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**Official Report  
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(Hansard)**

**Thursday 10 August 2006**

**Journal  
des débats  
(Hansard)**

**Jeudi 10 août 2006**

**Standing committee on  
justice policy**

Human Rights Code  
Amendment Act, 2006

**Comité permanent  
de la justice**

Loi de 2006 modifiant le Code  
des droits de la personne

Chair: Vic Dhillon  
Clerk: Anne Stokes

Président : Vic Dhillon  
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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

## STANDING COMMITTEE ON JUSTICE POLICY

## COMITÉ PERMANENT DE LA JUSTICE

Thursday 10 August 2006

Jeudi 10 août 2006

*The committee met at 1009 in the Valhalla Inn, Thunder Bay.*

### HUMAN RIGHTS CODE AMENDMENT ACT, 2006

### LOI DE 2006 MODIFIANT LE CODE DES DROITS DE LA PERSONNE

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

**The Chair (Mr. Vic Dhillon):** Good morning. Welcome to the meeting of the standing committee on justice policy. The order of business today is Bill 107, An Act to amend the Human Rights Code. This is our third day of public hearings. We met in London on Tuesday and in Ottawa yesterday. Public hearings will also be held in Toronto this fall.

For your information, to make these hearings as accessible as possible, American Sign Language interpretation and closed captioning services are being provided each day. As well, two support attendants are present in the room to provide assistance to anyone requiring it.

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

I understand there is a motion. Not yet? Okay.

### THUNDER BAY AND DISTRICT INJURED WORKERS SUPPORT GROUP

**The Chair:** We'll begin, then, with our first presentation from the Thunder Bay and District Injured Workers Support Group. Steve Mantis, good morning.

**Mr. Steve Mantis:** Good morning. Thank you, Mr. Chair. My name is Steve Mantis, and I'm the treasurer of the Thunder Bay and District Injured Workers Support Group. On my right is Eugene Lefrançois, who is a trustee and a member of our organization.

We want to thank you first for coming to Thunder Bay and including us. I know that we're so far from Toronto that we don't always get on the list, so we sure appreciate

that you did come up and make the time to hear from folks here in the great northwest.

Let me just start talking a little bit about our organization. The Thunder Bay and District Injured Workers Support Group was started in 1984, in response to pending legislation to amend the Workers' Compensation Act. We're a volunteer organization. We have no paid staff. We have a board of 15 that is our corps of volunteers that delivers service. We have an office that is supplied by a couple of the local unions in town that we can operate out of. We average about 60 people coming into our office every month. Here we are, no staff, and 60 people walk into our office looking for help with their problems, primarily with the workers' compensation system. These are workers who are disabled at work. That's not counting all the phone calls and the bump-ins when you're in the supermarket.

Our organization has two main goals. The first is really to make the system work better for everyone. Through that, we research and try to understand the various aspects of the systems we're dealing with so that we can then intelligently participate, whenever we get the opportunity, when anyone will listen to us, to try to make the system work better. The other is to provide information and support to workers who are disabled at work.

I don't know if you're familiar, but every year there are over 300,000 workers who are hurt at work. Of those, 14,000 to 15,000 a year end up with a permanent disability—people like me: amputations. Mostly these are invisible injuries, ones you wouldn't know if you just saw a person walking down the street—a person like Eugene who's had three knee replacements now. In Ontario alone, cumulatively there are 300,000 workers who have a permanent disability as a result of a workplace injury or disease. These are recognized numbers through the Workers' Compensation Board or the Workplace Safety and Insurance Board. Research shows that somewhere near 40% of the injuries never get reported, and we also know that 30% of the workforce isn't covered at all, so the numbers might be double that in terms of the real tragedies that happen in the workplace.

What happens? How does our society then support people once they become disabled at work? This has some bearing, because today we're talking about human rights. Human rights are for whom? Whom do we have human rights for here in Ontario and in Canada? Certainly injured workers don't feel like their rights are

being protected, because of what happens to us. Here we've got the research, the 300,000 people who went to work to put food on the table for their families. Somewhere between 50% and 80% are chronically unemployed now. The majority are living in poverty. We did a survey of our membership at an information fair that we had in the spring: 60% said they had considered committing suicide as a result of their disability and the way they were treated both by the public system, that was there to help them, and by their employer and their co-workers.

To me, this is the essence of what human rights is about: When you're down on your luck, when you've got extra barriers that you have to face, you're going to get some support from society, from our communities, to overcome those barriers and regain your status as an active member of society. Our records really are going downhill in terms of the government's commitment to protecting our human rights. We see it in a number of sectors. It seems to me that if you're making \$60,000, \$80,000 or \$100,000 or, like the management of the WCB, \$200,000 a year, you don't have to worry about your human rights because you can pay for all the stuff you need. It's people who are living in poverty, people who are facing systemic barriers, who aren't valued to that limit in society. That's who really needs protection of their human rights.

How are we doing? Does anyone know what the United Nations just said about Canada's record on human rights? Did anybody follow what the United Nations had to say? Nobody, eh? Interesting. The United Nations just evaluated Canada's record on human rights and found that Canada is falling short, particularly for people who are living in poverty and aboriginal people. Really we look at past performance. We look at how the government, for the last dozen years anyway, has been on a course of cutting back public services and really allowing people to make their way all by themselves in the world.

**1020**

Freedom of choice: We'll give you freedom of choice. If you've had a hard time and your only choice is whether to buy Kraft Dinner or diapers for your kids, I'm not sure what kind of choice that is. Human rights include security of housing, security to be able to feed your family. Certainly this government and the previous government and how they treat poor people have not shown your commitment to human rights. I don't see it. Forcing people to make those choices is not protecting their human rights.

We are helping people all the time. Here we are, a bunch of volunteers, and we feel like we're the ones who are the safety net in our community for workers who are disabled. Where is the public system? Where is the commitment to human rights in our government? We don't see it. The agency that was created to help injured workers has received less and less funding over the last 10 years. So they have to tell half the people who come to them to go away because they can't help them, right off the bat.

The government introduced legislation to say, "We're going to help human rights because we're going to speed up the process," and they have no clear indication of how to do that, of how they're going to replace the work of the human rights commission, other than, "We're going to do something that's good for you. It's okay. Trust us." Why? Why should we trust you? You haven't shown us that you're worthy of that trust. You haven't shown us that in fact you are interested in protecting our human rights. It sure seems to me it's more like, "We'll protect the economy; we'll protect our position somewhere internationally," but in terms of people who are needy in our society in Ontario, I don't see it. So when you say, "Trust us," you have to give us something to build that trust on. Certainly, our organization doesn't see it. We are the folks who are living in poverty. We are the people who are making tough choices about the little bit of money that we get and we don't see the government supporting us.

It leads me to think, what is the role of government? For years and years and centuries the role of government was to protect the people in power: the king, the queen and the emperor. That was the role, in large part, right? Then we went through a stage where we had more democracy and more protection for all citizens. Now I feel like we're going that other way again. I feel like the commitment to protect all the citizens, to try to build inclusive societies, is disappearing and it really makes me sad. We elect you, our elected representatives, to show leadership for all of us, and what do we see? We see more people ending up in poverty. We see a bigger gap between the rich and the poor. We see what we deal with all the time at the workers' compensation board and we go to the Minister of Labour and say, "Look at the numbers, look at the people who are falling further and further into poverty," and the minister says, "We can't afford to increase premiums to employers." The economy is booming, everyone is making big profits all over the place, but we can't afford to make employers pay for the injuries that are caused in their workplace. When legally they have the responsibility to protect the health and safety of their workers, we can't afford to make them pay for it anymore. So it's the workers themselves who are going to have to suffer; it's the families. They're the ones who will have to pay now. Now, he won't say that. He just says, "How can we do this? We can't afford it." Who can't afford it? Someone has got to pay. If it's not GM and Ford, it's Eugene and I. We're the ones who every year see our ability to care for our families go down and down as a result of a workplace disability. So someone is paying, but your government has taken the position that it's not the big boys who have to pay, it's somebody else. Well, the somebody else is us.

So we're really looking for leadership from the government—not leadership from Ford Canada or Bombardier—that represents the people. And this whole process of how we got to Bill 107 here: I don't know whom the government was talking to or listening to. Certainly in our community, which deals with human

rights issues on a regular basis, none of us were contacted. When the government starts thinking that the bureaucracy knows more than the people themselves, which is where I'm guessing this stuff comes from, I think you're starting to get out of touch. That's why these types of events are so important and why it's so great that you did come to Thunder Bay, because you need to talk to the real live people.

I only wish that your committee could actually do something. I've been presenting to these committees for 20 years, and I'm not sure I've ever seen them overrule anything that the minister wants to do. It's a little bit of craziness. So I'd like to see a little bit more backbone around the table, to tell you the truth. Certainly we don't see our own MPPs here, who say they support these issues that we bring forward, really standing up. You've got to follow the party line. Where is your own integrity here? What were you elected for? Why did you get involved? I don't know.

I think as well what we see is that in terms of human rights, the community legal clinics have been the group that has been most active in supporting the human rights of people in Ontario. Our organization provincially, the Ontario network, has now twice gone to the Supreme Court of Canada on cases of human rights, and it was the community legal clinic in Toronto, ARCH, that was there to represent us. There's no way we could have done that without that free service, without publicly funded legal clinics. But what we're hearing all across the province is that these clinics are so overwhelmed that they really can't do much anymore. They have to focus on people who just got thrown out of their house, out of their apartment, who got cut off welfare because they did something wrong: They filled out the form wrong or they checked a wrong box somewhere. That's where they have to focus: getting food and shelter for a person today. They don't have the ability to really push a lot of these issues that take longer and are more systemic. So leadership, to me, is showing more support for those legal clinics.

When you're bringing in changes to human rights, tell us what the heck you're really planning to do. If you say, "Okay, there's a backlog, and we want to allow a person to opt to go directly to the tribunal as an option," if that's their choice, if they've got money in their pocket and they want to go hire a lawyer and they want to avoid a lot of the red tape at the commission, okay. But does that mean that everybody can no longer get the support and the investigative capacity that happens at the commission? I'm not sure that's a good trade-off.

### 1030

I'm going to finish by just briefly mentioning too a research project we're doing. It's really interesting, as injured workers, being on the receiving end of this stuff. We go to the WCB and say, "What happens to workers, long-term?" We've been asking this question for 15 years, and they don't know. They don't know what happens, long-term, to people who are disabled. Government is all the time talking about accountability and outcomes:

"We want measurable outcomes." Well, don't we want to measure how this system, that spends \$3 billion a year, does its job? Don't we want to know whether in fact it is helping people? No one really looks at that. They look at the dollars, and that's the outcome they look at. So in fact injured workers have gotten together with university-based researchers to try to see what really happens. This little yellow flyer is our introductory for a five-year project we're launching now. After the next election, if some of you are around, we'll probably be talking to you some more about the findings of that research and looking to you to help us create a system that works for all folks. Eugene, do you want to add a little bit?

**Mr. Eugene Lefrançois:** I don't have much to add, except back to what Steve said about the legal clinics. What is the budget that you're planning to propose for the legal clinics? I haven't seen a number yet anywhere on all the literature I've read, how much you're planning to propose. That's just one question.

Another question is, what are the safeguards that will be in place so it won't cost anything for the average citizen? Is there going to be a means test? Are you going to check it out, so if you make \$12,000 a year you don't have to pay anything, but if you make \$12,001 a year you have to pay something? Because the ones who need it, that's about their income.

I had a case, and it took six years to get a decision on the tribunal—six years. I've got another one—it's 21 years and I'm still waiting for an answer. So if you're talking about tribunals that have some power, I hope you kind of speed up the process. Twenty-one years for an answer—I've got patience.

People who live in the north who travel to the south can buy a bottle of whisky in downtown Toronto for—what's a 26-ounce going for today, \$30?

**Mr. David Zimmer (Willowdale):** It's \$22.95.

**Mr. Lefrançois:** Okay, \$22.95.

**Mr. Peter Kormos (Niagara Centre):** What the hell are you drinking?

**Mr. Lefrançois:** So you can buy a \$22.95 bottle of whisky on the corner of Yonge and Bloor, and you can go to Armstrong, not too far from here, and still pay exactly the same amount—\$22.95—for that exact same bottle of whisky. If you get a loaf of bread in Toronto, what is it, 85 cents? It's three bucks up in Armstrong. Is that human rights? How about milk? You can buy a Texas mickey in downtown Toronto for, say, \$35—depending on what you're drinking, right? You go to Pickle Lake, you're looking at 100 bucks. That bread will cost you four, five, six times more—and that's just where the highway is. When you fly in and you have to get your bread or milk dropped off, is that human rights, when the prices are so various? Is that human rights, yes or no, to get the staples of life? I need an answer so I can move on here.

**The Chair:** That's not—

**Mr. Lefrançois:** Is that human rights, though, for the staples of life?

**The Chair:** I'm not going to comment on that. You can continue on.

**Mr. Lefrançois:** Okay. I belong to this Metis group; I am a Metis. We won a case in the Supreme Court of Canada called Powley. It seems the judges saw fit that the argument that the Metis should be treated like all the other aboriginal people in Canada was a good argument. It seems that the province of Ontario has taken it upon themselves—and it doesn't matter what government it is; it doesn't matter if it's Liberal, NDP or Conservative—that they don't want to bargain, they don't want to talk, they don't want to negotiate. Who has human rights then? Who do we go to? Do we go to the Ontario Human Rights Commission to argue with Ontario for human rights, or do we go to the UN? Do we go back to the Supreme Court and say, "Can you force the province to negotiate?" Is that human rights?

My final thing—I think it's final. You want to set up a bunch of lawyers to handle these cases, the proposed human rights cases. I've got a suggestion that we hire injured workers who are in LMR programs, who will work with Ontario human rights. We have been waiting for a long time, so we've already got that down; we already have a lot of job training. I guess this firm would be called Bill 'Em, Soak 'Em and Liar. There you go.

**The Chair:** Thank you. There are a couple of minutes for each side. We'll begin with the official opposition.

**Mrs. Christine Elliott (Whitby–Ajax):** As you know, this is our third day of public hearings on Bill 107. I can tell you that the concerns you've expressed today have been expressed by a number of other groups. Your basic question about how this system is going to serve people better in advancing the cause of their human rights: I share your concerns; the two opposition parties feel exactly the same way as you do about it. There are some significant gaps here, particularly when you look at advancing directly to the tribunal and how people are going to navigate that when you don't have basic information about the legal support centre and how it's going to be funded. That is and should be a question of concern to all of us, because although there are some broad strokes in this legislation that look like they're pretty good on the surface, as we all know, the devil's in the details, and we don't have the details. That's what these hearings are about: to hear about the important things that people need to know about. That's what we're going to be working on as we move forward with this. So I thank you very much for your presentation, and please know that many others share your concerns.

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

**Mr. Kormos:** Thank you very much, gentlemen. Your rather Shakespearean perspective on lawyers is an interesting one. The only comfort I take is that I'm not the only lawyer on the committee. The point's well made.

You should know that community legal services endorse this legislation. They're about the only ally that the government has found, and I don't begrudge the government some allies, because it can be awful lonely trying to peddle unpopular and poorly drafted legislation across the province. I'm not familiar with the details of the intimate relationship between the legal clinics and the

government around this bill, but the legal clinics support the legislation.

I also want you to know that this committee has the power to accept or reject any amendment put before it. The government happens to have a majority. Take comfort in this: the Liberal members of this committee, these people sitting right here, I can say with certainty, are amongst the best of that Liberal caucus. They are the most open-minded, the least partisan and the most thoughtful members of that caucus, and we need them to support amendments; for instance, if you're going to have direct access, to create a choice to retain the commission, to beef up the commission, to give it the resources that it needs so it can do its job in a timely way, so that people who can't afford to hire high-priced, \$800-an-hour lawyers can access a rights advocacy system as well. It's the issue of costs, right? The litigation chill of the risk of having to pick up the costs of the other party should you lose at a tribunal—because an adversarial system, other lawyers here will tell you, even with the best-prepared case, can still be something of a crap shoot. You folks know that, by virtue of your appearing in front of arbitral tribunals on a regular basis.

**1040**

Look, if we're going to have any chance at all of a group of government members taking their government on and doing the right thing, instead of drinking the Kool-Aid and following the party line, it's this group right here. If they can't do it, nobody in that government caucus can. So I'm looking forward to the clause-by-clause and I'm looking forward to seeing these independent-minded, bright, capable, thoughtful, fair-minded Liberal caucus members show the independence and the courage and the commitment to their voters that they promised their voters they would get from them once they were elected. I think you should join us at Queen's Park, or at least watch us on the legislative channel.

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

**Mr. Zimmer:** Just in case you're not aware, I want to point out that the Attorney General in the Legislature has made a clear and unequivocal commitment to amend the bill to ensure that everybody who has a complaint before the tribunal does receive legal support, has a lawyer attached to their case to see the case through with them.

Furthermore, the Attorney General has also committed, after this committee has completed its hearings and done its work, to consider any other amendments that come forth.

Thirdly, I just wanted to point out, because you did make reference to ARCH—I think they've worked with your organization and injured workers over the years and have a relationship which you obviously have confidence in. You should know that yesterday at the hearings in Ottawa, ARCH appeared, and ARCH is very supportive of the direct-access model. You might want to have a look at the Hansard proceedings yesterday and hear what they had to say, and their rationale for supporting the

direct-access model. They too, however, did make the statement that they were also very supportive of and insistent on the amendment to ensure each complaint had independent legal representation. So I would urge you to have a look at ARCH's Hansard record yesterday.

**Mr. Mantis:** I think we, as well, like the idea of the choice of a direct-access model, though maybe that's not the only choice, really, based on how this all unfolds and what kind of support there is both in the direct access and through the investigative powers of the commission.

I wish I had more confidence when a government minister stands up and promises something, because we had Bill Wrye stand up in 1985 and promise that injured workers would never have to come before Parliament, cap in hand, asking to have their pensions increased when inflation went up. We had Greg Sorbara stand up in the House and guarantee that when people were disabled and out of work, they would get their wage loss. That's not what happens. So I really wish that we could just trust the government minister who promises something. But when you've been at it for 20 years and you've seen the promises go by the wayside, the trust starts diminishing. I try to live by my word. I wish the finance minister of this government would as well.

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

#### FAYE PETERSON TRANSITION HOUSE

**The Chair:** Next we have the Faye Peterson Transition House.

**Ms. Debbie Ball:** Good morning. I'm on holidays, so I do apologize for not getting you the handout ahead of time. I thought it was important to interrupt my holidays and come and visit you this morning.

I am Debbie Ball and I am the executive director of the Faye Peterson Transition House here in Thunder Bay. We're a 24-bed shelter; we provide support and shelter to abused women and children. The mandate of the Faye Peterson Transition House is to support women and children to live lives free of violence. But we have a vision, and our vision is to have a society where all women and children live these lives free of violence, in safe communities free of racism and oppression, and also where women, youth and children are equal, fully participatory members of society. We also have a vision where perpetrators of woman abuse are held accountable through vigorous prosecution.

Much of my work as the executive director is done at the systemic level. I work provincially to ensure women's voices are included in social policy development through the use of a female-gendered lens.

Women, tragically, are abused and in some cases murdered because of ongoing harassment, including sexual harassment. Abused women also experience discrimination when they are recipients of social assistance, and can experience unequal and unfair treatment, for example, in accessing housing or using other social services. When this occurs, they may well be entitled to access the enforcement protection of the code, but very

often in the past, legal clinics have not recommended accessing the code's enforcement process because it does not afford our women an accessible, timely or effective remedy.

But the Faye Peterson Transition House does support Bill 107 in principle, because it will provide direct access to an immediate hearing. Abused women are living in crisis. They have many obstacles that they need to overcome and they cannot wait over a year for an investigation to begin. Also, we think increased access will assist us in holding perpetrators of woman abuse accountable. If the system can implement Bill 107 with amendments, and cases are won based on harassment and sexual harassment, perpetrators of violence will be held accountable for their behaviour—and it also sends a strong message to abusers. We support Bill 107 with the addition of mandatory language for a fully accessible and funded province-wide human rights centre to ensure women are provided the support and representation they will need before the tribunal.

So what are the problems with the system right now? First of all, the commission's veto over hearings. Right now, only about 6% of human rights complaints are referred to a hearing. The commission holds behind-closed-doors meetings to decide whether to dismiss a complaint without a hearing, with no ability of the parties to appear or participate. This results in many cases which have merit being dismissed without a hearing.

They also have long delays. Right now, the investigation takes up to five years, and then the tribunal process for the 6% can take a further one to two years. This delay is structural and built right into the system because the same work done in the investigation gets repeated in the tribunal process.

The commission has conflicting roles as well. Currently, the commission is supposed to be an advocate for human rights at the same time as it is obliged to be a neutral decision-maker for individual complaints. The reality is that the commission's resources routinely get swallowed up by dealing with the individual complaints, leaving little left to play any significant advocacy role.

Also, a lack of complainant participation: Right now, once a complaint is filed, the commission takes over the case and the complainant completely loses control over the process and only has limited rights to participate. This is a paternalistic and disempowering approach to human rights complainants which is unlike virtually any other individual rights enforcement process. Women who have been abused have been disempowered enough. They need a system that will empower them to move forward and to start the healing process.

How Bill 107 will correct these problems:

The first one definitely is access to the tribunal hearing. Bill 107 guarantees that complainants will have direct access to a tribunal hearing with no commission veto.

#### 1050

Significant reduction of delays: Bill 107 provides a one-step process for complaint resolution, which will shorten the pipeline from complaint filing to a final

decision, with a goal of reducing the time it takes to resolve a complaint to one year. We can live with one year.

Commission as a strong advocate: Bill 107 strengthens and clarifies the commission's role as a strong advocate for human rights by relieving the commission of its conflicting role in dealing with individual complaints.

Complainants will have control: Bill 107 gives the complainants full control over their claims and the ability to fully participate in the process.

Some suggested potential amendments to Bill 107: While the Faye Peterson Transition House supports Bill 107 in principle and endorses the general approach taken to the enforcement of human rights which is embodied in Bill 107, the Faye Peterson Transition House wishes to make submissions to this committee in order to make this legislation even stronger and more effective in the promotion and protection of fundamental human rights in Ontario.

We'd like to see supports for the claimants. Specifically, we'd like to see you strengthen section 46.1 to provide a clearer commitment to support for claimants. Adequate resources should be allocated to ensure abused women and all claimants are adequately represented. Several recommendations follow on how to strengthen this section.

Use the "advise and represent" language from section 176(1) of the Workplace Safety and Insurance Act, whereby the functions of the Office of the Worker Adviser include to "advise and represent" workers.

Replace "may" in the existing section 46.1 with the mandatory "shall."

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

Include language to ensure that sufficient resources are provided to enable the office to carry out its functions.

Provide for an annual review of the support being provided.

With these general principles in mind, the following language is proposed to replace section 46.1:

"46.1(1) The minister shall establish a system for providing high-quality support services to any person who is, has been, or may be a claimant under this act, and to provide information, support, advice, assistance and legal representation to those seeking a remedy at the tribunal.

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

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

Another amendment, structure of the commission: First, the commission should report to the Legislature, as is the case with the Ontario Ombudsman and the Information and Privacy Commissioner, to ensure its independence. That will require amendments to the following sections.

There should also be requirements to be appointed as a commissioner. It's important for Bill 107 to articulate certain requirements for individuals to be appointed as a commissioner, including such requirements as active involvement and lived experience in human rights, and demonstrated commitment to human rights. Language also should be included to ensure diversity and that commissioners are representative of the community.

I've given you an example of language for section 27(2): "Persons appointed as members of the commission shall possess active involvement and lived experience in human rights and demonstrated commitment to human rights. The members of the commission shall be representative of the community."

The committee should carefully consider submissions from the affected communities regarding the Anti-Racism Secretariat and Disability Rights Secretariat. The committee should hear from the affected communities as to how best to present their issues in the new system and whether establishing these secretariats meets their needs or whether it should be left to the commission to establish such secretariats or advisory groups as may be required.

I would also tell you that abused women experience a lot of oppression and that certainly one of our roles in looking at how we develop social policy is to have a clear understanding of what oppression is and then to do some training in the rest of the province around anti-oppression and anti-racism. So having Bill 107 include something on anti-racism and anti-oppression would certainly help us do our work when we're working with government; and I talk about using a female-gendered lens in developing social policy.

The role of the commission:

(1) Ability to obtain documents and information: Bill 107 should impose a duty to cooperate with a commission inquiry, investigation or review, and a duty to provide relevant documents or records as requested by the commission. In the event of non-cooperation, the commission should have the right to file an application with the tribunal to obtain an order to require the production of whatever documents or records have been refused.

(2) The commission should have the ability to intervene in any application, subject to such terms and conditions as the tribunal may impose. The commission should have the right to intervene in any application, subject to such terms and conditions as the tribunal may impose. The considerations for commission intervention should be set out in the tribunal's rules, and the tribunal should consider the consent of the claimant as an important factor as to whether or not the commission should be granted intervention. And I would emphasize the consent of the claimant.



Another point would be the tribunal's composition and reporting structure. There should be requirements for qualifications and expertise for tribunal members. As with commissioners, there should be certain requirements for tribunal members, and in particular that tribunal members be required to possess requisite qualifications, experience and expertise.

It is recommended that the following provision be inserted into section 32 of Bill 107:

"Persons appointed as members of the tribunal must have demonstrated experience, expertise and interest in, and sensitivity to, human rights."

The tribunal application process: If the correct form is not used to file an application, this should not stop the application from proceeding. Third parties must have the right to file applications on behalf of individuals whose rights have been infringed.

Many community agencies and equality-seeking groups like the Faye Peterson Transition House have fought long and hard over the years to have the right to file applications on behalf of individual members of the communities they serve. One of the reasons this is necessary is because the women we serve in these community agencies and groups are often vulnerable and are reluctant to put forth their own names as claimants. On other occasions, while community groups and agencies are made aware of actions which infringe the Human Rights Code, the specific individual who is affected cannot be identified. Sometimes, for community agencies and groups that serve homeless or transient communities, the individuals whose rights have been infringed simply cannot be located.

Bill 107 should be amended to provide community agencies and groups with the ability to file an application with the tribunal on behalf of members of the communities they serve whose rights have been infringed.

The time limit for filing an application should move to two years instead of six months, and this meets the general standard for civil claims.

The tribunal hearing process: Certain minimum procedural safeguards should be in place before the tribunal can summarily dismiss an application. Right now, an application can be dismissed without any requirement for any kind of hearing. The word "hearing" in the opening line of section 41(1) should be replaced with "full hearing on the merits."

Some kind of oral hearing should be required before an application can be summarily dismissed. One of the main criticisms of the commission's summary dismissal powers under the existing section 34 of the Human Rights Code is that complaints are being summarily dismissed behind closed doors on the basis of written submissions without the claimant having any direct access to the decision-maker. This needs to be rectified in the new system.

There should also be a legislative requirement for the tribunal to provide reasons for any summary dismissal.

Bill 107 should specify that the applicant has the right to elect whether to use alternative dispute resolution—

ADR—mechanisms instead of holding a hearing. The language in section 37(1) of Bill 107, which permits the use of ADR mechanisms by the tribunal, should be amended to give the claimant the right to choose whether he or she wants his or her claim resolved through ADR. I would tell you that alternative dispute resolution is seldom, if ever, appropriate for abused women. Abused women come out of a history where there has been a huge imbalance of power, and to put them in the same room or in a position of having to bargain with the same abuser is totally unacceptable. However, giving women the right to choose is also empowering and necessary in the healing process.

#### 1100

The emphasis on expedition in section 37(2) of Bill 107 needs to be balanced by an equal emphasis on deciding the case on the merits and ensuring procedural fairness.

The tribunal should be required to consider documents published by the commission. In its current form, section 44 of Bill 107 only states that the tribunal "may" consider documents published by the commission. If we truly want the commission to be a research and policy-making body, then the tribunal should be required to consider the policies and documents published by the commission. This can be achieved simply by changing the word "may" to "shall."

No right of appeal: One of the many problems with human rights enforcement systems over the years has been the ability of parties to an adverse tribunal decision to appeal to the courts to get the decision overturned. This is a pattern that has repeated itself over and over again in the history of human rights enforcement. The broad right of appeal that currently exists under the code has resulted in path-breaking tribunal decisions being overturned on their way up the judicial ladder, and often only restored at the level of the Supreme Court of Canada at great expense and, again, delay to the claimant, and often nullifying any meaningful remedy because of the delay and expense, even if the decision is ultimately restored.

While many other tribunals, such as the Ontario Labour Relations Board and grievance arbitrators, are respected and their decisions overturned only if they are patently unreasonable, the Human Rights Tribunal is subjected to the far more stringent standard of correctness, which means that the court can overturn the tribunal's decision on appeal solely on the basis of the court simply having a different view of the matter.

The entire reason for setting up an expert Human Rights Tribunal to deal with discrimination and harassment issues was originally because of the concern that the courts were not properly addressing discrimination issues. Both the Cornish report and the La Forest report recommend that human rights tribunal decisions be respected like other expert tribunals.

The provision giving the tribunal the power to charge fees for expenses incurred should be removed.

Civil action: One problem with the current section 46.2 is the court's remedial authority upon a finding of

discrimination is limited to awarding “compensation ... for injury”—

**The Chair:** Can I just interrupt? Can you slow down the pace?

**Ms. Ball:** Slow down for the interpreter?

**The Chair:** Yes. Thank you.

**Ms. Ball:** Oh, sorry—“to dignity, feelings and self-respect.” This prevents the court from awarding, for example, compensation for lost earnings as a result of discrimination, which is the most significant reason for asserting a human rights claim upon the loss of employment. What this means is that claimants will continue to be forced to file both a statement of claim in the courts and a human rights complaint at the tribunal, and the duplication and expense of multiple proceedings will continue.

These two problems can easily be solved with the following changes, and then I’ve listed 46.2 and how it would be written:

“If, in a civil proceeding in a court, the court finds that a party to the proceeding has infringed a right under part I of another party to the proceeding, the court may order the party who infringed the right to pay monetary compensation to the party whose right was infringed on the same basis as the tribunal under section 42 of this act and award such other remedies as are available to the tribunal under section 42 of this act.”

Bill 107 should also be amended to permit any tribunal to have the power to award remedies on the same basis as the tribunal under section 42 of the act, in accordance with the limits of the tribunal’s remedial jurisdiction.

Section 46.2(2) of Bill 107 should be changed to ensure that claimants can bring an action for discrimination if it is together with a wrongful or constructive dismissal claim or some other claim. Section 46.2(2) appears to say that a person can’t bring a civil action if their only claim is a claim of discrimination contrary to the Human Rights Code. But when the term “cause of action” is used, it appears to restrict or limit the ability of the plaintiff who has initiated a wrongful dismissal claim to also assert a separate and independent claim for discrimination in violation of the Human Rights Code, which awards damages on a different basis. The effect of this would be to force people to continue to engage in more than one legal proceeding.

This problem can easily be solved with the following changes: “(2) Subsection (1) does not permit a person to proceed with an action based solely on an infringement of a right under part I.”

Finally, Faye Peterson Transition House would like to comment on what we believe are misconceptions about Bill 107. We are aware that some individuals and groups—and many, I have to tell you, that I work with as well—some of whom have appeared probably before this committee or provided submissions to this committee, have been voicing opposition to this bill. I heard this morning some opposition as well. We believe this opposition is largely based on misconceptions both about the

current human rights system and about the actual provisions of Bill 107. Before concluding, I’d like to take an opportunity to address these with you.

There have been full public consultations. Some have expressed concern about a lack of consultations on human rights reform, and this is unfounded. Broad-based public consultations on human rights reform were held prior to the Cornish report in 1992 and the La Forest report in 2000, both of which made recommendations which are now being implemented in Bill 107. In addition, last spring the Attorney General, Michael Bryant, held listening sessions on human rights reform with a broad range of groups, including many of those currently voicing opposition, and the commission conducted a full consultation in the fall of 2005. The committee is now holding province-wide consultations on Bill 107 through the hearings being held this summer. So I would say there has been full public consultation.

Currently, there is no guaranteed right to an investigation or a speedy investigation under the present system. Many complaints are currently dismissed by the commission without any investigation whatsoever. Where a complaint proceeds to investigation, the wait for the investigation to even start is often over a year and many times even longer. Further, the commission’s investigation is not designed to assist the claimant; rather, the commission uses the investigation as a basis for dismissing the vast majority of complaints without a hearing. Investigations and dismissals of complaints currently happen behind closed doors without the claimant having the right to question witnesses relied upon to dismiss the complaint.

Currently, there is no legal representation. No legal assistance is currently provided to claimants with the filing of their complaints, at mediation or during the investigation process. A commission lawyer is only appointed to a case if it is one of the handful sent to the tribunal for a hearing. That’s the 6% we were talking about. Even then, the commission lawyer represents the commission, not the claimant, and can withdraw from the case. Commission lawyers also currently prepare legal opinions recommending the dismissal of complaints. In contrast, the government has announced its commitment to ensure that legal representation is available to all claimants who need it.

Bill 107 protects decisions made by an expert Human Rights Tribunal. The current system includes a broad right of appeal to the courts, which has resulted in many progressive decisions of the Human Rights Tribunal being overturned. Bill 107 would protect the decisions made by tribunal members with expertise in human rights from interference by the courts in the same way that other expert tribunals are protected.

Bill 107 does not impose user fees. Bill 107 contains a standard provision which currently applies to all administrative tribunals which allows them to charge for services such as photocopying etc. Bill 107 does not impose user fees, nor is there any intent to do so. As indicated above, the Faye Peterson Transition House supports the removal of this provision in order to allay these fears.

Bill 107 is not the same as the BC model. Under the BC model, the Human Rights Commission was eliminated and only the most minimal resources for legal representation were made available. In contrast, Bill 107 strengthens and clarifies the role of the commission, and the government has expressed a strong commitment to ensuring that adequate resources for legal representation will be made. That's it.

**The Chair:** Thank you very much. About a couple of minutes each. We'll begin with Mr. Kormos.

1110

**Mr. Kormos:** Thank you very much, Ms. Ball. I understand the debate. I understand the Cornish recommendations. I understand the difference between a commission-driven system and a direct access system. I appreciate your support for the government proposal. However, the impression one gets is that everybody is wrong but you and people who agree with you. David Lepofsky is wrong and the association of Ontarians with disabilities. The association for community living is wrong. All those groups—

**Ms. Ball:** We have had discussions with them.

**Mr. Kormos:** One moment—OPSEU; the Ontario Federation of Labour; lawyers like Mr. Hameed, who practises in the area; and there is a debate amongst lawyers. I respect the position of people who support the direct-access model; however, with all due respect—and I appreciate that your submission is not the only one that has been cribbed, to a large extent, from roots. There will be AODA-based submissions that will have similar language in them. There will be OFL-based submissions that will have similar language in them. But when a transition house then proceeds to part IV with the misconceptions about Bill 107, which is the government line—

**Ms. Ball:** I—

**Mr. Kormos:** —Ms. Ball, please—it causes me great concern because it diminishes, in my view, and maybe my view only, the strength of your submission. The government is quite capable—it has spin doctors, it has hundreds of thousands of dollars worth of staff here and in every community we go to working with the media, spinning the government line.

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

**Ms. Ball:** Do I get to respond to that?

**Mr. Lorenzo Berardinetti (Scarborough Southwest):** I wonder if we can give Ms. Ball a chance to respond to Mr. Kormos's comments.

**Ms. Ball:** I can say that we have had intense discussions and that we do work with a number of human rights lawyers. So the misconceptions that are identified are certainly ones that we believe are, and they're not the party line. I understand that you might perceive that. I have met Mr. Bryant, our Attorney General, as I have met many of our ministers, and I guess I do have some faith in this government. So I do stand by those.

I note as well, in my work with DAWN, the Disabled Women's Network, and cross-sectorially, a number of other organizations do have concerns. These are what we're saying we believe are some misconceptions that

are out there. With strengthening the bill with the amendments that we have suggested, then I think that it can be a strong bill.

**Mr. Kormos:** Ms. Ball, that's embarrassing.

**Ms. Ball:** Actually, I don't think that it is.

**Mr. Kormos:** I believe it is.

**Ms. Ball:** Well, I believe it.

**The Chair:** Mrs. Van Bommel?

**Mrs. Maria Van Bommel (Lambton–Kent–Middlesex):** Thank you for your presentation. Being an MPP in a rural area and the kinds of issues that we have faced in our communities in terms of access and helping women who are abused to make their way to transition homes and to shelters, I can only imagine what it's like for you to provide these kinds of services in northern areas.

One of the things that we have heard, and you bring it up here as well, is the whole issue around sexual harassment, the impact on women and the struggle that women have in trying to bring those issues to the Human Rights Commission. What experience have you had here in terms of women who try to bring their issues forward and the length of time that it takes their whole issue around going through the double process of commission and then tribunal, the time and the intimidation—I shouldn't even put that word in there—but their state of mind going into this and the length of time that it takes? Do you find that women are discouraged by the fact that they can't have direct access to a tribunal?

**Ms. Ball:** I think absolutely that they're discouraged from that. When women are in crisis, when they have left an abusive situation, there are many things going on in their life, so if they can't get or have a thought that there is a speedy remedy—and I don't mean speedy in 10 days—that there is a process that will engage them, that will have their voices heard, where they will be empowered, I think it's the length of the process that really discourages them, and also it just delays the healing process. It takes so long when we're working on other aspects of their life that, even when they're strong enough and capable of doing that, it's still just too lengthy and too ominous for them to really engage in.

**The Chair:** Thank you, Mrs. Elliott.

**Mrs. Elliott:** Ms. Ball, you stated at the beginning of your presentation that you support Bill 107, yet we have 10 or 11 pages of proposed amendments that you present to the bill that in my view fundamentally change the character of this bill. For example, you state at the beginning that everyone is guaranteed a hearing at the tribunal. In fact, that's not the case at all. The legislation doesn't say that, and you're recommending that that be changed; similarly with the commission, that the commission needs to be strengthened to allow it to continue its advocacy function. In fact, most of the powers of the commission are being taken away. So I find it really hard to understand how you say that you can support this bill when you are recommending sweeping, fundamental changes to it.

**Ms. Ball:** I think I've spoken to that in my presentation, that there are a number of amendments that we do recommend before supporting the bill.

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

CANADIAN HEARING SOCIETY,  
THUNDER BAY REGION

**The Chair:** The next group is the Canadian Hearing Society. Good morning. Welcome to the hearing. You may begin.

**Ms. Nancy Frost:** Good morning. My name is Nancy Frost. I am regional director of the Canadian Hearing Society, Thunder Bay region. With me was going to be Karen Higginson, who unfortunately, due to ill health, was not able to be with us. I will do my best to share her experiences and those of other persons who are culturally deaf or have some degree of hearing loss with respect to the existing human rights process and what is being recommended in the bill.

This morning I will briefly share with you the key concerns and recommendations of the Canadian Hearing Society with respect to Bill 107. Karen was going to be providing her perspective but is not able to do so. I will attempt my best to provide that perspective this morning. You have each been supplied with a copy of our presentation.

I would like to preface the presentation by stating that 23%, or one in four individuals, report having some degree of hearing loss or are culturally deaf.

This presentation is attempting to represent their issues and concerns. Our presentation today will focus specifically on what human rights protection means to this population, what their current experience is and what changes must be made to Bill 107 before third reading to guarantee that their human rights and its process are void of any discrimination and barriers.

The Canadian Hearing Society is the largest agency of its kind in North America serving culturally deaf, deaf, deafened and hard-of-hearing people and their families. We are a multi-service agency, founded in 1940, that offers 17 different programs to address a broad range of hearing health care and social service needs, working in consultation with national, provincial, regional and local consumer groups and individuals.

In general, the Canadian Hearing Society is pleased that the government wants to improve and strengthen the Ontario human rights system, which is currently inaccessible, underfunded and backlogged. However, having said that, the Canadian Hearing Society has very serious concerns with the direction of the government's reforms set out in Bill 107 and with the process by which this bill has been brought forward.

Although the presenter prior to me stated that there was ample public consultation, I must dispute that and state that we deeply regret that the Canadian Hearing Society and our consumer groups were not consulted by the Attorney General before he announced his plans for reforming the Human Rights Code. We also regret that the government did not take up a proposal to hold an open, fully accessible public consultation before introducing Bill 107, as was done with respect to Bill 118, the

Accessibility for Ontarians with Disabilities Act. Our primary recommendation, therefore, is that the government start over again with designing reforms to the overall human rights system.

**1120**

Should the government, however, decide to proceed with Bill 107, we now offer the following recommendations, highlighted from those set out in the AODA Alliance draft submission, which the Canadian Hearing Society endorses.

In general, Bill 107 should be amended to ensure that it does not take away any rights now guaranteed under the Human Rights Code; that it does not breach the government's promise to Ontario's disability community for a strong and effective enforcement mechanism to support the Accessibility for Ontarians with Disabilities Act, namely the continued availability of the Ontario Human Rights Commission's investigation and enforcement powers.

Without taking away from the many important recommendations for amendments set out in the AODA Alliance's draft submission, the Canadian Hearing Society specifically draws the committee's attention to these recommended amendments. I have six listed.

(1) Individual choice: Complainants should and must have the right to choose to either take their case directly to the human rights tribunal or to opt for the human rights commission to investigate their case and to prosecute if evidence warrants.

(2) The human rights commission's powers must not only be maintained but also enhanced. The commission's investigative and enforcement powers should be maintained and its powers strengthened to monitor and enforce tribunal orders, and to plan for removal and prevention of barriers in the human rights process.

(3) The removal of barriers: The bill should be amended to protect discrimination victims from financial barriers, such as user fees under section 45.2 and legal fees. The bill must also provide resources, funding and processes to ensure that the system itself is barrier-free.

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

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

(6) The bill should be amended to give the Disability Rights Secretariat and the Anti-Racism Secretariat meaningful enforcement powers that have existed under other departments within the Ontario Human Rights Commission and sufficient staffing and funding to fulfill this mandate.

It was at this point that I was going to have Karen Higginson speak to you about her real-life experiences

and those of other culturally deaf persons and persons with various degrees of hearing loss. We do have individuals such as that in the audience currently, but because this process has not been accessible, meaning that there has not been a presentation of material in an accessible format, they have not been apprised of the bill nor the opportunity, as Karen had, to meet with me at great extent to review the bill and to prepare our presentation. On Karen's behalf, I will attempt to do my best to represent her issues.

For culturally deaf, deaf, deafened and hard-of-hearing complainants and respondents, full participation in the human rights complaint process is fundamentally linked to ensuring clear, accurate, professional two-way communication. When the appropriate accommodations are not in place, full participation by this population is in fact compromised.

If we did not have today professional sign interpreters and professional captioning, one out of every four Ontarians would not be able to participate in this session. That is access.

For someone such as Karen who is culturally deaf, linguistic access is required, examples being qualified sign language interpreters, plain-language documentation and English comprehension assistance. That is access and accommodation.

For persons with various degrees of hearing loss, their requirement is communication access; for example, real-time captioning, computerized note-taking or an accessible physical environment. It is these communication and language accessibility and accommodation requirements that are limited or void in the current human rights system. It is these accessibility and accommodation requirements that must be guaranteed.

To support our key recommendations that I earlier mentioned, Karen was going to be sharing with you specific examples of major accessibility barriers and gaps that are faced by persons who are culturally deaf or have various degrees of hearing loss.

The first example is that there are no clear policies and procedures for providing said access and accommodation, even though the Supreme Court of Canada, which supersedes the Ontario Human Rights Code, guarantees equal access; even though the Accessibility for Ontarians with Disabilities Act was implemented to ensure that communication and language access is in place. We are looking at a bill that is going to be taking away human rights protection as guaranteed by the Supreme Court, as guaranteed by Bill 117. Who will be investigating and enforcing the removal and prevention of barriers? By weakening the Ontario Human Rights Commission, you weaken the AODA.

The lack of funding for communication and linguistic access accommodations is a huge concern. With no or limited access, one out of four Ontarians is not able to participate in the process. They would thus remain a victim of the process itself.

Insufficient funding and staffing levels: The current backlog has forced some complainants to hire their own

lawyers at their own expense. I wish to state that due to very high unemployment and underemployment rates, lower income levels, low level of education and low literacy levels experienced by persons who are culturally deaf or have some degree of hearing loss, they cannot afford to hire and pay for their own lawyers. The system thus will not be accessible for them.

#### 1130

The elimination of investigations by the publicly funded commission and legal representation by a lawyer, as proposed in Bill 107, will create a serious barrier for complainants who are deaf or have some degree of hearing loss. Without this, many may choose not to proceed. Many will thus remain marginalized and victimized.

Many legal aid services across Ontario will not take on human rights cases, leaving these complainants with no representation when trying to fight big companies or governments.

Lack of availability of sign language interpreters and real-time captioners and lack of accommodation regarding the booking of said services result in unnecessary delays in the handling of human rights complaints. Wait times for these consumer groups are often longer than average.

The inability of most legal aid clinics, legal clinic offices, lawyers and paralegals to assist deaf, deafened and hard-of-hearing individuals who have limited English literacy skills and do not understand the intake forms is a regularly experienced barrier.

Communication and linguistic barriers are experienced from the very beginning of the human rights complaints process to the very end. That must be addressed. To not address it is to not make your system accessible to one out of four Ontarians.

We need and ask for a bill that will enhance, not take away, the human rights system by addressing these gaps and barriers. We do not need a bill, such as the proposed Bill 107, that will make it more difficult and more terrifying to fight for what is legally ours.

Many persons who are culturally deaf or have some degree of hearing loss cannot afford to pay for their own lawyers, have no experience using the human rights system, and would experience undue emotional trauma having to proceed alone with additional expense and having to individually face the person or organization that discriminated against them.

This is not a system that will protect and guarantee our human rights. We ask you to amend your bill to do so.

In conclusion, the Canadian Hearing Society strongly endorses the immediate need for establishing an enforceable and effective Ontario human rights amendment act. Bill 107 needs to include an enforcement mechanism, quality assurance and sufficient resources to ensure that qualified accommodation measures are available, such as interpreting, captioning and deaf-blind intervening. The legislation needs to have authority and be suitably funded so that proper systems can be set up to monitor and enforce the Ontario human rights system by strengthening the Ontario Human Rights Commission.

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

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

Thank you for this opportunity.

**The Vice-Chair (Mrs. Maria Van Bommel):** We have about four minutes for each party to ask questions or make comments. We start with the government side.

**Mr. Berardinetti:** We want to thank you for your presentation today, Ms. Frost. The information is quite valuable, and we will take it into consideration. A copy of it will be given to those who are still working on this bill, and we will be going through it clause by clause. My gut feeling is that there will probably be some changes made to the bill before it reaches its final form. How far that goes remains to be seen, but we thank you very much for your presentation here today. On behalf of the government members, thank you.

**Ms. Frost:** Can I ask a question? Will we be able to see the amendments or the draft amendments and be allowed an opportunity to provide feedback?

**Mr. Berardinetti:** I don't know if I'm allowed to answer that, Madam Chair, but I know that we do the clause-by-clause in Toronto. We haven't set those dates yet, but it is going to be in a committee format that we go through that clause-by-clause debate. But that's still to be determined.

**Mr. Kormos:** I'll answer that, Chair.

**The Vice-Chair:** Certainly, Mr. Kormos, but first we'll move to Mrs. Elliott, the official opposition member.

**Mrs. Elliott:** I'd simply like to thank you, Ms. Frost, for your presentation on behalf of the Canadian Hearing Society. You've raised some significant concerns which many of us share, and we hope that we will be able to convince the government to make amendments along the lines that you've suggested.

**The Vice-Chair:** Mr. Kormos, third party member.

**Mr. Kormos:** Thank you, Chair, and thank you, ma'am. If the government wishes or wants to have you see the amendments before they are put before the committee, it can. It remains to be seen whether or not it will. Unfortunately, that is probably not within the—I know it's not within the power of the committee members, for whom I have great regard, but it's the decision of the Ministry of the Attorney General itself. Unfortunately, the practice is to write the amendments in relative secrecy and then, boom, they're before the committee. If they are government amendments, they tend to get passed, because the government has the majority. If they

are amendments—notwithstanding that they are based upon the careful consideration of any number of persons or groups that appear before the committee—that are sponsored by the opposition parties, that's usually an indicator that they will fail, although from time to time the government will set up an amendment with an opposition caucus to make it appear as if the government is listening to everybody. But that's just part of the political game.

At the end of the day, although in one respect it's up to the government, it's really up to the committee. This committee can send whatever bill it wants back to the House for third reading. This committee is an incredibly powerful body. This committee can accept any amendment it wants; it can reject any amendment it wants. This committee could create the dual-stream model that AODA proposes and that you endorse. That seems to me to provide direct access to the tribunal for those who can afford it, who wish it and who want the expediency of it, but also to preserve the very important advocacy and investigative role of the commission for more vulnerable, less powerful, less prosperous victims of human rights.

I don't suspect you of having any misconceptions about the existing system or about the bill, unlike some other participants in these proceedings. I think yours is—like so many others, many of whom disagree with you—a valid proposition. It's up to the members of this committee to use their judgment to earn their paycheques and decide whether or not your proposal is going to be in the bill that's reported back to the House. It's a matter of whether the members of this committee listen to the people of this province or whether they listen to their political bosses in the Premier's office. I think it's as simple as that.

Thank you, ma'am.

**Ms. Frost:** Thank you, everyone.

**The Vice-Chair:** Thank you, Ms. Frost.

1140

GREG SNIDER  
SANDRA SNIDER

**The Vice-Chair:** Now we will hear from Greg Snider and Sandra Snider. Thank you very much for coming this morning. You have 20 minutes. You can use the entire 20 minutes to make your presentation or, if there is any time remaining after you finish, there will be opportunity for questions and comments by the members of the committee. If you would please start. Thank you.

**Mr. Greg Snider:** I'll probably check at the end of my rough spiel here and see how much time is left, and I might take a little more time.

**The Vice-Chair:** It's totally up to you.

**Mr. Snider:** Hello. I am Greg Snider, and with me today is my wife, Sandra Snider. Sandra and I are both active members of our union, OPSEU, the Ontario Public Service Employees Union. Sandra is the northwestern region representative on the provincial women's committee and president of Local 736. I am chair of the

provincial human rights committee and co-chair of OPSEU's disability rights caucus. We are both active members of Westminster United Church. Sandra is also an active member of the Lakehead Board of Education's special education advisory committee and the Learning Disabilities Association of Thunder Bay.

We applaud the government for having the courage to try and fix a badly backlogged system. Sadly, the effort being made by this government will not fix the problem. Either it will transfer the backlog to the tribunal doors or, worse, clear the backlog by discouraging legitimate complaints from being filed. In addition, the bill in its current form violates a promise this government made to the many persons with disabilities living across Ontario.

**Mrs. Sandra Snider:** Although it is our view that there are several problems with Bill 107, we intend to concentrate on the two above-mentioned items.

First, we would like to discuss the financial barriers to access to justice. We recognize that the minister has clearly stated that the new legislation would establish a system of full access to legal services for all, regardless of income. However, there is only permissive reference to these kinds of services in the legislation. This in itself would lead one to question the legitimacy of the promise, but this in addition to the knowledge of how much that kind of legal commitment would mean for the coffers of the Ontario government leaves one no choice but severe skepticism. With apologies to our friends in the Liberal Party, I do not for a second believe that this promise will be kept. This would create a huge increase in the cost when compared to the current system, and the government has already been unwilling to address the current underfunding of the Human Rights Commission for nearly a decade. In fact, it is my understanding that one of the last significant changes to the commission prior to the bill was to lay off intake staff. There is no question that this move was both a great savings to the government as well as an indication that access to justice and legal supports is not a priority of this government.

Without guaranteed access to lawyers for all citizens, those faced with discrimination will have to make a financial decision. They will have to put a price on the right to equality and human rights protection. Certainly, many will not go forward.

This represents only the beginning of the financial barriers that exist within Bill 107. A far greater financial barrier to filing a complaint is the exposure of a complainant to the possibility of paying his opponent's legal costs should he lose. Not only do possible complainants have to consider the cost of their lawyers, but now they have to consider the possibility of having to pay the costs of the much larger, more expensive lawyers of their opponents. Although this may be seldom used by the tribunal, my years as a labour activist tell me that it will be a weapon frequently used by defendants with power prior to the hearing. With a whisper here, a comment there, the message will be delivered.

As a final financial barrier, this bill allows the Human Rights Tribunal to charge fees for services of the tri-

bunal. This series of legislative amendments demonstrates that the government has indeed taken a stand on human rights. That stand is that fighting for one's human rights comes with a price, and the victim should be paying at least part of that price. We disagree.

**Mr. Snider:** Turning to our second major criticism, the last time I sat before a commission to make a presentation, it was on the Accessibility for Ontarians with Disabilities Act. At that time, I expressed a great deal of skepticism about what would be put in place to enforce the Accessibility for Ontarians with Disabilities Act. The government was very clear that the tool of enforcement would be the Human Rights Commission. When the Ontarians with Disabilities Act Committee fought to have an independent enforcement agency created to implement this act, they were told that no such agency was needed because the Human Rights Commission would fulfill that role. But now there will be no enforcement role for the Human Rights Commission. When I spoke on the Accessibility for Ontarians with Disabilities Act, I was told by two Liberals not to worry, that there would be enforcement. Mr. Gravelle, a man I have a great deal of respect for, told me I was being needlessly cynical. Clearly, my worries were not needless.

Bill 107 does set up a disability rights secretariat, but with no power to investigate or prosecute, it will be of little help to the Accessibility for Ontarians with Disabilities Act or those facing barriers to accessibility. The secretariat will make recommendations that may or may not be followed, it will do as much public relations as the government of the day decides to fund under that year's budget, and on occasion it will respond to the wishes of the chief commissioner as he responds to the minister. But that's all.

We have a union sister who is currently sitting on one of the advisory committees set up under the AODA, and I spoke with her about how her work on the committee was going. I was astounded to hear that she was spending a lot of time arguing with other members that the Human Rights Code does apply when setting the standards. That's a very scary thing when you add that to the fact that you're not going to have the enforcement tool that was promised to us.

Bill 107 will require victims of those violating the Accessibility for Ontarians with Disabilities Act to purchase their own enforcement officers and prosecution staff in order to enforce the law, with the exception, of course, of those already living in or near poverty. Under the current system, the Human Rights Commission has the power to investigate a complaint and to represent the complainant without cost to the victim.

Why is the government so determined to throw out the very best parts of the commission? In our view, this bill should be scrapped and a new, more inclusive, ground-up process should begin. Everyone agrees that the commission needs to be fixed, but the key is maintaining the best parts and the most important roles.

If the government decides to go forward with these amendments, we want to express our strong support for

the recommendations put forward by the Accessibility for Ontarians with Disabilities Act Alliance, the most important of which, in our view, is to give people the option to take their case right to the Human Rights Tribunal or to opt for the Human Rights Commission to investigate their case and to prosecute if evidence warrants.

**Mrs. Snider:** The fifth recommendation, to strengthen, not weaken, the commission's enforcement powers, including expanding its role to monitor and enforce tribunal orders, and to plan for removal and prevention of barriers in the human rights process, would take the government a long way towards meeting the commitments it made with the passing of the Accessibility for Ontarians with Disabilities Act.

We would finally encourage the government to re-invest in intake processes at the stage where complaints are processed. The average person currently accessing the commission requires skilled assistance in filing and drafting complaints. Many complaints are rejected on the basis that they do not substantiate a human rights claim, either because they fail to outline what part of the code is violated or they fail to outline relevant evidence that validates their claim. The ability to connect very painful and emotional experiences with the requirements of the Human Rights Code is not an easy task and requires the assistance of culturally and language-sensitive intake staff.

**Mr. Snider:** With that, I want to thank you very much. How much time do I have left?

**The Chair:** You have about four minutes for each side, so 12 minutes.

**Mr. Snider:** Maybe if I can very quickly mention a few things before I do questions. I have a couple of people I know who have brought cases forward and several that have been settled. John Rae has taken the Ontario Federation of Labour to task and won his case, and Carol, a friend of mine, took the banks to the Human Rights Commission. She is blind and has a Seeing Eye dog. She couldn't access the banking machines, and she used to have to ask people to help her with the banking machines and give them her code in order to get money out of the machines. It's just not a good thing to be doing, right? So she took them to task and said, "You know, you can set these up so that we can use them." The settlement that came out of it was that all new banking machines have to have earphone plug-ins so blind people can plug in earphones and the machines will talk to them and they can do those functions. That's a case where the commission has actually worked.

**1150**

I wonder if these cases would go forward now. Carol is employed. She's a legal aid worker. Brother John is an OPSEU member. I think he's retired now. Would these people take their cases forward if they knew they might have to pay up front for lawyer costs or if they had to pay some other fee? The government says that they're going to pay for people to have a lawyer, but you're not paying for the commission now. The commission is underfunded now, so where's this extra money going to come from? I

don't see governments spending more money these days. So I see these two cases not going forward.

The last thing, because I've heard some talk about us being from OPSEU and there may be some commission staff there: The reason I am speaking as an individual is because OPSEU has been on the receiving end. A complaint had been filed with the Human Rights Commission—it was since withdrawn—against OPSEU by one of its members, and I felt more comfortable coming here and speaking as an individual towards this because for me, it really is about human rights for individuals and about persons with disabilities getting representation. Persons with disabilities represent close to 50% of the complaints heard by the Human Rights Commission. It's interesting that today we've had four presenters so far, and the three people who are representing groups with disabilities had significant concerns about the bill or were saying that it should be withdrawn. I think that's significant.

**The Chair:** We'll begin with the official opposition.

**Mrs. Elliott:** Mr. and Mrs. Snider, I was not a member of the Legislature when the Accessibility for Ontarians with Disabilities Act was passed, but I can tell you that I've heard from many, many people. We've heard presenters in all three locations tell us about the representations that were made to them with respect to the enforcement powers—that the commission would be able to enforce the act—and about how betrayed so many people in groups feel that that hasn't happened. For the life of me, I don't know why. It seems to be taking the opposite direction, both with respect to the powers of the commission and its ability to represent people and continue to play the investigative role that it has traditionally played, and with respect to the whole issue of legal representation now directly before the tribunal. These are valid questions. They're hard questions that need to be asked, and believe me, we're taking them very seriously at this committee level and we will be following them. Thank you very much for coming before us today.

**The Chair:** Mr. Kormos.

**Mr. Kormos:** I know Mr. Zimmer is chomping at the bit, so I'm going to try to be as prompt as I can. It was interesting, because you talked about how the OFL and OPSEU have been the respondents in complaints. I think one of the things we have to understand is that it's not necessarily, nor should it be, a source of shame to be called by the commission with respect to a human rights complaint. There are egregious and incredibly cruel, conscious breaches of human rights and then there's a whole other range of breaches that result from ignorance, lack of awareness, insensitivity. I'm increasingly impressed with the AODA proposal, which you endorse, for the dual track because, although I'm not one of those who would suggest that ADR, including mediation, is the solution for all disputes, it is an effective tool, especially when you have discriminatory behaviour that's a result of ignorance, that's a result of insensitivity, that's a result of lack of knowledge. It seems foolish to draw that respondent into a litigious tribunal where people resist, people



fight back—the lawyers here who do civil litigation will know that—people defend themselves, when in many cases of discrimination, I'm sure victims would acknowledge as well, it's a simple matter of bringing those people into a forum like the office of a mediator to resolve the differences of perspective and move ahead. I'm impressed increasingly—and I didn't think I would be—although I'm not 100% committed yet to the prospect of maintaining that important commission role.

The fact is that the litigious process—and let's not deny ourselves the reality: the tribunal is a court-style forum. It means lawyers—big-bucks lawyers, if you can afford them. It means using all the legal rules—and we know about those—to get the application tossed out, to get it dismissed before it's even heard on the merits, and all the pettifoggery that skilful lawyers sometimes use. I'm anxious to get to Mr. Zimmer, but I'm increasingly impressed with the dual model that seems to be a compromise position as well. Is that fair?

**Mr. Snider:** As I said, part of my role on the provincial human rights committee for OPSEU is also being an adviser under our harassment and discrimination policy. Part of that role—when we come into these, quite often they're much smaller cases, but people are harassing somebody else's human rights. We sit down—there's a big education role that's involved in that—and we try to educate and to resolve those issues, not through a confrontational format but being able to bring the people together and getting them to understand where other people are coming from and what situation they are in in their lives and that kind of stuff. I think that's part of what the commission provides at the tribunal.

If you just simply go to the tribunal, you're absolutely right, it's going to be a confrontational situation with lawyers who in some cases—not in all cases, but some—are going to see it as a chance: “The longer the conflict happens, the longer the debate takes place, the more money there is for us to make out of it.” I think that's not productive towards solving human rights issues. Human rights issues are really about educating people more than anything else.

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

**Mr. Zimmer:** I've made a note of Mr. Kormos's observation here, that he's “increasingly impressed” by the dual model. So I'll just make a note there.

**Mr. Kormos:** You didn't have to write it down; Hansard has it.

**Mr. Zimmer:** Yes, all right.

You made reference to an OPSEU member who actually filed a complaint against OPSEU. I note, Sandra, you're the president of Local 736, and, Greg, you're the chair of the provincial human rights committee, so I guess you're the appropriate person to ask this question of. OPSEU, in fact, has a direct access model, so the complaint that you referred to—and I don't know the substance of the complaint filed by a member—went directly to a tribunal-like body rather than through some overarching organization. OPSEU has its own direct

access model, so there must be some merit to the direct access model.

**Mrs. Snider:** I think you're mistaken. Our process isn't a direct access model. Our first step to resolve any issues between the employer and an employee is in the workplace. We do that first and then we go through to the ministry level. We don't go to a tribunal until the third step. We try and resolve as many issues as possible before we ever get there.

**Mr. Zimmer:** But the complainant can take their complaint directly to a tribunal.

**Mrs. Snider:** No.

**Mr. Snider:** No. This went through the Human Rights Commission. It was withdrawn at the Human Rights Commission level, through the negotiation process that happens at that level.

**Mr. Zimmer:** No, but the point is, the complainant doesn't need the authority of some über-body in OPSEU to proceed with their complaint. They can push the complaint themselves—direct access.

**Mr. Snider:** If you're filing a complaint against OPSEU, you wouldn't want to get permission from OPSEU to do it. They probably won't give it.

**Mr. Zimmer:** And that's exactly the model that we have with our dual system that Mr. Kormos is becoming increasingly impressed with.

**1200**

**Mr. Snider:** I don't think there is a dual—the Human Rights Commission under your policy isn't going to do any investigation or any—

**Mr. Zimmer:** Dual model.

**Mr. Snider:** There isn't a dual model under this, not for investigating.

**Mrs. Snider:** But it doesn't matter who you are, whether you're a unionized employee or anyone. Human rights have to be accessible for everyone and we're not seeing that this bill is going to do that.

**Mr. Snider:** The reality is, in the case that we talked about, this person is employed. Because of his position with the government—I don't want to say all OPSEU members have really good-paying jobs but we're certainly better than the rest. In this particular case, he has a good-paying job, and I find it very difficult to believe, under a situation where you are underfunding the Human Rights Commission right now, that you're going to pay for lawyers to represent him. He simply is not going to get lawyer representation. And is he going to bring forward his case when he has to pay for a lawyer? I think he's not going to. There's nothing in this act that says you're going to pay for a lawyer, and the added cost that's going to be for you to supply lawyers to every single person who brings forward a complaint is going to make you unable to fulfill that role. It simply isn't going to happen.

**Mr. Zimmer:** Well, I look forward to a close examination of OPSEU's direct access model. Thank you.

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

## KINNA-AWEYA LEGAL CLINIC

**The Chair:** Next, we have the Kinna-aweya Legal Clinic. Welcome to the committee. If you can just state your name for the record.

**Ms. Sarah Colquhoun:** Thank you very much. My name is Sarah Colquhoun. I'm the coordinator of legal services at the Kinna-aweya Legal Clinic. Thank you for the opportunity to appear before the committee today.

Kinna-aweya Legal Clinic is funded by Legal Aid Ontario to provide legal services to low-income people in the district of Thunder Bay. We were established in 1978 and we provide services primarily in the areas of income maintenance, which would include welfare appeals, disability appeals, Canada pension, employment insurance, all the government—too fast?

**The Chair:** Yes.

**Ms. Colquhoun:** Sorry.

**The Chair:** Thank you.

**Ms. Colquhoun:** —all the government income maintenance programs that have appeal processes if people aren't receiving the benefits that they should and housing issues. In addition to summary advice and ongoing case work, we are involved in public legal education, law reform activity and community development.

In terms of our experience with respect to human rights, our legal clinic has in recent years rarely assisted clients with human rights complaints at the Ontario Human Rights Commission. This is true for several reasons.

Since the commission closed its Thunder Bay office several years ago, human rights issues have had much less of a profile in the community and fewer clients come to the clinic wanting to pursue a human rights complaint.

Over the years, our clinic has had to narrow our case-opening criteria because of a steady increase in requests for service with no increase in our resources. So our primary case types now are income maintenance and housing issues, if people are being evicted or not getting social assistance.

The human rights complaints process is extremely lengthy and provides little practical benefits to a complainant who, for example, has been refused housing because of racial discrimination. In most cases, the claimant has no right to a hearing of their complaint. Sometimes we will recommend to people that they raise human rights issues in another forum, such as the Ontario Rental Housing Tribunal or the Social Benefits Tribunal, because they would then have the right to have the issue adjudicated in an open, transparent hearing and in a timely fashion.

The absence of an effective human rights process under the code for our clients and the resulting use of an alternative process may mean that their human rights issue is not appropriately dealt with in the broad public policy context that is the hallmark of a properly litigated human rights hearing.

The Kinna-aweya Legal Clinic supports Bill 107 because, for the first time in Ontario, human rights claim-

ants would have the right to take a discrimination case to a hearings tribunal without first having to undergo a lengthy and delayed process to obtain permission from the Ontario Human Rights Commission. As you know, the commission currently dismisses many more complaints than it allows to proceed to a hearing. The dismissals take place in a behind-closed-doors process, with the claimant never having had the opportunity to tell their side of the story in an open hearing. The process can be patronizing and alienating for claimants, who find it difficult to understand how it can be fair for their complaint to be dismissed without any opportunity to explain their story to the decision-maker. Because the commission no longer has an office in Thunder Bay, often complaints are dismissed not only without a hearing but without the complainant even having spoken face to face with anyone about their complaint. Matters are dealt with by telephone and fax and not in person.

Under Bill 107, our clients will have the same right to conduct their own human rights case as they already have in making any other kind of administrative or civil claim, such as a claim for employment insurance, workers' compensation, social assistance, maintenance of rental accommodation and so on. A claimant with a human rights complaint for the first time will be able to decide for themselves whether to proceed to a hearing or to mediation at the tribunal. A claimant will no longer have to persuade the commission, acting as a gatekeeper to the hearing process, that their case is an appropriate one to go to the tribunal or that a settlement offer at mediation is inadequate. Once at the tribunal, the claimant will have carriage of their own complaint and will no longer have to sit back while the commission controls the conduct of the case before the tribunal.

The ability to control your own case is one which is uniquely denied to human rights claimants under the current system. I think it's important to note that in terms of representation, when there's a lawyer from the commission presenting a case, they are not representing the claimant; they are representing the commission and they're presenting the case on behalf of the commission, not the complainant. In a recent issue of the newsletter of ARCH Disability Law Centre, noted disability rights activist Catherine Frazee explained in an interview how it is patronizing and disempowering for claimants to have the status of bystander in the conduct of their own discrimination claim at the tribunal.

Bill 107 is not perfect, by any means. We certainly have recommendations for improvements. The first recommendation we would make is that the limitation period to file a complaint be extended to at least two years, which is pretty much the standard limitation period for civil actions in Ontario these days. Six months is simply too short.

The second recommendation we would make is that there not be any fees associated with a complaint to the tribunal. Accessibility of the tribunal to our client constituency demands that there not be any fees associated. We would prefer to see a system continued where

there are no fees, rather than a system with fees with possible waivers for low-income people, because we find that any kind of fee is going to be a disincentive to our client constituency.

Section 46.1 of the bill allows for the establishment of agreements to provide legal services to assist claimants in proceedings before the hearings tribunal. Our office takes the position that this provision as currently drafted falls short of the promises made by the Attorney General at first and second readings. We're calling on the government to amend the bill to include language to establish the legal support centre for claimants and to ensure that it receives adequate funding. Our position is consistent with the promise made by the Attorney General in the Legislature on June 10, 2006, when he undertook to introduce amendments to the bill to set out more clearly the role and mandate of the new centre.

We applaud the government's promise to ensure that claimants are appropriately supported in the new human rights regime. The amendments to the bill should be consistent with the comments made by the Attorney General in the Legislature, to the effect that the government will establish a new human rights legal support centre as a "critical component" of the human rights system. The new centre, the minister indicated, would "provide information, support, advice ... and legal representation for those who are seeking a remedy before the tribunal" and "would ensure that, regardless of levels of income, abilities ... or personal circumstances, all Ontarians would be entitled to share in receiving equal and effective protection of human rights, and all will receive that full legal representation."

We note that Legal Aid Ontario has initiated an internal consultation at the request of the ministry with respect to the question of whether community legal clinics and other legal aid providers will have some role in delivering the services through the legal support centre. We would note that our office and our services are already overburdened. Our clinic would not be able to provide any significant additional legal services to human rights claimants without receiving additional funding for that purpose. Our clinic is under the direction of a community board of directors, and any decision to participate in the provision of legal services to human rights claimants would be up to the directors of our clinic.

#### 1210

Whether it is through Legal Aid Ontario or some other mechanism, it is vitally important that services through the legal support centre be provided in person and through accessible, appropriate venues throughout the province. The increasing reliance of government offices on Internet access and toll-free phone numbers to offices in Toronto has resulted in the steady erosion of the level of services available to low-income citizens throughout the rest of Ontario.

In terms of the role of the Human Rights Commission if this new regime does come forward, we would support the commission taking an enhanced role in public education and setting community standards of non-discrim-

ination. Under the current system, we would submit that the commission is not effective as an advocate against discriminatory practices because it's overburdened with the need to investigate and dismiss or refer every complaint that is made.

We support the commission's ability under Bill 107 to bring its own application or to intervene in any case where there's a broader public interest. We submit that the language in section 36 of the bill is unduly restrictive in limiting the commission to applications in cases of systemic discrimination. We would suggest that it should be broadened to any issue that's of broader public interest.

We would also like to see Bill 107 amended to restore the commission's investigative powers, as currently set out in section 33 of the current legislation. The commission would no longer investigate every complaint, because under the new regime the commission would only be using its investigation powers in cases where it's bringing its own application or intervening in a case filed by an individual that has a significant public interest aspect. Nonetheless, it's important that the commission retain its investigation powers to facilitate an effective investigation in respect of those cases in which it has identified a broader public interest.

The Human Rights Tribunal should be an expert tribunal with a duty to decide on the real merits and justice of the application. We would recommend that the bill be amended to include language similar to that found in the Canadian Human Rights Act that requires adjudicators to have experience and understanding of human rights issues. We've certainly seen situations in other tribunals that we deal with where people are appointed purely on the basis of political connections, which is very unfortunate in many cases—not all cases, certainly. We would ask that the legislation be amended to require that people appointed to this tribunal have interest, knowledge and understanding of the issues that they will be dealing with.

We're also concerned that subsection 37(2) of the bill may place too great an emphasis on the tribunal following the "most expeditious" process of disposing of an application on its merits. In our experience with other tribunals, "expeditious" disposition of applications often means that emphasis is placed on dealing with a matter quickly rather than fairly. We would recommend that the language in the bill be amended to provide that the tribunal is required to decide every application in an efficient manner but in accordance with the real merits and justice of the case. Again, one of the things we're seeing with other tribunals that have a focus on dealing with matters in an expeditious way is telephone hearings where you don't have any face-to-face contact with the adjudicator and that kind of thing. It's a problem for those of us in the north and in more remote areas.

We are very supportive of the initiative of the Attorney General to move forward with long-overdue reforms to the human rights enforcement process. I'm sure that everybody who has appeared before you has been unani-

mous that there are serious problems with the system as it is now.

There are opportunities and risks for our clients in any change of the magnitude proposed by Bill 107. For our claimant communities, the success or failure of the proposed amendments will rest, to an enormous extent, on the willingness of the government to adequately fund the new human rights legal support centre. Again, one of the distinctions will be that the lawyers in the human rights resource centre will be representing the claimants, not the commission.

Almost as important will be the openness of the tribunal to hear and consider the input of legal clinics and other claimant-sided counsel when they're developing the new rules and procedures of the tribunal. Finally, the success of the new system will also depend on the extent to which the Human Rights Commission embraces its new mandate enthusiastically and effectively. I've provided a summary of the recommendations.

Those are our submissions. Before we get to the questions, I have been asked to provide submissions on behalf of a number of other legal clinics which were not able to attend the hearings in Thunder Bay since these were the only hearings scheduled in northern Ontario.

I have a submission from the Algoma Community Legal Clinic in Sault Ste. Marie that endorses the joint submission prepared on behalf of legal clinics but also raises several regional issues, making sure that there are no fees or costs and extending the limitation period. I also have letters from a number of other legal clinics addressed to the committee, endorsing the joint submission of the legal clinics.

I have the letter from the Lake Country Community Legal Clinic in Muskoka endorsing the joint legal clinics' submission.

I have a letter from the Manitoulin Legal Clinic on Manitoulin Island endorsing the joint clinics' submission.

I have a letter from the Kenora Community Legal Clinic endorsing the joint clinics' submission.

I have a letter from the Sudbury Community Legal Clinic endorsing the joint clinics' submission.

I have a letter from Keewaytinok Native Legal Services in Moosonee endorsing the joint legal clinics' submission.

I apologize to the clerk; I don't have additional copies of those documents. Thank you.

**The Chair:** Thank you very much. We have a little bit over five minutes each. We'll start with Mr. Kormos.

**Mr. Kormos:** Thank you, Ms. Colquhoun. It comes as no surprise that the legal clinics at this point support the legislation but for their concerns. I understand that. I do want to compliment you on the submission because you make your case without diminishing or attacking contra views, and I see that as an admirable approach to the matter.

I am concerned, as are you, about the so-called expeditious disposition, not only with respect to subsection 37(2) but with respect to clause 34(2)(b), where the tribunal is going to have the power to make its own rules,

including rules to "limit the extent to which the tribunal is required to give full opportunity to the parties to present their evidence and to make their submissions." Clearly, that's a paragraph and a jurisdiction of the tribunal—the power to make those rules—that's a sibling to the most expeditious method of disposing with application.

Would you advocate the deletion of that rule-making power from the act, the power to create rules to "limit the extent to which the tribunal is required to give full opportunity to the parties to present their evidence and to make their submissions"?

**Ms. Colquhoun:** I agree it makes one uneasy, wondering why they felt it would be necessary to include that in the legislation. A sitting member of a tribunal or a panel always has the right to tell a party that they've heard sufficient submissions—

**Mr. Kormos:** To speed it up. I've been told that by numerous judges.

**1220**

**Ms. Colquhoun:** But it is a concern why they felt it was necessary to include that in the legislation. Then, as you say, it rolls into the whole concern about the emphasis on dealing with matters in an expeditious way. It's certainly something that we've seen happening in other tribunals, for instance, the Social Benefits Tribunal, where they schedule hearings for a certain period of time. The tribunal member will tell you that you've only got 12 more minutes. If you need another hour, you need another hour. The focus on dealing with matters quickly rather than thoroughly and fairly is of concern.

**Mr. Kormos:** The issue of fees: I agree with your proposition, and I think many people do, even though some have dismissed those concerns as being unwarranted, because surely the government doesn't mean filing costs; they only mean costs of preparing photocopies. I think that's a bunch of presumptuous hooey. But what about costs? It seems to me that when you have a direct-access model, you've got to have costs, as compared to the commission-driven model, where the commission performs what has been described as triage.

**Ms. Colquhoun:** I don't think you have to have costs. The Ontario Rental Housing Tribunal generally doesn't order costs. It's a direct-access model, where a tenant or a landlord can bring an application if they feel that they have grounds to do that.

**Mr. Kormos:** Fair enough. But in a human rights case, you can have a relatively short one afternoon of hearings, but you could have cases like the autism case—the autistic children case, where the commission has done a brilliant job—which is lengthy, with days and days and days of hearings and volumes and volumes. I'm concerned about a respondent, for instance, against whom a baseless claim is made, but not baseless enough to be dismissed as frivolous and vexatious. This is what I'm saying: How do you create fairness, then, for the respondent who is unjustly—or inaccurately or improperly; I shouldn't say "unjustly"—accused of discrimination, who expends thousands of dollars, just as the com-

plainant can expend thousands or tens or hundreds of thousands of dollars? How do you protect the parties in direct access, which is more akin to the private civil litigation process?

**Ms. Colquhoun:** Your suggestion that that doesn't happen now is because the commission has vetted the complaint?

**Mr. Kormos:** It also assumes responsibility for costs, because it's the one that prosecutes. I understand the position of the direct-access people, and maybe it's my background in the type of law that I'm familiar with, but I see the role of the commission as similar to the role of the crown attorney. I agree with the proposition that people don't feel involved in the decision-making, but then again, victims of crime don't feel involved in the decision-making either, because the crown attorney makes decisions in the public interest, not in the victims' interests.

**Ms. Colquhoun:** But accused people don't get costs if they're acquitted.

**Mr. Kormos:** I'm talking about the role of the commission vis-à-vis the crown attorney. But in civil litigation, the successful party can make a claim for costs, and there's a rationale for that, isn't there?

**Ms. Colquhoun:** Yes, there is, but if there is any provision for costs to be awarded, we would suggest that it be used rarely and only in the most egregious situations, where there's some sense that a matter was brought unnecessarily.

**The Chair:** Thank you very much. The government side?

**Mr. Zimmer:** Thank you very much for your submission. I've read it over carefully. Please do thank the other clinics whose submissions you've filed on their behalf.

I want to say that I'm pleased to see that you see the merit in the direct-access model, and you've elaborated your reasons quite cogently, especially the paragraph where you've got some thoughts expressed under what it means for claimants to control their own claim. We heard about that issue yesterday in Ottawa. I think that this business of direct access and complainants having control over their own claims, when coupled with the amendment that the Attorney General is committed to, to ensure that each claimant has proper legal representation, is going to go a long way to speed up the claims and to give claimants a real sense that they've got, if you will, ownership and control over their claim.

On a separate note, I've made detailed notes of the particular needs and concerns that you've expressed of the people in the northwest and what it means for them not to have the office here, how that plays out in terms of their claims and how direct access will do a lot to improve the system in that regard.

Thank you very much for your submission and the written materials you've provided.

**The Chair:** Mrs. Elliott.

**Mrs. Elliott:** Ms. Colquhoun, you indicated at the beginning of your presentation that you support Bill 107

because it does allow direct access to a tribunal for a hearing for the first time. But as you know, the tribunal doesn't guarantee a hearing. It can dismiss a hearing. The tribunal can set up its own rules for determining how it wants to proceed with a case, including the expeditious process that you've indicated concern about, and I certainly share that concern.

I would like to comment on one aspect of your presentation that I found to be the most significant, and that is the fact that when the Attorney General announced this system, the new direct-access system, he indicated that the third pillar would be the legal resource support centre and that it would guarantee legal representation for all people who need it. He's only now going through consultations to determine how that should be determined? It's absolutely astonishing to me how he could proceed with introducing the legislation without really knowing at that time how he was going to deliver. So I think when people express skepticism about how this system is going to work, those concerns are well founded because, for the life of me, I don't know how it's going to happen. For all of the people who have presented to us with those concerns, in my view, those concerns are legitimate.

I thank you for your presentation. I think we have a lot of concerns that need to be addressed here, but thank you.

**Ms. Colquhoun:** The devil is in the details often, and certainly very much so in this case. On a broad scope, we support the changes that are being proposed, but if the details aren't there, if there isn't the legal support for people to be able to bring their complaints with assistance, then it will be all for naught.

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

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

**Mr. Kormos:** Chair, I have a motion that I wish to make at this point. I know Mr. Zimmer is interested.

I move that the standing committee on justice policy invites former OHRC Commissioner Keith Norton, current Commissioner Barbara Hall—

**Interjection:** Sir, could you slow down, please.

**Mr. Kormos:** My apologies.

Now that Mr. Zimmer is back, I move that the standing committee on justice policy invites former OHRC commissioner Keith Norton, current Commissioner Barbara Hall, and commission managers and staff to attend before the committee during its consideration of Bill 107, and that they be allowed adequate time for their submissions and responses to questions.

**The Chair:** Any debate?

**Mr. Berardinetti:** If I may ask a couple of questions, Mr. Kormos, when you say "managers and staff," do you expect a lot of them to show up? I'm not sure who is going to show up. When the subcommittee sits down and puts together a list of deputants for presentations for Toronto, how much time should we give them, I'm wondering.

**Mr. Kormos:** The motion clearly says "be allowed adequate time for their submissions and responses to questions."

**Mr. Berardinetti:** What do you think would be adequate time, in your view, just your opinion?

**Mr. Kormos:** I guess that remains to be seen: how many of them there are; how many commissioners attend of the two who are requested; whether or not there are any amendments to the motion, adding to the motion, requesting attendance of yet further people. It's a matter of good faith. Look, if I want to filibuster the bill, I'll do it so effectively during clause-by-clause that you'll be an old man before this thing passes, okay?

**Mr. Berardinetti:** I already feel like an old man.

**Mr. Kormos:** Let's just get realistic here and be practical and act in good faith, like we've been so far, and agree that if the motion passes, it will then be up to the subcommittee to structure this in good faith with a reasonable amount of time for these people to make their submissions and answer questions.

**Mr. Berardinetti:** As long as my colleagues know, and it's clear to all of us, that the subcommittee will decide and work out time periods for these people to appear. That's all. I wanted to be clear on it. I support the motion. I'm not saying I don't support it.

**Mr. Kormos:** Why are you so suspicious, Mr. Berardinetti?

**Mr. Berardinetti:** I'm not suspicious. I just want to be clear so that when we sit down to go through this, I just want to make sure—I don't know which staff are going to show up. I want to hear as well from Mr. Norton and Ms. Hall, but I don't know who the other staff people will be, that's all.

**Mr. Kormos:** We need representative staff. We need somebody here from management, somebody here from the hands-on, active staff, in my view, to comment on Bill 107, and to comment on 107 in the context of what this committee has heard. Let's not be silly. We're not going to have every single staff person. They don't want to come here. They've got better things to do. They're too damn busy because they're understaffed and under-resourced. You know that.

**Mr. Berardinetti:** Of course, I know that. I just want to know, when we sit down to our subcommittee, who is going to be coming out to speak on behalf of the staff people. That's all. I just wanted some clarification. We can do it later in Toronto. I support the motion; I just wanted clarification.

**Mr. Kormos:** God bless you.

**Mr. Berardinetti:** And God bless you too.

**Mr. Kormos:** I appreciate the support for this modest proposal.

**Mr. Berardinetti:** I just wanted some clarification, that's all.

**The Chair:** Any other debate?

**Mr. Zimmer:** I'm going to propose an amendment and I'll tell you what's behind my amendment. It's just an editorial thing, really. I would amend your motion and move that the Chair of the standing committee on justice policy invite the chair and any former chairs of the Human Rights Commission to attend—and so on. Just let it go and give them adequate time to do their work. My

experience has been that chairs will show up with their staff sitting beside them, much the way they do at the other standing committees. So we'll just invite the chair and any former chair.

**Mr. Kormos:** I need your direction, Chair. Can I accept that, as the mover of the main motion?

**The Chair:** Yes.

**Mr. Kormos:** I accept that. I don't want to deny anybody an entourage. Lord knows, Mr. Zimmer has one here. Certainly chairs of the commission should be entitled to them.

**Mr. Zimmer:** Have you got the motion now? It would be—

**Mr. Kormos:** The motion, in my view, having accepted that amendment: I move that the standing committee on justice policy invites former chairs/commissioners of the OHRC and current Commissioner Barbara Hall and commission managers and staff to attend before the committee during its consideration of Bill 107, and that they be allowed adequate time for their submissions and responses to questions.

**Mr. Berardinetti:** That's fine.

**Mr. Zimmer:** Yes.

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

**Mr. Kormos:** Let's have a recorded vote on this, Chair.

**The Chair:** My apologies.

**Mr. Kormos:** Never apologize, never explain, but still let's have a recorded vote.

**The Chair:** Mr. Kormos wants a recorded vote. We're going to vote on the motion, as amended.

### Ayes

Balkissoon, Berardinetti, Elliott, Kormos, Van Bommel, Zimmer.

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

This committee is adjourned for lunch. For the committee and staff, lunch is being served upstairs in boardroom 2.

*The committee recessed from 1232 to 1346.*

### ONTARIO PUBLIC SERVICE EMPLOYEES UNION, LOCAL 710

**The Chair:** Good afternoon. We're resuming our committee meeting looking at Bill 107, An Act to amend the Human Rights Code.

The first presenters this afternoon are the Ontario Public Service Employees Union, Local 710, Thunder Bay, and Ms. Brenda Clapp, who is the president.

**Ms. Brenda Clapp:** Good afternoon. First of all, before I do my presentation this afternoon, I just want it known that when I've gone to somebody who has authority to make a difference, I've always tried not only to bring the problem to them but to try to find a solution so that I can offer some positiveness on how to find some resolution and resolve.

With that in mind, I'd like to start by saying hello and good afternoon to all of you. I'm glad to be here today and to have been given this opportunity to voice concerns surrounding the McGuinty government's Bill 107 and changes to the Ontario Human Rights Code.

Before proceeding further, I would like to take this time to introduce myself and share some of my history with you. I am Brenda Clapp, and I have been employed with the Ministry of the Attorney General. I have spent the past 27 years working in the offices of the Superior Court of Justice. Throughout this 27 years, I have been a proud and active unionist with the Ontario Public Service Employees Union. Currently, I hold an elected position on my local's executive as president of Local 710. I say with confidence and conviction that the Ontario Public Service Employees Union has worked intensely to ensure that the Human Rights Code is upheld and preserved in numerous ways, such as within our union, within our collective agreements and within our province.

OPSEU leads in many areas of equality such as the Provincial Women's Committee, Live and Let Live Fund, Provincial Human Rights Committee, Youth Committee, Rainbow Alliance, Aboriginal Circle, and Workers of Colour Caucus, to name just a few.

The Ontario Human Rights Commission is second to none and is recognized and revered as a safeguard for those who require its services. The Ontario Human Rights Commission does not discriminate who you are, what you are and especially not where you are in Ontario when you are seeking representation. All peoples are given quality treatment in our communities across this province.

We identify that the current Ontario Human Rights Code needs change. These changes can be achieved and must support strengthening what we already have. Ontario's human rights enforcement system is very backlogged, seriously underfunded and far too slow. These issues need to be remedied and necessary amendments to the Ontario Human Rights Code need to be implemented.

I will begin by addressing some issues of concern and conclude my presentation by offering improvements.

My concerns are as follows:

Bill 107 eliminates a victim's right to have a public investigation of their human rights complaint by a Human Rights Commission. Discrimination is eminent when a victim's right to have a Human Rights Commission prosecute their case is stripped. Victims will have to become their own investigators and prosecutors, or else they'll have to find someone to do it.

Bill 107 does not ensure that every human rights complainant will have free publicly funded legal advice and representation, as this government has previously committed to, and it does not necessitate that legal services be provided by bona fide lawyers.

Bill 107 lets the tribunal charge user fees. The tribunal could order human rights complainants to recompense their opponents' legal costs at tribunal hearings if they lose. Currently, the tribunal can order the commission,

not the complainant, to pay the costs of the party accused of discriminating. The bill will give rise to discrimination victims afraid of bringing their case forward.

Bill 107 allows the tribunal to make up rules and strip the right to be represented by a lawyer at any hearing, to call any relevant evidence, to be cross-examined and to cross-examine opposing witnesses.

Bill 107 noticeably reduces the right to appeal from the tribunal to court under the judicial review system. At this time, anyone losing at the tribunal has a great and broad right to appeal to the court. Bill 107 only lets the loser go to court if the tribunal's decision is demonstratively unreasonable. This is a very tough and hard test.

Bill 107 unjustly forces thousands of discrimination cases now in the human rights system to start over again in the new system and without the Human Rights Commission's help. Ontarians have duly trusted that they could use this current system.

Some of the improvements that I would like to suggest are as follows:

- Allow all complainants the choice of taking their case directly to the Human Rights Tribunal or opting for the Human Rights Commission to investigate their case and to prosecute if the evidence warrants it;

- Guarantee all complainants the dignity of a publicly funded lawyer at all tribunal proceedings;

- Continue current practice by allowing the tribunal authority to order the commission, not the complainant, to pay the legal costs of the party accused of discriminating and totally eliminate all of the user fees;

- Ensure all hearings are conducted fairly; for example, stop the tribunal, the judge, from being the investigator; and

- Let complainants retain their right to appeal to a court if they lose at the tribunal. Ensure that cases now in the human rights system are completed under the code and needn't start all over again under Bill 107.

In conclusion, I personally thank each and every one of you for being here today, for giving of your time and making an endeavour to strengthen the Ontario Human Rights Code. Your voices are strong. They are heard by many. You have the ability to empower those in government to make all necessary changes to the existing Human Rights Code. We must move forward together, unified, to ensure that our families and all Ontarians have fair and equal treatment under Bill 107.

**The Chair:** There's just a little over seven minutes for each side. We'll begin with the government side.

**Mr. Berardinetti:** I think we should at least take this opportunity to thank Sister Brenda Clapp for attending today and for your presentation. We will take your points into consideration when we go through this bill clause by clause in the near future.

**The Chair:** Mrs. Elliott.

**Mrs. Elliott:** I don't have any questions, but I also would like to thank you for your thoughtful and very sensible recommendations, which we will certainly look at in the course of deliberations. I think your final point

that we must all work together to make the human rights system better for everyone in Ontario is really important, so I thank you very much for that.

**The Chair:** Mr. Kormos.

**Mr. Kormos:** How much time do I have? The balance of her 30-minute slot?

**The Chair:** Yes.

**Mr. Kormos:** Sister Clapp, thank you very much. You're the one who took time out of your day to come here—we're paid to be here—and I appreciate that. I'm grateful for the comments of Mr. Berardinetti, but I'm woeful that the phrase "take into consideration" is the lowest level. You've got "take into consideration," which is sort of, "Yes, thank you very much for the submission." "We will strongly and thoroughly consider" is one stage up, and, "You've made a significant impact on our deliberations" is one higher. I'm going to work on them, because I think there's stuff here to work with.

Of course, the AODA is a strong proponent of the two-path system, if I can call it that, the dual-path system, and you have endorsed that today as well—direct access to the tribunal, option A; the alternative option is to use the commission as it exists now—and I am increasingly impressed with that. However, I'm concerned. I spoke with some of the Liberal members. My discussions with them have caused me to feel greater concern about this option, particularly because it has the potential to create a two-tiered system. In other words, if you've got cash, you've got the big, big wad, the pile of 50s, 100s that you pull out of your pocket and you put them on the lawyer's desk, the \$600-, \$700-an-hour lawyer, you can then fast-track, right?

**1400**

What happens, then, to the cases that are being processed by the commission? Do they get put at the end of the line of the tribunal, such that poor folk—there are still a whole lot of poor folk in this province. We've heard a lot from the community of persons with disabilities. One of the things that impresses me—and this is not to say that all persons with disabilities are poor, but if you've got a serious disability or even a not-so-serious one, you stand a higher chance of being poor than other folks do. That's one of this province's shortcomings.

So what about the dual-path model? If the government adopted it and if I became persuaded of it, what would convince me that we wouldn't have—how would we make sure the commission-processed complaints don't get put to the end of the line?

**Ms. Clapp:** Number one, to ensure the commission's complaints that have been processed don't get put to the end of the line, eliminate the user fees altogether. I think that's really what we have to move forward and look to.

There are a lot of people, as you have quoted, from the disabilities—they, in a lot of cases, have a lot of other issues they deal with throughout their lives. One of them certainly can be financially, depending on the disability, of course. Even for normal people who have jobs and want to utilize the commission, it's unfair to have user fees attached to this. There are a lot of young people out

there, middle-aged and older people who would use the commission, and to have fees for services and take the chance also that if you happen to lose you may have to pay your opponent's legal costs as well, that's going to deter an awful lot of people from feeling confident and feeling that the commission is there on their behalf.

**Mr. Kormos:** I don't know if you had a chance to read the Thunder Bay paper this morning.

**Ms. Clapp:** No.

**Mr. Kormos:** I read it and it curled my hair when I read page 3 of the Thunder Bay Chronicle-Journal. I have the data from the Ontario Human Rights Commission that say that last year, for instance, they received some 2,395 complaints, give or take, and that 57.1% of those complaints were resolved at the commission level—settlement before mediation, mediated settlement etc. Imagine my shock and surprise this very morning—I darn near fell over; I almost spilled my Sanka—when I'm reading the paper and a prominent government spokesman—I'm giving too much away; spokesperson—a prominent government spokesperson said that of the 2,400 complaints—did you read this, Mrs. Elliott?—the commission received last year, only 100 had been settled. Now what in Lord's name was that government spokesman smoking when he said that, when we know that 57% were resolved without even going to the tribunal? Can you understand why somebody would make that sort of comment?

**Ms. Clapp:** I don't know why they made the comment, and comments like that shouldn't be made without being backed up with facts, that's for sure. I don't know why somebody would make that type of comment.

**Mr. Kormos:** I figured it was, well, something he was smoking, but far be it from me to suggest what causes people to say things like that.

What has OPSEU had to say about staffing levels in the Ontario Human Rights Commission? Do you know?

**Ms. Clapp:** Staffing levels are very, very low, and this is what is creating some of the horrendous backlog.

**Mr. Kormos:** Do you deal professionally within the union with your colleagues in working in the Human Rights Commission?

**Ms. Clapp:** Absolutely.

**Mr. Kormos:** What can you tell us about what they've got to say? Hopefully we'll hear from them when we're back in Toronto. What sort of reports do you get?

**Ms. Clapp:** The material I've read that has been provided to me by our union—basically what we would like to see is this entire Bill 107 put on the table to rest in its entirety. Barring that from happening, because a lot of times, once a bill has been introduced and things are rolling, it's hard to turn back the pages of time, what we would like to see is that these submissions that are made to the commission with regard to the problems and the flaws be seriously looked at and a lot of great input from various areas implemented before the final decisions are made on behalf of all the people in Ontario.

**Mr. Kormos:** By the way, the level of staffing, as I know it, in our various court offices ain't exactly up to par either, is it?



**Ms. Clapp:** No comment.

**Mr. Kormos:** What does that do for staff morale when you've got understaffing, when you've got case-loads that are far beyond what staff can reasonably be expected to cope with?

**Ms. Clapp:** First of all, you hope that you're dealing with staff who all have a great sense of humour. Barring that from happening, when you're working under a lot of pressure and you're taking other people's jobs, chunking them up, and they're being put on your desk so you're carrying more of a load, before you know it time rolls by and you're burnt out and then it's not a great public service anymore. You're burnt out, you're not providing what you should be providing to the public or to anyone else, and the process seems to fall behind.

**Mr. Kormos:** And from time to time mistakes get made because of that which wouldn't otherwise be made?

**Ms. Clapp:** That's definitely a possibility.

**Mr. Kormos:** Staff, when they get burnt out, get sick, take sick leave, take stress leaves?

**Ms. Clapp:** All of those things happen, and accidents can happen. That's par for the course.

**Mr. Kormos:** Ms. Clapp, I don't think there's anything else that I can ask you that's going to add to what was, like so many others, a substantial submission. Thank you very much, Sister Clapp.

**Ms. Clapp:** Thank you very much, and I'd like to thank everyone here. It's been a terrific opportunity to be given this chance to come here and speak with all of you today.

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

#### ROBINSON SUPERIOR TREATY WOMEN'S COUNCIL

**The Chair:** Next is the Robinson Superior Treaty Women's Council, Marlene Pierre. Just for your information, this is a group that arrived and is being accommodated for 2:10.

**Mr. Berardinetti:** Could you say the name again?

**The Chair:** Robinson Superior Treaty Women's Council, and its Ms. Marlene Pierre.

Good afternoon. Welcome to the committee. You may begin.

**Ms. Marlene Pierre:** Thank you for allowing me to participate in these proceedings. It appears that everyone seems to be all so nice to each other around this table and you have asked some interesting questions. However, I just think somehow we're missing the point with respect to the aboriginal community in Ontario.

I want to let you know a little bit about myself. I come from a family of eight. We lived off reserve, which had a lot of legal impact as to how we were treated by the government. We had a movement afoot. I became involved as an activist and as a community developer. Part of that work was assisting in the implementation of the Human Rights Code back in the 1970s and 1980s. I had the pleasure of working with Bob McPhee, who was the

chair of the commission at that time. His main concern, especially for the northern communities, was how we were to get our people accessing and using the code. So we went about trying to help him do that job as effectively as we could.

**1410**

Much to my and others' disappointment, the Human Rights Commission's work may have been valid in southern Ontario, but certainly not in northwestern Ontario. I can bet that none of you has been in any of those communities that surround Thunder Bay, maybe with the exception of a few, so you have no idea of the expansiveness of the land and the socio-economic conditions of our people, who have to live in those isolated, semi-isolated and rural communities, and who quite often go unprotected, not only in the aspects of human rights and what our human rights are, but in every other aspect: housing, employment, justice delivery.

We heard from Kinna-aweya Legal Clinic. Myself and a few others were responsible for getting that legal clinic established here to serve the needs that they do serve with respect to the clinic's work in and around the community, and we set up a delivery model for that to happen. Despite that, because it was set up to serve native and non-native people, we complained after about 10 years of the clinic's work that there were very few people accessing that service as well.

The Human Rights Commission's work has been practically non-existent with respect to the aboriginal people in our territory. That's a shame, and you have the responsibility in this new exercise to ensure that that happens. How? We heard a lot of eloquence and a lot of strong recommendations, and we've heard from people who have studied this Bill 107. Personally, I haven't had a chance to even look at it, because we only found out yesterday that this was happening. Our headwoman, Norma Fawcett, said, "Get there, tell them the story about our people in the north, and have our input into this bill so that some remedies can be made for our women and their families." That's the reason I'm here. There has been, as I said, a lot of eloquent written material. I would hope that what I am saying to you will be listened to and somehow incorporated into your next exercise of getting this bill through.

The Robinson Superior Treaty Women's Council is a political women's group just newly emerged. It covers the territory from Wawa to 60 miles outside of Thunder Bay. We represent 14 First Nation communities. We represent off-reserve First Nation women as well. I would say that there are close to 10,000 First Nation families directly connected to the Robinson Superior Treaty living here in our territory, plus a lot of other NAN people, treaty people from other areas of Canada who come here to live and to try to make a better life.

Unfortunately, that is not happening. Over 50% of our families are single-parent-led, female. They earn an average, in today's money, of about \$12,000 a year. They have an average family size of five. I can go on and quote you all day about the statistics that directly affect our

families, and it is not a lie or an exaggeration to say that our families are living in Third and Fourth World conditions. If any of you have ever been to some of our communities—and I don't like to be patronized when I say these things, because you haven't lived there. The guy earlier today said three dollars for a loaf of bread. Yes, that's true, and there are a lot of other costs and expenses associated with not just money but our lives, our children's lives.

I spoke to a friend the other day who could not rely on the government of Ontario to help him in his job. He's gone to the World Bank; he's gone to Save the Children Canada to bring food into our homes. Now, why do we have to do that? We are the most impoverished of the Canadian aboriginal families anywhere and it's us women who are carrying that load. We need help. How can this help us? It can help us a lot.

I came here—one more thought I had. I was called to sit on the Canadian Human Rights Commission in the 1980s. I never was called once to adjudicate in any way or have a discussion with any of the people who were up there about the Indian condition. How would people who do not have any connection to our way of life have any idea how to deal with the issues that come before them, whether it's employment-related, justice-related or any other kind of discrimination? How can you people who are going to be sitting on the tribunal have any empathy or understanding? I believe you have to have people of our ancestry on the tribunal properly represented and being able to sensitize other commission members when they're talking about community issues. I think you have to do that. You would be thoroughly missing an important part of the people's lives you have to adjudicate over in Ontario, especially northwestern Ontario.

Deeply disappointed when the Ontario Human Rights Commission closed their office—you want to talk about access? We have no access. So you have to bring those services to at least Thunder Bay. You have to have a model that reaches out into Sioux Lookout, Fort Frances, Geraldton, Longlac so that our people can start using your services, or else it's going to be a dismal failure as such that happened with the Ontario Human Rights Commission. You don't want that to happen with this new bill and its implementation—totally meaningless to us if you don't include us in the process and make sure that we have access to this.

But my real point, and the message from our head woman Norma Fawcett today, is, "Marlene, tell them about the matrimonial property law, or the lack of one." The women who are sitting around this table and the women who are in this room listening, how would it be for you and your children if you did not have the Family Law Reform Act to protect you, to ensure that when there's a marital breakup, you get your fair share, that your children get their fair share, that all of those assets or whatever assets you have are evenly dispensed? That does not exist in First Nations communities. I would hate to see the province of Ontario hang its hat on some kind of hook that says, "Oh, well, that's a federal respon-

sibility." Well, no, it's not a federal responsibility; it is also a co-responsibility of the province of Ontario to ensure that its residents have the privilege and protection of law. For us it would be a privilege, because we don't have it. There are no laws under the Indian Act that protect women and their children during a marital breakup. Now, what does that say? Is that discrimination? Is that the government not having any—how do you call it?—feeling or any kind of answer or anything for aboriginal women in our territory? No, that is unacceptable.

The province of Ontario has to play a role in protecting all of its citizens, including us, because quite often when you have a gun—I tell you, I do support Debbie Ball, the lady from the transition home, the Faye Peterson Transition House. She hit the nail on the head with every issue we have ever discussed around family violence, separation etc., etc. I unequivocally support what she has said and, quite honestly, you people are here to listen to us, to what we have to say. I'm saying that all of those things that she alluded to in our First Nations community exist, 99.9%. We did a survey in 1990 where eight out of 10 aboriginal women were either incestually, sexually, physically, or emotionally abused, etc. When you have a gun at your head, which is often the way it happens, you just leave; you leave as safely as you can with your family; you go hide out. You've got to do what you've got to do. And when you leave, where do you come? You come to Thunder Bay. Right off the hop, we're involved with the provincial government. You have a responsibility to help us put together a process to help us—the groups like the Robinson Superior Treaty Women's Council—put together laws or bylaws for implementation that protects our rights.

#### 1420

We do not have any rights on the reserve other than to live. That's about it. If you're not friendly with the powers that be in the community, you don't get anything. You don't get that next house that comes up, and you're still living in substandard housing as it is. You're not drinking good water; your children aren't eating good food. Open up your eyes, Ontario, and see how our people actually live.

I'm asking, on behalf of the women in our territory—you must help us. If this is one of the small ways, through this process of putting together this bill, then help us. Make sure that even if you can't do anything—I shouldn't say that because I think there's enough anger out in our communities, i.e. Caledonia. We're just tired of waiting for the federal government to make some decisions, to take a process and establish—make it right for all of us, not just the Indians or not just the white people but everybody so that we're all satisfied. But that's not happening, and people do not understand the strength of our treaties. We do have treaties, even though we don't use them enough to prove our point as a separate people and a governing people. This bill, I hope, whether it comes out—is it still a flawed document? Hey, it's better than what we have.

One other big message I want to bring is that you've got to make—you know, the Ontario Human Rights Commission has had, I'm sorry to say, a very poor image in terms of actually getting the job done in the past. You don't want that to happen again. So I would suggest that the accessibility issue be thoroughly examined from our point of view and that you put out a campaign image, improvement plan or something, because you guys are spending millions of our dollars trying to implement this. How much of that is going to come to northwestern Ontario? How much is actually going to benefit our people? Maybe after 35 years of being involved, I'm a little skeptical. But I do still have faith and hope that someday, somewhere, somebody is going to do the right thing for our people.

Those are some of the messages that have to be given to you. We have so many issues: We have seniors' vulnerability, we have employment-related issues—and not just against non-native employers but our own people. Lateral discrimination, lateral racism? Yes, it exists, and more than we want to publicly admit, but today I am. I'm saying that we even discriminate amongst each other as aboriginal people, either tribally, genderly, by age, whatever. I'm 62 years old. There are a lot of women like me with a wealth of experience, but I won't be able to ever get a job with the chiefs because they're scared of me. They don't want me in their quarters where I can tell the truth.

There's a lot of that kind of thing that exists in our own communities, so we have to contend with that. One of the big things I always dealt with is, when our people get fired or released because, you know, you said the wrong thing that day to the boss, you don't have a means to fight it because you don't have the money, you don't have the connections, you don't know where to go, and yet you know you've been wrongfully treated for whatever reason.

I think you have to do a very progressive and aggressive campaign to involve our people in this process, because I do see it as an answer to some of the dilemmas we face that prevent us from feeding our families. When they fire you and all of a sudden you don't have a job, your children don't eat. You've got five kids, and that's not unusual. We have big families.

With respect to the matrimonial property law, there's been a lot of pressure across the country, and as well from the United Nations, that Canada has to do something about matrimonial law and family violence with respect to aboriginal women and their families. This is our time, in our little, narrow mandate here, to respond effectively, to give leadership in Ontario on how to resolve some of our family life issues. We want healthy families. We want our children educated. We want to be able to feed them the proper foods just like you do. When there's a family breakup, we want our share too. But right now that doesn't exist. I don't think the non-native women in this country would stand for something like that, and they didn't and they got what they wanted. But we need the help too, because we don't have resources.

We're a volunteer group. We just started, and we're already making presentations to the standing committee on Indian affairs and the status of women, because nobody is listening to us because we're not part of the mainstream women's movement in Canada. We're a grassroots—I don't like that word. Our women come straight from their kitchens to our meeting rooms. So we represent the voices of, I would say, 5,000 women just in our little, small area of the Robinson Superior Treaty area.

We seek the good thoughts, the good work and the good support that this standing committee has been charged to create for us, for aboriginal women, and for all Ontarians. I would like to thank each and every one of you, even though I do not have a written submission, that you have listened to what I have said. I would welcome any kind of question at this point.

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

**Mrs. Elliott:** Thank you very much, Ms. Pierre. I don't think you needed a written presentation. Your verbal presentation was very powerful, and it's almost hard for me to know what to say other than to say to you that I think you have brought a unique perspective to us and one that is really important for us to hear, because I think it's generally true to say that we tend to have more of a southern bias when we look at these things and think that it would apply across the board to all parts of Ontario, when of course it doesn't. It's really been helpful for me certainly to hear the difference that an enhanced code could make in the lives of aboriginal women and children and how from individual cases to systemic cases in the sense of things like the matrimonial property inequity. I don't know exactly how that could be resolved, but it certainly seems to me that that would be a matter that should be the subject of a discrimination complaint.

**1430**

I also very much appreciate your suggestions about how we can work specifically with your group to make it meaningful in the sense of having representation on the tribunal to let people know how things are and how to understand things better and to also have more direct access, whether that's reopening district offices or having more direct lines of communication, whatever form that might take. They're all really practical suggestions and certainly I think all of us take them very seriously.

I do thank you for being here today. Even without a written presentation, I'm making lots of notes and I certainly will think about them as we continue our discussions. So thank you.

**Ms. Pierre:** I thank you as well. I did bring a copy of our report. I will leave it with the clerk. There are a number of recommendations that can be extracted on a number of topics, including family violence, child poverty and Bill C-31, which is another discriminatory act where the federal government is trying to phase out Indians in Canada. So we've got some very serious and hard work to do.

If any of you are sitting on any other committees that affect aboriginal women and the resources—especially

the lack of resources—that we have, we need to have somebody helping us on a full-time basis. Right now, we're just doing it on a volunteer basis. I would like to solicit any assistance that any of you might be able to give us with respect to spreading the word about community initiatives like ours, our movement. This movement is also happening in the Treaty 9 area. It's also beginning in the Treaty 3 area, where First Nations women are starting to organize. We're going to be coming and knocking on the doors of Mr. Bryant's office, but in another department, to help aboriginal women in Ontario.

**The Chair:** Mr. Kormos?

**Mr. Kormos:** Thank you, ma'am. I very much appreciate your coming here today and saying what you have. I think you create some opportunities for us. Yesterday we were in Ottawa and we heard from the Native Women's Association of Canada. Later this afternoon we're going to be hearing from a spokesperson for the Ontario Native Women's Association—

**Ms. Pierre:** I'm very familiar with both, having been president of both of them at one time.

**Mr. Kormos:** Okay. I'm sure you would be—and later, Nishnawbe-Aski Legal Services.

I'm from southern Ontario. Some of us have had the opportunity to go—I know Mr. Zimmer has been there as well—along the Timmins-James Bay coast to Peawanuck, Kashechewan and communities like that.

**Ms. Pierre:** Kashechewan is a good one to go to.

**Mr. Kormos:** "Good" is a relative term.

Some members are very newly elected and other members, when they get the opportunity—I suspect Mr. Mauro has been far more extensively in the northwest—obviously, when any of us gets the opportunity, I think it's incredibly important to visit those remote, isolated, incredibly poor, marginalized communities. But, as I say, you create an opportunity.

The clerk followed the committee's instructions in terms of advertising these committee hearings. With some relatively short notice to the clerk, we gave instructions for the committee to be advertised in as many publications and newspapers as possible and in as many languages, including aboriginal language papers. I say to my committee colleagues, here you are today, and I say, you create an opportunity. The parliamentary assistant has staff at the back, his entourage. They're not as well paid as they should be but they're here nonetheless. What I'm suggesting is that if there is an interest in some of these communities for this committee to travel to those communities, then this committee should make best efforts, in the early fall of this year, to travel to some of those communities. I don't know whether it can be done. We've got to live with the timetable that's imposed upon the committee with the agenda that the committee is dealing with, but I think it would serve the committee well, if there's an interest in people in any of those communities to speak with this committee, to address this committee, and an interest in the committee to be there instead of those people travelling to wherever it is, because of course the committee has agreed that we'll

subsidize the travel costs of people travelling to whatever city.

But again, I'd encourage you to talk to Mr. Zimmer and his staff at the back. They're the better-dressed people in the room—seriously. You'll get some contact information. I can't speak for the other members yet—it's something we've got to discuss—but I'd be more than pleased to propose that we do some of that travelling.

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

**Mrs. Van Bommel:** I want to say thank you very much for your very passionate presentation, especially on such short notice. I hope that, not only in leaving your document with us, but if you have any further thoughts as things come by, you will make further submissions to us, because I think as we go into clause-by-clause we certainly want to take those into consideration as well.

I heard the comment about expertise being necessary on the tribunal and the commission. We've heard that before from other groups, and in terms of aboriginal expertise I think it certainly is important to have it there.

In terms of the matrimonial property law, I don't quite know how to put my thoughts into words on this one because, as a farm woman, I know, and having been a founder of the farm women's movement in Ontario and in Canada, that was exactly why. I understand your outrage. As farm women, we work very hard, and at the dissolution of a marriage we had no property rights. That has changed through the courts and through the laws and legislation. I'd just like to say I understand your outrage at the fact that this still hasn't happened for you, and it should. So I encourage you to continue to fight for that.

We as farm women now have rights to the property that we work for—women like Irene Murdoch, who died a poor woman in spite of the fact that she spent her life working on the farm. When her husband decided he didn't want her anymore—she had worked on that farm and built that farm—with the divorce action, she lost everything and died a poor woman. I certainly share your outrage at that. Thank you very much for your passion.

**Ms. Pierre:** Thank you for your empathy, then.

**The Chair:** Thank you very much for coming in.

#### PATRICIA MANAHAN

**The Chair:** Patricia Manahan?

**Ms. Patricia Manahan:** My name is Patricia Manahan and I am a woman with disabilities, a senior, and a member of the board of the DisAbled Women's Network of Ontario. I'm but one of many voters who may have to use the access to the Human Rights Code at any time.

I commend the government for wanting to fix the problems with the present human rights protection system, but have many concerns about the proposals in Bill 107, and I thank you for the opportunity to add my voice to those you have heard and will hear regarding this controversial bill.

It's unfortunate that the government did not consult with more concerned groups and individuals prior to the February announcement or between that time and the bill's introduction on April 26 in response to many requests. No bill should be introduced without proper input from the people it affects.

The Ontario Human Rights Code was enacted in 1962, and states in its preamble that the code seeks to promote "a climate of understanding and mutual respect for the dignity and worth of each person so that" everyone "feels a part of the community and able to contribute fully to the development and well-being of the community and able to contribute fully to the development"—

**The Vice-Chair:** Could you slow down?

**Ms. Manahan:** Oh, I'm sorry.

**The Vice-Chair:** The interpreters need to be able to keep up with you. Thank you. Go ahead.

**Ms. Manahan:** —"and able to contribute fully to the development and well-being of the community and the province."

1440

It makes it illegal for anyone in the public or private sector to discriminate against a person because of his or her disability, sex, religion, race, sexual orientation or certain other grounds. It bans discrimination in access to things like employment and the enjoyment of goods, services and facilities. It requires employers, stores and others offering goods, services and facilities to accommodate the needs of disadvantaged groups protected by the Human Rights Code, like persons with disabilities, up to the point of undue hardship. It requires organizations in the public and private sectors to remove existing barriers to persons with disabilities and prevent the creation of new ones.

There has to be a user-friendly way to enforce the code. Right now, a person who believes he or she has been discriminated against for any of the reasons covered under the code can make out a formal document called a "human rights complaint" with the Ontario Human Rights Commission. This document is to list all facts relevant to the complaint, and the commission is supposed to give any assistance needed to do this form. The form is then reviewed and the commission registers it and serves it on the respondent, who is supposed to respond within 21 calendar days. The commission will then work with the parties to try to settle the dispute or will open an investigation to clarify the facts and then decide if the matter needs to go to the Human Rights Tribunal.

From an OHRC news release dated May 11, 2006, in the fiscal year ending March 31, 2006, 170 cases out of the 2,260 cases resolved were referred to the tribunal, 1,291 were resolved through negotiated settlements guided by the commission, and 256 received commission decisions. There was no information on the number of complaints not dealt with.

It appears to me that the knowledge and intervention of the commission was and is essential to the resolution of a large number of human rights cases. This will change if Bill 107 is adopted and most of the com-

mission's powers and mandate are eliminated or substantially reduced. Complainants will have to do their own investigation, gather evidence, identify witnesses and hire experts. The commission will no longer be the public prosecutor at tribunal hearings. People will have to go to the tribunal without having had opportunities for early resolution, or they may have their complaint refused because of some technicality. The chances of the tribunal direct access system ending up even more backlogged than the present system are very high.

Although the Ontario Human Rights Code presently has some problems that need to be ironed out, Bill 107 as it now stands will make matters much worse and will take away many of the rights that the code gave us.

The best solution would be to start again with the input of the people who use the system to guide the amendment suggestion process right from the start. If this is not possible, Bill 107 should be revamped using the recommendations brought forward in these consultations and written submissions and active input from those who use the system.

There is no need to discuss what's wrong with the present Human Rights Code here. What is needed is to take a good look at the equally flawed fixes outlined in Bill 107 and find viable solutions. There are three main points I wish you to consider.

Amendments should ensure that any rights that the Human Rights Code now gives are not taken away. For instance, an option to take the case directly to the Human Rights Tribunal should be available as an alternative to opting for the Human Rights Commission to investigate cases and prosecute if the evidence warrants it.

Amendments should ensure that the bill does what the government says it does; for example, guarantee all human rights complainants publicly funded legal representation at all tribunal proceedings and strengthen, not weaken, the Human Rights Commission.

Amendments should ensure that the Human Rights Commission retains all current powers and duties to enforce disability rights or to create a new strong and effective independent enforcement agency to receive, investigate, mediate and prosecute disability complaints.

Please take a few minutes to think of the people, your voters, who need access to a strong Human Rights Code. In the majority of cases, the people who are violated and will be complainants are marginalized in some way. Some are members of obvious minorities; most are not high-income or highly educated in such things as human rights legislation. Many are blocked by physical or mental barriers, or by society itself. These are most frequently people who are suffering in some way from the violation and can be manipulated or overpowered by those who have violated them. The complaints registered are quite often against businesses, organizations or the government. It's like pitting a mouse against a lion.

Few discrimination victims know now or will know how to use the human rights system. Most are fearful of dealings with official agencies. They most often feel angry, confused and afraid because of the violation they

have suffered. They need very efficient assistance and support.

There is a six-month filing limitation period. It could take longer than that for a potential claimant to figure out what his or her claim should be or to access the system. Daily living must be the victim's priority, and they may be suffering emotionally and psychologically as well as financially during the period between the offence and making a claim. They certainly will be feeling totally helpless. With certain violations, the victim may be in fear for his or her safety. He or she may have suffered physical damage that needs to heal to a certain point before they can become active. Six months is a very insufficient time limit for the types of cases that can come under the Human Rights Code. Two years or more would be much more reasonable.

While we're looking at victim situations, we need to address financial barriers. As I mentioned earlier, many if not most of the people who will need access to human rights legislation are members of certain social classes. They are most often low-income and/or underemployed. Bill 107 permits a human rights complainant to be charged tribunal user fees, which may stop people who really need this legislation from filing a claim. A large percentage of human rights claims involve employment issues, and the claimant may have lost their income or job or be unable to work due to the issues being brought forward in the complaint. User fees can impose undue hardship on a claimant.

Beyond these fees, Bill 107 gives the tribunal the power to order the complainant to pay the respondent's legal costs if the respondent wins the case at the tribunal. Again, this would be imposing undue hardship on a claimant. Because the complainant will be in a position to have to largely handle his or her own case before the tribunal, the claim could be wrongfully lost due to insufficient presentation or misunderstanding of the procedures or the inability to contradict the professionals speaking for the respondents. Even the most carefully prepared case can be easily derailed by someone with more access and experience. Both of these financial impositions should be stricken from the bill.

This brings us to the matter of assistance for claimants. Under Bill 107, a claimant will have to face the person or organization that discriminated against them armed with only whatever information they could access themselves. He or she is unlikely to have the knowledge to know what evidence is needed. An individual does not have the powers required to perform a thorough investigation. He or she cannot enforce entry, inspection and examination of documents, questioning of a person or a warrant. We live in a world where we don't even have the right to access our own medical records without large financial output and satisfying certain conditions. How is the common man going to access documented proof that their rights have been violated when the very proof they need is in the hands of their opponents? How will a person on a fixed or low income be able to pay for such things as expert witnesses or documentation? Most

respondents have their own lawyers who will vigorously defend them, some from Ontario's largest law firms. If the victim does not have equal legal support, they will be at a serious disadvantage. Even with help, the prospect will be terrifying.

On top of this, section 37.1 will let the tribunal force the parties to participate in mediation. This could be frustrating and wasteful, and even harmful to a complainant. A respondent could simply use this process to drag out the case and wear down the complainant, who may already be in a fragile state. In cases that involve more personal or touchy matters, such as disability, race, religion or sex, for example, mediation could increase the injury to the victim and will certainly give the respondent more opportunity for subtle harassment or intimidation. Mediation can be constructive in many cases, but it should not be allowed to provide opportunity for further violation. It should be voluntary, with the provision that declining will be without prejudice to any rights to a hearing.

#### 1450

The Attorney General has repeatedly made the sweeping promise that, under Bill 107, all those who bring complaints to the Human Rights Tribunal will receive publicly funded, full legal representation, regardless of income. A new human rights support centre is supposed to be established. The fact is that this centre is not established under Bill 107, though it's supposed to be covered in section 46. There's a statement in section 46.1 that the Attorney General may sign agreements to pay yet-unnamed organizations to provide legal advice or representation. This way, the Attorney General need never agree to provide any funding. He or she could refuse to renew funding even if initial funding is agreed to. Cuts to any funding could happen at any time there's a change in the government. On top of this, the type of legal support that is supposed to become available is not defined. The legal support needs to be a lawyer who is familiar with human rights legislation. Non-lawyers, such as paralegals or community legal workers, are not able to provide the level of service needed at a hotly contested hearing. Vulnerable people should not have to take it on faith that Queen's Park will protect their interests. This system and its funding must be required to be firmly clarified and approved by the Legislature.

Even if sufficient aid is made readily available to the complainants and all possible financial threats are removed, there's still no guarantee of a fair hearing. In fact, there's no guarantee of a hearing at all. In section 41, Bill 107 lets the tribunal dismiss a complaint on several grounds without holding a hearing, and section 40 gives the tribunal sweeping powers to defer a hearing.

Bill 107 requires the complainants to trust the tribunal but does not ensure that tribunal members are expert in their field. They must have enhanced expertise if the tribunal is to take on sole responsibility for the hearings, unassisted by an experienced public prosecutor like the Human Rights Commission. This is another matter that needs to be addressed whether or not Bill 107 is adopted.

Presently, tribunal members are politically appointed and these appointments really should be based on competence and expertise, with political considerations eliminated from the process as much as possible.

There's also the matter of due process, honouring certain basic inalienable rights under a statute called the Statutory Powers Procedure Act. At present, Human Rights Tribunal hearings must conform to these rules, but section 38 of Bill 107 would exempt the tribunal from this. They would be given the power to make their own rules of procedure without consulting the public or approval from the Legislature or cabinet. This positively should not be allowed. The tribunal should be accountable for all its actions.

Another cause for confusion about the tribunal is that we assume it to be the judge in human rights cases, but Bill 107 raises the possibility that it may undertake some of its own investigative functions. However, this intention has not been made clear. It's inappropriate for the tribunal to do investigations, as that would threaten the impartiality of the hearing process. This radical idea needs to be examined as a separate issue with public input.

Bill 107 eliminates the right to appeal. Section 45 states that a judicial review application is the only way to challenge an unsuccessful tribunal final decision or order. The party must be able to show that the decision or order was patently unreasonable. That is difficult to do, especially if a case was lost due to the complainant having difficulties in navigating the system. However, wealthy respondents who have lost their cases will be able to pay lawyers to craft an appeal. This causes a very unfair imbalance of rights and needs to be changed.

I'm personally a member of three groups that are often victims of human rights violations: a woman, a person with a disability and a senior. Violations against people in any of these categories are rarely just private injury on an individual but are most often systemic in nature. A Human Rights Commission investigation usually uncovers the public interest aspect of these cases now, but Bill 107 eliminates that and also limits the Human Rights Commission's power to initiate human rights complaints or to intervene in tribunal proceedings where there is a possibility of public interest aspects.

Bill 107 appears to require categorization of cases. And again, that is going to be difficult, if not impossible, for an individual to do. Bill 107 doesn't even define systemic matters. The alteration of the Human Rights Commission itself under Bill 107 has many other built-in problems as well. One of these problems is that Bill 107 threatens to significantly reduce the number and quality of public interest remedies that will result from human rights complaints. This is contrary to the resolution passed on October 29, 1998, that Dalton McGuinty promised to implement in his 2003 pledge to Ontarians with disabilities. Public interest remedies are intended to root out the causes of discrimination and to prevent repetition of past acts. The Human Rights Commission will not have the ability to conduct an investigation to

prove the need for a public interest remedy. An individual victim should not be expected to seek these. They are having enough trouble dealing with their own personal situations. There's also no provision for public enforcement of remedies. The Human Rights Commission is the most obvious body to take care of this.

In the Accessibility for Ontarians with Disabilities Act discussions in 1982 and again in 2003, there were requests by the disability community for formation of a new, independent agency to enforce the act. This was refused after the election on the grounds the Human Rights Commission complaints process would enforce our rights. The disability community applauded the new 2005 disability act. Even with the lack of a new, independent enforcement agency, we trusted in the promise that the Human Rights Commission would continue to have strong public enforcement abilities. The amendments, as they stand now, will substantially weaken the Human Rights Commission. Bill 107 will remove the complainants' rights to the commission as an investigator, guide, advocate and prosecutor. Most people with disabilities will not be able to effectively perform these duties by themselves due to barriers that exist. Proper access to publicly funded lawyers is not guaranteed under Bill 107, and should be, even if the Human Rights Commission powers are expanded rather than reduced.

The proposed secretariats are completely inadequate to provide any real support for people without their taking over all the duties the Human Rights Commission has right now. That will require much larger membership and more funding than the proposed six members each. Members need to be appointed by the same independent, merit-based selection process as for commissioners and provided with sufficient staffing and funding to fulfill their mandate. Advisory groups, which would be established under section 31.1, need to be effective bodies with membership appointed by the same process as for commissioners and not unpaid volunteers. An advisory group involved with the disability community should be made up mostly of people with disabilities—

**The Chair:** Thank you, Ms. Manahan. Your time has expired. Thank you very much.

#### THUNDER BAY AND DISTRICT LABOUR COUNCIL

**The Chair:** Next up is the Thunder Bay and District Labour Council. Welcome. Good afternoon. You may begin.

**Ms. Judith Mongrain:** Thank you. My name is Judith Mongrain and I'm first vice-president of the Thunder Bay and District Labour Council. With me is Melanie Kelso, an executive member of our council.

It was 3 o'clock yesterday afternoon when we heard that we did have time today at 3 o'clock. I thank you for allowing us to speak.

We have many concerns about this bill, and it's not a matter of saying changes should not be made, but the changes suggested by Bill 107 are not changes that will

assist Ontarians in pursuing justice. The current system does not work. That doesn't mean that it can't work; it means the government needs to fund the commission properly. Current funding is almost at the same level as that from 1995. Chronic underfunding has caused a backlog of complaints, and that won't get fixed with the changes proposed. What will get fixed is the number of complaints, as people will not be able to access or afford to complain. We need vast improvement to human rights enforcement, not a weakening of this act.

**1500**

Presently, the Human Rights Commission receives and decides which complaints will be referred to a hearing. There is no absolute right to a hearing. The commission investigates all complaints at no charge. The commission has the power to get warrants, compel production of documents and question relevant witnesses. All complainants are provided with a commission lawyer when their complaint is referred to the tribunal, and this service is at no cost to the complainant.

The commission can monitor the public interest or systemic aspects of all complaints when complaints are received. The commission represents the public interest in all hearings before the tribunal. The commission has the right to bring and pursue a systemic discrimination complaint at the tribunal.

There are no user fees charged to the complainant. Costs cannot be awarded against the complainant, only the commission or respondent.

The commission provides expertise to the public and uses its historic expertise, policy papers and research to form its litigation strategies.

Bill 107 weakens the commission and will have a profound negative impact on the ability of equity-seeking groups to secure the protection of their human rights, particularly when it comes to workplace complaints. Public access to and use of the human rights protection system has to be protected. Not to do so attacks the most vulnerable members of our society.

Bill 107 dismantles the commission that has historically been the foundation of a strong human rights system. It has been universal, accessible and publicly funded. What Bill 107 will do is make it an exclusive weapon of the financially powerful.

Individual Ontarians will have to file complaints directly with the tribunal and will be responsible for investigating their own cases, hiring lawyers to represent them. Currently in Thunder Bay, we're paying about \$250 an hour for a lawyer. How many people in this city or any city in this province can afford to have a law firm investigate, process and bring forward to a tribunal a case for them? It's the poor, the working class, the most vulnerable citizens who need the assistance of the commission on a no-fee basis. Otherwise, human rights injustices will be perpetuated in this province.

Bill 107 is a direct slap in the face for Ontarians with disabilities. When the 2005 disability act was introduced, there was a clamouring for an independent enforcement agency, but the government assured those concerned that

they would be protected under the human rights act, with the commission having the ability to deal with their issues. The weakening of the commission under the Bill 107 proposed changes and the creation of a powerless Disability Rights Secretariat will mean lip service only. Our disabled citizens deserve better—a whole lot better.

So how does Bill 107 get improved?

The government should start at the beginning, with proper public consultation, and build from there. But as we are already down the reading road on Bill 107, the practicality of the above suggestion seems to be moot.

Amend Bill 107 to ensure that it doesn't take away any rights that the Human Rights Code now gives.

We do not object to taking cases directly to the tribunal if they are ready to go, but the option must remain for the commission to investigate the case and prosecute same if warranted.

Any changes should not impact negatively on cases already in the system. No one in the process now should be expected to go back to the beginning and begin the gruelling process over.

The amendments must ensure that they do what the government says it intends to do: guarantee all human rights complainants the right to publicly funded legal representation at all tribunal proceedings, and strengthen, not weaken, the Human Rights Commission.

The commission must retain all current powers and duties to enforce disability rights. If a separate enforcement agency is contemplated, then that agency must have all of the powers and duties that are currently with the commission.

Thank you for your time.

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

**Mr. Bill Mauro (Thunder Bay—Atikokan):** I'm not part of the standing committee that's touring the province, but I'm happy to be able to be here. I welcome the committee and all members to Thunder Bay. Thank you for ensuring that Thunder Bay is on the itinerary of all of the communities that you're visiting. Thank you, Ms. Mongrain and Ms. Kelso, for your deputation.

I only want to make one comment. The concern has been raised by the two or three speakers I've heard about whether or not people, if they go directly to the tribunal, are going to have the ability to have publicly funded representation if they're the complainant. The Attorney General has publicly committed in the House to amendments in the legislation to ensure that that will happen. So if I've got enough time, if you don't mind, I'll read you his answer that is in Hansard because you've raised the same issue again.

This is the Attorney General responding to Deb Matthews, who is a member of our party as well, who gave him the question. He said:

"I thank the member for London North Centre. I know she, and many members of this House, have taken the opportunity to meet with Ontarians about this very important bill. This is, after all, the first time in more than 40 years that this House has had an opportunity to engage in substantial changes to the Human Rights Code,



so there have been a number of questions about the bill, and so there should be. After a lengthy and productive second reading debate, the House has voted in favour, in principle, of the bill. I know that the government has consulted and will continue to consult with Ontarians. I know that MPPs in this House have consulted and will continue to consult with Ontarians on this bill. So now it goes to the standing committee on justice and social policy, where open, full public hearings will take place. Of course, at that committee we'll seek input and the committee will seek input about the bill and any potential amendments" to the bill.

"The human rights legal support centre that we are establishing is the first of its kind in the country. We have committed to providing full legal supports to all Ontarians who turn to their human rights system, at the same time as the Human Rights Commission goes forth and, on behalf of all Ontarians, addresses systemic issues, both on behalf of the commission and before the tribunal."

There's more to it, but I don't think I'll read it. I just thought it was important that I share that with you and others.

**Ms. Mongrain:** We had heard that. I think our biggest concern is that you may promise me a lawyer to assist me, but is that lawyer going to know human rights legislation? I know in this community we have one law firm that most of us use, as trade unionists, which is the only law firm that deals with labour issues in this community from our point of view. In this community, I cannot see us having a whole range of lawyers who have the kind of expertise needed to represent people in human rights issues. One of our biggest concerns is that all of those people who have these abilities will be dispersed since there won't be a commission. You might get a lawyer in Thunder Bay who may be really good at real estate or some other aspect of litigation, but he may not have the expertise needed.

That's one of our big concerns: It doesn't say in his statement that these are going to be people who have the expertise.

**The Chair:** Any other questions? Mr. Berardinetti.

**Mr. Berardinetti:** Thank you for your presentation. I just wanted to reiterate that we will have a chance to go through this legislation clause by clause at a later date in Toronto, and at that point we're going to bring forward something which would guarantee that or at least put it into the legislation, I would hope, so that lawyers who are in this field would be able to assist those in need of assistance. That's something that I think we want to see and probably put into the legislation.

**The Chair:** Mrs. Elliott.

1510

**Mrs. Elliott:** Thank you very much for being here today and presenting your points so clearly, especially on such short notice.

You've heard that the Attorney General—and you're well aware that he has made the statement about the legal support centre being set up and being fully funded to

provide everyone who needs it with legal representation. However, it sounded from that announcement as if the legal support centre was a clearly defined entity and that he knew exactly what he was intending to set up at the time. But you should know, and perhaps you do know, that at this time, as we speak, the Attorney General is conducting inquiries from legal aid to determine whether legal aid would be in a position to deliver this service, or perhaps they're speaking to other organizations. I don't know.

So it seems to me that this is something, since it's so fundamental to this new system, that should have been determined by now, and certainly before the announcement was made. So when you say you're a little bit skeptical about it, I would certainly agree with you.

**Ms. Mongrain:** I would also be quite concerned that they were looking to legal aid to assist. If you have any dealings with legal aid or members of your family or friends who've had to try and find legal aid—it is such an overburdened system itself that even to think of looking to them to do this at this point, unless you intend to more than double their funding, means nothing.

**The Chair:** Thank you very much for being here today.

#### PERSONS UNITED FOR SELF-HELP IN NORTHWESTERN ONTARIO

**The Chair:** Next is the Persons United for Self-Help in Northwestern Ontario.

**Ms. Tracy Hurlbert:** Good afternoon.

**The Chair:** If you could just speak a bit louder, or if we can get the mike a little closer.

**Ms. Hurlbert:** Good afternoon.

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

**Ms. Hurlbert:** Okay.

Persons United for Self-Help in Northwestern Ontario, known as PUSH Northwest, extend our thanks to you, to the standing committee, for giving us the opportunity today—

**The Chair:** Can I get you to introduce yourself and to speak slowly so the sign language interpreters can do their job well? It's rather difficult when people are speaking fast.

**Ms. Hurlbert:** Okay. I myself am hard of hearing.

**The Chair:** Do you need to move that closer?

**Ms. Hurlbert:** I can read it from here. It's fine.

**The Chair:** Let us know if you're having any difficulty in any way. We can assist you.

**Ms. Hurlbert:** It's fine. My name is Tracy Lynn Hurlbert, and I'm here from PUSH Northwest. I'm the secretary of the board of directors. I'll start this again.

Persons United for Self-Help, which is known as PUSH in northwestern Ontario, extend our thanks to you, the standing committee, for giving us the opportunity today to make this submission with regard to Bill 107, that will amend the Ontario human rights act.

Persons United for Self-Help in Northwestern Ontario was incorporated as a non-profit, charitable organization

in 1989 with the mandate to provide a voice for the disabled population of northwestern Ontario.

**The Chair:** You're speaking too fast for our sign language people. So if you can just slow it down. You have 30 minutes. It would really help us in helping them.

**Ms. Hurlbert:** Okay. The organization speaks out on issues that may affect children, youth, adults and seniors with disabilities. Our mandate is to advocate for the cross-disability population, which includes anyone with a physical, intellectual, psychiatric or non-visual disability.

PUSH Northwest has representatives with disabilities across northwestern Ontario living in communities from White River on the east to the Manitoba border. PUSH Northwest has a history of working with our municipality, the provincial and federal governments, and the public and private sectors to address barriers and obstacles and plan and develop methods to create a more inclusive community. Our organization is a member of the Council of Canadians with Disabilities, the national organization that advocates for all Canadians with disabilities at the federal level.

PUSH Northwest knows from past history that individuals with disabilities have tremendous difficulties filing complaints under the current legislation due to lack of funding and access to legal professional services that will assist them. It is also known that, due to lack of funding and resources in the current system, complaints often take years to be investigated and settled. In this brief submission, PUSH Northwest supports the positions put forth by both the AODA Alliance and ARCH legal resource centre for people with disabilities in their identification of issues and concerns with Bill 107, and we support their recommendations to improve the proposed legislation. It is our hope that through this community consultation process, Ontario can develop a bill that will strengthen the Human Rights Code and create fairness and efficiency when dealing with human rights complaints.

Our organization would like to highlight the following issues with respect to Bill 107.

**Issue one, the accessibility of the human rights process:** Disability advocates throughout the province recommend that there be no barriers to accessing the process for filing a human rights complaint. As recommended by ARCH, the tribunal must act to facilitate the ability of complainants with disabilities to come forward with their human rights complaints so they may be heard and decided. As persons with disabilities are statistically poorer and more marginalized than persons without disabilities, the process must be flexible and sensitive to the particular needs of the disabled community.

Some of the barriers to accessibility that exist under Bill 107 are as follows.

**Lack of funding for legal advice and representation:** Bill 107 doesn't ensure that every human rights complainant will have free, publicly funded legal advice and representation. Section 46.1 of the bill merely states that the Attorney General may sign agreements to pay yet-unnamed organizations to provide legal advice or rep-

resentation. However, it doesn't require the government to fund any, nor that this government funding be adequate. It doesn't entrench the government's promised human rights legal support centre. It doesn't require legal services to be delivered by lawyers. PUSH Northwest supports the recommendation of many disability advocates in the province that section 46.1 be amended to establish a system of high-quality support services to any person who may be a claimant under the act, and to ensure that sufficient resources are allocated to this system. This is particularly important given that Bill 107 abolishes discrimination victims' right to have the Human Rights Commission publicly investigate all non-frivolous human rights complaints, armed with legal investigation powers.

**User fees:** For the first time, Bill 107 will allow the Human Rights Tribunal to charge user fees for going to the tribunal. Section 45.2 states, "Subject to the approval of the minister, the tribunal may establish and charge fees for expenses incurred by the tribunal in connection with a proceeding under this part." This discriminates against persons of low income and complainants on social assistance, who could not file a complaint if there were costs attached to the process, and may expose human rights complainants for the first time to have to pay their opponent's legal costs if they lose. In the interest of equality, it is recommended that the human rights process remain cost-free.

**Third party applications:** Under both Bill 107 and the current Human Rights Code, only individuals and the OHRC can file an application to the tribunal. For some individuals, the daunting task of filing their own application is enough to prevent them from initiating the process due to lack of resources, fear of reprisals or emotional stress. Community organizations should be allowed to pursue an application to the tribunal with the individual's consent. This would also allow organizations to use their experience and expertise to address ongoing and routine discrimination practices that otherwise would not be addressed without an individual applicant.

#### 1520

PUSH Northwest supports the recommendation of ARCH legal resource centre that a provision be included in section 35 to state that an application may be filed "on behalf of a person or groups of persons who have experienced or continue to experience discrimination by any organization with a demonstrated interest in the subject matter or to the welfare of that group of persons. The written consent of that person or persons is required except in the case of systemic applications where such consent is deemed by the tribunal to be unnecessary."

**Procedural accessibility:** Bill 107 does not articulate the need of the Human Rights Commission to ensure that all of its offices are accessible to persons with disabilities in the areas of communication and information, policies and practices. An example of this can be found in sections 35(3) and 41(1)(c) of the bill. ARCH legal resource centre has noted that these sections can be read together to suggest that if an application does not meet the

tribunal's approved form, it can be dismissed. Applying to the tribunal can be a difficult and confusing process, and claimants should be protected from having applications rejected on the sole basis of proper form. This protection and access to information includes the need to establish regional or branch offices so that the commission is accessible to all Ontarians, which is of increased importance to people with disabilities from northern and remote communities.

**PUSH Northwest** recommends that delivery of the human rights legislation requires access points located throughout the province, in its regional areas. These access points should provide professional legal human resources as well as funding for individuals to file complaints through known advocacy organizations that have sound knowledge and experience with the discrimination issues that affect people with disabilities.

**Physical accessibility:** An accessible human rights process requires that all barriers to accessing the physical spaces of the tribunal be removed. Currently, the onus is on the complainant to request any necessary accommodations such as captioning or transcription of proceedings. **PUSH** and other advocacy groups believe the tribunal should be proactive in the removal of barriers and make it unnecessary for individual requests for accommodation to be made. Therefore, **PUSH Northwest** supports the recommendation of **ARCH** legal resource centre that a provision addressing accessibility be legislated under section 37: "The principle of accessibility will have primacy over concerns of efficiency and expeditiousness of the tribunal process."

In addition, **ARCH** also recommends that accessibility be included in section 34(2) governing the tribunal's rules of practice. The following should be added to this section: "In making rules governing the practice and procedure before it, the tribunal must prescribe practices and procedures to ensure full accessibility throughout its processes."

**Dismissal of complaints:** Bill 107 doesn't keep the government's commitment that all discrimination victims will be given a hearing before the Human Rights Tribunal. Subsection 41 of Bill 107 lets the tribunal dismiss a complainant on several grounds without holding a hearing, including some of the same grounds the commission currently uses to dismiss cases without a full hearing. Furthermore, section 34 of the bill allows the tribunal to adopt rules that may "provide that the tribunal is not required to hold a hearing," and section 40 gives the tribunal sweeping powers to defer a hearing. An application can be dismissed without any notice or opportunity for the exchange of submissions and arguments. As recommended by **ARCH**, subsection 41(2) should be removed from the bill, as it can be used to limit the **SPPA** protections in the early dismissal process.

**Reconsideration of dismissal:** Under the current code, if a complainant is dismissed by the commission, the complainant has the right to request a reconsideration of that decision. As Bill 107 is drafted, there is no right to request that the tribunal reconsider a decision to dismiss an application.

**Appeal of a tribunal's decision:** Bill 107 dramatically reduces the right to appeal a decision of the tribunal to court. Now, anyone who loses his or her case at the tribunal has the broadest right to appeal to court. Bill 107 only allows the losing party to challenge the tribunal in court if the ruling is proven to be "patently unreasonable," a far tougher test. As there are no steps in place to ensure that members of the tribunal have experience, expertise and sensitivity to disability and human rights, it is not satisfactory to remove the broad right to appeal a tribunal decision.

**Weakening of the Human Rights Commission:** Contrary to government commitments, Bill 107 significantly weakens, and doesn't strengthen, the Human Rights Commission's ability to bring cases to challenge discrimination. At this point in time, the commission can launch its own complaints in any case, not just systemic cases. It has investigation powers to get evidence to support its case, and it can seek sweeping remedies to compensate discrimination victims for past wrongs and to prevent future discrimination.

Seriously weakening the commission, section 36 of the bill states: "The commission may apply to the tribunal for an order under section 43 if the commission is of the opinion that,

"(a) there are infringements of rights under part I that are of a systemic nature...."

This only allows the commission to launch its own case in systemic cases. It doesn't define "systemic." Bill 107 abolishes the commission's investigation powers. It stops the commission from seeking remedies to compensate victims for past wrongs, even in systemic cases.

**Lessening of OHRC enforcement powers:** Bill 107 dramatically shrinks the human rights system's capacity to advocate for and protect the public interest. Now, the Human Rights Commission can seek remedies both for individual discrimination victims and to address the broader public interest. It can do so when settlements of cases are negotiated, and at Human Rights Tribunal hearings. In contrast, under Bill 107, the commission won't be involved in negotiating most case settlements. It won't have carriage of or even be present at many, if not most, Human Rights Tribunal hearings. This bill also gives commission policies the least legal significance possible. It doesn't make commission policies on human rights binding on the Human Rights Tribunal when it decides cases. Section 44 of the bill merely states, "In determining a proceeding under this part, the tribunal may consider any document published by the commission that the tribunal considers relevant to the proceeding." This trivializes the commission's role as a meaningful policy-maker.

#### **1530**

**Weak Disability Rights Secretariat:** By Bill 107, the McGuinty government seriously breaks faith with 1.5 million Ontarians with disabilities. In the 2003 election, Premier McGuinty promised a new disability act with effective enforcement. After winning the election, the McGuinty government rejected disability community

requests to create a new independent agency to enforce the new disability act. The disability community applauded the new 2005 Accessibility for Ontarians with Disabilities Act, even though it created no new independent enforcement agency. The government said such an agency wasn't needed, since persons with disabilities could use the Human Rights Commission's complaints process to enforce their rights. Now Bill 107 removes most of the Human Rights Commission's public enforcement teeth. This isn't corrected by Bill 107's proposal to create in the Human Rights Commission a weak Disability Rights Secretariat. That secretariat has no public investigation and prosecution powers. The commission previously had a stronger version of that secretariat.

**Conclusion:** To improve Bill 107, it would be ideal for the government to start from scratch, hold proper time-limited public consultations and then introduce an appropriate human rights reform bill. However, if the government presses Bill 107 forward, Persons United for Self-Help in Northwestern Ontario agrees with the AODA Alliance and ARCH legal resource centre for people with disabilities that Bill 107 should strengthen and improve the Human Rights Code rather than weaken it. It should increase access to the human rights process for persons with disabilities and other marginalized groups. It should allow organizations to apply to the tribunal on behalf of individuals or as groups wishing to address systemic discrimination. Finally, this bill should not remove any of the rights previously held by individuals under the current Human Rights Code.

For further information on this submission, you may contact Ron Ross, president, Persons United for Self-Help in Northwestern Ontario.

**The Chair:** Thank you very much. About three minutes each; we'll begin with the government side.

**Mrs. Van Bommel:** Thank you for your presentation. In your presentation, you talk about the appeals mechanism and the fact that you would like to see the ability to appeal the tribunal's or commission's rulings. We've heard a lot of conflicting ideas around this, and I'm feeling a little conflicted myself on this, because we've also had people come and say to us that they would like to see no appeal of tribunal hearings. Their concern is that good rulings are overturned by the courts later. How do you feel about the possibility that an appeal may actually overturn good things?

**Ms. Hurlbert:** I'm just thinking that one over here. It's kind of hard to understand it; I'm only getting a few lines at a time here.

Your question was about the appealing of the tribunal's hearings?

**Mrs. Van Bommel:** Yes.

**Ms. Hurlbert:** I personally feel that if a ruling—I'm just trying to think here; I have so many conflicts here. If a ruling is given by the tribunal, I do think that people should be able to go to court to get it changed in cases where things have not gone through because of a file not being filed correctly or something not being done to

form, submissions of forms. Sometimes I find that the tribunal doesn't rule in your favour just because you haven't got all the paperwork in order. For people with disabilities, sometimes we just can't do it. If you can't, and if you can go to court and get someone to help you there, then I think we should.

**Mrs. Van Bommel:** Thank you.

**The Chair:** Mrs. Elliott.

**Mrs. Elliott:** I don't have any questions, Ms. Hulbert. I just wanted to thank you for being here today and for your very comprehensive statement. You raised some important issues that we need to be speaking about, so I appreciate your contribution today.

**Ms. Hurlbert:** Thank you.

**The Chair:** Mr. Kormos.

**Mr. Kormos:** Ms. Hurlbert, I was unfortunately not here for the earliest part of your submission; I was here for the latter part. I think I understand the submission, because in many respects it's consistent with the recommendations being made by AODA.

I appreciate Ms. Van Bommel raising this interesting issue about appeal/no appeal. I suppose it's a double-edged sword. Having said that, I'm very hard pressed to suggest that somehow our courts at the appeal level screw things up. What the courts do is apply the law, and if we don't like the law once the court has applied it, that appeal court has then performed a service by permitting us to change the law. I know there's folks out there who say, "Oh, the courts are screwing things up with their rulings." No, the courts—the appellate courts amongst them—apply the law. They give us a chance to understand where the deficiencies are, where the defects are in the law. If we haven't written the law good the first time around, they give us as legislators a chance to approach it a second time. So I know this debate is going to be an interesting one, and I very much appreciate your contribution to it. Thank you kindly, Ms. Hurlbert.

**Ms. Hurlbert:** Thank you.

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

The next group is the Ontario Native Women's Association, Ms. Sally Ledger. Is Ms. Ledger here?

Maybe we can go on to the next group in the meantime, the Nishnawbe-Aski Legal Services, Evelyn Baxter.

It's still early for both of those groups. How about Don MacAlpine? Is Mr. MacAlpine here?

The committee is going to be recessing for about 15 minutes to give people time; we're running a little bit ahead of our schedule today.

*The committee recessed from 1535 to 1550.*

BRUCE CORBETT

**The Chair:** Can I have your attention? We're going to the 5 o'clock presenter, Bruce Corbett, and that will be by teleconference. Is he on the phone? Can we get some audio?

**Mr. Bruce Corbett:** I am, sir. Can you hear me?

**The Chair:** Hello, Bruce?

**Mr. Corbett:** Yes, sir.

**The Chair:** Hi. It's Vic Dhillon. I'm the Chair of the standing committee on justice policy. You have 20 minutes for your presentation. Any time that you don't use will be divided up amongst the three parties for any questions or comments that they might have. So you can start any time.

**Mr. Corbett:** All right, sir. Members of the committee, as I'm sure you are aware, the Human Rights Code of Ontario has been changed and the Tobacco Control Act has been replaced by the Smoke-Free Ontario Act. That has caused a little bit of difficulty. I'll cut to the chase. I am suggesting an amendment to the Smoke-Free Ontario Act, that all citizens in Ontario over the age of 19 have optional smoking privileges in all enclosed spaces with adequate ventilation.

In the local area, bank staff have been forced to smoke outside the bank, which presents a bad image for the bank. Private sector restaurants and bars have been forced to move smoking outside, which is a quaint custom in the summertime, but in January I see it posing quite a problem. I'd put to you a hypothetical question, but I don't think I need to go any further. I'm open to questions.

**The Chair:** Was that the conclusion of your presentation?

**Mr. Corbett:** That's the conclusion of my presentation.

**The Chair:** Okay. We're starting with the official opposition this time, and that's Mrs. Christine Elliott.

**Mrs. Elliott:** Thank you very much for your call, Mr. Corbett. I'm not sure if that's something this committee would be able to do something about in terms of being able to proceed with any amendments; however, that might be something that perhaps in the future could be the subject of a matter before the commission. What we're hearing today is people's views with respect to the new act and the changes that it proposes. Do you have any comments with respect to the new legislation?

**Mr. Corbett:** As I see it, it's highly discriminatory. Anybody who suffers from carcinogens from second-hand smoke has bigger issues than second-hand smoke to deal with. I believe if private sector establishments are supplied with adequate ventilation, all parties can be accommodated.

**The Chair:** Thank you, Mrs. Elliott. We'll be moving to Mr. Kormos. Mr. Kormos is shaking his head. He doesn't have any questions.

**Mr. Kormos:** No, thank you, Chair.

**The Chair:** The government side: Any questions or comments?

**Mr. Berardinetti:** I just want to thank Mr. Corbett for his presentation today.

**Mr. Corbett:** It's very much well appreciated.

**The Chair:** Thank you very much, Mr. Corbett, for your presentation. Bye now.

**Mr. Corbett:** Goodbye.

**The Chair:** We'll be recessing again for 10 minutes or so, or until the parties arrive.

*The committee recessed from 1556 to 1600.*

## ONTARIO NATIVE WOMEN'S ASSOCIATION

**The Chair:** We're resuming the meeting of the committee. I believe Ms. Sally Ledger is here now from the Ontario Native Women's Association. Welcome. We're running a little bit ahead of schedule today, so thank you very much. You may begin your presentation.

**Ms. Sally Ledger:** Meegwetch. Welcome, everyone. Thank you for coming to Ojibway territory. My name is Sally Ledger. I am the Ontario Native Women's Association's executive director. I commenced as the executive director in June of this year. This presentation is a combined presentation developed in partnership with the Ontario Native Women's Association and the Native Women's Association of Canada.

Incorporated in 1971 as a not-for-profit corporation, the Ontario Native Women's Association is representative of the views and aspirations of native women in Ontario and exists to create a forum through which aboriginal women can effectively address the social, economic, health, justice, employment and training issues that affect their lives and their families.

The philosophy of the Ontario Native Women's Association embraces the principle that all citizens of aboriginal ancestry will be treated with dignity, respect and equality and that our inherited rights and all those benefits and services will be extended to all, no matter where we live and regardless of tribal heritage, beliefs and customs.

The Native Women's Association of Canada was founded as a not-for-profit organization in 1974 on the collective goal to enhance, promote and foster the social, economic, cultural and political well-being of First Nations and aboriginal women within First Nations and the broader Canadian society. NWAC is the only national aboriginal women's group and is an aggregate of 13 aboriginal women's groups from across Canada.

The Ontario Native Women's Association is an independent provincial-territorial organization that is a member and sister organization with NWAC. We jointly made this submission.

Over the past 30 years, the equality interests of First Nations, non-status, Metis and Inuit women have maintained a prominent place in policy discussions about the Indian Act and in general discussions about the human rights of aboriginal women in Canada. This has primarily been the result of efforts by individual aboriginal women and organizations such as NWAC and ONWA—

**The Chair:** Ms. Ledger, can I ask you to slow down, please?

**Ms. Ledger:** I'm very nervous, and it's my habit to speak fast. I will try to slow down.

**The Chair:** We'll remind you if your pace picks up again. Thank you very much.

**Ms. Ledger:** Okay.

This has primarily been the result of efforts by individual aboriginal women and organizations such as NWAC and ONWA to keep the interests in the public

eye and on the federal and provincial agendas. One high-priority area for our respective organizations has been the promotion and protection of the human rights of aboriginal women in Canada.

#### 1610

We are mandated to address the needs and the priorities of aboriginal women, who are perhaps the most marginalized and disadvantaged population, having the highest incidence of poverty in Canada—more than twice the rate of non-aboriginal women. It's our belief that aboriginal women are thus uniquely vulnerable to all of the barriers, including access to housing, employment, education, health and other services that are experienced by other low-income people, while simultaneously confronting overt and systemic discrimination particular to our race and our gender.

One of the goals of NWAC and ONWA is to empower aboriginal women by engaging in international, national and regional advocacy measures aimed at legislative and policy reform that promote equal opportunities for aboriginal women, such as access to programs and services. As well, NWAC and ONWA are committed to ensuring that the unique needs of aboriginal women are reflected in all and any legislative and policy directives that have the potential to have significant impacts on our lives and our children.

We would like to thank the standing committee on justice policy for giving NWAC and ONWA the opportunity to express our concerns and make recommendations to strengthen Bill 107. It's our belief that, while often viewed as a champion of human rights in the international forum, Canada has failed to ensure that basic, fundamental standards of human rights are applied to aboriginal people, particularly aboriginal women and our children, in Canada. This is true in relation to many aspects of social, economic, cultural, political and civil rights. Several United Nations bodies have criticized Canada's human rights record and its treatment of aboriginal people. Specifically in relation to aboriginal women, Canada has been criticized by domestic and international bodies for failing to protect the equality rights of aboriginal women.

The provincial government has a significant role to play in ensuring that Canada observes its international obligations and respects and promotes the human rights of all citizens. Substantive law reform and reform to current human rights systems are fundamental for the protection from discrimination and advancement of human rights of aboriginal women. In this sense, we welcome the commitment by this government to address reforms to the current human rights system, including amendments to the Ontario Human Rights Code and human rights mechanisms.

However, we are not convinced that these proposed changes under Bill 107 will result in the kinds of changes that will benefit aboriginal women. We support the position taken by other equity-seeking groups, such as the AODA, and similarly take the position that anticipated changes may result in weakening an already

struggling human rights system. We anticipate that the proposed changes to the current system may weaken Ontario's ability to maintain its reputation as a leader in advancing the human rights of its citizens.

The proposed sweeping changes under Bill 107 to the Ontario Human Rights Code and changes anticipated by the direct access model will have significant impact on the ability of those marginalized and disadvantaged members of society to have access to and redress from overt and systemic discrimination in Ontario. While the proposed changes have been hailed as allowing individuals greater access to human rights tribunals, we believe that the social reality of aboriginal women and other marginalized groups will result in those having greatest needs for protection from discrimination to be even more vulnerable to human rights abuses. Access to a tribunal cannot and should not be equated as access to human rights and accessibility for redress by those most in need of human rights protection.

A key ingredient for a human rights system is that it's accessible and responsive and addresses the needs of those members of society most vulnerable to human rights violations. The Ontario Human Rights Commission consultation report identifies two principles that must be kept in mind. The first is that the complaints resolution process should be first and foremost about the people. Any system design should consider the experiences of those actually using the system and how it feels to them—

**The Chair:** Ms. Ledger, just a little bit slower. They're still having a bit of difficulty.

**Ms. Ledger:** A second principle: While the complaint resolution process is concerned with resolving individual disputes, it is not only for that. There is public interest at stake in the resolution of these issues.

Therefore, any amendments to the Ontario Human Rights Code, Human Rights Commission and tribunal process require much broader public consultation, particularly with those of marginalized communities and individuals most in need of human rights protections and redress.

While we feel that much more consultation is required, we are prepared to offer recommendations in four broad, overarching areas that are essential to strengthening the current and proposed changes under Bill 107. These include:

- (1) accessibility;
- (2) defined jurisdiction and adequate power;
- (3) operating effectively and efficiently; and
- (4) independence and accountability.

An effective human rights system requires that state institutions are readily accessible. Prominent factors affecting accessibility include physical location design and geography, employment of communication technologies, timeliness of services and representation by staff of the community served.

Accessibility issues also include lack of access to legal representation, complexity of judicial and administrative costs, inordinate delays, lack of knowledge of the system,

geography, lack of accommodations for disability, language and cultural barriers, marginalization and lack of trust, and receptivity and perception of service.

Accessibility is perhaps the most important factor in considering changes to the current human rights system. The current model of human rights has remained relatively unchanged since it first came into being 40 years ago. Since that time, the population demographics and the needs of those who rely on human rights mechanisms have changed drastically in Ontario.

For aboriginal people, the social reality is that there is a growing number of aboriginal people living in urban and rural settings. It's estimated that approximately 75% live off-reserve. Poverty is a fact of life for too many aboriginal people, who remain at the lowest level of the population, lagging far behind the rest of Canada on all socio-economic indicators. There can be no denying that aboriginal women in particular have borne the brunt of years of colonization and assimilation practices carried out by the Canadian government, and are further marginalized even amongst the aboriginal population as a whole, as evidenced by socio-economic disadvantage and marginalization.

While poverty is a key factor in acquiring access to basic human rights, such as the right to adequate housing, adequate health services and educational and employment opportunities, many times overt and systemic discrimination further compounds our problems. For example, in the area of housing, we continue to hear that even though there are human rights laws that prohibit discrimination based on race and gender, our women continue to experience being denied access to leases from landlords because they are visibly native. In fact, NWAC has fielded many calls from aboriginal women across Canada on many potential human rights violations, and our organization directs these women to file a claim with their regional Human Rights Commission, which will investigate and guide them through the complaints and tribunal process, as many do not have the means to hire lawyers and pursue other avenues of redress.

One of our issues is whether the proposed Bill 107 direct access model is responsive to the needs of those who will receive its services and whether human rights will be more accessible. In the opinion of NWAC, the proposed direct access model will weaken existing avenues of redress for violations under the Ontario Human Rights Code. Having direct access to a tribunal does not mean that redress from discrimination will be more effective or timely or accessible for an already underserved population such as aboriginal women.

#### 1620

In fact, we are of the opinion that these kinds of reforms will lead to a further judicialized human rights process, whereby members of already marginalized groups will have less means to access avenues of redress by making the system overly complex and dependent on access to legal representation. Many of our constituents do not have the necessary means to investigate their own claims and obtain lawyers. The purpose and function of

an administrative law system and the role of the Human Rights Commission will be compromised and the legal and financial barriers will act as a deterrent for many aboriginal women.

Power imbalances will be heightened as claims are forced into an adjudicative model, and it will be further detrimental to those without the means to acquire adequate legal representation. It is unclear whether the proposed resource centre and/or publicly funded legal representatives will be readily available for those marginalized communities that wish to pursue claims against respondents such as landlords, business owners, employers or government departments, who have the financial means and resources to drag cases out for years.

We recommend that the current Bill 107 could be strengthened by giving proper resources to the publicly funded Human Rights Commission, which plays an important role in investigating and pursuing individual claims through the tribunal process as well as on behalf of the public interest.

However, to improve accessibility to the Ontario Human Rights Commission, the commission needs to be staffed to reflect the claimants it serves and have offices in rural and geographic locations, perhaps even a circuit-type commission and tribunal hearings that will better meet the needs in those rural, far north and remote areas.

The OHRC and the tribunal process must be accessible by the most vulnerable members of society and must be free of barriers such as financial costs, user fees and dependence on legal representation, which would act as a deterrent to pursuing discrimination claims by the most vulnerable members of society. This should be the rule and not the exception, or at the very least a guiding principle for a newly reformed human rights system.

The role and importance of the Human Rights Commission and tribunal: An effective human rights system relies on the co-operation and participation of many players, including government, NGO advocates, unions and associations. In Canada, human rights commissions have played a significant role and have been the cornerstone of the Canadian human rights model. For commissions with a broad mandate to be effective, there is a need to be independent of government interference, and they require the ability to investigate individual complaints, resources to promote human rights and educate the public, and the ability to pursue systemic discrimination complaints on behalf of the public interest for prevention of discrimination across the government and private sectors.

NWAC recognizes the important role that the Human Rights Commission and tribunals play in upholding the principles of equality and protection for those most marginalized and disadvantaged communities in Canadian society, such as aboriginal women, visible minorities, people with disabilities and other segments of the population that are vulnerable to discrimination. While we feel human rights tribunals are an important aspect of the human rights system, we feel it's necessary to underscore

the vital role that the commission plays in bringing claims of an individual complainant or equality-seeking group—who most often do not have the resources to launch such broad-based investigations, recommend broad-based systemic changes and pursue claims on behalf of the public interest—and in promoting equality and the human dignity of all members of society.

The commission plays a unique and integral role in supporting individuals through the human rights process and by pursuing broad-based systemic claims. For example, in 2001, NWAC, along with other equality-seeking organizations such as the Canadian Association of Elizabeth Fry Societies, successfully launched a joint human rights complaint with the Canadian Human Rights Commission to address systemic discrimination for federally sentenced women in correctional institutions. In 2003, the Canadian Human Rights Commission released its report titled *Protecting Their Rights: A Systemic Review of Human Rights in Correctional Services for Federally Sentenced Women*. The report concluded that there is systemic discrimination and that aboriginal women, racialized women and people with disabilities were particularly vulnerable, and made 19 recommendations that CSC must fulfill to ensure that it is acting consistently with human rights laws in Canada. Many of those broad-based systemic claims may not otherwise have been pursued by individual women in prison or by community-based organizations because of the human and financial resources necessary to pursue such a claim and move it forward.

An effective and independent commission also has the ability to take on a proactive initiative on its own, and in this way they play an important role in ensuring that government departments, laws and regulations are consistent with human rights laws. For example, in another instance, the Canadian Human Rights Commission was instrumental in bringing to light a proactive initiative, a report on section 67 of the Canadian Human Rights Act, which exempts the Indian Act and actions pursuant to the Indian Act from human rights scrutiny. It is necessary to preserve and enhance the ability of the Ontario Human Rights Commission to act as an independent player with the powers and adequate resources to fulfill a broad mandate to pursue claims on behalf of those marginalized in the province and to work co-operatively with not-for-profit and community-based organizations dedicated to ending discrimination and promoting equity in Canadian society.

Another issue for us is whether Bill 107 will assume the role and function of the commission and give the tribunal expanded gatekeeping functions, both of which will not benefit the most marginalized and disadvantaged in Ontario.

The proposed Bill 107 direct access model proposes that individuals will have direct access to the Human Rights Tribunal process, thereby seizing the vital role the commission has played in supporting individuals with very limited resources by investigating and pursuing claims through the tribunal process on behalf of the public interest.

This has the potential of amounting to a privatization of human rights. Individuals and the broader public will bear the cost and brunt of this kind of shift because the newly constituted commission will have limited capacity to support individuals and pursue claims on behalf of the public interest. Similarly, individuals who do not have the financial means and resources necessary to investigate their own claims and hire their own legal representation for the tribunal hearings will be at a serious disadvantage under Bill 107. This, we feel, is a strong deterrent for those who have already limited resources to pursue cases, such as our women.

This proposed direct access model will not mean that all individual claimants will have access to an impartial and accessible decision-maker in a timely and effective manner. Rather, the proposed amendments will shift the gatekeeping function played by the OHRC to the OHRT and give the tribunal unfettered discretion to dismiss claims without a formal hearing proceeding. This may deter most from pursuing claims, and those who do will not have an avenue of appeal or redress from decisions of the tribunal, as the tribunal will have significant powers to dismiss a claim without an open and fair hearing.

In our opinion, the direct access model, as proposed by Bill 107, will have a very significant impact on the poor and those with the least means to protect and advance human rights claims. In fact, as stated earlier, these kinds of reforms will move human rights procedures to an adjudicative model by making the system overly complex and dependent on access to legal representation. Members of already marginalized groups will have less access to avenues of redress for violations of human rights. Many of our constituents do not have the necessary financial means to investigate their own claims and obtain lawyers. The purpose and function of an administrative law system and the role of the OHRC will be compromised. Only those with the resources to access the direct access model will be able to pursue their human rights complaints. The financial and anticipated systemic barriers will act as a deterrent for many aboriginal women.

#### 1630

It is recommended that for a human rights system to be effective it should create rights and not take them away by being inaccessible to those who depend and rely on a fair, impartial, effective, efficient and accessible redress model.

It is recommended that Bill 107 be strengthened to be responsive to the needs of, and ensure accessibility by, the most vulnerable members of society by maintaining the jurisdiction and even expanding on the role and purpose of the OHRC and by providing the OHRC with adequate powers and resources to fulfill its broad mandate.

It is further recommended that individuals could be given the choice to have direct access to a Human Rights Tribunal, and others, with less means to pursue that choice directly, should have the option of having their claim investigated and pursued by the support of a publicly funded OHRC.



Because the equality and dignity of every human being is a fundamental and inalienable human right, the effectiveness of a human rights system should not be compromised solely by arguments of operational efficiency. It is unclear as to whether the proposed reforms under Bill 107, including the direct-access model, will make the resolution of the human rights system more effective and more efficient. What is clear is that there is a need for reform and improvement in the way most cases are currently processed, including the time it takes to make a claim.

The issue we have is whether the proposed Bill 107 direct-access model reforms will make the human rights system more effective and more efficient. The key issue is how best to balance the need to process claims in a manner that is efficient while being viewed as effective by those who rely on a fair, impartial, accessible and timely resolution of their human rights claims. The main criticism of the current system is the length of time it takes under the current OHRC system, which has an obligation to process every claim filed, followed by a lengthy investigation process, with many claims being settled by mediation and few being referred to the OHRT.

Although commissions are a cornerstone of our human rights system within federal and provincial jurisdictions, Human Rights Commissions in almost every jurisdiction have been seriously underfunded and under-resourced for years. This is true despite the social reality that more and more people rely on these essential services and despite the growing need for independent Human Rights Commissions to advance the equity interests of individuals, including the right to live free from discrimination.

Under Bill 107, it is advanced that giving individuals direct access to the tribunal process will make things more effective and the resolution of human rights claims timelier than the commission. However, there is no guarantee or evidence offered that would support the position that giving individuals direct access to tribunals will speed up the claims process.

**The Chair:** Ms. Ledger, can you slow down? You've picked up speed again. Thank you.

**Ms. Ledger:** Assuming that an aboriginal woman has the resources to investigate her own claim and hire her own lawyer to bring her case forward to the tribunal, shifting the gatekeeping function and having the tribunal operate as judge, jury and final decision-maker will require a significant degree of procedural fairness. Under an enhanced adjudicative model, the wheels of the human rights resolution process would surely come to a grinding halt.

In our opinion, operational efficiency and procedural fairness and effectiveness may mean that some claims and claimants are treated differently. For example, some claimants may want to proceed directly to the tribunal process and their claims may not require the rigor of an investigative process laden under the current OHRC. However, others claimants may need support and guidance through the process. Their claims may be complex

and systemic in nature and thereby could benefit from the commission playing a more active role in the investigation and pursuit of the claim through the tribunal process on behalf of the individuals and in the public interest.

It would be more effective and efficient to streamline cases by giving individuals the opportunity of proceeding under an adequately resourced, enhanced OHRC or having direct access to a tribunal process, as opposed to treating all claims and claimants the same, i.e., having access only to a Human Rights Tribunal process or forcing those unwillingly into a Human Rights Commission process.

The social reality is that all human rights claims and all those who want to file a human rights claim are not the same; for example, some in an employment relationship may want direct access to a tribunal for a quick decision that may preserve the relationship, while others, such as a complex systemic claim that will affect many, may want the resources and level of investigation and public interest remedies that the OHRC may be equipped to provide. By allowing choice, this would create efficiencies and strengthen the effectiveness of the operations of the human rights system as a whole.

It is recommended that the provincial government use this unique opportunity to reform and strengthen the operational—

**The Chair:** One minute left, just to let you know.

**Ms. Ledger:** —effectiveness and efficiencies of the current human rights system by creating options and alternatives for the residents of the province of Ontario. Having access to an adequate OHRC process and having direct access to the OHRT need not be an-all-or-nothing approach.

Another issue that we have is whether Bill 107 will resolve the outstanding issues of accountability and independence of the Human Rights Commission.

If I had spoken faster, I would have gotten it all in. At this point, I will just summarize and let you know that we have handed in a hard copy. There are recommendations. Our key areas of concern are accessibility, an adequately resourced process and ensuring that we have additional consultation. Unfortunately, we have not been able to meet with all of our members and get additional input.

Meegwetch.

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

NISHNAWBE-ASKI  
LEGAL SERVICES CORP.

**The Chair:** The next group is the Nishnawbe-Aski Legal Services. Welcome. Good afternoon. If you can state your names for Hansard, please.

**Ms. Claudia Belda:** My name is Claudia Belda and this is Mary Jean Robinson. We are here representing Nishnawbe-Aski Legal Services Corp. We are both lawyers. Mary Jean is the legal aid area director in our office and I am the legal education and communications officer. If you look at the packages that we've provided

for you, you will be able to take a quick look at some background information about us and our organization, so I'm not going to take an awful lot of time to introduce ourselves.

Nishnawbe-Aski Legal Services Corp. represents all the Nishnawbe Aski Nation communities. There are 49 of them and they belong to Treaty 9. We serve approximately 30,000 people on and off reserve. The geographic territory that we cover is approximately two thirds of the province of Ontario, extending from the Manitoba border on the west all the way to the James Bay coast on the east. You can take a look at the maps that they're handing out right now.

The mandate of our organization is to address legal and justice issues as they relate to Nishnawbe Aski Nation and its members, as well as to further and protect the rights of those members. We are mandated to promote alternative, community-based justice systems and to deliver legal, paralegal, public legal education, restorative justice and law reform services.

Since we have limited time to present to you today, I will begin by addressing the points that we think are in need of revision and why, and then Mary Jean Robinson will contribute some of her personal experiences regarding access-to-justice realities faced by NAN members.

Like many people here today, we happen to agree that it is time to make some changes; however, Bill 107 cannot be enacted into law as it currently stands.

#### 1640

We also agree with many of the things that have been said by the presenters before us and, like all those other groups, we have concerns about the proposed legislation in terms of how it will impact those people we represent.

We have identified five main points of concern for our clients, all of which are either part of the current Bill 107 or are missing from it.

- (1) There's no right to a free investigation.
- (2) There is no explicit right to free legal representation.
- (3) There are user and legal fees.
- (4) Only individuals or the commission can file an application, which means that there is less chance of systemic issues being brought to the tribunal.
- (5) There are expanded grounds to exclude complaints and a limitation of reasons for appeal.

Why do we have such concerns? We appreciate the fact that the government is trying to streamline a system that has been problematic in the past. However, we do not want the government to do it in such haste and without the public opinion that may shed helpful light on the implications of what the government is trying to accomplish. In an effort to provide some guidance, we propose the following amendments, many of which I am sure you have already heard today.

In terms of lack of free investigations, if the tribunal is to be the direct access route, the tribunal and the individual involved should be provided with the same investigatory powers that were given to the commission, or, as an alternative, give complainants a choice between

accessing the tribunal or opting for the commission to conduct an investigation of their claims. By giving them a choice, you can continue to speed up the process for those who already have all the proof they need, while at the same time maintaining protection for those who depend on or prefer the investigatory powers of the commission. As such, we're urging you to allow the commission to retain some of the powers that it already has and that have in the past been used to the advantage of legitimate complainants.

On the issue of legal representation, we need the establishment of fully funded community-based centres to provide advocacy services on behalf of the clients, and they need to have a specified funding budget as well as a reassurance that any funding changes will be approved by the Legislature as a whole and not just by the minister. We also need to have a list of the services that will be performed by the proposed human rights legal support centre. We would also like to see entrenched, ongoing and free legal support, assistance and representation for the complainants, as well as a publicly available central list of where this help can be accessed. We want the bill to include a guarantee of representation and assistance throughout the entire case for complainants from a publicly funded lawyer. As it stands, there is no requirement that assistance will come from a lawyer or any other qualified source.

In regard to user fees and resources, the bill is creating financial barriers for victims of discrimination with the threat of user fees. Though we understand that the threat of user fees is supposed to be a deterrent in order to prevent complainants from bringing frivolous cases forth, since the tribunal has the discretion to accept cases that it believes to have merit, we think this is a moot point. There should not be user fees, and no legal fees should be awarded against complainants who have a legitimate complaint. It is also helpful to point out that if the commission were to retain its investigatory powers and make them available to complainants in a broader-based and more public process, it would save the tribunal time in determining which cases to accept on the basis of evidence. In addition, we would also like to see resources allocated to the tribunal to travel to all regions in the province to hear cases, including northern reserves. If the Attorney General is committed to access-to-justice issues, then he must include First Nations who are in remote and fly-in reserves.

We also support a re-examination of the expanded grounds for refusal and the limitation on grounds for appeal. We do not think that preventing cases from getting a hearing or refusing appeals for valid complaints that may not necessarily fall under the proposed changes embodies what the bill is really trying to accomplish.

We also want an amendment to the bill to allow applications to be brought before the commission or tribunal by representative third parties such as community organizations, band councils or other groups who may be more able to recognize systemic discrimination and practices.

Another general point we would like to bring up is an amnesty period for those cases that are already in the system as it currently stands. We have heard—and you can correct me if I'm wrong—that all the discrimination cases that are already in the system will be forced to start over, with the tribunal as their starting point, as soon as the bill becomes law. That's creating backlogs and anger from complainants. If the idea is to speed up the process, this would make the elimination of most of the powers of the commission a mistake.

The reasons why we would like to see this bill amended are as follows. The people we represent are already marginalized First Nation groups. They experience constant discrimination due to their skin colour, where they live, their cultural beliefs and more, both as a group and as individuals. They're also often discriminated against by government and a justice system that has not yet learned to deal with aboriginal justice issues. Through Bill 107, you will be further discriminating against this large group of people who are already economically disadvantaged.

We understand that you are advocating Bill 107 on the basis that it will improve access to justice for the people. However, it is in fact doing the opposite by forcing people who do not have the economic means or the cultural inclination to conduct their own investigations to abandon otherwise legitimate complaints.

As you are already aware, many types of discrimination are difficult to prove. The discriminatory actions may be covert or unconscious. Every year, the commission turns down many applicants on the basis of a lack of evidence. However, without guidance as to the type of evidence that they should be looking for and without the investigatory powers of the commission, an individual has virtually no chance of gathering enough evidence to make a claim. For example, who is going to force employers to give out information? The employee is certainly not in a position to do so, and our clients certainly cannot afford to lose their jobs or pay user fees to access the tribunal. Moreover, even if they did manage to find enough evidence for their claims to proceed, they will never have resources equal to those of the people they're up against.

The bill has pledged support for anyone who requests it. However, even we often have a hard time providing similar information to all NAN members. Who is going to be responsible for letting isolated northern communities know where they can get help? How will this be done? This help is supposed to come from a human rights legal support centre, and yet there is no mention of this centre in the bill. Even if this centre were to be created, it is likely to only be found in large urban areas—I'm assuming that this help would be provided in Thunder Bay, if it is provided in the north at all. So what happens with the rest of the northern community? The support staff for a project of this magnitude is not available at this time, and we don't know what type of training or changes have to be laid out for this to happen. Furthermore, how will clients in the north be able to access this help? They

will likely have to travel to Thunder Bay or elsewhere, at great and prohibitive expense.

News releases and backgrounders regarding Bill 107 have pledged individuals the right to publicly funded legal support, yet the bill doesn't actually mention that anywhere. At least under the current model, individuals are entitled to the support of a free commission lawyer. Now they will be forced to hire their own lawyers to guide them through the complicated tribunal process. Our clientele just can't afford that. These are people who are mostly dependent on legal aid certificates to deal with their claims in the justice system, and even if they were able to jump over the monetary hurdles thus far, the fact that in the event of a loss they will be liable to pay for costs will certainly make them think twice about starting a claim in the first place.

In addition to all of the above, we feel that the proposed changes would also result in legitimate systemic cases of discrimination not being brought up before the relevant authorities. By eliminating the commission's role, you are eliminating the illusion that these cases are a publicly managed issue. Since now the system is shaping up to be similar to the justice system in that they are becoming interactions between individuals, it would certainly hurt any chances that we have as a whole to create human rights changes that will affect all First Nations. We would like to see the bill amended so that it legitimizes third parties to bring discrimination cases forth on behalf of First Nations individuals or communities.

Moreover, the direct approach that is meant to reduce backlog is unlikely to do so. The tribunal will instead be burdened with the task of trying to sort out which cases it would likely hear rather than concentrate on just hearing the cases. It will ultimately result in the same backlog, despite the fact that fewer cases will be heard. Access to justice for our community members will once again be restricted.

Our position is that we agree that it is time for changes to be made to human rights legislation. However, we do not think that those changes are the ones currently found in Bill 107. We believe that in order to really serve those who are in need, sweeping amendments need to be made to it. What we have touched on is only a small part of the changes that need to be made.

To recap, this bill will manage to roadblock our clients in many ways. Many of our clients are shy, in large part due to cultural issues. Often they want to preserve their anonymity, and often they have to deal with the issue of reprisals. The emotional cost of having taken a discrimination claim to the tribunal or the commission and seeing the case come to a conclusion is huge for them, but they also lack the resources to even get their case that far. I think this is evident from the low number of complaints actually received by the commission from aboriginal people, despite the fact that they're one of the groups that is most victimized.

As the legal aid area director and as a lawyer who has had experience working in the north for several years,

Mary Jean Robinson can provide you with some anecdotal evidence of the hurdles that Bill 107 will impose on Nishnawbe Aski Nation members.

1650

**Ms. Mary Jean Robinson:** Hello, and thank you for being here to hear these presentations today. Although I am presently the legal aid area director at Nishnawbe-Aski Legal Services, which means administering the Legal Aid Services Act for on- and off-reserve members of NAN communities, I have for many years practised in private practice in the remote north and in the city of Thunder Bay and across northwestern Ontario for First Nations people individually, for communities and for bands.

I would start out by saying that if you want to look at what not to do, the first thing you need to look at is your FRO, your Family Responsibility Office, which went from bad, terrible to worse and atrocious. In the early days of my practice, we had a Family Responsibility Office here that the lawyers accessed, that the people accessed, and it worked. Now if you're attempting to pursue an FRO claim—and I know this isn't human rights, but it's an analogy—they say, "Well, where is he? You go find him." Yet the government has the drivers' licences, the car registrations, the income tax, the GST and all of the other resources to investigate. So the net result is that nothing happens because these people do not have the resources to investigate their own claims.

The Criminal Injuries Compensation Board is another one. You say, "Well, fill in the form." The simple form for the common experience payment for elders right now is one of the simple forms that's out there that may seem simple to everyone around this table; it is not simple, it is not straightforward. So simply putting your case forward—if you make a mistake in putting your case forward, you can get tossed just because your paper didn't match what was required. Again, turning to the common experience payment, people's claims get booted out because the government says, "Sorry, we have no records of that school at that time. We know it was there, but we don't have any records. So you go out and get your own record and let us know." These people cannot do that.

What we're trying to do here by amending this legislation is to improve access, and not just to improve access, i.e., you can come before the tribunal now, but to ensure that everyone who has a human rights complaint can bring that complaint forward. That requires, for our population, I would say 75% of it, representation. It's not something they can do themselves. It requires a knowledge of the legislation. It requires a knowledge of whether you're in the Canadian human rights system or the Ontario human rights system, which is an issue we get all the time with labour law. There are distinct differences on whether or not you are in the federal or the provincial. You can be on-reserve and be in one or the other.

So those are the kinds of issues that, quite apart from language, from culture—if you come from a culture of

not complaining, how are people encouraged to say, "This happened to me," and "I'm hurting," or "I want redress"?

The other issue which Claudia and the people before addressed was cost, fees. As a lawyer, I've written and I've had clients receive those letters that say, "Here's your \$10 offer to settle, and if you don't take this reasonable offer, it's going to cost you \$2,000," and the client goes, "Oh, my God. I don't have \$2,000. Let's take this offer." People are intimidated. So you have to constantly watch that if one side has a lawyer, both sides have a lawyer, so that there is a level playing field.

The first point is the point of access. People do not have access to the Criminal Injuries Compensation Board, because there's no one in the remote doing that. From Legal Aid Ontario's and our community legal workers' side, we are defence-side bar.

Now, when one looks at how all of this is going to get funded and so on—and I'm sure all of you have heard about the Legal Aid Ontario sustainability campaign. We're already grossly underfunded, and we already have people who are denied legal aid because the crown is not looking for a period of incarceration. So if you're charged with a criminal offence and the crown says, "Oh, well, 12 months' probation," and the person says, "I didn't do it," they can't get legal aid. So to say, "Well, you can go before the judge and tell the judge your story," well, the fact of the matter is that they can't and they don't. They're intimidated. It's not their system, they don't use it in that fashion, and they end up pleading guilty. We get a huge number of guilty pleas where, had they had representation, they would likely have succeeded in a defence.

So dollar access—who's going to get representation, and where are the dollars going to come from for this representation?—and ensuring that there are offices. We all have all the nice, new, modern technology, and we make the phone calls with the 14 layers of menus that people with a good command of the English language can barely manage. Anyone for whom English is a second language is just going to hang up after the third layer of the menu. So all of this technology does not work for the clientele we represent. You cannot be depending on websites for information. You cannot be depending on voice mail, information disseminated in that way. It will not work.

So as you've heard over and over today—and we in the north are really good at saying, "Geography, geography," but the fact of the matter is that geography is huge. Let me give you an example of someone who is arrested in Pickle Lake. He or she is taken to Kenora for a bail hearing, is released on conditions, and they say, "Bye." There is no bus to Pickle Lake. There is no public transportation to Pickle Lake. These are broader systemic human rights issues—for example, someone who is released and is told they can't go home. Where in Toronto would you ever say to someone, "Well, yes, the crown is consenting to your release, but you can't live in Toronto. You have to go live in Niagara Falls, and by the

way, we'll pay for you to get to Niagara Falls, but you have to get yourself back to Toronto for court?"

These are the kinds of systemic human rights issues that, although they're not directly in this bill, when anyone is dealing with human rights in the north, are issues that we deal with every day: seniors being phoned for money because somebody can't get home, because the government took the person somewhere else. In fairness, the crown attorney's office is very good about some of the fly-ins, and we do our best to make sure nobody is on the road in the dead of winter. But it's a danger and it's a huge human rights issue that would not be tolerated anywhere else, and part of it is that you people don't know. How many people here realize that someone is released to make their own way home, 300 kilometres, with no money? They might not even have a winter coat with them.

1700

I don't think I have anything, really, to add. Claudia is much more versed in it. I'm only here today because our executive director got called away. So I'm standing in for Evelyn Baxter as well as representing Legal Aid Ontario.

We are the only area office that is operated outside of Legal Aid Ontario. All of the other legal aid area offices are directly employed by Legal Aid Ontario. So our area office is unusual in that respect. We're sort of one-off, and we appreciate it but we certainly struggle with all of the problems that legal aid has.

I guess the final factor would be public legal education. We do operate a public legal education process, but access to information is really difficult and has to be delivered face to face. Websites are nice and I would not discourage anyone from having a website; I think they're great. Increasing numbers of people have this access, but we also have a huge population that doesn't have any clean water or doesn't have any running water. So having a computer and being hooked up is pretty far down their list of things to do.

I have nothing more to add to what Claudia has had to say, except: Use the FRO and the Criminal Injuries Compensation Board and those kinds of existing tribunals as one of your guidelines when you look at what not to do in ensuring that what you're doing is increasing accessibility and not limiting it. Your numbers should increase. If you increase accessibility, your numbers should increase. But I would suggest to you that if you implement this bill in its present form, your numbers will decrease, your costs will decrease, but access will be non-existent for a huge number of people.

**The Chair:** Thank you. We'll begin with Mr. Kormos. Two minutes each.

**Mr. Kormos:** Ms. Robinson and Ms. Belda, thank you very much. Ms. Belda, there are several lawyers on here, but even the non-lawyers, I think, get incredibly excited when we see bright young lawyers working in areas like this. I really do, and you were very effective here today. Ms. Robinson, you've got a few more years on her than—you have a few more years on her. You're almost my age, I'm sure. A very valuable contribution.

Marlene Pierre was here earlier today. She got onto the list at the last minute. She's a spokesperson for aboriginal women, amongst other things.

If we were to go somewhere to observe—some of us have been, especially up on the east side, on the James Bay, Hudson Bay coast areas. But if we were to go somewhere as a committee to see first-hand and witness first-hand some of the difficulties you speak of—and I agree with you; I think in so many ways, almost everyone does—where would you suggest we go? Where would we go, as a committee, to have people address us dealing with some of the very specific things you spoke to? Here's the map.

**Ms. Robinson:** Off the top of my head, I would say Pikangikum.

**Mr. Kormos:** Where? Help.

**Ms. Robinson:** West side.

**Mr. Avrum Fenson:** Yellow dot.

**Mr. Kormos:** Yes. Right here?

**Ms. Robinson:** Right. That would be one. Sandy Lake.

**Mr. Kormos:** Right here.

**Ms. Robinson:** Sandy is a big community. Both Sandy and Pikangikum are a fairly significant size, and for us, a significant size is over 1,200. But I think it would also be important for you to see one of the very small communities, maybe Poplar Hill.

**Mr. Zimmer:** Where?

**Ms. Robinson:** I don't have a map in front of me.

**Mr. Zimmer:** On the west?

**Mr. Kormos:** Right here, right by the Manitoba border.

**Mr. Zimmer:** Oh, yes. Okay, thank you.

**Ms. Robinson:** It doesn't show on this map, but NAN territory is divided by tribal councils, and each of our community legal workers works with a tribal council. For example, out of Thunder Bay, you will get the Matawa tribal council and—I'm trying to think of—we're in three zones. You've talked about the fact that you've been up to the James Bay coast, and that would be one of our zones. The communities I've given you now would be our western zone, and in our centre zone would be Webequie or Nibinamik.

**Mr. Kormos:** The Chair's going to cut me off, in any event, because he's going to say I've used up my time. Thank you kindly. Can you imagine, folks, though? It's one thing to live in one of these communities, so isolated, so remote. Can you imagine being disabled, being deaf or—

**The Chair:** Thank you, Mr. Kormos. Anybody from the government side?

**Mr. Kormos:** —not being ambulatory in one of those communities?

**The Chair:** Mrs. Van Bommel?

**Mrs. Van Bommel:** Thank you very much for a very interesting presentation. I certainly appreciate the map because it gives us a real sense of the span. I'm trying to get a sense—are you the only legal service for this entire area or are there others?

**Ms. Robinson:** No, we're it.

**Mrs. Van Bommel:** You're it. So you're serving all of this?

**Ms. Robinson:** We serve all of the 49 NAN communities and we serve Treaty 9 NAN band members, both on and off reserve, throughout northern Ontario. So we go all the way down to North Bay. In the remote communities, we provide the duty counsel—and these are combined courts, so what's there is criminal, youth court, family court, child welfare court, all in one day. We provide all of the duty counsel, the community legal workers, the restorative justice workers. The airplanes are all organized through our office. There is no one else working in the remotes.

**Mrs. Van Bommel:** The significance of the colours of the dots? Is it by size of community or—

**Ms. Belda:** By tribal council.

**Mrs. Van Bommel:** By tribal council. Okay, thank you. So it relates to down here.

**Ms. Belda:** Yes.

**Mrs. Van Bommel:** That's great. Thank you.

**The Chair:** Mrs. Elliott.

**Mrs. Elliott:** I would also like to thank you for your very effective presentation. What it has really illustrated to me, when you talk about access to justice, is not just access to human rights assistance, not just the idea and the right to have the ability to bring it forward in a legal sense, but in a physical sense the difficulties that you face in terms of being able to have someone help fill out the forms. One of the things you were talking about: having perhaps circuits and having people go to visit the more remote communities in order to bring human rights abilities to them, where it's very difficult for them to come to another major centre. I think what you're illustrating for us is that to be effective, you need to really have that physical presence. That's an important component of the whole piece, and we really need to think long and hard about it. So thank you very much.

**Ms. Robinson:** I might add that if there's going to be a tribunal and the tribunal is going to sit, the tribunal needs to sit in the community. It has been a huge problem. In my days of private practice, I can tell you that in one instance—this was a labour claim—the arbitrator refused to go up into the community and held the hearing in Geraldton and there were no witnesses because they didn't have an airplane. So it's really important to keep those things and those costs in mind.

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

1710

DON MacALPINE

**The Chair:** Next is Mr. Don MacAlpine. Welcome, and good afternoon. You may begin.

**Mr. Don MacAlpine:** Good afternoon. For your information and further consideration, I left a hard copy of the text of this presentation here and I left the appendices as an electronic copy on a floppy diskette. The hard-copy

materials will include only the summary presentation I make here.

First, a brief personal history: My name is Don MacAlpine. I was raised on a farm in southern Ontario. I came to Lakehead University in 1971 to train as a forester. I officially became a professional forester in 1977 as I worked in private forestry businesses. In 1981, I moved to Nipigon, Ontario, my current place of residency, and served as a government forester. I emphasize that I served under three different political parties. I left government service in 1996 and started to work with First Nations on forestry issues as I tried to write a book on forestry. I also entered the realm of private business after discovering marble deposits in the Nipigon area. In 1997, I was elected to Nipigon town council and served until 2000.

Why am I here? Snippets of my personal history, and especially circumstances that began in 2002, should lead this committee to a better understanding of its duty, but more importantly, its collective responsibility to each and every citizen. A bill supposedly relating to human rights, Bill 107, is under debate here today. My conclusion will be simply this: There is too much hypocrisy about human rights in this very room, which should end today. I hope that this committee collectively starts to take its responsibilities more seriously.

Human rights? Human rights codes for Ontario? First, let me take you to my grandmother's kitchen when I was a teenager in the late 1960s. I saw the tears stream down her face as she told the story of her brother, my great-uncle, choking to death on lungs damaged by mustard gas. He was there, on the bloody fields of Europe, I was told as a student in school, to defend the freedoms and rights of Canadians during World War I.

I then heard the story of my father being trained as a militia man on the muddy fields near Chatham, Ontario, during World War II. He told of the fear he had as he dragged a heavy rifle and bayonet under rows and rows of barbed wire through the mud as live machine-gun rounds whistled overhead. Nazi subs had been spotted in Canadian waters. The sons of farmers were once again being called upon to be prepared to spill their own blood for our freedom, as hundreds of thousands disappeared again into the soils of Europe.

I then heard the story from my uncle, my father's brother, of throwing dessert in with the main course in a tray in the trenches of Korea. He said it did not much matter what the food tasted like as shells exploded nearby, bullets whistled overhead and men died around him.

Since 2002, I have been forced to become like a lawyer. In irony, I learned that my uncle served in one of the first United Nations-endorsed actions intended to defend the defenceless against those who put no value in human rights and freedoms. In irony, I learned that Canada joined a league of nations, declaring "Never again," and that my country became instrumental in drafting and then signing the United Nations Universal Declaration of Human Rights on December 10, 1948. In fact, Canada

reaffirmed its commitment to the principles set out in that declaration in 1998, and it adopted similar wording in its own much-lauded Charter of Rights and Freedoms of 1982.

Pardon me, but I have been forced to read laws and become like a lawyer. So why do I charge this committee with much hypocrisy? This committee calls itself a committee of justice considering amendment to Ontario's Human Rights Code. Well, let me first remind this committee about some wording my relatives risked lives for and too many others died for.

From the United Nations declaration of 1948, I quote article 2: "Everyone is entitled to all the rights and freedoms set forth in this declaration"—and I add emphasis to this section—"without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

I quote from article 7: "All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this declaration and against any incitement to such discrimination."

It becomes clearer that Canada, on the issue of how human rights are to be considered, supports this premise, because our Charter of Rights and Freedoms of 1982 says, and I quote from the part pertaining to equality rights, section 15(1), "Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law"—and I emphasize—"without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability."

So why do I charge this very committee with practising hypocrisy? As I expressed in writing to the clerk of this committee, this process is supposed to be in advancement of the equivalency of citizens of this province. But the committee itself apparently cannot get the simplest notion of this concept right. It sets deadlines for citizens outside of the geographic area of Toronto before it publicizes the restrictions that will apply to Toronto residents. There was no setting of a schedule for all hearings and soliciting participation for all citizens on an equal basis. Regardless of intent, the appearance becomes that there is some reason to favour the greater Toronto area, so citizens of other geographies become second class. Deadlines are set for other citizens with not even a blink of an eyelash as to what this implies under the laws and promises quoted above.

Then, in continuing promotion of this hypocrisy, the clerk's communication confirming my time slot also informs me that I will be restricted to 20 minutes. This is because I am an individual. But the same communication informs me that organizations will be allotted 30 minutes. I am a citizen of Canada. The highest laws of this nation forbid discrimination against me and promise equivalency under the law. Therefore, I will not tolerate denigration of my rights simply because I am viewed by this hypocritical committee of justice as being different in

status simply because I am not an organization. If I exceed the 20 minutes, I will take the 30 minutes given others by this committee.

The document in its whole will take personal experience and observations to warn this committee that it and its members need to soberly reflect on their collective and individual duties after today, and it makes a more full assessment of the added serious violations of human rights that appear in this very room, in addition to these preliminary offensive acts of discrimination.

**1720**

I took the liberty of using the experience with the Internet I have gained over the last 3.5 years. In irony, I found that three of your members are lawyers by profession. Even more ironically, they appear as members from each of the three major political parties represented in this room. I'm not going to read out their names publicly here, but I do warn that their names are included in this document and that this document has been sent to the commissioners of the RCMP and OPP for reasons that will become clearer as this presentation continues. If the protection of human rights is indeed the purpose of this Bill 107 session, then I suggest that you all take the time to more carefully consider why this is an issue.

I'm going to suggest some prerequisite reference materials for this committee; first, a book. I have not had the time and resources to dig out the actual title and author, but I do make reference to the date and time I heard this book referenced on a CBC Radio program. The reference can be found at a personal column website that I have created and which this document gives linkage to. If I got the title of the book right, it is called *Entering the Dark Ages*. I was intrigued by the interviewer's reference to the elderly female author's prognosis that so-called professionals in our modern society fail their public duty miserably. I am going to use my personal observations to make confirmation that this author's assessment is most correct and why the conduct of the legal profession, including those in this room and on this panel, is not only hypocrisy but irresponsible in this issue of human rights in my country, something this committee claims to be so concerned about.

Second, I am going to insist that if this committee is indeed servant to the goals of human rights, each and every committee member, but especially those of the legal profession and those in the government's service, watch the powerful movie *The Piano*. Based on fact, this movie tells the story of a famous Polish Jew concert pianist. I suggest that you review the scene where a Nazi sympathizer appears in the pianist's Warsaw ghetto home. A plump man tells the starving family to accept a pittance for the piano because they should know that money for food should be more important to them. The instrument of the pianist's source of economy is removed. Then, shift to the scene where the Warsaw ghetto is being emptied to send its citizenry to gas chambers and listen to the angst that arises from a frail pianist whose brother insists in that scene that the thousands in the square being held for shipment in cattle

cars should risk rushing the few armed guards in defence of their freedom. This movie, or its precursor, Schindler's List, gave perspective to what happened during World War II. People in government institutions and in the service of government apparently forget that scenes like this led to the written declarations on human rights I have referenced above.

These films should not be reflected upon in debate of the accuracy of the words used and what actually transpired but in sober reflection of what happened and what the promise "never again" set in these declarations and charters really means. We need to remember that first partisans were empowered, then they declared that those people who paid to promote their ideals were the favoured. First, they acted to ensure that those who did not pay into their political party were excluded from consideration by the government. Then even the poor were declared persons of lower status. Those outside the circle of partisans were assigned reduced rights until they had no rights at all.

So I ask of this committee, by declaring me less important than organizations, what makes your actions any less abhorrent than those of partisan Nazis? More cynically, what of the duty of professionals and our elected? Ask yourselves this question: At what stage do we collectively have a responsibility to demand protection of the rights of the individual set in our laws? The answer is clear in our history: Our responsibility lies in the first revelation of deteriorating rights, not when bodies finally appear on streets or on television screens.

I am left wondering if any members of this committee have ever read the UN declaration or the Canadian Charter of Rights and Freedoms. I suggest that this committee collectively start to think about article 21 of the UN declaration:

"(1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.

"(2) Everyone has the right of equal access to public service in his country."

In 2002, I encountered a situation where article 21, part 2, was blatantly violated by the partisans in power at that time. In time, I was forced to read the law extensively. I quote from the UN declaration of 1948, article 10:

"Everyone is entitled in full equality to a fair and public hearing"—and, I add emphasis—"by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him."

In the course of three years since 2002, I discovered the blatant self-promotion of our so-called legal professionals. I have summarized the circumstances with more details in an appendix to this submission provided to this committee as an electronic floppy diskette.

Suffice it to say here in this summary presentation that I first encountered lawyers who, paid to be partisans, refused to deal with my petitions for justice and then appeared in court on behalf of partisans and big corporations who had paid into the same partisan groups.

Then I discovered that the judges I appeared before had paid astutely into the very partisan groups I complained about. These judges, some on the bench less than 1.5 years, then sat in judgment of my complaints. And every time I received orders of the court, I discovered more and more and viler and viler violations of the principles and promises of justice in Canada, which are justice regardless of status and an impartial and independent justice system. Indeed, appendix A of my submission reveals the discoveries of these base violations of charter and international law to the level of the Supreme Court of Canada.

I suggest that you all review the Canadian Criminal Code, especially those sections that make it a Criminal Code violation to breach any act of Parliament and which make this duty especially a duty of people given position in any government institution. Then tell me why the highest acts of Parliament and promises to all Canadian citizens are repeatedly ignored by those of position, including members of this committee. Review those sections of that law which forbid any individual using their elected or promoted position in any government institution to promote and protect their own position or personal economy. Then answer me this question: If this were a committee relevant to determining what new fee structures would be applied to Canada's Great Lakes shipping channels and former Prime Minister Paul Martin appeared as an elected official, would you remain silent in the obvious violations of Criminal Code sections forbidding our elected officials from exercising influence to protect their position or to promote their own economy? Start to think about your collective duty here.

After I applied to appear before this hearing on July 27, 2006, the local news stations had an OPP officer urging cyclists to watch how they rode Canada's main highway. The report noted that a cyclist crossing Canada to raise awareness about the lack of support for legal aid had been struck and killed by a vehicle outside Sault Ste. Marie. Answer me this: If the principles set in higher laws require justice regardless of status of any nature, why is it that elected lawyers repeatedly appear to influence laws and committees like this as the poor are denied justice and access to our courts? Why do I have to pay \$40 to fight a small-claims-court claim that comes from a big corporation that I have already tried to file and been told by courts to pay \$157 when I don't have the money to even subpoena people? Answer me that.

#### 1730

Read the laws I reference at the end of this document. Every one of them suggests or references laws that declare that the primary principle of any law is justice, as seen by normal citizens to be just. The law is not for legal experts; the law is for the citizens of this nation, and it is on the basis of the equivalency of the individual set under higher laws.

But now your committee appears with so-called legal professionals sitting in consideration of the issues of justice and supposedly human rights, and the committee, despite the presence of these "experts," cannot get the



basic considerations of discrimination of any kind right. Geography merits greater preparation time for Toronto than Ontario's lowly hinterlands. Organizations bear greater distinction than the individual citizens. "Policy is the prerogative of the government" is a phrase I have heard too many utter, pretending to serve democracy or to be instruments of justice. Too many ignore that this was a theory promoted by 1939 which too many Canadians died for once again to stop. Policy is not the prerogative of government when other laws—higher laws—become ignored.

You collectively and with much hypocrisy propose a law that is 20 pages long. Your proposal does not simply state that the province of Ontario accepts the extreme importance of Canada's Charter of Rights and Freedoms nor does it acknowledge that the higher acts of Parliament accepted the 1948 UN declaration that bears equal relevance; your proposal does not simply state that the government of Ontario wants to set up a tribunal to accept and review complaints of violations of these important acts. Instead, you collectively promote 20 pages of rules that most vilely state that a supposed tribunal for human rights will be allowed to determine and set fees that will then determine who will or who will not be granted hearings before a supposed tribunal set up for the promotion and protection of human rights. Who appears at these hearings demanding these fees? At least three lawyers who, if they were shipping magnates appearing in front of a committee about the shipping industry, would be vilified and attacked and humiliated.

Moral and legal duty is not defined by majority positions. If it were, we would accept the pronouncement by Hezbollah that Jews are inconsequential and we would accept the majority premise of 1939, even reflected sadly in Canada's rejection of boatloads of Jews fleeing Germany, that parts of our society can be defined as insignificant simply because they are not of the same race, religion, partisan association or economic status.

UN declarations and constitutional charters were created in recognition that a majority opinion does not always guarantee moral conduct. These highest laws were created to protect every citizen from those who corrupt the base promise of equivalency of person. "Policy is the prerogative of the government" is neither the founding principle in Canada's laws nor is it the principle protecting the standards of democracy.

"Professionals"? "Professional associations"? "Self-regulating professionals"? I suggest that you all carefully review the ramifications I watched develop in my 35 years of involvement in the forestry profession, as I summarize in appendix B of the information provided. Again, in brief, there would have been no need for the extensive mill closures being experienced in my part of this country in 2006 if the warnings of real professionals had been listened to 35 years ago.

It would serve this committee best to soberly reflect on why we pause every November 11. The record shows troops leading German citizens through concentration camps adjacent to their towns. They were forced to view

piles of rotting bodies because they claimed that they did not know. The precedent set by the Nuremberg trials after 1945 became that judges, politicians and leaders of the highest offices be accountable when they take advantage of their position to deny any citizen basic human rights.

Indeed, it took legal action by Canadian Jews to finally establish that property removed by those who followed laws first created by partisans, while other laws of human rights and just governance were ignored, was illegally removed and had to be returned to those denied these basic considerations. The piano had to be returned to the pianist if justice were to be served, but Jews had to wait 30 years before they finally achieved justice.

The appendices of my presentation reveal the dark side of growing Canadian injustices in a system claiming to be for justice and basic human rights. I urge you to consider your duty here and review those appendices.

Thank you for your time.

**The Chair:** Thank you. There's obviously no time for questions and comments. So thank you very much for your presentation.

**Mr. Kormos:** By the way, Mr. MacAlpine, you missed one.

**Mr. MacAlpine:** Well, hopefully, they'll recognize they're doing it.

#### BERNADETTE POULIN

**The Chair:** We have one more presenter for a few minutes. It's Bernadette Poulin.

Good afternoon, Ms. Poulin. You have 10 minutes.

**Ms. Bernadette Poulin:** Am I loud enough? Okay. I'm here to talk about myself and my situation. I've been really looking for and searching for help since 2001. I had a car accident in 2001. Since then, it's been an upward battle to get any kind of help. I've been denied help in rehab when they applied for me from the Brain Injury Services of Northern Ontario, but the reason for that is that I had a DAC program in Sault Ste. Marie. So out of that, without my MRI being sent there with my other forms, they made the conclusion that I was denied my rehab.

I haven't got any disability since then too, which I have applied for. The first time I applied would have been in 2003, when we really had it filled out and done. It was supposed to be sent out, but my worker forgot about it in my file, so it was there and the time period ran out. These things happen. It finally went in this year, in March. So now it's in there, and hopefully—they said they wouldn't be able to look at it until November.

1740

So I just really need help with a lot of things. I believe I've had a head injury, which has given me great difficulty in my life and in the daily functions of life. I've had suspensions from OW since I don't know when. I think this is the first time, last month, when I finally got my cheque on time, thanks to my addiction worker, Carrie. But things like this and other things are piling up

and piling up, and I'm just not able to do the things I used to do before the accident, as far as catching up with all these things and dealing with the everyday issues of life, dealing with my 15-year-old daughter, who is so badly affected by this, and so is my 20-year-old. He's depressed. It's just like we're falling apart over here, and I've been going round and round all these years and asking for help and knocking on doors and all this stuff.

I have headaches constantly, daily now. I've been having headaches for a long time, and nosebleeds. I've had an MRI done, but that's very questionable, because when my worker and I went to see the neurologist, what I saw in there was a ball that round inside my head, and I guess I had a concussion with that, according to the doctor. But none of that is in the report. I still haven't got the help I need, and my headaches are getting worse, and my neck. I had injuries in this accident, with nobody admitting to them on paper or anything like this. I'm the one who's suffering here. I'm the one who has to deal with this thing every day. If I can get some kind of help, it would be much appreciated.

They also diagnosed me with cirrhosis of the liver, but I haven't drank for five years now, since shortly after the accident. I'm wondering why my liver would still be deteriorating when I stopped drinking. But my big question was, would 500 iron shots do it? I don't know. That's what I've gotten in a span of a year and a half. I got 500 iron shots, and I don't know if that affected my liver in any way. It's still deteriorating to this day, and I'm still not drinking.

My eyes have been affected. I went to see a specialist, and he asked me a question. He said, "Did you ever get a blow on the head?" I said, "No, but I did get into a car accident, and I believe that hurt my head." He said, "Well, you have scarring in the back of your left eye. That indicates that you got a really good blow on your head." All these things point to that.

After I was in the accident, in the ambulance, the first time I came to, the ambulance driver was driving around—I mean, like a time capsule, floating around. I went in and out, and I came to again at the hospital, same thing: The nurse was floating around the room. Everything points to that. When I finally got my MRI out of that hospital—they sent me to another DAC program last month in Toronto, and when I got there it was supposed to be an hour to an hour and a half meeting. I got there and 15 minutes later he says, "Okay, that's it." I said, "Wait a minute. Didn't they send my MRI?" He said, "No." I said, "Okay, it happened again. Well, here, have a look at this one." I had gotten it from the hospital. I said, "I want you to show me what you guys are telling me, that I don't have anything to worry about, that I have a cyst in my head. So I want to see it." So he showed it to me. "It's right here," he said. "It's very hard to see." Then, when I said, "Okay, now show me that round ball that I saw," he couldn't find it.

So I don't know what's going on. I need help to uncover some of these things so that my family and I can leave this behind and move forward and find healing for

our lives, because we're falling apart. We need to get this straightened out and we need to move on.

I had a lot of things written down here that I wanted to say, like how I feel angry, stressed out, anxious. I was called names. I was called the F-word and the B-word by the insurance company. They said to me, "Why don't you leave it well enough alone, you—blah, blah, blah?" Why do I get spoken to like that by a representative of some office? I don't need that either. That wasn't my job; that was my lawyer's. I need help.

**The Chair:** Thank you very much. We're really sad to hear your story. Just as a suggestion, have you contacted your MPP with respect to this?

**Ms. Poulin:** I have. They said their hands are tied, and I don't know what that means.

**The Chair:** Maybe you can let us know who your MPP is and we can ask them to give you a call. Do any of the committee members have any suggestions?

**Mrs. Elliott:** The other thing that you might want to consider is working through the brain injury association, if there is a local chapter to help you, because I understand that it's difficult for you to put things together. The other thing is, are you still seeing a physician for your headaches? It sounds like that's still a concern for you.

**Ms. Poulin:** My biggest problem has been getting a regular family doctor. But I have since been seeing a doctor for about six months now.

**Mrs. Elliott:** Perhaps they can help you work with the association and maybe they can help you with some advocacy to help you pull things together. They've certainly been very helpful in my area. I think they would be a good place for you to start, anyway.

**The Chair:** Any other comments or suggestions?

**Mr. Kormos:** Who's your MPP?

**Ms. Poulin:** I phoned Mike Gravelle's office.

**Mr. Kormos:** You spoke with his staff, right?

**Ms. Poulin:** Yes, I spoke with his staff twice, once a few years back and once a few weeks ago.

**Mr. Kormos:** The staff are very busy, right? Because they are in all of our offices. You didn't get a chance to speak to Mike Gravelle, did you?

**Ms. Poulin:** No, I didn't. I really wanted to. He's the person I really wanted to get a hold of.

**Mr. Kormos:** Colleagues, maybe if somebody would take down a contact number, we could ask Mike Gravelle to give her a call.

**The Chair:** Actually, his office is right next door to mine. I'll call, and we'll get Ms. Poulin's information.

**Mr. Kormos:** Vic Dhillon is the Chair of the committee. He's a colleague of Mike Gravelle's in the Liberal caucus. I suppose the commitment we're making to you is that Mike Gravelle or somebody from his office will call you. Nobody knows how much help he can give you, but you want him to try, right?

**Ms. Poulin:** Yes.

**Mr. Kormos:** All you want is for somebody to try, huh?

**Ms. Poulin:** Yes.

**Mr. Kormos:** And that will happen within how many days?

**The Chair:** We'll pass on the message.

**Mr. Kormos:** No, we've got to give this woman a time frame.

**The Chair:** We don't know what his schedule is.

**Mr. Kormos:** That'll happen within seven days.

**Ms. Poulin:** Okay.

**Mr. Kormos:** If it doesn't happen within seven days, get a hold of the clerk of the committee.

**The Chair:** Thank you very much. Thank you, members, staff and all the other people who assisted.

**Mr. Berardinetti:** Chair, I just have a quick request as we wind down here. I spoke to Mr. Fenson briefly—

and I wonder if I need to make this in the form of a motion or just a request, that he look at some of the other provinces to see what they're doing with their human rights tribunals or commissions and let us know.

**The Chair:** Have you noted that? Mr. Fenson has noted that, and he'll get back to us.

**Mr. Kormos:** Specifically Quebec, which has a dual—

**Mr. Berardinetti:** And British Columbia, because they did make a change to theirs as well, which was mentioned earlier today.

**The Chair:** Thank you very much. This committee meeting is adjourned.

*The committee adjourned at 1745.*







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## CONTENTS

Thursday 10 August 2006

<b>Human Rights Code Amendment Act, 2006, Bill 107, Mr. Bryant / Loi de 2006 modifiant le Code des droits de la personne, projet de loi 107, M. Bryant</b> .....	JP-387
Thunder Bay and District Injured Workers Support Group.....	JP-387
Mr. Steve Mantis	
Mr. Eugene Lefrançois	
Faye Peterson Transition House .....	JP-391
Ms. Debbie Ball	
Canadian Hearing Society, Thunder Bay region .....	JP-396
Ms. Nancy Frost	
Mr. Greg Snider; Mrs. Sandra Snider .....	JP-398
Kinna-aweya Legal Clinic.....	JP-402
Ms. Sarah Colquhoun	
Ontario Public Service Employees Union, Local 710.....	JP-406
Ms. Brenda Clapp	
Robinson Superior Treaty Women's Council.....	JP-409
Ms. Marlene Pierre	
Ms. Patricia Manahan.....	JP-412
Thunder Bay and District Labour Council.....	JP-415
Ms. Judith Mongrain	
Persons United for Self-Help in Northwestern Ontario .....	JP-417
Ms. Tracy Hurlbert	
Mr. Bruce Corbett .....	JP-420
Ontario Native Women's Association .....	JP-421
Ms. Sally Ledger	
Nishnawbe-Aski Legal Services Corp. ....	JP-425
Ms. Claudia Belda	
Ms. Mary Jean Robinson	
Mr. Don MacAlpine .....	JP-430
Ms. Bernadette Poulin.....	JP-433