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Jeudi 16 novembre 2006

Standing committee on justice policy

Human Rights Code Amendment Act, 2006

Comité permanent de la justice

Loi de 2006 modifiant le Code des droits de la personne

Chair: Vic Dhillon
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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON JUSTICE POLICY

COMITÉ PERMANENT DE LA JUSTICE

Thursday 16 November 2006

Jeudi 16 novembre 2006

The committee met at 0934 in room 151.

HUMAN RIGHTS CODE AMENDMENT ACT, 2006

LOI DE 2006 MODIFIANT LE CODE DES DROITS DE LA PERSONNE

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

The Chair (Mr. Vic Dhillon): Good morning, folks. Welcome to this meeting of the standing committee on justice policy. The order of business this morning is Bill 107, An Act to amend the Human Rights Code.

To make these hearings as accessible as possible, American Sign Language interpretation and closed captioning services have been provided. I would ask that the presenters speak at a slow rate so that the sign language people can do their job, because it's sometimes difficult for them to do their job if one is speaking really fast. Also, we have two personal support attendants present to provide assistance to anyone requiring it.

Actually, we only have one sign language interpreter. He'll be providing sign language upon request.

INCOME SECURITY ADVOCACY CENTRE

CATHERINE FRAZEE

The Chair: Our first witness today is Ms. Cynthia Wilkey, if she could come forward. Good morning, Ms. Wilkey. You have 30 minutes and you may begin.

Ms. Cynthia Wilkey: Thank you very much. I am a staff lawyer with the Income Security Advocacy Centre, and I would like to thank the committee very much for the opportunity to speak today. But before I speak, I would like to be joined by Catherine Frazee, who is a former chief commissioner of the Ontario Human Rights Commission. As I believe you heard yesterday, Ms. Frazee was intending to appear with Raj Anand, but was unable to do so because of a personal emergency. As ISAC has already provided our submissions in writing to the committee, I would like to, with your agreement, give Ms. Frazee the first half of our 30 minutes.

Mr. Peter Kormos (Niagara Centre): I have no quarrel with that, except that the committee made a commitment to effectively ensuring that former chairs of the commission would have access to the committee for a full 30-minute slot. So that's fine by me, but Ms. Frazee is, in my view, entitled to have access to a full 30-minute slot at some point. But if she wants to do it as half of yours, God bless.

Ms. Catherine Frazee: Thank you very much to members of this committee for allowing me the opportunity to speak today in support of Bill 107. Thank you especially to my colleagues, the Income Security Advocacy Centre, for offering to share their slot when, as was explained, for compelling personal reasons I was unable to be present yesterday.

I'll going to be speaking today in my individual capacity as one who was privileged to serve from 1989 to 1992 as chief commissioner of the Ontario Human Rights Commission. In my present work, I'm a professor at the School of Disability Studies at Ryerson University. To allow time for discussion and to stick within a 15-minute opportunity to address this committee, I'm going to limit my presentation to 10 minutes, during which time I will not by any means be comprehensive. I'm going to focus my attention primarily on the role of the Human Rights Commission. I recognize that the Human Rights Tribunal is an important, vital component of this proposal, but I'm going to focus on the commission and in my time I'm going to make just two points.

0940

The first of these is as follows: The greatest problem with our human rights system is neither backlog nor delay, pernicious though these problems have been and will perhaps continue to be. The greatest problem with our human rights system is that too many people are left out of it. I believe that Bill 107 can move us incrementally but hopefully toward addressing that problem.

Let me explain it this way: When the primary raison d'être for a human rights system is at its core the redress of individual complaints of discrimination or individual acts of discrimination, when that's the primary reason for a human rights system, it is, I submit to you, inevitable that certain individuals will enjoy far greater access to and success from having their human rights claims addressed than other individuals. A system like our present system, a system that we are seeking to reform, by its very nature privileges individuals who have more robust supports and the most resilient sense of entitlement already. People who live in conditions of profound disenfranchisement, people whose experience of the

world is shaped by multi-generational poverty, by institutionalization, by alienation and by the degradations of social and physical violence: These people do not present themselves at the door of the Human Rights Commission ready to proceed to articulate a single human rights complaint. It doesn't work that way for everyone. Those in most need of human rights protections overwhelmingly remain unserved by individual enforcement.

Chief Commissioner Barbara Hall yesterday spoke of the need for balance between addressing individual claims and creating a culture of human rights. I agree with her assessment, and I would add to that assessment my conviction that such balance can only be achieved by liberating our Human Rights Commission from its responsibility as gatekeeper for individual complaints and by equipping the commission for a clear and unfettered role as human rights champion, catalyst and watchdog. Bill 107, in my view, makes this possible, and it makes it possible in precisely the way that has been detailed by experts such as Cornish and La Forest, people who have studied this problem and without exception recommended abandonment of the gatekeeping role of Human Rights Commissions.

My second point is that the task of human rights protection can no longer be reduced to a simple whodunit, a contest of allegation and response. It's not that simple. The task of human rights protection requires tools and capacities far beyond fact finding and conciliation, essential though these processes may be. I believe that Bill 107 will permit our Human Rights Commission to do more of what it does best and to deploy its expertise and resources where they are most desperately needed.

When members of our community are allowed to languish and perish in boarding house isolation and despair, when gay and lesbian youth take their own lives in the face of relentless bullying and homophobic hostility, when law enforcement officers respond with lethal force to those who are in mental health crisis, when racialized youth are made to feel like pariahs in their own schools and neighbourhoods, when eugenic motives entrench themselves so deeply in our culture as to imperil present and future generations of people with intellectual and other disabilities, when such atrocities prevail, there is no simple perpetrator of discrimination, no single wrong that can be righted by a human rights complaint. There is deep inequality, deep injustice, the kind that calls for a new paradigm in human rights enforcement.

Bill 107, in my view, offers the possibility of a Human Rights Commission focused on the larger task, a commission that is outspoken and respected, a commission of clear conviction and moral authority, a commission equipped to intervene with sophisticated methods of policy analysis and intervention, a commission that will lead in shaping public opinion and public policy. We know this is possible.

Our current Human Rights Commission, beleaguered though it has been by a gatekeeping mandate that is utterly antithetical to the spirit of the legislation it is mandated to uphold, has nevertheless made major contributions through its policy and public dialogue initiatives. In recent years, as you all know, we have seen the commission's groundbreaking contributions on important issues like racial profiling, economic and social rights, accessible public transit, safe schools and gender identity, to name just a few. I applaud this work and I affirm the necessity for much more of it.

It is my belief that Bill 107 will enable the commission to do much more strategic, influential work and to play a leading role in advancing a culture of human rights in this province. So I urge to you proceed with the reforms detailed in Bill 107, as amended, and I urge you to join with equality seekers everywhere in this province as we remain vigilant to ensure that our new system of human rights delivers on the great promise of this historic moment. Thank you.

The Chair: You may continue.

Ms. Wilkey: Would the committee like to ask questions at this point of Ms. Frazee, or should I continue?

The Chair: I think you could finish and then we could have questions at the end.

Ms. Wilkey: The Income Security Advocacy Centre is a specialty legal clinic funded through Legal Aid Ontario. ISAC has a province-wide mandate to engage in law reform work on income security issues using community organizing, policy development and test case litigation.

We are an independent, community-based organization that is directed by a community board drawn from low-income people and activists across Ontario. We are part of Ontario's network of general service and specialty legal clinics that represent low-income Ontarians.

ISAC legal staff have had many years of experience representing people who have made complaints under the Human Rights Code. I, personally, have been advising and representing complainants for almost 20 years.

In the five years since ISAC opened its doors, we have made little use of the commission process. Why is that? It is not because low-income Ontarians lack issues that could and should be brought to the Ontario Human Rights Commission. The clients of the clinic system are among the most disadvantaged and vulnerable Ontarians. Rather, our experience over many years of working in and with the human rights system in Ontario has taught us that the current complaints process holds out little hope of satisfaction for our clients. Instead, we have had to look to other avenues for law reform, including time- and resource-consuming charter challenges in Ontario's courts.

0950

One of the speakers yesterday morning spoke of the Ontario human rights system as being the charter for ordinary people. I wish that were true. It simply isn't.

ISAC supports the initiative of the Ontario government in introducing Bill 107. There is broad consensus that the current human rights enforcement process is not working for Ontarians and must be reformed. Two large public consultations—the 1992 Cornish task force in Ontario and the 2000 La Forest report federally—have thoroughly examined the Ontario type of enforcement

model and come to similar conclusions about how to address dysfunction in both settings. Specifically, both consultations recommended eliminating the commission's gatekeeper function and giving complainants the right to go directly to a human rights tribunal. This is a change that has been urged by the UN committee on economic, social and political rights in 1998 and 2006, and by the UN human rights committee in 1999. Both of the consultations recommended replacing the commission's mandatory complaint investigation process with a combination of legal supports for complainants and activist powers for the tribunal. Both of the consultations saw the need to clarify and refocus the role of the Human Rights Commission so it could become a clear advocate for human rights and be relieved of the burdensome and conflicting roles imposed by the neutral investigation and gatekeeping mandate.

Bill 107 draws on the work of both of those consultations and incorporates these most fundamental recommendations. The reforms proposed by Bill 107 will create significant new opportunities for low-income Ontarians and legal clinics such as ISAC to use the human rights enforcement system to promote equality. We hope it will also allow the commission to increase its public policy and advocacy work, including the use of its investigation capacity to support needed systemic research and litigation. We particularly see the potential for the reforms to give both the commission and anti-poverty activists a greater opportunity to deal with core issues for our constituents, such as the promotion of social and economic rights and the enforcement of international human rights through domestic processes.

Change of a system as important to the core values of our society as human rights enforcement is surely cause for careful consideration, but there is ample evidence that change must be made. There is widespread dissatisfaction with the status quo. The commission, in spite of the continued efforts of committed staff and talented chief commissioners, has not over the past two decades been able to figure out how to make its impossibly conflicting roles work together.

It is quite unfair to maintain that there has not been sufficient consideration of and consultation on how to fix this problem. We have the guidance of the Cornish and La Forest reports, both backed by massive, open public consultations and led by exemplary public figures with extensive understanding of legal enforcement processes. Many of the groups appearing before this commission have also participated in those prior consultations. There is nothing that has happened to change the validity and relevance of that important work.

Defending human rights in 2006 means honestly confronting the intractable flaws and failures of the current system. As human rights advocates, and you as members of a Legislature that values human rights, we must be prepared to fashion a new and better way of protecting and promoting human rights in this province. Bill 107 may not be perfect, but it is a considered and thoughtful approach to the problems that we all know plague the system. There are very solid reasons to see Bill 107 as charting a new direction that will be a vast improvement for those seeking the protection of the code.

We are asking you to consider and support amendments that will strengthen the intent of the bill as introduced and to move quickly towards passage of the bill into law.

In its written submissions, which you should have before you, ISAC has made a number of specific recommendations for amendments. I am happy to say that many of our key concerns were addressed by the Attorney General's announcement yesterday. Of those that remain unaddressed, we would ask you to take a look at our recommendations with respect to the following six issues:

(1) The anti-racism and disability rights secretariats: For reasons we have outlined, we are supporting other groups who are asking that these provisions be removed and that their mandates be folded into the general mandate of the commission.

(2) With respect to the remedies that can be sought by the commission, like so many other advocates, we are concerned that the commission is restricted to section 43 public interest remedies. We believe it is an important part of the commission's systemic work to be able to seek section 42 remedies on behalf of individuals.

(3) The need to review the adequacy of financial resources for the legal support centre is critical in our view because of the difficulty in anticipating the demands that will be placed on a legal support centre in future.

(4) We believe it is important for the bill to incorporate authority for third parties to bring applications to the tribunal. Because groups like ISAC often have clients who are too marginalized or too vulnerable to file claims, we are asking that third parties who can demonstrate an interest in the subject matter of a complaint be allowed to make an application to the tribunal.

(5) Yesterday, the AG announced amendments dealing with the limitation period for making applications. The movement from six months to one year is certainly a significant and welcome improvement, but we cannot see any principled reason why the code would not be brought into line with the two-year limitation period that applies to most other civil claims.

(6) Finally, the bill deals specifically with tribunal consideration of commission documents in a permissive way. Section 44 permits but does not require the tribunal to consider commission documents. We think that should be mandatory.

Thank you again for your attention and thank you for allowing me to share my time. If there is any time, we would both be happy to respond to questions or comments.

The Chair: Thank you very much. We have about three minutes for each side. We'll begin with the official opposition.

Mrs. Christine Elliott (Whitby–Ajax): I do have a question for Ms. Frazee, if you don't mind. Thank you

very much for being here today and making a presentation.

My question—and I asked some of the presenters about it yesterday—is that while the commission would be freed of the gatekeeping function under the new system, I'm wondering if you feel that there are sufficient mechanisms in place in the legislation as drafted now to allow the commission to be sufficiently aware of what's going on with individual complainants and getting additional information about systemic discrimination as a result of that.

Ms. Frazee: In fairness, I haven't had the opportunity to review in a detailed manner the amendments that have been announced, but my sense, from a quick review of those amendments, is that they do address the concerns that I have had about the articulation between the commission and the tribunal.

I agree with the spirit of your question. It will be extremely important for the commission to be able to monitor trends in human rights litigation through an active role at the tribunal, to intervene in appropriate cases where there is a significant public interest element that the commission is able to raise, and to proceed with systemic inquiries of its own undertaking. In all of those regards, I believe that the amendments do address adequately those imperatives.

Mrs. Elliott: Thank you very much.

1000

The Chair: Mr. Kormos?

Mr. Kormos: Thank you very much. Ms. Wilkey, other than a handful of maverick legal aid clinics, with which I have a natural affinity—

Ms. Wilkey: And not with us?

Mr. Kormos: Well, you're not maverick. Legal Aid Ontario-funded clinics have consistently supported the legislation and the principles, and that's fair enough. But you, like the others, have also indicated that you don't use or haven't referred or haven't supported your clients in Human Rights Commission applications for redress. Why? Was the commission staff unavailable, were they corrupt, were they incompetent, were they indifferent? Why have you, like other legal aid clinics we've talked to, not used the Ontario Human Rights Commission?

Ms. Wilkey: For none of the reasons you have identified, I'm happy to say. It is because my long experience of supporting claimants at the commission, which has been frustrating, disappointing, discouraging and time-consuming, has led me, as I said earlier, to understand that it is unlikely to provide satisfaction to my clients. What happens currently at the commission is that complaints languish for a long period of time—

Mr. Kormos: But why?

Ms. Wilkey: Why? Because the investigation process is cumbersome. It often yields results that are very unsatisfactory. There is often internal wrangling within the commission. Often the respondents are uncooperative, and that also is a way of delaying the process. There are a million ways in which the process at the commission can be delayed and derailed, and that in fact happens.

Mr. Kormos: Fair enough. But you say the results of investigations are unsatisfactory. Once again, are you talking about incompetent investigators?

Ms. Wilkey: I will be honest. I think there is unevenness. The quality of investigations is something that I know the commission has struggled with for years, and certainly as practitioners, as complainant counsel, we see investigations of uneven quality and uneven utility in terms of identifying the existence of discrimination.

Mr. Kormos: Ms. Frazee, there was a fellow here yesterday called Mark Hart, and when I read to him the commission's data in terms of the cases it had dealt with, resolved, from its annual report of 2005-06, Mr. Hart, who had worked for the commission at some point, said these numbers were irrelevant because the commission always spins its numbers. Ms. Hall was here and she denied doing that under her stewardship. Were you spinning numbers during your stewardship, Ms. Frazee?

Ms. Frazee: That's a great question. In my responsibility as Human Rights Commissioner, it was important to affirm the quality of the commission's work, always. I think we do things with numbers that aren't dishonourable or dishonest, but we attempt to present them in the best possible light. Did I do that? Probably I did. Did I feel compromised in my role as chief commissioner by the bifurcated mandate of the Human Rights Commission? Absolutely and utterly. It was not a time of—

The Chair: Thank you very much.

Ms. Frazee: Sorry. I have to stop.

Mr. David Zimmer (Willowdale): There is another model out there for the reform of the Human Rights Commission, and that's commonly referred to as the AODA model or the Accessibility for Ontarians with Disabilities Act Alliance. They've got a blueprint for reform. Can you comment on your thoughts about their blueprint?

Ms. Frazee: I have a great deal of respect for the authors of that report and for the intent of that alternative proposal and for the intent with which it has been presented. I have some concerns, perhaps, about the blueprint in terms of the compromises that I see it makes. I think it is really important to absolutely and utterly relieve the commission of any role in the handling of individual complaints. Complainants deserve, in all cases, the dignity of direct access to an open hearing. So I have some reservations about fully endorsing that blueprint.

But at the end of the day, I'm a pragmatist. I see, in a sense, an offer on the table, and that is Bill 107. I think the offer is a strong offer and moves us clearly in the right direction, and that's why I'm supporting it.

Mr. Zimmer: Thank you.

The Chair: Any other—

Mr. Ted McMeekin (Ancaster–Dundas–Flamborough–Aldershot): I appreciate your comments.

The Chair: Thank you very much.

Mr. Kormos: To legislative research, surely there are manuals that set the standards for the intake process at

the commission, because this whole gatekeeping function is what's being argued. Some are arguing the quality of it, the suggestion that the commission and its staff are incompetent or at least erratic in their levels of competence. Others are simply saying that the gatekeeping function shouldn't occur. What we need to know, in a very detailed way, is exactly what the process is in terms of the direction internally, within the commission. We haven't had a chance to sit down and talk with anyone about that specifically yet, have we, Mr. Zimmer? And unless and until we get those front-line workers here, we won't, will we?

Thank you, Chair.

RAHAMAT RAZACK

The Chair: The next presentation is from Rahamat Razack. Good morning, sir. You have 20 minutes, and you may begin.

Mr. Rahamat Razack: Good morning. Thank you for the opportunity to speak on Bill 107. My name is Rahamat Wally Razack. I was a complainant at the commission from November 4, 2000, to March 15, 2006, when I was denied my basic and fundamental right of due process, whereby the commission denied to send my claim to the tribunal, a complaint, overwhelmingly with merit, of direct and systemic discrimination against the Workplace Safety and Insurance Board. In the process, I have spent $35,000, ably represented by Mr. Raj Anand, the former chief commissioner, and Paul Guy of WeirFoulds. Now, I have filed an application for judicial review as of August of this year, which can cost $15,000 to $20,000. Also, now I am confronted with an adversarial approach from the commission in terms of submitting to me substantive information I would need for this judicial review.

These are the submissions that I have made from November 4, 2000, to March 15, 2006; $35,000, which I can ill afford, has gone down the drain. It has made me destitute and bankrupt. My submission is handwritten because I can no longer afford the luxury of having it typed, which would have cost $30.

1010

The Workplace Safety and Insurance Board—to claim systemic discrimination should be a walk in the park. I've been there for almost 11 years, and everybody knows there is systemic discrimination. The commission's own database only goes back to 1990. I acquired information through the Freedom of Information and Protection of Privacy Act. There were 69 complaints against the WSIB from 1990 to 2003. This is what the WSIB has submitted in my six years at the commission. The only submission they have made is regarding section 34(1)(a). They have made no other submission. The commission did their dirty work, and that is provable.

Now we have Bill 107, which is like a knight in shining armour. But this is something that was recommended way back in 1992 by Mary Cornish at the behest of Premier Bob Rae, and nothing was done. Politicians, bureaucrats and former commissioners did absolutely nothing about it. Even now, our honourable Premier has waited until the last year of his government to present Bill 107.

As we all know, Bill 107, legislation to overhaul the Human Rights Commission, must pass, with the stipulated key amendments. The only amendment I disagree with is to retain the commission to focus on systemic discrimination. They lack the expertise, they were disinclined to do it, they don't have the capabilities, they are incompetent and they shouldn't be allowed to continue to focus on systemic discrimination. So the legislation must pass, with the stipulated key amendments enunciated by the Attorney General a few days ago, and guarantee adequate legal support for all complainants, without a means test.

After becoming bankrupt by the commission, I sought legal help to do the judicial review. I went to the African-Canadian clinic. I'm not black. I don't qualify. They don't have enough for themselves. I've been to the Southeast Asian clinic. I couldn't qualify because I'm not a Southeast Asian. I went to the South Asian clinic. They don't have funding. I went to legal aid. I have a TV, so I don't qualify. I don't have a DVD.

It is important that complainants are adequately and appropriately funded for legal representation because it is very, very costly. You've got lawyers charging $500 an hour.

Bill 107 should also embody an amendment to gut and completely dismantle the commission, with its financial allocations disbursed to provide legal representation to complainants and make the tribunal more robust, professionalized—end patronage—faster, stronger and more effective.

Bill 107 will replace the commission's present process that is a bureaucratic nightmare, inexplicably adversarial, mind-boggling, tortuous, costly, cumbersome, lengthy and openly biased against complainants. They just want to get rid of you at all costs.

Furthermore, as we all know, the commission receives over 2,500 complaints a year but less than 5% are referred to the tribunal. The cases sent to the tribunal are even more lamentable with race-based complaints. Imagine the commission being in existence since 1961-62 and never having had, until last year, a policy and guidelines on racism and racial discrimination. They didn't know how to handle race-based complaints. So what did they do? They threw them in the rubbish bin, dismissed arbitrarily and capriciously all these complaints. A dismal few probably get to the tribunal.

I can recall one, Smith v. Mardana. In that case, the tribunal rejected the claim of racism, and the poor guy had to go to the Divisional Court, where he won. He spent 10 years. He was a Midas worker—I don't know—working for minimum wage.

The commission repeatedly—and I have scores of cases—erred in law and exceeded its jurisdiction by breaching its duty of procedural and administrative fairness, in the absence of an unbiased, fair and complete investigation. My complaint is a classic, classic example,

and I will beg, cajole, plead or pay to meet with somebody in the Attorney General's office or the Premier's office for one hour to show them the overwhelming evidence of the incompetence of the commission staff. My complaint is no different, inasmuch as the documents that were placed before the commissioners are tainted by procedural unfairness.

However, the commission staff's recommendations are, in most cases, rubber-stamped by the commissioners. The commissioners are farcical. Commission staff has made about five recommendations to the commissioners. One was reversed, and that was when the commission told them to reverse it. Every other one was rubber-stamped by the commissioners. What purpose this served, with all due respect, I don't know.

In the process of this six years, I have, with the help of Mr. Raj Anand, overturned one of their initial decisions, which should not have been against me. And if I have the time to show you, I will. They made a bad decision, and it had to be overturned.

With all due respect, the role of the commissioners, as I said before, is farcical. The recent appointment of seven new commissioners by the Attorney General is incomprehensible, inexplicable, in light of Bill 107. Why are we going to need seven new part-time, patronage—with all due respect to the work they have done and their ability, why would we need them in light of Bill 107?

Due to the commission's inability and disinclination to process race-based complaints—an arrogance of power, an abuse of power—thousands upon thousands of complaints were denied their basic and fundamental right of due process, which violated international human rights law and is tantamount to crimes against humanity. Three thousand lives is an atrocity; one life is an atrocity.

Politicians, Premiers, bureaucrats, lawyers of the commission and former human rights commissioners are among the people who should be held accountable for this travesty, this quagmire we are experiencing now—and we shouldn't be. This matter should have been settled decades ago. The commission, as all editorials and a majority of people are saying, is a broken system. It didn't fulfill its mandate and should be dismantled.

A lot of us don't know what we're getting into when we get to the commission. We have high hopes: They're objective, they're neutral. To me, that's not so. It took me a year or more into this process before I realized that I'm not getting due process from the commission. I've got to fight an almost insurmountable hurdle to get to the tribunal. I didn't know this until about 18 months into this process. Once I was in it, I was stuck because I'm determined. I persevered. I'm 64 years of age, and I'm not giving up. I'm going to die trying, and if I don't try, I'll die. I'll go to Divisional Court, I'll go to the Ontario Court of Appeal, I'll go to the Ontario Supreme Court if I have to, because I have a case with merit. I was discriminated against by WSIB, CUPE Local 1750 and the Ontario Human Rights Commission.

1020

The commission's decision-makers, culture, policies, practices and track record don't support its capabilities to investigate and pursue cases of systemic discrimination, as in my complaint. As I said before, in August of this year I filed an application for a judicial review, which can cost $15,000 to $20,000. As of November 10, I've been having opposition within the commission to basic information that I'm requesting: telephone records, documents that were before the commission on July 4, 2001. I am being denied information that I can get through a freedom of information request: "We understand your position on this issue is different from ours. I note that you may wish to bring a motion in order to have this resolved." I told my legal agent that I can get this thing under freedom of information, and he said, "No, we can get it in this manner."

During the commission's investigation of my complaint of direct and systemic discrimination against the Workplace Safety and Insurance Board, Mr. David Lee, investigation officer, requested that I show him the slurs and graffiti, indicating that he saw no racism, only bad management—and this is the first time I set eyes on the guy. This was the initial interview with him, on October 6, 2003. This was his statement. Where is he living, 3,000 years ago? There are hardly any slurs and graffiti now. It's subtle, rampant, hidden and covert. Furthermore, Mr. Lee stated that "he will not take a systemic approach to my investigation because it will not find favour with the commission and it will not prevail at the tribunal." He added, "We could claim that every company has systemic discrimination." This is coming from a commission staff, an investigation officer, Mr. David Lee.

Mr. Lee's conduct is representative of the commission, and clear evidence not to breathe life or pour more money down the drain into a broken, failed system. The commission has failed its mandate. It should just disappear. Shoot it in the leg and put it out of its misery.

I reiterate that Bill 107 should be passed retroactively at least to February of this year, if not further back, when Bill 107 was announced by the Attorney General. With the appropriate amendments, there should be an expansion of publicly funded legal representation that guarantees all complainants adequate legal representation without a means test, because legal representation is exorbitant.

In many respects, the tribunal is no better than the commission. Therefore, substantive changes must be made at the tribunal for it to render prompt, fair and effective justice. Forget education; it's not going to work to cure racism. The tribunal must be empowered to levy punitive damages to victims of discrimination—punitive. Send a message. Honda got a message the other day from a judge: $500,000. They appealed and it was whittled down to $100,000. Education is not going to work. They're going to throw it in the garbage. Punitive damages, not only corrective but remedial and that sort of thing.

Also, the tribunal must have a system that is transparent and accountable. The tribunal must be professionalized and the patronage system must end. The tribunal would need more judges and more support staff.

Bill 107 is not a silver bullet. Nobody is going to be pleased with it—pros and cons. I've got all that has been written in the ethnic newspapers and in the Toronto Star about it, pros and cons, from everyone under the sun. It's confusing. Which way to go? But we know that from 1962 until now, the commission has failed. We've got to try something else. We can't stay the course. It's not working.

We've got to do something else, whatever it is. I'd rather be screwed by a lawyer than be screwed, as I was, by incompetent staff at the commission, whose salary I've been paying for the 21 years that I've worked in Canada. They have bankrupted me. I've got a 26-year-old adopted son, an almost four-year-old granddaughter and a four-month-old grandson. I can hardly buy them a Happy Meal. What am I going to leave? I've used over $60,000 of my RRSP—all of it. I have cash-surrendered my $10,000 life insurance which I've had since 1978. Next year, when I turn 65, there's nothing to get. I have used up the cash values as loans. Furthermore, I've got a $55,400 line of credit on my house, which I bought in 1985. I paid off the mortgage in 1992. In 2000, when I had worked at the compensation board for almost 11 years, I had not one single cent in debt—not a single cent in debt, thank God.

As I said, Bill 107 is not a silver bullet, but my complaint against the WSIB is a smoking gun for Bill 107. I thank you for the chance to speak on Bill 107.

The Chair: Thank you very much. You've taken your full 20 minutes.

Mr. Kormos: It's unfortunate. Chair, if I may: Mr. Razack, if you stay here until 12:30—Mr. Zimmer is the parliamentary assistant to the Attorney General—you will be able to have your hour with a person in authority. Please stay here. He'll be finished in this committee at 12:30, perhaps 12:40.

Mr. Razack: Mr. Zimmerman?

Mr. Kormos: Mr. David Zimmer, right there. He's the parliamentary assistant to the Attorney General.

Mr. Razack: God bless you. Thank you very much.

Mr. Kormos: Thank you for coming, sir. Stay right here.

Mr. Razack: I will. I intended to do that.

1030

STEPHNIE PAYNE

The Chair: The next presenter is Stephnie Payne. Good morning.

Ms. Stephnie Payne: Good morning, and good morning to members of the public who are here this morning. When you listen to other people's stories, you realize that, after all, yours is not that bad, or could be just as bad.

My name is Stephnie Payne. I want to tell you a little bit about me before I get into my personal story on Bill 107, An Act to amend the Human Rights Code. I'll tell you this, but you can see for yourself that I'm an African Canadian woman, but I was born in Barbados. I came to Toronto in 1968. I have spent many years of my life devoted to community work, especially with youth, young adults and families within the Jane and Finch community. Currently, I'm working on renewal projects with the private sector in Jane and Finch and the San Romanoway for African Canadians and other diverse members of this community. I'm also a school trustee for the Toronto District School Board. And I'm honoured to have been recognized for my many outstanding community achievements by being awarded the Governor General's 125th Anniversary Medal, the Queen's Golden Jubilee Medal and most recently the African Canadian Achievement Award for excellence in education.

However, it is because of my direct experience with the Ontario Human Rights Commission that I'm here today to support Bill 107. In particular, it is an absolute necessity that any reform ensure that claimants have the right of direct access to a tribunal hearing, together with adequate legal supports. I also wish to ensure that no human rights claims ever get dismissed behind closed doors again, and also that both commission and tribunal members have the requisite background, expertise and experience to properly do their jobs under the new legislation.

I want to take you back in time almost 13 years ago. I'm going to tell you my story, and my story is one that I think is quite poignant. It is also one that created a lot of controversy, and the reason for the controversy—there are people like me who may belong to religions that none of you would ever think of. My mother is a second-generation Jew and I was labelled anti-Semitic. No one has ever asked my background, no one has asked how I was raised, but I was automatically given that label.

Being black, being born in the 1940s in Barbados, being of a mother who is interracial and came out black—she was a "dirty Jew," and I want you all to understand that. My father was a Baptist and we were raised in the Anglican Church. We were ashamed to be Jews because of the stigma that is attached to Caribbean blacks. Many are living in our communities and it goes undisclosed who they are. People need to first check. You need to know the history of individuals before they're labelled, and it is because of this reason and the dismissal from my job in 1994 that I'm here to talk to you.

I'm being passionate about this because I think a great injustice has been done to me, to the speaker previous to me and to many others in this province, and there needs to be drastic change.

I filed a complaint of discrimination in employment, because of my race, my gender and reprisal, with the commission in August 1994. I specifically at that time did not mention the historical background of my mother's religion, and it was for reasons I kept that hidden.

On April 4, 1996, the commission disclosed its report from the first investigation into my case. This report recommended that my complaint be referred to the tribunal for a full hearing on the basis that the evidence

from the commission's investigation supported my allegations that I was subjected to unequal treatment in employment and was subsequently terminated because of my race, colour, ancestry and ethnic origin, and because the evidence also supported my allegation that reprisal was also a factor in the decision to terminate my employment.

On October 2, 1996, the commission wrote to say that after reviewing the investigation report and submissions made on the report, the matter required further investigation and analysis before a decision could be made.

On January 29, 1997, the commission disclosed a second case analysis report, which once again recommended that my complaint be sent to the tribunal. This case analysis report found that the employer's contention that my job had become redundant was "incongruent with the evidence." The investigating officers referred to evidence from the executive director himself that he had been instructed by the board of directors to terminate my employment and that redundancy was "used ... as an excuse." There also was evidence that the executive director gloated that he had found a way of getting rid of me.

Much to my shock, I then received the commission's decision dated March 24, 1997. Contrary to the recommendations made in two investigation reports, the commission decided not to refer my complaint to the tribunal. With regard to the reprisal issue, where both reports had detailed the evidence in support of this allegation, the entirety of the commission's reasons for its decision to dismiss me were as follows: "There is insufficient evidence to indicate that the termination of the complainant's employment was a reprisal for having claimed and enforced" my "rights under the code, as set out in section 8 thereof." No explanation was provided to me as to why the commission now considered the evidence to be insufficient.

On April 9, 1997, my lawyer wrote to the commission to request disclosure of documents and information needed in order for me to apply for a reconsideration of the decision. The reconsideration decision was made by the same commissioners who already threw out my case. To effectively exercise my right to reconsideration, we asked for an answer to the question as to why the evidence in both case analysis reports was regarded as being insufficient to support going to a board of inquiry on the basis of reprisal, particularly when both investigations had concluded that the evidence was sufficient. The commission refused to disclose this information.

By the decision dated April 15, 1998, the commission again upheld its original decision to dismiss my complaint. The commission's decision once again restated that there is insufficient evidence to indicate that the termination of my employment was a reprisal for having claimed and enforced my rights under the code, without providing any actual reasons as to how or why the evidence was regarded as being insufficient.

I subsequently learned that during the entire reconsideration process, the commission's investigation files related to my case, which includes such things as witness statements and documentary evidence, were lost. The whereabouts of the files were last known at some point prior to the commission's original section 36 decision, and the file was not located again until July 10, 1998, after my complaint was thrown out again on reconsideration.

My case was dismissed even with expert evidence. The commission never sought any expert evidence in the investigation of my case so my lawyer obtained an affidavit from renowned Dr. Frances Henry. Dr. Henry is a renowned expert on issues of racial discrimination and especially anti-black racism. Dr. Henry has testified as an expert witness in court and in human rights proceedings on numerous occasions, and has been retained on several occasions by the Ontario Human Rights Commission because of her expertise. On the basis of her review of the material which was given to the commission in my case, Dr. Henry found evidence of systemic and institutional racism and evidence of an organizational culture that was insensitive and did not give priority to race issues.

In particular, Dr. Henry found evidence of problematic hiring and promotion practices, disproportionate overrepresentation of African-Canadian staff in lower level positions, tokenism, race and gender stereotyping, and failure by the employer to respond to community concerns regarding its lack of African-Canadian employees and its lack of presence in the African-Canadian community. Dr. Henry also identified evidence of racial discrimination in the way that my employer treated me and the racialized environment leading to my being fired. Dr. Henry said that the most striking element in the case was my termination following shortly after I raised the issue of racism in the workplace. Like the investigation officers, she too found that I had experienced reprisal for having raised the issue of workplace racism.

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What was so astonishing is that even when we provided this evidence to the commission on a silver platter, they basically refused to consider it. Decisions were made in my case by human rights commissioners. With the exception of the chief commissioner, commissioners are part-time appointees who act in a manner similar to a board of directors. The commissioners meet as a whole at full commission meetings held about eight times a year. The commissioners, from time to time, also meet as a panel of three, called panel meetings. There's no prerequisite that commissioners have any legal background or training in human rights law in order to be appointed.

During the time of my complaint, commission staff, including the commission's senior management team and representatives of the commission's regional offices, attended commission meetings and made oral remarks regarding the strengths and weaknesses of particular cases, participated in discussions with the commissioners, answered questions from the commissioners, and offered their views and opinions to the commissioners regarding the cases. The oral comments made by com-

mission staff at the commission meetings are not disclosed to the parties, nor are the parties afforded any opportunity to respond to these oral comments. In fact, we don't even know who the decision-makers are.

My judicial review: After my complaint was dismissed again, my lawyer brought an application to the courts to have the court review my case. My lawyer also sought to find out what had happened at the commission meetings in my case. The commission fought this. For the next two years, the issue of getting disclosure of what happened at the meetings behind closed doors when decisions were made regarding my case wound its way up the court system. And I can understand what the gentleman was talking about with legal fees, because although my lawyer offered numerous supports and an inordinate amount of dollars pro bono, I ended up, like this gentleman, cashing in my RRSPs to pay for legal costs, which I should not have to. As a law-abiding, taxpaying person of this province, I should not have to do that when my public monies in my tax dollars went to pay these individuals. So you will see from whence I speak.

The Court of Appeal ultimately ordered the commission to attend a witness examination to answer questions as to what facts, arguments and considerations were presented to the commissioners when they decided not to request a tribunal in my case. The registrar of the commission was finally examined on September 13, 2000. From this examination, I found out that in addition to the seven commissioners, there were approximately 15 commission staff members in attendance at the meeting where my case was first dismissed—this is 15—taxpayers' dollars for commissioners who do these sorts of things to people, in particular visible minorities and African Canadians.

In my judicial review, we also had an affidavit from a former human rights commissioner, St. Clair Wharton, who served as a commissioner for two terms from February 1991 to February 1997. Since most of the commissioners are not lawyers or legally trained, former Commissioner Wharton said that most commissioners generally accept and rely upon as authoritative any comments or views expressed by representatives of the legal services branch during commission meetings. I found out that in my case the legal director had given a direction to the commissioners that resulted in the dismissal, and this had not been disclosed to me.

Commissioner Wharton also said that reasons were drafted by commission staff and are largely standardized in form. He said that in his experience as a commissioner, the reasons created by commission staff rarely reflected the actual discussions that took place during the commission meetings or the true substance of the commissioners' reasons for decisions.

With respect to my reconsideration decision, former Commissioner Wharton said that in his last few years as a commissioner, staff recommendations on reconsideration were almost always unfavourable for the complainant and decisions on reconsideration were made as quickly as turning a page of paper at times. Former Commissioner Wharton believed that he was expected simply to rubber-stamp the previous decision made by the commission, and if he disagreed, he would be faced with resistance.

In my case, the registrar of the commission confirmed that there was no discussion regarding my case and that "it was a very quick vote" to deny me my request for reconsideration, again in secret, behind closed doors.

Eventually, only after all the disclosures and after my lawyer had prepared all the materials and was ready to argue the judicial review, the commission agreed to set aside both decisions and consider my case again, without reference to the earlier decisions. I think at this point the commission realized that I wasn't going to back down. Trust me, if I had to sell my house, I was not going to back down, and I didn't.

Then we went through the process again. The commission simply proceeded to dismiss my case again. This time it had a lawyer write up the reports. They wanted to make my dismissal "judicial-review proof," my lawyer told me. On October 13, 2004, despite all the efforts of my lawyer, I found out that I had no further hope.

I came to the commission with the hope of obtaining a remedy for my experience of racism. Instead, after 10 years of battling with the commission, I felt that the commission's entire handling of my complaint was so unfair as to make a mockery of my lived experience of racism and other African Canadians' in this province. I also know that there was no way I would ever have gotten through the commission's process or stood up to them without a lawyer. Even though my lawyer provided, as I said, a great deal of work pro bono, it was still an incredibly costly and painful event for me and my family. The emotional harm for me was devastating, and it has taken me a long time to recover.

It is for that reason that I am here his morning, because I've waited for this day to come. I'm really pleased to have this opportunity to speak with you. I hope that each and every one of you—I'm getting emotional now—are really listening. The gentleman before me was South Asian. When we look at the hatred within our society and around the world and when we look at the most hated groups in this world, we look at people of African heritage, we look at people from religious backgrounds. We look at the Muslim community and at the Jewish community, which I happen to be a silent part of. I've been totally discriminated against by this province's commission because of my race. No one knew of my religion; of course, they just think I'm black Anglican or Baptist. No one knew of my mother's background. No one knew of my struggle, what I've been through.

So this reform of Bill 107 is a very integral part of the system, and I hope this government—it was sitting on the shelves. Peter, you were part of the Bob Rae government when this sat there. I've got to tell you, there are disappointments in all three parties of government.

For me, this is really, really important, and for a lot of people like me. Fortunately, like the gentleman previous

to me, I had a bit of money to be able to spend on this. There are a lot of people out there who are vulnerable in our visible diverse and ethnic communities who do not have the funds, who take it as the status quo. They don't know what to do. They don't know about the lawyer. They do not know how to act at these. So I would plead with you—

Interjections.

Ms. Payne: Excuse me, I'm speaking here, and you're talking back there. I feel very disrespected when these things happen.

I don't want any of you around this table to minimize my feelings or to minimize the feelings of any of the groups that have come before you to make presentations, because it is serious. I may be a public school trustee who speaks in the public eye, but I don't go public with my private issues. But today I'm making it public. Simply, it has to be told. The commissioner needs to be sensitized more.

I'm going to sum up. I might have spent my time, but please hear me out.

1050

The Chair: Your time is almost up. If you could quickly—

Ms. Payne: I am just going to sum up.

The Chair: You have 30 seconds.

Ms. Payne: There are delays, and these delays are structural. They're also quite systemic. The system can only work if we go to tribunals. A lot of members need to understand that the cases should not be taking 10 to 11 years, like mine did. In review, maybe this provincial government needs to look at ways of retroactively going back over some of the cases that had great merit—a case like mine, for instance—going back and looking at that, because that would be the most historic moment for us. Thank you.

The Chair: Thank you very much.

Mr. Kormos: Chair, Ms. Payne and Mr. Razack before her tell us a series of events that reveal incompetence or corruption on the part of chief commissioners overseeing these bodies, including the management of the commission, that I think this committee ought to be inquiring into. It's not a big organization. This isn't a huge corporate body with hundreds and hundreds of employees. If these sorts of things are going on, then there has been corruption or incompetence on the part of a succession of chief commissioners, on the part of a succession of assistant deputy ministers who oversee that, and on the part of Attorneys General, who are responsible for this ministry. This committee should be investigating that incompetence or corruption on the part of AGs, ADMs, chief commissioners and management in the commission.

The Chair: Thank you, Mr. Kormos.

HUMAN RIGHTS TRIBUNAL OF ONTARIO

The Chair: The next presentation is from Michael Gottheil. Good morning, sir. You may begin. You have 30 minutes.

Mr. Michael Gottheil: Thank you for inviting me here today to address the committee. As you know, my name is Michael Gottheil. I am the chair of the Human Rights Tribunal of Ontario and have had the honour of serving in that role since April 2005. Prior to that, I spent close to 20 years practising administrative labour employment and human rights law, first as in-house counsel to two national trade unions, and then as founding partner in one of Ottawa's leading labour and human rights firms. I also taught law at Algonquin College in Ottawa as well as the University of Ottawa.

I'd like to provide you today with my experience and perspective on the modern administrative law tribunal, and more specifically on my perspective on the core principles that I think should embody an effective Human Rights Tribunal.

Administrative tribunals are called upon to determine thousands of applications annually and to do so in an open and timely way. They must consider individual cases, apply policy and jurisprudence, and provide consistency in the application of their constituent statutes. This consistency is important, not only in respect of expectations of parties that may come before the tribunal but also for the community more generally to enable people to understand their rights and responsibilities and to govern their affairs accordingly.

Many tribunals like the Human Rights Tribunal of Ontario deal with parties that, whether or not they are represented by counsel, are not regular users of the legal system and indeed may come from communities that do not perceive the legal system as providing them with equal benefit and standing. As a result, there is an understanding in the modern administrative law world that non-traditional, innovative adjudicative approaches better meet the unique challenges of administrative tribunals, particularly those like the human rights tribunal.

Being involved in a human rights complaint, whether as a complainant or a respondent, is a very serious matter. While an individual human rights complaint certainly has a public element, being involved in a complaint can be an intensely personal affair. It affects economic rights, oftentimes the ability to work free of harassment and discrimination, or indeed the ability to work at all. It involves, for the complainant, issues of dignity and self-worth and, for the respondent, the stigma of being labelled a violator of human rights.

People need to feel that they have had the opportunity to be heard and understood. However, a hearing as contemplated by traditional administrative law principles, with all the procedural and technical trappings, may not in fact give a human rights complainant a meaningful right to be heard and may deter rather than enhance access to justice. More modern adjudication and dispute resolution models can truly enhance access to justice, particularly for those who are marginalized and who face barriers to full and meaningful participation in our communities.

So what are the core values, the principles, that would form the foundation of any tribunal, and more spe-

cifically, the Human Rights Tribunal? In my view, tribunal processes need to be accessible, transparent, fair and timely.

Accessible: certainly from a physical point of view in terms of meeting the needs of people with disabilities, people with literacy issues and so forth. Our processes, our forms and our materials need to be produced in an accessible way for people to be able to participate. But accessibility goes beyond that, I think. There is a sense of accessibility which means that all people, whether or not represented by counsel, feel that the process is understandable and relevant to their own experiences, not something so foreign that only lawyers can understand.

Transparent: that decisions are made in an open way, with substantive reasons that are clear and understandable.

Fair: that the processes ensure that decisions are based on the relevant facts and merits of the case, not on technicalities.

Timely: that resolutions are reached and decisions made in a timely way so that delays do not frustrate the objects of the Human Rights Code, those objects being, of course, to prevent discrimination and to provide effective, meaningful remedies, where appropriate.

Given these core values of accessibility, transparency, fairness, timeliness and of course the right to be heard, what kind of approaches might the tribunal consider? We must remember that we are at a very early stage. The legislation is before this committee and the Legislature. Amendments have just been proposed. And the tribunal would certainly engage in a broad consultation process with the community before designing any rules and procedures. However, I would like to highlight a few approaches for consideration.

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First, I would suggest that the tribunal should be responsive to different types of cases, different types of parties. For example, broader systemic cases or those which involve complex factual or legal issues may need a more traditional judicial-like adjudication model. But many cases, dealing with fairly straightforward issues and straightforward fact situations, may benefit from a more streamlined, non-traditional model of adjudication.

Second, it goes without saying that all our processes—case management, dispute resolution, and adjudicative processes—need to be supported by well-written, accessible, plain-language information. This includes forms, rules and information bulletins. The tribunal should not be a locked door to the stakeholder community, but an open door.

Third, as I mentioned previously, a less technical, more accessible approach to adjudication—dispute resolution—may be appropriate for a large number of complaints and complainants. There are a number of alternative adjudication models around currently. Small Claims Court and family law have a number of processes, collaborative justice models; Workplace Safety and Insurance Appeal Tribunal; in labour law, expedited arbitration models; and at the Labour Relations Board, the consultation model. All these models have the same goal: allowing the decision-maker to make a fair and just decision based on the true merits of the case, on the facts, relevant policy and legal principles, and to do so in a timely way.

Some common features of all these models: first of all, expert, skilled and active adjudicators; secondly, simplified processes; and third, having a process where the parties can tell the adjudicator in a simple, understandable way what the case is about and to permit the adjudicator to consult with the parties and to determine what issues need to be decided and what evidence needs to be heard to decide the merits of the case. This allows the adjudicator, with expertise in the area, to hear from the parties and to assist in focusing the case on relevant issues and evidence, rather than having the hearing turn into a legal boxing match where the parties have complete freedom to duke it out using whatever legal tactics and procedural strategies they can think of or afford.

These models provide adjudicators with an ability to determine, in a more informed but highly effective way, the real dispute that needs to be determined. A less formal model can also enhance transparency and the acceptability of the decision-making process for the parties. People may want their day in court, so to speak, but throwing them into a formal judicial model does nothing to enhance their right to be heard and their understanding of the process.

Of course, all adjudicative processes have a mediation function. We have one currently at the tribunal. It's highly effective and no doubt we will continue to have a mediation function. However, there are different approaches to mediation, and a more listening, evaluative mediation approach is one model that might be considered, again to enhance the rights and the interests of parties who come before the tribunal and give them an opportunity to be heard in a meaningful way.

It is probably true that most human rights complaints have at their core a real dispute, a real concern, some real conflict, and it may not, at the end of the day, be something that is covered by the code or will meet the standards for a finding of a violation of the code. However, ensuring that the decision-making and dispute resolution processes are accessible, understandable and fair will enhance not only the acceptability for the particular parties but will enhance the stature of the code itself.

I think I'll end there. I hope my comments have been helpful. I would be happy to answer any questions the committee may have.

The Chair: Thank you very much. You have about six minutes each. We'll start with Mr. Kormos.

Mr. Kormos: Thank you kindly, sir. I appreciate your coming here today on short notice, although I suspect it wasn't as short as it appears from Mr. Zimmer's motion yesterday. But that's okay.

I think I understand you. I'm pretty sure I understand you. You talk about a gradation of styles, a range of styles in terms of the adjudication. How would that

decision be made, and what role would parties have in making that decision? For instance, you talk about everything from the traditional adversarial adjudicative model that I perhaps am most familiar with, having spent a lot of time in criminal court, both before and after being elected to the Legislature, all the way through to a very informal—

Mr. Zimmer: Do you want to rephrase that?

Mr. Kormos: I was found not guilty, Zimmer.

Somebody referred to it yesterday as the inquisitorial model. Would parties consent to this? We're dealing with a statute. You've made that clear. We're dealing with the violation of a statute. So if I'm a respondent, are you going to tell me that I'm going to be participating in an inquisitorial model without my consent?

Mr. Gottheil: I know the words "inquisitorial model" have been used. First of all, the powers that would be granted to the tribunal, if reforms in Bill 107 do proceed, certainly are a matter for the Legislature to decide. The tribunal doesn't determine its own powers, the powers of the tribunal; the tribunal is a statutory decision-maker and has those powers, and only those powers, that are granted to it by the Legislature.

Within the framework, the tribunal—and this is common amongst administrative tribunals. They design processes that are appropriate to the nature of the cases and the nature of the parties that appear before them. When we talk about the inquisitorial, our early thinking on this is not to adopt a European inquisitorial model. I would frame it more as an informed, expert and activist adjudicator, an adjudicator who hears from the parties and in a sense consults with the parties on an application and says, "All right. We understand the complaint. I understand the defence here. What are the legal issues that need to be determined and what evidence do we need to hear?" as opposed to a traditional model which sits back, the adjudicator listens to it all and then in the decision, 10, 20 or 30 days later, says, "These 10 witnesses—irrelevant." So you decide those issues upfront, after hearing from the parties.

Mr. Kormos: I suppose I'm speaking to you about this in the context of the tribunal's ability to make its own rules as well as the regulatory standards that will be made, not in the legislative chamber but in cabinet, and the ability of the tribunal to exempt itself from the Statutory Powers Procedure Act. Which parts of that act would you consider it necessary to exempt the tribunal from? Because the bill is giving you the power to make rules that exempt you, that indemnify you, that relieve you of any responsibilities under the SPPA.

Mr. Gottheil: Right. What I would say is that the SPPA, the Statutory Powers Procedure Act, is a piece of legislation that's 40 years old that was designed to set the framework for a very traditional judicial model.

Mr. Kormos: Mr. Zimmer is older than that.

Mr. Gottheil: Many tribunals are in fact not even covered by the SPPA. Other tribunals, in their constituent statutes, have provisions similar to the one that is proposed in Bill 107. All tribunals, regardless, are subject to rules of natural justice, whether or not the framework under which they operate is the SPPA framework.

Mr. Kormos: But what parts of the SPPA would you yourself consider necessary—

Mr. Gottheil: I suppose I'm having difficulty answering your question because our model that we would eventually come up with if Bill 107 was passed is in large part dependent upon the product of our community consultations of what's appropriate.

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

Mr. Zimmer: Why do you feel that the direct access model, which contemplates giving carriage of an individual complaint rather than the broad, systemic complaint—why this direct access model of giving carriage to the individual complainant is faster, fairer for the individual complainant as opposed to the broad, systemic—what's the magic in giving the carriage of the complaint to the complainant?

Mr. Gottheil: The perceived benefits or the objection to direct access is really not something within the—it's a policy question that I know has been debated both outside and inside this chamber, and it's not really for the tribunal to take a position on whether direct access is a good thing or a bad thing. From the tribunal's perspective, I think what would be important is that if a direct access model were to be adopted, that should be managed by the tribunal to enhance and advance those core values that I was talking about and ultimately achieve the objects of the code.

Mr. Zimmer: My second question is, if the legislation is passed and we move to a direct access model, how will the workload and the volume at the tribunal in your view likely change, and are you ready for that change?

Mr. Gottheil: Well, it will change. We receive about 150 complaints a year now. We have two full-time adjudicators and a number of part-time adjudicators and we have five staff. Our sense is, if Bill 107 were to go through and direct access were to come into play, we would receive 2,500 or perhaps more—up to 3,000 or more complaints a year. So, obviously, just the size of the tribunal, the number of adjudicators, all of that, certainly would be impacted. Are we ready for it? We will be.

Mrs. Elliott: Mr. Gottheil, thank you very much for joining us today. I would just like to ask you a few questions, if I might, about the operation of the tribunal and the rules that can be brought forward by the tribunal. I can understand the view that you need a more flexible system to work with and that the traditional adversarial model doesn't necessarily work, but on the other hand you don't want to throw it open to any kind of practice. There needs to be some kind of basic fairness level, and that's what you're hoping to achieve with this. If the Statutory Powers Procedure Act is not to apply to the situation, can you envision situations where, if it's not stated in the legislation that both of the parties have to

agree to whatever format is going to be used for a hearing, there would be challenges to that which would further backlog the system?

Mr. Gottheil: As I mentioned before, there is a wide range of tribunals that operate that are administrative decision-makers and not subject to the SPPA. They are nonetheless subject to the natural justice rights of the common law. Certainly, as I understand and what I've seen of the amendments that were proposed yesterday, that directive, if you will, is made explicit, that the tribunal, its processes and the rules it would develop would have to be designed for the purpose of achieving a fair, just and timely resolution on the merits. So I think that's in some ways stronger than the SPPA.

The other part, to answer your question, is that when we talk about flexibility, we're not talking about arbitrary decisions of an adjudicator; we're talking about the ability of a tribunal to create rules which are created in an open and public way through consultation, which are transparent because they are published and known to the parties; guidelines and information bulletins which are known and transparent. It's within the context of those guidelines that the discretion is exercised.

Mrs. Elliott: But if I can just refer to the amendments, they do indicate that the tribunal shall adopt the most expeditious method of dealing with an application on the merits. But I guess the question would be, expeditious to whom? And what happens if the complainant doesn't want that mode of dealing with it? On the face of it, the tribunal is sort of a one-sided thing. The tribunal decides, and that's it. I can just see the possibility that that could lead to all kinds of other problems down the road.

Mr. Gottheil: As I understand the amendments, first of all, the tribunal shall dispose of an application or make rules in a way that ensures it is not just expeditious but fair, just, on the merits, which is quite specific. If I recall, the amendments also provide that no application would be disposed of finally without providing the parties an opportunity to make oral submissions. So I think there are quite stringent procedural requirements to protect those rights.

Mrs. Elliott: If that's the case, is there merit in specifically allowing the tribunal to opt out of the SPPA? Why not keep it, if the basic rules of fairness are going to apply in any event?

Mr. Gottheil: Because the rules of fairness, in the sense of natural justice and the common-law principles of providing parties an opportunity to be heard and ensuring that decisions are made on the merits rather than on technicalities, are principles that can be advanced with or without the SPPA. In fact, there are a lot of tribunals that deal with parties that are not regular users of the legal system, and that's an important factor. The Legislature has determined it was appropriate to provide the tribunal with alternative ways of approaching dispute resolution, and the Legislature has recognized that in those cases a very formalistic, judicial-like model, which is the model envisaged by the SPPA, is not appropriate in those circumstances.

The Chair: Thank you very much.

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WOMEN'S EQUALITY RIGHTS ORGANIZATIONS AND INDIVIDUALS

The Chair: The next presentation is from Sanson and Hart.

Ms. Geri Sanson: Good morning. My name is Geri Sanson. I am actually here on behalf of myself and a whole host of organizations. I hope everybody at this point has a copy of our written submissions.

I'm going to begin with just a little bit about myself. I'd like to say, first of all, that I'm incredibly excited to be here and feel it's a great privilege to be able to share my experience in the work I do in the context of this fantastic reform initiative. The second thing I'd like to do, because I think it has gone unspoken for the most part, is to appreciate this government for having the guts to undertake this initiative. It clearly has not been a popular thing with respect to the equality rights community. It is long overdue. Those of us in the equality rights communities have been advocating for reform for far too long, and I congratulate this government for having the guts to do this.

In terms of who I am, I'm proud to be a private bar lawyer and very proud to be doing the work I do, which is human rights, labour and employment law. I also want to say that prior to opening up my own private practice, I served as counsel to the Ontario Human Rights Commission for a number of years. I was very passionate and excited about that work but felt, in terms of opening my practice, that there was more proactive work to do and a better way of resolving claims.

I also want to say that I have, in my private practice, been involved in a number of cases all the way to the Supreme Court level. In particular, I have also served as counsel with a number of equality-rights-seeking groups at three inquests dealing with gender-related violence. One in particular, which I'm going to speak to you about today, was the inquest into the death of Theresa Vince. She was shot to death in her workplace after a long period of sexual harassment.

I want to talk to you about who we are. We are the following organizations: the At^lohsa Native Family Healing Services; the Bulimia Anorexia Nervosa Association; the Centre for Research on Violence Against Women and Children, which is housed at the University of Western Ontario; the Chatham Kent Women's Centre, which is a women's shelter; Guelph-Wellington Women in Crisis, which has both a sexual assault centre and a women's shelter; the Ontario Association of Social Workers, who see this as an issue of access to justice with respect to the clients they serve; the Sexual Assault Centre of Brant; the Sexual Assault Centre of Hamilton and area; the Sexual Assault Centre London; the Sexual Assault Centre for Quinte and District; the Sexual Assault/Rape Crisis Centre of Peel; the Sexual Assault Survivors' Centre Sarnia–Lambton; Timmins and Area

Women in Crisis; the Toronto Rape Crisis Centre/Multicultural Women Against Rape; the Woman Abuse Council of Toronto; the Women's Sexual Assault Centre of Renfrew County.

There is also a group of individuals which includes myself; Martha Glover, a woman who experienced sexual harassment and has a story to share about her experience with the commission; Colleen Pritchard, similarly an experience of sexual harassment and how that was handled in the system; Sharon Scrimshaw, a woman who also had an experience not unlike what you've already heard in terms of a mind-boggling adversarial process with the commission. We're talking about sexual harassment complaints. These are the ones that have been framed as the straightforward, fact kinds of cases; well, it's still taking four to seven years to deal with these, and then they're still not dealt with. The last person is Dr. Sandy Welsh. Dr. Sandy Welsh is a foremost expert on sexual harassment in the workplace. She is an associate professor at the U of T. She has been frequently called by the commission as an expert. She was called as an expert at the Theresa Vince inquest. She has done extensive research on the context of workplace gender violence and sexual harassment, and I'm going to be weaving some of that work into the context of my presentation.

There are detailed backgrounds with respect to the various organizations that are found in appendices A and B for your reading. The point I want to make about this is that these are front-line organizations that are representing the very individuals the commission is supposed to serve. These are members of every community across Ontario, so when they speak, they are speaking from that perspective. The communities that are served, as well as the individuals who work at these organizations, represent the diversity of the communities across this province. When we say there are two opposing sides, I want to be really clear that these are communities reflective of the disability community, racialized communities, First Nations communities—the entire ethno-diverse backdrop. This is the group of organizations I'm representing today.

I said I'm proud to be a lawyer. But I also want to say that my experience in the work I have done has been informed by the work I have done for some of these organizations and the women I have served over 16 years of doing this work.

I'm going to begin with a bit of the work I did at the Theresa Vince inquest. She was shot to death in 1996. She worked in the Sears store. It was well known to most that she was being sexually harassed. Nobody took it seriously. I served a coalition of interveners, which included the Chatham-Kent Women's Centre, the sexual assault centre, and the local Chatham and District Labour Council. One of the things that most struck me—and this was back in 1996—in terms of my quest for reform was the evidence of the commission that was called during the inquest. I need to say that Theresa Vince did not file a complaint, but I think most significant was the evidence of the commission that said, "Had Theresa Vince filed a complaint, she would be dead. She still would have been dead before we got to her." Thus the quest for direct access. There is no process currently in Ontario that gives women the immediate access to a hearing and an immediate remedy.

What we know from the work of Dr. Sandy Welsh—she conducted a review of all complaints, 14 years of sexual and gender-related complaints filed with the Canadian Human Rights Commission over a 14-year period. Here are some of the things she found: 70% of the women were no longer in the jobs they were in when they made the complaint. In addition to what we typically know as common forms of sexual harassment, there were specific violent aspects, including kicking, punching, and spitting. She also determined that, depending on the kind of workplace, the sexual harassment manifested differently.

Some of the other work she has looked at, in the context of the entire group of women who experience sexual harassment, is that roughly between 40% and 70% of all women experience some form of sexual harassment—40% to 70% of women in their lifetimes will experience that. Now, add that to the intersections of racism, ableism and other forms of oppression, and women do not have a chance in this workplace unless we can deal with sexual harassment in an immediate and remedial way.

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Dr. Welsh's work has also told us that of the 40% to 70% of all women who are sexually harassed, roughly only 10% of those women actually come forward. That 10% can come forward in a variety of ways. They might come forward internally, to their employer, they might come forward in some kind of alternative complaint resolution process, or they might go to a human rights commission or some other form of legal action. But the thing that is most telling—of that group, only 10% have that courage to come forward, but they only come forward as a last resort. Women will use every other method of coping with that experience of violence or sexual harassment, and only as a last resort will they come to a place like the commission.

When you're talking about the ways in which the commission needs reform, when women come they need to have their claims heard, they need to have them heard by the decision-maker, and they need immediate relief. They cannot lose their jobs, or worse, die while they're waiting for this province to do something.

I want to talk a little bit about the inquest, and I really want to appreciate Pat Hoy for his work in this area. This was during the Conservative government, particularly because they were looking at a review of the Occupational Health and Safety Act and because there was already a mechanism in place for direct access. The coalition put forward a number of recommendations, many of which I don't think were ever implemented. One of the things we pushed for were changes to the Occupational Health and Safety Act, to see it included as workplace danger, because that gets you an immediate

order and/or a tribunal hearing, so it gives you immediate access. Well, of course that never happened.

Subsequent to that, both my clients and the daughters of Theresa Vince worked with Pat Hoy. He made a commitment and a promise and in 2001 introduced a private member's bill, Bill 78, to specifically do that. I believe Mr. Hoy reintroduced that very steadfastly on a number of occasions. I'm flattered to see the most current generation of that coming from the NDP. I understand there is a more recent version of that by Andrea Horwath.

Just a little explanation: We did that because it was clear there was not going to be any reform to the Human Rights Code. We did that because there was already a legislative mechanism in place that would give women the direct access they needed. As a model of preference, sexual harassment and gender violence is an equality rights issue for women, and this is what these equality rights groups are saying. It's a fundamental equality rights issue.

Women need one place to go, not to be given the runaround, not to be sent here or there or told they should have their claim dealt with elsewhere. They need one-stop shopping in terms of getting their needs met. In that regard, I see this private member's bill coming from the NDP as great. It supports direct access, so I don't get the debate; I don't get a lot of things about this debate. But let me leave it at that.

I want to talk about our position in terms of the women's equality rights organizations. We support Bill 107 because all individuals should have the right of direct access to a tribunal hearing and timely relief. I have to say, this is non-negotiable, completely non-negotiable. This has come from generations of front-line workers and the experience of the women themselves in the process, that they want direct access. And this is across the board.

We've heard a lot about the delays and we've heard a lot about the problems that the delays create. Dr. Welsh did some work in terms of looking at the actual independent and additional harms that are created for women experiencing the commission process. In addition to the initial harm, we're also seeing harm created by the process itself, and that's another reason that we need direct access. But for women, apart from the delay—and you've heard lots about that—this is an issue of empowerment. This is something that the women's movement refers to as agency. That means they do not want a paternalistic, patronizing, anachronistic process which is going to say, "There, there. We'll tell you what's good for you." They want the right to make their own choices and decisions, they want the right to control how their case is managed, and they want to right to be able to speak directly to the decision-maker.

The other piece we've heard quite a bit about today is this piece about transparency and accountability. If it wasn't so sad, I would laugh at this notion that we're moving to a private process, when in fact I would say the existing process could not be more private, where 96% of all complaints at the commission are disposed of in some manner behind closed doors—in secret, in private. When I was commission counsel, I had the privilege of hearing a judge refer to that process as the star chamber, where decisions are made in secret. And unless you judicially review the commission, you don't get to know who those decision-makers are; you don't even get to know that. They've also moved to a place where you don't even get to know who wrote the case analysis, so you've got these faceless investigations being done as well. You also have this process whereby, even after the commission or the investigator does the report, there's this sort of quality control where they remove parts of the case analysis, where they actually change the recommendations. We've only found out about this because the investigator mistakenly gave us their findings in the first place.

So direct access is really, really important. As I said, it's not negotiable. There can be disagreement about that, but this process will not be acceptable unless women have the right to direct access to a hearing.

The second piece is adequate legal supports. Again, what a fallacy that there's actually any kind of legal support for women in this existing process. You don't even get your complaint drafted by the commission any more; I don't know if people are aware of that. This idea that, if you're one of the lucky ones whose case actually gets to a tribunal, you're going to get a commission lawyer—well, let's talk about that, because the commission went to the higher courts to get the right to actually sit down on cases. So continuing that paternalistic process, after the tribunal is appointed and the respondent comes up with some kind of remedy, the commission can force the claimant to accept it or they'll sit down, leaving them without any representation whatsoever. So we need to disabuse ourselves of the notion that there's actually legal representation in the existing process.

One of the pieces of work that Dr. Sandy Welsh did—and it's really cool, because she's done a lot of cross-sectoral research. She's combined her own research with actually going out and interviewing women across all segments. In terms of what women most need, what she found was legal support and other supports in the context of bringing their claims. This was with the existing system, that one of the fundamental things was that legal supports were not available for women. So I think that's a fundamental.

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I want to talk a bit about legal supports. I'm really thrilled to see that we're going to see language that actually mandates those legal support centres across the province. I think we need a system of combined supports, and legal support centres is one of them. I would like to recommend on behalf of the organizations I serve, particularly the sexual assault centres and women's shelters that are actually serving women on the front line, that you consider housing some of those advocates and lawyers at the actual centres where women come for help.

I've covered off the first two, and these are the most fundamental. And we heard yesterday that we've gotten rid of user fees.

The right of third party applications: Organizations who represent the disadvantaged need to be able to bring complaints on behalf of individuals when they cannot do so themselves. Right now, organizations can bring their own complaint, but we would hope to see the ability of an organization, when somebody is vulnerable and unable to bring it on their own, to do so.

The fifth piece: We support a vibrant commission that has the ability to be a strong public advocate of human rights and that is empowered to act and eliminate broader societal discrimination.

I see those components and I see, in taking a look at what the government has done, that they've moved a long way, and I think that's really important. People have been crying out for these amendments, and they're listening. I heard some of the submissions yesterday. People are crying out for amendments, and when you announce them you get in trouble for announcing them at a particular time. I just don't know.

The last piece talks about submissions that were already made. You'll see that Chatham-Kent Sexual Assault Centre has made their submission as well as the Faye Peterson House, the Association of Human Rights Lawyers, the daughters of Theresa Vince. The Ontario Association of Interval and Transition Houses: I think those submissions were available in writing today; I'm not sure whether they're actually appearing or not. That's another body supporting, I think, approximately 75 women's shelters that support direct access in adequate legal services.

How much time do I have left?

The Chair: You have about six minutes left.

Ms. Sanson: Six minutes? Okay. I'm going to comment on just two things in terms of the technical piece, and then hopefully I'll have a couple of minutes for questions.

The first thing I want to do—and this is only because it's come up. On the perennial question of the Statutory Powers Procedure Act: There was a recent case in Divisional Court, the kind of example where you want a tribunal with flexibility, a tribunal that's more interventionist, a tribunal that does that work of gathering the facts so that the claim is heard. The tribunal looked at the matter and said, "Okay, I want X, Y and Z witnesses to come." The respondent went off to Divisional Court, and the court said, like in a traditional adversarial process, "Uh, uh—SPPA. You can't do that, Tribunal. You can't make a decision about calling witnesses." So that's not to say that the SPPA will not apply, but that the tribunal has the flexibility to make its own rules that will take precedence over that. The example I most think of is the Ontario Labour Relations Board. It's one of the most well-respected tribunals in this province, and the SPPA doesn't apply to that. So the amendments we saw yesterday, particularly in terms of a fair, just and expeditious resolution and no dismissal of any claim without an oral hearing, are great improvements.

The last piece is on the appeal process. Women, in terms of the submissions that have already been made, don't support a right of appeal for a couple of reasons. The first is that women are talking about housing, loss of jobs, money—immediate help. They don't want to be caught up in a process where their claims are in limbo for years while there's some intricate point of law being challenged.

The second piece is that, based on my review of decisions, it seems to me that it's more often the case that the tribunal makes the progressive decision, it gets overturned by one or two courts above, and then you have to go all the way to the Supreme Court of Canada to get the tribunal decision reinstated.

The last piece is, as we know, even with a privative clause, there is always the ability of the court to review judicial reviews, so that protection is always there. So I don't support an appeal.

I hope there's time for any questions.

The Chair: Just a quick question for each side, a little less than a minute.

Mr. Pat Hoy (Chatham–Kent Essex): Thank you for your presentation on behalf of all of these organizations and groups, many of whom have volunteered time beyond what might be in their workplace, but certainly have volunteered a lot. I am thankful for the Vince family, as well as Michelle Schryer and a host of others, yourself included.

You mentioned the Occupational Health and Safety Act. Given what we know today and see before us at this committee—I'm not restricting you from now until the end of time or anything like that—is there a need to pursue remedies under the Occupational Health and Safety Act, knowing what we do about this bill today?

Ms. Sanson: It certainly can't help to have that extra coverage. Clearly sexual harassment and violence in the workplace are a workplace danger. It's an occupational health and safety issue for women when we know that the result is that 70% of women are not working any more or are changing jobs when it happens. The difficulty with that legislation is obviously—and I think you've probably heard it—in terms of expertise. Occupational health and safety people under the legislation don't have that human rights expertise. My worry is that we're going to create one more duplication of process.

Take a look in terms of the stories that are here. Sharon Scrimshaw was sent everywhere. The commission wouldn't take her case, and this went on for 10 years—again, sexual harassment. That's my worry. I would like to see it enshrined in the code. That's where it needs to be. Let's do it now. It's on the table.

Mrs. Elliott: With respect to your comments that this bill is about empowerment of women, which I think we would all acknowledge and agree with—any changes to the human rights system should empower all people coming before it, including women, of course. But with respect to your other comments about not really wanting to be hidebound by the SPPA and some of its conventions, that the tribunal should be able to be more interventionist, it seems to me that is almost paternalistic in itself. It's taking control away from women to decide

their own cases if the tribunal can step in and say, "No, I don't think you should do it this way. I think you should call this, this and this witness." How do you reconcile that empowerment issue with respect to the tribunal's proposed rule-making authority?

Ms. Sanson: Just to give you an example—and this is typically what I have seen happen in some of the cases—

The Chair: Can we just get a quick response to that? We have to move on.

Ms. Sanson: Okay. I think it is about empowerment. One example is this cross-examination of sexual harassment victims that currently goes on for days. The tribunal thinks they can't stop it because of this right to cross-examine under SPPA. Stopping that will empower them.

The Chair: Mr. Kormos, quickly please.

Mr. Kormos: Gosh, yesterday Barbara Hall and I had common ground for once when she called on the government to include a right to appeal. Now you are destroying the little bit of a relationship that Barbara and I have, so you have to live with that.

I listened to Ms. Payne today and Mr. Razack. We've heard those same stories in our constituency offices. The commission is not a huge organization; it really isn't. There isn't a huge number of staff. You've got chairs: Barbara Hall; her predecessor, Keith Norton; Ms. Wilkey spoke to it as well; Rosemary Brown; Catherine Frazee. These are the immediate supervisors of these people. Where does the incompetence or corruption lie? With these chairs? Seriously, they're not that far removed. We hear these horror stories of incompetence. At the very least, where are the chairs? Where have they been? You worked there. Mark Hart worked there.

Ms. Sanson: Those are your words, not mine. I think there is a huge, committed staff at the commission who are totally committed to human rights. We are operating in an anachronistic process that is designed to gate-keep and to process claims, as opposed to actually hearing and determining them on their merits.

The Chair: Thank you very much.

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ADVOCACY CENTRE FOR TENANTS ONTARIO

The Chair: The next presenters are the Advocacy Centre for Tenants Ontario. I just want to remind everybody that we do have a sign language interpreter here. Good morning. If I could have your names before you speak for Hansard, that would be good.

Ms. Kathy Laird: I just told Mr. Kormos that I brought all these people because he asks such scary questions. He promises me he's reading our submission down the hall—I didn't want to know any more than that—and he'll be back in a moment. So I'm going to introduce everyone.

Mr. Zimmer: The scary questions come from the staff.

Ms. Laird: Okay. I'm Kathy Laird. I'm presenting here today on behalf of the Advocacy Centre for Tenants Ontario. We're a legal clinic that does human rights advocacy on housing issues in a variety of legal, political and policy forums, including before the Ontario Human Rights Commission.

I'm also here today to speak on behalf of the 55 community legal clinics that support Bill 107. In the materials that I have provided you with today, you'll find a letter from those clinics to the Premier. You'll also find the joint submission you already received from clinics in Ottawa and Thunder Bay. As well, you'll see a myths and realities chart which you may have seen previously. Everyone is using that title. You're getting a lot of these myths and realities documents. I've updated this to try to reflect the announced amendments yesterday.

Because I'm speaking for a broad group of community legal clinics and because we represent a broad constituency of low-income Ontarians, I brought with me today some of my colleagues to assist with questions at the end of the presentation, and I'll introduce them.

I have them in the wrong order. First I'll introduce, from that side, Michelle Mulgrave. Michelle was a tenant organizer at the Federation of Metro Tenants' Associations before becoming manager of human rights intake service at the Centre for Equality Rights in Accommodation, CERA. Michelle is now working with us as a tenant duty counsel, but while at CERA, Michelle assisted hundreds of individuals and families experiencing discrimination in housing. So she brought here today her experience from the front lines, helping disadvantaged individuals who had enormous difficulty using the current system. I hope you'll have questions for her.

Next to her is Consuelo Rubio. Consuelo was a community legal worker. She comes from the Centre for Spanish Speaking Peoples. Consuelo, like all clinic staff, is employed by a community board of directors. Her board endorsed the letter to the Premier, which you have. Consuelo has extensive grassroots experience for over 20 years in representing marginalized individuals in the human rights process. Consuelo will maybe have the opportunity to appear before you again, but she came today to answer any questions because her clinic has signed the letter to the Premier.

Also with me is Grace Vaccarelli. Grace is currently on loan to ACTO, to my organization, from her home position at Kensington Bellwoods Legal Clinic. Grace has handled numerous human rights complaints on behalf of low-income workers and tenants and she also will be happy to answer your questions.

Finally, I want to introduce Phyllis Gordon, who is to my immediate left. Phyllis is the executive director of ARCH Disability Law Centre. ARCH is named at the top of the list of clinics on the letter. Phyllis has a lengthy legal career, including being the director of Parkdale Community Legal Services. She was the chair of the pay equity hearings tribunal. She was my chair when she was at the tribunal. Phyllis has been a commissioner of the Canadian Human Rights Commission. She has lots more things that she's done, but we don't want to use up all our time in introductions.

I want to tell you a little bit more about my experience. I'm mindful of Raj's joke yesterday about how he didn't just come to share his CV with you, so I'm going to keep it really brief. But I want to let you know that I have experience as a policy advisor to the commission in the late 1980s. During that time, I was seconded by the NDP government to prepare the cabinet submission for the Cornish inquiry, and then I was again seconded to prepare the new rules for the brand new human rights board of inquiry that was set up at that time. Then I served as counsel to the first three chairs of the board of inquiry before being appointed as a vice-chair to hear and decide human rights cases, as well as pay equity cases and, for about a minute and a half, employment equity cases.

I want to start by telling you why so many, many community legal clinics support this legislation. They support the legislation even though it means more work for them and no more money for them. Peter Kormos yesterday mentioned the Thunder Bay clinic, Kinna-aweya Legal Clinic. He mentioned that the clinic is under-resourced and overworked, and I know that to be true. But he neglected to also remind you that the clinic supports these reforms. I'm going to remind you of that by telling you what Kinna-aweya said in their presentation, and I'll do that briefly: "Kinna-aweya Legal Clinic supports Bill 107 because, for the first time in Ontario, human rights claimants will have the right to take a discrimination complaint to a hearings tribunal without first having to undergo a lengthy and delayed process to obtain permission from the 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 the opportunity to tell their side of the story in an open hearing." I really don't need to read the rest of this because you've heard it so eloquently through previous speakers this morning, but clinics feel how patronizing this process is, and the clinic went on to describe it as "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."

They point out that the commission no longer has an office in Thunder Bay. I know you've raised the question of how legal services will be delivered outside of Toronto. I'm happy to talk about that later. But let's remember that under the current process, it has been a long time since the commission had regional offices. I often say that when I worked at the legal clinic in James Bay, we had a commission in Timmins and they came up to investigate whether the Polar Bear Lodge was discriminating when it assigned rooms to First Nations people. That was the kind of commission we used to have. We haven't had that for a very long time.

"Under Bill 107, our clients will have"—and this is still Kinna-aweya talking—"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....

"A claimant with a human rights complaint will for the first time be able to decide for themselves whether to proceed to a hearing or to mediation at the tribunal.... 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."

That's what Kinna-aweya told you back in August in Thunder Bay. Then they went on to make the case for a number of amendments to Bill 107. I note that the Attorney General yesterday announced amendments in each of the areas addressed by the Thunder Bay clinic. I'm just going to name those. But I want to point out to Mr. Kormos and Ms. Elliott that this document you have been referring to—you've taken a couple of witnesses to the information on the left-hand side of the page. That's the current legislative language. I know Mr. Kormos referred to the proposed amendments as the "explanatory note column." That's actually the proposed. So when you've put to witnesses the language on this side, it's the wrong language. That's why, when Michael Gottheil answered the question about disposing of the application "on the merits," he took you to the new language, which is "fair and just." I just wanted to point that out as we have this debate.

The things that the Thunder Bay clinic, Kinna-aweya, asked for and which are addressed by the amendments, include:

—no application fees

—entrenchment of the legal support centre for claimants

—they doubled the so-called limitation period. It's not really a limitation period, but that initial period

—restoration of the investigation powers in the commission

—a broader right for the commission to launch its on applications and intervene in other applications

—a requirement of expertise and real human rights experience and even sensitivity to human rights issues. That's all built in as a prerequisite for appointments and at the commission as well

—new language in the bill, which I just touched on, to emphasize fair process.

I just want you to take a look at the joint letter to the Premier at tab A and to note that there are two pages of—

Mr. Kormos: Excuse me, Chair. That means we've got a vote.

The Chair: The bells have gone off, so we'll briefly recess for 10 minutes.

Ms. Laird: Will I be able to resume after you return?

The Chair: After 10 minutes.

The committee recessed from 1200 to 1213.

The Chair: This committee is called back to order. Sorry for the interruption. You have 20 minutes remaining, and you may continue.

Ms. Laird: What I was about to do was to take you to the letter we sent to the Premier, just to make sure that

you flipped through and saw that there were two pages of clinic names, in rather small font, from all over Ontario. The legal clinic system is made up of specialized legal clinics. ACTO would be an example of that. But you'll also see Downsview, Durham, Elgin-Oxford, Elliot Lake, Georgina, Grey-Bruce, Hamilton, the injured worker clinic in Huron-Perth, Justice for Children, Keewaytinok, up on James Bay, where I once hung out, Kenora, Kinna-aweya, of course, the Lake Country, Manitoulin, Niagara North and South both, London, Sarnia, Scarborough—I could go on. I won't.

The thing you should know about each of these legal clinics is that they operate under a community board of directors, and that community board is representative of the community—we're required to have boards that are representative—and generally includes community leaders and activists in addition to members of the disadvantaged communities that are served by the clinics and are protected by the code. So when a clinic endorses a letter like that and the attached joint submission, it means that some pretty active people in the community, including those people whose rights are at issue in this bill, have made a decision that this legislation is the right way to go forward. It's not just a bunch of lawyers.

I did hear Mr. Kormos say yesterday that it's obvious why lawyers support this bill. That's sort of been out there in the debate on this bill since the beginning. I have to say that this work, for any lawyer, is not lucrative, and it will be less so under Bill 107 because we now will have an entrenched legal service centre. But for clinic lawyers in particular it would just mean more work. But the clinic lawyers and their boards have supported Bill 107 anyway, and it's because their clients are shut out of the present system.

Maybe a middle-class person can wait for a complaint to wind its way through the current process. It's not good, but maybe they can do that. I don't think David Lepofsky would mind my saying that he waited for many years. He's a very experienced and skilled lawyer—a very persuasive person, I think you'll all agree—and he was able to retain his own lawyer for part of the process, I understand. David shouldn't have had to wait four years or whatever it was, but our clients can't wait at all.

When a low-income person, a person on welfare, is denied an apartment or denied fair treatment at a marginal workplace and when the issue is discrimination, they need human rights protection and they need it in a very timely manner. If they have to wait for justice, they will have already lost the opportunity to rent that apartment, they will have lost the job they applied for, the job opportunity, they'll have lost the job, they could have lost their housing. Our clients become homeless. We lose track of them. They move in and out of the shelter system. We can't reach them on the phone. They're forced to move on with their lives, and not in a good way. They won't be around for that complaint to go slowly through the system. The Supreme Court recently recognized this in a case that our clinic went up on. Poor people don't have time on their side. They need to get justice in a prompt way. Their lives go on to face new, devastating hurdles, not just the discrimination.

Catherine said it so much better than I could, but what is important to people in these circumstances is direct access to a hearings tribunal, access to publicly funded legal services, a commission that will fight the systemic battles, the public interest battles, will intervene, launch applications and will educate employers and landlords and service providers and government. And we need a timely and accessible process at the tribunal, and that will not necessarily be a formal hearing with all the procedural rules under the SPPA.

I would be happy to talk about how, when I was at the tribunal, I often had hearings that I didn't have the tools to rein in. I had counsel who were keen on tripping each other up, keen on extending the hearing. I was at the mercy of the SPPA restrictions and the adversarial process. If the other counsel didn't object, it was very hard for me, very hard for any adjudicator, to cut things off.

So I say to you, if the tribunal is going to meet the challenge of the new legislation, they need the skills that other tribunals have. We go all the time to the workers' compensation tribunal. It's one of the best tribunals that clinics go to. That tribunal is not under the SPPA. I'd be happy to speak more about that later.

Finally, I put in your materials at tab B the myths and realities document. The stats in there are taken from the commission's website, so there's no glossing there; they come right off the website. This chart can be found in each of the annual reports except the last one. You'll notice at the bottom of the first page that I do the comparison of hearing referrals and dismissals. I think that's instructive.

The first year I give is 2000, the 73 hearing referrals. If you look back earlier, there are lots of years during the time that I was at the tribunal where 20 and 30 complaints only were referred to the tribunal for a hearing each year. In the B'nai Brith submission yesterday, they mentioned that the tribunal may get 70, 80, 100 complaints but only issues 20 or 30 decisions a year and suggested that there was a huge backlog at the tribunal. That isn't the case. The tribunal settles at least 70% of what goes there. We always have done that; they're doing it now. There is not any kind of backlog comparable to what you see at the commission.

1220

A couple of other things: I want to remark on how the number of referrals goes up and down. It seems to depend as much as anything on how the chief commissioner leads the tribunal in interpreting section 36. You couldn't have a higher threshold than the current statute for getting to a hearing. It's whether, in the opinion of the commission, the evidence is sufficient and a hearing is not otherwise inappropriate. I'm not sure if I should have checked the exact language. It's a wide-open, discretionary section. And you've heard people before you say that when you are turned down, you never know why; the reasons never tell you why.

I want to get to questions, but there are just a couple more things. Yesterday there was a discussion about a two-tier system, so I wanted to touch on that. Mr. Kormos suggested that we may be moving to a two-tier system under Bill 107, where some people have private lawyers and others are relegated to a publicly funded and—I missed part of your question, but maybe a backlogged legal services centre. Catherine Frazee has already dealt with this far more eloquently than I could, but I want to say a couple of other things about it. We already have a two-tier system. For example, 4% of claimants get to a hearing and 96% go into the process with no reasonable likelihood of getting to tell their story face-to-face to a decision-maker. We already have a two-tier system because some people can afford to hire their own lawyer and the rest hope the commission will support them at the hearing if they're lucky enough to get to a hearing.

Raj yesterday mentioned cases where the commission is on the other side of the claimant at the hearing. That does happen. I'm sure everyone in this room who does this work can give you an example of that. But really it's Stephnie Payne's presentation this morning that makes it clear that the experience of claimants is sometimes that they're up against the commission lawyers at every point in the process.

Then we have a two-tier system today for another reason. It's that some people can get their human rights issues adjudicated through the relatively fast, accessible and relatively informal labour arbitration process. If you're unionized you don't have to go through this commission process. If you're an OPSEU member, you don't have to go through this commission process. OPSEU has a process that lets their members go right to a hearing. Remember that. OPSEU members won't be stuck in this process. It's non-unionized workers, the really low-income people whom we represent, the people with housing service complaints, who are stuck in the commission process. So we already have a tragically two-tier system where the most disadvantaged people are at the bottom of the heap.

Under Bill 107, for the first time we will and can have, I believe, like Catherine, a commission that is a champion for human rights. Everyone will have access to the hearing tribunal, everyone will have access to publicly funded legal support, and everyone will be able to have their claims heard and decided at an oral hearing on the merits. You've heard the chair of the tribunal speak to that this morning.

So we urge you to pass Bill 107 with the amendments that the government has put forward. I just want to say something about investigation, because much too much, in my opinion, has been made in this debate about the importance of having a commission investigation. I want to remind you that the commission itself has been on record for a long time as wanting to have the discretion in the statute to not investigate. They recognize that many cases in fact do not require an investigation, notwithstanding that every case gets lined up for investigation. I also note that the blueprint for reform issued last week also recommends that a claimant should be able to waive an investigation, again recognizing that not every case needs an investigation. But more than that, I want you to ask Consuelo about some of the investigations that she has seen, when the investigation consisted of only a few phone calls by an investigator and then resulted in a dismissal decision with no real reasons. I think she will tell you that her clients would have been happy to waive the investigation for a chance to tell their story.

I think I'll stop there. We have time for questions. How much time is left?

The Chair: About three minutes for each side.

Ms. Laird: I think it's a little longer, isn't it?

The Chair: No. Ms. Elliott?

Mr. Kormos: How many lawyers do we have here?

Ms. Michelle Mulgrave: I'm not a lawyer.

Ms. Laird: There you go. Ask her.

Mr. Kormos: You've got at least four lawyers there.

Ms. Consuelo Rubio: You've got a lawyer there too.

The Chair: Ms. Elliott?

Mrs. Elliott: I'd just like to ask a question with respect to the amendments that were announced yesterday by the Attorney General, particularly with respect to the legal support centre. We haven't seen the full text yet, but with respect to the language we have in the proposed amendment, are you satisfied with that language? Do you think that is all that we need to see by way of amendments, or is there anything else you would like to see included?

Ms. Laird: We're looking at the right-hand column. It's not legislative language, but we want to see a "shall." That's the implication, that's what this says: "The minister would establish...."

Ms. Phyllis Gordon: If I might quickly answer, I agree with Cynthia Wilkey this morning. It certainly was part of ARCH's initial submission that the statute should also provide that there be a review of the resourcing of the centre after a certain period of time, because we can't really tell at this point what the requirements are. Otherwise, I think the language, in this form, looks okay.

Mrs. Elliott: I guess we won't really know until we see the actual text of the language.

The Chair: Mr. Kormos?

Mr. Kormos: I don't think anybody was confused about the damage control document that the minister came forward with yesterday. It's one thing to say that, for instance in section 41, all the paragraphs are going to be deleted except paragraph (g). It's another thing to say, as in section 46.1, that this is the section that stands, with no suggestion that anything is going to be deleted.

Let's get to the funding, because you're right. You were up in James Bay. You know how desperate people are up there for resources. I found your observation interesting that the commission came out from Timmins to investigate on James Bay. What a remarkable, novel proposition. But I am worried about the funding. Offices of the Worker Adviser—is that going to be the model? Offices of the Worker Adviser down where I come

from—legal clinics don't do that work because the OWA is there—have two-year backlogs.

Ms. Laird: We all worry about the funding. I'm not saying we're not worried about the funding.

Mr. Kormos: Let's talk about it, then. What good is it for us to be spun, like we were yesterday, when there is no suggestion of a single new penny, as compared to using money that's already in the system? And the system is already starving.

Ms. Gordon: One thing we don't know is what the changes will mean for the current system. So when Catherine Frazee and Commissioner Hall talk about the critical role of systemic complaints and inquiries, if that work can happen and go forward I think a lot of human rights complaints will get dealt with in a systemic way; from a disability point of view, it would be a barrier-removal way. Fundamentally, that would then make a lot of future complaints unnecessary.

So I find it really hard to estimate. We're really hopeful that the systemic part does its job. We can't measure at this point. Do I agree that more funding is needed? The whole system could certainly do with an influx of a lot more money. But I go back to what Raj said yesterday, which was that when he had 50% more without changing the system, it didn't make any difference.

Ms. Laird: I want to mention legal costs; I forgot to mention that. There was a question yesterday. There is no provision in this bill for legal costs to be ordered against a party. The only place that exists is in the SPPA. The SPPA allows a tribunal to order legal costs, but only if it creates rules for that purpose. This tribunal doesn't have rules for that purpose. There's been no suggestion that they would. We appear in front of tribunals all the time that can make rules for legal costs and don't.

The Chair: Any questions from the government side?

1230

Mr. Zimmer: I've been listening to the hearings now for several days and throughout the summer, but I was caught by an expression you used that, at least for me, summed up everything rather succinctly and poignantly. The people you find your clinics dealing with are often poor people, disadvantaged people, people living their lives on the edge, with great amounts of anxiety in their life, and you used the expression that these people don't have the luxury of time. They don't have the luxury of two or three of four years. You used the example of Mr. Lepofsky and others, middle-class people who have the luxury of time and circumstances where they can engage lawyers and see these things through. The folks you're dealing with need a result, a solution, a resolution tomorrow, in effect. It seems to me that the whole philosophy of the direct access model is to balance off that absence of the luxury of time and get on with the complaint so they can relieve their lives of some of that anxiety, that pressure, that sense of always living on the edge. Your expression that they don't have the luxury of time is a good expression for me that captures it all. Thank you.

Ms. Laird: I think Ms. Rubio wants to respond to that.

Ms. Rubio: Kathy mentioned in her brief that in the course of my work—she said I had been at my work for 20 years; it's actually 28 years, so almost approaching 30. I have seen many of the people you referred to, I don't know whether on a daily basis, but at least three times a week: people who lose their jobs because of discrimination and, because of that, basically lose their lives; people who feel suicidal, women who feel suicidal after having been sexually harassed at work and finding that the commission has provided no forum at all, never mind an appropriate forum, so they can air their complaints and have their complaints investigated; people who lose their apartment; people who cannot buy medication for their children because they have lost their jobs, and their children end up particularly sick because they have lost all supports they might have because of discrimination in the workplace.

While I agree that this might not provide a perfect system, I'm reminded of what Ann Landers used to say about whether we will be better off with this or with that. What we have now is untenable. For that, I'm prepared to give the new system a try.

Mr. Kormos: Chair, that surely is the first Hansard-reported parliamentary reference to Ann Landers that's occurred in at least 20 years.

Mr. McMeekin: What was it Ann Landers said? I wasn't sure I caught it.

Ms Rubio: What Ann Landers said—she was actually referring to relationships and that women should ask themselves, "Am I better off with him or without him?"

The Chair: Thank you.

Mr. Kormos: Are you sure that wasn't Dear Abby?

ALLIANCE FOR EQUALITY OF BLIND CANADIANS

The Chair: The next presenters are the Alliance for Equality of Blind Canadians. Good afternoon, sir. You can start any time you like.

Mr. John Rae: Good afternoon. Mr. Chairman, could you please let me know when I'm about 15 minutes in?

The Chair: Absolutely.

Mr. Rae: That would be very helpful. I appreciate that.

Mr. Chairman, members of the committee, my name is John Rae. I appear as national president of the Alliance for Equality of Blind Canadians. We are a national not-for-profit organization whose work focuses primarily on public education and advocacy.

For myself, I have been a human rights advocate for over 30 years. I worked for the Ontario public service for 24 years before retiring last year. I have two complaints currently before the Human Rights Commission and am assisting other complainants both at the Ontario commission and at commissions in other parts of the country. I provide you those brief snippets of my background, and I will connect them later in my presentation.

I must begin on a sour note, I'm afraid. Yesterday I sat in this room and listened to the presentations. Your first witness, Toni Silberman, said she would come away

from this proceeding feeling ambushed—yes, ambushed—and I understand why she would have those feelings. Why did the Attorney General wait until yesterday to announce his proposed amendments? Why could he not have treated both you, as honourable members of the House, and us, as deputants before your committee, with some greater degree of respect and at least announce those amendments last week?

This bill was introduced in April. You have heard from witnesses from Ottawa, Thunder Bay and London. They got to speak about the bill as it was. We in Toronto seem to be a bit more fortunate. If we have the chance, we get to speak to the bill as it might be. Will people who come before you in December or January get to speak about the bill as it might be then? I submit to you that if I were a resident of Ottawa, Thunder Bay or London, I would be very upset that I didn't have the benefit of the minister's proposed amendments at the time I appeared before you.

But I came away from yesterday's experience feeling far worse than Ms. Silberman—yes, far worse. I came away feeling demeaned, discriminated against, in fact blindsided—yes, blindsided. I know that's a harsh term. That's how I came away feeling yesterday. That's because the minister came before you with some documents in print. I suspect those documents were produced electronically, but he didn't bring an electronic version and he didn't bring any Braille copies. He just brought print. I'm afraid, I must admit, it has been many years since I've been able to read the printed word. I was scheduled to present to you today, and I'm honoured to be here. That's not good enough treatment from the minister who has the responsibility to promote and advance the cause of human rights in this province. That is not good enough. It just is not good enough.

I must admit that instead of spending yesterday afternoon focusing on my presentation today, I spent a fair bit of yesterday afternoon thinking about how I was going to respond to the indignities I came away feeling yesterday. I came up with three ideas. One was to come before you and demand the resignation of the Attorney General. Second was to phone the Human Rights Commission and file a complaint of discrimination against the minister. But I'm a reasonable man, and I came up with another idea. I would particularly ask, Mr. Zimmer, if you would be so kind as to convey this to the minister: What I want is for the minister to rise in his place in the Legislature between now and the close of business next Friday and issue to me, John Rae, president of the Alliance for Equality of Blind Canadians, a public apology for the way in which I was treated here yesterday. Otherwise, I guess next week I'll be phoning the commission and lodging yet another complaint, but I'd rather not do that.

Okay. That takes care of me—for the moment.

1240

Let's then move on to the bill. A number of proponents have suggested that the commission, in its current form, is very flawed. Some have even suggested that those who oppose Bill 107 are attempting to maintain the status quo as it is now. That is not true. I think many people on both sides feel that the commission could be improved. I dare say that if we went out on the streets of Toronto and asked 100 citizens how they feel about the Ontario Human Rights Commission and whether they think it could be improved or its work streamlined a bit, I suspect a fair number might say yes to that question. I also wonder, if I asked those same 100 people if the work of honourable members of the Ontario Legislature might be a improved a bit or streamlined, what those same 100 people might say as well.

What is my point in all this? It's very simple. When human beings are involved in an institution, it may not be perfect. Here is where the real flaws occur: There may be some problems with the Human Rights Commission, but the greater flaws are with the way in which the minister has conducted whatever consultations he has conducted and with the bill itself. It's Bill 107 that's fundamentally flawed—fundamentally flawed.

What do I mean by all of this? The minister says he has conducted extensive consultations. I want to know with whom. I want to know with whom in my community he has consulted. I know he has talked to the AODA Alliance. That's good. But who else has he consulted? I know that I, as president of my organization, have written to him at least three times asking questions, seeking clarification and raising concerns. I remember that when I worked in the Ontario public service we were expected to turn around ministerial correspondence in no more than 48 hours or we caught lots of hell. And that's not unreasonable. I want Hansard to show what I'm showing to the committee, and that is a pair of empty hands. Why am I doing this? It's very simple. I have received neither acknowledgement nor a substantive response from any of the correspondence that our organization has sent the minister, nor were we invited or given any opportunity to consult. So who has he consulted with? Who has he been consulting with? I ask that question and I really do want to know.

On the kind of treatment I received yesterday, maybe I should have considered excusing it as simply an aberration or as something forgotten about. If it were a first circumstance, perhaps I might, but yesterday simply reinforces a pattern. I remember in the days before Bill 107 was introduced that the minister committed to the AODA Alliance that they would receive at least 48 hours' notice of the bill's introduction. That is because, for some persons with disabilities, getting transportation, getting to this wonderful building, is difficult. And what happened? Yet another promise broken. The alliance was given less than 24 hours.

This, members of the committee, becomes even more ironic in the current context. because less than three weeks ago, a sister ministry, the Ministry of Community and Social Services, released the first standard under the Accessibility for Ontarians with Disabilities Act. Some of us think that standard was a long time in coming, but that's a discussion for another table. Do you remember what the subject was of that first standard, members of the committee? How ironic. It was customer service.

Where was my customer service yesterday? I think you can understand why I feel so disillusioned, discriminated against and so upset over the treatment I received yesterday.

Some of you may be surprised at how adamant some members of the disability community are about Bill 107. This may surprise you; I think I could understand that. Let me explain. Persons with disabilities were not included when the Ontario Human Rights Code was first enacted, nor were a number of other groups. The number of prohibited grounds has fortunately been extended considerably since the first code was enacted those many years ago.

In our case, it didn't come easy. We had to fight like hell for it. I remember those days; I was there. In fact, it got to a point where the opposition had threatened to defeat the then minority government of that honourable gentleman Bill Davis. Instead, in a meeting that took place in the cabinet room in this very building—I remember it as if it were yesterday—our coalition convinced the Premier and his cabinet to withdraw what was then the infamous handicapped persons rights act and undertake a consultative process with our coalition. The government agreed to that one simple demand. They did withdraw the bill and they did enter into a consultative process. That consultative process took a little while, but what it produced was one of the best levels of legal protection for persons with disabilities that was available in this country at that time—in fact, to this day.

Thus, I am here to call upon the current government to withdraw Bill 107 and begin undertaking the kind of consultative process that happened back in the late 1970s and early 1980s that led to the kind of human rights protection that persons with disabilities have today.

As we know, the current commission has come under a fair bit of criticism, including today. However—this is interesting—I sat here yesterday and listened to the presenters. As you will recall, one of those presenters was none other than the current chief commissioner of the Human Rights Commission, Barbara Hall. I recall Barbara saying, "Since I began my work here, a year ago this month, I've experienced first-hand what has been recognized nationally and internationally: how effective the commission can be. We're recognized and emulated around the world, not simply because we're one of the first human rights commissions but because of the outstanding quality of our work." That wasn't me as a community activist saying that; that was the chief commissioner of the Human Rights Commission, the current chief commissioner.

Now, I ask you, would the real state of human rights in this province please step forward or join this discussion? You can't have it both ways. Either the commission is seriously flawed or it does exemplary work that is deserving of emulation around the world. It can't be both ways. You can't have it both ways.

Let's now look at some of the aspects of the new bill. I'm not an economist, but today it is very common to ask for a business plan when a new project or a new program is being developed. Where is the business plan in regards to Bill 107? Have you, as honourable members of the Legislature, seen it? I suspect not.

The Chair: Mr. Rae, you are 15 minutes in, as per your request.

Mr. Rae: Thank you, that's great.

I know I certainly haven't seen it. I think this is critical. We now have a situation in Ontario where we have a commission and a tribunal. According to yesterday's speech by the minister, we will have some kind of legal support centre. I believe his words were singular and not plural, and that raises some questions I'll get to in a minute. But under the new system, how many staff will be left with the commission? How many staff will the tribunal need to deal with 2,500 complains each year? How many staff will this legal resource centre have? Have you, members of this committee, seen those details? I haven't. So how is it possible for members of the community, regardless of how we feel about Bill 107, to comment adequately on what is being proposed?

1250

I'm particularly upset about that because I remember the process over the AODA itself. The committee established an open process. Organizations from across the province came and presented. Hundreds of recommendations were offered and very few were ultimately enacted by the government. Part of the answer during that process was, "Some of your concerns are issues of implementation. Once the bill is passed, we'll deal with those."

I think we allowed ourselves to be hoodwinked and sold down the river during that process, but I've learned. I think it is imperative that the minister release the business plan that will show all Ontarians how this new system might operate and what kind of staff and other resources it might have.

Speaking of resources, as I understand it, the minister has said he does not anticipate any new large infusion of funding into the human rights system. If that's the case, we're all wasting our time here, regardless of what side we're on. Without some new funding into the human rights system, all of our efforts—yours, mine and all the presenters who have come here—are a waste of time. All we will do is create a system that will have some of the inherent difficulties the current system has. And no, finances is not the only one—I'll get there. But resources are important. I believe all of your parties have starved the Human Rights Commission over the past 20 years—some more than others, I admit.

I think the complexity of cases that come before the commission is evident from the heartfelt presentations that we heard just this morning. Those are not the kind of cases that go before a Small Claims Court. They aren't dealing with whether my neighbour put up a fence that I don't like or my neighbour's dog is in my yard or that sort of thing. They are about discrimination. They are about difficult and complex issues.

Let's think about the complainants who come to the commission. There is a significant power imbalance between citizens and various entities. Think about it: the difference between an applicant for a job and the em-

ployer; the difference between the individual who wants his information in Braille and a government ministry. I could go on with a large list. That's the sort of thing that citizens like me hope a Human Rights Commission will help redress, will help deal with some of the power imbalance that is abroad in our society, the kinds of power imbalances that the political system has failed to adequately address.

I could say a lot more about the nature of human rights and the fact that we have expectations. Let me say one other thing about what this bill might result in. Toni Silberman made an eloquent point yesterday when she said that individual complaints should inform systemic complaints. I have a difficulty. I told you I have two complaints currently before the commission. One involves being discriminated against in employment because the employer required a driver's licence on the job description. That complaint, members of the committee, has two sides to it. Yes, it has individual issues. I want and expect individual redress for the fact that I feel discriminated against, but I also filed that complaint to try and address some of the larger systemic issues: To what extent is it reasonable for an employer to require a driver's licence?

So under the new proposed system, we will have a commission that is supposed to deal with systemic complaints over here, and a tribunal over here that is expected to deal with individual complaints. Mine deals with both kinds. Which door should I enter? Should I enter the systemic door or should I enter the individual door? Where should I go? This is not a facetious question, members of the committee. In fact, I have tried this question on two or three of my lawyer friends and they don't know the answer either. I need to know, because I suspect the complaints that I have before the commission now are probably not going to be my last ones—probably not, although I hope so.

So there are operational problems, there are funding issues, and there is a need for a business plan. But there's also a need to streamline the commission, and I want to spend the rest of my time on some more specific ideas in that regard. I must tell you, I have never had the honour of working for the commission. I am not a lawyer; I'm a mere community member. But let me try some ideas.

First and foremost, I think there should be an audit of the commission, how it operates. The person hired to conduct that audit should be given some very specific criteria and a mandate, and that is to examine the operation of the commission, its practices and how it operates, with the idea of figuring out: Are there ways it can be streamlined? Are there ways that cases can be moved more quickly through the system? Are there better ways?

I support the call that has been spoken about by several people for allowing third-party complaints. This has been called for over and over again.

There needs to be greater independence for the human rights system. The notion now is that the commission will be expected to make its annual report directly through the Legislature. Why was the tribunal not similarly mandated? Why shouldn't it be doing the same? Why should we, as citizens, have the right to hear about the work of the commission and not the work of the tribunal? I rather hope that one was an oversight that will be quickly corrected.

In days past, there was something called early settlement. As I understand it, that way that operated was that when a call came in that a human rights officer thought could be settled quite quickly, that person would call the respondent and outline the basis of the problem and attempt to effect a settlement without the filing of any formal complaint. I'm led to understand that that system often worked, but I know that option is no longer available.

I understand that the move towards eliminating commission staff from drafting complaints is something that we might have expected would streamline the process. I gather it's had the opposite effect; I gather that now members of the public, who are, after all, not human rights experts, nor should we expect them to be, end up sending in complaints that need significant redrafting.

Throughout the process, there are various kinds of delays. I believe the legislation should be amended to place much more rigorous time restrictions on the parties. There should be fewer delays. Timelines should be respected.

These are only a few proposals, but when you add some of those to the document the AODA Alliance put forward, I think we have perhaps the beginning of ways that might help fix the current system. Rather than throwing this baby out with the bathwater, it would be worth trying one more time to see if there isn't a way in Ontario to streamline the current system to make it work more effectively. After all, at the end of the day, the promotion and enhancement of human rights is critical, and not just for me as a disabled person. I, as a male, am as concerned as women are about the discrimination and harassment women feel. I, as a white urbanite, am as concerned, although I have never walked a mile in their moccasins, about the plight of First Nations peoples living both off-reserve or on distant reserves, and I think the rest of us in this province should be as well.

1300

When we think about the proposed legal centre, if there's only one, can we assume it will be here in good old Hogtown? Well, maybe, maybe not. But if it's situated in Toronto, how are people who live in Kenora or in James Bay or in Morrisburg or in Leamington going to have the opportunity to consult that centre to get advice? It's much easier to do it in person than it is over the telephone. So how are those people going to be served? These are questions that require answers, and it is not good enough to wait until any bill is passed to get these answers.

I've posed some questions that I hope you, as honourable members both of this committee and of the Legislature, can get answered by the minister. I don't seem to be able to. I hope you are luckier than I have been. I implore you to get those kinds of questions answered before this process goes much further so that all Ontarians, regardless of what side we may be on in the

current debate, know what we're getting ourselves into. Is this new system really going to be better than what we've got now? Well, from what I can see so far, I'm sure not persuaded. I just hope that you, as honourable members, can get answers to some of the questions that I can't.

Thank you for the opportunity to be here to express my feelings about yesterday, to talk about the nature of human rights in this province and to make some suggestions that I hope will help reform the Ontario Human Rights Commission and indeed ensure that it is exemplary, that it is worthy of praise from all persons, whether in Ontario, other parts of Canada or around the world.

The Chair: We'll begin with Mr. Kormos. Please be very, very quick. We have less than two minutes in total.

Mr. Kormos: Mr. Rae, thank you very much. I apologize to you. It was a delinquency on the part of all of us not to have simply been more sensitive to the needs of folks out there, everybody, in terms of making sure that they have access to this committee and its process, so I tell you, I apologize to you. But I am still looking forward to Mr. Bryant standing up in the House and apologizing.

Mr. Rae: I appreciate your apology, Mr. Kormos, but it's not for you to make.

The Chair: Mr. Zimmer, is there anything further from the government side?

Mr. Zimmer: Thank you very much for taking your time and giving us your thoughts on this important topic.

The Chair: Ms. Elliott?

Mrs. Elliott: Thank you very much, Mr. Rae. In my view, you've hit the nail on the head, both substantively and procedurally, with respect to the concerns being expressed about this bill.

Substantively, that is one of the reasons we in the opposition feel it's very important to get more information about how the system currently operates: so we can compare what's currently happening and how it could be improved, along with putting it against Bill 107 so we'll really know what we're dealing with. I thank you very much for that.

Procedurally, with respect to the other issues you've raised, I would like to address the committee on that point before we recess, if I may, Mr. Chair.

I would like to follow up on some of your comments, so thank you very much.

Mr. Rae: I would be pleased to meet with you or discuss any of these comments. I can only say to you, ma'am, that I hope you are more successful in getting answers than I have been so far.

Mrs. Elliott: We'll keep trying.

Mr. Rae: I look forward to your successes. Who knows? Maybe I will be persuaded that I should support Bill 107. I'm a bit skeptical, but then, I'm a bit of a cynic. But I look forward to the information.

The Chair: Thank you very much. That concludes our meeting today. We'll meet again Wednesday.

Mr. Kormos: Chair, there are some issues to be dealt with.

The Chair: Sure. Mrs. Elliott?

Mrs. Elliott: I think Mr. Rae's presentation today has highlighted the significant concerns a lot of people had with respect to what happened yesterday, with the Attorney General coming in and delivering this document to us. I did make the request yesterday before we broke to have the full text of what the amendments are actually going to be, particularly with respect to the legal support centre. In all fairness to the members of the committee and more particularly to the presenters here, we don't really know what we're dealing with. A lot of people want to take it on faith—and I don't blame them for that—that this legal support centre is going to be all they want it to be. But until we see what actually is in here, what it's actually going to say, in my view, I don't think we should have any further committee hearings. I would ask Mr. Zimmer to please state those concerns to the Attorney General.

Mr. Kormos: Further to that, I appreciate Ms. Elliott's call for faith. I've used up all of my faith in acknowledging the virgin birth, so I'll not have any faith left for the Attorney General.

I do say to legislative research, in terms of Mr. Rae's observations, because I don't know the answer, could research please tell us whether in the history of the Provincial Auditor there has ever been an audit of the Ontario Human Rights Commission, and of course give us the appropriate report and then responses by the OHRC.

Secondly, could research please get us material that elaborates on the report back by the OHRC in their 2005-06 report in terms of cases dealt with, resolved, gone to the tribunal? We've received in several forms, and through the actual report itself, the rough numbers without them being broken down with specificity. We don't have to deal with anything beyond 2005-06 because I think it's illustrative. But when they talk about cases disposed of, sent to tribunal, for instance, how long were tribunal hearings? How were they disposed of? How many cases were cases that were disposed of by simply telling the complainant that their complaint was not a valid complaint under the code, as compared to that their complaint could not be substantiated? We heard from Mr. Razack, for instance, earlier today, and that's one of the concerns he expressed. He was told he had a complaint that could not be substantiated. If we could get that kind of breakdown from—

Mr. Avrum Fenson: Of things that went to the tribunal or all cases?

Mr. Kormos: All cases coming into the OHRC, but more detail about how they were disposed of, why they were disposed of in that manner and the time frames within which they were dealt with. Mr. Hunt, was it, says the OHRC spins these things, Ms. Hall says no, Ms. Frazee smiles.

The Chair: Anything from the government side?

That concludes our meeting for today. We'll meet again next Wednesday at 9:30 a.m.

The committee adjourned at 1308.

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