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Wednesday 15 November 2006

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Mercredi 15 novembre 2006

Standing committee on justice policy

Human Rights Code
Amendment Act, 2006

Comité permanent de la justice

Loi de 2006 modifiant le Code
des droits de la personne

Chair: Vic Dhillon
Clerk: Anne Stokes

Président : Vic Dhillon
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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON JUSTICE POLICY

Wednesday 15 November 2006

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE LA JUSTICE

Mercredi 15 novembre 2006

The committee met at 0916 in room 151.

SUBCOMMITTEE REPORT

The Chair (Mr. Vic Dhillon): Good morning, everybody. Welcome to the standing committee on justice policy. The order of business today is Bill 107, An Act to amend the Human Rights Code. This is our first day of public hearings in Toronto. We've met in London, Ottawa and Thunder Bay.

To make these hearings as accessible as possible, American Sign Language interpretation and closed-captioning services are being provided. Because continuous interpretation is so demanding physically and mentally, the interpreters will be taking breaks from time to time. As well, two personal support attendants are present in the room to provide assistance.

The first order of business today is the motion for adoption of the subcommittee report. Can I get somebody to read the subcommittee report?

Mr. Ted McMeekin (Ancaster–Dundas–Flamborough–Aldershot): I'll read it, Mr. Chair.

Mr. Peter Kormos (Niagara Centre): A fine-tuned machine.

Mr. McMeekin: Being the fine-tuned machine we are, I'll read it.

Your subcommittee considered on Thursday, October 26 and Tuesday, November 14, 2006, the method of proceeding on Bill 107, An Act to amend the Human Rights Code, and recommends the following:

(1) That the committee commence public hearings on Bill 107 in Toronto on November 15, 2006, and continue on all regularly scheduled committee meeting dates until the House rises for the winter recess.

(2) That the committee request authorization from the House to extend the committee's meeting time until 12:30 p.m. on its regularly scheduled meeting dates until the House rises for the winter recess.

(3) That the clerk of the committee commence scheduling witnesses in Toronto from the current list of those requesting to appear on a first-come, first-served basis.

(4) That the Attorney General be invited to appear before the committee for 15 minutes at 9:15 a.m. on Wednesday, November 15, 2006—which is why I'm reading this so fast.

(5) That witnesses on the London list be scheduled at a later date in order to accommodate additional requests made in response to the new advertisement.

(6) That an advertisement be placed for one day in all Ontario English daily newspapers—

The Chair: Mr. McMeekin, can I just ask that you slow down for the interpreters, please.

Mr. McMeekin: Okay—Ontario French weekly newspapers, ethnic newspapers in Ontario and also be placed on the Ont.Parl channel, on the Voiceprint service, the Legislative Assembly website and in a press release.

(7) That the advertisement state that hearings will commence in Toronto on November 15 and further dates and locations for hearings will depend on the response received.

(8) That the deadline for those who wish to make an oral presentation on Bill 107 be December 15, 2006, dependent upon the ability to place ads in the ethnic papers within a reasonable period of time.

(9) That a subcommittee meeting be called to review the numbers on the list and the response received from the additional round of advertising and make decisions regarding meeting dates, locations and witnesses to be scheduled.

(10) That the committee endeavour to hear from all those on the current list and from all those who request to appear by the deadline posted in the new advertisement.

(11) That organizations appearing before the committee be given 30 minutes each and individuals be given 20 minutes each in which to make their presentation.

(12) That the ad specify that opportunities for videoconferencing and teleconferencing may be provided to accommodate witnesses unable to appear in each location.

(13) That sign language interpretation, closed-captioning and attendants for the disabled be provided for all public hearings on Bill 107.

(14) That interpretation for languages in addition to English and French be provided on the request of witnesses requiring such interpretation for their presentations.

(15) That the committee meet in room 151, if possible, for public hearings and clause-by-clause consideration of Bill 107, depending on availability of the room.

(16) That the subcommittee meet again to make decisions on dates for clause-by-clause consideration.

(17) That the deadline for written submissions be the end of public hearings on Bill 107.

(18) That the research officer provide the committee with a summary of witness presentations prior to clause-by-clause consideration of the bill.

(19) That options for videoconferencing or teleconferencing be made available to witnesses where reasonable.

(20) That requests for reimbursement of reasonable travel expenses for witnesses to attend hearings be subject to approval by the Chair.

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

Mr. Chair, this is a report of your subcommittee.

The Chair: Thank you very much. Any debate? Seeing none, all those in favour? Opposed? That's carried.

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.

MINISTRY OF THE ATTORNEY GENERAL

The Chair: The first order of business today is a presentation from Minister Michael Bryant. Good morning.

Hon. Michael Bryant (Attorney General): Thank you, Chair. I believe I have 15 minutes.

The Chair: Yes.

Hon. Mr. Bryant: I've got a watch here, and if I'm able to finish early, then I will. I was here on time.

I want to start by thanking the Chair and the committee for giving me the opportunity to come here to provide an update on the bill and to provide you with amendments proposed to Bill 107. We consulted with people before introducing the bill. We heard a number of voices after introduction of the bill that said changes were needed—that significant changes were needed. We are endeavouring to heed that call today by providing amendments to the committee now, in the proposed form that they are. We are going to offer a technical briefing for those interested. Tomorrow afternoon, I believe, we're going to arrange a time and a place for MPPs. Should technical briefings be desired by others, we will make those available.

I'm going to be referring to a document that I've spoken to Mrs. Elliott and Mr. Kormos about. It refers to proposed amendments to Bill 107. There's a chart with the bill as it now stands and the proposed amendments, and this is being translated into 14 languages. For the visually impaired, there's a number, to hear the text of the document. And I will endeavour to speak slowly, although it's not my nature.

I'm providing these amendments. It is a little unusual to provide proposed amendments at this stage in the proceedings. I'm doing so to give the committee the opportunity to consider the amendments and for the people who are appearing before the committee to consider these amendments, because it's many of the people who are appearing before the committee who called for these amendments. They fall into four categories. I'll go through each one and then I'll try to provide a little bit of context for them.

Firstly, amendments are being proposed to entrench in the bill a range of legal support services, entrenching the human rights legal support centre that will provide the legal assistance to complainants in Bill 107, in the legislation. The amendments are proposed to clarify that a range of legal support services would be provided, such as information, advice, assistance and legal representation. Amendments will confirm public funding for the human rights legal support centre. Amendments will provide that the services would be available across the province and clarify that any person who is or has been or may be an applicant seeking a remedy at the tribunal will receive those services.

Next, amendments are proposed to enhance the independence of the commission. I can say with experience that the commission does operate in an independent fashion from the government. These amendments entrench that independence:

—firstly, by requiring that the commission report directly to the people of Ontario through the Legislature;

—next, by ensuring that appointed commissioners would, for the first time, be required to have an expertise in human rights. Minimum requirements and qualifications will be established; and

—by amendments to clarify that the commission acts independently, in the public interest and at its own discretion, when it undertakes any of its functions.

Next, amendments are proposed, at the behest of a number of voices in the human rights community and by the Human Rights Commission itself, to strengthen the commission's investigative and public interest powers. These amendments include clarification of the commission's powers to ensure that it would have the ability to inquire into any matter, to examine documents, to question people and to compel co-operation with its inquiries. Amendments are being proposed and are before you to clarify that the commission would have the right to intervene in any application before the tribunal. And amendments would adjust the transitional provisions to allow existing complaints to continue to be dealt with through the existing system.

Lastly, amendments are being proposed to promote greater fairness at the Human Rights Tribunal of Ontario. We are entrenching the requirement that the rules of practice of the tribunal and the procedures facilitate fair, just and expeditious resolutions on the merits of the

matters before it. Amendments are before you to ensure that all applications to the tribunal are timely, within jurisdiction and would not be finally disposed of without the parties having an opportunity to make oral submissions. Amendments are before you and proposed that would restrict the tribunal's powers to dismiss applications without a hearing, eliminate the tribunal's ability to establish and charge fees, extend the limitation period for filing a claim from six months to one year and, lastly, ensure that the adjudicators at the tribunal have expertise in human rights.

I'll say, in closing, a couple of things. Firstly, these are not the only amendments under consideration by the government. We want to hear from the committee, from the people, and from members of the provincial Parliament in this committee and outside of this committee.

Before you is a fairly long list of procedural and process enhancements to Bill 107. I offer the following perspective on the human rights system. Fifty years ago, if you had a human rights complaint, you were basically on your own. There was no legal assistance being offered. There was relatively little expertise on the superior court, on the bench. In most cases, it meant no justice, because you had to retain your own lawyer at your expense and you'd argue a tort, a common law claim, before the courts. So 44 years ago a system was established, and the Human Rights Commission was to do two things. Firstly, it was to promote human rights, to proactively go forth and prevent human rights complaints from happening. Secondly, the commission was there as a place of expertise that would provide support to people and would resolve their complaints.

0930

What happened over the last 40-plus years, particularly in the absence of statutory amendments, is that procedures and process built up. There was no Human Rights Tribunal originally. It was not a highly adjudicative model, and in the 1970s, I'm told by commission counsel, it worked fairly well. But over the years, the adjudicative processes and procedures built up to the point where today, I would argue, we have procedural and process gridlock, and that results in delays. We say that justice delayed is justice denied so many times that sometimes we forget what it means. In this case, what it means is that the person who comes to the human rights system with a human rights complaint, an injustice, doesn't get that injustice rectified after a year, after two years, after three years—or more. And what that means is that after that year or two years or three years or more, they don't have the injustice rectified. For them, the delay does mean no justice at all.

So the goal here is to provide direct access. We've put into place some procedures and processes that we've heard from people are necessary for them to have confidence in the system. We are seeking to empower the commission to do that prevention work that the commission has not really been able to do at full capacity. And lastly, the new generation of human rights discrimination, in the form of systemic discrimination, is in fact now going to be tackled by the commission, in the event that this bill passes, with a vigour that will allow the commission to bring systemic claims before the tribunal and intervene in the tribunal on claims that the commission views amount to systemic claims.

The due process that we are going to talk about in the coming days I think we ought to consider for just a second, and then, I can see, my time will be up. Due process in the criminal law system is there to protect the innocent and is there to ensure that all parts of the system operate fairly. There is a real focus on the accused when it comes to procedural rights. I don't know of any human rights voices that have come to me to talk about concerns around due process for respondents, the people who are the subject of a human rights complaint. Due process for the complainants, the victims of human rights, I think needs to be process that ensures speedy and effective remedies of human rights injustices. And at some point over the last 44 years, I will say with respect, some people have become so attached to the procedures and process that is the work of our human rights system that I believe that they are clinging to a due process as an end in and of itself when I would say to you that due process here is a means to an end: a speedy and effective resolution of the complaint.

I'm not sure that the victim of human rights is nearly as concerned about a big pile of process and procedures that leads to delays, and I would have thought that the victim of a human rights violation would be a lot more interested in a big pile of justice and remedies, and that's what we're seeking to bring forth with these amendments and this bill. It is human rights, after all; it is not about process or procedural rights. The system's about human rights.

I believe, and I'm getting that look from the Chair, that my time is up. I do not want to delay the people who have come here to present before the committee. Some of them have called for amendments that are now before you, and I know that you want to hear from them, as does the government. So I will cede my chair and leave it in your hands as to what happens next, but I presume that our first witness is coming on up.

The Chair: Thank you, Minister.

LEAGUE FOR HUMAN RIGHTS OF B'NAI BRITH CANADA

The Chair: The first presentation is from B'nai Brith Canada: Ms. Anita Bromberg and Toni Silberman. Good morning.

Ms. Toni Silberman: Good morning.

The Chair: You may begin. You have 30 minutes.

Ms. Silberman: Thank you, Mr. Chair. Before we begin our allotted time to speak, we would appreciate a moment to comment on what just transpired. We really must object in the most strenuous terms to the actions of the Attorney General in announcing amendments to Bill 107 at this time. We, like so many other—

The Chair: Can I get your names for the record?

Ms. Silberman: Sure. I'm Toni Silberman.

Ms. Anita Bromberg: I'm Anita Bromberg.

The Chair: Thank you. You may continue.

Ms. Silberman: Thank you. We, like so many other community organizations, have invested considerable volunteer efforts in preparing our presentation and came here to address the text of the bill that has been on the table for some seven months. As of moments ago, that bill was effectively rewritten, and we, as the first presenters, are now placed in a very difficult and unfair position. As you can appreciate, we have absolutely no opportunity to consider the amendments, nor to develop comments on their content or even to assess the validity of the merits.

With respect, this is public hearing by ambush, and in a court of law this would constitute grounds for an adjournment with costs against the Attorney General. This is an especially cruel irony, since one of our many objections to Bill 107 is that the Attorney General proposes to strip away the important fair hearings requirements for the tribunal that are now imposed on it by the Statutory Powers Procedure Act. And if one needs a good illustration of why those procedural protections should not be tampered with, this is it.

We will proceed with the presentation we prepared prior to this morning's announcement. We cannot address any of the measures the Attorney General has just announced, as those who come after us will be able to. So in the interests of fairness, Mr. Chair, we respectfully request that we be given the opportunity to return to this committee in the near future to make an oral submission on the Attorney General's new version of Bill 107.

We do appreciate this opportunity to share with the members of the standing committee our concerns and recommendations regarding Bill 107 and hope they will assist you in your deliberations.

My name is Toni Silberman and I am the immediate past chair of the League for Human Rights of B'nai Brith Canada. Human rights advocacy has been my avocation and ultimately my vocation for over 40 years, including 16 years as a member of management with the Ontario Human Rights Commission. My colleague Anita Bromberg is the league's counsel and has been extensively involved in human rights issues and advocacy for decades.

Established in Canada in 1875, B'nai Brith is Canadian Jewry's oldest and only independent advocacy and community service organization, which some consider to be Canada's foremost human rights agency, specializing in and dedicated to combating anti-Semitism, racism, bigotry and hate in all its forms. We have enjoyed a long and fruitful association with the commission over the years, both as a partner and as a consumer.

The League for Human Rights endorses efforts designed to strengthen the Ontario Human Rights Commission and the protection of human rights in this province. We support the strengthening of the commission's ability and mandate to address systemic issues, proactively and through complaints, as we do the reintroduction of both a race relations and disability rights secretariat as part of the commission's mandate. In fact, no new law is required for the former, since provisions for its existence still are found—

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The Chair: Ms. Silberman, can I ask you to just slow down for the sign language interpreters, please?

Ms. Silberman: I'm sorry.

We are pleased that their benefit is once again being recognized, but query their effectiveness if the commission is to be divested of the attendant enforcement mechanisms.

But today, we join our voice with the large number of groups, organizations and individuals, some of whom you have already heard during the summer hearings, who oppose Bill 107 as seriously weakening human rights protection in Ontario. Our concerns are with regard to both process and substance.

With regard to process, we believe it was regrettable and counterproductive to reject the many calls from advocacy groups and concerned individuals for open public consultations prior to drafting a new bill on human rights reforms. Members of groups protected under the Human Rights Code, complainants and respondents within the current human rights system, and human rights staff were excluded. The resulting one-sided bill is reflective of this lack of representation.

There is no question that the commission's complaints process is in need of review and resources in order to operate more efficiently, and who better to inform that review than those who require and use the system—not just lawyers, but the clients and those who operate the system. It is our hope that the Premier's and the Attorney General's public commitment to ensuring broad consultations during the hearings will give, to all those who wish, adequate opportunity to express their views on the proposed legislation.

With regard to substance, the Attorney General asserts that the human rights system has not changed in more than 40 years. We remind the members that in 1982, under the Davis Conservative government, the code was completely revoked and rewritten, and the commission overhauled. This happened again in 1986. In fact, the commission has, over the last 40 years, reviewed and restructured its complaints process and infrastructure on an ongoing basis to more adequately address changing needs of an increasingly diverse society. Grounds of protection were added and public education was enhanced, leading to a tremendous increase in the number of cases coming forward. Unfortunately, the requisite resources to support this increased demand for services were not given, and a backlog was created. The commission became, in effect, a victim of its own success.

However, for the government to now propose eviscerating the commission, whose work formed the template for all subsequent provincial, federal and international human rights commissions, and replace it with a system whose track record elsewhere is less than stellar, to

decimate an established system before it is given the opportunity and resources necessary to allow it to do its work, is, we believe, short-sighted and dangerous to the protection of human rights in Ontario and will result in the denial of the very equality and access to justice that it purports to advance for the very people it purports to help.

Bill 107 proposes a system of direct access that was almost universally vilified as being ineffective, inefficient and costly in the 1980s, when it was first attempted in British Columbia, and again when it was reintroduced more recently. In fact, this spring a member of BC's Legislative Assembly introduced a bill calling for reinstatement of the old system, pointing out, in particular, that systemic instances of discrimination have gone unaddressed, that the public interest is no longer represented and that the entire human rights system in BC has been weakened. These and other concerns with direct access also compelled the former chief commissioner of BC's Human Rights Commission to come to Toronto to speak out against its implementation here.

We find the proposed legislation so seriously flawed in its efforts to create a fair, expeditious system intended to generate effective remedies that we would suggest removing it from consideration and starting again, once all interested parties have had the opportunity for input—a more fitting time, perhaps, to announce amendments.

We will now outline some of our concerns in summary form and urge you to read our submission in its entirety. For a summary of our summary, we refer you to the myths and reality documents inside the folder.

Bill 107 is fundamentally flawed in that it virtually guarantees that human rights protection and the opportunity for prevention will be eroded. As Ontario's public human rights enforcement body, the commission is charged with the responsibility of forwarding as public policy the provision of equal rights and opportunities without discrimination and the creation of a climate of understanding and mutual respect for the dignity and worth of Ontarians. When one removes that public body from its core function, the ability to affect that public climate is lost, as is the potential for remedies that not only address discrimination but also ensure that the requisite system-wide programs and policies of prevention are in place. To attempt to bifurcate the individual from the systemic issues is misguided and self-defeating. Disabled, racial, religious and historically disadvantaged people recognize through experience the necessity of public interest remedies in virtually all cases affecting them and that they should be an integral part of, not eliminated from, human rights reform. Bill 107 does not recognize that necessity.

You may hear from the proponents of the bill that direct access is a panacea. We believe that Bill 107's promise of direct access is illusory. It does not mean that every person will have his or her day in court. It means, rather, that the complainant may apply to the tribunal directly. It does not mean greater access to an oral hearing into the merits of the case or, indeed, greater access to a hearing at all. It simply means the complainant will have the right to file a paper application directly with the tribunal that has unfettered discretion to make its own rules, more powers to gate-keep and dismiss a complaint without either an investigation or a hearing than the commission currently does, no mechanism to enforce orders and settlements from which no appeal may be made, no means to adequately address the public interest, and no oversight.

You may hear that the bill will strengthen the Ontario Human Rights Commission. On the contrary, we believe that it eviscerates the commission and renders it a toothless tiger. The removal of the commission's total investigative, mediation and litigation functions give it no effective means of promoting systemic change precisely because it is left with no viable role with respect to individual complaints. At the same time, Bill 107 will make the complaints process more onerous and, in some cases, impossible for both complainants and respondents by requiring them perhaps to conduct their own investigations and gather evidence within an environment that is already poisoned by the very filing of a complaint.

Under the current system, an investigation takes place prior to the referral of a complaint to the tribunal. The investigation has several functions: First, it permits settlement discussions to take place in the context of the commission's investigation findings as to the facts and legal implications of a particular complaint; secondly, it provides an informed basis for a decision as to whether a case should be referred to the tribunal; and at the hearing itself, it gives the commission evidence to present before the tribunal and provides a further impetus to settle when the tribunal's processes begin.

Under the bill, no such investigation might occur. Complainants will not have the statutory authority to force the production of documents and will certainly not, for example, be permitted access to an employer's premises to interview witnesses. It will be up to the tribunal to interrupt its process, having somehow determined what evidence it needs, with directions to the parties to supply what evidence they can muster before the proceedings can continue. In the case of respondents, there will be no means of avoiding the tribunal's procedures, even in the case of the most frivolous complaints. In the case of both, the opportunity to resolve complaints without litigation at the tribunal, currently provided by the disclosure of the commission's investigative findings, will vanish. The tribunal will either have to form a conclusion based on its impression of the parties, or determine what evidence is required for the hearing to proceed. It seems somewhat irrational, inefficient, counterproductive and gratuitously costly to have a complaint come to the tribunal and then have the investigations occur, as proposed in Bill 107.

The proposed reform is based on the position that investigations into human rights complaints are useless; indeed, that they are themselves a barrier to human rights protection. What the government has forgotten is that Human Rights Codes are the accessible Charter of Rights

for ordinary people. The public investigators mediate, conciliate, negotiate and resolve cases for the parties at a fraction of the cost of expensive lawyers and adjudicators and usually in a fraction of the time. More importantly, the investigators are trained to address the future. When resolving a case, they get employers to conduct staff training, and create anti-discrimination and harassment policies and internal systems, so that the offending conduct does not happen again. In particular, mediation and investigation functions are necessary to fully address racial complaints because of the socio-political historic factors involved. Throwing money at a privatized system to pay for some form of legal assistance for complainants will not produce these results.

0950

In his address to the Legislature when the bill was introduced, the Attorney General said that the commission would have the right to intervene in individual cases under Bill 107. The bill, up to this point, provides no such right, thus losing the potential for significant changes in, and development of, human rights legislation in jurisprudence. For the commission to have any meaningful power to intervene and determine which cases merit intervention, it would require notice of cases proceeding at the tribunal. No such mechanism exists in the bill.

With regard to systemic investigation, the argument that a commission freed from responsibility for individual cases will better address systemic issues is seriously flawed.

First, by giving the commission no role with respect to the processing, investigation, mediation or prosecution of human rights complaints, and by reducing the dispute to a contest between two private parties, Bill 107 will both undermine individual rights and make it impossible for the commission to fulfill its public role.

The complainant's primary goal, and that of his or her lawyer, is often to obtain money and move on. The respondent's primary goal is to pay as little money as possible to bring the dispute to an end. Neither has much motivation to change the conditions that led to the complaint in the first place and thus root out and prevent future acts of discrimination. The Human Rights Commission currently seeks all of this when it processes and ultimately prosecutes a human rights complaint.

Second, it is primarily the commission's investigation and compliance function—its involvement in all aspects of individual cases—that highlights areas and trends—

The Chair: Ms. Silberman, could I just ask you to slow down, please. I know it's difficult, but please do your best.

Ms. Silberman: I'm so sorry. I'm conscious of the time.

The Chair: Thank you.

Ms. Silberman: —that highlights areas and trends that require systemic measures and policy directions. Otherwise, such efforts will be informed by anecdotal information and hearsay, rather than by facts and statistics.

Individual cases inform systemic work. Systemic work has a point of entry through individual cases. Individual complaints provide the raw material for systemic interventions.

Bill 107 contains, so far, no requirement for public interest settlements or remedies. The tribunal is not required to impose them; the legal support centre, if and when it is created, is not required to seek them; and the parties certainly cannot be expected to sacrifice their own self-interest for the public good. By removing the public prosecutor from the mix, the public protection is also removed.

Third, it is not the case that there is always a clear distinction between individual cases and systemic cases. Human rights complaints do not walk through the door with the word "systemic" labelled on the front—would that they did—yet experience shows that most cases have some systemic component to them.

The case of Michael McKinnon, the aboriginal prison guard whose long battle with the provincial ministry of corrections was recently chronicled in the Globe and Mail, illustrates this point. Under Bill 107, this would have been just another individual case of racial name-calling in an isolated workplace. Because the case was investigated and prosecuted by the commission, the deep-rooted and horrific racism that has been allowed to fester in provincial jails amongst prison guards has been revealed and the most far-reaching public interest remedies have been imposed.

You may also hear that Bill 107 gives the commission permission to apply to the tribunal to seek orders related to cases of a systemic nature. The commission, thus far, will be allowed only to seek orders. Such a provision is mere window dressing, however, absent the resources, authority and staff necessary to investigate complaints; the ability to retain expert witnesses; and the loss of the commission's highly regarded legal team that currently withstands the attacks from corporate and government counsel. Further, the preconditions for seeking such an order are onerous, and the granting of the right to pursue a systemic complaint is solely at the discretion of the tribunal. It does not specify whether the commission will have carriage of such complaints. In addition, with respect to systemic cases, should an order be granted, the legislation allows only for orders dealing with future practices. There is no compensation or any sort of restitution for the current infringement for the individual on whose behalf the commission would seek the remedy.

You may hear that Bill 107 will remove the so-called gatekeeping function which, it is alleged, creates an inefficient and protracted complaints process. Bill 107, in reality, merely provides for a change of gatekeeping venue. Section 34 of the bill allows the tribunal to make rules which may excuse it from the requirement to hold a hearing and which will permit it to restrict the opportunity of the parties to present their evidence and make their submissions. The bill does not set out the circumstances under which such rights could be curtailed by the tribunal's rules, lending the lie to the promise that every person will have his or her day in court.

You may hear that the efficiency of the direct-access model will result in fewer delays and no backlog. Currently, the publicly funded commission handles 65,000 inquiries per year, resulting in an average of 2,500 formal, signed complaints. Of those, close to 75% are settled to the satisfaction of both parties, thus obviating the need for a referral to the tribunal. These settlements are achieved through a publicly funded process, without the need to hire and pay for lawyers. Of the remainder, between 100 and 150 are sent to the tribunal for determination. Of those, the tribunal renders relatively few decisions on the merits each year, thus generating a considerable backlog.

If there is a considerable caseload at the commission—an agency replete with experienced officers operating within a system with which the public has familiarity for 44 years—query how the tribunal, with its own backlog, operating under a new system conducted by unfamiliar staff and navigated by members of the general public without assistance, could handle the sheer number of inquiries and complaints without creating an even greater backlog of complaints.

Gatekeeping under direct access will take place not only at the tribunal but also in the process of determining whether an application will be brought at all. No amount of funding that this or any government in the foreseeable future can realistically be expected to provide will afford legal counsel for 65,000 potential complainants. That the commission has only 2,500 rather than 65,000 formal complaints can be attributed in part to the fact that commission intake staff provide advice to the public and direct individuals to other agencies where appropriate. Without such intake staff, the number of individuals wishing to file complaints will be much in excess of 2,500. Those who are obliged to hire counsel on their own will self-screen, based on their ability to pay.

With respect to education, you may hear that Bill 107 gives the commission the authority to research, inquire into, recommend and educate in order to eliminate discrimination. We wholly support the espoused desire to strengthen the commission's mandate in this area. However, decades of experience have proven that without the ability to invoke the full force of the law, without effective enforcement mechanisms to add weight to the principles, goodwill and moral suasion only go so far and may not achieve the desired results.

With regard to fairness, we believe that the bill gives far too much power and discretion to the tribunal. At the same time, it reduces rather than increases measures for the tribunal's oversight and accountability. It does so in several problematic ways. Under Bill 107, the tribunal will be given complete and unfettered authority over the complaints process, with unlimited authority to develop its own rules and regulations outside the public arena, and will have primacy over the Statutory Powers Procedure Act, thus negating any minimal procedural protections afforded by the SPPA, calling into question the provision of natural justice and fairness.

Moreover, Bill 107 dramatically reduces the extent to which the courts can hold the tribunal accountable. It strips away the current right to appeal to the courts from decisions of the tribunal. Dissatisfied parties at a tribunal hearing will only be able to apply for a review if they demonstrate that the tribunal decision was patently unreasonable, a far higher threshold than on appeal. Bill 107 thus imposes a toxic mix of potentially unfair rules of procedure at the tribunal with less judicial oversight.

Under Bill 107, no agency is charged with enforcing settlements and orders, in contrast to current practice where, if either are breached, the commission takes all steps necessary to enforce the terms of the settlement or order, such as the garnishing of wages. Surely, one cannot expect a successful complainant to track down any monetary compensation owing or demand the enforcement of an order from an employer. At the end of the day, a remedy ordered by the tribunal is of no value if the order is not complied with.

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One of the positive aspects of the present system is the autonomy under which both operate and the separation of the commission's role as investigator and prosecutor on the one hand and the tribunal as neutral judge on the other. The tribunal is currently viewed as a distinct court of next resort, separate from the commission process. To now render the tribunal the court of only resort, from which there is no appeal mechanism, would not only create a conflict of roles within the tribunal system as police, judge and jury, but would also cast aspersion on the neutrality and objectivity of the process.

We are also concerned about the perceived conflict of interest and potential for bias in having both the tribunal and commission function under the auspices of the Ministry of the Attorney General, whose lawyers defend government respondents in human rights cases. It is interesting to note that more human rights complaints are filed against the government than against any other respondent. More fundamental is the inherent unfairness of requiring complainants to consider hiring their own lawyers, while government respondents will have the benefit of paid career government counsel.

We are especially troubled that even as we speak, in fact even prior to the onset of these hearings and even before this Legislature decides whether or not to grant these new powers to the tribunal by passing or rejecting Bill 107, the tribunal is, according to its own website, already at work planning for and hiring towards its implementation. We are concerned that this action makes a mockery of these hearings.

The need to secure legal representation and advice—currently a statutory right—will put an onerous burden on the majority of complainants, who are already victimized by alleged discrimination. We are not sure how the funding will operate, but the offer, for example, of some form of legal aid would benefit only those who fall within a certain income category. We fear as well that legal aid, an already overtaxed system, will not be in a position to adequately fund such a program, nor are many community legal aid clinics in a position to have carriage of these complaints. We are concerned that this will create an ethos of justice by means test, whereby justice

will be beyond reach of the average person, rather than more accessible.

In the event that the complaint procedure were privatized and that every individual does receive contracted legal representation, query the cost, particularly when the Attorney General last week fundamentally rejected calls for more funding for the human rights system. The Attorney General was quoted as saying in response to the recommendation by representatives of disability and racialized communities for additional resources for the commission, "If you've got a broken engine, you don't fix it by putting more gasoline in it. First you need to fix the engine and then you need to make sure it has enough gas." We agree with the sentiment, but believe that the Attorney General, to extend the analogy, rather than fixing the engine, is throwing it out and replacing it with a model that is not even on the Consumer Reports list of recommended engines.

Laughter.

Mr. Kormos: Excuse me. Can Hansard please report that there was much laughter in response to the last comment, including by myself.

Ms. Silberman: We in Ontario live in a democracy where injustice and discrimination are condemned by political philosophy and punishable by law. We believe that these hearings provide a golden opportunity for Ontario to once again stand in the forefront of progressive, dynamic human rights advancement, which will nurture its reputation as a province dedicated to the enhancement and equality of all its citizens. We agree that changes to the existing human rights system are a prerequisite to achieving the goal of ensuring equality and fairness. We, however, believe that Bill 107 is not the solution. We have a number of recommendations, but will only highlight a few.

We recommend that the current infrastructures be maintained and that the code and related procedures be amended to ensure that the complaints process operates more effectively and efficiently. This, in our view, means improving, not slashing, the public enforcement system through the Human Rights Commission.

The Vice-Chair (Mrs. Maria Van Bommel): Ms. Silberman, you have one minute left.

Ms. Silberman: Thank you. Unless the system is adequately funded, no reform will work. Rather than infusing a new system which may prove far more costly with additional funding, we recommend an administrative audit of the commission and an increase in its funding in the appropriate areas to allow for greater effectiveness. We recommend a complaints process wherein the best practices of the commission and the tribunal could be maximized, a process whereby complainants could either elect the commission route or the tribunal's direct access at relevant mileposts along the complaints continuum. If this option is considered, however, it is critical that direct access not be initiated until and unless the public enforcement process through the Human Rights Commission is improved and properly funded.

Honourable members, as you have heard and will no doubt continue to hear, considerable promises have been made with regard to human rights reform. Human rights are about fairness, justice and equality for all individuals and groups. The commission is, in many instances, their only voice. Bill 107 potentially silences that voice, leaving us with a legal system but certainly not a system of justice.

Thank you for your time and your attention.

The Vice-Chair: Thank you very much for your presentation. Mr. Kormos?

Mr. Kormos: There are people in the room who are standing. Some of them are going to be here all day. I'm no expert at these sorts of things—as you know, I'm only from small-town Ontario—but it seems that if a row of chairs were put at least in the front here, we could accommodate four people who deserve to be accommodated, unless we're breaking some fire code or Liquor Licence Act regulation.

The other observation is that in terms of signers, if signers were to stand here, would it be helpful to presenters in terms of allowing presenters to gauge their speed? I'd be prepared to move over here—no qualms about sitting close to Ms. Elliott—so that it wouldn't interfere with my sightlines, unless that's problematic with the signers.

Interjection.

Mr. Kormos: Okay, the signers want to stay there.

The Vice-Chair: I would ask, then, that the signers make that decision. I have no objection as Chair, so the signers would be—

Mr. Kormos: Fair enough. Can we get some chairs put in here?

The Vice-Chair: In terms of the chairs—

Mr. Kormos: The final thing, Chair, on a point of order.

The Vice-Chair: Yes, Mr. Kormos?

Mr. Kormos: This is very important stuff. People here are deadly serious, people both advocating for the legislation and critical of it. It seems to me that the government ought to have all of its seats at this committee table full. It is irresponsible and an insult to these people, both advocates for the legislation and critics of it, for the government to have empty seats in this committee on the very first morning of its proceedings.

The Vice-Chair: I'm sorry, Mr. Kormos. That's not a point of order.

Mr. Kormos: Well, it should be.

The Vice-Chair: I'm sure you feel that way, Mr. Kormos. In terms of the chairs, we are right now trying to find an overflow room. I would anticipate there may be even greater numbers coming in, so we're trying to accommodate everyone.

Mr. Kormos: But it's not just overflow. There are people here who are support workers, for instance, who have to be in this room and who have to be accommodated.

The Vice-Chair: I absolutely agree. They need to be able to sit down. It's going to be a long day, no question about it. We're trying to work on it.

Thank you very much for your presentation.

ASSOCIATION OF HUMAN RIGHTS LAWYERS

The Vice-Chair: I now want to call forward the Association of Human Rights Lawyers, Mark Hart. Welcome, Mr. Hart. You have 30 minutes in which to make your presentation. If you don't use up the entire 30 minutes, that gives members of the committee an opportunity to ask questions or make comments on your presentation. That would be done in rotation. So if you would please start by stating your name and your association, please.

Mr. Mark Hart: My name is Mark Hart. I'm here with Yola Grant and we're here on behalf of the Association of Human Rights Lawyers. Before I start, I want to thank Toni Silberman for the presentation she just made. I knew Toni Silberman when she was the public relations person at the Ontario Human Rights Commission. It's good to see that she's still performing that role.

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I'm a lawyer who has specialized in the area of human rights for the past 17 years, and particularly specialized in representing claimants in the current human rights system. I formerly worked as counsel at the Ontario Human Rights Commission, and I'm a founding member of the Association of Human Rights Lawyers.

The association itself is comprised of lawyers and community legal support workers who work on the front lines of the current human rights system. Our clients are members of racialized groups, persons with disabilities, women, members of our First Nations, members of the lesbian, gay and transgendered communities, and other clients who are poor, vulnerable and victimized. We struggle to assist our clients to make their way through a Byzantine, disempowering and disenfranchising human rights process which is fraught with horrendous delays.

The current state of affairs is completely unacceptable, and is notorious to anyone who actually works on the front lines of the current system, as we in the association do. This horrendous situation has not gone unnoticed. In 1992, a report was released by a blue-ribbon task force headed by Mary Cornish, who's in the front row today. She's one of the most prominent human rights lawyers in this province. The task force also included leading human rights advocates from racialized groups, the disability community, the lesbian and gay community and the First Nations community. This task force crossed the province and heard from everyone who wanted to speak. Giving careful and deliberate consideration to all they heard, this task force recommended that the existing human rights process be substantially reformed and replaced with a system where human rights claimants have direct access to a hearing at the tribunal, with publicly supported legal representation available to them, which is precisely the model we see before us in Bill 107.

In the year 2000, another blue-ribbon task force, this time headed by Justice La Forest, formerly of the Supreme Court of Canada, released a report to reform the federal human rights system, which is the same as the one in Ontario. This task force crossed the entire country and again heard from everyone who wanted to speak on the issue and came to the same conclusions as the Cornish task force.

The plight of human rights claimants in this province has not gone unnoticed by the international community as well, which in 1998 condemned Canada and this province for its backward and paternalistic human rights system and urged Canada and this province to guarantee that human rights claimants have access to a hearing. Through all these years, the association and the many vulnerable clients we represent have watched and waited as governments came and went and still no action was taken on human rights reform. Now, finally and at long last, Bill 107 provides us with a golden opportunity to achieve what so many have been studying, recommending and advocating for so many years.

What are the problems with the current system and how does Bill 107 address them? The problems with the current system are legion, and in the interests of time, I'll address only a key few.

First, the problem of the commission currently having a veto over whether or not a claimant gets to have a hearing into their human rights: What happens in the current process is that behind closed doors, a bunch of people whom the claimant has never met will sit in a room together for a day and they'll review a big pile of documents relating to some 30 to 40 cases at a time and issue their edict as to which cases get tossed out and which cases go to a hearing. The statistics show that the commission vetoes three out of every four cases that come before it—these faceless people behind closed doors—and then they issue a decision that is usually less than a page long and has three or four bullet points with inscrutable reasoning. If anyone thinks that this current system is still working, I would ask that you take a moment to sit with one of our clients and hear about the devastation they felt when, after they've pursued their complaint through the commission's process for so many years, they get tossed out with this little slip of paper with this inscrutable reasoning.

Bill 107 will fix this by getting rid of the commission veto over whether or not claimants are entitled to a hearing and ensuring that all claims get filed with the tribunal and have access to a hearing where the claimant will actually get to interact with the decision-maker, participate in the process and understand why their case wins or loses.

The next significant problem in the commission is the inordinate and inexcusable delay. You've heard about this from your constituents many, many times, that the delays are horrendous at the commission, and I'm sure there are a lot of statistics thrown around that you may have heard, and may yet hear, at this committee hearing. The significant one for our clients is that when a case goes to investigation, the average time it takes for the commission to deal with the case is three years. I've represented clients where the cases have taken six, eight, or even 10 or more years to go through this unbelievably long investigation process. This is an unacceptable state of affairs.

Then, if you make it through that, there is the incredible waste and duplication. What happens if you're one of the precious and lucky few who actually get to a tribunal hearing is that you have to start all over again from square one. All of the same witnesses who were interviewed in the investigation have to be called to give evidence again before the tribunal, all of the same documents that were produced in the investigation have to be tendered again before the tribunal, and all the legal arguments and submissions have to be dusted off again and re-presented at the tribunal, only this time the tribunal hearing is taking place some four or more years after the events at issue. Once again, Bill 107 will fix this problem by eliminating the wasteful and duplicative step of going through the commission process and allowing complainants to proceed directly to the tribunal.

The final problem I want to address is that in the current system, the commission has conflicting roles. Right now, the existing commission is burdened with the role of processing all of these individual cases and, during the course of doing that, maintaining its neutrality in making decisions about which cases go forward and which ones get tossed out. At the same time, the commission needs to be an advocate to pursue initiatives to address systemic discrimination in the province, including initiating complaints and prosecuting cases at the tribunal. These conflicting roles of neutrality versus advocacy are simply untenable. In addition, what routinely happens at the commission is that its resources get consumed by the backlog of cases, leaving precious little left to pursue systemic initiatives. Bill 107 will fix this problem by separating these conflicting roles. Rather than having two public agencies—the commission and the tribunal—processing individual cases and acting as a neutral decision maker, Bill 107 will clearly place this responsibility in the hands of one public agency, the tribunal. This will free up the commission to focus resolutely on its role as an advocate for the furtherance of human rights in this province.

In the previous submission you heard reference made to what's going on in British Columbia. The fundamental difference between what's happening in British Columbia versus what is being proposed in Bill 107 is that the government eliminated the commission in BC, whereas what Bill 107 does is free up the commission from being burdened by the individual complaint process and allows the commission to be a strong advocate for human rights and pursue systemic initiatives.

The association recognizes that Bill 107 is not perfect, and my colleague will be speaking to some of the key amendments we seek to this important and vital legislation. But we are here to say to this committee today that the fundamental structure of Bill 107 is sound, it is in keeping with the recommendations of the reports which have studied these issues, and it is consistent with our international obligations.

We are aware that there are some who disagree, some who have been our colleagues in the human rights community over the years. We have seen the so-called blueprint for reform which is being promulgated by David Lepofsky and two other dissenters. No doubt you will hear about this blueprint in submissions to come. I like to call this blueprint two steps backward, because it does nothing to address the fundamental structural problems in the current system and promises only more of the same. Throwing more money at a broken system will not work. It has been tried with the commission many times before; the money just gets gobbled up and the delays and backlog of cases keep growing.

At these hearings, I'm sure you have heard and will continue to hear a lot of strongly expressed rhetoric on both sides of this issue, and it may seem to you that we are talking about two completely different pieces of legislation. In order to find your way through this debate, what I urge you to do is go to the experts who have studied this issue and who have consulted with people across this province and across this country, including hearing and considering the submissions of the very authors of the blueprint for reform and all the others who will be speaking before you in these hearings. Read the Cornish report, read the La Forest report, and see how Bill 107 embodies the recommendations and will repair and reinvigorate the human rights system in this province and make it a beacon for other jurisdictions struggling with the same problems.

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I wish to make one more point before ceding the floor to my colleague. There are some who have been reported in the paper as keeping a kind of score card of the people who appear before this committee, counting up how many have spoken in favour and how many have spoken against. I urge this committee to see this as a very simplistic form of arithmetic that does not accurately gauge the widespread support for Bill 107.

As you are listening to the various presenters before this committee, I encourage you to ask yourself three questions:

First, ask yourself, is this presenter speaking as a representative for some larger body, or is the presenter speaking solely for herself or himself or on behalf of a group whose views have already been heard?

The second question: Does this presenter or any group he or she represents have actual front-line experience with the human rights system and demonstrate this knowledge, experience and expertise in their submissions, or does she or he, while perhaps being a member of a community protected by the Human Rights Code, not have this kind of important front-line experience with the current system?

Number three: Is the presenter merely parroting views which already have been heard by this committee without any real substantive understanding of the issue, or is this presenter providing a fresh, thoughtful and considered analysis of Bill 107?

When you answer these three questions, I believe you will have a much better sense of the considerable weight of support behind Bill 107 and the house of cards which has been built by the dissenters.

I turn now to my colleague.

The Vice-Chair: If you could identify yourself for Hansard before you start.

Ms. Yola Grant: My name is Yola Grant. I practise in the area of human rights, employment and labour law. I was formerly a member of the Attorney General's office and also functioned as counsel to the Human Rights Tribunal of Ontario. In that role, I was privileged to work on the first set of rules of procedure for that tribunal. I'm now in private practice and, like Mark, belong to the group of human rights lawyers who work on the front line, representing many different franchise claimants of various vulnerable groups who seek the protection of the code.

Mr. McMeekin: Just before you go on—I'm sorry. Mr. Chair, I'm having difficulty hearing the presenter.

Ms. Grant: Okay, I'll move this up. I'll attempt to speak louder and closer.

Mr. McMeekin: It's a combination of the noise outside—

The Chair: We'll asked them to quieten that down.

Ms. Grant: Thank you. I will make three main points dealing with the powers and mandate of the commission, the powers of the tribunal, and the supports being offered under Bill 107 for applicants to the tribunal.

First, dealing with the commission, I want to make three simple points, a couple of which appear to have been addressed this morning by the minister's announcement. The first is that the Association of Human Rights Lawyers strongly supports a commission's role to intervene in any application in which, in its sole discretion, it determines there's a public interest to enforce, and, secondly, that the commission retains its power to initiate its own applications. We know that this is a power the commission has had but not exercised in its many years of existence, and we would certainly encourage the government to retain that power and in fact to flex their muscles in this area. The third point regarding the commission's power is that it retain its investigative powers. I note that the minister this morning announced certain amendments. I'm not in a position to compare and contrast them with the current powers, but I'd ask that the powers to compel that the commission currently enjoys should be retained to allow them sufficient authority to effectively investigate systemic cases of discrimination in this province.

Regarding procedural fairness, I have a few more points to make, and I'd like to remind everyone that you should have a copy of this three-page submission. I gave copies to Ms. Stokes earlier and I believe it was distributed. On page 2 I deal with the tribunal process. I have broken it down into two areas: procedural fairness as well as substantive fairness.

On the point of procedural fairness, the first three bullets deal with permitting the tribunal's power to ensure a timely resolution, the tribunal's having flexibility similar to that enjoyed by the Ontario Labour Relations Board to stream cases depending on the complexity of the cases, and also depending on the party's expression of their wish regarding how the matter might be handled.

The third point is to ensure that the practice and procedural rules incorporate any necessary accommodations to optimize the participation of parties, whether that is translation or use of other assistive devices or methods of convening a hearing, electronically or otherwise, to ensure that parties can truly participate from wherever they are socially located.

The fourth point is one that the Association of Human Rights Lawyers feel quite strongly about: to depart from the long-established practice of dismissing complaints without providing reasons that a complainant can make sense of. So we're asking that Bill 107 limit the opportunity for summary dismissal of cases to only those applications that clearly fall outside the jurisdiction of the tribunal. When I say "clearly fall outside the jurisdiction," it might be something as simple as a matter that belongs elsewhere, that the statute to which that dispute applies can be clearly pointed out and the would-be applicant convinced to take their case elsewhere without umbrage, without concern that they are missing out on an opportunity to have their matter resolved.

The fifth bullet requires the tribunal to provide written reasons. This is something again that goes to one's notion of fairness. Particularly in dealing with dignity interests, it's important for applicants to leave a process, even when they are dismissed, understanding why they've been dismissed and having some sense that they've been heard and their matters addressed on the merits.

A final point, probably the most important point among these that I don't believe was addressed by the amendments mentioned by the minister this morning, is to require the tribunal, before dismissing any application, to ensure that an appropriate remedy has been provided to an applicant. It is common practice now to look at an application and see whether or not that person had sought or even obtained some hearing in another forum. What we urge you to consider and to support with an amendment is to ensure that that inquiry includes a look at the question of whether an appropriate remedy was provided. It's not uncommon for the very issue that is in dispute to be raised elsewhere and for the other tribunal to have deferred handling the matter, saying that they would defer to the human rights process. One must be careful that, even though a person might have been heard—in a grievance process or in a matter before the rental housing tribunal some part of the dispute might have been heard and resolved—the dignity interests might not have been addressed by way of a remedy.

On the matter of substantive fairness regarding tribunal powers, the Association of Human Rights Lawyers urges that Bill 107 provide for an expert tribunal, that members be chosen from among persons who are trained and experienced in human rights matters, and that these members be selected through a competitive and transparent process. On a separate note, from dealing with the competency of tribunal members, the association urges this committee to seek amendments that would require the tribunal to consider all relevant policy documents produced by the commission. We are asking that the

commission remain, that its investigative powers be stepped up for the purpose of systemic discrimination, but also that they continue in their role in crafting policy and assisting by way of research and policy papers to guide all of us in our work in human rights. We are asking, given their expertise and the work they have certainly done over the last 20 years in drafting policy, that these policies be taken quite seriously by the tribunal and that it's not a matter for the tribunal in its discretion to decide whether to aver to the policies but that they be required to—not that they would be bound by it but that they would certainly look to the policy, and if they depart from the policy, they do so in a conscientious manner.

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Finally, on the subject of tribunal powers, we are urging that the tribunal be provided with particular powers of inquiry that would assist applicants to ensure that proceedings are not protracted, as well as assist with the production of evidence through compelling particular witnesses to appear before them, compelling the production of documents, and other powers that today are actually quite standard powers at the Ontario Labour Relations Board.

The third area that I would like to address, being the supports for applicants to the tribunal: You've heard already of the need for legal representation and supports by way of advice and information to applicants. I would like to identify three other areas that I consider to be, broadly speaking, matters pertaining to support that Bill 107 can address.

The first is to recognize that Bill 107 provides applicants with the opportunity to have carriage and control over their matters. This act of autonomy is also a matter of dignity, which is not permitted today with the gatekeeping and veto functions provided by the commission.

A second point is that applicant status, who can be an applicant, should be broadened to ensure that third parties can apply to have matters addressed. Right now, applicant status is restricted to persons who are directly affected. Advocacy groups and other service or support organizations are not in a position to file third party complaints or applications to have matters addressed. Unions are not in a position to do so either, although they are generally recognized as a third party, an organized third party, who can, certainly before the labour relations board, function as a party. We are urging this committee to have the government look into and seriously consider expanding the notion of who can be an applicant so that service organizations that have some expertise in supporting vulnerable communities can go forward in their stead.

The fourth point on page 3 deals with the commission's ability to intervene, which we are advocating be added to Bill 107 and that it be an ability to intervene in any and all applications, that that provides yet another opportunity for support for complainants.

Finally, I propose also that should the tribunal be given special inquiry powers, that, too, would serve as a support to complainants and applicants in this process.

Thanks very much for your attention. Mark and I are available, and I believe we have five or more minutes remaining and will entertain your questions.

The Chair: Yes, we have a couple of minutes each.

Mr. Kormos: Thank you, folks. I appreciate your coming very much.

Ms. Drent, the legislative research officer, in response to one of our queries about civil court wait times, came up with the most recent data, dating back to 1997. The average civil case took three to five years to resolve and cost each litigant $38,000. That's average, and as we know, the vast majority of civil cases don't go to trial either; they're resolved one way or another—three to five years and an average cost of $38,000.

The human rights commission, in the time frame 2005-06, disposed of 2,117 cases. The average age of these files was 12.9 months. One hundred and forty-three cases were referred to the tribunal. The average age of these cases was 27.6 months, two years and a quarter. On March 31, 2006, 85 complaints—about 3% of the case load—was over three years old.

You might argue that the triaging that takes place at the onset is overly aggressive, Mr. Hart, but these are the numbers. I know that the civil court system out there may not be comparable directly to the proposal here—although I find some unique similarities—but in terms of the admitted problems in terms of the slowness with which cases travel through the commission, this is the commission's own data. How do we reconcile that with the mythical eight-year-old case? And I know there are some because my constituency office, like you said, deals with them.

Mr. Hart: I appreciate the question, actually. It's a good opportunity to address this. I don't know where the statistics on the civil cases come from, but it's apples and oranges.

Mr. Kormos: The Attorney General.

Mr. Hart: Yes. The apples and oranges that you're comparing here—anybody who has heard the current chair of the tribunal speak about the procedures that are being planned for the new tribunal structure knows that what he's planning is actually a very new and innovative process, in terms of a much more activist and inquisitorial model than the traditional adversarial model that we see in our court systems that in fact is not serving the people of this province very well. What I would expect we'll see in a direct access system, where you've got a reinvigorated tribunal which is pursuing this innovative kind of inquisitorial model, are much-reduced times. Certainly, the chair of the tribunal believes that the one-year time frame for resolving cases at the tribunal is realistic.

With regard to the commission's statistics, they spin them all kinds of different ways. When I look at their statistics when a case goes to investigation, the average length of time is three years. My cases are much longer, I find.

The Chair: Thank you very much. Any comment from the government side, Mr. Zimmer?

Mr. David Zimmer (Willowdale): I have a thought that has struck me. You used the expression, "You can find your way through this by consulting the experts." You and your colleague are obviously experts. We've heard from presenters before you who were obviously experts who came through the same system, studied the same problems and dealt with the same problems. My reflection here is that presumably you and the folks on the other side of the debate—everybody wants to get to the same place, that is, dealing effectively with these complaints. I ask myself, "How is it that experts with the same background, dealing with the same problems with the same good ambitions in place, can be so different in their approach to the problem?" I know that's a philosophical query, but I'd be interested in your reaction.

Mr. Hart: It's a very important question and a very interesting question. There is a fundamental structural and philosophical difference between the two sides of this debate. What I'm encouraging this committee to have consideration of is the fact that these very debates, in terms of different approaches to trying to address these well-documented problems, have been debated before. They were debated in the context of the widespread consultations, both in the Cornish report and the La Forest report. These blue-ribbon task forces, with people who have a tremendous amount of expertise in the areas, considered all of the back and forth and conflicting views and, having considered all of that, came to conclusions which are now embodied in Bill 107.

The Chair: Thank you. Mrs. Elliott?

Mrs. Christine Elliott (Whitby–Ajax): A brief comment: I'd like to thank you, Mr. Hart and Ms. Grant, for your presentation this morning. Certainly from the three days of travelling hearings that we held during the summer, we're very aware of the wide divergence of views here. Also, the fact that we've been presented with this summary of proposed amendments from the Attorney General this morning—I think we're all at a disadvantage here because we're not really able to comment in detail and to ask you perhaps some more specific questions with respect to your presentation. We'll certainly keep it all in mind as we get the full text of the amendments and we're able to review them in that context. So thank you very much.

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Ms. Grant: I would like to add one comment—actually, two comments. To respond to Mr. Kormos, the more appropriate comparator, in my view, would be the labour relations board or other quasi-judicial tribunals rather than the civil court system. Those other tribunals require fulsome responses, so you don't get bogged down with the cost and delays of discoveries that are a major impediment in delivering justice in the civil system.

To Mr. Zimmer, I would say that it might seem on the surface that we're of the same background, but indeed we're not. There is a huge divide in the community between those who are practitioners and those who are not.

The Chair: Thank you very much.

ONTARIO HUMAN RIGHTS COMMISSION

The Chair: Next is the Ontario Human Rights Commission. Good morning, Ms. Hall. You have 30 minutes. You may begin any time.

Ms. Barbara Hall: Thank you. Good morning. I'm here today with Nancy Austin, the executive director of the commission, who may be able to assist me if you ask questions.

I'm pleased to be with you this morning and to bring you the view of the Ontario Human Rights Commission on Bill 107 and its implications for the human rights system in Ontario. I anticipate that over the next few days and weeks, as this morning, you'll hear many considered and informed opinions about the proposed legislation. We've already heard different parties say many different things about this bill. However, I think it's important to remember as we proceed that in many respects we're all on the same side. Each of us who speaks to the committee—every group, every individual—is here because we feel the discussion is of fundamental importance. We're all committed to strong human rights, to building a better system, to promoting and protecting rights more effectively, to bringing the message to everyone.

What disagreements we have relate to how we do it. But I think the differences are not, in fact, that great, and over the past few months we've seen much movement towards a common ground in the discussion about the kinds of amendments that people advocated. The commission applauds that progress. We support the sense of compromise and consensus-building that has resulted in the amendments proposed this morning by the Attorney General. If there's more work done in that same spirit, we're confident that many differences can be addressed and, hopefully, resolved.

We've been working with the Ministry of the Attorney General for some months, recommending changes and amendments to Bill 107. New changes are still being developed. The commission will review them thoroughly and provide you with our formal comments in writing before the end of the hearings.

I hope that we're all agreed that the status quo is not an option. There's important work to be done, and reform is needed to complete that work.

The Ontario Human Rights Code is a fundamental piece of legislation. It provides the framework, a road map upon which our human rights system is based. To be successful, the code must be recognized and accepted as an essential standard on which our society is built. But from time to time, maps need to be updated and revised. As times change, the needs of the people of Ontario change with them. The time has come—is probably past due, in fact—for important changes to our human rights road map.

The commission wants change. A crucial part of our work is identifying and acting on new problems that need attention. For example, our recent work on the Forrester case has helped establish new ways to protect the rights of transsexual people. We've championed the fight

against racial profiling, including the development of a new policy to help guide police services and others.

With a renewed, broad mandate to conduct inquiries, do research and develop enforceable policies, we can continue to have a human rights system that is always moving forward.

From our position, monitoring the system and the people it serves, we're looking for change that will lead us to a better balance. That balance must be between effectively addressing individual claims and proactively creating a culture of human rights.

We are all too aware of the limitations of the existing code and have, many times, called for amendment and improvement. That's why we've welcomed and shared the government's vision of a strengthened commission, based on international principles, more focused on prevention and systemic issues, inside a rebalanced system for enforcing and promoting human rights.

From the time that Bill 107 was first proposed last spring, the commission has taken an active role in the discussion about its merits. We've met with stakeholders outside and inside government.

The commission has carefully considered the potential impact of each section of the proposed legislation, comparing it to what we have now. As I said earlier, we've recommended many improvements to the government.

One that remains outstanding is the commission's capacity to appeal tribunal decisions to the higher courts. In the past such appeals, although rare, have played an important role in advancing human rights through precedent-setting case law.

Many individuals and groups have spoken out passionately about the bill. They have sincere beliefs about what reforms are needed to improve Ontario's human rights system. Sometimes those beliefs have clashed. The result at times has been a difficult and even divisive process.

At the commission, it's often been hard for us to hear criticisms, and sometimes inaccuracies, about our work. However, I believe we've learned from the criticisms and been able to correct some of the public misconceptions. I am happy to say that we've also heard about our strengths and our successes.

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. Our thanks are due to the talented and committed staff of the commission.

Fear of losing these strengths may be the source of some of the concern and alarm expressed about the bill: the concern that individual complainants might not have what they need going forward; the fear that the good things we do now and are recognized for—the outreach, the systemic inquiries and the policy work—might be lost.

At the commission, we've listened to these legitimate concerns and considered how they might best be addressed. For us the bottom line is that any change needs to protect vital elements of the human rights system, but also bring progressive change for the better. Given the opportunity, I know the commission and the system can do more and do it better.

1050

So here we are with Bill 107 and its proposed amendments. Is it perfect? Frankly, I don't know of any perfect legislation, but it must create a framework strong enough to build on and move forward to a place we want to go, with the tools, opportunities and resources to do that. Will this bill advance the cause of human rights in Ontario? Overall, we think it can. Clearly, not everyone agrees. However, we do all agree that individual complainants must have their cases dealt with fairly, quickly and effectively, and we believe the system must change to allow that to happen.

We also believe that a human rights system primarily focused on individual complaints, as the current one is, ignores broader issues that cry out for attention. Consider that there are 13 million people in this province, often described as among the most diverse population in the world. We know from polling, from anecdotal stories and even intuitively that many more people experience discrimination than those who make it to the commission—many more than could ever hope to obtain justice in an individual, case-by-case process. So when we're looking for change, we're looking for the infrastructure necessary to address the tough issues, to identify and get rid of barriers to equity, to make our communities healthy and safe, to create that climate of understanding and mutual respect for the dignity and worth of each person spoken of in the preamble of the code and in the international human rights declaration.

The best way to reduce the need for individual complaints is to effect genuine social change. The commission needs to focus its energy on making social change happen if we're going to achieve a culture of human rights. We need to tackle the big, systemic issues through public inquiries, commission-initiated complaints, public education and outreach. We also need to maintain our broad mandate, as set out in the United Nations' Paris Principles.

We must also make sure that we make a smooth transition from an old system to a new framework. While we talk about what change might look like here, the commission is still working on existing complaints and receiving dozens of new ones every week. There will need to be a period of some months when two systems will need to operate side by side. That will be a challenge. We'll also need to find ways to ensure that the skill and knowledge of our staff are not lost to the system. But with adequate resources, we believe the transition can be made smoothly.

We believe the key task is to bring balance to the system so that the system can protect and promote human rights. To do that, we need to be prepared to make big changes; tinkering with the current system is not enough. We need to make sure the money is there to do the job

right; balance depends on that. We have an historic opportunity right now. If we don't take it, I fear it will slip by and may not come around again for years.

This opportunity could help us change focus in important ways. Our annual report this past year reminds us that issues such as racism, Islamophobia, homophobia, harassment and violence toward women, and barriers faced by people with disabilities continue to loom large in our communities. A recent survey indicated that age discrimination is on the rise. Relieved of individual complaints, the commission could expand its ability to address these issues in a strategic, systemic way. We could take the lessons learned, for example, in the restaurant initiative and apply them proactively in many other sectors.

The commission could also put more of its energy into addressing fundamental areas of human rights where the United Nations is currently focusing its international attention: economic, social and cultural rights, such as the right to housing.

We need to find new ways to involve the community in the work of the commission, and the commission in the work of the community. Such partnerships are essential as we move towards creating a culture of human rights.

If this bill is passed, the commission will work hard with all the individuals and organizations, for and against, to make this a reality.

The new legislation will need to be carefully monitored and reviewed. There may be unforeseen problems that will have to be addressed promptly. We'll do that.

The bottom line is that we can make reform work to meet the needs of Ontarians and ensure our position as a leader in human rights, in Canada and abroad. It's important work that's urgently needed. Together, I believe we can make it happen. Thank you.

Mr. Kormos: On a point of order, Mr. Chair: We're down to about three of the five government members. Perhaps a five-minute recess would be appropriate so that Mr. Orazietti and Mr. Berardinetti can hear what Ms. Hall has to say in response to questions. Mr. Orazietti left the minute Ms. Hall started. I don't know if they have a history, but—

The Chair: Mr. Kormos, it's not a point of order. We'll go to the government side, if you have any questions or comments?

Mrs. Maria Van Bommel (Lambton–Kent–Middlesex): Thank you for your presentation. I found it very interesting. On the third page of your presentation you talk about the capacity to do appeal. Could you expand a little further on that?

Ms. Hall: Yes. One of the current functions of the commission, and something that would continue, is the development of policy. Our policy is important, not just as something that is applied in the hearings at the commission, as well as at the tribunal, but also in changing behaviour.

For example, when we developed a policy on accommodation for people with disabilities, that policy formed a major part of our public education function. We met with major employers across the province, with human resource organizations, and told them how the commission interpreted that duty to accommodate, and those employers made changes in the way they responded to the needs of their employees. Human resource professionals went out to their clients and said that these are changes that promote the integration of people with disabilities or people requiring other kinds of accommodation into the society and the workplace. We're only effective with that if our policy is applied at the tribunal.

At present, in the vast majority of cases, when we put forward our policy, the tribunal, in its decisions, applies that. In areas where there's a disagreement, we believe it's essential that there be another level to determine who's right in that case. If our policy is wrong, we need to be told that. If it's right, then the tribunal needs to consider it in making its decisions. Because of that, without requiring complaints to be laid, in many cases change will be made in our society based on that policy. If it were to go to the tribunal and not be applied and there were no mechanism to respond to that difference, we believe that many people would ignore it. They'd take their chances. So a lot of the proactive work we do requires that our policy is seen as sound and what will be applied in the complaint process and as people wanting to avoid complaints make the change.

1100

Mrs. Elliott: Thank you very much, Ms. Hall, for appearing before the committee today. Your insight is really invaluable to us as we move forward with this. I just have one question, and it reflects the concerns of some of the presenters both during the summer hearings as well as the first presenters this morning about the separation of the commission from the individual complaints as they come forward, because systemic issues don't normally walk through the door. Even with the amendments that I see the Attorney General has put forward, I understand that the commission can initiate investigations into systemic complaints. I'm wondering how they'll even know about them under the new system.

Ms. Hall: We see that it is important to talk about a system. You can have systems where there are pieces that function as silos or in an integrated way, and we see it as necessary that this system will operate in an integrated way. We see, for example, having a memorandum of understanding with the tribunal that will set out in it many ways that we will work co-operatively together. We believe it's important that we be able to see the cases as they come in. We know that often, when individual complaints come forward, if there's a systemic component to them, we've already heard about that issue, and we know that particular cases with particular circumstances have systemic components. We've been told by Michael Gottheil, chair of the tribunal, that he would see in his rules the ability of the tribunal to also, in places where they've identified a systemic issue, invite the commission to intervene. It would be up to us whether or not we did that.

But I think one of the challenges of the current system is that we have identified systemic issues primarily based on what has come before us as individual complaints, and we have tended to focus on what's come in the door as opposed to working more closely with communities out there to identify what the systemic issues are and how they can be strategically proceeded with or addressed. Our priorities, in a sense, are set by what comes in the door, and I believe that there are many situations where we miss issues because communities are not connected to the process, are not aware of those rights, do not believe that there's a way of addressing them. As I said in my comments, we need to go out and work more closely with communities and set our priorities through that relationship.

Mr. Kormos: Thank you very much for coming. When I was younger, at weddings they used to ask you whether you were with the bride or the groom, and they'd seat you on one side or the other. They should have asked folks, "Are you for or agin?" so that we'd have the applause being more focused from one side of the room or the other side of the room here today.

Look, this is a very controversial issue and there are no two ways about it. There are two things I'm interested in. I have regard for what you have to say about this, along with a whole lot of other things. On page 4 you talk about, "Will this bill advance the cause of human rights in Ontario? Overall, we think it can." With respect, who is "we"? Exactly whom are you speaking for when you say, "We think it can"?

Ms. Hall: The Ontario Human Rights Commission.

Mr. Kormos: To wit—

Ms. Hall: The 14 commissioners who are the Ontario Human Rights Commission.

Mr. Kormos: I trust, then, that there's unanimity in that respect?

Ms. Hall: The commission's position is that we can.

Mr. Kormos: I trust, then, though, that there's unanimity in that regard.

Ms. Hall: The commission's position—our goal is to have a shared position, a consensus position.

Mr. Kormos: Okay; fair enough. On page 3 you talk about what appears to be your recommendation that the government incorporate the right to appeal into Bill 107, and if I'm correct in that inference, you and I have some common ground. There's been criticism of advocates for the right to appeal. There's been support by those same people who support Bill 107 of the omission of the right to appeal. Help us understand why the right to appeal is a valid and important inclusion in any system, whether it's the Bill 107 system or the system that retains a stronger, proactive commission role.

Ms. Hall: I know there are arguments that apply quite broadly in administrative law that the goal is to have an experienced tribunal, who are the best to make the decisions, and going to the courts doesn't necessarily give one that same level of expertise. I think when we're talking about human rights, we're talking about quasi-constitutional rights, and in order for us to be effective in areas like the use of our policy, the application of our policy, we need to have another body, a senior body, address disagreements that occur. There are concerns raised that too often appeals are used by respondents to delay the final resolution of issues, but we believe that it's important to have that opportunity to resolve what may appear to the world to be differences between commission policy and tribunal decisions.

Mr. Kormos: Fair enough. Mr. Hart suggested that the commission spins its data. Were you here when he said that? I'm hard-pressed to believe that. Are you?

Ms. Hall: We take our role seriously. I talked about the fact that there have been some criticisms that have been hard to take. I think there have been other criticisms that have been easy to ignore.

Mr. Kormos: So Mr. Hart is a little off base on that one?

Ms. Hall: I think that what appears on our annual report and any of the material we put out is based on an un-spinned version of the facts.

Mr. Kormos: Thank you, Ms. Hall. I appreciate your coming here today.

The Chair: Thank you, Ms. Hall.

1110

RAJ ANAND

The Chair: Next we have Raj Anand. He's a former chief commissioner and tribunal member. Good morning. You have 30 minutes.

Mr. Raj Anand: I understand that a motion was passed, I believe on August 9, calling on former chief commissioners to come before this committee, and I'm pleased to do so and to provide whatever assistance I can.

I was hoping that my successor, Catherine Frazee, would be able to share my time this morning. She was planning to do so but was unfortunately unable to come today because of the death of a close friend. I understand that she will be appearing later on.

The 1962 Human Rights Code was based on a 1947 New York state model, which has been replicated across Canada—in most of the 10 provinces, the three territories and the federal jurisdiction—throughout the 1960s, 1970s, 1980s and even into the 1990s. That 1947 model is based on an outmoded concept of discrimination and a rudimentary administrative law structure. The result is that despite the dedicated and hard-working staff and commissioners, and of course the current chief commissioner, Barbara Hall, it is a model which has outlived its usefulness, and I can say it outlived it long before I became chief commissioner in 1988.

I have to say that in my home office, I have a plaque on the wall which was from 1988, celebrating the 40th anniversary of the Universal Declaration of Human Rights, and it's signed by the Premier and the minister and myself. Unfortunately, it is a piece of paper that I think symbolizes the wide human rights protections we treasure and are proud of as Canadians that exist in our

law but are effectively unenforceable before human rights commissions, today and for some time.

The Ontario commission, in my respectful view, had ceased to be effective before the time that I was there. It was ineffective before, during and after my tenure as chief commissioner because the structure in place was ineffective. I campaigned and lobbied and secured a 50% increase in its budget, but that didn't serve the purpose, because I and other chief commissioners were limited by the existing legislation. In my case, I know I tried to improve enforcement capacity and promotion of equality through various administrative and organizational reforms, but the legislation, then and now, was an obstacle.

Since that time, I've practised before the commission, I've represented the Ontario and federal commissions, I've sat on a tribunal hearing cases brought by the commission, I've tried to teach some of these concepts of creating tribunals and shaping administrative practices to master's students, but more than anything else, I've represented complainants and respondents in human rights cases before human rights commissions, before labour arbitration boards, before the courts.

When I say complainants, I'm speaking of individual complainants who have suffered sexual harassment, racism, the refusal to accommodate disability or their religious beliefs, homophobia, age discrimination and so on.

I've also represented a number of organizations which are at the grassroots of these issues, such as CERA; MARC, the Minority Advocacy and Rights Council, which I chair; NAPO, the National Anti-Poverty Organization; OCAP; the Foundation for Equal Families; the Native Women's Association; many legal clinics and South Asian organizations.

I also want to note that I represent and have represented respondents—employers, housing providers such as co-ops and non-profits, sports organizations, hospitals, universities and so on—and I hope I can bring that perspective as well.

I've tried to work in the areas of access to justice through organizations such as Pro Bono Law Ontario, the late and lamented court challenges program, of which I was a panel member until a month ago, and the equity advisory group. I tell you this not to give you my CV but so that you can assess—and I would ask you to assess—the positions of those who favour the retention of the gatekeeper.

When you have witnesses before you, I recommend that you ask what their actual experience has been of litigation before the Human Rights Commission or a tribunal. I say that you need to ask these hard-working and well-meaning advocates, do they take complaints before the Human Rights Commission or do they, as I do, spend a lot of time advising people on how not to go to the Human Rights Commission but to find other processes and remedies which are more effective? It's because of that that we've had a plethora of other statutes and organizations created. The Pay Equity Commission, the application of disability rules at the Workplace Safety and Insurance Board and tribunal, internal human rights processes, collective bargaining, human rights processes—all of these have been designed to take over where the commission structure, in my respectful view, has failed.

I suggest when you hear from those who say that the solution is not to reform the system but to throw money at it, or who say that human rights officers provide support to complainants so don't take that away, in fact the reality is that by law they provide nothing of the sort. Their first disclaimer to the parties, and it's a legitimate one, is that they represent no one. They are neutral investigators. They therefore, as Mr. Hart said earlier, have conflicting roles from the outset.

Or those who say that direct access is wrong because complainants need representation—the fact is that complainants get public representation at no stage of the 44-year-old process in Ontario. None. At the tribunal, for those 5% who get to the tribunal, the public representation is provided by the commission, which often takes a different position from the complainant, and the complainant is left to hire counsel, to seek legal aid or in some other way to obtain legal representation. Indeed, in some cases—and I was involved in one fairly recently—the prime opponent of the complainant is the commission. That was true in a constitutional case that I was involved in, in which the commission took the position that it had no jurisdiction and the complainant had to take this up to the Court of Appeal—unsuccessfully, I might add—but the commission was, at all points, on the opposite side of the complainant. So there's no public representation of complainants under the present system and there never has been.

There are those who say that the gatekeeper function of the commission should be retained. The result of that is that the entire decision-making function has to be done at least twice before getting to a decision on whether there was discrimination. That's our present system and that, from a standpoint of public administration, which in my respectful view should concern you, duplicates the cost and duplicates the time. It's not solved, as some have recommended recently, by adding layers of appeal to the paper hearing at which commissioners spend something like seven minutes per application before them at the meeting in deciding whether the matter should go on to a tribunal or not.

Finally, you have to ask those who say that the enormous delays can be reduced under the current system—let me make no mistake about this. Delay is the single most debilitating factor of human rights enforcement in this country. It renders the human rights enforcement process ineffective in and of itself. It results in complainants giving up their cases and making settlements for virtually nothing. It results in respondents throwing a little money, relatively for them, at a complainant in order to be done with the process rather than spending a whole lot more on lawyers. So in terms of access to justice, it denies access to both sides.

1120

As we know, the fundamental structural difficulties in the Human Rights Commission process across the

country have been revealed by any number of studies and commissions, including, as you've heard, the very capable and expert inquiries by Mary Cornish and by the panel chaired by former Justice La Forest, as well as repeated reports of the international Committee on Economic, Social and Cultural Rights and the UN Human Rights Committee.

There is no right to a hearing under the current statute. Ninety-five per cent of complaints are screened out, abandoned or settled, with no decision on whether discrimination occurred. One might ask, if you told the landlords of this province that an application to the Rental Housing Tribunal for nonpayment of rent would be subject to an investigation and a discretionary decision on the part of the Rental Housing Tribunal on whether, in its discretion, it chose to allow a hearing of whether a tenant should be permitted not to pay rent, I fancy to say that you'd have landlords marching in the streets. Instead, we have quasi-constitutional rights that are subject to that discretion and it's virtually unreviewable by the courts.

Again, I ask you to consider that as you hear those who criticize the absence of an appeal right in Bill 107, something which the chief commissioner addressed and which I'm happy to speak to as well in greater detail.

At the La Forest task force, that blue-ribbon panel found virtual unanimity across the country that the system was broken, and not just underfunded but broken. They asked me to draft sort of a detailed blueprint on what should replace it. What I recommended was what I called a modified labour board model. This addresses to some extent Mr. Kormos's question earlier about the appropriate comparator: the courts versus another administrative tribunal. I say "modified" because the labour board model is essentially one in which you file a case and you get an adjudication. You don't necessarily get an oral hearing. There are a variety of innovative possible structures in terms of how the case is heard, but you get a binding adjudication on the merits, which you don't get in 95% of the cases currently—modified because you're not dealing with two relatively equal parties in trade unions and employers as you are at the labour board; you're dealing with vulnerable, disadvantaged groups by definition if they have a valid human rights complaint.

Therefore, there has to be publicly funded legal representation for complainants. That was essentially the model that I recommended. It was essentially adopted by the task force, creating essentially three branches, the commission being left to the work it does the best—the policy and research and public education work—as well as the right to take over or intervene in any individual human rights complaint. That, as I understand the Attorney General's proposed amendment that was announced to you today, is what is being substituted for the former systemic restriction which Ms. Elliott was asking about earlier. As I understand the proposed amendment, the commission will be permitted to file an application at any time where it views that application as being in the public interest. So it could include individual as well as what we call systemic complaints. As I understand it, the systemic definition, which is problematic, is not going to be part of that because it would only feed litigation over definitions.

The essential element is the right of the Human Rights Commission, as a public advocate, to intervene or to initiate complaints. I commend the Attorney General for having clarified and added that. I see that, quite frankly, as a victory and a recognition of the valid criticisms that have been put forward during consideration of this bill by what some would regard as opponents but I certainly regard as those who want to contribute to a better process.

The other aspect is a mandatory legal support centre. Again, as I understand the announcement this morning, that is going to be enshrined in legislation. It's important that that legal support centre be independent of government, of the commission and of the tribunal, and that it be properly funded. I commend the proposed amendments that make this mandatory, because direct access, and I would be the first to say this, falls to the ground without proper legal advice and representation. What you get is the BC model or, indeed, the present Human Rights Code, neither of which provides this essential representation function.

There must be a role for the Human Rights Commission as a publicly funded advocate, not as a gatekeeper to prevent access but rather as an advocate to do the difficult and proactive public policy work that Chief Commissioner Hall was speaking of, which is vitally important to avoid complaints; to change practices not through the labour-intensive, costly process of complaints, but rather to do it in a more substantive, proactive way; to advise the labour federations, the manufacturers' associations, the housing associations and so on as to what the proper practices should be and get them to make proactive change rather than waiting for an ex post facto complaint.

The tribunal, under this legislation and under its rules, must have the tools to run both fair and expeditious hearings—expeditious for the reasons I gave earlier in terms of delay being the single most debilitating factor. Fair is obvious: It has to be fair to both sides. That doesn't mean one-size-fits-all, in terms of an oral hearing going on for three weeks with interminable witnesses for every case. The tribunal, like any modern administrative tribunal, has to be given the tools—and I understand the legislation gives it those tools—to adopt practices which are suited to the complaint in question. So some cases will get a summary dismissal. Some cases will require further inquiry akin to discovery. Other cases can go to an oral hearing. It will depend on, for example, who's behind the complaint, whether it's a legal support centre, a legal clinic, an advocacy organization, a lawyer. Make no mistake of it: Lawyers in the private bar, I expect, will have a small role to play under this new structure, contrary to some of the criticisms that have been levelled at it. Certainly, that's what I anticipate.

The tribunal needs to be able to tailor the adjudication process to the nature of the complaint. It's undoubted that

frivolous complaints don't deserve the same expenditure of resources as cases involving a broad public interest issue. There are many interests at stake, and they need to be balanced.

Again, like many others, I would say that the legislation is not perfect. It can be improved through clause-by-clause, and perhaps even in the future. The essential elements are in line with international and domestic obligations and are the right ones, in my view. Persons protected by or subject to the human rights system deserve an enforcement system that is more than the piece of paper I have on my wall. So I urge you to pass this bill into law after due consideration of possible amendments.

1130

The Chair: Thank you very much. You have about four minutes each. We'll begin with the government side.

Mr. McMeekin: Thanks very much for your presentation. I was particularly impressed with your repetition of the concern about the appeal mechanism. I think, personally, that that's one of the weaknesses I've seen in the legislation. Some of the amendments that have been brought forward by the Attorney General today and the words of many of the presenters, including the commission itself and its chairperson—you're reinforcing that, given the propensity to have all these sidebar deals cut that are really not in the interest of true justice in the longer term, we really need to ensure that that appeal mechanism's there. Is that correct?

Mr. Anand: I'm not sure about that. I don't take a strong view on that, because I think it's a tough issue, quite frankly. I think there are strong arguments on both sides. There's the traditional administrative-law argument, which is when the courts should maintain a position of deference to administrative tribunals. The landscape may have changed somewhat this morning in the sense that in the proposed amendments I note that there will be specific requirements of experience, expertise, interest in and sensitivity to human rights as well as representativeness of the diversity of Ontario's population. That changes the calculus to some extent. The choice is, really: Do you want these decisions to be made by, let's call it, an expert tribunal with particular sensitivity and knowledge of human rights issues or do you want them to be made by generalist judges who have no necessary expertise in these areas? That's point number one.

Point number two is that the appeal right, by and large, has been exercised by respondents and not by complainants or by the commission to the divisional court in this province. That's their right—I'm not criticizing that in any way—but one has to take that into account, in keeping with what I said a moment ago in terms of the prevailing stances, to the extent that there are any, of the courts versus tribunals.

There's a reason why you don't simply have a right of civil action for human rights in the courts. That's what you have in the United States. The EEOC has a six-month period in which it can try to deal with the case and determine it. Either way, they don't have a gatekeeping function and the case goes on to the courts. But it's a civil action, a jury trial, it has all the costs and so on and it's put in front of generalist judges. So I think there are strong arguments in favour of restricting judicial review by way of the path of the "patent unreasonableness" standard.

Mr. McMeekin: I appreciate that clarification.

Mrs. Elliott: Thank you very much, Mr. Anand, for appearing before the committee this morning.

My only question relates to the rules of procedure that are to be adopted by the tribunal, which may have changed again somewhat with the amendments that have been proposed by the Attorney General. Once we get into the text of it, I guess we'll really know. But just on the face of it, it would appear to me that it would still be more or less the status quo in the sense that the Statutory Powers Procedure Act may still not be required to apply to the rules of the tribunal.

Do you have any views on why that should be so? I'm presuming that you would agree that they shouldn't need to apply. That has certainly been a concern that's been expressed to our committee, that those basic rules of natural justice should apply. I'd appreciate your comments on that.

Mr. Anand: I think that generally the rules under the SPPA should apply. It's difficult to answer the question in the abstract without looking at a particular rule and its particular equivalent in the SPPA, but I think the principle is clear—and, indeed, it's clearer now than it was yesterday—that the concern that has been validly expressed that complainants would see their cases disappear, in the sense of being dismissed, without reasons and without visible face-to-face adjudication of some kind has been drastically reduced, I would suggest, under this, and it should be. The tribunal has to have the power, in the interests of the public and in the interests of the parties before it, to look at a case as filed and say that it's outside the jurisdiction; for example, it should go to the federal commission and it need not go through an oral hearing for that purpose. It's the kinds of tools that the labour board has in those cases, but I think that it should be subject to an overriding requirement that the process be fair and expeditious in the circumstances. That will limit the circumstances in which an oral hearing is not required, and I think that's the way it should be.

Mrs. Elliott: Just one quick follow-up: Would you be in favour of removing the provision in the act that says that the SPPA does not apply to these proceedings?

Mr. Anand: In general, I would be, but I would have to see exactly what the rules say before being able to say that clearly.

Mrs. Elliott: Thank you very much.

Mr. Kormos: Mr. Anand, you know, I hope, that I am a fan of yours, because I have counted on your counsel and relied upon it any number of times.

In your comment about the funding proposal, I was here, as you were, with the Attorney General, who conjured up visions of offices of the worker adviser or legal

aid clinics across the province that are hard-pressed to deliver the modest amount of services that they're mandated to do.

We were up in Thunder Bay and we had a presentation by the aboriginal legal aid clinic—I hope I haven't mistitled it. This small legal aid clinic is responsible for the two ridings of Kenora–Rainy River and Timmins–James Bay—Howie Hampton's and Gilles Bisson's—which cover the whole border from Manitoba to the Hudson's Bay to James Bay's coast. They're saying that Human Rights Code access was a big issue. That remains to be seen.

Mr. Anand: This can't be a Toronto-centric model. It has to be regionalized as well.

Mr. Kormos: Yes, thank you—and pretty highly regionalized, huh?

Mr. Anand: I would expect so.

Mr. Kormos: You talk about the labour board, and that's fair enough. I have this problem in terms of understanding the parallel, because the labour board deals with a contractual relationship, primarily. There's a public interest being expressed between workers and their bosses. What about the distinction between human rights advocacy in the public interest, as, for instance, Criminal Code prosecutions are conducted in the public interest—it's in the public interest to suppress crime—versus these private relationships, like worker-boss relationships, notwithstanding that there's a public interest prevailing; similarly in landlord-tenant tribunals—and I appreciate the expertise element of tribunal. There are some of us who see the role of the commission as very significant in terms of prosecuting, if you will—

Interruption.

Mr. Kormos: Somebody's BlackBerry keeps going off, and that's what causes that damned disruption.

How about that distinction, because that takes us into this whole Bhadauria decision, yet the legislation incorporates human rights violations into civil actions if you can tie it into something else. It's the bastard child or offspring, if you will, of the marriage between Bhadauria and the American model. Respond to those for us.

Mr. Anand: You've asked a lot of questions. I'll try to answer them. First of all, you're right that there's a distinction between the labour board model and the human rights system. That's why I called it a modified labour board model. Without the public interest element in the form of a legal support centre to advise, assist and represent complainants in the human rights process, I say that the system falls to the ground, and it falls to the ground for exactly the reason that you've indicated: that there's less of a public interest. There's obviously a public interest in facilitating collective bargaining; the Labour Relations Act says that. But there isn't the same public interest in every case, with the result that if the labour board gets a consent from a union and an employer, it signs it on one line and that's the end of the case. It never really looks at it again. Indeed, I had this situation when I was chief commissioner, where the same case was essentially filed before the labour board and the Human Rights Commission. The labour board said, "Yes, sir," to it because that's the way it does its business. It's not an advisory tribunal. But there was still a human rights complaint, to which we said, "No, sir," because there was a public interest in the case going on and we were not going to sign the settlement.

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So I agree with you that there is a distinction. That's why, as I say, there are at least two modifications to that, as I see it, in this legislation. One is mandatory legal support and the second is the role of the Human Rights Commission. I agree with you that the Human Rights Commission should have a role in certain cases where it wants to take on that role, and that, frankly, is what I recommended to La Forest as well. It was a stronger role for the commission, in the sense that the commission would be allowed to take over a case in that situation but could not be the gatekeeper. Under this legislation it can't be the gatekeeper, but it can initiate, under the amendments proposed today, any complaint where it views it as being in the public interest.

The final point with respect to Bhadauria: Again, that's a difficult problem of public administration. Right now, you can file a human rights complaint and file a civil action in the courts over the same dismissal, and the jurisprudence is that they both go forward. Well, that's two-stop shopping, it's duplicative, it's costly and respondents resent it. On the other hand, a complainant may get different remedies before the two different bodies, and so it's important to try to marry that in some way that's feasible.

Mr. Kormos: Thank you, sir.

The Chair: Thank you, Mr. Anand.

CARP

The Chair: The next presentation is from CARP: Mr. Bill Gleberzon. Good morning, sir.

Mr. Bill Gleberzon: Good morning.

The Chair: You have 30 minutes. You may begin.

Mr. Gleberzon: I think that my presentation may take a somewhat different slant than that of the previous speaker. But before I begin, I'd like to tell the committee something about who we are. We represent 400,000 members across the country, 250,000 in Ontario, who are 50 years and older, retired or still working. We're a non-profit national organization that does not receive operating funds from any level of government. Our mandate is to promote and protect the rights and quality of life for mature Canadians and Ontarians. Our mission is to provide practical recommendations for the issues we raise. CARP's magazine has close to a million readers, and our websites are accessed by 350,000 unique visits per month.

I'll say that this was written before the announcements were made, so we'll make allowances for that. The addendum that's been handed out addresses the announcements that were just made.

While there seems to be a consensus that reform of the Human Rights Commission process is necessary, CARP opposes the proposed total revamping of the Human Rights Commission as outlined in Bill 107 for a number of reasons. The bill goes too far in trying to correct flaws that have been identified with the current commission, such as the time it takes to resolve cases. However, issues such as these can be rectified by amending existing regulations and procedures without the major overhaul proposed in the new bill.

It is likely that the legislation will not eliminate or reduce the chronic backlog of human rights cases. Rather, it will shuffle the lineup from the commission to the tribunal without setting enforceable deadlines to ensure that cases are heard and decided within a reasonable time. In fact, the gatekeeping function—that is, to ascertain if "the proceeding is frivolous, vexatious or is commenced in bad faith"—that has bogged down an expeditious resolution of cases before the commission will now have to be undertaken by the tribunal, so nothing's been resolved at all in that regard. In fact, because cases are still before the commission at the time of transference of responsibilities to the tribunal, the time lag will be increased as both old and new cases will simultaneously be before the tribunal. This will necessitate that the tribunal hire additional staff to dispose of the extra workload, I would assume, unless they're just going to let it pile up, which I assume they won't want to do. The legislation may force hundreds of current discrimination cases to start all over again in the new system without the benefit of continuity.

By splitting the commission and the tribunal, the roles of each will be undermined because the current integrated process will be replaced by silos. And by creating an anti-racism secretariat and a disability rights secretariat, the commission will be subjected to further silos. It seems to us that the government should be moving in the opposite direction: You integrate silos wherever possible rather than create them. As well, the appearance will be created that the areas represented by these two secretariats are the primary foci of the revised commission. In fact, it's our understanding that the African Canadian Legal Clinic opposes the anti-racism secretariat and that ARCH opposes the disability rights secretariat.

Bill 107 is based on the assumption that the heads of the commission and the tribunal will automatically collaborate. Although the current heads appear to be eager to do this, there's no guarantee that their successors will follow suit. Systems have to be built on legislation, not on the goodwill of particular individuals.

Human rights protection in Ontario will be weakened if the blending of investigation and prosecution of both systemic and individual cases does not continue. The tribunal will only deal with individual cases, and therefore systemic investigation and prosecution will suffer and permit the continuation of systemic discrimination. Of course, that's been changed with the new amendment, because the commission will be able to undertake investigation and prosecution of systemic discrimination. But the fundamental principle doesn't change. It's a kind of papering over, making a smiley face out of a bad situation. While the commission can make representations regarding cases of systemic discrimination to the tribunal, Bill 107 places the latter organization under no obligations to permit the commission's intervention. And I gather that the new amendments do not change that restriction.

The present cost-free legal representation is not protected in the legislation and could be replaced with fees. The legislation only vaguely refers to the possibility of legal assistance, in 46.1(1). Although the minister has stated that free legal assistance will be available without means testing, this verbal promise is not ensured in the legislation, and, as I'll point out, we believe the amendment does not ensure it either. Otherwise, the major beneficiaries of Bill 107 could be the legal community—I know the previous speaker has said that he doesn't believe that would be the case, but we do—and probably the province because the cost to the consumer could limit the number of cases before the tribunal since many Ontarians would be unable to pay legal fees.

The legislation permits the Human Rights Tribunal to charge user fees, which is unacceptable in principle. Moreover, according to the legislation, human rights complainants may have to pay their opponents' legal costs if they lose. Right now, the tribunal can order the Human Rights Commission to pay the legal costs of the party accused of discrimination if the complainant loses.

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The current right to appeal decisions of the tribunal will be eliminated, and judicial review of a decision will be seriously restricted to the difficult test of demonstrating that the decision is patently unreasonable. You heard from the previous speaker, and we heard from others, that judges do not necessarily have the training to deal with appeals of human rights cases. When you get down to it, a lot of judges don't have the necessary skills in a lot of the cases they hear, so it's a non-issue when you get down to it. That's why they take time in making their decisions, so they can bone up on what they don't know.

The changes to the Ontario human rights system proposed in Bill 107 are unique, as far as we know, and there's no evidence or precedent to demonstrate that the division between the commission and the tribunal will produce more effective and efficient human rights protection for Ontarians.

The commission has served as the defender of the public interest. This role will be severely weakened as a result of the proposed legislation. Indeed, there is no one on the tribunal to assume this role, because they believe that to do so would bias them. We heard that from the chair of the tribunal. Therefore, it is essential for the commission to be directly engaged in individual human rights cases in order to provide depth in their reports, public education and advocacy regarding systemic violations and protection. Individual and systemic cases go together. That's how you learn that cases are systemic, because you've investigated the cases of a number of individuals.

An example of the importance of the crossover of roles is the commission's outstanding document Time for Action. To remind the committee, I brought a copy of that document, which is outstanding. It serves as a model to fight ageism—and I'm just talking about the ageism part of it in this regard—across Canada. In fact, Time for Action had a major influence on the abolition of mandatory retirement in Ontario. So that's the result of blending individual and systemic approaches to human rights investigation and trials.

Indeed, the Human Rights Commission itself has played a leading role as a model for other provinces and, I understand, for other countries as well. This role will be jeopardized by the proposed legislation.

The results of British Columbia's tampering with its human rights commission shows that ill-conceived changes can undermine the protection of human rights, which is exactly what has occurred in BC.

In conclusion, CARP recommends that Bill 107 should be withdrawn entirely and sent back to the drawing board. This review should include broad consultations across the province to maximize participation rather than consultation only with selected individuals.

I'd now just like to make some comments on the proposed amendments to Bill 107, which we found out about in today's Toronto Star. Apparently, the minister is pledging a human rights legal support centre, where needed. We don't know what that means. Based on what criteria? Will it be income tested? Because while it's true we want to make sure that poorer complainants have the right to appear before the Human Rights Tribunal, why should that not apply to those who do have money? Why should they pay to defend their human rights? We therefore find this all very vague.

The second amendment talked about limiting the tribunal's power to dismiss a case as frivolous without first holding a hearing. Well, the only way they're going to do that is by lengthening the process of investigation, which is, as we understand, what caused the introduction of this legislation in the first place. This bill won't solve that problem, which, as I say, we understand was at the core of the legislation in the first place.

The third, we understand, was to give the commission investigative and enforcement powers to pursue cases of systemic discrimination, and will stipulate that the commission's report goes to the Legislature. This is moving in the right direction, especially in regard to its reporting structure, but also, I should add, in regard to allowing it to investigate and enforce these kind of cases. As I said, without blending individual and systemic cases, we won't get the kind of strength and depth that is needed in understanding what is going on across the province. But this reporting structure should apply to the tribunal as well, or the gulf between the two silos will be widened even more. Similarly, the split between the two silos will be accentuated by differentiating the areas for investigation and enforcement.

CARP advises this committee and the Attorney General to talk with the commission staff, if it follows our advice about withdrawing the bill, because who else knows better what solutions are needed to make the commission more effective and efficient? I can talk only of my own personal experience in a variety of management positions, in which I found the only way to find out what's going on and what should be done is by talking to the staff who deal with the issues on a daily basis.

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

Mrs. Elliott: Thank you very much for your presentation. It was succinct, concise, and I think really identified the major issues that are outstanding with respect to Bill 107. Again, until we've all had a chance to review the amendments in depth, we're not really going to know whether all of your questions have been answered.

My concern, as is yours, is with respect to the operation of the systemic investigation of complaints versus the individual investigation of complaints, that there really need to be some communication supports, reporting supports, something built into the legislation to make sure that that communication does happen, because I think that's key if the commission is to have value for investigating systemic complaints. So I certainly agree with you in that respect. I guess we'll have to look forward to what's actually in the amendments to see how they deal with it.

Mr. Kormos: Thank you very much, Mr. Gleberzon. The members of CARP are well served by their organization. You are one of the most effective advocacy groups and one of the most effective lobbyists for the greying members of our society, which includes more than a couple of people in this room; I'm talking about here at this table.

You raise some very interesting points. I sat here through Mr. Bryant's comments this morning and read his briefing note, and I don't take a whole lot of comfort. There may not be a means test in the provision of these services, but—I don't know if you're familiar with the Office of the Worker Adviser here in the province of Ontario. They advocate for workers in front of the WSIB, and their backlogs are two and three years. The backlog is created at that level of intake. So there may well not be a means test because what that means is that people with means don't have to use the advocate that the Attorney General claims will be provided. They don't have to wait two and three years for their case to be processed through the stage of the human rights legal support centre. So people who've got the cash can go to the head of the line. Down where I come from, we call that a two-tier justice system. It doesn't seem fair at all.

You are also the first person here in Toronto during these committee hearings who has raised an element of the bill that is not going to get the attention that it should, although, having raised it today, you may well provoke more interest. Burying an anti-racism secretariat and a disability rights secretariat in the commission, rather than having these as stand-alone bodies with their own funding and their own mandates, I think—and I agree with you—is a slight to all Ontarians, because all Ontarians have an interest in fighting racism and advocating for the disabled.

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The issue of cost: When you privatize the system, when you turn it into a litigious system where there's direct access, of course you have to have costs, because respondents will argue, "If I'm being prosecuted and the claimant is unsuccessful, why should I have to bear my own legal costs?" Once again, as some of us in this room know, when you go into a lawyer's office, Mrs. Elliott, and you talk about wanting to litigate against somebody, one of the first things the lawyer has to do is caution that person that even though they may have a pretty good claim, if they lose, they're going to have the CIBC daylights kicked out of them in terms of having to pay costs. That's a real barrier. Isn't that strange, a commission that has contained within it a disability rights secretariat building this kind of barrier to people seeking redress for discrimination, or for victims of discrimination to be told, "You've got to be careful, because if you proceed with this and should you lose"—because we know, Mr. Zimme, —don't we, that one of the other things lawyers have to tell their clients is, "No matter how good you think your case is, there's always a chance of losing. If you lose, you could have to pay costs"?

You've raised some very significant issues and I truly appreciate your participation in this process.

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

Mr. McMeekin: Hi, Bill. How are you? You and I have fought a lot of battles together, including the battle against ageism and the move away from mandatory retirement, so I know first-hand some of the abilities that you and CARP bring to the table, and interestingly the seniors' secretariat, which you've been very active in.

I was intrigued by your comments about silos. Frankly, I'm easy about it as long as it gets done. I just would make that observation. But as usual, your comments are helpful, particularly your reference to legal assistance for Ontarians, some clarification of that, and the fact that there's no requirement that the commission limit itself to systematic discrimination issues. I appreciate that as well.

Let me focus in, then, on your suggestion about the silos, because we've had some discussion about that, whether that's the right way to go or not. There is a belief in some quarters that when you set up a secretariat, be it a secretariat to deal with a co-operative as an economic development tool, which I will be presenting a private member's bill on down the road, a seniors' secretariat, a racism secretariat or whatever—can you comment about your reference to silos, and if CARP's position is not to go there, what alternative focus might guarantee that we get the job done there?

Mr. Gleberzon: I think you have it. It already exists; we have an integrated system that already exists. What it needs to be is reformed, not totally revised. I'm not sure if that's what you're asking me, but that's where I think the answer lies. By speaking to the people who know how the system should work, who know how it does work and how it can be repaired, I think we can get the kind of system you're talking about, one that's going to be fair, one that's going to be expeditious, one that's going to—I can't say it would reduce costs, but use money wisely. I think that's the way to go.

Mr. McMeekin: Ms. Hall was out this morning, and she went out of her way to say that that's exactly what the commission is doing: meeting around the clock with the government to make sure things are fair and expeditious.

Mr. Gleberzon: But I think that, talking of silos, creating these kinds of silos within the human rights sector will go against that effort.

Mr. McMeekin: Bill, you may be right. I really appreciate your wise counsel on that. Thank you.

The Chair: Thank you for your presentation.

COALITION FOR LESBIAN AND GAY RIGHTS IN ONTARIO

The Chair: Next we have the Council for Lesbian and Gay Rights in Ontario. Folks, can I get you to state your names for Hansard before you speak. You have 30 minutes, and you may begin.

Mr. Richard Hudler: My name is Richard Hudler. Thank you very much for giving us this opportunity to address the committee. I would like to introduce us and say a few words, and then the others will speak. Arti Mehta is our political action coordinator. Tom Warner is the founding member of the Coalition for Lesbian and Gay Rights in Ontario—it's "Coalition"—and we call it CLGRO. He is one of our directors. He has a long history with the Ontario Human Rights Commission, having served as a commissioner from 1993 to 1996. Nick Mulé has been with CLGRO since 1989 and is also one of our directors. He is chair of the Rainbow Health Network, a reference group of CLGRO.

I am the CLGRO administrator. I also have some history with the commission, having served for a period on a gay and lesbian advisory committee that was set up on sexual orientation shortly after sexual orientation was included in the Human Rights Code, and having gone through a successful complaint process 10 years ago.

The Coalition for Lesbian and Gay Rights in Ontario is a coalition of some 20 groups and hundreds of individual members in all parts of the province. Founded early in 1975, CLGRO has concentrated its efforts in the areas of grassroots organizing, public education and government lobbying. Since the first 12 years of CLGRO's existence was devoted to getting sexual orientation included in the Human Rights Code, CLGRO also has a long history with the commission.

When I filed my complaint against the mayor of the city of London, Ontario, for refusing—

Mr. Kormos: Dave says she's back.

Mr. Hudler: Yes, I hear that.

Mr. McMeekin: They can't find her there.

Mr. Hudler: —for refusing to issue a proclamation for lesbian and gay pride in 1995, I wanted the complaint to be in the name of the Homophile Association of London, Ontario, which had filed the application for their

proclamation and of which I was president at the time. It was necessary for me to file as an individual.

I want to express my appreciation of the changes suggested in Bill 107 which will allow for systemic complaints and will support the ability of the commission to deal with such complaints.

There are other aspects of the legislation which we support and there are aspects we seriously believe need to be changed, and I will ask those to be addressed by Arti, Tom and Nick.

Ms. Arti Mehta: The Coalition for Lesbian and Gay Rights in Ontario believes that Bill 107, if adopted as currently drafted, could establish a much weaker and less accessible human rights system in Ontario than the one we have now. While there is much in Bill 107 that is commendable and that is intended to streamline and enhance the system, those features will not be sufficient to ensure that Ontario has a better human rights system than we have today unless the bill's obvious flaws are corrected.

In particular, we have been concerned that the new system created by Bill 107 in its current form would not be publicly funded in the future. We have been worried that we could be confronted with a system in which users would be required to pay fees in order to make an application to simply get the chance to have their complaint considered. In addition, Bill 107 could result in a system in which there is no guarantee that complainants would be provided with free legal and other assistance in the preparation of their complaints or in understanding the legal process that would be used to deal with complaints.

We do welcome the fact that Bill 107 would establish a new Human Rights Commission having a mandate to identify and promote the elimination of systemic discrimination practices, including developing and conducting programs of public education and information. And providing complainants with direct access to the new Human Rights Tribunal for disposition of their complaints is a positive change.

But we are calling for substantial amendments to Bill 107 to strengthen its provisions and ensure that the new human rights system that it establishes really will be more efficient and more effective than the one we have now.

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Mr. Tom Warner: We are aware that the Attorney General has stated that Bill 107 will be amended to ensure that the system will be publicly funded and that every complainant will have access to free, independent legal counsel to handle their case regardless of the complainant's income, although I gather there's still some question as to whether that is the case, but that was our understanding. However, very few details have been provided to date to give assurance that the new system will have the infrastructure necessary to provide assistance to complainants, will have sufficient public funding and will be robust enough to ensure that complainants really do get their day in court.

I was a member of the advisory committee to the Human Rights Code Review Task Force that produced the Cornish report that recommended a new system to provide direct access to a tribunal process. Bill 107 contains this important change, which CLGRO supports. We do not support calls that have been made by many other groups in the province to scrap the direct access route and to retain the investigation requirement and process of the current system. Direct access to the tribunal process offers the best prospect to overcome the all-too-well-known problems of backlog, delay and dissatisfaction with the investigative process that plague the current system.

But a key feature of the Cornish report's proposed new system was providing direct access to a tribunal process within a publicly funded system in which regional equality rights centres would provide free legal and other assistance to complainants. There was no contemplation that users of the system would be required to pay to access it or to cover the costs of a hearing. As the report stated, "The public commitment to funding representation for human rights claims is crucial and should be continued. It represents an important statement by Ontarians that discrimination is a societal problem requiring publicly funded solutions." That's from "Achieving Equality," on page 62. Accessibility by those who have a need to access the human rights system was a cornerstone of the Cornish recommendations.

In contrast, Bill 107, as it currently stands, creates a new section 45.2 of the Human Rights Code that gives the tribunal the authority to establish and charge fees for expenses it incurs in connection with a proceeding, subject of course to the approval of the minister. This introduces the prospect that the tribunal could establish fees that must be paid in order to have a complaint dealt with by the tribunal. In addition, a proposed new section 46.1 of the code states that the minister may enter into agreements with prescribed persons or entities to provide legal and other services to applicants or other parties to a proceeding before the tribunal, and the minister may provide payment for the services. That wording does not oblige the minister to ensure that complainants are provided with assistance or to pay for the services.

These two new sections of the code, if retained in the final version of Bill 107, could someday result in a completely user-pay human rights system. Under such a system, complainants would be left on their own to hire a lawyer, if they could afford one, or they could try to navigate the hard-to-understand legal process on their own without any legal advice or assistance, often against corporate or government respondents who have considerable financial resources to pay for the best possible legal representation. A user-pay system would disadvantage or totally disenfranchise the great majority of the people that the human rights system is intended to assist.

On a personal level, I want to add that I am not among those individuals who have expressed total opposition to the reforms contained in Bill 107. I am both a community activist who has provided advice and assistance to many people about filing complaints of discrimination and a former Ontario human rights commissioner who was once faced with the difficult task of deciding which

complaints, based on the evidence presented by the investigation, should be referred to a board of inquiry. I have seen the current system from both sides. I know all too well the inadequacies of the current system.

I do not support retaining the status quo for human rights in Ontario. Reform of the system is long overdue. What is needed is a robust, publicly funded system that will be up to the job that needs to be done.

The solution does not lie in simply providing more funding for the current system. It requires substantial structural change. Bill 107, as it is currently drafted, only goes part of the way to providing that change.

Mr. Nick Mulé: In conclusion, we want to reiterate that CLGRO supports reform of the human rights system in Ontario. Reform is long overdue. It has been over 20 years since there has been a significant overhaul of the Human Rights Code's basic provisions and of the structure and mandate of the commission. We commend the Attorney General for taking action through the introduction of Bill 107 to correct the many flaws of the current system.

Now that the process of reform has finally been put in motion by way of legislation, it is vitally important that the results achieved be the right ones. CLGRO has long called for the Human Rights Commission to be given a mandate to deal with systemic discrimination and to conduct public education on human rights issues. We are pleased that through Bill 107, those important improvements to the human rights system will finally be achieved. The opportunity provided by the introduction of Bill 107 to achieve significant, meaningful reform of the Human Rights Commission should not be lost. We don't want Bill 107 to be scrapped, but we do support its being significantly amended. We believe that without the amendments we have called for today, Bill 107 could result in the replacement of one seriously flawed system with another system that is just as seriously flawed. Frankly, that would be a tragedy for the thousands of Ontarians for whom the Human Rights Commission is the only place they can turn to in order to seek redress when confronted with unlawful discrimination.

Bill 107 must enshrine the principles of full public funding and free access to the system, including the guarantee of the right of complainants to receive legal and other services free of charge, and it needs to clearly specify the means by which those objectives will be fulfilled. Anything less than that will leave open the prospect of a much less accessible and ultimately less effective human rights system in future than the one we have now.

The Chair: Thank you very much. We'll begin with Mr. Kormos.

Mr. Kormos: Thank you, Chair.

I was waiting for him to let me know how much time we had.

The Chair: Five minutes each.

Mr. Kormos: Thank you very much for being here today. Let's talk about the funding of the support for victims of discrimination. Earlier today we were given a copy of the proposed amendment: "The minister may enter into agreements with prescribed persons or entities for the purposes of providing legal services and such other services as may be prescribed to applicants or other parties to a proceeding under the tribunal"—applicants or other parties. "An agreement under subsection 1 would provide for payment of services."

So then in the little explanatory note, as these papers are prepared—if there are going to be weasel words, this is where the weasel words come up, in the little crossword puzzle: "The minister would establish a human rights legal support centre"—singular—"to provide a range of services, including information, support, advice, assistance"—so far that stuff is being done through those damned 1-800 numbers, which I suspect will soon, as the government loses more lottery revenue, turn into 1-900 numbers—"and legal representation. The minister would fund the legal support centre"—again, singular. "The services would be available, where needed, across the province." The "where needed" could imply where geographically they're needed. Well, hell, where wouldn't they be needed? What part of the province doesn't have people living in it that are potential victims of discrimination? That then suggests that "where needed" may well have a means test. Services where needed; in other words, by whom are they needed?

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At the end of the day, though, we're still left with the observations of things like offices of the worker adviser, where the waiting lists are two years plus, of legal aid clinics, and I don't know—are you in London still?

Mr. Hudler: No, I'm in Toronto.

Mr. Kormos: You're in Toronto. But legal aid clinics where, across the province, they are so underfunded that they've had to restrict their mandates in terms of who they represent, or legal aid certificates with—what are the hourly rates now? I have no idea; $60 an hour; $70 an hour—or with caps on the number of hours available. The government can't fund the legal aid system as it exists now. Women seeking access to Family Court to protect themselves from abusive spouses and murderous spouses can't get lawyers because lawyers won't take their certificates because they've put an artificial cap on the number of hours, for Pete's sake.

Sorry, my friends. I don't take much comfort in the announcement today. I really don't. I'm really concerned about it because today was a PR exercise—God bless 'em for doing it—a PR exercise on the part of Mr. Bryant, and I like Mr. Bryant, but to try to overcome the resistance to this bill on some of those fundamental issues. We'll have fundamental disagreements about whether the Human Rights Commission should function and prosecute in the public interest, which is where I come from, or in the more private interest, which is where the supporters of direct access are coming from. Fair enough. That's a legitimate argument; that's a legitimate debate. But damn it, I'm disturbed by the effort today to pull the wool over folks' eyes in terms of this promise of funding when it's a pretty hollow promise. I'm sorry for having gone on like that. I don't usually do that.

Laughter.

Mr. Kormos: I meant "apologize." But I thank you very much for your focus and your concern about that issue. That's something that we've got to push the government on.

Mrs. Van Bommel: I want to say thank you for making your presentation. There have been issues brought up this morning, and I'd like to address one with you. I know you didn't deal with it in your presentation, so if you would give it some thought I'd appreciate that very much. There has been a concern about the—and it was brought up initially by Barbara Hall, who's the current chief commissioner. She talks about the ability to appeal. We've been hearing different interpretations or different opinions on the ability to appeal. One of them is that there should be an ability to appeal a tribunal's decisions to a higher court. Then, on the other side, what we've heard this morning is that very often the people who exercise that appeal mechanism are the respondents because they're not happy with the decision, or they use it as a delay tactic to avoid acting on the decision. I just want to have your opinion, and I know I'm kind of throwing this at you at the last moment, but I'd like to have your opinion on the idea of, should there be an appeal mechanism or not?

Mr. Warner: I guess I'll attempt to answer that. Yes, I think there should. I actually think the current provision in Bill 107 is probably sufficient on that in terms of providing for an appeal but specifying the grounds on which an appeal could be made. I think that would certainly address the point that you've made that often it's the respondent who wants to appeal. It would certainly reduce the number of instances where there could be an appeal, but I think it probably strikes a good balance. My own view is, probably what is in 107 now is sufficient on that.

Mrs. Elliott: I just have a brief comment rather than a question, but I would like to also thank all of you for making the time to be here this morning and to make your presentation. I certainly share your concern that, if the model is to be changed, there's an absolute need for the appropriate supports in place to support complainants, who, as you know, are very often very vulnerable people who are of very limited financial means. I have to say, I share Mr. Kormos's concern with respect to the amendments that we've seen so far—although we haven't seen the full text of them—that don't seem to go to the extent that is really needed in order to ensure that those supports will be in place. I think that's something that we will need to follow up much more closely as we continue our deliberations in the committee. I thank you for highlighting that and, again, thank you very much for your presentation.

The Chair: Thank you very much for your presentation.

Mr. Zimmer: Mr. Chair, I want to bring forward a motion. I've given advance notice to my colleagues opposite, so I'll make the motion. I move that Michael Gottheil, who's the chair of the Human Rights Tribunal, be invited to attend tomorrow, Thursday, November 16, and that we find a slot to fit him in. I think it's important to hear from Mr. Gottheil. He is the chair of the Human Rights Tribunal as opposed to the commission. Obviously, what goes on in the tribunal or what will go on in the tribunal if this Bill 107 is passed is important. It's the tribunal that will be designing the rules. So I think, given all that we've heard, it's entirely appropriate that we hear from him. Earlier we moved to extend an invitation to the chair of the commission and the past chairs of the commission, so I think it's entirely appropriate that we hear from the chair of the tribunal.

Mr. Kormos: I intend to support that motion, but we also moved and passed a motion to have front-line staff from the commission appear before this body. Those front-line staff have been frustrated, intimidated and effectively prevented from coming before this body. I say to you, Mr. Zimmer, I support your motion. We should be hearing from everybody with any background, experience, counsel that could be provided to us with respect to this matter. As I say, it's a very serious matter. But I am incredibly concerned about the fact that those front-line staff have to date, insofar as I am aware, been told they're not to appear in front of this committee. It is up to the ADM senior management to choose—because we didn't just ask for commissioners and former commissioners; we asked for management staff, non-union staff. They've got important things to say. We heard from a former management staff person this morning, the very first presenter, Ms. Silberman, who unfortunately was sarcastically mocked by the person who succeeded her. You'll recall that comment.

So we asked for management staff; we asked for front-line staff. That means unionized staff. I say that it's up to management to decide which management staff come here. I say it's up to OPSEU to decide which front-line staff come here. So that's a serious problem. We've got some obstruction of the work of this committee going on somewhere. That could well be a contempt of this committee. I just put notice forward today that this is going to become a very serious issue if this committee's motion to have front-line staff here is frustrated, obstructed by somebody at some senior level in the commission tribunal or in the ministry overseeing it.

I expect there will be other motions as we proceed. This is going to be a lengthy process and I have no qualms about that. We're going to be spending a lot of time in this committee room over the course of this month and next month and then into the winter months, and that's fine by me. We've been hearing some fascinating stuff and, as you well know, I have no qualms about hearing from people who are on all sides of this issue—who are supportive of the proposal, who are opposed to the proposal, who are critical of it in any respect—because I think we'd better be very, very cautious in terms of how we approach this. I'm telling you now—you're the parliamentary assistant—somebody's throwing their weight around at a senior level. I will do my damned best to make sure that is not going to be successful. I have no further comments on this.

1230

Mrs. Elliott: I would certainly support the motion as I understand it, which was to include front-line staff. I think we need to have some mechanism to make sure that those staff are able to come forward if they have representations they wish to make before this committee.

Mr. Zimmer: This motion deals with Mr. Gottheil. There was a motion that was dealt with earlier, and I think Mr. Kormos is speaking to issues surrounding that one. But this one just deals with Mr. Gottheil's attendance tomorrow.

The Chair: We have an opening at 10:40 tomorrow morning for 20 minutes. If the committee is in agreement with that, we can slot him in for that time. Or we can start earlier.

Mr. Kormos: What time are we booked till tomorrow?

The Chair: We're booked from 9:30 until 12.

Mr. Kormos: I'm prepared to agree to sit till 12:30 to accommodate this person for 30 minutes. He may or may not use the 30 minutes, but it would be less than fair to not accord him—

The Chair: We'll have to sit until 1. The last presentation tomorrow is for 12, so that will go to 12:30. So if you want to accommodate this gentleman at the end, we will have to sit until 1.

Mr. Kormos: No, no. You have a 20-minute slot available. I'm saying, extend that 10 minutes. Everybody is going to be delayed by 10 minutes. My apologies to the people who will be inconvenienced, but give this chair of the tribunal a 30-minute slot and just push everything ahead 10 minutes so we'll be here till 12:40 or 12:45.

The Chair: We'll do that, then.

Mr. Kormos: Again, it's a simple matter of you not noting the clock. And a curse on anybody who draws your attention to it. There is no clock in this room anyway.

The Chair: Mr. Zimmer, can you repeat the motion?

Mr. Zimmer: That Mr. Michael Gottheil, the chair of the Human Rights Tribunal, be invited to attend this committee tomorrow at 10:40 for a 30-minute presentation.

The Chair: Okay. If the committee is in agreement with that—okay.

Then that ends today's—

Mrs. Elliott: Chair, are we going to be able to get a copy of the full text of the amendments, not only the members of the committee but the members of the public who are making presentations? Can we get them immediately? I understand there was some suggestion of a technical briefing tomorrow afternoon. However, as I understand it, that's just for Mr. Kormos and myself, but I think it's important for those people who are doing presentations tomorrow morning. Some people really felt disadvantaged by the fact that they did not have the benefit of those amendments before them today. I think it's important that they have access to that.

Interruption.

Mr. Kormos: Braille? If I may speak to that, that's not only fair, but with some embarrassment I have to acknowledge, and it's an embarrassment that I suggest that everybody should share with me, that it was a comment from the spectators that Braille would be an appropriate—again, look at where we're at, that that didn't come naturally, that we didn't address it unilaterally. The fact is that persons with disabilities have a very strong interest in this. We've acknowledged that by making strong efforts to ensure that there is access to this committee. This committee would be embarrassed if it were not to make those same briefing materials available in Braille.

Mr. Zimmer: Let me work on this over the—and I understand the point; it's well taken. We'll figure out some way to deal with this.

Mr. Kormos: Because, yes, it would be discriminatory, wouldn't it?

The Chair: That is the end for today's meeting. We will meet tomorrow morning at 9:30.

The committee adjourned at 1235.

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