



Is Bill 107 the Way to Right Wrongs? MS Society of Canada Views on Bill 107, Human Rights Code Amendment Act, 2006

Presentation to the Standing Committee on Justice Policy
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November 23, 2006

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Thank you for the opportunity to present the views of the Multiple Sclerosis Society of Canada, Ontario Division, on the proposed changes to the Ontario human rights system. My name is Cathy Topping and I am a volunteer for the MS Society from St. Thomas. With me is Deanna Groetzinger, MS Society vice-president of government relations.

Another MS Society volunteer had the opportunity to present to this committee during the hearings in Ottawa this summer. At that time we called our presentation "Rights in Jeopardy", and frankly I was hoping that we would be able to change the title of our presentation this time to something more positive. Instead, the title reflects the questions that continue to arise as we review Bill 107 although we are pleased with some of the amendments that the Attorney General tabled last week. We'll have some comments about the amendments in a few minutes but first, some background about the major concern that we still have with Bill 107.

I have had MS for 29 years and over the past 20 years have worked for greater accessibility and inclusion for people with disabilities in St. Thomas. As part of that work, I have been able to turn to the Ontario Human Rights Commission to resolve an issue in my home community. Some background – I learned that a large store on the outskirts of St. Thomas would not allow public transit buses to stop in front of the store. Instead, they had to stop on the street which was a considerable distance away across a busy parking lot. This situation was truly dangerous for everyone but especially people who use wheelchairs, scooters and canes. A friend who is blind and whose wife uses a wheelchair filed a human rights complaint. This in itself was an ordeal since he was first told by Human Rights Commission staff that it wasn't a human rights issue. We persisted and an investigation was started.

The case reached mediation. Imagine how I felt when we entered the room and found the company property manager, her supervisor and a company lawyer lined up against my friend and me in my role as his consultant. But I soon realized that mediation is not the same as litigation and, in fact, the mediator was committed to finding a solution that was equitable to all. Thanks to some creativity, it was agreed that one of the public transit buses could stop in front of the store with connections to other city buses.

I wish I could tell you that we have a happy ending and that every day people with disabilities are using public transit in St. Thomas to reach this store safely and efficiently. But unfortunately, the city decided instead it would prefer that people with disabilities use para-transit at greater cost to themselves and to the city. At this point, we have filed another human rights complaint – again, I should add, with some difficulty because Human Rights Commission staff in Toronto initially insisted the issue was not one of human rights.

However, it was and continues to be a learning experience. What impressed me was the mediation process and not having to feel that my friend and I were on our own when faced by experts and lawyers who lined up against us

I'll now ask Deanna to review the proposed amendments to Bill 107 and to provide our further recommendation about the need for mediation to be included within Ontario's human rights system.

Deanna Groetzinger

The MS Society has provided input for improving Bill 107 several times throughout the consultation process, and we are pleased that a number of our recommendations have been included in the proposed amendments.

We asked that all human rights complainants be guaranteed the right to publicly-funded legal representation at all Tribunal proceedings. The proposed amendment which establishes in the legislation, a Human Rights Legal Support Centre, appears to meet our recommendation. The MS Society is pleased that the support centre is legislated which provides it much greater protection from the whims of future governments and attorneys general. We would like to stress, however, that the Human Rights Legal Support Centre must be well funded from the very beginning and in the following years to ensure that complainants get the supports they need.

We urged that human rights complainants not be charged user fees or made liable for the legal fees of those who have been charged with discrimination. The proposed amendment removes the ability of the Tribunal to charge user fees or to award expenses. We are pleased with this important change to Bill 107.

We also recommended that Bill 107 should ensure the Human Rights Commission maintains a true investigative and support function for human rights complainants by providing meaningful investigative and enforcement powers to the disability rights and anti-racism secretariats. The amendments to improve the Commission's investigative and public interest powers appear to meet this goal.

The amendments to require appointees to the Commission and the Tribunal to have expertise and experience in human rights and to reflect the diversity of Ontario are positive and make common sense as does having the Commission and the Tribunal report directly to the legislative assembly.

The MS Society very much applauds the extension of the limitation period to file a human rights complaint from six months to one year and strongly suggests that this period be extended to two years, which is the period for many civil suits.

However, there is still room for improvement. I'd like to bring the committee's attention back to Cathy's account of the importance of mediation in the case in which she was involved. One of our major concerns with Bill 107 as initially presented was the removal of any kind of mediation process from the human rights complaint process. In our view, involving the Human Rights Tribunal as a quasi-legal entity from the very beginning might make dealing with complaints unnecessarily adversarial.

With that in mind, we reviewed with considerable interest the recent amendment that would allow the Tribunal to be able to make rules of practice and procedure, including alternatives to traditional adversarial or adjudicative procedures... If this indeed opens the door to a mediation process that is focused at finding equitable solutions and not on minute interpretations of facts, then the MS Society supports its inclusion. The devil, as usual, is in the details, however, and the MS Society urges this committee to examine that part of Bill 107 very carefully and to further amend the Bill to provide a mandated mediation procedure.

I want to come back to the funding issue. The proposed Human Rights Legal Support Centre must be well funded for it to be able to function effectively for Ontarians with human rights complaints. The Ontario Human Rights Commission was frequently and rightfully criticized for failing to process, investigate and support human rights complaints. It has been criticized for being an inefficient gatekeeper and worse than that, in being patronizing and removing control from human right complainants. The proposals in Bill 107 as amended should provide a better way to handle human rights issues in Ontario. But if this and future governments do not commit to appropriate funding, then unfortunately, we will be back where we are today.

With that in mind, we urge this committee to ask the Attorney General to tell you – to tell all of us – how much funding will be available to the Human Rights Legal Support Centre in its first year of operations and to provide projected funding for the following five years. We need to know that now as a measure of this government's commitment to a truly effective Human Rights Legal Support Centre. Telling us to "wait for the budget" is not good enough.

Finally, along with countless others, the MS Society is very disappointed in the government's move to invoke closure on Bill 107, which prevented many organizations and individuals from providing valuable recommendations about how to improve Bill 107. This decision was counter to the promise made earlier that there would be full and extensive consultations this fall. Cathy and I are pleased to be able to be with you today. We are sorry that so many others won't have this opportunity.

We ask that committee members use their influence to convince the government to allow these hearings to continue as promised. Opposition members have offered to quickly debate this legislation early next year following a full schedule of public hearings. This is a reasonable compromise that we hope committee members will urge the government to accept.

Thank you and we look forward to your questions and comments.

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