



Rights in Jeopardy: 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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Honourable Chair, Members of the Committee, Ladies and Gentlemen, 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 Yassemin Cohanim. I have secondary-progressive multiple sclerosis. I have to confess I am feeling a bit like David facing Goliath by appearing before this committee. Perhaps that feeling of vulnerability typifies what many of us – people with disabilities – are feeling about the changes that Bill 107 might bring. Will the changes put us in a weakened position when we try to use the altered human rights system? Without the able support of the Ontario Human Rights Commission, how will we be able to successfully bring human rights complaints against large corporations and organizations? The changes proposed by the government will have an impact on people just like me. That is why I have come here today on behalf of the MS Society of Canada, Ontario Division.

The MS Society of Canada has serious concerns about the changes proposed in Bill 107. In our view, if the Bill is adopted as currently drafted, the result will be a weaker and less accessible human rights system. In my submission today, I will focus on some key points. In addition, as a member of the AODA Alliance, the MS Society of Canada supports the position on Bill 107 which has been taken by the Alliance.

Our main concern is that reducing the powers and role of the Human Rights Commission in the enforcement of the Human Rights Code will further disadvantage Ontarians who experience discrimination. In our view providing direct access to the Ontario Human Rights Tribunal without also providing legal assistance is a step backwards.

As others have noted, this represents a privatization of human rights protection and removes the Commission from most discrimination cases that aren't considered "systemic" – a term that is not defined clearly. And as most of you would know, most human rights cases aren't systemic. They involve individuals – often people who are disabled – trying to obtain the rights enjoyed by other Ontarians in the face of concerted opposition from employers, landlords, service providers or government agencies.

Right now, if a person files a complaint of discrimination with the Commission, it investigates that complaint, as long as it is within its jurisdiction, not frivolous or vexatious or brought in bad faith, and is not sent to another appropriate external complaint board. If the Commission cannot mediate a settlement of the complaint between the parties, and decides that the case warrants a hearing before the Ontario Human Rights Tribunal (OHRC), one of the Commission's lawyers presents the case before the Tribunal.

In other words, people who experience discrimination don't have to be able to afford a lawyer or qualify for Legal Aid to ensure that a lawyer with specialized knowledge in human rights presents their case to the Tribunal.

Bill 107 takes away this role. A person who is discriminated against will have to get their own lawyer to present the case. Or they will be expected to present the case themselves. Although the Commission retains the power to intervene before the Tribunal in certain cases that are designated "systemic" if it chooses to, the implication is that other complainants will have to fight their own cases. This may result in "two-tier justice" and is a step in the wrong direction. Bill 107 proposes to establish within the Commission two new "secretariats", one focusing on disability rights and one on anti-racism. Their roles are not defined, so I am unable to comment on their possible effectiveness or more importantly their possible ineffectiveness.

People with disabilities will rarely be able to afford the costs of privately investigating their own case, and they certainly won't have the public investigation powers that the OHRC now has. As this committee is no doubt well aware, 25 percent of Ontarians who are disabled are unemployed, according to Statistics Canada. In the case of people with multiple sclerosis, up to 80 percent are unemployed just a decade or so following diagnosis.

We understand the Attorney General plans to have legal counsel available through a legal support centre. However, Section 46.1 merely states "the Minister may enter into agreements...for the purposes of providing legal service and such other services...to a proceeding before the Tribunal". There are no details and no guarantee this will happen.

What does this really mean? Does it mean all complainants to the Tribunal will be guaranteed publicly-paid lawyers who will assist them with what can be complex legal procedures? Or does it mean that only at some levels of proceedings will complainants have legal counsel? Or will only complainants who qualify under stringent Legal Aid requirements have legal counsel? We hope that this committee will ensure that adequate legal support is guaranteed and funded. There must be equal access to justice.

The MS Society is also troubled by the proposed change that would allow the Tribunal to charge user fees to people who bring human rights complaints forward. They could also be liable for the legal costs of the person or company charged with discrimination. And you can be certain the legal costs of a large company that has enlisted the support of a battery of lawyers will be substantial.

Another concern is whether legal representation for people who have human rights complaints will be adequately funded under the proposed legislation. Unlike the current system in which the Ontario Human Rights Commission is legally

responsible for representing complainants to the Human Rights Tribunal, funding for the new system could be at the whim of any future government. The Human Rights Legal Support Centre is not entrenched in the legislation and funding for it could easily disappear. Funding for the Ontario human rights system has never been adequate and the proposed changes might jeopardize what currently exists.

It is surprising that the proposed changes to the Ontario Human Rights System appear to run contrary to the basic understanding of how the Accessibility for Ontarians with Disabilities Act (AODA) will be enforced. When the new Act was being debated, many groups called for a new, independent enforcement agency to be established, to enforce the removal and prevention of barriers to access. The Government took the position that no such new independent agency was needed, because Ontario already had the Commission, with all its powers to receive, investigate and prosecute human rights complaints. The proposed changes may seriously impact AODA enforcement, and we urge this committee to look carefully into that aspect of the legislation.

As you are probably aware, just over 54 percent of the human rights cases filed each year are cases of disability discrimination. Briefly, I would like to present for your consideration some amendments that the MS Society believes would greatly improve Bill 107.

- Ensure that 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.
- Guarantee all human rights complainants the right to publicly-funded legal representation at all Tribunal proceedings.
- Ensure that no human rights complainant is charged user fees or made liable for the legal fees of those who have been charged with discrimination.
- Ensure Bill 107 does not breach the Government's commitment for enforcement of the Accessibility for Ontarians with Disabilities Act (AODA). If Ontario Human Rights Commission's current powers are not maintained, an effective independent enforcement agency under the AODA should be established.

In conclusion, it is important that Ontario retains a publicly-funded, independent enforcement body with a formal individual complaints process and mandatory investigation duties. Without significant amendments, Bill 107 may result in a human rights system in Ontario that is very seriously flawed and that will discriminate against people with disabilities and others who are disadvantaged. At the beginning, I mentioned feeling like David as he faced Goliath. However,

let's all remember that David in the end prevailed. I urge committee members to help all of us "Davids" who are concerned about many aspects of Bill 107 to also prevail. Thank you very much for your time and attention.