

Centre d'assistance juridique  
en matière de droits  
de la personne

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**VIA EMAIL**

March 13, 2012

Board of Directors  
c/o David Lepofsky, Chair  
AODA Alliance

Dear Mr. Lepofsky and Members of the Board:

**RE: ONTARIO HUMAN RIGHTS REVIEW**

We are writing to address misinformation in the AODAA submission to the Ontario Human Rights Review and on the AODAA website, about the use of the current human rights system by people with disabilities. We are very concerned that the promulgation of this misinformation may result in people with disabilities being discouraged from claiming their rights under the *Human Rights Code*.

First, we want to specifically address a statement attributed to David Lepofsky by the Toronto Star in a March 2<sup>nd</sup> article, posted on your website, as follows:

“Lepofsky said that this new system has resulted in fewer discrimination cases based on disabilities filed because applicants simply find it too onerous”.

Mr. Lepofsky’s statement, made in conjunction with the public release of the AODAA submission, is incorrect. The Human Rights Tribunal of Ontario has statistical information on its website demonstrating that an average of 426 more disability-based claims have been filed at the Tribunal each year as compared to the number of disability-based complaints filed at the Human Rights Commission before the *Code* was amended. Under the current system, more disability-based claims are being filed and moving forward to mediation and hearing.



Secondly, we want to address the statement on page 24 of the AODAA submission that “disability cases are underrepresented” in Human Rights Legal Support Centre’s caseload as compared to that of the Human Rights Commission prior to the *Code* amendments. In fact, disability-based cases currently constitute the same portion of incoming cases at the Centre as at the Commission. The Centre provides direct legal services to thousands of individuals with disability-based discrimination claims each year. This is a legal service that was simply not available to persons with disabilities under the pre-reform human rights system.

## **NUMBER AND PERCENTAGE OF DISABILITY-BASED CLAIMS FILED<sup>1</sup>**

### **Number of Disability-based Complaints Filed at Human Rights Commission Prior to *Code* Amendments**

From 2003/4 to 2006/7, the Commission reported a total of 9,585 new complaints, with an average of 2,396 complaints filed per year. The average number of complaints that named disability as at least one ground of discrimination was 1,340 per year. On average, 55.9% of all complaints named disability as a ground of discrimination.

### **Number of Disability-based Applications Filed at Human Rights Tribunal After *Code* Amendments**

In 2009/10 and 2010/11, the Tribunal reported a total of 6,718 new applications, with an average of 3,359 applications filed per year. The average number of applications that named disability as at least one ground of discrimination was 1,766 per year. On average, 52.6% of all applications named disability as a ground of discrimination.

In the current fiscal year, the Tribunal is reporting that 54% of applications name disability as a ground of discrimination.

On average, 426 more disability-based claims have been filed each year since 2008 and disability-based claims comprise almost the same percentage of claims under the current system as under the old system.

Contrary to the assertion attributed to Mr. Lepofsky, applicants with disability-based claims are actively using the new system in significantly greater numbers.

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<sup>1</sup> The numbers that we rely upon in making this comparison are readily available on the websites of the Commission and the Tribunal. We examined the Commission’s posted Annual Reports for 2003/4, 2004/5, 2005/6 and 2006/7, and the Tribunal statistics for 2009/10, 2010/11 and the current year to date. We omitted the transitional years (2007/8 and 2009/10) as not representative, due to significant special funding and a temporary expedited process at both the Commission and the Tribunal.

To the extent that some would-be applicants may find the application process difficult to navigate, as suggested by Mr. Lepofsky, we want you to remind you that individuals with disability-based claims are regularly accessing the services of the Human Rights Legal Support Centre. In the first 11 months of the current fiscal year, for example, our Human Rights Advisors provided legal advice and assistance in response to 6,159 inquiries where disability was a ground of discrimination.

As previously reported to you, the Tribunal has rejected less than 2% of all filed applications. The process may be difficult for some applicants but the record suggests that very few who attempt to file a claim are unsuccessful in doing so. This makes it very important that the AODAA not discourage would-be applicants who might otherwise take steps to secure their *Code* rights.

### **LEGAL SERVICES IN DISABILITY-BASED CLAIMS**

We have previously provided the AODAA with information on the Centre's work during its first three years of operation and with detailed data from our new case management system for the first six months of the current fiscal year. We can now report on the first 11 months of 2011/12. Disability was a ground of discrimination in 54% of all the Centre's answered inquiries where a ground of discrimination was identified.

This shows that the Centre is receiving and answering disability-related inquiries at the same rate as the Tribunal is receiving disability-based applications (54%) and at almost the same rate as the Commission received disability-based complaints under the old system (55%). The Commission did not publish a comparable breakdown of its inquiries by ground of discrimination.

Percentages do not tell the whole story. In addition to providing summary legal services in response to 6,159 disability-related inquiries in the past 11 months, the Centre's lawyers have also provided legal services to more than 700 individuals with human rights applications that included disability as a ground of discrimination. Lawyers provided assistance at all stages, including before an application was filed.

Under the pre-reform system, none of these individuals would have been able to access personal lawyer services from the Commission at any stage. A complainant would only benefit from the support of Commission counsel if their complaint was referred by the Commission to the Tribunal for mediation and a hearing.

Relatively few complaints were referred to the Tribunal under the old system. Because the AODAA submission questions the Centre's interpretation of the referral rate (p. 97), we have included a document from the Commission website entitled *OHRC Comparative Indicators*. The average number of complaints (on all grounds of discrimination) referred to the Tribunal in the decade before the 2006 *Code* amendments was 93.1, excluding 2003/4 when 200 autism cases were referred in a

group to the Tribunal. In most years, disability cases made up 30-50% of complaints referred for a hearing.<sup>2</sup> Commission counsel would take carriage of disability complaints after they were referred to the Tribunal for mediation and a hearing.

By way of comparison, we can report that, in the first 11 months of the current fiscal year, our lawyers provided representation in approximately 170 disability-based applications proceeding before the Tribunal. Based on the year-to-date, we are projecting that the Centre will represent applicants in over 180 disability-based applications before the Tribunal in the current year. This is in addition to the thousands of individuals with disability-based claims who received legal assistance, but not full representation, from the Centre's lawyers and Human Rights Advisors.

### **AODAA CRITICAL COMMENTS ON CENTRE'S SERVICES TO PERSONS WITH DISABILITIES**

The AODAA submission, on page 24, calls on the Review to investigate "why the Centre has disability claims so underrepresented among its cases population, relative to the caseload at the Human Rights Commission". It suggests that: "the Centre's internal procedures for screening cases have this result as an unintended impact".

The Centre has provided the AODAA with over forty pages of materials in answer specific questions about our services. The conclusion that we are under-serving persons with disabilities is based on a misinterpretation of the Centre's 2009/10 Annual Report that could easily have been corrected.

Our 2009/10 Annual Report stated that disability comprised 28% of all grounds cited in the cases where our lawyers provided legal services. The AODAA submission incorrectly concluded that this was a percentage of cases, not a percentage of grounds.

The Commission, like the Centre, reported each ground of discrimination as a percentage of all grounds in all cases. For example, in the two years cited in the AODAA submission as showing the gap in our services, the comparable figures from the Commission's Annual Reports are: 29.2% (2004/5) and 27.6% (2007/8).

The AODAA inappropriately compared our 28% figure with a different statistic reported by the Commission – the percentage of incoming complaints at the Commission that cited disability as at least one ground of discrimination - averaging 55%.

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<sup>2</sup> The years 2003/4 and 2004/5 were exceptions. In these two years, 242 autism cases were referred to the Tribunal to be heard together, including 200 cases as a group in 2003/4: Annual Report, 2004/5, page 44.

There are many reasons why this is not an appropriate comparison, starting with the fact that incoming disability-based complaints at the Commission should be compared to incoming disability-based applications at the Tribunal (at 54% as discussed above).

Appropriate comparisons between the Commission and the Centre should focus on our mandate – to provide legal services to claimants. As discussed above, we provided legal assistance in response to 6,159 disability-based inquiries in the past 11 months, comprising 54% of answered inquiries – the same proportion as incoming complaints at the Commission. In addition, our lawyers provide direct legal services to hundreds of disability rights claimants each year.

### **MORE TELEPHONE INQUIRIES ARE BEING ANSWERED UNDER REFORMED SYSTEM**

Finally, we want to respond to #2 of the “striking points” highlighted on the AODAA website in respect to your submission to the Review as follows:

Thousands fewer calls were made each year on average to the new Human Rights Legal Support Centre under the new system than were made to the Human Rights Commission under the old system.

The Centre has previously tried to clarify this issue for the AODAA. This point compares “apples to oranges” and fails to take into account several important facts:

- The Tribunal answers approximately 1,000 calls every week. Many callers are asking for a copy of the Tribunal’s Application form or seeking information on an application already filed at the Tribunal. These are calls that in the past went to the Commission, and now have shifted to the Tribunal, not the Centre.
- The Centre has answered between 24,000-25,000 telephone inquiries each year.
- Over 75,000 telephone inquiries have been answered by the Tribunal and the Centre each year since the *Code* reforms.
- The Commission Annual Reports (2003/4 to 2006/7) show that the Commission answered between 40,000 - 47,000 inquiries from the public each year.
- In response to these inquiries, the Commission inquiry service sent out between 4,500 to 5000 blank Complaint forms each year to callers with possible discrimination claims on all grounds, assisting some callers who had difficulty completing the form. In contrast, the Centre’s inquiries staff have provided legal assistance in response to 6,159 *disability-based* inquiries in the last 11 months.

**REQUEST FOR CORRECTION**

The Centre is requesting that the AODAA immediately take steps to correct the information on your website. We hope that you agree that it is very important that those who access your website have accurate information on the human rights enforcement system and on the services that the Centre can provide to assist individuals in protecting their rights.

We have copied the other organizations or individuals who were in attendance with Mr. Lepofsky in the meeting with Andrew Pinto on March 2, 2012, as well as one of our community partners, ARCH Disability Law Centre.

The inaccurate information on the AODAA website runs the risk of discrediting Ontario's human rights system at a time when human rights systems across the country face unprecedented criticism.

Yours very truly,

HUMAN RIGHTS LEGAL SUPPORT CENTRE, per:

*ORIGINAL SIGNED BY*

Pat Case  
Chair, Board of Directors

*ORIGINAL SIGNED BY*

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Executive Director

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