



**CANADIAN MENTAL  
HEALTH ASSOCIATION, ONTARIO**  
**ASSOCIATION CANADIENNE  
POUR LA SANTÉ MENTALE, ONTARIO**

Submission to  
Andrew Pinto  
Chair, Ontario Human Rights Review 2012

March 1, 2012

## Preface

Canadian Mental Health Association (CMHA), Ontario appreciates the opportunity to participate in the Ontario Human Rights Review 2012, and we want to thank Andrew Pinto, Chair of the Review for participating at our stakeholder consultation held on Wednesday, February 8, 2012.

CMHA Ontario is a not-for-profit, charitable organization committed to improving the mental health of all Ontarians. Our mission is “to make mental health possible for all.” CMHA Ontario is currently working to address the unique needs and advance the human rights of Ontarians with mental health disabilities in the areas of employment, housing, education, criminal justice, health equity and access to mental health services and supports. As part of our work, we are acting as a resource for the development of Ontario Human Rights Commission’s Human Rights Mental Health Strategy. We have also participated in the *Accessibility for Ontarians with Disabilities Act* (AODA) review process, and have articulated the need to consider and include mental health disabilities in the AODA standards and regulations (see Appendix A for CMHA Ontario’s submissions on mental health and human rights).

To inform the Ontario Human Rights Review 2012, CMHA Ontario convened a stakeholder consultation meeting. We extended an invitation through our networks to individuals who:

- Have first-hand experience using the services of the Human Rights Tribunal of Ontario (HRTO), the Human Rights Legal Support Centre (HRLSC) and the Ontario Human Rights Commission (OHRC);
- Have experienced issues, barriers or challenges to accessing services at the HRTO, HRLSC and OHRC;
- Have filed an application to the HRTO regarding experiences of discrimination on the grounds of mental health disability;
- Are services providers who have assisted clients who have filed an application to the HRTO regarding experiences of discrimination on the grounds of mental health disability.

Thirteen individuals were present at the stakeholder consultation, participating in person and by conference call, and the meeting was chaired by Andrew Pinto.

This written submission is informed by the statements and experiences shared by the participants of the stakeholder consultation meeting.

## Introduction

Individuals living with mental health disabilities face unique human rights issues and multiple barriers as a result of their disability. They also often fall through the cracks in the health care and criminal justice systems. Under the provisions of the *Mental Health Act* in Ontario, individuals with a mental health disability may be subject to consent and capacity determinations, may be involuntarily detained and may be given treatment without their consent.<sup>1</sup> Furthermore, individuals with mental health disabilities often face multiple barriers to accessing the social determinants of health, often live in conditions of poverty, and face many challenges to accessing adequate housing, employment, and education.<sup>2</sup> In addition, these individuals often face stigma, discrimination and violence due to their mental health disability.<sup>3</sup>

The human rights system in Ontario, which includes the Human Rights Tribunal of Ontario (HRTO), Human Rights Legal Support Centre (HRLSC) and the Ontario Human Rights Commission (OHRC), are the primary institutions through which Ontarians can address experiences of discrimination based on mental health disability. As such, the Ontario Human Rights Review 2012 presents a unique opportunity to give voice to the perspectives and recommendations of individuals with mental health disabilities as well as key stakeholders in the mental health sector. The Review's recommendations can enhance the existing human rights system to advance the rights for individuals with mental health disabilities.

In our submission, we present the issues raised during the stakeholder consultation meeting, as well as recommendations for creating a more equitable human rights system in Ontario to protect the rights of individuals with mental health disabilities. Quotations from the participants of the stakeholder consultation meeting are highlighted throughout the submission.

With respect to terminology, CMHA Ontario uses the term “mental health disability” to align with the language and framework used to address discrimination related to mental health experiences in the *Ontario Human Rights Code*. In this submission, the term “mental health disability” refers to the range of diagnosed and undiagnosed mental health conditions. CMHA Ontario recognizes that there is no single experience of a mental health disability, rather a range of experiences of diverse mental health conditions with different symptoms, characteristics and experiences. In many cases, symptoms of acute mental health conditions are episodic in nature, surrounded by periods of recovery or wellness. A person can experience mental well-being in spite of a diagnosis of a mental health condition or, conversely, can be free of a diagnosed mental health condition but still be experiencing poor mental health.<sup>4</sup> Stigma and discrimination may be experienced regardless of whether an individual has a diagnosis or is currently experiencing symptoms or characteristics of a mental health condition. We also acknowledge that not everyone with a mental health condition self-identifies as having a disability.

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<sup>1</sup> Psychiatric Patient Advocate Office. (2003). Mental Health and Patients' Rights in Ontario. <http://www.onfla.on.ca/library/repository/mon/22000/283377.pdf>

<sup>2</sup> The Standing Senate Committee on Social Affairs, Science and Technology. (2006). *Out of the Shadows at Last: Transforming Mental Health, Mental Illness and Addiction Services in Canada*. <http://www.parl.gc.ca/Content/SEN/Committee/391/soci/rep/rep02may06-e.htm>

<sup>3</sup> Canadian Mental Health Association Ontario, et al. (2008). “Mental Health Promotion in Ontario: A Call to Action.” [http://www.ontario.cmha.ca/policy\\_positions.asp?cID=25899](http://www.ontario.cmha.ca/policy_positions.asp?cID=25899)

<sup>4</sup> Canadian Mental Health Association Ontario. (2011). “Violence and Mental Health: Unpacking a Complex Issue: A Discussion Paper.” <http://www.ontario.cmha.ca/backgrounders.asp?cID=1081747>

# Barriers to the Human Rights System for Individuals with Mental Health Disabilities

## *Financial barriers have created a two-tiered human rights process in Ontario*

Participants of the stakeholder consultation identified financial barriers as the main barrier to accessing the human rights system in Ontario. If an applicant has legal representation, then they are able to navigate through the human rights process more easily; but if the applicant is not able to secure legal representation, often due to financial constraints, they then face many challenges throughout the process. This situation results in a two-tiered system where individuals with financial means are able to access and navigate the system more easily.

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*The forms were so complicated and confusing. I gave up and had to hire a lawyer just to fill out the forms. It cost me \$1,200 just to complete the forms.*

With regards to the HRTTO, there are multiple forms that must be completed in order to successfully submit a human rights application. Participants noted that these forms are complex and filled with legalese, and as such, many participants had to obtain private legal counsel in order to complete the forms. For many, the cost of securing private legal services has been an overwhelming burden.

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With regards to the HRLSC, many participants had only received a one-hour consultation to review their application with a lawyer appointed by the HRLSC. The HRLSC does not provide legal representation for applicants for the HRTTO hearing and many participants had to pay for their own legal representation.

Even the costs associated with the human rights process (such as making phone calls about the application, travelling to meetings regarding the application, mailing application notifications to respondents, etc.) can be a big burden for individuals with mental health disabilities.

### **Recommendation:**

Participants recommended that the Human Rights Tribunal of Ontario and the Human Rights Legal Support Centre increase the level of assistance provided to applicants so that applicants do not have to seek private legal representation. In addition, it is recommended that the Tribunal does not implement a filing fee to participate in the human rights application process.

## ***Human rights process has a negative impact on mental health***

Participants of the stakeholder consultation identified negative impacts of the human rights process on the mental health of applicants. This occurs in two ways – firstly, the negative impact of the human rights violation itself, and secondly the negative impact of going through the complicated, lengthy and adversarial human rights process. Participants stated that they frequently felt powerless during the process and felt like giving up.

Many participants shared their experiences with the human rights violations that they had faced that led to the filing of an application with the HRTO, and many described the negative impacts that discrimination had on their mental health.

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*I still have post-traumatic stress from the psychological abuse I went through at my workplace.*

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According to “Mental Health Promotion in Ontario: A Call to Action<sup>5</sup>” (2008), discrimination is a risk factor for poor mental health. Stigma and discrimination against people with mental health disabilities is a major concern, not just as a risk factor for recovery, but also as a barrier to accessing services, housing, employment, and education. For all those affected, discrimination creates a hostile and stressful environment, resulting in psychological distress and feelings of low self-esteem, control and mastery, as well as anxiety and depression.

Participants also shared the negative impacts that the process of navigating through the human rights system had on their mental health. Many found the entire process to be extremely stressful – first deciding to file a complaint against an individual or organization, then finding out the information about the human rights system on their own, and then navigating through the complicated application process. A significant cause of stress was the financial burden of securing legal representation to assist with the application process and the HRTO hearing.

Furthermore, many were negatively impacted by the cross-examination process at the HRTO hearing. Participants stated that, when they first filed their application, they understood that the HRTO was going to provide them the opportunity to share their story and share their lived experience of discrimination. Neither the HRTO nor the HRLSC had prepared them for the adversarial cross-examination by the respondent’s lawyer(s). Many of the participants had no legal representation during the HRTO hearing, and thus were left on their own to defend against their respondent’s legal team.

Participants also noted that while their application was in process, they continued to experience discrimination from the respondent, especially in situations where the respondent was an employer or government service provider. Many noted that their mental health steadily declined due to the stress caused by the acts of discrimination as well as the human rights case proceedings.

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<sup>5</sup> Canadian Mental Health Association, et al. (2008). “Mental Health Promotion in Ontario: A Call to Action.” [http://www.ontario.cmha.ca/policy\\_positions.asp?cID=25899](http://www.ontario.cmha.ca/policy_positions.asp?cID=25899)

Although these dimensions of the human rights system may impact negatively on anyone's mental health, the impact is greatly augmented for individuals already living with a mental health disability. In these situations, the negative mental health impact of the system can have severe and harmful impacts on the applicant's health.

**Recommendation:**

Participants recommended that the Human Rights Tribunal of Ontario appoint a Duty Counsel during the case proceedings to assist applicants who cannot afford to secure private legal representation.

In addition, it is recommended that the Tribunal and the Human Rights Legal Support Centre provide appropriate accommodation for individuals with mental health disabilities during the human rights application process. The Legal Support Centre should represent more applicants with mental health disabilities because of their particular vulnerability in (and to) the process. Participants suggested providing applicants with more hands-on assistance with filing a claim and discussing issues like evidence and the hearing process. Furthermore, the Tribunal adjudicator should help to coach an unrepresented applicant through the actual hearing to help them become familiar with the testimony and cross-examination process.

## ***Lack of information about the human rights process creates barriers***

The participants shared that the lack of information available about the human rights process created multiple barriers to accessing the HRTO and HRLSC.

Although some information about the process for filing human rights complaints is available through the HRTO, HRLSC and OHRC websites, it was very difficult for some participants to access this information as they did not have regular access to a computer and had to rely on a public computer available through a library or community based agency.

All of the participants had utilized the HRTO or HRLSC hotline to obtain information; however, many participants faced lengthy wait-times and were placed on hold, sometimes for many hours.

As stated previously, many of the participants had a one-hour consultation with a HRLSC lawyer to discuss their case. Many stated that this short in-person meeting did not provide enough time to ask all of the pertinent questions regarding the case and did not provide enough time to adequately prepare for the HRTO hearing. As a result, many participants had to pay for their own legal representation to assist with their case.

### **Recommendation:**

Participants recommended that the Ontario Human Rights Commission be given the responsibility for educating Ontarians about how to file a human rights application. The Commission can establish an information centre, similar to the Employment Standards Information Centre,<sup>6</sup> to increase access to information about the human rights process. The educational materials should be in plain language and be provided in multiple different languages.

The Commission should hold public education workshops across the province detailing the step-by-step process for filing applications with the Tribunal. The Commission can also take on the responsibility of managing public inquiries through the information hotline. By diverting the hotline responsibilities to the Commission, it would alleviate some pressure off of the Human Rights Legal Support Centre and allow the Legal Support Centre to provide longer in-person consultations to applicants.

It is also recommended that the Commission develop a web-based decision matrix, similar to the matrix used by Citizenship and Immigration Canada,<sup>7</sup> to assist applicants to identify their human rights issue and help to determine if they should move forward with filing an application with the Tribunal.

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*People are unaware of their rights – that they have a right to file a human rights complaint. Providing information is a way to empower individuals.*

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<sup>6</sup> The Ontario Ministry of Labour has established an information centre to manage public inquiries about employment issues, available at: <http://www.labour.gov.on.ca/english/feedback/index.php#esic>

<sup>7</sup> The Citizenship and Immigration Canada website utilizes a decision matrix to help direct inquiries about immigration applications, available at: <http://www.cic.gc.ca/app/ctcvac/english/index>

## ***Lack of clarity on the scope of the human rights system***

Participants raised concerns that there is a lack of clarity on the scope of Ontario's human rights system. For example, participants noted barriers due to a lack of clarity about what constitutes a human rights violation. When filing an application with the HRTO, the applicant is required to identify a respondent; in some cases, however, it is difficult to identify a respondent, especially with regards to systemic discrimination issues. The human right system does not provide a clear process for filing such complaints.

One participant spoke about their difficulty in filing a human rights complaint with regards to a violation related to the unauthorized disclosure of mental health information by various government jurisdictions and bodies. The application process was challenging because the violation did not neatly fit within one jurisdiction (municipal, provincial and federal governments were involved) or fall within the types of violations identified in the HRTO application form (e.g. employer, landlord, service-delivery, etc.).

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*They told me that they're not even sure where my case fits in because this is a systemic issue.*

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This participant faced multiple barriers to filing an application with the HRTO because the process for filing systemic human rights applications is unclear. The participant was denied entry into the United States as a result of the release of their mental health information. The unauthorized sharing of information is a violation of the right to privacy and law reform is necessary to change these discriminatory practices. However, without a clear process for filing applications regarding systemic human rights violations, it is not

even possible to bring these issues forward to be addressed by the HRTO.

In addition, participants were not clear on how the OHRC was addressing issues of systemic discrimination, as it is not possible for Ontarians to contact the OHRC in an ongoing way to discuss experiences of systemic discrimination.

### **Recommendation:**

Participants recommended that the Ontario Human Rights Commission respond to public phone inquiries (that currently go answered due to lack of capacity at the Human Rights Legal Support Centre) to help applicants identify appropriate respondents for their human rights case. Managing public inquiries would help to guide the Commission's work, especially in the area of systemic discrimination. It is also recommended that the Commission refer individuals filing a systemic human rights complaint to other organizations and coalitions in Ontario who are working to address the systemic issue that they are facing.

## ***Lengthy timelines for human rights process create barriers***

Participants of the stakeholder consultation consistently noted the negative impact of the lengthy timelines for the human rights process.

With regards to the HRLSC, participants experienced lengthy wait-times when they phoned into the hotline. Some individuals did not have regular access to a phone and were calling into the hotline from a pay phone or public phone available through a community based agency. For these individuals, the lengthy phone wait-time was an additional barrier.

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*Two years may be a reasonable time for a court case, but that's an eternity for a person with a mental health issue.*

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After filing a human rights application, many participants stated that a long period of time passed (at times a few weeks passed by) before they were contacted by a representative from the HRTO or HRLSC. Once they were contacted, then a few more weeks passed by before their scheduled consultation meeting with the appointed HRLSC lawyer.

With regards to the HRTO, participants raised concerns about the length of time it takes from the filing of the application to the HRTO hearing, and to the final decision from the adjudicator. Many of the participants were engaged in the HRTO process for several years, and as a result of the time-lapse, the respondent organizations had caused new barriers for the applicants. For example, in situations where the respondent is a policy making authority (such as the Government of Ontario), rules can be changed before the case is resolved, thus creating new barriers for applicants and prolonging the HRTO process.

For participants who had won their case at the HRTO hearing, they experienced significant delays in receiving remuneration from the respondent, sometimes being forced to wait several months further for their compensation.

Many participants stated that the process of waiting had a negative impact on their mental health, and often aggravated and worsened their mental health conditions. Many found it challenging or impossible to obtain clear timelines for their case. This lack of information contributed to the negative mental health impacts of both the original violation (as it was difficult for the individual applicant to know when the issue would be resolved) and the application process due to a sense of loss of control over the future. In multiple cases, the situation was perceived as never ending due to protracted timelines or failure to receive awarded reparations from the respondent.

### **Recommendation:**

Participants recommended that the Human Rights Tribunal of Ontario, the Human Rights Legal Support Centre and the Ontario Human Rights Commission provide applicants with expected timelines for the various steps of the application process and provide routine updates to applicants regarding the status of their human rights case. Providing an expected timeline and routine updates for applicants would help to alleviate some stress and anxiety about the ongoing case proceedings and decrease the sense of loss of control that applicants may experience.

## ***Lack of compliance creates barriers***

Participants of the stakeholder consultation raised multiple concerns regarding the lack of a mechanism for monitoring the compliance of HRTO decisions and enforcement of the *Ontario Human Rights Code*. Many participants who won a case at the HRTO faced significant barriers to securing remuneration from the respondent. In addition, the responsibility fell to the applicant to ensure compliance by the respondent. Participants stated that this strenuous process created feelings of powerlessness and hopelessness which significantly hindered their mental health.

As previously stated, many participants experienced significant delays in receiving the remuneration from the respondent, sometimes being forced to wait several months further for their compensation.

The current human rights process is also inadequate in supporting successful human rights applicants. One participant stated that they did not receive remuneration because the HRTO could not ensure compliance from the respondent. The HRTO is aware of the respondent's address of residence as well as the contact information for the respondent's lawyer; however, the HRTO does not appear to have the authority to compel the respondent to comply.

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*It's not fair that it's left up to me to follow-up and make sure that my employer is abiding by the law.*

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Furthermore, the human rights process does not prevent respondents from reoffending. Many of the participants shared lived experiences of respondents who continued their acts of discrimination throughout the case proceedings, and continued to discriminate even after the case was over and the HRTO had ordered remuneration from the respondent.

## **Recommendation:**

Participants recommended that the Human Rights Tribunal of Ontario develop a comprehensive mechanism for monitoring compliance. The compliance body should ensure that respondents are adhering to the Tribunal's decisions and enforce remuneration from respondents. The Tribunal and the Ontario Human Rights Commission should also work together to provide applicants (and respondents) with a comprehensive package of information about enforcing damage awards through the court process.

In addition, it is recommended that the Tribunal develop a public disclosure list of respondents (individuals and organizations) who fail to comply with the Tribunal's decisions, as well as respondents who are repeat offenders (i.e. respondents who have repeatedly been named in human rights cases and have been ordered to provide remuneration by the Tribunal).

# **Recommendations for Improving the Human Rights System in Ontario**

Detailed below is a summary of the recommendations offered by the participants of the stakeholder consultation for creating a more equitable human rights system in Ontario to protect the rights of individuals with mental health disabilities.

## **Recommendations to the Human Rights Tribunal of Ontario and the Human Rights Legal Support Centre:**

1. A filing fee to participate in the human rights application process should not be implemented.
2. The Tribunal should appoint a Duty Counsel during the case proceedings to assist applicants who do not have the means to secure private legal representation.
3. The Tribunal and the Legal Support Centre should provide appropriate accommodation for individuals with mental health disabilities during the human rights application process. The Legal Support Centre should represent more applicants with mental health disabilities because of their particular vulnerability in (and to) the process. Applicants should be provided with more hands-on assistance with filing a claim and discussing issues like evidence and the hearing process. The Tribunal adjudicators should help to coach unrepresented applicants through the actual hearing to help them become familiar with the testimony and cross-examination process.
4. The Tribunal, the Legal Support Centre and the Ontario Human Rights Commission should provide applicants with expected timelines for the various steps of the application process, and the Tribunal and Legal Support Centre should provide routine updates to applicants regarding the status of their human rights case.
5. The Tribunal should develop a comprehensive mechanism for monitoring compliance. The compliance body should ensure that respondents are adhering to the Tribunal's decisions and enforce remuneration from respondents. The Tribunal and the Commission should also work together to provide applicants (and respondents) with a comprehensive package of information about enforcing damage awards through the court process.
6. The Tribunal should develop a public disclosure list of respondents (individuals and organizations) who fail to comply with the Tribunal's decisions, as well as respondents who are repeat offenders (i.e. respondents who have repeatedly been named in human rights cases and have been ordered to provide remuneration by the Tribunal).

## **Recommendations to the Ontario Human Rights Commission:**

7. The Commission should assume the responsibility for educating Ontarians about how to file a human rights application. The Commission can establish an information centre, similar to the Employment Standards Information Centre, to increase access to

information about the human rights process. The educational materials should be in plain language and be provided in multiple different languages.

8. The Commission should hold public education workshops across the province detailing the step-by-step process for filing applications with the Tribunal.
9. The Commission should assume the responsibility of managing public inquiries through the information hotline. By responding to public phone inquiries, the Commission can help applicants identify appropriate respondents for their human rights case.
10. The Commission should develop a web-based decision matrix, similar to the matrix used by Citizenship and Immigration Canada, to assist applicants to identify their human rights issue and help to determine if they should move forward with filing an application with the Tribunal.
11. The Commission should refer individuals filing a systemic human rights complaint to other organizations and coalitions in Ontario who are working to address the systemic issue that they are facing.

It is also important to note that collaboration is needed in order to protect the rights of individuals with mental health disabilities in Ontario. There are many organizations, both governmental and non-governmental, that are working to address the needs of individuals with mental health disabilities. The *Accessibility for Ontarians with Disabilities Act* is focusing on creating equitable access to services for individuals with disabilities including mental disorders. The Ontario Ministry of Health and Long-Term Care, working in collaboration with an inter-ministerial group, is implementing an integrated 10 year Mental Health and Addictions Strategy for the province. The Mental Health Commission of Canada is leading the development of a National Mental Health Strategy across Canada. The human rights system in Ontario must work in tandem with existing and new initiatives to provide a coordinated response to the needs of individuals with mental health disabilities. A coordinated effort that builds partnerships and engages multiple sectors is needed to ensure that the rights of individuals with mental health disabilities are protected in all areas of society.

As a non-governmental organization and a key stakeholder in the field of mental health in the province, Canadian Mental Health Association Ontario welcomes the opportunity to work in partnership with the Human Rights Review, the Human Rights Tribunal of Ontario, the Human Rights Legal Support Centre and the Ontario Human Rights Commission to advocate for the rights for all Ontarians with mental health disabilities.

For further discussion, please contact:

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## **Appendix A:**

### **Canadian Mental Health Association Ontario's Submissions Regarding Mental Health and Human Rights**

Response to the draft proposed Integrated Accessibility Regulation under the *Accessibility for Ontarians with Disabilities Act, 2005*: Final Public Review Period (2011)

A joint submission with Schizophrenia Society of Ontario  
<http://www.ontario.cmha.ca/submissions.asp?cID=922852>

Response to the Proposed Integrated Accessibility Regulation under the *Accessibility for Ontarians with Disabilities Act* (2010)

A joint submission with Schizophrenia Society of Ontario  
<http://www.ontario.cmha.ca/submissions.asp?cID=832944>

Response to the Ontario Human Rights Commission Public Consultation Paper (2009)

<http://www.ontario.cmha.ca/submissions.asp?cID=449206>

Focus on Equity: Response to “Every Door is the Right Door: Towards a 10-Year Mental Health and Addictions Strategy” (2009)

A joint submission with the Wellesley Institute  
<http://www.ontario.cmha.ca/submissions.asp?cID=291236>

Mental Health Police Records Check Coalition Submission to the Ontario Human Rights Commission (2008)

A joint submission with Psychiatric Patient Advocate Office, Ontario Association of Patient Councils, and CLASP

<http://www.ontario.cmha.ca/submissions.asp?cID=25538>

Submission on the Ontario Human Rights Commission Consultation on Housing (2007)

<http://www.ontario.cmha.ca/submissions.asp?cID=25211>

Submission on Bill 107, An Act to amend the Human Rights Code (2006)

<http://www.ontario.cmha.ca/submissions.asp?cID=7228>

Submission to the Standing Committee on Social Policy, Legislature of Ontario, in response to Bill 118, the Accessibility for Ontarians with Disabilities Act (2005)

<http://www.ontario.cmha.ca/submissions.asp?cID=5415>