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EDITORIAL NOTE

The National Journal of Constitutional Law is Canada's premier legal journal dedicated to constitutional, *Charter of Rights*, and human rights issues, and directed to all sectors of the legal profession including practitioners, academics and the judiciary. Most of the manuscripts we publish are written in an academic style. However, the sole paper we are publishing in this issue of the Journal departs from the academic style that our readers are accustomed to. It is a narrative piece written by David Lepofsky on the history of the *Ontarians with Disabilities Act*.

David has long been a passionate advocate on behalf of persons with disabilities, and he is a central figure in the development of the Act. Readers who have heard David speak on Section 15 of the *Charter* and equality rights for persons with disabilities will have heard his critique of the *Charter* process. It is protracted, expensive and ultimately not very helpful for people like Ms. Eldridge, whose right to a sign language interpreter when she gave birth was affirmed by the Supreme Court of Canada when her children were seven years old.

Much has been written about *Charter* equality rights for persons with disabilities, and the courts have struggled mightily with this issue in major decisions that include, most recently, the Supreme Court of Canada's ruling in *Martin v. Nova Scotia (Workers' Compensation Board)*.¹ The common themes in all these cases are the unique aspects of a Section 15 *Charter* analysis of disabilities. As Justice Gonthier wrote in *Martin*, the challenge of disability as an enumerated ground under Section 15 of the *Charter* is how to deal with the "virtually infinite variety and the widely divergent needs, characteristics and circumstances of persons affected by them. . . Due sensitivity to these differences is the key to achieving substantive equality..."²

Even though a body of case law has built up under the *Charter* and human rights codes, another approach was necessary to address the needs of persons with disabilities. David Lepofsky spearheaded that effort, and has very kindly agreed to tell the story of the *Ontarians with Disabilities Act*. We are proud to publish his record of this very significant

1 [2003] 2 S.C.R. 504, 2003 CarswellINS 360, 2003 CarswellINS 361 (S.C.C.), released on October 3, 2003

2 *Ibid.* at para. 81; citing *Eaton v. Brant County Board of Education*, [1997] 1 S.C.R. 241, at para. 69; and *Granovsky v. Canada (Minister of Employment and Immigration)*, [2000] 1 S.C.R. 703 at para. 27.

contribution to the law. We see this as a unique and important contribution to legal literature, one that we are delighted to publish as a stand alone issue of the National Journal of Constitutional Law.

Errol Mendes
Editor-in-Chief
Debra M. McAllister
Managing Editor

March 10, 2004

The Long, Arduous Road To A Barrier-Free Ontario For People With Disabilities: The History Of The *Ontarians with Disabilities Act* — The First Chapter

*M. David Lepofsky*¹

This is a contemporary history of an Ontario grassroots disability rights movement. It is an account of this movement's unfinished campaign from 1994 to 2003 to achieve a barrier-free province for persons with physical, mental and/or sensory disabilities through the enactment of strong new legislation to be called the Ontarians with Disabilities Act (ODA).

1 C.M., LL.B. (Osgoode Hall Law School), LL.M. (Harvard Law School), LL.D. (Hon.) (Queen's University). The author served as a founding co-chair of the *Ontarians with Disabilities Act* Committee, became its chair in 1999, and served in that capacity throughout the balance of the period covered in this account. This is a volunteer position.

Totally apart from and unrelated to this volunteer activity, the author is employed as Counsel with the Crown Law Office Criminal of the Ontario Ministry of the Attorney General. This account is written in the author's personal capacity, and does not purport to represent the views of Ontario's Attorney General or his Ministry.

This account is dedicated to the many wonderful people who helped out with the ODA cause over the many years of this unfinished effort. Many selflessly contributed so much, often without public fanfare or recognition. Several sadly did not live long enough to see all the fruits of their efforts, including, among others, Niagara Falls/St. Catharines ODA Committee Regional Contact Kathy Watts, Sudbury ODA Committee Regional Contact Richard Sawicki, Brockville ODA Committee Regional Contact Frank Algar, an ODA founding member Don Ogder, and London ODA activist/folk-singer Michael Lewis (who composed and performed the song "Still Waiting," putting to music the ODA movement's message. They are all heroes. It is a great honour and a humbling privilege for me to serve in this cause with them.

The meticulous assistance of Mindy Noble and Pauline Rosenbaum with the final text editing of this account, and with the footnotes, is acknowledged with gratitude.

Told from inside the movement, this account explains the goals of the ODA movement, why new legislation was sought to remove and prevent barriers that impede persons with disabilities from fully participating in society e.g. in access to employment, goods, services and facilities. It details the origins and pre-history of the ODA movement, how it got off the ground in late 1994, and its actions, strategies and policy positions up until Ontario's provincial election in October of 2003.

This grassroots legislative history includes a thorough description of the legislation which this movement secured in 2001, the Ontarians with Disabilities Act, 2001, the ODA movement's efforts at getting that legislation strengthened during legislative debates in the Fall of 2001, why this legislation ended up being so disappointing, and the ODA movement's strategies to get this legislation implemented from late 2001 to 2003. It concludes with a look to the future when the ODA movement will seek to get Ontario's new Government, elected in October 2003, to substantially strengthen this legislation.

Throughout this account, the reader progressively learns about the lessons that the ODA movement itself gradually learned during its campaign on how to be more effective. This account is the first chapter of a saga which is just embarking on its as-yet unwritten second chapter.

This account is aimed at a wide range of readers including those interested in disability rights, disability policy and/or disability activism, those who may have no grounding in disability issues, but who are concerned more broadly about social justice movements, social change, or the broad worlds of public policy and/or extremely recent political history and those interested in law, including human rights, anti-discrimination and constitutional law.

Le texte qui suit raconte l'histoire contemporaine du mouvement populaire ontarien des droits des handicapés. Il s'agit d'un compte rendu de la campagne inachevée qui a été menée par ce mouvement entre les années 1994 à 2003 afin de créer une province libre de tout obstacle pour les personnes souffrant d'un handicap physique, mental ou sensoriel, et ce, grâce à l'adoption d'une nouvelle et forte loi devant s'appeler la Loi sur les personnes handicapées de l'Ontario (LPHO).

Raconté du point de vue du mouvement, ce récit explique les objectifs visés par le mouvement pour la LPHO, et pourquoi il fallait une nouvelle loi pour éliminer et empêcher les obstacles qui se dressent devant les personnes handicapées et les empêchent de participer pleinement à la société, comme dans le cadre de l'accès à l'emploi, aux biens, aux services et aux établissements. Le récit raconte en détail les origines et les balbutiements du mouvement pour la LPHO, comment celui-ci s'est mis en branle vers la fin de 1994, ainsi que ses actions, ses stratégies et ses prises de position en matière de politiques, et ce, jusqu'à l'élection provinciale de l'Ontario en octobre 2003.

Cet historique d'une loi populaire comprend une description approfondie de la législation obtenue par le mouvement en 2001, la Loi de 2001 sur les personnes handicapées en Ontario, des efforts déployés par le mouvement pour la LPHO pour renforcer la législation au cours des débats législatifs de l'automne 2001, des raisons

expliquant pourquoi la loi s'est révélée si décevante, et des stratégies développées par le mouvement pour la LPHO pour obtenir la mise en œuvre de la Loi entre la fin de 2001 et l'an 2003. L'historique prend fin par un regard porté vers l'avenir, où le mouvement pour la LPHO va essayer de pousser le nouveau gouvernement ontarien, élu en octobre 2003, à renforcer substantiellement la loi.

Le lecteur apprend au fur et à mesure du récit quelles leçons ont été graduellement apprises par le mouvement pour la LPHO, au cours de sa campagne, sur les façons de devenir plus efficace. Ce récit n'est que le premier chapitre d'une saga qui ne fait que débiter son deuxième chapitre, lequel reste encore à écrire.

Ce récit a été écrit pour un grand éventail de lecteurs, notamment ceux qui ont un intérêt pour les droits des handicapés, pour les politiques ou l'activisme touchant les handicapés, pour ceux qui n'ont aucune raison d'être intéressés par les questions relatives aux handicapés mais qui sont par ailleurs préoccupés par les mouvements de justice sociale, par les changements sociaux, par les larges centres d'intérêts que constituent l'intérêt public ou l'histoire politique extrêmement récente, et pour ceux qui ont un intérêt pour le droit, particulièrement les droits de la personne, le droit relatif à la discrimination et le droit constitutionnel.

“Each time a man stands up for an ideal, or acts to improve the lot of others, or strikes out against injustice, he sends forth a tiny ripple of hope, and crossing each other from a million different centers of energy and daring those ripples build a current which can sweep down the mightiest walls of oppression and resistance.”

Senator Robert F. Kennedy, Day of Affirmation Address,
University of Capetown, Capetown, South Africa, June 6, 1966

1) INTRODUCTION

Late in the evening of December 13, 2001, minutes before rising for its Winter Recess, the Ontario Legislature gave Third Reading approval to the *Ontarians with Disabilities Act, 2001* (ODA 2001). This was the final legislative vote needed for this law to be passed. The next day it was given Royal Assent, the formality by which the Queen's representative confirms the law's passage.

For seven long years, a grassroots movement had grown across Ontario to fight for a new law, to be called the *Ontarians with Disabilities Act*. This law was sought to achieve a barrier-free Ontario for the up to 1.9 million Ontarians who have a physical, mental, or sensory disability and for all others who would get a disability in the future.

People from all walks of life, those with disabilities, and those who had not yet acquired one, old and young, life-long disability rights activists and recent newcomers to community activism, had been advocating all over Ontario for much-needed new disability accessibility legislation. They had been relentlessly calling, faxing, emailing and

visiting their local members of the Ontario Legislature, planning or going to community forums, writing passionate letters to the editor, phoning call-in radio programmes, talking to their friends and family, submitting detailed briefs to the Ontario Legislature, recruiting newcomers to the cause, giving speeches to community groups, ploughing through email announcements on recent developments in this grassroots campaign, and crafting their own forms of novel political action. So many dedicated women, men and children who wanted to improve the status of Ontarians with disabilities each sent out those ripples of hope about which the late U.S. Senator Robert Kennedy, renowned social justice advocate, had spoken.

Yet on that cold December 2001 night, there was no jubilant fanfare, parties, popping of champagne corks or other celebrations among Ontario's disability community. This was so, even though that community had united like never before, to fight for over half a decade, to win the passage of an *Ontarians with Disabilities Act*. Not a single person with a disability was in the Ontario Legislature's public galleries applauding when this bill became law. In pointed contrast, hundreds of people with disabilities from across Ontario had flocked to the provincial Legislature time and again over the previous seven years, tenaciously pressing legislators to pass a new disability rights law, to tear down the barriers that impede so many persons with disabilities from fully participating in Ontario life.

Ontario's disability community had ample cause that night for being disappointed at the contents of the *Ontarians with Disabilities Act, 2001*. At the same time, they had great cause to be proud at having put disability issues on Ontario's political map like never before and for having brought forward new, innovative ideas on how to address these issues. They could also be proud that they had put in motion a legislative process that is expected to eventually result in the future passage in Ontario of strong and effective legislation to achieve a barrier-free province.

Most legislation in Canadian law books is the result of dry, detached legal and policy work, obscured from the political and social grassroots of Canadian life. In contrast, the ODA 2001, with all its warts, is distinctive because it is one of a few statutes in Canada which is the direct result of the activities of a hitherto-unheard-of grassroots movement, whose sole focus was the passage of new disability rights legislation in Ontario.

This account is a legislative history of the *Ontarians with Disabilities Act, 2001*. It chronicles the major events leading to this legislation's enactment. It describes the major aims of the movement for this legis-

lation, how the ODA movement got started, the ODA movement's strategies, the crafting of its policy platform, the many challenges and roadblocks it encountered along the long and arduous road to the enactment of this legislation, and the tactics the ODA movement used to circumvent the roadblocks it encountered. This narrative highlights the lessons that the ODA movement learned along the way, at the points in the journey where they were learned. This account concludes with an analysis of the ODA 2001's content, an explanation of why its passage into law was not greeted with joyous festivities, a summary of the steps taken from 2001 to October 2003 toward its implementation, and a look toward the future including the need for this legislation to be strengthened.

The time period covered by this account concludes at October 2, 2003. That was the date when the Conservative Government that enacted the ODA 2001 was defeated at the polls. That Government was replaced by a new provincial Liberal Government that had campaigned on a platform to strengthen this weak legislation, within one year of taking office. An as-yet unwritten second chapter of this unfinished saga will eventually be needed to describe how Ontario's new Liberal Government will act to live up to its 2003 election commitments to strengthen the ODA.

This account's narrative recounts the history of this process as seen from inside the ODA movement. As it unfolded, this story was full of suspense, surprises and at times, a necessary suspension of disbelief. It included comedy and tragedy sometimes arising from the same incident, and some striking examples of irony.

This account is aimed at a wide range of readers. It is intended for anyone interested in disability rights, disability policy and/or disability activism. It also speaks to readers who may have no grounding in disability issues, but who are concerned more broadly about social justice movements, social change, or the broad worlds of public policy and/or extremely recent political history. For those interested in law, including human rights, anti-discrimination and constitutional law, this account provides an insight into an aspect of those fields that law schools rarely address; namely, what many people with disabilities have been doing in the face of the fact that the *Charter of Rights* and human rights codes have not delivered to them the benefits that they were intended to provide.

Finally, this account is aimed at readers who would just like to hear about the saga of how a political flame that 20 people lit one day in 1994 caught fire and spread to ignite tenacious action all around Ontario. For

readers not familiar with Ontario's political and legislative systems, this account provides basic background information where needed.

To some, this account may at first appear to convey an internally contradictory message. On the one hand, it reads like a proclamation of success by a movement fighting for a specific cause. On the other hand, the legislation which this movement won in 2001 falls dramatically short of the movement's aims. That suggests that the movement failed.

There is in fact no contradiction. The ODA movement was successful because it managed to bring together a diverse group of people and organizations, to develop and popularize a new agenda, and to put that agenda squarely on Ontario's political map. When legislation was offered to this movement that was substantially insufficient, the movement wasn't duped into thinking that it deserved nothing more. The movement got the most it could from a Government that clearly wanted to give it nothing at all. Moreover, the seeds for the future passage of the strong legislation that this movement still seeks have been planted by the events described in this account. This is because the limitations of the weak and limited legislation, which was passed in December 2001, can be expected to propel the Legislature toward eventually passing a strong, comprehensive law. This is the history of a work that is still in progress.

In this account, the unfolding events leading to the enactment of the *Ontarians with Disabilities Act, 2001* are described for the most part in chronological order. This is told as an unfolding story. As we took part in this story, we had no idea how it was going to end, or what turn of events would await the ODA movement, months or even weeks ahead. This in the end is the story of a movement which had a clear vision of its ultimate goal, which kept its expectations high, and which every few months set a new list of short-term goals on which to focus like a laser. This narrative is divided into time segments. For the most part, these correspond with the short-term goals on which the ODA movement was successively focusing.

The ODA movement's substantive policy proposals, political action strategies, and seemingly endless work on the ground to put these into effect, were all the product of the ideas and efforts of many, many individuals. It is impossible to attribute credit for each of these in this account, without filling pages and pages with their names, and without erroneously and inadvertently leaving some out in the process. Nevertheless in this narrative, I have identified a cross-section of some of the wonderful people who have contributed their energies to this cause. I haven't been able to mention many, if not most of those who deserve to be identified. Of those actually named, I could only detail a mere fraction

of their individual contributions.² To all who selflessly helped this cause, and who rightly deserve to be mentioned but who aren't named in this account, I humbly apologize. The fact that their names are not stated on these pages does not mean their invaluable contributions are not valued.

The credit for our successes along the way deserves to be shared by the many dedicated participants in the ODA movement as a whole. It united in an unprecedented manner from 1994, when the organized ODA movement got off the ground, and thereafter. While I was a visible player in this process, in my capacity as co-chair and later as chair of the *Ontarians with Disabilities Act* Committee, I am adamant that my visibility must not distract from the incredible wealth of wonderful ideas and tenacious efforts contributed by the amazing array of extraordinary and tireless people who deserve the credit for this movement's strategies, activities, and policy positions. I also emphatically acknowledge that because I was a participant in many of the events described here, I obviously and inevitably bring my own point of view to bear in describing them.

2) BEFORE 1994: PRE-HISTORY OF THE ODA MOVEMENT

a) General

The movement for a strong and effective ODA grew out of the need to remove and prevent barriers in society that impede people with disabilities from fully participating in all that society has to offer. This is of course not a new need. It is as old as organized society.

In the 1990s, the ODA movement coined the phrase "barrier-free society" to capture in three words the yearnings of so many people with every kind of disability, as well as their friends and families. To explain how the organized ODA movement got started in 1994, it is first necessary to describe the status of persons with disabilities in Ontario society and the barriers they face. It is then necessary to explain what efforts were taken to improve their position in Ontario life by removing barriers facing them from the 1970s to the early 1990s, and how these efforts fared. From that series of events emerged the events that gave rise to the organized ODA movement.

2 Where possible, I do identify the names of key politicians who played important parts in this process. It is important that they be identified for the public record, as they are publicly accountable politicians.

b) Disability Touches Us All

To understand the ODA's goal of a "barrier-free society", first it is important to recognize something which most people either don't know or prefer not to think about: Disability eventually touches everyone's life. Everyone either now has a disability, or knows someone near and dear to them who has a disability, or will acquire a disability in the future. There are only two kinds of people in society: those who have a disability now, and people with disabilities in waiting—i.e. those who will get one later. This reality was reflected in a 1997 poll, done *pro bono* for the *Ontarians with Disabilities Act* Committee by Thompson, Lightstone (the Lou Harris Polling Organization's Canadian arm). It found that fully 77 percent of the people surveyed across Canada knew someone with a disability with whom they were in direct or close contact.

The term "disability" refers to any degree of a physical, sensory and/or mental disability. When most hear the term "disability," they often think of people with physical disabilities, and particularly of people who use a wheelchair. The ODA movement of course included people with these physical disabilities. However, it also expanded far beyond the needs solely of people who use wheelchairs.

After it was initiated, the ODA movement came quickly to include the needs of people with a wide range of disabilities. This encompasses people who are blind or vision impaired, deaf, deafened or hard of hearing, people who have speech impediments, people with a wide range of mobility impairments, those who have a developmental or intellectual disability, those who have a learning disability or who have a mental disorder or have been labelled as such, and many more. It includes those who were born with a disability, as well as those who acquire a disability during their life. It encompasses those whose disability is plainly visible, such as someone who uses a white cane, as well as the many whose disability is invisible, such as those with an acquired brain injury.

This list is not exhaustive. Moreover, disabilities are not readily divided into neat watertight compartments. A person can have more than one disability.

Disability is ultimately everyone's concern, since it eventually touches everyone's life. We all have a strong interest in ensuring that our society becomes barrier-free.

As of the 1990s, fully 17 percent of Canada's population at any point in time had a disability of some sort. Thus over four million Canadians had a disability. That number is larger than the population of any single Canadian province except Quebec or Ontario. During the

years addressed in this account, the Ontario Government assessed the number of Ontarians with disabilities from 1.5 million to 1.9 million. This figure is greater than the population of any Ontario municipality except Toronto.

It has been widely projected that the percentage of Canada's population of persons with disabilities will increase in the near future. This is because Canada's population is aging. The aging process is the greatest cause of disabilities. As we get older, our physical, sensory and/or mental abilities tend to diminish.

People with disabilities tend to be among society's most disadvantaged. They are over-represented among Canada's poor. The proportion of persons with disabilities who are unemployed or under-employed is substantially higher than is the case in the general public. They are over-represented among those who must depend on dwindling social assistance programmes. They are disproportionately vulnerable to the arbitrary exercise of power over their most basic needs by public sector, private sector, and charitable organizations. They too often lack access to effective legal services. This is so despite the fact that they are needier than most for recourse to lawyers' services to vindicate their rights and freedoms.

People with disabilities reflect the diversity of the population as a whole in terms of gender, race, religion, ethno-cultural origins, and sexual orientations. They live in big cities, small towns, and remote rural communities. They are found in all walks of social life and all stripes of political life. A substantial percentage of people with disabilities are seniors.

c) A Province Full Of Barriers

At the core of the ODA movement's message has been the recognition that people with disabilities face far too many barriers on a daily basis. These impede them from fully participating in and being fully included in all aspects of life in Ontario, and indeed in Canada. Over recent years, governments, businesses, and others have taken some sporadic steps to remove some of these barriers. Yet most of the major barriers impeding persons with disabilities still remain. Making things worse, new barriers are still being created. This significantly slows our progress towards a barrier-free society.

What and where are these barriers? Many arbitrary and unnecessary barriers prevent people with disabilities from seeking and fully and equally participating in competitive employment, education, job train-

ing, communications, housing, public and private transportation, health care, social services, as well as getting access to other goods, facilities, services, and other key opportunities in the public and private sectors. This forces far too many persons with disabilities to live in conditions of poverty, isolation, and despair right in the midst of one of the world's richest societies. This cruel reality exists despite the fact that if given an opportunity to succeed on the basis of their individual merits, people with disabilities would have so much to offer. Politicians' oft-repeated promises to voters of job growth, better education, and greater opportunities for people who are willing to put in the effort often seem remote from many people with disabilities who are barred from offering their skill and hard work.

Most people think of barriers impeding persons with disabilities as being physical barriers, e.g. a step at the doorway of a store which impedes a prospective customer in a wheelchair. Yet these barriers also take many other forms. A number are invisible to the uninformed observer.

Few people without disabilities realize how many public buildings are still physically inaccessible to persons who use a wheelchair, walker, motorized-scooter, or other mobility-assisting device, and how few buildings are designed to even attempt to achieve true physical accessibility. Still fewer people are aware that even buildings that are labelled as "accessible" are often not in reality fully physically accessible for all people with disabilities.

For example, the aisles of a store may be too narrow to accommodate someone who uses a scooter. A children's playground may have a curb surrounding it. There may be a ramp outside a building that is too steep for a wheelchair to ascend. Even if there is a satisfactory ramp to get into the building's front door, there may be stairs inside the building. A bathroom door may be too narrow for a wide electric wheelchair. Alternatively, there may be a bathroom that has been designed to be accessible, but which no wheelchair can reach due to barriers to entry to the building.

For someone who is blind, an information barrier may be an office tower that has neither Braille markings on the elevator buttons nor an electronic voice announcing the floor where the elevator has stopped. For someone who is deaf, deafened, or hard-of-hearing, a comparable barrier may be a fire alarm system that does not also have a visually-displayed alarm.

Many people mistakenly believe that all buildings must now be accessible to persons with disabilities because of the existence of laws

called “building codes.” The reality is that, typically, building codes only require that when a new building is constructed it must meet certain stipulated accessibility requirements, or that accessibility features must be added to an older building when and if it is renovated. A building that does not comply with an applicable building code need not be retrofitted to comply with that law if it is not renovated. Often these building codes provide that even where an existing building is renovated, accessibility features need only be added to the part of the building that is being renovated. Moreover, building codes have not historically included sufficient barrier-free design standards, even for new buildings. If a building is “built to code,” it can still incorporate barriers against persons with disabilities.

Many barriers also exist in the designs of goods, services, and facilities, that don’t take into account the needs of people with disabilities who would want to make use of those goods, services, and facilities. Many of these barriers can be easily avoided through good design and an awareness of the need to consider people with disabilities as possible users when the good, service or facility is first being designed. It can require more effort to remove these barriers after the design is completed. Design barriers occur in public transit systems, playgrounds, household goods and products, government services, and the increasingly pervasive use of technology to replace cash in everyday transactions.

For example, often consumer products are not designed to be easily used by people with disabilities. Some products, such as VCRs and DVD players, use visual menus that show up on the television screen. This does not accommodate the needs of a user who has a serious vision impairment or who is dyslexic. Other products may require that the user have good manual dexterity to rapidly push tiny buttons before menus flash by. This can be a barrier for someone with cerebral palsy, arthritis, or a neurological disease.

A bus or subway system that doesn’t announce each upcoming stop aloud for vision-impaired riders creates a barrier that is easy to rectify. Important audio public announcements in train stations or other public facilities are useless to people who are deaf, deafened, or hard-of-hearing, unless they are accompanied by a visual announcement of some type. Information provided to the public is often presented in conventional printed form only, not in Braille, large print, or other alternative formats which would be accessible to people who are blind, who have low vision, or who have other print disabilities such as dyslexia. The use of plain language instructions for products would remove a barrier facing many persons with an intellectual disability. The lack of sign

language interpretation in a publicly-funded health facility like a hospital creates a serious communication barrier for persons who are deaf.

People with disabilities often confront frustrating workplace barriers. These keep too many of them from getting or keeping a competitive job, or from getting a promotion based on their abilities. Office equipment and technology are generally not designed with the idea that people with disabilities might be using them. For example, many offices lack computer tables that can be easily modified to accommodate someone using a wheelchair. Modular office configurations that use screens and single-piece units containing a desk and drawers are not easily modifiable. This can make employers reluctant to hire someone who might need the modification, even though their disability will not affect their ability to do the work. It is the setting that is the barrier.

Some of the most pervasive barriers are those that cannot be seen. They are the result of policies or programmes designed without taking into account the needs of people with disabilities. For example, collective agreements, employer policies, and insurance plans may include provisions which create barriers that make it difficult for people with some disabilities to obtain competitive employment or to take advantage of benefit plans used by other employees. Attitudinal barriers and workplace harassment can create impediments that inhibit people with disabilities from trying to enforce their legal rights. They may discourage people from staying at their jobs. As but one example, discrimination against people who are HIV-positive has made it difficult for some people to continue in their job or obtain a new job, even though they are able to carry out the job duties.

Application procedures that require people to fill in forms on the spot may create barriers for people who have difficulty writing because of a learning disability, or who have a physical disability that affects their co-ordination. A student loan programme that requires students to enrol for a full-time programme, and which makes no provision for part-time studies, creates a major barrier against students who cannot spend an entire day in school because of fatigue due to a disability. The same applies for a person who needs to receive important disability-related medical treatments, such as dialysis, or who needs to return home to receive disability-related support services, which are often rigidly scheduled.

Disparate barriers can interact with each other to amplify the disadvantage which persons with disabilities face. When a person with a disability is blocked from fully benefiting from a public education in school or university, this creates barriers to future employment. When

a municipal public transit system has barriers that impede effective transportation, this can impede individuals with disabilities from benefiting from a university, even if the university itself is barrier-free, or from seeking and maintaining competitive employment, even at barrier-free workplaces. Thus, persons with disabilities need comprehensive action to systematically eradicate these barriers in all sectors of society.

Many surmise that these barriers were all created decades ago, and that we will get rid of them over time now that we know better. It seems like it's just a matter of time. Few would think that any new barriers would be invented after the public has become more enlightened about the full participation of persons with disabilities. Unfortunately, this is not the case. Even with increased public awareness of the needs of people with disabilities, new barriers continue to be created. For example, companies designing computer hardware and software still too often don't take into account the fact that many people using this technology are blind, deaf or have a motor co-ordination challenge. It was only after the *Americans with Disabilities Act* and other new U.S. disability rights legislation came into effect that some U.S. manufacturers began more systematically designing technologies that could be adapted for users with disabilities. Yet there still are many new products and services in the computer field and elsewhere which are still designed in ways that create major barriers against people with disabilities.

d) The Need For A Barrier-Free Society

Ontario needs to become a barrier-free society. Whether barriers facing persons with disabilities are physical, contractual, technological, bureaucratic, communicational, informational, attitudinal, or of some other kind, they usually don't benefit the service, programme or job they are related to, nor do they relate to the ability of the person to perform the task. These barriers are not necessary. They were typically created because too often no one has thought about the need to prevent barriers. For too many employers and providers of goods, services, and facilities, people with disabilities, as prospective employees or consumers, are simply not on the radar screens.

These barriers benefit no one. No one profits from them. They only hurt our society. They are a cruel impediment to persons with disabilities enjoying all that society has to offer. They also hurt the families and friends of persons with disabilities, who often have to help a person with a disability deal with the harmful consequences of encountering these barriers.

These barriers also seriously hurt the business community. Businesses that have barriers impeding customers with disabilities lose out on the spending power of millions of potential customers. The business they lose is not only that of customers with disabilities but of their friends and families as well. An inaccessible restaurant loses the business not only of patrons with disabilities but as well of their friends or family, with whom they go out to dine. The business community also suffers from Ontario's public transit barriers against persons with disabilities. Those barriers prevent many customers with disabilities and potential employees with disabilities from being able to get to many business locations where they could shop or work.

Barriers in Ontario result in a loss of the valuable tourist dollars of those tourists with disabilities who might have come from abroad to spend their money here. Ontario also loses out on the revenues of conventions that will be held elsewhere, because Ontario's barriers make it a less desirable destination to American companies, for example, that have to comply with U.S. accessibility legislation.

Companies that make products that do not incorporate universal design features to enable persons with disabilities to make full use of them lose out on sales, not only in Canada's domestic market, but in markets around the world. There are millions of consumers with disabilities around the world. They constitute an enormous untapped market.

Society as a whole also loses out because of these barriers. When people with disabilities are impeded from getting an effective education and/or competitive employment, they can end up on social assistance. They must draw from the public purse, when they would rather be earning a salary and paying taxes into the public purse. When governments continue to use tax dollars to create new barriers that could have been avoided, they saddle future generations with the cost of later having to undo the mess they now make. A society full of barriers is a lose-lose proposition.

e) 1970s - No General Law Against Discriminating Because Of Disability

The organized ODA movement only coalesced and got off the ground in 1994. However, the seeds that would later sprout into this movement were planted over a decade before, back in 1982, unbeknownst at that time to any of the ODA movement's later key players. Ironically, the genesis of the ODA movement was hidden in two major victories on the road to a barrier-free society for persons with disabilities

that culminated in 1982. At the time, those victories didn't seem to point the way toward the need for more legislation, legislation that no one conceived of at that time.

In the mid-1970s, it was not against the law in Ontario to discriminate against someone because of his or her disability. Canada had no constitutional *Charter of Rights*, nor any constitutional guarantee of equality rights for people with disabilities.

At that time Ontario had a statutory anti-discrimination law, called the Ontario *Human Rights Code*. It was passed in the early 1960s, and prohibited discrimination in employment, housing, and access to services and facilities on grounds such as race and religion. It had periodically been amended to make it illegal to discriminate on additional grounds.

However, as of the mid-1970s, the Ontario *Human Rights Code* did not make it illegal to discriminate against people with disabilities. At most, Ontario only had some very limited piecemeal laws addressing select barriers against some persons with disabilities. For example, Ontario's *Blind Persons Rights Act*³ was passed in the 1970s to prohibit discrimination against blind persons who were denied access to public services because they were accompanied by a guide dog.

In the 1970s, Ontario also had no comprehensive, well-organized disability rights movement. Individuals with disabilities and individual disability organizations launched piecemeal advocacy activities on an *ad hoc* basis. Most focused efforts primarily on issues relating to their own kind of disability. For example, blindness-related organizations directed advocacy efforts on the specific needs of people who are blind or vision-impaired. In the mid-1970s there was no high-profile disability rights movement actively advocating for the Ontario *Human Rights Code* to be amended, to make it illegal to discriminate because of disability.

There had been ongoing intermittent talk among Canadian politicians in those years about creating a national *Charter of Rights* to be added to Canada's Constitution. However, there was no broad grassroots national movement seeking to create a *Charter of Rights* to be entrenched in Canada's Constitution. There was certainly no major disability rights movement in the mid-1970s urging politicians to enshrine disability equality in Canada's Constitution. The idea had been given scarcely any thought.

3 R.S.O. 1980, c.44, enacted by S.O. 1976, c. 14

In the mid-1970s, the Ontario Human Rights Commission (the provincial government body which enforces the Ontario *Human Rights Code*) struck a committee to study how the Code could be revised to more effectively root out discrimination in Ontario. That committee released a landmark report calling for comprehensive reforms to the Ontario *Human Rights Code* on a number of fronts, including the rarely-discussed topic of disability discrimination. The committee's report, entitled "*Life Together*"⁴ recommended only that the Human Rights Code be amended to make it illegal to discriminate in Ontario because of a *physical* disability. It did not call for discrimination because of a mental disability to be made illegal. Nevertheless, *Life Together* was seen as a ground-breaking stride forward in the name of advancing disability rights.

For the next two to three years, the Ontario Government took no major public action to implement *Life Together*'s proposed reforms to the Ontario *Human Rights Code*. The period of 1979 to 1982 marked a major turning point on the road to a barrier-free society for persons with disabilities. During this period, people with disabilities in Ontario ended up battling simultaneously on two fronts to seek legal protection for their equality rights.

f) The Battle To Amend Ontario's Human Rights Code To Prohibit Discrimination Because Of Disability

This battle's first front was at the provincial level in Ontario. In 1979, after several years of delay, Ontario's Conservative Government finally proposed to act on the "*Life Together*" report's recommendations to create a statutory prohibition against discrimination against people with disabilities. The Ontario Government was initially unwilling to do this by amending the Ontario *Human Rights Code*, afraid that if it opened up the Ontario *Human Rights Code* for amendments to protect people with disabilities from discrimination, the gay and lesbian community would also seek amendments to that law to prohibit discrimination based on sexual orientation. The latter was an issue that the Government of the day did not want to open up.

As a parliamentary sleight of hand to duck the sexual orientation issue, the Ontario Government opted to achieve its goal of prohibiting discrimination against persons with disabilities by passing a separate

4 Ontario Human Rights Commission, *Life Together: A Report on Human Rights in Ontario* (Toronto: Queen's Printer, July 1977) (Chair: Thomas H.B. Simons)

disability rights law, rather than by amending the Ontario *Human Rights Code*. In late 1979, the Ontario Government introduced its proposed “Handicapped Persons Rights Act” into the Ontario Legislature for First Reading. It was a freestanding disability rights law. It did not propose to amend the existing Ontario *Human Rights Code*.

This bill set out a series of prohibitions against discrimination against people with disabilities in employment and with regard to access to goods, services, facilities, accommodation and the like. This new law was to be enforced by the Ontario Human Rights Commission. An individual who felt that he or she had been discriminated against because of disability could file a disability discrimination complaint with the Ontario Human Rights Commission. That Commission could then investigate the complaint and take the case before a tribunal for a hearing if it felt that the complaint had merit. This proposed legislation amounted to a parallel Human Rights Code for people with disabilities, which invoked the same enforcement procedure as was used under the Ontario *Human Rights Code*.

News of the Government’s introduction of this bill into the Ontario Legislature for debate spread around Ontario’s disability community. This news led several disability organizations and individuals with disabilities to come together in an *ad hoc* cross-disability coalition. Later named the Ontario Coalition for Human Rights for the Handicapped, this unincorporated single-issue movement united for the sole purpose of achieving the enactment of effective legal protection for the human rights of Ontarians with disabilities. In many ways, this Coalition foreshadowed in its structure and strategies the *Ontarians with Disabilities Act* Committee which would be founded 15 years later, and which would lead the charge for the enactment of a strong and effective *Ontarians with Disabilities Act*. Those who participated both in this earlier Coalition and later in the ODA movement would draw on this earlier Coalition’s experiences both with policy and politics.

With 20 years’ hindsight, it is extremely ironic that what initially topped this new Human Rights Coalition’s agenda was a powerful, fundamental and deeply-emotional opposition to any notion of a separate stand-alone disability rights law. The Government’s 1979 bill was roundly condemned as inferior “separate-but-equal” legislation. This was because it did not incorporate disability equality rights into the all-purpose Ontario *Human Rights Code*.

The fact that the Government’s disability rights bill included substantively deficient provisions which were weaker than comparable anti-discrimination provisions in the Human Rights Code for women, relig-

ious and racial minorities and others was not at first the top concern to many of the individuals with disabilities and disability organizations that came to the fore in opposition to the Government's bill. Rather, the predominant concern was the objection in principle to the pejorative symbolism of persons with disabilities not being included in Ontario's mainstream human rights code alongside other disadvantaged equality-seeking groups. No one could have then foreseen that 15 years later, Ontario's disability community would unite around the very goal of winning the enactment of a stand-alone new law, whose sole purpose would be the removal and prevention of barriers impeding persons with disabilities.

Shortly after it formed in 1979, this Human Rights Coalition scored a major initial victory. It persuaded the Ontario Government to withdraw its separate disability rights bill. It also won a commitment from the Conservative Government of the day to instead amend the Ontario *Human Rights Code* to include disability rights protection.⁵

Over the next year and a half, the Ontario Government undertook an extensive process of constructive face-to-face negotiations with the Ontario Coalition for Human Rights for the Handicapped. We discussed and negotiated with Government officials in great detail over the precise wording that the Human Rights Code amendments should include. This included such important issues as the definition of "handicap" (the term in vogue at that time, which has since fallen into disfavour), the meaning of "discrimination," the defences that should be open to an organization accused of disability discrimination, and the kinds of remedies that should be available against an organization that violates the law.

During these negotiations, the Coalition won major improvements in the legislative language to be included in the Human Rights Code. The Coalition didn't need to resort to ongoing relentless political pressure tactics, such as public education forums, news conferences, and the like. This was because the party in power, the provincial Conservative Party under Premier William Davis, and the Labour Minister charged with this issue, Dr. Robert Elgie, presented themselves as open-minded, willing to dialogue, and receptive to many of our ideas. Moreover, the opposition Liberal and New Democratic Parties supported our cause and kept the Government on its toes.

5 I myself became involved with this Coalition after this initial victory. I served on the Coalition's executive committee and was very much involved in its advocacy efforts until it wound up in 1982.

In December 1980, after a constructive consultation process, the Ontario Government introduced a bill into the Legislature which proposed a total revamping of the Ontario *Human Rights Code*. This included the extension of its anti-discrimination protections to persons with disabilities. The Human Rights Coalition identified a short list of improvements that it believed this bill needed. It brought them forward before a Standing Committee of the Legislature that was holding public hearings on that bill in the Summer of 1981. This process would serve as an early training ground for the legislative process in 2001 surrounding the *Ontarians with Disabilities Act*.

One noteworthy irony occurred in this 1981 legislative process for the future ODA movement. On June 9, 1981, when the Human Rights Coalition appeared before the Ontario Legislature's Standing Committee on Resources Development to argue for amendments to beef up the Code's proposed new disability provisions, I had the privilege of being one of the Coalition's presenters. That Standing Committee's chair, presiding at that hearing, was a recently-elected, little known rookie Conservative MPP,⁶ by the name of Mike Harris.

Little did he know that 24 years later, he would become a two-term Ontario Premier and that some 24 years after this legislative hearing, while campaigning for election to his first term as Premier, Mr. Harris would sign a letter that set out an election pledge promising to enact the *Ontarians with Disabilities Act*. Little did he know that an organized coalition would form to press him to keep that commitment.

Little did I know that I would be actively involved in trying to hold Mr. Harris to that election promise. Little did either of us know that when he was elected, he would repeatedly refuse to meet with us. That day back in 1981 was the only day when I would have the chance to speak directly to him about protecting the rights of persons with disabilities, albeit in the framework of formal legislative hearings, with him simply performing the formalities of chairing a legislative hearing.⁷

6 Short form for "Member of the Provincial Parliament".

7 Also of interest with hindsight were two others who were present at those hearings. The Liberal who led the charge to beef up the Human Rights Code was a young MPP, Sheila Copps. She would later become a major political figure on the national scene. Her mother, Geraldine Copps, would years later become a Hamilton city counsellor who actively supported the ODA cause, as described further below. An NDP MPP present that day, Ross McLelland, helped advocate for the strengthening of disability protections in the Human Rights Code. He would much later become a senior advisor to NDP Premier Bob Rae from 1990 to 1995, with whom ODA supporters would meet to advocate for

Resulting from this process was the brand new Ontario *Human Rights Code*, passed into law and proclaimed in force in 1982.⁸ Its reforms included, among other things, Canada's most comprehensive package as of that time of statutory protections against disability discrimination.

This new legislation was not, however, flawless. Its most significant flaw was an unsatisfactory provision which precluded a human rights complaint if it was based solely on a premises' physical inaccessibility.⁹ Under that provision, it was open for a human rights complaint to be filed based on a combination of other kinds of disability discrimination, as well as problems of physical inaccessibility. However, the new Code did not permit a human rights complaint to be launched based solely on a place being physically inaccessible to persons with disabilities. The Ontario Government of the day was very reluctant to address physical accessibility issues at all through the Ontario *Human Rights Code*. It had a right wing flank to keep in check, in order to get the new Code through the Legislature.

We very much regretted this provision. Despite it, we projected that it would be relatively easy to get around it by drafting a human rights complaint about a physically inaccessible workplace or store, while simply adding to it some other kinds of barriers facing persons with disabilities to supplement any legal complaint about physical barriers. We were also pleased that five years later, a new provincial Government under the Liberal Party repealed this limitation on the human rights of persons with disabilities. It did so because it evidently concluded that it was contrary to the *Charter of Rights*.¹⁰

g) The Battle To Include Disability Equality In Canada's Constitution

The second front on which disability rights advocates fought during those critical years was at the national level. In the Summer of 1980, after federal-provincial negotiations for constitutional reform had failed to reach an agreement, the federal Government announced that it intended to unilaterally patriate Canada's Constitution. Back then Canada's Constitution was a British statute. It could only be amended by

the ODA during the last days of the NDP Government in Ontario.

8 S.O. 1981, c. 53.

9 *Ontario Human Rights Code, 1982*, S.O. 1981, c.53 s. 16(1)(a).

10 *Equality Rights Statute Law Amendment Act*, S.O. 1986, c.64.

the U.K. Parliament. Under the leadership of Prime Minister Pierre Trudeau, Canada's federal Government simultaneously planned to call on the British Parliament to patriate Canada's constitution, and to entrench in it a new *Charter of Rights*.

The proposed *Charter of Rights*, which Trudeau introduced into Parliament in October 1980, included a new constitutional guarantee of equality rights for Canadians, Section 15. However, Section 15's proposed wording originally included no protection against discrimination because of disability.¹¹ In fact, its wording clearly would have prevented a court from interpreting it to add protection against discrimination because of disability. This was a deliberate decision by the *Charter's* initial drafters.

When the Trudeau Government introduced its package for constitutional reforms into the Canadian Parliament for debate in the Fall of 1980, a number of disability organizations got right into action on an *ad hoc* basis.¹² There was no time to organize a co-ordinated national campaign. Prime Minister Trudeau had announced a very fast schedule for Parliament's debates on his constitutional reform package.

A number of organizations and groups urged that *Charter* Section 15 be amended before it was passed into law, so that it would extend constitutional protection to persons with disabilities against discrimination. This campaign, fought in the media, before parliamentary committees and elsewhere, was waged under extreme time pressure. Back

11 As originally proposed, s. 15 provided:

- (1) Everyone has the right to equality before the law and to equal protection of the law without discrimination because of race, national or ethnic origin, colour, religion, age or sex.
- (2) This section does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged persons or groups.

12 I was one of the many players in this process. I served as volunteer constitutional spokesperson on the *Charter* for the Canadian National Institute for the Blind. Among other things, I appeared before the Joint Committee of the Senate and the House of Commons on the Constitution of Canada on December 12, 1980 to argue in support of the disability amendment we were seeking. See M.D. Lepofsky "How disabled won place in *Charter*" *The Toronto Star* (17 April 2002) A-27. On the range of arguments put forward by the various organizations and groups supporting the disability amendment to the *Charter*, See generally M. D. Lepofsky and J. Bickenbach, "Equality Rights and the *Canadian Charter of Rights and Freedoms*, Equality Rights and Physically Handicapped," (Toronto: Carswell, 1985).

then instant communication through the future technologies of email and faxes was not yet even a dream.

As a result of the advocacy of many, the federal Government was persuaded to amend *Charter* Section 15 to include a constitutional guarantee of equality rights to persons with disabilities.¹³ The federal Justice Minister of the day, who acceded to these calls on behalf of Prime Minister Trudeau, was Jean Chrétien. He would, years later, become Canada's Prime Minister. In January of 1981, the federal Government agreed to an opposition motion, supported by both the opposition Conservatives and New Democrats, to amend the proposed wording of Section 15 of the *Charter* to add explicit protection against discrimination based on mental or physical disability by any level of Government. As well, Section 14 of the *Charter* (which guarantees the right to an interpreter for persons involved in court proceedings) was amended to ensure that it provided the right to sign language interpretation for deaf persons involved in court. Disability equality was the only substantive right that was added to the *Charter* during the wide-ranging national debate in 1980-81 over the patriation and reform of Canada's Constitution.

h) These Two 1982 Victories As Seeds Of Future ODA Movement

In the Spring of 1982, when Canada's new *Charter of Rights* and Ontario's newly-revised Human Rights Code each came into effect, Ontarians with disabilities had tangible causes for optimism. They had just won two major battles. They had important new legal rights on the books. A bright future lay ahead. They could deploy these new rights to tackle the many barriers they faced in their daily lives.

Yet hidden in these unprecedented and unexpected victories were the unforeseen seeds of the as-yet-unborn ODA movement. This was so even though no one had then contemplated the idea of an ODA and even

13 The final wording of s. 15 is as follows:

- (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.
- (2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability

though the whole idea of a separate disability rights law was then repugnant to most Ontario disability rights advocates.

How was this so? The seeds of the ODA movement lie within these two victories because of the experience which people with disabilities would have throughout the decade following 1982, when they tried to put these new rights to work. Many spent the 1980s and early 1990s trying to get the most out of these new rights. Numerous cases were brought in court under the *Charter*, before the Ontario Human Rights Commission under the Ontario *Human Rights Code*, and before the Canadian Human Rights Commission under the corresponding federal anti-discrimination statute. Some were orchestrated test cases, hand-picked to set major legal precedents. Many other cases were brought by ordinary individuals who were simply trying to tackle barriers they faced, one at a time.

As cases gradually worked their way through the legal system, both disability rights cases and equality claims by other disadvantaged groups, courts and human rights tribunals set a series of important precedents. By and large, these rulings sounded very helpful to the cause of equality for persons with disabilities. They made for great law journal articles and law conference panel discussions.

Courts held that the rights guaranteed in both the constitutional *Charter of Rights* and statutory human rights codes must be interpreted liberally and purposively.¹⁴ Those who were accused of unlawful dis-

14 Re the *Charter*, see *Canada (Director of Investigation & Research, Combines Investigation Branch) v. Southam Inc.*, (sub nom. *Hunter v. Southam Inc.*) [1984] 2 S.C.R. 145, 1984 CarswellAlta 121, 1984 CarswellAlta 415, (sub nom. *Hunter v. Southam Inc.*) 11 D.L.R. (4th) 641, 33 Alta. L.R. (2d) 193, (sub nom. *Hunter v. Southam Inc.*) 55 A.R. 291, 27 B.L.R. 297, 41 C.R. (3d) 97, 84 D.T.C. 6467, (sub nom. *Hunter v. Southam Inc.*) 14 C.C.C. (3d) 97, (sub nom. *Director of Investigations & Research Combines Investigation Branch v. Southam Inc.*) [1984] 6 W.W.R. 577, (sub nom. *Hunter v. Southam Inc.*) 55 N.R. 241, (sub nom. *Hunter v. Southam Inc.*) 2 C.P.R. (3d) 1, (sub nom. *Hunter v. Southam Inc.*) 9 C.R.R. 355 (S.C.C.); *R. v. Oakes*, [1986] 1 S.C.R. 103, 1986 CarswellOnt 95, 1986 CarswellOnt 1001, 26 D.L.R. (4th) 200, 65 N.R. 87, 14 O.A.C. 335, 24 C.C.C. (3d) 321, 50 C.R. (3d) 1, 19 C.R.R. 308, 53 O.R. (2d) 719 (S.C.C.); *Irwin Toy Ltd. v. Quebec (Attorney General)*, [1989] 1 S.C.R. 927, 1989 CarswellQue 115F, 1989 CarswellQue 115, 94 N.R. 167, 58 D.L.R. (4th) 577, 24 Q.A.C. 2, 25 C.P.R. (3d) 417, 39 C.R.R. 193 (S.C.C.). Under the Human Rights Code, see *O'Malley v. Simpsons-Sears Ltd.*, 7 C.H.R.R. D/3102, 1985 CarswellOnt 887, 1985 CarswellOnt 946, (sub nom. *Ontario Human Rights Commission v. Simpsons-Sears Ltd.*) [1985] S.C.J. No. 74, (sub nom. *Ontario Human Rights Commission v. Simpsons-Sears Ltd.*)

crimination, and who wanted to raise defences, had to meet a strict burden of proof and to fulfil a tough test.¹⁵ *Charter* rights, including the constitutional right to equality, are part of the “supreme law of Canada” and are paramount.¹⁶ Rights guaranteed in human rights codes are “quasi-constitutional.” They therefore have virtually the same importance and force as rights guaranteed under the *Charter*.¹⁷

Both the *Charter* and human rights codes were interpreted as banning not only intentional discrimination, but also unintentional discrimination e.g. when an organization unknowingly has a policy or practice that applies equally to all but which disproportionately burdens an equality-seeking group such as persons with disabilities.¹⁸ This meant that employers, and the providers of goods, services and facilities to the public had a duty to accommodate the needs of persons with disabilities up to the point when that organization incurred undue hardship to itself.¹⁹ Moreover, as mentioned earlier, in light of *Charter* Section 15, the Ontario Legislature amended the Ontario *Human Rights Code* in 1986 to remove an obstacle to its effectiveness, referred to above.²⁰

At the same time as disability cases were coming to court to enforce these new rights, major efforts were undertaken to educate governments, judges, the legal profession, private sector businesses, and the disability community about the new legal requirement to respect the equality of persons with disabilities. This supplemented decades of efforts by dis-

[1985] 2 S.C.R. 536, 23 D.L.R. (4th) 321, 64 N.R. 161, 12 O.A.C. 241, 17 Admin. L.R. 89, (sub nom. *Ontario (Human Rights Commission) v. Simpsons-Sears Ltd.*) 9 C.C.E.L. 185, 86 C.L.L.C. 17,002, [1986] D.L.Q. 89 (note), 52 O.R. (2d) 799 (note) (S.C.C.) [hereinafter *Simpson-Sears* cited to (S.C.C.)].

15 Under the *Charter*, see, e.g. *R. v. Oakes*, *ibid.* Under the Human Rights Code, see *Ontario (Human Rights Commission) v. Etobicoke (Borough)*, 3 C.H.R.R. D/781, 1982 CarswellOnt 730, 1982 CarswellOnt 730F, [1982] 1 S.C.R. 202, 40 N.R. 159, 82 C.L.L.C. 17,005, 132 D.L.R. (3d) 14 (S.C.C.) at D/785 [C.H.R.R.]; and *Simpson-Sears*, *ibid.* at D/3102, D/3105.

16 See s. 52(1) of the *Constitution Act, 1982*.

17 *Simpson-Sears*, *supra*, n. 14 at para. 24766.

18 Re the *Charter* see *Andrews v. Law Society (British Columbia)*, [1989] 1 S.C.R. 143, 1989 CarswellBC 16, 1989 CarswellBC 701, [1989] 2 W.W.R. 289, 56 D.L.R. (4th) 1, 91 N.R. 255, 34 B.C.L.R. (2d) 273, 25 C.C.E.L. 255, 36 C.R.R. 193, 10 C.H.R.R. D/5719 (S.C.C.); Re human rights legislation, see *Simpson-Sears*, *supra* at note 14; See also *Ontario Human Rights Code* R.S.O. 1990, c. H.19 s. 11 and 17.

19 *Ibid.* See generally M. D. Lepofsky, “The Duty to Accommodate: A Purposive Approach,” (1992) 1 Canadian Labour Law Journal 1 and 2.

20 *Supra*, n. 10.

ability community organizations to remove the extraordinary attitudinal barriers facing persons with disabilities through extensive public education campaigns.

Despite these important strides forward, in the 1980s people with disabilities did not experience significant progress toward their goal of a barrier-free society. There were isolated instances of individual victories. Yet the vast preponderance of old barriers remained, blocking people with disabilities. Making things worse, new barriers continued to be created. For every old barrier that was taken down, it seemed that a new barrier was being created. This problem got even worse during the 1990s, when all levels of government became preoccupied with cutting budgets. People with disabilities increasingly became the first and worst victims of those cuts.

People with disabilities increasingly learned that, even though the rights they had won at the start of the 1980s in the *Charter of Rights* and in human rights legislation were important and should never be weakened, those laws had critical weaknesses and limitations. Under them, people with disabilities had to fight barriers one at a time, either suing in court under the *Charter*, or bringing a complaint before a human rights commission. This took an extraordinary amount of time and effort. *Charter* cases took years to wend their way through the courts. Human rights complaints took years to make their way through a human rights commission's backlogged investigation, conciliation and litigation processes. Only in infrequent cases did a human rights commission bring a disability rights case on for a full hearing before an independent human rights tribunal.²¹ To add injury to injury, when chronically-underfunded human rights commissions delayed bringing a human rights case to a hearing, courts would at times consider granting to the party accused of discrimination, the remedy of staying the proceeding.²² The result of a

21 For a thorough review of the problems with the human rights commission enforcement process, see the *Ontario Human Rights Code Review Task Force, Achieving Equality: A Report on Human Rights Reform*, (Toronto: Ministry of Citizenship, 1992) [hereinafter "The Cornish Report"] and the Canadian Human Rights Act Review Panel (Chair: The Hon. Gérard V. LaForest). *Promoting Equality: a New Vision*. Ottawa: (Canada: Department of Justice, 2000) [hereinafter "The LaForest Report"].

22 See *Blencoe v. British Columbia (Human Rights Commission)*, [2000] 2 S.C.R. 307, 2000 CarswellBC 1860, 2000 CarswellBC 1861, [2000] S.C.J. No. 43, 2000 SCC 44, 2 C.C.E.L. (3d) 165, 81 B.C.L.R. (3d) 1, 190 D.L.R. (4th) 513, [2000] 10 W.W.R. 567, 23 Admin. L.R. (3d) 175, 2000 C.L.L.C. 230-040, 260 N.R. 1, (sub nom. *British Columbia (Human Rights Commission) v. Blencoe*) 77 C.R.R. (2d) 189, 141 B.C.A.C. 161, 231 W.A.C. 161, (sub nom. *British*

stay of proceeding was that the complainant, the person bringing the human rights complaint, had their case thrown out without even getting a hearing. This was due to bureaucratic delays for which the complainant was not to blame.

If a person with a disability took on the protracted hardship of launching a disability claim under the *Charter of Rights* or a human rights code, it was important if not essential to retain a lawyer to skilfully present their case. Yet many persons with disabilities live in poverty. They cannot afford high-priced legal talent such as that routinely deployed by the organizations against whom they would bring their claim. Even when a lawyer was available to the claimant with a disability, e.g. through a provincial Legal Aid plan, Ontario's legal profession has not been well-trained to handle disability rights cases.²³ Lawyers' effective assistance is desperately needed if the legal rights of persons with disabilities are to be meaningfully enforced.

Over the first decade of the *Charter's* equality provision, Canadian courts did a mediocre job in tearing down barriers confronting persons with disabilities.²⁴ In ironic contrast it may be the case that more progress was made in Ontario in the 1990s due to some U.S. companies, operating in Canada, choosing to obey the strictures of U.S. disability accessibility laws in their Canadian operations. It would be a cruel irony indeed if the U.S. Congress had done more in these years for causing barrier removal in Ontario than had the Ontario Legislature.

The one major breakthrough for people with disabilities under the *Charter* in its first decade in force²⁵ was won in the Ontario Court of

Columbia (Human Rights Commission) v. Blencoe 38 C.H.R.R. D/153 (S.C.C.).

23 An independent judicial inquiry in the early 1980s into the extent to which the Ontario legal profession met the legal needs of persons with disabilities found that Ontarians with disabilities were substantially under-served. See Ontario, *Report of a Study by Judge Rosalie S. Abella: Access to Legal Services by the Disabled* (Toronto: Queen's Printer, 1983) at 55-60. Recommendations made to Canada's law deans in the early 1990s on how to redress this chronic situation, see "Equal Access to Canada's Judicial System for Persons with Disabilities - A Time for Reform" (1995) 5 NJCL 2.

24 See M. D. Lepofsky, "A Report Card on the *Charter's* Guarantee of Equality to Persons with Disabilities after 10 Years - What Progress? What Prospects?" (1997) 7 NJCL 5.

25 The *Charter's* equality provision first went into operation on April 17, 1985, even though the *Charter's* other provisions went into effect three years earlier.

Appeal, in the area of access to equal educational opportunities.²⁶ That victory was very short-lived. It was rapidly overturned by the Supreme Court of Canada.²⁷

The Supreme Court of Canada later took a far more positive and inclusive approach to the *Charter*'s guarantee of equality to persons with disabilities. In 1997 it held that a pregnant deaf woman had the constitutional right to have a government-funded sign language interpreter provided for her in a hospital emergency ward when she came there to give birth prematurely.²⁸ However, it took Canada's courts several years after the delivery of her children to decide that she had that right. She had lost her case in both courts below.²⁹ A pregnant woman cannot reasonably be expected to wait that long to learn if she will be provided sign language interpretation before she gives birth.

This important Supreme Court decision was welcomed. However, it didn't have an immediate significant impact on the lives of Ontarians with disabilities. As one example, the Ontario Government delayed for years taking meaningful steps towards implementing its obligations under that Supreme Court ruling.

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- 26 *Eaton v. Brant (County) Board of Education* (1995), 22 O.R. (3d) 1, 1995 CarswellOnt 838, [1995] O.J. No. 315, 27 C.R.R. (2d) 53, 123 D.L.R. (4th) 43, (sub nom. *Eaton v. Board of Education of Brant County*) 77 O.A.C. 368 (Ont. C.A.), reversed (1996), 1996 CarswellOnt 5035, 1996 CarswellOnt 5036, [1996] S.C.J. No. 98, 31 O.R. (3d) 574 (note), 41 C.R.R. (2d) 240, 142 D.L.R. (4th) 385, (sub nom. *Eaton v. Board of Education of Brant County*) 207 N.R. 171, (sub nom. *Eaton v. Board of Education of Brant County*) 97 O.A.C. 161, [1997] 1 S.C.R. 241 (S.C.C.).
- 27 *Eaton v. Brant (County) Board of Education* (1996), [1997] 1 S.C.R. 241, 1996 CarswellOnt 5035, 1996 CarswellOnt 5036, [1996] S.C.J. No. 98, 31 O.R. (3d) 574 (note), 41 C.R.R. (2d) 240, 142 D.L.R. (4th) 385, (sub nom. *Eaton v. Board of Education of Brant County*) 207 N.R. 171, (sub nom. *Eaton v. Board of Education of Brant County*) 97 O.A.C. 161 (S.C.C.). See my critique of this decision in "A Report Card on the *Charter*'s Guarantee of Equality to Persons with Disabilities after 10 Years - What Progress? What Prospects?" *supra*, n. 24.
- 28 *Eldridge v. British Columbia (Attorney General)*, [1997] 3 S.C.R. 624, 1997 CarswellBC 1939, 1997 CarswellBC 1940, [1997] S.C.J. No. 86, 151 D.L.R. (4th) 577, 218 N.R. 161, 96 B.C.A.C. 81, 155 W.A.C. 81, [1998] 1 W.W.R. 50, 46 C.R.R. (2d) 189, 38 B.C.L.R. (3d) 1, 3 B.H.R.C. 137 (S.C.C.).
- 29 *Eldridge v. British Columbia (Attorney General)* (1992), 75 B.C.L.R. (2d) 68, [1992] B.C.J. No. 2229, 1992 CarswellBC 379 (B.C. S.C.), affirmed (1995), 7 B.C.L.R. (3d) 156, [1995] B.C.J. No. 1168, 1995 CarswellBC 287, 125 D.L.R. (4th) 323, 59 B.C.A.C. 254, 98 W.A.C. 254 (B.C. C.A.).

Similarly, even when a person with a disability effectively identifies an unfair barrier, launches a human rights complaint, fights for years, and wins his or her case, this may not yield positive results. In a widely publicized case, several persons using wheelchairs brought human rights complaints against a major movie theatre chain, because several Toronto theatres were not wheelchair accessible. The company vigorously defended the claim. Yet it did not adduce evidence before the tribunal that the cost of making the theatres in issue accessible would cause the theatre company undue hardship.

The complainants won a resounding victory.³⁰ The theatre was given a specified period to bring forward plans to retrofit the theatres in issue. Instead of doing this, the theatre opted to close the theatres in issue, and to blame persons with disabilities for the closure of these popular theatre locations. All the complainants got out of this resounding legal victory was an unfair public backlash against them, stirred up by the theatre chain to justify its decision of closing the theatres (even though it appeared that the chain was going to close the theatres in issue in any event).³¹

In other situations, when a human rights complaint has been filed and a tribunal has found that discrimination did occur, remedies obtained under the Ontario *Human Rights Code* can be paltry and inadequate. This legislation has not deterred many organizations with barriers from perpetuating their barriers against persons with disabilities, nor from creating new barriers. As a practical matter, the regimes for enforcement of the Ontario *Human Rights Code* and the *Charter of Rights* leave organizations that perpetuate barriers at practical liberty to retain those barriers, up until someone takes the time and effort to sue them, one barrier at a time. By intentionally or unintentionally following the practice of “discriminate now, litigate later,” many organizations unfortunately know that they will rarely face litigation in this area. Most people with disabilities have neither the time, the resources, nor the energy to take on that burden, i.e. to become private human rights cops.

Even where an organization wants to comply with disability equality, the rights of persons with disabilities under the *Charter* and human rights legislation are expressed in broad but vague language. They do not spell out in detail what an organization must specifically do to

30 *Turnbull v. Famous Players Inc.* (2001), 40 C.H.R.R. D/333, 2001 CarswellOnt 5331 (Ont. Bd. of Inquiry).

31 Barbara Turnbull, “Don’t Blame the Victims,” *The Toronto Star* (20 December, 2001) A28.

comply with them. For example, they do not map out detailed standards for organizations to become barrier-free, nor time lines for organizations to take action to remove and prevent barriers against persons with disabilities. These important laws, and the case law interpreting them, speak only in generic terms about respecting “equality,” not committing “discrimination,” and fulfilling the “duty to accommodate” persons with disabilities. These are important legal concepts. They should never be weakened. However, they don’t give clear directions to a lay person who operates a restaurant, runs a municipal office, or purchases buses for a public transit authority.

Under the *Charter* and human rights legislation, standards for disability accessibility are set, if at all, only on an *ad hoc* basis by tribunals or courts. They are set, if at all, only long after the fact, when a court or tribunal rules on individual cases. Organizations are far more likely to take concrete action to become barrier-free if the law tells them, in practical, specific detail, what they need to do and by when they need to have done it.

Beyond the *Charter* and human rights legislation, in the late 1980s, significant effort was focused on a new strategy for addressing barriers facing people with disabilities in access to employment, namely “employment equity.” Employment equity is a concerted strategy for increasing the representation in the workplace of certain under-represented designated disadvantaged groups, such as woman, racial minorities, Aboriginal persons and persons with disabilities. In the earliest years, several organizations, particularly at the government level, tried implementing employment equity programme federally and in Ontario.

Unfortunately these efforts did not yield significant progress for people with disabilities. People with disabilities continued to suffer substantial under-representation in federal and provincial workplaces. They even lost ground, particularly during government downsizing, despite efforts at increasing their representation in the workplace. This is not to suggest that employment equity cannot be carried out in a manner which would benefit persons with disabilities.

By the early 1990s, an increasing number of people and organizations in Ontario who were concerned about the rights of people with disabilities found that something very new was needed to address the barriers that persons with disabilities face, to supplement existing initiatives. It was increasingly recognized that strong, innovative new legislation was required. Existing legislation and programmes were not solving the problem.

Decades of efforts at educating the public had not made a dent in the problem. Neither the private nor the public sector could be relied upon to act voluntarily to achieve a barrier-free society. Some would act to remove and prevent barriers without being required to do so by law. However, most would not act without effective new legal requirements.

This growing view was most certainly not an “anti-*Charter*” movement. No one sought to have the existing rights of persons with disabilities under the *Charter of Rights* or under provincial human rights statutes repealed, reduced or replaced. Rather, it was increasingly believed that new legislation was needed to augment the *Charter*’s and human rights codes’ guarantees to persons with disabilities.³²

What about the cost of removing and preventing these barriers? Barriers can be prevented at little or no cost. As well, many existing barriers can be removed at little or no cost. Where it would cost more to remove barriers, more time can be allotted for this activity, to let an organization absorb this cost over time.

For years, existing laws have in effect required public and private sector organizations to make a proportion of their funds available to remove and prevent barriers. The *Charter of Rights* and human rights statutes have since the 1980s obliged organizations with barriers to spend funds, at least up to the point of undue hardship, on such activities. Yet many public and private sector organizations have not removed existing barriers, and have created new ones, despite these existing legal requirements.

Beyond the funds which organizations have been supposedly allotting to barrier removal and prevention, additional targeted government funding could help with this activity. As well, if carried out properly, barrier-removal and prevention should in the end be a cost-saver for private businesses and for the public sector. This is discussed further at various points in this account.

Which level of government should be approached to enact this new legislation? It made sense for any such new legislation to be enacted at the provincial level, not the federal level. This may seem to some to be counter-intuitive. After all, it would be more efficient if one national law could be passed to operate Canada-wide to set uniform standards and requirements. Canada’s disability community would not want to

32 Indeed, the goal of a barrier-free society was recognized by the Supreme Court of Canada in *Eldridge v. British Columbia (Attorney General)* *supra*, n. 28, and was there linked to the *Charter*’s guarantee of equality to persons with disabilities.

have to lobby each of the ten provincial legislatures, one at a time, if it could solve the problem by just lobbying for one national law.

However, it is not possible in Canada for one federal law to comprehensively address this entire issue. Under Canada's Constitution, many, if not most, of the barriers facing persons with disabilities are subject to the exclusive authority of the provincial legislatures, rather than the federal Parliament. There is clearly room for federal legislative action in the form of a national *Canadians with Disabilities Act*. However, such a federal law would likely not be able to constitutionally reach as far into each province as could a strong and effective piece of provincial legislation.

In this regard, Canada's Constitution is more decentralized than the U.S. Constitution. In the U.S., the federal Government was able to pass one national law, the *Americans with Disabilities Act*, which could reach barriers at the national, state, and local levels. In the end, what Canada ultimately needs are parallel new laws to be passed in this area at the federal and provincial levels.

In the early 1990s, the main activity in the disability community that got started through the events described in the next section focused solely on securing a new provincial law in Ontario. This was not preceded by any major debate over whether to focus efforts nationally or provincially. Rather, it was the result of a chain reaction of events, described below, that led to the founding of the *Ontarians with Disabilities Act* Committee.

Of course, in hindsight, it was far easier to organize a grassroots disability movement in Ontario at the provincial level than at the national level. Canada is huge. Its population is widely spread out over thousands of miles and several time zones. Getting new legislation passed by our large federal Government is also likely harder to achieve than getting a law passed by a smaller provincial Government.

3) THE ODA MOVEMENT'S FIRST MONTHS

a) The Birth Of The Organized ODA Movement

The realization within Ontario's disability community that a new law was needed to tear down the barriers facing persons with disabilities did not take place all at once as the result of a single catastrophic event. Rather, it resulted slowly from a simmering, gradual process. That process led to the birth of Ontario's organized ODA movement.

How then did the organized ODA movement get started? Most would naturally think that it is the birth of a civil rights movement that later spawns the introduction into a legislature of a new piece of civil rights legislation. Ironically in the case of the organized ODA movement, the opposite was the case. The same ironic twist had occurred 15 years before when the Ontario Coalition for Human Rights for the Handicapped formed in reaction to the Government's introduction of a stand-alone piece of disability rights legislation.

In the early 1990s, after the enactment in the U.S. of the *Americans with Disabilities Act* (ADA) in 1990, sporadic voices in Ontario began discussing the idea of seeking the enactment of something called an "*Ontarians with Disabilities Act*." There was little if any focused attention on what this new law would contain. It was understood from the outset that an ODA would not be a carbon copy of the ADA. For example, some parts of the ADA were already incorporated in the Ontario *Human Rights Code*. There was no need to replicate them again.

In the 1990 Ontario provincial election campaign (which happened to take place just days after the U.S. had enacted the *Americans with Disabilities Act*) NDP leader Bob Rae responded to a disability rights legal clinic's all-party election platform questionnaire in August 1990 with a letter which, among other things, supported appropriate legislation along the lines of an *Ontarians with Disabilities Act*. Rae's letter didn't spell out what this law would include. This letter did not get serious airplay in that election campaign. It was not well-known when the NDP came from behind in the polls to win that provincial election. Because the NDP had not been expected to win, it was widely seen as campaigning on a range of election commitments that it never anticipated having the opportunity to implement.

Despite sporadic discussions among some in the early 1990s, there was no grassroots groundswell in Ontario supporting an ODA. There was also no major grassroots political force building to push for one. This was quite similar to the fact that there was no organized grassroots disability rights movement pushing for the inclusion of disability equality in the Ontario *Human Rights Code* in 1979, before the Ontario Government proposed its new disability discrimination legislation in that year. In the early 1990s, Ontario disability organizations involved in disability advocacy were primarily focused on other things, such as the NDP Ontario Government's proposed Employment Equity Act, expected to be the first provincial legislation of its kind in Canada. That legislation, aimed at increasing the employment of persons with disabilities as well as women, racial minorities and Aboriginal persons, was

on the agenda of the provincial New Democratic Party that was then in power in Ontario.³³

What ultimately led to the birth of a province-wide, organized grass-roots ODA movement in Ontario was the decision of an NDP back-bench member of the Ontario Legislature, Gary Malkowski, to introduce into the Legislature a private member's ODA bill in the Spring of 1994,³⁴ over three years into the NDP Government's term in office. By that time, the NDP Government had not brought forward a Government ODA bill. Malkowski decided to bring forward Bill 168, the first proposed *Ontarians with Disabilities Act*, to focus public and political interest in this new issue. Malkowski was well-known as Ontario's, and indeed North America's, first elected parliamentarian who was deaf. Ontario's New Democratic Party Government, then entering the final year of its term in office, allowed Malkowski's bill to proceed to a Second Reading vote in the Ontario Legislature in June, 1994, and then to public hearings

33 Throughout the years addressed in this account, Ontario had three major political parties. It is perhaps an oversimplification to so state but New Democratic Party (NDP) is situated on the left, the Conservative Party is on the right, and the Liberal Party views itself as somewhere in between the two.

From 1990 to 1995, the NDP held power in Ontario. The Ontario Liberal Party was in second place, and formed the Official Opposition. The third place party was the Progressive Conservative Party.

As the following narrative relates, power dramatically shifted in Ontario politics from 1995 to 2003. During that period, the Conservatives took power as a majority government. The Liberals were in second place and the NDP fell to third place in the Legislature.

34 In Ontario's parliamentary system, there are roughly two kinds of bills that can be put forward in the Legislature, government bills and private members' bills. A government bill is put forward by the Government of the day and has the prior backing of the party in power that has formed the Government. A private member's bill is put forward by any member of the Legislature, whether on the Government side or the opposition side. However, it does not have the prior approval of the Government. Government bills most often are passed into law, except if there is a minority Government that cannot convince enough of the opposition members to vote for it. In contrast, private members' bills very rarely get passed into law.

A bill must be voted on and passed three times for it to become law. These votes are called First, Second and Third Reading. First Reading is a formality that virtually all bills pass. Second Reading constitutes "approval in principle." Many private members' bills never get this far.

Some bills get sent to a Committee of the Legislature for public hearings after they pass Second Reading and before Third Reading. It very unusual for a private member's bill to make it to a Legislative Committee for public hearings.

before a committee of the Ontario Legislature in November and December 1994.

In 1994, word got around various quarters in Ontario's disability community that Malkowski had introduced this bill. Interest in it started to percolate. Malkowski met with groups in the disability community, urging them to come together to support his bill. He called for the disability community to unite in a new coalition to support an *Ontarians with Disabilities Act*. A significant number of persons with disabilities turned up at the Ontario Legislature when this bill came forward for Second Reading debate in the Spring of 1994.

Over the spring, summer and fall months of 1994, around the same time as Malkowski was coming forward with his ODA bill, some of the beginnings of the organized ODA movement were also simmering within an organization of Ontario Government employees with disabilities. Under the governing NDP, the Ontario Government had set up an "Advisory Group" of provincial public servants with disabilities to advise it on measures to achieve equality for persons with disabilities in the Ontario Public Service. In the Spring of 1994, this Advisory Group set as one of its priorities working within the machinery of the Ontario Government to promote the idea of an ODA.

This public service Advisory Group met with several provincial Cabinet Ministers and later with Ontario's Premier, Bob Rae, to discuss the idea of an ODA. It successfully pressed the Government to hold public hearings on Malkowski's ODA bill.

As 1994 progressed, Malkowski's bill served its important purpose. It sparked the attention and interest of several players in Ontario's disability community in the idea of an ODA. No one was then too preoccupied with the details of the contents of Malkowski's ODA bill.

Malkowski's bill had an even more decisive effect on November 29, 1994, when it first came before the Legislature's Standing Committee for debate and public hearings. On that date, NDP Citizenship Minister Elaine Ziemba was asked to make a presentation to the Committee on the Government's views on Malkowski's bill. She was called upon to do this before community groups would be called on to start making presentations to the legislative committee. The hearing room was packed with persons with disabilities, eager to hear what the Minister would have to say.

Much to the audience's dismay, the Minister's lengthy speech said little if anything about the bill. She focused instead on the Government's record on other disability issues. The temperature in the room elevated as the audience's frustration mounted.

When the committee session ended for the day, word quickly spread among the audience that all were invited to go to another room in Ontario's legislative building. An informal, impromptu gathering came together to talk about taking action in support of Malkowski's bill. Malkowski passionately urged those present to come together and to get active on this cause.

I was one of the 20 or so people who made their way into that room. In an informal meeting that lasted about an hour, it was unanimously decided to form a new coalition to fight for a strong and effective *Ontarians with Disabilities Act*. There was no debate over the content of such legislation at that meeting. However, there was a strong and united realization that new legislation was desperately needed, and that a new coalition needed to be formed to fight for it. This coalition did not spawn the first ODA bill. Rather, the first ODA bill had spawned this coalition.

Days later, in December 1994, the Legislature's Standing Committee held two full days of hearings into Malkowski's bill. A significant number of organizations, including disability community organizations, appeared before the Legislature's Standing Committee to submit briefs and make presentations on the need for new legislation in this area. Among the groups that made presentations was the Ontario Public Service Disability Advisory Group which had pressed for these hearings to be held. Its brief later served as a core basis for briefs and positions that would be presented by the brand-new *Ontarians with Disabilities Act*.³⁵

b) The ODA Committee Kicks Off Its Work - Winter 1995

How does a new disability rights movement kick off its work? Our experience may be illustrative. Over the last weeks of 1994 and the first weeks of 1995, we gathered together an initial nucleus of individuals and community organizations in Toronto to join together and to get the ball rolling.

After a series of telephone calls issuing invitations to major disability organizations and to those who were present at the fateful November 29, 1994 inaugural meeting, follow-up meetings were held early in 1995 in Toronto to establish the foundation for all that would follow. The

35 I served as a member of the Ontario Public Service Advisory Group, later became its vice-chair, and was centrally involved in its work on the ODA issue in 1994 and early 1995. I participated in its presentation to the Standing Committee of the Legislature holding hearings into the Malkowski bill.

coalition adopted the name “*Ontarians with Disabilities Act Committee*.” An initial Toronto-based leadership team was elected.³⁶ At this point, the ODA Committee was a totally Toronto-based coalition, although some of our member organizations operated across Ontario or across Canada.

c) Setting Our Longterm Goals - Adopting Our Eleven Principles For The ODA

It was then necessary for this embryonic movement to make its first foray into setting its long-term policy agenda. It had decided at its most basic what the ODA Committee wanted an ODA to include. This began with formulating its core objective in a simple, clear and compelling way. The goal that was agreed upon during the earliest meetings of the ODA Committee at the start of 1995 was the achievement of a barrier-free Ontario for all people with disabilities, in which all persons with disabilities could fully participate.

Originally, the ODA Committee said that its aim was to achieve this goal by the year 2000. In 1994, the year 2000 appeared quite far away. The many years of Government delay which would follow regrettably squandered that target date. It is ironic to look back on that target. The year 2000 is now well behind us. The Conservative Government that ruled Ontario for eight years starting in the mid-1990s did not even enact its ODA until the final days of 2001, well after the date initially envisioned for attaining the goal of a barrier-free province.

Early in 1995, the ODA Committee was a small group that easily fit into one meeting room. It approved 11 core principles, which all wished an ODA to incorporate. These 11 principles followed from the goal of a barrier-free Ontario. They immediately became, and remained, the core goals around which the ODA movement would rally across Ontario. From then on, for a person or an organization to join the ODA Committee, they had to endorse these 11 principles. The membership drafted these principles based on a shorter list of principles which the Ontario Public Service Advisory Group had formulated the year before, and had made public in a brief it had submitted to the Ontario Legisla-

36 At this point I became one of three co-chairs of the ODA Committee. Over the next period, the two other co-chairs, Sam Savona and Robert Fenton, had to step down due to other commitments. They remained, however, strong supporters of the ODA cause.

ture's Standing Committee during the December 5, 1994 public hearings into the Malkowski private member's ODA bill.

According to our 11 principles, the ODA's purpose should be the achievement of a barrier-free Ontario for all people with disabilities. It should cover all disabilities, whether physical, mental or sensory. It should cover all barriers, not just physical barriers.

All public and private sector providers of goods, facilities and services should be required to remove and prevent barriers in their organization. Time lines and standards for removing and preventing barriers should be decided upon through a consultation with all stakeholders. The legislation should set out the time lines for developing these standards and a process for consultation.

The same requirements should apply to all employers. There should be an effective and speedy way to enforce the law, besides filing human rights complaints for each barrier in individual circumstances. People with disabilities should be able to propose regulations which the Government must consider adopting in order to set standards for barrier removal and prevention, sector by sector and industry by industry. Regulations are laws which the ODA would permit the provincial Cabinet to make, and that would set out the detailed standards for removing and preventing barriers.

Though slightly fine-tuned afterwards, the 11 principles that articulated these basic ideas were:

1. The purpose of the *Ontarians with Disabilities Act* should be to effectively ensure to persons with disabilities in Ontario the equal opportunity to fully and meaningfully participate in all aspects of life in Ontario based on their individual merit, by removing existing barriers confronting them and by preventing the creation of new barriers. It should seek to achieve a barrier-free Ontario for persons with disabilities within as short a time as is reasonably possible, with implementation to begin immediately upon proclamation;
2. The *Ontarians with Disabilities Act's* requirements should supersede all other legislation, regulations or policies which either conflict with it, or which provide lesser protections and entitlements to persons with disabilities;
3. The *Ontarians with Disabilities Act* should require Government entities, public premises, companies and organizations to be made fully accessible to all persons with disabilities through the removal of existing barriers and the prevention of

- the creation of new barriers, within strict time frames to be prescribed in the legislation or regulations;
4. The *Ontarians with Disabilities Act* should require providers of goods, services and facilities to the public to ensure that their goods, services and facilities are fully usable by persons with disabilities, and that they are designed to reasonably accommodate the needs of persons with disabilities. Included among services, goods and facilities, among other things, are all aspects of education including primary, secondary and post-secondary education, as well as providers of transportation and communication facilities (to the extent that Ontario can regulate these) and public sector providers of information to the public e.g. Governments. Providers of these goods, services and facilities should be required to devise and implement detailed plans to remove existing barriers within legislated timetables;
 5. The *Ontarians with Disabilities Act* should require public and private sector employers to take proactive steps to achieve barrier-free workplaces within prescribed time limits. Among other things, employers should be required to identify existing barriers which impede persons with disabilities, and then to devise and implement plans for the removal of these barriers, and for the prevention of new barriers in the workplace;
 6. The *Ontarians with Disabilities Act* should provide for a prompt and effective process for enforcement. It should not simply incorporate the existing procedures for filing discrimination complaints with the Ontario Human Rights Commission, as these are too slow and cumbersome and yield inadequate remedies;
 7. As part of its enforcement process, the *Ontarians with Disabilities Act* should provide for a process of regulation-making to define with clarity the steps required for compliance with the *Ontarians with Disabilities Act*. It should be open for such regulations to be made on an industry-by-industry or sector-by-sector basis. This should include a requirement that input be obtained from affected groups such as persons with disabilities before such regulations are enacted. It should also provide persons with disabilities with the opportunity to apply to have regulations made in specific sectors of the economy;
 8. The *Ontarians with Disabilities Act* should also mandate the Government of Ontario to provide education and other infor-

mation resources to companies, individuals and groups who seek to comply with the requirements of the *Ontarians with Disabilities Act*;

9. The *Ontarians with Disabilities Act* should also require the Government of Ontario to take affirmative steps to promote the development and distribution in Ontario of new adaptive technologies and services for persons with disabilities;
10. The *Ontarians with Disabilities Act* should require the provincial and municipal Governments to make it a strict condition of funding any programme, or of purchasing any services, goods or facilities, that they be designed to be fully accessible to and usable by persons with disabilities. Any grant or contract which does not so provide is void and unenforceable by the grant-recipient or contractor with the Government in question;
11. The *Ontarians with Disabilities Act* must be more than mere window dressing. It should contribute meaningfully to the improvement of the position of persons with disabilities in Ontario. It must have real force and effect.

From the outset, and as later refined, the core ingredients which the ODA Committee wanted the ODA to include were clear and simple. They were designed to effectively respond to and address several of the reasons why barriers against persons with disabilities still exist in society, and why new ones are still being created. The solution should be tailored to address the cause of the problem.

Why are there still barriers against persons with disabilities when they seek access to competitive jobs, goods, services and facilities? Of course, no individual or organization has set about deliberately to create barriers against persons with disabilities out of a desire to prevent them from fully participating in society. There are several reasons why these barriers were originally created, why they remain in place, and why new ones are arising.

One major reason is that many in positions of authority in public and private sector organizations simply don't know that they have created barriers, that they are maintaining them in place, and that they may well create them in future. They have likely never even thought about this much, if at all. Accordingly, a core component of the ODA Committee's proposal for the ODA was that it should in effect require these organizations to direct their minds to these. We proposed that organizations that extend opportunities to the public for jobs, goods, services and/or facilities should periodically look to see what barriers they have

in their organizations, and that they develop strategies to remove them, and to prevent new ones from being created in future.

A second reason why barriers still exist is that organizations don't think they have to remove and prevent such barriers. This is the case, surprisingly, despite the requirements of the Canadian *Charter of Rights and Freedoms*, which applies to the public sector, and human rights legislation, that apply to both the public and private sectors. We therefore proposed that the ODA should explicitly require that barriers against persons with disabilities be required to be removed and prevented, along reasonable time lines.

A third reason why organizations don't remove and prevent barriers is that they may think that their competitors don't have to do so. They might think, albeit erroneously, that they shouldn't bother doing anything if their competitors don't have to do the same thing. Accordingly, we proposed that the ODA should apply to all such organizations. All competitors should be covered.

Another important reason why some organizations don't act in this area is that they simply don't know exactly what to do to remove and prevent barriers. Accordingly, we proposed that the ODA should provide clear standards on barrier removal and prevention. This would avoid the need for each organization to have to re-invent the wheel.

Yet another reason why these barriers remain in place is that many organizations may fear that it is too costly to remove them. To a significant degree, this is due to misinformation. As indicated earlier, it costs little or nothing to prevent barriers. It also costs little or nothing to eliminate the many readily removable barriers. Barrier removal also can and will generate revenues and/or benefits for such organizations. However, it is for this reason that our proposals for the ODA included giving such organizations reasonable time lines for removing and preventing barriers. The time lines should be geared to the costs involved, among other things. The accessibility standards we proposed should include reasonable time lines, to ensure that the measures that an organization is expected to take are fair, and beneficial to the organization, and that they are not unreasonably burdensome. Moreover, the creation of uniform, clear and constructive accessibility standards would drive down the cost to each organization of having to figure out what to do.

d) Broadening The ODA Committee's Membership

Core elements of future ODA Committee strategies emerged in the early weeks of 1995. These often sprang extemporaneously from immediate necessity, not from probing introspection.

In the past, some disability advocacy coalitions limited their memberships to community organizations that provide services to people with disabilities. Other coalitions were comprised only of grassroots advocacy groups of people with disabilities themselves. Still other coalitions were entirely made up of individuals with disabilities, and included no pre-existing organizations.

The ODA Committee was different. Its members included disability service organizations, organizations of individuals with disabilities, and individuals. A person could get involved, whether or not he or she was affiliated with an existing organization, and regardless of whether or not the person had a disability. The sole criterion for membership in the ODA Committee from early on was one's support for the enactment of a strong and effective *Ontarians with Disabilities Act* that fulfils the ODA Committee's 11 principles.

From the outset, the ODA Committee's structure and core strategies were based on informality of approach and voluntarism. These worked well together. The ODA Committee didn't establish a complex matrix of committees, sub-committees and the like, with various formal posts and strictly-defined mandates. It avoided protracted, highly-regimented formal meetings with motions, seconders, amendments to resolutions and highly-structured debate. It never drafted a constitution or basic *Charter* or bylaws. It never incorporated into a corporate structure.

Instead, commencing early in 1995 with its work in the Toronto area and later spreading to different regions around Ontario, the ODA Committee informally brought together people who were ready to work as volunteers on a common cause. It fashioned practical strategies for them to put their energy into action. It invited one and all to offer ideas. It asked one and all to contribute their time and effort.

It was also tacitly decided without a vote or major debate that our coalition would be non-partisan. We would work with any political party that would work with us. We would not put all our strategic eggs in one political party's basket. Our being non-partisan did not, however, mean that we could not be critical of a party or Government if it acted contrary to our goals. It did mean, for example, that we never endorsed any party, or told people for whom they should vote. We offered every party our help and the chance to work with us.

One thing was strikingly absent from ODA Committee activities from the very beginning, and throughout its history. We never had a debate among ourselves over whether it was a good idea to have an ODA, and over whether a strong and effective ODA was worth our pursuing. Rather, our membership was by definition limited to people and organizations that believed that a strong, effective ODA is a good thing for persons with disabilities to fight for.

Of course, we spent a great deal of time and effort over the next years spreading this message to others, and encouraging them to join the ODA movement. However, from the outset we avoided being side-tracked by an internal debate over whether the very idea of a strong ODA was a worthwhile thing. We knew that it was impossible to convince every last Ontarian of an ODA's merits. If some did not share our view, they were free not to get involved with the ODA movement. Our aim was to harness the energies of any and all who came to share our vision.

e) Getting Political Parties' ODA Commitments In The 1995 Provincial Election

Once we had taken initial organizational steps to formalize our core legislative agenda and to gather together a critical mass of membership early in 1995, all efforts turned quickly to preparation for the forthcoming provincial election. In early 1995, the NDP Ontario Government was well into its fifth year in office. We knew that an election could be called at any time. It was obvious that there was slim chance that the incumbent NDP Government would take any more meaningful steps toward passing an ODA before calling an election.

To its credit, in 1994 the NDP Government had let the Malkowski private member's ODA bill make substantial progress through the Legislature's processes in relatively short order. However, it was widely recognized that that bill needed significant work before it reached final form and was ready to be passed into law. There wasn't enough time for this work to be completed before the expected election call. As well, the NDP Government had not taken a formal position on whether it would let Malkowski's private member's bill ultimately be passed.

In early 1995, the NDP Government was very low in the public opinion polls. It seemed wise for us to try to get election promises from each political party to enact a strong and effective ODA.

In early 1995 and for months beforehand, public opinion polls consistently put the Ontario Liberal Party far in the lead. Therefore, we

initiated discussions early in 1995 with senior Liberal Party officials, toward securing an election ODA commitment. We also actively tried getting a commitment from the governing NDP. We did this largely through discussions with then-Citizenship Minister Elaine Ziemba and her staff, as well as with other NDP Cabinet Ministers who had been more supportive of our cause.

In retrospect, it will seem startling that in 1995 we invested no active effort whatsoever into convincing Ontario's Conservative Party, led by Mike Harris, to make an election ODA commitment. No one realistically expected the Conservatives to win the election. They were in third place among the three parties in the Ontario Legislature. Their sharply neo-conservative platform seemed inconsistent with our aims. They opposed Government regulation of business, planned to radically slash Government, opposed employment equity, and seemed more interested in cutting taxes than in expanding disadvantaged people's opportunities.

On the last day before the governing NDP called the provincial election, to be held early in June 1995, the ODA Committee received its first ODA election commitment from an Ontario political party in that, the ODA Committee's first election campaign. Then-Liberal leader Lyn McLeod wrote to the ODA Committee in April, 1995, committing the Liberal Party to enact an *Ontarians with Disabilities Act* if elected. She also pledged to work together with the ODA Committee to develop this legislation.

This was a major step forward. It contained a clear commitment to pass the ODA. It also recognized our very new coalition as a major player deserving a role in the ODA's development.

The ODA Committee quickly took advantage of this breakthrough. It immediately sent the NDP and Conservative leaders a copy of the Liberal Party's election pledge. We asked them to meet or beat the Liberals' election commitment.

In response the NDP made no ODA election commitment. The NDP expressed no principled opposition to the idea of an ODA. However, they appeared to have an odd overall campaign strategy of making no election commitments to anyone. They estimated that the public was sick of politicians who made bundles of grand election promises and later didn't keep them. Thus they decided to make no election promises at all.

To our bemused surprise, and then seemingly of minimal consequence, the ODA Committee received a letter from Conservative leader Mike Harris dated May 24, 1995. We had no idea at that time that that

one piece of paper would transform into the foundation of our next eight years of activity. Harris wrote:

”...a Harris Government would be willing to enact an *Ontario with Disabilities Act* in the first term of office within the economic goalposts of The Common Sense Revolution.

The accommodation issue is often the stumbling block when it comes to financing access to post-secondary institutions, transportation, Government publications, training programmes and communications. We hope, through cost efficiencies achieved in other areas of Government, to direct much needed funding to accommodation.

I would be pleased to work together with your Committee in the development of such legislation.”

In the following years, we circulated this letter widely. We printed it on the flipside of many of our news releases. May 24, this letter’s date, became an important ODA movement anniversary. Year after year, we used that date to focus public and media attention on the extent of the Government’s progress, or lack of progress, on the Conservatives’ pledge.

When read alongside the Liberals’ ODA election pledge, the Conservatives’ commitment clearly appears to have been carefully crafted to appear to promise more than had the Liberals’. At the point in the election campaign when the Conservatives made this pledge, the Liberals still had a strong lead in the polls. They were the party that the Conservatives had to beat. It was only later, toward the campaign’s end, that the Conservatives took the lead in the polls. With hindsight, it seems doubtful that the Conservatives would have made this commitment to us, had they held the lead in the polls on May 24, 1995, and had the Liberals not already made an ODA pledge to us. What a difference a week can make!

f) Our 1995 Election ODA Campaign

With the political parties’ platforms on the ODA in hand, the 1995 Ontario election campaign was the first testing-ground for innovative ODA Committee political action. Our tiny new coalition was organized only in the Toronto area. We had no media recognition. Initial attempts earlier in 1995 to get media coverage were largely rebuffed. To journalists, we and our issue seemed to be irrelevant. We had no experience, no website, no email network and little recognition or credibility, even in the disability community. To most, including most in political circles

or in disability circles, the letters “ODA” were then thought to refer solely to the Ontario Dental Association.

Because we were so small and so inexperienced, we could only manage limited Toronto-based election campaign activities. We took the traditional approach of writing to all local candidates across Ontario to solicit their positions on the ODA. The few responses we received tended to echo the candidate’s party’s position.

We thought of turning to the media to publicize the ODA issue and the parties’ platforms. Our efforts at securing media coverage initially fell flat. We learned quickly that during an election, the mainstream news media define the few major issues they will cover. If your issue is not one of those that the media includes on its tacit short list, you’re out of luck. This bitter 1995 experience would later inform our strategies in the 1999 and 2003 provincial elections.

Facing this uphill battle, a small team gathered as an informal ODA Committee election-strategy SWAT team early in the campaign to devise a clever new approach. When the team first sat down together, no one had any particularly imaginative ideas. Someone suggested going to all-candidates’ debates to raise our issue. Initially this seemed unproductive. Usually the media do not attend Toronto area all-candidates’ debates. These meetings are a dime a dozen. They tend to degenerate into squabbles over potholes on one’s street corner, or other complaints, including ones that fall outside the authority of the provincial Legislature.

A stalwart ODA supporter at the meeting, Henry Hill, then piped up with a simple, brilliant idea. His idea would influence many future ODA events: Why not go to an all-candidates’ debate that is inaccessible to people using wheelchairs? Had this been a scene in a movie, dramatic music would have crescendoed.

The team fanned out to survey upcoming all-candidates’ meetings to find one to be held in an inaccessible location. We learned that an all-candidates’ debate was to be held at a physically inaccessible public school in a hotly-contested Toronto riding. The election debate was to focus on public education issues. An inaccessible school building was a perfect venue for us to make the point that a strong ODA was needed to achieve, among other things, a barrier-free education system.

With just a few days to get organized, we could rally only a dozen people to come with us to this event. We had not yet developed lists for faxes and email. We had to use the telephone, a far more laborious method, to spread the word to the media, and to our potential supporters.

We asked the media to keep our plans under wraps before the all-candidates' debate commenced. One news outlet ignored this request. It broadcast the story early on the very day of the upcoming event. This turned out to be fortunate for us. This broadcast enticed other media to cover this event.

On a beautiful spring evening, just before the all-candidates' debate began, our small contingent clustered in front of the stairs leading to the school door. Members of the public strode past us to attend the meeting. Utterly unplanned, one of our contingent who could climb stairs opted to go into the public meeting. That person evidently publicly chastised the candidates for leaving people with disabilities outside.³⁷

Much to our surprise, the candidates left the meeting and came outside to speak with us. Television cameras hungrily recorded this scene. When an all-news radio station declined to send a reporter, we took it on ourselves to call in our report by cell phone. The station put us on the air live, with us acting as our own on-the-scene reporter.

Embarrassed, the candidates spoke to us for a few moments. They then started heading back inside. One of our contingent complained aloud that the candidates couldn't just leave us behind outside.

As the candidates apologetically made their way toward the door, the school door unexpectedly opened from inside. Members of the audience, who had been waiting inside, and who didn't want to wait any longer, started streaming outside. Their trickle became a flood. Organizers of the event ran inside to bring chairs outside for the entire audience. In the end, the all-candidates' debate was reconvened outside the school on the sidewalk. People with disabilities and those without disabilities sat side by side. Television cameras continued to roll. As these events unfolded, we phoned in an update to the all-news radio station. It put the update on the air live. Over that night and the next morning, our tiny contingent, numbering no more than a dozen, generated great coverage on television, on radio and in the newspaper.

That night we learned critically important lessons that dramatically influenced our strategies over the next years. First, the media do not cover issues—the media cover events. To get media coverage, grassroots organizers must bring about newsworthy events that symbolically illustrate our message. Second, once the media is recording us, we must convey our message in quick, well-crafted soundbites, using the newsworthy event as a visual backdrop to illustrate our issue. That night we

37 To this day I have no idea who did this. We are forever indebted for this spontaneous act.

argued that we need a strong ODA to gain access to such important places as schools—isn't it a cruel irony that we can't even get into an inaccessible school, to complain about inaccessibility of public education to children with disabilities? Third, it takes neither large numbers of people nor weeks of planning to beat the odds and to win precious media coverage.

Fourth, such events can help us build relationships with politicians and win new, strong ODA supporters. The NDP candidate at that event, Frances Lankin, again won her seat in the Legislature. For the next several years she was an active ODA supporter on the Legislature's floor. It cannot be said that this one event made her an ODA supporter, given her longer and well-known commitment to such issues. However, it certainly didn't hurt.

During the 1995 campaign we also got our first taste of an under-used avenue to circumvent news editors who did not think our issue merited election coverage - the phone-in radio programme. We managed to get several minutes of province-wide coverage when a call got through to NDP Premier Rae as he appeared on a CBC phone-in radio programme.

During this election campaign we got our first exposure to the need for quick action to capitalize on unexpected news stories. During the campaign, one media establishment reported that Conservative leader Mike Harris had made a troubling statement about the supposed unproductivity of employees with disabilities. We quickly used this as an "angle" to entice the media to report on the ODA issue. Learning from this afterwards, we remained alert over the next years to respond quickly whenever an unexpected news story broke that we could use to generate media coverage of the need for the ODA.

4) SUMMER 1995 TO SPRING 1996: THE CONSERVATIVE GOVERNMENT'S FIRST YEAR IN OFFICE

a) The Year's Priorities

Confounding pundits and pollsters, the Conservative Party under its leader, Mike Harris won a surprise victory in the 1995 election. It won enough seats in the Ontario Legislature to form a majority Government.³⁸

38 In our system, a majority government has enough votes to pass any law it wishes, even if all opposition MPPs vote against it, so long as no Government MPP breaks ranks with his or her party. It also has the sole power to call an

The second place Liberals formed the Official Opposition. The NDP came third.

When the election had been called earlier that Spring, this had dissolved the previous Legislature. Any business before the Legislature died on the order paper. This meant that the Malkowski private member's bill was dead in the water.

In the Summer of 1995, as the new Conservative Government took office, the young, small and inexperienced ODA Committee faced several challenges. First, it had to expand its membership by spreading its message to the broader disability community. Second, it had to convincingly present its case for the ODA to the new Conservative Government, in hopes of engaging the new Government in a meaningful, substantive dialogue leading to the development of legislation. Third, it had to build public support for the largely unheard-of idea of an ODA, while developing much-needed credibility for the ODA movement in the eyes of the media.

Once the election was over, the ODA movement had to start again from scratch at the Legislature. Any new bill, whether a Government bill or a private member's bill, had to begin again from the beginning. Moreover, Gary Malkowski, like many other NDP MPPs, had lost his own seat in the 1995 election.³⁹ We did not have an obvious champion in the Legislature, to pick up where he had left off, and certainly none within the ranks of the newly-elected Conservative Government.

The tasks facing us were all formidable. The most important thing we had in hand to wage the campaign that lay ahead was the May 24, 1995 letter to us from the new Premier, Mike Harris, in which he promised to pass the ODA in his first term in office and to work together with the ODA Committee to develop it. The Conservatives had emphasized during the election campaign and afterwards that, unlike other politicians, this was a party that would keep all its promises. In fact, Premier Harris went so far as to pledge that if he did not keep all his promises, he would resign.⁴⁰

election whenever it wishes, within its five-year mandate.

39 As a private citizen, Mr. Malkowski stayed very much involved in the ODA issue, as an eager and active participant in the ODA movement. He gave the ODA movement a great deal of his time and expertise, based on his experience within the Ontario Government and his work with Ontario's deaf community.

40 As one record of Premier Harris' promise to resign if he broke any of his promises, see "Harris says: I'll quit too if election vows broken" *The Toronto Star* (2 May, 1996) A-10.

b) Crafting The First ODA Committee Brief To Government

To begin, the ODA Committee developed a short twelve-page brief, entitled “Towards A Barrier-Free Society for Persons with Disabilities by the Year 2000.” It set out, in clear and straightforward terms, our call for the needed legislation, the 11 principles for the ODA which the ODA Committee supported, and the reasons why a strong ODA would be good for Ontario. This brief formed the basis of most subsequent ODA Committee briefs and presentations in support of the ODA.

This brief was carefully crafted so that it spoke in terms with which no one could disagree, wherever they may reside on the political spectrum. We wanted it to appeal to people with disabilities, to those concerned about people with disabilities, and to all others among the broader public. Who could oppose the goal of a barrier-free society for persons with disabilities? Who would possibly think that barriers facing people with disabilities are good for Ontario? Who could argue that it’s a bad idea to remove these barriers? Who could support the creation of new barriers against persons with disabilities in the future?

We formally sent this brief in early Fall 1995 to Ontario’s new Citizenship Minister, Marilyn Mushinski. She was the first of five Conservative Party Citizenship Ministers with whom we would deal over the next eight years. The Conservative Government, like the NDP Government before it, had assigned this issue to the Citizenship Minister’s portfolio.

We then took the counter-intuitive step of deliberately halting for the time being any more detailed discussions within the ODA Committee about what we wanted the ODA to include. It may sound bizarre that a focused disability rights movement would deliberately stop discussing the details of the very legislation for which it was fighting.

However, this move made a great deal of sense. Having already worked out our fundamental platform, as reflected in our initial brief and our 11 principles, at that point we needed to shift all our energy to building our coalition’s membership, and to securing the attention of the public, the media, and the Ontario Government. Had we consumed extensive time and energy at that early stage, exhaustively debating and parsing in minute detail what to include in a strong ODA to flesh out our 11 principles, critical months and years could be lost, tied up in potentially divisive policy debates, before we built a coalition with the capacity and credibility to effectively wage our campaign for a barrier-free province. To achieve our elusive goal of uniting people with disa-

bilities behind a single message, it was important then to keep our message as general, agreeable, and unifying as possible.

c) Further Expanding Our Coalition

Over the next months, we set about telephoning, writing to, and otherwise contacting individuals with disabilities and disability organizations in the Toronto area, and particularly organizations with a province-wide presence, to get their support and participation in our efforts. This was initially a slow, taxing process. Few knew much about us, even in disability circles. Many thought it impossible to convince Premier Harris to take disability issues seriously. His Government was so busy taking steps that were so obviously antithetical to the needs of people with disabilities, including cutting social assistance, social housing, para-transit and other social programmes, repealing employment equity, systematically eliminating provincial Government staff whose jobs included removing barriers facing persons with disabilities in the Ontario Government workplace, and eliminating a provincial Government policy requiring local municipalities to buy new buses that are accessible to riders with disabilities.

Understandably, there were numerous sceptics at that time. Later, many of those sceptics opted to join in the ODA movement. Our strategy in dealing with sceptics within the disability community was to share our message with them, to listen to their concerns, and to see how we could address these without abandoning our 11 principles. If a sceptic remained uninterested in joining our cause, we would move on to others. Our aim was to unite and involve those who agreed with our core goal.

These activities culminated in an important Toronto public forum in February 1996 which the ODA Committee organized. It became our model for forums held across Ontario over the next years. At this forum, individuals with and without disabilities, including representatives of disability organizations, came together. Presenters explained the benefits of an ODA, the content of the Conservative Government's 1995 ODA election pledge, and how to help our cause.

The audience then split into discussion groups for an activity which we later replicated at many forums. Called "What's my Barrier?", in each discussion group, every participant was asked to brain-storm barriers that they or others with disabilities had faced. Lists of barriers were compiled. The ODA Committee gathered and later inventoried these barrier lists.

This quickly animated everyone into thinking in ODA terms. Through this process, participants learned to translate their own life experience into the central ODA concept of “barriers.” It helped all to see how an ODA could make a difference in their lives.

Previously, people with different disabilities understandably often spoke in terms of their own particular needs in isolating, not unifying terms. Blind people spoke about the need for Braille or other alternative formats for print materials. Deaf people spoke about the need for sign language interpretation. People using wheelchairs talked about the need for ramps. In contrast, the ODA concept of “barriers” united everyone. Everyone faced some kind of barrier. The barriers they face may take different forms, but the experience of being obstructed by a barrier was universal. The term “barrier” became the mirror in which each participant could see his or her own life experience reflected.

This never meant that every problem someone faced was automatically considered a barrier that the ODA would magically fix. We repeatedly emphasized that the ODA was not a cure-all to every challenge facing persons with disabilities. However, the concept of “barrier” quite properly enabled people to identify those impediments that they faced, that could realistically constitute a barrier, and that legislation could help us tackle.

At the start of this public forum the room was filled with people who were curious and interested. By the meeting’s end, it was full of people ready to swing into action, to fight for a strong ODA.

Unexpectedly, this February 1996 Toronto forum also sowed seeds of further growth in the ODA Committee across Ontario. A prominent Hamilton municipal city councillor, Geraldine Copps, had journeyed to Toronto for this event. At the end of the event, she proposed organizing a similar ODA public forum in Hamilton. Four months later, Hamilton was the site of our second ODA public forum, and the first outside Toronto. Its content was similar to the Toronto event. It became the basis of the ODA Committee’s first growth spurt outside Toronto, as explained further below. Ms. Copps became a Regional Contact for the ODA Committee Hamilton region. She vigorously supported the spread of the ODA cause in her community. From her we first learned how helpful it could be to have a respected municipal politician as part of the ODA movement.

d) Trying To Get The New Government To Talk To Us

Our most challenging task in the Conservatives' first year in office was getting the Ontario Government to even talk to us. The Government was extremely busy slashing budgets, laying off public servants, repealing various pieces of legislation, and passing others at an unprecedented rate. This Government wanted to implement its agenda as soon as possible. It became clear to us that the ODA they promised us was nowhere to be found on that post-election agenda.

We were eager to emphasize that the ODA issue was not a left wing issue. Had the Conservatives seen it as a left wing issue, the ODA movement would have been dead in the water from the outset. We emphasized that while we did not want to carbon copy the U.S. *Americans with Disabilities Act*, that legislation was the world's most comprehensive legislation in this area. That law was proudly signed into law by U.S. President George Bush in 1990. He was certainly not known to be a left-leaning politician.

In this regard, it ironically turned out to be fortunate for us that the previous NDP Government had not passed the ODA in its dying days. Had it done so, the new Conservative Government would likely have branded it an NDP initiative. In that event the Conservatives may well have lumped it in with other NDP policies against which the Conservatives had vigorously campaigned, instead of themselves making their own 1995 election pledge to pass the ODA.

In the Summer of 1995, shortly after the provincial election, the ODA Committee quickly wrote to the new Premier and the new Citizenship Minister, Marilyn Mushinski. We offered to work together with the Government to develop the ODA. We asked Minister Mushinski to meet with us to discuss steps for the Government to keep its ODA commitments.

The Minister initially responded in writing by indefinitely deferring any meeting. She announced that her Government's priority was to repeal the previous NDP Government's Employment Equity Act. Her Government also planned to focus on developing an "equal opportunity plan" for employment for persons with disabilities. This plan, we later learned, would be entirely voluntary and non-legislative. It would have no mandatory ingredients. Thus, it was clear from early on that the ODA was not to form any part of the Government's strategy for advancing equality for persons with disabilities.

In late 1995 and early 1996, the ODA Committee continued trying to meet either the Citizenship Minister or, in her place, Premier Harris.

All requests for meetings were rebuffed. The Premier was too busy. The Minister gave no reasons.

Starting in this early phase of our campaign, and expanding over the following several years, we encouraged ODA supporters around Ontario to phone or visit their local MPPs, especially MPPs from the Conservative Party. We had hoped to build up enough pressure within the Conservative caucus to press the Premier to support a strong ODA. Some Conservative MPPs either refused outright to meet ODA supporters, or made it very difficult to schedule a meeting.

When any Conservative MPPs would meet with ODA supporters, these encounters were always intriguing. The Conservative MPPs were usually awkward if not outright uncomfortable with the ODA issue. Often they were mystified as they heard individual stories about barriers people with disabilities were facing. Some Conservative MPPs acknowledged that at least some of our ideas made sense. Some MPPs even went as far as musing aloud about the need to do something about this problem.

Before ODA supporters came to them, few Conservative MPPs had learned much about this issue. In a few cases, the MPP would become snippy or hostile. Others would try to offer advice on how to convince the Government.

Over time, this issue was becoming an increasing headache for Conservative MPPs. ODA supporters were encouraged to remind these MPPs to expect that this issue would be raised in the next provincial election, for example at all-candidates' debates. MPPs were urged to think ahead, and to decide what kind of record on this issue they wanted to be defending at those future events.

At some of these meetings, either the MPP or one of their staff members would volunteer that they have had personal experience with disabilities, because their parent, spouse or child had a disability. We hoped this might motivate them to identify with our cause, and to use back-room channels to move this issue forward. It was hard for us to ascertain whether any of that ever happened.

e) Getting The Attention Of The Opposition Parties

In 1995, the opposition Liberals and NDP were far too shell-shocked with the dramatic change in Government agenda to pick up on the ODA issue. No doubt the ODA issue seemed marginal to them in the new Government's first months. Both opposition parties were scrambling to respond to the Government's rapid-fire barrage of major changes to the Ontario Government. Moreover, in the wake of the 1995 election, both

the Liberal and NDP leaders eventually stepped down. Each party had to elect a new party leader.

This didn't mean that we had no business to transact with the opposition parties. Over the first months after the 1995 election, both the Liberals and Conservatives were on the record with ODA commitments. Only the recently defeated NDP had not gone on record in the 1995 election supporting passage of the ODA. We wanted to get the NDP to endorse our ODA agenda. Even though they were now the third place party in the Legislature, they could become an important voice in raising the ODA issue.

A few months after their 1995 election defeat, the NDP invited ODA Committee representatives to meet with their caucus of MPPs. We asked the NDP to go on record supporting the need for passage of the *Ontarians with Disabilities Act*. As a result of this meeting, the NDP caucus made a formal decision to support the ODA cause. The ODA Committee could thereafter say that all parties in the Ontario Legislature were unanimous in support of the need for the passage of the ODA. This made it harder for the Government to justify its persistent inaction on its ODA election commitment.

f) Swiftly Using Unexpected Events To Focus Attention On The ODA Issue

In December 1995, six months after the Conservatives took power and just over one year after the ODA Committee was born, the fledgling ODA movement got its first experience with trying to rapidly react to an unexpected development at Queen's Park, the location of the Ontario Legislature, to focus the public spotlight on the ODA issue. The Conservatives had campaigned in the 1995 election to repeal the previous NDP Government's new employment equity legislation. However, the Conservatives didn't want to look as if they didn't care about achieving equality in the workplace for disadvantaged groups like persons with disabilities.

Therefore on December 14, 1995, Citizenship Minister Mushinski announced the Conservative Government's new "Equal Opportunity Plan," referred to above. This was a non-legislative provincial programme, that was intended to convince employers to voluntarily ensure equal employment opportunities for persons with disabilities and the other disadvantaged groups who were the intended beneficiaries of employment equity.

Seeking to get good news coverage for this initiative, the Government leaked news of this announcement in advance to the Toronto Star. The Star reported on this forthcoming announcement on the day when the Government was to unveil this programme. This tipped us off. It gave us time to throw together a news release and to rush down to Queen's Park. We did not have the time, the network or the experience to rally a large number of people to come along to show support.

The Government's supposedly new Equal Opportunity Plan turned out to include nothing substantial that was new. The Government tried to make existing programmes look like new initiatives. Most important to the ODA movement, this announcement included not a word about the Government taking steps to keep the Government's promise to develop and pass the ODA.

From our experience during the 1995 election we had learned to frame our message in short, hopefully-catchy quotations. "This announcement is full of sound and fury but contains nothing new," said our news release. Drawing on the December festive holiday season theme, our news release continued: "The Government has taken last year's old shoes and wrapped them up as if they were this year's new Christmas present." The visual or olfactory reference got the attention of some media. We secured television, radio and print coverage.

This also re-inforced the lesson we first learned in the 1995 election about the critical importance of rapid reaction if we want to get the media's attention. Two days later, this would have been old news. Our reaction would never get media attention unless it was as close to instantaneous as possible.

g) Learning To Use Legislative Procedures To Raise The ODA Issue

Early in 1996, it was increasingly evident that unless the ODA Committee took dramatic action, the Ontario Government would continue to ignore both its ODA pledge and the ODA Committee, despite the Government repeatedly claiming that it keeps all its promises. This led us to stumble into a new strategy. This tactic would come to form a fundamental weapon in our political action arsenal.

Acting on the NDP's post-election commitment to us, NDP MPP and former Attorney General, Marion Boyd, offered the ODA Committee to table a private member's ODA bill. At this early stage we decided not to take this route. We were concerned that it would take far too much effort to draft a good ODA bill. It would need hundreds of hours of

policy work, and numerous technical headaches, just to choose the right legal language. This is an enormous challenge for anyone lacking a Government's substantial resources. If the bill was not well-drafted, it could have attracted criticism from the disability community. That could potentially divide us when we needed unity.

Ms. Boyd then offered instead to table a resolution for a vote, during the Legislature's Private Members' Time. We were unfamiliar with this option. We learned that the resolution could say whatever we wished. The Legislature would debate the resolution for an hour, and then would vote on it. Government MPPs would have to fish or cut bait on the resolution, and take a position. The resolution would not be legally binding, but could acquire political force.

We accepted Ms. Boyd's offer. We didn't then foresee that the ODA movement would use her creative idea about presenting a resolution to the Legislature over the next years again and again, and that it would serve the ODA movement extremely well. We timed the date for her presentation of her resolution to the Legislature to coincide as closely as possible with May 24, 1996, the first anniversary of the Conservatives' letter promising us the ODA. By focusing on this date, we could highlight the importance of the Conservatives' 1995 election promise to pass the ODA, and its mantra about keeping all their commitments.

We hoped that this initiative would bring attention to the ODA issue in the Legislature, would force Citizenship Minister Mushinski to finally meet with us, and would win previously-unobtained attention from the media. To this point we had gotten minimal media attention on the ODA issue. We had also still been unable to arrange any meetings with either Premier Harris or Citizenship Minister Mushinski.

What should the resolution say? At first it seemed attractive to draft a resolution which would be highly critical of the Government for inaction on its ODA commitments. Our frustrated membership would probably like this. The opposition parties would happily vote for that kind of resolution. However, drafting a resolution in this way would ensure that the Government would use its majority in the Legislature to defeat it.

We opted instead for using wording in the resolution which Conservative MPPs could not vote against. The resolution simply repeated in substance the content of the Premier's May 24, 1995 election pledge to Ontarians with disabilities. The Legislature was asked to resolve that the Ontario Government should pass the *Ontarians with Disabilities Act* within its first term, and that it should work with the *Ontarians with Disabilities Act* Committee, among others, to develop it. How could the

Conservatives vote against this? They could not vote against their own election pledge, while still claiming that they keep all their election promises.

The resolution was debated on Thursday, May 16, 1996. That day was critical for the ODA movement. First and foremost, the resolution passed unanimously. While Government MPPs spoke during that day's legislative debate in terms that seemed critical of the resolution, they simply couldn't bring themselves to vote against their own promise.

Second, many individuals with disabilities and their supporters converged on the Ontario Legislature to watch the debate. Our ranks swelled as a result of this, our first organized ODA Committee event at the Ontario Legislature.

Third, we strategically decided to act on the striking yet hitherto unpublicized fact that the Ontario Legislature's public galleries were inaccessible for people using wheelchairs, with the trivial exception of three or four seats. We urged that this inaccessibility at the heart of our democracy symbolized the need for a strong ODA.

In solidarity with our membership who were in wheelchairs, we decided that if all of us could not go in the public galleries, then none of us would do so. Instead, we arranged seating in legislative committee rooms, with video monitors and the like. We brought our own sign language interpreters and attendant care. The cruelly ironic symbolism was overwhelming. People with disabilities had to sit in separate rooms, because they could not get into the public galleries to watch the legislative debate, when the debate itself was about disability inaccessibility. We would do this again many times over the ensuing years, each time the ODA issue was the subject of a major debate in the Legislature and we were able to rally ODA supporters to attend. The symbolism became stronger, as the Government continued delaying on its ODA commitments.

Fourth, we learned how an event staged in the Legislature could finally generate real media coverage of the ODA issue. We used that day's events to hold our first news conference at the Ontario Legislature building at Queen's Park. We invited representatives from all three political parties. As was the case at all later ODA Committee news conferences, no Conservative MPPs chose to attend.

Our message's potential was profoundly illustrated at that news conference. Joining the ODA Committee organizers at the news conference were two former attorneys general, former Liberal MPP Ian Scott, and NDP MPP Marion Boyd, the proponent of the resolution that the Legislature had passed that morning.

This news conference pointedly depicted our message that disability can affect anyone's life. Since stepping down as an MPP, Mr. Scott, a widely-respected, very effective lawyer and politician, had been significantly disabled by strokes. Similarly, Marion Boyd indicated at the news conference that she had a disability.

On that day the ODA Committee earned a place at Queen's Park as a voice that could secure legislative and media attention. We also had ratcheted up the profile of the Conservatives' 1995 election ODA pledge.

h) Our First Meeting With A Conservative Citizenship Minister

Only after the Ontario Legislature unanimously passed its May 16, 1996 ODA resolution did the Citizenship Minister's office finally contact us to arrange a meeting. This was not the first time the ODA Committee learned that a meeting was to be scheduled. It first heard this when an Opposition MPP pressed the Minister during Question Period in the Legislature, earlier in the Spring of 1996.

This was the first of many occasions over the next years when we had to resort to the regrettably confrontational process of Question Period, to try to get information from the Conservative Government. Question Period is the time during each formal day in the Legislature when Opposition MPPs can put questions to Government Cabinet Ministers. These questions tend to be very political in content, as do the answers that are given by the Cabinet Minister who is the target of the question.

We learned early on that it is not easy to get an opposition party to raise a question in Question Period. Opposition parties treat this as very important time to get media attention. They focus their handful of formal questions on the provincial political news stories that scream from that day's headlines. Each opposition party has to contend with its MPPs each pressing for a chance to raise an issue which is near and dear to them personally, or to their region of the province. The fact that as the years of this saga went by, the opposition parties were increasingly willing to devote their scarce Question Period time to raise the ODA issue symbolized our issue's growing political appeal.

Our first meeting with a Conservative Citizenship Minister finally took place on June 14, 1996, one year after the Government took office. The Government had taken no visible steps during its first year to develop the ODA, nor to consult with the disability community, including the ODA Committee, on developing it. By the time we first sat down to speak with Minister Mushinski, the Government had already had over eight months to reflect on the ODA Committee's first brief, which had

included our 11 principles for the ODA. Yet the Minister had little if anything to say about the substance of our brief.

At this meeting, the ODA Committee contingent reiterated the core ingredients that we sought in the ODA, the reasons why it was good for Ontario, and why existing legislation like the Ontario *Human Rights Code* was insufficient. Foreshadowing yet another approach we would later repeatedly use, we offered the Minister practical assistance on how to proceed. We provided a comprehensive outline on how the Government should go about developing the legislation. This included time lines and principles for a public consultation process. Our road map proposed that the Government should need about one year from the commencement of policy work, through to the holding of extensive public consultations, and concluding with the full legislative process including public hearings on an ODA bill that the Government would bring forward.

At the meeting it was evident that Premier Harris had a tight rein on his Government. He had given the Minister absolutely no latitude to take any real substantive action on the ODA. In all correspondence from the Premier's office and from the Minister over the year leading to that meeting, the Government avoided any meaningful reference to the words "*Ontarians with Disabilities Act.*" Instead, the Government spoke vaguely and evasively about its commitment to the "dignity of persons with disabilities." During the Legislature's debate the month before over Marion Boyd's ODA resolution, Government MPPs studiously avoided where possible referring to the ODA. At our June 14, 1996 meeting, the Minister similarly appeared to be avoiding as much as possible using the words "*Ontarians with Disabilities Act.*"

During our June 14, 1996 meeting, the Minister agreed with the importance of achieving the goal of a barrier-free Ontario for persons with disabilities. We asked the Minister's assistance to help us get a meeting with the Premier. We wanted to solicit his support for the Minister's making progress on the ODA. Without a green light from the Premier, we knew nothing would get started. The Premier had already turned down our several requests to meet, saying he was too busy.

At this meeting the Government presented us with the idea of the Government blending its work on the ODA with a broader initiative on several sweeping issues, of which the ODA would at best be a minor and likely marginal part. We made it clear that we did not want to distract or dilute the ODA initiative by subsuming it as a marginal part of some more vague, general policy initiative.

Perhaps most compelling about this meeting (apart from the lack of any Government commitment either to a time frame for developing the ODA or even to help us arrange a meeting with the Premier) was the meeting's general tone. The Minister's staff came in, expecting us to unleash a hostile confrontation. They were surprised that they were met instead with our cordiality and constructive suggestions.

The Minister's opening words were memorable. We had had a frustrating year during which the Government refused to meet us. The Minister had rarely even replied to our letters. Yet the Minister opened the meeting by proclaiming "Well, at last we finally have the chance to meet."

In one more strategy that we would learn to use over and over, the ODA Committee documented this meeting's outcome in a detailed letter to the Minister. This letter set out the specific follow-up we were requesting. That follow-up was not to materialize for at least one year.

5) SUMMER 1996 TO SPRING 1997: THE CONSERVATIVES' SECOND YEAR IN POWER

a) The Year's Priorities

To seek progress during the Government's second year in office, we focused on three priorities. We used any available avenues to try engaging the Government. We worked on expanding our coalition, especially outside Toronto. While addressing each of these, we simultaneously worked on the third priority, namely getting media coverage of the ODA issue to increase public support for our campaign. Up until then, the media was still minimally interested in the ODA and had only started to accept us as a credible player.

b) Confronting The Government's Brick Wall

Over the next months, the ODA Committee encountered a brick wall when it tried dealing with the Ontario Government. There was no sign that the Government was making any progress in developing the ODA. It didn't respond to any of our proposals for the ODA's content or for how it should be developed.

The most the Government did to address the need to make Ontario barrier-free during this period was to unveil a new Government website in November of 1996. This site gave out general information to companies and organizations on how to become accessible. We knew that

we needed much more than a new Government website to reach our goal.

To engage the Government from the 1996 Summer to May 1997, we tried eliciting Government commitments for specific action, by writing to the Citizenship Minister and the Premier. We offered concrete proposals and sought specific answers. Their responses remained vague, general, and largely evasive.

Only once in 1996 after our June 14, 1996 meeting with Minister Mushinski did we manage to get any Government representative to even say that the Government would keep its ODA commitments. At a September 28, 1996 Toronto disability community event (a rare one which Minister Mushinski attended), ODA Committee representatives asked the Minister (in the media's presence) whether the Government would keep its ODA promises. Media reports about this event confirmed that the Minister said that the Government would keep its commitment to pass the ODA, that the legislation had to be meaningful, and that the ODA should not lack teeth. The ODA Committee quickly confirmed the Minister's statements in writing.

This was one of the very few times in the Government's first two years in office that a Minister publicly uttered the words "*Ontarians with Disabilities Act*." Beyond this, however, the Minister refused to give commitments to meet with us again in the short term, or to help us get a meeting with the Premier.

During this period, we also built on what we had learned over the past year about how to take advantage of the Legislature's procedures. The opposition parties hadn't yet taken on the ODA issue as a major priority. However, at our request, opposition MPPs increasingly raised questions about the ODA during Question Period.

As well, in early 1997, the opposition parties got a committee of the Legislature to hold formal public hearings on the impact of Government spending and programme cuts. We made a formal presentation to those hearings, delivering our second brief to the Legislature. We called on the Government to incorporate the ODA's enactment into its aggressive legislative agenda. We proposed that the Government pass the ODA early in that legislative agenda, before it undertook its plans for massive restructuring of many public and private sector programmes. This would ensure that no new barriers were created during the Government's forthcoming massive restructuring, and that barriers could be effectively removed while this restructuring was going on.

The Government didn't accept this proposal. Instead, it used tax dollars to undertake unprecedented provincial restructuring, while cre-

ating new barriers and perpetuating old ones. It put off passing its ODA until well after the provincial restructuring die was already cast.

For example, the Ontario Government had sent out a commission to decide which hospitals in Ontario it would close and which it would leave open. The Government did not ensure that in making these decisions, emphasis was put on keeping open those hospitals which had the fewest barriers against persons with disabilities. The predictable result was a health care system that, in some instances, became more inaccessible to persons with disabilities.

Almost two years after the Conservatives' 1995 ODA election pledge, on Thursday May 15, 1997 (which was also one day shy of the first anniversary of the Legislature's passing its first formal ODA resolution) we invited ODA supporters to converge on Queen's Park, to ask politicians what had been done in the past year to live up to the ODA pledge. We called our event "Face the Disability Community." It was loosely modelled after the U.S. TV networks' Sunday morning political interview shows.

That day, opposition MPPs raised the ODA issue in the Legislature. At the Queen's Park media studio (which is wired into all news outlets and MPPs' offices), we invited each party to send an MPP to answer questions on the ODA from a panel drawn from the disability community. The NDP and Liberals each sent an MPP. The Conservatives again refused to attend. In their place, seated at the podium we placed a life-sized cardboard cut-out of the Premier.

We had a substantial turnout at Queen's Park. This included not only our members from Toronto but ODA supporters from outside Toronto as well. We encouraged ODA supporters who could not make it to Toronto to approach their local MPPs in their local communities, to raise the same issues. In Windsor, a major march was held in support of a strong ODA. In Ottawa, several persons with disabilities in wheelchairs got media coverage when they tried in vain to get access to long-time Conservative MPP Norm Sterling's wheelchair-inaccessible constituency office.

During this period and afterwards, we faced an ongoing strategic tension. At each public or media event, and in each letter to the Government or news release, we had to decide how negative or how positive our message to the public and media should be. There was significant pressure to sound positive. A positive message is often more appealing to average members of the public. If we always sounded negative, we ran the risk of being type-cast as whining and impossible to placate.

Also, within any constituency there are always individuals who would be alienated by a collective message that is too negative.

On the other hand there were great pressures in favour of a negative message. The Government we faced was so hostile to us, and so unwilling to take serious action to develop a meaningful ODA. How could we say anything about this topic that didn't sound negative? Had our message always sounded positive, and not been critical of the Government, we would have to ignore the over-arching fact of the Government's negative treatment of us. We also kept getting strong feedback from the ODA movement expressing rising anger and frustration. There was a real and substantial need for us to echo that widespread feeling, lest we lose the support of our own movement.

As well, it is an unfortunate fact of life that the media is often more willing to cover a story if it is critical. It must be emphasized that we never opted to "go negative" just to get media coverage. At the times when we had negative content to our message, it was very much the legitimate message we had to share.

Our solution was to try as often as we could to balance any criticism of the Government with an off-setting positive message. We would for example try to combine any criticism of the Government's delay on the ODA with a renewed offer to work together with the Government to develop this legislation. We would complain about the hardships caused by society's barriers against persons with disabilities with a positive message about how society will benefit from removing these barriers. This balancing of our message between the positive and the negative was not easy to do. No doubt we could have done it better.

c) Approaching The Three Party Leaders

Whenever we slammed up against one of the roadblocks in dealing with the Government, the person we most often directly encountered was one of the five successive Conservative Citizenship Ministers assigned to the ODA file from 1995 to 2003. It was very evident to us, from early on in this process, that all the shots were being called by the Premier and his advisors. Each successive Citizenship Minister had to strictly follow marching orders, while loyally defending the Government's inaction.

We therefore decided early on that it was critically important to have a face-to-face meeting with Premier Harris. We made it clear that we wanted to go to meet with him, along with his Citizenship Minister, not behind the Minister's back. Premier Harris publicly prided himself as

being a tough, strong leader, who would make the tough decisions and would always keep his word. We said we wanted to benefit from this leadership. An effective ODA required co-ordinated action by several major Ontario Government ministries including Health and Education. It needed “buy-in” from these ministries, and not just from a small, secondary ministry like the Ministry of Citizenship.

Over his almost seven years as Premier between 1995 and 2002, Premier Harris refused every request we made to meet him, including our 27 written requests over those years. His reasons included his being busy. Yet he never proposed any other time to meet us. Once he declined our invitation for a particular date, but was later reported as being at the Toronto Skydome at a cheerleaders’ performance.

Premier Harris also refused numerous invitations over these several years to public ODA Committee events, including ones explicitly billed as non-partisan. Twice over those several years, he slipped out of the Legislature to avoid us when we were in the building. One of these instances was during our May 15, 1997 “Face the Disability Community” event described above. Once in 2000, he evidently signalled to the Opposition benches in Question Period that he would meet with us when we were assembled in a legislative building meeting room down the hall. Yet he ended up choosing to leave instead of meeting with us, signalling to an opposition MPP that he wouldn’t meet us. This was all very frustrating.

In sharp contrast, the new leaders of both opposition parties, the Liberals’ Dalton McGuinty and the NDP’s Howard Hampton (each elected to their leadership roles early in the Conservatives’ first term in office) met with ODA Committee representatives several times over the years of our ODA campaign. Some meetings were formal. Others were just brief chats or phone exchanges.

As these relationships grew, it appeared that their interest in the ODA issue went beyond an obvious political attraction to a tactically-good issue. They each seemed to see the ODA as a truly worthwhile cause. They and various of their MPPs periodically mused to ODA supporters that they just couldn’t figure out why the Conservatives were so unwilling to take real action on the ODA. Even if the Conservatives didn’t care about disability issues, these opposition MPPs mused to us that the Conservatives could easily score political points by promptly passing a strong, effective ODA, and could avoid growing political embarrassment over their inaction on this issue. Members of the public and journalists alike similarly repeatedly asked us with mystification:

“Why won’t the Premier just do it?” We often asked ourselves the same question.

d) Spreading The Coalition’s Activities Around The Province

Those unfamiliar with community advocacy may assume that people with a common interest will easily and automatically come together, unite around shared goals, and jump right into concerted action. We learned how untrue this is. We had to work hard to reach out to individuals and community organizations, to try to get them involved.

Our approach was to go into a new community, one at a time, and try to find a few likely natural allies, either individuals or organizations with a disability issues track record. Each Ontario community is different, often lacking obvious starting points.

In a new community, we would first seek out a small group, sometimes as few as two or three people, to interest with our message. We planned to build one step at a time. We would ask these first initiates to organize a public ODA forum, like the ones we had held successfully in Toronto and Hamilton in the first half of 1996. This would let the new core group in that community reach out to, educate and involve more people in their community. We offered support and advice, based on our experience with our previous successful ODA forums.

Organizing an ODA public forum is not a simple task. A fully accessible location had to be found for this event. Sign language interpreters and attendant care had to be donated.

These opening forums had attendance ranging from 20 to two hundred. After introductory speeches on the need for a strong ODA and an energetic round of “What’s My Barrier,” the forum would culminate with a simple announcement: Who wants to join this new region of the ODA Committee? Resounding applause was always the answer.

These events were a natural for local media attention. They highlighted human interest. They brought to light real grassroots problems in the community’s midst about which most are unaware. These events also depicted the building, brick by brick, of a new political movement, to tackle the seemingly impossible challenge of taking on a juggernaut Government that portrayed itself as inconvincible, invincible and impenetrable.

Springing from a community’s initial public ODA forum usually came a core of individuals, backed by one or more community organizations, ready to spearhead the new ODA Committee region in their community. Behind this core team was usually a larger group. That

group was ready to get involved and to help the core team on an “as needed” basis, or was at least eager to learn more and to eventually take part. We left it to each community’s new ODA Committee region to figure out how to organize itself.

We came up with the unromantic and unimpressive title of “Regional Contact” for the individual, duo or trio of persons that assumed an administrative or leadership role in their community’s new ODA movement. These ODA Committee regions typically kept their internal organizations informal and flexible, avoiding bureaucratization.

Our informal structure was intended to encourage everyone to contribute their efforts, however they wished. It was felt that if we tried to set up rigid committee structures, with pre-assigned fixed job descriptions, we ran the risk that some would feel left out if they weren’t included on a committee they wanted to join, or if they weren’t given some fancy title. It was also thought that if someone took on a formal title, but didn’t fulfil their tasks, we would be stuck with the messy problem of figuring out how to get the work done by others without offending the volunteer title-holder.

We stick-handled around these land mines by keeping titles to a minimum, and simply allowing everyone to contribute to our campaign, however they wished. Even the one title we had, “Regional Contact” so lacked glamour that we faced little in the way of divisive fights over who would hold it.

This informality, though incredibly helpful, can pose its problems. Some are so eager to have formalities, rigid structures and the like, that our organizational informality can at times seem a bit foreign to them. Fortunately, we generally got feedback that ODA activists preferred our strategy of organizational informality.

We learned that our informality made it easier to recruit volunteers. If you ask a person to chair some committee for a year or longer, they will likely find this large time-consuming assignment too daunting. They tend to just say no. If instead we make a far more modest request, asking the same individual to just give a few hours to help on a specific project, they are more likely to say yes. Once they got involved, the ODA bug usually bit. They often stayed involved long afterwards, giving far more of themselves than they originally anticipated.

We also learned how to address one feature that comes up for everyone in a volunteer movement, but which can be accentuated in the disability area. Some volunteers can get sick, or have a volatile condition that may make it difficult to attend regular meetings, or to make long term volunteer commitments. No matter. We would assign such indi-

viduals tasks that accommodated this and which let them effectively contribute.

For example, one indefatigable ODA Committee volunteer, Carole Riback, had undertaken to phone around to the media to announce a major ODA event at Queen's Park the next day. Unexpectedly she had to go to hospital on an emergency basis. She found a solution. While in hospital, receiving her treatment, she phoned each Toronto news outlet to alert them about our event the next day. One could only imagine how the reporters would have felt had they known they were receiving calls from a hospital treatment room.

Between 1994 and 2001, we used our organizing strategy with some variations in fully 23 regions all over Ontario. This included both big cities and small towns. Existing ODA Committee regions informally helped out newly-founded ones.

In some communities, once we had a base established, we progressed to the next step. This involved holding a local event aimed specifically at teaching ODA supporters the nuts and bolts of taking political action. These "political action labs" included training on how to write, phone or meet with an MPP, how to prepare and submit a petition to the Legislature, and how to approach the media. At these events, those with experience in advocating to Governments, like CNIB's Angelo Nikias and the Ontario March of Dimes' Paul Raina, offered their vital, extensive expertise to newcomers to activism, who may have been nervous or reluctant about meeting with provincial politicians to discuss the ODA issue. We also provided tool-kits including such things as sample letters to politicians.

e) Harnessing The Power Of The Internet

In 1997, this gradual process of building our movement on the ground took another giant leap forward when we jumped into the new world of the internet. Few of us foresaw its potential. Before we started using the internet, we had lacked the funds to mail out monthly hard-copy newsletters to our growing list of supporters. That led some to complain in our earliest years that our semi-annual "snail mail" newsletters were not enough. Some felt left out in the cold, unaware of what was going on.

Once we harnessed the power of the internet, that complaint evaporated. In early 1997, at the suggestion of the visionary Patti Bregman, we launched an ODA Committee website. We posted our letters to and from the Ontario Government, our newsletters and the exchanges in the

Ontario Legislature about the ODA. Initially our website started off slowly. In the Fall of 1998, we were contacted via email by one Barb Anello. She had visited the site, and had much to say about how it could be dramatically improved. She immediately volunteered to take over management of our website. She generously spent far too many hours to count over the next years, improving its design and keeping it current, despite our floods of new material. She ensured that the website was designed to be fully accessible and barrier-free for persons with disabilities who use adaptive equipment, such as talking computers. Barb Anello also became the ODA Committee's North Bay Regional Contact. It is a sign of the internet's power that the internet led that talented, dedicated individual, like many others, to our cause, and gave her an avenue to contribute her special skills.

This website became our open filing cabinet. Everyone who could use the internet could learn about us and could quickly get involved. Unfortunately, despite this effective new tool, we were left with the perennial problem of how to adequately update people who had no computer or no internet access. We never completely bested that challenge. Periodic ODA Committee snail mail reports couldn't equal frequent internet postings.

Our website, now at *www.odacommittee.net*, became a major resource for ODA activists, community organizations, journalists, newcomers to the movement, students, and even Government officials. One Conservative Citizenship Minister's political advisor remarked that they got their quickest answers on ODA issues by visiting our website. Detailed documentation of many of the events described in this account was posted on our website as they happened.

Our website won awards. It eventually had thousands of hits each month, including visitors from around the world who wanted to learn from our activities. Think of the postage this saved.

Rivalling our website's incredible power was our growing use of email. Anyone could ask to be added to our email distribution list. We gradually amassed a massive email distribution list for sending out frequent ODA updates.

Our email updates included our news releases, letters to and from the political parties, transcripts of exchanges on the ODA in the Legislature, news media articles on the ODA, and announcements of upcoming ODA events around Ontario. We also broadcast individual ODA Action Tips. These gave individuals and organizations ideas on how they could help the cause on their own. Later supplementing them were

longer ODA Action Kits. These were chock-full of a medley of strategies for grassroots action.

All this email engaged and educated hundreds of people about our cause. It attracted many more to get involved in their communities. In this way we wanted the ODA Committee to serve as the “fast food chain” of political action. We had learned, for example, that if you just ask people to write to their MPPs, some will do so. However, if you also provide them with a sample letter via email from which they can quickly cut and paste, and to which they can add their own personal touch, many more will do so.

People who signed up for our email broadcasts got many updates from us, some within hours or even minutes of late-breaking news. Those who didn’t want to receive that much email could periodically check in to our website. We eventually posted our email announcements there too, to maximize their availability.

We also used the website and email to solicit ongoing ideas and feedback from ODA supporters. This supplemented the feedback we regularly received at public forums, local meetings, and through other avenues like snail mail and phone calls. We thereby kept a finger on the ODA movement’s pulse.

The internet is undoubtedly very helpful for any community-based political movement. Yet much could be written on the internet’s special additional potential to help persons with disabilities engage in our kind of grassroots community advocacy. By ensuring that our website is disability-accessible, we made our growing volume of printed information instantly accessible to persons who are blind, deaf-blind, vision impaired, or dyslexic, so long as they had access to a computer. Computers, such as the one on which this account has been written, can now readily be adapted to read aloud the text on the screen in synthesized speech, for the benefit of those of us who cannot read printed material.

Similarly, email enabled people who are deaf, deafened, or hard of hearing to communicate instantly with others who do not know sign language or Braille. Tenacious Ottawa ODA supporter Penny Leclair, who is deaf-blind, effectively used the internet as a prolific writer of letters to newspapers, politicians and ODA supporters alike. In addition, people who could not speak verbally could use the keyboard to communicate to others. In this way, the internet enabled us to overcome serious barriers to effective political organizing.

As well, any disability rights movement will likely have little or no money, given pervasive poverty among persons with disabilities. The internet helped overcome this, at least to some extent. With only one

email account, email can be sent to thousands of people. They in turn can and do relay our emails on to others, spreading the word quickly and widely. Add to this a good media fax list programmed into a computer, and a movement can quickly get a news release into every major newsroom, without having to buy a single piece of paper or postage stamp.

Our email broadcasts and website together enabled many, many people to quickly learn as much as they wished about the ODA movement's aims and activities. It let everyone with internet access be on the front lines with a keen sense of connectedness. They were equipped with all the information available to us, often within days or even hours of that information coming into the ODA Committee's hands. It helped people learn about the ODA movement and reach out to us, even if they had never attended an ODA event or met an ODA supporter in person.

Our website and email network helped in our effort to make the Conservative Government more accountable for its handling of the ODA issue. Government officials eventually learned that anything they publicly said or wrote on this issue could, and likely would end up on our website for all to see, as would any official letter from the ODA Committee. One overworked civil servant once called us on receiving a letter from the ODA Committee late on a Friday afternoon. We were asked if we would be posting this letter on our website that day, or whether this might await the next Monday. It was evident that this exhausted public servant needed to know if they had to rush to immediately get a briefing note up to their Minister.

Our website also helped us in our effort to gain credibility with the media. When an ODA supporter would contact a news reporter for the first time, the journalist might well wonder if this ODA business is for real. Once the journalist checked out our website, they could quickly see that ours was an authentic, legitimate, well-documented movement.

For some, we sent out far too much information via email to absorb. For others, this steady diet of email fed an insatiable desire to be empowered. For politicians, it meant that their every word on this subject rapidly could and would travel out to many corners of the disability community. Yet as for those too poor to afford a computer and internet access, and for those whose disabilities computers still do not accommodate, this wonderful new world of internet technology no doubt left them feeling very much left behind, a situation that still needs corrective action.

6) SUMMER 1997 TO SPRING 1998: THE CONSERVATIVE GOVERNMENT'S THIRD YEAR IN POWER

a) The Year's Priorities

In the Government's third year in office, our priorities shifted dramatically. Events led us to add to the previous year's priorities a new, far more vigorous focus on our policy platform for the ODA.

b) Refining Our Policy Platform

In the summer of 1997, we detected signals that the Ontario Government might finally be ready to begin discussing process issues on how to consult the disability community about the ODA, even if it was still not willing to talk about what the ODA itself should include. Citizenship Minister Mushinski said that she planned to hold a public consultation on the ODA. In a break with the icy cold shoulder that the Government had turned our way since it took office in June 1995, Minister Mushinski's staff had refreshing, substantive discussions with us that summer on a nuts and bolts level on how to conduct that consultation. To show our good faith during these discussions, we turned off any effort to get media attention.

This culminated with our second formal meeting with Minister Mushinski since the Conservatives took office. On August 20, 1997, during a cordial meeting, an ODA Committee delegation⁴¹ further explored with the Minister ideas for her planned ODA consultations. As a seemingly significant breakthrough in contrast with months of Government inaction, the Minister reiterated her commitment to a meaningful ODA with teeth. She announced to us that her target for the introduction into the Legislature of the ODA bill was mid-to-late Fall of 1998.

At last, there seemed to be light at the end of the tunnel. This spurred on our kicking off a major policy project of our own. We wanted always to remain several steps ahead of the Government, and never to be caught unprepared. We therefore needed to turn our attention to developing in

41 Over these years we rotated the composition of our delegations that attended meetings with the Citizenship Ministers. We wanted to give different people a chance to take part in these meetings. We also wanted to have some continuity. We tried to include in our delegation each time a good mix of people from different ODA Committee regions, as well as people with different kinds of disabilities. Needless to say, this can be quite a juggling act.

greater detail our policy platform for the ODA, building on our 11 principles.

This huge project was much more than a simple piece of legal research. We wanted to fashion an innovative consensus platform, faithful to our 11 principles, that would garner widespread disability community support. We needed to educate, involve, and consult with both our formal membership (which was growing by leaps and bounds) and the broader disability community. We also wanted to put forward a proposal which was not pie-in-the-sky. It needed to be realistic, balanced, and politically saleable.

To do this, the disability community first needed to learn more about and reflect on the important policy issues that would arise in any substantive discussion with the Government about the ODA. We opted not to summarily pump out a highly technical “options paper” (like the ones civil servants routinely serve up to a Cabinet) and then just tally up our membership’s votes for one policy option or another. We had to engage the broader disability community on the ground floor from the outset. It seemed worthwhile to encourage them to reflect at the grassroots about what they needed a strong ODA to achieve in their own lives. This would help the resulting platform truly belong to them, as deserving their support, even in the face of a recalcitrant Government.

Between the Summer of 1997 and April 1998, our work unfolded in three stages. At the first stage, we widely circulated a short, inclusive survey, called our “Input Paper.” It asked everyone to identify barriers they faced in their daily lives, and to indicate what areas or life activities they wished the ODA to cover.

ODA supporters distributed this survey widely, far beyond our membership. Meetings and forums sprang up all around Ontario to collect answers. Some of this activity was done on a regional basis. Other efforts focused on particular disabilities. For example, two talented and inexhaustible deaf community leaders, former NDP MPP Gary Malkowski and Chris Kenopic (then the president of the Ontario Association of the Deaf, ever-active in the ODA cause), toured the province holding a series of ODA forums, to gather input from the deaf community.

At the second stage in this process, in the Fall of 1997 we compiled and synthesized the large volume of responses to our Input Paper. Building on this and on further research, we worked up a second document, our “Goals Paper.” This nine-page plain language document, which we again circulated widely, set out in a more focused, detailed way what we wanted the ODA to include and to achieve. This was spelled out in a policy-focused “question and answer” format.

After our Goals Paper was widely circulated, we gave ODA supporters time to send in feedback on this document. That led to the third and final stage of this policy process, the development of our comprehensive 100-page 1998 brief to the Ontario Legislature. It was entitled “Making Ontario Open for People with Disabilities - A Blueprint for a Strong and Effective *Ontarians with Disabilities Act*.” Our most rigorous product to date, this brief was the most thorough, detailed Canadian proposal for new disability-specific barrier-removal and barrier-prevention legislation of which we were aware.

This brief included a first chapter which detailed the history of the ODA movement, the Government’s election commitments to us, and the 11 principles we wanted the ODA to incorporate. The second chapter set out our Blueprint for the ODA. It was our “Goals Paper,” as fine-tuned, based on feedback we had received after the Goals Paper had been widely circulated.

The brief also included two important appendices. The first appendix, entitled “Life in a Province Full of Barriers” is a fifty-page compilation, organized by subject area, of the wide range of barriers which Ontarians with disabilities experience. It was based on feedback in response to our Input Paper and on information gathered at public ODA forums, in at least ten centres around the province. This appendix directly echoed the experiences of grassroots ODA supporters around Ontario.

The second appendix, entitled “The Public Supports the Need for the *Ontarians with Disabilities Act*” reported on the results of a public opinion survey which Thomson Lightstone had conducted for us, pro bono, in early 1997. It showed substantial public support for the kind of legislation we were seeking. We had been careful to ensure that the survey questions were worded fairly and weren’t leading, so that the results would be reliable. We did not want the Government to dispute the survey questions’ fairness. They never did.⁴²

The survey showed very strong support for the introduction of new legislation that included the removal and prevention of barriers impeding people with disabilities. It showed that the majority of people in Ontario

42 The questions were asked of a random sample of 2,095 Canadians 18 or older. According to Thomson Lightstone, a sample of this size is accurate with a margin of error of to 2.2%, 19 times out of 20. Of the total interviews done, 523 were with people in Ontario. According to the company conducting the survey, this sample size is accurate with a margin of error of 4.3%, 19 out of 20 times. There were few material differences in the results between Canada as a whole and Ontario.

supported effective legislation to remove barriers to equal access for people with disabilities. Support ranged from sixty-six percent for legislation covering consumer products to seventy-eight percent for legislation that would remove barriers to Government services. Results for each area were:

- government services 78%
- job training 77%
- public places 76%
- the workplace 75%
- housing 70%
- consumer products 66%

Of the minority who did not support new legislation to remove existing barriers, 25 percent did support legislation to prevent the creation of new barriers, even if it cost money to implement the legislation. Fully 85 percent of the people who supported legislation to prevent new barriers said the expenditures would be worth it.

According to this poll, most people recognize that people with disabilities face barriers in employment, access to public transportation, access to public places, access to housing, and access to office buildings. Fewer people think that there are barriers in access to government services, use of everyday products, and access to quality education and the opportunity to attend college. Thus, this poll showed that not only do people with disabilities believe they still face significant barriers to fully participating society, so do people in Ontario and in Canada in general.

In response to a question about bringing people with disabilities into the workplace, 84 percent of those surveyed in Ontario said this would benefit society, and 66 percent said this would be a boost to society. Most people, 88 percent of those interviewed in Ontario, believe that people with disabilities have difficulty finding jobs. Sixty-four percent of the people interviewed believe that people with disabilities are generally worse off financially. Regarding desire to work, 69 percent felt that people with disabilities do want jobs.

In Ontario, 77 of the people interviewed said they know someone with a disability either as a family member, friend, co-worker or other person they see on a regular basis. This showed how much disability barriers touch everyone's lives. The poll also showed that even if removing barriers impeding persons with disabilities costs money, the cost is worth it, according to a substantial majority of Canadians.

c) Our Blueprint For The ODA

Here is the text of our 1998 brief's ODA blueprint. Our brief explained that this blueprint describes basic concepts and ingredients that the *Ontarians with Disabilities Act* should include in order to be strong, meaningful and effective. It also explained that the ODA Committee remained flexible and open to creative ideas, from our members and others interested in this area, on how to design the ODA. It states:

“What is the Aim of the *Ontarians with Disabilities Act*?

The *Ontarians with Disabilities Act*'s objective is to achieve a barrier free society in Ontario for people with disabilities, a society whose workplaces, goods, services, and facilities will be designed and operated for all its citizens, including those with disabilities. Ontario will be a society in which people with disabilities can fully participate - a society where existing barriers have been identified and removed, and where new barriers are prevented before they arise.

Who Should be Expected to Comply with the *Ontarians with Disabilities Act*?

To achieve a barrier free society the *Ontarians with Disabilities Act* must apply to all provincial and municipal Governments, as well as private and public sector organizations subject to the laws of Ontario. These organizations created the barriers that obstruct people with disabilities, often unintentionally. They must share responsibility for removing them. Most importantly, everyone must be involved in preventing the creation of new barriers. This means the law should apply to the Ontario Legislature and Government, the Ontario Public Service, all municipal, regional and local Governments including all their committees and commissions, the broader public sector such as schools, school boards and hospitals, as well as all businesses and other organizations operating in Ontario.

Governments have special obligations to ensure all citizens have a full and equal chance to participate in society. The Government cannot avoid its obligations under the *Ontarians with Disabilities Act* by downloading its responsibilities to other levels of Government, or to the private sector by privatization. Even though the Government may decide not to deliver a programme itself, where the Government is providing the funding and setting the standards, it is obliged to ensure that barriers are removed and no new barriers are created.

It is also important that institutions which symbolize the Government and people should be accessible. This includes the Ontario Legislature, as well as MPPs' offices. Everyone, including people with disabilities, must be able to watch and participate in Government.

What Should the *Ontarians with Disabilities Act* Cover?

Since the goal of the *Ontarians with Disabilities Act* is to ensure full participation in society by people with disabilities, it must cover the full range of activities, products, facilities, services and other opportunities used or enjoyed

by the citizens of Ontario. In some cases the *Ontarians with Disabilities Act* would refer to specific activities, products, facilities and services. It must also be flexible enough to include any new developments. For example, ten years ago the internet barely existed. Today it is an increasingly important tool for communication, research and learning. The *Ontarians with Disabilities Act* must apply to new developments, such as the internet, to ensure that when changes occur, new barriers are not created. In our Fall 1997 survey our members told us that some of the most important areas the *Ontarians with Disabilities Act* must cover are:

- employment
- public transportation
- education and training at all levels (e.g. public schools, high schools, post-secondary institutions and job training programmes)
- health and social services including health promotion
- communications and telecommunications
- recreational programmes and facilities
- information provided to the public
- housing
- consumer products
- police and law enforcement
- tourism and entertainment

What Kinds of Barriers Should the *Ontarians with Disabilities Act* Cover?

The *Ontarians with Disabilities Act* should cover all types of barriers keeping people with disabilities from participating fully in society. For example, it should include: physical barriers, such as high curbs without curb cuts; communication barriers, like those faced by people who are Deaf and require sign language interpretation to communicate effectively; barriers faced by people who cannot read printed material and who require Braille, large print, tape or other alternative formats.

Other barriers to be covered include: discrimination in employment faced by many people with disabilities, including mental illness, developmental disabilities and learning disabilities.

What Disabilities Would the *Ontarians with Disabilities Act* Cover?

The *Ontarians with Disabilities Act* must be inclusive so all people with disabilities of all ages will benefit from it. The definition of disability used in the *Ontarians with Disabilities Act* should include a broad range of disabilities including: communication disorders and speech impairments, learning disabilities, mobility disabilities, AIDS, kidney disease and other invisible disabilities, multiple sclerosis, Deafness and hearing loss, blindness and visual impairment, neurological disorders, traumatic brain injury, psychiatric and mental illness and diabetes. The definition of disability must be clear that the list of disabilities is not exhaustive, and that it can be expanded by regulation or by the courts in accordance with the principles set out in the *Ontarians with Disabilities Act*. No disability may be explicitly excluded from the *Ontarians with Disabilities Act*'s definition of disability.

What Will the *Ontarians with Disabilities Act* Require?

The *Ontarians with Disabilities Act* must clearly guarantee persons with disabilities the right to participate fully in a barrier free society. This includes a right to have existing barriers identified and removed. It also includes a right to have new barriers prevented.

It must state that no statute or regulation of Ontario, nor any municipal bylaw, can be passed or implemented if it conflicts with the requirements of the *Ontarians with Disabilities Act*. The *Ontarians with Disabilities Act* will apply fully and equally in all areas of the province, including cities, towns and rural areas.

Organizations, including businesses, that must comply with the *Ontarians with Disabilities Act* will be required to:

- identify barriers now existing within their organizations, keeping persons with disabilities from participating fully in their workplace and from participating fully in and benefiting from the goods, services and facilities which they provide;
- develop a plan for removing the barriers. The plan should set out stages in which barriers will be removed, and set a final date when they will be completely eliminated. It should also include steps to ensure new barriers are not created in future;
- carry out their barrier free plans.

Governments will have the same obligations as other organizations. Governments will have additional responsibilities such as:

Within a specified period of time, developing and carrying out a barrier free plan for each provincial ministry or department, applying to services that they deliver or have responsibility for delivering, and for the sector of society for which they are responsible. For example, some of the areas in which the Government must act to remove existing barriers and prevent new barriers are:

- the education system (Minister of Education & Training)
- the Ontario system of colleges and universities (Minister of Education & Training)
- the health and long term care system (Minister of Health)
- the social services system (Minister of Community & Social Services)
- child care services (Minister of Community & Social Services)
- the justice system (Attorney General)
- policing services (Solicitor General)
- provincial and municipal public transportation (Minister of Transportation)
- the Ontario housing system (Minister of Municipal Affairs & Housing)
- Building Codes at the provincial and local levels (Minister of Municipal Affairs & Housing)
- labour issues including occupational health and safety (Minister of Labour)
- recreation and tourism (Minister of Citizenship, Culture & Recreation)

- making the Ontario Public Service a barrier free Workplace (Chair of Management Board)
- making the Legislature and the electoral process accessible (Speaker/Attorney General)
- taking steps to ensure that wherever possible Government would purchase or rent only barrier free products, facilities and services. This would provide an incentive for companies providing services, facilities or products to remove existing barriers and prevent new ones from arising;
- reviewing existing legislation, regulations and policies, and new ones to be proposed in future, to ensure they are barrier free and, if necessary, making changes to eliminate barriers;
- making sure when a Government programme is delivered, whether by Government, an agency or any other organization chosen by Government, it is done in a way that is barrier free;
- working with people with disabilities to develop expertise in designing barrier free programmes, goods and services, and using this expertise to help the private sector comply with the *Ontarians with Disabilities Act*.

The *Ontarians with Disabilities Act* must also give the provincial Government authority and duty to develop, implement and enforce barrier free standards to apply across the entire province. Barriers are created in part because municipalities may each have a set of different standards, creating confusion and inconsistency. These new province-wide standards would apply to areas like transportation, zoning, or parking rules for people with disabilities.

Barriers must be removed and prevented in every area and region of the province. People with disabilities should have the ability to travel and live in any area of the province without having to face new barriers in each location.

The *Ontarians with Disabilities Act* must also do nothing to diminish rights that people with disabilities have under the Human Rights Code and the Building Code.

How Should the *Ontarians with Disabilities Act* be Enforced?

The *Ontarians with Disabilities Act* should provide prompt and effective ways to enforce the rights it guarantees. Although people should still be able to file individual complaints when they run into a barrier, there should be other ways of enforcing the ODA that do not depend on individuals filing complaints each time they face a barrier.

Self-enforcement by Governments, businesses and other organizations covered by the *Ontarians with Disabilities Act* will be an important part of the enforcement process, by developing and implementing barrier free plans described above.

Funding must also be made available to organizations of people with disabilities that are involved in promoting a barrier free society and providing education, information and support for people with disabilities as well as business.

The *Ontarians with Disabilities Act* should establish an accountable and effective public agency responsible for enforcement of this law. Adequate funding

must be available for this new responsibility. The ODA Committee cannot now take a position on whether the Ontario Human Rights Commission should be that agency. In 1995 the Premier made an election promise that his Government would increase funding for the Human Rights Commission. That promise was made in connection with the Commission's current responsibility of enforcing the Ontario *Human Rights Code*. Instead of keeping that election promise, the Government announced cuts to the Ontario Human Rights Commission's budget. Until the Government restores the funding it said it would cut and keeps its election promise to increase the Commission's funding, the ODA Committee cannot consider the option of giving the Human Rights Commission even more responsibilities than it has today.

The enforcement agency should:

- report annually to the legislature on the progress made towards the goal of achieving a barrier free society. It should also:
- identify where additional work is still needed;
- have expertise in the area of disability;
- receive complaints from both individuals and groups, and have power to bring a claim to enforce the ODA;
- have authority to look at systemic problems and come up with systemic remedies;
- have the power and obligation to make regulations to help enforce the *Ontarians with Disabilities Act*, including regulations setting standards in specific areas. In some areas, steps required to remove all barriers and prevent the creation of new ones may be clearly identified in the *Ontarians with Disabilities Act*. In some cases, change can happen quickly. For example, there is no cost or significant change needed for public transit services to require that operators announce each stop. In other areas, change may take somewhat longer. The *Ontarians with Disabilities Act* should:
- require that regulations be passed by a specific date in specific areas of activity to set out these reasonable time lines;
- be required to consult with people with disabilities, business and other stakeholders before regulations are finalized. All activities of the enforcement agency, including the regulation making power, must take into account the diversity of the province, including regional concerns;
- be required to consider requests from persons with disabilities that specific regulations be developed to cover an area or sector. The agency would also be required:
- be required to consult with all stakeholders (people with disabilities, businesses, etc.) before deciding whether to enact proposed regulations;
- to receive barrier free plans that Governments and other organizations will prepare and file with the agency (which should be available to the public), and take steps to enforce the *Ontarians with Disabilities Act's* requirements regarding these plans.

A Minister of the Ontario Government should be designated who will be responsible for achieving a barrier free society for persons with disabilities. The Minister should be responsible for:

- monitoring Ontario Government programmes and laws to ensure that they are designed and operated in a barrier free manner;
- reviewing proposals brought to Cabinet to ensure that they are barrier free and that they take into account the needs of persons with disabilities.

Municipal councils, school boards, Government committees and commissions and other public agencies should adopt similar procedures for their activities.

All Ontario regulatory agencies, boards and tribunals must be required to consider the impact of any decision they make on barrier removal or prevention, and the achievement of a barrier free society for persons with disabilities. For example, the Health Services Restructuring Commission should be required to ensure that any restructuring of Ontario's health system is done in a way which both removes existing barriers, and which prevents new ones from being created as a result of the restructuring.

What Remedies Should be Available for Breaches of the Ontarians with Disabilities Act?

Remedies should be meaningful and effective. They must ensure that existing barriers are removed and new ones prevented.

Remedies should include such things as systemic remedies, injunctions and damages.

Class actions which could be brought by groups of people with disabilities should also be available.

The enforcement agency must have the power to enforce the *Ontarians with Disabilities Act* without waiting for a complaint from an individual.

What Support Services Should be Available to Assist Organizations to Comply with the Ontarians with Disabilities Act?

The *Ontarians with Disabilities Act* should require the Government of Ontario to provide education and other information resources to companies, individuals and groups to assist them in complying with the requirements of the *Ontarians with Disabilities Act*. People with disabilities must be involved in developing the education and providing technical assistance.

Organizations of people with disabilities should play a key role in assisting business, Government and others with the implementation of barrier free plans.

What Resources Should be Available to Help Finance the Cost of Achieving a Barrier Free Society?

The *Ontarians with Disabilities Act* should provide, where feasible, financial resources to assist organizations, including businesses, to achieve a barrier free society. These could include subsidy programmes and/or accelerated tax credits or deductions for expenditures specifically tied to compliance with the *Ontarians with Disabilities Act*.

People with disabilities and their organizations should be provided the necessary technical expertise and funding so they can participate effectively in the

processes created by the *Ontarians with Disabilities Act*, such as the regulation-making process. This includes funding for travel and communications so that people living in all areas of the province have a full opportunity to participate.

How Will the *Ontarians with Disabilities Act* Operate Together With other Important Legal Protections for People with Disabilities Including the Ontario *Human Rights Code*, the Ontario Building Code and the Canadian *Charter of Rights and Freedoms*?

The *Ontarians with Disabilities Act* must strengthen and complement the protections that now exist for people with disabilities under the Ontario *Human Rights Code*, the *Charter of Rights and Freedoms*, and the Ontario Building Code. Nothing in the *Ontarians with Disabilities Act* should reduce the protections for persons with disabilities in those laws. As well, the fact that an organization complies with another law does not mean that they do not have to follow the *Ontarians with Disabilities Act*.”

Before we made our brief public and delivered it to the Ontario Government, we wanted to consolidate support for it within the disability community. We circulated it in draft to the Regional Contacts for each of the ten regions of the ODA Committee that had been established by the Spring of 1998. After minor final touch-ups, their “go-aheads” were obtained. All that was left was for us to decide how and when to unveil our finished product.

d) Unveiling Our Blueprint For The ODA

By April 1998, our 100-page brief was finished and ready to go. The Conservative Government was then almost three years into its first term. It still hadn’t launched its promised public consultation on the ODA, much less had it come forward with actual legislation.

The glimmer of hope that we had garnered back in the Summer of 1997 during discussions with Citizenship Minister Mushinski, described earlier, was dramatically eclipsed a few weeks after our August 20, 1997 meeting with her. Early in the Fall of 1997, Premier Harris shuffled his Cabinet. In the process, he shuffled Ms. Mushinski out of her role as Citizenship Minister, and in fact, right out of Cabinet.⁴³ He replaced her with the second Conservative Citizenship Minister, Isabel Bassett. This was Ms. Bassett’s first Cabinet post.

43 Ms. Mushinski never returned to Cabinet during the Conservatives’ eight years in power. However, the Government periodically used her to defend its record on the ODA in the Legislature. For example, the Government from time to time had her ask friendly questions of her successor Citizenship Ministers in Question Period, to give them a chance to trumpet the Government position.

We initially pondered whether Ms. Bassett would be more supportive of our cause than her slow-moving predecessor. She gave an initial signal for some optimism. Mere days after taking up her new post, Minister Bassett phoned me to initiate a dialogue. This was promising, since it had taken her predecessor a full year before we had any direct contact with her beyond correspondence. In addition, on this phone call Minister Bassett sounded a note of encouraging openness and receptiveness to working together on the ODA issue.

However, shortly after this, Minister Bassett made it clear that we had no cause for optimism. We had an initial “get acquainted” meeting with her late in the Fall of 1997, a few weeks after she took up her new post. It became obvious that either the Premier’s office or her own advisors had gotten to her between the time of her initial phone call to me and the time of this meeting. Her tone at the meeting was far more controlled and unforthcoming. She told us that she was going right back to the drawing board on the ODA file. She said she didn’t feel bound by any of her predecessor’s decisions or commitments. This included Ms. Mushinski’s commitment back in the Summer of 1997 that she aimed to introduce her ODA bill by late 1998. At this meeting we had to re-plough ground we already had covered with the previous Minister about the basics of the ODA issue.

After an initial flurry of contact with the new Minister, we experienced several months of radio silence from her office. During that period, and well into the Spring of 1998, there was no signal that the Government was giving the ODA issue any real attention.

Therefore in April 1998, with months of our consensus-building and policy work finished, and with our 100-page brief ready to go, we decided to stage a major public event at the Ontario Legislature to unveil this brief. On April 22, 1998, we convened a formal non-partisan ceremony at the Queen’s Park media studio. We chose that date because it was the day before the Government’s new Throne Speech. In the Throne Speech the Government was expected to set out its legislative agenda for the following year, and indeed for the rest of its term leading up to the next provincial election. The Government had never mentioned the ODA in any of its prior Throne Speeches since it took office in the Summer of 1995.

Our event was billed as a ceremony to formally present our brief to all parties in the Legislature. We invited each political party leader to attend, or to send an MPP in their place, to officially receive our brief in print and Braille. We offered our brief to assist the Legislature to fulfil its May 16, 1996 resolution which had called for the ODA’s enactment.

We announced that because the Government had still not kicked off its promised public consultation on the ODA, we wanted to kick it off for them by releasing our brief for public comment. At this ceremony individuals with disabilities highlighted barriers in their own lives, to show why we need a strong ODA.

As yet another recurring ODA Committee strategy, we deliberately opted not to offer this brief as the “final word” from the disability community on what the ODA should contain. Instead we presented it as our coalition’s consensus view, while strongly encouraging one and all within the disability community and elsewhere to supplement it with their own ideas if they wished. Our goal was harmony, not unanimity within the disability community.

At this ceremony, we focused our message to the media on a simple core message: Would the Government include a specific commitment for action in the next day’s Throne Speech on the ODA? If it did, this was a win for us. If it did not, this showed that the Government didn’t intend to keep its promise to enact the ODA in its first term. We were learning to tie our message closely to the major political events on which the media was focusing.

Both opposition parties sent MPP representatives to our ceremony. Of these, the NDP was the first party to send its leader, Howard Hampton, to an ODA Committee public event. Both Liberal and NDP MPPs spoke strongly in support of our work. Again the Conservative Party sent no MPP to this event to receive our brief. This was seen as a clear snub by the Conservatives.

e) The Immediate Aftermath

Our event garnered some, but not extensive media coverage. We learned not to let this frustrate us. The next day, April 23, 1998, we were more frustrated when we got no media attention on the fact that the Government’s new Throne Speech again made no commitment to action on the ODA.

However, sprouting from that frustration emerged two important steps forward. First, the Government quickly got the message that it was wrong to leave the ODA issue out of the Throne Speech. Days later, in the Government’s 1998 budget speech, it included a vague Throne Speech-like commitment on the ODA.

Second, days after this Throne Speech, by coincidence we had a chance to speak to a conference of the Canadian Association of Journalists. There we focused on our recent news release (which all media

had ignored) that had criticised the Government for leaving us out of its Throne Speech. We pointed out that our news release had all the traditional hallmarks of newsworthiness. We got great advice at this conference on how to refine our message to the media. Some journalists who had been at this event were afterwards more receptive to our ODA news stories.

At this journalists' conference, as we explained why our Throne Speech news story was newsworthy, we changed for the first time the way we described the number of Ontarians who have disabilities. Before this, for years we had said we were "17 percent of the public." That phrase rarely hit home with much punch. In contrast, at this journalists' conference, we said for the first time that "Ontarians with disabilities number over 1.5 million," with heavy emphasis on the word "million."

Editorial lights flashed on. "One point five million people" sounds like a multitude. This is because it is a multitude.

This new more forceful turn of phrase found its way into a prominent position in all our news releases and speeches. It then quickly found its way into the speeches of opposition MPPs. Later it even started popping up in the speeches of Government MPPs. To politicians of any political stripe, the word "million" juxtaposed with the word "people," signifies many, many voters. To them it rings like a cash register.

7) SPRING AND SUMMER 1998: THE GOVERNMENT'S FIRST CONSULTATIONS ON THE ODA

a) The Next Battle: How Would The Government Consult The Disability Community?

We did not foresee the next round in our campaign until it crept up on us. It quickly became a very important battle.

Confirmed by an April 1998 news report, word reached us that the Government's plans for its promised public consultation on the ODA had taken a troubling twist. We had wanted this consultation to be conducted by MPPs. The Government was instead planning to hire a private person with a disability to conduct the consultation. This meant that the disability community wouldn't get to talk to the politicians at all.

We felt that it was vital that MPPs themselves conduct the consultation. If they hired a proxy to hold the consultations, this would shield the MPPs from the disability community. The MPPs, and especially those on the Government side of the Legislature, needed to learn first-

hand about the barriers facing persons with disabilities and the need for a strong ODA. We didn't need to educate or persuade a person with a disability about the barriers facing people with disabilities.

In response to this development, we launched a new campaign in May 1998. In it we called for Government MPPs themselves to consult directly with the disability community, rather than the Government's imposing between the MPPs and the disability community a person with a disability that they hire as their proxy. Our blitz culminated on May 24, 1998. By 1998, that date had become etched in ODA history. It was the third anniversary of Premier Harris's promise to enact the ODA. We dubbed this "Action Day" the Government's "Anniversary of Inaction."

Around Ontario ODA supporters phoned, faxed and visited their MPPs to urge the Government to commit that MPPs, and not a Government-picked surrogate, conduct the promised ODA public consultations. Even one Government MPP eventually supported our effort. He put our issue to his own Government's Citizenship Minister during Question Period days after our Action Day.

Two months after this blitz, on July 13, 1998, the Government finally kicked off its ODA public consultation. The Government decided to have MPPs directly conduct this consultation. This met our blitz's objective.

b) The Government's 1998 ODA Consultation

Three years after taking office, in the lazy, hazy days of the Summer of 1998, the Conservative Government finally launched its formal public consultation on what to include in the ODA. It chose to do this while many were away on summer holidays.

The Government announced this consultation in as low-profile a manner as possible. It issued no public announcements nor any press releases. It held no news conferences. It merely posted a new 30-page Government discussion paper on the ODA on a Government website. If a person wasn't surfing the web that morning, looking for a Government announcement on this topic, they would have had no idea that this consultation had begun. In contrast, the Conservative Government spent unprecedented millions of tax dollars during its two terms in office advertising itself and many of its other policies and initiatives.

It appeared that the Government's aim in so doing was to keep the ODA issue as low-profile as possible, to avoid negative publicity, to catch the disability community off-guard, and to impede the community's capacity to organize and to participate.

The Government's strategy backfired. We were ready. We jumped into action minutes after the Government's discussion paper was posted on its website.

Within hours, the ODA Committee released its initial response to the Government's discussion paper. We said that their discussion paper was good at identifying the issues. It recognized that persons with disabilities face too many barriers, and that this hurts us all. The discussion paper said we must act to prevent and remove barriers facing persons with disabilities. To this extent, the Government had adopted part of our core message.

We went on to state that despite these positive ingredients, the discussion paper was seriously flawed. In it the Government had already made key policy decisions about the ODA's contents, before it even began to consult with the public. The issues which the Government had pre-decided were bad decisions. They ensured that the ODA would be neither strong nor effective.

The discussion paper proclaimed that no new enforcement agency would be established under the ODA. It also directed that in the area of removing and preventing barriers to employment, the ODA would be voluntary, not mandatory. This was a formula for legislative impotence.

Our responding message to the public was clear and simple. Removal and prevention of barriers must be mandatory, not voluntary. As well, the ODA must include a mechanism for effective enforcement. We added that the Government should not start a consultation with the public by pre-deciding core issues before the public can have its say, especially where the Government's decisions condemn the law to be ineffectual.

This discussion paper put into sharp focus a key clash between the Conservative Government and the ODA movement on an issue which would divide them throughout this saga. The ODA movement held to the core principle that beyond whatever is in the Ontario *Human Rights Code*, a strong and effective ODA had to make it specifically, legally mandatory that existing barriers against persons with disabilities be removed, and that new barriers not be created in the future. In contrast, the Conservative Government took the position that barrier-removal and prevention should be "voluntary." This would mean that if an organization had a barrier, or was thinking of creating a new one, the law should not tell them they had to remove the existing barrier, or that they may not create a new one. It should be left to the organization to remove or prevent barriers if they wished, how they wished and when they wished.

The ODA movement argued throughout that a meaningful law cannot be “voluntary.” It contended that no one would seriously argue that other legislation, like prohibitions on drunk driving, should be voluntary. The disability community had tried for decades to get barriers against them removed voluntarily with only limited success. Anyone who argued that it was sufficient for the removal and prevention of these barriers to be voluntary, not mandatory, either didn’t understand the reality facing persons with disabilities, or didn’t really care if those barriers remained in place indefinitely.

Over the next days in the latter half of July 1998, we learned how the Government planned to conduct its public ODA consultations. This gave us even more cause for concern. The Government planned to hold invitation-only sessions in several Ontario cities. Its invitation list remained secret.

The consultation meetings would be closed to the public and media. Anyone whom the Government didn’t invite to its closed consultation sessions could provide input only in writing. Their submissions were due around Labour Day, 1998.

The consultation sessions would be conducted in several cities. Each would be run by one Government MPP. Citizenship Minister Bassett presided at the Toronto sessions. Derwyn Shea, her parliamentary assistant, was to preside at any meetings held outside Toronto. There was no assurance that these MPPs would take the time to read the written submissions of any who were not fortunate enough to be included on the Government’s invitation list for the consultation sessions.

The Government’s tight time lines for participating in this consultation process gave major disability service organizations insufficient time to canvass their boards, staff and consumer populations to formulate meaningful input. Some organizations and individuals received their invitations to these meetings as late as 24 hours before the meeting. They couldn’t effectively prepare meaningful input. This also made it impossible for some to arrange accessible public transit. It is well known that scarce accessible para-transit services for persons with disabilities who cannot use inaccessible public transit usually must be booked days in advance.

As well, the Government did very little to publicize its own consultation process in order to solicit input from the public. The ODA Committee leapt into the gap. It did whatever it could to widely publicize this consultation process, and to encourage as many as possible to tell the Government what to include in the ODA.

The disability community, including many individuals and non-profit charitable disability service agencies, quickly realized that this consultation, with all its flaws, was an important event. It merited their concentrated effort. They pulled together, and took part as best they could.

The ODA Committee set several objectives for this consultation. We wanted to present the Government with a strong united front supporting our blueprint for the ODA, set out in our April 1998 brief. We wanted to get more people and community organizations involved in the ODA movement. We wanted to get more public and media attention and support for our cause.

We knew that we could convey to the Government the ODA Committee's core message on what the ODA should contain. After all, the Government had had our 100-page brief, including its detailed blueprint for the ODA, for several months. What we needed to achieve went far beyond this. We wanted as many people as possible to get involved in this consultation, because we anticipated that the more who got involved, the more would support our blueprint.

We made progress on each goal. Our media coverage was unprecedented in its quantity and frequency. The Government unwittingly gifted us this. The Government had launched its ODA consultations in the summer months, when there is little political news. Reporters were hungry for a new story. We gave them one. This catapulted our credibility in the eyes of the media and public. This major media breakthrough helped us enormously over the next several years.

Unprecedented numbers of individuals with disabilities and disability organizations tried to get involved in the Government's consultation process. They expressed widespread support for our 1998 brief. This support even came from people, organizations, and entire communities that we had not before organized. This further swelled our ranks.

Later in July 1998, we learned that on August 4, 1998, right after the mid-Summer long weekend, the Government would start its series of closed, invitation-only ODA consultation meetings with sessions in Toronto. We decided to organize a major innovative public event on that day in Toronto to focus attention on our message. We built on the lesson we had learned that the media cover concrete events, not abstract issues.

Our event had to symbolize the need for open, not closed, consultations. It should graphically illustrate the barriers which a strong, effective ODA had to address. It needed to portray the growing depth and

breadth of support for the ODA, with the ODA movement being seen as an emerging political force that no political party could ignore. It should be positive and non-partisan.

We only had ten days to turn these objectives into a concrete plan, to pull this event together and to pull it off. We anticipated correctly that the Government would orchestrate no media attention on their closed ODA consultations. The Government thereby again gave us full scope to fill the media vacuum.

We scheduled our major public event for late in the afternoon on August 4, 1998. However, we had much to do that day before that event began. Earlier that day, at 9:00 a.m. an ODA Committee delegation, selected to reflect people with a wide range of disabilities, attended Citizenship Minister Bassett's office at the Minister's invitation. This team made the ODA Committee's formal presentation to the Minister's consultation. It was the Government's first consultation meeting. While we objected to the Government's closed format for its consultations, we would not for that reason boycott the consultation sessions. We wanted to use every opportunity we could for input into the ODA. Had we refused to participate in this process, we would have squandered an opportunity, cutting off our coalition's nose to spite its face.

The Government appeared to expect this delegation to make a hostile, negative presentation. To their evident surprise, our delegation positively outlined our case for the ODA. Our presenters constructively showed where the Government's ODA discussion paper coincided with our views. Where we had points of disagreement with the Government's position, our delegation tried to respectfully and persuasively explain why the Government should reconsider its views and should adopt our position.

After meeting with the Minister, an ODA Committee contingent proceeded to the legislative building at Queen's Park for a mid-day news conference. There was a higher media turnout at this news conference than at any of our previous Queen's Park news conferences. We had piqued their curiosity on a slow summer news day. We detailed for the media the presentation we had made to the Minister earlier that day. We encouraged the media to attend our public event taking place later that afternoon.

Hours later came our major public event. It was our biggest Toronto event to date. What did we do? Since the Government wouldn't hold an open, public consultation where anyone could speak, without requiring a personal invitation, we decided to hold a public ODA hearing for them.

These “shadow hearings” would stand in sharp contrast with the Government’s closed invitation-only consultation sessions.

We booked several committee meeting rooms at Queen’s Park. These rooms are where legislative committees usually hold public legislative hearings. We invited all three political parties to send MPPs to preside at our shadow hearings. We posted volunteers throughout the building, to help people make their way to us.

At least 200 people came to this event. MPPs from all three parties came, including, for the first time ever at an ODA Committee event, a Conservative MPP. The Government had been placed in a Catch-22 position. If it sent no one, this would show that the Government didn’t really want to consult the public on the ODA. If a Conservative MPP did attend our event, this signalled that a public hearing process was worthwhile. The Conservative MPP who attended, Trevor Pettit, was not a Cabinet Minister.

The event looked and sounded just like legislative hearings that a Government would ordinarily convene, except for two striking facts that were not lost on anyone. First, it was the ODA Committee, not the Ontario Government, that organized them. Second, we provided sign language interpretation and other accommodations to ensure that this event was fully-accessible and barrier-free.

For over three hours, one individual after the next stepped forward to the microphones to describe horrendous barriers they faced, and the need for a strong ODA. Presenters included newcomers to disability rights issues, as well as life-time disability activists (some of whom had previously been reluctant to join the ODA cause). We provided no scripts and exercised no control over what people said. It was a true, spontaneous grassroots outpouring.

The infectious passion and genuineness of the individuals who spoke were dazzling. The media drank it all in and reported profusely. MPPs stayed for hours after the programme’s formal end, because more and more people kept presenting. Once again, the ODA movement’s ranks ballooned. There was a clear sense that the growing wave of support for the ODA movement could not be turned back.

Once this event wound up, we quickly got word out about it around the province via our website and growing email network. We also sent to our growing email list the text of our delegation’s ninety-minute presentation to the Minister from earlier that morning, and posted it on our website. This would let others learn from it, and use it as they wished. This generated enthusiasm around the province, as the Government took its closed ODA consultations to other cities.

The August 4, 1998 event at Queen's Park got a great deal of media coverage, thanks both to the event itself, and to the lack of other pressing news stories that day. After this initial flurry, more media coverage of the ODA issue continued, week after week, over the rest of the Summer, than we dreamt was possible. The predominant news story became one of individuals with disabilities and their organizations rallying into action at the local level. We even broke into national TV coverage on the CBC.

On the morning after our August 4, 1998 Toronto shadow public hearings, we thought we deserved a day of rest. However, rest was not in the cards. Early in the morning of August 5, 1998, we learned that CBC radio had scheduled an hour-long, province-wide, radio call-in programme on the ODA for that day. We scrambled to get word out about this around the province, using our email network. As a result, every caller on the air echoed our message, from all over Ontario. It was like a radio equivalent of our Toronto shadow hearings of the previous afternoon.

Near the show's end, the CBC managed to get Citizenship Minister Bassett on the line. When asked why the hearings she was holding were closed to the public, she responded that they were not closed, they were public. The CBC journalist asked her live on the air if he could attend her consultation sessions. Minister Bassett said no. This pointedly showed to a province-wide radio audience that the Government's consultation sessions were certainly not public.

Throughout those hectic summer weeks, many in the disability community turned to the ODA Committee for guidance on the message that they might convey to the Government. We were eager to help. However, we always emphasized that we wanted everyone to share their own views. We later obtained Government records of the secret consultation sessions, through an appeal under the Freedom of Information Act. We had to resort to that legal avenue because the Government tried to keep those records from us. The Government's records documented that from the broader disability community came widespread support for our blueprint for the ODA.

We surmised that the Government had opted for closed consultation sessions in large part so that they could control the process. However, as things turned out, the Government found that it couldn't entirely control the process. At some venues, presenters appeared whom the Government hadn't invited. They behaved peacefully, but weren't eager to be excluded. In some cities, the Government let uninvited attendees come in. In others, they were barred at the door.

In some cities where the Government took its closed road show, it planned to hold separate meetings with the disability community, then with public sector bodies, and then with the private sector. It evidently wanted to keep these groups from talking to each other. This unfortunately minimized our likelihood of reaching common ground among all sectors of society.

In Thunder Bay, the Government's divide-and-conquer plan didn't work. After the Government MPP met with disability representatives, he expected them to leave so that the next group, the public sector delegates, could come in for their separate closed session. We later learned that the disability representatives stayed put, contrary to the Government's wishes, with the media nearby. We were later told that the disability representatives were grudgingly allowed to stay, but only if they remained silent during the sessions with the other sectors. As the day unfolded, however, we learned that the local disability representatives ended up participating in the meetings and sharing their views.

The Government's ODA consultation process gifted us an additional bonus, beyond those already described. We learned that our message had reached communities that we had neither organized nor even visited. The Government consultation visited among other places, Peterborough and Sudbury. These then had no organized ODA Committee Region. The Government's consultation process led persons with disabilities to come together in those communities over the ODA issue. They obtained local news coverage of grassroots voices echoing our message in those communities. Shortly after the Government consultation left town, Peterborough announced the establishment of a new ODA Committee Region. It is doubtful that the Government had intended to give us such a gift.

During this consultation, the growing ODA movement echoed common messages: The ODA must make barrier-removal and prevention mandatory, not voluntary or optional. The ODA must address all barriers facing all persons with all kinds of disabilities. It must not leave out important areas like employment. The ODA must have a meaningful and effective enforcement mechanism to give it teeth. It must not rely on people with disabilities having to file human rights complaints one barrier at a time to contest barriers. These messages permeated the ODA movement, came up again and again over the next years, and recurred in media coverage.

A description of the Government's Summer 1998 ODA consultation would not be complete without highlighting the support the ODA movement secured from the former Chief Justice of Canada, Brian Dickson.

Citizenship Minister Bassett had invited him to participate in her closed consultation sessions. He strongly endorsed our call for a strong, effective and mandatory ODA. His position was crystallized in a guest column published in the October 7, 1998 Toronto Star, aptly entitled “Disabilities Act Must Have Teeth.” The endorsement of such a learned jurist, himself a person having a disability acquired fighting for freedom in World War II, propelled our campaign onto a whole new plane. Sadly, Chief Justice Dickson passed away just days later. I believe his ODA column comprised the last published words of his extraordinary legal career.

c) What Did The Government Learn From Its 1998 ODA Consultation?

The Government’s ODA consultation wrapped up around Labour Day, 1998. Our attention then turned to crystallizing its benefits. We asked to meet again with Citizenship Minister Bassett. We wanted to hear what the Government learned during its ODA consultations, and to give the Government our policy feedback. We had initially requested this opportunity while the ODA consultations were still in progress. From our own sources, we had already received a steady flow of information from around Ontario on what presenters had said at the closed ODA consultation meetings.

The Minister met with an ODA Committee delegation at her Toronto office on October 22, 1998. She and her staff summarized what they said they had heard via the Summer’s ODA consultations. This summary strikingly corresponded with the Government’s stated policy on the ODA which it announced at the start of the consultation process in its ODA Discussion Paper. We were told that the Government found widespread support for a voluntary, not mandatory approach to the removal and prevention of barriers against persons with disabilities.

We knew that this description of the feedback that the Government had received was quite inaccurate. We respectfully confronted the Minister with examples of feedback we knew she had received during the consultation, including from some in the business community, that contradicted her summary, and that supported our platform. When we later compelled the Government to disclose all documents from the consultation process under Freedom of Information legislation, we further confirmed that the summary of the consultation’s results that we were given at that meeting was substantially incorrect.

That Freedom of Information request also revealed that the Government had never prepared any comprehensive document summarizing and synthesizing the feedback it received during its Summer 1998 ODA consultations. In sharp contrast, it is common practice for such a written synthesis to be prepared whenever the Government undertakes a major consultation with the public on a policy issue. The failure to even bother pulling together into one document the feedback that the Government had received suggested that the Government wasn't particularly interested in what people had to say during their Summer 1998 ODA consultations.

The Government's inaccurate report of the consultations' results was not the aspect of the October 22, 1998 meeting with Citizenship Minister Bassett that would leave a lasting impression on many. Rather, its lasting impression came from something more rudimentary. The ODA Committee's nine-person delegation at this meeting included three members who were blind or vision-impaired. Despite this, the presentation to us by the Minister and her staff was given using overhead slides. We couldn't believe it. We politely asked if the slides' contents could be read aloud. In the end, we were accommodated. Nevertheless, for us, the message was clear: after a six-week consultation on disability barriers, at the most basic level they just didn't get it.

We fed the media the story of this meeting. The fact that the Government shamelessly skewed the consultation's results to fit its pre-decided political agenda, and had ignored the overwhelming feedback it had received during taxpayer-financed consultations, was not seen as newsworthy. Instead, the showing of overhead slides to a delegation that included, among others, several blind and vision-impaired people became the headliner. This anecdote was repeated over and over in the media and elsewhere, for years to follow. It captured our experience in dealing with the Government on this issue, in a single vignette.

8) FALL 1998: THE ONTARIO LEGISLATURE DECLARES WHAT THE ODA MUST INCLUDE AND THE GOVERNMENT BRINGS FORWARD ITS FIRST ODA BILL

a) Enshrining The ODA Yardstick - The Legislature's Second ODA Resolution Adopts Our Eleven Principles

Perhaps the most significant milestone in the first chapter of our campaign came in October 1998. In the Fall of 1998, after the Govern-

ment's 1998 ODA closed consultations ended, we turned our attention to a next big challenge. A Government ODA bill could come at any time. We had no reason to expect that the Government would forewarn us of the date when it would introduce an ODA bill into the Legislature. The Government hadn't forewarned us of the July 1998 release of its ODA discussion paper.

We wanted to publicly set a clear benchmark or yardstick against which any Government's ODA bill could be measured. We had no reason to expect that a Government ODA bill would be any better than its weak policy framework in its ODA discussion paper.

Early in the Fall of 1998, we were approached by Liberal Windsor MPP Dwight Duncan. Until then, Hamilton Liberal MPP Dominic Agostino had been the lead Liberal MPP championing the ODA in the Legislature. Agostino had announced at one of our news conferences that his father had been an injured worker. From this, he well understood the barriers persons with disabilities faced. He had brought a personal passion to the ODA issue.

Mr. Duncan told us he wanted to introduce a private member's ODA bill in the Legislature for us. We welcomed his support. However, we were still very reluctant to put massive work into researching and drafting a private member's bill, for the reasons discussed earlier. We also feared that the Government could skilfully focus a barrage of criticism on some minor, distracting target in a bill that we would crank out, such as some obscure inconsequential wording problem. It could thereby transform a red herring into the central public issue. This could drag us off our message.

Accordingly we asked Duncan to instead introduce another private member's ODA resolution into the Legislature. This tactic had worked so well for us in May 1996, when NDP MPP Marion Boyd had successfully brought forward the first ODA resolution to the Legislature. If Duncan were to bring forward another ODA resolution, this could help increase the Liberal Party's support for the ODA. It was very important for our coalition to be, and to be seen as non-partisan. Rotating our activities among both opposition parties helped us achieve this.

Duncan was open to our idea. We then had to decide what this second ODA resolution should say. It needn't replicate the first ODA resolution. That had called on the Ontario Government to keep its 1995 ODA election promise. We again didn't want the resolution to be a partisan attack on the Conservative Government. As in 1996, we didn't want to give the Government an easy excuse to use its majority in the Legislature to defeat this resolution.

We came up with an idea which would move the ODA cause forward, and which would put all of the political parties to the test. We proposed to Duncan that his resolution call on the Ontario Legislature to pass an ODA which complies with our 11 principles. A legislative debate over those principles took the ODA discussion far beyond the realm of just discussing in the abstract whether a law called the ODA should be passed. Such a resolution would make the parties either vote for or against our core principles on what that legislation should contain.

Dwight Duncan agreed to introduce the resolution we proposed. He also secured the Liberal Party's support for the resolution. The NDP also notified us that it would support the resolution. We did not know whether the Conservatives, who commanded a majority of votes in the Legislature, would support it. We had no reason in advance for any optimism.

The resolution was scheduled for a debate and vote in the Legislature on October 29, 1998. This was one week after our meeting with Citizenship Minister Bassett, where we had been treated to the overhead slide show. The date for the resolution's debate and vote also came a mere two days before Hallowe'en. Carole Riback, an inspired and inspiring ODA activist, dreamt up a clever Hallowe'en slogan around which we rallied. This resolution vote raised the question: "Would the ODA be a trick or treat?"

In Fall 1998, the ODA movement made its main focus getting this resolution passed. We urged ODA supporters to lobby MPPs from all three parties to vote for it. We also urged them to go to their local media to publicize this issue. We were learning more and more that the ODA movement was increasingly effective when it channelled its energies over a period of weeks on one concrete short-term goal.

The ODA Committee again quickly pulled together a major event at the legislative building at Queen's Park for the morning of the resolution's debate and vote. ODA supporters came to the legislative building and met in committee rooms. We planned to break into small teams to each go to MPPs' offices, door to door, to "trick or treat," canvassing them for their support on the resolution.

All hurried planning for this event went well, until we were contacted the night before by the office of the Speaker of the Legislature. It confronted us with a huge problem. The Speaker would not let us go to any MPP's office unless we had a prior appointment. We were told that there is a blanket rule that provides that no one can get near the MPPs' offices without an invitation. We were threatened with all being refused admittance to the legislative building. Since the Conservatives had taken

power in 1995, Queen's Park building security had increased extraordinarily.

This threatened to eviscerate our plans. We explained to the Speaker's office that we planned an informal door-to-door canvass. It was impossible for us at that late hour to call then, the very night before our event, to try to book meetings with each MPP. We feared that if asked, Conservative MPPs would not agree to meet with us. They had refused to come to most of our prior events, and had so often resisted meeting our supporters in their local communities. If we could even get through to their offices at that late hour (which was unlikely), we would likely be told that appointments cannot be booked on such short notice.

We hurriedly negotiated a solution with the Speaker's office. Small groups of our supporters could go to MPPs' offices without a prior appointment, if each group was escorted by one Queen's Park security officer, one MPP staffer, and one ODA committee representative. We had to agree to immediately recall all groups if any complaints about their conduct were received.

Having removed this last-minute roadblock, October 29, 1998 was a dramatic day. We had no idea in advance whether the resolution would pass. The Conservative majority held the power to decide this. Our teams carried out their door-to-door trick or treat canvass without any complaint.

One group was larger than authorized. We persuaded the Queen's Park security staff not to complain. That group was composed entirely of deaf people. They made no noise, and needed our sign language interpreters. Queen's Park security officials who travelled with our teams seemed to be enjoying the process.

An ODA supporter on one of our "trick or treat" teams reported that a Conservative MPP happened to be quickly leaving his office as the ODA team approached. The MPP called out that he had no time to meet, but he would vote for us, whatever it was we wanted him to vote for. While behind a glass door, another Conservative MPP turned to a staff member and mouthed that he did not know what the *Ontarians with Disabilities Act* was all about. That MPP hadn't foreseen that among those on the other side of the glass door was a hard-of-hearing ODA supporter who can read lips.

The trick or treat teams finished their tours of MPPs' offices. They then converged in Queen's Park legislative committee rooms to watch the MPPs debate Dwight Duncan's resolution in the Legislature, again on video monitors. We again brought our own sign language interpre-

tation. As in the past, the Legislature's public galleries remained almost totally inaccessible to persons with mobility disabilities.

During the debate in the Legislature, Liberal and NDP MPPs predictably spoke in favour of the resolution. The governing Conservative MPPs boasted of their Government's record, and sounded as if they would vote against the resolution. However, when the vote came, our second ODA resolution in the Ontario Legislature passed unanimously.

Immediately afterward, we held a triumphant news conference at the Queen's Park media studio. Both opposition parties had MPPs in attendance. The Government again declined our invitation to participate.

As another important step forward for us, the new Liberal leader, Dalton McGuinty attended our news conference. He announced on the record that if his party were elected, they would commit to passing an ODA which complies with Dwight Duncan's resolution.⁴⁴

Later that day Citizenship Minister Bassett was asked in Question Period whether her Government would honour the resolution that the Legislature had unanimously passed that morning. Minister Bassett had not attended the debate in the Legislature that morning when the resolution was under consideration, even though it directly related to legislation for which she had lead responsibility for the Government. In her evasive answer to the opposition's question put to her in Question Period that afternoon, Minister Bassett condemned the resolution as calling for job hiring quotas.

It was self-evident from the resolution's text that it did not call for job hiring quotas or even hint at them. When we realized that the Government was going to use the hot-button "job quotas" accusation to try to whip up public opposition against us, we immediately launched a province-wide letter-writing campaign addressed directly to Minister Bassett and Premier Harris. We proclaimed that we sought no job hiring quotas. We called on the Government to desist in their inaccurate claims. Within a short time, Minister Bassett candidly conceded on a CBC radio interview that we were not seeking quotas. The Government thereafter dropped that tactic.

The Legislature's passage of Dwight Duncan's October 29, 1998 resolution was likely the most critical victory for the ODA movement

44 This was Mr. McGuinty's first public commitment to this effect. Of great importance to the as-yet unwritten second chapter of the ODA saga, five years later, Mr. McGuinty would be elected Premier of Ontario in the October 2, 2003 provincial election. His 2003 election platform included a pledge to fulfil the commitment he first gave at our news conference on October 29, 1998.

in its history to that date. From then on, we no longer referred to the 11 principles as simply “the ODA Committee’s 11 principles for the ODA.” From then on we could, and did point to them as “the 11 principles for the ODA which the Ontario Legislature unanimously approved by a resolution on October 29, 1998.” We were indebted to Duncan for spearheading this resolution in a non-partisan way. His resolution served to become the yardstick by which any future legislation would be tested. It was also the catalyst that brought the Liberal and New Democratic Parties officially on the record in support of our 11 principles for the ODA. Both parties would go on to campaign for these 11 principles in the 1999 and 2003 provincial elections, and would actively press the Conservative Government to live up to them.

In the end, October 29, 1998 was a decisive, indeed towering milestone on the road to a barrier-free Ontario. Ironically, we got no media coverage that day, despite our best efforts. This cannot be explained on the basis that this story wasn’t newsworthy. The story had all the hallmarks of newsworthiness. We have learned that this is an unfortunate fact of community advocacy life. It did not deter our tenacity.

b) Bill 83: The Government’s First ODA Bill

The ODA movement was buoyed by its success with the unanimous passage of the Legislature’s second ODA resolution. After this, however, we again had little time to rest before the next round in this campaign was suddenly sprung on us.

Four weeks later, on November 23, 1998, without affording us any prior notice, Citizenship Minister Bassett rose in the Ontario Legislature to introduce for First Reading the Government’s first attempt at an ODA bill. While no one expected it to be all we had hoped for, few expected it to be as empty and useless as it turned out to be.

Bill 83, the Government’s first proposed *Ontarians with Disabilities Act*, was a mere three pages long. Those three pages included not only the bill’s seven scant sections, but its 38-line preamble that resoundingly proclaimed the need to achieve a barrier-free Ontario for persons with disabilities. The preamble proclaimed among other things that “identifying, preventing and removing barriers will increase the contribution of persons with disabilities to the economic and social life of the province.”

Bill 83 did not require a single barrier against persons with disabilities to be removed or prevented, anywhere in Ontario, by anyone, at any time, no matter how cheap and easy it might be to do so. It merely

re-affirmed the rights of persons with disabilities under the Canadian *Charter of Rights and Freedoms* and the Ontario *Human Rights Code*. It then required each Ontario Government ministry, as part of its annual business plans, to state what barriers against persons with disabilities it was prepared to remove or prevent in the next year. It did not require the Government to consult when preparing these plans. It did not oblige the Government to make the plans public, or to ever implement the plans. It did not require the plans to be any good. It did not require any organization outside the provincial Government to do anything at all. Had the Government wished, it could have prepared annual accessibility plans starting on the day it first took office. It did not need to pass legislation for this.

As a final nail in this bill's coffin, Section 3 stated: "No new cause of action, right of appeal, claim or other remedy exists in law because of this Act or because of anything done or omitted to be done under this Act." Therefore, even if this bill's paltry language had offered any glimpse of help to persons with disabilities, the bill forbade courts from ever enforcing it.

Bill 83 did not fulfil any of the 11 principles for the ODA that the Legislature had adopted four weeks earlier. The Government claimed that this bill was the first of its kind in Canada. The ODA movement and opposition parties quickly responded that it was the worst of its kind in Canada. Bill 83 soon became known as the "toothless three-page bill."

Overnight, the ODA Committee quickly canvassed its regions for their response to Bill 83. They were unanimous in their complete opposition to it. On November 24, 1998, the day after Bill 83 was introduced in the Legislature for First Reading, the ODA Committee scheduled a press conference at Queen's Park. We there called for the Government to immediately withdraw Bill 83 and to replace it with a bill which complied with the Legislature's unanimous October 29, 1998 ODA resolution. We condemned the bill as a slap in the face of all Ontarians with disabilities.

We launched a feverish campaign against Bill 83. This was the new single target at which the ODA movement's energies had to be immediately concentrated. We finally could build on our new-found credibility with the media, on which we had been labouring for over three years. For the first time the media was coming to us to report on this story, without us always having to go to them.

The ODA cause got the supportive attention of Queen's Park reporters, columnists and pundits, and even editorial writers. For example, on its own initiative the Toronto Star ran an editorial reprinting the entire

meagre bill. It condemned the bill as a sham. Over the next years the Toronto Star would lead provincial media coverage of the ODA issue, publishing several editorials criticizing the Conservative Government's record.

As soon as this bill was introduced into the Legislature, opposition MPPs blasted its flaws. Day after day over the seventeen days before the Legislature rose for the Winter, the Government faced a barrage of criticism in the Legislature over Bill 83.

Citizenship Minister Bassett tried to defend the bill. Her efforts seemed half-hearted. The bill even fell far short of the limited policy position enshrined in the Minister's own Summer 1998 ODA discussion paper. That document had begun: "Getting to work, borrowing a book from the library, using a pay phone, going to the movies, eating in a restaurant. These seem like ordinary activities to most citizens, but this is not the case for many Ontarians. Barriers can prevent Ontarians with disabilities from participating in the community." The Government's bill did nothing to address any of the very barriers which had headlined the Government's own major policy document on the ODA, released a mere four months beforehand.

During those hectic weeks, many thought that despite the outpouring of criticism, the Government would ram Bill 83 through the Legislature. An election was expected the next Spring. The Government would want to campaign on a claim that it kept its promise to enact the ODA, however vacuous its ODA turned out to be.

Our campaign against Bill 83 occurred in the weeks before the 1998 Christmas. We had learned that seasonal themes have a good ring to them. We rallied around a pre-Christmas theme.

The ODA Committee rushed to churn out a mini-poster that would fit on one sheet of paper, and posted it on its website. It was ready for downloading, printing and posting in public places. It depicted Scrooge with the Premier's face. Our slogan said that Bill 83 "scrooged" Ontarians with disabilities. An opposition MPP highlighted this poster during province-wide televised proceedings in the Legislature.

The Government eventually relented. It let Bill 83 die on the order paper when the Legislature rose for the Winter Break. It never brought Bill 83 forward for Second and Third Reading debate and votes, even though it had enough MPPs to ram this legislation through.

At least tentatively, we had won this round. Regrettably it had to be a negative victory of sorts. We had headed off a useless bill. We would have preferred to progress forward with a good bill.

It is worth asking why the Government had decided to come forward with Bill 83. The Government's advisors must have been able to predict in advance that this bill was so weak that it would be politically indefensible. They must have foreseen that neither ODA supporters nor anyone else would endorse such a bill.

One might conclude that the Government knew it was heading into an election, and simply wanted to be able to say it kept its promise to pass the ODA. Perhaps it figured that any ODA on the books (no matter how weak and ineffectual) would be easier to defend than no ODA at all. A busy election campaign usually focuses on a short list of much bigger issues.

Of course, the fullest answer can only come from those who were at the time hidden in the Government's innermost sanctums. That was a realm which kept itself far from the ODA movement. It was widely reported that the Conservative Government was largely run by a small team isolated in the Premier's office. We suspected that they must have cared so little about disability issues that they were grudgingly going to give us only the least possible.

According to some informal and unofficial word that later made its way back to us, the Government's faceless strategists had decided at the time that the ODA movement was so impossible to please that the Government might just as well give us nothing at all beyond an empty bill that bore the name "*Ontarians with Disabilities Act*." This tenor recurred throughout the years when we dealt with this Government. We were always ready and willing to take on the difficult give-and-take of negotiating over the contents of a bill.

We had high hopes, but real-world expectations. We repeatedly told Minister after Minister that we were flexible and open to discussion on a wide range of issues. Yet those with the levers of power over those years had convinced themselves that we were inflexible extremists, and that substantive discussions with us over the content of the ODA would be a hopeless exercise. They never gave real dialogue with us a meaningful try.

9) WINTER AND SPRING 1999: ELECTION FEVER

a) The Immediate Aftermath Of Bill 83

As 1999 began, we were drained from an exhausting 1998. The past year had seemed like a roller-coaster ride. When 1999 got underway, the ODA movement didn't know whether the Legislature would be

recalled or whether the Government would plunge Ontario right into the much-anticipated general election. That decision was in the secretive hands of Government strategists.

The ODA movement began 1999 with a clear objective: we didn't want the Government to simply re-introduce the toothless three-page Bill 83 into the Legislature. ODA supporters across Ontario again plunged into action over the 1999 Winter, acting in groups, via regional activities in their communities, and on their own as individuals. Their new short-term aim was to carry forward the message that the Government had to improve its ODA bill before re-introducing it.

Even though the Government had let Bill 83 die on the order paper in late December 1998, it had not then committed to bring forward a better bill. During the 1999 Winter, a few Government statements circumspectly hinted that the Government was prepared to reconsider what to include in its ODA bill. Over those winter months, we offered to meet with the Premier and Minister Bassett to discuss this. No one took us up on these offers.

In the Winter of 1999, we also launched a new strategy. It would bear fruit, but not until two and a half years later. We wanted to ensure that when an ODA bill eventually came before the Legislature for a full debate, it would be sent to a legislative committee for public hearings. A majority Government has the power to decide whether a bill goes to a legislative committee for public hearings. The governing party also has the power to decide whether any hearings that it does convene will take place only in Toronto, or also elsewhere around the province.

We knew from our experience with the Government's Summer 1998 closed, invitation-only ODA consultations that province-wide open public hearings before a legislative committee were very much needed, to give the broad disability community a chance to push for amendments to a new Government ODA bill, if the bill that the Government were to bring forward turned out again to be inadequate. From the experience with Bill 83, we had every reason to fear that the Conservative Government's next ODA bill would likely need improvements.

Public hearings before a committee of the Legislature would give the disability community another chance to get additional public and media attention on the ODA cause. They could generate a further expansion of the ODA movement. All this could help pressure the Government to make the bill meaningful.

Since the Summer of 1996, we had asked successive Citizenship Ministers to commit that any ODA bill would be sent for public hearings. Until this point, they hadn't ever answered. To turn up the heat in the

cold Winter of 1999, we encouraged interested individuals and organizations to write to the Clerk of the Ontario Legislature to ask for public hearings, and to ask to be put on the list of people wanting to make a presentation at such hearings.

We used the internet to circulate sample letters for people to use. We heard that hundreds of letters poured into the Legislature. The Clerk had no power to order hearings. However, we were building a solid public record, while educating ODA supporters on important nuances of legislative procedure. These are foreign to most.

Even as the ODA movement was busy with this initiative, the ODA Committee continued building on the ground. We added new regions to our coalition, reached out to build relationships with more MPPs, and got more local media coverage.

b) The Winds Of An Impending Election

Over 1999's first months, it was increasingly clear that a provincial election was in the offing. We had to prepare for it. As we were non-partisan, we again didn't plan to campaign for or against any party or candidate. Once again, we wanted to inform voters about the ODA issue and to encourage them to take it into account when voting.

We began by trying to elicit election platform commitments on the ODA. As the 1999 Spring approached, both the NDP and Liberals each made solid commitments to us. Regrettably, these were not in their main platform documents. Rather they were set out in letters to the ODA Committee. In a March 15, 1999 letter to the ODA Committee, NDP leader Howard Hampton pledged that an NDP Government would enact an ODA which complied with the 11 principles that the Legislature had approved. He said his Government would do so within two years of taking office. In a March 26, 1999 letter to the ODA Committee, Liberal leader Dalton McGuinty made a similar pledge, but said his Government would fulfil this within three years of taking office.

In the weeks leading up to the 1999 election, we wanted once more to focus media and public attention on the ODA issue, but without just seeming to rehash the same message. We called a news conference at Queen's Park for April 15, 1999, just weeks before the official start of the election campaign. At this news conference the ODA Committee called for a barrier-free election, in which all voters with disabilities could fully participate. We wanted voters with disabilities to have assured access to campaign literature, to all-candidates' debates, to polling

stations, and to the ballot itself. Most incorrectly assume that these are provided as a matter of course.

Our message resonated. With all the pre-election distractions, we managed to obtain a striking amount of province-wide media attention. We identified numerous barriers that still remained in the electoral process. This made the election process itself a compelling illustration of our need for a strong, effective ODA. The ever-creative Patti Bregman dreamt up the ingenious idea of focusing on the need for a barrier-free election. That linkage won us excellent media coverage not only in April 1999 but as well four years later in the 2003 election.

On the eve of the election announcement, the Government re-called the Legislature for a pre-election April 22, 1999 Throne Speech. This Throne Speech was widely marketed as the Government's chance to unveil its election platform. ODA supporters made it clear in advance that they would turn out at the Legislature for the Throne Speech, to see if the Government would yet again leave the ODA out of its Throne Speech's legislative agenda. The Government had left the ODA out of all previous Throne Speeches.

On April 22, 1999, the Government's last Throne Speech of its first term was delivered. It turned out to also be the first Throne Speech in which the Government said anything about the ODA. This was a full year to the day since we had unveiled our blueprint for the ODA at Queen's Park. The Throne Speech committed that the Government would not re-introduce Bill 83. This implicitly conceded that persons with disabilities deserved better than that ineffectual bill. The Throne Speech committed the Government instead to holding further consultations, to precede a new bill.

On the very morning of the day when the Throne Speech was to be delivered, the *Toronto Star* ran a prominent article on the Government's record on the ODA issue. This may have, and likely did have something to do with the Government's deciding to include the ODA in that Throne Speech. This view is bolstered by the fact that, just hours before the Throne Speech, we received a rushed phone call from the Citizenship Minister's advisor, alerting us in advance to the forthcoming Throne Speech commitment. That same advisor had avoided talking to the ODA Committee leadership for months. Moreover, the text he hurriedly read us over the phone, hours before the Throne Speech was delivered, seemed hastily written and had changed by that afternoon, when the speech was actually read in the Legislature. It seemed to us that they were writing this paragraph on the fly.

We arranged an opportunity for ODA supporters to get admittance to the Legislature, to sit together with us to watch the Throne Speech on a video monitor in a legislative committee room. This was allowed even though each of the ODA supporters who came had no formal personal invitation to attend the Throne Speech. Normally, no one can get in the building for the Throne Speech without an invitation from an MPP. These invitations are usually in high demand and short supply. We worked out an exception to this rule with Queen's Park officials. We reactivated that arrangement again over the next years of this saga.

Right after our contingent watched the Throne Speech itself, we were joined there by the Citizenship Minister, several other Cabinet Ministers, as well as Liberal MPP Dwight Duncan and NDP MPP Frances Lankin. The latter two MPPs had been strong critics of the Government's ODA record.

ODA supporters were treated to a lively preview of the parties' upcoming election pitches on the ODA issue. We hadn't arranged this in advance. Our members extemporaneously grilled Citizenship Minister Bassett, trying to get answers from her on when, where and how the Government planned to conduct the new round of ODA consultations that had just been announced in the Throne Speech. The Minister gave no specifics. All the while, the media were never far away.

That Throne Speech was one more turning point for the ODA movement. It was an obvious centre of political and media attention, while election winds were getting fiercer and fiercer. We had never had a Citizenship Minister speak with us at one of our many gatherings at the Legislature, much less had one ever brought their senior staff and several fellow Cabinet Ministers along.

That night's Throne Speech media coverage for the first time included the ODA issue. The ODA Committee was added to the usual groups quoted responding to a Throne Speech. In the media the ODA Committee reacted to the Throne Speech ODA commitment as too little, too late. We had come a long way in the past year. A year earlier, our criticism of the April 23, 1998 Throne Speech had been left out of every media outlet's coverage. One year later, our critical response to the April 22, 1999 Throne Speech got prominent media attention.

c) The 1999 General Election Campaign

Days later, on May 5, 1999, the governing Conservatives called a general provincial election for Thursday, June 3, 1999. The ODA Committee immediately issued a hard-hitting news release. It announced that

by calling this election, the Government had unequivocally broken its 1995 election promise to enact the ODA in its first term.

Throughout its first term, the Government had repeatedly said that it had not broken its 1995 ODA pledge, because the Government's first term in office was not yet over. It had argued that its 1995 commitment was to pass the ODA in its first term. With the election call, that argument collapsed. The Government's first term was over. There was no ODA on the books. Yet with an election campaign then officially underway, not one media outlet picked up on this news release.

The 1999 election was the first time when anyone to our knowledge had ever tried a major drive to organize voters with disabilities around the province. In 1999, we took on the formidable challenge of adding the ODA issue to the electoral agenda across this large province, and not merely in its capital city.

We were enthusiastic about this challenge, but also were realistic. The parties, the media and pundits tend to shape the election coverage agenda. It typically devolves into two or three mega-issues, accompanied by "horse-race" coverage of which party leads in the polls. If your issue is not on the tacit short list of big-ticket election issues, it is extremely difficult to get media attention, no matter how much the public cares about your issue.

The ODA Committee made heavy use of its fully-operational website and weekly-growing email list. We widely distributed election action tips almost every day of the campaign. We suggested questions for ODA supporters to ask politicians at all-candidates' debates. We designed a one-page pamphlet on the ODA election issue. ODA supporters could download and print it up for distribution anywhere in Ontario. We gave ideas on how to book accessible transit well in advance of voting day, to ensure that voters with disabilities could exercise their democratic franchise.

The core issues on which the media focused during that election campaign included health care, education, the economy and effective leadership. Of the other potential issues, which could interest the public but which were not on the media's tacit short-list, senior Queen's Park reporters later told us that the ODA issue received among the most coverage. ODA supporters' grassroots efforts across Ontario caused the media to focus unprecedented attention on our call for a barrier-free province.

Despite this, we had correctly anticipated in advance that once the election was formally called, media coverage of the ODA issue could well diminish. It was our core strength, our grassroots supporters, that

gave us our best chance to directly reach voters across Ontario. We had a far more organized network of supporters around Ontario in 1999 than we had back in the 1995 election when we had been small, new, inexperienced, and solely Toronto-based. In the 1999 election campaign, from one end of Ontario to the other, individuals and community organizations rallied to inform and educate voters about the ODA issue. They printed up and handed out thousands of copies of our election leaflet. It informed voters about the three parties' positions on the ODA issue. In Toronto alone, some ten thousand copies of this leaflet were distributed by ODA supporters, whose efforts were skilfully managed and coordinated by hard-working ODA Committee volunteer Andrea Snider. ODA supporters also brought forward complaints to politicians and election officials about barriers they confronted during the election campaign.

Many ODA supporters spoke out in support of the ODA issue at all-candidates' debates all over the province. One Toronto all-candidates' debate in a riding with a close race got special media attention. Citizenship Minister Isabel Bassett had agreed to participate in an all-candidates' debate that turned out to be at an inaccessible location. Although the event was moved to an accessible venue at the last minute, the event, and the many persons with disabilities who turned up to raise the ODA issue, got headline TV coverage. It was an especially good venue to confront Citizenship Minister Bassett on her Government's record on the ODA issue, while she herself was running for re-election.

During this election campaign, the media had been pre-occupied with the community activism "flavour of the month," that some others used to raise their election issues, namely staging noisy protests at Premier Harris's campaign events. For the most part, ODA supporters did not take that tack. It appeared ineffectual. It also was impractical for persons with disabilities. The Premier's campaign team sometimes actually concealed his campaign schedule, preferring for him to appear before friendly audiences. Gone were the days of the open electoral forum, where voters can size up a sitting Premier. We heard that the Premier's campaign had at times even given out incorrect information about his events' locations. It is not possible to arrange accessible public transit for voters with disabilities at the last minute for such events, whether one wants to cheer or to ask tough questions, and then to change one's destination if the announced address turns out to be incorrect.

On one occasion, disability activists heard in advance about a campaign stop by the Premier in Thunder Bay, and arranged a peaceful picket outside. Yet the media gave it no coverage. Ironically, that night

a pundit said on provincial television programme that it seemed that all protesting around Premier Harris had come to an end.

In the end, the Conservatives won a second majority. Several local campaigns were very close, where Government MPPs were elected because a majority of voters split their votes between the two opposition parties. A majority of votes was cast for the two parties who promised a strong ODA, the Liberals and NDP. The Conservative Party felt driven to commit to a better ODA bill and to a new consultation process to precede that new bill's introduction.

Citizenship Minister Bassett lost her seat in the Legislature. The ODA Committee had not specifically targeted her or any other candidate. However, it is widely recognized that her performance on the ODA issue contributed to her defeat.

Both leading up to and during this election campaign, the media had come to see that the broad needs of people with disabilities, including the ODA issue, are core mainstream political issues, meriting more attention than they received in the past. As one example, on election night, for the first time, the ODA Committee was invited to have a spokesperson at several TV programmes to comment on election results. Disability issues were no longer reserved for "soft news" stories.

d) An Election Full Of Barriers

Ontarians with disabilities did not enjoy a barrier-free 1999 election. During and after the election, we received feedback about many election barriers. The ODA Committee called for a public inquiry into this. No Government action was announced to follow up on our concerns, though the accuracy of our concerns was not disputed.

Here are examples of some 1999 election barriers: we received word about some all-candidates' debates that were held in inaccessible locations. We also heard about some campaign offices that were inaccessible. We got word about a voter in a wheelchair who arrived at the polling station identified on their voting card received from the Government, only to learn that the card had given the address of the wrong polling station. That voter needed para-transit to get to the correct address. However, they couldn't arrange a second ride to a second destination on the same day. As mentioned earlier, para-transit must be booked well in advance. Of course, the election cannot be deferred to give that voter time to arrange accessible public transit to the right address. This shows how a barrier that could have been prevented can cause the irreparable harm of taking the vote away from a voter with a disability.

A blind voter asked all three parties to provide their election brochures in Braille. The NDP and Liberals agreed. The Conservatives refused. It was widely known that the Conservatives had the largest election war chest, and were thus in the best position to afford this minimal cost.

Ontario elections legislation had been understood to require deaf voters to bring a sign language interpreter to the polling station. The Government required them to cover the cost themselves. Some deaf voters decided to test this, by seeking to have the Government's elections officer cover the cost. He refused.

Legal proceedings were threatened.⁴⁵ A Supreme Court of Canada *Charter* decision required the Government to provide and fund sign language for deaf persons using the health care system.⁴⁶ An election certainly would seem as compelling a venue for such accessibility to be provided. Eventually the Government backed down in that one individual case. This only happened after litigation was threatened and only after the election was already over. Later, in 2001, during debate over the Government's next ODA bill, the Government used its majority to vote down an opposition amendment, proposed by the ODA Committee, that would have systematically corrected this barrier.

10) SUMMER 1999 TO SPRING 2001: THE CONSERVATIVE GOVERNMENT'S SECOND TERM BEGINS

a) Re-Grouping For The Conservative Government's Second Term

In the June 1999 election, the Conservatives won a second victory, securing another majority of seats in the Legislature. This might have led them to try to walk away from their 1995 ODA commitments. They might have tried to claim that the voters had re-elected them to power and thus had forgiven any of their unfulfilled 1995 election pledges, like their 1995 ODA promise. Alternatively, in the face of their 1999 election victory, the Conservatives might have decided to quickly ram through a bill similar to the toothless Bill 83. Had they done this early in their second term, the opposition parties, smarting from their electoral defeat, would have had the least capacity to react.

⁴⁵ The ODA Committee was not involved in this.

⁴⁶ See *Eldridge v. British Columbia (Attorney General)* *supra*, n. 28.

Instead of pursuing either of those options, the Government started its second term by offering to reach out to groups who had felt excluded in its first term. The media recognized the ODA Committee as the first group out of the post-election starting-gate in response to this new Government posture. Early in June 1999, just days after the election, the ODA Committee held a news conference at Queen's Park. We offered to work co-operatively with Premier Harris in his second term, to help him keep his ODA promises, which he had left unfulfilled in his first term.

b) Third Citizenship Minister Appointed

In the Summer of 1999, Premier Harris appointed a new Citizenship Minister, Helen Johns, as the third Conservative Minister since 1995 to deal with the ODA issue. Within two months of the election, Citizenship Minister Johns cordially accepted our offer of help. This was far faster than the full year that it took to get any attention from the first Conservative Citizenship Minister, Marilyn Mushinski, back at the start of their first term. We knew, and Minister Johns had to know, that her two predecessors had left a tough job for her. It was also no secret that of her two predecessors, Minister Mushinski had subsequently been shuffled out of Cabinet and Minister Bassett had just been defeated at the polls. Minister Johns had every incentive to want to fare better.

Minister Johns scheduled her first meeting with an ODA Committee contingent on September 28, 1999. This date was coincidentally three years to the day after the first Conservative Citizenship Minister, Marilyn Mushinski, had publicly committed that the ODA had to be meaningful and should not lack teeth. Some time before this meeting, Minister Johns asked the ODA Committee to advise the Government on how to conduct its promised new post-election ODA consultation. In advance of our meeting with the Minister, we put together and circulated a detailed proposal to the three political parties.

Our proposal recommended that before a new ODA bill is drafted, a three-party Select Committee of the Ontario Legislature should be designated to hold open, accessible public hearings across Ontario on what to include in a strong, effective ODA. This would afford all a chance to have their say. It would help avoid the problems experienced during the Government's closed, invitation-only Summer 1998 ODA consultations. For example, it could receive input from the many who were excluded from the 1998 ODA consultations.

Before our September 28, 1999 meeting with Minister Johns, both the Liberal and New Democratic parties promptly accepted our proposal on how these new public ODA consultations should be conducted. With those acceptances in hand, our September 28, 1999 meeting with Minister Johns was pleasant, courteous, but largely introductory. By then we were well-experienced with the first “get-acquainted” exercise with a new Minister.

To help break the ice, and to show that we remain on-message, we gave Minister Johns a gift at this meeting. It was a framed copy of our 11 principles for the ODA which the Legislature had unanimously adopted. We suggested that she put it up in her office as a helpful guide as she developed the next ODA bill.⁴⁷

At this meeting, Minister Johns told our contingent she would be a “hands on” Minister. She said she wanted to read every piece of paper on the ODA issue and to dig right into this issue. However, she did not accept our proposal for new consultations at that meeting, or afterwards.

c) A New Throne Speech And Mixed Government Messages

In Fall 1999 the Government sent out very mixed messages on the ODA. The September 11, 1999 edition of the *London Free Press* quoted Minister Johns as saying that the *Ontarians with Disabilities Act* would be a “huge priority” for her. This was encouraging.

Yet a month later, and about four weeks after our friendly first meeting with Minister Johns, on October 21, 1999, the Government’s first post-election Throne Speech signalled that the ODA was not a similar priority for the Government. Although it did mention the ODA, that Throne Speech talked only vaguely about an undefined “action plan” being the Government’s “goal” for this “session” of the Legislature. A

47 We had given a symbolic gift to each of Minister Johns’ two predecessors. At our second meeting with Minister Mushinski, back in the summer of 1997, we gave her a T-shirt emblazoned with the words “I support an *Ontarians with Disabilities Act* with teeth.” We encouraged her to wear it to Cabinet meetings. We chose this wording because she had publicly said the previous fall that she had supported ODA legislation with teeth.

At our first meeting with Minister Bassett, held in the fall of 1997, we designed a gift to highlight the fact that her predecessor, Minister Mushinski, had committed to introduce an ODA bill by late fall 1998. Our gift for Minister Bassett was a daytime calender for the year 1998. It had a countdown marked on each page, to show her each day how many days were left before she was due to introduce her ODA bill.

legislative session could last months and months. After the Throne Speech, Citizenship Minister Johns and the Premier didn't answer our inquiries on what this ODA "action plan" would entail.

This Throne Speech had an additional cruel irony. It announced that the Government had recently spent thousands of tax dollars renovating the legislative building to "beautify" what was already a beautiful building. While it is always nice to beautify that building further, no funds whatsoever were used, as far as we could tell, to improve accessibility to the Legislature, the heart of Ontario's democracy.

d) The Legislature's Third Resolution On The ODA: Setting A Fixed Deadline For A Strong, Effective ODA To Be Passed

Later in the Fall of 1999, Minister Johns signalled in the Legislature that the Government would deny having any ODA promises to keep whatsoever. This was worse for us than the Government's earlier, troubling mixed messages. We concluded that swift, decisive action was needed.

The Liberal Party fortuitously offered us an opportunity for decisive action. This culminated on November 23, 1999. On that date, the Liberals dedicated one of their two scarce "Opposition Days" in the Legislature to the ODA. This was a promising indication that the Liberals saw the ODA as an important issue. Usually an opposition party saves its scarce opposition days for major political issues, such as health care or public education.

The Liberals asked us in advance how they might best use an opposition day. We opted for the tried and true. We asked the Liberals to introduce another legislative resolution on the ODA for a debate and vote. Drawing upon our lessons learned with our two earlier resolutions successfully passed in the Legislature, we would again craft this new resolution so that no MPP could credibly vote against it, including no Conservative MPP.

We wanted the resolution to clearly reiterate the Government's commitment to pass the ODA. This would undo Citizenship Minister Johns' equivocation on this commitment that autumn. We wanted the resolution to require that the ODA be strong. We hoped this might deter the Government from introducing another toothless three-page bill like Bill 83. We did not want this resolution to re-open our 11 principles for debate, since we already had in hand a unanimous resolution adopting it.

We also wanted this resolution to fix a clear deadline by which the ODA must be passed. We had learned in the Government's first term that without a fixed deadline, the Government could drag this issue out for another full term, hoping that the story would get lost in the shuffle once it called another general election. We wanted a deadline that would give the Government enough time to put the ODA together, so that the Government couldn't complain that it needed more time. We also wanted the deadline to be short enough that the Government would have to pass legislation well before the next provincial election. A two-year deadline filled the bill.

Crystallizing all these ideas in one clear statement, we asked the Liberals to introduce a resolution requiring that "an *Ontarians with Disabilities Act* which is strong and effective" be passed into law within two years of the resolution's date. The Liberals scheduled the debate and vote on this resolution for November 23, 1999. We deliberately recommended that date. It was exactly one year after the date on which the Government had introduced its widely-condemned three-page Bill 83. We wanted that date etched into ODA history, to commemorate a weak bill that should not be replicated.

Rookie Liberal MPP Steve Peters, the Liberals' new disability critic, sponsored this resolution. He brought the same zeal and energy to this cause that had been demonstrated by the sponsors of our two previous ODA legislative resolutions, namely NDP Marion Boyd and Liberal Dwight Duncan.

Drawing again on the tried and true, we unleashed a province-wide MPP-by-MPP grassroots campaign to get this resolution passed. Our message to local MPPs around Ontario was simple and familiar: How could any MPP vote against this resolution? Did they oppose an ODA? Did they think it should be weak and ineffective? Did the Government need more than two more years to develop it after having had this issue before them for four and a half years? We were putting in place once more our now well-honed experience with urging ODA supporters around Ontario to target their efforts at a single immediate goal, and not to get side-tracked.

On November 23, 1999, as had been the case for earlier major ODA debates in the Legislature, ODA supporters converged on the Legislature from all over Ontario. We once more absented ourselves en masse from the largely-inaccessible Legislature's public galleries. One more time we instead sat together in special legislative committee rooms that we had booked.

We again brought our own sign language interpreters and attendant care, donated to us by some of our organizational members. Journalists, MPPs (usually only from the Liberals and NDP) and some political staff wandered in and out of our meeting rooms, chatted with us, and monitored what was going on. We again had in place a team of volunteers deployed around the building, to guide people to our meeting rooms. This ensured that everything went smoothly. By this point, many of our team of volunteers were veterans who had already carried out this task at several ODA Committee Queen's Park events.

In advance, the Liberals and NDP both announced that they would support the resolution. On November 23, 1999, this resolution, like the two ODA resolutions before it, passed unanimously. As had happened with our two previous resolutions, we didn't know in advance whether the Government would use its majority to defeat or to pass this resolution. While MPPs were still debating the resolution, mere minutes before the final vote, Citizenship Minister Johns came to one of our meeting rooms. She revealed that the Government would support the resolution and would commit to fulfil it.

Minutes later, the media filmed as ODA supporters cheered the unanimous vote, passing our third resolution. This was yet another milestone on a seemingly endless road, another step forward resulting from the grassroots efforts of people with disabilities, and their friends and families, who pulled together once again on very short notice. It was frustrating to watch the Government MPPs once more speaking during the debate as if they were opposed to the resolution. Yet the presence of ODA supporters at Queen's Park from right across Ontario in impressive numbers, in tandem with local activities around Ontario, left the Government no option but to vote in support of the resolution.

This resolution backed the Government into committing unequivocally on the record to the enactment of a strong and effective ODA, and to do so within very specific time lines. This silenced the Government's equivocation on the ODA issue earlier that Fall.

After this resolution passed, we commenced a daily public countdown in our ODA email updates. We identified the number of days left for the Government to meet this ODA deadline. This added suspense, and enhanced the sense of pressure on the Government.

e) A New Millennium - Taking The ODA On The Road

The year 1999 concluded with the ODA movement stronger than ever. It had launched regions in 18 parts of Ontario, and had supporters

all over the province. Through the 1999 election and then the unanimous passage of its third ODA resolution in the Legislature, the ODA Committee felt that it had firmly established our credibility and won widespread recognition, not only within the disability community, but among the wider public. Despite all of this, however, by the end of 1999, the Government still showed no enthusiasm about the ODA.

As 2000 began, it was evident to us that the Government would not begin its promised new round of ODA consultations anytime soon. The ODA movement had no reason to expect prompt action on the ODA “action plan” promised in the Government’s Fall 1999 Throne Speech.

Early in 2000, Citizenship Minister Johns indicated that she was having weekly ODA consultation meetings. However, we had heard and seen nothing of this. The Government had not announced any ODA consultations. It had solicited no input or participation.

A Liberal Party Freedom of Information request to get access to Minister Johns’ records, including her daily calendar, later revealed that the Minister’s claim of ongoing, extensive consultations was unsupported by any written record. When senior Government officials such as Cabinet Ministers hold ongoing consultations on a public policy issue, this usually produces a fulsome paper trail. The Government resisted complying with the Liberal disability critic’s Freedom of Information Act request. Steve Peters was forced to appeal the Ministry’s failure to release these documents.

The Ministry was ultimately ordered to turn over the requested documents. It became obvious why the Government was resisting disclosure of these documents. These Ministry documents revealed that the Government had internally recognized that it had made strong commitments to enact an ODA which complied with our 11 principles. They also revealed that the Minister had only held a handful of *ad hoc* meetings on the ODA with anyone outside Government, over a long stretch of months. Later Cam Jackson (the next Citizenship Minister who succeeded Helen Johns) would candidly tell us on his own initiative that his review of Minister Johns’ records revealed little in the way of ODA consultations.

In the face of this, in January 2000, we reached another major milestone on our journey. At an ODA Committee event in London in late January 2000, Liberal disability critic Steve Peters announced that because the Government was not getting to work on the public ODA consultation that it had promised on the eve of the 1999 election, he would himself hold an ambitious ODA public consultation tour across Ontario in March 2000 on behalf of the Liberal Party. Opposition parties

sometimes use this strategy to highlight an issue, and to emphasize Government inaction. We were delighted that the ODA issue merited this kind of attention from the Liberal Party. It gave us an opportunity to keep the ODA issue alive in the public eye, and to engage more people and more entire communities in the ODA movement.

Over the 2000 Winter, many volunteered their time to get word out across the province about the Steve Peters public ODA consultation tour. We didn't have the Government's resources or staff to run such a large enterprise. We offered our help to the Liberal Party because it asked us. The non-partisan ODA Committee would offer the same assistance to any party holding an open, public consultation. For example, during the Government's closed Summer invitation-only 1998 ODA consultation, we did far more than the Government had done to publicize the Government's own ODA consultation.

In March 2000, Liberal disability critic Steve Peters held open, accessible public forums on the ODA in 15 different communities all around Ontario. The ODA Committee's Durham region happened to plan a public forum on the ODA around the same time, organized under the passionate leadership of Catherine Bremner, one of the ODA Committee Durham region's Regional Contacts. This provided Mr. Peters with a sixteenth public opportunity to gather input. This totalled roughly twice as many cities as the Government had visited during its 1998 closed, invitation-only ODA consultations.

These lively events were all well-attended. Many who came were newcomers to the ODA issue. Presenters spoke about the barriers in their lives—barriers that people without disabilities typically do not know pervade our society. All reflected the strong grassroots feeling across Ontario that there is a pressing need for a strong, mandatory, effective and enforceable ODA.

As in the past, the Premier and the Citizenship Minister refused to attend any of these events. They were invited to them all. One event was held right on their doorstep, at Queen's Park. One was held in London, when Citizenship Minister Helen Johns was in town.⁴⁸ Only once did a Government MPP attend one of these many public events.

The Liberals' ODA public consultation tour spawned widespread local media publicity of the ODA. It was especially important for the ODA movement to reach local media markets outside Toronto. We hoped the Government might be more responsive if they saw our support spread wider and deeper, especially in areas where their voter support

48 Citizenship Minister Helen Johns herself represented a riding near London.

was concentrated. Local media coverage tended to link our province-wide campaign to local barriers, with which the local public could easily identify.

One excellent example was a major new market area recently built in London. It was constructed with barriers making access difficult for persons with certain disabilities. The use of public funds to create new barriers seemed especially absurd and wasteful.

The message about the need for a strong, effective ODA reached more people than ever before. Many more hurried to become involved in the efforts across Ontario to win a strong ODA. For example, the Liberal consultation tour visited Sault Ste. Marie. In its wake, a new ODA Committee region was promptly launched there.

f) A Spring And Summer Of Local Action

A few weeks after the Liberal ODA consultation tour was completed, ODA supporters across the province marked May 24, 2000 as the fifth anniversary of Premier Mike Harris's unfulfilled 1995 election promise to enact the ODA in his first term in office. Our slogan was "Half a Decade is Long Enough." Grassroots action brought this message to the public, directly and through the media, including on national TV news.

As the Summer of 2000 approached, we increasingly worried that our message was becoming repetitive. We feared that the media might pass over us as old news. We searched for a new twist to give the ODA issue currency.

During and after the Summer of 2000, ODA supporters deployed a new three-part strategy. We unveiled it at an August 3, 2000 Queen's Park news conference. We had learned that if a news conference is held in the low-news mid-Summer, it will be more likely to attract great media coverage around Ontario.

The first part of our strategy drew on the fact that the Government had effectively marketed Premier Harris for years as a tough but down-to-earth guy, "Mike," our Premier. We had been asked over and over again why Premier Harris was delaying the ODA. We decided to turn that question to our advantage.

To find out what was continuing to delay the ODA, we launched our "Call Mike" campaign. People from all over the province were encouraged to call the Premier, to ask him personally why he was not fulfilling this, his oldest, longest broken promise. We urged people to flood Premier Harris's office with phone calls. The Premier had cam-

paigned aggressively in two elections on the theme that he was a different kind of politician, one who always kept his word.

ODA supporters got right to work, phoning the Premier's office, aided by the fact that we widely circulated his phone number. ODA supporters also downloaded our new "Call Mike" poster from our website, made copies, and put them up around Ontario. This poster encouraged the public to join in our new tactic.

The media picked up on this story, thanks in part to the fact that August is a slow news month. Our "Call Mike" blitz had some amusing, unexpected twists. A Sarnia newspaper publicized our "Call Mike" campaign, including a phone number to reach the Premier's office. Unfortunately, the article didn't give out the correct number for the Premier's office. Instead, it gave out my home number. I was rather surprised to come home one day, to receive angry voice mail messages about why I had been stalling passing the ODA, and demanding to know what I personally was going to do about it. When we realized what had happened, we got a correction published in the next day's Sarnia newspaper. This provided yet another chance for coverage of our Call Mike campaign.

At a planning meeting to prepare this "Call Mike" campaign for its upcoming launch, one of our supporters was initially sceptical about whether it was a good idea. After it was fully discussed, she became somewhat supportive. She became a lot more enthusiastic a couple of days later. While she waited in line at a cafeteria, she was surprised to see the Premier himself standing right near her in line. She did better than to just "Call Mike" by phone. She walked up to him and launched right into our spiel. The Premier reportedly responded that legislation would be coming in the Fall of 2000. This was news to us.

This "Call Mike" campaign refreshed the ODA issue's image in the media's eyes. Shortly before, the media was starting to dismiss it as simply a hopeless cause that had already had its day in the sun. After the launch of our "Call Mike" campaign, the media increasingly saw the ODA movement as having a new signature image, the image of a movement that is tenacious and relentless, no matter how steep the odds and regardless of the many barriers.

We received word that this campaign caught the Premier's office by surprise. One of our earliest callers reported that the Premier's office told one caller they had reached the NDP. Eventually, the Premier's office reportedly started transferring calls to the Citizenship Minister's office.

As our second strategy in the midst of 2000, ODA supporters raised the ODA issue during Fall 2000 local municipal election campaigns. Our third strategy, discussed in the next session, was to use a series of provincial by-election campaigns as a platform to get more attention on the ODA issue.

g) Raising The ODA In Provincial By-Election Campaigns

In 2000 and 2001, ODA Committee regions in three disparate parts of Ontario took up the challenge of drawing upon experience refined in the 1999 provincial election campaign. They unleashed ODA campaigns during a series of provincial by-elections, where voters had the chance to fill vacancies in the Legislature.⁴⁹ Our aim was to make the ODA an issue in these by-elections. As in the past, the ODA movement wasn't trying to elect or defeat any candidate. Local ODA supporters used the by-elections as opportunities to get the ODA issue in the public eye, and to focus candidates on it.

Their activities were similar to those which ODA supporters used around Ontario in the 1999 election. They distributed non-partisan ODA leaflets, went to all-candidates' meetings to raise questions about the ODA, tried to meet directly with the candidates or their campaign leaders, and brought this by-election issue to the media. The ODA Committee made by-election action tips available through its website and email network.

The first of these by-elections was in a Hamilton area riding in June 2000. This had previously been a very safe Conservative seat. Hamilton area media coverage during the by-election campaign included criticism of the Government's delay on the ODA issue. After this, Citizenship Minister Helen Johns went to campaign in support of the Conservative candidate in that riding. Attempting to defend the Government's record on the ODA, Minister Johns was reported in the media as saying that every building cannot be renovated at once. Of course, we never had asked for such unreasonably drastic action, to be completed overnight.

⁴⁹ Between general elections, a seat in the Legislature may become vacant, e.g. if the incumbent dies or resigns. The Government can call a mini-election to fill the vacant seat, called a by-election. The only people who vote are qualified voters in the riding where the seat in the Legislature has become vacant. These are often seen as local popularity contests on the performance of the Government of the day.

Unlike the other major candidates, the Conservatives' candidate refused to answer calls from local ODA supporters. In the end, the Liberal candidate, Ted McMeekin, won the by-election. When the victor later spoke in the Legislature in support of a strong ODA, this showed that Hamilton ODA supporters had been very effective at educating that future MPP during the campaign.

In the second of these by-elections, the March 2001 campaign to fill a very safe Conservative seat in a riding in a northern part of central Ontario, our Parry Sound supporters built on our Hamilton region's success in raising the ODA issue. In the Parry Sound by-election campaign, Conservative candidate Norm Miller became far more open to our supporters than had been the Conservative candidate in the Hamilton area by-election. Miller agreed to meet them during the campaign, and expressed a genuine interest in the ODA issue.

After Miller won the by-election, he was far more willing than most of his caucus colleagues to meet with local ODA supporters and to attend public events about the ODA. He spoke in support of the ODA issue in the Legislature. He even broke ranks with his party to vote in favour of an NDP 2001 private member's bill, opposed by his party. That bill would have given long-overdue cost of living raises to those receiving disability social assistance benefits, benefits that had not been adjusted for the cost of living since before the Conservatives took office in 1995.⁵⁰ We also heard that Miller helped shepherd through an amendment to the Government's later ODA bill in Fall 2001, to expand its application to small towns and rural communities, at the request of local ODA supporters. This showed the beneficial impact of our policy of non-partisan advocacy.

The third by-election occurred in March 2001, in the York region riding of Vaughan-King-Aurora, north of Toronto. This riding was also previously a very safe Conservative seat. The opposition parties had targeted it for a possible turnaround.

Drawing on the two recent by-election ODA efforts, the ODA Committee's York region hit the campaign trail running, spearheaded by the always spirited Ivy Henriksen, our Regional Contact for the ODA Com-

50 The Conservative party used its majority in the Legislature to defeat that bill. Among the 38 Conservatives voting against it were Carl DeFaria, the then-current Minister of Citizenship with responsibility for disability issues, as well as Helen Johns, Marilyn Mushinski, and Cam Jackson, all three former Conservative Citizenship Ministers who were still in the Legislature and who previously had responsibility for disability issues including the ODA.

mittee's York Region. The by-election's victor, Liberal Greg Sorbara, a senior official in that party, had taken the time during the campaign to meet with our ODA Committee Regional Contact. Again we wound up with a new MPP who entered the Legislature voicing support for our cause.

The fourth by-election occurred in September 2001, in the Toronto Beaches riding. This had been safe NDP territory for years. The seat was vacated when NDP MPP and strong ODA supporter Frances Lankin stepped down. Both the Liberal and NDP candidates were battling it out for the seat. The Conservatives were known to have no chance.

The Liberal and NDP candidates were very supportive on the ODA issue. NDP candidate Michael Prue won the seat. Toronto ODA supporters repeated the performances of their counterparts in the previous by-elections. Because this by-election turned out to have been held just before the Government was to introduce its new ODA bill in 2001, this campaign ended up serving as a warm-up session for what ODA supporters would face weeks later.

This by-election strategy didn't end with the passage of the Government's ODA bill in late 2001. In the Spring of 2002, Premier Harris stepped down. Former Finance Minister Ernie Eves, who had resigned from the Legislature in 2001, was chosen by his party as the next Conservative Party leader and Premier. In 2002, Premier Eves ran for a seat in the Legislature in a by-election held in a safe Conservative riding near Toronto. ODA supporters once more deployed the same by-election strategy. They got the opportunity to question the new Premier on the ODA issue at a televised all-candidates' debate.

h) ODA On The Legislature's Floor

Throughout 2000 and the first nine months of 2001, even though there was no ODA bill before the legislature for MPPs to debate, Opposition MPPs nevertheless raised the ODA issue on a number of occasions in the Legislature. They asked the Government pointed questions during Question Period. They also made statements on the ODA from time to time during other debates and proceedings in the Legislature. This helped show that the ODA issue was not going away.

We searched for clever new ways to have the ODA issue raised in the Legislature. One example occurred on Monday, April 10, 2000. The day before, Sunday April 9, 2000, was a significant date. Two and a half

years before, in the *Eldridge* case,⁵¹ the Supreme Court of Canada had unanimously held that provincial Governments had the constitutional obligation to ensure that deaf people using the health care system had sign language interpreters available, so they could effectively communicate with health professionals like emergency room doctors. In the two and a half years since then, the Ontario Government had not brought itself into compliance with the unanimous constitutional ruling of Canada's highest court. Earlier that year, Citizenship Minister Johns had indicated in her January 17, 2000 letter to Liberal disability critic Steve Peters that the *Eldridge* issue was still "under study."

In Question Period on April 10, 2000, Liberal disability critic Steve Peters caught the Premier by surprise with a very unusual form of question about the Government's failure to comply with the Supreme Court's *Eldridge* decision. Peters first asked his question of the Premier in American Sign Language, rather than the spoken word. The ensuing exchange in the Legislature demonstrated that the Government still had taken no concrete action to comply with the *Eldridge* decision.

This was especially significant. In the past, the Government argued that no new enforcement agency is needed under an ODA, because we already have access to the *Charter of Rights* and the Human Rights Code. This was a clear case where, even when persons with disabilities had won a decisive victory under the *Charter of Rights* in the highest court in the land, the Government felt itself at ongoing liberty not to comply with that decision. It showed how pressing the need is for a new, effective enforcement mechanism for the removal and prevention of barriers against persons with disabilities.

At an occasion far earlier in the ODA saga, several people were in the Legislature's public galleries when the ODA was being discussed.⁵² When an opposition MPP made some remark supporting the ODA cause, applause broke out among these spectators. The Speaker of the Legislature chastised the spectators for their applause, noting that the Legislature's rules of decorum do not permit such audible demonstrations.

That day, an idea spread both among some MPPs and the spectators. Why not show their support for the ODA cause using the American Sign

51 *Supra*, n. 28.

52 I regret that I cannot recall the specific debate in the Legislature when this occurred. I am inclined to think that it was back during the NDP Government, when the Gary Malkowski private member's ODA bill was before the legislature for Second Reading debate. That was in the spring of 1994, before the ODA Committee had been founded. In any event I vividly remember the event itself.

Language symbol for applause. That two-handed sign makes no sound. Both deaf and hearing spectators alike broke into this silent sign language applause, as did several MPPs. They had all obeyed the Speaker, while finding a clever way around the ruling.

For its part, the Government made a recurring argument when the opposition attacked it for its inaction on the ODA issue. First, it proclaimed how much money it had spent on programmes that help persons with disabilities. This figure grew by the week. This “Government as Santa Claus” echoed the stereotypical view of persons with disabilities as primarily recipients of charity and Government hand-outs, and painted the Government as the generous benefactor.

i) A Second Meeting With Citizenship Minister Johns

The 2000 summer months saw a frustrating process of trying to set up a second meeting with Citizenship Minister Johns. We finally met on September 8, 2000. This was around one full year after our first meeting. Unlike the first cordial meeting with her, Minister John’s posture at this second meeting was tangibly stiff, formal and unfriendly. In advance of this meeting, she, unlike her predecessor Ministers, had imposed a small limit on the number of people we could bring to the meeting. As a result, a contingent of additional ODA supporters, who were not allowed at the meeting itself, waited downstairs in the building’s lobby. After the meeting, the small ODA Committee delegation who were allowed to be present with the Minister briefed the contingent who were excluded, all standing in the building’s lobby.

Our second meeting with Minister Johns was quite revealing. For the first time, the Minister broached with us the subject of the cost of implementing a strong and effective ODA. We discovered at this meeting that Minister Johns didn’t even know that her own ministry had commissioned and obtained a detailed 100-page study by the Roeher Institute into the costs and benefits of the *Americans with Disabilities Act* (ADA).

The Roeher report had shown the Conservative Government that the U.S. legislation had been significantly effective, while not imposing substantial costs. Minister Johns had told us a year before that she would be a “hands on” Minister, who read every piece of paper the Government had on the ODA issue. The issue of the cost of an ODA had been talked up by this Government as a major concern. One of her predecessor Ministers, Marilyn Mushinski, had claimed in previous years that the Government was holding off conducting an ODA consultation specifi-

cally because it was awaiting the results of the Roeher Institute study. It was shocking that after being Citizenship Minister with carriage of the ODA issue for over a year, Minister Johns knew nothing about the Roeher report that her own Government had commissioned at taxpayers' expense, and that was sitting in the Citizenship Ministry's ODA files which Minister Johns had claimed she would meticulously be reading.

At this meeting, Minister Johns didn't take up our suggestion that she bring the business community and the disability community together with her to discuss ways to design a strong, effective ODA. In fact, she seemed resistant to delving into much of substance. She was asked about her position on the 11 principles for the ODA that we had formulated and that the Legislature had adopted two years beforehand. She only expressed any endorsement for the idea of educating the public on disability barriers.

j) Government ODA Plans Leaked To Opposition Liberals

A major but entirely unexpected event occurred on October 4, 2000. That afternoon, Liberal opposition leader Dalton McGuinty rose in the Legislature's Question Period to confront Citizenship Minister Helen Johns with a leaked secret draft Cabinet document on the ODA. Citizenship Minister Johns evidently looked quite shocked when confronted in the Legislature with her leaked plans. The Government never denied the leaked document's authenticity.

This leaked document revealed the Government's secret plans for the ODA. These included an agenda over the Fall of 2000 to introduce another weak, ineffective bill that would not bring us anywhere near our goal of a barrier-free Ontario. That bill would largely resemble the Government's failed three-page 1998 Bill 83. The only major change was that the new ODA bill would also raise parking fines for people who illegally park in handicap parking spots. The leaked draft Cabinet document also discussed strategy for the Government to deal with the media in light of expected criticism of the Government's ODA agenda.

This leaked document revealed that the Government had already formulated its detailed plans for the ODA the week before the ODA Committee delegation had its second meeting with Citizenship Minister Helen Johns back on September 8, 2000. At the September 8, 2000 meeting, Minister Johns had told us that she was still open to consider all options for the ODA. At that meeting, she had asked the ODA Committee to encourage others to come forward to consult with her on what the ODA should include. It turns out that by the date of that meeting,

the Government had already made up its mind on what the ODA would contain. Minister Johns would have known that at the time. Any subsequent Government consultations on the ODA would have been a sham.

This leaked document attracted province-wide media coverage, including a front page newspaper report. ODA supporters yet again launched into action with a new single target. The immediate aim was to convince the Government to abandon its leaked plans. We worried that the Government would try to sneak its planned new weak ODA bill through the Legislature over the 2000 Fall weeks. The media and public were very distracted by the Fall 2000 federal election campaign.

The leaked document had suggested that the Government thought Ontarians did not care about a strong ODA, based on polling data they said they had acquired.⁵³ The ODA movement struck back with a new “Ontarians Do Care” campaign. This was the slogan around which we rallied for several weeks. Activity took place over Ontario.

For example, one week in November was declared “ODA Action Week.” During it, ODA supporters concentrated on again phoning, writing and visiting MPPs to convey our message. On October 7, 2000, a guest column by another retired Supreme Court Justice, the learned and wise Peter Cory, was published in the *Toronto Star*. It called for a strong, mandatory ODA. With this, two former Supreme Court justices had gone on the record in support of our message.

On November 15, 2000 from all over southern Ontario ODA supporters again converged on Queen’s Park. They asked to meet with the three party leaders, to show them that Ontarians do care about the ODA. The Liberal and NDP leaders and members of their caucuses each readily met with us. The Liberals’ newly-appointed disability critic, Ernie Parsons, asked Premier Harris during Question Period to take five minutes to walk down the hall and meet with us. Premier Harris gave the impression in his response that he would meet with us, but then left, refusing to meet us, as mentioned earlier. Simultaneously, ODA supporters gathered in Sault Ste. Marie to rally along with new NDP disability critic Tony Martin in support of the ODA cause.

November 23, 2000 was two years to the day since Citizenship Minister Bassett had introduced her failed three-page ODA Bill 83 into the Legislature. It was also exactly one year after the Legislature had passed Liberal Steve Peters’ third ODA resolution, the resolution which fixed November 23, 2001 as the deadline for passage of a strong, effec-

53 As discussed further below, we would later learn that their poll actually didn’t support that conclusion.

tive ODA. The Liberal Party used this symbolic date in late Fall of 2000 to hold a news conference at Queen's Park. It unveiled former Liberal disability critic Steve Peters' detailed and exhaustive report on the ODA.

This document reported on the results of his Spring 2000 public ODA consultation tour. It extensively documented many barriers facing people with disabilities. It recommended the enactment of a strong ODA which complies with the 11 principles which the Ontario Legislature unanimously approved by resolution back on October 29, 1998. The Liberals' report also declared that the blueprint for the ODA in the ODA Committee's 1998 Brief to the Ontario Legislature is a good basis or starting point for discussing the ODA's detailed contents. The Liberals' report was the most comprehensive study supporting the ODA that had been produced to date outside the ODA Committee itself.⁵⁴

On December 4, 2000, in further support of our "Ontarians Do Care" campaign, representatives of several major seniors' organizations held a Queen's Park news conference, to add their voices to the call for a strong ODA. This was another important breakthrough. The addition of organized seniors to the voice of organized persons with disabilities broadened our appeal. It made our issue more politically compelling to any party.

On December 14, the new Liberal disability critic Ernie Parsons introduced a clever private member's bill into the Ontario Legislature, the "Promise Made, Promise Broken Act." This bill was not a draft ODA. Rather it was a tongue-in-cheek way to highlight the harm that all Ontarians suffer because the Government had not fulfilled its ODA promises. This bill passed its First Reading, but later died on the order paper.

To make the Government more accountable, the bill, if passed, would require a sign to be posted next to any new barriers that are created with our tax dollars. The sign would announce that the Government created this barrier against persons with disabilities with your tax dollars. The bill would also require that the Government include a message in any of its massive advertisements which it funded with tax dollars, indicating that the ad comes from the Ontario Government, which broke its promise to enact the ODA.

54 This event will acquire even more significance in the as-yet unwritten second chapter of this ODA saga. As discussed further at the end of this account, the Liberals were elected to power in 2003. Opposition leader Dalton McGuinty, who shared the podium at the Liberals' November 23, 2000 news conference, has as of October, 2003, become Premier McGuinty.

This private member's bill spoofed two public relations strategies that had pervaded the Conservative Government's first five years in office. Over that period the Government spent millions of tax dollars advertising its activities, in ads that were thinly-veiled political campaign ads. As well, next to road construction sites around the province, the Government erected signs announcing: "Your Ontario Tax Dollars at Work" with credit in effect attributed to the Ontario Premier.

In the end, we concluded that our "Ontarians Do Care" campaign was worth the effort. The Government backed off its Fall 2000 timetable to bring forward another toothless ODA bill. By year's end, the Government had neither introduced a bill, nor conducted meaningful new public consultations on the ODA. Yet this unfortunately was merely another negative victory. In it we merely headed off more bad news, rather than moving things forward in a positive direction.

By the end of 2000, the Government had not even brought forward something as minimal as its "action plan" on the ODA, which it had been promising since its October 1999 Throne Speech. Late in 2000, the Government claimed that it had not broken its October 1999 Throne Speech commitment to produce an ODA "action plan" during that legislative session, because the session was not yet over. However, back in March 2000, Citizenship Minister Helen Johns had said in a rare London Ontario TV appearance to discuss the ODA, that she would bring forward her ODA action plan by June 2000. June, and indeed December, came and went with no ODA action plan.

k) Ongoing Activity At The Grassroots

As the various major milestones were being reached at the provincial level, this campaign was fuelled by critically important efforts at the grassroots level. The ODA Committee grew from 18 regions at the end of 1999 to 21 regions by the end of 2000, adding Sault Ste. Marie-Algoma, Kitchener-Waterloo, and Chatham-Kent regions. Our email list kept growing. The numbers of ODA email announcements per month proliferated.

Individuals and local organizations devised their own new initiatives, or adopted ones the ODA Committee had suggested. ODA supporters across Ontario, working on their own, or with local groups or with province-wide community organizations, undertook a wide range of activities. They gave speeches to community groups. They held local meetings and forums. They gathered signatures on petitions supporting

the ODA and sent them in to MPPs to have them read aloud in the Legislature.

Throughout 2000, ODA supporters were arranging formal meetings with MPPs around the province. Opposition MPPs were generally welcoming. Government MPPs were uneven in their responses. Some were readily prepared to meet. Others insisted on letters and agendas in advance, or pleaded busy schedules to avoid meeting. Most Conservative MPPs refused to attend our public events, some claiming they feared a “media circus.” A few had the courage to show up. They found they received a deeply committed but courteous response.

As examples of the many ODA supporters who helped out, Woodstock Ontario’s unbeatable Bette Jones persuaded her Conservative MPP to spend a day in a wheelchair, to see what barriers face persons with mobility disabilities. Mississauga’s relentless Chris Portelli didn’t give up trying to meet with Conservative MPPs in his region, no matter how often he was told they weren’t available.

Imaginative local strategies were deployed, to give our message force while being positive wherever possible. On a May 24 anniversary of the conservatives’ 1995 promise to pass the ODA, the ODA Committee’s Windsor region, with the help and leadership of a group including one of that region’s Regional Contacts, the clever Dean LaBute, held a birthday party, complete with a huge cake, to which MPPs were invited. In Guelph, a video was prepared for public distribution, with major input by, among others, committed volunteers ODA Committee Guelph Regional Contact Janet Wood and Toronto ODA Committee activist Carole Riback. In it, individuals with disabilities highlighted the barriers they face, to show why we need the ODA.

London Ontario’s Michael Lewis, a blind folk singer and passionate ODA supporter, wrote and sang a powerful folk song, called “Still Waiting.” It put to music our need for the legislation for which we continued to wait. London’s Accommodation, Networking and Training for Persons with Disabilities, a community organization under the stewardship of ODA supporter Vicki Mayer, produced a compelling video to present this song. It visually depicted the barriers which the song described. This song and video communicated our message with a power that emails and speeches could not rival. During the 2003 Ontario election campaign, despite the ravages of his life-threatening cancer that would take his life scant weeks after the election, Michael Lewis drew on his “Still Waiting” song theme to compose a similarly powerful column on the ongoing ODA election issue. It was published in the

London Free Press during the 2003 election campaign. It remains an undying testament to his devotion to our cause.

Paul Rushton, a dedicated Kingston area ODA supporter, couldn't leave home to attend a major ODA event, because of a serious illness in the family. He did his bit for the cause right from home. He spent a long evening at his computer, individually emailing every last member of the Ontario Legislature to press them to support the ODA cause.

When Premier Harris was taking calls on a Toronto radio station's call-in programme one day, one caller pressed him on his failure to keep his ODA commitments. This was one of the few times Premier Harris was cornered in public on this issue. We later learned that the caller turned out to have been an unsuccessful Green Party candidate who had run in the 1999 provincial election. This candidate had learned about the ODA issue while campaigning in that election. He had been contacted during the 1999 election campaign by Doreen Winkler, an enthusiastic ODA Committee volunteer who took on the Herculean task of phoning all the many candidates from all parties in the Toronto area to seek their support on the ODA issue. From this we learned once again how much individual efforts so often can yield a real pay-off, even if unexpected ways.

Several community groups developed their own "Barrier Wall" for display in a public setting. Large cardboard "bricks" were piled atop each other. Each brick had a picture, drawing or text description of a barrier facing persons with disabilities.

The Toronto District School Board developed a teaching unit for schools to teach students about the ODA issue. The ODA Committee circulated this around Ontario to encourage other school boards to use it.

One by one around the province, many groups pressed their municipal or regional councils to pass ODA resolutions. These resolutions called on the Ontario Government to pass the *Ontarians with Disabilities Act*, in terms which complied with our 11 principles. As of the end of 2000, over 20 local and municipal councils had passed resolutions which called upon the provincial Government to pass the ODA. At times ODA supporters were assisted by a pro-ODA member of municipal council, such as London's ever-helpful Sandy Levin, to aid them in stick-handling a resolution through a city council's political and administrative minefield.

Individuals and groups continued to write letters to the editor of their local newspapers, to give media interviews and to recruit others to get involved in this cause. When a local barrier issue would come up in

a community, ODA supporters would go to the media to use it as an illustration of the hardship Ontarians were suffering due to the Government failing to keep its promise to us.

ODA supporters, whether formally connected to the ODA Committee or otherwise, arranged to be guests on radio call-in programmes, or just called in to existing programmes. If their local newspaper would not send a reporter to cover this story, ODA supporters would write their own guest column and send it in. Among the wonderful role-models for this activity were ODA supporters Cathy Vincent-Linderroos, who wrote innumerable guest columns in the *London Free Press*, and Linda Crabtree, who was similarly successful in getting published in the *St. Catharines Standard*.

In some communities, if a news outlet repeatedly refused to cover the issue, some groups would arrange to meet the editor or editorial board, and convince them to see this as an issue worthy of attention.

Some media outlets had regular professional journalists dedicated to covering disability issues. For example, the *Toronto Star's* bi-weekly disability issues column by Helen Henderson and a London TV station's regular "Raising Cane" disability item by journalist Lynn Swanson kept various media markets informed on developments on the ODA issue on their own initiative, among the other disability issues they covered.

The tireless Eddie Rice took on the ODA cause for the B'nai Brith League for Human Rights. He assembled a clever photo album of numerous Toronto retail establishments and other public facilities with obvious and readily-correctable barriers. He took this photo album on tour, eagerly presenting it to MPP after MPP, to journalist after journalist, to public audience after public audience. His pictures each told a thousand words about the need for a strong ODA. Similarly, relentless ODA supporter Kevin MacGregor toured several communities outside London Ontario, giving speeches in support of the ODA cause, and triggering supportive media coverage in local newspapers.

To back all this action around the province the ODA Committee needed a central administrative locus or hub. With no budget and no fund-raising of its own, the ODA Committee turned to a succession of major community disability agencies to donate their help. This included (among many things) providing office space when needed for meetings, phone lines when needed for major telephone blitzes that volunteers could not do from home, management of our growing files, sending our periodic snail mail newsletters to our growing membership, production, copying and distribution of hard copy materials when needed, and most important of all, making available a staff person who could help with

administrative support. Whoever got this unenviable task had to fit it into their other work duties. We were indebted first to the Canadian Paraplegic Association Ontario (with help discharged by the valiant Diana McCauley), followed by the Canadian Hearing Society (with the administrative savvy of Deborah Thynn and the unparalleled writing skills of Susan Main). Thereafter for more than half of the life of the ODA Committee we were blessed by the Canadian National Institute for the Blind's carriage of this load (as ably fulfilled by the ever-dependable administrative skills of Marg Thomas, and the specialized blindness accessibility expertise of the patient persistent Leslie Macdonald). Augmenting their assistance at some periods were several hard-working college or university students like Shannon Beard, Paul Broad and Debra Field, who did formal or informal volunteer placements with the ODA Committee at various stages in this process. We were delighted that people like them saw value in seeking such placements.

l) ODA Committee's Debut On The International Stage

While these grassroots efforts continued, the ODA Committee also made its debut on the international stage. In October 2000, the U.S. Government sponsored an international conference on disability rights legislation, to honour the tenth anniversary of the *Americans with Disabilities Act*. Two ODA Committee representatives, myself and strategic genius Patti Bregman, were sponsored to attend, to participate and to lead some of the discussions.

At this conference we saw how Ontario was lagging behind an international trend towards enacting disability-specific accessibility legislation. We learned ideas about legislative options and effective advocacy strategies from disability rights specialists from around the world. We were warned by many from different countries to watch out for Governments that enact promising new disability rights legislation but which lack effective enforcement and which are not effectively implemented. At the same time we shared our ideas and experience with other disability rights advocates at this conference, and linked their websites to ours. This helped in the important work in the busy year that was to follow.

m) 2001 Begins With An Expected Bonus - Government Polling Data Shows ODA Movement Making Headway With The Public

In early 2001, we knew that if the Government were to keep its commitment to comply with the Legislature's November 23, 2001 deadline for passing the ODA, this would be a very busy and decisive year. The year 2001 began with yet another surprise. These surprises were becoming a regular feature on the long and winding road to a barrier-free Ontario.

At the end of December 2000, the Government (either anticipating or responding to a routine Freedom of Information Act request from the media or opposition parties) quietly released its summary of the results of a public opinion poll that it had conducted on the ODA in June 2000. It seemed that the Government released this poll at a time when most are on year-end holidays, in hopes that no one would notice it. This poll buoyed our spirits. It kicked off 2001 on a strong footing.

According to the Government's poll, there was strong public support for an ODA which is mandatory, and which covers the private sector as well as the public sector. Our Spring 1997 poll had shown this. The Government's poll results, as reported in the *Toronto Star*, documented that the public recognized that the Conservative Government was not really committed in this area. It also showed that a significant percentage of the public recognized that voluntary efforts by business will not solve the problem of barriers facing Ontarians with disabilities.

The Government's poll showed in effect that the public did not support the position which the Government had been aggressively putting forward over the past several years. The Government had been claiming that if any legislation was passed, it should not apply to the private sector, that it should be voluntary, not mandatory, and that this would meet the needs of persons with disabilities. In contrast, a strong majority, 77 percent, believed that the legislation needed to regulate private industry. Forty-five percent believed that businesses would never voluntarily make their businesses accessible to people with disabilities.

The Government had repeatedly said that it was committed to keeping its ODA promises, despite its five-year delay on the ODA. According to this poll, a decisive majority of the public, 61 percent, believed that the Government was not committed to the ODA. Only 30 percent thought the Government was committed.

From this poll we learned that the Government's Fall 2000 leaked Cabinet ODA submission had inaccurately informed Cabinet Ministers

about the Government's public opinion research. Little did we know weeks before when we launched our Fall 2000 "Ontarians Do Care" campaign, that the Government had polling results showing that we were right.

Of extraordinary significance was the poll's finding that in the Summer of 2000, fully 18 months after the Government's debacle with its toothless three-page ODA bill, Bill 83, almost one in five members of the public still remembered that incident. This poll asked whether people had heard of the 1998 bill. Eighteen percent said yes.

This was amazingly good news for us. Almost one in five people still remembered that critical event in our ongoing saga, even though it pertained to events fully 18 months before, and had spanned at most only seventeen days. There had been so much intervening high-profile news since then, including an entire provincial election campaign. To us, this poll's results were an incredible measure of the effect of grass-roots ODA campaign.

The Government had often claimed that it was deeply concerned about the needs of persons with disabilities, and that it had acted on that commitment. Overall, the poll suggested that the public was not impressed with the Government's performance on disability issues. Forty-eight percent thought that the Ontario Government's performance on disability issues was good or very good. Sixty-six percent thought the current level of services for persons with disabilities was not enough.

Curiously, according to the poll, more than half of Ontarians thought Ontario already had a disability act, though they were divided on what they thought it covered. This was not surprising. In our experience, for example, many people, including many journalists, had told us they thought all public buildings are now required to be fully accessible to persons with disabilities, something which is not true.

Trying to salvage something good for itself out of this poll, the Government relied in its defence on the figure that sixty-six percent of the public agreed, either strongly or somewhat, that the Government would take a fair and reasonable approach to the ODA. We took this result in a different way. Given the other views expressed in the poll, this could well indicate that the public thought the Government would eventually do the right thing, and pass a mandatory ODA covering the public and private sectors, despite the Government's lack of commitment in this area.

According to the poll, 75 percent agreed that the Ontario Government should get its own house in order, rather than regulating private companies. To us, the poll's question gave respondents the false im-

pression that we must choose one or the other. In reality, however, an ODA could do both, i.e. get the Government to get its own house in order, and also address barriers in the private sector.

We asked the Government to release the detailed documentation underlying these poll results. The Government never responded. In contrast, months before Citizenship Minister Johns had asked us for the detailed results of our Spring 1997 poll on the ODA. In response to Minister Johns' request, we had turned over to her all the documentation that we had.

n) Grassroots Action In Early 2001

Local ODA events and grassroots action carried on in 2001's earliest months. We kept publicizing our day by day count-down to the Legislature's deadline for passing the ODA on November 23, 2001. With the supportive Government poll results in hand, ODA supporters turned their efforts in the 2001 Winter to again convincing MPPs one at a time.

Most people who are unfamiliar with community activism think first of demonstrations, protests, sign-waving and angry speeches blasting out of blaring megaphones. The ODA Committee's Windsor region showed how it can be far more effective to gather a large group together, and then use a cleverly designed event to generate public and media support, without over-used, stereotypical strategies.

On Thursday evening January 25, 2001, over one hundred ODA supporters gathered outside a Windsor auditorium where the Conservatives were to hold a fund-raising dinner, at which Citizenship Minister Helen Johns was the guest speaker. Community groups including seniors' groups, social agency personnel, and a local trade union joined together with other ODA supporters. Hot dogs and veggie dogs barbecued in the sub-zero weather fed the ODA supporters outside. Guests going to the Conservative fund-raiser inside filed past the ODA gathering, en route to their \$135.00-a-plate black-tie dinner. A 15-foot banner read "Four out of five Ontarians support an *Ontarians with Disabilities Act*." ODA supporters handed out leaflets supporting the ODA to those on their way into the dinner. This peaceful gathering got good coverage on the local news that evening.

To widen our message's audience, we released a new action kit for ODA supporters which helped them bring our message directly to the business community. We encouraged ODA supporters to contact people in the private sector, to show how removing and preventing barriers was good for business. This "business case" had become especially impor-

tant. This was because the Premier and his successive Citizenship Ministers had made public statements ostensibly claiming that the ODA we sought would be devastating for business and, as mentioned earlier, would raise the spectre of job hiring quotas.

Over time, we witnessed a qualitative change in the media coverage that the ODA issue received. When ODA supporters had raised this issue with the media early in this saga, it was either not covered at all, or it was covered in a special “social policy” or “human interest” context, away from the usual coverage of political issues. After repeated efforts, a news outlet might cover a specific event by ODA supporters. In that report, the overall ODA issue might get some brief coverage.

Over time, this coverage transformed, as it piqued the interest of a news outlet’s political reporters. It gradually moved to the hard news pages of a newspaper, again isolated in individual stories about the ODA. It would later catch the attention of a news outlet’s political or social issues columnists. At times, it could even generate an editorial.

The ultimate achievements in media coverage came in several ways. One way was when a news outlet would incorporate reports on the ODA issue without needing ODA supporters to first bring the story to their attention. This would often occur when a reporter or columnist would include references to the ODA issue in a broader column or story on provincial affairs e.g. when a news outlet would list the Government’s unkept promises.

A second way was when the ODA issue was added to a story about a particular barrier in a community, i.e. where the barrier highlighted the need for the ODA. This happened, for example, when the Ottawa para-transit service for persons with disabilities went on strike, and also when a Toronto teachers’ strike led the school board to advise that children with disabilities stay home.

A third way was when the ODA was given special coverage in major TV programmes on Ontario politics. The ODA was given full province-wide coverage several times on Global TV’s half-hour “Focus Ontario” programme. It also was covered several times on Ontario’s other major TV provincial affairs show, TV Ontario’s “Fourth Reading.”

A fourth way was when the ODA issue was the subject of a series of ongoing reports. Over several days in late Summer 2000, the Toronto Star published an extraordinary series of articles on accessibility problems in Toronto and on the need for the ODA. This series was the product of extensive investigative journalism.

A fifth way was when the ODA issue several times received national coverage. This showed that this story had significance well beyond Ontario's borders.

11) WINTER TO SUMMER 2001: INCREASING MOMENTUM

a) A New Year - A New Citizenship Minister

In the middle of a cold 2001 Winter, Premier Harris again shuffled his Cabinet. Helen Johns was shuffled out of the Citizenship portfolio. Cam Jackson was appointed the fourth Citizenship Minister in under six years of Conservative Government.

In any Cabinet shuffle, some Ministers manage to hold on to their portfolios. For us, every major Cabinet shuffle under the Conservatives ended up meaning yet another new Citizenship Minister. The prospect of a new Minister gave us mixed feelings. We had found that whenever a new Minister takes office, there is a several-month delay as they hire staff, learn the ropes and delve into the ODA file that had confounded their predecessors. Yet with the appointment of a new Minister could also come some hope that there would finally be some meaningful action on the ODA issue.

With each successive Citizenship Minister, we had started out by trying to have a positive constructive relationship, no matter how difficult we had found things with their predecessor. We would offer each time to start afresh and to do whatever we could to help the new Minister succeed in their new portfolio. In the case of each previous Minister, the Government's protracted inaction eventually made ODA supporters frustrated and impatient.

By the time the fourth Conservative Citizenship Minister took up this portfolio early in 2001, we were not optimistic that Minister Jackson would make much of a difference, since the man holding the reins, Premier Harris, still refused to meet with us. Premier Harris's few public remarks about the ODA unfairly slammed the U.S. *Americans with Disabilities Act* (which, as said earlier, we had never intended to carbon copy in any event), and sought to fan the flames of the business community against us.

When Minister Jackson took office, we felt that there had been so much water under the bridge, that we did not have time to go through the same "get acquainted" ritual with him for a fourth time since 1995. That would necessitate a delay of several weeks, followed by an introductory "get acquainted meeting" with this new Minister. Only after that

might some work start being done on the ODA file, weeks or months later. The Government had only nine months to conduct its promised public consultation on the ODA, to draft new legislation, and to hold public legislative hearings and full legislative debates on the ODA, all before the deadline of November 23, 2001, fixed by the Legislature's third unanimous ODA resolution.

We suspected that Minister Jackson might be more eager to get right to work. This was both because of these time constraints, and because this was his first appointment to Cabinet since he had been shuffled out of Cabinet some years before. We thought he would be hungry to get a "win" on the nagging ODA issue, on which his predecessors had not succeeded.

We again reached into our bag of tricks, to find something new. We knew that each time a new minister takes his or her post, civil servants crank out a mountain of Briefing Notes. Each one explains an issue the Minister must address. Civil servants are expected to tailor these briefing notes to the "bent" of the party in power.

We decided to introduce ourselves to this new Minister by drafting for him our own briefing note on the ODA. We wanted to provide him a full, fair backgrounder on the issue, the events to date, and the road ahead. We wanted him to read a briefing note on the ODA that had not been subjected to any political sanitization, as would happen to all internal Government briefing notes that he received from his staff. We forwarded our own briefing note to him. Of course we also circulated it widely via our email network and our website, and shared it with some media sources.

After Minister Jackson took office as Citizenship Minister, we received an early indication that events could take a significant change in direction. By way of background to this, and as discussed earlier, in 1999 the Government had committed to undertake a fresh ODA consultation process, and to then bring forward a new ODA bill. More than a few ODA supporters voiced to us an understandable frustration about having to go through yet another ODA consultation, especially with a Government that did not appear eager to listen to ODA supporters. We nevertheless wanted the Government to proceed with a new, real and open public ODA consultation. This would help us get our message through to the Government. We could also use it as a platform to build even more public and grassroots support for the ODA cause.

Word got back to us quite soon after Minister Jackson took office that he was doing something none of his predecessor Conservative Ministers had done. He was getting out of Toronto, travelling around the

province, and meeting with a diverse range of individuals and organizations across the disability community, to discuss the ODA. He was doing more than just looking for photo opportunities, or just meeting with “safe” people who would not make well-informed demands on the ODA. We were disappointed that Minister Jackson never announced a public ODA consultation process and never openly solicited input, by publicly inviting interested individuals and organizations to come forward on their own initiative. However, unlike his predecessors, Minister Jackson got on the road and appeared to be actually trying to explore the ODA issue himself.

b) Major New Voice Supports Call For ODA

It was important to us that new voices join the call for the ODA, especially from outside the disability community. In February and March 2001, the ODA cause was buttressed by the addition of a major new voice, the Ontario Human Rights Commission. On February 19, 2001, that independent public agency charged with enforcing the Ontario *Human Rights Code*, unveiled a new discussion paper on major barriers facing persons with disabilities in public transit. That was one area we wanted the ODA to address. That discussion paper identified major barriers blocking persons with disabilities from equal access to public transit. It spoke about gains made in the U.S. in this area under the *Americans with Disabilities Act*. It called for public input on this issue.

Of most immediate importance to us, the discussion paper inexorably pointed in the direction of a law like the one we were seeking. It highlighted the Government’s promise to enact the *Ontarians with Disabilities Act*. We responded with a supportive news release, bearing the headline “New Human Rights Commission Study Shows Ontario Needs New Disability Law: Will Harris Keep His Promise to Enact It?” Our news release stated:

“This excellent discussion paper, by an independent agency of the Ontario Government, reveals powerful proof of the serious barriers persons with disabilities face, the impact of provincial cuts and downloading, and the harm this inflicts on many, many Ontarians. It shows that provincial standards need to be legislated to get rid of these barriers, and that American legislation along these lines has spawned real and substantial progress.”

Weeks later, on March 22, 2001, following quickly on the heels of its release of that discussion paper, the Ontario Human Rights Commission released a new comprehensive policy guideline on the duty to accommodate persons with disabilities under the Ontario *Human Rights*

Code. This updated an earlier Commission policy guideline. Among other things, it incorporated several core ideas which we had presented to the Commission and the public.

The Commission's new policy guidelines talked for the first time about the need to prevent barriers as well as to remove them. They talked about the benefits of organizations developing action plans for identifying, removing and preventing barriers. These were all policy ideas that the ODA movement had developed. They were part of our 111 principles for the ODA and our ODA blueprint.

The Commission's policy guideline was only Commission policy. It was not binding law. Nevertheless it was a resounding endorsement of our ideas, from an agency which is the expert enforcement body in this area.

Beyond the new policy guideline's excellent content, we were delighted that at a March 22, 2001 news conference unveiling these guidelines, the Chief Commissioner of the Ontario Human Rights Commission, Keith Norton, explicitly endorsed the need for the *Ontarians with Disabilities Act*. Our ongoing efforts at gradually educating the Queen's Park press corps paid off. Without prior contact with us that day and without us present at the news conference, we learned that journalists led off with the ODA issue when questioning the Chief Commissioner. We had not planted that question.

In response to this new Commission initiative, we again praised the Commission's action and reiterated our call for the ODA. It was critical to us that the major body enforcing the Ontario *Human Rights Code* had, in effect, agreed with us that existing human rights legislation was not enough to meet the needs of persons with disabilities, and that we needed the ODA to be passed. For years, the Government had fended off our calls for the ODA, despite the fact that it had promised to pass it, by repeatedly saying that our needs were adequately met by the existing protections in the Ontario *Human Rights Code*. We also believed that the fact that the Commission had placed new emphasis on the disability part of its mandate was in part due to the ODA movement's ongoing effort at getting profile for the ODA issue.

c) Legislature Prorogued - Another Promise Broken

On March 2, 2001, the Government prorogued the Legislature. When the Legislature is prorogued, the legislative session is considered to be formally ended. The Legislature had not been sitting since Decem-

ber 2000, but its session was still considered open until the date when the Government chose to prorogue it.

For the ODA movement, the proroguing of the Legislature meant that the Government had unequivocally broken yet another promise to us. That was its October 1999 Throne Speech commitment to introduce an “action plan” on the ODA in that session. Throughout the legislative session’s seventeen months, Citizenship Minister Helen Johns repeatedly claimed that she had been working on this action plan. The Government did not bring forward that action plan in that session, or indeed ever.

When we learned that the session had been prorogued, we went public with a news release, to publicize this latest turn of events. Our news release stated:

“It’s more cruelty upon cruelty: The Premier says over and over again that he always keeps his promises. When it comes to his commitments to people with disabilities, it’s just one broken promise after another.”

d) New Immediate Goal - Getting An ODA Commitment In The Forthcoming Throne Speech

In Spring 2001, the ODA movement set its sights on yet another short-term goal for all province-wide efforts. We knew the Government would present a new Throne Speech when the Legislature resumed sitting sometime that Spring. We therefore launched a province-wide blitz, calling for the Government to include in its Throne Speech a specific commitment that a strong effective ODA would be passed in this session, and indeed by the Legislature’s November 23, 2001 deadline.

We framed the Throne Speech as an “all or nothing” test of the Government’s plans to comply with its ODA commitments. The Throne Speech would map out the Government’s legislative agenda through the period covering the Government’s deadline for passing the ODA. We felt that if we were to win a Throne Speech commitment, this would be another step forward. If the Throne Speech included no ODA commitment, this would be a glaring sign that the Government didn’t plan to keep its commitment to meet the November 23, 2001 deadline for passing the ODA which the Government had unanimously voted for in the Legislature. If there were no Throne Speech ODA commitment, the Government would put itself in a difficult if not an impossible position on its mantra that it always keeps its promises.

Our Throne Speech blitz followed our then oft-practised rhythm. Local ODA supporters focused their efforts on their own MPPs. Our outreach around Ontario to the media reiterated our focus on the Throne Speech. Our news releases leading up to the day of the Throne Speech warned that ODA supporters would be at Queen's Park watching the Throne Speech closely. The media increasingly accepted that the ODA issue was on the list of issues for them to monitor. The Government knew this, too. This was just what we wanted.

On April 19, 2001, the Throne Speech day, ODA supporters from many parts of Ontario again journeyed to Toronto to gather at Queen's Park. Again with the pre-negotiated co-operation of Queen's Park building security officials, we arranged for two large committee rooms in the legislative building where ODA supporters could watch the Throne Speech on a video monitor. Over six long years after the ODA movement had begun, persons with disabilities still could not collectively get into the Legislature's public galleries.

During this gathering, we were visited by several NDP and Liberal MPPs, including Liberal leader Dalton McGuinty who addressed our group at some length. Both opposition parties encouraged ODA supporters to keep up the pressure. Meanwhile, in solidarity, ODA supporters around Ontario who could not make their way to Queen's Park simultaneously watched the Throne Speech on their TVs. In Ottawa, many ODA supporters gathered at City Hall to attend an organized event to watch the Throne Speech.

Weeks of lobbying yielded results. The Throne Speech listed 21 Government priorities for the beginning of the 21st century. Introducing a new ODA bill was included, albeit as number 20. The Throne speech said:

“Step 20: Equal Opportunity for All Citizens. Ontario is a diverse province. Not only is diversity cause for celebration, it offers a significant economic advantage. Some in the community face special barriers, including those who live with physical or mental disabilities. Ensuring equal opportunity for all is the twentieth step of the plan. The Government will seek common ground and shared solutions to address the needs of persons with disabilities, and take action, including the introduction of legislation, to build on its commitment.”

We were delighted to have pinned the Government down. Yet we were also worried that the new Throne Speech commitment included waffle-words. We were concerned that the Throne Speech set no specific date for the ODA's introduction. In sharp contrast, the Throne Speech fixed a long list of specific dates for many, if not most of its announced new initiatives. This Throne Speech ODA commitment noticeably didn't

pledge that the ODA would be passed into law this session or indeed at all. It merely said the ODA would be introduced. In contrast, the Legislature's November 23, 1999 ODA resolution had committed that the ODA be passed into law by November 23, 2001. The Throne Speech also didn't say that the ODA will be strong and effective at removing and preventing barriers. The Legislature's November 23, 1999 ODA resolution had committed not simply to pass an ODA, but an ODA which is strong and effective.

In the end we felt that the Throne Speech's waffle-words didn't diminish the pressure on the Government to keep to the November 23, 2001 deadline for passing a strong, effective ODA. We kept running our ongoing countdown to that deadline. This was the first time since taking office that a Conservative Government's Throne Speech had committed to introduce ODA legislation during the upcoming session. Previous Throne Speeches were either silent on the topic, or merely committed to more consultations or to an "action plan" on the ODA.

We were also encouraged that the Government here recognized that diversity is good for business. We had argued for years that a strong, effective and mandatory ODA would be good for diversity and thus, good for business.

The Throne Speech committed the Government to "seek common ground." We hoped this would at last lead the Government to accept our proposal, which we had been making for quite some time, that the Government bring together to one table the disability community and the business community from right across Ontario, to meet together. This was the best if not the only sensible way to forge that "common ground." Regrettably, despite our repeated requests, even after this Throne Speech commitment, the Government never did take this step.

The ODA issue again obtained good coverage in that night's media. ODA supporters were among the core groups in the media responding to the various Throne Speech announcements. The Queen's Park media corps knew our issue well and simply came by to ask ODA supporters for a quick "sound bite." One reporter, obviously well-schooled in our issue after attending several ODA Committee news conferences, posed his question to us in pointed, simple terms that said it all. He thrust forward a microphone and groaned, while saying: "Six years!"

The April 19, 2001 Throne Speech ODA commitment was discussed on a province-wide provincial political affairs TV programme. The programme's panellist who reflected the Conservatives' perspective, not himself an MPP, said that the ODA movement should keep on doing

what we were doing. This further encouraged ODA supporters to keep up their strategy of province-wide, grassroots action.

In response to the Throne Speech, the ODA Committee's message to the media was that ODA supporters were as tenacious as ever. It responded with two themes. The first was:

“VICTORY FOR ONTARIANS WITH DISABILITIES IN TODAY'S THRONE SPEECH - BUT WILL HARRIS KEEP HIS WORD THIS TIME?”

The second was an expression of hope that we did not need to wait another 20 Throne Speeches before we would climb to the top of the Government's priority list. In this Throne Speech, the ODA was number 20 of 21.

e) Post-Throne Speech Grassroots Campaign

In the wake of this 2001 Throne Speech victory, ODA supporters turned their efforts next to the goal of making the Government keep the Throne Speech commitment. Premier Harris set out to tour the province to speak with Ontarians about the overall Throne Speech agenda. The ODA Committee encouraged ODA supporters to take advantage of this to get to the Premier and raise our message. Yet this was difficult. The Premier usually appeared at carefully-controlled, staged events, that gave us little if any access. Yet a London radio talk show host, who had covered the ODA issue in the past and who had come to be supportive, raised the ODA issue with the Premier when he was on his show.

ODA supporters from all quarters wrote letters to the editor and guest columns in local papers. These came from a full range of people, from lifetime disability activists to clergy, such as Mississauga's Rabbi Larry Englander, who had gotten his congregation involved in supporting the ODA cause.

The ODA Committee's Barrie region had a successful ODA public forum in late April, 2001. In May, 2001, the ODA Committee's Niagara Falls region (which had for years been effectively led by, among others, even-keeled founding Regional Contact Ian Greaves, who also was one of several people who played an important role in helping bring into the ODA movement organized persons with multiple sclerosis) convened a forum entitled “Countdown to a Barrier-free Ontario.” It focused on steps for ODA supporters to take to keep the pressure on their local MPPs. In late May, 2001, the ODA Committee's Parry Sound-Muskoka region also hosted an ODA public forum. Their newly-elected Conservative MPP Norm Miller, who had just won a by-election, attended this

event and spoke supportively about the ODA cause. The ODA Committee's Windsor region held an event in May 2001 entitled: "Happy Birthday Broken Promises." This was a birthday party for The Conservatives' six-year old promise to enact the ODA in its first term.

Province-wide, the ODA movement used the juxtaposition of May 24, 2001, the sixth anniversary of The Conservatives' 1995 ODA election pledge, and the following week, declared across Canada as "National Access Awareness Week," as a platform to focus local action. The ODA Committee's London region prepared and sent to the media an excellent document, entitled "Life in a City Full of Barriers" to highlight the need for a strong ODA.

In June 2001, the Ontario Association for Community Living (which is involved with provision of services to persons with intellectual disabilities) sponsored a major ODA forum in Ottawa. It included a ODA panel, part of which was nationally televised. That panel included, among others, Mr. Tony Coehlo, the former U.S. Congressman who had led the legislative movement for the *Americans with Disabilities Act*. He had introduced the ADA into the U.S. Congress in the 1980s.

All three Ontario political parties were invited to send a representative to this panel. The only party to send a representative was the Liberal Party, represented on this panel by its leader, Dalton McGuinty. Tapping into the leadership of the movement that led to the ADA further boosted the ODA cause. At the same time, OACL's executive director, Keith Powell and its legal counsel, veteran disability rights advocate Orville Endicott, had successfully spearheaded the move to bring persons with intellectual disabilities into the ODA movement as a major part of the ODA cause.

The ODA Committee kept expanding its reach. It launched its 22nd region in Sudbury in April 2001 and its 23rd region in Brockville-Grenville-Leeds in June 2001. Meanwhile, every few weeks another municipality passed a resolution urging the Ontario Legislature to pass the ODA.

f) ODA Issue Heats Up At Queen's Park

After the April 19, 2001 Throne Speech, the ODA issue kept coming up in the Legislature day after day. MPPs kept raising it during Question Period or in other exchanges in the Legislature, even though other issues dominated the Legislature.

As one of many examples, during 2001's National Access Awareness Week, Liberal disability critic Ernie Parsons announced that he was

introducing a resolution into the Legislature which he would ask to have debated and passed that week. The resolution stated that:

“in recognition of National Access Awareness Week from May 28 to June 2, 2001, Premier Mike Harris should agree to meet with representatives of the *Ontarians with Disabilities Act* Committee to show the Premier’s leadership and accountability on the important issue of removing and preventing barriers to access now facing 1.5 million Ontarians with disabilities.”

The resolution’s preamble dramatically listed all the many, many times that the ODA Committee has asked Premier Harris to meet. Premier Harris had not accepted any of those requests to meet. The Government used its majority to block a debate or vote on this resolution.

g) Fourth Citizenship Minister Meets ODA Committee Leadership

On May 7, 2001 the fourth successive Conservative Citizenship Minister, Cam Jackson, held his first meeting with an ODA Committee provincial delegation. At a friendly, relaxed meeting, Minister Jackson made it clear to our delegation that he wanted to establish a relationship of trust with the disability community. He joked disparagingly about his Government’s failed 1998 three-page ODA bill. He frankly admitted that he did not think his immediate predecessor, Helen Johns, had done much consulting with the public on the ODA. He was not satisfied with previous plans for the ODA that the Government had contemplated.

He volunteered his advice for us on how the ODA movement should proceed with its advocacy. Among other things he suggested that the ODA movement should get away from talking about the Government’s promises regarding the ODA. As mentioned earlier, the ODA movement knew well that the Conservatives’ core message for years had been that they would keep all their promises. We also knew that given the Government’s obvious lack of interest in passing effective ODA legislation, our best political meal ticket had been the Premier’s promises to the ODA movement. From Minister Jackson’s advice at this meeting, trying to steer the ODA movement away from playing that card, the ODA Committee delegation readily gleaned that the Government didn’t like the ODA movement using that card. This reinforced the sense that using that card was working. The ODA movement never let up on it.

Minister Jackson said legislation would more likely succeed if sectors like municipalities buy into it and agree with its contents. He talked

about the need to build bridges between the disability community, the business community and the municipalities.

The ODA Committee delegation gave Minister Jackson several specific proposals on how he could develop the consensus of which he had spoken. These included: that he bring the disability community together with business and municipal Government representatives to jointly consult; that he help the ODA Committee get a meeting with Premier Harris; that Minister Jackson participate in public ODA forums around Ontario to supplement his earlier private meetings on the ODA (which had been held with people the Minister had chosen to meet); and that he help the ODA Committee get us an opportunity to speak to the Conservative caucus.

The ODA Committee delegation emphasized that people with disabilities have real expertise in this area. They can effectively show others why the ODA we seek is good for Ontario, and won't impose unwarranted burdens on business or on the public.

The ODA Committee delegation raised with Minister Jackson the costs of implementing an ODA, including the cost of barrier-removal and prevention. It knew this was an ongoing fear within the Conservative Government. The delegation explained that there are so many barriers which can be removed at little or no cost. Preventing barriers usually costs little or nothing. Moreover, removing barriers, such as for business, will in the end produce revenues in the form of more business. Business will make money on the transaction. People with disabilities too will benefit.

Where it costs more to remove a barrier, the ODA Committee always believed that more time should be given. This would let the cost be spread out over time. The ODA Committee delegation explained that if the ODA sets detailed provincial standards for removing and preventing barriers, this will have the effect of driving down the cost of barrier-removal and prevention for each business or other organizations which have barriers to remove.

The ODA Committee delegation told Minister Jackson that the ODA they seek would reduce the amount of litigation in this area. Without the ODA, under the Ontario *Human Rights Code* (whose protections the ODA movement did not want reduced), persons with disabilities potentially must bring individual legal proceedings to challenge every single barrier that organizations will not remove or prevent. That threatens an enormous amount of litigation. A strong and effective ODA would lead to barriers being removed and prevented systematically. This would reduce the need for so much litigation against each barrier.

The ODA Committee delegation also addressed the topic of the *Americans with Disabilities Act*. It repeated yet again that it had been our consistent position for years, that we didn't want the ODA to simply replicate the ADA. We wanted to use the parts of the ADA that have worked well. We also wanted to borrow from the parts of other countries' disability legislation that work well.

We reiterated the ODA movement's desire to do whatever we could to help Minister Jackson succeed on the ODA. The ODA movement couldn't simply forget the frustrating past. Nevertheless the ODA Committee delegation told him that the ODA Committee was prepared to work together, focusing on the future.

Minister Jackson indicated a desire for future meetings, to discuss issues of substance. The ODA Committee delegation expressed its strong agreement. The delegation presented Minister Jackson with a copy of the 11 principles for the ODA, with which he was familiar, and the ODA Committee's blueprint for the ODA, included in our 1998 brief. We asked him to compare these with the Ontario Human Rights Commission's recent disability policy guidelines and discussion paper on public transit for persons with disabilities. The Minister had previously applauded those Commission initiatives. The delegation told Minister Jackson that based on that comparison, he should find ample room for common ground with the ODA Committee.

At the time, this meeting appeared to begin a new phase in the ODA saga. It felt as if it had been a constructive opportunity to begin to build a working relationship with the new Minister. There also was a lot going for the ODA movement. A provincial election could be as little as two years away. When the Government hits the second half of its mandate, as was the case in 2001, it usually needs good news. The Government had been behind in the polls for some time. More than ever, it needed to take steps that would win it some good news.

The day after this meeting with Minister Jackson, he got a question on the ODA in Question Period. However, this did not come from the opposition, as it usually had. Instead it came from a member of Mr. Jackson's own party. A Government plants a friendly question in Question Period when it wants to offer up good news. Minister Jackson evidently felt that he was on the road to some better news for the Government on the ODA file.

12) SUMMER AND FALL 2001: THE ROAD TO THE INTRODUCTION OF THE NEXT ODA BILL

a) Preparing For The Government's New ODA Bill

Over the Summer of 2001, it was time for the ODA movement to focus all efforts on getting ready for the Fall legislative session. Minister Jackson's recent statements suggested that he planned to introduce his new ODA bill that Fall, for passage into law before year's end. From its 1998 experience, the ODA movement knew that the Government could well bring in its new ODA bill without any prior notice to us, again hoping it might catch us off guard.

We were keenly aware that before the ODA movement could take on the challenge of addressing a new piece of ODA legislation, lots of people had lots to learn, and very little time in which to learn it. Many in the ODA movement were not experienced with the technical formalities of the legislative process. Because this movement had grown so big so quickly, many were still scrambling to learn the details about the ODA that the ODA Committee sought, and the battles it had fought. Many had climbed aboard this movement's high-speed train after the events of late 1998. Some did not know much about the Conservatives' 1998 three-page ODA bill.

To tackle this challenge, the ODA Committee took several steps. In August 2001, we wrote to Citizenship Minister Jackson, to again formally call for a barrier-free legislative process. We detailed that this should include province-wide public hearings, with sufficient advance notice of legislative debates and hearings to enable people with disabilities to arrange accessible transit to the Legislature. We asked the Government to commit that it would provide for full debate on any amendments proposed to their bill that are consistent with the 11 principles for the ODA, which the Legislature had unanimously adopted by its October 29, 1998 resolution.

The ODA Committee alerted Minister Jackson that in the Spring of 1999, many individuals had written to the Clerk of the Legislature, requesting a chance to appear at public hearings on Bill 83. We asked that all applications received at that time be applied to hearings on the forthcoming ODA bill. We urged that new applications should be encouraged and accommodated, so that all who wish to appear at these hearings would be able to do so.

We encouraged ODA supporters to write again to the Clerk of the Legislature, to apply to make a presentation at hearings on the ODA. Of

course, no hearings had been announced or even agreed to, but the ODA Committee wanted to get a head start on this once more. We also wanted to fully engage ODA supporters in the process early on. By getting people to ask to appear at hearings, they were staking their claim in this legislative process.

We widely circulated a new “action kit” to help ODA supporters get ready for the bill, and recirculated our Spring 1998 blueprint for the ODA as a refresher. We distributed a handy pamphlet setting out a checklist of six questions that people could ask when looking at any new ODA bill.⁵⁵

We prepared and widely circulated a summary of the steps that a bill must go through to get passed into law. It was entitled: “HOW A BILL MAKES ITS WAY THROUGH THE ONTARIO LEGISLATURE: AN OVERVIEW FOR ODA SUPPORTERS.” This was designed to explain the legislative process and the terminology often used in it. We projected that we would not have enough time to explain this process all to ODA supporters on the fly, once the Government tabled its new ODA bill.

Meanwhile in the early Fall of 2001, the ODA issue kept heating up even more in the Ontario Legislature and in the media. Amid coverage of the Fall session’s opening were the Premier’s public statements that an ODA bill would be introduced in the Fall. MPPs played verbal tennis in the Legislature, exchanging volleys about the ODA. News articles addressed individual barriers or commented on the Government’s record of broken ODA promises.

In the Fall of 2001, there was a palpable feeling among ODA supporters of excitement and momentum. ODA supporters had accomplished so very much. They had built a large, active coalition. They had developed a detailed, positive blueprint for a strong and effective ODA.

Grassroots ODA supporters in 23 regions all around Ontario had gotten many municipal councils to adopt the ODA movement’s goals and its 11 principles for the ODA, by passing local resolutions. It had won the active, ongoing support of both the opposition Liberals and NDP. It had successfully rejected the Government’s first ODA bill in 1998, as well as the Government’s leaked 2000 plans for another weak bill. It had opted to hold out for something better. It had kept the issue alive in the public eye for years, despite so many other headline issues that seemed to monopolize the media’s attention. Over seven years,

55 These are set out below in the ODA Committee’s initial analysis of Bill 125, the bill the Government introduced into the Legislature later that Fall.

ODA supporters spent so much time listing the barriers they face, organizing public forums, recruiting new people to the ODA cause, writing, phoning and visiting MPPs, giving interviews to the media, writing letters to the editor, etc.

It was clear that an unprecedented grassroots battle lay just ahead, and that the odds for the ODA movement were not great. However, the ODA movement had done all it could at the grassroots around Ontario to be in the best position for the events that were about to unfold.

b) Conflicting Rumours And A Healthy Scepticism

In October 2001, rumours abounded that Citizenship Minister Jackson was holding a second round of meetings with a diversity of disability groups around Ontario. These followed on his Spring 2001 meetings. These reportedly included briefings on what his bill would include. We heard that at many of these briefings, the Minister required those present to sign undertakings of confidentiality. At other meetings, no confidentiality undertakings were sought. At the end of this process, the Minister gave a confidential briefing to a small ODA Committee provincial delegation, though he agreed to their request for permission to speak to anyone else who had previously had a confidential briefing.

It appeared from all the conflicting information floating around that the Minister had at different times been discussing not one, but two different versions of an ODA bill. We consistently heard descriptions from some people of a new ODA bill that sounded utterly toothless, being barely more than the Government's 1998 three-page ODA bill. From others we heard about a different ODA bill, one that included substantial and potentially helpful components. While the latter bill did not appear to meet all the ODA Committee's requirements, it sounded like a sign of real and significant progress.

We didn't know which of these two bills Minister Jackson actually intended to introduce. We didn't know why he would tell some about one version and others about a different version of the bill. We never figured out whether the difference in these versions was due to a deliberate strategy by the Minister, or whether it was just due to a simple lack of effective communication at the Minister's end, or whether it was due to confusion on the part of those who received the briefings. We may never know.

When the Government finally introduced its 2001 ODA bill, it turned out to be in reality neither of the two rumoured versions. Instead, it was somewhere in between.

c) The Lead-Up To The 2001 ODA Bill's Introduction

As October 2001 came to a close, the Government chose to let the disability community know in advance when it would introduce its new ODA bill. This suggested that the Government didn't plan to hide from its new ODA bill as bad news. Instead, this suggested to us that the Government decided to stand proudly behind its new ODA bill this time, as good news. This stood in contrast with the Government's leaked plans the year before to minimize or avoid publicity of the weak ODA bill it had planned to introduce in the Fall of 2000. As discussed earlier, those plans were set aside in the Fall of 2000 after the Government's plans were leaked, made public and widely condemned.

On November 1, 2001, four days before introducing the bill, Citizenship Minister Jackson hosted a public event at which he unveiled the Government's brand new "Vision Statement" on disability. That day the Government also bought space in newspapers around Ontario to publish this new "Vision Statement."

This vision statement committed the Ontario Government to achieve the goal of a barrier-free Ontario for all persons with disabilities, where existing barriers are removed and new ones are prevented. This amounted to a wholesale adoption of our core objective and our language. It gave the ODA movement another yardstick against which to measure the forthcoming ODA bill.

We knew that the Government might not match its lofty new words with its upcoming legislative actions. However, we viewed this vision statement as helpful to us. We had collectively won the battle over what we were entitled to expect as the ultimate goal. It was not a vision from which the Government could easily back down.

The Government made it known that it would introduce its new ODA bill in the Legislature on Monday, November 5, 2001. It invited dozens of people from disability organizations around Ontario and others to come to Toronto at public expense for the bill's formal introduction, and to attend a lunch earlier that day at the Legislature. This was to be hosted by Minister Jackson, just before he introduced the bill. It appeared to us that the Government was taking quite a gamble. If the bill turned out to be a let-down, the Government would have organized their own potential corps of critics. After all, the Government itself was bringing together the very people who would be most motivated to criticize the bill if it was a let-down right at the Queen's Park media corps doorstep. The Government built up these individuals' expectations about the bill

by virtue of the Government's invitation to this major November 5, 2001 event, and by virtue of its November 1, 2001 vision statement.

As November 5, 2001 approached, we encouraged ODA supporters to hold off passing judgement on the bill until they saw it and got a chance to read its "fine print." In this Government's past handling of other issues, it would often make a big splash with some new announcement, which at first generated a flurry of positive media coverage. This would not infrequently be followed days later by media stories in which those issuing initial compliments changed their tune, after they had gotten a chance to explore the devil in the details of the Government's announcement.

We also had figured out that if the bill was introduced on November 5, 2001, and was to pass before year's end, the Government must be planning to rush the bill through. Either there would be no hearings on the bill at all, or there would be very rushed hearings. This pointed to serious concerns that the bill was not going to measure up to the expectations that the Government had created at some of its Fall 2001 confidential briefings.

Over the weekend before the bill's introduction, the Government "leaked" an advance story about the bill to one news outlet. A good number of other news outlets picked up the story. Governments plant these advance leaks when they want to try to effectively control the story's initial "spin." It is usually leaked to a news outlet friendly to the Government. Such leaks are usually done at a point when the journalist receiving the leak will not have time to check the story with other sources in the community, before the story goes to print.

In the leak, the Government told the media their bill would raise parking fines for people who illegally park in handicap parking spots to \$5,000.00, and would address accessibility to Government buildings. The leak led the Toronto Sun to report on November 4, 2001, the day before the bill's introduction that:

"Unlike an earlier attempt at legislation, this law will have teeth, and is expected to be one of the most comprehensive pieces of disabled-rights legislation in the country. . . . There will be mandatory components on accessibility for Government and for the broader public sector.

As well, private business will be encouraged to become more inclusive in providing services for people with disabilities.

. . . It is expected the new legislation will establish consistent standards for accessibility and barrier-free access to buildings. At present, no such standards exist.

“It will have a mechanism to engage the private sector,” the source said.”

The Government’s “leak” strategy worked, to the extent that a good proportion of the news coverage of the bill then and afterwards mentioned the evidently large hike in parking fines. It was ironic that this high-profile part of this bill was actually the very same prominent item in the Government’s planned ODA bill of the year before. As discussed earlier, that bill never reached the Legislature because the Government’s plans about it were leaked to the Liberals who made these leaked plans public.

It is also ironic for two additional reasons that the hike in parking fines got so much profile. First, although the Government raised the maximum parking fine to \$5,000.00, it was unrealistic to expect that anyone except some horrific serial offender would ever be sentenced to a \$5,000.00 fine.

Second, this hike in parking fines actually threatened to harm persons with disabilities. During hearings on the new ODA bill, ODA supporter Carole Riback pointed out that she too often erroneously gets parking tickets for parking in a handicap spot, even though she herself uses a wheelchair and has a clearly marked disability parking permit on her vehicle. She has to fight each of the many improper parking tickets which are wrongfully put on her vehicle. She also has to pay the fines before fighting them, or else she may not be permitted to renew her driver’s licence. To renew the licence, one must pay the outstanding fines up front, and then fight the fine later, in hopes of getting the fine back. If the Government’s raised parking fine were in effect, she might accrue such high erroneous fines that she could not afford to renew her licence.

Yet this leak strategy also backfired on the Government. It alerted ODA supporters that this bill was not likely going to be the promising version of the legislation that the Citizenship Minister had described to some groups in his confidential Fall 2001 briefings. Also, the Government’s leak dramatically piqued media interest in the ODA story on the day before the bill was to be introduced, a Sunday, when ODA news would otherwise rarely get much news attention. This in turn amplified the media attention we were able to secure the next day, when the bill was introduced.

d) November 5, 2001, The New ODA Bill Is Introduced For First Reading

The morning media coverage on November 5 heralded the forthcoming bill. It reported that we claimed that the very fact of the introduction of a bill is a victory for us, but only an interim victory. We were reported as cautioning that we will need to read the bill's fine print to see how good it is.

On the morning of November 5, 2001, the Legislature was swarming with individuals with disabilities and employees of major disability organizations. This was the first such ODA-related event at Queen's Park in seven years that we ourselves did not have to organize. The Government had delivered it to us on a silver platter. It was replete with a real sense of suspense, as we awaited the chance to see the bill. The level of interest and suspense signified the interest that had grown since 20 people had first met in this same building almost seven years earlier, starting the organized grassroots ODA movement.

Citizenship Minister Jackson's luncheon before the bill's introduction brought together many from across Ontario who had been involved in the ODA cause. Yet the invitation list also left out many others. The Minister's office had planned its invitation list, and certainly had not consulted the ODA Committee on it. The Minister's speech at the luncheon was strikingly non-partisan. It gave significant credit to the ODA Committee. His tone was to change minutes later, the moment he entered the Legislature.

After the lunch, and before the Minister entered the Legislature to introduce his bill for First Reading, he held a news conference about his bill in the Queen's Park media studio. At that news conference the Minister declined to answer reporters' questions on the content of his bill. He said he could not comment on these until the bill was introduced. It was quickly evident to all that the Government had scheduled this news conference for a time before the bill was introduced, to help the Minister duck probing media questions on the bill's contents.

After this news conference, Minister Jackson proceeded to the Legislature to formally introduce Bill 125, the proposed *Ontarians with Disabilities Act* 2001, for First Reading. Each party made short speeches. In his speech, the Minister congratulated and acknowledged everyone present, except for ODA Committee provincial leadership, who were noticeably omitted from his remarks. When the bill was being introduced, many again watched the Legislature's proceedings on a TV monitor from a legislative committee room, since nothing had been done

in advance of this event to provide for better accessibility in the public gallery.

At the same time the bill was being introduced, the Government released backgrounders on the bill, and a 35-page policy document, entitled “Independence and Opportunity - A Framework for Change.” That document detailed the bill’s contents, enumerated the results for persons with disabilities that the Government said the bill would achieve, and listed companion commitments that the Government said it would undertake in conjunction with the bill.

After the Minister introduced the bill, copies were made available to us. We scrambled to read through and analyze its 30 pages. This was a more challenging task than was the case for the Government’s 1998 three-page bill. This task was more challenging this time because the bill was written in a convoluted and confusing manner. It was unclear whether it had been written in that way because the legislative drafters had been asked to write it in a hurry, or as a deliberate tactic to confound ODA supporters, or to make the bill appear to do more than it did to an uninformed reader. The media clamoured for our instant reaction. We had to fend them off long enough to try to digest the bill.

We hurriedly compared the bill’s contents to the initial blast of public statements about the bill that the Government had released. As we combed through the bill, many who initially had been enthusiastic based on the Citizenship Minister’s confidential briefings (conducted before anyone saw the bill’s text) rapidly lost their enthusiasm. The closer we looked, the worse things appeared. The Minister had led many to expect a bill that was very different from the product he introduced in the Legislature that day.

The bill stated that its purpose was to “improve opportunities for persons with disabilities and to provide for their involvement in the identification, removal and prevention of barriers to their full participation in the life of the province.” It did not state, as had the Government’s November 1, 2001 “Vision Statement,” that the government’s purpose here was to achieve a barrier-free Ontario for persons with disabilities. To “improve opportunities” appeared to be a far more minimal aim for this bill.

The bill did not create a general legal duty to remove or prevent barriers, beyond what the Ontario *Human Rights Code* provided. It only addressed the broader public sector, and not the private sector. It required provincial Government ministries and broader public sector organizations like municipalities, school boards, hospitals, public transit providers, colleges and universities to develop and make public annual “ac-

cessibility plans.” These plans would include only those barriers that the organization chose to remove or prevent. Each organization could decide voluntarily which barriers, if any, to include in their annual accessibility plans, and which actions, if any, to take to deal with them.

Moreover, no organization need ever implement their annual accessibility plan. They need only make the plan and then make it public. The bill did not create any means for enforcement, for example if an organization failed to make a plan, or made a plan that was palpably weak and ineffective, or if an organization failed to implement its plan. Under this bill, barrier removal and prevention was left entirely voluntary.

The bill imposed a series of “obligations” on the Ontario Government, e.g. to make its websites accessible, and to provide certain government information to the public in a format accessible to persons with disabilities such as Braille, where requested. However, the bill created no means for enforcing these seeming obligations. As well, many of these obligations were worded in very equivocal language, lacking teeth. For example, the bill required the Ontario Government to “have regard” to disability accessibility needs when it purchased certain things such as goods and services. To “have regard” to something only required the Government to think about it, and not necessarily to do anything about it.

The bill created a limited and confusing power for the Government to set provincial standards. However, it did not oblige the Government to ever exercise this power. The bill itself neither set time lines for barrier-removal and prevention, nor required that any such time lines ever be established.

Central among the bill’s features was the bill’s establishment of two new bodies. First, it established a provincially-appointed Ontario Accessibility Advisory Council, to advise the Citizenship Minister on the ODA’s implementation. Before the Conservatives took power in 1995, a similar provincially-appointed disability advisory council had existed in Ontario since the 1970s. The Conservatives abolished it within weeks of taking office in 1995.

Second, the bill proposed to require that all municipalities with a population over ten thousand create a municipal accessibility advisory committee, to advise the municipal Government on taking certain actions under the ODA. Several Ontario municipalities had had such a committee for years. None of these advisory bodies could do anything more than give advice. No one had to listen to them, or to give reasons if their advice was rejected. The disability community had no say in who the Government or local municipalities appointed to these bodies.

For a more detailed summary of the bill's contents, here is the Government's explanatory note, which was written by the Government and tabled with the bill. It summarized Bill 125's contents as follows:

"The Bill imposes a number of obligations, with respect to improving access for persons with disabilities, on the Government of Ontario and other organizations. The obligations include the following:

1. In consultation with persons with disabilities and others, the Government is required to develop barrier-free design guidelines for buildings, structures and premises and to ensure that any buildings, structures or premises that it purchases, constructs or significantly renovates after the Bill comes into force comply with those guidelines. When entering into a lease for a building, structure or premises, or part of a building, structure or premises, for the occupation or regular use by its employees after the Bill comes into force, the Government is also required to have regard to the extent to which the design of the leased premises complies with the guidelines.
2. In deciding to purchase goods or services through the procurement process for the use of itself, its employees or the public, the Government is required to have regard to their accessibility for persons with disabilities.
3. Where technically feasible, the Government is required to provide its internet sites in a format that is accessible to persons with disabilities.
4. Upon receiving a request by a person with disabilities, and where technically feasible, the Government is required to make an Ontario Government publication available in a format that is accessible to the person.
5. The Government is required to accommodate the accessibility needs of its employees and applicants for positions as Government employees who are invited to participate in the selection process. The Government is required to ensure that its employees with managerial or supervisory functions receive training with respect to its obligations and also to inform its employees of the rights and obligations that they and the Government have in the area.
6. The Government may include requirements with respect to accessibility to persons with disabilities as part of the eligibil-

ity criteria for certain projects or classes of projects to receive funding under a Government-funded capital programme.

7. Each ministry is required to prepare an annual accessibility plan that addresses the identification, removal and prevention of barriers to persons with disabilities in the Acts and regulations administered by the ministry and in the ministry's policies, programmes, practices and services. Ministries must make their accessibility plans available to the public. The Lieutenant Governor in Council may, by regulation, include other organizations in the definition of "ministry."
8. Municipalities having a population of not less than 10,000 are required to have an accessibility plan that addresses the identification, removal and prevention of barriers to persons with disabilities in their by-laws, policies, programmes, practices and services. They must make their accessibility plans available to the public. They must also have an accessibility advisory committee to advise on the implementation and effectiveness of the plans. The Lieutenant Governor in Council may, by regulation, extend any of the requirements described in this paragraph to other organizations specified by the regulation.
9. In deciding to purchase goods or services through the procurement process for the use of itself, its employees or the public, the council of every municipality is required to have regard to their accessibility for persons with disabilities.
10. Organizations that provide public transportation are required to have an accessibility plan that addresses the identification, removal and prevention of barriers to persons with disabilities in their by-laws, policies, programmes, practices and services. They must make their accessibility plans available to the public.
11. The Schedule to the Bill lists organizations such as district school boards, hospitals, colleges of applied arts and technology and universities. The Lieutenant Governor in Council may, by regulation, name other organizations or classes of organizations to the Schedule or delete them from the Schedule. Every organization listed in the Schedule is required to prepare an annual accessibility plan that addresses the identification, removal and prevention of barriers to persons with

disabilities in the organization's by-laws, policies, programmes, practices and services. The organizations must make their accessibility plans available to the public.

12. Every agency listed in the regulations is required to have an accessibility policy that addresses the provision of services to persons with disabilities in its policies, programmes and practices.
13. The Minister responsible for the administration of the Bill is required to establish the Accessibility Advisory Council of Ontario to advise on issues related to the subject-matter of the Bill and the Accessibility Directorate of Ontario under the Minister's direction.

The Bill amends other Acts as follows:

1. The Bill amends the *Election Act* to require every returning officer for an electoral district to report to the Chief Electoral Officer on the measures taken to provide accessibility for electors with disabilities in the district. The Chief Election Officer must make the report available to the public.
2. The definition of "campaign expense" in the *Election Finances Act* is amended to exclude expenses that a candidate with disabilities incurs and that are directly related to the disabilities.
3. The Bill amends the *Highway Traffic Act* to increase the penalty for various offences related to the use of disabled person parking permits. The penalty in the current Act is not less than \$60 and not more than \$500. Under the amendment, the penalty is not less than \$300 and not more than \$5,000.
4. References to "handicap" in the *Human Rights Code* are replaced with "disability."
5. The Bill amends the *Legislative Assembly Act* to require the Speaker to prepare an annual accessibility plan that addresses the identification, removal and prevention of barriers to persons with disabilities in the Legislative Chamber and the other parts of the Legislative Building that are under the Speaker's control and in the policies, programmes, practices and services of the Assembly. The Speaker must make the accessibility plan available to the public.

6. The Bill amends the *Municipal Act* to allow municipalities to require, as a condition for licensing a business, that the business premises be accessible to persons with disabilities. By-laws made with respect to the use of disabled person parking permits and the provision of parking spaces for vehicles displaying disabled person parking permits must provide that contravention of the by-laws is an offence punishable by a minimum fine of \$300. The owner of a vehicle left parked, standing or stopped in violation of the by-laws is also guilty of the offence, whether or not the owner was the driver of the vehicle at the time.
7. The references to electors with impaired mobility under Section 45 of the *Municipal Elections Act* are expanded to cover electors with disabilities.
8. The Bill amends the *Planning Act* to add accessibility for persons with disabilities to the matters of provincial interest that the council of a municipality, a local board, a planning board and the Ontario Municipal Board must have regard to in carrying out their responsibilities under the Act. The Bill also adds accessibility for persons with disabilities to the matters that approval authorities must have regard to in considering a draft plan of subdivision.
9. Service managers that construct or alter housing projects under Subsection 5 (1) of the *Social Housing Reform Act, 2000* or that deal with programmes under Subsection 5 (2) of the Act shall ensure that the housing project or programme contains the number or percentage specified by the regulations of modified units and units that comply with the criteria and requirements specified by the regulations for accessibility for persons with disabilities.”

We were deluged that day with more media attention and coverage than in any single day in the previous seven years. This came without our having time to assemble a press release. Public affairs programmes that had taken years to show any interest in the ODA issue came to us that day asking for interviews on the spot.

We learned that day that we had finally won our multi-year battle for public hearings on the bill. As of that day, we didn't yet know when they would be taking place. We knew that there would be little time available and lots of work ahead.

13) A CRITICAL LOOK AT BILL 125

a) ODA Movement's First Reaction To Bill 125

Our initial reaction to the bill was that it was a substantial let-down. It needed major amendments to achieve the Government's stated vision of reaching a barrier-free Ontario. We announced that we would bring forward amendments to accomplish this.

Within hours of the bill's introduction, we had emailed the text of the bill around Ontario. This gave unprecedented access to it for all to scrutinize. We immediately began receiving feedback from ODA supporters around Ontario. Many had taken the time to plough through the bill's convoluted wording over the first day after the bill was released, even before the ODA Committee had a chance to offer its own detailed analysis of the bill. People were angry and very disappointed with the bill.

We made intensive use of the internet over the next five weeks, to gather more feedback on the bill, and to ensure that everyone who had access to it could follow and take action on late-breaking events. We emailed out all the media coverage, legislative debates, and other information we had received, and rushed it onto our website. Hundreds of people forwarded this information on to others, and closely watched these events, while planning their own responses to the bill.

b) ODA Committee's First Thorough Analysis Of Bill 125

Two days after Bill 125 was introduced into the legislature, the ODA Committee used its website and email network to broadly circulate a more thorough analysis of the bill's provisions. It used the Legislature's unanimous resolutions about the ODA, the Government's own statements in connection with the bill, and the ODA Committee's 1998 blueprint for the ODA as the yardsticks for assessing the bill.

The ODA Committee's initial analysis of Bill 125 concluded that the bill, as then written,

“- is not consistent with the 11 principles enunciated by the *Ontarians with Disabilities Act* Committee and unanimously adopted by a resolution in the Ontario Legislature on October 29, 1998.

- does not achieve the barrier-free society for Ontario's 1.5 million people with disabilities, as proclaimed in the Government's own vision statement released on Nov. 1, 2001; and

- is not a “strong and effective” law, as required by the Ontario Legislature’s unanimous resolution adopted on November 23, 1999.”

The following is the text of the ODA Committee’s initial analysis of Bill 125 in material part:

“The bill is vaguely drafted and confusing. This makes it difficult to understand how many of its provisions will work, and raises a number of key questions.
. . .

The bill will require substantial amendments to achieve the Government’s vision and goals. This analysis assesses Bill 125 from the standpoint of 11 principles for the ODA. . . .

Prior to the release of the legislation, the *Ontarians with Disabilities Act* Committee released a series of six questions to be used to measure the proposed legislation. This analysis is based on those questions:

1. Does the proposed ODA include protection for all disabilities, physical, mental and sensory, be the disability visible or invisible?

The bill uses a definition of disability similar to that in the Ontario *Human Rights Code*, with more updated, contemporary terminology. On a first read of the bill, it appears to include all physical, mental and sensory disabilities including invisible as well as visible disabilities. However, a main thrust of the bill’s provisions appears to focus on barriers faced by persons with mobility disabilities.

For example, the only guidelines that are required to be developed under this legislation relate to the design of newly-acquired or newly-leased Government buildings, and Government buildings which are significantly renovated in the future. The minimum standard is at least the existing standards in the Ontario Building Code. There is no requirement that those design guidelines meet the needs of persons with all types of disabilities that are not dealt with in the Building Code. There is no assurance, in any of the bill’s consultation mechanisms, that the views and needs of persons with all types of disabilities will be taken into account.

2. Does the proposed ODA cover the removal and prevention of barriers in all aspects of life in Ontario whether in the public or private sector, such as: in employment and the enjoyment of goods, services and facilities e.g. transportation, health care, education and training, communication and access to information?

No. The bill only requires the creation of plans for barrier identification, removal and prevention in the public sector, including the Ontario Government itself, the broader public sector (including public transportation providers) and municipalities.

The bill permits the creation of guidelines, standards, protocols and regulations that may apply to the private sector if the Minister and Ontario Government later choose to do so. The Government may also choose to turn these guidelines and standards into regulations that would cover specific organizations or sectors. However, there is no obligation on the Ontario Government ever to create these guidelines or to turn them into regulations, nor to cover every area of the private sector, or even every area of the public sector (since the bill permits the Government to unilaterally grant exemptions).

For the past 20 years, the Ontario Cabinet has had an authority under the Ontario *Human Rights Code* to create regulations on standards in this area. Even though the Commission has had detailed policy guidelines on accommodating the needs of persons with disabilities for over a decade, the Government has not chosen to make those guidelines into regulations.

3. Will the proposed ODA require that detailed standards be set for the removal and prevention of barriers through a consultative process with key stakeholders including people with disabilities, business, and others in the specific sectors affected?

No. The bill permits a confusing and complicated range of different types of standards, guidelines and protocols to be developed and possibly (though not mandatorily) turned into regulations. There is no clear definition as to what a guideline, standard, code or protocol is, nor what the difference is between these types of documents.

The only guidelines that the Government is required to make are design guidelines for Government buildings that will apply only to newly-purchased or newly-leased Government buildings, or to Government buildings that are significantly renovated after this bill comes into effect. The guidelines would not apply to buildings currently used by the Government unless the Government plans to significantly renovate them.

The Government must make guidelines regarding the preparation of accessibility plans and policies. There is also the optional power to make regulations governing the preparation and content of accessibility plans and policies. This suggests that the guidelines (which must be made) refer only to the process, not the content of the accessibility plans

and policies. There is no requirement that any regulations ever be made regarding the preparation or content of these accessibility plans and policies. In the narrow category of guidelines which the Ontario Government must make, the bill imposes no time frame within which the Government must develop them.

For the most part, in the case of Government acquiring new property or goods, e.g. for capital expenditures, the only obligations which the bill imposes on the provincial or municipal Governments are merely to “have regard” to the issue of accessibility. To “have regard” can be seen as a loose, minimal obligation. There appear to be no standards or guidelines set in the bill against which the assessment can be made. There is no requirement for the Government in question to document the process. There is no right for persons with disabilities to appeal from a decision. There is no public reporting on these decisions or any consequence if the Government chooses to go ahead and make a major capital expenditure which creates new barriers, using taxpayers’ dollars.

In terms of consulting with the disability community, the legislation is vague. It imposes very limited requirements on the Ontario Government to consult with persons with disabilities, or even with its own new provincial Advisory Council.

The only mandatory consultations prior to any kind of standard-setting in this bill appear to be in the case of the guidelines regarding new Government building accessibility, and limited consultation at the municipal level. The design guidelines must be created by the Government of Ontario in consultation with “persons with disabilities and others.” It does not specify what ministry is responsible for developing these guidelines, nor what type of consultation is required.

At the municipal Government level, the municipal council must consult with the municipal accessibility advisory committee with respect to access to buildings owned or leased by the municipality (apparently again, only new building acquisitions or renovations). That advisory committee must include persons with disabilities (although not necessarily a majority). There is no requirement of broad consultation with persons with disabilities in the community.

In terms of other consultation, the bill permits the designated Minister to direct the new Ontario Government office, the Accessibility Directorate, to consult with stakeholders chosen by the Minister to develop the codes, codes of conduct, formulae, standards, guidelines, protocols and procedures related to the subject-matter of the bill. After these are developed, the Cabinet has the option of making these into regulations if it wants, and it can change them as it wishes, without any

consultation. There is nothing in the section relating to the consultation by the Accessibility Directorate that requires the Minister to direct the directorate to consult with persons with disabilities.

Similarly, the new provincial Accessibility Advisory Council, which is required to have a majority of persons with disabilities, is not required to consult with persons with disabilities in carrying out its mandate. The new provincial Advisory Council has a very limited role with no authority to initiate its own research or investigation except within the narrow confines of its mandate, unless directed to do so by the Minister. It has only the power to advise. Its advice is not binding on anyone. The Minister is not required to explain to the Council or the public why the Minister does not follow the provincial council's advice. The Council is required to report on its activities to the Minister. There is no requirement that the report or the advice provided by the Council be made public.

The Minister's announcement of this bill and publicity about it speaks to putting persons with disabilities "in the driver's seat." It is difficult to reconcile that statement with the bill itself. The Advisory Council at the provincial level, and the accessibility advisory committees at the municipal level, are put forward by the Ontario Government as the key mechanism for achieving that goal. As discussed above, their own participation in the consultation process is very limited. Most of the consultation, where it exists, is done not through these advisory bodies but through the Accessibility Directorate, which is a part of the Ministry of Citizenship, and responsible and accountable solely to the Minister. There is no requirement that the staff of that directorate include persons with disabilities.

Like the provincial Advisory Council, the bill's provisions regarding the municipal advisory committees have many serious weaknesses. They, too, can only "advise." The municipalities never have to listen to them, accept their advice, or even meet with them or answer them. These advisory bodies have no power to require disclosure of information from the Government they advise, in order to know what is going on. If that Government ignores or rejects their advice, it need give no explanation or reasons.

Moreover, under this bill's provisions, these advisory bodies are not selected by the disability community. The disability community, in fact, has no say in who sits on them. The provincial Advisory Council is appointed by Cabinet. The bill does not specify how the municipal advisory councils are to be appointed.

There is no requirement that different disability groups be represented on these advisory bodies.

4. Does the proposed ODA provide a process for ensuring that barriers are removed and prevented in a timely manner?

No. The bill does permit regulations to be passed setting time frames for meeting any obligations set out in the Act. However, there is no requirement to make any such regulations or to set a time limit.

There is nothing in the bill that actually requires barriers identified in the plan to be removed or prevented. It only requires the making of an annual plan by a range of public sector organizations. The bill also adopts or reaffirms certain existing obligations i.e. those under the Ontario *Human Rights Code*. A new bill is not needed to say that persons with disabilities have those existing rights.

The bill gives considerable authority to the Government to unilaterally exempt Government ministries, the broader public sector, agencies and the private sector from obligations under this bill. The bill imposes no limits or criteria on this broad exemption power, nor any accountability for the Government when it is exercised. There is no right of persons with disabilities to appeal from the Government's granting an exemption. The Government is not required to give any reasons or any rationale for granting an exemption. For example, the Government could exempt all hospitals from complying with the bill without having to have a good reason or to justify its decision.

5. Does the proposed ODA establish an effective mechanism beyond individual complaints to enforce these new standards?

No. The bill does not impose an enforcement mechanism. The language of some of the provisions sound as though there are mandatory requirements by stating that the Government "shall," or the municipality "shall." However, there is no form of penalty or other consequence for failing to comply. There is no independent and impartial review of these actions. No independent body or agency is required to review or investigate the actions of organizations covered by the bill. There is no provision that states that failure to comply with the provisions of this bill is a violation of the Ontario *Human Rights Code*.

The only "enforcement" which the bill imposes is the requirement that plans be made public. However, the public is not granted ready access to information about the actual circumstances of Governments, agencies or organizations that are supposed to be removing and preventing barriers. There are no clear guidelines, or requirements for Government bodies to publicly justify their decisions for failing to remove

and prevent barriers. As such, public review of these plans seems toothless.

The bill provides no avenue for a member of the public to make a complaint about non-compliance. An individual with a disability who faces a barrier must still resort to battling one barrier at a time, by filing a complaint under the Ontario *Human Rights Code*.

The provincial Advisory Council, which may advise the Minister generally on the implementation of the Act, has no authority to take any proceedings, compel access to any information, or obtain any remedy for anyone.

6. Does the proposed ODA reduce existing rights of people with disabilities?

This question requires additional review. The legislation specifically states that the legislation does not limit the Ontario *Human Rights Code*. However, we have not yet had time to review carefully how this legislation will interact with the other legislation being amended or affected.”

Bill 125 also proposed to amend a series of other pieces of legislation. This is discussed further below. The ODA Committee’s initial analysis of Bill 125 did not address those provisions.

Shortly after the ODA Committee released this analysis of Bill 125, it received a substantial amount of feedback from ODA supporters on this analysis of the bill. That feedback overwhelmingly accorded with this analysis. Although the Government conducted an aggressive campaign to market its bill, and was closely monitoring what the ODA Committee and others had to say about it, it never contested the contents of the ODA Committee’s analysis of Bill 125. It never released any point-by-point refutation of the ODA Committee’s analysis of the bill.

c) A Closer Look At One Of Bill 125’s Features

Although our initial analysis of the bill did not fully explore this, it seemed curious that the Government chose to include in Bill 125 the creation of the new provincial Accessibility Advisory Council, and municipal Accessibility Advisory Committees. These were not part of the ODA Committee’s blueprint for the ODA. We had witnessed no grass-roots movement calling for these to be established.

On further reflection, with the benefit of hindsight, the Government may well have had several things in mind when it proposed creating these bodies, and in so prominently showcasing them as major selling-points for their bill. Citizenship Minister Jackson had come to realize

that there was a strong feeling among ODA supporters around Ontario that persons with disabilities had been systematically disregarded and disenfranchised. They wanted a real sense of control over their lives. Trying to harness that spirit, Minister Jackson repeatedly claimed that this bill would put the disability community “in the driver’s seat” to drive reforms.

Yet on closer scrutiny, these municipal advisory committees and the provincial Advisory Council fell far short of this rhetoric. They had no real power. This could well have been the Citizenship Minister’s selling point in getting the organized municipal Government sector and his Cabinet colleagues to endorse this aspect of the bill.

Moreover, the disability community would have no say in who sat on these bodies. The provincial Government would choose who would sit on the provincial Advisory Council. Each municipality would choose who sat on their municipal accessibility advisory committee. If the applicable Government wished to ensure that their advisory body would not rock the boat, they could hand-pick a membership that would fill that bill. This all could also have made this bill more acceptable to the municipal Government sector and the Conservative Government.

This strategy looked to be part of a larger Conservative Government aim, namely to get activists within the disability community off the Ontario Government’s back. By setting up a wide array of municipal committees, the Conservative Government may well have hoped that ODA activists in local communities would get on these local committees. They would exhaust all their energy pressuring their local municipal Governments. This would leave them less time and energy for directing their advocacy efforts at the Ontario Government.

There was no doubt that Citizenship Minister Jackson had brokered the content of Bill 125 in advance with the municipal government sector. When the Conservative Government introduced Bill 125 into the Legislature for First Reading on November 5, 2001, one of its few public supporters was the Association of Municipalities of Ontario (AMO). AMO is a coalition of many Ontario municipalities. It serves as the political voice of Ontario’s municipal government sector. Its president, Oakville mayor Ann Mulvale, stood beside Citizenship Minister Cam Jackson at his November 5, 2001 Queen’s Park news conference to endorse his bill.

AMO’s endorsement of that weak, limited bill flew in the face of the many local resolutions passed by municipalities around Ontario supporting the ODA cause. Many of those resolutions had called for a strong ODA that complied with our 11 principles. The municipalities

and regional governments that had adopted supportive resolutions on the ODA issue reflected a clear majority of the population of Ontario, as well as the full diversity of communities from the largest cities to the smallest towns.

While AMO President Ann Mulvale may have had a dialogue with the Conservative Government on this bill, she unfortunately had not had any dialogue with us. We had written to her in June of 2001 seeking an opportunity to work together with her and AMO. Regrettably, Ms. Mulvale never responded to our letter. We had earlier spoken with some lower-level AMO policy staffers. However, they had little if any authority to set AMO's position on the ODA issue.

AMO's failure to meaningfully consult with us on its approach to the ODA issue, despite our request, was quite ironic. In endorsing the Conservatives' ODA bill, AMO was supposedly signing onto the Conservative Government's stated agenda of valuing input from the disability community.

Beyond the foregoing, the Conservative Government's creation, or perhaps more accurately, restoration of a provincial disability Advisory Council gave the Conservative Government a potential cosmetic answer to a criticism that had nagged them for years. Throughout this saga, the Ontario Government was widely criticised for not listening to the disability community, including the ODA movement. By creating a provincial council that the Government itself would hand-pick, it could claim that it is now engaging in ongoing consultations. Of course, this would be limited to consulting with a small number of people whom the Government had hand-picked. It would be limited to those issues on which the Government chose to consult.

These municipal accessibility committees and the provincial Accessibility Advisory Council could give their members a genuine sense of having real power, or of "being in the room" where important decisions are made. Veterans of Government know how to use such systems, and such perceptions, to divert the energies of constituencies, if they wish.

Nevertheless, an activist provincial council or municipal advisory committee, if committed to mandatory action to achieve barrier-removal and prevention, could try to push the limits of this very weak system. They could hold their meetings in public, hold public consultations, and make public statements calling for strong, effective Government action. They could use the media to put pressure on the Government they were appointed to advise. A provincial or municipal Government would be hard-pressed to take real steps to muzzle an advisory body that did this, for fear of creating bad media publicity for that Government. In the end,

these advisory bodies would have to decide whether they would serve as a voice to Government in support of the disability community, or whether they would instead serve as the Government's voice to the disability community.

14) NOVEMBER TO DECEMBER 2001: CAMPAIGNING TO STRENGTHEN BILL 125

a) The Blitz To Improve Bill 125 Begins

Once the initial flurry over Bill 125 subsided, the ODA movement had to again do what it did so many times in the past - it had to set its sights on a clear immediate goal, and then concentrate all of its attention on a short list of activities to achieve that goal. The ODA movement's goal was to get Bill 125 improved before it was passed. We knew that the Government planned to pass it. It therefore made sense to do what we could to beef it up.

To achieve this goal, we had to immediately get to work developing a package of amendments to put forward. We knew that public hearings would be rushed, so this had to top our agenda. We didn't have the luxury of time for extensive research, reflection and protracted debate. The ODA Committee also had to monitor legislative developments closely, such as debates on the bill in the Legislature, and quickly let ODA supporters know about them.

As we were doing this, we needed to again rally ODA supporters to apply to attend and present at public hearings, and to publicize these hearings. As we suspected, the Government did not widely publicize these hearings in advance. Newspaper ads were placed at the last minute. If interested people and organizations were going to find out about the hearings in order to participate, we correctly projected that they would have to find this out from us, not from the Government. No doubt the Government was not eager about these hearings. It appeared again to fear adverse publicity and to prefer as few as possible to take part in them.

We urged ODA supporters to start drafting submissions to send to the Standing Committee that would be holding hearings. The ODA Committee asked one and all to share their ideas with us so it could incorporate them in any amendments it was crafting.

As they had done so often in the earlier series of mini-campaigns and blitzes over the years of this saga, ODA supporters around Ontario again hit the ground running. For example, the ODA Committee's Lon-

don region hastily convened a public ODA forum. This gave an opportunity to brief members of the public on the contents of Bill 125, and to give tips on how to get active in advocating for improvements to this bill. This, like many ODA London events, was spearheaded by the unstoppable ODA Committee London Regional Contact Cathy Vincent-Linderoos. There was also ongoing local and provincial media coverage of the ODA issue. This included an hour-long province-wide CBC radio call-in show where criticisms of Bill 125 came from people around the province.

Several of Canada's major and most venerable disability service organizations called a major Queen's Park press conference to criticize Bill 125, including the Canadian Mental Health Association (Ontario Division), the Canadian National Institute for the Blind, the Canadian Hearing Society, the Ontario Association for Community Living, the Multiple Sclerosis Society of Canada, the Spina Bifida and Hydrocephalus Association of Ontario, the Canadian Paraplegic Association (Ontario), and the Muscular Dystrophy Association of Canada. They declared that this bill was incapable of meeting its stated goals. Their open letter to the Government stated:

"In our view, in many important respects, Bill 125 still falls significantly short of the goal you have been championing. This is particularly the case for people who are blind, deaf or hard of hearing, or for those with developmental disabilities or disabilities caused by mental illness. For them, we fear the legislation, in its current form, will make very little difference."

These organizations summarize the following important common concerns:

"Currently, the bill lacks a significant role or authority for the Advisory Council and the lack of an effective mechanism for meaningful disability input into all standards to be made under the bill.

There is a lack of specific legislated time frames for the creation of effective regulations that will remove barriers across all sectors.

There is a lack of any real enforcement or mandatory barrier removal and prevention requirements other than for parking violations under the Highway Traffic Act."

We had known for years that the Government would feverishly be looking for any individuals with disabilities and disability organizations to endorse whatever bill they introduced, no matter how weak. The Government would trumpet any supporters they could find. If ODA supporters got into a huge public debate with other people with disabilities, the Government might just sit back and say that you can't please

everyone. The Government would predictably hope that the public would tune out any major debate among persons with disabilities themselves, and wouldn't study the bill's fine details.

We also knew that out of over 1.5 million Ontarians with disabilities, the Government might well find someone who would settle for any bill no matter how weak. This might be either because they felt that anything, no matter how weak, is better than nothing, or because the Government would reward them in some way for their public endorsement. We had two strategies to deal with this.

First, the ODA Committee did its best throughout this multi-year campaign to educate ODA supporters and the broader disability community on the key features that the ODA needed to contain to be strong and effective. On this score, the ODA movement did a tremendous job of absorbing obscure and complicated legal and policy ideas, and of relating them to the media in accessible lay language. Second, it decided not to engage in a divisive public debate with those who, for whatever reason, were prepared to endorse a weak ODA bill. This built upon its strategy, dating back to the ODA movement's earliest days, of moving forward by trying to educate as many as possible, without being side-tracked by any who did not agree with its message.

b) The Legislature Begins Formal Debates On Bill 125

From the moment the Government introduced Bill 125 on November 5, 2001, the ODA repeatedly came up day after day in the Legislature, during daily Question Periods, during Second Reading debates which spanned three days, during several hours of debate over the Government's closure motion, and collaterally during debates over other subjects. The Government defended its bill as the best thing done for persons with disabilities in Canada. The opposition parties echoed our criticisms of the bill.

We monitored these debates closely, and circulated them widely. The flood of information became formidable. We wanted to keep ODA supporters posted on what was happening at Queen's Park, and to closely track the steady stream of feedback we were receiving from all corners of the disability community.

The ODA Committee provided ODA supporters with a "reality check" on Government statements whose factual content we disputed. Some examples are:

The Citizenship Minister had said that the disability community is given input into the regulations and standards to be set under the bill,

and is put in the driver's seat to drive change. According to our analysis, this was not the case. The bill did not require consultation with persons with disabilities or the new Government-appointed Disability Accessibility Advisory Council, except for consultation on the accessibility of newly-acquired or newly-renovated Government buildings.

The Citizenship Minister had stated that Bill 125 contains the 11 principles put forward by the ODA Committee and unanimously adopted by the legislature on October 29, 1998. Our analysis concluded that Bill 125 only fully incorporated one of these 11 principles, namely Principle 8 - that the ODA should mandate the Ontario Government to offer education and resources to those who must comply with the ODA. It fell short on the ten other principles.

The Citizenship Minister had presented the proposed Government-appointed provincial Accessibility Advisory Council and the new Government office, the provincial Disability Accessibility Directorate, as new bodies that put Ontario in a leadership role across Canada. We pointed out that Ontario had a similar provincial advisory body for years before this Government took office. This Government abolished that body within weeks of taking office. Several other provinces also have advisory councils, in some cases established by legislation. A provincial disability office had also existed in Ontario in one form or another for years, though it had been downsized in recent years.

Finally, the Government had made some inaccurate statements about the *Americans with Disabilities Act*. The Citizenship Minister had said that under the ADA there is a 30-year window for compliance and that Ontario would become barrier-free much more quickly. We pointed out that in fact, the ADA came into effect immediately and required barrier removal shortly after it was passed. We noted that there are various time frames under the ADA but only one very specific area that may allow up to 30 years for complete barrier removal.

c) A Legislative Process Full Of Barriers

The Government created a number of barriers impeding persons with disabilities from fully participating in the democratic legislative process around Bill 125. This was so despite the ODA Committee's early call for that process to be barrier-free. For example, the Government brought Bill 125 forward for Second Reading debate in the Legislature with less than 24 hours' notice. This ensured that large numbers of persons with disabilities could not arrange accessible transit in advance, to attend the legislative proceedings. Earlier that Fall the ODA

Committee alerted the Government that ODA supporters had wanted sufficient notice to be able to attend all debates on the ODA in the Legislature.

In the middle of November 2001, the Government was on the verge of convening public legislative hearings on Bill 125, without having first ensured that there would be sign language interpretation at the hearings. When we learned this, we alerted the media. A rush at Queen's Park to find interpreters followed. The Government managed at the last minute to avoid that potential barrier and embarrassment.

The Government used its majority in the Legislature to vote through a "closure" resolution, which superimposed a very tight series of time lines for all debates on the ODA. Its timetable impaired the Legislature's capacity to adequately consider the bill.

Perhaps worst of all, the Government used its majority to schedule rushed public hearings on Bill 125 for six days, in five cities. Its schedule gave persons with disabilities as little as 24 hours' prior notice that they could attend and participate. This serious barrier appeared to be deliberate. We had repeatedly warned the Government at the highest levels not to do this, well before they decided to do so.

The opposition parties did what they could, in the Legislature and outside, with minimal success, to use the limited parliamentary tools at their disposal to tear down the barriers that the Government had created in this legislative process. On November 8, 2001 NDP Disability critic Tony Martin unsuccessfully tried to delay Second Reading debate on Bill 125, on the grounds that there was no advance notice to persons with disabilities, who therefore couldn't overcome the barriers to attending that legislative debate. Also, the opposition parties offered to the Government to agree that the Legislature allow hearings to be held in January 2002, with adequate advance notice to the disability community, and then to have the Legislature resume for one day at the end of that month to vote on this bill for Third Reading. This would have kept the Government close to its timetable, while removing the barriers to full participation in the process that the Government had created. The Government did not accept these offers.

ODA supporters faced a difficult dilemma regarding these legislative procedural headaches. On the one hand, we wanted the process slowed down enough to enable persons with disabilities to fully and effectively participate. On the other hand, the Government criticized the ODA Committee for asking them to slow down, when we had previously complained about the Government's six-year delay on their ODA promises. It was a cruel irony that the Government first delayed for so long

on the ODA, and then carefully mapped out a rushed schedule to create new barriers. It blamed the ODA Committee for reacting to this unnecessary conundrum, when the stated aim of their legislation was the removal and prevention of barriers against persons with disabilities.⁵⁶

The Legislature's November 23, 2001 deadline for the ODA came and went, with no ODA bill then passed. The bill before the legislature on that date was not "strong and effective," as the Legislature had unanimously required it to be, according to the Legislature's November 23, 1999 resolution.

Amidst the flood of media coverage as this legislative drama unfolded, the Toronto Star published a compelling editorial on Monday, December 10, 2001 on the eve of clause-by-clause debate on Bill 125. It called on the Ontario Government to take the time required to consider the amendments needed to make Bill 125 strong and effective.

d) The ODA Committee's Proposed Amendments To Bill 125

After continuing to analyze the bill and soliciting ideas for amendments from ODA supporters, a draft ODA Committee package of amendments to Bill 125 was assembled. This was emailed to ODA supporters on November 26, 2001. It was quickly posted on the ODA Committee's website.

This made our draft amendments available not only to ODA supporters, but also to the Government and opposition parties. We wanted all concerned to start thinking about their own ideas springing from our draft proposals. ODA supporters could then give us feedback on our proposals. As well, our proposals would help everyone within the organized disability community set about drafting their own proposals.

We gathered feedback on our draft package of amendments. This feedback showed that many were giving the bill itself, the Government's rhetoric in support of it, and the details of our draft amendments very careful thought.

Drawing on the feedback we received, we rushed to finalize the ODA Committee's amendments package and to write a formal ODA Committee brief to accompany it. We knew our proposed amendments were far from perfect. They were prepared in an unbelievable rush. They

⁵⁶ It was a further cruel irony that after this rushed process, the Government later delayed proclaiming in force the ODA 2001's provisions for several months, as discussed further below. In the end, this was a case of hurry up and then wait.

were constrained by the content of the bill we were proposing to amend. We feared that if our amendments were so far-reaching that they amounted to a total re-write of the bill, the Standing Committee's chair might rule them out of order, thereby preventing the Standing Committee from even considering them.

Our aim in preparing these amendments was not only to try to get Bill 125 amended where possible. We also wanted to use this process to pin down the Liberals and NDP. Once these parties put forward amendments, if the Government rejected any, we could later turn to these opposition parties for commitments to pass similar amendments if they are later elected to power. This is exactly what the ODA Committee did two years later, in the 2003 election, as is discussed below.

By powerful coincidence, it was on November 29, 2001, the ODA Committee's seventh birthday, that the ODA Committee delivered its final 100-page brief on Bill 125 to the Legislature's Standing Committee on Finance and Economic Affairs. This was the Legislature's committee that was assigned the task of holding public hearings on this bill.

Our brief included the ODA Committee's final 30-page package of amendments, a detailed analysis of the bill's shortcomings, and an analysis which contrasted the bill's actual contents with the statements which the Government had made about the bill. This brief was circulated on the ODA Committee's email list and posted on its website. This again aided others who were rushing to prepare their presentations to the Standing Committee. That Committee's hearings were to start one day later, on November 30, 2001.

In sum, the ODA Committee's brief argued:

"This Government has made a number of statements about what persons with disabilities need and what they seek in this legislation. Their statements prove the case for enacting a strong, effective, mandatory and comprehensive ODA. However, Bill 125 does not live up to those statements by the Government. It does not achieve the benefits for Ontarians with disabilities, for Ontario's business community and for all Ontarians that a strong and effective ODA could bring. Both the Government's own public opinion poll and our public opinion research and feedback support the kind of ODA we have been seeking."

This brief summarized the ODA Committee's proposed amendments as follows:

"In this brief, the ODA Committee proposes a set of detailed amendments. These are designed to achieve four goals: to make the bill include all the things that the Government says it includes; to make the bill fulfil all 11 principles for the ODA (which the Legislature unanimously adopted by resolution on October 29, 1998); to ensure that the bill is "strong and effective" (in accordance

with this Legislature's unanimous November 23, 1999 resolution); and to clarify the bill's vague and confusing wording."

The amendments that the ODA Committee proposed would be:

- to make the ODA's stated goal the achievement of a barrier-free Ontario.
- to require that barriers against persons with disabilities in the public and private sectors be identified and removed along reasonable time lines.
- to require organizations not to create new barriers against persons with disabilities in the future.
- to specifically prohibit the Ontario Government and municipal Governments from using tax dollars to create new barriers against persons with disabilities, or from using tax dollars to purchase goods or services that create or maintain barriers against persons with disabilities, except where such goods or services are not reasonably available.
- to extend the ODA's requirements to any organization, whether in the public or private sector, that offers goods, facilities or services.
- to require the Government to set specific time lines for making Government buildings accessible to persons with disabilities having regard to such considerations as the cost of doing so.
- to explicitly require the Ontario Government to create and maintain a barrier-free employment environment for the Ontario Public Service.
- to require the Ontario Government, after proper consultations, to set standards for accessibility under the ODA. Bill 125 would allow the Government to set these standards if it wishes but would not oblige the Government to do so.
- to require that accessibility plans, made by organizations under the ODA, effectively address barriers in those organizations, to require that those plans be implemented, and to make those plans enforceable. Under Bill 125, only public sector organizations need make accessibility plans. Bill 125 leaves the removal and prevention of barriers in these plans entirely voluntary.
- to require that the provincial and municipal Governments give a timely response to any recommendations received from the provincial Accessibility Advisory Council or municipal accessibility advisory commit-

tees, and give reasons if advice from one of these advisory bodies is rejected.

- to give the disability community an opportunity for input into the nominees for membership on the provincial Accessibility Advisory Council and to ensure that the Council reflects a diverse membership.
- to require that the provincial Accessibility Advisory Council consult with the public including with persons with disabilities on the implementation of the ODA.
- to require that the Government make public the advice it receives from the provincial Advisory Council.
- to create an independent enforcement mechanism for the ODA.
- to fix time lines for the Ontario Government to take steps needed to implement the ODA.
- to require polling stations in a provincial election to be accessible to persons with disabilities unless impossible to do.
- to require that voters who are deaf, deafened, or hard of hearing be accommodated when voting, e.g. by providing sign language interpretation where needed.
- to require the Government to make the Ontario Legislature fully accessible to persons with disabilities within five years.
- to limit the sweeping exceptions and exemptions that Bill 125 included.

e) The Public Hearings

The all-party Standing Committee on Finance and Economic Affairs held six days of back-to-back hearings on Bill 125 in Windsor, Ottawa, Toronto, Thunder Bay, and Sudbury between November 30 and December 7, 2001. Because the governing Conservatives had a majority in the Legislature, they also had a majority of the seats on this committee. ODA supporters turned out as best they could to these hearings, both to make presentations and to cheer on those who spoke in favour of a strong ODA.

People travelled substantial distances to participate. For example, the ODA Committee's Sault Ste. Marie region arranged for an entourage to drive four hours, to participate in the Standing Committee's public hearings in Sudbury; others sent in written submissions if they could not attend in person.

The Standing Committee received hundreds of submissions. Its staff summarized these. We used the internet to circulate this summary.

The Standing Committee heard presentations from many organizations and from individuals who made their own personal presentations. The strong message, coming from most who presented, was that the bill desperately needed substantial amendments to make it strong and effective. The most commonly proposed amendments that presenters requested would extend the bill to barriers in the private sector, would make barrier-removal and prevention mandatory, would provide for effective accessibility standards and would provide for an effective new enforcement mechanism. Many presenters endorsed the ODA Committee's recommendations for amendments, and added their own good suggestions for additional amendments.⁵⁷

On December 5, 2001, the ODA Committee itself was one of the organizations to make a formal presentation to the Standing Committee. There was a good turnout of ODA supporters to watch and support that presentation.

In this presentation we had only about 20 minutes. We had to hone our message to try to make a difference. There was no point in using this hearing simply to reiterate what others had said criticising the bill. We did not need to convince ODA supporters or the Liberals and NDP, for they were all on side. Moreover, time did not permit us to get into any great detail on technical matters.

We therefore focused our presentation on highlighting a short list of the major amendments that the bill needed. We argued that these were needed to make the bill do what the Government what itself said the bill was supposed to do. In other words, we linked our suggestions to the Government's own rhetoric about the bill. This left the Government no wiggle room. They either had to live up to their rhetoric, or concede that the bill would not live up to their rhetoric.

We also left the Government and the media with one lasting message. The Government had hoped that by passing a bill, indeed by

57 The substantial tenor of presentations from individuals with disabilities and disability organizations was that Bill 125 needed dramatic improvements. While this was the overwhelming trend from the disability community, it was not unanimous. A few disability organizations simply voiced support for the bill, without strongly urging amendments. The Conservative Government repeatedly cited those few submissions in response to any criticism of Bill 125. No organization from within the disability community took the position that it was opposed to amendments to strengthen Bill 125.

passing any bill, they could close the ODA file, and permanently put this issue behind them. We emphasized in our presentation to the Standing Committee that unless this bill was amended to become strong and effective, to make a difference in the daily lives of persons with disabilities, ODA supporters would not let this issue go away.

The Government had been asked to make sure that London, Ontario was one of the places where the Standing Committee would hold its hearings. The Government refused. This was perhaps surprising, since the London area was one bell-wether part of Ontario, which swings in different elections. It seemed odd that the Government would want to be seen as snubbing a politically-vulnerable and populous part of the province as little as two years before an election might be held.

The ODA Committee's London region decided to take action, yet again on short notice. It organized a day of "shadow hearings" on Bill 125 on Saturday, December 8, 2001, the day after the Committee's formal hearings had ended without having travelled to London. Presenters at these shadow hearings echoed the strong message from elsewhere around Ontario supporting the need for amendments to the bill.

Attending the London shadow hearings were one NDP MPP, one Liberal MPP and two Conservative MPPs. This was an unprecedented turnout of Conservative MPPs at an ODA Committee-organized event.

f) Clause By Clause Debate - The Final Amendments

Once the Standing Committee finished holding formal hearings, the next step in the legislative process was for the Legislature's Standing Committee to decide what it was going to do with all the input it gathered. It does this by studying the bill and voting on proposed amendments, one clause at a time. This is called "clause-by-clause" debate of the bill. Of course, when there is a majority Government in power, it is not the Standing Committee itself but the powers that be within the Government who ultimately decide what changes to the bill will take place. Thereafter the Government directs their proxies on the Standing Committee to put those decisions into action. At most, the minority of opposition MPPs on that Standing Committee can propose amendments, make speeches, and cast their votes for the public record.

The three political parties had until noon on Monday December 10, 2001 to file with the Standing Committee all amendments they would place before the Standing Committee for consideration during clause-by-clause debate on the bill. This gave the parties a mere three days after

the formal public hearings concluded. This time was even shorter if one factors in the London shadow hearings.

The Government had used its majority to only allow the Standing Committee one day to consider all the amendments that the parties proposed. The opposition had tried without success to get this period lengthened, so that each amendment could be fully considered and debated. The Conservatives used their majority to block the committee from having any more time to debate amendments.

The Standing Committee's clause-by-clause debate occurred on Tuesday December 11, 2001. However, to us, the most critical point in time was high noon on Monday, December 10. We knew by then that both the opposition Liberals and NDP would table substantial packages of amendments that put into legal language the essence of all of the ODA Committee's 30 pages of proposed amendments. The Liberal and NDP packages were virtually identical.

We didn't know until noon on that critical Monday what amendments if any the Government would propose. Because the Conservatives controlled the Standing Committee, the moment of truth came when ODA supporters could see what the Conservatives would put forward. The Conservatives tabled a much shorter package of proposed amendments than did the Liberals or NDP. These made only modest adjustments to the bill.

Everything then unfolded at breakneck speed. As the parties' packages of amendments came to the ODA Committee on Monday, December 10, 2001, we rushed to email them out to ODA supporters and to post them on our website. These packages were being electronically distributed via our email network even before we had time to fully digest what they said.

ODA supporters turned out yet again in force to watch the Standing Committee's December 11, 2001 clause-by-clause debates and votes on each proposed amendment. As they had done throughout the hearings, the NDP and Liberal disability critics, Tony Martin and Ernie Parsons respectively, worked together in a non-partisan and constructive way to vigorously put forward the case for a strong, effective ODA. They pressed the Government MPPs to see the light.

The Conservatives on the Committee voted down virtually every amendment proposed by the opposition, except those few which were similar to amendments which had been included in the Conservative Party's package. The Conservatives also used their majority on the Committee to pass each of the amendments which the Government had put forward, with the exception of two. Citizenship Minister Jackson's

staff, present at the meeting, were passing notes to the Conservative Government MPPs on the Standing Committee, directing them on what positions to take on the amendments.

Because of the Government-imposed time limits for the Standing Committee for clause-by-clause debate of this bill, each party was given only a few minutes to speak to each proposed amendment. Even then, this only allowed for any debate by MPPs on a minority of the bill's provisions and the proposed amendments. Partway through the day, the Conservatives forced the Standing Committee to summarily vote on each remaining clause of the bill and each remaining proposed amendment in rapid succession, without any debate on them whatsoever.

During this rapid-fire process, the Government withdrew two of its proposed amendments, in favour of opposition amendments that addressed the same issue. These were as follows:

First, the Government withdrew its proposed amendment to the definition of "barrier" in Section 2 of Bill 125, and instead supported the amendment to that definition which the Liberal Party put forward.

Second, the Government withdrew its proposed amendment to Section 3 of the bill which was intended to preserve rights which persons with disabilities enjoy under other legislation. Instead, it supported the NDP amendment to that.

In the end, the Committee passed amendments covering fully 15 of the 33 sections of Bill 125. This signified how deficient the initial bill had been, even on the Government's own grudging recognition. The amendments that the Government permitted included:

DEFINITION OF BARRIER: The bill's definition of "barrier" was considerably broadened to include: "anything that prevents a person with a disability from fully participating in all aspects of society because of his or her disability, including a physical barrier, an architectural barrier, an information or communications barrier, an attitudinal barrier, a technological barrier, a policy or a practice." This removed the bill's previous requirement that something could be a barrier only if it blocked persons with disabilities while not blocking anyone else. The revised definition also added some additional examples of barriers. Its list is not intended to be exhaustive. This was the only Liberal Party amendment that the Government accepted.

DEFINITION OF DISABILITY: The bill's definition of "disability" in Section 2 and the corresponding definition of disability in the Ontario *Human Rights Code* were amended to explicitly include "a brain injury."

RECOGNITION OF EXISTING LEGAL OBLIGATIONS: Section 3 of the bill was amended by the only NDP proposal which the Conservative Government accepted, to provide that nothing in the ODA “diminishes in any way the existing legal obligations of the Government of Ontario or any person or organization with respect to persons with disabilities.” This provided a better assurance than had the original bill’s wording that nothing in the ODA can be used to reduce the rights of persons with disabilities. Originally, the bill had said only that nothing in the ODA “limits the operation of the Human Rights Code.”

PUBLIC INPUT INTO REGULATIONS: Perhaps the most significant change to the bill which the amendments made was to provide for an avenue for public input into regulations.⁵⁸ In Ontario, there is usually no legal process provided to ensure that the public has input into regulations. The amendments included the following new step for this process: before Cabinet can make any regulation under this bill, it must first publish a draft of it in *The Ontario Gazette*, and then allow interested persons a reasonable opportunity to make comments on the draft to the Accessibility Directorate of Ontario. People with disabilities would therefore have advance notice of possible new regulations, and a chance to voice concerns and suggestions. There was no assurance that the Government would listen to this advice, but the door had been opened for people with disabilities to try to have their say.

ONTARIO GOVERNMENT INTERNET SITES: Section 6 was amended to require the Ontario Government to “provide its internet sites in a format that is accessible to persons with disabilities, unless it is not technically feasible to do so.” This changed the wording in the original bill, which had only required the Government to provide accessible websites “where technically feasible.” The burden of justifying an inaccessible Ontario Government website was placed on the Government by this amendment. The Government would therefore have the duty to make each of its websites accessible, unless the Government can show that it is not technically feasible in a particular instance. Nevertheless the ODA still contained no procedure for enforcing this provision.

GOVERNMENT PUBLICATIONS: Section 7 of the bill was replaced with new wording requiring that, after the Government of Ontario

58 “Regulations” are laws which are made by a delegated body, such as the provincial Cabinet, rather than by the Legislature. The Legislature can by a provision in legislation give the delegated body power to make certain categories of regulations. Under Bill 125, the provincial Cabinet was given a wide range of powers to make regulations to implement the bill, if it wished.

receives a request for a Government publication in an accessible format, “the Government of Ontario shall make an Ontario Government publication available in a format that is accessible to the person, unless it is not technically feasible to do so.” As in the amendment to Section 6, this reversed the burden from the original bill. The bill had originally said that the Government had to provide these publications in an alternative format, only “where technically feasible.” The bill as amended presumed that all publications can be made available in an alternative format, and exempts the Government from this provision only where it could show that it is not technically feasible. As in the case of Section 6, however, the bill, even after this amendment, did not provide a place to go to complain and to get enforcement, beyond existing rights to make complaints to the Ontario Human Rights Commission.

DUTIES OF MUNICIPALITIES: The amendments made the following changes regarding municipalities:

- (a) The amendments required all municipalities to make annual accessibility plans. Previously, the bill had required this only of municipalities with a population of at least 10,000.
- (b) The municipality is required to undertake consultations on the preparation, implementation and effectiveness of its accessibility plan. If the municipality has a population of at least 10,000, it must do this consultation with its disability advisory committee. If the municipality has a smaller population, it may either establish a disability advisory committee to consult with, or it must consult directly with persons with disabilities and others.
- (c) A majority of the municipal disability advisory committee must be made up of persons with disabilities. The original bill had no such majority requirement.
- (d) The amendments empowered the municipal advisory committees to review site plans and drawings for new building construction under the Municipal Act, which the Committee can request the municipal council to provide. The amendment did not require the municipality or anyone else to accept any advice on the site plans that the advisory committee might give.
- (e) Where more than one municipality or other body identified in the regulations are allowed to make a joint accessibility plan,

they are also allowed by the amendments to establish a joint disability accessibility committee.

ACCESSIBILITY PLANS OF PUBLIC TRANSIT ORGANIZATIONS AND “SCHEDULED ORGANIZATIONS”: The amendments required public transit organizations and “scheduled organizations” (e.g. hospitals and universities) to consult with persons with disabilities and “others” in preparing their annual accessibility plans.

ENFORCEMENT: The amendments provided for a new provision, Section 21, to create a limited enforcement mechanism for ministries, municipalities, public transit organizations and other organizations if they are required to make an accessibility plan, and either don’t make the plan at all or don’t make their plan public. The amendments made it an offence punishable by a fine up to \$50,000.00, for these organizations if they either to fail to make a plan where required, or to fail to make the plan public. The amendments similarly made it an offence for a municipality to fail to establish a municipal disability advisory committee, where it is required to do so under the bill. Those organizations which the bill defines as an “agency,” and which are required to make an accessibility “policy,” (not an annual plan) commit an offence with the same penalty, if they fail to make an accessibility policy.

ROLE OF PROVINCIAL ACCESSIBILITY ADVISORY COUNCIL: The amendments added to the role of the provincial Accessibility advisory council the tasks of advising, at the Minister’s direction, on the implementation of the ODA and the preparation of regulations. The original provision, on advising the Minister on access by persons with disabilities to employment in Ontario, was also replaced with these words: “the accessibility for persons with disabilities to employment opportunities in economic sectors in Ontario.” It is not clear that this added anything of substance.

ROLE OF THE PROVINCIAL ACCESSIBILITY DIRECTORATE: The amendments obliged the Accessibility directorate, a new Government office, to do the following, in addition to other tasks already outlined in the bill, all at the Minister’s direction:

- (a) consult with the provincial disability advisory council;
- (b) ask that organizations which produce accessibility plans or policies provide them to the directorate;
- (c) review these plans or policies;

- (d) consult, as the Minister directs, with the provincial advisory council, persons with disabilities, and others that the Minister directs, to develop codes, codes of conduct, formulae, standards, guidelines, protocols and procedures under the bill. This presumably was intended to relate to voluntary codes for the private sector;
- (e) consider the feedback that the Government receives on draft regulations, and provide recommendations to the Minister on these.

MUNICIPAL ELECTIONS: The amendments changed the Municipal Elections Act. That Act will now require that vision impaired voters be provided with a ballot that they can mark without assistance, during a municipal election. Previously, this had not been mandatory. It had only been optional.

These amendments, taken together, did not make Bill 125 “strong and effective,” as was promised in the Legislature’s unanimous resolution of November 23, 1999. They did not bring the bill into compliance with all 11 principles for the ODA, which the Ontario Legislature approved by a unanimous resolution passed on October 29, 1998. They did not fulfil the Government’s own November 1, 2001 “Vision Statement” calling for a barrier-free Ontario.

Despite this, these amendments did make a number of improvements. They responded to some of the criticisms of the bill and some of the proposed recommendations for amendments, which the ODA Committee and other ODA supporters brought forward in their presentations and briefs to the Standing Committee.

g) Third Reading And Royal Assent

While Bill 125 was before the Standing Committee, heated exchanges about this bill continued to fly across the floor of the Legislature. In accordance with the Government-imposed timetable for this bill, the bill was brought back before the Legislature for Third Reading two days after clause-by-clause debate, on the evening of December 13, 2001. This was the last evening of the last day that the Legislature sat with Premier Harris as Premier. The Government allowed Bill 125 to be debated for only one hour. The final vote occurred around 10:00 p.m. It was the last piece of legislation the Legislature voted on that evening. Thus it was the last piece of legislation passed under the Conservative Government, when Premier Harris was at its helm.

Bill 125 passed on Third Reading. Both opposition parties voted against it. They favoured the adoption of a bill which would fulfil our 11 principles for the ODA. The Liberal and NDP caucuses said they decided to vote against the legislation, to show their support for an *Ontarians with Disabilities Act* that would be strong and effective, that would require barriers to be removed and prevented in all sectors of society, and that would have effective enforcement. Both opposition parties committed to pass such legislation, if elected to power after the next election.

As mentioned in this account's introduction, the Legislature was quite empty of ODA supporters when Bill 125 passed. This was a striking contrast to the scene when it was first introduced six weeks earlier. When Bill 125 passed Third Reading, Citizenship Minister Jackson had no cheering section apart from his caucus colleagues. The Bill received Royal Assent the next day, on December 14, 2001.

15) DECEMBER 2001 TO OCTOBER 2, 2003: THE CONSERVATIVE GOVERNMENT'S IMPLEMENTATION OF THE ODA 2001

a) ODA Committee's Priorities For The Rest Of The Conservative Government's Second Term

Over the 2001 year-end holiday period, The ODA movement took a desperately-needed breather. It had just gone through the ten most frenetic weeks of its seven-year history. Then, early in 2002, we mapped out a succinct list of priorities for our activities during the remaining months of the Conservative Government's second mandate.

It is unclear whether the Government's strategists had expected that with the passage of the *Ontarians with Disabilities Act* 2001, the ODA movement would just give up the ghost and fade away. We didn't. Despite a widespread sense of disappointment with the legislation that was passed, the ODA movement opted to do what it could to reap any benefits that the ODA 2001 could provide.

We decided to urge that the ODA 2001 be implemented as effectively as possible, so that Ontarians with disabilities could get from it whatever gains they could. This included calling on the Ontario Government to pass regulations to set accessibility standards under the ODA 2001, and to create enforcement mechanisms for this new law. It also included urging the Ontario Government to proclaim in force the ODA 2001's provisions as quickly as possible. In addition, we took on the

task of monitoring how this legislation was working. Finally, we decided to gear up to raise the ODA issue in the next provincial election, which could come any time before June 2005, at whatever time the incumbent Government decided to call it.

b) Publicizing The Conservatives' Promises In Connection With The ODA 2001

When Bill 125 was being debated before the Legislature, the Government's carefully crafted speeches about it made very sweeping commitments to persons with disabilities. To begin our 2002 activities, the ODA Committee documented these, and broadly publicized them. These became the Conservatives' new pledges to Ontarians with disabilities, against which the ODA 2001 would be judged. They took on the role in our movement that previously had been occupied by Premier Harris's May 24, 1995 letter to the ODA Committee, in which he had first promised to enact the ODA.

The Conservative Government's commitments included:

1. ONTARIO TO BECOME BARRIER-FREE

Ontario will become a barrier-free province for persons with disabilities, in which existing barriers are removed and new barriers are prevented from being created.

2. ODA 2001 WILL MAKE ONTARIO BARRIER-FREE AS SOON AS REASONABLY POSSIBLE

A key component of the Government's strategy to achieve this goal, the ODA 2001 will achieve a barrier-free Ontario as soon as reasonably possible, and can do so far sooner than the U.S. will.

3. ONTARIO TO BECOME CANADA'S MOST INCLUSIVE PROVINCE

Ontario will become the most inclusive province in Canada.

4. NO NEW BARRIERS

In Ontario, no new barriers will be created against persons with disabilities. This includes a commitment that tax dollars will not be used to create new barriers against persons with disabilities, and Government-funded capital expenditures including new infrastructure will meet accessibility standards.

5. MANDATORY REGULATIONS WILL COVER ALL SECTORS

Under the ODA 2001, standards will be set. Regulations will be enacted which impose mandatory requirements. Regulations will cover every sector in Ontario, including the private sector. There is a time frame for the private sector to act. Regulations will be made over barriers in the private sector if compliance is not happening fast enough. The Government is developing regulations that could contain enforcement features if necessary.

6. DISABILITY COMMUNITY IN DRIVER'S SEAT AND SETTING STANDARDS

Ontario's disability community will be put in the driver's seat, in the forefront of change, and driving change in the province. The regulations to be enacted under the ODA 2001 will be developed by the disability community. Ontario's disability community will be pivotal in setting the standards under the ODA 2001. Ontario's disability community will help to set the guidelines, the mandatory terms of reference, and the time frames for completion of accessibility plans to be implemented under the ODA 2001. Ontario's disability community will decide when Ontario's cities will become fully accessible.

7. ONTARIO ACCESSIBILITY ADVISORY COUNCIL'S ROLE

The new Ontario Accessibility Advisory Council will decide the point in time when it will be "reasonably possible" for Ontario to become a barrier-free province. The Ontario Advisory Council will drive the reforms in Ontario including working on regulations, examining and developing mandatory plans for the private sector and driving the work on developing enforcement mechanisms under the ODA 2001 necessary to ensure compliance. The Ontario Advisory Council and local municipal Advisory Committees will be accessible to the disability community. The Government will be open to their advice. The ODA 2001 contains a mechanism for persons with disabilities to tell the Government what barriers they face, and when and how they should be removed.

8. SPECIFIC ACTIONS BY ONTARIO GOVERNMENT

The ODA 2001 includes mandatory requirements which will be monitored and enforced. The Government will force compliance with the ODA 2001, based on guidelines and accessibility plans that will be made public for every sector, and based on time frames. Transit providers will be required not only to make accessibility plans, but also to comply with them. The Government will take on a leadership role and set a high standard. Its new Accessibility Directorate will undertake several specific actions to promote accessibility, including launching a new public education campaign and new barrier-removal incentive programme. The Government will select specific private sector companies for compliance. The Government's November 1, 2001 "Vision Statement," committing Ontario to become a barrier-free province for persons with disabilities, will be widely posted in public buildings. The Government has key players prepared to swing into action to implement change. The Government will not rest until it achieves its vision for persons with disabilities.

9. ONTARIO GOVERNMENT'S SPECIFIC RESULTS

The Government will achieve specific accessibility results. The business of Ontario ministries will be made more accessible to employees and customers with disabilities. Services will be reviewed and improved. New guidelines for accessibility of Government buildings will be developed in conjunction with persons with disabilities and others. New construction will be accessible. Access to public buildings will be considerably improved. Goods and services will be more accessible. Access to Government information will be greatly enhanced. Public awareness of disability issues will be heightened significantly. Thousands of suppliers throughout Ontario will have to become aware of, and consider the accessibility of the goods and services they provide, if they wish to sell to the Government. The Government itself should be in full compliance within five years.

10. MUNICIPAL GOVERNMENTS' SPECIFIC RESULTS

Specific accessibility results will occur at the municipal level. These include significant improvements in community accessibility, higher visibility and public awareness of disability issues throughout the community, more buildings and other sites (such as parks and

recreational facilities) being accessible, greater public accountability, and an ongoing and participatory role in decision-making for persons with disabilities. No new subdivisions or construction will occur without consideration of accessibility features. Curb cuts and audible traffic signals and inclusive design will become more common features in communities across Ontario. Municipalities will be required to take accessibility into account when issuing licences. More than 160 municipalities will plan for accessibility as a regular part of doing business. All Ontario municipalities covered by the ODA 2001 will be required to meet or exceed the standards now achieved in Windsor and Thunder Bay.

11. BROADER PUBLIC SECTOR SPECIFIC RESULTS

Specific accessibility results will be achieved in the broader public sector e.g. schools, hospitals, public transit, and universities. Some 159 hospitals, 25 colleges, 17 universities, and 78 school boards will be developing and implementing accessibility plans. These will significantly enhance access by persons with disabilities to education, training and services. This will result in increased access to schools, colleges, universities and hospitals, and better services for persons with disabilities at these institutions. As a result of increased accessibility in public transportation, persons with disabilities will find it easier to move around their communities safely. This will significantly enhance their ability to participate fully in community life. There will be greater public accountability and heightened public awareness.

12. PRIVATE SECTOR SPECIFIC RESULTS

Specific accessibility results will be achieved in the private sector, including development of flexible, industry-appropriate standards which eventually become law, private sector commitment, and partnerships between industry and persons with disabilities. Every sector of the community and the economy will be engaged in improving accessibility to meet or exceed its own sector standards. Opportunities for persons with disabilities will significantly improve throughout the province as sectors move towards greater accessibility. The accessibility bar will move higher as each sector learns and benefits from each other. There will be improved access to business facilities for those people in Ontario who use motorized scooters, wheelchairs, walkers and other assistive devices. Independence of persons with disabilities will be enhanced. There will be

increased retail job opportunities for persons with disabilities and considerable potential for retail businesses to attract customers with disabilities.

13. MEANINGFUL DIFFERENCE FOR PEOPLE WITH DISABILITIES

The ODA 2001 will make a meaningful difference in the lives of Ontarians with disabilities.

The Government never disputed that they had made these commitments. Had they tried to do so, we were ready. Each commitment was documented by citations to clear public statements from the Conservatives, all available on our website.

These commitments show how much the Conservative Government had adopted rhetoric that was very similar to many of the ODA movement's own goals. Had the Government lived up to these commitments and to its own rhetoric, it would have had a record to be proud of. However, as things turned out, the Conservative Government didn't fulfil any of these commitments.

c) ODA Committee's Steps To Implement The ODA 2001

After circulating the Conservative Government's commitments on the ODA 2001, the ODA Committee kicked off in earnest its new initiative which it called its "Barrier Busters Campaign." In it, we called on one and all to become a barrier-buster, while we watched to see whether this legislation made a difference in the lives of persons with disabilities. This was in some ways a very different focus from the kinds of activities that had occupied ODA supporters over the previous months.

Our first step in this new campaign was to encourage as many people as possible to nominate good candidates for the Government to appoint to its new provincial Accessibility Advisory Council. We urged the Government to use an open process for selecting this council's membership, and to appoint people to the council who supported strong mandatory measures to remove and prevent barriers. We publicized the nomination process for this council more than did the Government itself.

Second, starting in the Winter of 2002, we urged the Government to proclaim in force the ODA 2001's provisions as quickly as possible. Once a new law has received Royal Assent, it does not actually come into force until the Government in power proclaims it in force. A law

usually can be proclaimed in force either all at once or in stages, depending on what the Government in power wishes to do. It is not unusual for a Government to delay proclamation of a new law for a limited period, to give time for society to get ready to comply with it. We didn't want the Government to drag its feet on proclaiming the ODA 2001 in force.

Third, in the Spring of 2002, we canvassed our membership for ideas on the priorities for action to implement the ODA 2001 that we should recommend to the Government. Drawing on these, the ODA Committee developed a detailed document setting out a series of priority tasks for the Government to take, and proposed time lines for these tasks. We called this document our "PROPOSED ONTARIO GOVERNMENT ONE-YEAR ODA WORKPLAN." We submitted it to the Ontario Government in June of 2002.

Fourth, when the Government eventually appointed members to its new provincial Accessibility Advisory Council, we offered our help to that council. It never took us up on that offer. We sent the council background materials on the ODA and our new proposed Government ODA workplan. We asked the council to go out and hold public consultations with the disability community on how to best implement the ODA 2001. We also urged the council to develop strong, mandatory accessibility standards.

Fifth, in the Spring of 2002, Premier Harris stepped down as Premier of Ontario. The Conservative Party replaced him with a new Premier, Ernie Eves. We offered the new Premier our assistance in getting the ODA 2001 implemented. Like his predecessor, Premier Eves never agreed to meet with us during his year and a half leading the Conservative Government.

The new Premier shuffled his Cabinet in the Spring of 2002. He replaced Cam Jackson with a fifth Conservative Citizenship Minister, Carl DeFaria. We offered Minister DeFaria our assistance in his new role. We had one meeting with this new Citizenship Minister in the Spring of 2003.

Sixth, in November 2002 we circulated our new "Municipal Barrier Busters Action Kit." It provided a menu of ideas on how ODA supporters could try to address barriers at the municipal level, using the ODA 2001's provisions, weak as they were. It was meant to be particularly helpful to members of municipal accessibility advisory committees. Several municipal accessibility advisory committees had asked the ODA Committee for ideas on how to get municipal Governments to listen to them, since no one need reply to their advice. Beyond preparing our new action

kit, we also provided briefings to the several municipal advisory committees who asked us for these.

Seventh, we tried to keep the ODA issue alive in the media. This was harder now since Bill 125 was no longer being debated before the Legislature. ODA supporters around Ontario nevertheless succeeded in getting periodic pieces in the media. These were often written by ODA supporters as guest columns. Our media coverage over this period tended to focus on specific barriers that caught a news outlet's eye. ODA supporters would link that barrier to the broader ODA picture. For example, when a Toronto restaurant kicked out a blind patron from its premises solely because that customer was accompanied by a guide dog, we emphasized for the media the need for the enactment of a strong, effective ODA to address this.

Finally, we kept ODA supporters posted on developments on the ODA 2001's implementation, and circulated ideas from time to time on how ODA supporters could get involved in this process. Our membership kept growing. People joined the ODA movement who had had no involvement in this issue prior to the passage of the Conservatives' ODA 2001.

d) The Government's Record On Implementing The ODA 2001

In the end, the ODA 2001 did not make a significant difference in the lives of Ontarians with disabilities, over the 21 remaining months of the Conservative Government's second term in office.

The Conservative Government did not immediately proclaim the ODA 2001 in force after it received Royal Assent. Two months after it received Royal Assent, the Government only proclaimed in force a few provisions. Later in 2001 the Government announced that it would proclaim the rest of the Act in force by the end of that year. It said it wanted to give organizations time to get ready to comply with the new legislation.

On September 30, 2002, the Government proclaimed all remaining provisions in force save two. Of these, on December 31, 2001, it had proclaimed in force the provision requiring Ontario Government websites to be made disability accessible.

For the 21 months that the Conservatives remained in power after they passed the ODA 2001, they never proclaimed in force the one other remaining unproclaimed provision, Section 21. This was the provision that made it an offence, punishable by a fine, for organizations covered by the ODA 2001 to fail to make an annual accessibility plan, or for

municipalities with a population over ten thousand to fail to establish a municipal accessibility advisory committee. The Government had added this provision during clause-by-clause debate, to create the only limited enforcement mechanism in the legislation. In the Fall of 2001, the Conservatives had announced that they had added Section 21's limited enforcement mechanism in specific response to the disability community's widespread complaint that the bill lacked any enforcement. Some thought that the Government put forward this amendment with no intention of ever proclaiming it in force.

The ODA Committee vigorously pressed the Government to proclaim in force Section 21. By not proclaiming it in force, the ODA 2001's accessibility planning provisions were left utterly unenforceable. The toothless Bill 125 had been given one tooth, but that tooth was never allowed to bite.

It took the Government fully five months to appoint its first five appointees to the new provincial Accessibility Advisory Council. The Government took over five more months to fill the rest of the 12 positions on this Council. The ODA Committee wrote to the new Council fully three times in the Summer and Fall of 2002 to offer its help and suggestions. The Council did not answer any of these letters until early in 2003.

The Government-appointed council's initial chair, David Shannon, stepped down after a few months. Its second chair, Mr. Jeff Adams, finally wrote to the ODA committee in 2003. He rejected our proposal that the Council hold public consultations on the implementation of the ODA 2001. Mr. Adams took the position that the new council had no mandate to hold public consultations. Its members could, however, attend and speak at public events, and get input in that way. It appeared from the outside that the Government largely saw the Accessibility Council as a speaker's bureau to go out and speak to community groups.

Throughout the 21 months from the passage of the ODA 2001 up to the 2003 election, the Government claimed that it was working on developing some regulations to implement the ODA 2001. However, in that period it enacted no regulations. It posted no draft regulations for public comment. Early in 2003, the Government only held limited consultations to develop accessibility standards on the narrow topic of accessibility of new Ontario Government buildings.

Back when the Government had introduced its initial three-page ODA bill on November 23, 1998, then-Citizenship Minister Isabel Bassett committed the Government to a process to develop new accessibility measures in the Ontario Building Code. Four years later, in the Winter of 2002, the Ontario Government held some consultations on what those

measures should include. In the late Spring of 2002, the Government brought forward and passed a new, totally revamped Ontario Building Code. However, it included no significant changes in the area of disability accessibility standards.

Pursuant to the ODA 2001, the Government established a new office in the Citizenship Ministry, called the Accessibility Directorate. This office did good work developing materials on accessibility. They were constrained by the fact that the ODA 2001 still viewed barrier removal and prevention as a voluntary endeavour.

When the Government proclaimed in force most of the ODA 2001's provisions on September 30, 2002, it declared that all public sector organizations, including Ontario Government ministries, were thereby required to have their first annual accessibility plans formulated and made public by one year hence, namely September 30, 2003. The Accessibility Directorate spent the next months working with municipalities and other public sector bodies with a view to their promulgating their accessibility plans by that legislated deadline.

In late 2002, the ODA Committee had recommended that the Ontario Government convene a conference for municipalities and other public sector bodies to come together to discuss how to implement the ODA 2001. The Government didn't take up this suggestion. In fact, the Government took up scarcely any of the ODA Committee's suggestions on measures for implementing this new legislation.

To fill in the vacuum, the municipal accessibility advisory committee for the City of Sault Ste. Marie organized a conference for organizations wishing ideas on what to include in their accessibility plans. With hundreds of hours of organizational work voluntarily spearheaded with virtually endless energy by ODA supporter Tracey Roetman and the ODA Committee's inaugural Sault Ste. Marie Regional Contact Dorothy McNaughton, it was held in the Sault on September 11, 2003, three weeks before the accessibility plans were due. As it turned out, this was right in the midst of a provincial election campaign. The Ontario Government declined our suggestion that the provincial Government help fund people to attend this conference. Citizenship Minister DeFaria was quoted in the media as slamming the conference's organizers for holding this conference at all. He reportedly suggested that the conference organizers had exceeded their mandate and had gotten ahead of themselves by organizing this conference.

The ODA Committee was invited to make an extensive presentation at this conference on how to implement this legislation. The delegates from around Ontario were eager for any guidance to help them figure

out what to do in their accessibility plans. At the end of the conference all present passed a unanimous resolution calling for provincial accessibility standards to be set. They bemoaned the fact that they each had to re-invent the wheel.

e) A Last Page Of The ODA Saga's First Chapter

The unexpected and startling last event in this first chapter of the ODA saga occurred on September 30, 2003, the Ontario Government's legislated deadline for the first accessibility plans. This day was also a mere two days before the impending provincial election. On the morning of September 30, 2003, the ODA Committee wrote to Citizenship Minister DeFaria to ask that he provide to the ODA Committee a copy of each Ontario Government Ministry's accessibility plan. Prominent among the organizations that had to make their plans public that day were each of the Ontario Government's ministries. For years, the Conservatives had said that the Ontario Government would lead by example in the area of barrier removal and prevention for persons with disabilities. We were eager to see what the Government itself planned to voluntarily include in its own first accessibility plans.

That day, being virtually the eve of the election, the Conservative Government refused to make public any of its ministries' accessibility plans. Correspondence from the Citizenship Ministry stated that it was postponing release of the Government's own accessibility plans because an election was impending.

This was as incredible as it was inexcusable. True, the ODA 2001 was chock full of exemption clauses. However, none of these excused the Government from obeying the law because an election was in progress. The Government was not caught off-guard by the election call. It was the Conservative Government that had chosen the date for proclaiming in force the ODA 2001's provisions concerning accessibility plans. It was that same Government that chose the date of the provincial election.

Moreover, the Government could not complain that it had not had enough time to devise its own accessibility plans. It had been contemplating the idea of a law requiring provincial ministries to make such plans as far back as 1998, when it brought forward its toothless Bill 83. The only thing that earlier bill had included was a provision requiring provincial ministries to make accessibility plans. In fact, it had been open to the Government since it first took office back in 1995 to make

annual accessibility plans without needing any new legislation to be passed.

We immediately issued a news release, bearing the headline:

“SLAP IN THE FACE OF ONTARIANS WITH DISABILITIES ON ELECTION’S EVE - CONSERVATIVE GOVERNMENT REFUSES TO MAKE PUBLIC DISABILITY ACCESSIBILITY PLANS WHICH ITS DISABILITY LAW REQUIRES THEM TO MAKE PUBLIC TODAY.”

Our news release said:

“The Conservatives promised for years that the Ontario Government would lead by example on the road to a barrier-free Ontario for 1.9 million Ontarians with disabilities. Here they are openly disregarding their own self-imposed deadline, just before a provincial election where voters with disabilities have been actively raising disability issues. Does the Government believe that just because it called an election, it doesn’t have to obey its own law?”

The Conservative Government’s final act in this first chapter of the ODA story triggered yet more media coverage on the day before the October 2, 2003 provincial election. This episode said it all about the Conservative Government’s approach to the ODA issue. It showed with crystal clarity why the removal and prevention of barriers against persons with disabilities must be mandatory. It cannot be left to something as inherently absurd and oxymoronic as a voluntary law. It again showed that anyone who argued that such legislation should leave barrier removal and prevention voluntary mustn’t care if barriers against persons with disabilities remain in place.

Here the Conservative Government opted unequivocally to disobey its own law. Under the ODA 2001, it could do so with impunity. It had refused to proclaim in force Section 21 of the Act, which would have made it an offence punishable by a fine for the Government to have done as it did. Citizenship Minister DeFaria and the chair of the Government-appointed Accessibility Advisory Council, Jeff Adams, had earlier each publicly argued that there was no need to proclaim in force Section 21, since everyone was going to obey this law. In the end, the Government’s refusal to proclaim Section 21 in force turned out to insulate the Conservative Government itself from legal proceedings.⁵⁹

59 As of the time of writing, we do not know how many other public sector organizations actually met the ODA 2001’s announced deadline for making public their first accessibility plans. We received some inquiries in the weeks leading up to that deadline about the possibility of organizations getting extensions. We also understand that on September 30, 2003, the Ontario Government notified all covered public sector organizations of the Government’s intention

After this last episode, the debate over whether the ODA should make barrier removal and prevention mandatory is over. The fact is that removing and preventing barriers against persons with disabilities has been required by the Canadian *Charter of Rights and Freedoms* and various human rights statutes such as the Ontario *Human Rights Code*. As explained earlier in this account, the ODA movement grew out of a recognition that even those laws were insufficient to achieve effective barrier removal and prevention. The ODA movement arose because a new, mandatory ODA with more effective enforcement was what Ontarians with disabilities need.

16) SEPTEMBER 2, 2003 TO OCTOBER 2, 2003: THE ELECTION THAT CLOSED THE ODA SAGA'S FIRST CHAPTER

On September 2, 2003, the governing Conservatives called a provincial election for October 2, 2003. The ODA movement had been preparing for this election for months. In the Spring of 2003, we sought commitments from Ontario's three major parties to strengthen the ODA. Both the Liberals and the NDP unveiled comparable election platforms in the Spring on the ODA issue.

The Liberals and NDP each promised to enact a new *Ontarians with Disabilities Act* within one year of taking office. Each said their ODA would fulfil all our 11 principles for this legislation. Each promised at a minimum to incorporate the amendments to Bill 125 that they had put forward on our behalf during the public hearings on that bill. Each promised to work together with the ODA Committee and to openly consult with the disability community. Each leader, Dalton McGuinty

not to obey their own law. Some other public sector organizations may have opted to follow the Ontario Government's lead.

On this issue of voluntary compliance with an unenforceable law, the Government had earlier said that it had delayed proclaiming in force various provisions of the ODA 2001 until September 30, 2002, specifically to give all covered organizations enough time to comply with that legislation. The date for making public these first plans was over 19 months from the date when the Legislature passed the ODA 2001.

We also received informal word, which we did not have the chance to verify, that some municipalities did not have in place a municipal accessibility advisory committee by September 30, 2002. The Government had also said that its delay in proclamation in force of certain ODA provisions was to enable municipalities to get these committees in place by that proclamation date.

for the Liberals and Howard Hampton for the NDP, pledged that if elected, they would personally meet with the ODA Committee. Each leader had done so several times during this first chapter of the ODA saga.

Over the weeks leading up to the election call, ODA supporters took part in the ODA Committee's summertime letters to the editor blitz, to keep the ODA issue in public view. We had launched that blitz to prime the media about the upcoming ODA election issue in advance of the widely-anticipated election call.

When the election was called, the ODA movement again turned to the tried and true. It carried out the same campaign activities as it had in 1999. This time, it focused on the theme that Ontario needs to strengthen the Conservatives' weak, unenforceable ODA. To its 1999 strategies it added something new. In London and in the St. Catharines areas, fully-accessible all-candidates' debates were held specifically on disability issues.

On October 2, 2003, Ontario voters elected Dalton McGuinty's Liberals to a majority Government. The Conservatives were resoundingly defeated. Among the many conservative MPPs who were defeated in their own ridings were three of the four Conservative Citizenship Ministers still in the Legislature, Marilyn Mushinski, Helen Johns and Carl DeFaria.

17) CONCLUDING REFLECTIONS: TOWARDS THE ODA SAGA'S SECOND CHAPTER

a) The ODA Movement's Goal In This Saga's Second Chapter

The ODA movement can look forward with anticipation to the beginning of the as-yet unwritten second chapter of the ODA saga. The ODA movement's goal in this new phase of its campaign will be to work together with the new Liberal Ontario Government to effectively implement its 2003 election pledges on the ODA.

As the story recounted in this first chapter makes clear, the Conservative Government never had any interest in or enthusiasm about the idea of enacting a strong and effective *Ontarians with Disabilities Act*. In contrast, the Liberals while in opposition, like the NDP while in opposition, showed a real zeal and passion about the ODA issue. As the Liberals take power, they have a strong 2003 election commitment on the ODA to fulfil. It builds on two previous Liberal Party election ODA Commitments, made in 1995 and 1999.

As explained earlier in this account, Ontario's Liberal Party showed its commitment to the ODA cause while in opposition by putting forward the Dwight Duncan resolution on October 29, 1998 which sets out the ODA Committee's 11 principles for the ODA. The Liberals held a cross-province ODA public consultation tour which Liberal Steve Peters conducted in 2000. The liberals have the benefit of the November 23, 2000 Liberal Party report on this consultation tour that resulted from it. The Liberal Party also committed itself to a specific series of amendments which it tabled in 2001 during Bill 125's public hearings.

The 2003 election has given the Liberal Party the mandate and the opportunity to put its commitment into action. The grassroots ODA movement, which has survived, grown and thrived after nine frustrating years, can begin this saga's second chapter with optimism and renewed tenacity and energy.

b) A Dialogue Between The Courts And The Legislatures?

The story of the first chapter of the ODA saga is very much disconnected from a paradigm which is in common use in Canadian constitutional law circles, when law professors and judges discuss how to effectively put fundamental rights and freedoms such as equality rights into practical action. It is fashionable in Canadian legal academic and judicial circles to talk about the *Charter of Rights* as creating a "dialogue" between the courts and Governments in Canada. They are said to dialogue back and forth over how the *Charter's* rights are to be effectively implemented and respected.⁶⁰

This "dialogue" theory may be useful to some. However, the experience of the ODA movement shows that it is largely irrelevant to persons with disabilities.

If there is such a dialogue between the courts and legislature, persons with disabilities rarely come up in the discussion. If persons with disabilities are talked about at all, little is actually done beyond talk. Even when Canadians with disabilities won a massive constitutional victory in the Supreme Court's *Eldridge* decision discussed earlier,⁶¹ Govern-

60 See, for example, P.W. Hogg & A.A. Bushell, "The *Charter* Dialogue Between Courts and Legislatures" (1997), 35 *Osgoode Hall L.J.* 75. and *Sauvé v. Canada (Chief Electoral Officer)*, [2002] 3 S.C.R. 519, 2002 CarswellNat 2883, 2002 CarswellNat 2884, [2002] S.C.J. No. 66, 2002 SCC 68, 5 C.R. (6th) 203, 168 C.C.C. (3d) 449, 98 C.R.R. (2d) 1, 218 D.L.R. (4th) 577, 294 N.R. 1 (S.C.C.).

61 *Supra*, n. 28.

ments didn't quickly pick up the ball and run with it. Using the "dialogue" metaphor, Governments seemed instead to just quickly change the topic of conversation. The ODA movement's experience highlights that if there is such a dialogue going on between the courts and legislatures, it is necessary to remove the barriers to that dialogue which impede persons with disabilities from fully participating in it.

c) Gains During The ODA Saga's First Chapter

With the first chapter of this saga now completed, there is merit in looking back to see what was achieved by this effort. It is helpful to assess this story first in terms of the new legislation that it yielded and second in terms of the ODA movement that it spawned.

What did the ODA movement gain through the passage of the ODA 2001? The *Ontarians with Disabilities Act* 2001 passed into law on December 13, 2001 did not fulfil ten of the 11 principles put forward by the ODA Committee as essential for strong and effective legislation that will remove and prevent barriers in all aspects of society. It may well lead some barriers in the broader public sector to be addressed. However, it does so in a haphazard, voluntary, and inefficient way. It forces the disability community to have to lobby hundreds of municipalities, Government ministries and other public sector organizations to tackle identical barriers. It will raise the consciousness of some about the need to act to remove and prevent barriers. However, it didn't assure to them the tools or the legal framework needed to efficiently achieve what Ontario is capable of. In sum, the ODA 2001 is a mere shadow of what it could have been.

The ODA 2001 ended up including good, broad definitions of "disability" and of "barrier." The ODA movement learned from the experience in the U.S. under the *Americans with Disabilities Act* to avoid narrow definitions of key terms such as "disability." U.S. courts have narrowly interpreted such terms in the ADA. They thereby weakened that legislation's potential effectiveness.⁶² Unfortunately, because the ODA 2001 included little in the way of legal requirements and no effective enforcement, the fact that it included good definitions of "dis-

62 See, for example, *Sutton v. United Airlines, Inc.*, 527 U.S. 471, 119 S.Ct. 2139, 144 L.Ed.2d 450, 67 U.S.L.W. 3681 (U.S. Colo., 1999) and *Murphy v. United Parcel Service Inc.*, 527 U.S. 516, 119 S.Ct. 2133, 144 L.Ed.2d 484 (U.S. Sup. Ct., 1999).

ability” and “barrier” was not sufficient to ensure that the legislation would be effective.

The weak ODA 2001 has led to some limited action on the accessibility front. However, its greatest significance is that it unwittingly contains within it the seeds that will drive Ontario towards the enactment of a new strong and effective ODA.

For example, the ODA 2001 requires a range of public sector organizations to devise annual accessibility plans. As explained earlier, the ODA 2001 didn't require that these be any good, or that they ever be implemented. However, the fact that a range of public sector organizations have now prepared these plans may and most certainly will make some of them rectify some barriers. This weak law broke the ice.

This planning requirement has already shown these public sector organizations that there is a manifest need for provincial standards on accessibility to be made. As discussed earlier, without those standards, each organization is forced by the Ontario Government to go through the wasteful process of each trying to re-invent the wheel. Those standards will have to be mandatory in order to be effective and must also be fair to all.

The ODA 2001 in several ways leaves it to the municipalities to try to devise their own standards of accessibility if they are to use any of the new powers created in the ODA, such as the power to make the issuance of a business licence contingent on the business becoming accessible. Businesses and municipalities will not want to have to deal with the creation of hundreds of local building codes and other accessibility codes. Instead, they would benefit from and should ultimately want consistent provincial accessibility standards that apply across Ontario, and that allow for uniformity for businesses operating in more than one municipality. This too can add to the pressure for provincial accessibility standards.

If accessibility planning is a good thing for the public sector, it cannot be any less worthwhile for the private sector, a sector which the ODA 2001 leaves out. As well, the ODA 2001 leaves persons with disabilities to file individual human rights complaints to enforce barrier-removal and prevention, one barrier at a time. As these human rights complaints proliferate, the need for the ODA to be strengthened to provide for a more effective enforcement process (to supplement the Human Rights Code complaint process) will become even more manifest.

To the extent that the weak ODA 2001 led some to voluntarily remove and prevent barriers, this shows how much more beneficial it

would be if all organizations that provide jobs, goods, services and facilities were required by a strong effective ODA to act. It should show how mandatory standards and time lines for all would make Ontario a better place. To the extent that public sector organizations opted under the ODA 2001 to leave barriers in place, even when they could easily be removed, this shows why stronger legislation is needed.

The ODA 2001 took key ideas from the ODA Committee's blueprint. However, it diluted them so much that it took away from them much of their potential. A return to that undiluted blueprint will be the best way to get the full benefit Ontario deserves.

At the very least, the ODA 2001 did not make things worse for persons with disabilities. There had been some fear within the ODA movement that the Conservative Government would find a way to craft an ODA that would actually cut back on the rights of persons with disabilities. Accordingly, we were very vigilant throughout to make sure that this didn't happen.

Beyond this bill's contents, what did the ODA movement achieve as a community grassroots movement during the first chapter of this saga? The ODA movement has covered a great deal of ground in the nine years since that fateful day when about 20 individuals found themselves in a room together at Queen's Park on November 29, 1994, and established the coalition that became the ODA Committee.

So many individuals and over a hundred community organizations came together to work together. The ODA Committee organized in fully 23 regions of Ontario. It remained in the forefront of the movement for a barrier-free Ontario for persons with disabilities. It found effective ways to promote its collective goal of a barrier-free Ontario.

By uniting around a single goal, the ODA movement avoided being side-tracked by divisive internal debates over what should be its top priorities. Using unorthodox strategies and a flexible, informal organizational structure, the ODA Committee tried to offer leadership, strategies, information, co-ordination and help. It offered a shared message that clearly resonated within the disability community. It offered people the tools to quickly and easily swing into action. Because most lack the time to research and develop their own political action tactics, this made it easier for newcomers to community activism to take part.

The ODA Committee encouraged and supported all organizations and individuals to raise their own voices, to focus on their own priorities, to make their own proposals, and to help the cause in any way they preferred. This let ODA supporters channel their energies into the important task of keeping the pressure up on the Government, without

wasting any energy on divisive internal struggles. If someone didn't like the ODA Committee's choice of tactics in any particular instance, they were encouraged to go ahead and choose their own tactics, and to put these right into action.

The ODA movement's informal structure let it react quickly to late-breaking events. This gave it a decided advantage over a large, lumbering Government. In Government, it is usually difficult to quickly and dramatically change direction in response to unexpected events.

In the end, the ODA movement's ultimate strength came from the dedicated efforts of many individuals spread across a very large province. Those who pitched in to the ODA movement had much to be proud of, despite the fact that so many were disappointed with the legislation passed in December of 2001. It may seem cliché, but this saga showed how much can be done by a group who traditionally are invisible on the political radar of most politicians and journalists, when age-old grassroots action is tried, and especially when it is wedded with newfangled technology like the internet.

The ODA movement managed to beat the odds at so many important points in this process. Many initially thought it would be impossible to get Ontario's diverse disability community to unite behind the goal of fighting for an ODA. Yet this is what happened.

In early 1995, many thought it extremely improbable that any of the three political parties would give an ODA election commitment. Yet the ODA movement secured commitments from two of the three parties in that election, as well as in the 1999 and 2003 provincial elections. Many also believed it was not possible to get the Legislature to unanimously adopt the ODA movement's 11 principles for the *Ontarians with Disabilities Act*. Yet on October 29, 1998, ODA supporters all around Ontario convinced the Legislature to do just that. After the Mike Harris Conservatives won the 1995 election, many thought it would be impossible to ever get them to introduce an ODA bill into the Legislature. Yet they were pressured into coming forward with a bill, Bill 83 in November 1998.

After the Conservatives introduced that toothless three-page bill into the Legislature for First Reading in November 1998, many thought it would not be possible to get the Government to back off that bill, and to commit to introducing something better. Yet the ODA movement achieved this, too.

After the Conservatives won their second mandate in the 1999 election, many predicted that buoyed by this new mandate, the Conservatives would never bring forward a new ODA bill. Yet the Government was

driven to come forward in November 2001 with Bill 125. In November 2003, when the Conservative Government introduced Bill 125 into the Legislature, many thought it would be impossible to get amendments passed to improve that bill. Yet the Conservatives were pressured by ODA supporters around Ontario into amending fully 15 of the 33 sections of the bill. While these did not make the bill strong and effective, they did improve it.

This movement put the goal of a barrier-free society on the political map of Canada's most populous province. It collected ideas from all around the world to fashion new ideas for legislation to achieve what the *Charter of Rights* and human rights legislation have not achieved in the daily lives of persons with disabilities. It showed itself able to be critical of Government when necessary, while always offering constructive suggestions.

The ODA movement even earned credibility outside Ontario, being followed and monitored by individuals and groups on several continents. It won enough international respect to be invited in 2002 to address a conference of the European Union in Denmark, convened to consider how E.U. member states can draft their own anti-discrimination legislation. As yet another example of irony in this saga, the European Union seemed more interested in genuinely consulting the ODA movement than Ontario's Conservative Government had been.

The ODA movement's efforts undoubtedly have made some take action to remove and prevent barriers in Ontario. This is so even if the true potential for progress will be realized only when a strong and effective *Ontarians with Disabilities Act* is passed.

When the ODA 2001 was passed, the ODA movement did not throw up its hands in defeat. As it had throughout this saga, it remained tenaciously committed to its goal of strong and effective legislation that applies to the private sector as well as the public sector, that imposes clear mandatory standards and time lines for removal and prevention of barriers, and that has effective enforcement. ODA supporters kept their eye on the bottom line. They unwaveringly remained focused on winning a law that achieves real results - one which makes a real and substantial difference in their daily lives.

The ODA movement wrestled from a recalcitrant Conservative Government the most that it could, and more than that Government wanted to give, even if it is far less than the disability community needed and deserved. As is the case when so many individuals with disabilities are erroneously told "No, you just aren't able to do that," this movement persevered against the odds.

The ODA movement has also firmly implanted within Ontario society some key yardsticks against which this and any future legislation can be measured, including its 11 principles for the ODA, and its ultimate goal of a barrier-free society. The former was adopted by the Ontario Legislature. The latter was even adopted by the Conservative Government as a provincial goal on November 1, 2001, although that Government's consequential actions fell far short of that now-unretractable provincial target. Finally, the ODA movement stuck to its guns, and did not sell out its ideals, through to the 2003 election which will open a new hopeful chapter in this saga.

The ODA movement's activities spawned additional "spin-off" benefits, which are not easily quantified. For example, they helped many individuals with disabilities and their families learn to advocate effectively, not only for the ODA, but as well, for other disability-related needs in their lives. They led to the creation of some new local community disability groups which advocated at first just for the ODA, but later for other local causes of concern to persons with disabilities as well. They inspired several venerable non-profit charitable organizations that provide services to persons with disabilities to become more active and more vocal in advocacy for the rights of persons with disabilities.

The ODA movement caused many persons with disabilities to learn about the needs of others with different disabilities. For instance, deaf people came to argue in support of more information being provided in Braille for the benefit of blind persons. More vision-impaired people came to speak out about the need for more American Sign Language interpretation and other accommodations for the benefit of persons who are deaf.

It is reasonable to also conclude that the new priority which the Ontario Human Rights Commission gave to disability issues in the late 1990s and afterward, can be traced at least in part to the heightened public profile that the ODA movement generated for these issues. That Commission's adoption of the ODA movement's core goals, including the call for removal and prevention of barriers against persons with disabilities, could be traced to no other source. That Commission has a very wide mandate, covering such diverse areas as racism, sexism, ageism, discrimination because of sexual orientation, and so on. In the past it has been hard for disability issues to garner top profile in the Ontario Human Rights Commission's work.

There is much ground still to traverse on the road to a barrier-free Ontario. Much more effective legislation is needed than the ODA 2001 to power Ontario down that road. The ODA movement secured a strong

commitment from the newly-elected provincial Liberal Government to enact that legislation. That new Liberal Government also knows from its work with the ODA movement while in opposition, how worthwhile a cause this is, and how tenacious are ODA supporters around Ontario.

The story of what that new Government will do has yet to be written. That is why the history recorded in this account is only the first chapter in the ODA movement's long and arduous but unstoppable journey.

Let me modify somewhat the oft-quoted words of the late U.S. Senator Robert Kennedy: Some people see the world as it is, and ask "Why?" ODA supporters dream of a world without barriers, and ask "Why not?"⁶³ As the late ODA activist/folk-singer Michael Lewis put it so well in his song about the ODA cause, we are "still waiting."

63 The actual quotation, frequently attributed to Robert Kennedy, is: "Some men see things as they are and ask why. I dream of things that never were and ask why not."

If the late Robert Kennedy (who was widely known as a powerful advocate for social justice for disadvantaged people prior to his untimely death) were speaking today, he would undoubtedly use contemporary language and refer explicitly to both men and women.

