

# NOVA SCOTIA

## Human Rights Commission

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### Complaint under the Human Rights Act

NS Human Rights Comm.

#### Complainants

Beth MacLean  
Emerald Hall  
Nova Scotia Hospital  
Halifax, NS B3K 6R8  
[Represented by Vincent Calderhead  
and Charlene Moore, Nova Scotia Legal  
Aid, 420-3464]

Olga Cain, Truro, Nova Scotia on behalf  
and in respect of Sheila Livingstone  
[Represented by Vincent Calderhead  
and Charlene Moore, Nova Scotia  
Legal Aid, 420-3464]

Susan Lattie, Dartmouth, Nova Scotia  
on behalf and in respect of Joseph Delaney,  
Emerald Hall, Nova Scotia Hospital  
[Represented by Vincent Calderhead and  
Charlene Moore, Nova Scotia  
Legal Aid, 420-3464]

Marty Wexler, for the Disability Rights Coalition,  
Complainant [Represented by Donna Franey,  
Dalhousie Legal Aid Service, 423-8105]

Kim Pate, for the Canadian Association  
of Elizabeth Fry Societies (CAEFS), Complainant  
[Represented by Donna Franey,  
Dalhousie Legal Aid Service, 423-8105]

#### Respondent

The Attorney General of Nova Scotia  
representing Her Majesty the Queen  
in Right of the Province of Nova  
Scotia (including the Minister of  
Community Services and the  
Minister of Health and Wellness),  
a.k.a. "the Province"

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#### Section and Nature of Complaint:

Section 5(1)(a) and/or (o)  
and/or (t) and/or  
physical or mental disability, and/or  
source of income in respect of the provision  
of or access to a service

Inquiry Case Number: H14-

\* All portions struck out reflect the decision of the  
Commissioners of May 8, 2015 as amended on April 15, 2016

## **Beth MacLean: Human Rights Complaint**

**I, Beth MacLean, complain against the Respondent that from 1986 through to the present and continuing, the Respondent ("the Province") has and continues to discriminate against me with respect to the social services provided to me because of the combined effect of my mental disabilities and my source of income (social assistance).**

### **1. What are your protected characteristics? Please explain.**

1. My protected characteristics are the combined effect of my mental disabilities and my source of income (social assistance). They have jointly combined to result in my being discriminated against in the provision of a service provided by the Province. As a person with mental disabilities who needs assistance in basic living arrangements, but without independent financial resources, I am completely dependent on the Province for whatever residential settings the Province makes available to me.

2. I have been told that my medical condition is:

- a. Mild Mental Retardation, and
- b. Mood Disorder

3. I believe that my medical conditions date back to my childhood. I have also been financially dependent on social assistance since childhood.

### **2. When did the alleged discrimination begin?**

4. The discrimination began when I was a child but my claim is limited to the time after the introduction, in 1986, in the Nova Scotia *Human Rights Act*, of the prohibition of discrimination against people with mental disabilities. This discrimination has been continuous through to the present and continues.

### **3. Please provide example(s) of discriminatory treatment you say you experienced by the Respondent.**

5. Although the discrimination alleged dates back to 1986, it is necessary to understand my prior history to appreciate the nature of the discrimination.

*History of Removal from the Community and Institutionalization*

6. I was born on August 16, 1971. I am from the Pictou area of Nova Scotia. I am the middle child of three children; I have an older brother, Peter, and a younger sister, Lee Anne. My parents, Karen and Ben MacLean live in Coxheath in the Sydney area of Cape Breton, Nova Scotia. They are both retired and live on a modest income.
7. I started school at the normal age but, by age 10, my parents were told, that I was not welcome at school due to "behaviour problems".
8. From there, when my parents asked the Province to assist in my care, I was sent, in 1983, to Bonnie Lea Farm, a Provincially-run institutional setting in the Bridgewater area of Nova Scotia where I remained for 5-6 months.
9. In 1983, I was sent to the NS Youth Training Centre in Truro, where I stayed until 1985. In November 1985, I was sent to the Youth Treatment Wing of the NS Hospital ("NS Hospital") where I stayed for about six weeks. From there, in July 1986, at age 14, I was sent to the Residential Rehabilitation Centre ("Kings RRC") in Waterville, Nova Scotia where I stayed until October 2000—almost 15 years.
10. From age 10, I was given no further formal education.
11. All of these placements were institutional where people with mental disabilities were provided with housing in congregate settings; that is, large groups of people were housed in institutions that bore little or no resemblance to normal life in a home located in a community.
12. I (and many others with mental disabilities) was effectively prevented from being able to integrate and participate in the community and had little say about my activities of daily living.
13. After my admission to Kings RRC in 1986 at the age of 14, I was forced to remain there in a mostly locked setting for the next 14 years because the Province failed to offer me an alternative.
14. I did not like living there and openly stated that I did not wish to live there. I often told people that I wanted to leave.

15. In the Fall of 2000, having become frustrated with the conditions at Kings RRC, I lashed out at a staff member while on an escorted walk around the facility. This resulted in a common assault charge and my transfer from Kings RRC to the Halifax County Correctional Centre for 15 days, while I awaited my court date.

16. Shortly thereafter, I pled guilty to common assault and was placed on probation.

17. At the time of my sentencing, in October 2000, an arrangement was made between the Province, Kings RRC and the NS Hospital that the latter would agree to 'take me' for no longer than one year by which point, the Province would find me a community placement. This happened in October 2000—more than 13 years ago.

18. On admission to the NS Hospital (2000), I was placed at Maritime Hall, a unit of the Hospital. During most of the seven years when I lived at Maritime Hall, I was locked in my room.

19. From Maritime Hall, I was transferred (July 2007) to the Emerald Hall unit of the Nova Scotia Hospital where I remain today.

20. At no time has there been a legal order of any kind in place requiring me to reside at the Nova Scotia Hospital or authorizing my detention there.

21. Emerald Hall is a unit of the Nova Scotia Hospital, a psychiatric hospital. It is a 14-bed unit that is designed to provide temporary (up to three months) stabilization care for people who are living in the community.

22. At any time, the unit has about 12-15 'patients' living on it. Their personalities and needs vary markedly. Some acutely ill patients can be very noisy and disruptive, sometimes violent and, occasionally, dangerous. But they are the minority.

23. As with my case, most of the other patients on the unit have no medical or legal need to be in hospital. I receive no treatment or support from Emerald Hall that cannot be provided in the community.

24. I was told when I came to the Nova Scotia Hospital in October 2000, that I would only be here for one year. I have now been here over 13 years. I have told my Community Services worker that I don't want to live here and have been telling my worker, and many others, that for many years. My Community Services worker has also

told me for many years that she knew that I didn't need to be here and that she would look for a place for me to live and that I am on a waiting list for a place to live in the community. Nothing ever happens.

25. I can't leave the Hospital when I want to. I can only leave when a staff member happens to be free to go with me and a vehicle is available for a trip to a mall or somewhere—maybe twice a week.

26. I don't want to live at Emerald Hall. I want to live in a home, on a street in a neighbourhood and to live a normal life.

27. I know that I need help to do things during the day, for example, cooking, shopping and other things. But I want to do what I can and to be involved in those things. For instance, I would like to work at the Dartmouth Adult Services Centre ("DASC") which I think I would enjoy.

28. I have very little of my own money and so cannot pay for the supports that I need to live in the community. I receive some money every month from Community Services but would need more money or supports than Community Services gives me now in order for me to be able to live in the community.

29. Throughout my life, my disability-related needs could have been adequately accommodated by community-based, supportive housing. That is, I could have lived in a small (2-3 person) living situation in a home in the community with support staff as required. Some people in Nova Scotia with my needs *are* supported to live in the community in Nova Scotia by the Province, but far more people are not.

30. For people like me, whose care needs can easily be met in supportive, community based housing, being forced to live on the unit is actually harmful to our health. In my case, the prolonged detention at Emerald Hall has harmed my mental and physical health and socialization skills.

31. If I were in a financial position to personally pay the cost of a community-based living situation out of my private resources, such a setting could easily and quickly be arranged through one or other of several organizations in Nova Scotia which provide supportive housing for people with mental disabilities.

32. The barrier to living in the community for me is not that there is insufficient supportive housing available, because appropriate supportive housing options are available. Given my financial inability to pay, the barrier that I face arises from the fact that the Province has failed to provide for my need for supportive housing. As a result, I continue to languish in a locked psychiatric ward that I neither want nor need and which is actually harmful to my health and full development.

*The Province's Discharge of its Obligation to Provide Supportive Housing*

33. Since I was ten years old, I have been provided with care by the Province. The care has always been congregate and institutional. It never included an education. It has always been coerced; neither I nor my family were offered real choices as to where I could live or with whom.

34. Regarding King's RRC, I was sent to an institution at age 14, even though the people living there were all adults. The living quarters were always locked and I had no ability to come and go freely.

35. The same has been true for the past 13 years which I have spent at the Nova Scotia Hospital. I have lived, and continue to live in a locked unit. None of the 'patients', including me, are free to come and go.

36. The people assigned to my case who work for the Province have been made aware, and acknowledged for many years that I am capable of living in supportive housing in the community, and that I wanted to live in the community.

37. However, in contrast to how the Province provides housing assistance to people in need without disabilities so that they can live in their communities, the Province has failed to provide the appropriate assistance which I need in order to live in the community.

38. In general terms, my disability related needs include:

- a. Support for all my activities of daily living
- b. 24-hour supervision

- c. A carefully planned transition to the community (preferably in the Halifax Metro area) with support from people I trust (i.e., circle of support) and an experienced provider of support
- d. Ongoing support in learning how to live in the community, travel and shop and access services in the community
- e. Ongoing support to engage in recreational activities/hobbies that are meaningful to me

***Human Rights Act Violation***

39. I feel that I am entitled to and should have been given the help and supports that I need to live in the community. The Province does provide assistance for people without disabilities who have no money; they are given the help they need by the Province to live in the community. The Province's failure, since 1986, to take into account and accommodate my different needs in offering supports for me to live in the community is discriminatory and a violation of s. 5(1)(a), (o) and/or (t) of the *Human Rights Act*.

**4. Why do you believe the treatment you received is because of your protected characteristics?**

40. I believe that the treatment I have received was because of my protected characteristics because the Province gives people without disabilities, who are in need, social assistance to live in the community. This assistance is given immediately and as of right.

**5. Do you believe that you are the only person who has experienced this treatment? Please explain.**

41. I know that the Province has failed to provide community based options to other people in Emerald Hall who want to live in a small options home in the community.

**6. How did this affect you?**

42. This affected me in many ways. I have, effectively, been forced to remain in a locked unit in a psychiatric hospital even though I neither wanted nor needed to stay in the hospital. I have been unable to properly develop or to receive an education. I have been deprived of the chance to work and do other things in the community. I have been

exposed to the problems of living in a psychiatric ward including noise and risks of violence.

43. The fact that I remain at Emerald Hall presents two problems for me:

- a. I cannot develop as a person to the fullest extent possible—including learning to live and thrive as a member of a community.
- b. In addition, my continued detention in Emerald Hall causes my mental and physical health and wellbeing to suffer.

**7. How did you try to resolve the problem?**

44. I have asked many people to help me including members of the staff at the NS Hospital and my various Provincial case workers. I have asked them to find me a small options home placement in the community many, many times. When I arrived in 2000, I was told that I would only need to stay at the Nova Scotia Hospital for one year but, instead, I have been forced to stay here for more than 13 years. My Provincial case worker says that they will find me a place but they never do.

45. I also know that the staff at Emerald Hall have asked DCS many times to find me a small options home over the years but nothing ever happens.

**8. When did you last have contact with the Respondent? What happened?**

46. I have lived in institutions run by the Province for decades, so my contact with the Respondent happens every day of my life. Efforts to secure a suitable residential setting that meets my needs have gotten nowhere.

47. I filed a Human Rights Complaint with the Commission on February 21<sup>st</sup>, 2014. Prior to then, despite my requests, the Province had failed to offer me a small options placement in the 13 years since I was sent to the NS Hospital. Following the filing of my complaint in February, a small-option home provider came to meet with me about the possibility of moving into a small options home. Unfortunately, the opening that it had was not a suitable situation for me.

48. I am requesting that a Human Rights Board of Inquiry do the following:



- a. Tell the Province of Nova Scotia (including the Departments of Community Services and Health and Wellness) that offering me a place to live in a hospital or other places where I didn't want to live and did not need to live since I was 10 years old was and is discriminatory and a violation of s. 5(1)(a), (o) and/or (t) of the *Human Rights Act*.
- b. Order the Province to treat me in a non-discriminatory way by providing me with the means to immediately access the help and supports that I need to live in the community as it does for other people who have no disabilities but who need social assistance.
- c. Order the Province of Nova Scotia to pay me compensation for all the years that it discriminated against me by effectively forcing me to stay in hospitals or places where I didn't want to be and didn't need to be.

#### **Sheila Livingstone: Human Rights Complaint**

49. I, Olga Cain, am the older sister of Sheila Livingstone (dob: June 4, 1947), the subject of this Complaint. I live in Truro, Nova Scotia. I am also the designated substitute decision maker for Sheila under the *Involuntary Psychiatric Treatment Act* and the *Hospitals Act* (NS).

50. I complain against the Respondent that from 2004 through to the present and continuing, the Respondent ("the Province") has and continues to discriminate against my sister, Sheila, with respect to the social services provided to her because of the combined effect of her mental disabilities and her source of income (social assistance).

#### **1. What are your protected characteristics? Please explain.**

51. Sheila Livingstone's protected characteristics are the combined effect of her mental disabilities and her source of income (social assistance). They have jointly combined to result in her being discriminated against in the provision of a service provided by the Province. As a person with mental disabilities who needs assistance in basic living arrangements, but without independent financial resources, Sheila is completely dependent on the Province for whatever residential settings the Province

makes available to her.

52. Sheila has had long-term mental illness: (schizoaffective disorder) and intellectual disability. As a teenager in the mid-1960's, Sheila was diagnosed as psychiatrically ill, suffering from schizoaffective disorder. In 2002, Sheila was diagnosed with dementia. Sheila has been financially dependent on social assistance for decades.

**2. When did the alleged discrimination begin?**

53. The discrimination began in 2004 and this discrimination has been continuous through to the present and continues.

**3. Please provide example(s) of discriminatory treatment you say you experienced by the Respondent.**

54. Although the discrimination alleged dates back only a decade, it is necessary to understand Sheila's prior history to appreciate the nature of the discrimination.

55. Sheila has had significant mental disabilities which have dominated the nature and quality of her life, including her family life.

56. The Province's way of responding to and providing care for these mental disabilities have had a terrible impact on the quality of my sister's life.

57. As a child, Sheila lived at home with our family in Pictou County, Nova Scotia. When she turned six, Sheila was sent to school but was turned away.

58. Sheila was cared for at home by my parents until she was about 12 years old. At that point, (in 1955), my parents asked the Province for help in providing care to Sheila and, in response, the Province sent her to the Childrens' Training Centre in Truro, Nova Scotia. She lived there full time for about 10 years, except for holidays and summer vacation.

59. In 1963, at age 16, she was transferred by the Province to the Halifax Mental Hospital where she stayed for about two and a half years (I believe she was there during the period March 1964 to October 1966).

60. While there, she was diagnosed with a psychiatric illness, which has been described as a schizoaffective disorder.

61. In October 1966, Sheila was then moved to the Abbie Lane Hospital where she remained for almost all of the next 15 years (until January 1982). She was abused in that institution.

62. In January of 1982, Sheila was transferred to the Cole Harbour Residential Rehabilitation Centre ("RRC") where she remained for over four years—until May 1986.

63. Finally, in May 1986 at the age of almost 39, Sheila was transferred out of an institutional setting and into a small options home managed by the Regional Residential Services Society ("RRSS"), where the cost of her care was paid by the Province. Sheila lived in a variety of RRSS managed homes in the Halifax/Dartmouth area from May 1986 until July 2004 (18 years).

64. In 2002, while living in a RRSS home, Sheila was diagnosed with dementia. However, this did not prevent her from continuing to live in a small options home.

65. During this time, Sheila did well in her circumstances. However, because of her psychiatric condition (long-term mental illness: schizoaffective disorder) and intellectual disability, she had multiple temporary admissions to the stabilization unit at Emerald Hall, Nova Scotia Hospital for short periods of time. (Typically, these stabilization admissions were for a 24-hour period.) Following these short-term admissions, Sheila would return to live in her supported home in the community.

66. In July 2004, Sheila was admitted to Emerald Hall (Nova Scotia Hospital) for another stabilization period but, while there, her place in her home was given to someone else. This left her with no home to return to once she was well again. This resulted in my sister spending the next nine years in the locked hospital ward which is Emerald Hall. This is not a place where she either wanted or needed to live.

67. In the period since 2004, her mental health has gone through ups and down (with some occasionally difficult behaviour flare-ups); however these situations have been far less frequent over the past few years as Sheila has aged.

*Transfer to Harbourside Lodge: January 2014*

68. On January 28<sup>th</sup>, 2014 Sheila was transferred to Harbourside Lodge, an Adult Residential Centre ("ARC") in Yarmouth, Nova Scotia.

69. It was only very recently that DCS offered the Yarmouth placement. I was really torn about whether to accept it for Sheila. In part, my hesitation was because it was an institutional setting rather than the community-based small options home in which Sheila had lived but, even more so, because of the enormous distance from the Halifax Metro area.

70. In the end, I agreed to accept the offer from DCS simply because, in the past few months, I had been contacted on many occasions by staff at Emerald Hall who informed me that Sheila had been assaulted by a fellow patient. As she languished there, she was a 'sitting duck' for assaults which seemed to happen despite it being a fully staffed psychiatric ward. In the end, and with reluctance, I accepted the offer of the Yarmouth placement in order to protect Sheila from further assaults, even though it meant that she would lose the close contact with me, her main source of family support.

71. Currently, the fact that Sheila has been transferred to Harbourside Lodge, an Adult Residential Centre ("ARC") in Yarmouth means that she will have far less contact with my daughter Jackie and me. The reason, of course, is that the distance from my home in Truro to Yarmouth is so great (at least a five-hour drive) and, what with being dependent on my daughter, Jackie, for driving, I simply will have limited ability to have contact with Sheila.

72. I would far prefer to have Sheila living closer to me and my daughter Jackie so that she could have more regular and frequent contact with us. I know that she would be happier if she were living in Halifax, closer to us where she could have far more regular visits.

73. In fact, I believe that the Respondent Province has a responsibility to provide supportive housing for people with mental disabilities in the area where they live, not a five-hour drive away.

74. On behalf of Sheila, I state that the Province needs to provide a suitable-community based living situation in the Metro Halifax area, rather than her current living situation in Yarmouth, Nova Scotia.

75. Sheila does not have any money or the financial resources to support her. She cannot pay the costs of supportive housing. However, I understand that if Sheila were in a financial position to personally/privately pay the cost of a community-based living

situation, such a situation could easily and quickly be arranged through one or other of several organizations in Metro Halifax which provide supportive housing for people with mental disabilities.

76. In contrast, the Province provides housing assistance to people in need, without disabilities, to live in the community. As a person with mental disabilities and who has no money, the Province has failed to provide the assistance which Sheila needs in order to live in the community.

*Human Rights Act Violation*

77. The Province does provide assistance for people without disabilities who have no money; they are given the help they need by the Province to live in the community. The Province's failure to take into account and accommodate Sheila's needs in offering supports to live in the community during the period 2004 to 2014 is discriminatory and a violation of s. 5(1)(a), (o) and or (t) of the *Human Rights Act*. Further, the Province's failure to offer Sheila the help and supports that she needs to live in the Metro Halifax community in the same way that people from Metro Halifax without disabilities who have no money are given the help they need by the Province to live in the community is discriminatory and a violation of s. 5(1)(a), (o) and/or (t) of the *Human Rights Act*.

**4. Why do you believe the treatment you received is because of your protected characteristics?**

78. I believe the treatment that Sheila has received was because of her protected characteristics because I understand that people without disabilities who are in need are immediately and as of right given the help they need by the Province to live in the community.

**5. Do you believe you are the only person who has experienced this treatment? Please explain.**

79. I am aware of at least two people in Emerald Hall who also do not need to be living there and who want to live in the community but who have not been offered the supports they need to do so.

**6. How did this affect you?**

80. This treatment affected Sheila in many ways; she was unable to resume her life in

the community and was excluded from opportunities for social interaction. Also, she was effectively forced to remain in a locked unit in a psychiatric hospital even though she neither wanted nor needed to stay there; she was exposed to the problems of living in a psychiatric ward including noise, risks of and actual, repeated violence at the hands of other people living there.

81. Throughout her entire stay at Emerald Hall (i.e., from 2004 to 2014), there was no legal reason or requirement for Sheila to be actually living in Emerald Hall.

82. Despite that, my sister continued to languish in Emerald Hall where she was forced to live in a locked hospital unit with many other people, some of whom are very ill.

83. As a result of being made to live in this locked setting, Sheila was exposed to the risk of *and* actual repeated assaults, including having been assaulted recently on *many* occasions by fellow patients resulting in bruises and black eyes.

**7. How did you try to resolve the problem?**

84. The Department of Community Services (“DCS”), along with the Department of Health and Wellness, have been the Provincial Departments that have been given responsibility by the Respondent Province to provide housing for Sheila. These Departments have been asked to provide community-based housing for her. The Respondent agreed that there is no *medical* reason for Sheila to live in Emerald Hall and that she could resume living in the community. The DCS has consistently held this view for well over two years.

85. Everyone involved in Sheila’s care—including representatives of the DCS—agreed that her best interests would be served by having a place to live outside the Nova Scotia Hospital where, for the remainder of her life, she would be able to live in a safe and healthy environment, where her quality of life would be greatly improved.

**8. When did you last have contact with the Respondent? What happened?**

86. Sheila lived for a decade in Emerald Hall, an institution run by the Province, so her contact with the Respondent pervaded her life from 2004 to 2014.

87. I last heard from DCS when Sheila was transferred to Yarmouth.

88. On behalf of Sheila, I am requesting that a Human Rights Board of Inquiry do the following:

- a. Tell the Province of Nova Scotia (including the Departments of Community Services and Health and Wellness) that having only offered Sheila a place to live in a hospital where she didn't want to live and did not need to live during the period July 2004 to January 2014, was and is discriminatory and a violation of s. 5(1)(a), (o) and/or (t) of the *Human Rights Act*.
- b. Order the Province to be told by the Human Rights Board of Inquiry that only offering Sheila, in January 2014, an institutional placement (Harbourside Lodge, an Adult Residential Centre ("ARC") in Yarmouth) which is at least a five hour drive from family members is discriminatory and against s. 5(1)(a), (o) and/or (t) of the *Human Rights Act*.
- c. Order the Province to treat Sheila in a non-discriminatory way by giving her, right away, the help and supports that she needs to live in a community-based home in the Halifax Metro area of the Province, as it has and does for other people who need social assistance but who do not have disabilities.
- d. Order the Province of Nova Scotia to pay compensation for all the years that it discriminated against her by making Sheila stay in hospitals or institutions where she didn't want to be and didn't need to be and/or that are too far from her family in the Halifax Metro area.

**Joseph Delaney: Human Rights Complaint**

89. I, Susan Lattie, live in Dartmouth, Nova Scotia and am the mother of Joseph Delaney ("Joey"), the subject of this complaint. I am also the designated substitute decision maker for my son Joey under the *Involuntary Psychiatric Treatment Act* and the *Hospitals Act* (NS). I have maintained a relationship with Joey throughout his life.

90. Joey currently is an inpatient at Emerald Hall (Nova Scotia Hospital). I visit with Joey as much as possible. I have been very ill for quite some time and have not been able to visit my son on a regular basis due to my poor health. I meet with the social worker for Emerald Hall on a bi-monthly basis and she provides me with an update on my son's care.

91. I complain against the Respondent that from 2010 through to the present and continuing, the Respondent ("the Province") has and continues to discriminate

against my son, Joseph Delaney, with respect to the social services provided to him because of the combined effect of his mental disabilities and his source of income (social assistance).

**1. What are your protected characteristics? Please explain.**

92. Joey's protected characteristics are the combined effect of his mental disabilities and his source of income (social assistance). They have jointly combined to result in his being discriminated against in the provision of a service provided by the Province. As a person with mental disabilities who needs assistance in basic living arrangements, but without independent financial resources, Joey is completely dependent on the Province for whatever residential settings the Province makes available to him.

93. Joey has been diagnosed with severe mental retardation and cyclic mood disorder, as well as epilepsy, hypothyroidism, and other health conditions. He has been financially dependent on social assistance for decades.

**2. When did the alleged discrimination begin?**

94. The discrimination began in 2010 and this discrimination is continuing through to the present and continues.

**3. Please provide example(s) of discriminatory treatment you say you experienced by the Respondent.**

95. Although the discrimination alleged dates back only to 2010, it is necessary to understand Joey's prior history to appreciate the nature of the discrimination.

96. Joseph Delaney was born on September 10, 1972 and is currently 41 years old.

97. At a very early stage in his development, Joey's behaviour made his care and protection significantly challenging.

98. At the toddler stage, I asked the Province for help providing care for Joey. As a result of my request, the proposal from the Province was for Joey to be admitted to the Dartmouth Children's Training Centre, where he spent his formative years.

99. Beginning in 1998, Joey resided in the community, in small option homes operated by Regional Residential Services Society ("RRSS"), funded by Services for



Persons with Disabilities (SPD) a division of the Department of Community Services ("DCS").

100. Apart from a stay at Emerald Hall (Nova Scotia Hospital) from December 2008 to March 2009, Joey lived in community-based small-option homes funded by DCS until he was admitted to Emerald Hall due to health complications in January 2010.

101. In December 2009, Joey was admitted to the Nova Scotia Hospital for acute care to address an adverse reaction to medication and resulting behavioural problems that could not be addressed in his small option home. His mental health and behavioural issues at the time required access to Emerald Hall's psychiatric care and clinical specialty inpatient team, and he was admitted there on January 22, 2010 in order for his health to be stabilized.

102. While being treated at Emerald Hall, Joey's level of care was reclassified by DCS. Following the reclassification, the Province took away Joey's placement at his community-based small option home.

103. As a result, Joey had no community-based home to return to once he was ready for medical discharge, and he was trapped in Emerald Hall.

104. In fact, by July 21, 2010, the clinical staff at Emerald Hall considered Joey to be ready for medical discharge. They notified DCS, and expected Joey to return to a community placement.

105. DCS responded, on November 16, 2010, by placing Joey on a waitlist for a placement requiring an "RRC" level of care.

106. Except for a period of mood instability requiring adjustments to his medication and therapy in January and February 2013, Joey has been ready for community placement since July 21, 2010. Not only is there no medical reason for Joey to be in the NS Hospital, there is no legal basis for him to be there.

107. The clinical staff at Emerald Hall considers Joey to be ready for discharge to the community, with therapy continuing on an outpatient basis. However, the Province has failed to offer Joey an alternative place to live in the community and as a result Joey continues to reside, and languish, at Emerald Hall to this date.

108. Joseph Delaney has been unnecessarily institutionalized for over 3 years, separated from his community, and denied the opportunity to engage and participate in a full and productive life.

109. Joey has no money or financial resources with which to pay for the care and support he requires to live in the community.

110. I understand that if Joey were in a financial position to personally/privately pay the cost of a community-based living situation, such a situation could quickly be arranged through one or other of several organizations in Metro Halifax which provide supportive housing for people with mental disabilities.

111. In contrast, the Province provides housing assistance to people in need, without disabilities, to live in the community. As a person with mental disabilities and who has no money, the Province has failed to provide the assistance which Joey needs in order to live in the community.

#### *Human Rights Act Violation*

112. I feel that Joey is entitled to and should have been given the help and supports that he needs to live in the Metro Halifax community in the same way that people from Metro Halifax without disabilities who have no money are given the help they need by the Province to live in the community. The Province's failure to take into account and accommodate Joey's needs in offering supports to live in the community since July 2010 is discriminatory and a violation of s. 5(1)(a), (o) and/or (t) of the *Human Rights Act*.

#### **4. Why do you believe the treatment you received is because of your protected characteristics?**

113. I believe that the treatment that Joey has experienced is because of his protected characteristics because I am aware that the Province immediately and as of right provides housing assistance to people in need, without disabilities, to live in the community. The Province has failed to provide the assistance which Joey, as a person with mental disabilities, needs in order to live in supportive-housing in the community.

#### **5. Do you believe you are the only person who has experienced this treatment? Please explain.**

114. I am aware of at least one other person currently living in Emerald Hall who also does not need to be living there and who wants to live in the community but who has not been offered the supports they need to do so.

**6. How did this affect you?**

115. This affected Joey in many ways, including that: he was effectively forced to remain in a locked unit in a psychiatric hospital even though he neither wanted nor needed to stay there; he has been unable to develop as fully as possible, to live and work and do things in the community that almost everyone else does; he has been exposed to the problems of living in a psychiatric ward including excessive noise and risk of violence.

116. When he lived in a small option home, Joey was able to work at Dartmouth Adult Services Centre 5 days a week and he enjoyed interacting with the people there on a day-to-day basis and at staff celebrations.

117. Joey connected well with the staff at his community home, and enjoyed going on car rides and shopping trips, working on puzzles, singing, and dancing around the home. Joey is denied these opportunities while he resides at Emerald Hall, and also suffers from adverse impacts by continuing to live there.

118. Emerald Hall is a locked unit designed for people with dual diagnosis in acute crisis situations. In this disruptive, institutional, and isolated setting, the skills that Joey gained while living in community placements that allowed him to interact socially and function more independently are deteriorating.

119. Joey is currently developing skills and behaving in ways that help him cope in the institutional setting of Emerald Hall. This institutionalized behavior may be functional in an institutional setting, but it is detrimental and counterproductive to Joey learning to live in a community setting.

**7. How did you try to resolve the problem?**

120. As mentioned above, Joey has been ready and approved by staff to leave Emerald Hall since July 2010. Indeed, staff at Emerald Hall notified DCS of this in July 2010 and expected Joey to return to a community placement.

121. DCS responded by placing Joey on a waitlist for RRC placement on November 16, 2010.

122. I understand that staff at Emerald Hall contacted the DCS worker who had been assigned to his file in November 2012 to advise that I wanted Joey to live in a small option within the Halifax Regional Municipality and that he had been ready for such a placement since July 2010. I have received no response from DCS with respect to the request for an appropriate placement.

123. The clinical staff at Emerald Hall considers Joey to be ready for discharge to the community, with therapy continuing on an outpatient basis. However, Joey continues to reside, and languish, at Emerald Hall to this date.

**8. When did you last have contact with the Respondent? What happened?**

124. Joey has lived in Emerald Hall, an institution run by the Province, since 2010, so his contact with the Respondent pervades his life.

125. I understand, via the social worker at Emerald Hall, that Joey remains on a waiting list for a placement outside Emerald Hall.

126. On behalf of Joey, I am requesting that a Human Rights Board of Inquiry do the following:

- i. Tell the Province of Nova Scotia (including the Departments of Community Services and Health and Wellness) that only offering Joey a place to live in a hospital since July 2010 was and is discriminatory and a violation of s. 5(1)(a), (o) and/or (t) of the *Human Rights Act*.
- ii. Order the Province to treat Joey in a non-discriminatory way by giving him, right away, the help and supports that he needs to live in supportive housing in the community, as it has and does for other people who need social assistance but who have no disabilities.
- iii. Order the Province of Nova Scotia to pay compensation for all the years that it discriminated against Joey and made him stay in hospital where he didn't want to be and didn't need to be and that staying there has been hard on him.

## **The Disability Rights Coalition (“DRC”): Human Rights Complaint**

127. I, Marty Wexler, am the current chair of the Disability Rights Coalition.

128. The DRC joins this complaint against the Respondent Province on the basis that the DRC, as an organization, is an aggrieved person because it represents the interests of persons vulnerable to discrimination on the basis of disability. Specifically, the DRC complains against the Respondent that from 1986 through to the present and continuing, the Respondent (“the Province”) has and continues to act and/or fails to act in a manner that aggrieves the DRC with respect to the social services provided to people with disabilities because of the combined effect of their disabilities and their source of income (social assistance).

### **1. What are your protected characteristics? Please explain.**

129. The Disability Rights Coalition (“the DRC”) actively promotes the equality interests of persons with disabilities. The DRC is a coalition of individuals and over 32 organisations<sup>1</sup> across Nova Scotia, which is committed to promoting the equality interests of persons with disabilities. The DRC is a “cross disability” organization, meaning that it represents the interests of all persons, regardless of the nature of their disability. The Coalition provides a forum for persons with disabilities and their advocates to work together toward full equality.

130. The DRC’s membership is drawn from people with disabilities and those associated with them: “We are an advocacy group made up of people who have

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<sup>1</sup> Abilities Foundation of NS, Anchor Industries, Annapolis Valley Special Needs Parent Support Group, Arthritis Society/Nova Scotia Division, Attention Deficit Association of NS, Autism /PDD Society of NS, Brain Injury Association of NS, Canadian Mental Health Association (Dartmouth), Canadian Paraplegic Association NS, Community Housing Association, Community Living Centres Inc., Dalhousie Student Accessibility Services, DASC Industries, Deafness Advocacy Assoc. of Nova Scotia, Halifax Adult Services (Prescott Group), Halifax Association for Community Living, Halifax Cerebral Palsy Association, Independent Living Nova Scotia, L’Arche Cape Breton & L’Arche Homefires, Metro Community Housing Assoc., Multiple Sclerosis Association of Canada NS, Nova Scotia Assoc for Community Living, Nova Scotia League for Equal Opportunities, Muscular Dystrophy Canada-Atlantic Region, Parkinson Society Canada - Maritime Region, Partnership for Access Awareness, People First Nova Scotia, Progress Centre for Early Intervention, Regional Residential Services Society, Service Support Groups, Society for the Treatment of Autism NS, Society of Deaf & Hard of Hearing NS, Windsor People First Society, Yarmouth Association of Community Residential Options (YACRO)

disabilities, professionals who work with people who have disabilities, and friends and family members.”<sup>2</sup>

131. The Coalition was formed in 2001 following the release of an independent assessment of the Nova Scotia government’s system of residential services for persons with disabilities, entitled *An Independent Evaluation of the Nova Scotia Community Based Options Community Residential Service System*, which became known as the *Kendrick Report*. The original mandate of the DRC was to advocate for improved community based options for persons with disabilities.

132. In addition, the DRC’s current mandate includes promoting the equality interests of persons with disabilities, as set out in the *UN Convention on the Rights of Persons with Disabilities (CRPD)*, and advocating for the development of a Nova Scotia Disability Strategy to implement the provisions of the CRPD.

133. The DRC has been active over the years in pursuit of our goals; especially including supportive, community based housing for people with disabilities. Some of these initiatives include:

- DRC invitation to and participation in a ‘Forum on Disabilities-Round Table Discussion’ hosted by the Nova Scotia Legislature Standing Committee on Community Services (September 2008)
- DRC Submission in response to the Province’s Discussion Paper on the development of a Housing Strategy (November 2012)
- DRC support for and organizational assistance provided for a rally held at the NS Legislature to protest the failure of successive provincial governments to provide appropriate community based residential options for persons with developmental disabilities.
- Development of a DRC web site: <http://users.eastlink.ca/~pkitchen/index.htm>

## **2. When did the alleged discrimination begin?**

134. The Respondent has, for at least 50 years failed to provide adequate, supportive, community-based housing for people with disabilities. However, our complaint is limited in time to the introduction, in 1986, of the prohibition of discrimination against people with physical and mental disabilities in the Nova Scotia *Human Rights Act*.

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<sup>2</sup> See the DRC web site re ‘Who we are?’: <http://users.eastlink.ca/~pkitchen/who%20we%20are.htm>

**3. Please provide example(s) of discriminatory treatment you say you experienced by the Respondent.**

135. Although DRC has had no direct involvement with any of the individual complainants, this complaint relates to the types of experiences with which DRC is all too familiar. Our organization is acutely aware of the barriers and challenges to community living experienced by many persons with disabilities, and in particular the harmful effects of long-term residence in institutions such as Emerald Hall. In our advocacy role in pursuit of deinstitutionalization, the DRC has endorsed the following definition of "institution," which the Emerald Hall unit of the Nova Scotia Hospital fits:

An Institution is any place in which people who have been labeled as having an intellectual disability are isolated, segregated and/or congregated. An institution is any place in which people do not have, or are not allowed to exercise, control over their day to day decisions. An institution is not defined merely by its size.

136. The Province's treatment of the individual complainants, and the adverse impact of the Province's failure to provide meaningful access to public assistance that will enable them to live in the community, is part of a systemic failure that will adversely affect many persons with disabilities who are in need of public assistance in Nova Scotia at some point in their lifetime. In the case of the individual complainants, these adverse impacts include both the harmful effects on their physical and mental health of being effectively forced to live in a locked psychiatric ward and the adverse consequences of being deprived of the opportunity to live and participate to the extent possible in the community. These are typical of the types of impacts of the Province's failure to provide supports and services to persons with disabilities.

137. At a systemic level, some individuals with disabilities need supports that non-disabled individuals do not need in order to live in the community and exercise some control over their lives. Thus, for persons in need and in receipt of social assistance, equality/non-discrimination require recognition of differential need; it is discriminatory not to provide for the necessary supports tailored to individual needs as they may change over time.

**4. Why do you believe the treatment you received is because of your protected characteristics?**

138. The DRC believes that the treatment that people with disabilities have received has been because of their protected characteristics based on the understanding that people without disabilities who are in need of social assistance, are immediately and as of right given the help they need by the Province to live in the community.

**5. Do you believe you are the only person who has experienced this treatment? Please explain.**

139. DRC joins this complaint to raise the systemic nature of the discrimination typified by the three individual complainants.

140. Addressing the systemic challenges to community living and inclusion is a fundamental interest and a *raison d'être* of the DRC and as a result it has made a particular effort to understand the nature, history and causes of barriers to community living and to support efforts to remediate the harm caused by such barriers.

141. Based on the DRC's history and involvement in Nova Scotia with respect to challenging the barriers to community living faced by individuals with disabilities, the organization has relevant knowledge and experience of the issues raised in this complaint at a systemic level, not shared by the individual complainants.

142. Indeed, by virtue of its work, mission and mandate, the DRC is aggrieved because its interests are prejudicially affected by the Nova Scotia government's failure to accommodate all categories of persons in need, specifically in failing to develop, implement and provide appropriate options for community living for persons with disabilities. The government's failure has resulted in the following breaches of the rights of members of the community whom the DRC is designed to serve:

- a) Persons with disabilities have been deprived of the opportunity to choose their place of residence and where and with whom they share their living space, but instead are obliged to live in inappropriate living arrangements not commensurate with their needs;
- b) Persons with disabilities have been denied access to a range of in-home residential and other community support services, including personal assistance to support living and inclusion in the community, which has resulted in their isolation or segregation from the community;



- c) Community services and facilities for the general population are not available on an equal basis to persons with disabilities and are not responsive to their needs.

*The Systemic Discrimination Problem at Emerald Hall*

143. Because there are so few supportive housing placements provided by the Province, (in comparison to the need e.g., there are over 800 people on the waiting list for appropriate supportive housing), once admitted to the short term, 'temporary' care unit of Emerald Hall, Nova Scotia Hospital, many people become 'stuck' or trapped there as they often lose their former community-based living situation upon admission to Emerald Hall, and, therefore, have no place to return to in the community once their short term stabilization in hospital has taken place.

144. This shortage of supportive housing creates a bottleneck, affecting people in hospital who are ready for discharge, in this case from the Emerald Hall unit of the Nova Scotia Hospital. As a result, the space in acute care hospital facilities such as Emerald Hall are filled with people who no longer require hospital care and, conversely, spaces are frequently unavailable for people who actually need to be admitted to hospital for shorter term stabilization. This serves to undermine Emerald Hall's intended purpose to provide short-term care.

145. Staff at Emerald Hall has met, on many occasions over the years, with representatives from the Province's Department of Community Services and Capital Health in an effort to resolve the backlog of people waiting for community placements. During these meetings, DCS officials have been reminded that the majority of inpatients at Emerald Hall are awaiting community reintegration with some people waiting over a decade for placement by the Province. It has further been pointed out to officials with the Province that the continued detention at Emerald Hall is a form of discrimination against people with disabilities.

146. At these meetings and on other occasions, DCS officials have indicated in their statements and written correspondence that they are fully aware of the extent of the situation of people such as the individual complainants who, because of the Province's failure to offer adequate supportive housing in the community, are stuck in a locked ward such as Emerald Hall.

147. In April 2006, an external review of the Emerald Unit and the Community Outreach Assessment Service and Emerald Hall was carried out by Chrissoula Stavarakaki

MD, FRCP, Ph.D. and Dorothy Griffiths Ph.D. Entitled "*Joint Review of the Emerald Unit and the Community Outreach Assessment Service Team (COAST) Nova Scotia Hospital*", the report made recommendations for improvement to the service provided to patients. To date the majority of recommendations concerning either the mandate or the actual provision of services have not been fully implemented. Among the comments and recommendations included in the report are the following:

"The philosophy of support and care should be shifting to be more people centered and community oriented. Treatment supports must continue to move towards the least restrictive and most normative approach."

"There is an urgent need for the Department of Health to meet with the Department of Community Services to develop a short term strategy to deal with the confinement of individuals unjustifiably in the Emerald Unit."

"There is a need for a long term plan to ensure that future gridlocks do not occur in the system. The two departments need to develop a coordinated plan that will ensure that a policy is created that will not result in a loss of "home" for persons who experience a mental health crises, that categorization of the clinical needs of people does not obviate the importance of placement of persons based on a person centered transition plan and that the requirement for the least restrictive and intrusive is not blocked for persons ready for community reintegration to their own home when the crises has been appropriately managed".

"The inpatient unit has become a long term holding unit for many of the 19 residents, who no longer need this service. It was estimated that approximately 50% of the population of this program are being hospitalized without justification and some are being held against their wishes in a locked psychiatric unit, despite a lack of grounds on which to currently retain them. The individuals are being confined without justification because no community options are available for them within the system.....Consequently, these individuals are living in a more restrictive environmental setting than is needed, appropriate, or advisable, because of a moratorium on placement development in the Department of Community Services.....The delay of discharge at this time appears to be strangling the current unit in its attempt to serve the existing population and verging on violation of the Rights and Freedoms of the individuals long time destined for release."

“...the most intractable barrier to the return of well persons with dual diagnosis to the community is the current moratorium that is placed on the development of new community options. The moratorium in the Department of Community Services was apparently implemented 6 years ago while the Department engaged in a reformation process.”

“The resultant effect of the current Department of Community Services policies is that the acute short term capacity of the unit operated by the Department of Health has been eliminated, not by choice but because of a political roadblock. **This roadblock creates three critical challenges for the system:**

**First, because the unit is gridlocked acutely ill clients from the community cannot gain needed treatment services....”**

“Second and perhaps even more severe challenging is that many of the residents of Emerald Hall are being held without justification and against their will in a locked psychiatric hospital unit. More than 10 of the individuals currently living in the acute short term program have been ready for discharge for a very long period of time (i.e., 10 years) but have been forced to be confined in a locked psychiatric unit because of a the failure of the community to develop appropriate community supports that can support these individuals.

Moreover, this current situation clearly undermines the fundamental rights of these individuals. It represents discriminatory treatment because they carry a dual diagnosis. The situation is clearly confinement without justification and cruel and unusual punishment for behaviours which have long since resided. A nondisabled person in the province of Nova Scotia who experienced an acute mental illness and recovered would not likely be held in a locked psychiatric ward for up to ten or more years post recovery. This failure to return these individuals to a less restrictive environment is inhumane and a class action law suit waiting to happen. Furthermore, human rights and freedoms should be neither granted nor denied by governments (Gostin, 2000). Persons possess rights simply because of their humanity. Thus, persons with Dual diagnosis do not need to prove that they deserve certain rights. Human rights law provides fundamental protections without qualification or exception.

**Third, several other clients on the unit have also been there for a very long time, and while these other individuals have ongoing or recurrent Issues,**

**they are not of a severity that would require institutionalization. One man has been living on this acute unit for 40 years.” (emphasis in original)**

148. Forcing persons with disabilities to live in care settings that do not adequately accommodate their needs risks their health and safety. Placing a person in a care facility that cannot properly address the diverse and varying needs of dual disorder patients puts them at risk of improper health treatment, and at risk of aggravating their health concerns - possibly leading to hospitalization - if their treatment cannot be properly managed. As demonstrated by the experience of the individual complainants, hospital admission can lead to a loss of a permanent care placement, being placed on a waitlist for a new placement, and prolonged, unnecessary and harmful placement in an institutional health care setting.

*Broader Consequences of the Respondent's failure to provide access to the required services*

149. Beyond the specific context of Emerald Hall, the DRC is aware that the individual complainants are representative of a much larger group of individuals in Nova Scotia who, based on their poverty and disability, have been deprived of access to government supports and services which would enable them to live in the community and participate as full citizens in our society.

150. The DRC believes that there are hundreds and hundreds of people with disabilities in Nova Scotia, who are in need of community-based, supportive housing but whose needs the Province has failed to respond to. Many hundreds of these are people who are needlessly institutionalized, many in jails and prisons, many hundreds of others in RRCs and ARCs.

151. The DRC alleges that the current patchwork of options for community based living for persons with disabilities involves long delays and opaque criteria and waiting lists, based primarily on the needs of institutions not on individuals.

152. The failure to provide timely access to community living supports and services can result in unnecessary detention in institutional settings, and harm to individuals through loss of life choices, exclusion, segregation, mental, psychological and at times physical harm.

153. In accessing community based housing options, persons with disabilities may face a multitude of barriers over the course of their lifetime. Many individuals rely on parental support, but as parents grow older, and individual needs increase, often family support options are no longer tenable because of the undue burden it places on families and the insufficient support that is offered to individuals.

154. Without personal or family financial resources, many persons with disabilities must look to charitable or government funded housing options in order to be included in their communities. Based on their own financial resources many individuals with disabilities are not able to finance the supports and services they require in order to live in the community. Accordingly, they require government services and supports. The DRC is actively involved in promoting the development of policies, programs, services and supports for the meaningful inclusion of persons with disabilities in the community in order to strengthen accessible and inclusive government programs, policies and services.

155. Inadequate supports and services impact individuals with disabilities in a number of ways; physically, mentally and psychologically. Where inadequate supports and services result in unnecessary institutionalization, as occurred to the individual complainants in this case, the harm that can result is especially serious.

156. Individuals placed outside their community of origin may find their contact with family and friends greatly curtailed, and thus their emotional and psychological support and health undermined, due to financial and health constraints that prevent people from travelling.

157. Depending on the nature of the institution, and the condition of the other residents, detention in an institution may result in assault or other threats to personal security. It may result in psychological harm and mental deterioration, as persons are deprived of interactions with the community at large.

158. The unnecessary institutionalization of disabled persons creates a barrier to their social inclusion, and perpetuates stigma and stereotypes associated with disabled persons and their abilities to participate in society and their communities. Effectively, it separates disabled persons from their communities, and excludes them from an equal opportunity to enjoy a full and productive life, contrary to the purposes of the *Human Rights Act*.

159. Offering services to persons such as the individual complainants—in care settings that do not appropriately meet their needs not only undermines but directly conflicts with their rights under the *Convention on the Rights of Persons with Disabilities* (“the CRPD”) to which Canada is a party. Nova Scotia provided its approval to Canada ratifying the CRPD which, in article 19, provides:

**Article 19 - Living independently and being included in the community**  
States Parties to this Convention recognize the equal right of all persons with disabilities to live in the community, with choices equal to others, and shall take effective and appropriate measures to facilitate full enjoyment by persons with disabilities of this right and their full inclusion and participation in the community, including by ensuring that:

(a) Persons with disabilities have the opportunity to choose their place of residence and where and with whom they live on an equal basis with others and are not obliged to live in a particular living arrangement;

(b) Persons with disabilities have access to a range of in-home, residential and other community support services, including personal assistance necessary to support living and inclusion in the community, and to prevent isolation or segregation from the community;

(c) Community services and facilities for the general population are available on an equal basis to persons with disabilities and are responsive to their needs.

160. The Respondent Province itself has admitted clearly in a recent discussion paper (*Putting People First: Working Together to Support Independence and Dignity*, Dept. of Community Services, 2013) that many people are unnecessarily institutionalized in Nova Scotia (“...some for as long as two years or more...”) and that most of these people needlessly live away from their family and community and that, with the proper supports, they are capable of living in their own community.

*Discrimination in the provision of or access to a “service”*

161. The “service” in question in this complaint is access to social assistance or other public assistance or service required in order to enable persons with disabilities who are in need to live in an appropriate care setting, instead of being forced to live in situations which: do not adequately accommodate their needs, put their health in jeopardy and isolate them from their communities.

162. The individual complainants are poor persons who are “persons in need” pursuant to the *Employment Support and Income Assistance Act (ESIA)* and/or the *Social Assistance Act* and are eligible for assistance from the Province’s Department of Community Services.

163. A member of the public, living in the community who qualifies as a “person in need” is able to access the service of social assistance to obtain housing through a ‘shelter allowance’.

164. If the three individual complainants were “persons in need” who did not have disabilities, they would be provided assistance to live in the community as a matter of entitlement and at once. The waitlists and/or non-provision of community-based supportive housing are in stark contrast to the provision of the service of social assistance, including housing assistance, to “persons in need” who have no disabilities.

165. The complainants do not seek access to an extra, “ancillary” service, but rather access to assistance that is ordinarily provided by the Respondent Province to “persons in need”, albeit in a way and an amount that adequately accommodates the complainants’ disabilities and the needs arising therefrom in order to permit them to live a full and productive life in the community.

166. In contrast to its treatment of able-bodied persons in need, or, indeed, the treatment afforded to persons with disabilities who do not require supportive housing, the Province has failed to offer the needed and appropriate accommodative assistance to the individual complainants.

167. There is no meaningful access to this service for the individual complainants and many other persons with disabilities who need it. As acknowledged by the Province’s 2013 report *Putting People First*, almost 300 persons with disabilities are waiting for community-based placements, and more than 600 are waiting for a change of placement to a facility that will better accommodate their needs.

168. Instead of being provided with the necessary and appropriate services, they have been denied meaningful access to supports and services that will allow them to live in the community, and/or have been placed on waitlists while they are unnecessarily institutionalized and/or held in care facilities that do not accommodate their needs.

169. This “gridlock” in the system requires changes to broad systemic policies. Over the past two decades, a long list of reports have called for a more comprehensive continuum of residential housing options to address this issue, yet the ‘moratorium’ on the development of small option homes imposed by Provincial Government in the mid 1990’s is still in effect. As a result, the number of small option homes has continued to decline despite the increasing number of people requiring this type of housing and support.

170. The Provincial Government is failing to provide appropriate/accommodative assistance and support to persons with disabilities, such as the individual complainants, who need supportive shelter, and, therefore, is failing to provide meaningful access to a public service based on disability.

#### *Human Rights Act Violation*

171. The non-provision of supportive housing and other services in the community is a failure to accommodate the needs of persons with disabilities and violates the protections in s. 5(1)(a), (o) and/or (t) of the Nova Scotia *Human Rights Act* as informed by: i) article 19 of the *CRPD*, ii) articles 2, 9 and 26 of the *International Covenant on Civil and Political Rights* (ICCPR), iii) the Equality Rights guarantee in s. 15 of the *Canadian Charter of Rights and Freedoms* and iv) by the constitutional commitment to ‘providing essential public services of reasonable quality to all Canadians’ in s. 36(1)(c) of the *Constitution Act, 1982*.

172. The DRC alleges that all of the Respondent’s actions or inactions described above demonstrate that the Respondent has failed to accommodate poor people with disabilities in its provision of social assistance and/or social services. The provision of social assistance to “persons in need” discriminates between the disabled and non-disabled by enabling the latter, but frequently not the former, to live in the community. This failure to accommodate the needs of persons with disabilities is a failure to take account of their differential need, i.e. a failure to account for the fact that many persons with disabilities need supports to be able to live in the community which non-disabled persons do not need. This failure to accommodate the needs of persons with disabilities violates s. 5(1)(a), (o) and/or (t) of the *Human Rights Act* on the basis of poverty (their source of income being receipt of assistance from the Province as “persons in need”) and disability, as informed by: i) article 19 of the *CRPD*, ii) articles 2, 9 and 26 of the *International Covenant on Civil and Political Rights* (ICCPR), iii) the Equality Rights guarantee in s.



15 of the *Canadian Charter of Rights and Freedoms* and iv) by the constitutional commitment to 'providing essential public services of reasonable quality to all Canadians' in s. 36(1)(c) of the *Constitution Act, 1982*.

173. In light of the paragraph immediately above, and given the DRC's principles, goals, mandates and activities, the DRC, because the interests it seeks to advance are prejudicially affected, is directly aggrieved by the Respondent's actions and failures to take actions to accommodate the needs of people with disabilities who are living in poverty.

174. The DRC files this complaint under s. 29(1)(a) of the Nova Scotia *Human Rights Act*.

**6. How did this affect you?**

175. The Province's actions and failures to take action are directly contrary to the DRC's interests, specifically its principles and long-term advocacy goals designed to support the protection and advancement of the interests and the right to non-discrimination of persons with disabilities. The Respondent's actions and failures to take action regarding residential and other services for persons with disabilities directly aggrieve the DRC by prejudicially affecting its interests and thwarting its *raison d'être*.

**7. How did you try to resolve the problem?**

176. From 2011-2013, members of the DRC participated in the Nova Scotia Joint Government/Community Advisory Committee examining the Services to Persons with Disabilities Program. Two members of the DRC were also members of this Advisory Committee.

**8. When did you last have contact with the Respondent? What happened?**

177. The DRC has ongoing contact with the Respondent. The Respondent has made a public commitment to change, including the implementation of a "Roadmap", originally released by the former NDP government in 2013. The government has not yet implemented any changes to the current system.

*Remedy Sought by the DRC*

178. The DRC seeks remedial action in response to this complaint which takes into account the social and economic context in which these complaints are made, and the necessity for remedies that will address system failures, not simply individual gaps and violations.

179. In order to address the systemic failure to accommodate the needs of persons with disabilities in accessing supports and services that will enable them to live in the community on an equal basis in accordance with Article 19 of the *CRPD*, the DRC seeks a remedy that will compel the development and implementation of an integrated plan to address the systemic discrimination identified in this complaint. The plan and its implementation must include benchmarks, goals and timeframes, and collection of the information necessary to monitor the implementation of that integrated plan. The plan and its implementation must include ongoing supervisory jurisdiction to the NSHRC and to stakeholders representing those needing the supports and services incorporated into the plan.

180. A core component of the plan must be ongoing and meaningful involvement of disability rights organizations in the development and enactment of legislation which creates a legally enforceable right for people with disabilities to community-based, supportive housing in circumstances in which it is needed (*CRPD* articles 4(3) and 19).

181. The remedy must incorporate the following principles in furtherance of the commitments enshrined in the United Nations *Convention on the Rights of Persons with Disabilities*:

- An essential feature of self-determination is the appropriate provision of disability related supports and services. Disability related supports are a wide range of goods and services that assist persons with disabilities to overcome barriers and facilitate social inclusion and economic participation in community life. With these supports persons with disabilities enjoy equal opportunity to participate as full citizens in our communities. Community living rather than institutionalization is the ultimate goal.
- Supports and services must be based on person-centred planning, so that they are based on the wants, needs and desires of the person. This is in contrast to the current norm where the individual has to fit into the programs available, even though not tailored to individual need.

- Proper supports address housing, education, employment, recreation & individualized funding that follows the individual throughout their lifetime, with allowances for changing needs.
- Hospitals should never be an option for "placement" - a hospital is designed to meet medical needs, not day-to-day living. A hospital serves a short term function, but is an inappropriate setting for the long term. If a crisis leads to temporary hospitalization, the person's place in the community must be maintained.

### **The Canadian Association of Elizabeth Fry Societies (CAEFS): Human Rights Complaint**

182. I, Kim Pate, (J.D.) (Dalhousie), am the Executive Director of the Canadian Association of Elizabeth Fry Societies and have been since January 1992.

183. CAEFS joins this complaint against the Respondent ("the Province") on the basis that CAEFS, as an organization, is an aggrieved person because it represents the interest of persons vulnerable to discrimination. Specifically CAEFS complains that from 1986 through to the present and continuing, the Province has and continues to act and/or has failed to act in a manner that aggrieves CAEFS with respect to the social services provided to people with disabilities because of the combined effect of their disabilities and their source of income (social assistance).

#### **1. What is your protected characteristic(s)? Please explain.**

184. CAEFS' advocacy efforts are focussed on promoting the inclusion and equality of women and girls who face institutionalization, a disproportionate percentage of whom live in poverty and have disabilities.

#### *Advocacy & Litigation experience*

185. CAEFS has been involved in advocacy which either advances or supports human rights claims, including the claims for substantive equality that we are advancing in this Complaint.

186. At the United Nations, CAEFS has formal 'consultative status'.

187. Before UN Human Rights Treaty bodies, CAEFS has made five formal submissions, and attended three UN Human Rights Congresses as well as having been invited to attend two UN meetings to discuss the formation of rules for the better protection of the rights of women and girls (e.g., *The United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders* (the "Bangkok Rules").

188. We have filed two human rights complaints before the Canadian Human Rights Commission (on behalf of all federally sentenced women); CAEFS was granted standing and participated in the Commission of Inquiry into Certain Events at the Prison for Women in Kingston ('Arbour Inquiry'); and have participated in inquests into the deaths of four federally sentenced women and seven women in provincial or police custody. Most recently, CAEFS participated in the inquest into the death of Ashley Smith, a young woman with disabling mental health issues who died in federal custody. Ashley's life and death demonstrate the need for supportive housing, community and social services supports with and for those with mental health issues, particularly women and girls. Had Ashley and her family received the supports they needed, Ashley need not have been criminalized, or imprisoned. Most importantly, she would not have died in the manner that she did.

189. CAEFS' work focuses on the broader interests of women and girls who are too often marginalized, victimized, criminalized and institutionalized as a result of inadequate financial, educational, health and social service support.

190. The CAEFS' Mission Statement makes clear that we:

"[W]ork with and for women and girls in the justice system, particularly those who are, or may be, criminalized....The association exists to ensure substantive equality in the delivery and development of services and programs through public education, research, legislative and administrative reform, regionally, nationally and internationally."

191. CAEFS' Principles include that "all efforts will be made to prevent women from being incarcerated and to facilitate the earliest community integration of those who are sentenced to a term of imprisonment."

192. CAEFS' Goals include: "To increase the availability of community-based, publicly funded, social service, health and educational resources available for marginalized, victimized, criminalized, and imprisoned women."

193. CAEFS states that, because of the prejudicial impact on the interests it represents and the goals that it advocates and promotes, it is aggrieved by the Respondent's actions and failures to take action for people with disabilities who are needlessly and, frequently to their detriment, institutionalized and who, more appropriately, ought to be offered supportive, community-based housing.

**2. When did the alleged discrimination begin?**

194. The Respondent has, for many decades, failed to provide adequate supportive, community-based housing for people with disabilities. However, our complaint is limited in time to the introduction, in 1986, of the prohibition of discrimination against people with physical and mental disabilities in the Nova Scotia *Human Rights Act*.

**3. Please provide example(s) of discriminatory treatment you say you experienced by the Respondent.**

195. Although CAEFS has had no direct involvement with the named individual complainants, this complaint relates to the types of experiences with which CAEFS is all too familiar.

196. One of the complainants in this complaint (Beth MacLean) has personal experience of having been both criminalized and effectively detained for 13 years, after a common assault on a staff member as a result of frustrations with her living situation.

197. Ms. MacLean's experience is emblematic of far too many people with disabling mental health issues. Too often, they are shuttled from a system that has inadequate community-based social supports through to institutional detentions. Don Head, Commissioner of the Correctional Service of Canada has recently described this phenomenon as "correctional services becoming the default mental health system in the country."

198. Nova Scotia is no exception to this widespread phenomenon as recent cases featured in the local media have made notorious. The principles and advocacy goals of CAEFS are undermined by Nova Scotia's inadequate provision of supportive housing and related services.

199. Individuals who are detained and/or institutionalized too often experience violence within institutions in Nova Scotia and Canada. Thus, Sheila Livingstone's experience as the victim of repeated assaults while in an institution raises a problem that CAEFS has long recognized as requiring remediation.

**4. Why do you believe the treatment you received is because of your protected characteristics?**

200. CAEFS believes that the treatment that people with disabilities have received has been because of their protected characteristics because it understands that people without disabilities who are in need are immediately and as of right entitled to the help they need from the Province, to live in the community.

**5. Do you believe you are the only person who has experienced this treatment? Please explain.**

201. CAEFS joins this complaint to raise the systemic nature of the discrimination typified by the three individual complainants and to push for the systemic remedies required to fully bring Nova Scotia's system into equality-compliance.

202. CAEFS believes that there are hundreds of people in Nova Scotia, who are in need of community-based, supportive housing and for whose needs the Province has failed to provide. Many of these are people who are needlessly institutionalized, many in jails and prisons, too many more are detained in RRCs and ARCs.

203. CAEFS advocates widely for individual and systemic remedies for women. The human rights complaints of the three individual complainants are emblematic of the need for broader reforms in the area of supportive housing and the provision of related support services. The Provincial government's actions and inactions seriously undercut CAEFS' efforts to promote the community inclusion and substantive equality of women and girls with disabilities.

204. Cutbacks and inadequate equality-enhancing social programs lead to both the risk of and actual involvement of women and girls in the justice system—both civil and criminal.

*Human Rights Act Violation*

205. CAEFS states that the Respondent's failure to provide social supports and services that accommodate the needs of persons with disabilities in a way which permits them to live with dignity in community-based supportive housing is a violation of s. 5(1)(a), (o) and/or (t) of the Nova Scotia *Human Rights Act*. The provision of Provincial government assistance to "persons in need" discriminates between the disabled and non-disabled by enabling the latter, but frequently not the former, to live in the community. This failure to accommodate the needs of persons with disabilities is a failure to take account of their differential need, i.e. a failure to account for the fact that many persons with disabilities need supports to be able to live in the community which non-disabled persons do not need. This failure to accommodate the needs of persons with disabilities violates s. 5(1)(a), (o) and/or (t) of the *Human Rights Act* on the basis of poverty (their source of income being receipt of assistance from the Province as "persons in need") and disability, as informed by: i) article 19 of the *CRPD*, ii) articles 2, 9 and 26 of the *International Covenant on Civil and Political Rights (ICCPR)*, iii) the Equality Rights guarantee in s. 15 of the *Canadian Charter of Rights and Freedoms* and iv) by the constitutional commitment to 'providing essential public services of reasonable quality to all Canadians' in s. 36(1)(c) of the *Constitution Act, 1982*.

206. In light of the paragraph immediately above, and given CAEFS' Mission Statement, Principles and Goals, CAEFS, because of the prejudicial impact on the interests it represents, is directly aggrieved by the Respondent's actions and failures to take actions to accommodate the needs of women and girls with disabilities, especially those living in poverty, and particularly in light of the institutionalization that, too often, needlessly results.

207. CAEFS files this complaint under s. 29(1)(a) of the Nova Scotia *Human Rights Act*.

**6. How did this affect you?**

208. In light of the above, it will be appreciated that CAEFS' interests, in particular its principles, practice and goals for community-based social programs are prejudicially affected by what has taken place and continues to take place at Emerald Hall and across Nova Scotia. CAEFS views these human rights violations as contrary to our philosophy, principles and goals. CAEFS is directly aggrieved because the interests it represents and promotes are harmed by the Respondent's actions and inactions in this matter.

**7. How did you try to resolve the problem?**



209. In addition to CAEFS work towards resolving the systemic problems identified in this complaint as described above at paragraphs 184-189, and its intermittent contact with the Respondent on behalf of women admitted to the Nova Scotia Hospital outlined in paragraph 210, CAEFS is joining this complaint to present the broader picture typified by the individual complaints in recognition of the history that case by case resolution has proven totally inadequate to address the real, systemic discrimination issues. As an integral part of that, CAEFS is also pushing for the systemic remedies required to fully bring Nova Scotia's approach to providing supportive, community-based housing for people with disabilities into equality-compliance.

8. **When did you last have contact with the Respondent? What happened?**

210. CAEFS has had intermittent contact with the Respondent in relation to women who have been admitted to the Nova Scotia Hospital, an institution operated by the Respondent.

*Remedy Sought by CAEFS*

211. CAEFS requests a ruling from a Board of Inquiry that:

- i. Unnecessary and inappropriate institutionalization of people with disabilities which has happened and continues to happen at Emerald Hall is contrary to s. 5(1)(a), (o) and/or (t) of the NS *Human Rights Act*.
- ii. The Respondent Province must immediately take steps to ensure that people with disabilities are fully and properly accommodated in their need for supportive, community-based housing.
- iii. The Respondent Province must immediately develop and implement a plan of action to accomplish the goal in b) above with benchmarks and within a reasonably tight time frame, including the setting and realization of intermediate, annual targets. The design and implementation (including monitoring) of the action plan shall be done with the effective participation of all stakeholders.
- iv. The action plan must include the development and enactment of legislation that will implement the action plan and create a legally



enforceable right to community-based supportive housing for people with disabilities.

- v. The Respondent Province must immediately resource the development of independent advocacy supports for people with disabilities who seek or otherwise require accommodation in their need for supportive community-based housing and other support services.

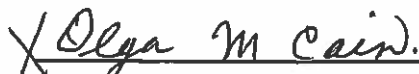
I refer to all the above information and allege that these actions constitute discrimination on account of mental disability and/or source of income and that they are prohibited under section 5(1)(a), (o) and (t) of the Nova Scotia *Human Rights Act*.

I have read (or had read to me) the above allegations and to the best of my knowledge, the information is true and accurate.


Dated at Halifax, Nova Scotia on July 22, 2014

  
Beth MacLean, Complainant

Dated at Elmsdale, Nova Scotia on July 23, 2014

  
Olga Cain, on behalf of and in respect of  
Sheila Livingstone, Complainant

Dated at Halifax, Nova Scotia on July 22, 2014

  
Susan Lattie, on behalf and in respect of  
Joseph Delaney, Complainant

I consent to the release of the Nova Scotia Human Rights Commission (NSHRC) of all information and documents concerning me that the NSHRC considers necessary for its investigation, such as personnel records, documents, data, medical or hospital records which relate to this complaint. I also authorize the NSHRC to have such information examined by any person it retains to provide advice and assistance in dealing with my complaint.

Dated at Halifax, Nova Scotia on July 22, 2014

Beth MacLean  
Beth MacLean, Complainant

Dated at Elmsdale Nova Scotia on July 23, 2014

X Olga M Cain  
Olga Cain, on behalf of and in respect of  
Sheila Livingstone, Complainant

Dated at Halifax, Nova Scotia on July 22, 2014

Susan Lattie  
Susan Lattie, on behalf and in respect of  
Joseph Delaney, Complainant

I refer to all the above information and allege that these actions constitute discrimination on account of disability and/or source of income and that they are prohibited under section 5(1)(a), (o) and (t) of the Nova Scotia *Human Rights Act*.

I have read (or had read to me) the above allegations and to the best of my knowledge, the information is true and accurate.

Dated at Ottawa, ON on July 16<sup>th</sup> 2014  
(City, Town or Municipality)

Kim Pate  
Kim Pate, for the Canadian Association of Elizabeth Fry Societies (CAEFS), Complainant

Dated at Halifax, Nova Scotia on July 30<sup>th</sup> 2014



Marty Wexler, for the Disability Rights Coalition (DRC),  
Complainant


I consent to the release to the Nova Scotia Human Rights Commission (NSHRC) of all information and documents concerning the organization I represent that the NSHRC considers necessary for its investigation. I also authorize the NSHRC to have such information examined by any person it retains to provide advice and assistance in dealing with my complaint.

Dated at Ottawa, ON on July 16<sup>th</sup>, 2014  
(City, Town or Municipality)



Kim Pate, for the Canadian Association  
of Elizabeth Fry Societies (CAEFS), Complainant

Dated at Halifax, Nova Scotia on July 30<sup>th</sup> 2014



Marty Wexler, for the Disability Rights Coalition (DRC),  
Complainant

ALL THE COMPLAINANTS HEREIN AGREE THAT THEY WANT THEIR  
COMPLAINTS DEALT WITH TOGETHER AS ONE:

Dated at Ottawa, ON on July 16<sup>th</sup>, 2014  
(City, Town or Municipality)




Kim Pate, for the Canadian Association of Elizabeth Fry Societies (CAEFS), Complainant

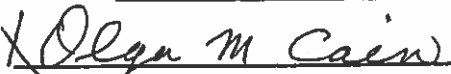
Dated at Halifax, Nova Scotia on July 30<sup>th</sup> 2014

  
Marty Wexler, for the Disability Rights Coalition,  
Complainant


Dated at Halifax, Nova Scotia on July 22 2014

  
Beth MacLean, Complainant

Dated at Elmsdale, Nova Scotia on July 23 2014

  
Olga Cain, on behalf of and in respect of  
Sheila Livingstone, Complainant

Dated at Halifax, Nova Scotia on July 22 2014

  
Susan Lattie, on behalf and in respect of  
Joseph Delaney, Complainant