

Nova Scotia Human Rights Board of Inquiry

In the matter of:

Beth MacLean, Joey Delaney and Sheila Livingstone

and

Disability Rights Coalition

and

The Nova Scotia Human Rights Commission

v.

Province of Nova Scotia

Pre-Hearing Memorandum of the Complainant, the Disability Rights Coalition

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Part 1– Concise Overview

Overview

1. Disability and poverty lies at the heart of the issues in this discrimination claim. Beth MacLean, Joey Delaney and Sheila Livingstone all had needs that were different from the mainstream, based on their disabilities. They relied upon publicly funded social services programs to assist them in meeting their needs, in particular their need for supports and services to enable them to live in the community. The Disability Rights Coalition complaint is based on the fact that these unmet needs were not unique or exceptional, in the sense that they are experienced by many people with disabilities who are poor and require supports and services to live in the community in Nova Scotia.

2. As a result of their unmet needs, the lives of the individual complainants were characterised by long periods of unnecessary institutional care, segregation from society, and isolation from the larger community, for no reason other than the government's failure to make funding available for the services and supports they required to live in the community. Government's implementation of its social services programs failed to respond to their differential needs, and resulted in social barriers and disadvantage. The government action and inaction was not intentionally discriminatory but lead to the creation of social barriers and imposed disadvantages not felt by others.

3. Those disadvantages, resulting from the government's failure to respond to differential need, has lead not only to unnecessary institutionalisation, but also to substantial delays (years and even decades in some cases) in providing individuals with the supports and services that they need to live in the community, leaving some with no access to services and others with inadequate or

inappropriate services. These delays can be seen in the lives of the individual complainants, indeed, Sheila Livingstone died during the course of this proceeding, while waiting for a community based option.

4. The evidence will disclose that at any given time over the decades since 1986, in addition to Beth MacLean, Joey Delaney and Sheila Livingstone, the needs of hundreds of other people with disabilities, for supports and services to live in the community, were neglected or overlooked by the Respondent Province at various times in its funding, regulation, administration, management and delivery social services programs and policies. While not intended, the actions of government have indirectly excluded people with disabilities and denied them the opportunity to fully and effectively participate and be included in society by failing to take their different needs into account.

PART 2: Scope of these submissions restricted to *prima facie* case

5. The Board of Inquiry determined that the complaint would be heard in two parts. The first stage of the hearing will deal exclusively with the issue whether there has been a *prima facie* case of discrimination. The burden is on the complainants at this stage to meet a three part test: to show that they have a characteristic that is protected under the Nova Scotia *Human Rights Act (HRA)*,¹ that they have experienced an adverse impact in relation to access to a service not experienced by other members of the public, and that their protected characteristic was a factor in the adverse impact.²

¹ *Human Rights Act*, RSNS 1989, c. 214.

² *Moore v. British Columbia (Education)*, 2012 SCC 61, at para 33.

6. Issues of justification, reasonable limits, or government defence are not relevant at this stage of the proceeding, and will be dealt with in separate submissions. Questions of whether the government can meet its burden, in demonstrating that it has acted reasonably in responding to the complainants' needs for services, are questions left to the second stage of the hearing under the category of 'reasonable accommodation.'

PART 3: Parties to this proceeding

7. The complainants are comprised of three individual complainants, as well as the Disability Rights Coalition (DRC), a non governmental organisation, whose focus is the widespread and systemic nature of the discrimination claim in this complaint.

8. The respondent in this complaint is the Province of Nova Scotia, who is bound by the provisions of the *Human Rights Act*.³ In correspondence dated November 23, 2015, counsel for the Province indicated that it would not oppose the DRC's standing as a complainant in this matter.

9. In addition, pursuant to s. 33(a) of the *HRA*, the Nova Scotia Human Rights Commission is a party to this complaint.

PART 4: Statutory purpose and interpretation

10. The *Human Rights Act* provides the statutory framework for a claim of discrimination, and its interpretation is guided by the statute's stated purpose, in particular the protection of human rights through preventing discriminatory practices.

³ *HRA supra* Note 1 at s. 21.

11. Among other things, the Act's statement of purpose recognises that discriminatory practices, if left unchecked, are harmful to society as a whole, and that they are necessary to ensure that every individual has an equal opportunity to enjoy a full and productive life:

The purpose of this Act is to...recognize that the government, all public agencies and all persons in the Province have the responsibility to ensure that every individual in the Province is afforded an equal opportunity to enjoy a full and productive life and that failure to provide equality of opportunity threatens the status of all persons...⁴

In addition, the Act recognises that human rights must be protected by the rule of law.

12. Human rights legislation is quasi-constitutional and overrides any statutory provisions that are in conflict with its provisions. In interpreting the provisions of the *HRA*, the Board should adopt a consistent approach with the leading equality rights jurisprudence under s. 15 of the *Canadian Charter of Rights and Freedoms*:

Of course, human rights legislation is quasi-constitutional, and its precepts should, within the principles of statutory construction, conform to Charter values...⁵

PART 5: Discrimination

13. The 'point of departure' for this Board's consideration of whether the complainants have satisfied their burden of showing that there has been a *prima facie* violation of their rights, is the definition of discrimination contained in the *Human Rights Act*, which states as follows:

⁴ *HRA supra* Note 1 at s. 2.

⁵ *IAFF, Local 268 v. Adekayode* [2016] NSCA 6, para 59, Fichaud, J.

Meaning of discrimination

4. For the purpose of this Act, a person discriminates where the person makes a distinction, whether intentional or not, based on a characteristic, or perceived characteristic, referred to in clauses (h) to (v) of subsection (1) of Section 5 that has the effect of imposing burdens, obligations or disadvantages on an individual or a class of individuals not imposed upon others or which withholds or limits access to opportunities, benefits and advantages available to other individuals or classes of individuals in society.⁶

14. Discrimination is prohibited in respect of the provision of services to the public, if it is based on the protected ground of disability:

Prohibition of discrimination

5 (1) No person shall in respect of

(a) the provision of or access to services or facilities;

discriminate against an individual or class of individuals on account of

(o) physical disability or mental disability;

(t) source of income;⁷

15. The complainants rely upon disability and source of income as the grounds of discrimination, and in particular the following definition of mental and physical disability as defined in the *HRA*:

(l) "physical disability or mental disability" means an actual or perceived

(i) loss or abnormality of psychological, physiological or anatomical structure or function,

(ii) restriction or lack of ability to perform an activity,

(iii) physical disability, infirmity, malformation or disfigurement, including, but not limited to, epilepsy and any degree of paralysis, amputation, lack of physical co-ordination, deafness, hardness of hearing or hearing impediment, blindness or visual impediment,

⁶ *Human Rights Act*, supra Note 1 at s. 4.

⁷ *Human Rights Act*, supra Note 1 at s. 5(1)(o).

- speech impairment or impediment or reliance on a hearing-ear dog, a guide dog, a wheelchair or a remedial appliance or device,
- (iv) learning disability or a dysfunction in one or more of the processes involved in understanding or using symbols or spoken language,
- (v) condition of being mentally impaired,
- (vi) mental disorder, or
- (vii) dependency on drugs or alcohol;⁸

PART 6: Elements of a *prima facie* case of discrimination

16. The Nova Scotia Court of Appeal has held that the elements of *prima facie* discrimination under the Nova Scotia *Human Rights Act* are consistent with other provincial human rights legislation. Most recently those elements were described by Justice Abella of the Supreme Court of Canada in *Moore*:

As the Tribunal properly recognized, to demonstrate *prima facie* discrimination, complainants are required to show that they have a characteristic protected from discrimination under the Code; that they experienced an adverse impact with respect to the service; and that the protected characteristic was a factor in the adverse impact. Once a *prima facie* case has been established, the burden shifts to the respondent to justify the conduct or practice, within the framework of the exemptions available under human rights statutes. If it cannot be justified, discrimination will be found to occur.⁹

17. The elements of a *prima facie* case include the following:

1. The complainants have a characteristic protected from discrimination, in this complaint, a disability as defined in the *HRA* s. 3(1);

⁸ *HRA supra* Note 1 s. 3.

⁹ *Moore v. British Columbia (Ministry of Education)*, *supra* Note 2, at 33, under the British Columbia Human Rights Act, as relied upon by the Nova Scotia Court of Appeal in *Adekeyode supra* Note 5 at para 61. See also *Stewart v Elk Valley Coal Corp* [2017] SCC 30 para 24

2. The complainants have experienced an adverse effect in relation to the service, in this complaint, access to services or facilities, as defined in s. 5(1);
3. The complainant's disability was a factor in the failure to provide access to services or facilities.

PART 7: Protected characteristic

18. The individuals whose interests are at stake in this complaint, require supports and services to live in the community, and share in characteristics protected under the definition of disability under the *HRA*, in the form of intellectual disabilities,¹⁰ in some cases combined with physical disabilities,¹¹ as well as mental disorders.¹² They experience social and economic disadvantage and are dependent upon social assistance to meet their needs.

19. The determination of whether discrimination exists is a contextual exercise, and the Supreme Court of Canada has held it is important to look to the wider “social, political and legal context.”¹³ The social and economic disadvantage of persons with disabilities and their exclusion from the mainstream, have been identified as recurrent issues in the history of discrimination against persons with disabilities:

It is an unfortunate truth that **the history of disabled persons in Canada is largely one of exclusion and marginalization.** Persons with disabilities have too often been excluded from the labour force, **denied access to opportunities for social interaction and advancement**, subjected to invidious stereotyping and relegated to institutions....This historical disadvantage has to a great extent been shaped and perpetuated by the notion that disability is an abnormality or flaw. As a result, disabled persons have not generally been

¹⁰ *HRA supra* Note 1 s. 3(1)(iv) and (v).

¹¹ *HRA supra* Note 1 s. 3(1)(ii) and (iii)

¹² *HRA supra* Note 1 s. 3(1)(iv)

¹³ *Eldridge v BC (AG)* [1997] S.C.J. No. 86, para 55

afforded the “equal concern, respect and consideration” that s. 15(1) of the Charter demands. Instead, they have been subjected to paternalistic attitudes of pity and charity, and their entrance into the social mainstream has been conditional upon their emulation of able-bodied norms... **One consequence of these attitudes is the persistent social and economic disadvantage faced by the disabled.** Statistics indicate that persons with disabilities, in comparison to non-disabled persons, have less education, are more likely to be outside the labour force, face much higher unemployment rates, and are concentrated at the lower end of the pay scale when employed...¹⁴ [emphasis added]

20. It is evident that not all persons with disabilities need be subject to the same adverse impacts of a government practice or policy, for discrimination to be shown. Pregnant women may experience gender discrimination, despite the fact that not all women may become pregnant.¹⁵ The fact that not *all* persons with disabilities are impacted adversely, does not defeat a claim of discrimination. Especially in discrimination cases based on disability, the impact will differ depending on the nature of the needs of the person with disability.

21. It is also well established that a distinction made *between* different types of disabilities may also give rise to discrimination – such as a distinction that removes the benefit of an otherwise ameliorative program such as an insurance program¹⁶, or workers compensation,¹⁷ which exclude those with certain types of mental or physical disability.

¹⁴ *Eldridge* *ibid* para 56

¹⁵ *Brooks v. Canada Safeway Ltd*, [1989] 1 S.C.R. 1219 at 1247 where pregnancy was excluded from those ‘disabilities’ under the employment insurance program

¹⁶ *Gibbs v. Battlefords & District Co-operative Ltd* [1996] S.C.J. 55 at para 21.

¹⁷ *Martin v NS* [2003] SCC 54

22. In *Battlefords*, involving access to insurance for an employee with mental health issues, in addressing the particular stigma of mental illness, the Supreme Court of Canada noted that:

Aside from the statutory and constitutional treatment of mental disability as a distinct prohibited ground, a second broad factor that should influence a purposive approach is the particular historical disadvantage faced by persons with mental disabilities. In *Equality for All*, a 1985 report of the Parliamentary Committee on Equality Rights, the following passage submitted to the Committee by the Canadian Mental Health Association, New Brunswick Division, is cited at p. 89:

Mental illness is one of the least understood and least accepted of all illnesses. It creates fear and stereotypical responses in people. Yet who are the mentally ill? Potentially they can be people who suffer from varying degrees of illness, from short term situations that temporarily incapacitate an individual to long term illnesses that require continuous support and attention. Psychiatric disabilities have many possible causes, sometimes physical, sometimes psychological and sometimes social. For a great many people, such illnesses are shameful and embarrassing and as a result they are very reticent to stand up for their rights or to protest when injustice has been done to them.

Indeed, the particular disadvantage facing the mentally disabled was recognized by this Court in *R. v. Swain*, 1991 CanLII 104 (SCC), [1991] 1 S.C.R. 933. Lamer C.J. stated at p. 994:

Furthermore, the fact that the claim involves the personal characteristic of insanity (which falls within the enumerated ground of mental disability) leaves no doubt in my mind that, if the differential treatment is “discriminatory” (which remains to be seen), the s. 15(1) claim fits within the overall purpose of remedying or preventing discrimination against groups suffering social, political and legal disadvantage in Canadian society. There is no question but that the mentally ill in our society have

suffered from historical disadvantage, have been negatively stereotyped and are generally subject to social prejudice.¹⁸

23. In *Martin*, in addressing the Nova Scotia workers compensation scheme, that provided benefits to injured and disabled workers, the Supreme Court of Canada discussed the discriminatory impact of a rule that excludes some persons with disabilities – in that case chronic pain:

For instance, there could be no doubt that a legislative distinction favouring persons of Asian origin over those of African origin would be “based on” race, ethnic origin or colour, or that a law imposing a disadvantage on Buddhists relative to Muslims would draw a distinction “based on” religion. It would be no answer for the legislator to say there is no discrimination because both persons born in Asia and persons born in Africa have a non-Canadian national origin, or that Muslims, like Buddhists, belong to a minority religion in Canada. **Likewise, in the present case, it is no answer to say that all workers subject to the scheme are disabled.** The second step of the Law test does not ask whether the claimant and members of the comparator group possess a certain characteristic. **Rather, the inquiry is whether the basis of the challenged differential treatment is an enumerated or analogous ground.** The distinction between the claimants and the comparator group was made on the basis of the claimants’ chronic pain disability, i.e., on the basis of disability. The fact that injured workers without chronic pain have their own disability too is irrelevant. Distinguishing injured workers with chronic pain from those without is still a disability-based distinction. Whether that distinction is in fact discriminatory remains in each case to be determined under the third branch of the Law test.

This approach to the analysis of distinctions drawn between various disabilities allows the courts to take into account a fundamental and distinctive characteristic of disabilities when compared to other enumerated grounds of discrimination: their virtually infinite variety and the widely divergent needs, characteristics and circumstances of persons affected by them: see Eaton v. Brant County Board of

¹⁸ *Battlefords and District Co-operative Ltd. v. Gibbs*, [1996] 3 S.C.R. 566 at para 31

Education, 1997 CanLII 366 (SCC), [1997] 1 S.C.R. 241, at para. 69; Granovsky, supra, at para. 27. Due sensitivity to these differences is the key to achieving substantive equality for persons with disabilities. In many cases, drawing a single line between disabled persons and others is all but meaningless, as no single accommodation or adaptation can serve the needs of all. Rather, persons with disabilities encounter additional limits when confronted with systems and social situations which assume or require a different set of abilities than the ones they possess. The equal participation of persons with disabilities will require changing these situations in many different ways, depending on the abilities of the person. The question, in each case, will not be whether the state has excluded all disabled persons or failed to respond to their needs in some general sense, but rather whether it has been sufficiently responsive to the needs and circumstances of each person with a disability. If a government building is not accessible to persons using wheelchairs, it will be no answer to a claim of discrimination to point out a TTY (teletypewriter) telephone for the hearing impaired has been installed in the lobby.

Finally, the medical experts recognize that chronic pain syndrome is partially psychological in nature, resulting as it does from many factors both physical and mental. **This Court has consistently recognized that persons with mental disabilities have suffered considerable historical disadvantage and stereotypes:** Granovsky, supra, at para. 68; R. v. Swain, 1991 CanLII 104 (SCC), [1991] 1 S.C.R. 933, at p. 994; Winko, supra, at paras. 35 et seq. Although the parties have argued the s. 15(1) case on the basis that chronic pain is a “physical disability”, the widespread perception that it is primarily, or even entirely, psychosomatic may have played a significant role in reinforcing negative assumptions concerning this condition.

In answering this question, it is vital to keep in mind the rationale underlying the prohibition of discrimination based on disability. As I stated above, this rationale is to allow for the recognition of the special needs and actual capacities of persons affected by a broad variety of different disabilities in many different social contexts. In accordance with this rationale, s. 15(1) requires a considerable degree of reasonable accommodation and adaptation of state action to the circumstances of particular individuals with disabilities. Of course,

classification and standardization are in many cases necessary evils, but they should always be implemented in such a way as to preserve the essential human dignity of individuals.¹⁹
[emphasis added]

24. It should also be noted that the ‘comparator group’ referred to in *Martin* is no longer a requirement, which can be seen clearly in the human rights context addressing discrimination against persons with disabilities in *Moore*.²⁰

PART 8: Adverse effect in relation to access to services

25. At this second step of the *prima facie* case, the complainant must show that the Respondent is involved in the provision of a service, and that the complainants are adversely effected in the provision of that service. The adverse effects relied upon by the complainants in this case include the following:

1. Unnecessary segregation in institutional facilities and the accompanying disadvantage and harm that results from being isolated from mainstream society and placed in a congregate facility, based solely upon disability;
2. The denial of supports and services to live in the community.

Services

26. In this complaint the “services” at issue are social services, together with social assistance. These government services are generally available to members of the public who can show that they are in financial need.

¹⁹ *Martin supra* Note 17 at 80-93

²⁰ *Moore supra* Note 2 at 30-31; Where the Court noted that insisting on a mirror comparator group “risks perpetuating the very disadvantage and exclusion from mainstream society the Code is intended to remedy”

27. The services are *not* restricted to the services provided under the Disability Supports Program of the Department of Community Services, but include all provincial social services. The Supreme Court of Canada rejected a similar argument in *Moore* when it found that to limit its inquiry to the discriminatory impacts of 'special needs education' rather than the education system as a whole would undermine the protection of persons with disabilities from discriminatory actions that exclude them from receiving the equal benefit of the law:

27 A central issue throughout these proceedings was what the relevant "service ... customarily available to the public" was. While the Tribunal and the dissenting judge in the Court of Appeal defined it as "general" education, the reviewing judge and the majority defined it as "special" education.

28 I agree with Rowles J.A. that for students with learning disabilities like Jeffrey's, special education is not the service, it is the means by which those students get meaningful access to the general education services available to all of British Columbia's students:

It is accepted that students with disabilities require accommodation of their differences in order to benefit from educational services. Jeffrey is seeking accommodation, in the form of special education through intensive remediation, to enable him equal access to the "mainstream" benefit of education available to all.... In Jeffrey's case, the specific accommodation sought is analogous to the interpreters in *Eldridge*: it is not an extra "ancillary" service, but rather the manner by which meaningful access to the provided benefit can be achieved. Without such special education, the disabled simply cannot receive equal benefit from the underlying service of public education. [Emphasis added; para. 103.]

29 The answer, to me, is that the 'service' is education generally. Defining the service only as 'special education' would relieve the Province and District of their duty to ensure that no student is excluded from the benefit of the education system by virtue of their disability.

30 To define 'special education' as the service at issue also risks descending into the kind of "separate but equal" approach which was majestically discarded in *Brown v. Topeka Board of Education* (1954), 347 U.S. 483 (U.S. Kan. S.C. 1954). Comparing Jeffrey only with other special needs students would mean that the District could cut all special needs programs and yet be immune from a claim of discrimination. It is not a question of who else is or is not experiencing similar barriers. This formalism was one of the potential dangers of comparator groups identified in *Withler v. Canada (Attorney General)*, [2011] 1 S.C.R. 396 (S.C.C.).²¹

28. Similarly, the Disability Supports Program is the means by which social services are provided to persons with disabilities, but this Board's examination of services is not restricted to that program.

29. The Respondent Province's obligation to provide such services, flows from a statutory framework. That framework provides for social services for persons with disabilities who require supports and services for community living. While the Province has always had legal responsibility for funding and regulating the service, the responsibility for the administration and delivery of the service moved from the municipalities to the Respondent Province in 2000.

30. The Respondent Province's obligation to provide social assistance to persons in need is found in the *Social Assistance Act*, which provides that the Minister of Community Services is obligated to provide for persons in need, defined as "a person who requires financial assistance to provide for the person in a home for special care or a community based option."²² In addition to funding the program as they had done historically, in 1995 the Province assumed responsibility for

²¹ *Moore supra* Note 2 at para 27-30.

²² *Social Assistance Act*, RSNS 1989, c. 432 at s 4 (d).

the management, administration and regulation of programs for persons who require financial assistance for community based options.

31. Under amendments made to the *Social Assistance Act* in 2000, the Minister became responsible under the statute for managing and administering all duties once held by the municipal 'social services committees' and establishing policies and procedures to provide financial assistance to persons in need under the Act.²³ Those duties include the obligation ("shall furnish assistance") to all persons who require a home for special care or community based option.²⁴

Access to services

32. In *Moore*, Abella J speaking for a unanimous court noted that 'access' must be meaningful access and required that it is responsive to the individuals needs:

if the evidence demonstrates that the government failed to deliver the mandate and objectives of public education such that a given student was denied *meaningful* access to the service based on a protected ground, this will justify a finding of *prima facie* discrimination.²⁵

Adverse effect

33. In this complaint, the adverse effect arises not from the law or policy itself but from the government's failure to apply or implement the law or policy in a manner that meets the needs of the complainants. In the human rights context, adverse effects discrimination, as contrasted with direct discrimination, has long been recognised as a vital area of human rights protection.

²³ *Social Assistance Act* *ibid* at s 7A.

²⁴ *Social Assistance Act* *ibid* at s. 9.

²⁵ *Moore supra* Note 2 at para 36.

34. The evidence in this complaint will show that the 'adverse' effect is felt in the impact of unnecessary placements in institutions, where persons with disabilities are grouped together, and segregated from the wider community. At times it results in them being placed with individuals who are in acute psychiatric crisis, such as when they are placed on the acute care ward of a psychiatric hospital. At other times, the adverse effect is felt in the substantial delay – many years and decades in some cases - in receiving any services, or receiving the type of service that is appropriate to their needs. Such measures result in disadvantage and reduce opportunities for personal growth and community inclusion and engagement.

35. In addressing the nature of the adverse impact in this case, the Complainant will show that it is based on the Province's failure to apply the law in addressing the needs of persons in need who require supports and services to live in the community. The circumstances in this case reflect that neutral policies may have an adverse effect on certain groups:

Discrimination can take many forms, including “'indirect' discrimination”, where otherwise neutral policies may have an adverse effect on certain groups²⁶

36. As the Supreme Court of Canada noted in *Eldridge*:

Adverse effects discrimination is especially relevant in the case of disability. The government will rarely single out disabled persons for discriminatory treatment. More common are laws of general application that have a disparate impact on the disabled. This was recognized by the Chief Justice in his dissenting opinion in *Rodriguez*, supra, where he held that the law criminalizing assisted suicide violated s. 15(1) of the Charter by discriminating on the basis of physical disability.²⁷

²⁶ *Stewart v Elk Valley Coal* supra Note 9 at para 24, quoting *Québec (Commission des droits de la personne et des droits de la jeunesse) v. Bombardier Inc.*, 2015 SCC 39, [2015] 2 S.C.R. 789 (S.C.C.), at para. 32.

²⁷ *Eldridge* supra Note 13 at para 64.

37. The government will describe the services at issue in this case as “voluntary.” It is true that the institutional facilities in which persons with disabilities are placed are generally not court ordered or otherwise legally mandatory. However, in the context of socio-economic disadvantage, where individuals must rely upon the provision of social services to meet their needs, any ‘choice’ is an illusion, and reflects a discredited theory of formal equality, rather than the approach endorsed most recently by Justice Fichaud of the Nova Scotia Court of Appeal in examining the test for discrimination under the NS *Human Rights Act* that embodies substantive equality.²⁸

38. In that case, in determining that proof of historic prejudice was not required to prove substantive discrimination under the *Human Rights Act*, Justice Fichaud explored the concept of substantive discrimination:

Substantive equality aims to **capture the discriminatory effects of a facially neutral law or a formally well-meaning program.** It is about substance over form. Peter W. Hogg, *Constitutional Law of Canada* (Toronto: Carswell, 2007), looseleaf 5th ed. supplemented, vol. 2, explains:

55.6(e) Formal and substantive equality

The most common criticism of the similarly-situated definition of equality (and of the Aristotelian definition of equality) is not that it provides too little guidance to a reviewing court (or is “empty”), but that it can mask discrimination that occurs indirectly rather than directly. An apparently neutral law may have a disproportionate effect on a particular group, which, as a consequence, is being treated unequally. ... A theory that only covers the direct case is often described as “formal equality” But, as Wintemute acknowledges, formal equality is not enough. It is also necessary to guarantee “substantive equality”, meaning by that term a theory of equality that will capture indirect as well as direct discrimination.

²⁸ *Adekayode supra* Note 3 at para 75.

...

55.11(a) Substantive equality

A law may be discriminatory on its face. A law that expressly excluded women from admission to the police force would be discriminatory on its face. We have already noticed this is an example of “direct” discrimination. And we have also noticed that the term “formal equality” is normally used to indicate a theory of equality that covers only direct discrimination. Section 15 includes direct discrimination (obviously), and this leads to the invalidity of a law that is discriminatory on its face.

A law may be discriminatory in its effect. A law that imposed height or weight qualifications for admission to the police force would be discriminatory in its effect if the effect of the law (whether intended or not) was to disqualify a disproportionate number of women. We have already noticed that this is an example of “indirect” discrimination. ... The term “substantive equality” is normally used to indicate a theory of equality that covers indirect as well as direct discrimination. Because s. 15 includes substantive equality, it leads to invalidity of a law that is discriminatory in its effect.

Finally, a law may be discriminatory in its application. A law that prescribed no discriminatory qualifications for admission to the police force would be discriminatory in its application if police recruitment procedures led to the rejection of a disproportionate number of female applicants. **This is another kind of indirect discrimination, and it is also a breach of substantive equality and of s. 15.** Where a law is discriminatory only in its application, s. 15 will not lead to the invalidity of the law itself. Section 15 will deny validity to past applications of the law, and will require (in the police example) that gender-neutral procedures be established for its future administration. ...

... **Substantive equality allows a court to drill beneath the surface of the facially neutral law and identify adverse effects on a class of persons distinguished by a listed or analogous personal characteristic.** ...[emphasis added]²⁹

39. In *Adekayode*, Justice Fichaud, relying upon Supreme Court of Canada jurisprudence, also noted that discriminatory activity can also include “a denial of resources that are ‘basic or necessary for full participation in Canadian society’ ”.³⁰ The provision of access to social services, represents a denial of resources that are basic or necessary for persons with disabilities to participate fully in society.

Olmstead³¹

40. Jurisprudence of the US Supreme Court bears careful consideration in relation to the issues in this complaint, in particular concerning the adverse and discriminatory effects of the denial of community based options and unnecessary institutionalisation of persons with disabilities.

41. The facts in *Olmstead* involved two women, LC and EW, who were at different times voluntary patients in a psychiatric hospital in Georgia. Both had intellectual disabilities and psychiatric conditions, and one had a behavioural disorder. In LC’s case, upon being declared by her doctors ready for discharge in May 1993, based on an assessment that her needs could be more appropriately met in a community-based treatment program, she remained institutionalised until February 1996. In EW’s case, a plan to discharge her from the psychiatric hospital to a homeless shelter was abandoned by the State when her lawyer brought an administrative complaint, but she

²⁹ *Adekayode supra* Note 3 para 74; The Court noted that while stereotype was not a requirement, it could in appropriate cases provide important contextual evidence of discrimination.

³⁰ *Adekayode ibid* para 79

³¹ *Olmstead v L.C. ex rel. Zimring* (1999) 119 S.Ct. 2176

remained institutionalised for a further year after her doctor recommended her for a community based treatment program. Neither woman opposed a community based option and both sought access to services to enable them to leave the psychiatric hospital.³²

42. In *Olmstead*, the US Supreme Court considered whether the State's denial of community based treatment was discriminatory under the *Americans with Disabilities Act (ADA)*. The provision of the *ADA* "centrally at issue" is substantially the same as the prohibition on discrimination contained in s. 4 of the NS HRA, and reads as follows:

Sec. 12132. Discrimination

Subject to the provisions of this subchapter, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.³³

43. In addition, the ADA also protects against exclusion from the benefits of services, programs and activities, in a manner similar to the Nova Scotia *HRA* at section 5, cited above.

44. Thus it is evident that the test for discrimination under the ADA is similar in all important respects to the NS *HRA* as both bind public entities, include disability as a ground of discrimination and define the elements of discrimination as the exclusion or denial of benefits, services or programs.

³² *Olmstead, ibid, at 2185-2188*

³³ *Americans with Disabilities Act of 1990, 42 USC Title II, 12132; also referred to as Title II*

45. In *Eldridge*, the Supreme Court of Canada has acknowledged that the ADA and its regulatory framework can provide important guidance in interpreting the scope of the equality rights with respect to discrimination.³⁴

46. Justice Ginsberg, speaking for the majority of the Supreme Court, affirmed the conclusions of the US Attorney General that:

....unjustified placement or retention of persons in institutions, severely limiting their exposure to the outside community, constitutes a form of discrimination based on disability prohibited by Title II.³⁵

47. Justice Ginsburg also affirmed the finding of discrimination by the Court of Appeal in finding that the unnecessary institutionalisation of LC and EW constituted discrimination:

.....the appeals court ruled that the unjustified institutionalization of persons with mental disabilities violated Title II; the court then remanded with instructions to measure the cost of caring for L.C. and E.W. in a community-based facility against the State's mental health budget.³⁶

48. The US Supreme Court concluded that: “Unjustified isolation, we hold, is properly regarded as discrimination based on disability.”³⁷ The Court relied upon the preamble to the ADA, which states that:

³⁴ *Eldridge supra* Note 13 at para 81.

³⁵ *Olmstead supra* Note 31, at 2185

³⁶ *Olmstead ibid*, at 2185. It should be noted that although the US jurisprudence with respect to the definition of discrimination, as contained in the ADA, is substantially identical to that contained in the Canadian equality rights jurisprudence, the defence or justification jurisprudence differs in one important respect. In the US, the government can rely on cost to justify or make an exception to the prohibition on discrimination, whereas in Canada, the SCC has determined that cost is insufficient to constitute a ‘reasonable limit,’ so as to provide a defence to a claim of discrimination.

³⁷ *Olmstead, ibid* at 2185.

historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem;.....

individuals with disabilities continually encounter various forms of discrimination, includingsegregation, and relegation to lesser services, programs, activities, benefits, jobs, or other opportunities,³⁸

49. The Court rejected the State's argument that LC and EW were not discriminated against because they were not denied a community placement "by reason of" their disability. The Court also rejected the argument that discrimination requires the uneven treatment of similarly situated individuals.

50. The Court found that unjustified institutional isolation of persons with disabilities perpetuates stigma and the stereotype that persons with disabilities are unworthy of participating in community life, and diminishes their quality of life:

Recognition that unjustified institutional isolation of persons with disabilities is a form of discrimination reflects two evident judgments. First, institutional placement of persons who can handle and benefit from community settings perpetuates unwarranted assumptions that persons so isolated are incapable or unworthy of participating in community life...Second, confinement in an institution severely diminishes the everyday life activities of individuals, including family relations, social contacts, work options, economic independence, educational advancement, and cultural enrichment.³⁹

51. The Court concluded that:

³⁸ *Olmstead, ibid* at 2187; see also ADA, *supra* Note 33, at 12101 (a) (2) and (5).

³⁹ *Olmstead, ibid*, at 2187.

...States are required to provide community-based treatment for persons with mental disabilities when the State's treatment professionals determine that such placement is appropriate, the affected persons do not oppose such treatment, and the placement can be reasonably accommodated, taking into account the resources available to the State and the needs of others with mental disabilities.⁴⁰

Attribution or stereotype not required

52. In this case, it is not the attribution of a stereotype that serves as the basis for the discrimination but the Province's failure to recognize the actual characteristics of the group and remove the headwinds that act as a barrier to social inclusion. As Sopinka J, of the Supreme Court of Canada noted in a case examining the needs of children with disabilities in *Eaton*:

...The other equally important objective seeks to take into account the true characteristics of this group which act as headwinds to the enjoyment of society's benefits and to accommodate them. Exclusion from the mainstream of society results from the construction of a society based solely on "mainstream" attributes to which disabled persons will never be able to gain access. Whether it is the impossibility of success at a written test for a blind person, or the need for ramp access to a library, the discrimination does not lie in the attribution of untrue characteristics to the disabled individual. The blind person cannot see and the person in a wheelchair needs a ramp. Rather, it is the failure to make reasonable accommodation, to fine-tune society so that its structures and assumptions do not result in the relegation and banishment of disabled persons from participation, which results in discrimination against them. The discrimination inquiry which uses "the attribution of stereotypical characteristics" reasoning as commonly understood is simply inappropriate here. It may be seen rather as a case of reverse stereotyping which, by not allowing for the condition of a disabled individual, ignores his or her disability and forces the individual to sink or swim within the mainstream environment. It is recognition of the actual

⁴⁰ Olmstead, *supra* Note 31, at 2190.

characteristics, and reasonable accommodation of these characteristics which is the central purpose of s. 15(1) in relation to disability [emphasis added].⁴¹

53. In the same case before the Ontario Court of Appeal, Arbour J. examined the context of segregation in education for children with disabilities:

The history of discrimination against disabled persons, which the Charter sought to redress and prevent, is a history of exclusion. Some of the Ontario landmarks in that history have been canvassed by Weiler J.A. in her dissenting opinion in *Adler v. Ontario* (1994), 19 O.R. (3rd) 1 at p. 48. She referred to the 1971 Williston report which endorsed the ongoing movement for deinstitutionalization of the mentally disabled (Walter A. Williston, *Present Arrangements for the Care and Supervision of Mentally Retarded Persons in Ontario, 1971*, prepared for the Ministry of Health), and to the subsequent report by Robert Welch entitled *Community Living for the Mentally Retarded People in Ontario*, (1973). These led to the transfer of jurisdiction over persons with disabilities from the Ministry of Health to the Ministry of Community and Social Services (MCSS), with a view to facilitating the integration of mentally disabled people into the broader community.

Deinstitutionalization was the first step towards full community integration, which has been the primary objective of the disability movement....

In all areas of communal life, the goal pursued by and on behalf of disabled persons in the last few decades has been integration and inclusion. In the social context, inclusion is so obviously an important factor in the acquisition of skills necessary for each of us to operate effectively as members of the group that we treat it as a given. Isolation by choice is not necessarily a disadvantage. People often choose to live on the margin of the group, for their better personal fulfilment. But forced exclusion is hardly ever considered an advantage. Indeed, as a society, we use it as a form of punishment. Exile and banishment, even without more, would be viewed by most as an extremely severe form of punishment. Imprisonment, quite apart from its component of deprivation of

⁴¹ *Eaton v. Brant County Board of Education*, [1997] 1 S.C.R. 241

liberty, is a form of punishment by exclusion, by segregation from the mainstream. Within the prison setting, further segregation and isolation are used as disciplinary methods. Even when prisoners are segregated from the main prison population for their own safety, the fact that they will have to serve their sentences apart from the main prison population is considered an additional hardship.

When segregated education for the disabled is understood in a broader context, it is easier to understand why the appellants draw the distinction between the necessity for the school board to provide extra assistance to Emily, in the form of a full-time educational assistant in her regular classroom, amongst other things, and the boards' decision to educate her in a segregated facilities for pupils with similar disabilities. It has been argued that the distinction is merely one of geography, as a student can be effectively isolated in a regular classroom if he or she is unable to participate in a meaningful way in the life of the group. This form of isolation must also be combated, but it remains that the opportunities for interaction with mainstream students are simply not available when the disabled child is segregated in the plain geographical sense of the word.⁴²

Systemic and individual discrimination share the same elements

54. The Nova Scotia *Human Rights Act* protects against systemic discrimination and the adverse effects analysis is the same whether applied to a single individual, or an impact on a group:

.....A practice is discriminatory whether it has an unjustifiably adverse impact on a single individual or systemically on several: *Griggs v. Duke Power Co.* (1971), 401 U.S. 424 (U.S. N.C. S.C. 1971). The only difference is quantitative, that is, the number of people disadvantaged by the practice.

In *Canadian National Railway v. Canada (Human Rights Commission)* this Court first identified 'systemic discrimination' by name. It defined it as "practices or attitudes that

⁴² *Eaton v. Brant County Board of Education*, 1995 CanLII 980 (ON CA) Arbour, JA, at para 35, 36 38-40, overturned on other grounds at *Eaton v. Brant County Board of Education*, *ibid* [1997] 1 S.C.R. 241

have, whether by design or impact, the effect of limiting an individual's or a group's right to the opportunities generally available because of attributed rather than actual characteristics". Notably, however, the designation did not change the analysis. The considerations and evidence at play in a group complaint may undoubtedly differ from those in an individual complaint, but the focus is always on whether the complainant has suffered arbitrary adverse effects based on a prohibited ground.⁴³

55. Thus in this case, the Disability Rights Coalition's portion of the complaint with respect to systemic discrimination must be approached in exactly the same way as an individual complaint.

56. The adverse effects described above, resulting in unnecessary segregation in institutions, and/or being deprived of access to services including community based options, arise from the Province's restricted application of laws with respect to social services. Thus, a 'formally well meaning program,' in its effect or application, it is alleged, has resulted in serious harm to the complainants and other persons with disabilities.

PART 9 Disability connected to access to social services

57. The third element in the analysis of a *prima facie* case of discrimination is the connection between the ground of discrimination, in this case disability, and the provision of access to the service, in this case social services and social assistance.

58. In *Moore* the Supreme Court of Canada described the relationship between the protected characteristic and the access to the service, as a 'factor,' not necessarily the sole factor but simply a

⁴³ *Moore supra* Note 2 at para 58-59.

factor.⁴⁴ The Court had no trouble concluding that Jeffrey's learning disability was 'a factor' in his inability to get meaningful access to the education he was entitled to.

59. In *Stewart v Elk Valley Coal* the Supreme Court of Canada split on the question whether there was a sufficient connection between the employee's protected ground (disability in the form of addiction) and the employer's actions in terminating his employment. The majority of the Court accepted the employer's argument that the evidence with respect to the connection between the employee's addiction, and his failure to disclose his addiction as required by his employer's policy, was insufficiently proven, although it was a question of fact to be assessed on a case by case basis:

It cannot be assumed that Mr. Stewart's addiction diminished his ability to comply with the terms of the Policy. In some cases, a person with an addiction may be fully capable of complying with workplace rules. In others, the addiction may effectively deprive a person of the capacity to comply, and the breach of the rule will be inextricably connected with the addiction. Many cases may exist somewhere between these two extremes. Whether a protected characteristic is a factor in the adverse impact will depend on the facts and must be assessed on a case-by-case basis. The connection between an addiction and adverse treatment cannot be assumed and must be based on evidence.⁴⁵

60. The factual inferences involved can clearly be seen in the dissenting judgment, which found that a denial of an addiction was an element of the disability itself, and directly lead to the employee's failure to disclose, thus allowing for an inference that disability was a sufficient 'factor' in the employee's termination to support a *prima facie* finding of discrimination:

⁴⁴ *Moore supra* Note 2 at para 33 and 40.

⁴⁵ *Stewart v Elk Valley Coal supra* Note 9 at para 39

To prove *prima facie* discrimination, Mr. Stewart is not required to show that his termination was caused solely or even primarily by his drug dependency. Rather, Mr. Stewart must only show that there is a “connection” between the protected ground — his drug dependency — and the adverse effect:… We agree with Gascon J. that Mr. Stewart’s exercise of some control over his drug use merely reduced the extent to which his dependency contributed to his termination — it did not eliminate it as a “factor” in his termination (para. 120). Mr. Stewart’s impaired control over his cocaine use was obviously connected to his termination for testing positive for cocaine after being involved in a workplace accident. In our view, the Tribunal unreasonably focused on Mr. Stewart’s limited capacity to control his choices and behaviour regarding his use of drugs and failed to consider the connection between his drug dependency and his employer’s decision to fire him.⁴⁶

61. Based on the reasoning in *Stewart*, it is clear that the Board must consider whether the evidence shows that the complainants’ disability is a factor in their deprivation of timely and appropriate access to community based options.

62. It is clear that the nature of the connection does not impose an obligation to prove causation. In the recent Canadian Human Rights Tribunal decision examining the systemic impact of the alleged underfunding of First Nations child protection program’s the Tribunal noted that:

For the third element, the Complainants have to establish a connection between elements one and two. A “causal connection” is not required as there may be many different reasons for a respondent’s acts. That is, it is not necessary that a prohibited ground or grounds be the sole reason for the actions in issue for a complaint to succeed. It is sufficient that a prohibited ground or grounds be one of the factors in the actions in issue.⁴⁷

⁴⁶ *Stewart, ibid*, at para 50

⁴⁷ *First Nations Child and Family Caring Society et al v Canada* [2016] CHRT 2, at para 25; citing the Supreme Court of Canada in *Bombardier supra* Note 26 at 44-52.

PART 10 Conclusion

63. The elements of a *prima facie* of discrimination require the complainants to show that they share a protected ground of discrimination, that they have experienced an adverse impact in their access to services provided by the Respondent, and that the adverse impact is connected to or a factor in the adverse impact.

64. The Respondent is responsible for providing community based options to persons with disabilities who require financial assistance. As the evidence will show, the Respondent has managed, administered, funded and maintained a system where many individuals who are fully capable of living in the community are forced to choose between remaining in an institutional facility, or going to a homeless shelter or park bench.

65. In the words of Justice Ginsburg, of the US Supreme Court, the institutional placement of persons who can handle and benefit from community based options “perpetuates unwarranted assumptions that persons so isolated are incapable or unworthy of participating in community life...Second, confinement in an institution severely diminishes the everyday life activities of individuals, including family relations, social contacts, work options, economic independence, educational advancement, and cultural enrichment.”⁴⁸

66. The purpose of the Nova Scotia *Human Rights Act* is to bring an end discrimination against disadvantaged groups in our society. As the jurisprudence shows, the history of discrimination

⁴⁸ *Olmstead*, *supra* Note 31, at 2187.

against persons with disabilities is marked by isolation, segregation, and lack of opportunities for growth and development that comes with being part of mainstream society. This Board of Inquiry will address these important issues in the context of the ongoing unnecessary institutionalization of persons with disabilities in Nova Scotia.

All of which is respectfully submitted.

Dated January 15, 2018.



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APPENDIX : Citations and Legislation

Citations

Battlefords and District Co-operative Ltd. v. Gibbs, [1996] 3 S.C.R. 566

Brooks v. Canada Safeway Ltd, [1989] 1 S.C.R. 1219

Eaton v. Brant County Board of Education, [1997] 1 S.C.R. 241

Eaton v. Brant County Board of Education, 1995 CanLII 980 (ON CA) Arbour, JA,
Eldridge v BC (AG) [1997] S.C.J. No. 86

First Nations Child and Family Caring Society et al v Canada [2016] CHRT 2

Gibbs v. Battlefords & District Co-operative Ltd [1996] S.C.J. 55

IAFF, Local 268 v. Adekayode (Adekayode) [2016] NSCA 6

Martin v NS [2003] SCC 54

Moore v. British Columbia (Education), 2012 SCC 61

Stewart v Elk Valley Coal Corp [2017] SCC 30

Olmstead v L.C. ex rel. Zimring (1999) 119 S.Ct. 2176

Québec (Commission des droits de la personne et des droits de la jeunesse) v. Bombardier Inc.,
2015 SCC 39, [2015] 2 S.C.R. 789 (S.C.C.)

Statutory Sources

Americans with Disabilities Act of 1990, 42 USC Title II, 12132; also referred to as Title II

Human Rights Act, RSNS 1989, c. 214, s. 3, 4, 5

Social Assistance Act, RSNS 1989, c. 432 at s 4 (d), s 7A, s. 9.

Legislation

1. AMERICANS WITH DISABILITIES ACT OF 1990

TITLE 42 - THE PUBLIC HEALTH AND WELFARE CHAPTER 126 - EQUAL
OPPORTUNITY FOR INDIVIDUALS WITH DISABILITIES

Sec. 12101. Findings and purpose

(a) Findings The Congress finds that

(1) physical or mental disabilities in no way diminish a person's right to fully participate in all aspects of society, yet many people with physical or mental disabilities have been precluded from doing so because of discrimination; others who have a record of a disability or are regarded as having a disability also have been subjected to discrimination;

(2) historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem;

(3) discrimination against individuals with disabilities persists in such critical areas as employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, health services, voting, and access to public services;

(4) unlike individuals who have experienced discrimination on the basis of race, color, sex, national origin, religion, or age, individuals who have experienced discrimination on the basis of disability have often had no legal recourse to redress such discrimination;

(5) individuals with disabilities continually encounter various forms of discrimination, including outright intentional exclusion, the discriminatory effects of architectural, transportation, and communication barriers, overprotective rules and policies, failure to make modifications to

existing facilities and practices, exclusionary qualification standards and criteria, segregation, and relegation to lesser services, programs, activities, benefits, jobs, or other opportunities;

(6) census data, national polls, and other studies have documented that people with disabilities, as a group, occupy an inferior status in our society, and are severely disadvantaged socially, vocationally, economically, and educationally;

(7) the Nation's proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living, and economic self-sufficiency for such individuals; and

(8) the continuing existence of unfair and unnecessary discrimination and prejudice denies people with disabilities the opportunity to compete on an equal basis and to pursue those opportunities for which our free society is justifiably famous, and costs the United States billions of dollars in unnecessary expenses resulting from dependency and nonproductivity.

(b) Purpose

It is the purpose of this chapter

(1) to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities;

(2) to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities;

(3) to ensure that the Federal Government plays a central role in enforcing the standards established in this chapter on behalf of individuals with disabilities; and

(4) to invoke the sweep of congressional authority, including the power to enforce the fourteenth amendment and to regulate commerce, in order to address the major areas of discrimination faced day-to-day by people with disabilities.

.....

Sec. 12102. Definition of disability

As used in this chapter: (1) Disability

The term "disability" means, with respect to an individual

(A) a physical or mental impairment that substantially limits one or more major life activities of such individual;

(B) a record of such an impairment; or

(C) being regarded as having such an impairment (as described in paragraph (3)). (2) Major Life Activities

(A) In general

For purposes of paragraph (1), major life activities include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.

(B) Major bodily functions

For purposes of paragraph (1), a major life activity also includes the operation of a major bodily

function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

(3) Regarded as having such an impairment For purposes of paragraph (1)(C):

(A) An individual meets the requirement of "being regarded as having such an impairment" if the individual establishes that he or she has been subjected to an action prohibited under this chapter because of an actual or perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity.

(B) Paragraph (1)(C) shall not apply to impairments that are transitory and minor. A transitory impairment is an impairment with an actual or expected duration of 6 months or less.

(4) Rules of construction regarding the definition of disability

The definition of "disability" in paragraph (1) shall be construed in accordance with the following:

(A) The definition of disability in this chapter shall be construed in favor of broad coverage of individuals under this chapter, to the maximum extent permitted by the terms of this chapter.

(B) The term "substantially limits" shall be interpreted consistently with the findings and purposes of the ADA Amendments Act of 2008.

(C) An impairment that substantially limits one major life activity need not limit other major life activities in order to be considered a disability.

(D) An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.

(E)

(i) The determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures such as

(I) medication, medical supplies, equipment, or appliances, low-vision devices (which do not include ordinary eyeglasses or contact lenses), prosthetics including limbs and devices, hearing aids and cochlear implants or other implantable hearing devices, mobility devices, or oxygen therapy equipment and supplies;

(II) use of assistive technology;(III) reasonable accommodations or auxiliary aids or services; or (IV) learned behavioral or adaptive neurological modifications.

(ii) The ameliorative effects of the mitigating measures of ordinary eyeglasses or contact lenses shall be considered in determining whether an impairment substantially limits a major life activity.

(iii) As used in this subparagraph

(I) the term "ordinary eyeglasses or contact lenses" means lenses that are intended to fully correct visual acuity or eliminate refractive error; and

(II) the term "low-vision devices" means devices that magnify, enhance, or otherwise augment a visual image.

.....

SUBCHAPTER II - PUBLIC SERVICES Part A - Prohibition Against Discrimination and Other Generally Applicable Provisions

Sec. 12131. Definitions As used in this subchapter:

(1) Public entityThe term "public entity" means

(A) any State or local government;

(B) any department, agency, special purpose district, or other instrumentality of a State or States or local government; and

(C) the National Railroad Passenger Corporation, and any commuter authority (as defined in section 24102(4) of title 49).

(2) Qualified individual with a disability

The term "qualified individual with a disability" means an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.

Sec. 12132. Discrimination

Subject to the provisions of this subchapter, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.

Sec. 12133. Enforcement

The remedies, procedures, and rights set forth in section 794a of title 29 shall be the remedies, procedures, and rights this subchapter provides to any person alleging discrimination on the basis of disability in violation of section 12132 of this title.

Sec. 12134. Regulations

(a) In general

Not later than 1 year after July 26, 1990, the Attorney General shall promulgate regulations in an accessible format that implement this part. Such regulations shall not include any matter within the scope of the authority of the Secretary of Transportation under section 12143, 12149, or 12164 of this title.

(b) Relationship to other regulations

Except for "program accessibility, existing facilities", and "communications", regulations under subsection (a) of this section shall be consistent with this chapter and with the coordination regulations under part 41 of title 28, Code of Federal Regulations (as promulgated by the Department of Health, Education, and Welfare on January 13, 1978), applicable to recipients of Federal financial assistance under section 794 of title 29. With respect to "program accessibility, existing facilities", and "communications", such regulations shall be consistent with regulations and analysis as in part 39 of title 28 of the Code of Federal Regulations, applicable to federally conducted activities under section 794 of title 29.

(c) Standards

Regulations under subsection (a) of this section shall include standards applicable to facilities and vehicles covered by this part, other than facilities, stations, rail passenger cars, and vehicles covered by part B of this subchapter. Such standards shall be consistent with the minimum guidelines and requirements issued by the Architectural and Transportation Barriers Compliance Board in

accordance with section 12204(a) of this title.

2. *Human Rights Act*

Purpose of Act

2 The purpose of this Act is to

- (a) recognize the inherent dignity and the equal and inalienable rights of all members of the human family;
- (b) proclaim a common standard for achievement of basic human rights by all Nova Scotians;
- (c) recognize that human rights must be protected by the rule of law;
- (d) affirm the principle that every person is free and equal in dignity and rights;
- (e) recognize that the government, all public agencies and all persons in the Province have the responsibility to ensure that every individual in the Province is afforded an equal opportunity to enjoy a full and productive life and that failure to provide equality of opportunity threatens the status of all persons; and
- (f) extend the statute law relating to human rights and provide for its effective administration. 1991, c. 12, s. 1; 2008, c. 59, s. 1.

Interpretation

3 In this Act,

- (l) "physical disability or mental disability" means an actual or perceived
 - (i) loss or abnormality of psychological, physiological or anatomical structure or function,
 - (ii) restriction or lack of ability to perform an activity,
 - (iii) physical disability, infirmity, malformation or disfigurement, including, but not limited to, epilepsy and any degree of paralysis, amputation, lack of physical co-ordination, deafness, hardness of hearing or hearing impediment, blindness or visual impediment, speech impairment or impediment or reliance on a hearing-ear dog, a guide dog, a wheelchair or a remedial appliance or device,
 - (iv) learning disability or a dysfunction in one or more of the processes involved in understanding or using symbols or spoken language,
 - (v) condition of being mentally impaired,
 - (vi) mental disorder, or
 - (vii) dependency on drugs or alcohol;

PART I DISCRIMINATION PROHIBITED

Meaning of discrimination

4 For the purpose of this Act, a person discriminates where the person makes a distinction, whether intentional or not, based on a characteristic, or perceived characteristic, referred to in clauses (h) to (v) of subsection (1) of Section 5 that has the effect of imposing burdens, obligations or disadvantages on an individual or a class of individuals not imposed upon others or which withholds or limits access to opportunities, benefits and advantages available to other individuals or classes of individuals in society. 1991, c. 12, s. 1.

Prohibition of discrimination

5 (1) No person shall in respect of

- (a) the provision of or access to services or facilities;
- (b) accommodation;
- (c) the purchase or sale of property;
- (d) employment;
- (e) volunteer public service;
- (f) a publication, broadcast or advertisement;
- (g) membership in a professional association, business or trade association, employers' organization or employees' organization,

discriminate against an individual or class of individuals on account of

- (h) age;
 - (i) race;
 - (j) colour;
 - (k) religion;
 - (l) creed;
 - (m) sex;
 - (n) sexual orientation;
 - (na) gender identity;
 - (nb) gender expression;
 - (o) physical disability or mental disability;
 - (p) an irrational fear of contracting an illness or disease;
 - (q) ethnic, national or aboriginal origin;
 - (r) family status;
 - (s) marital status;
 - (t) source of income;
 - (u) political belief, affiliation or activity;
 - (v) that individual's association with another individual or class of individuals having characteristics referred to in clauses (h) to (u).
- (2) No person shall sexually harass an individual.
- (3) No person shall harass an individual or group with respect to a prohibited ground of discrimination. 1991, c. 12, s. 1; 2007, c. 41, s. 2; 2012, c. 51, s. 2.

3. *Social Assistance Act*

Interpretation

2 In this Act,

- (a) "Minister" means the Minister of Community Services or, in the case of homes for the aged and licensed nursing homes, means the Minister of Health;

Interpretation of Parts I and II

4 In this Part and in Part II,

- (a) "council" means the council of a municipal unit;
- (b) "designated residence" means a residence designated pursuant to Section 8;
- (c) "home" means a home for special care as defined in the Canada Assistance Plan and includes a home for the aged or the disabled, a licensed nursing home, a licensed boarding home and a social services institution designated by the Minister;
- (d) "person in need" means a person who requires financial assistance to provide for the person in a home for special care or a community based option;

Continuation of agreement

7A Any agreement entered into between a municipal unit or a social services committee and the Minister pursuant to Section 7 continues in force in so far as it is required to be in force for the purpose of enabling the Minister to

- (a) administer and manage all matters that are the responsibility of the social services committee or municipal unit under this Act and the regulations;
- (b) establish policies and procedures required to provide financial assistance to persons in need under this Act and the regulations. 2000, c. 27, s. 22.

Duty of committee to assist person in need

9 (1) Subject to this Act and the regulations the social services committee shall furnish assistance to all persons in need, as defined by the social services committee, who reside in the municipal unit.