

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 organisations¹ 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

¹ 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.”²

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*.

² 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.