

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

**JENNIFER TANUDJAJA, JANICE ARSENAULT, ANSAR MAHMOOD,
BRIAN DUBOURDIEU, CENTRE FOR EQUALITY RIGHTS IN
ACCOMMODATION**

Applicants

- and -

**HER MAJESTY THE QUEEN IN RIGHT OF CANADA,
HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO,
ATTORNEYGENERAL OF CANADA and
ATTORNEY GENERAL OF ONTARIO**

Respondents

APPLICATION UNDER Rule 14.05(3)(g.1) of the
Rules of Civil Procedure, R.R.O. 1990, O. Reg. 194
and under the *Canadian Charter of Rights and
Freedoms*

AFFIDAVIT OF MICHAEL BACH

I, Michael Bach of the City of Orangeville in the Province of Ontario MAKE OATH

AND SAY as follows:

A. Qualifications

1. I am the Executive Vice-President of the Canadian Association for Community Living (CACL), a national advocacy organization which works to advance the human rights and inclusion of people with intellectual disabilities and their families into Canadian society. CACL is a federation of over 400 local associations for community living and 13 provincial/territorial associations.
2. I hold a Ph.D. in Sociology and Equity Studies from the Ontario Institute for Studies in Education, University of Toronto. For a number of years, I was Director of Research and Vice President at the Roeher Institute, a national institute for research on disability, public policy and human rights. I have conducted research into development, disability and human rights both nationally and internationally (Central and South America, the Caribbean, European Community, India) on a wide range of public policy issues, including the need for disability-related supports as a component of adequate housing, labour force inclusion, literacy and education, children's and family issues, individualized funding models for supports and guidelines for inclusive programs and services.
3. I have prepared numerous professional reports and research studies, published articles, chapters, and books in the area of disability and public policy, and have spoken at conferences nationally and internationally on wide-ranging issues in the field. These are listed in my *curriculum vitae*, attached as Exhibit A.
4. I have conducted research on housing and intellectual disability in the context of various deinstitutionalization initiatives in British Columbia,

Saskatchewan, Ontario, Nova Scotia, New Brunswick, Newfoundland and Labrador, and Prince Edward Island. As well, I have undertaken research on various aspects of community living and public policy as it affects persons with intellectual disabilities, including research related to: family supports, education access, income supports, access to needed disability-related supports, employment, literacy and literacy programming.

5. I have been asked to describe in this Affidavit:

- a) the nature and prevalence of intellectual disabilities
 - b) historical patterns of housing for people with intellectual disabilities through institutionalization and the prevalent stigmas and stereotypes that have been applied to this group;
 - c) the policy shift in favour of community based housing with supports;
 - d) barriers faced by this group in seeking housing in the community and the unique housing and support needs of persons with intellectual disabilities;
 - e) the effects on people with intellectual disabilities of being denied access to community living with supports;
 - f) the extent and effects of homelessness and inadequate housing among persons with intellectual disabilities in Canada and Ontario;
- and

g) what is needed to ensure access to adequate housing and support services for people with disabilities; and

h) the importance of international human rights for people with disabilities, particularly the *International Convention on the Rights of Persons with Disabilities* (CRPD) which Canada ratified in March, 2010.

B. Intellectual Disability

6. Intellectual disability is a term used to refer to the diverse challenges that some people face in learning, communicating and adapting to dominant behavioural norms. People with intellectual disabilities are considered to be those who have significantly greater difficulty than most people with intellectual and adaptive functioning due to a long-term condition that is usually present at birth or appears prior to the age of 18. 'Adaptive functioning' includes carrying out everyday activities such as communicating and interacting with others, managing money, doing household activities, and attending to personal care. Among those with more severe intellectual disabilities, over 60% also have agility or mobility related disability and 25% have visual impairment.¹

¹ Cameron Crawford, *The Employment of People with Intellectual Disabilities in Canada: A Statistical Profile* (Toronto: Institute for Research on Inclusion and Society, 2011) at 5 [Crawford, *Employment*].

7. While the term ‘intellectual disability’ is technically distinct from ‘developmental disability’, these terms are regularly used interchangeably. Developmental disability is technically a slightly broader category that includes disabilities which arise during the “developmental” period, prior to the age of 18 and which may not be permanent. The housing and support needs of individuals are not affected by the fine points of the distinction between the two terms. The associated stereotypes and stigmas are essentially the same, and the treatment of the group by family, neighbours, the public and by governments are similar. For the purposes of the present affidavit, I use the terms interchangeably.
8. Often the most serious challenges people with intellectual or developmental disabilities face are the stereotypes, negative perceptions and discrimination by others in response to their unique and different ways of learning and communicating. People with intellectual disabilities are also subject to false assumptions made about their potential to live independently and contribute to society.
9. Intellectual disability was at one time called *mental retardation*. People who have an intellectual disability resent being labeled by this term and have advocated for many years to have governments and others desist from using this label. A campaign in the United States led to a federal law which came into force in 2010 changing references in all federal law from ‘mental retardation’ to ‘intellectual disability’, and references to ‘mentally retarded individuals’ to ‘individuals with an intellectual disability’. Canadian law has for the most part

been similarly changed in the past two decades to replace references to mental retardation with 'intellectual' or 'developmental' disability.

10. Estimates of the prevalence of intellectual disability vary from 0.6% to 3% of the general population.² Statistics Canada's 2006 *Participation and Activity Limitations Survey* (PALS) indicates a 0.7% prevalence rate or about 207,000 people in 2006. However, because of the identification methods used by Statistics Canada, this estimate is largely restricted to people with 'severe' or 'very severe' levels of disability and under-estimates the total population of people with intellectual disabilities.³ A more realistic estimate is that approximately 686,000 Canadians of all ages have some level of intellectual disability. This estimate is based on a prevalence rate of about 2%, which is between the 1% and 3% estimates that have been used in the United States.⁴ Using this approach, the estimated number of people with intellectual disabilities in Ontario is about 266,000.⁵

² Cameron Crawford, *People with Learning Difficulties: A Demographic Snapshot* (Toronto: Institute for Research on Inclusion and Society, 2009) at 5 [Crawford, *Demographic*].

³ *Ibid* at 6.

⁴ Administration for Children and Families, "What is the prevalence and incidence of intellectual disabilities?" (12 April 2009), online: US Department of Health and Human Services <<http://faq.acf.hhs.gov/app/answers/list/c/69,137>>. As of January 1, 2011, Statistics Canada estimated Canada's population at 34,278,400 people. See Statistics Canada, *The Daily* (Ottawa: StatCan, 24 March 2011).

⁵ In Ontario, the population was estimated at 13,282,400 on January 1, 2011. See Statistics Canada, *Population Growth: Canada, Provinces and Territories, 2010* (Ottawa: StatCan, July 2011).

C. Stigma, Stereotype and Historical Patterns of Housing for People with Intellectual Disabilities through Institutionalization

11. The historical treatment of people with intellectual disabilities reflected widespread and destructive prejudices, stigmatization and misleading stereotypes applied to members of this group. It was falsely assumed that people with intellectual disabilities:

- had little or no potential to contribute to society;
- needed to be controlled through authoritarian, institutional methods of behavioural modification; and
- imposed such a 'burden' on society that individualized care would be unmanageable.

12. As a result of these negative prejudices and false stereotypes, up until the 1980's, individuals with intellectual disabilities who were not living with their birth families were generally placed in large institutional residential facilities.

Institutions for persons with intellectual disabilities often forced people into horrific and degrading living conditions. As many as 2,500 people would be housed in a single institution in very over-crowded conditions. Systematic physical and sexual abuse has been well documented.⁶ Isolation, unreasonable

⁶ Canadian Association for Community Living, *2009 National Report Card on Inclusion of Canadians with Intellectual Disabilities* (Toronto: Canadian Association for Community Living, 2009) at 3 [CACL].

physical restraints and many other forms of inhumane treatment were frequently used for behavioural control.⁷

13. In 1971, the National Institute on Mental Retardation estimated that there were approximately 30,000 people with developmental disabilities in Canada residing outside of the family home, most living in large institutions - facilities of 100 or more. By contrast, in 2009, there were less than 1,000 individuals in Canada living in large institutional facilities.⁸

D. The Policy Shift From Institutionalization to Community Living with Supports

14. During the 1970s, experts increasingly came to question institutional care for people with intellectual disabilities. In 1971, former Minister of Health in Ontario, Walter Williston, was asked by the Ontario Ministry of Health to undertake a review of the care provided to people with developmental disabilities. He prepared a report entitled *Present Arrangements for the Care and Supervision of Mentally Retarded People in Ontario*.⁹ Williston found that institutions for people with developmental disabilities were isolated from mainstream health, education, social and family services, and therefore failed to respond adequately to residents' needs. He recommended that institutions be

⁷ Roeher Institute, *Harm's Way: The Many Faces of Violence and Abuse against Persons with Disabilities* (Toronto: Roeher Institute, 1995) [Roeher, *Harm's Way*].

⁸ Canadian Association for Community Living, *2009 National Report Card on Inclusion of Canadians with Intellectual Disabilities* (Toronto: Canadian Association for Community Living, 2009) at 2 [CACL].

⁹ Ontario Department of Health, *Present Arrangements for the Care and Supervision of Mentally Retarded People in Ontario* by Walter Williston (Toronto: Minister of Health, 1971).

phased out, and residential supports be provided in the community, integrated with educational, recreational and commercial facilities.

15. The Williston Report was followed two years later in Ontario with a Report from the Provincial Secretary for Social Development, Robert Welch, entitled, *Community Living for the Mentally Retarded in Ontario: A New Policy Focus*.¹⁰

The report affirmed the concept of community living and recommended that:

- residential care resources be reallocated from institutions to the community;
- employment opportunities for individuals with developmental disabilities be integrated within mainstream society; and
- mechanisms at both local and provincial levels be better coordinated, so that a wide range of services are made available.

17. These new policy directions responded to both an increasing awareness that institutionalization was linked to discriminatory and degrading stigma and stereotypes of people with intellectual disabilities and to a growing self-advocacy movement by persons with intellectual disabilities, with supporting advocacy by their parents. These advocacy movements affirmed the importance of recognizing the dignity and fundamental human rights of persons with intellectual disabilities and challenged the assumption that institutions are ever an

¹⁰ Ontario Department of Social Development, *Community Living for the Mentally Retarded in Ontario: A New Policy Focus* by Robert Welch (Toronto: Provincial Secretary for Social Development, 1973).

appropriate form of housing for this group. The movement for deinstitutionalization continued to grow during the 1980s as pilot projects, providing community services and supports to facilitate community living proved to be successful in assisting people even with very complex needs to live in regular housing in the community.

18. It was increasingly recognized that community housing with supports is not only critical to the health and wellbeing of people with intellectual disabilities, but also represents the most cost effective policy direction for governments. For many individuals, often those who require the most intensive supports when they first move into the community, the need for formal, paid supports declines as they develop new capacities and as community supports expand.

19. Significant potential savings for governments were documented in studies of deinstitutionalization initiatives. An evaluation of “The Right Futures” project in Newfoundland & Labrador which I directed for the Roeher Institute, for example, showed that during the first year after deinstitutionalization, community support expenditures were reduced by 30%. For example, two-to-one supports (i.e. two staff per individual) were often reduced to one-to-one (i.e. one staff per individual); intensive behavioural supports provided by agencies were often reduced to respite supports for caregivers; and the need for paid support staff declined as individuals obtained unpaid supports of others, such as co-workers, family, friends or other community members.

20. Also, a national study of deinstitutionalization initiatives conducted by the Roeher Institute in 1999 assessed the cost effectiveness of individualized support services in relation to outcomes, and found a high degree of cost-effectiveness in an individualized approach to supports.¹¹ A copy of the Roeher Institute's *Towards Inclusion: National Evaluation of Deinstitutionalization Initiatives* is attached as Exhibit B.

21. Studies elsewhere have confirmed the dramatic costs savings to governments in providing community based housing with individualized supports rather than imposing institutional models of residential care which are both excessive in costs and fail to meet individual needs. A report prepared for the Governor of Illinois by the Governor's Taxpayer Action Board, for example, found that it costs \$142,533 annually to house a developmentally disabled individual in an Illinois state developmental centre while the annual cost of community care is about \$53,291.¹² While the direct savings, calculated by comparing the costs of institutional care with community housing and supports, may be reduced where enhanced community support and affordable housing is provided, there are many indirect savings which flow from these additional expenditures as well. As will be explained below, community based housing with support significantly enhances opportunities for paid employment and community participation.

¹¹ Roeher Institute, *Towards Inclusion: National Evaluation of Deinstitutionalization Initiatives* (Toronto: Roeher Institute, 1999) [Roeher, *Towards*].

¹² Emma Jackson, "Illinois could save millions by reforming developmentally disabled services", *Medill Reports Chicago* (10 March 2010) online: Northwestern University <<http://news.medill.northwestern.edu/chicago/news.aspx?id=161061>>.

22. Encouraged by both the evidence of potential savings as well as by human rights advocacy and humanitarian concerns, governments directed a policy shift from institutionalization to community living throughout the last two decades in Canada and in Ontario. The policy shift was promoted in the 1992-1996 “National Strategy on the Integration of Persons with Disabilities”¹³ and more recently, in 2008, in the Government of Ontario’s *Services and Supports to Promote the Social Inclusion of Persons with Developmental Disabilities Act*.¹⁴ This Act formally defined the term ‘developmental disability’ for the first time and provided funding mechanisms for services and supports in a wide range of residential settings. In Ontario, the last remaining government-operated institutional facility for adults with a developmental disability closed in 2009.

23. It has been increasingly recognized that adequate and appropriate community housing for people with intellectual disabilities relies on individualized planning and must ensure that adequate resources are in place to deliver on identified needs. New approaches to designing and implementing individualized, long-term plans have been developed to assist people with mild, moderate, and more severe disabilities to live in the community with dignity and security. Individual planning processes may identify a range of support needs – daily living support, communication supports, behavioural supports and vocational supports. Ensuring access to individualized planning and supports in all of these areas requires long-term commitment from government bodies.

¹³ Roeher, *Towards*, *supra* note 12.

¹⁴ SO 2008, c 14.

24. Services and supports now funded by Ontario's Ministry of Community and Social Services and delivered through community agencies include:

- in-home and out-of-home respite care;
- specialized community supports to assist people with a developmental disability to remain in their community; and
- community participation and personal development supports including the Passport Initiative, which provides people who have a developmental disability with exposure to a wide range of activities such as work, volunteer, leisure and recreation opportunities.

E. Barriers to Accessing Adequate Housing and Unmet Needs

25. Despite the documented successes and reduced government expenditure linked to deinstitutionalization initiatives where adequate housing options and community supports are ensured, individuals with intellectual disabilities in Canada and in Ontario continue to remain in need of both decent housing and adequate support services. A disproportionate number of people with disabilities are forced to live in inadequate housing and many lack necessary support services. Despite important shifts in policies and approaches to housing and supports for people with intellectual disabilities, the federal government and the Government of Ontario have yet to fulfill their commitments to promote the social inclusion and integration of people with intellectual disabilities in the manner that was recommended as far back as the Williston Report.

26. Persons with intellectual disabilities have encountered many challenges in accessing adequate housing and supports in the community, including:

- stereotyping and discrimination by landlords, including failure to accommodate the unique needs of tenants with intellectual disabilities;
- high rates of poverty and inadequate income support,
- lack of access to affordable housing or shelter subsidies;
- insufficient funding of support services and programs;
- discriminatory and inhumane treatment of residents in alternative forms of institutionalization in group homes and nursing homes.

i) Discrimination in Housing

27. Many landlords are unwilling to rent to people with intellectual disabilities or to take appropriate measures to accommodate their unique needs.

Widespread discrimination results in people with intellectual disabilities being denied equal choice in the rental market, and having to live in the most undesirable, overpriced and badly maintained apartments. As the ARCH Disability Law Centre noted in a submission to the Ontario Human Rights Commission, “Some of the most damaging acts resulting in loss of human dignity occur when a community rallies against persons with mental health disabilities

and intellectual disabilities who wish to live in the community: the 'Not In My Back Yard' campaigns."¹⁵

ii) Poverty and Inadequate Income Support

28. The poverty rate among adults with intellectual disabilities is much higher than the general population, which means housing affordability is out of reach for most. 73 per cent of working age adults with intellectual disabilities who live on their own are living in poverty, compared to 23 per cent of those in the same cohorts among the general population.¹⁶

29. People with intellectual disabilities are also far less likely than others to have access to paid employment and disproportionately rely on governmental sources of income assistance. Only 25.5% of working age people with intellectual disabilities have any paid employment compared to the national average of 75.5%.¹⁷ The average income for working age people with intellectual disability is less than half of that of Canadians without a disability.¹⁸ Nearly half (43.7%) of working-age people with intellectual disabilities received provincial/territorial social assistance at some point in 2009.¹⁹

30. Rates for income assistance for people with disabilities in Ontario and across Canada are grossly inadequate to cover the cost of access to housing

¹⁵ Robert Lattanzio & Laurie Letheren, *ARCH's Submission to the Ontario Human Rights Commission on Human Rights and Rental Housing in Ontario* (Toronto: ARCH Disability Law Centre, 2007).

¹⁶ CACL, *supra* note 8 at 5.

¹⁷ *Ibid* at 6.

¹⁸ *Ibid*.

¹⁹ Crawford, *Employment*, *supra* note 1 at 12.

without additional subsidy or shelter allowance. The National Council of Welfare has found that the peak year for the income of a person with a disability in Ontario was 1992, and that the real value of Ontario Disability Support Program (ODSP) benefits had declined by \$2,858 by 2009.²⁰ In a review of Canadian disability programs, the Organization for Economic Co-operation and Development (OECD) found that one third of people with disabilities in Canada have incomes below 60% of the household size adjusted median disposable income - one of the highest proportions in the OECD.²¹ A copy of the OECD's *Sickness, Disability and Work: Breaking Barriers – Canada: Opportunities for Collaboration* is attached as Exhibit C.

31. The maximum of \$469 a month available on ODSP to cover rent and utilities for a single person is clearly insufficient to secure adequate and safe housing, in a context in which private rents in Ontario for a one bedroom apartment average \$850.

32. In addition, people with intellectual and other disabilities face non-reimbursed out-of-pocket expenses for disability-related supports including those costs related to technical aids and devices, personal assistance and environmental accommodations. Conservative estimates of non-reimbursed costs of support for people with intellectual disabilities are in the range of \$1,000

²⁰ National Council of Welfare, *Welfare Incomes 2009*, ch 3 (Ottawa: National Council of Welfare, 2010) at 3-4.

²¹ OECD, *Sickness, Disability and Work: Breaking the Barriers - Canada: Opportunities for Collaboration*, Sickness, Disability and Work Series, (2010) at 18.

to \$2,000 per year.²² These costs either restrict the ability to meet housing needs, or force people to go without the disability-related supports and other provisions they require to meet basic needs.

iii) Lack of Affordable Rental Housing

33. A disproportionate number of people with intellectual disabilities are in core housing need in Canada. Canada Mortgage and Housing Corporation (CMHC) classifies households in core housing need as those which are unable to afford shelter that meets adequacy, suitability, and affordability norms. A household is said to be in core housing need if its housing falls below at least one of CMHC's adequacy, suitability or affordability standards and if the household would have to spend 30% or more of its before-tax income to pay the median rent of alternative local housing. 18.5% of persons aged 15 years or older with developmental disabilities live in a household in core housing need in Canada – more than twice the average for all households in Canada (9.1%) and higher even than persons with any disability (16.6%).²³ About 87% of persons aged 15 years and older with intellectual disabilities who are living in core housing need report income from government sources.²⁴

34. Approximately 12,000 adult Ontarians who have an intellectually disability are on a waiting list for long-term housing. On average, people are waiting for

²² Cameron Crawford, *Personally Paid: Non-reimbursed Costs of Selected Disability Supports* (Toronto: Roeher Institute, 20??)

²³ Canada Mortgage and Housing Corporation, *2001 Participation and Activity Limitation Survey: Issue 7 - Profile of the Housing Conditions of Canadians aged 15 Years and Older with a Developmental Disability*, Socio-economic Series 10-013 (Ottawa: CMHC, July 2010) at 4.

²⁴ *Ibid* at 7.

seven years to obtain the residential supports they require. In Toronto, there are approximately 2,200 people with intellectual disabilities waiting for appropriate housing.²⁵ There is also very limited access to subsidized housing in Ontario and across Canada. As of January 2011, there were 152,077 households on municipal waiting lists for assisted housing. The number of households looking for assisted housing across Ontario grew by 10,442 households from January 2010 - an increase of 7.4% in one year. This is the second consecutive year of significant increases in the number of waiting households, following a 9.6% increase from 2009 to 2010. Waiting list figures undercount the number of households in urgent need due to the fact that many eligible persons do not bother to apply because the wait for assisted housing is too long. Average waits for social housing in major municipalities across Canada are between 2 and 5 years.

iv) Lack of Access to Supports for Community Living

35. Even where people with intellectual disabilities are able to find affordable and adequate rental housing, they are likely to face a critical shortage of supports necessary for community living. The lack of available supports may either force them to remain with family in inappropriate circumstances, or leave them attempting to manage community living without supports, leaving them vulnerable to loss of housing and homelessness.

²⁵ Laura Starret & Mary Pat Armstrong, "LIGHTS - Enabling Individuals and their Families to Explore Creative Residential Options Through Collaboration and Fundraising" (Lecture delivered at the Ontario Association of Developmental Disabilities Annual Conference, Thorold, Ontario, 7 April 2011).

36. Ontario provides a variety of residential and community supports for approximately 16,000 individuals.²⁶ This represents, however, only a small portion of the more than 250,000 individuals with intellectual disabilities living in the community in Ontario. There 13,400 on the waiting list for support services for people with developmental disabilities in Ontario.²⁷ There are approximately 4,000 individuals on the waiting list for passport funding, which provides some supports to young people with intellectual disabilities who are preparing to leave or have left school, to encourage community participation. Only 2,500 currently receive funding.²⁸

37. A CMHC funded study found that adults with intellectual disabilities, like other adults, usually want to live independently. However it found that those who wish to live independently face serious obstacles including:

- “limited support services that could assist them in planning for and effecting the transition to independent living and subsequently provide the specific support services they would need to live independently”
- “a system that is geared to accommodating them within existing housing, rather than creating housing situations geared to their needs”; and

²⁶ Ontario Ministry of Community and Social Services, “The evolution of government policy and legislation: 2000 and beyond” (12 April 2011), online: Ontario Government <http://www.mcscs.gov.on.ca/en/dshistory/legislation/2000s_beyond.aspx>.

²⁷ All Together Now, “Introduction”, online: All Together Now <<http://www.alltogether-now.ca>>.[Getting this information directly from the Ministry – reference to be changed]

²⁸ Family Alliance Ontario, *Submission to the Standing Committee on Finance and Economic Affairs regarding 2011-2012 Ontario Provincial Budget* (Oshawa: Family Alliance Ontario, January 2011) at 3.

- “families and support organizations that fear for their safety or question their ability to live on their own.”²⁹

A copy of Canada Mortgage and Housing Corporation’s *Housing for Adults with Intellectual Disabilities* is attached as Exhibit D.

v) Alternate Forms of Institutionalization

38. The lack of access to affordable housing and to independent community living with support services has sadly forced many people with intellectual disabilities to continue to live in alternate forms of institutionalization which repeat many of the abuses of the large facilities which have been closed. CACL defines an institution as any place in which people with an intellectual disability are isolated, segregated and/or congregated and where people do not exercise control over their lives and day to day decisions. Alternate forms of institutionalization include nursing/seniors homes, personal care homes and long term care facilities. These facilities are used to house people with intellectual disabilities when they are designed to meet entirely different needs for nursing care. Other forms of institutionalization occur in congregate care facilities, such as group homes. As Cameron Crawford has explained:

[M]ultiple problems have been associated with group home arrangements regardless of their size, including: inflexible schedules; high levels of staffing; incompatibility/disputes among residents; inability to adapt to residents’ changing needs/preferences; low levels of personal choice and autonomy regarding group activities and decisions; and availability not keeping pace with increases in demand. Research indicates that

²⁹ Canada Mortgage and Housing Corporation, *Housing for Adults with Intellectual Disabilities*, Socio-economic Series 06-008 (Ottawa: CMHC, March 2006) at 2 [CMHC, *Housing*].

some individuals residing in group homes do not require such high levels of support and may demonstrate better outcomes, at lower cost, by living semi-independently.³⁰

39. In its submission to the Standing Committee on Social Policy in relation to the 2008 *Services and Supports to Promote the Social Inclusion of Persons with Developmental Disabilities Act*, ARCH described some of the complaints they deal with in relation to group homes in Ontario:

People complain about all forms of abuse in group homes that create a living hell both for the individual and those who support him/her. We have been told about people being dragged down stairs, being left in the cold without blankets, being prevented from seeing family and friends, experiencing neglect relating to medical needs and having their cherished personal belongings stolen. People have been refused transfer requests despite an existing abusive situation. However, they have also been forced to move from one group home to another without regard to their wishes or the disruption created in their lives. Over and over we hear of desperate and failed attempts to resolve these situations through the group home and/or the Ministry of Community and Social Services that funds the homes.³¹

A copy of ARCH's submission is attached as Exhibit E. I have heard many similar reports from people with intellectual disabilities and families in consultations I have conducted in Ontario and across the country.

³⁰ Crawford, *Demographic*, *supra* note 2 at 18.

³¹ Kerri Joffe & Lana Kerzner, *ARCH's Written Submission to the Standing Committee on Social Policy regarding Bill 77, An Act to provide services to persons with developmental disabilities, to repeal the Developmental Services Act and to amend certain other statutes* (Toronto: ARCH Disability Law Centre, 2008) at C.2.

F. The Extent and Effect of Homelessness Among Persons with Intellectual Disabilities

40. There is no survey data on the number of people with intellectual disabilities who are homeless in Canada, but it is reasonable to assume from studies done elsewhere, and from Statistics Canada data on the number of people with intellectual disabilities who are in “core housing need”, that a disproportionate number of the homeless individuals in Canada are persons with intellectual disabilities.

41. A 2005 study of homelessness and intellectual disability in Ottawa suggested, on the basis of interviews with staff at shelters, that people with intellectual disabilities are likely over-represented in the shelter system.³² Staff also believed that there are likely many homeless individuals who have undiagnosed or unrecognized intellectual disabilities, resulting in their needs not being properly identified or met. Those interviewed also noted that many individuals with intellectual disabilities who wanted to leave their family home appeared to have no avenues of assistance, and that this could potentially lead to homelessness or to reliance on inadequate or inappropriate housing.³³

42. Studies done in other countries have indicated an over-representation of people with intellectual disabilities among the homeless. Findings of a U.K. study published in late 2008 found that “homeless people are significantly more likely to

³² Ottawa Ginger Group Collaborative Cluster, *Adults with Developmental Disabilities Experiencing or at Risk of Homelessness: Report to Ottawa’s Community Capacity Building Team* (September 2005).

³³ *Ibid.*

have an intellectual disability than the general population.”³⁴ A copy of the study, “Intellectual Disability in Homeless Adults: A Prevalence Study” by Peter Oakes and Ros Davies is attached as Exhibit F.

43. Homelessness is often more damaging to dignity and security for people with intellectual disabilities and is more difficult to escape. People with intellectual disabilities who are homeless or forced to live in inappropriate housing or living situations are extremely vulnerable to financial, emotional, and sexual abuse. They are frequently isolated due to poverty, discriminatory stereotypes and lack of access to work or to recreational or athletic activities. Past experiences often engender fear of making social connections or developing friendships.

44. People with intellectual disabilities are often cut off from the most important means to escape from homelessness because it is more difficult to navigate bureaucratic systems or negotiate procedures to access community services, financial or emergency assistance or to access subsidized housing. Discrimination by landlords or housing or service providers often bars access to housing accommodation, and this in turn may prevent people with disabilities from moving into employment or becoming involved in recreational activities in the community. Homelessness can therefore result in extreme social isolation.

³⁴ Peter M Oakes & Ros C Davies, “Intellectual Disability in Homeless Adults: A Prevalence Study” (2008) 12:4 *Journal of Intellectual Disabilities* 325 at 325.

People with intellectual disabilities are also particularly vulnerable to mental health problems linked to the stress of homelessness.³⁵

45. In addition, a significant number of people with intellectual disabilities are living with family when they do not feel that this is appropriate. In many of these cases, they are forced to remain there only because they lack access to the necessary support or services to be able to live independently in the community.

G. Effects of Denial of Access to Community-Based Housing with Supports for People with Intellectual Disabilities

46. The denial of access to appropriate housing with supports has serious detrimental consequences for people with intellectual disabilities.

47. Community living, with appropriate supports, is a necessary condition to the personal development and well being of a wide range of persons with intellectual disabilities, including those with severe intellectual disability, medical fragility and complex health needs, challenging behaviour, and advanced age.

U.S. research indicates, in fact, that individuals identified as 'severely' or

³⁵ My experience and observations are similar to those of researchers elsewhere. See, for example, Sarah MacDonald & Mischelle Surawski, *Particularly Vulnerable: An Outreach Model for Supporting Young People with a Learning Difficulty/Intellectual Disability Who are Homeless* (Australia: At Risk Resource & Outreach Service, [nd]) cited in Ottawa Ginger Group Collaborative Cluster, *supra* note 34 at 9.

'profoundly' disabled show the greatest benefits in 'adaptive behaviour' (conceptual, communication, social, and practical life skills) from supported community living.³⁶

48. Inability to access adequate community housing with supports has serious consequences for people with intellectual disabilities in five main areas:

- Self-determination, health and well-being
- Personal relationships
- Access to services
- Educational and economic integration
- Community participation

i) Self-Determination, Health and Well-Being

49. Self-determination can be defined as having one's autonomy respected, having a vision or plan for one's life, and the resources and opportunities to pursue that plan. Research in health promotion points to the positive relationship between health status and self-determination. My research, using a self-reported health status scale similar to those in large-scale health status surveys used by Statistics Canada, has confirmed that both self-determination and health status improve for people with intellectual disabilities who have moved into supported

³⁶ See James W Conroy, *Deinstitutionalization of People with Mental Retardation and Developmental Disabilities in the United States: Was This Good Social Policy?* (Havertown, Pa: Center for Outcome Analysis, 2002).

housing in the community. Community living leads to improvements in communication, behaviour, and agility/mobility.³⁷

50. Persons with intellectual disabilities are also more vulnerable to violence, exploitation and abuse when they are denied choice of the most appropriate housing options.³⁸ Poverty, social isolation, discrimination, low literacy skills and difficulty accessing community services may leave individuals with no connection to people or agencies who can assist them in addressing sexual and physical abuse.³⁹ A key finding of a study of the Roeher Institute on violence against people with disabilities which I helped to design, was that vulnerability to violence and abuse increases dramatically in setting where people with intellectual disabilities do not have control over where and how they will live, and where they are socially isolated.⁴⁰

51. There are many other risk factors associated with social isolation for persons with intellectual disabilities. People with intellectual disabilities are more likely than others to suffer from depression or dementia.⁴¹ Access to community housing, along with personal networks of families and friends to assist in ongoing individual planning, building connections to the broader community, and providing opportunities for inter-personal relationships and caring are essential to

³⁷ Roeher, *Towards*, *supra* note 12.

³⁸ See Exhibit H to this affidavit: John Lord & Alison Pedlar, "Life in the Community: Four Years After the Closure of an Institution" (1991) 29:4 *Mental Retardation* 213.

³⁹ MacDonald & Surawski, *supra* note 36.

⁴⁰ Roeher, *Harm's Way*, *supra* note 7.

⁴¹ Shahin Shooshtari, et al, "Prevalence of Depression and Dementia among Adults with Developmental Disabilities in Manitoba, Canada" (2011) 2011 *International Journal of Family Medicine* 1.

address the serious consequences for health and well-being that may result from social isolation.

ii) Personal Relationships – Community-based Housing with Supports Reduces Stereotypes, Stigmatization Violence and Abuse

52. My research on the formation of personal networks by individuals living in the community with appropriate supports points to positive changes in attitudes of families, staff and the general community which come with access to appropriate housing in the community. Family and community members who were initially resistant to community living usually change their views after seeing the often dramatic improvements in individuals' skills and capacities and benefits of community based living with supports. Family and community members get to know individuals living in community settings and see their potential in a new light.⁴²

53. My findings are supported by early research on the closure of the Tranquille facility in British Columbia, from which some 300 persons were provided new homes in the community. Research found that only 2.9 per cent of all family members surveyed indicated that they were 'somewhat dissatisfied' with the outcome. None said that they were "very dissatisfied".⁴³ Other research has also found similar positive changes in attitudes.⁴⁴

⁴² Roeher, *Towards*, *supra* note 12.

⁴³ John Lord & Cheryl Hearn, *Return to the Community: The Process of Closing an Institution* (Waterloo: Centre for Research in Education and Human Services, 1987).

⁴⁴ Conroy, *supra* note 37.

iii) Access to Services

54. Community based housing with supports also facilitates access to a variety of services that are of critical importance to people with intellectual disabilities. Access to services is often compromised in other living situations such as with families or in group homes. The CMHC study found that difficulties in accessing community supports when needed and a lack of individualized planning often means that people with intellectual disabilities move into housing that does not provide access to necessary services.⁴⁵

iv) Educational and Economic Integration

55. Access to educational and economic opportunities is frequently dependent on access to adequate housing with supports. In a research study that I conducted, over 50 per cent of men and just over 20 per cent of women, became involved in some form of education/training, volunteer work, or paid employment after making the transition to community living.⁴⁶ While these results showed a need to promote more equal gender participation in employment they also showed a significant benefit of community based housing with supports for accessing employment, expanding opportunities for economic integration and self-sufficiency.

56. Other research I have conducted on employment shows that even people with more severe intellectual disabilities can participate in education, training and

⁴⁵ CMHC, *Housing*, *supra* note 30.

⁴⁶ Reference your study

employment with adequate supports.⁴⁷ Living in the community is the first step in gaining access to these opportunities for the vast majority of individuals with intellectual disabilities. These new opportunities for paid employment lead to diminishing needs for financial assistance and longer term savings for governments.

v) Community Access and Participation

57. Community-based housing for individuals with disabilities is often a precondition for people with intellectual disabilities to access community life and to engage in meaningful participation. This applies to individuals with a broad range of intellectual disabilities, from more mild to more severe. National research I conducted showed that over 80 per cent of individuals who moved from institutions into community settings regularly attended community facilities, gatherings or events with “some,” “several,” or “lots” of opportunities to contribute to and/or be involved in their community.⁴⁸ This level of community access contributed to overall improvement in community attitudes, challenged discriminatory stereotypes and stigmas and led to personal growth and enhanced well-being. The denial of access to adequate housing and support services for so many people with intellectual disabilities in Canada exacerbates prevailing discriminatory attitudes and perpetuates social exclusion and stigma.

⁴⁷ Roeher Institute, *On Target? Canada's Employment-Related Programs for Persons with Disabilities* (Toronto: Roeher Institute, 1993).

⁴⁸ Roeher, *Towards*, *supra* note 12.

H. What is Needed

58. While governments in Canada have recognized the fundamental rights of persons with intellectual disabilities to inclusion, participation and equal citizenship, and the fact that access to adequate housing with supports in the community is a prerequisite to equality, security and meaningful inclusion in society, these commitments have not been implemented. Far too many people with intellectual disabilities are homeless, living in inadequate housing, living without necessary supports or forced to live in degrading institutional settings and socially isolated.

59. What is needed to address the gap between rhetoric and reality is the adoption of comprehensive housing strategies by both the federal and provincial governments as recommended by the UN Special Rapporteur on Adequate Housing, the Ontario Human Rights Commission, UN human rights treaty monitoring bodies and a wide range of experts.

60. Strategies should include commitments to provide adequate income assistance, shelter subsidies or access to subsidized housing as well as ensuring the right to adequate community supports. In addition, strategies should include the following key components:

- Mechanisms to foster ongoing commitment to the goal of community inclusion. For initiatives to continue to demonstrate success, it is critical to establish mechanisms through formal agreements with

governments, strategic planning and partnerships with community organizations.

- Formal accountability mechanisms to ensure that goals and targets are met, ongoing monitoring is undertaken, and reporting on outcomes by both governments and institutional facilities.
- Mechanisms for individual planning, decision making, and support network development – to ensure that individuals have an active role in planning and decision making about what housing they move into, their goals, and how they would be supported; that families are effectively involved in the process where appropriate; and that a process is in place for resolving conflicts.
- Mechanisms for development and management of individual supports in the community – to ensure development and financing of community supports and services that respond to individual plans.
- Community development process that engages community members and community agencies on an ongoing basis to ensure sustainable linkage between supports needed and available housing.
- Flexible funding mechanisms – that can respond to diverse and changing needs of individuals.

- Forum for partnerships – to build trust and collaboration among governments, community service providers, families, people with disabilities and their advocacy organizations in the community.

H. International Human Rights and Canada’s Ratification of the *Convention on the Rights of Persons with Disabilities (CRPD)*

61. The extent of homelessness among persons with mental and physical disabilities in Canada, and the critical need for a comprehensive housing strategy to ensure adequate housing and support services for all members of this group has been recognized as an urgent human rights crisis by international human rights bodies for many years. The United Nations Committee on Economic, Social and Cultural Rights (CESCR) has called for a national housing strategy to include adequate support services for persons with disabilities in its last two periodic reviews of Canada, in 1998 and 2006.⁴⁹ This recommendation was subsequently endorsed and reaffirmed by Miloon Kothari, the UN Special Rapporteur on the Right to Adequate Housing after a special mission to Canada in 2006.⁵⁰ The Ontario Human Rights Commission has also recommended both

⁴⁹ United Nations Committee on Economic, Social and Cultural Rights, *Consideration of Reports Submitted by States Parties Under Articles 16 and 17 of the Covenant: Concluding Observations of the Committee on Economic, Social and Cultural Rights: Canada*, UNCESCROR, 36th Sess, UN Doc E/C.12/CAN/CO/4 & E/C.12/CAN/CO/5, (2006) at para 62; United Nations Committee on Economic, Social and Cultural Rights, *Consideration of Reports Submitted by States Parties Under Articles 16 and 17 of the Covenant: Concluding Observations of the Committee on Economic, Social and Cultural Rights: Canada*, UNCESCROR, 19th Sess, UN Doc E/C.12/1/Add.31, (1998).

⁵⁰ United Nations Human Rights Council, *Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, and on the Right to Non-discrimination in this Context, Miloon Kothari - Addendum - Mission to Canada (9 to 22 October 2007)*, UN Human Rights Council OR, 10th Sess, UN Doc A/HRC/10/7/Add.3, (2009).

a national and provincial housing strategy incorporating the recommendations of the CESCR and the Special Rapporteur to implement Canada's and Ontario's obligations under international human rights law.⁵¹ A copy of the Ontario Human Rights Commission's 2008 Report, *Right at Home: Report on the consultation on human rights and rental housing in Ontario* is attached as Exhibit G.

62. The CESCR also clarified the obligations of governments in its General Comment 5 on the Rights of Persons with Disabilities.⁵² The CESCR stated that governments are obliged "to take positive action to reduce structural disadvantages and to give appropriate preferential treatment to people with disabilities in order to achieve the objectives of full participation and equality within society for all persons with disabilities. This almost invariably means that additional resources will need to be made available for this purpose and that a wide range of specially tailored measures will be required."⁵³ The CESCR has also emphasized that the right to housing for people with disabilities includes the right to support for independent living.

In addition to the need to ensure that persons with disabilities have access to adequate food, accessible housing and other basic material needs, it is also necessary to ensure that "support services, including assistive devices" are available "for persons with disabilities, to assist them to increase their level of independence in their daily living and to exercise their rights". "Wherever possible, appropriate personal assistance should also be provided in this connection. Such assistance should be

⁵¹ Ontario Human Rights Commission, *Right at Home: Report on the consultation on human rights and rental housing in Ontario* ISBN 978-1-4249-7224-1. Approved by the Commission: May 28, 2008

⁵² United Nations Committee on Economic, Social and Cultural Rights, *General Comment 5: Persons with Disabilities*, UNCESCROR, 11th Sess, UN Doc E/1995/22, annex IV (1994).

⁵³ *Ibid* at para 9.

undertaken in a manner and spirit which fully respect the human rights of the person(s) concerned.”⁵⁴

63. During the 1990s it was increasingly recognized that a separate human rights instrument was needed in order to promote and protect the fundamental human rights of people with disabilities. In 2002 the United Nations General Assembly created an Ad Hoc Committee to draft a new human rights treaty dealing with the rights of persons with disabilities. People with disabilities in Canada were actively involved, along with representatives of the Government of Canada, in the drafting and negotiation of the text of the *Convention on the Rights of Persons with Disabilities (CRPD)* in the Ad Hoc Committee between 2002 and 2006. I participated as one of the CACL representatives in the Ad Hoc meeting negotiating process for the CRPD.

64. The CRPD was adopted by the UN General Assembly on December 13, 2006 and was opened for signature on March 30, 2007. On the day it opened for signature 82 states signed the CRPD, including Canada. This is the highest number of signatories on the opening day for signatures in history to a UN human rights treaty. The CRPD entered into force on May 3, 2008. It has now been signed and ratified by over 100 countries.

65. Subsequent to Canada’s signing of the CRPD, people with intellectual and other disabilities throughout Canada urged the Government of Canada to ratify it,

⁵⁴ *Standard Rules on the Equalization of Opportunities for Persons with Disabilities*, GA Res 48/96, UNGAOR, 48th Sess, UN Doc A/RES/48/96, (1993) 202 cited in *General Comment 5*, *supra* note 52 at para 33.

in order to make it legally binding on Canada under international law. Provincial agreement was required in order for the federal government to proceed with ratification, so provincial governments were also urged to support ratification. Canada's ratification of the CRPD in March, 2010 with the support of the provinces and territories was recognized by the Government of Canada and by disability rights groups across Canada as an historic advance in the recognition of the equal rights of persons with disabilities in Canada. The federal government stated the following in its press release announcing Canada's ratification of the CRPD on March 11, 2010:

The Honourable Lawrence Cannon, Minister of Foreign Affairs, and the Honourable Diane Finley, Minister of Human Resources and Skills Development, today announced that, with the support of all provinces and territories, the Government of Canada has ratified the Convention on the Rights of Persons with Disabilities at United Nations headquarters in New York City.

"Canada is committed to promoting and protecting the rights of persons with disabilities and enabling their full participation in society," said Minister Cannon. "Ratification of this convention underscores the Government of Canada's strong commitment to this goal."

"Canada is proud to have been one of the first countries to originally sign the Convention in 2007," said Minister Finley. "The ratification of this agreement is just further acknowledgement that Canada is a world leader in providing persons with disabilities the same opportunities in life as all Canadians."

"Today is a momentous day for Canadians with disabilities and their families," said Bendina Miller, President of the Canadian Association for Community Living (CACL). "CACL is thrilled that Canada has ratified the Convention. Canada has been an international leader on disability and human rights, and through ratification can continue to play this important

role. CACL looks forward to working with the Government of Canada on implementing and monitoring compliance with the Convention.”⁵⁵

66. In the Government of Canada’s ‘Backgrounder’ to its press release announcing ratification of the CRPD, it explained the significance of the CRPD as follows:

It reaffirms for persons with disabilities existing civil, political, economic, social and cultural rights set out in international law.

The Convention’s core obligations relate to non-discrimination and reasonable accommodation. These core obligations are then elaborated in specific provisions that address such issues as freedom of expression, political rights, liberty and security of the person, legal capacity, education, health and employment. The Convention also contains provisions on issues unique to people with disabilities, such as accessibility, independent living and inclusion in the community, as well as the processes of rehabilitation and habilitation, through which those with disabilities learn to function fully in society.

The Government of Canada consulted provincial and territorial governments throughout the Convention’s negotiation, signature and ratification processes. The Canadian government also consulted civil society through a national round table with stakeholders, and an online consultation open to the public. It also sought the views of self-governing Aboriginal groups on how ratification of the Convention might affect their communities.⁵⁶

67. Three Articles of the *Convention* speak directly to the dimensions of the right to housing for persons with disabilities which must be addressed in order to deal with the particular nature of homelessness and inadequate housing faced by

⁵⁵ Government of Canada, ‘Canada Ratifies UN Convention on the Rights of Persons with Disabilities’ (Press Release, March 11, 2010) online at <<http://www.international.gc.ca/media/aff/news-communicues/2010/99.aspx?view=d>>

⁵⁶ *Ibid.*

persons with intellectual disabilities: accessibility, living in the community with needed supports, and adequacy.

68. Article 9 of the CRPD on “Accessibility” states:

1. To enable persons with disabilities to live independently and participate fully in all aspects of life, States Parties shall take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas. These measures, which shall include the identification and elimination of obstacles and barriers to accessibility, shall apply to, inter alia:

(a) Buildings, roads, transportation and other indoor and outdoor facilities, including schools, housing, medical facilities and workplaces.

69. Article 19 of the CRPD on “Living independently and being included in the community” states:

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.

70. Article 28 of the CRPD ensures an “Adequate standard of living and social protection” states:

States Parties recognize the right of persons with disabilities to an adequate standard of living for themselves and their families, including adequate food, clothing and housing, and to the continuous improvement of living conditions, and shall take appropriate steps to safeguard and promote the realization of this right without discrimination on the basis of disability.

71. A copy of the *Convention on the Rights of Persons with Disabilities* is attached as Exhibit H.

72. A housing strategy as recommended by the UN Special Rapporteur on Adequate Housing, the CESCR, the Ontario Human Rights Commission and many other human rights bodies and experts, is critical to enabling “the full participation in society” of people with intellectual disabilities, as described by Minister Canon upon Canada’s ratification of the CRPD, and to addressing the many other hardships, degradations and threats not only to dignity but also to life, health and individual security which occur when people with intellectual disabilities are denied access to adequate and appropriate housing in the community, along with necessary supports.

73. My acknowledgement of my duty to the Court on Form 53 is attached as Exhibit I to this affidavit.

74. I affirm this affidavit in order to provide evidence on the application herein and for no other or improper purpose.

AFFIRMED BEFORE ME)
at the City of Ottawa in the)
Province of Ontario)
this th day of 2011.)

MICHAEL BACH

A Commissioner, etc.

List of Exhibits

Exhibit A: Michael Bach, *Curriculum vitae*.

Exhibit B: Roeher Institute, *Towards Inclusion: National Evaluation of Deinstitutionalization Initiatives* (Toronto: Roeher Institute, 1999).

Exhibit C: OECD, *Sickness, Disability and Work: Breaking the Barriers - Canada: Opportunities for Collaboration*, Sickness, Disability and Work Series, (2010).

Exhibit D: Canada Mortgage and Housing Corporation, *Housing for Adults with Intellectual Disabilities*, Socio-economic Series 06-008 (Ottawa: CMHC, March 2006).

Exhibit E: Kerri Joffe & Lana Kerzner, *ARCH's Written Submission to the Standing Committee on Social Policy regarding Bill 77, An Act to provide services to persons with developmental disabilities, to repeal the Developmental Services Act and to amend certain other statutes* (Toronto: ARCH Disability Law Centre, 2008).

Exhibit F: Peter M Oakes & Ros C Davies, "Intellectual Disability in Homeless Adults: A Prevalence Study" (2008) 12:4 *Journal of Intellectual Disabilities* 325 at 325.

Exhibit G: Ontario Human Rights Commission, *Right at Home: Report on the consultation on human rights and rental housing in Ontario* ISBN 978-1-4249-7224-1. Approved by the Commission: May 28, 2008

Exhibit H: *Convention on the Rights of Persons with Disabilities*, GA Res 61/106, UNGAOR, 61st Sess, Supp No 49, UN Doc A/RES/61/106, (2007).

Exhibit I: Form 53.