Court File No. CV-10-403688

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, ATTORNEY GENERAL 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 CATHERINE FRAZEE AND ESTHER IGNAGNI

I, **ESTHER IGNAGNI** of the City of Toronto in the Province of Ontario, and I **CATHERINE FRAZEE** of the Town of Baxter's Harbour in the Province of Nova Scotia, **MAKE OATH AND SAY**:

PART I: CREDENTIALS AND EXPERIENCE

1. I, Catherine Frazee, currently hold the position of Prof. Emerita at Ryerson University, School of Disability Studies. Prior to my retirement in 2010, I was a

Professor of Distinction in the School of Disability Studies and Co-Director of the Ryerson-RBC Institute for Disability Studies Research and Education. After serving for four years as a Commissioner for Human Rights in the province of Ontario, I was appointed to a three-year term as Chief Commissioner of the Ontario Human Rights Commission in 1989. I have served in a voluntary capacity as Director, Task Force Chair, advisor and active contributor to various national and local civil society organizations promoting the equality and full citizenship status of people with disabilities in Canada.

2. I have lectured and taught extensively across Canada on subjects related to the history, rights claims, culture and precarious citizenship of disabled people. I was the Bertha Wilson Visiting Scholar in Human Rights Law at Dalhousie University in 2000, and served for several years as a faculty member for the National Judicial Institute Social Context education initiatives for Canada's judiciary.

3. I have provided expert witness testimony on critical disability analysis and social context theory before the Federal Court of Canada in the case of *Chesters and Canada (Minister of Citizenship and Immigration), 2002* and on disability and accessibility before the Canadian Human Rights Tribunal in the case of *Hughes and Elections Canada, 2010.*

4. I have also served as an expert on equality, human rights, disability issues and disability disadvantage at Boards of Inquiry appointed under the Ontario Human Rights Code: *Elliot and Epp Centres* (1993); *Quesnel and Eidt* (1995), unreported; *Lewis and York Region Board of Education* (1996); *Brock and Tarrant Film Factory* and *Turnbull and Famous Players* (2000, 2001) as well as before the Supreme Court of Ontario:

Poynter and St. Vincent Hospital, 1988. My Curriculum Vitae is attached as **Exhibit "A"** to this affidavit.

5. I have been asked to discuss the problems and issues that people with physical disabilities in Canada confront with regard to housing. I acknowledge my duty to the court as an expert witness. My acknowledgement form is attached as **Exhibit "B"**.

6. I, Esther Ignagni, currently hold the position of Assistant Professor at Ryerson University, School of Disability Studies. Prior to taking an academic position, I had almost twenty years employment and voluntary experience as an advocate in local community civil society organizations promoting the health and equality of disabled and other marginalized people in Toronto.

7. I have conducted research with disabled young people and their families. I have worked with families of disabled children who require technology for eating, breathing and other bodily functions. The focus of this research was to ethnographically explore the everyday experience of families as they attempted to operate households with a child with high equipment and care-giving requirements.

8. I have conducted a study of disabled young people as they made the transition to independent living. Although this study examined young people's citizenship rights with respect to personal support, I observed young people in the process of securing and maintaining housing. My Curriculum Vitae is attached as **Exhibit "C"**.

9. I have been asked to discuss the problems and issues that people with physical disabilities in Canada confront with regard to housing. I acknowledge my duty to the

court as an expert witness. My acknowledgement form is attached as **Exhibit "D"** to this affidavit.

PART II: OVERVIEW

10. In Canada, 4.4 million people have a disability that limits their everyday activity. Almost 50% report that the disability is severe to very severe. Approximately 1.5 million live in Ontario (*Participation and Activity Limitation Survey 2006: Analytical Report,* Statistics Canada 2006, at 9 attached and marked as **Exhibit "E"**).

11. Disability rates increase with age: in 2002, 40.5% of Canadians over the age of 65 had a disability (See: Lori Weeks and Kristal LeBlanc, *Housing Concerns of Vulnerable Older Canadians,* Canadian Journal on Aging, 29(3): 333-347, 2010, attached as **Exhibit "F"**). Disabled Canadians struggling with low income and high health care costs are particularly vulnerable (*Housing Concerns* **Exhibit "F"**, and Erika Khandor and Kate Mason, *The Street Health Report,* Street Health, 2007, attached and marked as **Exhibit "G"**).

12. The history of living conditions for disabled Canadians is painful. After well over a century of warehousing disabled people in institutional confinement, Canadian governments began in the 1970s to adopt policies of deinstitutionalization that culminated in the closure or transformation of developmental and psychiatric facilities. However, many people leaving large institutions were poorly resourced as they attempted to move into the community. As a result, many became marginally housed or were forced to move back into segregated residential settings such as nursing homes.

13. Information about the current housing conditions of disabled Canadians has not been analyzed in any comprehensive manner. Although Statistics Canada collects some housing information, few quantitative analyses examining disabled Canadians' housing conditions exist.

14. What does exist suggests that disabled Canadians fare poorly in terms of housing affordability, adequacy and accessibility. And some groups of disabled people fare even more poorly than others. Young people in transition to adult life; people who are renting; people who do not have access to the resources and support of families; immigrants; and low income families with disabled children are particularly vulnerable.

15. People with severe physical disabilities, particularly those who also live with developmental or psychiatric disabilities, who could live independently with adequate supports, may be institutionalized within group homes or nursing homes at young ages due to a lack of supported housing (housing with attendant care or personal support services).

16. In Canadian social policy, disability tends to be defined through biomedical and functional criteria. Such a narrow understanding of disablement dictates policy responses that are flawed and often counterproductive, premised upon a fundamental assumption that the problems and/or limitations experienced by persons with disabilities are a direct consequence of their individual impairments. Disabled peoples' experience of profound disadvantage in the realm of housing, for example, will be understood ***not as an issue of pressing social policy***, but as an unfortunate ***medical*** problem.

17. This leaves little room for the analysis of other influences on housing access for persons with disabilities such as: inadequate income supports, discriminatory attitudes, rising costs of accessibility renovations, normative design standards, lack of affordable, accessible housing and the governments' failure to commit to retroactive accessibility standards. Moreover, the medical and functional approaches privilege medical authority such that physicians are positioned as *de facto* gatekeepers for redistributive social policy with respect to housing.

18. In this affidavit, we review some of the major barriers disabled people confront with respect to housing. These include issues of affordability, access to housing supports, physical accessibility and adequacy of the housing stock itself.

PART III: BARRIERS TO ACCESSING ADEQUATE HOUSING

19. There are a number of barriers related to affordability that negatively impact housing for disabled Canadians. These include: high shelter costs, long waiting lists for social housing, discrimination, and inadequate housing allowances within existing social assistance plans. This places disabled people at a high risk of eviction and homelessness.

i) High Shelter Costs

20. The Canadian Mortgage and Housing Corporation (CMHC) defines acceptable housing as housing that is in adequate physical condition, suitable, and affordable. A household is said to be in core housing need if its housing falls below one of the adequacy, suitability or affordability standards.

21. Shelter costs are high for many Canadians. The high cost of housing is an especially challenging obstacle for disabled people. Disabled Canadians have higher rates of unemployment, lower levels of education and are more likely to have low personal incomes than the general Canadian population (*Profile of Disability in 2001*, Canadian Social Trends, Statistics Canada, 2004 attached and marked as **Exhibit "H"**).

22. The average annual income for persons with disabilities is $28,503 almost $10,000 less than the average annual income for non-disabled Canadians. This means fewer disabled Canadians are fortunate enough to own their own homes and many struggle with housing affordability (*Housing Concerns*, **Exhibit "F"**).

23. The proportion of household income spent on shelter costs is known as the shelter-cost-to-income ratio (STIR). Since the 1980s, CMHC and the provinces have agreed on a threshold of 30% STIR as the accepted upper limit for defining affordable housing. Those spending more than 30% of their income on shelter are considered to be in core housing need.

24. Over one quarter (27.2%) of renter households in Canada spent 30% or more of their income on shelter in 2006, placing them in core housing need (*2006 Census Housing Series: Issue 3- The Adequacy, Suitability, and Affordability of Canadian Housing, 1991-2006,* CMHC Research Highlight, February 2009, at 3, attached and marked as **Exhibit "I"**).

25. In Ontario the incidence of core housing need among renter households rose from 23.9% in 1991 to 33.0% in 2006 (**Exhibit "I"**, at 8). If a tenant is disabled, the incidence of core housing need escalates dramatically.

26. In 2010, CMHC produced a series of research highlights in which they analyzed the incidence of core housing need among persons with various disabilities. The seven highlights are attached as a package and marked **Exhibit "J"**. The researchers found that disabled people over the age of 15 who live in rental housing experience core housing need at the following rates:

- 48% of persons who are legally blind
- 32% of persons with a hearing disability
- 30% of persons with a developmental disability
- 37% of persons with an emotional /psychological disability
- 37% of persons with a learning disability

27. In addition, the researchers found that 23% of seniors with disabilities and 39% of children with disabilities living in rental housing were in core housing need. (**Exhibit "J"**). Some reports suggest that housing is the most urgent unmet need for people living with HIV (*Under My Umbrella": The housing experiences of HIV positive parents who live with and care for their children in Ontario*, Arch Women's Mental Health. 2010 Jun;13(3):223-32, at 223, attached as **Exhibit "K"**).

28. Low income families with children who have disabilities are particularly disadvantaged. A child's disability impacts on a parent's ability to work outside the home, hours of work and choice of work. Parents of disabled children report that their child's conditions impact the family's employment situation: parents may work fewer

hours or choose to work jobs with lower pay that offer more flexible hours (Research Highlight 2010, *Profile of the Housing Conditions of Children Living with Disabilities*, at 8-9[1] (**Exhibit "J"**)).

29. Low income families with children with disabilities face challenges daily as they struggle to cope, waiting up to ten years and longer to get into affordable housing that meets their needs. While waiting, they live in inaccessible housing that is unsafe and pay market rents that in some cases consume up to 75% of their income. (*Housing Opportunities Community Consultation,* Bloorview Kids Rehab, Summary Report, September 2008, at 3, attached as **Exhibit "L"**).

30. Both in Canada and elsewhere (see: Bryony Beresford and Dave Rhodes, *Housing and Disabled Children*, attached as **Exhibit "M"**), families with children with disabilities report that the combination of low income and the lack of affordable housing contribute to shelter arrangements which are often inaccessible, overcrowded and in a poor state of repair.

31. The consequences of this may include risk of injury to family members, including the family member with a disability, and the need for family members to forego food, medication and other household amenities. There have been reports in which families

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1 Families of children with severe disabilities are eligible for ODSP. In 2011, ODSP recipients could also receive the federal Child Disability Benefit (CDB), a supplement to the Canada Child Tax Benefit (CCTB). Families are also eligible for other provincial social assistance benefits. For instance, the Assistance for Children with Severe Disabilities Program (ACSD) in Ontario distributes funds to families for assistive devices, respite, etc. (MCSS, 2011). Special Services at Home (SSH) also provides funds to families with children with severe disabilities for respite services (MCSS, 2011). While these funds are not specifically directed to shelter costs, presumably they free up resources to better meet the family's basic needs. Nevertheless, these supplementary programs are capped and based on income thresholds. Families' financial needs frequently outpace what these funds provide.

have had to institutionalize their children or surrender their children to child welfare (Ombudsman Ontario, 2009, attached as **Exhibit "N"**).

ii) Inadequate Income Supports

32. Shelter allowances or subsidies connected to income assistance plans are often insufficient to secure adequate, accessible housing within the private rental market.

33. In 2001, about 5% of working aged Canadians (15 to 64) received disability benefits. In Ontario, the primary form of social assistance to persons with disabilities is the Ontario Disability Support Program (ODSP), which includes a shelter allowance. See: Institute for Work and Health, "Disability income security programs are poorly coordinated" (Issue 53, Summer 2008), attached as **Exhibit "O"**.

34. In May 2011 (MCSS, 2011) there were 394,739 ODSP beneficiaries in Ontario. Attached and marked as **Exhibit "P"** is a copy of the Ontario Social Assistance Monthly Statistical Report dated May 2011. Although more generous than general welfare (i.e. Ontario Works), ODSP is inadequate to cover housing and other costs of daily living, e.g. medication, special diet requirements, assistive devices. See: Vera Chouinard, *On the Dialectics of Differencing Disabled women, the state and housing issues,* Gender, Place and Culture, Vol. 13, No. 4, pp. 401-417, August 2006, attached and marked as **Exhibit "Q"**.

35. As of November 2010, the maximum monthly shelter allowance for a single individual on ODSP was $469. This is $309 less than the average cost of a bachelor

apartment in Toronto (CMHC Rental Market Report: Greater Toronto Area, Fall 2010, p. 16, attached and marked as **Exhibit "R"**).

36. Inadequate shelter allowances create situations in which many disabled people live in housing which does not accommodate their needs. These situations include living in inaccessible housing, living with family members or violent partners, living in core housing need, doing without food, medication or necessary assistive devices (See: *On the Dialectics,* **Exhibit "Q"**).

iii) Discrimination

37. Discrimination is another barrier to adequate, accessible and affordable housing. Disabled people are vulnerable to unique forms of discrimination. People with visible impairments may be refused housing because landlords fear negative responses from other tenants or neighbours, the cost of potential modifications, or questions about the functional ability of the disabled person.

38. Disabled people are also subject to discrimination based on their social conditions. That is, disabled people who are poor, unemployed and receiving social assistance, or living in congregate settings (such as disabled youth in the child welfare system, people living in group homes, etc.) experience discrimination on these bases.

39. So-called neutral rental practices may also discriminate against disabled people, particularly those on social assistance. These practices may include reference checks, credit checks and rent to income ratios. While there has been no systematic Canadian investigation of housing discrimination against disabled individuals, we can assume

discrimination exists given the consistently high proportion of human rights complaints filed on the basis of disability each year in Canada.

40. The Centre for Equality Rights in Accommodation (CERA) provides assistance to individuals and families experiencing discrimination in their search for housing across Ontario. In 2008/2009, almost 40% of CERA's housing discrimination complaints were related to disability (CERA, 2011, attached and marked as **Exhibit "S"**). In other words, disability was overrepresented.

vi) Social Housing Wait Lists

41. One option is to seek social housing. Access to affordable non-profit housing through rent geared to income for low-income households and low end market rents for moderate income households, offer protection from the inflationary forces at work in the private housing market (*On the Dialectics,* **Exhibit "Q"** at 415).

42. However, only about 5% of Ontario's housing stock represents affordable social or non-profit housing. At present, there are 152,077 households on the active wait list for social housing in Ontario (Ontario Non-Profit Housing Association, *Wait List Maps,* January 2011, attached and marked as **Exhibit "T"**).

43. In Toronto, the waiting time ranges from approximately one to five years for a bachelor apartment; seven to ten years for a one bedroom; five to ten years for a two bedroom; and up to ten or twelve years for a three to five bedroom home. (Housing Connections, *Quarterly Activity Report,* 1st Quarter 2011, attached and marked as **Exhibit**

“U”). Due to the length of waiting lists for subsidized housing in Ontario, it is not a viable solution for the majority of low income tenants currently in need.

44. There are currently almost 6000 people with “special needs” on the social housing wait list and just over 1000 households requiring supportive housing (Housing Connection, at 8-9, **Exhibit “U”**). Disabled people on wait lists for adapted housing in Toronto may wait as long as seven to eight years for an appropriate unit. Families with children who are disabled often wait ten or more years. (See: Bloorview Kids, at 3, **Exhibit “L”**). In the time it takes for a subsidized unit to become available, an applicant’s situation may have changed considerably, often for the worse.

45. Supportive housing combines relatively affordable housing with support services that enable individuals to maximize independent living in the community. People requiring supportive housing may include people with complex care needs, people with mobility impairments, individuals with developmental disabilities, psychiatric consumer/survivors, substance users, etc. Although these individuals are able to live independently with adequate supports (social service worker, developmental support worker, personal support worker, etc.), the dearth of these supports can result in institutionalization or even homelessness.

46. Even when supportive housing is available, it is often difficult for disabled people to find housing that provides an adequate amount of support. Residents of Support Service Living Units (SSLU) for instance may only receive limited hours of support per day which may need to be dedicated to complex care tasks or monitoring of assistive

technology (Brooks, Gibson & Dematteo, *Perspectives of Personal Support Workers and Ventilator Users on Training Needs*, 2009, attached as **Exhibit "V"**).

47. As a result, they only have support for the most basic activities of daily living. Other activities that foster health, social inclusion and community participation, such as recreation, education, spiritual life and even employment are impossible without support. Alternatively, people will forego essential supports, (e.g. support with eating) in order to pursue other activities.

48. Excessively long waiting lists for affordable and accessible housing have been repeatedly identified as a subject of concern by the U.N. Committee on Economic, Social and Cultural Rights (*Concluding Observations of the Committee on Economic, Social and Cultural Rights: Canada 12/10/1998 and May 2006,* attached and marked as **Exhibit "W"**).

PART IV: THE IMPORTANCE OF AFFORDABLE ACCESSIBLE HOUSING

49. Inaccessible housing affects the productivity, social life and self-determination of disabled people and their families. Accessible housing allows families and individuals to pursue education and employment opportunities and participate in the community. [2]

i) Adapted housing

50. House adaptations are fundamental to independence and quality of life. Disabled persons living in modified/accessible homes are more likely to be able to learn, practice

[2] See: Kay Seville-Smith, *Housing and Disability: Future Proofing New Zealand's Housing Stock for an Inclusive Society",* Centre for Housing Research and The Office for Disability Issues, New Zealand, May 2007.

and employ independent living skills including cooking, self-care, study, leisure activities, etc. A lack of suitable adaptations can contribute to missed opportunities to pursue further education or employment, and to fully participate in family and community life and even to freely and autonomously live in one's home.

51. Disabled people have reported that difficulties in accessing appropriate housing have restricted opportunities to choose with whom and how they wish to live.[3] For instance, young people may find it difficult to move into independent living because of a lack of affordable accessible housing. People with disabilities have difficulties leaving abusive partners (Chouinard, **Exhibit "Q"**). They may find it difficult to find accessible housing near work or near educational institutions. Anecdotally, we have heard that people with disabilities have had to move to other cities/communities to access supportive living units.

52. In 2001, 483,000 disabled Canadians needed special features in their home to assist them with their activity limitations: features such as ramps, handrails, visual or audio alarms, adapted bathrooms, etc. Twenty six percent of disabled Canadians reported having none of the modifications they needed and eleven percent reported having only some of the modifications they needed (*Profile of Disability*, **Exhibit "H"**). People with the most severe disabilities are the most likely to have unmet needs for special features in their homes. The most commonly reported reason for unmet needs was high cost or a lack of insurance coverage.

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[3] Ibid.

53. The impact of non-adapted housing is profound. People who use wheelchairs and live in housing with stairs or with rooms which are not accessible are forced to move about their apartments without the assistance of their wheelchairs thereby risking injury. People who cannot access their kitchens or washrooms without attendant care or other assistance may defer eating or voiding, risking adverse physiological effects.

54. Even if available and sufficient, adaptation or renovation funds are generally only available for one set of modifications, yet needs may change throughout the life course.[4] One-time modification funds can limit the opportunities for growth, maturation and independence.

55. For instance, youth and young adults with disabilities and their parents highlight the changing housing needs of the child and young person as they grow and develop (*Housing and Disabled Children,* **Exhibit "M"**). Further education or employment may require a change of residence and/or the need for housing modifications throughout a young person's life.

56. In addition, as young people with disabilities age and plan to move out on their own, they will not be able to access one-time funding sources again. This can discourage or delay young people with disabilities from transitioning to living independently.

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[4] Housing adaptation funding programs in Canada are offered federally and provincially. Canada Mortgage and Housing Corporation's Residential Rehabilitation Assistance Program for Persons with Disabilities (RRAP – Disabilities) offers forgivable loans to Canadians with disabilities with maximum amounts varying according to location of the home (in Southern, Northern or far Northern parts of Canada) and whether the applicant is a homeowner with a disability or landlord to a tenant with a disability. The March of Dimes Home and Vehicle modification program provides Ontario residents with disabilities a lifetime maximum of $15,000 for home modifications and a 10 year maximum of $15,000 for vehicle modifications. However there are many barriers to accessing these grants, including stringent economic criteria, long waiting periods and lots of red tape.

Alternatively, this could also limit young people with disabilities from moving back with parents – a common practice among Canadian youth[5] – since their childhood homes may no longer be adequate or accessible.

57. At the other end of the life course, inaccessible housing affects the health and safety of elderly disabled people, including a heightened risk of falls in bathrooms and on stairs. A deep lack of financial resources impairs their ability to make their homes more accessible or to move to an accessible home (*Housing Concerns*, **Exhibit "F"**). As such, elderly disabled people may be prematurely institutionalized in nursing homes.

58. Accessible housing must reflect an understanding of the intersection between the physical environment, physiological conditions and everyday functions within the home. Truly accessible housing not only allows disabled people to enter and move about their homes, but also enables them to live relatively independently, with comfort and dignity.

59. One reason homes lack the appropriate adaptations is the approach to accessibility in the housing stock. The trend in housing has been to deem accessible housing as 'special needs' housing. 'Special needs' housing assumes that disabled people's needs are unique and can be best met via a 'housing design prescription'[6] in which ordinary homes are adapted to meet minimum accessibility standards. This approach to housing fails to recognize how the principles of universal design, flexible housing or even visitability are features of dwellings from which all people may benefit. Inclusive housing can include

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[5] See: http://www.statcan.gc.ca/pub/11-008-x/2006003/pdf/9480-eng.pdf

[6] See for instance, Jo Milner and Ruth Madigan, *Regulation and Innovation: Rethinking 'Inclusive' House Design,* Housing Studies, Vol. 19, No . 5, 727-744, September 2004

zero-grade entrances, first floor washrooms, open-concept design or widened door frames, single floor dwellings, etc.

ii) Space

60. Space has been a primary housing access concern for disabled people and their families. Historically, conventional housing design has outlined minimum recommended floor-space standards based on level of occupancy. As Milner and Madigan[7] report, the "space required for a range of conventional activities was added to standard furniture and equipment requirements for each room in the house, which in turn was added to circulation and storage space, which were aggregated to offer the total floor space."

61. Many disabled people and their families have reported a number of difficulties with the spatial arrangement of the current housing stock; these problems are particularly acute for those living in affordable and social housing. In general they identify the amount of general space, the amount and location of storage space and the multi-functional dimensions of space as presenting unique access challenges.

62. Disabled individuals may be able to enter their homes, but may not be able to enter all rooms. In a study of their home support requirements, disabled young people described only being able to access rooms in their basement or second floor if they were carried. This was true in both social and private market housing. Once in a particular room, space constraints may mean that a disabled individual, such as a wheelchair user may not be able to move around freely or participate in the activities taking place in that room.

[7] Ibid.

63. In studies of children fed via gastrostomy, families had difficulty fitting their children's equipment (wheelchair, t-bar, etc.) into kitchens or dining areas of their homes. In these situations children sat apart from the family or were fed at a separate time, marginalizing children within their own homes.

64. Large and bulky rehabilitation, life-sustaining or mobility equipment may displace activities that take place in a particular space. For instance, a disabled child or elderly parent may need to locate their bedroom in the family living areas since traditional bedrooms tend to be quite small. Family members, including non-disabled children, may not have common space in which to gather, contributing to other family tensions.

65. In a study underway at the Centre for Independent Living Toronto, families in which one or both parents live with an impairment, expressed concern about finding affordable dwellings with adequate floor space for more than one wheelchair user to negotiate or large enough to safely store medical and technical equipment out of the grasp of children.

66. In a similar study, *Housing and Disabled Children* (**Exhibit "M"**) reported that disabled parents were not able to enter their child's bedroom because the doorframe and room size were too small. In these instances, disabled parents' capacity to safely care for their children may be constrained. To address this problem, parents may hire a personal support worker to assist with the children's physical care needs at the direction of the parent. This sort of support however, is expensive and difficult to sustain.

67. Many homes have inadequate storage space for the medical supplies and assistive technologies that disabled people may require (Yantzi & Rosenberg, *The Contested Meanings of Home for Women Caring for Children with Long-Term Care Needs in Ontario, Canada*, 2008, attached as **Exhibit "X"**). Families complain about how equipment and supplies encroach on common space intended for other activities. Having convenient space close at hand to store supplies facilitates timely and dignified care for disabled individuals and reduces the workload for caregivers who use these supplies.

68. The lack of adequate storage space limits other household activities. For instance, bathrooms may become a space where gastrostomy feeding, bowel and bladder care, wound care and ventilation supplies are stored alongside more typical family hygiene products. Living rooms may contain physiotherapy or life-assisting technologies. This leaves families with less space to gather together, entertain guests, do homework or other work from home, or relax. In turn this may increase family stress, reduce the opportunities for cohesion, interfere with the school performance of children in the household, and leave families more isolated.

69. A particularly challenging space issue for families involves sleeping arrangements. Families may need to respond to disabled children's needs at all times of the day and night, which means that they must remain in close proximity to their disabled child. Many families describe sharing bedrooms with their disabled children in order to monitor their children's assistive technology or easily intervene in the event of health crises (seizures, vomiting, breathing interruptions, etc.). This situation speaks to the importance of accessible homes having larger sleeping areas.

iii) Multi-functional space

70. Health care restructuring in Canada, an aging population that wishes to 'age in place', medical innovations leading to enhanced survival among those who are medically fragile and the enhanced transportability/mobility of technological assistance has meant that complex health care is shifting from health care institutions to the home. While this change is welcomed by disabled people, it means that new activities, functions and routines must take place in people's homes. These include many bodily care activities, giving medication and monitoring and using technologies that assist with bodily function.

71. Homes are now the site of many of the functions that were once performed in hospitals or other health care facilities. Therefore the physical space of the home has an immediate and concrete impact on the health and well-being of disabled people and their families.

72. Disabled individuals and their family members must find different places within the home for different routines. As already mentioned, common living or gathering space in a home can be the site in which some typically private activities take place, such as bathing, dressing medical care, physiotherapy and so forth.

73. As health care shifts to the home, disabled people's home may also become a worksite for personal support workers, health care professionals, social workers and others. This extends this to informal caregivers as well since they do the lifting, carrying, reorganization and other physical activities of care provided within the home.

74. There are unique pressures on these households to offer space where workers and caregivers may accomplish their tasks efficiently while ensuring the dignity and safety of disabled people and workers themselves. Studies included account of disabled children being accidentally knocked and bruised because of the difficulties of lifting and moving in a small space (*Housing and Disabled Children,* **Exhibit "M"**). Furthermore, where a lack of space limited the use of equipment or carrying out therapies, parents believed this had an impact on their children, possibly contributing to an exacerbation of their physical impairment.

iv) Safety

75. The current state of the rental market puts disabled people at higher risk for abuse. Landlords may initially rent to a disabled person as a gesture of benevolence. However, when tenants act in ways that do not meet with the landlord's stereotypes of people with disabilities (e.g. quiet, asexual, deferential, etc.) the landlord may threaten eviction or otherwise harass their tenant. There are reports of landlords in the rooming house or the private low-rent housing market coercing disabled tenants to sign over their income assistance payments. If tenants refuse, landlords may threaten eviction, withdrawal of supports and institutionalization.

76. The paucity of affordable housing has also meant that some disabled tenants are forced into housing in which they are subject to forms of physical, sexual and verbal abuse from landlords and other tenants. People with sensory, communication and cognitive impairments are particularly vulnerable because they face unique barriers in not only reporting but also articulating their experiences of violation. As well, they may have

unique safety concerns. For instance, inadequate alarm systems or poorly marked escape routes may place Deaf and blind people at risk during fire emergencies. Poor security systems, such as broken or missing locks on doors and insecure windows put all residents at risk.

v) Housing location

77. Another important accessibility issue is the location of the home. Disabled people and their families reported difficulties with the location of their home. These difficulties could be due to the location being unsafe for the child (for example, by a busy road), difficulties with neighbours, and/or the lack of accessible local facilities or services. These challenges greatly reduce disabled people's opportunities for community participation, restricting their opportunities to pursue and use the social goods that are the entitlement of all Canadians.

78. In concrete terms disabled people may face greater social isolation, curtailed capacity to pursue family life (e.g. safely minding children, accompanying children to school, etc.) and restricted access to work or other opportunities for social contribution in their communities. In some instances, their health and well-being may be negatively influenced, or impairments may be exacerbated if they cannot attend rehabilitation or primary health care services.

79. Another crucial issue with respect to location is transportation. Housing that is not close to an accessible public transportation system, risks further isolating disabled people. Disabled people and their families have reported difficulty accessing medical

appointments, work, school, and contact with friends and relatives due to living in an area with poor public or even private transportation alternatives.

PART V: CONCLUSION

80. Article 9 of the UN Convention on the Rights of Persons with Disabilities (attached and marked as **Exhibit "Y"**) outlines the right of persons with disabilities to "…. live independently and participate fully in all aspects of life". States Parties are required to:

> "take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment…"

The Article goes on to direct State Parties to identify and eliminate the obstacles and barriers to accessibility, specifically including the barriers to housing.

81. From our experience and research, appropriate and adequate housing for disabled people is housing that:

- Supports the basic human aspiration for safe and healthy conditions of living.
- Costs 30% or less of a person's income or has rental charges (or mortgage payments) that fall within the shelter allocations of social assistance plans.
- Facilitates easy, independent and dignified movement to all areas of the home.

- Allows personal support workers, health care providers and informal caregivers to perform their job-related tasks in a manner that minimizes the risk of injury to themselves and to the disabled person.

- Provides adequate storage for assistive technology and medical supplies without compromising a family's use and enjoyment of their home.

- Enables disabled children to explore their environment safely and accomplish developmental tasks.

- Allows disabled children to pursue the tasks and functions necessary for development and maturity.

- Can be modified as individuals progress through the life course and their activities and subsequent housing requirements evolve.

- Allows disabled people to have an appropriate degree of privacy for personal care and other tasks.

- Offers both individuals and family members opportunities for privacy when health care workers are visiting the home.

- Permits easy access to public transportation, health, social and community resources. Accessible, affordable housing should allow disabled people to pursue employment, education and leisure activities.

SWORN BEFORE ME at	)	
	)	
	)	
	)	______________________________
this day of , 2011	)	**CATHERINE FRAZEE**
	)	

____
Notary Public

SWORN BEFORE ME at	)	
	)	
the City of Toronto,	)	______________________________
	)	**ESTHER IGNAGNI**
this day of August, 2011	)	
	)	

____
A Commissioner, etc.

JENNIFER TANUDJAJA, ***et al.*** - and - **HER MAJESTY THE QUEEN IN RIGHT OF CANADA,** ***et al.***
Applicants Respondents

Court File No. CV-10-403688

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

AFFIDAVIT OF CATHERINE FRAZEE AND ESTHER IGNAGNI

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