

Court File No.: C57714

COURT OF APPEAL FOR ONTARIO

BETWEEN:

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

Applicants
(Appellants)

-and-

**ATTORNEY GENERAL OF CANADA and
ATTORNEY GENERAL OF ONTARIO**

Respondents
(Respondents on Appeal)

- and -

**AMNESTY INTERNATIONAL/ESCR-NET COALITION; ARCH DISABILITY
LAW CENTRE, THE DREAM TEAM, CANADIAN HIV/AIDS LEGAL NETWORK
AND HIV & AIDS LEGAL CLINIC ONTARIO; CHARTER COMMITTEE ON
POVERTY ISSUES, PIVOT LEGAL SOCIETY and JUSTICE FOR GIRLS;
COLOUR OF POVERTY/COLOUR OF CHANGE NETWORK; DAVIS ASPER
CENTRE FOR CONSTITUTIONAL RIGHTS; INCOME SECURITY COALITION;
ONTARIO HUMAN RIGHTS COMMISSION AND WOMEN'S LEGAL
EDUCATION AND ACTION FUND INC.**

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PART I- OVERVIEW

1. Together as a coalition, ARCH Disability Law Centre (“ARCH”), The Dream Team, the Canadian HIV/AIDS Legal Network (“Legal Network”) and the HIV&AIDS Legal Clinic Ontario (“HALCO”), were granted leave to intervene in this matter by Order of Feldman J.A. on March 26, 2014.

2. As a Coalition, we share our experience and expertise as a group that represents the interests of people living with physical, sensory, intellectual and mental health disabilities, and people with HIV.

3. Our Coalition’s submissions discuss the role of international human rights instruments in informing the *Charter* analysis. Our focus is on the *Convention on the Rights of Persons with Disabilities* and the Articles of that Convention that aid in our understanding of section 7 and 15 *Charter* rights. A proper analysis of sections 7 and 15 of the *Charter* cannot be completed without an understanding of Canada’s international human rights obligations and an examination of Canada’s record in fulfilling these obligations.

4. Our submissions will assist the Court by demonstrating how the Governments’ choice of policies and programs, and in particular their lack of a cohesive strategy to address homelessness and inadequate housing, impact on the mental and physical health and human dignity of people living with disabilities. People with disabilities are often homeless or inadequately housed and being homeless creates unique challenges and

risks for them. By creating risks to health, well-being and human dignity, the Governments' choices result in a deprivation of security of the person and equality rights.

PART II – FACTS

5. The Coalition adopts the facts set out in the Appellants' factum.

PART III – ISSUES AND LAW

6. In determining whether this appeal should be granted, the following issues are to be addressed:

The role of international human rights instruments in interpreting the scope and meaning of the *Charter*

The meaning of section 7 “life, liberty and security of the person” in the context of an alleged lack of adequate, accessible and affordable housing for persons to whom the *Charter* is to provide protection, and in particular, for persons with disabilities

The proper section 15 *Charter* analysis and whether a decision on the justiciability of issues involving alleged section 15 breaches could be reached without a full examination of the evidence in this case

International Human Rights Treaties are Important Tools for Charter Analysis

7. In addition to making the submissions set out below, the Coalition accepts the submissions made by the intervenor, Amnesty Canada/ESCR-Net Coalition.

8. It is the opinion of this Coalition that the motions judge erred in concluding that “whatever international treaties may say about housing as a right is not of much help.” In making this statement, the motions judge did not appreciate the role of international human rights instruments in interpreting the scope and

meaning of *Charter* rights. Courts have recognized that international human rights instruments, to which Canada is a party, are useful interpretative aids in understanding the basis on which Charter rights are protected. The failure to recognize the important role of international human rights instruments contributed to the motion judge's erroneous conclusion that the Application had no reasonable prospect of success.

Tanudjaja v. Attorney General Canada (Application), 2013 ONSC 5410 paras 149-151. [Tanudjaja]. ARCH Coalition Book of Authorities Tab 7
R v Keegstra, [1990] 3 S.C.R. 697 at 750, 754-5. ARCH Coalition Book of Authorities Tab 5

9. The Supreme Court of Canada has held that international human rights obligations are a relevant and persuasive factor in *Charter* interpretation, and their content is an important indicator of the meaning of the full benefit of the *Charter's* protection.

Baker v Canada (Ministry of Citizenship and Immigration), [1999] 2 S.C.R. 817 at 861-2. [Baker]. ARCH Coalition Book of Authorities Tab 1

10. In *R v Khadr*, the Supreme Court relied on *R v Hape* to state that in interpreting the scope and application of the *Charter*, the courts should seek to ensure compliance with Canada's binding obligations under international law.

Canada (Justice) v Khadr, [2008] 2 S.C.R. 125, 2008 SCC 28 at para 18, citing *R v Hape*, [2007] 2 S.C.R. 292. ARCH Coalition Book of Authorities Tab 3

11. The Supreme Court has repeatedly stated that "the *Charter* should generally be presumed to provide protection at least as great as that afforded by

similar provisions in international human rights documents which Canada has ratified”.

Slaight Communications v Davidson, [1989] 1 S.C.R. 1038 at para 23. Appellants’ Book of Authorities.
United States of America v Burns, [2001] 1 S.C.R. 283 at para 79-80, Appellants’ Book of Authorities.

12. The *Vienna Convention on the Law of Treaties*, to which Canada is a party, compels State Parties to act in good faith in fulfilling their obligations as signatories to international human rights instruments. Article 26 of the Treaty reads, “Every treaty in force is binding upon the parties to it and must be performed by them in good faith.” In other words, agreements must be kept.

Article 26: Pacta sunt servanda *Vienna Convention on the Law of Treaties* UN Treaty Series Vol. 1155 p. 331. Adopted 22 May 1969. Entered into force 27 Jan 1980.

UN Convention on the Rights of Persons with Disabilities is Important Interpretive Tool

13. The United Nations adopted the *Convention on the Rights of Persons with Disabilities* (“CRPD”) on December 13, 2006. Canada signed the CRPD on March 30, 2007 and ratified it on March 11, 2010.

Convention on the Rights of Persons with Disabilities, GAOR, 61st Sess., 76th Mtg., UN Doc. GA/10554 (2006) [*CRPD*]

14. The purpose and goals of the CRPD are to promote, protect and ensure the rights, dignity and full inclusion of persons with disabilities. The equality provisions of the *Charter* share many of the same values and principles advanced in the CRPD.

CRPD, *supra* at art. 1.

Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11, s. 15. [Charter]

The Respondents' Obligations to Ensure People with Disabilities have Adequate Housing under the CRPD

15. In light of Canadian courts' validation of the role of international human rights instruments as tools for *Charter* interpretation, it is necessary for a court to fully examine the *CRPD* before it may conclude that an application which alleges breaches of *Charter* protections of people with disabilities has no reasonable prospect of success. There are a number of Articles in the *CRPD* that aid in our understanding of sections 7 and 15 *Charter* rights.

CRPD Article 4 - General Obligations

16. As a signatory to the *CRPD*, Canada has accepted obligations "to ensure and promote the full realization of all human rights and fundamental freedoms for all persons with disabilities." In order to fulfill these obligations, Canada is required, among other obligations, to "[a]dopt all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the Convention."

CRPD, supra, Article 4.

17. It was of particular relevance to the issue before the court below that by ratifying the *CRPD*, Canada has accepted the following legal obligation: "With regard to economic, social and cultural rights, [Canada has undertaken] to take measures to the maximum of its available resources ... with a view to achieving progressively the full realization of these rights."

CRPD, supra Article 4 and 28.

Infringement of Section 7 Charter Rights are Judiciable through this Application

18. This Application sets out clear judiciable issues regarding the violations of many Canadians' "right to life, liberty and security of the person" that result from the Respondents' failures to adopt effective strategies to address homelessness and inadequate housing. When the motions judge dismissed this Application, he did so without appreciating how, for people with disabilities, a right to adequate, supportive, accessible housing is a right to life, liberty and security of the person.

19. From the perspective of people with disabilities, this Application is not about a pure economic right. This Application is about a right to basic human dignity and health.

20. A significant part of a person with a disability's existence is spent asserting and fighting for the most basic fundamentals of human dignity.

21. The Supreme Court of Canada has recognized that an analysis of s.7 rights must include an element of human dignity. Human dignity pervades the entire Charter:

The idea of human dignity finds expression in almost every right and freedom guaranteed in the *Charter*. Individuals are afforded the right to choose their own religion and their own philosophy of life, the right to choose with whom they will associate and how they will express themselves, the right to choose where they will live and what occupation they will pursue. These are all examples of the basic theory underlying the *Charter*, namely that the state will respect choices made by individuals and, to the greatest extent possible, will avoid subordinating these choices to any one conception of the good life.

R v Morgentaler, [1988] 1 SCR 30 at 166, Wilson J. ARCH Coalition Book of Authorities Tab 6

22. Adequate and appropriate housing is fundamental to achieving human dignity for people with disabilities. Without adequate and appropriate housing, many people with disabilities face insurmountable challenges to realizing their rights to life, liberty, and security of the person. “For members [of the Dream Team who identify as people living with mental health disabilities] having safe, stable homes has meant that that are able to live, live with dignity and be well.” Access to supported living allows many people with disabilities to live independently in their community outside an institutional setting.

Motion Record of Proposed Intervener, ARCH Coalition, Tab 2: Affidavit of Ivana Petricone para 10. [Petricone Affidavit]

23. “People with HIV require stable, safe, and affordable housing in order to maintain their health and well-being. Stable, safe and affordable housing is key for people whose privacy and human rights are under constant threat, as is the case for many of HALCO’s clients. Housing is a fundamental need which is interwoven with many of HALCO’s clients’ other needs.”

Petricone Affidavit para 31.

24. For people with disabilities, the right to adequate housing also provides a “right to life” at its most basic meaning. With respect to HIV, once a fatal diagnosis, today effective treatment exists that transforms the illness into a chronic, manageable illness, extending their lifespan to close to that of a non-infected person. Many of these medications, however, require refrigeration, need

to be taken with food and on a specific schedule according to doctor's orders. For a person living with HIV who is homeless or inadequately housed, taking advantage of this miraculous medical advancement becomes difficult if not impossible.

25. In *Carter, infra*, the Attorney General of Canada argued that the plaintiff's right to life under s.7 was to be narrowly construed to mean a right to bare existence. The Chief Justice of British Columbia, in dissent, disagreed:

.... Surely this human rights guarantee should protect "life" beyond one's mere physical existence. "Everyone" lives in different circumstances, experiences life in different ways, and lives within the ambit of his or her own personal abilities, characteristics and aptitudes. The meaning of the term "life" in the context of s. 7 includes a full range of potential human experiences. ... Life's meaning, and by extension the life interest in s. 7, is intimately connected to the way a person values his or her lived experience.

Carter v Canada (Attorney General), 2013 BCCA 435 at para 86. ARCH Coalition Book of Authorities Tab 4

26. While not binding on this Court, Chief Justice Finch's comments on the right to life under s.7 illustrate the need for a full evidentiary record in this matter. To dismiss the Application on the basis that there is no "fundamental right to affordable, adequate and accessible housing provided through s. 7 of the *Charter*" is to miss the point that this Application raises human dignity and right to life issues that are apart from any economic right. These issues can only be fully appreciated and adjudicated upon examination of an evidentiary record.

Tanudjaja, supra at para 59.

27. The Supreme Court has recognized the devastating impact that the lack of appropriate supports such as adequate and accessible housing can have on the lives of people with disabilities. “The history of disabled persons in Canada is largely one of exclusion and marginalization.”

Eldridge v British Columbia (Attorney General), [1997] 3 S.C.R. 624 at para 56. Appellants’ Book of Authorities.

28. Lack of supports and adequate and accessible housing can often worsen and amplify the effects of a person’s disability. The health of people with physical disabilities is negatively impacted if they are subjected to the dangers and physical strains encountered when living in inaccessible homes. Such a decline in health creates further isolation and loss of independence putting people with disabilities at “risk of being forced into the ranks of the dispossessed.”

Winko v British Columbia (Forensic Psychiatric Institute), [1999] 2 S.C.R. 625 at para 37. ARCH Coalition Book of Authorities Tab 8

Section 7 Infringements Set Out in the Application Offend Fundamental Justice

29. There are a number of CRPD obligations that relate to the need for Canada to ensure the protection of “life, liberty and security” of persons with disabilities. An understanding of the CRPD’s rights and obligations would assist the court in understanding the meaning of section 7 as it relates to homelessness and inadequate housing for people with disabilities.

30. The CRPD preamble states:

Recognizing also that discrimination against any person on the basis of disability is a violation of the inherent dignity and worth of the human person

Recognizing the importance for persons with disabilities of their individual autonomy and independence, including the freedom to make their own choices

Highlighting the fact that the majority of persons with disabilities live in conditions of poverty, and in this regard recognizing the critical need to address the negative impact of poverty on persons with disabilities

Recognizing the importance of accessibility to the physical, social, economic and cultural environment, to health and education and to information and communication, in enabling persons with disabilities to fully enjoy all human rights and fundamental freedoms

31. There are a number of CRPD articles which also recognize that a right to adequate and accessible housing impacts of the rights of persons with disabilities to life, liberty and security of the person:

Article 10 - Right to life

Article 14 - Liberty and security of the person

Article 19 - Living independently and being included in the community

Article 28 - Adequate standard of living and social protection

CRPD, supra. Preamble and Articles 10, 14, 19, 28

32. The Supreme Court has established that an infringement of a s. 7 right will offend “principles of fundamental justice” if it violates “basic tenets of our legal system.” These tenets must “take into account Canada’s obligations and values, as expressed in the various sources of international human rights law by which Canada is bound.”

Appellants’ Factum paras. 76-77

Khadr, supra, at para 39.

Godbout v Longueuil (City), [1997] 3 SCR 844 at para 74. Appellants’ Book of Authorities

33. An analysis of the Respondents’ international human rights obligations and an examination of the evidence on whether they are meeting those

obligations is essential to the determination of whether it is plain and obvious that this Application, which raises issues of section 7 and 15 *Charter* violations, has no reasonable prospect of success. “International human rights law requires Canada to monitor and enforce individual human rights domestically, and to provide effective remedies where these rights are violated.”

Canada (Human Rights Commission) v Canada (Attorney General), 2012 FC 445 at para 155. ARCH Coalition Book of Authorities Tab 2

Infringement of Section 15 Charter Rights are Judiciable through this Application

34. This Application sets out clear judiciable issues regarding the discrimination experienced by those who are impacted by the Governments’ failures to adopt effective strategies to address homelessness and inadequate housing. In concluding that the Applicants’ arguments regarding the alleged Section 15 breaches would have no reasonable prospect of success, the motions judge failed to apply the proper Section 15 analysis.

35. The motions judge narrows the section 15 analysis to a consideration of whether the government programs deny people who are homeless a benefit that is provided to others, whether the government programs treat persons who are homeless differently than others are treated – a mirror comparator analysis.

Tanudjaja, supra at paras 105-109.

36. The Supreme Court of Canada’s decision in *Kapp* reaffirmed our understanding of substantive equality and the purpose of section 15(1) of the *Charter*. Section 15(1) involves more than a consideration of whether likes are

treated alike: "... the concept of equality does not necessarily mean identical treatment and the formal 'like treatment' model of discrimination may in fact produce inequality."

R v Kapp, 2008 SCC 41 at para 15. Appellants' Book of Authorities

37. A proper section 15 analysis cannot be undertaken without a full understanding of the impact that the Governments' failure to provide adequate housing has on protected groups such as people with disabilities. The motions judge did not appreciate the importance of an impact analysis when he considered who is affected by homelessness. He instead stated, "The problem should be evident. Taken together, these groups include virtually everybody in our society. ... What discrimination can there be when all of the groups identified as being subject to this discrimination, taken together, include virtually all of us?"

Tanudjaja, *supra* at para 135.

38. The Supreme Court has determined that a section 15 analysis "involves looking at the circumstances of members of the group and the negative impact of the law on them. The analysis is contextual, not formalistic, grounded in the actual situation of the group and the potential of the impugned law to worsen their situation." A full and accurate appreciation of the true distinction(s) and disadvantage(s) experienced by people with disabilities as a result of the Respondents' failures to address the homelessness situation in Canada could only be fully achieved after the Court has gained an understanding of the actual situation of the claimants through the evidence.

Withler v Canada (Attorney General), 2011 SCC 12, [2011] 1 SCR 396 at para 37. Appellants' Book of Authorities

39. The importance of this contextual analysis with respect to disabilities was articulated by the Supreme Court in *Granovsky v. Canada*:

What s. 15 of the Charter can do, and it is a role of immense importance, is address the way in which the state responds to people with disabilities. Section 15(1) ensures that governments may not, intentionally or through a failure of appropriate accommodation, stigmatize the underlying physical or mental impairment, or attribute functional limitations to the individual that the underlying physical or mental impairment does not entail, or fail to recognize the added burdens which persons with disabilities may encounter in achieving self-fulfillment in a world relentlessly oriented to the able-bodied.

Granovsky v Canada (Minister of Employment and Immigration), 2000 SCC 28, [2000] 1 SCR 703 at para 33. Respondents' Book of Authorities

People with disabilities experience discrimination in ways that are often different and unforeseen.

40. The inability to access housing which is suitable for their disability-specific needs has many different dimensions for people living with disabilities, including those with mental health disabilities and those living with HIV. Different policy choices with respect to the housing-related benefits being offered can have significant impacts on the lives of people with disabilities.

41. The Respondent's lack of strategy to address homelessness and inadequate housing has a significant impact on Canadians with disabilities, including those living with HIV and/or mental health disabilities. Lack of secure, accessible and adequate housing forces people with disabilities into further isolation and marginalization which has important implications for their ability to access treatment and services, and to function to their full capacity as members

of communities. Many people with disabilities “experience homelessness which often has life-threatening impacts on their health and often impacts on their right to be included in society.”

Petricone Affidavit para 5.

The CRPD as an interpretive tool for Section 15 Charter analysis

42. The *CRPD* imposes very defined legal obligations on Canada with respect to housing programs. The *CRPD* engages obligations to provide affordable, accessible and adequate housing to people with disabilities. In dismissing the role of international human rights instruments in a proper *Charter* analysis, the motions judge did to appreciate how the Respondents’ failure to fulfill their *CRPD* obligations could inform the *Charter* analysis.

CRPD, supra.
Tanudjaja, supra at para 150.

43. The goals and values of the *CRPD* are similar to those of the *Charter*. The *CRPD* imposes specific obligations on Canada to fulfill those goals. The obligations which demonstrate the importance of safe, secure accessible housing in achieving the *CRPD* goals include:

Article 5 - Equality and non-discrimination
Article 9 – Accessibility
Article 19 - Living independently and being included in the community
Article 22 - Respect for privacy
Article 28 - Adequate standard of living and social protection
CRPD, supra at Preamble and Articles 1, 4, 5, 9, 19, 22 and 28.

44. The motion judge’s failure to appreciate the importance of the *CRPD* in interpreting s.7 and s.15 rights contributed to the erroneous conclusion that the

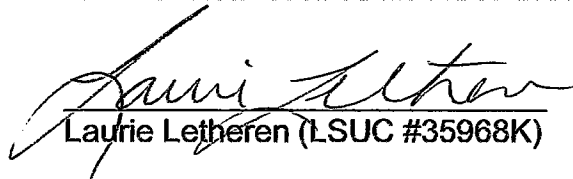
Applicants are asserting a pure economic right and therefore that there is no justiciable issue. He therefore did not appreciate the full meaning of "life, liberty and security of the person or appreciate the need for a proper contextual equality rights analysis. He failed to see that the Applicants are in fact asserting established Charter rights and that in order to make a reasoned decision on the Application, it was necessary to examine the full evidentiary record.

PART IV- ORDER SOUGHT

45. This Coalition requests that the Court grant this appeal.

46. This Coalition does not speak to costs and requests that no costs be awarded against it.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 15th day of April 2014.



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SCHEDULE A – LIST OF AUTHORITIES

- Baker v Canada (Ministry of Citizenship and Immigration)*, [1999] 2 S.C.R. 817
- Canada (Human Rights Commission) v Canada (Attorney General)*, 2012 FC 445
- Canada (Justice) v Khadr*, [2008] 2 S.C.R. 125
- Carter v Canada (Attorney General)*, 2013 BCCA 435
- Eldridge v British Columbia (Attorney General)*, [1997] 3 S.C.R. 624
- Godbout v Longueuil (City)*, [1997] 3 SCR 844
- Granovsky v Canada (Minister of Employment and Immigration)*, 2000 SCC 28, [2000] 1 SCR 703
- R v Kapp*, 2008 SCC 41
- R v Keegstra*, [1990] 3 S.C.R. 697
- R v Morgentaler*, [1988] 1 SCR 30
- Slaight Communications v Davidson*, [1989] 1 S.C.R. 1038
- Tanudjaja v. Attorney General Canada)(Application)*, 2013 ONSC 5410
- United States of America v Burns*, [2001] 1 S.C.R. 283
- Winko v British Columbia (Forensic Psychiatric Institute)*, [1999] 2 S.C.R. 625
- Withler v Canada (Attorney General)*, 2011 SCC 12, [2011] 1 SCR

SCHEDULE B – STATUTES RELIED UPON

Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11, ss. 7, 15.

Legal Rights

Life, liberty and security of person

7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

Equality Rights

Equality before and under law and equal protection and benefit of law

15. (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

La Charte canadienne des droits et libertés, Loi constitutionnelle de 1982 (R-U), constituant l'annexe B de la Loi de 1982 sur le Canada (R-U), 1982, c 11

Garanties juridiques

Vie, liberté et sécurité

7. Chacun a droit à la vie, à la liberté et à la sécurité de sa personne; il ne peut être porté atteinte à ce droit qu'en conformité avec les principes de justice fondamentale.

Droits à l'égalité

Égalité devant la loi, égalité de bénéfice et protection égale de la loi

15. (1) La loi ne fait acception de personne et s'applique également à tous, et tous ont droit à la même protection et au même bénéfice de la loi, indépendamment de toute discrimination, notamment des discriminations fondées sur la race, l'origine nationale ou ethnique, la couleur, la religion, le sexe, l'âge ou les déficiences mentales ou physiques.

Convention on the Rights of Persons with Disabilities, GAOR, 61st Sess., 76th Mtg., UN Doc. GA/10554 (2006)

Preamble

The States Parties to the present Convention,

- a. Recalling the principles proclaimed in the Charter of the United Nations which recognize the inherent dignity and worth and the equal and inalienable rights of all members of the human family as the foundation of freedom, justice and peace in the world,
- b. Recognizing that the United Nations, in the Universal Declaration of Human Rights and in the International Covenants on Human Rights, has proclaimed and agreed that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind,
- c. Reaffirming the universality, indivisibility, interdependence and interrelatedness of all human rights and fundamental freedoms and the need for persons with disabilities to be guaranteed their full enjoyment without discrimination,
- d. Recalling the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Rights of the Child, and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families,
- e. Recognizing that disability is an evolving concept and that disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others,
- f. Recognizing the importance of the principles and policy guidelines contained in the World Programme of Action concerning Disabled Persons and in the Standard Rules on the Equalization of Opportunities for Persons with Disabilities in influencing the promotion, formulation and evaluation of the policies, plans, programmes and actions at the national, regional and international levels to further equalize opportunities for persons with disabilities,
- g. Emphasizing the importance of mainstreaming disability issues as an integral part of relevant strategies of sustainable development,
- h. Recognizing also that discrimination against any person on the basis of disability is a violation of the inherent dignity and worth of the human person,
- i. Recognizing further the diversity of persons with disabilities,

- j. Recognizing the need to promote and protect the human rights of all persons with disabilities, including those who require more intensive support,
- k. Concerned that, despite these various instruments and undertakings, persons with disabilities continue to face barriers in their participation as equal members of society and violations of their human rights in all parts of the world,
- l. Recognizing the importance of international cooperation for improving the living conditions of persons with disabilities in every country, particularly in developing countries,
- m. Recognizing the valued existing and potential contributions made by persons with disabilities to the overall well-being and diversity of their communities, and that the promotion of the full enjoyment by persons with disabilities of their human rights and fundamental freedoms and of full participation by persons with disabilities will result in their enhanced sense of belonging and in significant advances in the human, social and economic development of society and the eradication of poverty,
- n. Recognizing the importance for persons with disabilities of their individual autonomy and independence, including the freedom to make their own choices,
- o. Considering that persons with disabilities should have the opportunity to be actively involved in decision-making processes about policies and programmes, including those directly concerning them,
- p. Concerned about the difficult conditions faced by persons with disabilities who are subject to multiple or aggravated forms of discrimination on the basis of race, colour, sex, language, religion, political or other opinion, national, ethnic, indigenous or social origin, property, birth, age or other status,
- q. Recognizing that women and girls with disabilities are often at greater risk, both within and outside the home of violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation,
- r. Recognizing that children with disabilities should have full enjoyment of all human rights and fundamental freedoms on an equal basis with other children, and recalling obligations to that end undertaken by States Parties to the Convention on the Rights of the Child,
- s. Emphasizing the need to incorporate a gender perspective in all efforts to promote the full enjoyment of human rights and fundamental freedoms by persons with disabilities,
- t. Highlighting the fact that the majority of persons with disabilities live in conditions of poverty, and in this regard recognizing the critical need to address the negative impact of poverty on persons with disabilities,
- u. Bearing in mind that conditions of peace and security based on full respect for the purposes and principles contained in the Charter of the United Nations and observance of applicable human rights instruments are indispensable for the full protection of persons with disabilities, in particular during armed conflicts and foreign occupation,

- v. Recognizing the importance of accessibility to the physical, social, economic and cultural environment, to health and education and to information and communication, in enabling persons with disabilities to fully enjoy all human rights and fundamental freedoms,
- w. Realizing that the individual, having duties to other individuals and to the community to which he or she belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the International Bill of Human Rights,
- x. Convinced that the family is the natural and fundamental group unit of society and is entitled to protection by society and the State, and that persons with disabilities and their family members should receive the necessary protection and assistance to enable families to contribute towards the full and equal enjoyment of the rights of persons with disabilities,
- y. Convinced that a comprehensive and integral international convention to promote and protect the rights and dignity of persons with disabilities will make a significant contribution to redressing the profound social disadvantage of persons with disabilities and promote their participation in the civil, political, economic, social and cultural spheres with equal opportunities, in both developing and developed countries,

Have agreed as follows:

Article 1 - Purpose

The purpose of the present Convention is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.

Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.

Article 3 - General principles

The principles of the present Convention shall be:

- a. Respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons;
- b. Non-discrimination;

- c. Full and effective participation and inclusion in society;
 - d. Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;
 - e. Equality of opportunity;
 - f. Accessibility;
 - g. Equality between men and women;
 - h. Respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.
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Article 4 - General obligations

1. States Parties undertake to ensure and promote the full realization of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability. To this end, States Parties undertake:

- a. To adopt all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the present Convention;
- b. To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities;
- c. To take into account the protection and promotion of the human rights of persons with disabilities in all policies and programmes;
- d. To refrain from engaging in any act or practice that is inconsistent with the present Convention and to ensure that public authorities and institutions act in conformity with the present Convention;
- e. To take all appropriate measures to eliminate discrimination on the basis of disability by any person, organization or private enterprise;
- f. To undertake or promote research and development of universally designed goods, services, equipment and facilities, as defined in article 2 of the present Convention, which should require the minimum possible adaptation and the least cost to meet the specific needs of a person with disabilities, to promote their availability and use, and to promote universal design in the development of standards and guidelines;
- g. To undertake or promote research and development of, and to promote the availability and use of new technologies, including information and communications technologies, mobility aids, devices and assistive technologies, suitable for persons with disabilities, giving priority to technologies at an affordable cost;
- h. To provide accessible information to persons with disabilities about mobility aids, devices and assistive technologies, including new technologies, as well as other forms of assistance, support services and facilities;

- i. To promote the training of professionals and staff working with persons with disabilities in the rights recognized in this Convention so as to better provide the assistance and services guaranteed by those rights.

2. With regard to economic, social and cultural rights, each State Party undertakes to take measures to the maximum of its available resources and, where needed, within the framework of international cooperation, with a view to achieving progressively the full realization of these rights, without prejudice to those obligations contained in the present Convention that are immediately applicable according to international law.

3. In the development and implementation of legislation and policies to implement the present Convention, and in other decision-making processes concerning issues relating to persons with disabilities, States Parties shall closely consult with and actively involve persons with disabilities, including children with disabilities, through their representative organizations.

4. Nothing in the present Convention shall affect any provisions which are more conducive to the realization of the rights of persons with disabilities and which may be contained in the law of a State Party or international law in force for that State. There shall be no restriction upon or derogation from any of the human rights and fundamental freedoms recognized or existing in any State Party to the present Convention pursuant to law, conventions, regulation or custom on the pretext that the present Convention does not recognize such rights or freedoms or that it recognizes them to a lesser extent.

5. The provisions of the present Convention shall extend to all parts of federal states without any limitations or exceptions.

Article 5 - Equality and non-discrimination

1. States Parties recognize that all persons are equal before and under the law and are entitled without any discrimination to the equal protection and equal benefit of the law.

2. States Parties shall prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds.

3. In order to promote equality and eliminate discrimination, States Parties shall take all appropriate steps to ensure that reasonable accommodation is provided.

4. Specific measures which are necessary to accelerate or achieve de facto

equality of persons with disabilities shall not be considered discrimination under the terms of the present Convention.

Article 9 - Accessibility

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;
- b. Information, communications and other services, including electronic services and emergency services.

2. States Parties shall also take appropriate measures to:

- a. Develop, promulgate and monitor the implementation of minimum standards and guidelines for the accessibility of facilities and services open or provided to the public;
- b. Ensure that private entities that offer facilities and services which are open or provided to the public take into account all aspects of accessibility for persons with disabilities;
- c. Provide training for stakeholders on accessibility issues facing persons with disabilities;
- d. Provide in buildings and other facilities open to the public signage in Braille and in easy to read and understand forms;
- e. Provide forms of live assistance and intermediaries, including guides, readers and professional sign language interpreters, to facilitate accessibility to buildings and other facilities open to the public;
- f. Promote other appropriate forms of assistance and support to persons with disabilities to ensure their access to information;
- g. Promote access for persons with disabilities to new information and communications technologies and systems, including the Internet;
- h. Promote the design, development, production and distribution of accessible information and communications technologies and systems at an early stage, so that these technologies and systems become accessible at minimum cost.

Article 10 - Right to life

States Parties reaffirm that every human being has the inherent right to life and shall take all necessary measures to ensure its effective enjoyment by persons with disabilities on an equal basis with others.

Article 14 - Liberty and security of the person

1. States Parties shall ensure that persons with disabilities, on an equal basis with others:

- a. Enjoy the right to liberty and security of person;
- b. Are not deprived of their liberty unlawfully or arbitrarily, and that any deprivation of liberty is in conformity with the law, and that the existence of a disability shall in no case justify a deprivation of liberty.

2. States Parties shall ensure that if persons with disabilities are deprived of their liberty through any process, they are, on an equal basis with others, entitled to guarantees in accordance with international human rights law and shall be treated in compliance with the objectives and principles of this Convention, including by provision of reasonable accommodation.

Article 19 - Living independently and being included in the community

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

- a. Persons with disabilities have the opportunity to choose their place of residence and where and with whom they live on an equal basis with others and are not obliged to live in a particular living arrangement;
- b. Persons with disabilities have access to a range of in-home, residential and other community support services, including personal assistance necessary to support living and inclusion in the community, and to prevent isolation or segregation from the community;

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

Article 22 - Respect for privacy

1. No person with disabilities, regardless of place of residence or living arrangements, shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence or other types of communication or to unlawful attacks on his or her honour and reputation. Persons with disabilities have the right to the protection of the law against such interference or attacks.

2. States Parties shall protect the privacy of personal, health and rehabilitation information of persons with disabilities on an equal basis with others.

Article 28 - Adequate standard of living and social protection

1. 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.

2. States Parties recognize the right of persons with disabilities to social protection and to the enjoyment of that right without discrimination on the basis of disability, and shall take appropriate steps to safeguard and promote the realization of this right, including measures:

- a. To ensure equal access by persons with disabilities to clean water services, and to ensure access to appropriate and affordable services, devices and other assistance for disability-related needs;
- b. To ensure access by persons with disabilities, in particular women and girls with disabilities and older persons with disabilities, to social protection programmes and poverty reduction programmes;
- c. To ensure access by persons with disabilities and their families living in situations of poverty to assistance from the State with disability-related expenses, including adequate training, counselling, financial assistance and respite care;
- d. To ensure access by persons with disabilities to public housing programmes;

- e. To ensure equal access by persons with disabilities to retirement benefits and programmes.

Vienna Convention on the Law of Treaties UN Treaty Series Vol.1155

Article 26

“Pacta sunt servanda”

Every treaty in force is binding upon the parties to it and must be performed by them in good faith.

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

-and-

ATTORNEY GENERAL OF CANADA and
ATTORNEY GENERAL OF ONTARIO

Applicants
(Appellants)

Respondents
(Respondents on Appeal)

COURT OF APPEAL FOR ONTARIO

PROCEEDING COMMENCED AT TORONTO

FACTUM OF THE INTERVENER

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