ARCH *Alert* **Volume 19, Issue 4** **December 3, 2018**

ARCH *Alert*

ARCH’s Quarterly Newsletter on Disability and Law in Ontario

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ARCH Disability Law Centre

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International Day of Persons with Disabilities 2018

By Lila Refaie, Staff Lawyer

December 3rd is the International Day of Persons with Disabilities ("IDPD"). Proclaimed in 1992 by the United Nations General Assembly[1], the IDPD is an annual celebration of disability rights in all dimensions of society. The IDPD promotes the dignity, rights and well-being of persons with disabilities and raises awareness of disability-related issues in political, social, economic and cultural life, while endorsing the need to build more inclusive societies.

Theme for IDPD 2018

Every year, the United Nations releases a theme for the IDPD. This year, the focus is on empowerment, with the theme being: <u>empowering persons with disabilities and ensuring inclusiveness and equality</u>.

Specifically, this theme brings into focus Goal 11 of the 2030 Agenda for Sustainable Development, which relates to sustainable urbanization and making "cities and human settlements inclusive, safe, resilient and sustainable". Adopted in 2015 by the United Nations, the 2030 Agenda brings forth a plan of action for the international community to put in place sustainable economic, social and environmental developments. Based on the principle of "leaving no one behind", the focus is on empowering vulnerable people, including persons with disabilities, around the world. To achieve this, 17 Sustainable Development Goals were developed. The goals range from ending poverty and world hunger to ensuring social inclusion and equality in all areas of life. They also touch on environmental changes and economic growth. Every nation member of the United Nations has pledged to implement these goals. To read the 2030 Agenda in its entirety, go to: https://sustainabledevelopment.un.org/post2015/transformingourworld

ARCH's Events for IDPD

ARCH is hosting an event in Toronto and co-hosting an event in Ottawa.

In Toronto, ARCH is hosting an event to celebrate the IDPD and its theme. We will have a sneak peek of our new website and public legal education materials on the rights of persons with disabilities. ARCH staff will present these new materials and will be available for a meet and greet. This event is taking place on December 3rd, from 2:00pm to 4:00pm, at 55 University Avenue, 14th Floor.

In Ottawa, ARCH and the Canadian Centre on Disability Studies are co-hosting an event to celebrate the IDPD and the United Nations *Convention on the Rights for Persons with Disabilities,* in collaboration with the Canadian Human Rights Commission, the Council of

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[1] UN Resolution A/RES/47/3

Canadians with Disabilities, and the Canadian Council on Rehabilitation and Work. The day will be filled with presentations by various organizations, networking and information sharing. Key note addresses will be made by the Honourable Carla Qualtrough, Minister of Public Services and Procurement and Accessibility, and Marie-Claude Landry, Chief Commissioner of the Canadian Human Rights Commission. The Canadian Centre on Disability Studies will also launch their new brand. This event is taking place on December 3rd, from 9:00AM to 4:00PM, at the Shaw Centre in Ottawa.

How Can You Observe the IDPD in your Local Community?

There are many ways to observe IDPD. You can attend IDPD events, celebrate the contributions made by persons with disabilities as agents of change, or take action in your local community to help realize the objectives of the day.

On December 3rd, the United Nations will hold their annual events at their headquarters in New York to celebrate IDPD. This year, the United Nations will be launching its first report on disability and development, titled “UN Flagship Report on Disability and Development, 2018 – Realizing the SDGs by, for and with persons with disabilities”.

Events are also organized worldwide on or around December 3rd.

ARCH wishes everyone a great IDPD 2018!

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Accessible Canada Act Update: Bill C-81 Passes House of Commons Third Reading

By Kerri Joffe, Staff Lawyer

Bill C-81, the *Accessible Canada Act*, continues to work its way through the legislative process. In October 2018, the House of Commons Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities (HUMA) held public hearings to study the Bill. HUMA heard from witnesses from government, industry and disability communities about their reactions to the Bill, and HUMA members had the opportunity to ask witnesses what changes they thought should be made to the Bill. ARCH was one of the organizations that had an opportunity to participate in the hearings. These public hearings can be watched online or a transcript can be read by going to: https://www.ourcommons.ca/Committees/en/HUMA/StudyActivity?studyActivityId=10268658.

Many witnesses from industry and organizations that will have to comply with new accessibility requirements once the Bill becomes law emphasized the steps they are already taking to make their services and businesses more accessible. On the other hand, advocates from disability communities spoke about changes they felt were important to make in order to strengthen the Bill. The message from many disability rights advocates to HUMA was that the Bill presents a significant opportunity to advance accessibility and inclusion for persons with disabilities in Canada; but a number of changes are needed to ensure that the Bill will achieve its purpose of a barrier-free Canada.

In addition to appearing before HUMA, ARCH, together with the Council of Canadians with Disabilities (CCD) and the AODA Alliance, wrote an Open Letter to Minister Qualtrough and the members of HUMA. The Open Letter sets out 9 key concerns and changes that are necessary to strengthen Bill C-81. These include having timelines in the Bill, using language that requires accessibility standards to be made, making compliance and enforcement of the Bill more streamlined, eliminating exemptions from complying with accessibility requirements, and a number of other important concerns. To date, over 90 disability organizations and groups from across Canada have signed on to support the Open Letter, showing how important these changes are to disability communities. To read the Open Letter in English and French, go to: http://www.archdisabilitylaw.ca/node/1351

In early November 2018, following the public hearings, HUMA members proposed and debated a large number of amendments to Bill C-81. HUMA adopted most of the amendments put forward by Liberal members of the Committee and declined most of the amendments put forward by Conservative, NDP and Green Party members of the Committee.

In its amended form, the Bill now requires the CRTC, CTA and government to make at least one regulation about accessibility plans, feedback processes or progress reports within 2 years from the time the Bill becomes law. It still allows for organizations to be exempted from complying with accessibility requirements, but those exemptions are now limited to 3 years and reasons for granting the exemption must be made public. The Bill now requires organizations to take into account important principles set out in the Bill when they create their accessibility plans. The definitions of “barrier” and “disability” have been expanded by adding cognitive to the list of types of disabilities, and by clarifying that disability includes those that may not be evident. Communication and facilities were added as areas in which barriers must be identified, removed and prevented, and barriers must now be addressed in the design and delivery of programs and services, not just the delivery of programs and services. These are just some examples of the amendments to the Bill that were adopted by HUMA.

Many of the amendments made by HUMA are important changes, which ARCH and other disability organizations advocated for. However, even with these amendments, Bill C-81 still does not address the concerns set out in the Open Letter.

On November 27, 2018 the House of Commons passed Bill C-81 at Third Reading. To access the Third Reading debates, go to: https://openparliament.ca/bills/42-1/C-81/. The Bill will now be sent to the Senate for further study and debate. Like the House of Commons Committee, the Senate Committee that studies the Bill can make further amendments to it. ARCH and other disability organizations will continue to advocate for changes to strengthen the *Accessible Canada Act* so that it will advance accessibility and inclusion for persons with disabilities in Canada.

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The Ontario Government Announced Changes to ODSP and OW

By Lila Refaie, Staff Lawyer

On November 22 2018, the Ontario government announced its plan to make significant changes to Ontario Works (OW) and Ontario Disability Support Program (ODSP) over the next few months. Many of these changes will impact persons with disabilities, including a person’s eligibility for ODSP.

A major change that was announced by the government relates to the definition of disability for ODSP. Currently, ODSP uses an inclusive definition of disability, however, the Ontario government is planning to change the definition to align with the federal definition. The Canadian Pension Plan – Disability has a much more restrictive definition and limits eligibility to persons with “severe” disabilities. How ODSP defines disability has an effect on the number of persons with disabilities eligible to receive income support through the program. ARCH is concerned about the impact of this significant change on persons with disabilities in Ontario. A more restrictive definition could mean persons with certain disabilities, such as episodic disabilities or mental health disabilities, may not be eligible for income support through the provincial program. Those ineligible would then only be able to access OW, which provides much lower benefits.

The government also announced the creation of a new “Health Spending Account” for persons receiving income support from ODSP. No further details about this has been released. Other proposed changes include changes to employment and other supports, as well as changes to employment income exemptions and other various benefits.

The Ontario government has not released any details other than the general announcement. The scale of the impact of any of these proposed changes on persons with disabilities is unclear at this time.

The Income Security Advocacy Centre is hosting a public webinar on Thursday, December 6 2018, from 10:00AM to 11:30AM, about the proposed changes to ODSP and OW. For more information and to register for the live webinar, go to: https://yourlegalrights.on.ca/webinar/social-assistance-ontario-whats-happened-and-whats-next-0

ARCH is monitoring this development and will provide more information as it becomes available.

To read the Ontario Government announcement in full, go to: https://news.ontario.ca/mcys/en/2018/11/ontarios-government-for-the-people-announces-plan-to-restore-dignity-independence-and-empowerment-to.html

The Income Security Advocacy Centre has also provided a preliminary analysis of the proposed changes. To read this analysis, go to: https://incomesecurity.org/public-education/many-questions- few-answers-and-great-risk-for-people-with-disabilities/

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Medical Assistance in Dying: Boosting or Threatening Inclusion and Equality?

By Catherine Frazee, Professor Emerita, Ryerson University

As we observe the 2018 International Day of Disabled Persons, it is a good time to reflect on how Canada's Medical Assistance in Dying (MAID) law is impacting the well-being of disabled persons in Canada. Since our last report to ARCH *Alert* readers in April, which you can find by going to: http://www.archdisabilitylaw.ca/www.archdisabilitylaw.ca/archalert_April52018, much attention has been focused on whether more people with disabling conditions and illnesses should have greater access to medically assisted death.

This year's theme for the International Day of Disabled Persons, as described on the UN webpage http://www.un.org/en/events/disabilitiesday/ emphasizes empowering persons with disabilities and promoting a "resilient society for all". In keeping with this theme, our current report examines how current and possible future developments in Medical Assistance in Dying could affect the lives and circumstances of people with disabilities in Canada.

1. What We Know

What we know about Medical Assistance in Dying is that the practice has been legal in Canada since June 2016. As we have noted in earlier editions of ARCH *Alert*, the federal government has issued updates on the implementation of the law at regular six-month intervals. The third and most recent of these reports was released in June of this year, and can be found by going to: https://www.canada.ca/en/health-canada/services/publications/health-system-services/medical-assistance-dying-interim-report-june-2018.html. This report highlights the following findings:

- In the first two years since the passage of the law, over 3700 persons in Canada have died as a result of MAID.
- The number of people dying as a result of MAID is steadily increasing over time. The government's most recent report records an increase of 29.3% since the previous report.
- The majority of people in Canada who receive MAID are between 56 and 90 years old.
- Approximately 65% of persons who receive MAID have a diagnosis of cancer; approximately 10% have been diagnosed with a neuro-degenerative condition.
- There is no significant difference along gender lines among persons who receive MAID.
- Approximately 56% of persons who receive MAID live in larger urban centres.

These sparse statistics give us little to go on in evaluating whether MAID is having any significant impact – either favourable or negative – on the well-being of people with disabilities in Canada. In accordance with its own commitments to carefully monitor the implementation of MAID, the Government of Canada implemented new regulations in November that establish a national monitoring system. These regulations set out precisely the information that medical practitioners are required to provide whenever they are involved in a MAID request. Under the regulations, the government has committed to publish annual reports on MAID, with a view to providing Canadians with "a clear picture of how the legislation is working" in order to "help us to understand the impact of the legislation".

You can view the new regulations on monitoring of MAID by going to: http://www.gazette.gc.ca/rp-pr/p2/2018/2018-08-08/html/sor-dors166-eng.html. What is notable about these regulations is that future reporting on MAID will build from what is currently available to include additional information about:

- where persons who request MAID live, according to their postal codes;
- the nature of the intolerable suffering that motivates requests for MAID;
- whether medical practitioners consult with other health care or social work professionals regarding MAID requests;

- whether persons who request MAID had access to and received palliative care services;
- whether persons who request MAID had access to and received disability support services; and
- the reasons why certain MAID requests were denied.

Some of this information may prove to be very important, particularly if it reveals patterns of neglect or harm affecting people with disabilities. For example, we need to know if people are choosing to die because they are being forced to live without the disability supports that they require. We need to know if people are suffering intolerably because of physical or psychological symptoms that could be alleviated by good palliative care that is simply not available to them. We need to know if disproportionate numbers of persons who receive MAID are living in postal code areas associated with poverty, racial disadvantage, Indigenous status, institutionalization or incarceration.

By this time next year, the first official reports issued under these new regulations will at the very least, offer some minimal assurance against any extremely dangerous trends in the implementation of MAID. While this is an important step forward, disability rights advocates have expressed grave concerns that the new regulations do not go far enough to protect people who could be vulnerable to harm or abuse from our MAID laws.

2. What We Do Not, and Will Not, Know

ARCH *Alert* readers will recall from our last MAID update in April, that we set out in some detail a critique of the draft regulations which had been proposed by the government at that time. Regrettably, many of the deficiencies in the draft were simply not addressed in the final regulations, and input from disability advocates and allies appears to have been largely overlooked.

In September, the Council of Canadians with Disabilities (CCD) and the Canadian Association for Community Living (CACL) issued a joint press release strongly calling on the federal government to strengthen the MAID regulations. You can read this powerful statement by going to: http://www.ccdonline.ca/en/humanrights/endoflife/Media-Release-4Sept2018-MAiD-Regulations-Fall-Short.

CCD and CACL argue that much more must be known about the root causes of the suffering that propels people to pursue a medically assisted death. Are people choosing to die because they do not want to be a burden on family members? Are people choosing to die because of their worries about money? Are people choosing to die because they have been forced to live in situations which strip them of their autonomy and undermine their human dignity? Only a monitoring system that permits patients or their chosen representatives to self-report their own experiences and circumstances can provide adequate insight into the conditions of life in which a desire for MAID takes root.

The mechanism for monitoring established under the government's MAID regulations is designed exclusively for the input of participating doctors, nurse practitioners and pharmacists. No information will be collected from other health care practitioners who may have important knowledge to contribute – family physicians, social workers, rehabilitation professionals, attendants and caregivers, etc. Even more importantly, ordinary citizens who may have felt pressured to request MAID, or who have pursued this option out of desperation because their needs for support and care have not been met – these persons have no access to Canada's new MAID monitoring system. Their experiences will not form part of the official record of MAID in this country.

As a result, experiences like one reported recently by Roger Foley, may never come to the attention of our lawmakers or the Canadian public. Mr. Foley, a disabled man who lives in Ontario, has alleged that he is being denied the assistance he needs to live safely and independently, and that medically -assisted death has been offered as an alternative. You can read about Mr. Foley's claims by going to: https://www.ctvnews.ca/health/chronically-ill-man-releases-audio-of-hospital-staff-offering-assisted-death-1.4038841.

Canadians with disabilities who are approaching the end of their lives cannot be expected to mobilize national media to bring their experiences to our attention. A self-reporting option that is reliable, accessible and confidential must therefore be part of a comprehensive and inclusive approach to MAID monitoring.

For more critiques of what is missing from our MAID monitoring regime, you may wish to read the opinion of the Globe and Mail editorial board by going to: https://www.theglobeandmail.com/opinion/editorials/article-globe-editorial-ottawa-should-do-more-to-examine-how-medically/. An excellent and detailed review of the kinds of information that should be collected by a robust monitoring system, but will remain unknown under our current regulations, can be found in a webcast produced by the Canadian disability rights group, Not Dead Yet, which you can find by going to: https://tvndy.ca/en/2018/09/webcast-archive-health-canadas-final-monitoring-regulations/. In addition, my own commentary on the subject was published in the Toronto Star at: https://www.thestar.com/opinion/contributors/2018/08/29/medically-assisted-dying-needs-more-monitoring.html.

3. What We Don't Know Yet, But Will Know in the Future

In recent weeks, a number of MAID advocates have been pressing for changes to the law to ease the legal requirement for persons to confirm their clear consent immediately prior to receiving a medically assisted death. Under the current law, a person approved for MAID must be fully capable of expressing their consent, not only at the time of their request, but again immediately prior to the procedure. This requirement ensures that everyone is free to change their mind about going through with a medically assisted death, and that no third parties such as a physician or family member can make that decision on someone else's behalf.

Early in November, a Nova Scotia woman named Audrey Parker chose to proceed with MAID, but made it clear that she would have wished to prolong her life a bit longer by specifying a future date for the procedure. Under the current law, Ms. Parker felt that she could not risk postponing MAID because cancer had spread into her brain and could at any time impair her legal capacity to give final consent. Ms. Parker argued that the law should be amended to allow for "advance directives" to be issued by persons who have been approved to receive MAID. You can learn more about Ms. Parker's MAID decision from a CTV report by going to: https://www.ctvnews.ca/health/why-a-n-s-woman-is-opting-for-assisted-death-earlier-than-she-planned-1.4126887. For an interesting panel discussion presenting a variety of views on this issue, visit the CBC Radio feature on The Current by going to: https://www.cbc.ca/radio/thecurrent/the-current-for-november-1-2018-1.4887105/halifax-woman-who-chose-early-medically-assisted-death-gets-the-last-say-with-her-life-1.4887133.

As is often the case with matters of important public policy, looking through the lens of a single individual's experience may be inadequate in gauging the potential impact upon communities at large. Disability rights groups have consistently opposed permitting advanced directives for MAID, because doing so would empower other persons to determine when it is time for someone to die. The Vulnerable Persons Standard asserts that "to empower others to decide whether a person with cognitive impairments is suffering" so as to require MAID, "would make too many people vulnerable to abuse and error, especially error based on stigma, stereotype or prejudice". (For a more detailed explanation of this position, you can refer to FAQ #13 on the Vulnerable Persons Standard website by going to: http://www.vps-npv.ca/questions.)

Because the issue of permitting advanced requests for MAID is extremely complex and involves potential impacts for some of our most vulnerable citizens, in 2016 the Government of Canada commissioned an independent study of scholars and practitioners in law, medicine, social work and other academic disciplines to study the issue thoroughly and report upon their findings. After nearly two years of investigation and deliberation, the report of the Council of Canadian Academies (CCA) is now in the final stages of publication and scheduled to be tabled in Parliament in December. According to the CCA website, which you can visit by going to: https://www.scienceadvice.ca/reports/medical-assistance-in-dying/, this report will be online and available sometime this month.

Our next update for ARCH *Alert* will review the highlights of this report, as well as two additional reports prepared by the CCA which are also scheduled for release this month. These reports will review the implications of extending eligibility for MAID for mature minors (young people who have not yet reached the age of 18), and for persons who are not at the end of their natural lives but wish to receive MAID because of a "mental disorder". Like the issue of advance directives, these are highly complex and controversial questions that merit careful attention because of the profound potential effects on people with disabilities.

While the CCA reports will not make recommendations regarding the current law, it is hoped that they will provide a solid foundation for any future consideration of amendments to Canada’s MAID law. Such thorough and careful review will be essential if we are to ensure that Medical Assistance in Dying does nothing to compromise our aspirations as disabled people to nurture and sustain “a resilient society for all”.

> Medical Assistance in Dying remains a difficult and controversial topic for all persons in Canada. If you have questions or concerns arising from this article, you may contact the author at cfrazee@ryerson.ca or ARCH Disability Law Centre at archlib@lao.on.ca. Both are committed to open and respectful dialogue.

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Accessibility for Ontarians with Disabilities Act (AODA) Update

By Dianne Wintermute, Staff Lawyer

Every five years, the Ontario government appoints an independent person to review the AODA, and Ontario’s progress towards becoming accessible to persons with disabilities by 2025. The first two reviews, by Charles Beer and Mayo Moran, received a great deal of public attention and input. The 3rd Independent Review is currently being done by David Onley.

ARCH provided a written submission to Mr. Onley as part of his Independent Review. Our submission asked Mr. Onley to extend the time for individuals and organizations to provide written submissions until the end of March 2019. We explained that this extension is necessary to ensure that people can meaningfully participate in the Independent Review process, and to allow organizations like ARCH to consult with their members about how well Ontario is doing to fulfill the AODA’s goal of making Ontario accessible by 2025. In our submission, ARCH’s recommendations included asking Ontario to recommit to its goal of full accessibility and to implement the previous recommendations made by both the Beer and Moran Independent Reviews.

Before the 2018 provincial election was held on June 7, 2018, the Government of Ontario stopped the work of two new Standards Development Committees – the Health Care and the Education Standard Development Committees. These two standards are of critical importance to Ontarians with Disabilities. As part of our submissions to Mr. Onley, we asked that the work of these two committees be resumed. To date, these committees have not begun their consideration of new standards in education and health care.

ARCH's submission on the 3rd Independent Review of the AODA can be found by going to: http://www.archdisabilitylaw.ca/node/1339

ARCH also filed submissions to the Standards Development Committee reviewing the Employment Standard. We made 31 recommendations on this Standard, aimed at increasing accessible employment for Ontarians with disabilities. A number of these recommendations were presented by ARCH staff to the Standards Development Committee on November 21, 2018. Our written submission can be found by going to: http://www.archdisabilitylaw.ca/node/1327.

ARCH will continue to provide updates on the AODA as they become available.

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Respecting Rights is Set to Launch an Exciting New Project

By Sue Hutton, M.S.W., Respecting Rights Coordinator

Respecting Rights is a project at ARCH Disability Law Centre. Respecting Rights gives rights education to people labelled with intellectual disabilities in an innovative and accessible way. Respecting Rights also does accessible law reform work. We include persons with FASD, autism, and developmental disabilities in our language.

We like to call our Respecting Rights approach the "triple scoop". By this we mean that three perspectives are integral to all of our work. Three voices work together:

1. People labelled with intellectual disabilities (self-advocates)
2. Advocacy staff who know developmental services well
3. ARCH disability rights lawyers

Respecting Rights began about five years ago. Peter Park, founder of People First of Ontario, identified the importance of approaching rights education for people labelled with intellectual disabilities in a new way. Peter and People First have a long history of working with ARCH. In the 1980s, ARCH was working on a project with self-advocate Pat Worth called "Institutional Outreach", in which Pat and an ARCH lawyer went into institutions for people with developmental disabilities, to educate people about their legal rights. Respecting Rights builds on that work by educating people who received developmental services about their legal rights.

Respecting Rights has a mission to provide rights education that is accessible and meaningful to people labelled with intellectual disabilities and their support networks. In this context, rights education is delivered to staff, family members and developmental services agencies. All of Respecting Rights meetings and information aims to be in plain language.

Use of arts-based practices like graphic recording, role plays, and visual arts is common in the work of Respecting Rights.

After having travelled across many communities in Ontario for the last 3 years, delivering our rights education workshops to hundreds of people, Respecting Rights has learned that people labelled with intellectual disabilities are asking for more continuity, and increased coaching in asserting their rights in their communities. We are launching a new project to respond.

Respecting Rights is extremely grateful to have received Strategic Program Investments (SPI) funding that comes from the surplus funds left over after the Huronia Class Action lawsuit settlements were completed. This funding was to be used to benefit individuals with a developmental disability and their families. We are using this funding to conduct our new project, which will provide more substantial rights education to people labelled with intellectual disabilities, as well as peer supports to enable people to advocate for their rights. We are also expanding the membership of Respecting Rights and developing deeper partnerships with self-advocates in communities around Ontario.

Stay tuned for more information about our new project in the coming months.

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BC Court’s Decision Undermines Access to Justice for Persons with Disabilities

By Kerri Joffe, Staff Lawyer

In a recent decision called *MacLaren v. British Columbia (Attorney General),* 2018 BCSC 1753 the Supreme Court of British Columbia dismissed a *Charter* challenge to the deemed consent provisions of British Columbia’s *Mental Health Act*, because the Court found that a disability organization did not have public interest standing to bring the case forward.

The *MacLaren* case was started by two individuals and the Council of Canadians with Disabilities (CCD). The two individuals and the CCD filed a lawsuit alleging that certain provisions of British Columbia’s *Mental Health Act*, *Health Care and Care Facility Act,* and *Representation Agreement Act* violate the right to equality and the right to life, liberty and security of the person, guaranteed by sections 15 and 7 of the *Canadian Charter of Rights and Freedoms*. The provision of the *Mental Health Act* that the case challenged is sometimes called the ‘deemed consent’ provision. This provision permits physicians to administer psychiatric treatment to persons with mental health disabilities who are involuntarily detained in hospital, without the person’s consent. In those situations, the other provisions that this case challenged prevent the person’s substitute decision maker or representative from giving or refusing consent to psychiatric treatment. Together, the challenged provisions allow physicians to forcibly administer psychiatric treatment to involuntarily detained patients with mental health disabilities, without their consent or the consent of someone they have appointed to make decisions on their behalf. For many years, disability rights activists have advocated to abolish deemed consent.

During the course of the *MacLaren* case, the two individuals who had started it could not continue with the case. As a result, the case went ahead with CCD as the only plaintiff. However, the Court found that without the two individuals, the CCD did not have public interest standing to bring the case forward. Standing is the legal status necessary to bring a case before a court or tribunal. The Court dismissed the case before hearing the arguments about why the deemed consent provisions violate the *Charter*.

According to the Court, the lack of a particular individual's case meant that there were insufficient facts for the Court to conduct a legal analysis about whether the challenged provisions violated the *Charter.* The Court also reasoned that people with mental health disabilities who had been involuntarily admitted to hospital and forced to have psychiatric treatment without their consent could, if they wanted to, bring forward their own individual cases to challenge the deemed consent provision.

The BC Court's decision in this case is not binding in Ontario. Nevertheless it is concerning for disability rights advocates and persons with disabilities across the country. Persons with disabilities often face significant barriers to starting and sustaining court cases, particularly *Charter* challenges. Litigation is usually very costly, lengthy, difficult to navigate, and many people with disabilities cannot access legal representation. Individuals who bring forward court cases risk having their disability diagnosis, private medical records and other personal experiences exposed publicly. For people with stigmatized disabilities, including mental health disabilities, there is a very real risk that such exposure may result in discrimination in other areas of their lives. In this context, the Court's decision not to grant public interest standing to a national disability organization is another barrier to access to justice for disability communities.

The CCD is presently appealing this case to the British Columbia Court of Appeal. Community Legal Assistance Society (CLAS) is representing the CCD in this case. On its website, CLAS commented that they, "…are disappointed that the government chose to challenge the ability of non-profit organizations to represent the communities they serve in court instead of coming to court to address the issues. The serious questions raised by this Charter challenge about the rights of people with mental disabilities deserve to be considered in court."[1]

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[1] Current Cases – Everyone Deserves to Control Their Own Health Care, online: Community Legal Assistance Society < http://www.clasbc.net/current_cases>.

To read the *MacLaren* decision go to: https://www.courts.gov.bc.ca/jdb-txt/sc/18/17/2018BCSC1753.htm

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Human Rights Tribunal of Ontario's New Case Processing System

By Jessica De Marinis, Staff Lawyer

The Human Rights Tribunal of Ontario ("HRTO") has a new case processing system for all applications filed on or after March 1, 2018. You can read the full Practice Direction from the HRTO by going to: http://www.sjto.gov.on.ca/documents/hrto/Practice%20Directions/New%20System%20and%20CMCC.html. The HRTO hopes that the new system will resolve cases more quickly and efficiently.

The new system includes three main parts:

1. One Vice-chair will be assigned to each application for the whole process (not including Mediation),
2. Most hearings will be scheduled for one day, and
3. The parties are required to participate in a mandatory Case Management Conference Call approximately 30 days before the first day of the hearing.

The part of the new system that may have the most significant impact for persons with disabilities who have applications at the HRTO is the Case Management Conference Call (the "Conference Call").

The Conference Call will occur approximately 30 days prior to the first day of hearing, after the Applicant and the Respondent have exchanged documents to be relied upon and witness statements. The purpose of the Conference Call is to address preliminary or procedural issues before the hearing, to discuss how the hearing will proceed, and to explore whether the parties are interested in mediation/adjudication at the start of the hearing.

What issues will be discussed at the Conference Call?

Only certain kinds of issues are appropriate for the Conference Call. For example, the HRTO lists the following issues:

- Objections to hearing documents or witnesses,
- Requests for a witness to testify at the hearing by way of video or phone or at a specified time,
- Requests for proper or more specific witness statements, and
- Other issues that arise out of the disclosure of witness statements and hearing documents.

If you want to talk about one of these issues during the Conference Call, you must tell the Registrar at the HRTO at least 7 days before the Conference Call, by letter or email, and copy the other parties. You do not need to fill out a form. The opposing party may respond in writing, but they are not required to respond.

At the Conference Call, each party must be prepared to speak to the Vice-Chair about the issues that they and the other parties have identified. The Vice-Chair can decide how the issues will be dealt with during the Conference Call, or they can decide afterwards. The Vice-Chair is not required to write reasons for their decision.

What issues cannot be discussed at the Conference Call?

Some issues should be raised as soon as they come up instead of waiting for the Conference Call. For example, issues about document disclosure should be raised as soon as possible by way of Request for an Order During Proceedings (Form 10). (You can get a Form 10 by going to www.sjto.gov.on.ca/documents/hrto/Other/SJT010E.pdf) If you wait to deal with these issues until the Conference Call, the Vice-Chair may not grant your request because of delay.

Why is the Conference Call important?

The Conference Call is important because if a party doesn't bring up an issue that should have been raised, they may be prevented from talking about that issue later at the hearing. Because the issues to be discussed at the Conference Call are related to the documents and witness statements of the parties, it is important that the Applicant and the Respondent have exchanged these materials before the Conference Call. Therefore, requests for extensions of time to file documents and witness statements will only be granted in "exceptional circumstances." This means that a party who asks for an extension of time to file documents will need a good explanation, such as having been in the hospital and therefore not able to work on or prepare the documents.

What else happens at the Conference Call?

The Vice-Chair will talk about how the hearing will proceed. Each party should be prepared to talk about the order they want to present their witnesses, how long they need to question their witnesses, whether they want to present an opening statement, marking exhibits and the adoption of witness statements, and clarification of the issues for the hearing.

Parties can also tell the Vice-Chair whether they want to participate in mediation/adjudication. If both parties consent, the Vice-Chair may start settlement discussions by way of phone or email before the hearing.

If you are a person with a disability who has questions about an upcoming Conference Call in your HRTO case, an ARCH lawyer may be able to provide you with summary legal information and advice to assist you. To contact ARCH:

Call 416-482-8255
1-866-482-2724 (Toll-free)
416-482-1254 (TTY)

The Human Rights Legal Support Centre also may be able to provide you with some assistance. To contact them:

Call 416-597-4903
Or go to their website: www.hrlsc.on.ca/en/contact-hrlsc/contact-information

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Class Actions Update

By Lila Refaie, Staff Lawyer

Thalidomide Survivors Contribution Program Class Action

A class action lawsuit has recently been certified by the Federal Court of Appeal against the Attorney General of Canada regarding the Thalidomide Survivors Contribution Program (“TSCP”). This class action was started on behalf of the Thalidomide survivors who were denied eligibility to the TSCP because of the strict documentary requirements.

Thalidomide was a prescribed medication given to pregnant women between the late 1950s and early 1960s to help with nausea and morning sickness. However, the medication has since been directly linked to children being born with physical, sensory and other disabilities.

In 2015, Health Canada established a fund for those affected by the medication through the TSCP. This program put in place strict eligibility criteria to access the fund. Applicants had to prove their eligibility by providing an affidavit from the doctor who prescribed the medication or a prescription record indicating that it was prescribed to them. Because of the passage of time, many applicants could not provide either of these documents and their applications were rejected. The class action alleges that the criteria for eligibility are unlawful because they are effectively impossible for people to meet.

Represented by Koskie Minsky LLP, Mr. Bruce Wenham filed an application for judicial review in 2016, after his application to the TSCP was denied. He then asked to certify his lawsuit as a class action instead of an individual application. On November 1, 2018, the Federal Court of Appeal certified the class action. This means that the lawsuit will continue as a class action.

For more information, you can contact Koskie Minsky by:
Phone (Toll Free): 1-866-474-1741
Email: thalidomideclassaction@kmlaw.ca

You can also go to: https://kmlaw.ca/cases/thalidomide-survivors-contribution-program-class-action/

Provincial Schools for the Deaf Class Action

ARCH wrote about the Provincial Schools for the Deaf class action in the October 2018 ARCH *Alert*. In that article, we indicated that the deadline to file a claim was October 24, 2018. The Court has now extended the deadline for people to file claims to January 24, 2019.

For more information and to get a claim form, go to: http://www.schoolsforthedeafclassaction.ca/

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Provincial Government Maintains Funding for Existing Overdose Prevention Sites in Ontario

By Tyler Lin, Law Student

On August 13, 2018, Ontario’s Health Minister, Christine Elliot, announced that the opening of three new overdose prevention sites intended to provide life-saving supervision would be postponed.[1] Funding for the three sites, located in Thunder Bay, St. Catharines, and Toronto, was frozen by the Progressive Conservative Government. The delay was attributed to a new provincial review regarding whether the sites have merit in harm-reduction.

Overdose prevention sites (OPS) are temporary facilities approved by the province to address an immediate need in a community. They may reduce harm by providing clean injection supplies and help with referrals to mental health and substance treatment

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[1] "Ontario Health Minister Christine Elliott puts 3 overdose prevention sites on hold", online: CBC <https://www.cbc.ca/news/canada/toronto/ontario-holding-off-overdose-prevention-sites-1.4783592>

services. Safe injection sites (SIS) are permanent, and are approved by the federal government after a more extensive application process. They provide safe spaces where people can use substances with supervision of trained staff, provide clean injection supplies, and help with referrals to health services and treatment programs.

In response to the Province's call for more evidence, experts such as Dr. David Juurlink, head of the Division of Clinical Pharmacology and Toxicology at Sunnybrook Health Sciences Centre, and Dr. Eileen de Villa, Toronto's Medical Officer of Health, issued statements attesting to the scientifically proven efficacy of both OPS' and SIS'.[2]

Overdose prevention activists and health groups organized and spoke out against the Province`s decision. Community and specialty legal clinics, including ARCH, also advocated for the Provincial Government to reverse its decision. Legal clinics pointed to the legal recognition of addictions disabilities and the negative impact that delaying OPS' will have on disability communities.

On October 22, 2018 the Provincial Government announced that it would maintain funding for existing overdose prevention sites, and that it would approve no more than 21 sites in Ontario. Further, Minister Elliot mandated a change of the current goal of overdose prevention sites, which is short-term harm reduction, to the long-term goal of helping drug users get treatment and rehabilitation services.

The Province's decision to maintain existing OPS' represents a partial, progressive step forward for people with disabilities in Ontario. The return of funding to existing sites will provide much needed harm reduction services. However, as noted by Bhutila Karpoche, NDP critic for mental health and addictions, the four-month delay resulted in 252 deaths which may have been prevented.[3]

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Library Corner

By Mary Hanson, Librarian

We invite interested readers to view these recent additions to the ARCH collection in the Resource Centre at ARCH's office in Toronto (or, where available, online).

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[2] Andrew Russell, "Ontario`s decision to halt new overdose-prevention sites could `lead to more death`: experts", online: Global News <https://globalnews.ca/news/4387312/ontario-overdose-prevention-site-controversy/>

[3] Peter Edwards, "Ontario to keep overdose-prevention sites", online: Toronto Star <https://www.thestar.com/news/queenspark/2018/10/22/ontario-to-keep-overdose-prevention-sites.html>

- Arbuckle, Ed. ***Family Guide to Disability and Personal Finances***. Victoria, Tellwell Talent, 2018. (on ARCH shelves at 332.024 CA Arb 2018)

  A practical guide, by Kitchener-based chartered accountant, to financial planning for adults with significant cognitive or physical disabilities. Topics covered include community and family supports, sources of income assistance, trusts, tax and estate planning, investing, pensions and preparing for the senior years.

- Birenbaum, Joanna and Barbara Collier. ***Communication Intermediaries in Justice Services: Access to Justice for Ontarians Who Have Communication Disabilities***. Toronto: Communication Disabilities Access Canada. (on ARCH shelves at 362.402 CA-ON Cda 2017). Also available online. Go to: http://www.access-to-justice.org/wp-content/uploads/2018/02/Communication_Intermediaries_In_Justice_Services_DIGITAL_14-1.pdf

  A guide for service providers working in the legal system on how to best use services of the communication intermediary to reduce barriers, provide appropriate accommodation, and support access to justice for persons with speech, language, and communication disabilities.

- Galer, Dustin. ***Working Towards Equity: Disability Rights Activism and Employment in Late Twentieth-Century Canada***. Toronto: University of Toronto Press, 2018. (on ARCH shelves at 331.59 CA Gal 2018)

  A social history of disability activism, this work explores issues of work and identity, the evolution of disability rights and advocacy, and the role played by family, employer, government and labour organization in the struggle for employability.

- Hamraie, Aimi. ***Building Access: Universal Design and the Politics of Disability***. Minneapolis: University of Minnesota Press, 2017. (on ARCH shelves at 720.87 US Ham 2017)

  The author explores the origins of universal design, tracing the political, economic, and scientific forces behind the shift from "design for the average" to "design for all".

- Hansen, Nancy, Roy Hanes and Diane Driedger, eds. ***Untold stories: a Canadian Disability History Reader***. Toronto: Canadian Scholars' Press, 2018. (on ARCH shelves at 362.4 CA Han 2018)

  This collection discusses the generally unknown role played by Canadians with various disabilities – from Confederation to the present day - in bringing about social change and increasing inclusion through their influence on science and technology, law, education, healthcare, and social justice.

- Malhotra, Ravi and Benjamin Isitt, eds. ***Disabling Barriers: Social Movements, Disability History, and the Law***. Vancouver: UBC Press, 2017. (on ARCH shelves at 362.4 CA Mal 2017)

  This latest publication in the *Disability Culture and Politics* series analyzes issues and debates at different moments in Canadian and American history, ranging from public portrayal to systemic barriers faced in employment, immigration and the legal system. The authors examine disability in relation to class and gender, with a focus on the capacity of persons with disabilities to transform their environment by changing the discourse surrounding disablement.

- Ontario. Office for Victims of Crime. ***Have You Been a Victim of Crime? What's Next…*** Toronto: Ministry of the Attorney General, 2018. (on ARCH shelves at 362.88 CA-ON Ovc 2017). Also available online. Go to: http://www.ovc.gov.on.ca/ovc/wp-content/uploads/2017/06/Have-You-Been-a-Victim-of-Crime-2017-EN.pdf

  Plain language guide for victims of crime in accessing services to get help quickly and apply for financial compensation. Includes an overview of the criminal justice process, and Ontario and Canadian Victims Bills of Rights.

  (version française): ***Avez-vous Été Victime d'un Acte Criminel? Que Faire…*** http://www.ovc.gov.on.ca/ovc/wp-content/uploads/2017/06/Have-You-Been-a-Victim-of-Crime-2017-FR.pdf

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Check ARCH's website www.archdisabilitylaw.ca for the Latest ARCH News, publications (including past issues of the ARCH *Alert*), submissions, fact sheets and more.

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Or you can send your donation cheque to:

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We welcome your comments, questions and feedback. We will endeavour to include all information of general interest to the community of persons with disabilities and their organizations, but reserve the right to edit or reject material if necessary. Please address communications regarding **ARCH *ALERT*** to: Theresa Sciberras, Program and Litigation Assistant, ARCH Disability Law Centre, 55 University Avenue, 15th Floor Toronto, ON M5J 2H7, Fax: 416-482-2981 or 1-866-881-2723, TTY: 416-482-1254 or 1-866-482-2728, e-mail: scibert@lao.on.ca **Website: http://www.archdisabilitylaw.ca/**

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