

Schedule “A”

1. The ARCH Disability Law Centre (“ARCH”), Income Security Advocacy Centre (“ISAC”), and HIV & AIDS Legal Clinic Ontario (“HALCO”) request to intervene in Coalition (herein after the Coalition) in this Application.
2. The members of the Coalition each have extensive interest and expertise in several issues that arise in this matter. Collectively, the Coalition members bring together a complementary joint interest and expertise in the human rights of persons with disabilities, their income security, the cost of living with a disability, and the impoverishing effects of discrimination against persons with disabilities.
3. In the HRTO’s Interim Decision in *Reilly v. Ford Motor Company of Canada* (HRTO File # 2015-222094-I), at paragraph 36, Adjudicator Mark Hart invited ARCH to participate in this case.
4. If this request to intervene is granted, the Coalition will provide the Tribunal with a unique and important perspective on the issues before it, which would not otherwise be available to the Tribunal. The Coalition will do so without causing any prejudice to the parties.

A3 – THE ISSUES THE COALITION PROPOSES TO ADDRESS

5. The Coalition proposes to address the following issues:
 - (a) The systemic implications of this application on persons who are or have been employed and can no longer work because of disability;
 - (b) The different eligibility criteria under long-term disability plans and the Canada Pension Plan Disability (CPP-D) program;
 - (c) The cost of disability related needs, supports and services and their impact on the standard of living for persons with disabilities;

- (d) The disadvantage and economic barriers to full inclusion and participation faced by persons with disabilities who rely on income security program such as LTD and CPP-D;
- (e) Canada's obligations under international treaties, conventions and other instruments, including, but not limited to, Article 28 of the *Convention on the Rights of Persons with Disabilities*.

A4 – THE COALITION'S INTEREST, EXPERIENCE, AND EXPERTISE IN THE MATTERS AT ISSUE IN THIS APPLICATION

I. The ARCH Disability Law Centre

Background

- 6. ARCH is a specialty legal clinic dedicated to defending and advancing the equality rights, entitlements, fundamental freedoms and inclusion of persons with disabilities in Ontario. ARCH provides legal services to Ontarians with disabilities in an effort to ensure dignity, autonomy, and full participation in our communities.
- 7. ARCH was founded over thirty-five years ago as a charitable organization with an Ontario-wide mandate. ARCH was first incorporated in 1979 as the "Advocacy Resource Centre for the Handicapped". By the mid-1990s, ARCH used the name "ARCH: A Legal Resource Centre for Persons with Disabilities". On November 15, 2005, amended letters patent were issued which changed ARCH's name to "ARCH Disability Law Centre".
- 8. From its inception, ARCH has been funded principally by Legal Aid Ontario ("LAO") pursuant to the *Legal Aid Services Act, 1998*.
- 9. ARCH is governed by a community-based board of directors, the majority of whom are persons with disabilities. ARCH works with over sixty Community

Partners, which are organizations that represent the interests of persons with disabilities and endorse the goals and objectives of ARCH. ARCH meets regularly with our Community Partners to inform them of our current priorities and activities and to receive feedback on the direction of the work of ARCH for the coming year. ARCH's current Community Partners include:

- Addictions and Mental Health Ontario
- Alliance for Equality of Blind Canadians
- Canadian Hearing Society
- Canadian Mental Health Association, Ontario
- Citizens with Disabilities-Ontario
- Coalition for Persons with Disabilities
- Houselink Community Homes
- Integration Action for Inclusion
- March of Dimes
- PATH Employment Services
- People First of Ontario
- Students for Barrier Free Access
- Tourette Canada

10. ARCH is guided by the vision that all persons with disabilities deserve social justice and equal participation in our communities. To inform the strategic direction of its work, ARCH consults with its Community Partners, members and persons with disabilities, reviews its intake statistics, and analyzes legal trends affecting persons with disabilities.

11. In order to carry out its mandate, ARCH provides a range of legal services to persons with disabilities who live in Ontario, disability advocacy organizations, and the legal profession. In particular, ARCH engages in law reform and policy initiatives, community development, legal advice and referrals, public legal education and litigation. ARCH

conducts test case and systemic litigation before administrative tribunals and at all levels of court including the Supreme Court of Canada.

12. ARCH provides legal advice and referrals and conducts test case litigation in areas such as human rights, mental health, legal capacity, abuse, attendant services, disability-specific funding, education, employment, home care, privacy, policing, taxation, and transportation. This service extends to lawyers calling on behalf of their clients with disabilities to consult on the disability rights implications of their cases.

ARCH's Test Case, Charter and Human Rights Litigation Experience

13. ARCH conducts test case litigation before all levels of Court. It brings the perspective of persons with disabilities to important public interest issues often raising *Charter* and human rights arguments. ARCH has represented interveners before the Supreme Court of Canada in the following cases:

- *Frederick Moore on behalf of Jeffrey P. Moore v Her Majesty the Queen in Right of the Province of British Columbia as represented by the Ministry of Education et al.* [2012] 3 SCR 360
- *Alberta (Aboriginal Affairs and Northern Development) v Cunningham*, [2011] 2 SC. 670
- *Honda Canada Inc. v Keays*, [2008] 2 SCR 362
- *Council of Canadians with Disabilities v VIA Rail Canada Inc.,* [2007] 1 SCR 650
- *McGill University Health Centre (Montreal General Hospital) v Syndicat des employés de l'Hôpital général de Montréal*, [2007] 1 SCR 161
- *Tranchemontagne v Ontario (Director, Disability Support Program)*, [2006] 1 SCR 51
- *Hilewitz v Canada (Minister of Citizenship and Immigration); De Jong v Canada (Minister of Citizenship and Immigration)*, [2005] 2 SCR 706
- *Nova Scotia (Minister of Health) v JJ*, [2005] 1 SCR 177, *Newfoundland (Treasury Board) v NAPE*, [2004] 3 SCR 381
- *Auton (Guardian ad litem of) v British Columbia (Attorney General)*, [2004] 3 SCR 657

- *Nova Scotia (Workers' Compensation Board) v Martin; Nova Scotia (Workers' Compensation Board) v Laseur*, [2003] 2 SCR 504
 - *Lovelace v Ontario*, [2000] 1 SCR 950
 - *Grismer v British Columbia (Super. of Motor Vehicles)*, [1999] 3 SCR 868
 - *R. v LePage*, [1999] 2 SCR 744
 - *Orlowski v British Columbia (Forensic Psychiatric Institute)*, [1999] 2 SCR 733
 - *Bese v British Columbia (Forensic Psychiatric Institute)*, [1999] 2 SCR 722
 - *Winko v British Columbia (Forensic Psychiatric Institute)*, [1999] 2 SCR 625
 - *Eldridge v British Columbia (Attorney General)*, [1997] 3 SCR 624
 - *Gibbs v Battlefords and District Cooperative*, [1996] 3 SCR 566
 - *Rodriguez v British Columbia (Attorney General)*, [1993] 3 SCR 519
 - *Weatherall v Canada (Attorney General)*, [1993] 2 SCR 872
 - *Renaud v Central Okanagan School District No 23*, [1992] 2 SCR 970
 - *Canadian Council of Churches v Canada*, [1992] 1 SCR 236
 - *Andrews v Law Society of British Columbia*, [1989] 1 SCR 143
 - *Bhinder v Canadian National Railway*, [1985] 2 SCR 561
 - *Ontario (Human Rights Commission) v Simpsons-Sears*, [1985] 2 SCR 536
14. ARCH has represented interveners before the Ontario Court of Appeal in:
- *Ontario (Disability Support Program) v Tranchemontagne*, 2010 ONCA 593
 - *Wynberg v Ontario* (2006), 82 OR (3d) 561
 - *Tranchemontagne v Ontario (Director, Disability Support Program)* (2004), 72 OR (3d) 457
 - *Ontario (Human Rights Commission) v Ontario* (1994), 19 OR (3d) 387

15. In addition, ARCH has represented interveners before the Federal Courts of Canada in:

- *Canada (Attorney General) v Jodhan*, 2012 FCA 161
- *Harris v Canada (Minister of Human Resources and Skills Development)*, 2009 FCA 22, [2009] 4 FCR 330
- *National Capital Commission v Brown*, 2008 FC 733
- *Canada (Human Resources Development) v Marsden*, 2007 FCA 395
- *Canada (Citizenship and Immigration) v Colaco*, 2007 FCA 282
- *Simser v Canada*, 2004 FCA 414
- *Canada (Human Rights Commission) v MNR*, 2003 FC 1280, [2004] 1 FCR 679
- *Chesters v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 727, [2003] 1 FC 361
- *Canada (Attorney General) v Buchanan*, 2002 FCA 231
- *Miller v Canada (Attorney General)*, 2002 FCA 370
- *Weeks v Canada*, [2001] 1 CTC 146

16. Furthermore, ARCH has intervened on its own behalf in the following cases before the Supreme Court of Canada, Court of Appeal for Ontario, and the Human Rights Tribunal of Ontario:

- *Cuthbertson v Rasouli*, [2013] 3 SCR 341 (in coalition with the Advocacy Centre for the Elderly)
- *Canada (Attorney General) v Downtown Eastside Sex Workers United Against Violence Society*, [2012] 2 SCR 524 (in coalition with West Coast Legal Education and Action Fund) and Justice for Children and Youth)
- *Thompson v. Ontario (Attorney General)*, 2016 ONCA 676
- *Tanudjaja v Canada*, 2014 ONCA 852 (in coalition with The Dream Team, Canadian HIV/AIDS Legal Network and HIV & AIDS Legal Clinic Ontario)
- *Yuill v Canadian Union of Public Employees*, 2012 HRTO 366

- *Barber v South East Community Care Access Centre*, 2012 HRTO 368

17. Recently, ARCH was granted intervener status on behalf of a Coalition at the Supreme Court of Canada in *Stewart v. Elk Valley Corporation, Cardinal River Operations and the Alberta Human Rights Commission*. The primary argument is the proper application of the *prima facie* test for discrimination and the defence of *bona fide* occupational requirement (BFOR) in s.7 of the *Alberta Human Rights Act* and its broader implications.

18. In *Yuill v Canadian Union of Public Employees*, ARCH was invited to intervene before the Human Rights Tribunal of Ontario (HRTO) regarding the barriers for persons with legal capacity issues to bring cases before the HRTO. ARCH argued that the HRTO should have jurisdiction to appoint a litigation guardian for persons with legal capacity issues in order to advance access to justice. Without such jurisdiction many persons with legal capacity issues would not be able to assert their claims. ARCH also relied on Article 13 of the *CRPD*. The HRTO found it had the jurisdiction and adopted a process for appointing a litigation guardian.

19. ARCH also engages in extensive law reform activities, commenting on the impact of current and proposed laws and practices from a disability rights perspective. Examples of law reform activities include:

- i) ARCH made submissions to the Ontario Human Rights Commission in response to a Draft Policy on Mental Health Discrimination and Police Record Checks, outlining the impact on persons with disabilities of police disclosure to employers or volunteer agencies of non-criminal information including police contact pursuant to the *Mental Health Act*.
- ii) In 2014, ARCH prepared a commissioned paper for the Law Commission of Ontario's Legal Capacity, Decision-Making and Guardianship project entitled "Decisions, Decisions: Promoting and

Protecting the Rights of Persons with Disabilities Who Are Subject to Guardianship”.

- iii) ARCH has made submissions to Ontario’s Changing Workplace Review;
- iv) ARCH made submissions on each of the Standards under on the the *Accessibility for Ontarians With Disabilities Act (AODA)* including: *the Employment Standard*; *the Integrated Accessibility Standard*; and the two *Independent Reviews of the AODA (2209 and 2014)*;
- v) ARCH has made numerous submissions to the Law Commission of Ontario, including: *The Law as it Affects Persons with Disabilities*; *Vulnerable Workers’ and Precarious Work*; *Mental Disabilities and the Registered Disability Support Plan*.
- vi) ARCH is a member of a select group working with the Council of Canadians With Disabilities on a Shadow Report on the *Convention on the Rights of Persons with Disabilities (CRPD)*, which includes a review of Article 28.

20. ARCH relies on the United Nations’ *Convention on the Rights of Persons with Disabilities (CRPD)* in all aspects of its work including its law reform, litigation, and public legal education activities. In particular:

- i) ARCH is currently supporting the work that is being led by the Council of Canadians with Disabilities to prepare a Shadow Report in response to Canada’s first report to the United Nations Committee on the Rights of Persons with Disabilities;

ii) In 2013, ARCH authored a paper commissioned by the Canadian Human Rights Commission that provided an analysis of the extent to which federal income support measures effectively address economic disadvantage of persons with disabilities in Canada in light of Article 28 of the *CRPD*;

iii) ARCH prepared a Disability Law Primer which provides an introduction to disability law in various areas. Chapter 10 of the Primer explores the breadth and utility of the *CRPD* in interpreting Canadian and provincial laws.

ARCH's Interest and Expertise in Reilly and Ford Motor Company of Canada Limited

21. ARCH has a direct and genuine interest in the issues raised by in this case. The outcome of the hearing will significantly impact income security for persons with disabilities in Ontario. As counsel for both individuals with disabilities and disability advocacy organizations, ARCH's community is directly affected by the issues in this matter.

22. A key area of ARCH's work relates to addressing employment, income support and poverty for persons with disabilities, through law reform, direct services, test case litigation and public legal education.

23. ARCH will rely on its extensive constitutional and human rights expertise regarding persons with disabilities.

II. The Income Security Advocacy Centre

Background

24. The Income Security Advocacy Centre is a provincially incorporated, specialty legal clinic founded in 2001 that is funded by Legal Aid Ontario to advance the rights, interests and systemic concerns of low-income Ontarians with respect to income security. ISAC is the only Ontario legal clinic wholly devoted to systemic advocacy on income security issues.

25. ISAC is mandated to address issues of law and policy arising from federal and provincial income security programs, including social assistance, Employment Insurance, the Canada Pension Plan, Old Age Security programs and other government income security programs as decided from time to time by its Board. ISAC is directed to work towards improving income security for low-income people through the protection and enhancement of legal rights in the context of income security programs and employment law.

26. ISAC carries out its mandate through test case litigation, policy advocacy, community development and public education.

27. ISAC is governed by a community Board of Directors representative of all regions of Ontario and composed of low-income individuals, Indigenous persons and advocates with particular expertise in issues of income security and poverty.

ISAC's Relevant Experience and Expertise in this Case

28. ISAC works directly with low-income people through provincial organizations and in local communities in partnership with the provincial network of over 60 local community legal clinics.

29. ISAC has developed a unique expertise in income security programs, with our litigation and advocacy work addressing provincial and federal programs, including the Canada Pension Plan.

(i) *Test case litigation in income security benefits, human rights and Charter equality rights*

30. ISAC has been involved in many significant income security-related cases concerning access to social benefits, human rights and *Charter* equality rights issues, through direct representation and interventions. This Request to Intervene will focus on the cases of greatest relevance to the issues raised by Mr. Reilly's human rights complaint:

(a) Discrimination and the Special Diet Allowance – SBT (ongoing):

ISAC is co-counsel in a human rights challenge at the Social Benefits Tribunal involving a group of five Ontario Disability Support Program ("ODSP") recipients who live in group homes who are excluded by regulation for the special diet allowance (an additional allowance for recipients with higher food costs as a result of their disabilities). The challenge asserts that the denial of a special diet allowance to residents of supported group living homes for adults with "developmental disabilities" amounts to disability discrimination under the *Code*.

(b) Access to Canada Pension Plan disability benefits (2016), *Osaj v.*

Canada (Attorney General) (2016 FC 115): ISAC was co-counsel in a successful application for judicial review of a Canada Pension Plan Disability case in which the Appeal Division of the Social Security Tribunal denied leave to appeal. The issue on appeal was whether Mr. Osaj was eligible for disability benefits before he reached "maximum medical recovery." ISAC argued that the application of "maximum medical recovery"

to the definition of CPP disability creates an unlawful barrier to access to CPP-D benefits.

(c) Income security programs and the Charter (2015), OPSEU v. Ontario (Court File No. CV-14-518213): ISAC was granted leave to intervene in a *Charter* application in the Ontario Superior Court brought by the Ontario Public Service Employees Union. The application argued that Ontario's flawed new computer system for the management of social assistance programs violated the sections 7 and 15 *Charter* rights of social assistance recipients. ISAC's intervention was focused on ensuring access to courts for recipients of social assistance programs to challenge the policies and programs that affect them.

(d) Access to justice for income security recipients and the Charter (2013, 2014), Tanudjaja v. Attorney General (Canada), 2014 ONCA 852: ISAC was granted intervener status as part of coalitions at both the Ontario Superior Court and Ontario Court of Appeal in a *Charter* application concerning whether government failure to prevent homelessness violates sections 7 and 15 of the Charter. ISAC's intervention focused upon positive government obligations under section 7 of the *Charter* and ensuring access to courts for social assistance recipients.

(e) Discrimination and the Special Diet Allowance - HRTO (2008-2013): ISAC acted for over 100 clients at the Human Rights Tribunal in a series of human rights challenges alleging disability discrimination in the "Special Diet Allowance" program administered through provincial social assistance programs. The Tribunal found the program discriminatory and ordered that it be brought into compliance with the *Code*.

(f) Human rights, the Charter and limitation periods for disability benefits (2013), Pavon v. Ontario (Disability Support Program), 2013 ONSDC 4309: ISAC represented an ODSP recipient in an appeal at the Ontario Divisional Court on the interpretation of a limitation period applying

to appeals to the Social Benefits Tribunal. The Divisional Court accepted ISAC's arguments and confirmed that the legislation must be interpreted in a manner consistent with human rights and *Charter* values, in particular in a way that recognizes the right of persons with disabilities to reasonable accommodation.

(g) Child support, disability benefits and discrimination, Ontario (Disability Support Program) v. Ansell, 2011 ONCA 309 (CanLII): ISAC was co-counsel in an appeal challenging the ODSP policy of attributing child support as income to adult children with disabilities whose parents were separated, thereby making them financially ineligible for ODSP. (If the appellants' parents were not separated, she would have been eligible.) In deciding that child support payments should not be considered income to the child, the Court of Appeal agreed with ISAC's argument that the ODSP policy was discriminatory towards the children of separated parents.

(h) Disability benefits and discrimination (2010), Ontario (Disability Support Program) v. Tranchemontagne, 2010 ONCA 593: The Court of Appeal of Ontario granted ISAC intervener status in a test case on whether Ontario discriminated by excluding individuals with addictions from ODSP. ISAC's intervention focused on the government claim that its expert evidence was entitled to special deference in human rights challenges.

(ii) Policy advocacy and education in CPP

31. ISAC has developed particular policy advocacy and public education expertise with respect to the CPP program.

(a) CPPD Client and Stakeholder Roundtable: Since early 2016, ISAC staff has been a member of this Roundtable, formed by Employment and Social Development Canada. The Roundtable meets three times a year and has a mandate to provide feedback on all aspects of the CPPD program

including policy development, program design, legislative and regulatory reform and service delivery.

(b) Canada Pension Plan Working Group: This group was launched in 2014 by ISAC in partnership with the Clinic Resource Office (a department of Legal Aid Ontario). Group members include clinic caseworkers from across Ontario. ISAC co-chairs the group and organizes quarterly meetings which discuss both substantive and procedural issues involving CPP-disability appeals.

(c) Social Security Tribunal stakeholder consultations: ISAC takes a leadership role on SST appeal issues including organizing consultations with the Chair of the SST with working group representatives in 2014 and 2016. The SST has consulted ISAC on CPP forms.

(d) Resources and training: ISAC has prepared resources and provided training to support clinic caseworkers in CPP cases, including a precedent submission on “form of hearing” in CPP-D appeal hearings and training on CPP-D law and advocacy.

(e) Legislative Reform: ISAC is and has engaged in legislative reform activities involving CPP issues including: an invitation to appear before the Parliamentary Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities (HUMA) on its study on poverty reduction strategies which will involve examining CPP issues (ongoing), and submissions on changes to the CPP spousal and survivor allowances in 2014.

iii. The HIV & AIDS Legal Clinic Ontario

Background

32. The HIV & AIDS Legal Clinic Ontario (“HALCO”) is a not-for-profit charitable organization founded in 1994 and incorporated under the laws of Ontario. A majority of the members of HALCO’s board of directors are persons living with HIV.

33. HALCO is a community legal clinic that provides legal services to people living with HIV in Ontario, and is the only such legal clinic in Canada. The mission and vision of the organization are as follows:

Mission

The mission of the HIV & AIDS Legal Clinic Ontario is to provide legal services to persons living with HIV/AIDS in Ontario that are relevant to their well-being and that enable them to participate fully in the communities in which they live.

Vision

HALCO’s vision is a society where laws and the legal system help reduce discrimination, stigma, poverty and injustice faced by people living with HIV/AIDS.

34. HALCO provides its services in four ways: (i) summary advice, brief services and referrals; (ii) representation; (iii) public legal education; and (iv) law reform and community development. Human rights-related issues permeate all of these services.

HALCO's Experience and Expertise Relevant to this Application

35. Since 1995, HALCO has responded to over 50,000 legal inquiries in various areas of law, including social assistance, insurance, human rights, health, privacy, immigration, housing, and employment.

36. Since 2001, HALCO has responded to over 2,000 human rights issues, approximately 700 Canada Pension Plan issues, and over 650 private insurance long-term disability issues. HALCO represents clients before the Human Rights Tribunal of Ontario (the "HRTO"), and also presents human rights arguments on behalf of clients before many other administrative tribunals in Ontario.

37. HALCO has a history of intervening before the Supreme Court of Canada, all levels of court in Ontario, and the Federal Court. HALCO has been granted leave to intervene in the following cases:

- *Simpson v. Ministry of Community Safety and Correctional Services*, HRTO File No. 2015-19800-I, regarding human rights issues flowing from the segregation of a prisoner living with HIV in the Toronto South Detention Centre;

- *Duncan v. Toronto Community Housing Corp.*, 2015 ONSC 4278 (Div. Ct.), regarding the content and application of the duty to accommodate in the housing context under the Ontario *Human Rights Code* (the "Code");

- *Ontario (Community Safety and Correctional Services) v. De Lottenville*, 2015 ONSC 3085 (Div. Ct.), a matter involving the intersection between complaints made to the College of Physicians and Surgeons and the Human Rights Tribunal of Ontario;

- *Carter v. Canada (Attorney General)*, 2015 SCC 5 and *Cuthbertson v. Rasouli*, 2013 SCC 53, matters concerning the scope of patient autonomy in the health care setting;

- *R. v. Lloyd*, 2016 SCC 13, involving challenges under the Canadian *Charter of Rights and Freedoms* to provisions of the *Controlled Drugs and Substances Act* imposing a mandatory minimum sentence for certain drug offences;
- *R. v. Smith*, 2015 SCC 34 and *R v. Mernagh*, 2013 ONCA 67, involving *Charter* challenges to Canada's medical marijuana regime;
- *R v. Wilcox*, 2014 SCC 75, *R v. Mekonnen*, 2013 ONCA 414, and the joint hearing of *R v. Mabior*, 2012 SCC 47 and *R v. DC*, 2012 SCC 48, matters involving the criminalization of HIV non-disclosure;
- *R v. Hutchinson*, 2014 SCC 19, regarding the appropriate legal framework for cases involving sexual fraud;
- *Tanudjaja v. Canada (Attorney General)*, 2014 ONCA 852, regarding the right to housing under the *Charter*;
- *Canada (Attorney General) v. Bedford*, 2013 SCC 73 and 2012 ONCA 186, in which the constitutionality of *Criminal Code* provisions regarding sex work were at issue; and
- *Attorney General of Canada v Downtown Eastside Sex Workers United Against Violence Society, et al*, 2012 SCC 45; *R v Felix*, 2013 ONCA 415; and *Companiononi v. Minister of Citizenship and Immigration*, 2009 FC 1315.

38. HALCO is often consulted by government and non-government organizations on issues affecting people living with HIV. For example, HALCO was involved in legislative consultations in relation to Ontario's *Regulated Health*

Professions Act, 1991, Health Promotion and Protection Act, 1990; the creation of the *Mandatory Blood Testing Act, 2006*; and the development of Health Canada's medical marijuana access program. For many years, HALCO has been active on the Ontario Advisory Committee on HIV/AIDS, which provides social and health policy advice to Ontario's Minister of Health and Long-Term Care on all aspects of HIV.

39. In addition, HALCO engages in law reform activities to advance the interests of people living with and affected by HIV including various health law issues of concern to members of the HIV community. For example, HALCO's advocacy contributed to stronger privacy protections under Ontario's *Personal Health Information Protection Act, 2004*, particularly in relation to health records. HALCO was actively involved in human rights reform in Ontario that ultimately resulted in Bill 107, an *Act to Amend the Human Rights Code, 2006*. HALCO has also participated in three inquests relating to the death of people living with HIV in Ontario prisons.

40. In the wake of the 2012 amendment of the *Code* to include "gender identity" and "gender expression" as grounds of discrimination, HALCO has undertaken the Trans Legal Needs Assessment project, a three-year province-wide research project to:

a) assess the legal needs of transgender community members, and the needs of lawyers/legal service providers in serving transgender clients;

b) conduct education and information sessions with trans community members as well as lawyers/legal service providers in cities around Ontario; and

- c) identify barriers to accessing justice and make recommendations to improve access to justice and substantive justice for transgender Ontarians.

The goal of the project is to gather information quantifying and qualifying transgender legal needs or issues impacting access to justice facing the transgender community.

41. HALCO also engages in public legal education initiatives. HALCO has delivered hundreds of oral presentations on a wide variety of legal topics to audiences including people living with HIV, health care professionals, legal professionals, and governmental and non-governmental organizations. HALCO routinely presents on social assistance and private insurance issues, and has conducted over 35 presentations on human rights issues since 2001.

42. HALCO has also produced numerous written public legal education materials, including the *HIV & the Law Advocate's Manual* (2004); *Planning for illness: legal information for people living with HIV in Ontario* (2012); *HIV Testing in Ontario* (1999, updated in 2009 and 2013); and *HIV disclosure: a legal guide for gay men in Ontario* (2009, updated for a national audience in 2013).

43. Finally, HALCO has also participated in a training session for judges. In March 2010, HALCO and the Canadian HIV/AIDS Legal Network, in collaboration with the National Judicial Institute, organized a half-day, bilingual training session on the criminalization of HIV non-disclosure for dozens of judges from across the country. This was the first such session of its kind in Canada. Numerous presenters – including medical experts, social scientists, people living with HIV and service-providers – participated in the session.

44. In sum, through its client work, public legal education, law reform, and community development activities, HALCO has developed considerable expertise in the analysis of legal issues facing people living with and affected by HIV, with a significant focus on social assistance, private insurance, and human rights issues. HALCO can therefore offer a unique and valuable perspective to the Tribunal on the hearing of this matter.

A5 – THE COALITION’S POSITION ON THE FACTS AND ISSUES IN THE APPLICATION AND RESPONSE

45. If leave to intervene is granted, the Coalition will advance one central and systemic submission: where a disability benefits plan (whether offered through a private insurer or employer-funded) stipulates that any CPP-D benefits received by the insured person are to be deducted from the extended or long-term disability benefits provided by the plan, that provision adversely impacts people living with more serious (i.e. “severe and prolonged”) disabilities. The Coalition will base its submission on several propositions, including but not limited to:

(a) In order to be eligible for CPP-D benefits, an individual must be living with a “severe and prolonged” disability within the meaning of the Canada Pension Plan. This definition is a higher standard of disability than generally required to satisfy eligibility criteria for extended or long-term disability plans (including the Ford Canada extended disability plan).

(b) Individuals who qualify for both CPP-D benefits and extended or long-term disability benefits under a private insurance plan (i.e. those who are living with a “severe and prolonged” disability and also meet the private insurance threshold of “total disability”) face greater disability-related

financial needs and greater disadvantage, exclusion, and vulnerability than those who qualify only for extended or long-term disability benefits (i.e. those who meet their private insurer's definition of "total disability", but do not meet the CPP-D definition of "severe and prolonged" disability). For example, Statistics Canada data reveals the following:

a. The more severe the disability, the more likely an individual faces unmet needs for specialized disability-related equipment (10% for mild limitations, climbing to 33% for severe limitations and 50% for very severe limitations);¹ and

b. The more severe the disability, the more likely an individual faces unmet needs for special disability-related features in the home (5% for moderate disability, climbing to 11% for severe disability and 16% for very severe disability).²

(c) The number of individuals receiving both CPP-D and private insurance disability benefits is not insignificant. Somewhere in the range of 6% of Canadians over age the age of 15 self-identify as experiencing severe or very severe disability.³ Approximately 15-32% of those self-identifying as having severe disabilities receive CPP-D benefits.⁴ Approximately 25% of all CPP-D recipients have benefits coverage offered through private disability insurance plans.⁵

¹ Statistics Canada, *Disability Supports in Canada* (Ottawa, StatsCan, 2003) at p. 6.

² *Ibid.* at p. 7.

³ Statistics Canada, *PALS Survey – Participation and Activity Limitation Survey*, 2001: <http://www.statcan.gc.ca/pub/89-577-x/index-eng.htm> at p. 20.

⁴ Human Resources and Skills Development Canada (2011), "Summative Evaluation of the Canada Pension Plan Disability Program: Final Report" (Strategic Policy and Research Branch) at pp. ii, 19.

⁵ John Stapleton (2013), "The 'Welfareization' of Disability Incomes in Ontario" (Toronto: Metcalf Foundation) at p. 16.

(d) Provisions that require the deduction of CPP-D benefits from private insurance disability plans amplify and compound the aforementioned increased disadvantage that people living with severe and prolonged disabilities face, by creating additional economic barriers to their full participation and inclusion within society. As the Supreme Court of Canada has acknowledged, many of the difficulties confronting people living with disabilities do not flow “from the individual’s condition at all but are located in the problematic response of society to that condition. A proper analysis necessitates unbundling the impairment from the reaction of society to the impairment, and a recognition that much discrimination is socially constructed. ... Exclusion and marginalization are generally not created by the individual with disabilities but are created by the economic and social environment”⁶

(e) Canada has ratified various international instruments that declare that all persons have a right to be free from discrimination, and enshrine rights that are applicable to persons with disabilities. These include, but are not limited to: The *Universal Declaration of Human Rights*⁷, the founding human rights document, states that everyone, regardless of status, has the right to be free from discrimination; the *International Covenant on Civil and Political Rights (ICCPR)*⁸ and the *International Covenant on Economic, Social and Cultural Rights (ICESCR)*⁹ which both set out important human rights guarantees that apply also to persons with disabilities. Finally, Canada has ratified the *Convention on the Rights of Persons with Disabilities*.

⁶ *Granovsky v. Canada (Minister of Employment and Immigration)*, 2000 SCC 28 at para 30.

⁷ GA Res 217(III), UNGAOR, 3d Sess, Supp No 13, UN Doc 1st A/810, (1948) 71, Article 7.

⁸ 19 December 1966, 999 UNTS 171, 6 ILM 368 (entered into force 23 March 1976) [ICCPR].

⁹ 16 December 1966, 993 UNTS 3, 6 ILM 360 (entered into force 3 January 1976) [ICESCR].

As a ratifying state, Canada has undertaken and committed to ensuring and promoting the full realization of all human rights and fundamental freedoms for persons with disabilities without discrimination of any kind on the basis of disability and to implement the rights recognized in the *CRPD*.¹⁰ In particular, Article 28 is a legal obligation to ensure that people with disabilities have access to social protection, including poverty reduction programs, assistance with disability related expenses, public housing, and retirement benefits, as well as a standard of living adequate to live independently and be included in the community. The obligations contained in the *CRPD* are binding on Canada, both as a matter of international law and to the extent that they have been incorporated by implication into existing domestic law.

46. The Coalition may also address the purposes and provisions of the CPP-D plan, from the perspective of the communities that the Coalition members serve. As set out in the previous sections, each member of the Coalition has extensive expertise and experience related to the CPP-D program (with some also having expertise regarding the interaction between the CPP-D program and private insurance benefits). The Coalition will therefore be able to provide the Tribunal with a useful and unique perspective on aspects of the CPP-D plan. The Coalition will, however, be mindful of the need to avoid repetition in argument, and will limit its submissions on this issue to matters not already fully canvassed by the parties.

A6 – THE MATERIAL FACTS THE COALITION WILL RELY UPON

47. The Coalition will rely upon the facts as stated by the Applicant in his Application and Reply

¹⁰ *Supra* note 1, Articles 4.1-4.1(a).

48. The Coalition will rely on the material facts set out in section A5. The Coalition will also rely on social science literature, policy and other materials to support our arguments. We will seek direction from the HRTO about when to file these documents.

A7 – The Terms On Which the Coalition Requests to Intervene

49. The Coalition seeks permission to intervene on the following terms:

- (a) Permission to make oral opening submissions.;
- (b) Permission to make oral closing submissions (if closing submissions are to be made orally);
- (c) Permission to make written closing submissions in the event that the parties will be submitting written closing submissions;

50. The Coalition will abide by the current scheduling of the hearing of this matter if its request to intervene is granted, and will abide by any further orders of the Tribunal with respect to the procedure for its intervention.

51. The Coalition has requested the right to intervene on terms that, in its view, would not cause any delay in the proceedings, such that the parties will not be prejudiced if this request to intervene is granted.