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E-MAIL: centre@pilc.mb.ca

Writer's direct line: (204) 985-9735
Email: jopas@legalaid.mb.ca

July 19, 2016

The Manitoba Human Rights Commission
175 Hargrave Street
Winnipeg, MB R3C 3R8

Dear Sir/Madam:

Re: Human Rights Complaint of Ms. Amelia Hampton

Please be advised that I am counsel of record for Mrs. Charlene Hampton. All correspondence related to Mrs. Hampton's human rights complaint for Ms. Amelia Hampton should be forwarded to me.

Enclosed please find:

- 1) A Human Rights Complaint Form signed by Mrs. Hampton alleging ongoing discrimination against her daughter Ms. Amelia Hampton by Manitoba Health, Seniors and Active Living & Manitoba Families & Winnipeg Regional Health Authority.
- 2) A Written Statement of Amelia Hampton in Support of a Human Rights Complaint.
- 3) An attached paper with the legal names and contact numbers of each of the respondents.
- 4) A copy of

Please note that the complaint was inadvertently dated as June 2016. I can confirm that the complaint was signed and dated at the noted dates in July 2016.

Yours truly,

Joëlle Pastora Sala
Attorney

JPS/jw
Enclosures



Human Rights Complaint Form

Please review *Instructions for Filing a Complaint* before completing this form.
If possible, complete and return in Word format.
This form is also available in French. Ce formulaire est disponible en français.

A. Complainant:

This is the person filing the complaint. This is usually the person who has been discriminated against.

Your first name (legal name) <input type="checkbox"/> Mr. <input checked="" type="checkbox"/> Ms <input type="checkbox"/> Mrs. <input type="checkbox"/> Mx. Amelia	Your last name Hampton
--	-------------------------------

If you are filing a complaint for someone else, please also complete the following.

Their first name (legal name) <input type="checkbox"/> Mr. <input type="checkbox"/> Ms <input checked="" type="checkbox"/> Mrs. <input type="checkbox"/> Mx. Charlene	Their last name Hampton
---	--------------------------------

B. Respondent(s):

This is the organization (in some cases person) you believe has discriminated against you.

Name of business, employer, organization, landlord etc.		
Manitoba Health, Seniors and Active Living & Manitoba Families & Winnipeg Regional Health Authority		
Address where discrimination occurred		
Town or city	Province	Postal code
	Manitoba	
Business phone number	If there is more than one Respondent, please include name and contact information on an attached paper.	
Office Use Only: Legal name of Respondent(s)		

C. Characteristic(s) on which discrimination was based:

Indicate only on what basis you were discriminated against. Indicate on the line how that characteristic(s) applies to you.

- ancestry, including colour and perceived race
- nationality or national origin
- ethnic background or origin
- religion, religious belief, association or activity
- age
- sex, including pregnancy
- gender identity
- sexual orientation
- marital or family status
- source of income
- political belief, association or activity
- physical or mental disability
- social disadvantage
- other (e.g. criminal record)

D. Area in which discrimination occurred:

- | | |
|--|---|
| <input type="checkbox"/> purchase of property | <input type="checkbox"/> rental of premises |
| <input checked="" type="checkbox"/> services, facilities, programs | <input type="checkbox"/> signs and statements |
| <input type="checkbox"/> contracts | <input type="checkbox"/> employment |

E. Type of discrimination:

- | | |
|--|---|
| <input checked="" type="checkbox"/> treated differently/ disadvantaged | <input type="checkbox"/> harassed (includes sexual) |
| <input checked="" type="checkbox"/> special needs not accommodated | <input type="checkbox"/> retaliated against or reprisal |

Office Use Only: Relevant sections of *The Human Rights Code* allegedly contravened include but are not limited to:

F. Date of discrimination:

In the case of ongoing discrimination, identify the date (day/month/year) on which the last incident occurred. The incident must have occurred within the **ONE YEAR** prior to you filing this complaint. If the incident occurred more than one year ago you must explain why your complaint should be accepted.

Date (on or around): Ongoing.

My complaint is late and I have attached an explanation as to why.

G. Written statement:

Briefly explain the incident(s) that support your allegations. Be sure to include: **How** you were discriminated against or harassed, by **whom**, **when**, and on **what basis**. Include your statement in the box below or on attached pages. Your statement cannot be longer than 5 single sided standard 8.5"x11" pages, must be typed in font no smaller than size 12, or legibly printed.

<input type="checkbox"/> My entire statement in this box, or
<input checked="" type="checkbox"/> My signed statement is attached.

IMPORTANT: If your complaint is registered, only this form (sections A-G), and your written statement will form your formal complaint. It will be shared with the Respondent and serve as the basis for any mediation, investigation or adjudication that may occur.

REQUIRED: I have provided to The Manitoba Human Rights Commission documents to identify the legal name of the Respondent (e.g. ROE, T4, paystub, lease etc.)

I certify that the information on this form as well as in my written statement is true to the best of my knowledge. I understand that this document will constitute my complaint under *The Human Rights Code*.

Date: July 24, 2016 - JPS Signature of Complainant: Charlene Hampton

The personal information requested is being collected and used by The Manitoba Human Rights Commission (the "Commission") under authority of *The Human Rights Code* ("The Code"). This information will be used by the Commission to carry out its duties under *The Code*. Any questions about

Please complete Sections H-L

H. Complainant's contact information:

Mailing Address			
Town or City	Province Manitoba	Postal code	
Home phone number	Cell number	May we contact you at work? <input type="checkbox"/> yes <input type="checkbox"/> no	Work phone number
May we send confidential information to you by e-mail? <input checked="" type="checkbox"/> yes <input type="checkbox"/> no	E-mail address		

If you are filing a complaint for someone else, please also complete the following:

<p>I am filing a complaint that a person other than myself has been discriminated against because:</p> <p><input type="checkbox"/> I am their lawyer; or</p> <p><input type="checkbox"/> I am their legal guardian; or</p> <p><input checked="" type="checkbox"/> I have power of attorney over their affairs and I have included a copy of the Power of Attorney document.</p> <p><input type="checkbox"/> They have requested that I file the complaint because _____</p> <p>_____ Their signature below indicates I have permission to file this complaint.</p> <p>Signature <i>Charlene Hampton</i> Witness <i>James Wheeler</i></p>
--

I. Other steps taken to address this issue:

- | | |
|---|--|
| <input type="checkbox"/> union grievance | <input type="checkbox"/> civil claim/ court proceeding |
| name of union | <input type="checkbox"/> other |
| <input type="checkbox"/> signed a release with employer | |

J. Medical information (optional)

If your complaint is on the basis of a disability or disability related special needs, in order to speed up our process you may wish to provide information about the healthcare provider who would have relevant information about your disability. We will not contact them until you have completed and signed a consent form.

First name <input type="checkbox"/> Dr. <input type="checkbox"/> Mr. <input type="checkbox"/> Ms <input type="checkbox"/> Mrs. <input type="checkbox"/> Mx		Last name	
Name of clinic & mailing address			
Town or City		Province	Postal code
Your date of birth (used on our consent form to help your physician identify you):			

K. Witnesses (optional)

If you know individuals who have relevant information about your complaint, you may wish to provide their contact information now, to speed up our process. Providing their information does not guarantee they will be contacted.

Witness name	Phone number	Why they are important to your complaint

--	--	--

L. Important documents (optional)

If you have documents (other than a ROE, T4 or another document used to identify the legal name of the Respondent) that are relevant to your complaint, you may submit copies of those documents. Please indicate the name and date of the documents below and briefly explain why they are important to your complaint.

Document name	Document date	Why it is important to my complaint

Your complaint form and statement (preferably in Word format) and other documentation can be returned via e-mail to hrc@gov.mb.ca. It can also be mailed to:

7th Floor, 175 Hargrave Street, Winnipeg MB, R3C 3R8
 or
 341-340 Ninth Street, Brandon MB, R7A 6C2

**WRITTEN STATEMENT OF AMELIA HAMPTON
IN SUPPORT OF A HUMAN RIGHTS COMPLAINT**

Overview

1. This complaint concerns an ongoing violation of Amy Hampton's ("the Applicant") right to be free from discrimination on the basis of disability and age when receiving services. The Applicant alleges that the Manitoba Health, Seniors and Active Living (MH), Manitoba Families (MF) and the Winnipeg Regional Health Authority (WRHA) (together, "the Respondents") have failed to provide adequate services for the Applicant as well as other adults with significant physical disabilities contrary to ss. 9(1), 9(3) and 13(1) of the *Manitoba Human Rights Code* ("Code").¹
2. During her transition from youth to adulthood, the Applicant went from receiving a full suite of services to an inadequate patchwork of supports. This situation is a systemic failure. It is so widely recognized that the expression "gappers" has been coined to refer to persons (like the Applicant) who fall through the cracks in policy and law. This gap creates a hierarchy of disability and perpetuates the stereotype that people with disabilities are less worthy than others. It sends the message that society will not benefit from the Applicant's inclusion and that she is not worthy of equitable and adequate services.

Description of the Parties

3. The Applicant is a 24 year-old woman who enjoys spending time with her friends and has a passion for music and art. Since birth, the Applicant has had cerebral palsy with spastic quadriplegia. She developed scoliosis when she turned 16 years old.
4. She is not able to walk independently and uses a wheelchair or a walker as transportation devices. The Applicant is strapped to her chair and walker so she can sit and stand in an upright position. She is non-verbal but is able to communicate through facial gestures, signs and sounds.
5. Given her severe disabilities, the Applicant requires assistance with all aspects of daily living, such as pushing her wheelchair, feeding, dressing, toileting and going to bed. Due to her particular disabilities, some of her daily living activities can take quite a bit of time. For example, the Applicant's food must be pureed and she drinks from a syringe. She also requires assistance with stretching every morning to loosen her muscles. This assistance is needed to ensure her well-being and safety.
6. The Applicant has been in receipt of income assistance since she turned 18 years old. In 2011, she graduated from _____ at the age of 21. She lives with her parents in _____ Manitoba. Since 2010, the Applicant's mother, Mrs. Charlene Hampton, is paid for 45 hours per week to be her caregiver through the Family Managed Care Program.
7. The MH, MF and the WRHA are provincial government service providers. The MH and MF are tasked with delivering health services and social programs which the Applicant receives.
8. The WRHA's authority flows from the *The Regional Health Authorities Act*². The *Act* ensures that

¹ *The Human Rights Code*, CCSM 2015, c H-175 art 9(1)(2)(3), 13(1) [Code].

² *The Regional Health Authorities Act*, CCSM (2014), c R-34.

Charlene Hampton on behalf of Amelia Hampton: CH July 19, 2016
JPS

July 19, 2016
JPS

type of financial assistance was no longer available. When she turned 23 years old, her family had to purchase a new van and pay out of pocket for additional costs for making the vehicle wheelchair accessible was approximately \$25,000.

15. Throughout this process, a major challenge for the Applicant and her family has been the lack of assistance and information to guide the transition from childhood to adulthood. The lack of information adds additional stress to the Applicant and her family as they are left to navigate a patchwork of programs and services on their own.
16. The loss of critical supports and services has created a situation where the Applicant must rely on her parents to pay for her access to essential services. Specifically, the Applicant's parents pay approximately \$10,000 per year for the services provided by the Movement Centre of Manitoba. This Centre, the Applicant learns ways to improve her physical mobility, function more independently and foster relationships with peers.
17. The failure by the Respondents to ensure ongoing services once the Applicant turned 18, results in her becoming completely dependent on her family. This situation has caused significant anxiety, financial and emotional stress for both the Applicant and her family.

IQ Testing: A Demeaning Quest for Appropriate Services

18. Community Living Disability Services offers a vast array of residential, day and other support services.⁶ In order to qualify for the CLDS, a person must be considered to be “vulnerable” under *The Vulnerable Persons Living with a Mental Disability Act (VPA)*.⁷
19. The Department's policy also relies on the Diagnostic and Statistical Manual of Mental Disorders (DMS) to determine eligibility. While the outdated DSM IV defined “mental retardation” as an “intellectual functioning (an IQ of approximately 70 or below)”, the current DSM V includes a more holistic definition and does not refer to the IQ test.⁸ Despite the updated DSM V and the Department's policy, the Department continues to rely on the IQ test.
20. Determining eligibility based on the IQ test is demeaning. It is also contrary to the VPA's legislative intent to provide support services for adults with intellectual disabilities based on their needs.

⁶ These supports include: independent living, day services that aim to help individuals participate in the community such as supported employment, as well as vocational and personal skill development. Moreover, some individuals may qualify for services such as respite, transportation and clinical services.

⁷ *Vulnerable Persons Living with a Mental Disability Act*, CCSM (2014), c V-90: Section 9 of the VPA allows the Minister to “provide or arrange for the provision of support services for a vulnerable person.” A “vulnerable person” is defined under s. 1(1) of the VPA as an adult living with a mental disability in need of assistance to meet their basic needs. A “mental disability” is defined as “significantly impaired intellectual functioning existing concurrently with impaired adaptive behaviour manifested prior to the age of 18 years.” The Program's Eligibility Policy provides that in order to determine whether individuals have “significantly impaired intellectual functioning”, there must be a “current and conclusive” intellectual assessment.

⁸ The DSM V states that Intellectual disability “is characterized by deficits in general mental abilities, such as reasoning, problem solving, planning, abstract thinking, judgment, academic learning, and learning from experience. The deficits results in impairments of adaptive functioning, such that the individual fails to meet standards of personal independence and social responsibility in one or more aspects of daily life, including communication, social participation, academic or occupational functioning, and personal independence at home or in community settings.”

21. The Applicant has not taken the IQ test given her and her family view it as degrading and flawed. In addition, given her physical disabilities, taking the IQ test is not an option for the Applicant. Relying on the IQ test to determine eligibility is demeaning and is contrary to the VPA's legislative intent to provide support services for adults with intellectual disabilities based on their needs.
22. The Applicant views not being eligible for CLDS as a punishment for having the "wrong kind of disability".

Inadequate Home Care Services Lead to Isolation and Despair

23. The Applicant's primary caregivers are her parents. The Applicant is eligible for 55 hours of home-care per week. She is part of a minority of home-care clients whose mother is paid for 45 hours per week under the Family Managed Care Program of the MHCP. The remaining 10 hours is provided to the Applicant and her parents through respite services.
24. Under the MHCP, the Applicant would likely be eligible for the same amount of hours of home-care services. However the services offered by home-care workers are very limited. Typically, home-care workers are dispatched for 15-25 minutes to help clients with their medical and personal care needs. They would not cater to the Applicant's social needs and when home-care is not available, the Applicant would be left alone potentially putting her health and safety at risk.
25. Given the Applicant's high level of required care, the option of receiving home-care visits would not be appropriate for her. The only other option that would be available to the Applicant is to move to a personal care home. These homes cater to senior citizens. They are not designed to meet the needs of young adults, nor do they enable them to lead satisfying and productive lives in their communities.
26. Life in a personal care home would be isolating for the Applicant; she would lack stimulation appropriate to her age and abilities, and it would be difficult for her to find meaningful companionship.

Individual and Systemic Discrimination Based on Disability and Age

27. The situation described in this complaint consists of individual and systemic discrimination based on disability and age. The Applicant and other adults with severe physical disabilities find themselves in a legislative and policy gap of services for persons with disabilities because:
 - (a) When individuals are over 18, they are not eligible for the CDSP.
 - (b) Persons with physical disabilities do not qualify for the CLDS, a parallel adult program of the CDSP, if they do not have a mental disability.
 - (c) For adults without mental disabilities, the MHCP provides a maximum of 50-55 hours of home care a week. The provision of the MHCP services is inadequate because: (i) the amount of hours is insufficient as the Applicant requires 24/7 care for her health and safety and (ii) the MHCP is based on a medical model of service delivery and puts insurmountable barriers in place for him to have a meaningful life.

Charlene Hampton on behalf of Amelia Hampton: CH July 19, 2016

July 19, 2016

70

13

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Manitoba. Health, Seniors and Active Living

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Service: Health Workforce Division / Insured Benefits Branch

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Record #: VMB3881 **Last Full Update:** 08 May 2014

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Toll Free Phone	1-800-392-1207 General Inquiries 1-866-778-7730 Health Care Fraud Line 1-800-392-1207 Ext. 7303 Out of Province Claims 1-800-297-8099 Pharmacare
TTY Phone	204-774-8618 TDD 711 or 1-800-855-0511 TDD Relay Service outside Winnipeg
Fax	204-783-2171 General Inquiries 1-866-608-2983 Toll Free General Inquiries 204-786-6634 Pharmacare
E-Mail	insuredben@gov.mb.ca
Website	www.gov.mb.ca/health/mhsip/index.html
Location	Downtown (Winnipeg)
Address	300 Carlton St Winnipeg, MB R3B 3M9 View Google Map

Intersection	Portage Ave and Carlton St
Bus Route Information	10 Wolseley, 11 Portage, 14 Ellice, 15 Mountain, 19 Notre Dame, 24 Ness, 38 Salter, 43 Munroe, 53, 55 St. Anne's, 56, 62 Richmond, 68 Crescent
Parking	Visitors lot on West side of building; Accessible off Ellice Ave.
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[Text area for comment or question]

Your name (optional)

[Text field for name]

Do you require a response?

No Yes

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(email address, phone number or address - *required if requesting a response*):

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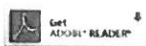
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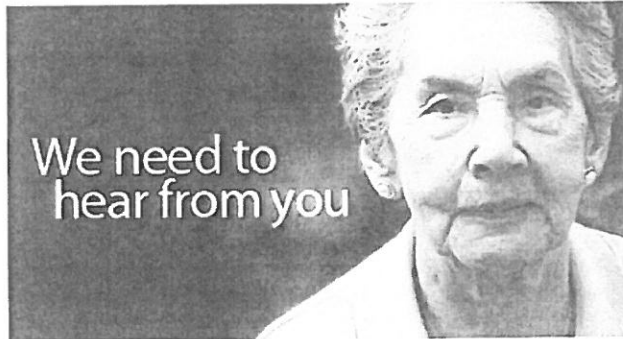
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 4th Floor, 650 Main Street
 Winnipeg, Manitoba
 R3B 1E2 Canada
 Phone: 204-926-7000
 Fax: 204-926-7007

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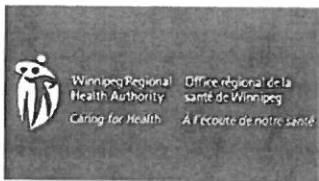
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