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**300 - 287 BROADWAY
WINNIPEG, MANITOBA
R3C 0R9**

**TEL: 204.985.8540
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E-MAIL: centre@pilc.mb.ca

Writer's direct line: (204) 985-9735
Email: jopas@legalaids.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 Mr. Tyson Sylvester

Please be advised that I am counsel of record for Mr. Tyson Sylvester. All correspondence related to Mr. Sylvester's human rights complaint should be forwarded to me.

Enclosed please find:

- 1) A Human Rights Complaint Form signed by Mr. Tyson Sylvester alleging ongoing discrimination by Manitoba Health, Seniors and Active Living & Manitoba Families & Winnipeg Regional Health Authority.
- 2) A Written Statement of Tyson Sylvester in Support of a Human Rights Complaint.
- 3) An attached paper with the legal names and contact numbers of each of the respondents.

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 checked="" type="checkbox"/> Mr. <input type="checkbox"/> Ms <input type="checkbox"/> Mrs. <input type="checkbox"/> Mx. Tyson	Your last name Sylvester
---	---------------------------------

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 type="checkbox"/> Mrs. <input type="checkbox"/> Mx.	Their last name
--	-----------------

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 N.A		
Town or city	Province Manitoba	Postal code
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 19/16 Signature of Complainant: T.S.

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

the collection, use or disclosure of personal information requested on this form should be directed to the Access and Privacy Coordinator at 204-945-5815.

Please complete Sections H-L

H. Complainant's contact information:

Mailing Address			
Town or City	Province	Postal code	
Winnipeg	Manitoba		
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:

I am filing a complaint that a person other than myself has been discriminated against because:


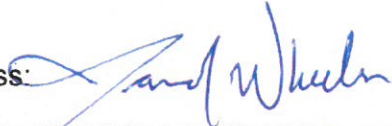
I am their lawyer; or

I am their legal guardian; or

I have power of attorney over their affairs and I have included a copy of the Power of Attorney document.

They have requested that I file the complaint because

Their signature below indicates I have permission to file this complaint.

Signature  Witness: 

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 | |

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 TYSON SYLVESTER
IN SUPPORT OF A HUMAN RIGHTS COMPLAINT**

Overview

1. This complaint concerns an ongoing violation of Tyson Sylvester'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 his transition from youth to adulthood, the Applicant went from receiving a full suite of services to an inadequate patchwork of rudimentary 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 he is not worthy of equitable and adequate services.

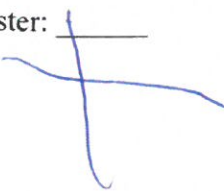
Description of the Parties

3. The Applicant is a 20-year-old man who values human interaction, has a thirst for knowledge and enjoys surfing the Internet. He fulfills these two passions through online interactions and research. Since birth, the Applicant has been severely visually impaired and uses a wheelchair due to his cerebral palsy. For his safety and well-being, he requires assistance in all aspects of his day-to-day life, including feeding, dressing, toileting and going to bed.
4. Since turning eighteen, he has been in receipt of income assistance. He lives alone in an apartment at _____ in Winnipeg.
5. The MH, MFS and the WRHA are provincial government service providers. The MH and MFS are tasked with delivering health services and social programs which the Applicant receives. The WRHA's authority flows from the *The Regional Health Authorities Act*.² The WRHA administers the *Manitoba Home Care Program* ("MHCP") which is strictly limited to personal and medical care. MFS has put two programs in place to deliver services for persons with disabilities: (1) the Children's disABILITY Services Program ("CDSP"); and (2) the *Community Living disABILITY Services* ("CLDS").

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

² *The Regional Health Authorities Act* CCSM c R34 art 23(2)(h). The Act states that "health services are provided in a manner that is responsive to the needs of individuals and communities in the health region."

Tyson Sylvester: _____



July 19/16

July 19, 2016

JPS

The Applicant Received Appropriate Services Until Leaving Highschool

6. The Applicant attended _____ from 2010 to 2015. He graduated in January 2015. Until he graduated from high school, the Applicant was eligible for a wide array of personal and educational services offered by the CDSP, funded through his public school board and Manitoba Families. Specifically, he was provided services through Special Needs Categorical Funding which allows for an in-depth accommodation program for students.
7. As part of these supports, the Applicant was eligible for personal care and had one-on-one support during his entire schooling. The Applicant and his mother also had access to respite, occupational therapy and rehabilitation, supplies and equipment, and transportation to and from appointments and school. This program enabled the Applicant to live as independently as possible in his own community in a way that respected his self-worth and valued his dignity.

Reaching Adulthood and Losing Access to Critical Supports

8. During his transition from youth to adulthood, the Applicant went from receiving a full suite of supports to suddenly being left with only the most rudimentary assistance which does not meet his social needs. This transition has created an enormous strain on the Applicant and his mother.
9. Pursuant to the eligibility criteria of the Children disABILITY Services, when the Applicant turned 18, he was no longer eligible for the majority of services provided by the Children disABILITY Services Program. For example, the Applicant had access to a screen reader which empowered him to learn, communicate, socialize and perform important tasks such as banking. Upon graduation, his screen reader was removed. Once the Applicant turned 18, he was left at the mercy of Employment and Income Insurance to determine whether his equipment is “essential to health and well-being.”³
10. Throughout this process, a major challenge for the Applicant and his mother has been the lack of assistance and information from childhood to adulthood. The lack of information adds additional stress as they are left to navigate a patchwork of programs and services on their own.
11. The failure by the Respondents to ensure ongoing services once the Applicant turned 18, results in him becoming completely dependent on his mother. This situation has caused significant anxiety, financial and emotional stress for both the Applicant and his mother.

IQ Testing: A Demeaning Quest for Appropriate Services

12. Community Living Disability Services offers a vast array of residential, day and other support services.⁴ 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).⁵

3 *The Manitoba Assistance Act*, CCSM (2015), c A-150, art 2.

4 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.

5 *Vulnerable Persons Living with a Mental Disability Act*, CCSM (2014), c V-90: Section 9 of the VPA, allows the

Tyson Sylvester:



July 19/16

June 18, 2016



13. The Department's policy states that it 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. Despite the updated DSM V and policy, the Department continues to rely on the IQ test.
14. 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.
15. In a desperate attempt to receive services, the Applicant has taken the IQ test. Despite requiring the individualized services which are provided by CLDS, given his IQ test score was above 70, the Applicant was deemed ineligible for CLDS. The Applicant felt the requirement of an IQ test to access essential personal care services was demeaning.
16. 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

17. The Applicant is currently eligible for a maximum of 50 hours per week of home-care services funded by the MHCP, which is provided by the WRHA.
18. The Applicant is part of a minority of home-care clients that uses the program to live at home permanently in combination with assistance from his family and friends.⁶ When home-care is unavailable, the Applicant is home alone. In some cases, the Applicant's mother, a single parent working full time, must take time off work. On average, the Applicant's mother must be absent from work at least two or three days per month.
19. The services provided by the WRHA are limited to medical and personal care. On a daily basis, a home-care worker is dispatched for 15 to 25 minutes to help the Applicant bathe, dress and go to the washroom. He is fed a meal that has been prepared by his mother and is given his medication. The home-care worker does not offer companionship, shopping or transportation services.
20. There are no educational requirements for home-care workers. Many of them have not received

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.

⁶ Manitoba is the only province in Canada where there is a home-care policy in place that requires family members to create a backup plan in case of service interruptions.

Tyson Sylvester: 

July 19/16

July 19, 2016
TSS

any training to transfer patients from their bed to a wheelchair. This is particularly troublesome for the Applicant as he is unable to leave his chair for personal care purposes.

21. Home-care does not provide any consistency of care. The Applicant often receives visits from different and unfamiliar workers. Workers are usually rushed and unaware of his needs. On a regular basis, he is obliged to re-explain his medical or current needs, leaving workers little time to actually assist him.⁷
22. Since Manitoba home-care services does not have the authority to transport clients off-site, the Applicant is left indoors all day and has nothing to do but use his computer. If he needs to use the toilet – a basic human need – he must wait hours until the next home-care visit or relieve himself his wheelchair.
23. The lack of consistency in home-care workers creates a situation where the Applicant cannot develop meaningful relationships with anyone but his mother. His lack of human interaction causes him extreme loneliness, which impacts his self-esteem and confidence.
24. If the Applicant's mother becomes unable to care and support him, the service structure is such that he would need 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 allow for self-actualization within communities.
25. Life in a personal care home would be isolating for the Applicant; he would lack stimulation appropriate to his age and abilities, and it would be difficult for him to find meaningful companionship.

Individual and Systemic Discrimination Based on Disability and Age

26. 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 his 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.

⁷ For example, a worker explained something to the Applicant by gesturing, without realizing that the Applicant was visually impaired. The Applicant has also been dropped during a transfer by a new home-care worker, which caused him trauma and resulting in a sprained ankle.

Tyson Sylvester:



July 19/16

July 19, 2016



27. HCP expects informal caregivers such as the Applicant's mother to supplement the role of home-care providers. The presumption that there exists a moral obligation for families to care for their relatives is an adverse and stereotypical treatment by the law that ignores one's autonomy and dignity as an individual.
28. This situation is so widely recognized that health and social service providers have coined the expression "gappers" to refer to persons (like the Applicant) who fall through the cracks in policy and law. The legislative and policy gap creates a hierarchy of disability and perpetuates stereotypes that persons with severe disabilities are less worthy of community living services.
29. This situation consists of discrimination based on age because individuals with lifelong physical disabilities who are under 18 years-old qualify for CDSP, but individuals with the same physical disability who are 18 years-old and older do not qualify for CLDS, the parallel adult program. There seems to be a false and ableist presumption that it is somehow easier for an individual over 18 with physical disabilities to live without full care, than it would be for a 17 year-old.
30. However, disabilities see no ages. This presumption does not take into consideration the actual circumstances and needs of individuals turning 18 who have physical disabilities. There is no way to justify such a pronounced discrepancy between the two groups.

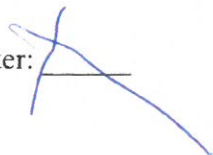
Remedies

31. The Applicant seeks the following orders under s. 43(2)(a) of the *Code* that: (1) the Respondents immediately cease their discriminatory practices; and (2) the Respondent take measures to redress the practice or prevent the same or similar practices from occurring in the future. The Applicant also seeks a remedial order in accordance with the provisions of sections 43(2)(b) and (c) of the *Code*. This list of remedies is not exhaustive and the Applicant reserves the right to seek additional or different remedies.

Conclusion

32. This complaint has not addressed undue hardship, or justification of the discrimination. The Applicant reserve the right to address these issues. The events described in this application took place in the Province of Manitoba. The Applicant certify that the information contained in this complaint is correct to the best of their knowledge. He believes that the events described above constitute a continuing contravention of *The Human Rights Code*.

Tyson Sylvester:



July 19/16

July 19, 2016 JPT

Winnipeg Health Services Online Directory

Record Details

Search

CONTACT Community Information

Volunteer Manitoba

Suggest a new Record

Search CONTACT Database

Login (administrator)

Manitoba. Health, Seniors and Active Living

Site: Public Health Branch

Service: **Health Workforce Division / Insured Benefits Branch**

 Add Record |  Suggest Update |  Print Version (New Window)

Share:

Record #: VMB3881 Last Full Update: 08 May 2014

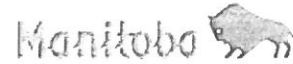
Location, Telephone & Internet

Office Phone	204-786-7101 General Inquiries 204-786-7118 Health Care Fraud Line 204-786-7303 Out of Province Claims 204-786-7141 Pharmacare
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.
Description & Services	

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- Family Violence Prevention Program
- Financial Benefits and Assistance
- Foster Care
- Information for Manitobans with Disabilities
- Manitoba Developmental Centre
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- Vulnerable Persons' Commissioner Office
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To help redirect your inquiry choose a topic from the menu below. If your question or comment relates to more than one topic, please choose "other" from the menu list.

Choose a topic

Comment or question:

[Large text input area for comment or question]

Your name (optional):

[Text input area for name]

Do you require a response?

No Yes

Contact information

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

[Text input area for contact information]

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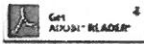
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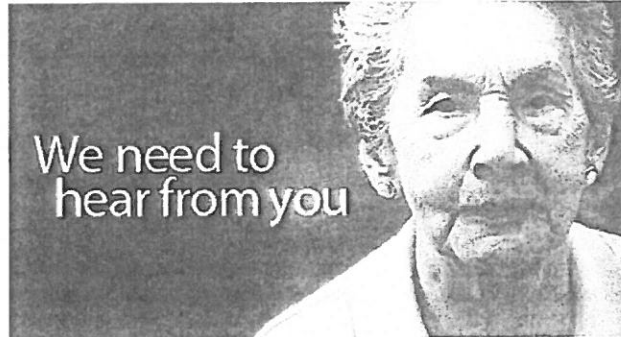
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News and Information from the Winnipeg Regional Health Authority

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

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The July / August 2016 issue of Wave, Winnipeg's health and wellness magazine, is now available online.

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Do you have any
comments or concerns?

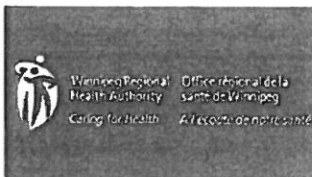
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