

To: member of the Legislative Assembly for:

_____ Date

_____ Name

_____ Province

_____ Contact (email/ mailing address)

Re: Private Members’ Motion to Establish THE GAYTON PRINCIPLE

“People with disabilities, both physical and cognitive, are currently discriminated against in the Legal Aid system because they are not offered substantive – or actual – equality.”¹

The Canadian Charter at s.15 guarantees all Canadians equality and by implication equal access to justice. By failing to take into account the cognitive capacity and abilities of the person seeking assistance in determining Legal Aid eligibility, provincial Legal Aid programs discriminate against people with cognitive disabilities. It is well established by Jordan’s Principle that individuals facing systemic inequities (in that case Indigenous children and their families) must be “levelled up” by greater resources – in this case, funding for legal representation.

Relying upon empirical research conducted by the NATIONAL SELF-REPRESENTED LITIGANTS PROJECT (NSRLP) in 2021, summarized in their report, **Struggling for Accommodation: Barriers to Accessibility faced by Cognitively Disabled SRLs**,² wherein experiences of cognitively disabled self-represented litigants (SRLs) who have requested accommodations for their cognitive disabilities were examined, we ask you to review the information provided herein and support our request that a private members Motion be tabled before the Legislative Assembly in your Province, in order to establish **The Gayton Principle**.

In 2016, a Canadian Human Rights Tribunal decision found the government in breach of the Jordan’s Principle established in 2007 in the House of Commons that recognized that Indigenous children, “have suffered historical disadvantage and must be able to access all public services when they need them...”³ People with disabilities applying for Legal Aid should be afforded the same protection and recognition, since they are also a group that requires more than formal equality (for example, financial eligibility for Legal Aid); they have the right to access our public courts in a meaningful way through access to appropriately skilled legal counsel. Recognition of the impact of cognitive disability on ability to self-represent is critical to

¹ “Enact the Gayton Principle,” Judy Gayton, NSRLP blog post November 15, 2021 (<https://representingyourselfcanada.com/enact-the-gayton-principle/>)

² “Struggling for Accommodation: Barriers to Accessibility faced by Cognitively Disabled SRLs,” NSRLP research report released November 15, 2021 (<https://representingyourselfcanada.com/struggling-for-accommodation-barriers-to-accessibility-faced-by-cognitively-disabled-srls/>)

³ *First Nations Child and Family Caring Society of Canada et al. v. Attorney General of Canada* (for the Minister of Indian and Northern Affairs Canada), Canadian Human Rights Tribunal, 2016 CHRT2

achieving substantive equality in access to justice for this group, who have been historically disadvantaged.

In addition to the NSRLP report, participants' testimonies and the NSRLP's recommendations were presented to the Ontario Courts Accessibility Committee in June of 2021.⁴ Segments of the interviews were shared publicly on the NSRLP podcast, "Struggling for Accommodation."⁵

In "Making Ontario's Courts Fully Accessible to Persons with Disabilities," December 2006,⁶ the Honourable Roy McMurtry affirmed *Eldridge v. BC*, a landmark Supreme Court of Canada decision which held that, "once a government undertakes to provide a benefit to the general population, it is required by s.15(1) to ensure that the disadvantaged members of society listed in s.15(1) have the resources to take full advantage of that benefit. The SCC ruled that the appellants' equality rights had been violated and the infringement could not be justified under s.1 of the *Charter*."⁷

Further, the NSRLP 2021 report makes the following recommendations (summarized):⁸

1. Judicial training should be improved.
2. Accommodation policies and the types of accommodations available should be much more thoroughly and effectively communicated to self-represented litigants (SRLs).
3. Official Court web pages should be updated to include clear information about the role and function of the Accessibility Coordinators.
4. Consideration should be given to enabling SRLs to identify their disability at the beginning of the court process.
5. That training and messaging about the barriers to justice faced by cognitively disabled SRLs be shared more effectively with members of the Bar.

THANK YOU,

SIGNED _____

Date: _____

⁴ "NSRLP Presents to Ontario Courts Accessibility Committee," NSRLP News posted October 25, 2021 (<https://representingyourselfcanada.com/nsrlp-presents-to-ontario-courts-accessibility-committee/>)

⁵ "Struggling for Accommodation," NSRLP Podcast posted June 15, 2021 (<https://representingyourselfcanada.com/struggling-for-accommodation/>)

⁶ "Making Ontario's Courts Fully Accessible to Persons with Disabilities [Report of Courts Disabilities Committee], December 2006 (https://www.ontariocourts.ca/accessible_courts/en/report_courts_disabilities.htm)

⁷ "Landmark Case: *Eldridge v. British Columbia (Attorney General)*" (<https://ojen.ca/en/resource/landmark-case-eldridge-v-british-columbia-attorney-general>)

⁸ For full details of the NSRLP recommendations, see section 5 of "Struggling for Accommodations: Barriers to Accessibility faced by Cognitively Disabled SRLs," NSRLP Report released November 15, 2021 (<https://representingyourselfcanada.com/struggling-for-accommodation-barriers-to-accessibility-faced-by-cognitively-disabled-srls/>)