



McGill Centre for Human  
Rights and Legal Pluralism

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Centre sur les droits de la personne  
et le pluralisme juridique de McGill

## SEMINAR SERIES

### GLOBAL PERSPECTIVES ON DISABILITY, HUMAN RIGHTS AND ACCESSING JUSTICE 2013-14

#### Human Rights and Inclusive Development: Integrating the Disability Perspective

October 2, 2013

**Moderator:**

Jonas-Sébastien Beaudry (Boulton Junior Fellow, CHRLP)

**Resource Persons:**

Anne-Marie Mooney Cotter (O'Brien Fellow, CHRLP)

Ravi Malhotra (Associate Professor, University of Ottawa, Faculty of Law)

Lipi Mishra (Law Student Intern, Legal Action for Persons with Disabilities)

**Organized by:**

Centre for Human Rights and Legal Pluralism

McGill Human Rights Working Group – Disability and the Law Portfolio

#### Summary of Seminar

On September 23, 2013, the UN General Assembly held a High-level Meeting on Disability and Development to elaborate concrete guidelines to improve the welfare of persons with disabilities. This meeting happened five years after the *Convention on the Rights of Persons with Disabilities* (CRPD) came into effect, which marked a shift toward a social and participative view of disability. The CRPD advocates a perspective that enables persons with disabilities to live independently and participate fully in all aspects of life. Despite this, there is an urgent and ongoing need for disability-inclusive development strategies. Each resource person presented brief remarks at the start of the discussion.

Ravi Molhotra linked the discussion of development with the importance of education for persons with disabilities, as enshrined in article 24 of the CRPD. He stressed education rights as fundamentally important to learning skills and employment inclusion, noting how persons with disabilities have, historically, been excluded from the workplace. He notes that litigants must be empowered by not only the CRPD, but also the UN *Declaration of the Rights of the Child*, and *International Covenant on Economic, Social and Cultural Rights*. There is a need to translate these international treaties to substantive provisions. For example, in *Moore v. British Columbia (Education)*, a 2012 case, the Supreme Court of Canada reached the right outcome for protecting the rights of a child with a learning disability in Molhotra's view, but did not rely on the CRPD. Ways of integrating international law were then briefly discussed, noting the need to look at individual merits on a case-by-case basis. Finally, Molhotra stressed regulation as an important factor in disability rights, and that arguments that regulation is law must be made. Litigants can use regulation within provincial legislation as a way of encouraging the

implementation of the CRPD. He concluded that development is not just an issue in the global south, and that Canadian litigators should be pushed to rely on the CRPD more in making their arguments.

Anne-Marie Cotter spoke of her experiences as a disability lawyer in Alaska. She stressed disability rights not only as human rights but also as civil rights, especially in the American context. There need to be safeguards to ensure that persons with disabilities who are legitimately unable to work due to their disability receive an income. A social safety net is in place to assist persons with disabilities, though they continue to live below the poverty line. As such, social security in this context is a human rights issue. There need to be safeguards to ensure that persons with disabilities can earn an income. Often, wheelchair access or accommodation is the difference between being able to work or not. The *Americans with Disabilities Act*, which is applicable to both private and public entities, has contributed to access in this sense. Internationally, many countries have strived to bring laws into conformity with the CRPD. While the legal side is critical, there remains a societal stigma around disability, particularly mental disability. In New Zealand, the policy has focused on inclusiveness as a way of mainstreaming disability. Around the world, it is estimated that 1-2 billion people have mental disabilities. PTSD, for example, is widespread in war-torn countries. Children are increasingly being diagnosed with autism. As such, there is a need for attorneys who will represent children with special education needs. At the same time, the very word disability is problematic. Cotter ended by insisting on the need, particularly in cases of discrimination, to look at intersecting grounds of inequality, including disability, race and gender.

Lipi Mishra discussed her experiences as an intern with *Legal Action for People with Disabilities* in Kampala, Uganda. Though Uganda claims to protect persons with disabilities, its legislation is extremely harmful, in Mishra's view. The Penal Code as well as the *Mental Treatment Act* define persons with mental disabilities as "idiots" and "imbeciles." Further, there are paternalistic provisions used to usurp property and other rights through guardianship. Children can be taken away, marriages declared void and legal capacity lost simply because someone is diagnosed with a disability. While Uganda pays "lip service" to its international obligations, domestic legislation derogates from those same rights. Mishra then spoke of her work that involved consulting with persons with disabilities, internally displaced persons and members of the LGBTQ community in Uganda. Many people reported discrimination from their family, community and police. In addition, many were unemployed and those with disabilities who had work were mostly self-employed. Some reported having their property stolen by family members, or having been placed under the guardianship of a parent. Persons with disabilities spoke of their diagnosis as stripping them of not only their rights, but also their ability to contribute meaningfully to their families and communities, making poverty and disability mutually reinforcing. Mishra ended hopefully, speaking of the Heart and Sounds organization that provides peer support, employment opportunities and training for persons with disabilities who use mental health services. Since this type of development provides much needed opportunities, there is a need for greater state buy-in to expand these types of projects.

When the floor was opened for general discussion, the need for specific implementation of the CRPD was discussed. While some rights in the CRPD merely replicate those enshrined in the *Charter*, others go further. Molhotra expressed skepticism that the CRPD creates new rights. He pointed, however, to damages being awarded in Ontario for cases of discrimination in employment law as a positive step. Dr. Cotter insisted on the need for domestic laws to back up the rights in the CRPD. Legal changes need to be coupled with a shift in public perceptions of disability to facilitate the passing of legislation that empowers persons with disabilities. Molhotra noted that Canada has not facilitated the optional protocol, the mechanism to directly enforce the rights provided for in the CRPD. As such, there is a movement on the ground needed, much like the LGBTQ movement that has seen success. The conversation then turned from macro-international rights to accommodating students with disabilities at McGill and the principles that should guide those policies. While the guiding principle is the duty to accommodate, it is difficult to determine exactly what this standard means in practice, especially in terms of an obligation to accommodate mental health issues.