



McGill Centre for Human
Rights and Legal Pluralism

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

Proactive Approaches to Inclusion: Legislative and Policy Developments

January 27, 2014

Moderator:

Colleen Sheppard (Director, CHRLP, Professor, McGill University, Faculty of Law)

Resource Persons:

Arlene Kanter (Professor, Syracuse University College of Law)

David Lepofsky (Chair, Accessibility for Ontarians with Disabilities Alliance)

Aurélie LeBrun (Researcher, Quebec Human Rights and Youth Rights Commission)

Organized by:

Centre for Human Rights and Legal Pluralism

McGill Human Rights Working Group – Disability and the Law Portfolio

Summary of Seminar

Professor Sheppard introduced the topic by stating that the subject was a very broad one. The purpose of the seminar, however, was to focus on domestic legislative, research and policy initiatives and to examine the extent to which those initiatives facilitate proactive change and the prevention of discrimination. She noted that the panellists would examine, in particular, the impact of the *Americans with Disabilities Act*, the *Ontarians with Disabilities* and *Accessibility for Ontarians with Disabilities Acts* and a research study on accessibility in Quebec. In exploring the themes of disability rights and social inclusion, therefore, the workshop explored the intersection between the litigation model of rights protection versus proactive approaches.

Arlene Kanter framed her discussion around the positive and negative impact of the *Americans with Disabilities Act* (ADA). In terms of the positive aspects, Professor Kanter indicated that the ADA adopted a relatively broad definition of “disability”. In particular, she said that the ADA reflects the social model of disability, protecting people who are socially regarded as having a disability. The social model recognizes that there are prejudices that may result in social exclusion of people who are perceived to be disabled.

In terms of criticism of the ADA, Professor Kanter indicated that employment of persons with disabilities has not increased. The other major problem is that the ADA is primarily enforced through the litigation model. This creates problems of access and results in legal problems such as procedural challenges to standing. Professor Kanter claimed that achieving compliance with the ADA through a litigation model

is difficult. This aspect of the ADA was contrasted to the UN *Convention on the Rights of Persons with Disabilities*. Professor Kanter stated that the *Convention* rejected the medical model and adopted a human rights approach to disability. The *Convention* has stringent monitoring and reporting requirements, which is a more effective and accessible method to gain compliance than the litigation model.

David Lepofsky focused his discussion on the history and developments in disability rights legislation in Ontario. Notably, Ontario was the first province to introduce comprehensive disability legislation. He talked about “barriers”—physical, technological, attitudinal, and bureaucratic—which put people with disabilities in a position of disadvantage. In light of Ontario’s disability legislation, the Canadian *Charter of Rights and Freedoms* and various human rights codes, Mr. Lepofsky claimed that such barriers are essentially illegal. However, this illegality is not having the effect of removing the barriers. He claimed that part of this problem is that barriers have to be fought one at a time through litigation, which is a major difficulty given that it pushes responsibility for enforcement onto those with disabilities. He suggested that this problem might be partly addressed by crafting more specific legislation and codes which tell organizations *specifically* what they have to do and require them to proactively think about removing barriers. He also advocated for an approach that would see the government more actively enforce these standards, which would help alleviate the problem of enforcing the standards “one litigation at a time”.

Aurélie LeBrun discussed a research project carried out by the Commission des droits de la personne et les droits de la jeunesse du Québec (CDPDJ). The project, *Towards Universal Access Goods Services in Pharmacies and Supermarkets*, focused on pharmacies and supermarkets because these entities provide basic, necessary services used by all. The CDPDJ had also seen an increase in disability-based complaints against these organizations. The purpose of the research project was to try to address complaints proactively, rather than complaint by complaint. The CDPDJ hopes to raise awareness in the business community and convince this community of the need to adopt universal accessibility practices. One of the most interesting findings of the study was the impact that staff training had on accessibility—improperly trained or insensitive staff could easily (unintentionally) undo good accessibility work. The CDPDJ found that the organizations responded positively and were receptive to incorporating the findings of the study into their businesses, including the provision of staff training.

There was a robust discussion period following the presentations. The group further discussed enforcement options, which led to Professor Kanter referring to a proactive practice in Israel of using “accessibility compliance professionals” to assess new buildings for accessibility, similar to a building code inspection. Ms. LeBrun emphasized the human dimension to accessibility: despite equitable architectural design, difficulties arise when employees are unfamiliar with accessibility practices.

The group also discussed various strategies for enforcing disability rights. Class actions were discussed, though it appears that not many disability rights cases have been brought as class actions—Mr. Lepofsky surmised that this was because individual cases generally affect large groups of people, so class actions may not be necessary (especially given that the remedy sought is not a financial remedy, but a change to a practice creating a barrier to access).

The session ended with Mr. Lepofsky suggesting that we ought to look at disability rights in a different way. He claimed that the old way of looking at disability rights was to approach the issue as one of people with disabilities against “everybody else”. However, a better way to approach the issue is to focus on the fact that everybody may eventually have a disability, and that accessibility and disability rights is really about improving the social environment for everyone, not just a select group.