



McGill Centre for Human
Rights and Legal Pluralism

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

SEMINAR SERIES

LIBERTY AND SECURITY OF PERSONS WITH DISABILITIES: RHETORIC AND REALITY 2015-16

Disability and the Criminal Justice System

September 21, 2015

Moderator: Professor Marie Manikis

Resource Persons: Justice **Patrick Healy** (Court of Quebec), **Laurent Morissette** (Vice-President, RAPLIQ), **Bekithemba Mlauzi** (LLM Candidate at McGill University), **Dianah Msipa** (Prosecutor, Zimbabwe *via video capsule)

Organized by: Center for Human Rights and Legal Pluralism (CHRLP)

Summary of Seminar

This seminar explored different international perspectives on the intersection of mental health and physical disability and the criminal justice system, with each of the speakers having played a role in the system at different stages. **Justice Healy** began the session by making the observation that issues concerning people with disabilities touch on all spheres of the criminal justice system (the trial, procedure) and can affect everyone (suspect, witness, victim, defendant, jurors). Justice Healy demonstrated that these issues have not been dealt with in a coherent way. In 2010, Canada ratified the *United Nations Convention on the Rights of Persons with Disabilities* (CRPD), and assumed the responsibility of taking concrete steps to bring criminal law into compliance with the CRPD. Yet, five years after ratification there is no such evidence. The Office for Disability Issues has been established, but one cannot find in that office or in any of its publications a plan to bring Canada in compliance with the CRPD. In 2013, the federal government published the *Federal Disability Reference Guide*, but no law reforms are in progress. Justice Healy is also not aware of any plan set out by the Department of Justice. What we do have right now are fragments in the law on how to deal with people with disabilities. What we need, however, is a coherent policy, especially since half of criminal cases involve some form of mental disability. Justice Healy strongly concluded that it is simply not the case that Canada has undertaken an “aggressive program” to bring criminal law, in all of its aspects, into compliance with the CRPD.

Laurent Morissette gave a portrait of the organization he has been a part of: *Regroupement Activistes pour l’Inclusion Quebec* (RAPLIQ). He then explained that the reason there has not been any significant improvement since Canada’s ratification of the CRPD is due to political and legislative unwillingness to deal with these issues. He then highlighted several issues people with disability face with the justice system. First, there is a lack of accommodation and accessibility for people with disabilities. Simply accessing the courts is often an issue. This lack of accessibility is not only dangerous for people with limited mobility, but it is also humiliating. Another issue raised by Mr. Morissette is privacy. If a person is deaf, for example, and needs support from an interpreter to share their testimony, how can we ensure that the person’s testimony will be kept in confidentiality? And how can we ensure that the interpreter will give

the full, true story, that the hearing impaired person is conveying? There seems to be no simple answer. To conclude, he also mentioned that a forgotten barrier is that people with disabilities are often recipients of welfare, which makes criminal courts financially inaccessible as well.

Bekithemba Mlauzi spoke about the experience of people with disabilities with policing in Zimbabwe. Although the CRPD has been ratified, the country's domestic laws are still not in conformity with the CRPD. He noted that, for many people, the police are the first point of contact with the criminal justice system and that many problems permeate policing. First, women and children are the most affected in terms of policing and abuse. However, there is a lack of statistics and data that demonstrate which crimes affect women and children the most, which makes it hard to prevent crimes. Second, police also experience difficulties in communicating with victims. The police do not have experts in sign language, interpreters or psychologists that can assist them when they are engaging with people with disabilities. Finally, victims often lack information about how to ensure their safety because the police do not have manuals or guidelines on how to investigate cases of persons with disabilities. In Israel, on the other hand, the government created such a manual: the *Investigation and Testimony Procedure Act*, which provides for accommodation for victims with disabilities. Mr. Mlauzi thinks that police should take a more pro-active approach and a community-oriented policy by engaging with people with disabilities. In addition to strong cooperation between the police and NGOs (whose mandates focus on disability rights), Mr. Mlauzi repeated that manuals and guidelines should be created to guide police conduct. For instance, one solution would be to create a computerized reporting system so that people with disabilities can file police reports from home.

Dianah Msipa started by pointing out that the CRPD calls for accommodation in the courtroom for people with disabilities. This often requires two different types of adjustments to the system in order to allow people with disabilities to participate meaningfully and on an equal basis in the criminal justice system. The first type relates to language, and concerns the content of witness' evidence as it is common that people with disabilities experience barriers in communicating with the court. Ms. Msipa gave the example of one case in Israel where a victim with a psychosocial disability was accommodated. The victim was abused in a psychiatric facility. The events took place at 6:00 AM. However, the victim indicated that the abuse happened at night. The defense wanted to use this discrepancy in time to demonstrate that the victim was not credible. However, the judge demanded further questioning to ensure a clear understanding of what the victim meant by "night." The victim understood the night to end with the night shift of the staff at the institution, which ended at 6:00 AM. Therefore, 6:00 AM was still considered night from the victim's perspective. A few further questions allowed the victim to meaningfully express herself. A second type of accommodation relates to physical environment. In Israel, once again, the court allowed a witness with a disability to take a break every 20 minutes during the trial. Ms. Msipa thus concluded that there are cases that show that accommodations can be made.

When the floor opened for discussion, seminar participants raised other potential barriers to addressing the issues faced by people with disabilities: Canadian federalism; the language of "accommodation"; lack of adjustments in prisons; lack of training for judges. Finally, some people commented that there might be cases in which no amount of accommodations will address the inequality. Justice Healy concluded the session with a striking story to illustrate this problem. In one of his cases, the victim was a middle-aged woman with down's syndrome. During her interview, the victim claimed numerous times that the offender was "X." However, when the police showed her eight pictures of suspects, the victim said that the offender was not there, although the picture of X was in the pile. Justice Healy was certain that X was indeed the offender, but he had no choice but to acquit him. Justice Healy suggested that, in some cases, *different rules* are needed for people with disabilities.