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THE INITIATIVE

The Disability and Human Rights Initiative was established in 2012 in recognition of the need for an interdisciplinary forum in the Faculty of Law to engage with one of the most pertinent human rights issues of the 21st century. Under the auspices of this initiative, the Centre has organized an annual seminar series dedicated to overarching themes intersecting disability, law, and policies. Our students have taken a leadership role in this initiative as reflected by the impressive list of past and current coordinators of the series.

The initiative has successfully served as a platform for sharing knowledge and good practices among academics, policy makers, advocates, activists, and members of the disability community. Active participation from members of the disability community has brought a rich experiential dimension to the discussions. We have been creative in integrating performance arts, multi-media, and other forms of expression into the series.

Collaboration with the LLM Fellows from Southern Africa and Latin America, who come to the faculty with the support of the Disability Rights Scholarship program of the Open Society Foundation, bring unique perspectives on the challenges of people living with disabilities in the global South. The internship placements around the world through the International Human Rights Internship Program bring insights from the field by continuing to inform our work even after they graduate from the faculty. It would not be an exaggeration to say that this initiative has surpassed the modest goal of raising consciousness among our students and faculty about disability and inclusion.

In six years, our efforts have resulted in creating a community of scholars and advocates in Montreal and Canada, as well as a growing network of partners both in the global North and South. Within the university we have developed strong partnerships with different faculties and departments on disability-related initiatives. We hope to continue to build on our work with our partners and aspire to expand our international network through the internship and the DRSP programs.

The Disability and Human Rights Initiative is generously supported by the Rathlyn Foundation, the Hugessen family, McGill’s Faculty of Law, and the Office for Students with Disabilities (OSD). We are grateful to all who have contributed to the success of this initiative over the past six years and look forward to your continued collaboration in the years to come.

Nandini Ramanujam, Fall 2017

Associate Professor (Professional)
Executive Director and Director of Programs
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EXECUTIVE DIRECTOR & DIRECTOR OF HUMAN RIGHTS PROGRAMS: Nandini Ramanujam

PROGRAM COORDINATOR: Sharon Webb
HIGHLIGHTS

Seminar Series on Disability Rights

58 Speakers
6 Years of existence

20 Topics explored
12 Coordinators

International Human Rights Internship Program – Disability Rights

13 Interns
6 Organizations

5 Countries
11 Research papers
Fellows in Disability Rights

6 Fellows

4 Home countries

3 Foundations

3 Dance performances for the

International Day of People with Disabilities
Human rights and disability law have evolved with significant strides over the last decades. Individuals, advocates, communities, institutions, governments and nations have championed and advanced legal reforms transcending borders. Today, global standards complement and compel national standards. In 2006, member states of the international community adopted the United Nations Convention on the Rights of Persons with Disabilities (CRPD), as the first international human rights treaty on disability.

Canada, the United States, the European Union and other nations have signed the United Nations Convention on the Rights of Persons with Disabilities (CRPD) over the past decade. It has become a barometer of disability rights, duties, and standards. It reinforces disability as a human rights priority, helps empower advocates to create enabling environments, fosters inclusive policies and programs, and advances new and existing laws. Despite its passage there are still remaining issues, ignorance, and major legal and policy challenges. They stand as barriers to advancing full equality and the fundamental human rights of people with disabilities.

To explore some of these advances, challenges and questions, the Centre for Human Rights and Legal Pluralism presented its 2012-2013 seminar series on selected issues of human rights and disability law. We did so in the wake of the CRPD. The series’ engagement was consistent with the Faculty of Law’s tradition of analysis, scholarship and promotion of human rights and social justice.

This interdisciplinary series aimed to identify and discuss key human rights issues, norms, strategies and challenges to implementation of the CRPD’s standards. It also sought to educate legal scholars, community members, students, and institutional players with interdisciplinary and pluralistic insights. The seminar series unfolded with an initial overarching look at implementing the CRPD, followed by an in-depth look into three particular contexts.
This seminar provided a forum for discussion on conceptual challenges, legal standards and international best practices for implementing the CRPD. The topics of discussion included challenges of implementation, community living, accessibility to educational and workplace institutions, mental capacity, and monitoring. The seminar allowed participants to reflect on the disparity between traditional welfare-oriented supports for people with disabilities and a model that aims to facilitate independence and active citizenship.
The panelists presented brief remarks at the start of the discussion, agreeing that the Convention is a remarkable achievement, highlighting that people with disabilities and civil society organizations were involved in the drafting process from the start. This engagement is consistent with the disability movement’s call for “nothing about us without us.” They noted that the CRPD targets and addresses the state as well as society, implicitly recognizing that both state and non-state actors need to work in order to eliminate discrimination aimed at people with disabilities. They also pointed out that the CRPD does more than just spell out rights. It is unique in that it represents a mixture of rights, policy standards and principles.

The panelists agreed that there are a number of challenges to the successful implementation of the CRPD in Canada and abroad. In order for the CRPD to be implemented successfully, democratic and legal institutions are needed; without them the rights of people with disabilities cannot be protected. This is a serious challenge, particularly in heavily impoverished countries characterized by political instability, violence, and civil war. A lack of adequate resources also poses a challenge to implementation. Lack of societal understanding on disability issues, particularly the understanding of those with the potential to initiate change, such as judges and legislators, also poses a challenge to implementing the CRPD domestically.

The panelists identified several steps that must be taken to implement the CRPD. These include bringing national laws into conformity with the purpose of the Convention, prioritizing services for people with disabilities, and focusing on low-cost projects aimed at ensuring full participation of people with disabilities. A number of nations, such as Burkina Faso and Kenya, have taken legislative measures in an effort to implement the Convention. In Paraguay the government has reserved 5% of available public housing and 5% of jobs for persons with disabilities.

**Discussion**

One participant asked the panelists what recourse is available when a state party violates a provision of the CRPD. First, in the event of a violation, an individual can use the remedies available under domestic law. In Canada, the rights of people with disabilities are protected by the Canadian *Charter of Rights and Freedoms* and statutory human rights instruments. Once local remedies have been exhausted and have failed to effectively address the violation, the Committee on the Rights of Persons with Disabilities, the treaty body tasked with monitoring implementation of the Convention, may be petitioned. The Committee is equipped with the right of individual petition, allowing individuals within state parties to petition. The Committee will rule whether or not the impugned law or policy is in violation of the Convention. If it is, then the state party in question has a duty to ensure compliance with the CRPD. Professor Mégret noted that, thus far, the Committee has only heard one case, *H.N. v. Sweden*. However, states parties must have signed

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the Optional Protocol indicating that they recognize the authority of the Committee. If they have not signed it, then the individual complaint remedy is not available.

There was also debate over the question of whether the Convention has created new rights or simply reaffirmed existing ones. There was no agreement on this point, however, it was clear that the Convention does re-iterate existing rights, and it draws attention to “new rights”, such as autonomy, in a way that other treaties have not. It was agreed that this is necessary because the disability community is diverse in itself; different groups face different challenges. Women and children with disabilities, for example, face intersecting inequalities. This is why the involvement of persons with disabilities in drafting the Convention and in implementing it is to be applauded. Currently, the Committee on the Rights of Persons with Disabilities has 18 members, many of whom are people with disabilities.

The panelists reiterated that there is a need for civil society and state parties to learn how to use the Convention as an advocacy tool. The Disability Rights Fund, for which Ms. Muñoz Gonzalez is a representative, exists to fund small disability organizations in order for them to teach people how to use the Convention as an advocacy tool, filling the knowledge gap. The Fund promotes national legislation and aims to improve knowledge and awareness of the Convention at a grassroots level through educational campaigns.

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with Disabilities held that not allowing a woman with a disability to build a pool in her backyard for therapeutic purposes was discriminatory.
Equal Citizenship for Persons with Disabilities: Recognizing Legal Capacity

Historically, people with disabilities have faced significant socio-legal barriers that have impeded exercise of their rights as citizens. Such barriers have typically been grounded on a fallacious assumption: physical or mental disability disentitles one from legal capacity. The law has conspired in such presumptions and treatment. Indeed, property, health, voting and inheritance laws have helped institutionalize the fallacy and inequality.

The Convention on the Rights of Persons with Disabilities (CRPD) intends to reverse this heritage by correcting the reasoning.

Following the general discussion of the UN Convention on the Rights of Persons with Disabilities in the introductory September seminar, this seminar is the first in the series to focus on a specific concept and article. In concert with other provisions, article 12 recognizes individuals with disabilities as persons equal before the law. The article thus outlines enjoyment of legal capacity on an equal basis, mandates nations to provide reasonable access for the exercise of legal rights, encourages appropriate and effective safeguards to prevent abuse, and mandates full and equal property and financial rights. The extent to which governments may limit a person’s right to legal capacity proved a contentious issue in drafting the CRPD. Its translation into daily life impacts access to justice, judicial review, health, housing, financial, property and the asset management of people with disabilities. Amidst ongoing UN discussions on the interpretation and implementation of article 12, this seminar provided a forum for a discussion of the legal and non-legal issues, challenges, and steps to overcoming lingering barriers that have impeded persons with disabilities from exercising their rights as citizens.
The moderator, Derek J. Jones, noted that while the concept and application of legal capacity engages broad elements of citizenship, the meaning of “legal capacity” in some areas of law have evolved significantly over the last decades. In mental health law, for example, the historic presumption of legal incapacity for those with mental disabilities has moved towards a modern general presumption of legal capacity and autonomy to decide health matters related to one’s person, even when institutionalized. The moderator then introduced the panel and invited them to launch discussion with 10-15 minute presentations per individual.

Michael Bergman began with observations on concepts and terminology. He cautioned that the term “disability” in the CRPD may cause confusion due to its elasticity, given that the word can mean different things, at different times, and in different cultures. Does such elasticity make the CRPD susceptible to manipulation? He argued that persons with disabilities should have rights by virtue of being human, not by virtue of having a disability. Otherwise, the inclusive equality goals of article 12 of the CRPD and Universal Declaration of Human Rights may result in persons with disabilities being treated as exceptions, rather than being accepted in mainstream society and the legal system. Therefore, he questions whether it may have been preferable to protect the rights of persons with disabilities under an instrument such as the Universal Declaration of Human Rights. Either way, one who is said to have the right to “equal citizenship” has corresponding duties, meaning that persons with disabilities must sometimes be enabled with support to fulfill these obligations.

Anna MacQuarrie and Roger Bill acknowledged the terminological and textual challenges noted, but regard the CRPD as a powerful tool for the realization of the rights of persons with disabilities. MacQuarrie cited the participation of persons with disabilities and civil society organizations during the negotiation process (in which she participated) as indicative of the CRPD being more than just a legal instrument, but an expression of the will of persons with disabilities.

Anna MacQuarrie noted that many interpret article 12 as a call for supported decision making, rather than substituted decision-making (or guardianship) regimes. She emphasized the need for
balance between protecting the legal capacity of people with disabilities and allowing the state to provide support to those requiring assistance. Change will not occur overnight because significant legislative reform is needed in some jurisdictions. MacQuarrie noted that article 12 was the most difficult article to negotiate, owing partly to some states’ desire to maintain the status quo, which was contrasted against the desire of disability organizations to bring change. Terminological differences also added to the difficulty in negotiating. In different countries, the capacity to have rights and the capacity to act are treated as separate and distinct concepts, and the word “capacity” usually refers to the capacity to have rights, rather than the capacity to act. As a result, some countries, including Canada, have issued reservations or interpretive declarations relating to article 12. It remains to be seen how these arrangements will be implemented in practice, but Anna suggested looking to the substituted decision-making regime in British Columbia for guidance.

Roger Bill’s recent internship experience in Mexico City with Disability Rights International illustrated the impact of substituted decision-making arrangements on people with disabilities. He found that, contrary to article 12, people with mental and psychosocial disabilities who are institutionalized may be subject to various forms of abuse. When institutionalization strips individuals of their legal capacity, they cannot assert their rights. Roger pointed to the case of Stanev v. Bulgaria in which the European Court of Human Rights used article 12 as a guiding principle, finding that long-term placement in a social-care home constitutes a deprivation of liberty requiring safeguards.

Discussion

When the floor was opened for general discussion, participants commented on and asked questions about the practical implementation of article 12. Many suggested it would take institutional and attitudinal changes to complement legal reforms to achieve full citizen participation. Many highlighted the importance of educating the community and the families of persons with disabilities. Others raised the importance of employing self-advocacy in asserting rights. There was consensus that there should be structural support systems in place, as well as guidelines for communities to follow in order to make supported decision making a reality. Many agreed that the right to legal capacity enshrined in article 12 is especially important because it has a bearing on individuals’ ability to make decisions about their day-to-day lives and on the realization of their rights as citizens.
With one-in-five people experiencing a psychological disorder during their lives, the workplace has emerged as a prime milieu of human rights challenges for people with mental health disabilities. Particularly over the last decade, mental health in the workplace has emerged as a poignant human rights, health, financial, management, and employer-employee relations issue. Interdisciplinary studies portray the complexity of the challenge. Its dynamics have been studied by international human rights, health, labour and economic organizations, as nations have sought to better understand and outline standards and policies for reform.

Employees with disabling mental illness suffer exclusion, misunderstanding, and stigma. Poor training of managers aggravates mental illness and workplace productivity, even as employment disability claims have risen to 30-50% of new claims in many countries. Effective workplace policies that outline respective rights, duties, and standards for employees, managers, and occupational health professionals are scant. While employers are legally obligated to accommodate disability, the principles in practice offer insufficient guidance. This seminar examined such issues with a focus on selected international standards, policies, and developments for reforming mental health law and policy in our workplaces, and further how they may be done in a manner consistent with the United Nations Convention on Rights of Persons with Disabilities and domestic human rights commitments. This seminar provided a forum to sample some legal and policy responses in three countries: Canada, the UK, and the US.
Derek J. Jones began by highlighting the foregoing confluence of initiatives by the international community on mental health in the workplace, noting that they present a unique opportunity for interdisciplinary research and policy reform. He indicated that, in research with Professor Sheppard, they are urging comprehensive workplace mental health policies (mhwp) to address key phases and elements of the employment trajectory: from pre-employment screening, to management training, occupational health services, accommodation standards, and return to work protocols. Me Jones argued that under this approach, privacy/confidentiality norms function as key pillars for mental health workplace policies. These are taken in tandem with equality standards to structure access to, and minimal sharing of, personal health information. To illustrate, he portrayed US reforms adopted pre-employment mental health queries. For entry into the legal profession, some state licensing boards have asked applicants whether they have ever used medications or been counseled for mental health conditions and addiction. Some defend such questions as valid fitness and character inquiries to prevent injury or harm. Others critique them as unjustifiable invasions of confidentiality, overbroad, and discriminatory, deterring applicants from seeking treatment. The debate has been litigated since passage of the Americans with Disabilities Act of 1990. Some states have struck such questions; some have narrowed them. Others have upheld them. He argued that even if mental health information might be legitimately disclosed, employers have duties to strictly limit its use and diligently manage non-discriminatory applications through the rest of the employment cycle.

Colleen Sheppard pointed out that, despite the protections at the national and international levels against stigmatization and discrimination on the basis of mental health, as well as privacy protections, a gap exists between law and practice. Professor Sheppard noted that one challenge lies in terminology. She cited the Canadian Charter of Rights and Freedoms which prohibits discrimination on the basis of mental or physical disability, noting that mental disability is a broad category covering intellectual or developmental disabilities, as well as mental health disorders. Most of the work done in this area refers to mental health disorders, another broad category covering anything from severe mental disorders to stress and situational depression. This reference to mental disorder raises the difficult question of how to reconcile the law on mental disability within medicalized categories. She went on to note that the privacy/discrimination interface results
in a “difference dilemma”: should employees keep confidential or reveal a health condition in order to receive accommodation at work with the risk of being subject to stigma and discrimination for the condition? One response to this dilemma is to adopt initiatives that de-stigmatize mental health issues. Another is to change institutional policies and practices for everyone, not just those with mental health conditions. These responses resonate with the reasonable accommodation and universal design themes recognized by the CRPD.

**Anna Lawson** noted that “reasonable adjustment” duties (the UK equivalent of reasonable accommodation) have been in place in the UK since 1995, but few cases have reached the courts, leaving it unclear how this duty will be interpreted in the future. In one case, the court held that a school had failed in its reasonable adjustment duty by not providing teachers with awareness training with respect to the treatment of a child with attention-deficit disorder. Professor Lawson suggested that this decision may have implications in the employment context in that it may place a duty to inform and raise awareness about mental health issues among employees. She also stated that the 2010 *Equality Act* imposed a ban on pre-employment health checks. Exceptions to this ban include the need to make adjustments to the interview itself, the need to create positive action schemes in favour of persons with disabilities, and cases where the existence of a particular disability is a job requirement. Professor Lawson then discussed the public sector equality duty in the UK which requires all public sector bodies to promote disability equality in the organization’s decisions and policies.

**Discussion**

When the floor was opened for comments, the bulk of the questions raised were of practical significance. One participant asked whether employers can use the perception of risk to prove undue hardship as a defense where it is alleged that the employer failed to discharge the duty of reasonable accommodation. Another participant asked how institutional policies can be effectively changed to protect employees with mental health conditions.
“Mainstreaming” Disability: Inclusive Education
February 18, 2013

The fourth and final seminar in the series provided a forum for exploring the role of inclusive education in integrating people with disabilities in academic settings, as well as strategies for implementing inclusive education. Despite provisions for inclusive education in human rights instruments, full integration remains elusive and people with disabilities continue to be among the least educated groups. The inclusion of students with disabilities in mainstream academic programs varies by province, leaving many children with disabilities attending segregated schools.

Tara Flanagan provided an overview of the work that she is involved with to promote inclusive education at McGill. Her research focuses on self-determination and quality of life. Professor Flanagan stated that the notion of self-determination, while linked to autonomy, choice, and personal empowerment, is capable of existing in a supportive community structure. She argued against the commonly-held assumption that a person who requires assistance cannot be empowered in educational settings. Little research has been carried out on issues related to quality of life for people with autism, which inspired her to engage in this area of research. Professor Flanagan highlighted the attitudinal factors that often act as barriers to full inclusion. She noted
that the Faculty of Education offers a specialized Masters of Education in Inclusive Education, and that Montreal’s first ever disability film festival took place that year from March 21-28.

**Cristobal Vignal** brought a practical perspective to the discussion as the Chairperson of the Governing Board at the Mackay Centre School, in addition to being the parent of a child with a disability who attended the school. He described the difficulties that his daughter has faced in transitioning from the Mackay Centre School, where she benefited from the latest in technology, to Westmount High School. While his daughter, who uses a wheelchair, is “integrated” in many ways, she sometimes feels isolated due to accessibility issues. Her classroom on the ground floor, for example, does not provide access to the cafeteria and auditorium. Mr. Vignal pointed out that his daughter would benefit from being part of an inclusive environment where she can get the support she needs to reach her full potential. Although he is encouraged by the fact that Canada is a party to the Convention on the Rights of Persons with Disabilities, there is much to be done before Canada achieves the level of accessibility available in countries such as New Zealand.

**Frédéric Fovet** highlighted the importance of the shift that has occurred in recent years from the medical model of disability to the social model, and the impact of mainstreaming inclusive education. The social model’s recognition that the concept of disability is not intrinsic to the individual is more conducive to the initiation of environmental interventions meant to reduce systematic barriers and societal exclusion. The medical model, by contrast, views disability as a diagnostic label attached to a physical condition, or as an “illness” to be cured or managed. Mr. Fovet suggests that a gap exists between the conceptual framework and reality. He pointed out that inclusion is not an overnight process, and that management of change is required to implement inclusion in practice. He also discussed McGill’s efforts in employing the universal design model.

**Discussion**

When the floor was opened for questions, a number of participants raised concerns about the costs involved in implementing inclusive practices. Mr. Fovet agreed that there is indeed a cost element, particularly with respect to training, but noted that not improving access to education is also costly, and that it would be a better use of funds to ensure inclusion—a sustainable change. One participant pointed out that there are ways of improving access to education that are less costly and which are already taking place, such as the recording of lectures and using different evaluation methods. Some participants also raised questions relating to inclusion of people with mental disabilities. Mr. Fovet stated that universal design places an emphasis on access to education rather than diagnostic issues and, together with a common sense approach, access to education can still be achieved through methods such as not making participation and attendance compulsory. A significant part of the discussion focused on the role of legislation. There was consensus that although legislation has a significant part to play in creating a duty to make education accessible, it is not the only response. Professor Flanagan pointed out that people can also contribute to change by modeling good practices in their everyday lives.
Global Perspectives on Disability, Human Rights and Accessing Justice
2013-2014

The series built on the themes explored in the CHRLP’s previous series on “Disability, Human Rights and the Law.” We offered this series to continue to engage in one of the most compelling human rights issues of our day, consistent with the Faculty of Law’s tradition of analysis, scholarship and promotion of human rights and social justice.
On September 23, 2013, the UN General Assembly held a meeting on disability and development in order to produce 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, marking a shift toward a social and participative view of disability. The CRPD aims to enable people 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.

The inclusion and empowerment of people with disabilities is critical to advancing the development agenda. In light of the United Nations’ effort to create a disability-inclusive development agenda, this seminar provided a discussion forum on international strategies for achieving equality for persons with disabilities by implementing disability perspectives in development processes. The CRPD, which is both a human rights treaty and a development tool, provides an opportunity to strengthen developmental policies related to the implementation of internationally-agreed development goals. The seminar allowed participants to reflect on programs and interventions that may begin to remove the barriers and increase accessibility in developmental efforts.
Ravi Malhotra 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 Malhotra’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, Malhotra stressed regulation as an important factor in disability rights, and argued that regulation should be regarded as law. 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. 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, their 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 their rights as well as 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.

Discussion
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. Malhotra 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. Malhotra 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.
Mental Health Disabilities & Access to Justice: Recognizing & Reinforcing Capacity

November 6, 2013

This seminar explored international perspectives on the intersections between disability, mental health, legal capacity and access to justice. Recent decades have witnessed an evolution in the understanding between life circumstances, mental health, human rights, and involvement with the law. Yet people with mental illnesses face significant obstacles in protecting their basic civil rights. The CRPD has advanced debate, thought, and policy on mental illness and legal

capacity. Its articulation of the legal capacity of persons with disabilities “on an equal basis with others” has important implications for legal and non-legal issues at the nexus of mental disability, human rights and access to justice. This seminar allowed for a discussion of these implications.

Resource Persons

Robert Dinerstein
(Professor, American University Washington College of Law)

Emily Hazlett
(Law Student Intern, Disability Rights International & BCL/LLB Student, Faculty of Law, McGill University)

Eliza Bateman
(LLM Student, Faculty of Law, McGill University)

Moderator

Derek J. Jones
(Member, Research Group on Health and Law & CHRLP)
**Derek J. Jones** began the session with thoughts on historic revolutions or “paradigm shifts” in decision-making rights with regards to health and disability law. In medical treatment it has shifted from a “doctor-knows-best” approach to a patient-centered standard of informed consent. In mental health law, it has shifted from presumptions of global incompetence to a legal presumption of decisional capacity of those with mental conditions; and now in disability law the shift is from traditional guardianship to supported decision making. All three revolutions are incomplete and imperfect. All reject paternalism to embrace autonomy, respect for the person, and shared decision-making powers. He noted that the speakers on the panel are diverse in that their work focuses on very different jurisdictions: the US, Guatemala and Australia.

**Robert Dinerstein** began by discussing the benefits and challenges of Article 12 of the CRPD’s “paradigm shift” from guardianship towards “supported decision-making” models of capacity. He compared supported decision making with the “all-or-nothing” approach which holds that if a person cannot make a decision in a specific aspect of their life, that person is thought incapable of making any decisions at all. He described such guardianship as akin to a “civil death”, especially plenary guardianship approaches that strip individuals of their civic rights in areas such as entering into contracts, getting married, voting, or making healthcare decisions. Even if the limits and dysfunctions of such models have been critiqued in the literature and rejected in the CRPD, the guardianship model remains prominent in US and international cases. He contrasted such guardianship with supported decision making, which he described as “a series of relationships, practices, agreements of more or less formality, to assist a person to make decisions that are key to the person’s life.” Professor Dinerstein said that while supported decision-making has been minimally used in US cases, he feels that the country is at a tipping point and the move to supported decision making will likely become more pronounced.

**Emily Hazlett** discussed her human rights intern experience working for Disability Rights International (DRI), an organization that works with vulnerable, typically institutionalized people. She focused her comments on the effects of loss of legal capacity. With the loss of legal capacity comes the loss of legal rights, most notably the loss of liberty. She spoke about this idea in relation to her experience with the Federico Mora psychiatric hospital in Guatemala City, Guatemala. As the only publically-funded psychiatric hospital in Guatemala, the conditions at the hospital are dire. Ms. Hazlett critiqued the requirement to exhaust domestic remedies prior to going the Inter-American Court of Human Rights. It is hard to exhaust domestic remedies if an individual lacks legal standing in the first place due to presumed legal incapacity.

**Eliza Bateman** discussed ongoing trends and her insights from working for Victoria Legal Aid in Australia. In her legal practice, she has represented individuals in guardianship cases and also did advocacy work for individuals with disabilities. She focused her discussion on a recent paper by the Victorian Office of the Public Advocate. She discussed how the paper posited the supported decision-making model as the preferred paradigm, which was significant given that the paper was published by a government agency. However, Ms. Bateman noted that in Victoria the dominant model is still substituted decision-making, not supported decision-making. In contrast, she indicated that the Australian Government is in the process of rolling out a new disability law framework, which is intended to take a holistic approach to supported decision making rather than a piecemeal approach to disability legal issues.
Discussion

When the floor opened for discussion, seminar participants raised diverse issues: the relation between incapacity in civil and criminal matters; ongoing developments in Quebec and historic reforms for supported decision making in BC; the role of the CRPD in courts and whether its standards impose duties for systemic legal and non-legal reforms; training needs and models; supported autonomy, substitute judgment and best interest standards of decision-making; and the tension between affirming the autonomy of people with disabilities and making or supporting decisions that have the welfare of the person as the key focus. Professor Dinerstein concluded the session with a comment: as we move away from a system that over-emphasizes paternalism, perhaps we will need to accept some of the risks inherent in freedom.
Domestic legislation and policy remains one of the most effective means of protecting the rights of persons with disabilities and facilitating social change. The passage of the Americans with Disabilities Act in 1990 was a watershed moment in its guarantee of equal opportunity and non-discrimination in education, employment, health, and access to justice for persons with disabilities. The legislation inspired other jurisdictions to draft their own disability rights legislation, such as the Ontarians with Disabilities Act in 2001 and the Accessibility for Ontarians with Disabilities Act in 2005; it also served as an example for the drafting of the CRPD. This event provided an opportunity for students, professors, and educators to discuss proactive approaches to implementing ongoing legal and policy developments in the areas of disability and human rights.

Colleen 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, as well as to examine the extent to which those
initiatives facilitate proactive change and the prevention of discrimination. She noted that the panelists would examine, in particular, the impact of the Americans with Disabilities Act, the Ontarians with Disabilities Act, and the Accessibility for Ontarians with Disabilities Act as well as 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 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, illegality is not having the effect of removing barriers. He claimed that part of the 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 telling organizations specifically what they have to do and requiring 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 Quebec (CDPDJ). The project, Towards Universal Access to Goods and 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 and address complaints proactively, rather than on an individual complaint basis.
The CDPDJ hopes to raise awareness in the business community and convince them 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.

**Discussion**

There was a robust discussion period following the presentations. The group 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.
Over the past decades, a number of jurisdictions have turned to the law to guide decision making or address human rights issues related to persons disabled by illness or injury near the end of life. In the last two years, developments in Canada have re-ignited public debate on end-of-life care and dying with dignity. Quebec proposed end-of-life legislation. A British Columbia Court found the Canadian Criminal Code ban on assisted suicide violated the Canadian Charter, but the decision was overturned and was pending before the Canadian Supreme Court. The seminar allowed participants to identify key issues and exchange ideas on the difficult questions inherent in end-of-life care, human dignity, and respect for the rights of persons with disabilities.

Resource Persons

Dr. Justine Farley, MD
(Director, Palliative Care Team, St. Mary’s Hospital, Montreal)

Mr. Joseph Arvay
(Farris Law, Vancouver)

Derek J. Jones
(Lecturer McGill University Faculty of Law & Member, McGill Research Group on Health and Law & Centre for Human Rights and Legal Pluralism)
Colleen Sheppard introduced the topic for the workshop by observing that many countries are currently debating issues related to end-of-life care, noting that Quebec has introduced legislation on “dying with dignity”. There was also ongoing litigation in British Columbia regarding the right to assisted suicide; the topic was timely. She clarified that the purpose of the seminar was to explore issues at the intersection of law, medicine and ethics: issues relating to human rights, dignity and end of life care. The intent would be to reflect in particular on the impact of these issues on the rights of persons with disabilities. The seminar would look at the broad topic of end-of-life care and not simply focus on the assisted suicide debate.

Justine Farley focused her presentation on defining what palliative care is, and used an example to illustrate the concept. With reference to the World Health Organization’s definition of palliative care, Dr. Farley explained that it is an approach that addresses the quality of life of patients and their families who are faced with the prospect of a life-threatening illness. Regarding dying as a normal process, palliative care aims to provide relief from pain and other symptoms while integrating both the spiritual and psychological aspects of human experience.

Dr. Farley framed her presentation around the case of a patient, “Don”, who at 59 years old suffers from colon cancer. Using the case as an example, Dr. Farley walked the group through the various stages of palliative care treatment. Dr. Farley emphasized that palliative care takes a team approach, with other health and non-health professionals forming part of the treatment team. Dr. Farley explained and discussed care planning, symptom management, family involvement and the planning of the dying process with the patient. At the end of her comments, Dr. Farley expressed some concerns about Bill 52 as proposed by the Quebec government. She indicated that she is concerned that many people do not understand what we are speaking about with regards to dying and end-of-life care. She is also concerned about the impact the proposed legislation could have on the budget for elderly care and resources for other health services.

Joseph Arvay, counsel for the applicants in Carter v. Canada, began his comments by taking up the theme of palliative care. He stated that palliative care was front and centre in the case and that most (though not all) palliative care physicians were opposed to physician-assisted dying.

Mr. Arvay spoke about his experience litigating the issue of physician-assisted suicide (PAS). He observed that the arguments he was most concerned about were those presented by disability rights groups who opposed his clients’ application. He commented that the arguments put forward by the disability rights groups were founded on a particular theory of disability rights and not the actual experiences of persons with disabilities. The view of the main disability rights organizations is based on the social model of disability, which is to be contrasted with the medical model. The social model holds that while people may have physical impairments, it is really society that disables them (i.e. while a physical disability actually disables, society allows for design that functionally disables). The disability rights groups, according to Mr. Arvay, suggest that if the state permits physician-assisted suicide it essentially endorses the view that a disabled person is “better off dead.” The concern of the rights groups is that society and the medical community will adopt this message and that persons with disabilities themselves will eventually internalize it. Mr. Arvay’s response was that the court should not reject physician-assisted suicide based on this hypothetical argument.
Mr. Arvay also discussed how people with disabilities fall into three categories: those born disabled, those disabled in the prime of life, and those who develop degenerative diseases later in life. He noted that it is the first category of individuals who seem most strongly opposed to PAS, as their experience of disability is fundamentally different from those who become disabled later in life. The second group is most affected by the argument based on the social model, but the concerns of the disability rights groups could be countered by imposing a significant waiting period on PAS. According to Mr. Arvay, this would allow the second group to put themselves in the same position as the first and thus make an informed decision about PAS. Finally, in Mr. Arvay’s view, the prohibition against PAS has the harshest effect on the third group. For this group, being disabled is the reality of living with a serious medical condition that they view as intolerable. In his opinion, the “better off dead” argument is patronizing and infantilizing, and he rejected the idea that this group might be “brainwashed by ‘ableist society’”.

Derek J. Jones suggested that to complement evolving standards of palliative care and the deep challenges of PAS, Canada may draw on over three decades of international interdisciplinary experience to address end-of-life issues. He indicated, for example, that the discussion of "Baby Doe" regulations and litigation in the U.S in the 1980s asks whether it is discriminatory to not treat babies born with severe, often life-threatening disabilities. Beyond decisional accountability issues, such cases raise potent questions, including:

- Who is a “person with disabilities” if death confronts many of us who move from ability to disability near the end of life?
- In policy and cases, how do we prioritize and reconcile autonomy and substitute decision making, discrimination and sanctity of life, risks of abuse and protection of the vulnerable?

The international experience, he noted, indicates society has basic processes for studying and answering such questions. These include the courts and the legislative process, deliberative democracy and public referenda, and institutional and national interdisciplinary ethics committees. For example, as a member of some McGill hospital clinical ethics committees, he has seen the committees serve as policy advisors, sounding boards and conflict resolution bodies for divided families, for divided treatment teams, and in family-versus-hospital disputes over “tragic choices” in end-of life cases.

Mr. Jones concluded his comments by recounting a notable experience with a power of health care attorney/advanced directive he had drafted under US law for a family member disabled by a chronic ailment. Conversations a decade before had led to periodic revision of the document. Ultimately, the process and document enabled his dying family member, siblings, and health professionals to manage difficult decisions towards a dignified death. He recommended more familial, clinical, interdisciplinary, public and legal discussion of disability, dying and death.

Finally, Jonas-Sébastien Beaudry offered comments on the broader concepts of dignity and the value of human life. Dr. Beaudry observed that these concepts can be muddy but they get to the crux of the issue. He stated that both sides of the debate use the concept of dignity as a basis for their arguments. In the debates around end-of-life care, dignity seems to mean two different things. Dignity can mean the autonomy of the person, implying that dignity means respecting the
wishes of someone. Dignity can also be defined as the value that a human being has. Pointing out that both sides of the debate invoke the concept of dignity in support of their position, Dr. Beaudry suggested that when the idea of dignity is invoked, its meaning ought to be clear. Dr. Beaudry concluded his thoughts by suggesting that the voices of persons with disabilities should be “structurally integrated in the debate.”

**Discussion**

At the end of the presentations, the period of open discussion addressed several questions: What role do or should resources and fiscal issues play in care of patients with disability in end-of-life care? Does denial of PAS constitute discrimination against those individuals whose disability will prevent them from stopping treatment or actively terminating their lives in the face of relentless suffering? Do elder neglect laws adequately protect and care for seniors, in nursing homes, who are disabled by age and physical ailments near the end of their lives?
The concept of “built environments” refers to all environments constructed by humans. Built environments are not only physical constructs but also social, legal and economic constructs such as families, schools and workplaces. The CRPD recognizes the “importance of accessibility to the physical, social, economic and cultural environment, to health and education and to information and communication, in enabling persons with disabilities to fully enjoy all human rights and fundamental freedoms.”

It is important to grasp the wide nature of the concept of environment in exploring accessibility for people with various types of disabilities. Physically-accessible buildings, legally-accessible institutions such as families, parenthood and professions, and socially-inclusive environments such as schools, work and public spaces are all important to ensure that people with disabilities have an equal opportunity to enjoy their human rights and fundamental freedoms.

This seminar series provided insights into the reality of different environments, whether or not people with disabilities are fully able to benefit from them, and the barriers that may be preventing full and equal access. We examined four topics through the lens of built environments: education, public spaces, workplaces, and family. In particular, we asked to what extent each of these built environments is accessible, if people with disabilities are involved in the decision-making process of building these environments, and how these environments can be restructured to become more accessible and inclusive.
This seminar investigated the institution of education as a built environment. The right to an education is enshrined in article 24 of the CRPD. The effective implementation of the Convention, however, requires translation to a domestic context. This seminar explored how the CRPD may be implemented in a meaningful way for rights holders. Investigating the global and the local, the panel brought together South African and Canadian perspectives on inclusive education to explore both challenges and best practices, as well as revealing the drawbacks of rhetorical posturing.
Moderator Frédéric Mégret began by introducing the topic for this first seminar in the series. The panelists were asked to provide insight into how the right to education in article 24 of the CRPD could be implemented in the domestic context and improve education outcomes for persons with disabilities.

The first speaker, Charles Ngwena, focused on the challenges of implementing the mandate of article 24 of the CRPD in the Global South. Article 24 recognizes redistributive justice as an important goal, and highlights the close link between poverty and disability. Mr. Ngwena framed the exclusion of persons with disabilities from mainstream academic institutions as a human rights violation, and noted that rights are an important currency for challenging this deep-seated injustice.

As we have seen since the Convention was enacted, ratification of a human rights instrument does not necessarily translate to the enjoyment of rights. The socioeconomic system in South Africa was constructed on an assumption of able-bodiedness, and persons with disabilities continue to experience major challenges in achieving equality in the realm of education. We must return to the discourse and values of traditional education, which are based on the principle of inclusion. Gradually, administrative practices have led to discrimination and exclusion. For example, the South African Department of Education recognized categories of severe intellectual disabilities, and children in these categories are assumed to be non-educable. They have used these categories for reasons of convenience, but in the process, they have imposed stereotypes which separates some children from others. When these issues are placed before the courts of South Africa, judges must provide remedies to address the systemic and structural issues that underlie the discrimination that children with disabilities face.

Roberta Thomson, the second speaker, explored the point of view of an educator in Quebec and the challenges they face with regard to implementing inclusive education in practice. Quebec is an example of a jurisdiction in Canada that still maintains a large number of segregated institutions. In some cases, parents support this segregation and feel like mainstream institutions...
are not equipped to support their child’s needs. Ms. Thomson noted that, in Quebec’s inclusive schools, educators are often unprepared to teach children with disabilities because too few courses are offered to train them. In her experience, teachers in inclusive schools are very open to learning the skills needed to teach children with disabilities, but they criticize the lack of adequate training and support to do so effectively. There are also administrative hurdles to accommodating some students’ specific needs. At one point, a school rented an FM microphone system (which broadcasts the teacher’s voice) to accommodate one student. Yet, school officials decided to discontinue the use of the microphone for seemingly arbitrary reasons, claiming that it was unnecessary. Having worked in a private, early intervention center for children with disabilities in Montreal, Ms. Thomson also observed that many families do not receive financial support to ensure their children receive the intervention they require at an early enough age to prepare them to attend inclusive institutions.

**Futsum Abbay**, the third and final speaker, discussed the lack of improvement for persons with disabilities in the education sphere in the Global South. Despite strong support for the CRPD and its Optional Protocol, a number of states have failed to implement the Convention in Africa. Mr. Abbay noted that there is a major lack of political will to implement inclusive education. There is an assumption that inclusive institutions are more expensive and that the lack of resources is a major impediment. There are very few statistics and a lack of information that establish how low the enrolment of people with disabilities in formal education systems truly is, rendering policymaking on the basis of this issue more difficult. Classrooms in Africa, even in schools with adequate funding, are still widely inaccessible, and there has been little effort to adapt teaching methodologies to children who learn differently. In addition, children with disabilities are unable to get to schools that would accept them because public transportation systems are inaccessible. Improving transportation alone, Mr. Abbay asserts, would result in an increased rate of attendance and enrolment of students with disabilities in mainstream schools. Widespread poverty also means that families cannot afford critically-important assistive devices. Misconceptions and prejudice impedes positive change, which leads to many people believing that persons with disabilities are incapable of learning and thereby less worthy of receiving an education.

**Discussion**

When the panel opened up the floor, seminar participants asked a range of questions about practical measures for implementing inclusive education, and how courts and legislators have attempted to implement the protections enshrined in the CRPD. Mr. Ngwena noted that education is one of the most difficult institutions to transform because it depends on changing our views about the role of academic institutions in society and how we think about scholastic achievement more generally. We produce scholarship ourselves and praise each other for writing papers, yet we exclude others for not being able to do so in the same way. Mr. Ngwena added that historically, courts have a weak track record of proposing effective systemic remedies. We must ask ourselves how best to monitor such remedies, as well as how to monitor the protection of the socioeconomic rights that are linked so closely with exclusion in education. Mr. Ngwena was asked whether the court, in one of the cases that had been discussed, had provided justification for its unwillingness to accommodate persons with profound mental disabilities. He replied that the judges believed persons with severe disabilities to be uneducable as a matter of “common sense.” The traditional South African paradigm of education dictates that it is the responsibility of families to educate
persons with severe disabilities at home if they want them to learn. Ms. Thomson was asked to clarify whether, in her example, the child or the child’s family had been consulted in making the decision to discontinue the FM microphone use and she clarified that they had not; the decision was made entirely at an administrative level. It is common practice and symptomatic of larger systemic issues for the voices of individuals who may benefit from an assistive device not to be taken into account when determining whether to use the device. Commenting on Mr. Abbay’s discussion of the practical challenges in South Africa, Mr. Mégret noted that the cost argument is often used as an excuse for the lack of progress in developing contexts.
Universal Design and Accessible Public Spaces
October 20, 2014

Barrier-free environments is an evolving concept that benefits everyone, not only people with recognized disabilities. Making buildings and other physical spaces accessible to people with disabilities is about more than just building ramps. From bathrooms to crowded classrooms, from stop announcements on the bus, to elevators in buildings, how do Canada, and Montreal in particular, “stack up on the ground”? This seminar looked at the concept of universal design and explored how the physical environment is accessible for people with disabilities.

Moderator
Margery Pazdor
(co-Rathlyn Fellow 2014-2015, McGill Centre for Human Rights and Legal Pluralism)

Resource Persons

John Radford
(Professor, Critical Disability Studies, York University)

Melanie Benard
(Disability Rights Activist)

Béatrice Vizkelety
(Visiting Fellow, McGill Centre for Human Rights and Legal Pluralism)
John Radford, provided a geographical approach by talking about the Ed Roberts Campus, which was built using universal design and operates as a non-profit community center in Berkeley, California. Mr. Radford said that the Ed Roberts building stands out for having a truly universal design, and for not looking typically “institutional” like a medical building. Moreover, the Ed Roberts Campus building shows how accessible design can be understood as a fundamental social justice issue. Universal design is a way of challenging the need to have places for people with specific diagnoses, resulting in the institutionalization of people with disabilities. As a conclusion, Mr. Radford explained the difficulty of moving beyond the asylum era, both culturally and socially. Universal design has been part of a battle to change the way we understand disability and conquer space justice.

Melanie Benard, disability rights activist, talked about the Quebec accessibility situation. Ms. Benard explained that Quebec legislation does not contain detailed accessibility requirements, and when requirements are included, they are impossible to understand for their technicality. Even though Canada has an improved accessibility situation, the Quebec situation is far from the ideal of universal design and inclusion. For example, only seven of 68 metro stations in Montreal have elevators. Each of those seven are on the orange line; the STM plans to only be fully accessible by 2029. The situation in Toronto is not much better; the metro plans to be fully accessible by 2024. Ms. Benard argued that transportation was not the only matter of concern in Quebec. Many people with disabilities are also still unable to vote, to access education and health care services, and the Human Rights Commission itself is not accessible. Moreover, the right to accessibility includes social and cultural spaces, so it is necessary to question how many restaurants and other social spaces are accessible in Montreal. Finally, the speaker explained that accessibility and universal design cannot be limited to mobility impairments. We have to take into account the barriers that people with other disabilities have to overcome daily.
Béatrice Vizkelety, the third and final speaker, focused on accessibility as the right to access public spaces without discrimination. She agreed with the previous speaker, explaining that the process for accessibility has been slow, and there is still quite a distance to go before we can speak about inclusion in Quebec. To explain the situation, Ms. Vizkelety discussed the Via Rail case. In 2000, the Canadian National Railway Company invested in a new generation of transportation rail cars that were not accessible to people with disabilities. In 2007, the Supreme Court stated in Council of Canadians with Disabilities v. Via Rail Canada Inc. that the company needed to modify the rail cars and that they had the duty to avoid new barriers for people with disabilities. The speaker explained that the legal landscape has changed since 2010, when Canada ratified the UN Convention on the Rights of Persons with Disabilities, which sets out important principles such as the social model of disability, respect for individual autonomy, the principle of non-discrimination, inclusion and accessibility. However, according to Canada’s first report under the Convention, it is understood that the implementation of the Convention principles and obligations stands on existing legislation. In order to enhance the effectiveness of principles relating to full and equal participation, the speaker suggests that it is necessary to: (1) shift the focus from stereotypes to systems and practices that create barriers to equal participation and inclusion; (2) recognize the existence of an implicit duty to act and take measures to eliminate such barriers, and (3) find appropriate remedies to fit the problem and to ensure that written policies regarding accessibility translate into practice.

Discussion

When the discussion period opened up, seminar participants asked a range of questions about the limits of universal design as a matter of accessibility, the current situation of McGill accessibility, how to handle the costs of universal design, and the role of the private sector in the discussion of universal design. The speakers agreed with the fact that universal design is not only about accessibility, and it should be understood as a matter of comfort, convenience, full and equal participation, democratic access to education and dignity. Universal design goes beyond physical structures, and is not just about access anymore. Furthermore, the speakers agreed that all the solutions for accessible transportation are not in the public system; in the private sector some people are addressing it in different ways. To end the panel, Mr. Radford explained that universal design couldn’t be understood as a more expensive option because the investment in a building that everyone can benefit from is less that having to build a new one.
Barriers faced by people with disabilities seeking to enter the job market are numerous: physically inaccessible workplaces, employer prejudice, lack of experience or education due to a vicious cycle of inaccessible educational institutions and workplaces, etc. These barriers affect economic security: the poverty rate of people with disabilities in Canada is 14.4%, compared to a rate of 9.7% for people without disabilities. Article 27 of the CRPD acknowledges the “the right of persons with disabilities to work, on an equal basis with others; this includes the right to the opportunity to gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible to persons with disabilities.” Recognizing that engagement in meaningful work is a basic human need, how can employment and other non-remunerated occupations enhance the quality of life of persons with disabilities? Furthermore, how can the economic security of people with disabilities be secured? The seminar drew on the insights of individuals and organizations with first-hand experience in contributing to the economic security of persons with disabilities.
Moderator, Colleen Sheppard, began by highlighting the importance of the topic of work and economic security and introduced the invited speakers. She also reminded the audience of the final seminar on Family and Sexuality that will take place on 26 March 2015.

The first speaker, Anne-Marie Laflamme, explained the applicable law in the context of job opportunities for people with disabilities. She explained that under the social model of disability it is understood that the unemployment of people with disabilities is due, not to the disability itself, but to the reaction of society to disability. Professor Laflamme recognized that the Federal government and the Government of Quebec have adopted different kinds of legislative measures to integrate people with disabilities into the workplace. The speaker divided these measures into two approaches: (i) affirmative action and (ii) the duty of accommodation. With respect to affirmative action, she outlined several initiatives and programs that the Quebec government has adopted, including creating financial incentives in the public and private sector to provide a wider range of employment opportunities for people with disabilities. The aim of these proactive strategies is to prevent and correct human resource practices that have discriminatory effects. However, Professor Laflamme recognized that the results of these strategies have been quite limited. The National Strategy for Labour Market Integration and Maintenance of Handicapped persons of 2008 is an example of the type of proactive initiatives adopted by the Government of Quebec.

The speaker then explained the second type of approach, which is related to the right to equality and the duty of accommodation. The right to equality has been developed in both the constitutional and statutory context, and is closely connected to anti-discrimination law. In the context of disability rights, Professor Laflamme described the duty of accommodation as the adaptations that the employer is required to make to enable people with disabilities to do their job. They further explained that the lack of this accommodation can constitute discrimination on the basis of disability. Giving the example of Hydro-Quebec v. Syndicat des employé de techniques professionnelles et de bureau d’hydro-Quebec, she explained that the court understands that the duty of accommodation is limited, and only extends to the point of undue hardship for reasons such as financial cost, the prospect of substantial interference with the rights of others etc.. The speaker explained that the determination of these reasons depends on the particularities of each case.
Professor Laflamme then provided practical examples of reasonable accommodations that employers provide, such as flexible working hours, the removal of specific tasks from the job description, the reallocation of an employee to a different part of the business, and the use of new technologies. On a final note, the speaker explained that the duty to accommodate provides assistance primarily to employees who are already on the job, but one of the most difficult obstacles facing persons with disabilities is getting hired in the first place.

Carole Foisy, the second speaker, outlined her work as a team leader at the Comité d’adaptation de la main-d’œuvre [CAMO]. She explained that the organization works strategically with different partners to provide solutions to barriers that people with disabilities face in education and employment. Ms. Foisy also explained that her organization provides people with disabilities and employers with information and training, encouraging employers to increase job opportunities for people with disabilities. She noted that it is important that hiring procedures be simplified, and that employers innovate to include people with different abilities in their businesses. Ms. Foisy concluded by emphasizing that diversity remains a tremendous challenge in companies, but also a potential source for organizational enrichment.

Discussion

Following the presentations, seminar participants asked numerous questions and provided additional commentary about the ongoing challenges of diversity, disability and employment. Both speakers emphasized the difficulties encountered by persons with disabilities in getting hired in the first place. Ms. Foisy explained that this challenge underlies her organization’s focus on working with companies and future employers. Indeed, she noted that change must also start in education, including more accessible and inclusive universities for people with disabilities.
Article 23 of the CRPD requires state signatories to “take effective and appropriate measures to eliminate discrimination against persons with disabilities in all matters relating to marriage, family, parenthood and relationships, on an equal basis with others.” Using the Convention as a backdrop, this seminar examined issues surrounding disability and family matters. In particular, it considered how legal and social constructs of parenthood, sexuality and sexual health have a dangerous potential to exclude people with disabilities. They discussed parenting and adoption for disabled parents and children with disabilities, as well as the issue of forced sterilization.

The first resource person, Natalia Acevedo Guerrero, discussed the violation of the rights of persons with disabilities in Colombia through non-consensual sterilization.
Discussions on sexuality and reproduction tend to be framed in terms of medical discourse. We tend to see this as a post-eugenics era where human rights inform decisions of reproduction, rather than arbitrary and essentializing notions of what humans ‘should’ be like. Are we past eugenic-logics? National human rights codes as well as the CRPD indicate that states acknowledge that the rights to self-determination are not to be summarily dismissed. Yet some states still allow forced sterilization based on the false belief that reproductive rights of certain individuals might burden society. For example, Colombia allows bypassing the individual by giving “substituted consent” for sterilization under a doctrine of “best interest.” Between 2009 and 2013 there were 505 procedures of sterilization on women with disabilities [WWD], and 127 on men with disabilities in the country. This “substituted consent” tends to be used for the forced sterilization of girls around the age of 14 who have been diagnosed with some form of long-term incapacity. Colombia’s procedure is premised on the medical model of disability with doctors making recommendations to the courts. Persons with disabilities are neither consulted nor do they consent. The process that removes their rights often starts with a 15-minute interview between a medical expert and the victim. Typically, if the doctor makes the recommendation, the court grants an order.

The sterilization is often justified on the basis that WWDs are more susceptible to rape, sexual violence and involuntary pregnancy. The focus on sterilization rather than violence prevention is counter-productive. Education on reproductive health and sexual violence is lacking for persons with disabilities in Colombia. Sterilization removes the deterrent of unwanted pregnancies which almost encourages sexual violence against sterilized WWDs. Can a medical opinion alone be used to usurp the rights of women? Lack of consent to the procedure is a denial and distortion of WWDs rights. Regrettably, the policy decisions on reproductive health are being framed in the “objective,” and “scientific” discourse of medicine which conceals how scientific discourse can be used to justify discriminatory beliefs. In such a discourse, diagnosis becomes more important than rights.

**Bonnie Brayton** was returning from a weeklong civil society meeting at the UN concerning the CEDAW (The Convention on the Elimination of Discrimination Against Women). DAWN-RAFH Canada is the only organization in Canada that advocates from both a gender and disability perspective to advance rights. Other organizations providing useful resources on these issues include Women Enabled International and Women with Disabilities Australia. Bonnie spent some time sharing a particularly good resource entitled ‘TWICE VIOLATED’ Abuse and Denial of Sexual and Reproductive Rights of Women with Psychosocial Disabilities in Mexico’ produced by the Colectivio Chuhcan with funding from Disability Rights International. Women with disabilities make up half a billion of the world's population, further Bonnie noted that WWD have twice the risk of rights violations compared to non-disabled women. The seminar topic underlines 2 key issues: motherhood and disability. On this subject she shared two anecdotes. The first is the story of Alessandra Pacchieri. Pacchieri was an Italian woman with bipolar disorder who was traveling in England. While there, she was forced to have a cesarean section and put her child up for adoption by a judge who ruled she was an unfit mother. The second story is about Andrea Amiar, who was the first woman with an intellectual disability in the UK to be allowed to marry. In order to be allowed to marry she had to agree to be sterilized. That is, in order to be granted the right to marry, she had to give up the right to have children. These cases remind these issues and prejudice are still prevalent in Western societies.
The seminar topic also raises consideration of intersectionality. Forced sterilization is largely specific to women with disabilities; because of its intersectional nature, it must be addressed in conventions like the CRPD and the Convention Against Torture.

She concluded with a personal anecdote. Bonnie survived polio. She has 2 girls. Not long after the birth of her second daughter, Bonnie became pregnant again. She was discouraged by her family doctor from having a third child and it was suggested she would be putting herself at risk and possibly undermining her own ability to mother as there was a perceived risk that her post-polio symptoms might become worse. She notes that her decision not to have a third child was informed by this prejudice. This is an example of how the medical model creeps in unexpectedly.

Angela Campbell, the third and final speaker, addressed the intersection of disability and family law. Many cases deal with the financial aspects of disability; because there is very little state support for people requiring care, private purses are typically relied on, and this sometimes gives rise to litigation. Therefore, most cases in family law relating to disability have to do with child support and spousal/alimentary support. Child support in Canada is governed by a series of mandatory guidelines. The question that arises is: how do the guidelines account for the special needs of children with disabilities? There is some flexibility, but this can lead to inconsistent and unpredictable results. The other issue is whether support payments get counted as income.

Spousal support has guidelines, but they are not mandatory – they are advisory. In the case *LMP v LS* (a 2011 Supreme Court of Canada case coming out of Quebec) a husband and wife ended their 19-year marriage and the husband agreed to indefinite spousal support. The wife had been diagnosed with MS during the marriage and was unable to achieve economic self sufficiency. It is important to note that this was a family with means. Very few family law cases involving low-income parties reach the Supreme Court. Therefore, it is important to remember class when speaking about intersectionality. In *LMP*, the ex-husband later made a request to vary spousal support payments so as to reduce, and then eventually end, support payments. The husband argued this was in line with the principle of promotion of economic self sufficiency. The Quebec Court of Appeal accepted the application, and the Supreme Court granted leave to appeal from that judgment. LEAF and DAWN intervened before the Supreme Court, which overturned the appellate decision.
Concerning forced sterilization, the question came up in Canada in the 1986 *Re Eve* Supreme Court decision. In that case a mother sought the sterilization of her disabled daughter. The Court refused invoking its *parens patriae* jurisdiction. In that case (and in *LMP*), there was a heavy reliance on medical opinion. Professor Campbell shared statistics from the United States, showing relatively high rates of removal of children from parents with disabilities. Disability is invoked as grounds for loss of custody, but also loss of independent access. These decisions often rely heavily on medical evidence. Decisions are made using the “best interest of the child” standard, which gives wide discretion to judges. This can be good because it allows individualized decisions, however it leaves a lot of room for discretion with little in the way of guidelines as to whether and how disability is considered when custody and access are decided.

**Discussion**

The ensuing discussion was fruitful, involving interventions from all three panelists and the audience. Among the topics discussed were the concept of Familism as another system of belief, with potentially oppressive tendencies; how women with disabilities are less self-represented in the justice system; how persons with disabilities are portrayed either as victims of sexual assault or as having higher-than-average libidos; and the over representation of women with disabilities who are institutionalized (including in prisons).
Liberty and Security of Persons with Disabilities: Rhetoric and Reality
2015-2016

Liberty and security of the person are fundamental rights to which every human being is entitled. The CRPD guarantees that all persons with disabilities, and especially persons with psychological or intellectual disabilities, are entitled to liberty and security pursuant to Article 14. Involuntary detention, declarations of unfitness to stand trial, and the lack of reasonable accommodation in prisons represent significant barriers to the exercise of this right.

While Article 14 focuses on the criminal justice system, the seminar series took a broader perspective on liberty and security by examining Article 19, which guarantees the right to live independently and to be fully included in the community. Although prison and community are very different contextually, the possibility exists in both for individual autonomy to be unduly repressed.

Thus this seminar series explored the right to liberty and security of people with disabilities in two different contexts: The Fall 2015 seminars focused on the criminal justice system, while the Winter 2016 seminars explored themes relating to security, autonomy and welfare of persons with disabilities living in the community.
This seminar looked at the experience of persons with disabilities in the criminal justice system as victims of crime, as accused persons, and as witnesses. In these roles, persons with disabilities face societal, institutional, and financial barriers to the support and resources they need to report crimes, face prosecution and testify. For instance, victims with disabilities may not report crimes because of their dependence on the abuser for basic needs. As accused persons and as witnesses, people with disabilities often encounter numerous barriers to effectively accessing justice. This seminar explored these challenges and identified best practices and realistic proposals for improving access to justice for persons with disabilities. It also considered different international perspectives on the intersection of mental health, physical disability and the criminal justice system, with each of the speakers having played a role in the system at different stages.

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)

Moderator

Marie Manikis  
(Professor of Law, McGill University)
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, etc.) 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 evidence of it having been done. 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 into 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 have right now is fragments of 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 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? 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, making it hard to prevent. 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 persons 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 move towards 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.

**Discussion**

When the floor opened for discussion, seminar participants raised other potential barriers to addressing the issues faced by people with disabilities, such as: Canadian federalism, the language of “accommodation”, lack of adjustments in prisons, and 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 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.
This seminar examined the rights of prisoners with disabilities. Historically, there were different institutions with different justifications for removing certain people from society: prisons for the ‘criminal’, asylums for the ‘insane’ and almshouses for the ‘poor’. Despite the asylums being closed, the confinement of the mentally ill persists; it is estimated that as much as 50 percent of the current prison population in Canada has a mental illness or other type of disability. Despite statutory provisions that require reasonable accommodation, persons with disabilities in prisons are subject to pervasively poor and often abusive living conditions. Further, they are routinely denied the care and equipment they need to address their mental or physical disabilities. There is also evidence that prisoners with disabilities are less likely to be sentenced to probation, less likely to be paroled, and serve longer sentences due to the one-size-fits-all prison rules. This seminar provided an opportunity to discuss the practices that best meet the needs of persons with disabilities in prison, and whether prisons have become the new “asylums”.

M O D E R A T O R :  
Robert Israel, Professor, Criminal Law, Faculty of Law, McGill University

P A N E L I S T S :  
Kim Pate, Executive Director, Canadian Association of Elizabeth Fry Societies  
Adelina Iftene, Post-doctoral student, Faculty of Law, York University  
Chris Chapman, Assistant Professor, School of Social Work, York University

Prisons: The New Asylums for People with Disabilities?  
November 9, 2015
The first speaker, Kim Pate, kicked off the seminar by speaking of the clear trend in the overincarceration of indigenous women, especially those with mental illness. In 2003, Human Rights Watch documented the broader issue of the incarceration of the mentally ill and noticed that previous efforts to deinstitutionalize those with mental health issues were being overborne by recent trends to reinstitutionalize this vulnerable population. These trends surged from the criminalization of the mentally ill, and with many psychiatric wards closing across Canada, the mentally ill have been increasingly funneled into the prison system. As a result, the mentally ill have been more likely to be classified as being high risk, because they are seen as being unpredictable, as posing a risk to the community, and as having difficulty adjusting to an institutional environment. And rather than being provided with therapeutic intervention and medication, these individuals’ behavior is instead controlled through the use of segregation and other isolating mechanisms, which Ms. Pate explained either promotes the development of a mental illness, or exacerbates the symptoms of an existent one. In her conclusion, Ms. Pate calls for the end of segregation, not only for those with mental illnesses, but for all prisoners, and for the use of more appropriate health resources in dealing with vulnerable populations in the carceral system.

The second speaker, Adelina Iftene, spoke about the incarceration of people with disabilities, especially that of older offenders with both physical and mental disabilities. According to her own research, Ms. Iftene found that over 20% of inmates in federal institutions were over the age of 50, which for her was indicative of a serious and pressing problem. The incarceration of older offenders is related to many problems concerning the rise of offenders with disabilities and terminal and chronic illnesses, which federal institutions are not equipped to deal with and accommodate.

Ms. Iftene’s presentation was based on data collected for the purpose of her doctoral research; her sample comprised 200 male inmates, over the age of 50, having both physical and mental illnesses who were housed in seven federal institutions across all levels of security. Ms. Iftene stresses the fact that, unlike women or Aboriginal offenders, who are recognized vulnerable groups, older offenders have not yet received such an acknowledgment. This lack of acknowledgment delays the implementation of solutions for helping to alleviate structural problems associated with the incarceration of an aging population. According to her research, Ms. Iftene found that 53% of her sample (103 out of 197) reported suffering from a physical disability; those who reported suffering from a physical disability also reported a higher number of related issues such as chronic pain, drug abuse, sleeping problems, and psychological and physical abuse. Ms. Iftene also took issue with the management in prisons of those with physical disabilities: facilities lack accessibility for older offenders, medical staff is often unavailable, and there is no notion of “compassionate release” in Canadian law. With respect to mental disabilities, 40% of the sample reported having at least one mental disorder; Ms. Iftene suspected that the prevalence of mental illness in prisons is much higher than reported, given the stigma and abuse the mentally ill are subject to. Of those who reported suffering from a mental illness, more than half reported having spent time in segregation and having disciplinary charges imposed on them. According to Ms. Iftene, these findings again reflect poor managerial structures and a lack of medical personnel in federal and provincial institutions. This has led, over the years, to the use of segregation as the main response to mental illness. Ms. Iftene concluded by stating that there are no clear solutions to the
incarceration of those with mental and physical disabilities, yet better measures should be implemented to acknowledge and facilitate the management of those with such disabilities.

Chris Chapman, from York University, began by asking how it is permissible to imprison anyone for a long period of time, let alone those suffering from a disability; how can we justify imposing such injustices individuals? Mr. Chapman drew a parallel with the historical background in the United States, and the imprisonment of Blacks. Marginalized communities were often incarcerated because social norms made the imprisonment of racialized and colonized people acceptable and desirable. Therefore, incarceration was believed to be a positive, transformative, mechanism for rehabilitating inmates. Yet, through the years, incarceration instead became a tool for violence against those with mental disabilities in asylums; this violence persisted because, normatively, society believed that confinement was necessary for personal transformation. To this effect, Mr. Chapman recommended a focus on the relational aspect of institutionalization: given that interactions and relationships are highly scrutinized and controlled in the carceral environment, the focus should be on increasing accountability for prison staff.
For many people with a disability, being taken to the hospital by a family member against their will or being held down and forced to take medication is a familiar scenario. The CRPD establishes that involuntary treatment and other forced psychiatric interventions in health-care facilities are forms of torture and ill-treatment that can affect the most fundamental rights, including the right to dignity and liberty. An international legal framework guaranteeing the right of persons with disabilities is thus in place. However, given that this framework is relatively recent, the Convention still needs to find its place in the policies of the state. This seminar engaged with the rights violations associated with involuntary placement and treatment and further identified strategies for limiting their use.

PANELISTS: Ella Amir, Executive Director, AMI-Quebec
James Sayce, Associate, Class Action Group, Koskie Minsky LLP
Marie-Hélène Goulet, Ph.D candidate, Nursing Science, Université de Montréal

MODERATOR: Derek J. Jones, Professor, Health Law, Faculty of Law, McGill University
Derek J. Jones began by painting the context of the seminar. Since the heyday of the asylum era from the late 19th-mid 20th century, societies have based involuntary commitment to psychiatric institutions on such grounds as lunacy, socio-economic status, danger posed, health needs, and well being. The modern human rights revolution that has unfolded since WWII has helped to challenge, narrow, eliminate and refine the process and standards for admission, conditions of stay, and departure. Beginning notably in the 1970s, that revolution helped fuel the deinstitutionalization movement, helped reform laws, helped empower patients with rights, freedoms and non-custodial community options, notably in the US, Europe and Canada. The 2007 Convention on the Rights of Persons with Disabilities (CRPD) shall contribute to this (r)evolution with its standards on human dignity, non-discrimination, liberty and treatment. Societies confront post-deinstitutionalization issues implicating profound legal conflicts. Moreover, many domestic statutes still provide for involuntary confinement and/or treatment of persons with a mental condition, typically based on a finding of a serious danger to self or others. Professor Jones introduced this interdisciplinary panel on “Involuntary Confinement and Treatment.” He invited the panelists to explore how such issues as equality, health and safety, personal autonomy, and dignity of the person may be better reconciled.

James Sayce spoke on his experiences as counsel in class actions involving incarcerated people with mental illness, focusing particularly on Brazeau v. Canada. He explained that the Corrections and Conditional Release Act S.C. 1992 c.20 requires prisons to provide reasonable access to essential healthcare within professionally accepted standards, including mental healthcare. It is, widely known that this standard is not met by correctional facilities in a variety of ways. Sayce mentioned three in particular: the over-reliance on administrative segregation, which can cause mental illness and exacerbate pre-existing mental illness; a failure to treat mental illness, whether through therapy or pharmaceutically; and a denial of access to specific pharmaceuticals. Sayce provided a typical account of a patient arriving at a facility after sentencing, having no access to prescribed medication, having to wait a prolonged period before seeing a doctor, who then might be limited in what they can prescribes by the rules of the particular facility. Prisoners are also regularly transferred within the correctional system, which then leads to a repeat of the challenges. As the language of the Act gives correctional facilities a lot of discretion over the administration of mental healthcare, there is incoherence throughout the system and administrators frequently make arbitrary medical decisions. Access to medication can be restricted and drugs can be withdrawn from a patient as a form of punishment. Sayce characterizes these failures as systemic negligence and breach of fiduciary duty by Canada. Sayce stressed the need to encourage class actions in such cases in order to pressure the government to enforce the standards set by the CRPD.

Ella Amir’s presentation was on the community’s experience with involuntary confinement and treatment, with special emphasis on the tension between notions of freedom and protection. Opinions on involuntary confinement are usually based on civil liberty arguments or getting the patient back to health. Efforts have been made to involuntarily commit persons with mental illness in order to treat them, and afterwards return them to their communities. However, it has been observed that this has not been successful and instead, has resulted in an increase in homelessness and repeated hospitalization. Danger to self or others has become the standard for involuntary
commitment. Families are increasingly seeking court orders to involuntarily commit family members with mental illness, however, this often backfires as it strains relationships between the patient and their family. This in turn increases the chances of the patient reverting to their poor mental condition after discharge back into the community. Therefore, when families approach her organization for advice, involuntary commitment through court orders is not usually recommended, and then only as a last resort. Rather, families are encouraged to attempt different communication techniques with the patient to persuade them to get treatment. Focus is thus moved from the illness to the patient, a technique that has reported much success. Amir emphasized that there is a need to reduce the reliance on involuntary commitment and consider other available options; not all mental illness necessitates involuntary commitment.

**Marie-Hélène Goulet** presented a psychiatric point of view from Quebec. Based on her research, she wants to examine the strategies that can be implemented to reduce the use of control measures. For the purpose of the discussion, she began by recalling the three main definitions used in psychiatric settings (which come from the 2002 Ministerial Guidelines that derive from the Act Respecting Health Services and Social Services). "Contention" involves the use of human force or mechanical means to restrict a person's freedom of movement. "Chemical restraint" limits this freedom by administering a drug. Finally, "isolation" consists of placing a person in a place, alone, from which they cannot leave. Section 118.1 of the Act addresses the issue of the use of these control measures. These can be used against a person only to prevent them from inflicting harm on themselves or others. On this point, Marie-Hélène notes that there is a prevalence, in Quebec and Ontario, to use isolation and restraint more so than the international average. Although the guidelines set out the principles on which the use of these measures must be based, they remain unsatisfactory. The adverse effects of the measures, for patients, stakeholders and organizations, are widely recognized, however when Marie-Hélène researched which measures were most effective, she ran into a wall: there is no meta-analysis or even reviews of writing on this topic; the data is sparse. Her research points to several factors that could help reduce the use of these measures. The most important of these is leadership, which is the willingness of managers and clinicians to apply a philosophy of reducing control measures. In addition, her studies show that reducing the use of control measures improves the health of all and does not affect the safety of health professionals.

**Discussion**

When the floor was opened for discussion, questions included the conditions of solitary confinement. It was noted that jurisdictions in the USA have limited or stopped solitary confinement for vulnerable populations, such as prisoners with mental illness or children. This was based on human rights claims and interdisciplinary studies documenting the ills of the practice. A question was raised as to why there have not been any Charter challenges raised against Canadian statutes and/or practices that seem to allow solitary confinement in the penal system. Sayce responded (i) that there are certain situations where solitary confinement is necessary, which makes it difficult to completely eliminate from the penal system; and (ii) there is little incentive for Charter litigation because the damages granted are usually very low; the latter leads such cases to be less effective than class actions in modifying government behaviour, and, more pragmatically, less attractive to potential counsel. Concerns were also expressed about whether doctors who refuse or limit treatment of prisoners with mental illness were liable for malpractice.
Professor Jones noted that failure to provide essential medical care has been successfully raised in litigation for HIV-affected prisoners and that federal law and regulations require the provision of adequate care. On the other hand doctors’ professional discretion is also framed by correctional facility practices, and individual prisoners seldom muster the resources to bring suits either against physicians, facilities or government.
Article 19 of the CRPD requires state signatories to ensure that "persons with disabilities have the opportunity to choose their place of residence and where and with whom they live on an equal basis with others and are not obliged to live in a particular living arrangement". Using the CRPD as a backdrop, this seminar explored issues of independent living and security. In particular, we examined how independent living in the community can be achieved. We discussed the challenges of balancing the protection with liberty, as well as the best policies for promoting not only human dignity, but also human flourishing.

PANELISTS:  - Roberto Lattanzio, Executive Director, ARCH Disability Law Centre
- Marie-Christine Beshay, Occupational Therapist, McGill School of Physical and Occupational Therapy
- Fahreen Nanji, Physiotherapist, Toronto Rehab

MODERATOR:  Iñaki Navarrete, Law Student Intern, Disability Rights International
In this last yearly installment to the seminar series “Autonomy and Security in the Context of Independent Living”, Inaki Navarrete moderated an interdisciplinary panel on how independent living and integration in the community can be achieved.

Fahreen Nanji gave her clinical perspective as a physiotherapist working with patients who have suffered strokes, brain injuries and other traumatic injuries. In her view, the most significant barrier to independent living is the lack of suitable housing and transportation facilities for persons with disabilities. She remarked that living with a disability is quite expensive and the recent government cuts to funding disability-related issues have worsened the situation for many persons with disabilities. While assisted-living environments are very helpful, they are still considered institutions and do not provide the same flexibility that one’s own home might provide, such as living with one’s children. Additionally, there are some who fall in an income bracket that disqualifies them from receiving governmental support, but still cannot afford disability-related services. While it is important to maximize limited resources, it is also important that decisions about who gets support are dictated by individual needs.

Roberto Lattanzio spoke on his experiences at ARCH Disability Law Center which specializes in test litigation advancing disability rights. He focused on the inclusion of persons with disabilities in the education system and the workforce. Despite the advances in the understanding of disability indicated by the transition from the medical model to the social model, there is still a strong remnant of the medical model in the legislative structures. An investigation in Ontario revealed that persons with intellectual disabilities were working in some jobs that paid below the minimum wage, a form of exploitation disguised as “creating work opportunities” for persons with disabilities. Such work environments are isolating and a tribunal found this practice to discriminate against persons with disabilities. It is imperative to think about these segregative practices and how they can be ended. While education is of utmost importance to persons with disabilities, most schools in the province still segregate students with intellectual disabilities. New Brunswick has developed a new inclusive education policy that creates a template for other provinces to follow.

Marie-Christine Beshay approached independent living from a community perspective and shed light on the work done by occupational therapists. Occupational therapists (OTs) look at the individual as a whole and consider physical abilities, cognitive abilities, and emotional functions in order to assess the impact of the disability on a person’s ability to engage in their occupation and take care of themselves. OTs also consider the physical environment and advocate for environmental modifications that allow their clients to engage in their occupations. The main priority of OTs is to avoid occupational deprivation for their clients because occupations allow participation and engagement in life. Therapists also help their patients to build communication skills, coping skills, and advocacy skills that promote inclusivity. Additionally, they work with other professionals such as lawyers to ensure that their clients get access to the resources that are due to them. They may also act as expert witnesses in court to provide the court with an accurate picture of a client’s needs arising from their disability.
Discussion

When the floor was opened for discussion, comments were made on the disparities in the disability services offered by the different provinces and how this has created a hierarchy of accessibility. It was also pointed out that Canada could learn a few things on accessibility from the United States in order to align further with the ideals of the CRPD with regard to independent living. Remarks were also made about how research by disability institutions is contributing to the formulation and shaping of policy such as the reformulation of building codes to promote independent access.
Children, Disability and Human Rights
2016-2017

The UN Convention on the Rights of Persons with Disabilities (CRPD) guarantees all people with disabilities, including children, the right to education (art. 24), the right to health (art. 25) and the rights to full participation in cultural and family life (art. 30; art. 23(3)-(5)). The 2016-2017 Disability and Human Rights Initiative explored the rights of children with disabilities from diverse personal, professional and geographic perspectives.

Drawing on the CRPD as well as the UN Convention on the Rights of the Child, the initiative marked advances and confronted obstacles to ensuring the rights of children with disabilities through two events. First, the Fall 2016 event examined the right to education and its implementation through models of inclusive education. Second, situated in the context of the Truth and Reconciliation Commission's calls to action, the Winter 2017 event explored the rights of Indigenous children with disabilities, including the rights to education and health as well as the rights to participate fully in cultural and family life.
Based on the principle that all children have a right to education, this event explored the gaps in access to inclusive education for children with disabilities from different perspectives and jurisdictions.

This event explored barriers to, and the status and successes of, inclusive approaches to education for children and youth with disabilities. Using the UN Conventions on the Rights of Persons with Disabilities (art. 24) and on the Rights of the Child (arts. 23, 28 and 29) as a jumping-off point, the topic of inclusive education was explored from diverse geographical and professional perspectives. The event aimed to attract and engage members of the legal community, academics and professionals in other relevant fields, and McGill students from the Faculty of Law as well as other faculties.
This event engaged participants with multiple perspectives on the challenges that children with disabilities face in having their right to an education respected, including in Quebec, in other Canadian jurisdictions and in Europe.

**Resource Persons**

**Shivaun Quinlivan**  
Lecturer, Department of Law, NUI Galway

**Tara Flanagan**  
Associate Professor, Department of Educational and Counselling Psychology, McGill University

**Teri Phillips**  
Director, Office for Students with Disabilities, McGill University

**Tanja Beck**  
Associate Director, Office for Students with Disabilities, McGill University
This seminar explored the obstacles that Indigenous children with disabilities can face in accessing services such as education and health care, and how these obstacles impact Indigenous children’s right to full participation in cultural and family life. Engaging with the Canadian legal framework, Indigenous law and the CRPD, this event called participants to work together to ensure that the rights of Indigenous children with disabilities are upheld as part of our shared process of reconciliation.

Featuring:
Dr. Vandna Sinha (School of Social Work, McGill),
Dr. Luna Vives (Centre for Research on Children and Families, McGill),
Jacinthe Dion (B.C.L./LL.B. Student, McGill)

Moderator
Shauna Van Praagh
(Professor, Faculty of Law, McGill)
Disability, Inclusion, and Integration in Big Cities
2017-2018

People with disabilities navigate unique challenges in big cities, many of which arise from the urban environment and infrastructure, as well as the high cost of living both with a disability and in the downtown core. Institutional barriers to access—transportation, public and government services, and the labour market—as well as structural barriers and discrimination—racism, classism, and sexism—intersect to shape the lives of people with disabilities in urban settings.

The United Nations Convention on the Rights of Persons with Disabilities (CRPD) specifically requires countries to ensure that people with disabilities can access their environment, transportation, public facilities and services, and workplaces (art 9); recognize the right of persons with disabilities to work and employment (art 27); and recognize the right to an adequate standard of living and social protection (art 28), without discrimination.

Drawing on the CRPD, the initiative sought to explore the ways that accessibility and inclusion in big cities are understood and enacted through disability rights frameworks and diverse policies, protecting people with disabilities.
Urbanization is currently one of the most important global trends of the 21st century. Urbanization has potential to achieve sustainable and inclusive development for all. About 6.25 billion people, with 15% of them living with disabilities, are predicted to be living in urban centres by 2050. Urban environments, infrastructures, and facilities and services can impede or enable access, participation, and inclusion of persons living with disabilities.

For the 15% of the world’s population who live with a disability, available evidence reveals a widespread lack of accessibility to built environments—from roads and housing, to public buildings and spaces—as well as basic urban services such as sanitation and water, health, education, transportation, emergency and disaster response, and access to information and communications. These accessibility limitations contribute to the disadvantage and marginalization faced by persons with disabilities, leading to disproportionate rates of poverty, deprivation, and exclusion. This situation also impedes the realization of the 2030 Agenda for Sustainable Development and other internationally agreed upon development goals.

This seminar explored disability in the built environment through planning, design, and public policy. It considered the following:

- How international policy frameworks require states to promote accessibility and disability-inclusive development
- Initiatives and progress made to promote accessible and inclusive development

Resource Persons

Omar Lachleb  
(Founder of J’accède Montréal)

Laurent Morissette  
(President of RAPLIQ)

Melanie Benard  
(Human rights lawyer)

Moderator

Stephanie Chipeur  
(PhD Candidate at McGill)
- Recommendations on the ways forward to advancing an accessible and inclusive new urban agenda for all
- Sharing of good practices from across Canada

A summary of the discussion at the Disability & Human Rights Initiative’s seminar on Friday, October 27, 2017. The discussion was moderated by Stephanie Chipeur. This seminar was based on the Initiative’s theme for 2017-2018: Disability, Inclusion, and Integration in Big Cities.

**STEPHANIE CHIPEUR**
**PHD CANDIDATE, MCGILL**

This panel will focus on accessibility, inclusion, and movement in the built environment of a big city. Panelists will provide an overview of the law protecting people with disabilities and the steps that the disability community is taking to make Montreal more accessible.

**ME MELANIE BENARD**
**HUMAN RIGHTS LAWYER**

The main legal protections for people with disabilities in Quebec are human rights legislation, building codes, and disability-specific legislation. The Charter protects people against discrimination on the basis of disability: governments have the obligation to accommodate people with disabilities to the point of undue hardship. The system is reactive, not proactive. This places the burden on people with disabilities to complain. There are over 2000 accessibility requirements for new buildings, but the minimum criteria are not adequately enforced.

**OMAR LACHLEB**
**FOUNDER, J’ACCÉDE MONTREAL**

J’Accède Montréal provides free ramps to small businesses, which are excluded from accessibility requirements in building codes if they are smaller than 300ft². There are between 50-60 ramps throughout Montreal that were built and painted by the community. The goal of the organization is to raise awareness; people with disabilities have a powerful purchasing power. This is a temporary solution that addresses “visibility,” not necessarily accessibility.

**LAURENT MORISSETTE**
**INTERIM PRESIDENT, RAPLQ**

Only 11 STM stations are accessible, and most people with disabilities cannot use escalators when elevators are broken. Paratransit is seen as a privilege, but users often wait outside for hours in the cold and miss appointments. Often, the question is how much accessibility willcost. In 2017, the Superior Court approved RAPLQ’s class action against the STM, claiming that the lack of wheelchair access in metro is discriminatory. Inclusion means access to sidewalks and transport, but also to government positions, culture, and medical care.

**FURTHER THOUGHTS**

How can people who are vulnerable within the disability community be included in the disability movement?

How can media coverage of accessibility issues and issues facing people with disabilities be improved?
Disability and Work: Inclusion and Integration in the Labour Market

The CRPD guarantees people with disabilities the right to the opportunity to gain a living through work, as well as a work environment that is open, inclusive, and accessible (art 27). However, there are still many challenges facing people with disabilities when entering the labour market, including discrimination, the employer’s economic concerns and short-term goals, and a decrease in funding and the organizational capacity of the disability community services sector.

Resource Persons

Normand Boucher, PhD
Sociologist, Political Scientist, and Researcher at the Centre for Interdisciplinary Research in Rehabilitation and Social Integration (CIRRIS)

Emmanuelle Ladouceur
Integration Advisor for Workers with Autism and Intellectual Disabilities at Action Main d’oeuvre Inc.

Gift Tshuma
Activist, music composer, and motivational speaker, with a background in Sociology and a minor in Law and Society from Concordia University.

Tanja Beck
Associate Director, Office for Students with Disabilities, McGill University

Moderator
Futsum Abbay
(Member, CHRLP)
Mr. Futsum Abbay, a disability rights scholar, moderated the seminar. He opened the discussion by giving a brief overview of the barriers persons with disabilities face when entering the labour market.

The seminar was aimed at exploring the intersection between disability work policies and various challenges faced by persons with disabilities in accessing the labor market in the Canadian context. This promoted the autonomy and independent living of persons with disabilities in line with the United Nations Convention on the Rights of Persons with Disabilities which guarantees the right to work, equality of opportunities, and non-discrimination, among other rights.

Mr. Abbay stressed that there was a duty for state parties to the CRPD to take immediate and appropriate steps to ensure adequate accommodation of human diversity. Each of the three panelists was invited to share their experiences or thoughts on the topic.

Prof. Normand Boucher's discussion focused on work disability policies in Canada from the perspective of the Centre for Research on Work Disability Policy (CRWDP), which is a national collaborative centre of 60+ researchers and partners. The core mandate of CRWDP includes identifying issues requiring coordination, and bringing together different stakeholders to facilitate dialogue on various disability policies in Canada. Prof. Boucher noted that Canada has a complex work disability policy system that consists of multiple programs at the provincial and federal levels. He added that the nature of work is also changing rapidly, which poses new challenges. According to the available data, about 15.5% of Canadians have a form of disability. This translates into more than 50% of Canadian families being affected by disability.

CRWDP is currently working with various research organizations on three thematic areas of population analysis: labour-market analysis, legal policy analysis, and program analysis. In this regard, CRWDP has among other things conducted an environmental scan of past policy initiatives addressing the Canadian work disability policy system, identified and described past policy efforts (initiatives) to address coordination of disability income support programs in Canada, and created
a database describing each initiative. The database has 751 scientific articles about work disability policy which are readily accessible. It was pointed out that CRWDP also supports research through seed grants for academic collaboration, including student research.

By way of conclusion, Prof. Boucher highlighted some key activities being undertaken by CRWDP aimed at knowledge mobilization. The activities included employer round tables aimed at helping employers to adopt best practices in the labor market, labour round tables designed to engage unions and labour representatives on current work disability policy issues, and policy round tables focusing on discussions with policymakers about a roadmap for policy change. He was, however, quick to note that sometimes it is difficult to bring employees and employers to the table.

Madame Emmanuelle Ladouceur shared her experience having worked with persons with autism as they integrate into the labour market. She has worked at Action main d’oeuvre for seven years, an organization that offers continued support for people with disabilities entering the labour market, and for their employers. She has mainly worked with people with autism and only recently started working with people with intellectual disabilities.

She explained how Action main d’oeuvre works. To accept people into their support program, two criteria must be met: (1) the person must be 16 years old and over; and (2) the person must be autonomous. She also specified that Action main d’oeuvre works on a voluntary basis and that the person must want to work; Action main d’oeuvre will not impose themselves on anyone. The discussion focused on creating effective communication and support services in order to enhance integration. The focus of their integration service is to find suitable workplaces that value inclusion, as their clients are more prone to stress.

The process includes the identification of challenges that the prospective client is likely to encounter in the workplace. The clients are supported as they think of ways to face those challenges or modify potential workplaces to accommodate their needs, such as excessive noise that may cause anxiety, or bright light that may be harmful to their skin. After engaging with the client and exploring the means of facing the potential challenges, a CV with a portrait of the client is submitted to the prospective employer (with consent of the client). Support is also offered during interviews. The prospective employer is then encouraged to work out accommodation and a
flexible scheduling program that would lead to gradual integration. Madame Ladouceur noted that some employers ensure that the measures or program agreed upon trickles down to all employees at all levels. Their services remain available to support both the client and the employer to ensure good work relations. They also help clients in resolving disputes by mediation.

**Mr. Gift Tshuma** was the third and final panelist. He began by sharing the discrimination he faced in the labour market due to his age, race, and name, coupled with physical disability. He noted that each of the variables of identity could be a basis of discrimination which increased the chances of not being able to penetrate the job market, despite possessing the requisite qualifications. He recounted his experience when he attended a job interview which started with the interviewer’s surprise that he was a person with a disability. The rest of the interview focused on questions about his disability, as opposed to his competencies and abilities. He was denied the job and this led him to rethink his strategy in order to access the labour market. He felt that he needed to challenge his prospective employers by presenting reference letters before the actual interview began. This worked for him and he was able to get a job.

Mr. Tshuma noted that most employers are not aware of what work equity means. He explained that work equity has to take into account age, gender, race, and other such variables. He stressed that work equity imposes a duty on the employer to accommodate employees with disabilities. This duty may include the procurement of software, the employment of personal assistants, and accommodating lateness due to an unreliable public transport system. He stressed the need to change not only the policies but to also educate people and ensure the government pushes employers and NGOs to participate in workshops aimed at highlighting their obligations.

**Discussion**

The moderator summarized the discussion by the panelists and noted that more than half of the total population of persons with disabilities in Canada were unemployed, despite an overall unemployment rate of about 8%. He concluded that the problem of unemployment was a problem not only in Canada but around the world.
The seminar opened up for questions from the audience. Prof. Ramanujam wanted a comment on how best to reconcile the paradigm shift in disability, from the medical to social model, against the capitalistic demands for efficiency, reduced costs, and maximizing profits by most employers. A member of the audience contributed by stating that the way to address the problem would be to shift from imbedded norms of preferring ‘able persons’ to do the work, to adopting technology using artificial intelligence. He noted that physicality will be less important than intelligence. This will drive equality of opportunities for all.

There was also a question on whether Canada has faced the problem of ‘job quality’ for persons with disabilities, as was the case in some countries where most jobs being offered to persons with disabilities were low ranking/paying jobs. It was noted that one of the contributing factors to fewer persons with disabilities in top positions was the notion that employers would incur more cost such as hiring personal assistants or investing in appropriate technology for a CEO with a disability.
OUR COLLABORATORS

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McGill Human Rights Working Group

Justice James K. Hugessen

David O’Brien
Nicholas Caivano holds a BCL/LLB from the Faculty of Law at McGill and a BCom from the Faculty of Management. His research focuses on international law and human rights. He has served as a law clerk at the Quebec Superior Court and as an editor for the *McGill Law Journal*. Nicholas has worked for a major Canadian law firm and an international non-profit in New York, and has assisted leading counsel before the Supreme Court of Canada. He is an associate with the Rule of Law and Economic Development Research Group (ROLED) and has also held an Aisenstadt Fellowship at the Centre for Human Rights and Legal Pluralism.

Izabella is a BCL/LLB 2016 candidate. Originally from Armenia Izabella holds a B.C.L., Licence en droit and LLM from French University in Armenia in collaboration with Universite Jean-Moulin Lyon 3. She also has a Masters in critical disability studies from York University in Toronto. She has extensive international and Canadian experience in employment and human rights. Izabella also has published brochures on employment and education for people with disabilities, and worked as a consultant for World Vision USA and World Vision Canada.
Coordinator: Margery Pazdor

Margery is a third year BCL/LLB student at McGill. Before starting law school, she spent two years working on a class action law suit representing former residents of an institution for people with disabilities. She holds a Bachelor of Science in Biochemistry and a Bachelor of Arts in French from Memorial University of Newfoundland, along with a Masters of Arts in European Studies from the University of British Columbia.

Coordinator: Steve Payette

Steve is a BCL/LLB 2016 candidate. He has an MA in Communication from the University of Ottawa and also holds a BA in Communications & Cultural Studies from Concordia University. His research interests concern conceptualizing Law as a communicative process; semiotic translation; and the (missing) embodiment of normative thinking. He endeavors to become a Quebec Notary and has interned with the Center for Law and Aging.

2015-2016

Coordinator: Alizeh Ladak

Alizeh, a 2nd year law student at McGill, holds a Bachelors degree in International Development and Globalization from the University of Ottawa. Her interest in disability rights began when she volunteered with the special needs class in her high school. She then proceeded to teach a weekly yoga class to adults with mental and physical disabilities. She has also worked at the Lyndhurst Centre for spinal cord injury in Toronto.

She was an Aisenstadt Fellow at the Centre before becoming a Rathlyn Fellow for 2015-2016. She plans on pursuing a career in international human rights law.
Iñaki is a fourth year law student at McGill University whose interests lie in human rights advocacy, disability rights and litigation.

At the Faculty of Law, he served as Senior Editor with the McGill Journal of Law and Health and as Teaching Assistant in Advanced Civil Law Obligations. His interest in disability rights began with his internship at Disability Rights International (DRI) in Mexico. He drafted and submitted the merits in the "Federico Mora" case on behalf of people with disabilities detained in Guatemala’s Federico Mora psychiatric institution. Iñaki filed this case with DRI in Washington, before the Inter-American Commission of Human Rights.

Iñaki was an Aisenstadt research fellow before becoming a 2015-2016 Rathlyn Fellow.

Simone is a fourth year law student completing a major in International Human Rights and Development at McGill University as a Loran Scholar. She has recently completed a human rights internship at the Disability Federation of Ireland and the Center for Disability Law and Policy at the National University of Ireland in Galway. Simone is also Equity Commissionner for the Student’s Society of McGill University.

Simone has been a disability rights advocate since a very young age. She is a Childhood Arthritis spokesperson for the Arthritis Society, was the coordinator of the Kids on the Move Camp for children with rheumatological diseases and Viomax, a weekend activities program for children with special needs.

Simone is also the founding director of Pivot International, a non-profit organization that provides adapted equipment and access to medical services for children with disabilities in Nicaragua with the goal of helping them achieve their full potential.
**Coordinator: Melissa Moor**

Melissa is a third year law student at McGill University. She previously studied education at Queen’s University and political science at the University of Ottawa.

Before beginning at McGill, Melissa worked for the House of Commons and participated in the Canadian Political Science Association’s Parliamentary Internship Program. She has also worked in policy at Universities Canada. Melissa has a long-standing interest in disability rights and has worked for the Canadian Autism Spectrum Disorder Alliance and the student-run Centre for Students with Disabilities at the University of Ottawa. She is a long-time Best Buddies volunteer and worked with youth with disabilities for several summers at Easter Seals Ontario’s Camp Merrywood.

**2017-2018**

**Coordinator: Mélisande Charbonneau-Gravel**

Mélisande C. Gravel is a third year student at McGill Law School. She is very involved in local communities and is particularly interested in issues concerning people with disabilities.

She has worked at Resources for People with Disabilities in Abitibi-Témiscamingue and northern Quebec, an organization helping people with disabilities who are in precarious situations.

For the past two years, she has also been an active member of the Faculty’s Human Rights Working Group’s Disability and the Law portfolio.
Coordinator: Sydney Lang

Sydney is a second year law student at the Faculty. She studied Anthropology and Equity Studies before coming to McGill, where she specialized in social advocacy and disability studies. She has worked for several social justice campaigns and community organizations where she focused on issues of environmental justice, extractivism, and labour.

Coordinator: Meghan Pearson

Meghan is a second year law student at McGill University. She previously completed a Bachelor of Arts in Journalism from Concordia University. She has focused much of her community-engagement work on facilitating access to crucial services. She is a research assistant for Voices-Voix, and has worked for both AIDS Community Care Montreal and the Legal Information Clinic at McGill.

Coordinator: Jacinthe Dion

Jacinthe is currently a 3L student in the B.C.L./LL.B. program at McGill. Before arriving at the Faculty, she completed an Honours Social Science DEC at Marianopolis College in Law and Social Justice. She is a Board Member of Warm Heart Initiatives which is an NGO that deeply cares about how the world treats children and is currently working in a village in Malawi. She also works with children with disabilities as a swimming instructor at a public pool. Upon her arrival at the faculty, she joined other initiatives, mainly becoming coordinator of the Human Rights Working Group as well as becoming President for the Canadian Student Association for Children’s Rights. Following a summer internship working at the Mental Disability Advocacy in Budapest, Jacinthe wrote a term paper on Indigenous Children with disabilities. She has continued getting involved with research while working as a research assistant on a policy memo assessing the situation of families immigrating to Canada with children with disabilities as well as writing a Shadow Report on Article 12 of the CRPD that was submitted to the UN CRPD.
PLACEMENTS

MEXICO CITY, MEXICO

Disability Rights international (DRI) has the specific mandate of protecting the rights of vulnerable people with disabilities, especially individuals with mental and psychological disabilities. DRI focuses its scarce resources and time primarily on ending systemic abuse of people with disabilities in Latin America. DRI’s approach to human rights advocacy generally centres on evidence collection, report writing, media outreach, and in some instances, legal action. Notably, they raise awareness by visiting institutions, documenting abuses, and releasing reports detailing abuses in order to attract the attention of media outlets and politicians.

BUDAPEST, HUNGARY

The goal of the Mental Disability Advocacy Centre (MDAC) is to advance the rights of children and adults with intellectual or psycho-social disabilities. The Centre achieves this through creating a body of progressive jurisprudence, instigating legal reform, empowering people with disabilities and promoting participatory politics.
LUSAKA, ZAMBIA

Disability Rights Watch (DRW) is a newly established organization in Lusaka, Zambia. Its purpose is to promote the rights of people with disabilities through strategic litigation, as well as to lobby and support civil society organizations. Various local organizations are encouraged to identify cases of discrimination in the community and respond by contacting DRW. As a result, coordination and training are the main workload of the organization.

KAMPALA, UGANDA

Legal Actions for Persons with Disabilities (LAPD) was formed by lawyers with disabilities in 2005, and provides free and sustainable legal aid to poor people with disabilities, monitors compliance of disability-related provisions in legislation, advocates for the protection of rights of people with disabilities, lobbies for policy reform and implementation, and raises public awareness.

Centre for Health, Human Rights and Development (CEHURD) is an Indigenous, non-profit, research and advocacy organization which is pioneering the enforcement of human rights and the justiciability of the right to health in Eastern Africa.

BELGRADE, SERBIA

Mental Disability Rights Initiative of Serbia (MDRI-Serbia) is an advocacy organization dedicated to the human rights and full participation in society of children and adults with mental disabilities in Serbia. MDRI-Serbia promotes citizen participation, awareness and oversight for the rights of persons with intellectual and mental disabilities, and participates in development of mental disability rights advocacy and the self-advocacy movement in Serbia.
During her internship, Miatta’s activities primarily involved shadowing a legal officer through the course of his work. She occasionally had the opportunity to sit in on client intake meetings and accompany the lawyer to court.

Miatta also assisted in the drafting of legal documents to assist the expedition of legal proceedings. Near the end of her internship, she attended a meeting of a parliamentary working group which was discussing amendments to the national electoral scheme that related to persons with disabilities.

At times, Miatta felt that she did not have enough responsibility or assignments, in part because of the unpredictable nature of legal aid work. However, in her spare time she volunteered to create summaries of the cases that LAPD had managed to provide a snapshot of all of the areas already covered. Miatta also suggests that it would be beneficial for future interns to have a solid background in disability issues.
Roger spent most of his time on two large projects.

The first project saw Roger researching and writing a report on the global implementation of the United Nations Convention on the Rights of Persons with Disabilities. This experience enabled Roger to analyze the improvements Mexico has made to adhere to its obligations under the CRPD. This allowed him to see just how deplorable conditions are for persons with disabilities in the country.

For his second main project, Roger collaborated on an application to the Inter-American Court of Human Rights (IACHR) requesting precautionary measures to protect the lives of over 300 internees at the Federico Mora National Mental Health Hospital in Guatemala City from gross human rights abuses. This project allowed him to develop and refine his legal training in research and writing.

Roger also assisted the director of Mexico’s DRI office prepare for a conference on the “Paradigm Shift from Social Welfare to Disability Rights.” For this conference he undertook research into two IACHR decisions which demonstrate the shift in legal thinking towards the concept of rights owed to persons with disabilities and away from the idea of welfare obligations applicable to these individuals.

“Currently we are trying to end institutional abuse in a Central American psychiatric hospital through motions before the Inter-American Commission of Human Rights. The abuse is terrible: people administered therapy without their consent, others locked up for life with no possibility to review their status and live again in the community, sexual abuse, human trafficking, and horrendous living conditions. We hope to stop the terrible abuse perpetrated by the institution. However, bringing about de-institutionalization is no mean feat. Realistically things won’t change overnight, and people with disabilities can do little to help themselves when they are locked up in psychiatric wards in deplorable conditions. So, I’m very happy to be participating in a project to empower people with disabilities and give them the tools to change the situation in the hallways of hospitals.”

Roger Bill, July 2012.
“My first two weeks at CEHURD have been nothing short of fantastic. I’ve had the unique opportunity to go to the Ugandan High Court to report on a trial (more on this later), met with a member of the East African Legislative Assembly at the Ugandan Parliament for a briefing on recent changes to TRIPS agreements (Trade Related aspects of Intellectual Property rights), and partook in a meeting for the Coalition to Stop Maternal Mortality in Uganda which brought Ugandan NGOs together to discuss issues of access to safe and legal abortions, contraceptives, and Uganda’s progress on the UN’s Millennium Development Goals.

What is particularly intriguing about CEHURD is its creative approach to driving forward human rights law. Not only does it conduct policy research, but it also engages in strategic litigation – a concept that I am only recently familiarizing myself with. Strategic litigation entails the careful selection of cases to bring before the court in order to utilize the judiciary to push forward changes in the law. Important factors that serve as an impetus for strategic litigation success include opportunistic timing (i.e. is the issue politically relevant? Can courts handle the issue?), suitable and compelling facts, and appropriate legal resources to actually carry out the case...”

Lipi Mishra, May 2013.
“Imagine a hospital where the patients sleep on the floor or on dirty old mattress. Instead of getting adequate treatment for their illnesses, they run a high risk of contracting HIV and other infectious diseases. Patients are placed in segregation or restrained, their arms tied to the sides of wheelchairs. Physical and sexual abuse are rampant. There is no clean water and not enough to eat. Day after day women are kept locked inside their ward to protect them from being assaulted. Most of the patients could leave, but given a lack of services in the community, they have nowhere else to go”.

Emily Hazlett, July 2013.
Matthias travelled to Kampala, Uganda for a joint placement at Legal Action for Persons with Disabilities (LAPD) and the Centre for Health, Human Rights and Development (CEHURD). This is one of the IHRIP few joint placements for interns to work simultaneously with two organizations.

Matthias worked a lot with CEHURD on a number of right to health initiatives, including strategic litigation on enhancing the right to health in domestic courts. Areas of research including intellectual property issues that affected access to medicines, maternal health, and HIV/AIDS. He drafted a blogpost on the polluting of two villages by a Chinese quarrying company in Uganda’s Mukono District and discussed CEHURD’s filing of an injunction to compel the mining company to clean up its environmental destruction.

Matthias really enjoyed working with the staff and his supervisors who were very helpful and encouraging. He also loved living in Kampala for the summer and wishes he had taken more opportunities to travel outside Kampala and see the rest of Uganda. He recommends this for future interns.
« L’organisme avec lequel je travaille cet été, effectue régulièrement des visites dans les hôpitaux psychiatriques locaux afin de documenter les conditions inhumaines et dégradantes dans lesquelles vivent les personnes handicapées. Lors de ces visites – toujours guidées –, la stratégie est simple. Certains suivent le guide tandis que d’autres trainent le pas à l’arrière pour voir ce qu’on ne veut manifestement pas qu’on voit.

Après un moment à l’arrière, je m’éclipsais donc dans une chambre isolée. Un jeune homme, appelons-le Victor, s’y trouvait, complètement nu et emmitouflé dans un nuage de draps sales d’où dépassaient des bras convulsifs. Notre guide, le directeur-neurologue, me rattrapa rapidement. C’est à grand renfort de termes techniques qu’il m’expliqua que Victor était un “cas perdu”. Plusieurs psychotropes étaient “nécessaires” pour apaiser son “trouble”. Bref, Victor était une machine qu’il n’arriverait jamais à réparer ».

Iñaki Navarrete, Août 2014
Claire arrived at DRI during a time of unprecedented change for the organization. After twenty years of advocacy in Mexico, DRI’s calls for change were finally being heard by important political actors. Claire had a very hands-on experience as an intern at DRI, spending a large amount of time assisting with on-site evidence collection and documentation.

The core campaigns and legal actions that DRI Mexico was working on during Claire’s internship included: (1) a campaign against sexual abuse and sterilization of women with disabilities; (2) the monitoring of Mexico City institutions and investigation into the “blacklist”; and (3) a follow-up on the Federica Mora case. During her internship, Claire’s responsibilities included:

- Visiting roughly 15 institutions where she assisted with interpretation for evidence collection and documentation of human rights abuses;
- Carrying out legal research and drafting an Urgent Appeal to several UN Rapporteurs;
- Writing a press release and co-authoring a report on trafficking and torture of persons with disabilities in Mexico City custodial institutions.

“It’s hard but meaningful work. By July, much of this evidence comes together in the form of a report, No Justice: Torture, Trafficking and Segregation in Mexico. Within hours the report is picked up by every major news outlet in the city. Soon after, ABC News airs a report on DRI’s yearlong investigation into shelters for children and adults with disabilities in Mexico City. The Mexican government responds, promising to end the use of restraints and cages. This is an historic victory.” Claire Boychuk, August 2015
Max was impressed by the Centre staff’s obvious dedication to the community. They have managed to make great strides over the past decade in improving laws affecting individuals with a mental disability.

The internship afforded him the unique opportunity of engaging in skype calls with legal teams from around the world while participating in office discussions and lending a hand in the more organizational and administrative tasks. Max also played an active role in MDAC’s press release on the Samajova case. After a review, his version was put in the organization’s website.

During his internship, Max’s responsibilities included:

- Reviewing jurisprudence;
- Summarizing cases;
- Writing briefs;

“Human rights, it seems, is not necessarily about “immediately realizable” rights, but more so about courage and experimentation, and an acknowledgement that the world we live is and will continue to be – imperfect.”

Max Zidel, August 2015
Olivier a trouvé son travail à Disability Rights Watch fortement enrichissant. Il a consisté principalement de recherche sur les droits des personnes handicapées, mais aussi de travail de terrain.

Olivier a eu la chance de contribuer à des séances de formation juridiques, de rencontrer et collaborer avec de nombreux partenaires, et d’aller enquêter dans les communautés. Bien sûr, il a aussi profité de l’occasion pour visiter certains des plus beaux endroits de la Zambie.

Olivier a notamment eu l’occasion de:

✔ Faire des recherches sur l’article 12 de la Convention sur les droits des personnes handicapées et sur la capacité à consentir de personnes avec des handicaps mentaux et intellectuels ;
✔ Remettre un rapport détaillé critiquant les principales lois zambiennes sur la capacité à consentir des personnes handicapées et à identifier les changements nécessaires pour satisfaire les exigences de la Convention.

« ... plusieurs membres présents ont appuyé la motion. D’autres ont proposé une collaboration avec les chefs et rappelé que certains de ces chefs avaient pris l’initiative de lutter, à l’intérieur même de leur « chiefdom », contre les mariages d’enfants. Cette intervention simple m’a fait chaud au cœur. Elle m’a laissé optimiste par rapport à l’exercice difficile mais important auquel doit se livrer la Zambie : l’articulation des droits humains fondamentaux dans une culture qui est la leur, et non pas par la culture des puissances impériales du passé. »

Olivier Beaubien, juillet 2015
When Nigah arrived at DRI, the organization’s access to institutions had been severely limited by the government, which somewhat shifted the focus of the organization’s activities.

DRI’s central projects during her time there included a campaign against sexual abuse and sterilization of women with disabilities, a campaign against the institutionalization of individuals with disabilities, and following up on the Inter-American Commission of Human Rights’ ruling with respect to the closure of a Guatemalan hospital.

During her internship, Nigah’s responsibilities included:

- Visiting two institutions to which DRI had access and assisting in the collection of evidence and documentation of human rights abuses;
- Conducting legal analysis for DRI’s petition to the Inter-American Court of Human Rights;
- Preparing document submissions related to UN Conventions and Special Rapporteurs.

“The local presence is very important to understand the needs of people with disabilities and what impacts the programs might have on them. International models are of great use to help implement much needed programs and elevate the life conditions of persons with disabilities; however each country comes with their limitations and ways of doing things. Without local presence, awareness and understanding the implementation of such development programs might end in disaster. There has to be a change of mentality and understanding within the general society itself to push for respect and understanding of the rights of people with disabilities.”

Nigah Awj, August 2016.
As an intern, Jacinthe had the opportunity to explore issues central to MDAC’s efforts, including involuntary detention, cross-gender intimate care, and legal capacity.

Jacinthe benefitted greatly from the expertise and helpfulness of her diverse colleagues and fellow interns, and enjoyed enriching discussions with them on human rights issues.

During her internship, Jacinthe’s responsibilities included:

- Reviewing new jurisprudence;
- Summarizing cases;
- Drafting social media posts;
- Conducting research

“Law serves more purpose than the set of rules it outlines for our society; it has the power to promote or limit equality, justice, and fairness. Having laws in place is not the end point, but only the starting point. How can people know about these laws if they are not promoted? How can they be implemented if nobody sees to their enforcement? How can they be respected if no one is given the tools to apply them and ensure they are being respected? It is necessary to proactively work to create an environment in which everyone has the same chances to live a prosperous life. That is what I feel I am a part of this summer.”

Jacinthe Dion, July 2016
“… Much of MDRI-S’ work is in the area of human rights advocacy for women who are institutionalized in psychiatric facilities across Serbia. In contrast to international standards, provided for in the Convention for Rights for People with Disabilities for example, and legal precedents provided for by European tribunals for human rights, the situation of institutionalized women in Serbia verges on major human rights abuses, if not outright systemic psychological and physical torture. Institutionalized people with disabilities, particularly women are subject to maltreatment and unsafe living conditions as a result of under-staffing and lack of understanding of psychiatric illness. Most women remain institutionalized for life, with few opportunities to be released, a prospect that increases quickly once institutionalized. Women not only experience psychological violence, but physical violence and in some cases forced sterilization and unconsented abortions, effectively negating the legal capacity of women with disabilities.

My understanding of these human rights abuses resonated with the theoretical and historical practical issues in psychiatry made familiar to me in my post-undergraduate work in psychology, studying issues that were (until now) almost considered academic psychology folklore.

[…] With regard to gender-based violence and depicted in movies such as Girl Interrupted, the effects of institutionalization not only worsens many womens’ conditions, but also prevents any reintegration or inclusion into mainstream society. The psychiatric-consumer movement that ushered in an era of client-centred service, enabling people afflicted by mental disabilities to take care of themselves, is merely an aspiration in Serbia, leaving the current state of psychiatric care something reminiscent of Brittany Murphy’s acting career at its early peak.

Interestingly, the psychiatric consumer revolution has been dubbed using a term emergent from one of the darkest periods of human history through the phrase “nothing about us without us”, a term which gained popularity during World War 2 not only in regard to the Nazi party’s draconian disability laws, but also with regard to the decision-making regarding Europe’s initially permissive attitude towards Germany’s annexation of parts of neighbouring countries.

I was astonished to learn then, that Serbia was still in the midst of institutionalization, replete with apparently common issues of legal capacity deprivation and maltreatment made notorious in the book One Flew Over the Cuckoo’s Nest. Tucked away in Serbia’s bucolic pastures, issues related to the rights and well-being of people with disabilities might have remained on the government’s back-burner without the tantalizing prospect of accession to the European Union […]”.
“I have noticed some western misconceptions with regards to East Africans themselves, in that I get the sense that some people assume laziness on their part. To be clear, very few Ugandans sit around pouting, complaining about living in poverty, and waiting for some wealthy person from some wealthy country to come and dump money into their laps. Everybody is doing something pretty much all the time. I always tell people that there exists a strong sense of vitality in Uganda that I have never quite felt before in any other place that I’ve visited. In fact, Uganda was recently named the most entrepreneurial country in the world. From what I have felt and observed, it is a sense of gratitude, pride, and resilience that fuels this spirit. I worry that the negative stereotypes about danger and disease in East Africa keep people from visiting, even just for purposes of tourism. Uganda has a lot to see. Among others, I visited Jinja (the town on the source of the Nile), Sipi Falls, Murchison Falls waterfall, and went on a safari in Murchison Falls National Park.”
Dianah Msipa currently works as a consultant with the Open Society Initiative for Eastern Africa. Prior to that, Dianah was a Human Rights intern with Inclusion International. She has also worked as a criminal prosecutor in her home country of Zimbabwe. Dianah holds a Masters of Laws Degree from McGill University in Montreal, Canada as an Open Society Institute Disability Rights Scholarship Program (DRSP) scholar. Dianah’s Master of Laws thesis was about access to justice, focusing on the manner in which the criminal justice system may discriminate against women with intellectual disabilities, particularly in the context of sexual abuse. She also holds a Postgraduate Diploma in Legal Practice (LPC) from Northumbria University and a Bachelor of Laws (LL.B Hons) degree from the University of Newcastle upon Tyne in the United Kingdom. Her Masters’ thesis identified specific provisions in the rules of evidence and criminal procedure in Zimbabwe, South Africa, Botswana and Namibia which perpetuate inequality and discrimination in the criminal justice system, thereby hindering access to justice which is a right provided for in article 13 of the Convention on the Rights of Persons with Disabilities.
Bekithemba Mlauzi (Zimbabwe) is a past LLM student at McGill University on a Disability Rights Scholarship Programme. His primary interests are to: develop disability rights jurisprudence, assist in the review of the Disabled Persons Act (Cap 17:01) in Zimbabwe, ensure that all Zimbabwean disability laws are in sync with the CRPD and the impending African Disability Protocol, challenge disability rights violations through being an *amicus curiae*, and finally, advocacy, training and mentoring of lawyers and stakeholders involved in the justice delivery system on disability rights.

He has been a Legal Researcher at Venturas & Samukange Legal Practitioners, Harare, Zimbabwe. He has served in the Zimbabwe Republic Police where he did legal work, human resources and administration management and general policing. He served in Liberia and East Timor as an advisor to the peace negotiator and a peacekeeper respectively. Bekithemba has also served on the Inter-Ministerial Committee on Human Rights and Humanitarian Law and was instrumental in the implementation of the Access to Justice for Children Program in the Zimbabwe Republic Police.

During his LLM, Bekithemba carried out an in-depth study on disability-related statistics, as part of an overall research agenda that aims to develop disability rights jurisprudence, assist in the review of the Disabled Persons Act in Zimbabwe, and ensure that all Zimbabwean disability laws are in sync with the CRPD and the impending African Disability Protocol. After his studies, he intends to introduce a legal clinic for disabled persons at no cost subject to donor funding, and establish a Traffic law Centre to research on traffic accidents and disability in Southern Africa.

He has published several legal articles on the Outpost (Zimbabwe Republic Police) magazine. He has organised and facilitated a number of International Humanitarian Law/International Human Rights workshops with the International Committee of the Red Cross; Access to Justice for Children workshops with the Legal Resources Foundation (Zimbabwe) and other stakeholders; Family Law workshops for police officers’ spouses, and a number of legal training seminars and workshops for the Zimbabwe Republic Police.
"When I first got to the McGill Faculty of Law, I was introduced to the Centre for Human Rights & Legal Pluralism and the seminar series on disability and human rights that a small group of dedicated students and professors organize. I had the opportunity to attend all of the seminars of the Fall and Winter terms, and to participate as a speaker describing the situation of sexual and reproductive rights of people with disabilities in my home country, Colombia. These series of seminars touched on a big spectrum of socially-relevant issues, such as education access, job opportunities, physical accessibility, reasonable accommodations and sexuality and reproduction of people with disabilities. Overall, these seminars reflect how disability rights are becoming an essential and relevant subject in the law to discuss social inclusion.

Moreover, disability rights do not have national or discipline limits, and it is possible to discuss the lack of accessibility to public transportation in the metro system in Montreal, the challenges of inclusive education at McGill and African educational institutions, the difficulties that women with disabilities face towards their maternity and sexuality in Canada and Colombia.

Disability rights join different people from all over the world in thinking about ways of using different areas of the law and other disciplines to impact the lives of people with disabilities, deconstruct stereotypes and pre-conceived ideas about difference, and successfully include every person in the different spheres of life."
Sebastián is the Program Manager for Latin America and the Caribbean at the Center for Reproductive Rights. He first joined the Center in 2014 as a Legal Fellow. In his role, he is responsible for leading international litigation and advocacy strategies before the United Nations and fostering strategic partnerships with non-traditional allies. Sebastian played a key role negotiating with government officials over the implementation of two landmark cases, *K.L. v. Peru* and *L.C. v Peru*, the first abortion cases decided by United Nations human rights bodies.

Prior to joining the Center, Sebastián was an Open Society Foundations Disability Rights Fellow at the Center for Human Rights and Legal Pluralism at McGill University. Before that, he was a Clinical Lecturer in Law at Universidad de los Andes, Colombia, where he spearheaded and supervised human rights advocacy and fact-finding work on LGBTQ, gender and disability issues. He has served as a policy advisor to the gender equity program at the Cabinet of the Minister of the Colombian Ministry of Labor, and has worked at the Organization of American States’ Mission to Support the Peace Process in Colombia and the United Nations High Commissioner for Refugees.
Bwighane Mwenifumbo was an LLM candidate with the Institute of Comparative Law at McGill University. Her work as a Legal Aid Advocate serving underprivileged people in Malawi opened her up to the challenges faced by people with disabilities during the court process, in the correctional system and society in general. The majority of her clients are women and children, and this has influenced her particular interest in their plight in Malawian society. Her LLM thesis is a comparative study that examines the implementation of disability rights legislation in relation to women and children in southern Africa.

She holds an LLB (Honours) from the University of Malawi, Chancellor College. Upon completion of her LLM, she intends to pursue a career as a human rights advocate.
Kims Banda is pursuing his LLM at McGill University. He is a practicing lawyer in Zambia, where he earned a LLB at the University of Zambia in 2008, and is an associate member of the Chartered Institute of Arbitration (UK).

From 2010-2014, Kims worked for the Legal Aid Board of Zambia as a defence attorney, where he represented indigent clients in both civil and criminal cases. In 2014, Mr. Banda joined the Human Rights Commission of Zambia, first as the Provincial Coordinator for Southern Province, then as principal Legal Counsel, and finally as Chief of Investigations and Legal Services.

Over the last two years, Kims has develop a deep interest in disability rights. His master’s research project focuses on the right to participation in political and public life by persons with disabilities in Zambia.
McGill Centre for Human Rights and Legal Pluralism

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This report has been prepared by Meghan Pearson & Mélisande Charbonneau-Gravel in Fall 2017, in collaboration with Sharon Webb & Nandini Ramanujam, and with thanks to the other coordinators of the Disability Initiative 2017-2018 Sydney Lang & Jacinthe Dion.