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People With Disabilities Need Lawyers Too! A Ready-To-Use Plan for Law Schools to Educate Law Students to Effectively Serve the Legal Needs of Clients With Disabilities as Well as Clients Without Disabilities

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Article abstract

Canada's legal profession is not sufficiently equipped to meet the legal needs of clients with disabilities. For decades, legal education focused primarily, if not exclusively, on training law students to serve clients without disabilities. A law student can complete their legal education while learning little about how to meet the legal needs of clients with disabilities. Law students need to be effectively trained to serve clients with disabilities as well as clients with no disabilities. Law faculties commendably focus increasingly on Equity, Diversity, and Inclusion. Disability should be a strong and equal focus in their equity, diversity and inclusion strategies. How can a law school fix this? This article gives a roadmap, and gives further resources enabling law deans and law teachers to quickly take action. This article first describes why it is important to expand a law school's disability curriculum. It spells out disability content that should be shared with students, including a course-by-course delineation of topics. It offers practical, cost-effective options for law schools to systematically work towards permanently embedding disability content in their programs. A law school should make a concerted policy decision and create an action plan. This article's tools point the way.

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People With Disabilities Need Lawyers Too! A Ready-To-Use Plan for Law Schools to Educate Law Students to Effectively Serve the Legal Needs of Clients With Disabilities as Well as Clients Without Disabilities

David Lepofsky*

Canada's legal profession is not sufficiently equipped to meet the legal needs of clients with disabilities. For decades, legal education focused primarily, if not exclusively, on training law students to serve clients without disabilities. A law student can complete their legal education while learning little about how to meet the legal needs of clients with disabilities. Law students need to be effectively trained to serve clients with disabilities as well as clients with no disabilities. Law faculties commendably focus increasingly on Equity, Diversity, and Inclusion. Disability should be a strong and equal focus in their equity, diversity and inclusion strategies. How can a law school fix this? This article gives a roadmap, and gives further resources enabling law deans and law teachers to quickly take action. This article first describes why it is important to expand a law school's disability curriculum. It spells out disability content that should be shared with students, including a course-by-course delineation of topics. It offers practical, cost-effective options for law schools to systematically work towards permanently embedding disability content in their programs. A law school should make a concerted policy decision and create an action plan. This article's tools point the way.

Le milieu juridique du Canada n'est pas suffisamment outillé pour répondre aux besoins juridiques des clients handicapés. Pendant des décennies, l'éducation juridique a porté principalement, sinon exclusivement, sur la formation d'étudiants appelés à servir des clients non handicapés. Il est fort possible que l'étudiant en droit termine ses études sans en avoir appris beaucoup sur la façon de répondre aux besoins juridiques des clients handicapés. Or, il est important que les étudiants reçoivent la formation nécessaire pour offrir leurs services autant aux personnes handicapées qu'aux autres. Heureusement, les facultés de droit mettent de plus en plus l'accent sur l'équité, la diversité et l'inclusion; toutefois, les enjeux liés aux handicaps devraient susciter tout autant leur intérêt et être pris en considération avec la même intensité dans les stratégies des facultés de droit en matière d'équité, de diversité et d'inclusion. Comment les écoles de droit peuvent-elles combler cette lacune? Dans cet article, l'auteur présente une feuille de route et d'autres ressources visant à permettre aux doyens et aux professeurs des facultés de droit d'agir rapidement. Il explique d'abord pourquoi il est important d'élargir la portée du programme d'études sur les handicaps et décrit en détail le contenu qui devrait être offert aux étudiants, y compris les cours correspondant aux sujets à traiter. L'auteur propose également, à l'intention des écoles de droit, des solutions pratiques et rentables qui leur permettront d'intégrer en permanence les handicaps dans leurs programmes. Les écoles

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de droit devraient prendre des décisions fondées sur des politiques concertées et élaborer un plan d'action. L'auteur explique la voie à suivre pour y parvenir.

I. INTRODUCTION

A. Why This Article?

Canada's legal profession is not sufficiently equipped to meet the legal needs of clients with disabilities. This is in no small part because, for decades, legal education has focused primarily, if not exclusively, on training law students to serve clients without disabilities, through an understanding of the law as it applies to people without disabilities. A law student can complete their legal education while learning little, if anything, about how to effectively meet the legal needs of clients with disabilities. There has been no central decision to create this curriculum gap or a desire to exclude the legal needs of people with disabilities. However, legal education would not look very different than it now does had there been a deliberate decision to cover only the legal needs of people with no disability. Any law teachers to whom I have spoken about this gap are troubled by it and agree that it needs to be eliminated. Law students need to be effectively trained to serve clients with disabilities as well as clients with no disabilities. Law schools should therefore take concerted steps to include more disability-related content in their curriculum. Law faculties commendably focus increasingly on equity, diversity, and inclusion. Disability needs to be elevated to a consistent, strong, and equal focus in their equity, diversity, and inclusion strategies.

Canada's legal education system collectively lags behind the United States. The concrete evidence of Canadian law school efforts in this area is regrettably less than is needed. Nine of Canada's twenty-two law schools did not respond to a short survey on their disability curriculum offerings, which was sent to them in 2021. Five law schools responded with no substantive information. In essence, they said that individual instructors undoubtedly include some disability content in their courses. However, those law schools have no course on disability rights and no strategy to expand their disability curriculum offerings. Only nine law schools responded with specifics on the issues about which the survey inquired, delineating specific disability curriculum in some courses. In contrast, the American Bar Association Commission on Disability Rights collects and publicly posts data from law schools accredited by the American Bar Association concerning their disability-related programming. This information appears to include, among other things, courses and experiential/clinical education learning options as well as information for students with disabilities seeking disability accommodations at law school.¹ As an example of one important topic discussed later in this article, some US law schools offer a full course on special education. Others offer more general courses on education and the law.²

A disability curriculum needs to be delivered to all law students and not just to students enrolled in specialized disability courses or experiential programs. When disability content is added to a law school's curriculum, everyone wins. Law students and professors respond positively to the inclusion of disability content. Disability curriculum addresses a core competency for lawyering that is often neglected. There is

¹ See e.g. "Law School Disability Programs Directory" (24 April 2020), online: *American Bar* <www.americanbar.org/groups/diversity/disabilityrights/resources/law_school_programs/>.

² See e.g. special education law courses offered by University of Pittsburgh School of Law, online: <www.law.pitt.edu/academics/courses/catalog/5136/>; Georgetown Law, online: <curriculum.law.georgetown.edu/jd/education-law-policy/>.

very limited guidance available to law professors who want to do more.³ How can a law school fix this issue? This article gives a roadmap and points to further resources that equip law deans and law teachers to quickly take action. It is tailored to the reality of busy law schools, labouring under multiple pressures, with limited time and resources, where professors have a broad discretion to choose their course content. This article first describes why it is important to expand a law school's disability curriculum. It then spells out disability content that can and should be shared with students, including a course-by-course delineation of topics. After that, it lays out a fulsome buffet of practical, cost-effective options for how a law school could systematically work towards permanently embedding disability content in their programs.

Grass roots disability experience reveals that necessary comprehensive solutions do not arise by accident. They only come about by design through a detailed plan of action. A law school needs to make a concerted policy decision and then create an implementation action plan. This article offers tools to guide that effort. In this article, "disability curriculum" or "disability content" includes curriculum on disability issues and on disability rights. Taken together, this process involves viewing a law topic through a disability lens. Where this article refers to "disability issues," it includes the application of any field of substantive or procedural law to the circumstances of people with disabilities. For example, disability issues in a family law course can include the analysis of child custody issues where a parent and/or child has a disability. Where this article speaks of "disability rights," it refers to the use of a disability equality approach to disability issues. In the foregoing family law issue example, a disability rights approach would seek to ensure that a parent with a disability, involved in a child custody dispute, would have a non-discriminatory equality-based, barrier-free assessment of their parenting abilities.

This article draws on my experience with disability issues accumulated during forty years of practising and/or teaching law and on my decades of volunteer disability rights advocacy. It is enriched by my part-time position at the Osgoode Hall Law School from 2016 to the present, where I have given many guest lectures on disability issues in different courses. As Osgoode's visiting professor of disability rights and legal education starting in 2019, I was asked to prepare a report to the dean on strategies for expanding the law school's curriculum on disability issues.⁴ This article is based on that report. It does not explore the ways in which a law school can effectively ensure that its program is barrier free for students with disabilities and effectively accommodates their disabilities. However, ensuring a barrier-free law school-learning environment for students with disabilities helps achieve this article's goals. For a law school to deploy good accessibility/accommodation practices exemplifies for law students how such efforts can be done. As well, students with disabilities can help other students learn about this article's disability curriculum topics. They can give memorable real-life perspectives on the barriers they face and the resistance they can encounter to getting those barriers removed.⁵

³ David Lepofsky, "Disabled Persons and Canadian Law Schools: The Right to the Equal Benefit of the Law School" (1991) 36:2 McGill LJ 636 [Lepofsky, "Disabled Persons"]; Laura F Rothstein, "Teaching Disability Law" (1998) 48:2 J Legal Educ 297.

⁴ David Lepofsky, "People with Disabilities Need Lawyers Too! – A Plan for Law Schools to Educate Law Students to Effectively Serve the Legal Needs of Clients with Disabilities" (5 January 2022) [unpublished].

⁵ I explored how law schools could effectively accommodate the needs of law students with disabilities three decades ago in my article David Lepofsky, "Disabled Persons and Canadian Law Schools: The Right to the Equal Benefit of the Law School" (1991) 36 McGill LJ 636. A decade later, the report by REACH, McChesney, Allan., and Laurie. Gillis. *Promoting Disability Accommodation in Legal Education and Training: the Continuing Relevance of the 1990 Lepofsky Recommendations*. Ottawa: Reach Canada, 2003, explored this topic at Canadian law schools. For other ideas on achieving a barrier-free learning environment for students with disabilities, the *Initial Report of the Post-Secondary Education Standards Development Committee*, appointed under the *Accessibility for Ontarians with Disabilities Act*, SO 2005, which was posted for public comment at <www.aodaalliance.org/whats-new/download-in-ms-word-format-the

B. Why Including Disability Curriculum in Legal Education Matters

There are compelling reasons for a law school to develop a comprehensive strategy to expand its disability curriculum and to ensure that all its students receive that curriculum. In most law practices, a lawyer inevitably encounters people with disabilities and/or disability legal issues, whether clients, witnesses, and/or transaction or court/tribunal participants. Unless properly trained for this, a lawyer could ineffectively address a case's substantive, procedural, practice, or ethical disability issues.⁶ People with disabilities are a huge, growing minority. They number over 2.6 million Ontarians, over six million people in Canada, and upwards of one billion people around the world.⁷ These numbers will grow as society ages since growing older is the most common cause of disabilities. This population includes those with a physical, mental, sensory, communication, learning, intellectual, mental health, neurological, or other disability or combination of disabilities. It includes disabilities that are visible to others as well as those that are invisible. It includes both continuous and episodic disabilities.

These numbers, though enormous, substantially understate the disability population. People with disabilities are the minority of everyone – that is, as they age, everyone eventually is bound to get a disability. As such, disability legal issues and needs are eventually everyone's legal issues and needs. Beyond this, legal issues affecting people with disabilities also regularly affect their families, their friends, and organizations with which they deal. People with disabilities are a vulnerable, systemically disadvantaged and marginalized equality-seeking group. They are over-represented among the poor, the unemployed and underemployed, and those dependent on social assistance and government bureaucracies and programs.⁸

People with disabilities routinely suffer from recurring systemic disability barriers. These can and do impede their access to full participation in, and the full benefit of, major opportunities, such as education, healthcare, transportation, other public and private services, employment, and housing. This pattern was most recently repeated in problematic government responses to the COVID-19 pandemic.⁹ Ever since protection against disability discrimination was added to human rights codes four decades ago, disability cases have comprised the largest body of complaints filed with human rights enforcement agencies.¹⁰ The

initial-report-recommendations-of-the-post-secondary-education-standards-development-committee-on-what-a-post-secondary-education-accessibility-standard-should-include/>.

⁶ For more information on access to justice barriers specifically impacting individuals with mental health issues, see Anita Szigeti et al, *Law and Mental Health in Canada: Cases and Materials* [forthcoming]

⁷ “An Open and Accessible Ontario: Accessibility for Ontarians with Disabilities Act Annual Report 2019,” online: *Government of Ontario* <www.ontario.ca/page/accessibility-ontarians-disabilities-act-annual-report-2019>; Stuart Morris et al, “Canadian Survey on Disability Reports: A Demographic, Employment and Income Profile of Canadians with Disabilities Aged 15 Years and Over, 2017” (28 November 2018), online: *Statistics Canada* <www150.statcan.gc.ca/n1/pub/89-654-x/89-654-x2018002-eng.htm>; “Disability and Health” (24 November 2021), online: *World Health Organization* <www.who.int/news-room/fact-sheets/detail/disability-and-health>.

⁸ Katherine Wall, “Insights on Canadian Society: Low Income among Persons with a Disability in Canada” (11 August 2017), online: *Statistics Canada* <www150.statcan.gc.ca/n1/pub/75-006-x/2017001/article/54854-eng.htm>; David Pettinicchio & Michelle Maroto, “Canadians with Disabilities Face an Uncertain Financial Future: U of T Expert” (March 2020), online: *University of Toronto*, <www.utoronto.ca/news/canadians-disabilities-face-uncertain-financial-future-u-t-expert>; Cara L Brown & JC Herbert Emery, “The Impact of Disability on Earnings and Labour Force Participation in Canada: Evidence from the 2001 PALS and from Canadian Case Law” (2010) 16:2 *J Leg Econ* 19.

⁹ “COVID Articles,” online: *AODA Alliance* <www.aodaalliance.org/covid/>; Osgoode Hall Law School, “David Lepofsky: Advocating to Address Added Hardships COVID-19 Imposes on People with Disabilities” (3 November 2020), online: *YouTube* <www.youtube.com/watch?v=yB5i7cCiw68>.

¹⁰ “Number of People Contacting CHRC to Complain at All-time High” (17 April 2019), online: *Canadian Human Rights Commission* <www.chrc-ccdp.gc.ca/en/resources/number-people-contacting-chrc-complain-all-time-high>; “Taking the

disadvantage that people with disabilities face can multiply when they are also members of other disadvantaged equality-seeking groups. For example, the intersectional impact of a person having a disability can increase when one is also a member of a racialized community, is female, and/or is a member of one of Canada's Indigenous peoples.¹¹ Discussions of "intersectionality" are incomplete if they do not include disability.¹²

Society's legacy of pervasive disability barriers also exists in the legal system. People with disabilities too often encounter recurring disability barriers when seeking legal services and/or when involved with courts, administrative tribunals, or regulatory regimes. Our legal system, court system, regulatory tribunal system, and legal profession, like the rest of our society, has operated for years on the implicit, invisible, and pervasive premise that those they serve have no disabilities. Here, as in the rest of society, the needs of people with disabilities are too often acknowledged and addressed, if at all, only as an afterthought and only after disability barriers are encountered. One of every three people receiving legal services from Legal Aid Ontario has a mental health disability, an addiction issue, or both.¹³ This percentage grows when clients with other disabilities are added.

Disability pervades so many areas of the law. People charged with criminal offences and those victimized by crime are disproportionately people with disabilities. Tort law is at its core largely a study of the state's response to actions that cause disabilities. Children involved in child protection proceedings disproportionately have disabilities. Those claiming refugee status in immigration proceedings are likely to have disabilities, including those acquired through the trauma of their displacement. Many people involved in professional regulatory proceedings have, are asserted to have, disabilities. Four decades ago, Justice Rosalie Abella, then a Family Court judge, found in her 1983 report *Access to Legal Services by the Disabled: Report of a Study* that the legal profession substantially underserved people with disabilities.¹⁴ Four decades later, despite progress, these disability barriers too often persist.

Where a law school includes any disability curriculum, it is most likely found in a few optional courses (if offered), such as courses on disability rights, law and discrimination, or mental health and the law. Several law schools offer no comprehensive disability rights course. Some professors commendably choose to include some content on disability issues or disability rights in a mainstream course, one that is not dedicated to disability issues. However, a law student can easily go through law school, receiving little disability curriculum beyond the not criminally responsible by reason of mental disorder defence.¹⁵ Each busy course instructor includes as much or as little disability content in their courses as they wish.

It is encouraging that equity, diversity, and inclusion strategies have expanded curriculum content on the legal needs of woman, racialized people, Indigenous communities, and the lesbian, gay, bisexual, transgender, and queer population. These initiatives were strengthened at law schools when they expanded this curriculum and recruited faculty whose teaching and research included these fields. It is vital for such equity, diversity, and inclusion efforts to expand to fully and equally include people with disabilities. This

Pulse: People's Opinions on Human Rights in Ontario Findings," online: *Ontario Human Rights Commission* <www.ohrc.on.ca/en/findings-taking-the-pulse>.

¹¹ See e.g. Peter Blanck et al, "Diversity and Inclusion in the American Legal Profession: Discrimination and Bias Reported by Lawyers with Disabilities and Lawyers Who Identify as LGBTQ" (2021) 47:1 Am J L & Med 9.

¹² The intersection between Indigenous peoples and mental health issues relating to intergenerational trauma are discussed by Szigeti et al, *supra* note 7.

¹³ "The Mental Health Strategy for Legal Aid Ontario" (2016) at 4, online: *Legal Aid Ontario* <www.legalaid.on.ca/wp-content/uploads/Mental-Health-Strategy-for-Legal-Aid-Ontario-EN.pdf>. For more information on mental health and the law, see Szigeti et al, *supra* note 7.

¹⁴ Judge Rosalie Silberman Abella, *Access to Legal Services by the Disabled: Report of A Study* (Toronto: Ministry of the Attorney General, 1983) (see further the discussion of Abella J's report in section C of this article).

¹⁵ The not criminally responsible defence is explored by Szigeti et al, *supra* note 7.

is no isolated concern, limited to legal education. Across the broader education system, as well as in many other contexts, equity, diversity, and inclusion initiatives too often omit disability or only include it as a secondary or lip-service consideration. Equity for some creates equity for none. Equity, diversity, and inclusion strategies commendably aim to eliminate hierarchies. Yet a strategy that does not fully and equally include disability risks simply replacing an old hierarchy with a new hierarchy.¹⁶ In it, people with disabilities continue to languish in chronic inequitable, de-prioritized disadvantage.

A core competency for lawyers is providing competent legal services to people with disabilities, which includes providing barrier-free legal services to them and effectively analyzing legal issues as they apply to people with disabilities.¹⁷ Law students want to be able to serve clients of all abilities. Any number of students increasingly comes to law school with an active desire to learn about disability rights. Law students generally are very receptive to the disability curriculum outlined in this article. Professors are interested in expanding their knowledge in this area and in exposing their students to it. Measures advancing disability rights collaterally benefit everyone. A ramp that allows someone using a wheelchair to enter a store or restaurant also assists someone with a baby stroller or shopping cart. Law school training that helps a student learn to use plain language to explain legal concepts to clients with intellectual disabilities empowers them to better explain legal concepts to any clients with different levels of education or languages. Disability discrimination claims provide a platform for understanding the meaning of equality in other contexts, such as gender and racialized cases.

Law schools are an important laboratory for new legal innovations. The blossoming disability rights field provides a great platform for such innovation. Canada is in the midst of major law reform initiatives in the disability field. Canada's Parliament and six provincial legislatures have enacted comprehensive accessibility statutes.¹⁸ Others may follow. Under at least some these statutes, major work is underway to enact or strengthen enforceable regulatory accessibility standards in diverse areas such as education, transportation, employment, the built environment, residential housing, customer service, healthcare, and information and communication. In the past, Canada's law schools too often have stayed on the sidelines in these activities.

C. Prequel to This Article: Previous Recommendations over Four Decades to Expand Law School Disability Curriculum

The earliest Canadian look at this topic, and the only official public inquiry into it, took place four decades ago. In 1982, Ontario's then Attorney General Roy McMurtry appointed then Family Court Judge Rosalie Abella to conduct an inquiry on whether Ontario's legal profession was effectively meeting the legal needs of people with disabilities. For decades, both the appointer and the appointee had been groundbreaking figures in Canada's legal system. Judge Abella 1983 report entitled *Access to Legal Services by the Disabled* was delivered one year after Ontario's *Human Rights Code* was amended to prohibit disability discrimination and one year after the *Canadian Charter of Rights and Freedoms* was

¹⁶ Dianne Pothier, "On Not Getting It" (1995) 33:4 Alberta L Rev 817.

¹⁷ Some of the competencies required to effectively represent clients with mental health issues are reviewed by Szigeti et al, *supra* note 7.

¹⁸ *Accessibility for Ontarians with Disabilities Act*, *supra* note 5, c 11; *Accessible Canada Act*, SC 2019, c 10; *Accessibility for Manitobans Act*, CCSM, 2013, c A1.7; *Accessibility Act*, SNS 2017, c 2 [*Accessibility Act*, NS]; *Accessible British Columbia Act*, SBC 2021, c 19; *Accessibility Act*, SNL 2021, c A-1.001 [*Accessibility Act*, NL]; Laverne A Jacobs et al, *The Annotated Accessible Canada Act* (Windsor: Faculty of Law, University of Windsor, 2021); Laverne Jacobs et al, "The Accessibility for Manitobans Act: Ambitions and Achievements in Antidiscrimination and Citizen Participation" (2016) 5:4 Can J Disability Studies 1.

enacted, replete with section 15's ban on disability discrimination.¹⁹ The Abella report found that people with disabilities had substantial legal needs that the legal profession was significantly underserving.²⁰ She made detailed recommendations, including for law schools.²¹ She concluded that law schools were not ensuring that students received training to serve clients with disabilities:

Throughout three years of legal education, a law student might receive a minimal familiarity with the defence of insanity within the criminal law, some problems in the law of estates affecting the mentally incompetent and perhaps review some of the issues involved in the overlap between the disciplines of psychiatry and law. None of this comes close to being an adequate preliminary examination of the legal problems of the handicapped.²²

The Abella report concluded that law schools were not fulfilling their important responsibility to train law students to serve a diverse client population, including people with disabilities. Among other things, it recommended that law schools should offer courses specializing in disability rights and should include disability-related content in mainstream courses, such as constitutional law, criminal law, and family law.²³

Seven years after the Abellareport, at a 1990 Council of Canadian Law Deans conference, I spoke on what law schools could do to include disability curriculum in their programs and on strategies for accommodating students with disabilities in law school. This talk culminated in a *McGill Law Journal* article,²⁴ in which I concluded that there had not been material improvements in law school curriculum from the disability perspective since the Abella report. I observed that law school leaders likely were unaware of the report and its recommendations.²⁵ My article offered recommendations to law schools on how to incorporate disability curriculum into their legal education programs and on how to effectively meet the disability-related needs of law students with disabilities.²⁶ I received very little feedback or outreach from any Canadian law schools as a result of the article's publication. The present article's recommendations substantially expand upon my earlier article.

A decade after my *McGill Law Journal* article, Reach Canada, an Ottawa-based community disability organization, undertook a study that investigated what Canadian law schools had done as a result of my *McGill Law Journal* article.²⁷ The 2002–2003 Reach Canada study's unpublished report concluded that, while there had been some progress since my *McGill Law Journal* article, “[a] great deal’ remained to be done,” finding: “Clients with disabilities continue to be underrepresented by the legal profession and thus are often without equal or effective access to the legal system.”²⁸ This study concluded that my *McGill Law Journal* article needed some updating to address legal and technological changes during the intervening decade, but it stated: “Yet the degree to which the assessment of problems and the proposals

¹⁹ Abella, *supra* note 14; *Human Rights Code*, RSO 1990, c H-19; *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11.

²⁰ Abella, *supra* note 14 at 15.

²¹ *Ibid* at 22.

²² *Ibid*.

²³ *Ibid* at 146–147.

²⁴ See Lepofsky, “Disabled Persons,” *supra* note 4.

²⁵ Abella, *supra* note 14.

²⁶ Lepofsky, “Disabled Persons,” *supra* note 4.

²⁷ See Reach Canada, online <www.reach.ca/>.

²⁸ McChesney, Allan., and Laurie. Gillis. *Promoting Disability Accommodation in Legal Education and Training: the Continuing Relevance of the 1990 Lepofsky Recommendations*. Ottawa: Reach Canada, 2003, at 6.

for remedial action remain relevant today is remarkable.”²⁹ It found that only two Canadian law schools offered a disability law course. The Reach Canada’s report reaffirmed the recommendations in my *McGill Law Journal* article and offered supplementary suggestions to expedite law school curriculum reform on disability issues, ideas that are encompassed in this article’s discussion.³⁰

II. WHAT TO TEACH AND IN WHAT COURSES TO TEACH IT

A. The Key Disability Content to Teach

This part of the article first identifies core disability content that should be taught somewhere at law school and then specifies what to teach, course by course.³¹ Disability curriculum divides into three overlapping categories. The first category includes substantive and procedural law as it affects people with disabilities. This can include rights and duties under mainstream legal regimes, such as tort, criminal, or contract law when applied to people with disabilities. It also includes specialized legal disability-related legal regimes, such as consent and capacity laws, civil and criminal mental health legislation, disability-specific social assistance laws, special education legal regimes, and specific disability accessibility legislation, such as the *Accessibility for Ontarians with Disabilities Act*; the *Accessible Canada Act*; the *Accessibility for Manitobans Act*; Nova Scotia’s *Accessibility Act*; the *Accessible British Columbia Act*; and Newfoundland’s *Accessibility Act*.³² The second category includes disability rights analysis, which includes an understanding of equality rights of people with disabilities and how to analyze a legal problem through a disability lens. The third category includes skills on how to effectively interact with and serve clients and others with disabilities, especially when delivering legal services.

The following discussion first expands these three areas into a more detailed list of curriculum content. It then offers suggestions on how this can be explored course by course.³³ These recommendations equally apply whether or not a law school offers a dedicated disability rights course. This discussion builds on the range of courses that a law school now offers. However, there are important areas of law that traditional law school courses typically do not cover. For example, there is a need to give students curriculum on legal avenues for addressing barriers impeding students with disabilities in the education system. However, a law school may not currently offer an education law course. Family law and courses on children and the law do not typically address this topic. A student could graduate from law school without learning any education law. In contrast, it is a specialized law practice field in the United States.

²⁹ *Ibid.*

³⁰ *Ibid.* at 34–40.

³¹ For some general helpful resources, see e.g. Peter Blanck & Eilionóir Flynn, *Routledge Handbook of Disability Law and Human Rights* (London: Routledge, 2017); Jacobs, Laverne A., Ruby Dhand, David Ireland, Richard Jochelson, Freya Kodar, Odelia Bay, and Brayden McDonald. *Law and Disability in Canada : Cases and Materials*. Toronto, Ontario: LexisNexis, 2021. [Jacobs, *Law and Disability*].

³² *Accessibility for Ontarians with Disabilities Act*, *supra* note 5; *Accessible Canada Act*, *supra* note 18; *Accessibility for Manitobans Act*, *supra* note 18; *Accessibility Act*, NS, *supra* note 18; *Accessible British Columbia Act*, *supra* note 18; *Accessibility Act*, NL, *supra* note 18. Dhand Szigeti and colleagues provide an overview of the regulatory and legislative framework governing civil mental health law. Szigeti et al, *supra* note 7.

³³ Lora Patton et al, “A Principled Approach: Considering Eligibility Criteria for Disability-Related Support Programs through a Rights-Outcome Lens” (9 August 2010), online: *Law Commission of Ontario* <www.lco-cdo.org/en/our-current-projects/the-law-and-persons-with-disabilities/disabilities-call-for-papers-january-2010/commissioned-papers-the-law-and-persons-with-disabilities/a-principled-approach-considering-eligibility-criteria-for-disability-related-support-programs-through-a-rights-outcome-lens/>.

1. Foundational or Introductory Disability Content

The following topics can comprise foundational content on disability issues and disability rights. This serves as an important foundation, especially in first year, to support more in-depth issues that can later be explored in upper-year courses:

- Who are people with disabilities – this topic explores different kinds of disabilities such as physical, sensory, learning, intellectual, communication, neurological, developmental, and mental health disabilities, including both visible and invisible disabilities and both ongoing disabilities and episodic disabilities. It can include the exploration of disability demographics, including age, socio-economic status, rates of unemployment, and dependency on public sector programs, such as social assistance.³⁴
- The social model of disability, as contradistinguished from the older, discredited medical model of disability – the medical model portrays a disability as a purely biomedical phenomenon, with its impact on a person being medically evaluated. The preferred “social model of disability” discerns the limiting impact of disabilities on a person as being socially imposed – for example, by human-created barriers in society that impede people with disabilities from full participation. Under the medical model, disability and the issues facing people with disabilities are predominantly seen as medical conditions, to be medically diagnosed and medically treated. In the policy context, people with disabilities are predominantly viewed as passive patients to be the recipients of clinical treatments.³⁵
- The concept of universal design (designing goods, services, or facilities to be usable by all, not just those with no disability) .– This topic includes examining recurring disability barriers in education, employment, transportation, getting around the built environment, information and communication, healthcare, and the enjoyment of goods, services, and facilities.³⁶
- Core elements of the right to equality for people with disabilities in human rights laws and section 15 of the *Charter*, including the goal of full participation and full inclusion, the duty to accommodate people with disabilities, and the duty to identify, remove, and prevent disability barriers.³⁷ This topic includes examining major legal regimes that are specific to the equality

³⁴ Morris et al, *supra* note 8; Wall, *supra* note 8; Lora Patton et al, “A Principled Approach: Considering Eligibility Criteria for Disability-Related Support Programs through a Rights-Outcome Lens” (9 August 2010), online: *Law Commission of Ontario* <www.lco-cdo.org/en/our-current-projects/the-law-and-persons-with-disabilities/disabilities-call-for-papers-january-2010/commissioned-papers-the-law-and-persons-with-disabilities/a-principled-approach-considering-eligibility-criteria-for-disability-related-support-programs-through-a-rights-outcome-lens/>.

³⁵ See e.g. Tom Shakespeare. *Disability Rights and Wrongs Revisited*, 2nd ed (London: Routledge, 2014); Clara Fatoye et al, “PHP151: The Perception of the Public About Disability and the Medical and Social Model of Disability: A Literature Review” (2018) 21 *Value in Health Journal* S175; Bianca Manago et al, “Discourse in Action: Parents’ Use of Medical and Social Models to Resist Disability Stigma” (2017) *Social Science & Medicine* 169; Clara Fatoye et al, “PNS 149: The Medical and Social Models of Disability” (2019) 22 *Value in Health Journal* S310; Jerome Bickenbach et al, “Being a Person with Disabilities or Experiencing Disability: Two Perspectives on the Social Response to Disability” (2017) 49:7 *J Rehabilitation Medicine* 543; Dianne Pothier & Richard Devlin, *Critical Disability Theory: Essays in Philosophy, Politics, Policy and Law* (Vancouver: UBC Press, 2014); Glenn I Cohen et al, *Disability, Health, Law, and Bioethics* (Cambridge, UK: Cambridge University Press, 2020).

³⁶ See e.g. Jerome Bickenbach, “Universally Design Social Policy: When Disability Disappears?” (2014) 36:16 *Disability & Rehabilitation* 1320; Aimi Hamraie, *Building Access: Universal Design and the Politics of Disability* (Minneapolis: University of Minnesota Press, 2017).

³⁷ David Lepofsky, “The Duty to Accommodate: A Purposive Approach” (1992) 1:1 *Comp Lab L & Pol’y J* 1; David Lepofsky, “Federal Court of Appeal De-Rails Equality Rights for Persons with Disabilities: *Via Rail v. Canadian Transportation Agency and the Important Duty Not to Create New Barriers to Accessibility*” (2006) 18:2 *NJCL* 169;

rights of people with disabilities, such as accessibility laws like the *Accessibility for Ontarians with Disabilities Act*, the *Accessible Canada Act*, and the other provincial accessibility statutes, listed above. This also includes international conventions and law relative to people with disabilities, such as the *Convention on the Rights of Persons with Disabilities*³⁸ and the *Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled (Marrakesh Treaty)*.³⁹

- Key legal regimes that are specific to people with disabilities or some subsets of them – this topic includes consent and capacity laws, laws governing the civil or criminal commitment of persons due to mental health issues, special education legal regimes, and social assistance regimes that are designed for people with disabilities.
- Recurring disability barriers facing people with disabilities in access to legal services, and the steps to overcome those barriers and provide barrier-free legal services.⁴⁰ This topic includes practical tips on interacting with people with disabilities – for example, terminology to use for disabilities, how to ascertain if they have accommodation needs, how to engage with support persons, as well as compounded intersectional disadvantage that can come from the intersection of a disability and other equality-seeking status or Indigenous status.⁴¹ This topic

David Lepofsky, “A Report Card on the *Charter*’s Guarantee of Equality to Persons with Disabilities after Ten Years: What Progress? What Prospects?” (1997) 7:3 NJCL 263; Osgoode Hall Law School, “David Lepofsky: Introduction to the Duty to Accommodate People with Disabilities” (30 September 2021), online: *YouTube* <www.youtube.com/watch?v=y32XvjWmDAQ>.

³⁸ *Convention on the Rights of Persons with Disabilities*, 6 December 2006, 2515 UNTS 3 (entered into force 3 May 2008) [CRPD]. See also Jerome Bickenbach, “The World Report on Disability” (2011) 26:5 *Disability & Society* 655.

³⁹ *Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled*, adopted June 27, 2013, Read the full text at <wipolex.wipo.int/en/text/301016>, (entered into force 2016).

⁴⁰ David Lepofsky, “Equal Access to Canada’s Judicial System for Persons with Disabilities: A Time for Reform” (1995) 5:1 NJCL 183; “Making Ontario’s Courts Fully Accessible to Persons with Disabilities” (Report of Courts Disabilities Committee, December 2006, online: *Ontario Courts* <www.ontariocourts.ca/accessible_courts/en/report_courts_disabilities.htm>; Law Society of Ontario Continuing Professional Development (LSO CPD) “David Lepofsky: LSO CPD – Enhancing Access to the Courts for People with Disabilities 2012” (22 September 2021), online (video): *YouTube* <www.youtube.com/watch?v=PzpmMfl-ha0&list=PLRDUnqhuWrq9HwtddVCiLz_B7um6tTPGs&index=1>; LSO CPD, “David Lepofsky: LSO CPD: Enhancing Access to the Courts for People with Disabilities 2013” (22 September 2021), online: *YouTube* <www.youtube.com/watch?v=lrD9IG1LapI&list=PLRDUnqhuWrq9HwtddVCiLz_B7um6tTPGs&index=2>; LSO CPD, “David Lepofsky: LSO CPD: Enhancing Access to the Courts 2014” (22 September 2021), online: *YouTube* <www.youtube.com/watch?v=QdipsDGILBs&list=PLRDUnqhuWrq9HwtddVCiLz_B7um6tTPGs&index=3>; LSO CPD, “David Lepofsky: LSO CPD: Enhancing Access to the Courts 2015” (22 September 2021), online: *YouTube* <www.youtube.com/watch?v=IZDHEg9tOZY&list=PLRDUnqhuWrq9HwtddVCiLz_B7um6tTPGs&index=4>; LSO CPD, “David Lepofsky: LSO CPD: Enhancing Access to the Courts for People with Disabilities 2016” (22 September 2021), online: *YouTube* <www.youtube.com/watch?v=xNNCUKOi3oA&list=PLRDUnqhuWrq9HwtddVCiLz_B7um6tTPGs&index=5>; LSO CPD, “David Lepofsky: LSO CPD – Ensuring Access to Your Law Office and Services for People with Disabilities” (22 September 2021), online: *YouTube* <www.youtube.com/watch?v=UaYUOyIT4_o&list=PLRDUnqhuWrq9HwtddVCiLz_B7um6tTPGs&index=6>.

⁴¹ ARCH Disability Law Centre, “Disability Law Primer” (September 2013) at 8, online: <www.archdisabilitylaw.ca/sites/all/files/ARCH%20Disability%20Law%20Primer%202011%20Mar%2014.pdf> [ARCH Disability Law Centre, “Disability Law Primer”]; Dianne Wintermute & Kathleen Cooper, “The Legal Rights and Challenges Faced by Persons with Chronic Disability Triggered by Environmental Factors” (July 2019), online: <archdisabilitylaw.ca/resource/paper-the-legal-rights-and-challenges-faced-by-persons-with-chronic-disability-triggered-by-environmental-factors/>.

also includes, among others, the recurring disability barriers obstructing court participants in the court system and measures for overcoming them to achieve a barrier-free court system. The same can be addressed for non-court administrative tribunals.⁴²

- The lawyer’s disability-related ethical obligations – this topic includes, for example, the assessment of a client’s capacity to instruct counsel, how to assess this, and ethical obligations to provide barrier-free legal services to clients with disabilities.

2. Advanced Disability Content

Upper-year courses can dive deeper into the foregoing. They could also investigate course-specific content that pertains to people with disabilities as well as these more general themes:

- Effective social justice advocacy strategies to remove and prevent recurring systemic barriers facing people with disabilities.⁴³
- Alternatives to traditional litigation to advance disability rights claims, such as structured negotiations.⁴⁴
- Guardianship, substitute decision-making and supportive decision-making, and developmental services/community living issues.⁴⁵

B. Where to Teach It: Course-By-Course Options for Incorporating Disability Curriculum

1. Introductory and Advanced Tort Courses

Viewed through a disability lens, tort law is largely disability law.⁴⁶ It is the civil law’s response to action that causes disabilities. For example, victims of torts, such as negligence, often sustain personal injuries that cause a permanent, temporary, or intermittent disability. Disability topics could include the following ideas:

⁴² LSO CPD, *Lepofsky*, *supra* note 40.

⁴³ Osgoode Hall Law School, “David Lepofsky: Community Organizing Lessons from Ontario’s Accessibility Campaign” (18 March 2014), online: *YouTube* <www.youtube.com/watch?v=zR6qKBC_j58&list=PLDGgB77j2ZYrl_rtp32nSjOXfrDAGvnn&index=9>; Osgoode Hall Law School, “David Lepofsky: Ethical Lawyering in a Global Community – David Lepofsky – August 29, 2013” (2 October 2013), online: *YouTube* <www.youtube.com/watch?v=uUqdaqgbu0s&list=PLDGgB77j2ZYrl_rtp32nSjOXfrDAGvnn&index=13> [Osgoode Hall Law School, “Ethical Lawyering”]; David Lepofsky, “The Long Arduous Road to a Barrier-free Ontario for People with Disabilities: The History of the Ontarians with Disabilities Act – The First Chapter” (2004) 15:2 NJCL 125. Advocacy tools for trauma-informed lawyering are explored by Szigeti et al, *supra* note 7.

⁴⁴ Lainey Feingold, *Structured Negotiation: A Winning Alternative to Lawsuits*, 2nd ed (Chicago: American Bar Association, 2016); Osgoode Hall Law School, “Lainey Feingold: Structured Negotiation: Effectively Resolving Legal Disputes without Needing Lawsuits” (10 February 2017), online: *YouTube* <www.youtube.com/watch?v=TkNw65JEeyI>.

⁴⁵ Stephanie Dickson et al, “Guardianship as a Last Resort” (2021) 40 Estates, Trusts & Pensions J 239; Israel Doron, “Mental Incapacity, Guardianship, and the Elderly: An Exploratory Study of Ontario’s Consent and Capacity Board” (2003) 18:1 Canadian Journal of Law and Society, 131; Szigeti et al, *supra* note 7.

⁴⁶ For resource(s) on disability perspectives in tort law, see e.g. Sagit Mor & Rina B Pikkell, “Disability, Rights, and the Construction of Sexuality in Tort Claims” (2019) 53:4 Law & Soc’y Rev 1016; Sagit Mor, “The Meaning of Injury: A Disability Perspective” in Anne Bloom et al, *Injury and Injustice: The Cultural Politics of Harm and Redress* (Cambridge, UK: Cambridge University Press, 2018) 27; Sonja Grover, “Maternal Tort Immunity, the Born Alive Rule and the Disabled Child’s Right to Legal Capacity: Reconsidering the Supreme Court of Canada Judgment in *Dobson v. Dobson*” (2017) 21:6 Intl JHR 708; Anne Bloom & Paul Steven Miller, “Blindsight: How We See Disabilities in Tort Litigation” (2011) 86:4 Wash L Rev 709.

- Incorporating a principled approach to tort damage assessment, using a disability rights perspective, such as the following:
 - If a plaintiff tortiously acquires a disability impairing their return to work, should a damages assessment that estimates the time for returning to work take into account the massive unemployment rates facing people with disabilities?⁴⁷ This reduces the likelihood of a plaintiff being able to return to comparable work, even if qualified. Should this assessment take into account the fact that many workplaces are not barrier free for employees and jobseekers with disabilities? If so, how should this be done?
 - If a plaintiff died due to a defendant's tortious conduct, damages include loss of earning capacity during their projected normal lifespan that was tortiously cut short. If that tort victim had a prior disability, should the lost income computation include a reduction because their chances of getting and keeping a job were reduced due to that disability? Is that discriminatory, contrary to section 15 of the *Charter*, because it discounts the damages by virtue of their disability, violating their right to the equal protection and equal benefit of the law?
- To what extent should tort law compensate for the mental health disabilities caused by tortious conduct? Can remoteness principles adversely affect such claims?
- The foreseeability of plaintiffs with disabilities within negligence law principles and duties of care owed by professionals or others to people with disabilities under negligence law – for example, what could the liability be of architects and other design professionals for including accessibility barriers in a new building they design? Should an architect or other design professional be required to compensate for the cost of remediating a building they designed or to remove the accessibility barriers that they designed into the building? If a design professional is alerted by an accessibility expert to disability barriers in their design plans, what tort liability arises if that design professional rejects that advice and withholds that accessibility advice from their client for whom they are designing a building?
- When are public authorities and regulators liable for their regulatory actions giving rise to personal injuries? If a municipality passes a bylaw that allows the use of electric scooters in public by uninsured, untrained, and unlicensed riders, and if a pedestrian is injured, can the municipality be liable in tort?⁴⁸ What if the municipality allows for a pilot project that lets private companies use delivery robots on public sidewalks, and this leads to a pedestrian being injured? If a municipality's snow-shovelling service shovels snow in a way that impedes accessibility for pedestrians with disabilities – for example, by piling snow up in front of a ramp to a building – what is the municipality's tort exposure?⁴⁹
- Some medical officials, physician insurance companies, and governments have used tort law “standard of care” rhetoric to describe protocols, crafted during the COVID-19 pandemic, to set out rules for physicians to decide which critically ill patients should be refused life-saving critical care if hospital overloads require triage or rationing of critical-care beds. This is done to try to insulate physicians and hospitals from tort liability if sued by the families of patients who are refused the critical care they need. Does labelling critical care triage protocols an

⁴⁷ Morris et al, *supra* note 8.

⁴⁸ For disability accessibility objections to allowing e-scooters on public places, see the AODA Alliance's e-scooter page, online: *AODA Alliance* <www.aodaalliance.org/e-scooters>.

⁴⁹ See e.g. *Nelson (City) v Marchi*, 2021 SCC 41.

“emergency standard of care” for rationing scarce publicly funded health care justify a court, deciding a wrongful death claim, in deferring to such protocols?⁵⁰

- Concepts of “consent” as a defence to intentional torts can be examined from the perspective of persons with intellectual or cognitive disabilities. This can be a gateway to exploring the law governing capacity to consent.

2. First-year Criminal Law Courses

Criminal law is in significant ways a disability subject.⁵¹ As noted earlier, those accused of crime disproportionately have disabilities, such as addiction issues, mental health issues, and/or other disabilities. Crime victims disproportionately have disabilities due to their vulnerability to crime and/or because of physical and mental health harms from crime victimization, which are exacerbated by the trauma of their involvement with the criminal justice system.⁵² Traditionally, criminal law starts from the presumption that an accused has no disability. Courses may address certain discrete exceptional bright line doctrinal regimes, such as the defence of not being criminally responsible due to mental disorder and/or automatism and intoxication defences. Beyond these topics, there is ample room to examine criminal law through a disability lens, including the following examples:

- Students could learn about disability barriers in the criminal justice system facing victims, accused persons, and witnesses with disabilities.
- The criminal law’s perception of disability as it relates to criminal responsibility is worth exploring. This can address whether the accused has a disability or where the victim has a disability. For an example of the latter, the necessity defence can be explored through the lens of disability rights via an examination of *R. v Latimer*.⁵³
- If a criminal law course focuses on diversity concerns, such as the need to address discrimination and equity in the criminal justice system, as for racialized persons and Indigenous persons, it is important to also focus on the intersectional impact on those persons who also have a disability, multiplying their disadvantage.

⁵⁰ See e.g. “A Deeply Troubling Issue of Life and Death: An Independent Report on Ontario’s Seriously-Flawed Plans for Rationing or ‘Triage’ of Critical Medical Care If COVID-19 Overwhelms Ontario Hospitals” (25 February 2021), online: *AODA Alliance* <www.aodaalliance.org/whats-new/a-deeply-troubling-issue-of-life-and-death-an-independent-report-on-ontarios-seriously-flawed-plans-for-rationing-or-triage-of-critical-medical-care-if-covid-19-overwhelms-ontario-hospitals/>; Osgoode Hall Law School, “David Lepofsky: Disability Discrimination in Ontario Critical Care Triage Protocol” (3 May 2021), online: *YouTube* <www.youtube.com/watch?v=Ju8cyH7TbQo>.

⁵¹ For resource(s) on disability and criminal law, see e.g. Steele, Linda. *Disability, Criminal Justice and Law: Reconsidering Court Diversion*. (Milton: Taylor and Francis, 2020); Erik Søndena et al, “Criminal Responsibility and Challenges in the Criminal Justice System for People with Intellectual Disability in Norway” (2019) 7:1 *Bergen J Criminal L & Criminal Justice* 97; Linda Steele, “Disability, Abnormality and Criminal Law: Sterilisation as Lawful and ‘Good’ Violence” (2014) 23:3 *Griffith L Rev* 467; Linda Steele & Stuart Thomas, “Disability at the Periphery: Legal Theory, Disability and Criminal Law” (2014) 23:3 *Griffith L Rev* 357; Perlin, Michael L. *A Prescription for Dignity: Rethinking Criminal Justice and Mental Disability Law* (Farnham: Routledge, 2013); David Ireland, Richard Jochelson & Brayden McDonald, “Arrest, Detention and Disability in Canada” in Jacobs, *Law and Disability*, *supra* note 31, 145; David Ireland, Richard Jochelson & Brayden McDonald, “Trial, Sentencing and Disability in Canada” in Jacobs, *Law and Disability*, *supra* note 31, 167.

⁵² For information on the disproportionate effects of the criminal justice system specifically on those with mental health issues, see Szigeti et al, *supra* note 7.

⁵³ *R v Latimer*, 2001 SCC 1. See also e.g. David Lepofsky, “The Latimer Case: Murder Is Still Murder When the Victim Is a Child with a Disability” (2001) 27:1 *Queen’s LJ* 319 [Lepofsky, “Latimer Case”]; Szigeti et al, *supra* note 7.

These topics also fit well in courses on advanced criminal law, criminal procedure, and evidence.

3. Contract Courses

A first-year contract law course could include the following topics:

- Principles governing a person's capacity to contract.
- Whether unconscionable contract principles can be invoked to protect vulnerable people with disabilities from exploitive contracts and business practices – for example, when a telemarketer manipulates a senior with cognitive limitations to pay an excessive price for products they do not need.⁵⁴

4. Property Courses

A property law course is enriched by examining limits on property rights that derive from disability rights requirements, viewing common law and statutory property law principles through a disability lens.⁵⁵ Disability topics could include some of these topics:

- Barriers facing people with disabilities include the fact that the built environment is largely designed for people without disabilities.⁵⁶ Some of those barriers violate provincial building codes or municipal bylaws. Even if that is not the case, they can violate anti-discrimination laws, such as human rights codes⁵⁷ and section 15 of the *Charter*. These barriers also need to be addressed in regulations to be enacted under accessibility legislation, such as the *Accessibility for Ontarians with Disabilities Act*, the *Accessible Canada Act*, and other provincial accessibility statutes.⁵⁸
- Limits on the state's power to restrict property from being used for disability-related needs could be considered, including bylaws that restrict the location of group homes in a neighbourhood (for example, "not in my back yard").
- The relationship of property rights and disability equality could be covered in such contexts as landlord-tenant law (for example, the landlord's duty to remove physical barriers to publicly

⁵⁴ For resource(s) on possible disability topics in contract law, see e.g. Eliza Varney, "The UN Convention on the Rights of Persons with Disabilities and English Contract Law: A Tale of Unfinished Bridges?" (2020) 31:3 *King's LJ* 444; María Paz García Rubio, "Some Proposals for Reform of the Spanish Civil Code as a Result of the New Model of Disability, Especially in Succession Law, Contract Law and Tort Law" (2018) 5:3 *Revista de Derecho Civil* 173; Eliza Varney, "Redefining Contractual Capacity? The UN Convention on the Rights of Persons with Disabilities and the Incapacity Defence in English Contract Law" (2017) 37:3 *Legal Studies (Society of Legal Scholars)* 493.

⁵⁵ For resource(s) on possible disability topics in property law, see e.g. Malloy, Robin Paul. *Disability Law for Property, Land Use, and Zoning Lawyers*. (Chicago: American Bar Association, State and Local, 2020); Robin Paul Malloy et al, "Land Use Law and Sidewalk Requirements under the Americans with Disabilities Act" (2017) 51:3 *Real Property, Trust and Estate LJ* 403.

⁵⁶ For illustrations of disability barriers in new buildings, see e.g. the Accessibility for Ontarians with Disabilities Alliance's (AODA Alliance) captioned videos that I narrated on barriers in selected new locations. David Lepofsky, "Accessibility Problems at New Toronto Area Public Transit Stations (Short Version)" (15 May 2018), online: *YouTube* <www.youtube.com/watch?v=za1UptZq82o>; David Lepofsky, "Accessibility Problems at New Centennial College Culinary Arts Centre (Long Version)" (28 November 2016), online: *YouTube* <www.youtube.com/watch?v=Dgfrum7e_0&t=87s>; David Lepofsky, "Accessibility Problems at Ryerson University Student Learning Centre (Short Version)" (29 October 2017), online: *YouTube* <www.youtube.com/watch?v=4oe4xiKknt0>.

⁵⁷ *Human Rights Code*, *supra* note 19.

⁵⁸ For example, see note 18 above.

available rental property), condominium law (for example, the barriers to making a condominium property accessible that can derive from requirements to get approvals from the condominium board), local zoning bylaws (which, for example, may require approvals for renovations to make a residential home disability accessible), and building codes (for example, that enforce rules regarding the design of buildings, whose accessibility requirements are often substandard).

- If a property course introduces trusts and estates, it could also provide an introduction to the disability issues presented later in this article in connection with estates and trust law courses.

5. Legal Process or Legal Foundations Courses

A first-year legal foundations or legal process course might include some of these important disability topics:⁵⁹

- The lawyer's ethical duty to engage in social justice advocacy could be studied, including advocacy for chronically vulnerable groups, such as people with disabilities.⁶⁰
- The disability barriers impeding people with disabilities in the justice system, including in the court system and the system of administrative tribunals – this topic includes strategies for overcoming these barriers for parties, witnesses, lawyers, and other participants with disabilities.⁶¹
- The ways in which different regulatory regimes can impact on people with disabilities can be examined, such as Ontario's controversial move in 2006 to change the process for enforcing the Ontario *Human Rights Code* from a public enforcement regime to privatized enforcement.⁶²
- If these courses explore practical lawyering skills, such as interviewing clients, this could include ways in which to effectively accommodate people with disabilities in the interview process.⁶³
- Limitation periods have been identified as a barrier for some plaintiffs with disabilities. Any discussion of limitation periods could include the impact of limitation periods on people with disabilities and the effective ways to overcome this barrier.

6. Constitutional Law Courses

Canada's Constitution provides a vital foundation for disability rights, and disability topics could include the following ideas:

⁵⁹ For resource(s) on possible disability topics in legal process, see e.g. Lepofsky, "Disabled Persons," *supra* note 4; Rachel Cox et al, "Solicitors' Experiences of Representing Parents with Intellectual Disabilities in Care Proceedings: Attitudes, Influence and Legal Processes" (2015) 30:2 *Disability & Society* 284; Ravi Malhotra & Benjamin Isitt, *Disabling Barriers: Social Movements, Disability History, and the Law* (Vancouver: UBC Press, 2017).

⁶⁰ Osgoode Hall Law School, "Ethical Lawyering," *supra* note 43.

⁶¹ LSO CPD, Lepofsky, *supra* note 40.

⁶² Osgoode Hall Law School, "David Lepofsky: Controversy on How Anti-Discrimination Human Rights Are Enforced in Ontario" (11 April 2017), online: *YouTube* <www.youtube.com/watch?v=pH4xCi5Ye_g>.

⁶³ ARCH Disability Law Centre, "Disability Law Primer," *supra* note 41.

- Section 15 of the *Charter*'s guarantee of equality to people with disabilities could be examined, including the way in which it can serve as a platform for understanding equality more generally.⁶⁴
- An early understanding of the *Charter* and its origins can be enriched by a discussion of the community campaign in 1980–1982 that led to the disability amendment, which added disability to section 15 during the patriation debates. Disability equality is the only new right that was added to the *Charter* during the patriation debates was not in the *Charter* at first reading.⁶⁵
- Disability issues provide an excellent platform for exploring how equality rights issues can interplay with *Charter* section 7 and can end up litigated or decided under *Charter* section 7 instead of, or in addition to, *Charter* section 15. Examples are the Supreme Court of Canada's decisions on medical assistance in dying and its decision on the detention of persons found not guilty of criminal offences due to mental disorder.⁶⁶

7. Introductory and Advanced Civil Procedure Courses

Civil procedure courses could explore these disability topics:

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- ⁶⁴ For resource(s) on possible disability topics in constitutional law, see *Supra* note 40; David Lepofsky, "The Canadian Judicial Approach to Equality Rights: Freedom Ride or Roller Coaster?" (1992) 55:1 *Law & Contemp Probs* 167; Laverne Jacobs, Examining the Right to Community Living for People with Disabilities in Canada" in Jacobs, *Law and Disability*, *supra* note 31, 45; Laverne Jacobs, "Equality Rights Instruments and the Importance of a Disability Lens" in Jacobs, *Law and Disability*, *supra* note 31, 3; Michael E Waterstone, "Disability Constitutional Law" (2014) 63:3 *Emory LJ* 527; Michael L Perlin, "A Change Is Gonna Come": The Implications of the United Nations Convention on the Rights of Persons with Disabilities for the Domestic Practice of Constitutional Mental Disability Law" (2009) 29:3 *Northern Illinois University Law Review* 483; Brendon D Pooran & Cara Wilkie, "Failing to Achieve Equality: Disability Rights in Australia, Canada and the United States" (2005) 20 *JL & Social Pol'y* 1; Yvonne Peters, *Twenty Years of Litigating for Disability Equality Rights: Has It Made a Difference?: An Assessment by the Council of Canadians with Disabilities* (Ontario, 20th: Twentieth Anniversary Committee of the Equality Clause, 2004); Pauline Rosenbaum & Ena Chadha, "Reconstructing Disability: Integrating Disability Theory into Section 15" (2006) 33 *SCLR* 343; Ena Chadha & C Tess Sheldon, "Promoting Equality: Economic and Social Rights for Persons with Disabilities under Section 15" (2004) 16:1 *NJCL* 27; Elizabeth F Emens & Michael Ashley Stein, *Disability and Equality Law* (Abingdon, UK: Routledge, 2016); Laverne Jacobs, "The Universality of the Human Condition: Theorizing Transportation Inequality Claims by Persons with Disabilities in Canada, 1976–2016" (2018) 7:1 *Can J Human Rights* 35 [Jacobs, "Universality"].
- ⁶⁵ See e.g. David Lepofsky & Jerome Bickenbach, *Equality Rights and the Canadian Charter of Rights and Freedoms, Equality Rights and the Physically Handicapped* (Toronto: Carswell, 1985); AODA Alliance, "David Lepofsky: Dec 12 1980 David Lepofsky at Parliamentary Committee on Constitution of Canada" (22 April 2012), online: *YouTube* <www.youtube.com/watch?v=hBdYFUtAslc>; Osgoode Hall Law School, "David Lepofsky: Fight to Amend Canadian Charter of Rights to Protect Disability Equality" (17 March 2014), online: *YouTube* <www.youtube.com/watch?v=XrYzAAKXOrc&list=PLDGgB77j2ZYrl_rtp32nSjOXfrDAGvnn&index=2>; "What Did Disability Advocates Tell Canada's Parliament 40 Years Ago This Fall to Help Win an Historic Amendment to the Charter of Rights to Protect Equality for People with Disabilities?" (7 December 2020), online: *AODA Alliance* <www.aodaalliance.org/whats-new/what-did-disability-advocates-tell-canadas-parliament-40-years-ago-this-fall-to-help-win-an-historic-amendment-to-the-charter-of-rights-to-protect-equality-for-people-with-disabilities/>; Laverne Jacobs, "An Introduction to Exploring Law, Disability, and the Challenge of Equality in Canada and the United States: Papers from the Berkeley Symposium" (2015) 32:2 *Windsor YB Access Justice*, v; John David Lee et al, "Law and Ordered C.H.A.O.S.: Social Science Methodology, and the Charter Claims of Persons with Disabilities" (2013) 32 *NJCL* 1 at 61.
- ⁶⁶ *Carter v Canada (Attorney General)*, 2015 SCC 5; *Rodriguez v British Columbia (Attorney General)*, [1993] 3 SCR 519; *R v Swain*, [1991] 1 SCR 933; David Lepofsky, "Carter v. Canada (Attorney General), The Constitutional Attack on Canada's Ban on Assisted Dying: Missing an Obvious Chance to Rule on the Charter's Disability Equality Guarantee" (2016) 76:1 *Osgoode Digital Commons* 89.

- Legal procedures available to enable vulnerable people with disabilities to fully participate in legal proceedings – for example, litigation guardians for persons who do not have the capacity to bring a lawsuit on their own behalf.
- The assessment of a client’s capacity to instruct.⁶⁷
- Recurring disability barriers that impede civil litigants with disabilities from full participation in the court process as well as the strategies for overcoming them.⁶⁸
- If not covered in a first-year legal foundations/legal process course, limitation period barriers facing litigants with some disabilities could be examined at this point.

8. Trust or Estate Law Courses

Disability issues in an estates and trusts course could include the following:

- The lawyer’s duty in connection with assessing a client’s testamentary capacity.
- Legal issues pertaining to the design and administration of a will or trust where a beneficiary is a vulnerable person with a disability, such as a person with a developmental or intellectual disability who may not be able to manage their affairs.
- The role of the public guardian and trustee or other corporate trustees in estate and trust administration.
- The trustee’s duty to accommodate the disability-related needs of a co-trustee or beneficiary that have disabilities.
- The question of whether a dependent family member can apply to court for increased benefits from an estate, beyond that allotted to them under a will or under usual intestacy rules, based on the claimant’s disability?⁶⁹

9. Family Law Courses

Discussions of family law can unintentionally assume that all family members have no disabilities. All traditional family law issues can also be explored in situations where one or more of the family members have a disability.⁷⁰ Disability topics include the following:

⁶⁷ For resource(s) on possible disability topics in civil procedure, see e.g. Feingold, *supra* note 44.

⁶⁸ LSO CPD, *Lepofsky*, *supra* note 40.

⁶⁹ For resource(s) on possible disability topics in trust or estate law, see e.g. Brendon Pooran, “2020 Inspiring Possibilities Estate Planning Guide: A Tax, Benefits, Trusts, and Wills Toolkit for Ontarians with Disabilities” (11 May 2020), online: *Community Living* <www.communitylivingupperottawavalley.ca/userfiles/file/2020/Wills-Estate-Planning-Guide_ENG.pdf>; “Consultation Paper, Common-Law Tests of Capacity” (2013), online: *British Columbia Law Institute* <www.bcli.org/publication/consultation-paper-common-law-tests-capacity/>; Dennis C Reardon, “Planning for Disability with Marital Trusts” (2014) 68:5 *J Financial Service Professionals* 15; Edwin G Upenieks & Melanie A Yach, *The Challenges Posed by the Issue of Capacity: The Impact upon Estate Planning, Estate Administration and Estate Litigation* (Toronto: Ontario Bar Association, 2012); Kelly Purser & Karen Sullivan, “Capacity Assessment and Estate Planning – the Therapeutic Importance of the Individual” (2019) 64 *International Journal of Law & Psychiatry* 88; Rebecca Lee & Lusina Ho, *Special Needs Financial Planning: A Comparative Perspective* (Cambridge, UK: Cambridge University Press, 2019).

⁷⁰ For resource(s) on possible disability topics in family law, see e.g. Beverley Clough & Jonathan Herring, *Disability, Care and Family Law* (Milton: Taylor and Francis, 2021); Robyn M Powell, “Family Law, Parents with Disabilities, and the ‘Americans with Disabilities Act’” (2019) 57:1 *Family Court Review* 37; Jasmine E Harris, “Legal Capacity at a Crossroad: Mental Disability and Family Law” 57:1 *Fam Ct Review* 14; Peter Blanck, “First Thornburgh Family

- How would it affect support obligations if a spouse has a disability? What if it is the supporting spouse? What if it is the supported spouse? If a dependent spouse is expected to enter the workforce to support themselves, how do we factor in the pervasive barriers in the education system and the workplace facing jobseekers with disabilities and the consequential high unemployment rate they face?
- Child custody and access issues (also called parenting and contact issues) where either one or more parent and/or one or more children have a disability. How should a court deal with allegations that a parent's disability adversely affects their ability to parent? How does a child's disability factor into custody and access assessments?
- Those disability custody-related issues are also important in child protection proceedings. Very often, the children in need of protection have disabilities. These disabilities either pre-exist their abuse or neglect or are due to their abuse or neglect or both. Child protection agencies must use approaches that are disability *Human Rights Code* appropriate and *Charter* equality appropriate to assess the ability of a person with a disability to parent.⁷¹
- The important issue of meeting the needs of a child with a disability in the school system. Disability-related human rights and special education law need to be covered but are ordinarily not. These issues arise whether or not there is a family breakdown. This can include disputes between parents who are still together over how a school should address their child's disability-related learning needs.⁷² How does a school board and/or court resolve what to do regarding

Lecture on Disability Law and Policy Americans with Disabilities and Their Civil Rights: Past, Present, and Future" (2005) 66:4 U Pitt L Rev 687.

⁷¹ *Supra* note 40.

⁷² For helpful resource(s) on legal issues concerning students with disabilities in school, see e.g. Osgoode Hall Law School, "David Lepofsky: Why Ontario Needs an Education Accessibility Standard (27 February 2017), online: *YouTube* <www.youtube.com/watch?v=9zFmybyl9ew&t=54s>; Osgoode Hall Law School, "David Lepofsky: Summary of K-12 Education Standards Development Committee Report and How and Why to Give Feedback on It" (24 June 2021), online: *YouTube* <www.youtube.com/watch?v=yjQgOjRTZJ8>; Luke Reid, Gillian Parekh & Robert Lattanzio, "A Relic of the Past: Identification, Placement and Review Committees in Ontario's Education System" (2020) 194 *Canadian journal of educational administration and policy* 51; Sicnolf, Andrew. "A Teacher's Guide to Education Law: Third Edition, by Michael Imber & Tyll Van Geel." *Catholic Education: A Journal of Inquiry and Practice* 10, no. 3 (2007); Antonis Katsiyannis et al, "Litigation and Students with Disabilities: A Persistent Concern" (2012) 96:1 *National Association of Secondary School Principals Bulletin* 23; ARCH Disability Law Centre, "If Inclusion Means Everyone, Why Not Me?" (2018), online: <archdisabilitylaw.ca/resource/paper-if-inclusion-means-everyone-why-not-me/>; Kerri Joffe & Roberto Lattanzio, "Inclusive Education: Opportunities for Re-Design" in Roderick C Flynn, *CAPSLE 2010: The Rocky Road Ahead: Balancing Competing Interests* (Toronto: Canadian Association of the Practical Study of Law [CAPSLE], 2011) 85; Luke Reid, "Invented Power: An Analysis of the Exclusion Clause in Ontario's Education Act" in Caroline Spindler, *CAPSLE 2016: Bright Lights on Emerging Issues in Education Law* (Toronto: CAPSLE, 2017) 1; Osgoode Hall Law School, "David Lepofsky: Tips for Parents of Students with Disabilities on How to Advocate for Your Child's Needs at School" (13 October 2020), online: *YouTube* <www.youtube.com/watch?v=TtadvCvcGC0>; "Initial report/recommendations of the Post-Secondary Education Standards Development Committee on What a Post-Secondary Education Accessibility Standard Should Include, which the Ontario Government Made Public on June 25, 2021," online: *AODA Alliance* <www.aodaalliance.org/whats-new/download-in-ms-word-format-the-initial-report-recommendations-of-the-post-secondary-education-standards-development-committee-on-what-a-post-secondary-education-accessibility-standard-should-include/>; "AODA Alliance's November 1, 2021 Brief to the Post-Secondary Education Standards Development Committee on That Committee's Initial Report on What the Promised Post-Secondary Education Accessibility Standard Should Include," online: *AODA Alliance* <www.aodaalliance.org/whats-new/download-in-an-accessible-ms-word-format-the-aoda-alliances-november-1-2021-brief-to-the-post-secondary-education-standards-development-committee-on-that-committees-initial-report/>; Sheryl Burgstahler, *Universal Design in Higher Education: from Principles to Practice*, 2nd ed (Cambridge, MA: Harvard Education Press, 2015); Laverne

the child's placement or supports, such as the contents of the child's individual education plan, if the parents disagree and each makes conflicting demands of the school?

10. Advanced Child Protection Courses

As noted above, children subject to child protection proceedings often have disabilities. These disabilities arise from the abuse or neglect if not before, and/or from, the disruptions to the family that state protection interventions can trigger. Disability curriculum could properly be central to these courses.⁷³ Topics can include:

- A closer look at disability-related child protection issues addressed in connection with family law courses.
- To what extent it is actionable child abuse or neglect for a parent to fail to provide to their child with disabilities the rehabilitation and developmental services they need to grow and thrive, especially if these are available at no charge.
- To what extent parents' failure to ensure the full participation of a child with disabilities in all activities of life can be justified by a family's cultural attitudes towards disabilities.

11. Other Courses on Children and the Law

The disability topics that concern children with disabilities, proposed above for family and child protection courses, can also be explored in greater detail in courses on children and the law. These topics could include:

- Special emphasis on meeting the needs in the school system of students with disabilities – for example, through the legal mechanisms provided by special education laws. As noted earlier, this is an entire area of law practice in the United States, but it is one that Canadian law schools are far less likely to address. It is a subject area that includes an examination of the right to full participation in the education system for students with disabilities, as guaranteed by human rights codes, the *Charter*, and, where provided, under accessibility legislation like the *Accessibility for Ontarians with Disabilities Act*.⁷⁴
- Using the law to expand health, social, and rehabilitation services for children with disabilities, exemplified by advocacy efforts in Ontario by parents of children with autism.

Jacobs, "Ward: A Missed Opportunity for the Supreme Court of Canada to Denounce Bullying of Children with Disabilities and to Promote Substantive Equality" (2016), online: *Oxford Human Rights Hub* <ohrh.law.ox.ac.uk/ward-a-missed-opportunity-for-the-supreme-court-of-canada-to-denounce-bullying-of-children-with-disabilities-and-to-promote-substantive-equality/>.

⁷³ For resource(s) on possible disability topics in advanced child protection law, see e.g. Joshua B Kay, "Advocating for Children with Disabilities in Child Protection Cases" (2019) 35:1 *Touro L Rev* 345; Joshua B Kay, "The Americans with Disabilities Act: Legal and Practical Applications in Child Protection Proceedings" (2018) 46:4 *Capital UL Rev* 783; Michael Lanci, "In the Child's Best Interests? Rethinking Consideration of Physical Disability in Child Custody Disputes" (2018) 118:3 *Columbia L Rev* 875; Sue Hutton et al, "System Kids: Transition-Aged Youth from Foster Care to Developmental Services – Journal on Developmental Disabilities" (2019) 24:1 *J Developmental Disabilities* 49; Sue Hutton et al, "Social Isolation Continued: COVID-19 Shines a Light on What Self-advocates Know Too Well" (2021) 20:1–2 *Qualitative Social Work* 83; Anne-Marie Callus & Ruth Farrugia, *The Disabled Child's Participation Rights* (London: Routledge, 2016).

⁷⁴ See resources above, *Supra* note 73.

12. Introductory and Advanced Legal Ethics Courses

Disability topics in legal ethics courses could include the following:⁷⁵

- The fact that people with disabilities have systemically faced substantial barriers impeding their access to legal services.
- The lawyer's ethical duty to provide barrier-free legal services and to not discriminate against clients, staff, or other lawyers on grounds such as disability. This topic includes the duty to accommodate the disability-related needs of clients with disabilities and lawyers with disabilities in relation to legal services and the duty to assist those clients as well as witnesses with disabilities and employees with disabilities in overcoming disability barriers in the justice system.
- Recurring disability barriers impeding people with disabilities in the justice system and strategies for overcoming them and for preventing new barriers.⁷⁶
- Ethical obligations for assessing a client's capacity to instruct and providing added supports to ensure that a client understands the instructions they are giving and the legal advice they receive.
- Ascertaining who is one's client with the mandate to issue instructions to a lawyer if a person with disabilities is accompanied by a family member or caregiver when seeking legal services.⁷⁷
- The lawyer's ethical duty to engage in social justice advocacy, with a focus on populations that are most vulnerable, such as people with disabilities.

13. Criminal Procedure and Advanced Criminal Practice Courses

These courses could address the following topics:

- The disability barriers that accused persons, complainants, witnesses, and prospective jurors with disabilities face in the criminal process.⁷⁸
- The fact that, as discussed above, accused persons and crime victims disproportionately have disabilities (for example, mental health issues, intellectual disabilities, addiction issues, and so on) and that participation in the justice system can be a major source of mental health traumatization.⁷⁹

⁷⁵ For resource(s) on legal ethics with a disability angle, see e.g. Osgoode Hall Law School, "Ethical Lawyering," *supra* note 43.

⁷⁶ Refer to, for example, the *CRPD*, *supra* note 38; LSO CPD, *Lepofsky*, *supra* note 40.

⁷⁷ ARCH Disability Law Centre, "Disability Law Primer," *supra* note 41.

⁷⁸ For resources on criminal procedure, see, e.g., LSO CPD, *Lepofsky*, *supra* note 40; Lepofsky, "Latimer Case," *supra* note 53; Laurie Letheren & Natalie MacDonnell, "Open Court and Confidentiality: Can There Be a Balance in Light of Our New Media Age?" (23 May 2014), online: *ARCH Disability Law Centre* <archdisabilitylaw.ca/resource/open-court-and-confidentiality-oba-human-rights-update-may-2014/>; David Ireland, Richard Jochelson & Brayden McDonald, "Inquests, Disability and Marginalization in Encounters with the Criminal Justice System" in Jacobs, *Law and Disability*, *supra* note 31, 195; David Ireland, Richard Jochelson & Brayden McDonald, "Inquests, Disability and Marginalization in Encounters Outside of the Criminal Justice System" in Jacobs, *Law and Disability*, *supra* note 31, 221; Fionnuala Williams et al, "Learning Disability, Autism and the Criminal Procedure (Scotland) Act" (2020) 14:5 *Advances in Mental Health and Intellectual Disabilities* 149.

⁷⁹ Szigeti et al, *supra* note 7.

- Traditional disability-specific elements of the criminal process, such as fitness to stand trial and post-trial disposition of persons found not criminally responsible due to mental disorder.⁸⁰
- Specific *Criminal Code* and *Evidence Act* provisions aimed at removing disability barriers to full participation by accused persons and witnesses with disabilities – for example, supports when vulnerable witnesses testify.⁸¹
- Important moments in the criminal process that are integrally tied to court proceedings but not governed by specific *Criminal Code* provisions. For example, if a witness who is deaf, deafened, or hard of hearing needs an interpreter while testifying, this is governed by the constitutional right to an interpreter in section 14 of the *Charter*. However, if the judge directs that the Crown speak to the witness outside court during a break – for example, to caution the witness about the *Criminal Code*'s perjury provisions, that witness still needs a sign language interpreter. The *Criminal Code*, section 14 of the *Charter*, and existing court interpreting services may not be treated as though they including this. However, *Charter* section 15's disability equality guarantee does apply, including the duty to accommodate people with disabilities.⁸²

14. Advanced Criminal Law Courses

Disability issues could be included in most, if not all, advanced criminal law lecture and seminar courses, including the following:

- Courses on sex offences could include an assessment of how the law treats sex offence complainants with disabilities, such as those with an intellectual disability.
- Sentencing courses could explore how sentencing principles apply to offenders with different disabilities.⁸³

15. Administrative Law Courses

Disability topics in administrative law include the following:

- Using disability cases as examples of how the regulatory state operates.
- The disproportionate vulnerability of people with disabilities to the regulatory state. Administrative law is especially important for people with disabilities, who must often interact with the regulatory state. They disproportionately depend on social assistance and on publicly funded or regulated social services. Students with disabilities engage with special education regulatory regimes.⁸⁴

⁸⁰ For a discussion of both these defences, see Szigeti et al, *supra* note 7.

⁸¹ *Criminal Code*, RSC 1985, c C-46; *Evidence Act*, RSO 1990, c E-23.

⁸² See e.g. *Eldridge v British Columbia (Attorney General)*, [1997] 3 SCR 624.

⁸³ For resource(s) on advanced criminal law topics with a disability perspective, see e.g. Lepofsky, "Latimer Case," *supra* note 53. See also Vaita Giannouli, *Reflecting on Crime and Legal Issues in People with Intellectual Disabilities, Research Anthology on Physical and Intellectual Disabilities in an Inclusive Society* (Hershey, PA: IGI Global, 2022); Williams et al, *supra* note 78.

⁸⁴ For resource(s) on possible disability topics in administrative law, see e.g. Laverne Jacobs, "'Humanizing' Disability Law: Citizen Participation in the Development of Accessibility Regulations in Canada" (2016) *Revue Internationale des Gouvernements Ouverts* 93; Cheryl L Anderson, "Balancing Administrative Authority, Employer Discretion, and Disability Accommodations: Introduction to the 2014–2015 National Health Law Moot Court Competition Problem" (2015) 36:3–4 *J Leg Medicine* 25; Jacobs, "Universality," *supra* note 64.

- Recurring disability barriers impeding people with disabilities in dealing with the regulatory state and strategies to overcome these barriers.⁸⁵
- Using the disability context to explore how to design a regulatory regime. Regulatory options for achieving accessibility for people with disabilities can be surveyed through a public Ontario Human Rights Commission model (as was the case in Ontario before 2008), privatized human rights enforcement, such as under the current Ontario *Human Rights Code*, and/or a systemic regulatory accessibility statute approach.⁸⁶
- Illustrating the regulatory state's front-line operation and the way in which administrative law overlays those operations, using disability-specific examples, such as parents of a student with disabilities trying to get their child's disability-related learning needs met at school, using, for example, special education laws, the Ontario *Human Rights Code*, or a broader strategy for education reform under accessibility statutes like the *Accessibility for Ontarians with Disabilities Act*.⁸⁷
- Legal constraints on the exercise of discretionary regulatory or bureaucratic powers, such as legal tools for ensuring that such discretionary powers are not exercised in a way that creates disability barriers.

16. Evidence Courses

There are several ways to infuse a disability perspective into a basic or advanced evidence course:⁸⁸

- Specific evidentiary tools and processes for receiving the evidence of a witness with disabilities – for example, if there is an issue about the witness's testimonial capacity.

⁸⁵ LSO CPD, *Lepofsky*, *supra* note 40.

⁸⁶ Osgoode Hall Law School, "David Lepofsky: AODA 101 – Introduction to the Accessibility for Ontarians with Disabilities Act" (13 October 2020), online: *YouTube* <www.youtube.com/watch?v=zrPLb3N1DBQ>; Osgoode Hall Law School, "David Lepofsky: What Should Canada's Promised National Accessibility Legislation Include?" (14 May 2018), online: *YouTube* <www.youtube.com/watch?v=IzUKVs28T8U>; Osgoode Hall Law School, "David Lepofsky: Controversy on How Anti-Discrimination Human Rights Are Enforced in Ontario" (11 April 2017), online: *YouTube* <www.youtube.com/watch?v=pH4xCi5Ye_g&t=6s>; Osgoode Hall Law School, "David Lepofsky: 2018–2019 Campaign to Get Canada's Parliament to Pass a Strong Accessible Canada Act" (26 November 2019), online: *YouTube* <www.youtube.com/watch?v=vMdC0wi5FIM>; David Lepofsky, "What Should Canada's Promised New National Accessibility Law Include? A Discussion Paper" (2018) 38:1 NJCL 169.

⁸⁷ "Watch Captioned Videos of Last Fall's Queen's Park Celebration of the 20th Anniversary of Ontario's Grassroots Campaign for Strong Accessibility Legislation and AODA Alliance Presses the Wynne Government for Current, Detailed Information on Its Enforcement of the Accessibility for Ontarians with Disabilities Act" (22 January 2015), online: *AODA Alliance* <www.aodaalliance.org/whats-new/new2015/watch-captioned-videos-of-last-falls-queens-park-celebration-of-the-20th-anniversary-of-ontarios-grassroots-campaign-for-strong-accessibility-legislation-and-aoda-alliance/>; Osgoode Hall Law School, "David Lepofsky: What Regulatory Powers Should a Disability Accessibility Law Include?" (18 March 2014), online: *YouTube* <www.youtube.com/watch?v=_83CX9ffWvw&feature=share&list=PLDGgB77j2ZYrl_rtpe32nSjOXfrDAGvnn&index=3>; The Alliance, "David Lepofsky: Disability Expert Conference" (24 August 2017), online: *YouTube* <www.youtube.com/watch?v=94PEEbhl4TU>.

⁸⁸ For resource(s) on possible disability topics in evidence law, see e.g. John Parry, *Disability Discrimination Law, Evidence and Testimony: A Comprehensive Reference Manual for Lawyers, Judges and Disability Professionals* (Chicago, Ill: American Bar Association, Commission on Mental and Physical Disability Law, 2008); Adelyn L Bowland, *The Police and Evidence Law Investigating Family Violence against Victims with Disabilities* (Ottawa: Solicitor General Canada, Ministry Secretariat, Police Policy and Research Division, 1993).

- Testimonial supports, for example, for persons with a communication disability, such as those who use alternative and augmentative communication supports.
- How typical credibility assessments might have a disproportionate adverse impact on some witnesses with disabilities. Credibility rules and practices ordinarily assume the patterns of behaviour of witnesses with no disabilities. In what ways can the manner in which a person with a disability conducts themselves while testifying impact on the assessment of their credibility, especially if the judge or jury is uninformed about such impacts? Where a court assesses the testimony of a witness with disabilities, how and when can that disability's impact factor into the assessment of the witness's credibility and reliability?
- Does a trier of fact need an evidentiary basis before they can incorporate the impact of disability in their assessment of the credibility of a witness with a disability? Where a disability could affect the way in which that witness's evidence is assessed, can or must an expert be called to explain the impact of their disability on a witness in order to aid the trier of fact in assessing that witness's evidence? For example, if a witness with autism has delays or latency in answering questions, and does not make eye contact, can an autism expert aid the trier of fact in understanding this behaviour in order to prevent it from being misconstrued as weakening the witness's credibility?

17. Charter Litigation Courses

Disability cases can be used as a platform to illustrate aspects of *Charter* litigation. Years ago, Ontario's Bar Admissions public law course did this.⁸⁹ These courses can use the experience of vulnerable groups such as people with disabilities to learn about the limits of *Charter* litigation to advance social justice goals. Hardships in *Charter* litigation, such as its cost and the exposure to paying the opponent's costs if one loses helped drive the movement for detailed accessibility legislation, such as the *Accessibility for Ontarians with Disabilities Act*.

18. Mediation, Negotiation, and Alternative Dispute Resolution Courses

Disability topics include the following:⁹⁰

- Recurring disability barriers that mediation participants can experience in mediation as well as the proactive strategies to remove and prevent these barriers.
- Whether and how the alternative dispute resolution process or court system can better meet the needs of litigants with disabilities.
- Investigating through the experience of disability community organizers the ways in which to negotiate on behalf of a non-organized community, as compared to a formally incorporated organization.

⁸⁹ For resource(s) on possible disability topics in charter litigation, see e.g. Lisa Vanhala, *Making Rights a Reality?: Disability Rights Activists and Legal Mobilization* (Cambridge, UK: Cambridge University Press, 2011).

⁹⁰ For resource(s) on possible disability topics in mediation, negotiation, and alternative dispute resolution, see e.g. Martha E Simmons & David Lepofsky, "Disability Accessibility Guidebook for Mediators", online: *ADR Institute of Canada* <adric.ca/wp-content/uploads/2017/11/Disability_Accessibility_Guidebook_for_Mediators.pdf>; Feingold, *supra* note 44.

19. Labour Law, Employment Law, and Collective Bargaining Courses

Ever since human rights codes first prohibited disability discrimination four decades ago, most of the discrimination complaints filed with human rights commissions and tribunals were based on disability.⁹¹ A large proportion of these complaints were employment discrimination claims, and topics to address include the following:

- Core human rights legal principles and, especially, the duty to accommodate employees and job applicants with disabilities in the workplace.⁹²
- The interplay of human rights laws and collective agreements, including in the disability context. For example, discussing when a collective agreement attendance or seniority provision might be overridden by the *Human Rights Code*.
- The respective duties of the employer and union during collective bargaining to address disability issues – for example, to ensure that the collective agreement and its implementation does not create or perpetuate workplace disability barriers.
- Different forums for litigating disability human rights issues, such as at human rights tribunals and as a grievance before a labour arbitrator under a collective agreement’s human rights provision.
- The development and content of an employment accessibility standard under a disability accessibility law, such as the *Accessibility for Ontarians with Disabilities Act*, both in unionized and non-unionized contexts.
- Recurring barriers in the administrative tribunal process facing participants with disabilities – for example, in the context of a labour arbitration – and proactive strategies to remove and prevent those barriers.⁹³

20. Health Law Courses

People with disabilities disproportionately must use the healthcare system. Yet, too often, the healthcare system is fraught with disability barriers. This was exacerbated during the COVID-19 pandemic. These barriers fly in the face of Canada’s leading *Charter* disability equality decision, *Eldridge v British Columbia*, a healthcare ruling.⁹⁴ Health law disability topics include the following:

⁹¹ “Open and Accessible Ontario,” *supra* note 8.

⁹² For resource(s), see *supra* note 40. Carrie Griffin Basas, “A Collective Good: Disability Diversity As a Value in Public Sector Collective Bargaining Agreements” (2013) 87:4 St John’s L Rev 793; Sack, Jeffrey, Boris Bohuslawsky, Paula Chapman, Chris Davidson, Meryl Zisman Gary, Peter Neumann, and Chris (Christopher Harold William) Davidson. *Bargaining. Human Rights, Discrimination, Accommodation, Privacy*. (Toronto, ON: Lancaster House, 2018); Sarah Kaine, “Collective Regulation of Wages and Conditions in Aged Care: Beyond Labour Law” (2012) 54:2 J Industrial Relations 204; Frederike Scholz, *Disability Inequality and the Recruitment Process: Responding to Legal and Technological Developments* (United Kingdom: ProQuest Dissertations Publishing, 2017); David Lepofsky, “Understanding the Concept of Employment Equity: Myths and Misconceptions” (1993) 2:1 CLELJ 1; Odelia Bay, “Working Crip Time: Understanding Workplace Accommodation and Episodic” in Jacobs, *Law and Disability*, *supra* note 31, 73; Freya Kodar, “Federal Income Support: Canada Pension Plan Disability and Employment Insurance Sickness Benefits” in Jacobs, *Law and Disability*, *supra* note 31, 99; Dianne Pothier, “Tackling Disability Discrimination at Work: Toward a Systemic Approach” (2010) 4 McGill J Law & Health 17 [Pothier, “Tackling Disability”].

⁹³ LSO CPD, *Lepofsky*, *supra* note 40.

⁹⁴ *Eldridge v British Columbia*, [1997] 3 SCR 624.

- Recurring disability barriers in the healthcare system and the duty of healthcare providers and the government to remove and prevent these barriers. This can include an exploration of legal tools that can be used to tackle those barriers such as the *Charter*, human rights codes, and detailed accessibility legislation, such as the *Accessibility for Ontarians with Disabilities Act*. In Ontario, a Health Care Accessibility Standard is under development under this legislation.⁹⁵
- Regimes governing consent and capacity as it relates to healthcare decisions, supportive decision-making, and substitute decision-makers for healthcare decisions.⁹⁶
- Disability rights issues surrounding Canada's medical assistance in dying legislation.⁹⁷
- Healthcare barriers confronting people with disabilities during the COVID-19 pandemic. This could include a focus on the concern over the danger of disability discrimination in critical care triage protocols that governments have allowed to be promulgated.⁹⁸

21. Mental Health or Law and Psychiatry Courses

Courses on mental health and the law, law and psychiatry, or mental health and the criminal justice system bear directly on disability.⁹⁹ They could be enriched by including the following topics:

- Applicable Canadian and international disability rights, such as the human rights duty to accommodate people with disabilities and the social model of disability.¹⁰⁰

⁹⁵ For resource(s) on disability barriers in the healthcare system, see e.g. Osgoode Hall Law School, "David Lepofsky: What Should Ontario's Health Care Accessibility Standard Include?" (26 November 2019), online: *YouTube* <www.youtube.com/watch?v=f2yuFz_z9V0>; "Health Care Standards Development Committee: Initial Recommendations Report" (7 May 2021), online: *AODA Alliance* <www.aodaalliance.org/whats-new/download-in-an-accessible-ms-word-format-the-initial-recommendations-of-the-health-care-standards-development-committee-made-public-on-may-7-2021-on-what-the-promised-health-care-accessibility-stan/>; "AODA Alliance Brief to the Health Care Standards Development Committee on Its Initial Recommendations for the Contents of the Promised Health Care Accessibility Standard" (3 August 2021), online: *AODA Alliance* <www.aodaalliance.org/whats-new/download-in-an-accessible-ms-word-file-the-aoda-alliances-august-3-2021-finalized-brief-to-the-health-care-standards-development-committee-giving-feedback-on-its-initial-report-recommending/>; "Health Care," online: *AODA Alliance* <www.aodaalliance.org/healthcare/>; Peter Bartlett, "The United Nations Convention on the Rights of Persons with Disabilities and Mental Health Law" (2012) 75:5 Mod L Rev 752; Shawn Trabanino, "Health, Law, and Ethnicity: The Disability Administrative Law Judge and Health Disparities for Disadvantaged Populations" (2020) 108:6 Cal L Rev 2079; Glenn I Cohen, *Disability, Health, Law, and Bioethics* (Cambridge, UK: Cambridge University Press, 2020); Christopher P Manfredi & Antonia Maioni, *Health Care and the Charter: Legal Mobilization and Policy Change in Canada* (Vancouver: UBC Press, 2018); Jillian Craigie et al, "Legal Capacity, Mental Capacity and Supported Decision-Making: Report from a Panel Event" (2019) 62 Intl J Law & Psychiatry 160; Cohen et al, *supra* note 35; Barbara E Gibson & Roxanne Mykitiuk, "Health Care Access and Support for Disabled Women in Canada: Falling Short of the UN Convention on the Rights of Persons with Disabilities: A Qualitative Study" (2012) 22:1 Women's Health Issues 111.

⁹⁶ Szigeti et al, *supra* note 7.

⁹⁷ Inclusion Canada, "David Lepofsky: Disability Filibuster – David Lepofsky on MAiD (March 12)" (18 March 2021), online: *YouTube* <www.youtube.com/watch?v=ZDrWgHAjguk>; *supra* note 66.

⁹⁸ See e.g. AODA Alliance, *supra* note 48; *supra* note 50.

⁹⁹ For resource(s) on possible disability topics in the mental health law, see e.g. Ruby Dhand, "Access to Justice for People with Mental Health Disabilities and Addictions: Navigating Mental Health and Specialized Courts" in Jacobs, *Law and Disability*, *supra* note 31, 247; Bartlett, *supra* note 95; Graeme Lockwood et al, "Mental Health Disability Discrimination: Law, Policy and Practice" (2014) 14:3 Intl J Discrimination & the Law 168; Colleen M Flood & Jennifer A Chandler, *Law and Mind: Mental Health Law and Policy in Canada* (Toronto: LexisNexis Canada, 2016); Andrew J Hogan, "Social and Medical Models of Disability and Mental Health: Evolution and Renewal" (2019) 191:1 Can Medical Association J E16; Jerome Bickenbach, "Disability, 'Being Unhealthy,' and Rights to Health" (2013) 41:4 J Law, Medicine & Ethics 82.

¹⁰⁰ Canadian mental health law is discussed by Szigeti et al, *supra* note 7.

- The history of the mistreatment of people labelled with mental health conditions. There is a rich history of disability rights litigation challenging elements of these legal regimes.¹⁰¹
- The intersectionality of different disabilities with mental health conditions since people with other disabilities can concurrently have mental health conditions.¹⁰²
- Practice and principal considerations regarding barrier-free legal services for people with disabilities.¹⁰³

22. Discrimination and the Law Courses

There are several ways in which the disability curriculum can be addressed in human rights/discrimination and the law courses:¹⁰⁴

- Human rights principles as applied to the inequalities and barriers that people with disabilities face.
- Distinctive disability-related questions, such as the definition of disability for the purposes of anti-discrimination law and the social model of disability.
- Newer laws implementing disability equality, beyond human rights codes and section 15 of the *Charter*, such as disability accessibility statutes – for example, the *Accessibility for Ontarians with Disabilities Act* and the accessibility standards created under it.¹⁰⁵
- International conventions/treaties – for example, the *Convention on the Rights of Persons with Disabilities*.¹⁰⁶
- Disability barriers when trying to use litigation avenues, such as human rights complaints. The fact that many disability advocates opposed Ontario’s privatization of human rights enforcement in 2006 through Bill 107 is enlightening.¹⁰⁷

23. Courses Focusing on Social Justice or Specific Equality-Seeking Groups

Several kinds of courses concentrate on specific equality and discrimination issues – for example, women and the law courses, courses concerning racialized communities, Indigenous law courses, and

¹⁰¹ For an exploration of the lived experiences of those with mental health issues, see Szigeti et al, *supra* note 7.

¹⁰² *Ibid.*

¹⁰³ An examination of effective advocacy for those with mental health issues is provided by Szigeti et al, *supra* note 7.

¹⁰⁴ For resources, see, *supra* note 40; Marianne DelPo Kulow, “Teaching Disability Employment Discrimination Law: Accommodating Physical and Mental Disabilities: Teaching Disability Employment Discrimination Law” (2012) 29:2 J Legal Studies Education 335; Ramona L Paetzold, “Why Incorporate Disability Studies into Teaching Discrimination Law?” (2010) 27:1 J Legal Studies Education 61; Fayyaz Vellani, *Understanding Disability Discrimination Law through Geography* (Surrey: Ashgate, 2013); Brian J Doyle, *Disability Discrimination: Law and Practice*, 5th ed (Bristol: Jordans, 2005); Andrew Hogan, *Disability Discrimination: Law and Litigation*, (England: EMIS Professional Publishing, 2001); Jacobs, “Universality,” *supra* note 64; Pothier, “Tackling Disability,” *supra* note 92; Emens & Stein, *supra* note 64.

¹⁰⁵ See *Supra* note 39.

¹⁰⁶ *CRPD*, *supra* note 38.

¹⁰⁷ For a video lecture on this topic, see e.g. Osgoode Hall Law School, “David Lepofsky: Controversy on How Anti-Discrimination Human Rights Are Enforced in Ontario” (11 April 2017), online: *YouTube* <www.youtube.com/watch?v=pH4xCi5Ye_g&t=6s>. For the history of the opposition to Ontario’s Bill 107 and its privatization of human rights enforcement, see the “Ontario Human Rights Reform – A Call to Action,” online: *AODA Alliance* <www.aodaalliance.org/category/ontario-human-rights/>.

poverty law courses.¹⁰⁸ In these courses, disability curriculum can be important. For any course focusing on equality, disability merits attention because, as noted earlier, it trends as the most common discrimination ground in human rights complaints. A social justice or poverty law course should focus on poverty experienced by many people with disabilities and the barriers they face, especially in employment, education, housing, and healthcare. These courses can address strategies to ensure that people with disabilities benefit from anti-poverty and social justice law reform and policy efforts. They can examine strategies that can help ensure that people with disabilities can fully participate in social justice advocacy and community organizing efforts.

Here again, members of equality-seeking groups such as women, Indigenous persons, and racialized persons who also have disabilities face intersectional burdens that come with the compounding impact of multiple equality-seeking statuses. For example, courses on feminist legal issues can include an exploration of issues pertaining to women and girls with disabilities. It is also helpful to compare racialized-based, gender-based, and disability-based approaches to the analysis of equality issues. It is informative to explore how to design equality-promoting measures and doctrines that will not have an unintended result of disadvantaging other equality-seeking groups. For example, an employment equity program or equity, diversity, and inclusion strategy that only addresses sex and racialized status unintentionally makes things worse for people with disabilities.

24. Indigenous Law Courses

The disability curriculum described above for any equality-focused course can also apply to courses on the law as it applies to Indigenous peoples. These courses could endeavour to include the following topics:

- The impact of disability and disability barriers on Indigenous peoples and the legal options that are available for addressing them within the legal regime.¹⁰⁹
- Options for addressing disability barriers facing Indigenous people with disabilities, within the context of self-government and treaty relations – for example, during the development of the *Accessible Canada Act*, there were debates within Indigenous communities and discussions with the government on how to address such efforts within the framework of new federal accessibility legislation.
- How Indigenous law addresses disability issues compared to how non-Indigenous law addresses them.

¹⁰⁸ For resource(s), see e.g. Sue Hutton et al, “Self-Advocacy from the Ashes of the Institution” (2017) 6:3 Can J Disability Stud 31; Michael J Prince, “The Canadian Disability Community: Five Arenas of Social Action and Capacity” in Michael J Prince, ed, *Absent Citizens* (Toronto: University of Toronto Press, 2020) 112; Ruby Dhand, “Women and Girls with Disabilities: Gendered Disability Discrimination” in Jacobs, *Law and Disability*, *supra* note 31, 127.

¹⁰⁹ For resource(s) on disability issues and Indigenous law, see e.g. Rihanna Chisholm, Tamara Tulich & Harry Blagg, “Indigenous Young People with Foetal Alcohol Spectrum Disorders: The Convention on the Rights of Persons with Disabilities and Reform to the Law Governing Fitness to Stand Trial in Western Australia” (2017) 35:2 Law in Context 85; Kyllie Cripps et al, “‘Too Hard to Handle’: Indigenous Victims of Violence with Disabilities” (2010) 7:21 Indigenous L Bull 3; Eileen Baldry et al, “‘It’s Just a Big Vicious Cycle That Swallows Them Up’: Indigenous People with Mental and Cognitive Disabilities in the Criminal Justice System” (2016) 8:22 Indigenous L Bull 10; Claire E Brolan & David Harley, “Indigenous Australians, Intellectual Disability and Incarceration: A Confluence of Rights Violations” (2018) 7:1 Laws 7; Paul Harpur & Michael Ashley Stein, “Indigenous Persons with Disabilities and the Convention on the Rights of Persons with Disabilities” (2018) 7:2 Immigration & Human Rights L Rev 165. For information about the intersectionality between mental health and intergenerational trauma, see Szigeti et al, *supra* note 7.

- How Indigenous peoples in other countries have used the law to address their disability issues, including the extent to which Indigenous communities develop and implement their own regimes for addressing these barriers.
- How international disability rights conventions apply in the context of Indigenous law and self-government relations.

25. Elder Law Courses

A course on seniors' legal issues can delve into many issues that are explored elsewhere in this article since aging is the biggest cause of disability, and such topics could include the following:¹¹⁰

- Basic disability human rights concepts, such as the duty to accommodate people with disabilities and accessibility principles when applied to areas like health law, social assistance, estates, and trusts.
- Disability barriers in the healthcare system.
- Specific healthcare disability areas such as mental capacity and substitute decision-making legal regimes, medical assistance in dying, rights of long-term care facility residents, and the spectre of critical care triage during an emergency – for example, the COVID-19 pandemic.

26. Access to Justice Courses

Access to justice courses can benefit from a substantial component on barriers facing people with disabilities in the justice system.¹¹¹ These can be explored as disability issues standing alone and as intersectional barriers that confront people from other equality-seeking groups who also have disabilities. Topics to explore include the following:

- The recurring disability barriers in the court system, in administrative tribunals, and in alternative dispute resolution practices such as mediation.
- Disability barriers to effective legal services and how to remove these impediments to barrier-free legal services.

27. Tax Law Courses

Tax law topics that can be addressed include the following:

- Basic personal income tax provisions that bear upon people with disabilities, such as the disability tax credit (raising the issue of which disabilities should be covered).
- More complex tax regimes, such as the Registered Disability Support Plan.

¹¹⁰ For elder law and disability resource(s), see *Supra* note 45, 92 & 95 above; Richard L Wiener & Steven L Willborn, *Disability and Aging Discrimination: Perspectives in Law and Psychology* (New York: Springer Science + Business Media, 2011); Israel Doron & D Jur, "A Perspective on Ontario's Adult Guardianship Law the Role of Law in Adjudicating Disputes Caused by Old Men Marrying Young Women" (2002) 1 *Elder L Rev* 43; Doron, *supra* note 45; Dickson et al, *supra* note 45; Craigie et al, *supra* note 95.

¹¹¹ Any of the resources throughout this report can be helpful in a course on access to justice. See also e.g. Eilionóir Flynn, *Disabled Justice: Access to Justice and the UN Convention on the Rights of Persons with Disabilities* (Farnham, UK: Ashgate, 2015).

- The effectiveness of advancing social policy through the tax system, using the needs of people with disabilities as an illustration.¹¹²

28. Intellectual Property Courses

Disability topics in intellectual property courses include the following:¹¹³

- Copyright laws can impede efforts at providing accessible books for people with print disabilities, such as blindness or dyslexia. Canadian and US law and international conventions attempt to address this issue, but they can run into domestic and international law and operational or bureaucratic impediments.
- Patent law governing innovation, especially in technology, can engage with disability issues.
- The potential use of the law to promote accessibility of innovated products and services that people with disabilities can use – for example, in the development of artificial intelligence.

29. Technology and the Law Courses, such as Information Technology and the Law

Topics in this area can include the following:

- The duty to include disability accessibility and universal design¹¹⁴ in any product to be used by the public, including by people with disabilities.¹¹⁵
- The legal consequences when new innovative technology and other innovations create new disability barriers.¹¹⁶ Examples include the deployment of electric scooters or delivery robots on sidewalks, which can endanger people with disabilities, seniors, and other individuals.

¹¹² For resource(s) on disability issues in tax law, see e.g. Pooran, *supra* note 69; David G Duff, “Disability and the Income Tax” (2009) 9780521511360:4 Critical Tax Theory 316.

¹¹³ For resource(s), see e.g. Paul Harpur, *Discrimination, Copyright and Equality: Opening the e-Book for the Print-Disabled* (Cambridge, UK: Cambridge University Press, 2017); Corinne Tan & Perry Bing Xian Peh, “Improving Accessibility to Copyright Works for Persons with Print Disabilities in Australia and Singapore” (2021) 52:8 Intl Rev Intellectual Property & Competition L 1020; Caroline B Ncube, Blake E Reid & Desmond O Oriakhogba, “Beyond the Marrakesh VIP Treaty: Typology of Copyright Access-enabling Provisions for Persons with Disabilities” (2020) 23:3–4 J World Intellectual Property 149; Eric E Johnson “Intellectual Property’s Need for a Disability Perspective” (2010) 20:2 Geo Mason U Civ Rts LJ 181.

¹¹⁴ See e.g. note 36 above.

¹¹⁵ For resource(s) on possible disability topics in information technology and the law, see e.g. Eliza Varney, *Disability and Information Technology: A Comparative Study in Media Regulation* (Cambridge, UK: Cambridge University Press, 2013); Jonathan Lazar & Michael Ashley Stein, *Disability, Human Rights, and Information Technology* (Philadelphia: University of Pennsylvania Press, 2017); Catherine Easton, “Revisiting the Law on Website Accessibility in the Light of the UK’s Equality Act 2010 and the United Nations Convention on the Rights of Persons with Disabilities” (2012) 20:1 Intl JL & IT 19; Tony Y Yang & Brian Chen, “Web Accessibility for Older Adults: A Comparative Analysis of Disability Laws” (2015) 55:5 The Gerontologist 854; Frederike Scholz, *Disability Inequality and the Recruitment Process: Responding to Legal and Technological Developments* (University of Leeds: ProQuest Dissertations Publishing, 2017); Courtney L Burks, “Improving Access to Commercial Websites under the Americans with Disabilities Act and the Twenty-First Century Communications and Video Accessibility Act” (2013) 99:1 Iowa L Rev 363; Peter Blanck, “The Struggle for Web Equality by Persons with Cognitive Disabilities” (2014) 32:1 Behavioral Sciences & the Law 4; Michael Ashley Stein & Jonathan Lazar, *Accessible Technology and the Developing World* (Oxford: Oxford University Press, 2021).

¹¹⁶ “Brief to the Ontario Information and Communication Standards Development Committee on Its Draft Recommendations for Revisions to the 2011 Information and Communication Accessibility Standard” (25 November 2019), online: *AODA Alliance* <www.aodaalliance.org/whats-new/help-us-make-information-and-communication-accessible-to-ontarians-with-disabilities-please-tell-the-ford-government-if-you-support-the-aoda-alliances-finalized

- Expanding laws and government policies requiring the procurement of accessible goods, services, and facilities, including under provincial or federal accessibility legislation.¹¹⁷
- Information technology is a good example of the ways in which this new technology can either open amazing new doors for people with disabilities or create massive new barriers that will impede people with disabilities in important areas like employment, education, and healthcare. Courses on information technology and the law – whether they are general courses or more focused on specific areas like social media – can explore the disability barriers that have emerged in information technology when it is designed in a way that impedes their full use by people with disabilities, especially when using adaptive technology.¹¹⁸ A simple example is where software fails to provide keyboard commands for each operation that can be executed by a mouse. People with various disabilities – for example, vision loss – cannot use a mouse but can use a keyboard.
- The impact on information technology of the *Charter*, human rights, accessibility legislation (which can lead to the enactment of regulations on website and related accessibility), and even international conventions as they apply to disability accessibility. For example, accessibility standards under the *Accessibility for Ontarians with Disabilities Act* set requirements for accessibility of websites and of electronic self-serve kiosks.¹¹⁹

30. Introductory and Advanced Business Law Courses

Disability topics in business law courses include the following:

- A corporation’s legal duty to its employees, shareholders, and customers with disabilities, including ensuring accessibility in the context of corporate management obligations. As one small example, this topic includes ensuring that annual reports and financial statements can be available in accessible formats.
- Corporate counsel’s role in ensuring that a corporation fulfills its legal obligations to people with disabilities as employees, board members, shareholders, and customers.

31. Municipal Law Courses

Disability topics in municipal law include the following:¹²⁰

brief-to-the-information-and-commu/> [“Ontario Brief”]. For general advocacy efforts to make information and communication accessible in Ontario, see the AODA Alliance website’s information and communication page, online: <www.aodaalliance.org/category/infoandcom/>.

¹¹⁷ See e.g. *Integrated Accessibility Standards*, O. Reg. 191/11, s. 5, under the *Accessibility for Ontarians with Disabilities Act*, *supra* note 5.

¹¹⁸ See e.g. *Canada (Attorney General) v Jodhan*, 2012 FCA 161; *Jodhan v Canada (Attorney General)*, 2010 FC 1197. See also Ontario Information and Communication Standards Development Committee, *Final Report*, online: <www.aodaalliance.org/whats-new/send-us-your-feedback-on-the-information-and-communication-standards-development-committees-final-recommendations-on-what-is-needed-to-strengthen-the-2011-information-and-communication-accessibility/>; Jonathan Lazar & Michael Ashley Stein, *Disability, Human Rights, and Information Technology* (Philadelphia: University of Pennsylvania Press, 2017).

¹¹⁹ See *Integrated Accessibility Standards*, *supra* note 117, especially s 6 (re: accessibility of self-serve kiosks) and s 14 (re: accessibility of websites). See also the final report of the Ontario Information and Communication Standards Development Committee, *supra* note 118 (on how to strengthen that accessibility standard); “Ontario Brief,” *supra* note 116.

¹²⁰ For resource(s), see e.g. *Model Parking by-Law Municipal Resource Package on Designated Parking for Persons with Disabilities: Model Parking by-Law and Technical Guidelines for Persons with Disabilities*, Accessibility Directorate

- The municipality's role as a regulator, with its duty not to create any new disability barriers as it performs its regulatory functions.
- The municipality's role as a provider of services and facilities to the public and its duty to ensure that these are equally available to people with disabilities.
- Municipalities build and maintain a substantial amount of public infrastructure. What is the municipality's obligation to ensure the accessibility of that infrastructure?
- What is the liability of a municipality that permits new innovations on public streets and paths, such as autonomous delivery robots or electric scooters, if they endanger safety and accessibility for people with disabilities?
- To what extent can municipal regulatory authority be used to impede efforts at accessibility by ordering the removal of a private business's ramp that encroaches on public property or by requiring the compliance with substantial regulatory approval processes in a situation where a homeowner wishes to improve their home's accessibility?
- What measures must a municipality take to investigate the impact of prospective municipal action on people with disabilities?
- What legal tools are open to a municipal Accessibility Advisory Committee, appointed under the *Accessibility for Ontarians with Disabilities Act*, to get a municipality to act on advice that the committee provides on accessibility issues in the municipality?¹²¹

32. Planning Law Courses

Disability topics include the following:

- How planning legislation can help or impede efforts at making the built environment accessible to people with disabilities.¹²² For example, it can explore legal requirements to ensure accessibility in land use planning or building construction, as imposed under provincial building codes, section 15 of the *Charter*, human rights legislation, disability accessibility legislation, such as the *Accessibility for Ontarians with Disabilities Act*, or municipal bylaws governing building accessibility.¹²³
- The concept of universal design as part of core human rights requirements.¹²⁴
- The legality and constitutionality of land use restrictions where they impede the opening of a group home in a specified neighbourhood or where they impede a homeowner from making their home accessible – for example, by installing a ramp on their property.

33. Insurance Courses

An insurance law course could include the following topics:

Ontario, 2004); *ADA Guide for Small Towns: A Guide for Small Local Governments Including Towns, Townships, and Rural Counties* (Washington, DC: US Department of Justice, Civil Rights Division, Disability Rights Section, 2000); *In the Zone: Housing, Human Rights and Municipal Planning* (Toronto: Ontario Human Rights Commission, 2012); David Ferleger, "Planning for Access: Sidewalks and the American with Disabilities Act" (2012) 64:8 *Planning & Environmental L* 3.

¹²¹ See *Accessibility for Ontarians with Disabilities Act*, *supra* note 5, s. 29.

¹²² For resource(s), see e.g. Robin Paul Malloy, *Land Use Law and Disability: Planning and Zoning for Accessible Communities* (New York: Cambridge University Press, 2015); Robin Paul Malloy, *Disability Law for Property, Land Use, and Zoning Lawyers* (Chicago: American Bar Association, State and Local, 2020).

¹²³ See e.g. note 18 above

¹²⁴ See e.g. note 36 above

- The legality of disability discriminatory barriers to insurance coverage that some people with disabilities can face, such as pre-existing condition clauses in private health insurance or long-term disability benefits that can vary in an arguably discriminatory way depending on the characterization of one's disability. This can include any human rights legislation provisions on insurance discrimination based on disability.¹²⁵
- Issues concerning how to calculate disability-related loss, which was addressed earlier in connection with tort law courses.
- Disability barriers in the insurance claims process and the duty of insurers to provide a barrier-free process for receiving and assessing claims.¹²⁶

34. Immigration and Refugee Courses

Disability issues in immigration and refugee law include the following topics:

- Disability barriers in regulatory or administrative proceedings.
- Legal barriers facing people with disabilities trying to make a refugee claim or otherwise trying to immigrate to Canada.
- The extent to which refugee claimants have acquired disabilities as a result of the displacement that led to their refugee claim.¹²⁷

35. Legal History Courses

Legal history courses can explore the following topics:¹²⁸

- The historical and evolving treatment of people with disabilities and disability rights in the law.
- The evolution from a charity model to a rights model for people with disabilities.
- The evolving participation of people with disabilities in legal proceedings.
- Historic disability rights cases and major disability rights law reform efforts over history.

¹²⁵ See e.g. *Human Rights Code*, *supra* note 19, ss 22, 25.

¹²⁶ For resource(s), see e.g. Elizabeth G Doolin et al, "Health Insurance, Life Insurance, and Disability Insurance Law" (2019) 54:2 *Tort Trial & Insurance Practice* LJ 531; Eric J Schjerning & David Norwood, *Disability Insurance Law in Canada*, 2nd ed (Toronto: Thomson Reuters Canada, 2017); Richard Hayles, *Disability Insurance: Canadian Law and Business Practice* (Scarborough, ON: Carswell, 1998). See also *Human Rights Code*, *supra* note 19, s 22.

¹²⁷ For resource(s), see e.g. Mary Crock et al, *The Legal Protection of Refugees with Disabilities: Forgotten and Invisible?* (Cheltenham, UK: Edward Elgar, 2017); Mary Crock et al, "Where Disability and Displacement Intersect: Asylum Seekers and Refugees with Disabilities" (2012) 24:4 *Intl J Refugee L* 735; Mihoko Tanabe et al, "Intersecting Sexual and Reproductive Health and Disability in Humanitarian Settings: Risks, Needs, and Capacities of Refugees with Disabilities in Kenya, Nepal, and Uganda" (2015) 33:4 *Sexuality & Disability* 411.

¹²⁸ For resource(s), see e.g. Ravi Malhotra & Benjamin Isitt, *Disabling Barriers: Social Movements, Disability History, and the Law* (Vancouver: UBC Press, 2017); Joseph P Shapiro, *No Pity: People with Disabilities Forging a New Civil Rights Movement* (New York: Times Books, 1994); Lisa Beckmann, "Undoing Ableism: Disability as a Category of Historical and Legal Analysis" (2017) 3 *On Culture* 2; Michael J Prince, *Struggling for Social Citizenship: Disabled Canadians, Income Security, and Prime Ministerial Eras* (Montreal and Kingston: McGill-Queen's University Press, 2016); Ravi Malhotra & Benjamin Isitt, *Disabling Barriers: Social Movements, Disability History and the Law* (Vancouver: UBC Press, 2017); Ravi Malhotra & Morgan Rowe, *Exploring Disability Identity and Disability Rights through Narratives: Finding a Voice of Their Own* (London: Routledge, 2013).

36. Securities Regulation Courses

Viewing securities regulation law through a disability lens, topics can include the following:

- Whether traditional securities regulations and their enforcement effectively serves members of the public with disabilities. To provide just one example, if mandatory public disclosures are only provided in print or pdf, many people with print disabilities (disabilities effecting the ability to read print) will not be able to read them.
- The extent to which securities regulations, aiming to protect the public as investors, effectively protect those with cognitive disabilities who are vulnerable to exploitive practices.

37. Public International Law Courses Including International Human Rights Law

Public international law courses, including international human rights courses, can explore the following topics:

- International legal protections for disability rights, which can derive from disability-specific international laws, such as the *Convention on the Rights of Persons with Disabilities* and the *Marrakesh Treaty*.¹²⁹ The *Marrakesh Treaty* makes the production and international transfer of specially adapted books for people with vision loss easier, such as Braille and audio books.
- Disability rights protections in other international conventions.¹³⁰

38. Freedom of Information and Individual Privacy Courses

Disability provides a useful lens to examine freedom of information and privacy law, including the following topics:¹³¹

- When public information is not provided in a disability-accessible format, this is a freedom of information issue – for example, when a website for accessing public information is not designed to be disability accessible.
- When personal information is provided to an individual with print disabilities in a format that is not accessible to them, they must get others to read that information to them, violating their privacy.
- When government information about topics that are material to people with disabilities can only be obtained via a freedom of information application, for which there can be a prohibitive search fee, this can constitute a systemic barrier to freedom of information for a disability community whose members disproportionately live at or near poverty.

¹²⁹ CRPD, *supra* note 38; *Marrakesh Treaty*, *supra* note 41.

¹³⁰ For resource(s), see e.g. Arlene S Kanter, *The Development of Disability Rights under International Law: From Charity to Human Rights* (London: Routledge, 2017); Lawrence O Gostin, “International Human Rights Law and Mental Disability” (2004) 34:2 *Hastings Center Report* 11; Rachele Cera, Giuseppe Palmisano & Valentina Della Fina, *The United Nations Convention on the Rights of Persons with Disabilities: A Commentary* (Cham, Switzerland: Springer, 2017); Flynn, *supra* note 111; Alerne S Kanter, “The Globalization of Disability Rights Law” (2003) 30:2 *Syracuse J Intl Law & Com* 241; Alerne S Kanter, *International Human Rights Recognition of People with Disabilities: From Charity to Human Rights* (London: Routledge, 2014); Ilias Bantekas et al, *The UN Convention on the Rights of Persons with Disabilities: A Commentary* (Oxford: Oxford University Press, 2018); Gibson & Mykitiuk, *supra* note 95.

¹³¹ See *supra* note 115.

39. Other Specialized or Boutique Courses

In other highly specialized or unique courses, there is room for a disability curriculum:

- A course on starting a small practice could explore options for developing a practice in important underserved fields for clients with disabilities, such as representing students with disabilities to advocate for the school system to accommodate their learning needs.¹³²
- A course on law and catastrophes or emergencies can look at systemic failures to meet the urgent needs of people with disabilities during the COVID-19 pandemic.¹³³

40. Experiential Learning and Clinical Education Programs

Law school experiential learning or clinical education programs should include the following topics:

- All clinical education programs could include curriculum on the disability barriers that clients with disabilities can face in access to legal services and on strategies for ensuring barrier-free legal services. Each clinical program should do a disability barrier review of its own legal services and develop a plan to ensure that its legal services are barrier free for clients with disabilities.
- In criminal, civil, or administrative law clinical programs, specific barriers that litigation participants (clients, parties, and witnesses as well as lawyers) face in the criminal, civil, or regulatory processes.¹³⁴
- Expanding on substantive disability content, described earlier for specific related courses – for example, a criminal law clinical education program can further explore disability curriculum described above for criminal law courses.
- In a poverty law clinical education program, disability barriers in disability-specific income support programs, in access to employment and education, and in finding accessible housing.
- In a business clinical education program, disability barriers that business owners, employees, or customers with disabilities face as well as strategies for ensuring a barrier-free business for employees and customers with disabilities, in compliance with human rights legislation and disability accessibility legislation.
- In an intellectual property clinical program, the duty to accommodate the needs of product users and customers with disabilities in the innovation context linked to the human rights-based universal design concept. It can explore disability issues in artificial intelligence, such as the need to avoid the danger of automating pre-existing inequalities.¹³⁵

¹³² For resource(s), see e.g. Barry Taylor, “The Development of Emergency Planning for People with Disabilities through ADA Litigation” (2018) 51:4 John Marshall L Rev 818; Roberto Lattanzio & Laurie Letheren, “Comparing the Incomparable in Human Rights Claims: Moore Guidance” (presented at Ontario Bar Association’s 2013 Annual Human Rights Update, 7 June 2013), online: *ARCH Disability Law Centre* <archdisabilitylaw.ca/resource/comparing-the-incomparable-in-human-rights-claims-moore-guidance/>.

¹³³ See e.g. AODA Alliance, *supra* notes 56.

¹³⁴ See e.g. LSO CPD, *Lepofsky*, *supra* note 40.

¹³⁵ Virginia Eubanks, *Automating Inequality: How High-tech Tools Profile, Police, and Punish the Poor* (New York: St Martin’s Press, 2018).

III. HOW A LAW SCHOOL CAN PLAN TO MAKE PROGRESS

A. Guiding Principles

How can a law school quickly and effectively make systemic progress? The options described in this section can be used in combination or one at a time.¹³⁶ Significant progress will not happen by accident. It requires a law school to develop a detailed plan of action, approved through its governance process. Assured progress cannot be expected if it is simply left to each professor to separately decide if they want to take action. A simple, sincere, but ephemeral request to all professors to include more disability content in their courses, without more, won't bring about permanent progress. Law schools should learn from past successful curriculum improvement strategies. A great example is the commendable effort at several law schools to expand Indigenous curriculum, spawned by the Truth and Reconciliation Commission's recommendations. A law school's plan should include elements to make it as easy as possible for law instructors to include disability curriculum in their courses. The easier it is for them to take action, the more likely it is that they will take action.

The plan should respect professors' academic freedom, their need for ample flexibility to structure their courses as they feel is most effective, the multiple pressures on their time, and the diverse demands on their course content. It should be flexible enough to withstand unexpected shocks, such as the rapid unforeseen shift to online learning during the COVID-19 pandemic. Law teachers are busy, preparing and teaching their classes, supervising students, doing research, and running from one faculty committee to the next. It would be helpful for the plan to designate a faculty member (or members) as a disability curriculum lead (or leads) with day-to-day leadership responsibility. Under a law school's governance regime, the mandates of more than one faculty committee may be responsible for pieces of the initiative. Those committees should coordinate their efforts.

No single option described below will entirely solve this issue. "Trial and error" is a wise approach. A plan is more likely to succeed if it deploys multiple options. The plan should be periodically revisited to assess which options are working and to fine-tune the plan. Developing the plan collegially with the involvement of the collectivity of the law teachers who must ultimately implement it in their courses helps generate buy-in. The plan's design and implementation should be guided by law teachers with disability rights expertise. A number of course instructors may not have much disability rights background. Giving them access to people with disability rights expertise, where needed, is far more likely to produce positive results.

B. A Buffet of Options

1. The Starting Point: The Law School Could Announce a Strong Public Collective Policy Commitment to Expanding Its Disability Curriculum

An easy and vital starting point is for a law school to make a strong, public, and principled collective policy statement that it is committed to ensuring that it will effectively educate law students to serve all clients, including people with disabilities, and that achieving this is a shared responsibility.¹³⁷ A policy could include the following statement: "This Law Faculty is committed to educate law students to be competent to serve all in society, including people with disabilities. It aims to expand the curriculum that all law students receive on the legal rights and needs of people with disabilities, the disability barriers to justice that people with disabilities face, and how to deliver barrier-free legal services to people with disabilities."

¹³⁶ Rothstein, *supra* note 3.

¹³⁷ Lepofsky, "Disabled Persons," *supra* note 3.

2. The Law School Could Develop an Action Plan on What Disability Content to Deliver and Measures to Support Faculty in Delivering It

The law school then needs to develop an overall action plan to implement this policy statement. The plan can delineate disability curriculum content to be delivered by the law school and measures to implement the law school's policy on its inclusion. That plan can draw upon those options in this article that the faculty chooses and the steps for putting those strategies in place. It should be developed through the law school's governance regime. Where possible, it should be enshrined in the law school's strategic plan in clear terms and operationalized along with the rest of the plan. Different parts of the plan may need to be apportioned to different committees or individuals under the law school's governance regime. It is important for the plan to identify a single, leadership role to help keep progress moving. Success is more likely if one faculty member takes on an official evangelical role of leading and guiding this activity and reports to the dean in whole or in part on it.

3. The Law School Could Identify and Address Systemic Gaps in the Law School's Disability Curriculum

The law school should identify systemic curriculum gaps that may impede the effective delivery of key disability content. For example, an important topic identified earlier includes the legal rights of students with disabilities in the education system. This article earlier suggested existing courses where this topic could be inserted, such as family law and children and the law. Because these courses are now jam-packed with other content, they may not end up covering disability education issues. In Canada, education law is often not viewed as a discrete field of study and practice. Once important disability topics are identified that are unlikely to be covered through mainstream law school courses, the plan should devise a way to offer them, using options set out below.

4. In Addition to Mainstreaming Disability Content in Law School Courses, the Law School Could Offer Specific Disability Rights Classroom and Clinical Education Courses

A law school should offer a specific comprehensive course or courses on disability rights. Several Canadian law schools currently offer no such course. Some offer a course on the legal issues of mental health. With the commendable move to offering more experiential or clinical education courses in law school, it is strongly recommended that a law school also consider offering a clinical education program in disability rights, in addition to offering a classroom-based comprehensive disability rights course. The Osgoode Hall Law School has offered an excellent Disability Law Intensive program for several years. It is a model that other law schools can emulate. As well, it is very good that the University of Alberta's Faculty of Law offers a classroom and clinical course in mental health law.

A dedicated classroom course or a clinical education program on disability rights gives students a chance to go much deeper into this area of the law than can be achieved in mainstream courses. A cohort of law students come to law school because they want to specialize in human rights in general or, specifically, in disability rights. Offering a specialty disability rights classroom and/or clinical education course, while important, does not reduce the need to also firmly embed disability curriculum in the law school's mainstream courses. Otherwise, most law students will continue to receive little or no disability curriculum throughout their legal education, contrary to this article's objective.

5. The Law Dean and Associate Deans Could Exemplify the Commitment to Disability Curriculum Expansion

The law dean and associate deans help by exemplifying through their own concrete action that expanding disability curriculum is a real priority. They should use their influential positions as a “bully pulpit.” A good starting point is for them to announce their personal commitment to this goal to the faculty in writing and during faculty meetings. The law dean and associate deans can demonstrate their commitment by swiftly expanding disability curriculum in their own courses and by letting their faculty colleagues know how they did this. They can get their Faculty Council meetings to regularly address progress and brainstorm new strategies. During their informal interactions with faculty colleagues, the dean and associate deans can periodically talk up this topic. Informal exchanges can have a real impact.

6. A Disability Law Course Could Be Required

Every law school should offer a disability rights course, whether it is optional or mandatory. It would be far better to require law students to take a dedicated disability rights course in their JD program. This has the advantage of providing a time and place where core disability rights principles and doctrines can be explored in a systematic and sequential way. A growing number of Canadian law schools require students to take a course in the law on Indigenous peoples. This requirement is equally warranted in the disability curriculum context, which helps ensure that all law students will receive a necessary foundation in disability rights and issues. If this mandatory course is provided earlier in a student’s legal education, it can provide a foundation on which other instructors can build in later mainstream courses – for example, in family, administrative, or constitutional law.

It is recommended that the mandatory disability course involve a course that covers a broad spectrum of disability issues. It should not be sufficient for a student to take a course in one focused disability area, such as mental health law, which is, of course, an important disability topic. It is great that some law schools offer mental health law courses. However, such a course cannot deliver the full spectrum of foundational principles that law students should receive. Disability rights courses should be delivered by a faculty member with specialized disability rights expertise. It can serve as a platform for research in this area that can assist the rest of the faculty and the broader community.

Even if students are offered a disability rights course, but it is not a required course, the law school should not see that offering as fulfilling the need to effectively include disability content in the faculty’s curriculum. Unless they are made mandatory, such courses will only include a small fraction of the law school’s student population. If it is only an optional course, past experience shows that students selecting a disability rights course are often those who already have knowledge about some disability issues. It is important to also reach those many students who otherwise know little or nothing about this subject.

7. Disability Content Could Be Embedded in Mainstream Courses Where Possible

A strategy to get disability content included in any mainstream courses plays a central part in a plan for improvement. Several options in this article help make this happen. A single disability rights course, whether mandatory or optional, cannot effectively cover all key disability curriculum that law students need.

8. The Law School Could Offer Dedicated Mini-Courses and/or Teaching Days on Disability Curriculum

At selected points in the three-year law school cycle, a mini-course, or other short period, such as a bridge day or series of days, could be devoted to disability curriculum content. This could allow a team of professors with disability rights expertise to lead this programming, including guest speakers, without

having to replicate it in class after class. A number of mini-courses could be developed in the disability context. If they are only optional, they run the risk that they will only be taken by those students with a pre-existing interest in the topic.

Bridge weeks or days may have some disadvantages. Unless a creative way is found to avoid this situation, they have the disadvantage that it may not lead to content that is covered in examinations. Students will not take it as seriously especially when they are pressed for time, studying examinable materials. There was a regrettable experience with this issue years ago when Ontario's Bar Admission course included a day on disability legal curriculum but did not make it examinable. The implicit message was that it was less important.

9. A Law School Could Include Foundational Disability Content in First-Year Orientation and Introductory Programs

A disability component could be included in the introductory legal curriculum that law students receive at the beginning of first year. This can introduce the theme and set expectations throughout law school. It can establish foundational concepts, such as how to view legal issues through a disability lens.¹³⁸ This is especially appropriate if a first-year law school orientation includes an introduction to other equity issues, such as racialized or Indigenous community issues.

10. A Law School Could Create and Maintain a Repository of Disability Curriculum Teaching Resources

It would help for the law school to create and maintain a readily available, accessible, and searchable digital repository of teaching resources on disability curriculum topics. Of course, this would be done after getting the consent of the professor creating those teaching materials. A busy professor is more likely to incorporate disability content into their course if they have ready access to sections of reading materials for students that deal with disability issues, PowerPoint or other slide presentations, video presentations, and fact patterns that raise disability issues, such as mooted problems. Partnerships could be developed with other law schools to contribute to and share such a repository. With the author's agreement, these materials can be made publicly available. Maintaining this repository requires minimal centralized staff support. Each instructor, adding materials, could be invited to index the law topics or courses to which the new materials relate and to categorize them as reading materials, videos, slide decks, or classroom problems/fact patterns.

Assembling the repository could start with resources included in this article's footnotes. For example, the Law Society of Ontario posted on Youtube a series of six webinars, which I led, on strategies for overcoming barriers facing people with disabilities in the court process. These webinars include panels exploring these barriers on a disability-by-disability basis. It also includes a webinar on making a law office's services disability accessible.¹³⁹ Other disability curriculum teaching materials exist that could be added. For example, ten years ago, the Ontario Courts Accessibility Committee received a small grant from the Law Foundation to gather curriculum materials on courts accessibility issues. As well, in late 2021, an excellent new publication was made available by Laverne Jacobs and colleagues, entitled the

¹³⁸ I did this when gave the first introductory lecture to the Osgoode Hall Law School first-year class on the first day at law school. "Ethical Lawyering in a Global Community - David Lepofsky - August 29, 2013", online: *Youtube* <www.youtube.com/watch?v=uUqdaqgbu0s&feature=share&list=PLDGgB77j2ZYrl_rtpe32nSjOXfrDAGvnn&index=12>.

¹³⁹ This collection is now available at "Enhancing Access to the Courts – Series, last updated 2021", online: *Youtube* <www.youtube.com/playlist?list=PLRDUnqhuWrq9HwtdVCiLz_B7um6tTPGs>.

*Law and Disability in Canada: Cases and Materials.*¹⁴⁰ I have been developing a growing online video lecture series, which addresses some of the disability topics covered in this article. Some of them are included in this article's footnotes. Parts of my video lecture collection have been used in courses in law schools and other post-secondary settings.

11. A Law School Could Create New Ready-to-Use Teaching Units on Disability Issues for Course Instructors to Adopt or Adapt

It is recommended that a law school establish an initiative, including interested faculty members and a team of supervised students, to create new ready-to-use teaching components on relevant disability issues for a range of courses. This could be shared via an accessible online platform. Faculty members working on this project should get work credit for this effort. First, these new teaching units could cover required courses, such as first-year courses in areas like criminal law, constitutional law, torts, property law, legal process/foundations, and legal ethics. Second, units could be created for upper-year courses that are required or taken by many students (such as evidence, administrative law, and family law). Third, materials could be prepared for clusters of other courses that address similar issues. Fourth, disability content could developed for stand-alone or *sui generis* courses.

Each package could include selected readings that can be included in a casebook or other instructional materials or handed out separately and links to helpful video content, such as online lectures on point and a teaching guide for the instructor. The teaching guide could give an instructor suggested goals for their teaching unit, a summary of key legal principles in this area, points that could be covered, and ideas for classroom activities. These materials might be made available to the faculty on an online hub so that professors can opt to update them or post comments for future instructors if they wish, with teaching tips based on experience using those materials. Faculty members overseeing this project should have disability rights expertise. They should have a strong oversight role over the work of law students who work on this project. Law students helping with this project will not have the needed disability rights expertise.

12. A Law School Could Team Up with Other Law Faculties to Jointly Develop New Disability Curriculum Units

It would speed up progress for more than one law school to team up on a project to develop shared instructional materials on disability curriculum for law school courses. Participating law schools thereby avoid each having to reinvent the disability curricular wheel. It would be important for the participating law schools to establish baselines of disability rights expertise for oversight of this project in order to help ensure the quality of the work product. The Canadian Council of Law Deans, the Canadian Association of Law Teachers, and/or Canadian law librarians may provide excellent avenues for pursuing this goal. Experience can be garnered from the "Reconciliation Syllabus" developed in response to the Truth and Reconciliation Commission's report.¹⁴¹

13. A Law School Could Establish Course Clusters for the Purpose of Developing Common Disability Curriculum Content in Them

To avoid professors each having to reinvent the wheel, a law school's courses can be grouped into clusters, based on common subject matter. Professors teaching in a course cluster could be invited or encouraged to collaborate on disability content to be taught in courses in their cluster. For example, family

¹⁴⁰ Jacobs, *Law and Disability*, *supra* note 31.

¹⁴¹ See "reconciliationsyllabus: a TRC-inspired gathering of materials for teaching law," online: *Reconciliation Syllabus* <reconciliationsyllabus.wordpress.com/>.

law instructors could work together to develop family law disability curriculum content and instructional materials to be shared among them. This process could be especially efficient for first-year courses, such as criminal law, constitutional law, legal process/foundations, property law, or torts. It could also be helpful for advanced upper-year courses that address different topics but have shared themes. For example, instructors in different business and commercial law topics could similarly benefit from developing shared teaching materials. Multiple courses could choose to unite for a large group lecture on a disability topic. For example, all first-year criminal law teachers could opt to bring their sections together to receive a lecture on disability issues in criminal law rather than each instructor separately trying to cover the topic.

14. A Law School Could Seek Funding for Developing Disability Curriculum Resources

Progress in this area can accelerate if the law school secures external grant funding to assist. In addition to traditional grant funding sources to which law schools look, there are dedicated funding programs offered by different levels of government, in connection with the implementation of accessibility legislation. For example, the Ontario Ministry for Seniors and Accessibility operates its Enabling Change Grants Program to assist in the implementation of the *Accessibility for Ontarians with Disabilities Act*.¹⁴² The government of Canada administers a somewhat similar federal program in conjunction with the implementation of the *Accessible Canada Act*.¹⁴³

A funding application may be strengthened if the resulting new instructional resources will be shared and available to the public. It may be that a grant application could also be fortified if it is jointly made by more than one law school. These applications can be reinforced by the fact that the Accessibility for Ontarians with Disabilities Act Alliance (which I chair) has been advocating for years for self-governing professions to include needed disability content in their training for candidates for admission to their professions and for existing members of their professions. They can also be reinforced by the fact that this would be responsive to the recommendations of the Abella 1983 report on access to legal services for people with disabilities.

15. A Law School Could Offer Course Instructors a Voluntary Review of Their Courses for Areas of Disability Content to Add

The law school could offer course instructors the option of having their course materials reviewed to see if there is any disability-related content that the instructor might consider adding. This would be a voluntary process, which a course instructor can take part in if they wish. The course instructor would decide whether to make any of the recommended additions to their course. In recent years, the University of Toronto Faculty of Law has offered course instructors to have their courses reviewed for possible additions to address the law as it applies to Indigenous peoples. In this program, a team of law students, hired for the purpose, offered course instructors this help. Faculty member's time devoted to this activity should be fully credited or lead to commensurate teaching relief.

Here again, this review should be conducted by and/or closely overseen by faculty members with disability rights expertise. If a team of law students were hired with proper training and close oversight by a faculty member with disability rights expertise, this might speed up the process. Yet using law students without the needed expertise may turn out not to accelerate the review of courses.

¹⁴² "Age-Friendly and Accessibility Grants," online: *Ontario* <www.ontario.ca/page/age-friendly-and-accessibility-grants>.

¹⁴³ "About the Enabling Accessibility Fund," online: *Government of Canada* <www.canada.ca/en/employment-social-development/programs/enabling-accessibility-fund.html>.

16. Law Teachers Could Use Disability-Related Fact Patterns Where Helpful in Their Courses

An indirect way to engage disability issues, even when a course or other educational program is not itself then covering a disability topic, is for law teachers to use disability-related fact patterns, where they fit. It would help for these law teachers to have access to a faculty member with disability rights expertise who could advise them on this if needed. For example, if a first-year mooting problem raises disability issues, students will thereby focus on the law in this area in their research, factum writing, and oral arguments. Years ago, when the Ontario Bar Admissions course had a classroom teaching component, its public law seminars used a disability discrimination fact pattern to navigate an administrative law case through the tribunal process and courts.

17. A Law School Could Use Disability-Related Cases to Teach Students About the De-Siloed Legal Analysis of Fact Patterns

Law school courses tend to teach a siloed kind of legal analysis. In torts courses, a fact pattern is analyzed for possible tort liability, without considering when it could give rise to criminal liability. There is broad value in also giving students a fact pattern to analyze regardless of such silos. They can be given a fact pattern that could give rise to legal consequences in the tort, contract, criminal, constitutional, and/or regulatory legal worlds. A student would apply knowledge from several courses at the same time. Disability fact situations can be great for this kind of legal analysis. They can be helpful if the same pattern gives rise to disability issues and non-disability issues. Whether delivered in a first-year course or elsewhere, or in some new element in the law school experience, it can enrich legal education generally, while helping to mainstream disability issues.

18. A Law School Could Offer Disability Rights and Disability Law Training for Law Teachers

It would help course instructors to incorporate disability curriculum in their courses if they are themselves offered some disability rights training. Many law teachers may have had limited prior exposure to disability legal issues that arise in their courses or to disability rights principles. Professors who add more disability content to their courses no doubt want to get it right. They will not want to inadvertently infuse errors or stereotypes into their instruction. This training could be offered asynchronously in a package of pre-recorded lectures, which could be followed by an in-person or virtual live discussion, for those wishing to take part. This live content can provide an opportunity to discuss any recent developments in the law. The bedrock content of this training package can remain useful for years, supplemented by short updates covering new developments. To speed this up and spread the work around, this pre-recorded content could be developed in a collaborative effort with another law school or law schools for shared use.

19. Law Schools Could Draw on the Enriching Resource of People with Disabilities in Their Law School Community

Where possible, the participation of people with disabilities in delivering disability content reinforces its effectiveness. Of course, this is not to say that only people with disabilities should teach disability content. An important message is conveyed when this content is mainstreamed and is taught by all instructors, whether or not they have a disclosed or visible disability. That said, students benefit when the law school draws on people with disabilities, whether as instructors, guest lectures, or panel members, to infuse their experience into the discussion, whether in live or recorded presentations. Students have particularly strong memories of anecdotes about disability barriers that they have heard about directly from people with disabilities. This is enriched when students get to ask people with disabilities about their experiences. A law school community includes a readily available, diverse spectrum of people with

disabilities on faculty and staff and among current and past students. They can share with students in class and with faculty members as they design disability curriculum.

20. Law Schools Could Adopt an Initiative to Hire Faculty Members with Disability Rights Expertise and Scholarly Focus

A law school's capacity to incorporate disability curriculum into its offerings will be enhanced when it has real professorial bench strength in this area. Law schools should undertake a concerted effort to recruit more faculty members with disability rights and disability law expertise, either as their main focus or as one of their academic areas of study. Here again, action can be modeled after similar efforts in the area of the law as it applies to Indigenous peoples. Canadian law schools commendably made an impressive effort to recruit faculty with a focus on law pertaining to Indigenous peoples. In addition, when recruiting tenure-track faculty members, or when considering them for tenure or promotion, law schools could create an incentive for those law teachers who undertake to include disability content in their courses, where feasible. This could be identified as a factor that can be weighed in favour of the individual's application to be hired or promoted.

21. Law Schools Could Include a Disability Curriculum Content Provision When Hiring Adjunct Faculty Members

A number of law school courses are taught by adjunct or part-time law teachers rather than by permanent full-time faculty. Typically, an adjunct instructor is hired to teach a specific course on a year-by-year basis. In hiring the adjunct faculty member to teach a course, a law school could include in its letter or contract directions or requirements regarding the goal to include disability curriculum in their courses, where possible. These instructors should be offered assistance to fulfill this goal, if needed.

22. A Law School Could Establish the Position of Visiting Professor of Disability Rights and Legal Education

In combination with any of this article's options, a law school can establish a full-time or part-time position of visiting professor of disability rights and legal education. I have served in this role at the Osgoode Hall Law School in recent years. In this position, I offer to give guest lectures in courses throughout the law school program each term, averaging about twenty to twenty-five per term. Many, if not most, of these presentations are on disability-related topics. As far as I know, this is the first time Osgoode has had this position. This option has several advantages. For instructors who would like to include disability content in their course, they can most easily do so by simply accepting the offer of a guest lecture. The occupant of this visiting professor position gets to encounter students over and over in different courses throughout their law school journey. Content can be planned to minimize repetition from course to course. In first-year courses, guest lectures can establish foundational concepts on which upper-year courses' guest lectures can later elaborate and expand.

My experience in this position enabled me to create new instructional content, as exemplified in the catalogue of curriculum ideas reproduced in the second part of this article. My unique exposure to so many different classes and instructors, and the feedback I have received from law teachers and students, all enriched my ability to create new content and strategies for delivering it. This option alone, while very helpful, cannot fully achieve this article's goals. Many professors have been welcoming of offers of guest lectures. However, coordinating this across many busy faculty members is logistically challenging. Because including these guest lectures is up to each course instructor's choice, the presence or absence of

disability content varies from course to course and from section to section. Moreover, when course instructors become crunched for time, guest lectures can get cut out at the last minute.

23. A Law School Could Establish a Coordinated Strategy for Experiential Learning/Clinical Education Programs

Experiential/clinical education programs provide an excellent opportunity for students to engage with people with disabilities as clients. Law schools need to ensure that legal services offered to the public via experiential programs are themselves barrier free and offered at a barrier-free venue. Shared or coordinated training on how to overcome disability barriers in the delivery of legal services can be delivered to several experiential/clinical education programs at the same time – for example, how to conduct a barrier-free interview. This avoids having to repeat the same content for each experiential program. A number of experiential/clinical education programs can also serve as an excellent venue for exploring effective strategies for social justice advocacy on disability issues.

Certain parts of this content will be program specific. For example, some discrete issues may arise in a criminal law clinical education program that might not arise in other experiential/clinical education programs. However, much of the relevant content to include will be the same across many, if not most, of the experiential/clinical education program offerings. This content could be effectively delivered through a combination of pre-recorded presentations, virtual sessions, and/or in-person presentations to a number of experiential/clinical education programs at the same time, where logistically feasible. Each experiential/clinical education program could then follow up with a separate seminar or discussion that applies the shared content to that program's specific context.

24. A Law School Could Encourage or Require Students to Address a Disability Topic in One Paper during Law School

The law school could encourage or require students to include a disability topic in at least one paper they do somewhere during their law school studies. In courses where a paper is required, the course instructor could encourage students to focus on a disability topic, where appropriate. The course instructor could assist students by identifying disability topics that students might consider. The option of requiring this, rather than merely encouraging this, may be logistically difficult or impossible to administer. Here again, it can be very helpful to have available disability rights expertise in the law school to guide efforts on this issue.

25. A Law School Could Conduct a Voluntary Survey of Course Instructors on What Disability Content Is Included from Course to Course

It would help track progress for a law school to survey course instructors, asking them to voluntarily share ideas on which disability curriculum or teaching strategies they included in their courses. The anonymized results of this survey would inform future plans for disability curriculum.

26. A Law School Could Encourage and Incentivize Academic Research on Disability Issues

Implementation of any of these options is fortified if the law school expands the academic research that its faculty members undertake on disability legal issues. A law school could encourage, facilitate, and even incentivize this research. Such academic work can fuel the creation of new disability-related teaching content and instructional materials. An example of an impressive initiative is the Harvard Project on Disability.

27. A Law School Could Forge Co-Instructional Opportunities with Other University Faculties and Disciplines

A law school could explore providing joint courses, or components of courses, on disability issues with other faculties at their university. This process could generate two overlapping benefits. It would enrich offerings elsewhere at the university, and it could also bring expertise in other disciplines into the law school community, benefiting law students there. For example, it is good that the Osgoode Hall Law School offers a disability rights course in conjunction with York University's Faculty of Critical Disability Studies. A course or course element could be offered jointly with a business school, addressing disability-related obligations in the business context (for example, ensuring accessibility of the workplace and of goods, services, and facilities offered to the public). A joint offering could be created with a Faculty of Education (for example, focusing on the law as it applies to students with disabilities and their right to full participation in a barrier-free school system). A joint offering with a medical school or health faculty could address the law as it applies to patients with disabilities). A joint offering with a faculty of architecture, engineering, planning, or design could focus on legal obligations in connection with the universal design of goods, services, and facilities).

28. A Law School Could Ensure That Disability Is a Key Part of Its Equity, Diversity, and Inclusion Strategy

As noted earlier, it is essential that a law school's equity, diversity, and inclusion commitments and strategies include disability as a full and equal focus. This would reinforce this article's proposed disability curriculum reforms. As noted earlier, a strategy that does not fully include disability on a footing of equality works against the goals of equity, diversity, and inclusion. It can create a new hierarchy, disadvantaging people with disabilities.

29. A Law School Can Periodically Review Progress on Expanding Its Disability Curriculum Content

A law school should periodically plan to systematically review progress on inclusion of disability curriculum – for example, every year or every two years. This can let the law school see if its plan on disability curriculum is working or if it needs to be modified.

IV. CONCLUSION

May generations of new lawyers be trained to serve all clients, including the many who have disabilities. Using ideas in this article, action can start now. May Abella J's vision of equitable, diverse, and inclusive legal education on disability issues, urged four decades ago, become a reality in Canada.