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The *Convention on the Rights of Persons with Disabilities*: Beginning to Examine the Implications for Canadian Lawyers' Professional Responsibilities

H. Archibald Kaiser

The United Nations *Convention on the Rights of Persons with Disabilities*¹ (hereafter the *CRPD* or the *Convention*) should herald a new epoch in the way persons with disabilities are treated throughout the world community. The entire panoply of ramifications of this *Convention*, the purpose of which is “to promote, protect and ensure the full enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity”, (Article 1) is as yet unascertainable. However, States Parties must “take all appropriate measures to eliminate discrimination by any person, *organization* or private enterprise” (Article 4(1) (e)), among other obligations. For the self-governing legal profession, the primary responsibility for ensuring compliance falls to its individual members, its law societies and its federations. This mission is critical in order to demonstrate that lawyers avoid discriminatory “customs and practices” (Article 4(1)(c)) and it is incumbent upon the profession as it continues to fulfil its essential role as an unwritten pillar of the Canadian constitution in upholding the rule of law.

This article provides a small contribution to the extensive self-examination mandated by the *Convention* for the bar. It offers a brief overview of the *CRPD* in order to introduce its rich array of novel measures. The paper spotlights principles of professional ethics which are implicated by the *Convention* and identifies other areas of governance and policy wherein lawyers should consider its effects. The article then endeavours to articulate features of the moral dimension of legal professionalism which must be reconfigured in the wake of the *Convention*. The exhortations of the *CRPD* for lawyers seem daunting, but the prescribed reforms are both socially responsible and long overdue. The concentration herein will be on persons with long-term “mental” or “intellectual” impairments (Article 1), who experience discrimination and stigma most acutely, as exemplified by the readiness of society and the legal system to intrude upon their autonomy, remove their capacity for decision-making, permit forcible interventions and confine them to “live in conditions of poverty” (Preamble (t)). However, most of the following comments would apply to other



persons with disabilities who have “physical” or “sensory impairments” (Article 1).

Introducing the *CRPD*: An Innovative and Ambitious International Human Rights Treaty

The reach of international human rights law has been vastly extended since the United Nations adopted the Universal Declaration of Human Rights in 1948, recognizing “the inherent dignity” and “equal and inalienable rights of all members of the human family” (Preamble, para. 1).² Kate Parlett celebrated its impact, having transformed “rhetoric and declarations of human rights into legal rights and obligations”, indeed “to occupy a more permanent place in international law and to form part of general international law.”³ Growth in rights protection occurred too slowly for persons with disabilities prior to the *Convention on the Rights of Persons with Disabilities* coming into effect in 2007. The *CRPD*, the first twenty-first century human rights treaty, was negotiated rapidly, emerging in less than five years from the inception of the deliberations of an *Ad Hoc Committee* in 2002. The *Convention* has been enthusiastically received by persons with disabilities, an outlook in keeping with “the highest level of participation by representatives of civil society, overwhelmingly that of persons with disability and disabled persons organizations, of any human rights convention in history.”⁴ This substantial involvement in the formulation of the *CRPD* by persons with disabilities has influenced its content and will shape the ensuing processes of implementation and monitoring.

Whether the *CRPD* creates new rights or merely connects general international human rights law to people with disabilities has been debated, but no one doubts that its cumulative effect should be enormous. Most importantly, it demands a shift away from the supposition under the medical or charitable model that disability resides in individual deficits or pathologies which must be remediated through medical or rehabilitative services. The *Convention* substitutes the more challenging and transformative insight of the social (or human rights or disability) paradigm,⁵ where “disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others” (Preamble (e)). Law and policy must reduce discrimination and inequality,

thereby removing barriers to inclusion and requiring societies to change in order to demonstrate “Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity” (Article 3(d)). To achieve this reorientation, the *CRPD* stipulates a luxuriant blend of preambular, purposive and principled statements, individual entitlements and social, cultural and economic rights. While a close reading of the fifty articles of the *Convention* is demanded, what follows will set the stage for the exacting self-examination which is incumbent on the legal profession.

The Preamble situates persons with disabilities in a mixed recital of cold reality (e.g. the references to barriers to participation (k) and “multiple or aggravated forms of discrimination” (p)) and expectant aspirations (e.g. “should have the opportunity to be actively involved in decision-making processes” (o)). The overriding purpose, to promote “the full and equal enjoyment of all human rights” and “respect for their inherent dignity” (Article 1)), must always be kept in sight. The General Principles include respect for “individual autonomy” (Article 3(a)) and “Equality of opportunity” (Article 3(e)).

The *CRPD* imposes undertakings to adopt implementational “legislative, administrative and other measures” (Article 4(a)(a)) and to “modify or abolish” discriminatory “laws, regulations, customs and practices” (Article 4(1)(b)). The amplitude of individual rights is far-reaching, comprising “equality and non-discrimination” (Article 5), “equal recognition before the law” (Article 12), “access to justice” (Article 13), liberty, security (Article 14) and integrity of the person (Article 17), as well as freedom from “torture or cruel, inhumane or degrading treatment” (Article 15) and from “exploitation, violence and abuse” (Article 16). Interspersed within these positive and negative rights are correlative societal obligations, including the duty to raise awareness, by combatting “stereotypes, prejudices and harmful practices” (Article 8) and to ensure coverage for women and children with disabilities (Articles 6 and 7 respectively).

Among the innovative aspects of the *CRPD* is the extent of complementary economic, social and cultural rights, targeted at revamping the social context for individuals with mental health problems and intellectual disabilities. The *Convention* challenges States Parties to provide “Respect for home and the family” (Article 23); “Education” directed to “The full development of human



potential" (Article 24); "the right to the enjoyment of the highest attainable standard of health" (Article 25); "the right to work" "on an equal basis with others" (Article 27); "Adequate standard of living and social protection" (Article 28); "participation in political and public life" (Article 29) and "cultural life, recreation, leisure and sports" (Article 30). What is intended is no less than the reordering of society to redress "the profound social disadvantage of persons with disabilities and promote their participation" (Preamble (y)).

The simple ordinance that "The lawyer owes the client a duty to be competent to perform any legal service undertaken on the client's behalf" belies its complexity, particularly in light of the imperative that "the lawyer should keep abreast of developments in all areas in which the lawyer practices"

The *Convention* strives to be more than a paper victory for persons with disabilities. Its implementational scheme includes: the collection of "appropriate information" to enable States Parties "to give effect to the present *Convention* (Article 31); international cooperation (Article 32); and national implementation and monitoring (Article 33). Canada will be required to submit "a comprehensive report on measures taken to give effect to its obligations" (Article 35) to the Committee on the Rights of Persons with Disabilities (Article 34), which "shall make such suggestions and general recommendations as it may consider appropriate" (Article 36) and which reports to the General Assembly and Economic and Social Council (Article 39). Additional clout is provided by the Optimal Protocol signed by 90 countries and ratified by 63 at the time of writing (sadly, not including Canada),⁶ empowering the Committee "to receive and consider communications" from individuals or groups "who claim to be victims of a violation" (Article 1(1)).

The *CRPD's* plenitude of normative targets, individual freedoms and entitlements and societal obligations promises progress in the legal, social and economic

domains. The consequent obligations for the legal profession must be interpreted against the background of this ambitious agenda.

Emerging Professional Obligations

As Alice Woolley et al note, lawyers "can look to a number of sources for guidance on what constitutes ethical conduct,"⁷ including rules or codes, principles or norms and personal morality. Although the *CRPD* has implications in all of these interrelated domains, a sampling of its effects on formal statements of professional obligations will be canvassed first. While analytically convenient, it demonstrates the *Convention* penetrating the authoritative base of the legal profession, requiring consideration and conformity. The 2009 *Code of Professional Conduct*⁸ (hereinafter the "Code") of the Canadian Bar Association facilitates the discussion, as it is broadly consonant with the provincial and territorial codes. The paper then examines the ubiquitous, if uncodified, moral component of the legal profession.

Competence

The simple ordinance that "The lawyer owes the client a duty to be competent to perform any legal service undertaken on the client's behalf"⁹ belies its complexity, particularly in light of the imperative that "the lawyer should keep abreast of developments in all areas in which the lawyer practices".¹⁰

The assumption that the lawyer will become familiar with the *CRPD* is a reasonable expectation for the public, courts, tribunals and clients. This binding treaty is a source of law, broadly conceived. Whether the *CRPD* is seen as a substantive command in the same vein as domestic legislation depends in part on whether and to what extent the *CRPD* is regarded as implemented domestically. At the very least, the *Convention* will be used as an interpretative guide in construing legislation and the *Charter*.¹¹ Lawyers must thus understand the *CRPD as law*. That requires, for example, consideration of Articles 12 (Equal recognition), 14 (Liberty and security) and 17 (Protecting the integrity of the person) in cases involving incapacity determinations and involuntary treatment. Although only egregious cases of lawyer ineptitude result in disciplinary proceedings or civil suits, lawyers should be aware of this nascent branch of law as part of their duty to be competent. This canon explicitly obliges lawyers to be "cognizant and



knowledgeable of the language rights that apply”,¹² so it seems apposite that there is a *mutatis mutandis* duty regarding the rights of clients with disabilities. Beyond the direct legal implications, the *CRPD* principles of equality, participation and inclusion, must be incorporated in other ethical responsibilities.

The Duty of Non-Discrimination

The *CBA Code* establishes duties “to respect the dignity and worth of all persons and to treat persons equally, without discrimination,”¹³ referring to provision of services, employment conditions, accommodation and harassment. While disability is noted as a prohibited ground in the *Code*, the *CRPD* expands the concept of discrimination to demand that standards for lawyers’ conduct vis-à-vis clients, staff, fellow lawyers and activities in professional life be infused with the values of the *CRPD*. For instance, the principle of non-discrimination (Article 3(b)) involves, in the lawyer’s office, being advertent to the mental health effects of stressful working conditions in matters surrounding “performance appraisal, and hours of work”¹⁴ and requires additional vigilance on whether the lawyer is providing “inferior services”¹⁵ to clients with mental disabilities.

Making Legal Services Available and Improving the Administration of Justice

The *Code* encourages lawyers to “make legal services available...that will command respect and confidence”,¹⁶ including “by being considerate of those who...cannot readily explain their problems”.¹⁷ The lawyer must make “constant efforts to improve the administration of justice”¹⁸ and should “not hesitate to speak out against an injustice”.¹⁹ Similarly, the *Convention* demands that States Parties “ensure effective access to justice for persons with disabilities” (Article 13(1)) and “promote appropriate training for those working in the administration of justice” (Article 13(2)).

These twinned professional and international human rights law commitments compel an examination by individual practitioners, by the profession, by the courts and by Ministers of Justice of the essential questions of the quality, respectfulness, and accessibility of legal services. Additional training is to be provided for lawyers and judges as ordered by the *CRPD*, but other changes are commended too, such as: accessibility audits, both

with respect to physical barriers, but also, for this purpose, with a view to removing social and attitudinal obstacles that might discourage the use of legal services; rethinking codes of professional responsibility; greater investment in legal aid services for citizens with disabilities; improvement of standards for serving persons experiencing mental health difficulties or cognitive impairments; and more thorough supports for citizens with disabilities “they may require in exercising their legal capacity” (Article 12(3)).²⁰ The *CRPD* rights are not self-executing and lawyers’ heightened obligations, “greater than those of a private citizen,”²¹ demand curative and proactive actions to improve the administration of justice.

Because the constraints on the lawyer’s role as advocate “extend not only to court proceedings but also to appearances and proceedings before boards, administrative tribunals and other bodies”, the Convention should spawn a review of advocacy standards.

The Lawyer as Advocate

Because the constraints on the lawyer’s role as advocate “extend not only to court proceedings but also to appearances and proceedings before boards, administrative tribunals and other bodies”,²² the *Convention* should spawn a review of advocacy standards. Lawyers should conduct themselves in a manner which is consistent with the *CRPD*, for example, to guaranty “respect for inherent dignity, individual autonomy including the freedom to make one’s own choices” (Article 3(a)) and to protect against deprivations of liberty which “shall in no case” be justifiable due to the “evidence of a disability” (Article 14(1)(b)).

Given the omnipresence of mental illness and disability prejudice, advocates must preserve the normative fabric of the *Convention*, wherein persons with disability “are entitled without any discrimination to the equal



protection and equal benefit of the law" (Article 5(1)). This counsel of role moderation and advertence to responsibilities to the justice system is by no means radical. The *Code* admonishes lawyers "engaged as a prosecutor" to ensure "that justice may be done through a fair trial" and to "act fairly and dispassionately".²³ These notions of fidelity to justice, fairness and restraint, modified by a nuanced understanding of the prescriptions of the *CRPD*, must be transposed to any proceeding which could have a deleterious effect on the dignity, autonomy, equality and societal participation of persons with mental disabilities.

Further Influence by the *CRPD* on the Moral Dimension of the Legal Profession

Although formal statements of legal duties structure lawyers' behaviour, other variables are at least as decisive, if less susceptible of codified pronouncements. Grounded in "The Principles or 'Norms' of Lawyering" or "Personal Morality", the legal profession seeks to establish itself as having a "moral mandate",²⁴ which, although self-serving at times, carves out a role which is amenable to absorption of the purposes and values of the *CRPD*.

As Buckingham et al have put it, "The lawyer-client relationship...is not only responsible for social justice, it is an essential element of social justice".²⁵ While positing different ways (e.g. mores and moral theory) to approach this contribution of morality, they argue that "critical morality" is the most defensible stance: "The primary goal of critical morality is to produce considered moral judgments – that is, the best and most defensible moral judgments".²⁶ The present contention is that "considered moral judgments" must embrace the tenets of the *CRPD*. Hutchinson captures this theme in his countenancing constant interrogation by lawyers "about the moral status of their work and practices,"²⁷ with the goal by law societies of encouraging "their members to adopt a much more expansive understanding of their ethical responsibilities."²⁸ This vigilance would be ephemeral in 2012 without reference to the *Convention*.

When subject to this level of scrutiny, the legal profession does not fare very well. This is unsurprising in a society pervaded by "ableism" ("The cultural, institutional and individual set of practices and beliefs that assign inferior values to people" with disabilities²⁹) or "Disablism" ("discriminatory, oppressive or abusive behavior arising

from the belief that disabled people are inferior"³⁰). The Mental Health Commission of Canada has concluded that stigmatizing "beliefs and attitudes about mental health problems and illnesses...lead to the negative stereotyping... to prejudice,"³¹ which has "at least as great an effect on people as does their mental health problem...seriously impeding their ability to participate fully in society".³² Michael Perlin has accused the legal profession of propagating "sanism", "a variation of other types of stereotypical and discriminatory thinking patterns", reflecting "societal fears and apprehensions about mental disability",³³ which contaminate the law with the "same kinds of irrational, unconscious, bias-driven stereotypes and prejudices that are exhibited in racist, sexist, homophobic and religiously and ethnically bigoted decision making."³⁴

Once the legal profession engages in a rudimentary level of moral interrogation, it should be evident that these indictments of Canadian society and lawyers as being "ableist" or "disablist" and "sanist" are accurate and fair.

Once the legal profession engages in a rudimentary level of moral interrogation, it should be evident that these indictments of Canadian society *and* lawyers as being "ableist" or "disablist" and "sanist" are accurate and fair. The question is how to address this distortion of the moral dimension of Canadian legal practice. Even in the hyperbolic atmosphere that surrounds the promulgation of any international human rights treaty, it is not extravagant to point to the *CRPD* as an antidote to the regressive facets of the record of the legal profession.

The *Convention* represents the consensus of the world community: at the time of writing there were 153 signatories and 110 ratifications.³⁵ It embodies a radical shift in world opinion compelling a normative reordering, "away from the medical model, which views people as sick and in need of a cure", embracing instead the "human rights model, which views people with disabilities as rights holders...who are often more disabled by the physical and attitudinal barriers



societies erect...then by their own physical or mental condition".³⁶ The *CRPD* is heavily prescriptive, setting out a comprehensive list of individual human rights and facilitative social, economic, and cultural rights. The legal profession cannot claim the resultant legal and moral vision is vague, obscure or optional.

The *Convention* speaks to every level of interaction between lawyers and clients, their society and government. States Parties are bound to adopt implementational measures and modify discriminatory "laws, regulations, customs and practices" (Article 4(a)(b)) and this injunction touches the institutional heart of the legal profession. As part of the constitutional fabric, the bar is one of many "public authorities and institutions [that must] act in conformity with the present Convention" (Article 4(1)(d)). In its self-governing organizational guise, it is a site where Canada must "eliminate discrimination on the basis of disabilities" (Article 4(1)(c)). National, provincial and territorial representatives of the profession are required to conform, as the *CRPD* extends "to all parts of federal states without any limitations or exceptions" (Article 4(5)), eliminating the quintessential Canadian divestment of responsibility based on the division of powers.³⁷

Restating a Moral Vision for the Bar: Its Responsibilities to Persons with Disabilities

A fair question by the bar might be how the *CRPD*'s strictures can actually alter its more diffuse moral mandate. The answer is not elusive. Given that professional competence standards demand faithfulness to the *Convention* owing to its status as a form of current law and as a normative wellspring, the resultant adherence to the *CRPD* creates a corrective moral vision for lawyers. A summative *CRPD*-inspired statement is in order, articulating a vision for the moral dimension of legal practice in relation to persons with disabilities:

- The legal profession must recognize the "attitudinal and environmental barriers "that hinder the full and effective participation in society of people with disabilities" (Preamble (e)).
- Lawyers must respect the dignity and autonomy of persons with disabilities (Article 3), their "physical and mental integrity" (Article 17) and their right

to live independently and be included in the community (Article 19).

- The profession must honour the concomitant individual and professional obligations imposed by the *CRPD* to adopt implementational measures (Article 4(1)(a), while eliminating discriminatory practices (Article 4(1)(b)).
- The bar must do its part to "raise awareness", "foster respect" and "combat stereotypes" (Article 8(1)(a)(b)).
- Lawyers have a special responsibility to "recognize that persons with disabilities enjoy legal capacity on an equal basis" (Article 12(2)) and to "ensure effective access to justice", including by the promotion of "appropriate training" for justice workers (Article 13(1)(2)).
- The legal profession has a duty to protect people from deprivations of liberty based upon "the existence of a disability", "cruel, inhuman or degrading treatment or punishment" (Article 15(1)) and "exploitation, violence and abuse" (Article 16(1)).
- The bar must contribute to "redressing the profound social disadvantage of persons with disabilities" (Preamble (y)), by encouraging policies which contribute to the fulfillment of educational, health, employment, economic, political and cultural rights specified in the *Convention*.

The supervening commandment from the *Convention* is to require lawyers to advert to the "inherent dignity and worth" (Preamble (h)) of persons with disabilities, to accept that they are people with rights, not objects of charity and condescension, and to instill every aspect of their professional responsibilities with a respectful moral sensibility.

Conclusion: A Legal Profession Which Respects and Advances the Rights of Persons with Disabilities

The emergence of the *CRPD* in the twenty-first century as a legal and moral declaration by the United Nations is propitious for the world's largest minority³⁸ in the last great civil and human rights struggle.³⁹ The *Convention* legitimizes what disability rights advocates have been tirelessly arguing. The *CRPD* accepts that: people with



disabilities have lived in conditions of poverty and profound social disadvantage; their human dignity has not been respected; they have not been permitted to fully and effectively participate in society; their liberty, autonomy and legal capacity have frequently been attenuated unfairly owing to the existence of a disability; the costs of providing for their economic, social and cultural rights have never been accepted as legitimate charges on the fiscal or public policy ledger sheets. The bar has not faced its complicity in providing the legal superstructure for this subordination, but, with the advent of the *CRPD*, it is poised to transcend its self-imposed limitations.

The legal profession has mixed motives in its defence of its independence. There has been a conspicuous element of self-interest, the perpetuation of a lucrative monopoly, but the ideal side of the bar has not been a mere chimera. The legal profession has a unique constitutional role in enriching the realms of legal and social justice, a belief which inspires many law students, practitioners and judges. The challenge presented by the *Convention on the Rights of Persons with Disabilities* is to embed its sophisticated array of individual and societal rights within the lawyer's role at every level of professional obligation and moral consciousness. This goal is attainable, as long as the profession embraces the transformative force of the *CRPD*.

H. Archibald Kaiser is a professor at the Schulich School of Law and is also cross-appointed to the Department of Psychiatry, at Dalhousie University.

Endnotes

- 1 *Convention on the Rights of Persons with Disabilities*, 30 March 2007, 2515 UNTS 3 (accession by Canada 11 March 2010) [*CRPD*].
- 2 The author has recently written other articles which trace the development and assess the potential and substance of the *CRPD* more extensively. See H Archibald Kaiser, "Canadian Mental Health Law: The Slow Process of Redirecting the Ship of State" (2009) 17 Health LJ 141 [Ship of State], surveys several reformist influences on mental health law, including the *CRPD* (159-164). See also H Archibald

Kaiser, "Canadian Prisoners with Mental Health Problems: The Promise (and Limits) of the *Convention on the Rights of Persons with Disabilities*" (2011) 32(1) Health Law Can 1 develops potential applications of the *CRPD* for prisoners with mental illness. "Law and Psychiatry in the Age of the *Convention on the Rights of Persons with Disabilities*", in Hy Bloom and Richard Schneider, Eds., *Law and Mental Disorder: A Comprehensive and Practical Approach* [Law and Psychiatry], publication forthcoming, 2012, by Irwin Law, provides a more intensive discussion of the history, substance and application of the *CRPD*.

- 3 Kate Parlett, *The Individual in the International Legal System: Continuity and Change in International Law* (Cambridge: Cambridge University Press, 2011), at 338.
- 4 Rosemary Kayess & Phillip French, "Out of Darkness into Light? Introducing the Convention on the Rights of Persons with Disabilities" (2007) 8(1) Hum Rts L Rev 1 at 3-4.
- 5 See Ship of State, *supra* note 2 at 155-158 for a more thorough discussion of the wide nomenclature and diverse tenets for the many paradigms under the umbrella of the social or disability or human rights model.
- 6 United Nations Enable, "Convention and Optimal Protocol Signatures and Ratifications", online: United Nations Enable <un.org/disabilities/countries.asp?id=166>.
- 7 Alice Woolley et al, *Lawyers' Ethics and Professional Regulation* (Markham: LexisNexis Canada, 2008), at 7.
- 8 The Canadian Bar Association, *CBA Code of Professional Conduct*, Ottawa: CBA, 2009 [Code].
- 9 *Ibid* at 5.
- 10 *Ibid* at 6.
- 11 See Law and Psychiatry, *supra* note 2 at 17-19, for an analysis of the *CRPD* as a source of law in Canada.
- 12 *Code supra* note 8 at 9.
- 13 *Ibid* at 119.
- 14 *Ibid* at 121.
- 15 *Ibid* at 120.
- 16 *Ibid* at 95.
- 17 *Ibid* at 97.
- 18 *Ibid* at 91.
- 19 *Ibid* at 92.
- 20 Canada's Declaration and Reservation states that "Article 12 permits supported and substitute



decision making arrangements in appropriate circumstances and in accordance with the law”, but it does not reject other aspects of Article 12, including the recognition of “legal capacity on an equal basis” (12(2)) and access “to the support they may require” (12(3)). See UN Enable, *CRPD*, “Declarations and Reservations” online: <www.un.org/disability/countries.asp?id=166> Date accessed: November 19, 2011. Under Article 46(2) of the *CRPD*, “Reservations may be withdrawn at any time”, so that advocacy for the removal of Canada’s equivocating reservation has a clear objective.

21 *Ibid*.

22 *Ibid* at 69.

23 *Ibid* at 65.

24 United Nations Enable, *supra* note 6.

25 Donald E. Buckingham et al, *Legal Ethics in Canada: Theory and Practice*, (Toronto: Harcourt Brace Canada, 1996), at 15.

26 *Ibid* at 18. In a similar vein, see David M. Tanovich, “Law’s Ambition and the Reconstruction of Role Morality in Canada” (2005) 28 *Dalhousie L J* 267, where Tanovich argues for a move towards “role morality as an ethical guide for lawyers” at page 275, requiring “considerable reflection and contextual thinking...about developing and actualizing a ‘sense of justice’” (at page 278), part of “the pursuit of the cause of justice” (at page 308).

27 Allan C. Hutchinson, *Legal Ethics and Professional Responsibility*, 2nd ed (Toronto: Irwin, 2006) at 64.

28 *Ibid* at 66.

29 Peel District School Board, “Ableism; Issue Paper #2 (full discussion) (fall 2002)”, online: Peel District School Board <<http://www.gobeyondwords.org/Ableism.html>>.

30 Paul Miller et al, *Disablism: How to Tackle the Last Prejudice* (2004), online: Demos <<http://www.demos.co.uk/files/disablism.pdf>>.

31 Mental Health Commission of Canada, *Toward Recovery & Well-Being: A Framework for a Mental Health Strategy for Canada* (Mental Health Commission of Canada, 2009) at 91.

32 *Ibid* at 90.

33 M.C. Perlin, *Mental Disability Law: Civil and Criminal*, 2nd Ed. (Charlottesville, VA: Lexis, 1998) Vol. 1, at 424.

34 *Ibid* at 527. It may be of some comfort to the legal profession that the Canadian Psychiatric Association’s recent Position Paper, Susan Abbey et al, “Stigma and Discrimination” (2011) 56(10) *Can J Psychiatry* 1, accepts that “Decreasing stigma and discrimination...is of the highest priority for Canadian psychiatrists and organized psychiatry” (at 1), but goes on to note that “Psychiatrists are not immune from harbouring and acting on their own stigmatizing attitudes...understandable given that psychiatrists are members of a society where such views are pervasive and present from our earliest socialization and that our medical training has been replete with such stigma” (at 3).

35 United Nations Enable, *supra* note 6.

36 Arlene Kanter, “Introduction: The Promise and the Challenge of the United Nations Convention on the Rights of Persons with Disabilities” (2007) 34(2) *Syracuse J Int’l L & Com* 287 at 291.

37 See United Nations Treaty Collection, “Status as at: 15-12-2011 11:58:11 EDT, Chapter IV Human Rights, 15. Convention on the Rights of Persons with Disabilities”, online: United Nations <http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-15&chapter=4&lang=en#EndDec> where Canada’s Declaration and Reservation refers to Canada’s interpretation of Article 33(2), regarding implementational mechanisms, “as accommodating the situation of federal states”, but it does not question the fundamental binding character of Article 4(5). See also United Nations Enable, *supra* note 6.

38 Kayess & French, *supra* note 4, have described the *CRPD* as a “great landmark in the struggle to reframe the needs and concerns of persons with disability in terms of human rights” (at 2), with “transformative potential for the lives of the world’s largest minority” (at 33).

39 D. Driedger, *The Last Civil Rights Movement: Disabled Peoples International* (London, England: Hurst & Co., 1989) at 1.

