

UN Human Rights Day 2017: UN Convention on the Rights of persons with Disabilities (CRPD)
A sermon by Rev. Steven Epperson
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UCV

You may think it a bit unusual, but I'm going to begin my remarks about the UN 's International Human Rights Day, today, December 10th, by talking about zombies. Though I've seen several zombie movies, preached about zombies, and recently had my four-year old grandson Peter thrust a book called *Plants versus Zombies* into my hands as he settled into my lap, in spite of all that, I don't have a thing about zombies. I really don't.

That said, a recent article about disability and zombie and other apocalyptic narratives got my attention. It may be that along with the article's author, Shoshana Kessock, we've found ourselves rooting for the plucky band of good person, non-zombified humans, and indulging in the "what would I do in the case of the end of the world" game. How would we struggle against all odds? Who would survive and how? We may find ourselves identifying with the intrepid hard work, the sacrifices, the humanism of the heroes, and all the rest. But then Ms Kessock, who gets around in a wheelchair and is dependent on medications due to a chronic physical disability, starkly realized that in an apocalyptic world, she'd be toast. "These narratives," she wrote, "are by design ableist in the extreme. Apocalyptic fiction doesn't just embrace the erasure of the disabled and medically compromised, it normalizes their obliteration.... It says something very eerie about how people look at the disabled in these stories: In a stable society, the disabled are tolerated, if not welcomed. In the face of disaster, they are a liability, and one to be excised for the ease of the able bodied;" and then she cites one story, movie and scenario after another—as well as recent, real world, extreme weather disasters to back up her claim.

Reading something like that---makes me look at the world differently.

There are one billion people in the world who live with a physical, neurological or real or perceived psychosocial disability. They're our neighbours, friends, loved ones, colleagues, members of this congregation, and strangers living in every nation on this planet. In frank recognition that existing human rights protections have been insufficient to guarantee the full equality of disabled persons, ten years ago, the United Nations created, and the most every nation on earth has signed, the Convention on the Rights of Persons with Disabilities. Hereafter, I'll be calling this Convention the CRPD. Its purpose is to "promote, protect, and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity."

It was clear that this Convention was needed; in the words of a 2013 Canadian parliamentary review of the CRPD, persons with disabilities face "continuing discrimination," and that "something else was needed to both recognize civil, cultural, political and social rights" of those with disabilities, as well as "the obligation that states have to protect and promote those rights." I want to underline two statements from the above: *continuing discrimination* and the *obligation of states to protect and promote the rights of persons with disabilities*; both apply not only to other countries "out there," but to Canada as well.

Canadians were instrumental in crafting the CRPD and in successfully navigating it through the negotiation and ratification process. One of those Canadians was Vangelis Nikias of the Council of Canadians with Disabilities, a person with vision impairment who is now a Senior Advisor to the Canadian government, and who spoke to us from this pulpit several years ago. Not surprisingly, given the significant role of Canadians in writing the CRPD, along with our own existing Human Rights Act and Charter of Rights and Freedoms, Canada was one of the first nations to sign the CRPD—that's how we want to think of ourselves, and how other nations

want to see this country—that we lead out in matters of civil and human rights. (Would that it was so!)

On the UN Human Rights Day four years ago, I introduced us to the CRPD and explored some of its consequences. This year, and in fact, just in the past month, significant developments have taken place regarding the CRPD and our role as a nation and province in upholding it. In the time remaining, I want to walk with you through these important milestones. To get there, a brief review of the CRPD:

The CRPD is the first human rights treaty of the 21st century; it was negotiated with the greatest speed of any UN Convention and signed by the highest number of states parties—clearly, nations saw this Convention as overdue and something to sign on to given that it represents the largest minority population in the world, including 15% of all Canadians. The CRPD is comprised of fifty articles enumerating the rights of people with disabilities; it outlines key steps and actions states’ parties must take in order to promote and protect those rights.

Rights identified in the CRPD include: respect for privacy, home and family and security of the person (A.22, 23, 14); rights to education, health, work, and the right to live independently in the community and not be institutionalized (A. 24, 25, 27, 19); rights to an adequate standard of living (A.28); freedom of movement and nationality (A.18); rights to participate in political, public and cultural life (A29,30); equal recognition before the law and legal capacity (A.5, 12); freedom from torture (A.15), and the right to respect for physical and mental integrity (A.17).

So here’s the question: don’t we already have and enjoy these and other basic rights? By enumerating and asserting rights in the CRPD, the Convention does something quite extraordinary and important. It points out, and I believe we know this intuitively and through experience, that one billion people in the world, with real or perceived disabilities, encounter

barriers at every turn and every day; that is, they are *impaired*, they are *dis-abled*, from realizing and enjoying basic rights and freedoms we take for granted by virtue of barriers created by the able-bodied world either through policy decisions, architectural design, habit, prejudice, fear and/or neglect.

Closer to home, if someone with a mobility or sight impairment wanted to visit us where we live, play, work and worship, how accessible is the built environment to accommodate their needs? What barriers have been placed in their way to enjoy what we take for granted? Rick Hansen Foundation accessibility audit of UCV campus.

With its rights-based approach, the CRPD “defines disability as resulting from interactions between a non-inclusive society and individuals that society classifies as ‘disabled.’”

The UN’s Office of the High Commissioner of Human Rights recently stated that the CRPD

“emphasizes that a person with a disability is only limited in their ability to participate in society as a result of their interaction with barriers that any society permits to exist. Viewing disability from a human rights perspective involves an evolution in thinking and acting by States and all sectors of society so that persons with disabilities are no longer considered to be recipients of charity or objects of others’ decisions, but holders of rights.”

This is a paradigm shift—long overdue—and marks what should be a thoroughgoing revision of attitudes and approaches to persons with disabilities.

How far have our own attitudes and practices changed; how far have they been thoroughly revised?

Some final comments in our review of the CRPD: unlike many others, this UN Convention has teeth. First, it requires states to report regularly to the UN CRPD Committee on their progress in implementing the Convention. Second, when the CRPD Committee sees a need to further define the Convention to ensure that it’s effective as a tool for protecting rights, it adopts and publishes General Comments and Guidelines which then become part of the body of law in the CRPD; so the Convention is a dynamic, living document. Third, the CRPD includes

what's called an Optional Protocol which mandates, if signed by states' parties like our own federal government, that the UN's CRPD Committee can officially receive complaints of rights violations directly from citizens and civil society organizations when domestic courts fail them—think of it as a powerful tool of making governments more honest about living up to their obligations under the Convention. Where there is evidence, in spite of the rosy claims made about their compliance, of “grave or systemic violations set forth in the Convention,” the CRPD Committee may then launch inquiries and hold governments to account. Finally, every four years after ratification, governments must submit comprehensive reports on implementation of the CRPD. The UN CRPD Committee reviews the reports and then issues official observations about compliance or the absence thereof.

(Full text of the CRPD: <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html> and scroll down to Convention and Optional Protocol: English [[Print PDF](#)] [[Accessible PDF](#)] [[Word](#)])

In the time remaining, I have some good news, some double-barreled bad news, and some maybe good news to end with...

The Good News is the announcement on November 30th that the government of Canada is finally tabling the Optional Protocol in the House of Commons. If signed on by the House, it will signal Canada's accession, or formal agreement, to this part of the CRPD which officially recognizes the process whereby individual Canadians and civil society organization can communicate violations of disability rights concerns and complaints directly and formally to the UN CRPD Committee. This is good news—it gives voice to people with disabilities and a direct, formal channel to the CRPD Committee.

The Bad News, Part One: Last May, in response to Canada's mandatory four-year CRPD compliance report, the CRPD Committee issued its official response. While it credited Canada's engagement in the process, and steps taken toward compliance on efforts like issuing

government information in accessible formats, the Committee’s report goes on for ten, single spaced pages expressing concerns about the myriad ways in which our nation is falling short of its treaty obligations. From noting generally that the provisions of the Convention have “yet to be appropriately incorporated into legislation and policies across all sectors and levels of government,” the UN Report bores in on specifics: the lack or absence of consultation with disabilities organizations; the lack of legislation and policies to protect the rights of women, children and indigenous peoples with disabilities—and those who identify as lesbian, gay, bisexual, transgendered or intersex; the lack of affordable housing and access to water and sanitation; the lack of data disaggregated by age, sex and indigenous background—(Canada hasn’t collected data on children with disabilities since 2006); the lack of consistent enforceable frameworks for recognizing the legal capacity of disabled persons to consent to medical treatments and choice in supportive decision making; the lack of training of personnel in the justice, police, prison and health systems on the legally enforceable rights enshrined in the Convention; the involuntary detention of persons with psychosocial disabilities in psychiatric institutions; the lack of support and respect for the individual autonomy of persons with disabilities and their freedom to make choices about where and with whom they want to live...

The list goes on; it makes for sobering reading. We have a long way to go for Canada to live up to this international law our government signed and is legally obligated to uphold. (For the full report (http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fCAN%2fCO%2f1&Lang=en)

The Bad News Part Two, (with maybe some good news to come...)

I have already stated above, that we know that people with real or perceived disabilities are all-too-often *impaired*, they are *dis-abled* from realizing and enjoying basic rights and freedoms we take for granted by virtue of barriers created by our able-bodied world through policy decisions, architectural design, prejudice and/or neglect. I have also said that a paradigm

shift is taking place, one that views disability from a human rights perspective so that persons with disabilities are no longer considered to be recipients of charity or objects of others' decisions, but holders of explicit, inviolable rights. Those rights are enumerated in the CRPD. They run the gamut from rights to accessibility to equal protection and justice before the law, from work and employment and accurate statistics in data collection to liberty and security of the person, from freedom from torture to legal capacity to representative decision making.

I'm compelled to repeat this especially in view of a report issued November 29th by the BC Community Legal Assistance Society called "Operating in Darkness: BC's Mental Health Act Detention System." This 188-page report draws from interviews with scores of legal professionals who've represented thousands of individuals detained under our Mental Health Act over the past twenty-five years, as well as those detained. Currently, 20,000 residents of this Province are detained involuntarily under the Mental Health Act every year.

This report identifies and chronicles in meticulous, heart breaking detail that "we have allowed our mental health system to stagnate and operate in darkness" to such a degree that "BC is considered the most regressive jurisdiction in North America for mental health detention and involuntary treatment." We have fallen so far behind on numerous measures that our "*Mental Health Act* and *Mental Health Regulation* has become outdated, deeply flawed and inadequate to fulfill the rights guaranteed by the Charter and the UN CRPD." (p. 6)

"Detention is an extraordinary and intrusive exercise of state power in any context," reads the report. "But for individuals in mental health detention, the loss of liberty is only the beginning of rights deprivation. Once detained in the BC mental health system, detaining facilities control virtually every aspect of your life and your body. You can be denied access to the phone or the internet. You can be denied visitors or the right to go outside for fresh air.

Your clothing can be removed by force from your body by someone of the opposite sex. You can be forcibly administered psychiatric treatment, including injections” with grotesque side effects” and shock therapy.” You have no say in your forced medical treatment, nor does your family or designated representative. Advanced Directives about your medical care will not be respected. “You can be placed in mechanical restraints that tie you to your bed. You can be put in seclusion.” You can be relegated to detention and placed under coercive, provisional leave indefinitely. You will not have guaranteed access to legal representation. (pp. 13-19, and passim)

I could go on, but do you know what this means in practice? In this Province, anyone who finds your behaviour unusual, upsetting, or provocative can call 911, and in short order you can be apprehended in your home, place of work or on the street by the police or EMTs and taken to the hospital where, if you have the temerity to assert that there’s nothing essentially wrong—that you may have just been grieving, or upset, or elated or really sad—well, that’s sufficient proof that you “lack insight into your condition,” and you can be detained under the Mental Health Act and fall into the not-so-tender mercies of detaining facilities and personnel. I am not exaggerating. And to put it mildly, in view of all the above, such treatment and deprivation of rights is hardly conducive to healthy therapeutic relationships and recovery.

“In a free and democratic society, the extraordinary power [of detention] must be carefully administered with fair procedures and safeguards to ensure appropriate checks and balances.” Unfortunately, our Mental Health Act stands alone in all of Canada for the way it both “significantly expanded the criteria for detention and reduced procedural checks and balances involved in detention decisions....There are,” the report states, “shocking patterns of substantive and procedural rights violations that run throughout our administrative system for

mental health detention.” (pp. 5, 11) No wonder then, in view of daily, on-going violations of rights guaranteed by our Charter of Rights and Freedoms and those in the CRPD, this report calls on the BC Government to “establish an independent law reform commission to critically analyze the current mental health detention system,” overhaul our Mental Health Act and thus begin the work to “point us toward a transparent system that fulfills the principles of dignity, equality and self-determination.” (p.7)

I’ve read every excruciating page of this report. From personal and professional experience, I can attest to the accuracy of its details and affirm its recommendations—in many instances our Mental Health Act is not “constitutionally compliant, its procedures are inadequate to provide effective safeguards from abuse, and its systemic review efforts are virtually non-existent.” (p. 171) This may be lotus land for some, but for tens of thousands of people—our neighbours, family members, colleagues and friends—it’s hell on earth; for justice delayed, is justice denied. And justice and rights denied by intent?—well that’s an abomination in a civilized society, and should not stand.

The good news is that this report and the UN CRPD Committee report on Canada shines a light on where we fall short in upholding our treaty and Charter rights obligations; they provide a blueprint for how we can begin to put our own house in order.

In my Letter of Agreement with this congregation, signed May 5, 2002—I promised that I would work in the “area of social responsibility.” In that letter I am also guaranteed “the right to associate with any particular cause...according to my own desires” and that I have “the freedom to speak and act upon the truth as I understand it.”

My hope is that on this UN Human Rights Day, you may better understand who I am as a person, a minister, and a Unitarian who has promised to affirm and promote the inherent worth and dignity of every person, equity and compassion in human relations, and the goal of justice for all.

(see http://www.clasbc.net/operating_in_darkness_bc_s_mental_health_act_detention_system; if you can’t read the whole report (!), see report overview: pp 13-19 and summary of recommendations: pp. 173-75)