

**Impairment, Accessibility and Rights:
On the United Nation's Convention on the Rights of Persons with Disabilities**

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In North America, the movement for disability rights began in the 1950s when disabled veterans of both World Wars, along with other disability advocates, demanded access to voting, education, housing, transportation, communication and career opportunities which were literally out of reach because of architectural and other barriers.

Great strides have been made over the past decades toward making our society more accessible—from the 1985 Canadian Human Rights Act which banned discrimination against people due to physical and cognitive disability and mandated access and support to the 2002 Ontarians with Disabilities Act, from the 1968 Architectural Barriers Act, to the Rehabilitation Act of 1973, and the Americans with Disabilities Act in 1990 in the States.

By resorting to the courts and legislative bodies, disability rights advocates in North America and elsewhere have struggled to create a new “normal;” and they have, as a consequence, contributed to the literal reconfiguration of our built environment. As well, they are beginning to effect a sea change in subjective and social perceptions about accessibility, impairment, and the extension of genuine rights to people *who are disabled* by barriers they have encountered at every turn.

I want to really emphasize that last statement; people *are disabled* by barriers from architectural features to prejudicial attitudes. For example, no one in a wheelchair can visit me unimpeded and enjoy a cup of tea in my own home. There's a formidable barrier of steps to climb from sidewalk to my front door. And even if they could get inside, the doorway to my washroom is so narrow they wouldn't be able to get their wheelchair inside or manoeuvre around even if they did get in. I hate to admit it, but it's true. And to push this further, you didn't see the emotionally and mentally distressed in North America because they were thrown into jails,

cellars and locked wards. There were no barrier free features in the streets of Moscow I visited in 1990 because the disabled were an unwelcome, cognitively dissonant sight in a macho, socialist paradise. And in many Asian societies, people with physical disabilities were banished from public life due to ingrained beliefs that a disability was a sign of karmic retribution for past life transgressions.

In our progressive, modern Western societies, disability has been seen overwhelmingly as a health problem, a deficit, a disease—something to be “addressed by doctors and rehabilitation specialists who pursue treatments and cures for disabling conditions.” Seen through the lens of the medical model, the focus is on “changing, fixing, and curing disabled people.”

(Kaiser, Disability, “Human Rights and the CRPD,” March 6, 2013, http://www.dal.ca/content/dam/dalhousie/pdf/law/Events/minilaw/Archie%20Kaiser_Disability%20Human%20Rights%20and%20the%20CRPD.pdf. hereafter Kaiser)

A paradigm shift in this view and all that goes with it is taking place, and I want to tell you about it because it’s a story that offers us the opportunity and challenge to become a more welcoming, civil, inclusive, and attentive people and society.

There is a compelling alternative to the standard Western medical model and its understanding and response to people with disabilities; it’s a *social* rather than *deficit* worldview that asserts that “disability is situated not in an individual pathology, but in society’s failure to *embrace diverse ways of being in the world.*” Seen through the lens of a social, rather than medical or charity model ...Disability is a problem of the society,” of us and of our “response to people with disabilities in systems, laws, policies and relationships. The nature of the problem includes long-standing inequities, discrimination, exclusion and devaluation that must and will be remedied by equal access to resources of society and the removal of legal and other barriers.”

(see Kaiser and notes 3-6) . The social model compels us to re-think and re-view persons with disabilities as ‘subjects’ with rights, who are legally capable of claiming those rights and making decisions for their lives based on their free and informed consent as well as being active members of

society. (see Julian Walker, *The United Nations Convention on the Rights of Persons with Disabilities: An Overview*, Background Paper, Library of Parliament, publication no. 2013-09-E. 27 February 2013, p. 8. Hereafter Walker)

This *social model of disabilities* constitutes a fundamental shift in the way we should be looking at the world around us—its basic assertion is that *society impairs*, that it *disables* in myriad ways, and that we need to embrace the billion people—the world’s largest minority that includes close to 15% of Canada’s population—for the gift their diverse ways of being in the world brings forward to the rest of us. This is the key insight and message of the disability rights community and its advocates; and it’s bringing about sweeping, transformative changes in our world. And here I want to talk about the United Nations Convention on the Rights of Persons with Disabilities—I’ll be referring to the Convention throughout the remainder of my remarks by its acronym: CRPD.

Do you remember our UN and Gibbard Award Sunday in October, and the blind gentleman, Vangelis Nikias, who all-too-briefly spoke to us from this pulpit? He is the CRPD Project Director for the Council of Canadians with Disabilities. Mr Nikias spent the weekend at UCV speaking and meeting with members of this congregation and representatives in the disability rights community talking about the CRPD and the creation of a people’s report to the UN on whether and how the CRPD is being implemented on the ground. It was a privilege to have him here; it was a historic moment because this church was the first place in Canada where the work of gathering stories that will go into this report to the UN took place, and I’m sorry not more of us had an opportunity to meet and work with him that weekend. Because let me tell you, Mr Nikias and other members of the Canadian delegation at the UN played a crucial role in shepherding the CRPD through its writing, negotiation and ratification stages. Canada was one of the most progressive and engaged delegations involved in the creation of the CRPD. And in many regards, the world is looking to Canada to continue to lead the way through progressive

and meaningful efforts on implementing, monitoring and reporting on the success and challenges of making the CRPD real.

The CRPD was formally adopted by the United Nations General Assembly on December 13, 2006; and Canada was one of the first countries sign the Convention. On March 11, 2010, our government subsequently ratified the Convention—a decision that has profound consequences for law, policies and practices throughout all levels of government, their agencies and throughout our society. The CRPD is the first human rights treaty of the 21st century; the fastest negotiated human rights Convention in UN history and the first time in history where civil society actively participated in the development and negotiation of the text; the CRPD had the highest number of signatories of any UN Convention its opening day; to date more than 150 countries have signed and more than 120 countries have ratified the CRPD.

<http://www.ccdonline.ca/en/international/un/canada/making-domestic-implementation-real-and-meaningful-feb2011>; and Walker, 4)

The CRPD is comprised of 50 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. As well, it requires states to report to the UN on their implementation progress while also developing the dynamic participation with civil society and closer monitoring by independent groups. (Walker, 1)

Article 1 of the CRPD states that the Convention’s main 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.” The CRPD does not have a formal definition of disability; it recognizes that disability is an “evolving concept,” and thus permits people to define their own relationship with it. What guidance it does provide when using the term “persons with disabilities” includes, but is not limited to “those who [live with] long-term physical, mental, intellectual or sensory [differences from the norm] which in interaction with various barriers (like the six steps from the sidewalk to Epperson’s front door)

may hinder their full and effective participation in society on an equal basis with others.” Notice again, the important turn here from the old, conventional view of disability as a deficit in the person to an environment of impairments that arise due to barriers we’ve unwittingly erected that hinder others from full and effective participation. Not one of the six places we’ve rented in Vancouver was visitable by person in a wheelchair. Historically, our building codes literally wrote people off the map. And god help us, if we break a hip or otherwise lose our taken-for-granted mobility; given the way they’re designed and built, we’ll become alienated from our own private space and may lose access to our homes altogether.

Let’s return to the Convention. Enumerated rights 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 in the community (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 far so good, though in that list there are a couple of hidden kickers. The CRPD is unique among other UN Human Rights Conventions. It is not a merely aspirational text that lists rights we’d all agree would be nice to have in an OK world. States that ratify the CRPD are obligated to implement it (A.4). Because we’ve ratified the CRPD, Canada must establish “one or more independent mechanisms...to promote and monitor implementation (A.33.2); it had to submit “a comprehensive report on measures taken to give effect to its obligations” in 2012 and has to every four years thereafter (A.35.1). Then, the UN’s CRPD Committee reviews the report, reviews communications it receives on behalf of individuals and groups...including reliable information indicating grave and systemic violations of the Convention. (A.36.1, A.1.; A6.1 CRPD Protocol), and makes recommendations it may consider appropriate. Credible monitoring of both official and unofficial reports on implementation is what sets the CRPD apart

from its toothless counterparts, and it makes the CRPD an extremely interesting, even breathtaking document.

Let me give you a couple of examples. As you would expect, Canada's official report in 2012 was self-congratulatory about all the progress being made. This stands in marked contrast to the statement published by the Canadian Association of the Deaf and the Council of Canadians with Disabilities that states: "Canada's [official report to the UN] by no means tells the whole truth regarding the human rights story of Canadians with disabilities. The lived experience of people with disabilities was absent from the report." As well, the UN's Special Rapporteur on the CRPD expressed grave disappointment that the federal government has hesitated on implementing Article 12 of the CRPD...which, in his words "disempowers you considerably on...major achievements on a global level." http://www.cad.ca/news_events_en.php?newsID=189

Article 12? It's the one that asserts each and all have equal recognition before the law and *legal capacity* to make decisions for their own lives [including their health care] based on their free and informed consent; and that includes those with "physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others." The implementation of Article 12, in fine, grainy detail, and very close to home, looks something like this: in this Province, everyone can make out a Representational Agreement that provides a legal, compelling health care road map to your designated representative and to health care providers in situations where you may become incompetent and unable to speak for yourself. Everyone should have one—because it's going to happen to a lot of us at some time in our lives. (*available in the foyer, the UVC website and Office*)

However, there is one class of persons in this Province, and only one, who are *excluded* from having their Agreement and health care wishes respected. Guess who? People who are being considered for involuntary treatment in a psychiatric unit. Neither they, nor their legal

representative, in this Province, can exercise their Canadian Charter Rights and their right to legal capacity guaranteed by the CRPD. This exclusion in the BC Representation Act is clearly discriminatory and a violation of our human rights. This rights denying exclusion is cut from the same cloth as the BC Mental Health Act that denies legal capacity to persons certified under the Mental Health Act—something that led one respected social worker in this town to exclaim that it is the “most draconian in Canada.” Behind the scenes, there’s a lamentable history of paternalism, self-righteous interference and bad science that led to the crafting of these Acts; and they should be challenged and changed to conform to the Canadian Charter of Rights and the United Nation’s CRPD. Now I’m going to ratchet this up just one more notch, and then bring these remarks to an end.

Last Spring, in its Eleventh Session, the UN Committee on the Rights of Persons with Disabilities issued an official Comment and interpretation of Article 12 of the CRPD based on reports coming in from around the world. It’s an amazing document, and I’m going to quote just one paragraph from it; it’s regarding “respect for personal integrity and freedom from torture, violence, exploitation and abuse:”

As has been stated by this Committee...forced treatment by psychiatric and other health and medical professionals is a violation of the right to equal recognition before the law and an infringement of the rights to personal integrity (A.17); freedom from torture (A.15); and freedom from violence, exploitation and abuse (A.16). This practice denies the legal capacity of a person to choose medical treatment and is therefore a violation of article 12 of the Convention. States parties must...respect the legal capacity...to make decisions at all times, including in crisis situations; must ensure accurate and accessible information is provided about service options...and must provide access to support for decisions regarding psychiatric and other medical treatment. Forced treatment is a particular problem for persons with psychosocial, intellectual and other cognitive disabilities. States parties must abolish policies and legislative provisions that allow forced treatment, as it is an ongoing violation found in mental health laws across the globe [**including the Province of British Columbia—where forced treatment goes on every day**], despite empirical evidence indicating its lack of effectiveness and the views of people using the mental health system who have experienced deep pain and trauma as a result of forced treatment. The Committee recommends that States parties ensure that decisions relating to a person’s physical or mental integrity can only be taken with the free and informed consent of the person concerned. (<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G14/031/20/PDF/G1403120.pdf?OpenElement>)

There is a wind rising that is going to sweep this land and blow away its archaic, human rights violating laws, policies and practices. How long is this going to take? Martin Luther King Jr. was asked in another setting. “However difficult the moment,” he replied, “however frustrating the hour, it will not be long because truth crushed to earth will rise again...because no lie can live forever...because you shall reap what you sow.... because the arc of the moral universe is long, but it bends toward justice.”

Dismantling the barriers that impair others from full and equal participation in life is a blessing to the rest of us. I can't tell you how many times people feel a quiet satisfaction when their bus kneels and extends a ramp to someone in a wheelchair. The request for written copies of my sermons, by two deaf congregants in my first ministry, before the worship service led me to more carefully craft my sermons and helped me to become a better writer. Accessible apartments and homes with universal design features enable us to be better hosts and they bring more light, spaciousness, humanity, safety and livability into interior domestic and civic space for all who enter and use them. I've been with people in extreme states where they've expressed unusual beliefs and behaviours; and though difficult and complicated at times, I can't begin to tell you how much I've learned and my life has be enriched because of them. Blessings fore and aft and all around me.

Does it cost? Yes. Does it require us to walk in someone else's shoes? Indeed. Does it slow us down and maybe try our patience? Uh huh. Might it mean a bit of pain? Perhaps. *It's called growing up.* It's called becoming a more welcoming, inclusive and civilized people and nation. May it be said of us in years to come that we were those people and that nation! Amen.