

CHAPTER II

Providing Legal Services to Persons with Disabilities

ARCH¹

I. UNDERSTANDING, DEFINING, AND DESCRIBING DISABILITIES

I.1 What is a Disability?

There are many different ways of conceptualizing “disability”, but the current understanding is that a disability is a *functional limitation* related to what an individual can do. This means in a descriptive sense that an individual is unable to do something in a certain way.

There is no one legal definition in Canada either of disability in general or of specific disabilities. Rather, the legal definition depends upon the context in which it is used. Different statutes and regulations define disability in different ways depending on their purpose and intent.

The *Canadian Charter of Rights and Freedoms*² (“*Charter*”) refers to “mental disability” and “physical disability” in section 15, but these terms are not defined in the Charter.

Traditionally, disabilities were viewed through a medical lens only, and defined as a ‘health problem’ or ‘abnormality’ that must be cured. Disabilities were regarded as being divisible into two classes: *physical* disabilities (e.g., paraplegia, blindness, Deafness) and *mental* disabilities (e.g., Down Syndrome, depression). It has more recently been understood within the medical community that many disabilities have both a “physical” and a “mental” component, and that these components are not easily separated or differentiated. Learning disabilities, for example, may extend from differences in a person’s perceptual as well as cognitive systems. Acquired brain injuries may affect both mobility skills and emotional functioning. Multiple sclerosis may affect memory as well as mobility.

Most people are familiar only with this outmoded “medical model” of disability but there are two other models of disability that are followed in present Canadian law. In *Mercier*,³

the Supreme Court of Canada adopted a *social model* of disability. As described by Justice L’Heureux-Dubé at paras. 77 and 79, “[b]y placing the emphasis on human dignity, respect and the right to equality rather than a simple biomedical condition, this approach recognizes that the attitudes of society and its members often contribute to the idea or perception of a ‘handicap’ [the term used in the Quebec statute at issue]. In fact, a person may have no limitations in everyday activities other than those created by prejudice and stereotypes.... Thus, a ‘handicap’ may be the result of a physical limitation, an ailment, a social construct, a perceived limitation or a combination of all of these factors.”

The Supreme Court expanded upon this model in *Granovsky*⁴ at paras. 29-30, stating that there are three aspects to disability: physical or mental impairments; functional limitations, whether real or perceived, and the “problematic response of society to the [individual’s] condition. A proper analysis necessitates unbundling the impairment from the reaction of society to the impairment, and a recognition that much discrimination is socially constructed.”

The social model recognizes that functional limitations associated with disability are often not intrinsic to an individual, but are the consequence of socially-created *barriers*. One example of a barrier that causes disablement is a set of steps in front of a building. Persons who use wheelchairs are able to enter buildings. But when buildings are erected with steps in front of them, persons who use wheelchairs become ‘disabled’ from entering. It is the existence of steps in this example that causes a limitation, or disablement, for persons who use wheelchairs.

People tend to think of barriers as physical or environmental but socially-created barriers also cause or contribute toward disablement. These may be based upon policies, procedures, practices, and attitudes. For example, inflexibility with respect to hours of work and job descriptions may create barriers for persons with wide ranges of

disabilities. There may be a stereotype that an individual with a particular functional limitation is unable to perform a task satisfactorily, or that the individual will require take excessive time off work. Removal of this type of barrier creates “attitudinal accessibility.”

While living with a functional limitation entails that one is unable to do something in a certain way, it does not mean that one is unable to do the same thing in another way. For example, a person who uses a wheelchair may not be able to enter a building by steps, but they may gain access to the same building *via* a ramp. A person who is blind can not read in the same way as sighted persons but they can read using Braille and they can ‘read’ using a computer with a voice synthesizer. A person who is deaf often cannot communicate orally, but they can ‘speak’ using sign languages. A person with a developmental disability may not understand a written training manual but they can learn a skill or grasp a concept through careful instruction, demonstration, and support.

Facilitating the ability of persons with functional limitations to do things differently than others is called *accommodation*. In this chapter, we will refer to examples of how persons with a wide range of disabilities can and should be accommodated so that they receive appropriate legal services. The failure to accommodate the functional limitations of persons with disabilities contributes toward what has been described as the social component of disablement. The widespread failure to accommodate, the effect of which is to impede persons with disabilities from participation in society, constitutes *systemic discrimination*.

Our medical and social understanding of disability has changed very significantly over the past few decades. The Supreme Court also has considered an *economic model* of disability in its decisions in *Granovsky* and *Martin*.⁵ In this model, an individual who lives with an impairment is perceived as ‘non-productive’ because of limitations on their inability to work, and thus as a ‘burden on society.’

Previously unrecognized disabilities are being identified and distinguished from others. In recent times, for example, learning disabilities, bipolar disorder, chronic fatigue syndrome, chronic pain syndrome, fibromyalgia, environmental sensitivities, and HIV/AIDS have been identified as important types of disabilities.

Some disabilities are highly visible, while others are *invisible*. The Ontario Human Rights Commission refers to such disabilities as “non-evident”. To say that a disability is invisible means that it is not apparent from a person's appearance. Examples of persons with invisible disabilities include the following:

- A person who is HIV-positive but physically asymptomatic
- A psychiatric consumer/survivor whose behaviour and speech do not indicate a disability
- A person with epilepsy or diabetes
- A person with an acquired brain injury where the resulting disability relates entirely to behaviour and emotion

For some disabilities, there is an accepted diagnostic test, while others are identified on the basis of symptoms. There are continuing controversies about the ‘right’ definition of many disabilities, as well as about appropriate treatment.

It should be kept in mind that it is *individuals* who live with disabilities, and that limitations or symptoms commonly associated with a particular disability may not be present in a particular case. For example, while it is possible for a person with cerebral palsy to have an intellectual limitation, many persons with cerebral palsy are intellectually gifted. Many, but by no means all, persons with Down Syndrome live with heart conditions. An adult with cystic fibrosis may use a wheelchair and a ventilator and have a limited life expectancy, or may have only mild difficulty in breathing. A person's judgment may be severely impaired due to a psychiatric disability or intellectual disability, but such a person may also be capable of exceptional insight and compassion.

Because functional limitations are specific to individuals rather than common to all disabilities, the process of accommodation must be individualized, or tailored, to particular persons. The duty to accommodate is fundamental and must be treated seriously. Specific areas of accommodation are discussed in section 3, *infra*.

In summary, “disability” is a complex and ever-evolving concept. A lawyer's best assets in understanding persons with disabilities will be an open mind and a willingness to learn. When in doubt, lawyers should ask clients what disability means for them.

1.2 Defining Disability in Law

In addition to the models of disability found in case law, described *supra*, statutes and regulations may emphasize different aspects of disability:

- human rights legislation typically defines disability very broadly, because the public policy intent is to prohibit, comprehensively, all forms of discrimination on the basis of disability, including perceived disability
- legislation and program guidelines providing for public funding of specialized disability related supports and services typically define disability narrowly, based on medical criteria, in order to limit eligibility
- disability income program legislation and guidelines may focus specifically on unemployability due to disability, or may look more broadly at a person's limitations in performing activities of daily living
- disability income and support programs may permit or may prohibit the use of social and economic factors (*e.g.*, age, education, literacy) in determining whether someone is 'disabled enough' to qualify

Due to the assorted definitions of "disability" found in various statutes, clients with disabilities may be surprised to learn that, for some purposes, the government does not consider them to have a disability. In each case, it is important to look closely at the statutes, guidelines, and regulations, if such exist, and also at jurisprudence to determine how the legislated definition is actually applied in practice.

1.3 Statistical Profile of Disability in Canada

The best national database on disability is Statistics Canada's Participation and Activity Limitation Survey ("PALS"). PALS is a 2001 survey conducted as a follow-up to the Census. Unfortunately, PALS does not include statistics for persons living with disabilities in the Territories, on First Nations reserves, or in institutions. The following data have been extracted from PALS reports and provide a general picture of disability in Canada:

- 3.6 million Canadians, or 12.4% of the population, reported some level of disability (PALS categorizes disabilities as mild, moderate, severe, and very severe)
- the incidence of disability increases with age, from 3.3% of children under 15 to 40% of those over 65 to 53.3% of those over 75, the disability rate is approximately 2% higher for women than men, with the exception of the under-15 age
- more than half a million adult Canadians reported living with a psychiatric disability
- the most prevalent disability reported, after mobility and agility disabilities, is pain-related disability, which was reported by 10.1% of the adult population in Canada
- adults with disabilities are more likely to have multiple rather than single disabilities
- persons with disabilities have employment rates approaching half that of other Canadians
- persons with disabilities have significantly lower incomes than persons without disabilities
- women with disabilities are more adversely affected with respect to employment and income than are men with disabilities, although both groups are significantly disadvantaged
- persons with disabilities are about half as likely to have a university education as persons without disabilities

1.4 Appropriate Language and Terms Describing Disabilities

There are differing views regarding the appropriate use of language to refer to disabilities. Certain types of language are considered appropriate by government and disability organizations, and useful guidance may be obtained from their publications and websites. The federal government produces a guide titled "A Way with Words and Images" and the provincial government publishes a similar guide titled "Word Choices."

Despite the uniformity of much of the advice contained in the guides of organizations and governments, individual persons with disabilities and their families, may have their own preferences. Be aware that archaic or outdated terms may be found in older documents and among segments of the population not familiar with current thinking about disability. There are also cultural variances as to appropriate terminology.

The following examples can illustrate what language is, and is not, considered to enhance the dignity of persons with disabilities:

- putting the person first by saying, for example, “persons with disabilities” or “women with disabilities” is now generally considered more appropriate than saying “disabled persons” or (especially) “the disabled”
- persons with disabilities are often referred to as “consumers” of disability-related services
- persons with a strong commitment to Deaf culture capitalize the word “Deaf”
- “disability” is considered a more appropriate term than “handicap”
- “non-disabled” is considered more appropriate than “able-bodied”
- it is preferable to refer to a “wheelchair user” rather than to someone “confined” or “bound” to a wheelchair
- usage (in Canada, especially) strongly favours “intellectual disability” or “developmental disability” as opposed to “mental retardation”
- persons with a lengthy history of psychiatric treatment or hospitalization often refer to themselves as “survivors” or “consumer/survivors” rather than patients, especially if their perspective on the psychiatric system is that it is oppressive
- “Down Syndrome” has generally replaced “Down's Syndrome,” and “Huntington's Disease” is now used primarily instead of “Huntington's Chorea”
- it is not usually appropriate to speak of someone as “suffering” from a disability or

as “afflicted” with it, or as a “victim of it,” except in some particular circumstances. For example, persons who were affected by Thalidomide refer to themselves as “Thalidomide victims”

- it is appropriate to use words like “see” as you would normally when speaking to a person who is blind
- it is preferable to use the terms “partial vision”, “low vision” or “no useful vision” rather than “legal blindness”
- the terms “physically challenged” and “mentally challenged” are not in general use (at least in Canada)

2. DISABILITY-RELATED COMMENTARY ON THE RULES OF PROFESSIONAL CONDUCT (“RULES”)

2.1 General

Clients with disabilities should be treated like other clients unless a compelling reason emerges to treat them differently. Clients with disabilities want to be treated with courtesy, with respect, and with attention to their interests, just as other clients do.

Some clients with disabilities may require certain accommodations. Simple yet important advice for lawyers is to *ask* clients what, if any, accommodations are required or would be helpful. Clients with accommodation needs will appreciate such a question at the start of an interview so that they will be afforded the opportunity to discuss what will make them comfortable. They can address, for instance, whether the seating arrangements and environment will permit effective communication with the lawyer, when would be an appropriate time to take a break, and so on. If it is anticipated that there may be a number of accommodation needs, then the lawyer may request that all arrangements be canvassed and addressed by support staff in advance of the meeting. A larger firm may want to develop a checklist for this purpose.

For many clients with disabilities, the allowance of extra time is an important accommodation. A very tight timetable can cause problems. Clients with disabilities may use

accessible transit services that, because of limited availability, require pre-booking weeks before the date of a meeting. Clients with disabilities may need longer or more frequent breaks than usual to go to the washroom, take medication, and so on. A client with a cognitive or emotional disability may require more time to consider options and make a decision. An interview conducted using a sign language interpreter must be arranged well in advance and will take considerably longer than an interview with a hearing client. Where a client has a significant disability, care must be taken to develop a realistic time-line for case preparation.

As with other clients, the lawyer should discuss all aspects of cases fully and frankly with clients living with disabilities (refer to subrule 2.02(1) for the general obligation to be honest and candid). It is essential that clients be questioned fully about all relevant aspects of their cases, even if the questions may be difficult for the clients. It is also essential that clients, especially those with communication or emotional disabilities, understand the lawyer's advice and the reasons for it as clearly as possible. Important techniques in this area include the following:

- the use of plain and clear language
- asking clients to explain their understanding of what the lawyer has said using their own words or their own alternative means of communication
- encouraging clients to ask questions of the lawyer
- encouraging clients to tell the lawyer everything that may be relevant, while suggesting as clearly as possible what information would be of most use to the lawyer

Some clients with disabilities may require home visits because their disability makes it difficult for them to leave their homes. For example, clients with chronic pain may find that travel exacerbates their conditions, and clients with Multiple Chemical Sensitivity may react adversely to a number of substances in a lawyer's office environment. Visiting such clients in their homes will afford them with the accommodation they need. The key principle, again, is to ask clients what is best for them. For very good reasons, clients with disabilities often prefer the confidential setting of the lawyer's office for an

interview rather than meeting with the lawyer in the place where they live.

Too often, persons with disabilities report that lawyers refuse to consider representing them because of their unfamiliarity with the person's particular disability. Someone who has a speech-related disability may find their call to a law office inappropriately 'screened out' by the receptionist. It is submitted that lawyers have a public responsibility to attempt to learn about disabilities by asking potential clients about accommodation. (Refer to the discussion below regarding rules 2.09 and 3.01.) Clients are often the best sources of information on how their disabilities affect them. Disability organizations can also provide a great deal of general and background information about disabilities.

In this section, some of the most important rules within the *Rules of Professional Conduct* are discussed from the perspective of serving clients with disabilities, or clients who have a family member with a disability.

NOTE: The "Disability-Related" commentaries which follow have not been reviewed or approved by the Law Society of Upper Canada. ARCH is fully responsible for the content of such commentaries. The commentaries which follow that are placed within text boxes have been approved by the Law Society and are published with the Rules.

2.2 Definitions

Rule 1.02, "client", includes a client of the law firm of which the lawyer is a partner or associate, whether or not the lawyer handles the client's work.

Commentary

A solicitor and client relationship is often established without formality. For example, an express retainer or remuneration is not required for a solicitor and client relationship to arise. Also, in some circumstances, a lawyer may have legal and ethical responsibilities similar to those arising from a solicitor and client relationship. For example, a lawyer may meet with a prospective client in circumstances that impart confidentiality, and, although no solicitor and client relationship is ever actually established, the lawyer may have a disqualifying conflict of interest if he or she were later to act against the prospective client. It is, therefore, in a lawyer's own interest to carefully manage the establishment of a solicitor and client relationship.

Disability-Related Commentary

Persons with disabilities attending at a lawyer's office may come from backgrounds of disadvantage and exclusion and may be vulnerable. It is important for lawyers, when dealing with persons who are vulnerable, to be clear with them about whether or not a solicitor-client relationship has been established, and about the nature of the retainer. Otherwise, such persons may believe incorrectly that the lawyer with whom they spoke is handling matters for them, when there is in fact no retainer to do so.

Many persons with disabilities will have a "supporting person" to assist them in their dealings with a lawyer. The supporting person may be a family member, friend, case worker, social worker, or lay advocate who may call the lawyer on the client's behalf, attend at meetings between the client and the lawyer, and assist the client in communicating with the lawyer. The role of the supporting person may range from generally providing moral support, to acting as an interpreter, or to assisting the lawyer in formulating questions in a manner best suited to permit the client to respond.

Supporting persons often play a valuable, even essential, role in assisting vulnerable persons with disabilities to access legal services. Involving a supporting person may be an accommodation that a client with a disability requires. At the same time, the involvement of a supporting person may raise confusion about who is actually the lawyer's client. The lawyer should ensure that it is the instructions of the client that are being received, and that the supporting person does not become a *de facto* litigation guardian. In almost all cases, this will require the lawyer to meet with the client alone for some part of their discussions.

For a further discussion regarding supporting persons, please see the discussion below in relation to confidentiality and conflicts of interest.

2.3 Competence

2.01(1) "competent lawyer" means a lawyer who has and applies relevant skills, attributes, and values in a manner appropriate to each matter undertaken on behalf of a client including

- (a) knowing general legal principles and procedures and the substantive law and

procedure for the areas of law in which the lawyer practises,

- (b) investigating facts, identifying issues, ascertaining client objectives, considering possible options, and developing and advising the client on appropriate courses of action,
- (c) implementing, as each matter requires, the chosen course of action through the application of appropriate skills, including,
 - (i) legal research,
 - (ii) analysis,
 - (iii) application of the law to the relevant facts,
 - (iv) writing and drafting,
 - (v) negotiation,
 - (vi) alternative dispute resolution,
 - (vii) advocacy, and
 - (viii) problem-solving ability,
- (d) communicating at all stages of a matter in a timely and effective manner that is appropriate to the age and abilities of the client,
- (e) performing all functions conscientiously, diligently, and in a timely and cost-effective manner,
- (f) applying intellectual capacity, judgment, and deliberation to all functions,
- (g) complying in letter and in spirit with the *Rules of Professional Conduct*,
- (h) recognizing limitations in one's ability to handle a matter or some aspect of it, and taking steps accordingly to ensure the client is appropriately served,
- (i) managing one's practice effectively,
- (j) pursuing appropriate professional development to maintain and enhance legal knowledge and skills, and
- (k) adapting to changing professional requirements, standards, techniques, and practices.

Disability-Related Commentary

The provision in the *Rules* — at clause 2.01(1)(d) — respecting communication in a manner that is appropriate to the abilities of clients links the issue of competence to the requirement to provide accommodation to clients with disabilities. As a matter of competence,

lawyers must be able to communicate with their clients in a manner that is accessible.

When representing a client with a disability, an important function played by a competent lawyer will be to identify the accommodation measures that a client will need with respect to an impending attendance at a court or tribunal. The lawyer should communicate these needs to the relevant registrar and ensure that the needs of the client will be met.

The competence requirement obligates lawyers to have a sound knowledge of the areas of law in which they practice. A lawyer representing a client with a disability, or a client who has a family member with a disability, should ensure that all legal implications of the disability are taken into account. The lawyer should be generally knowledgeable about the laws relating to disability which are relevant to the lawyer's areas of practice. Some examples are as follows:

- a lawyer preparing a will should be aware of special trust provisions which will permit a beneficiary with a disability to continue receiving *Ontario Disability Support Program*⁶ benefits
- employment and labour law lawyers should know the implications of the *Human Rights Code*⁷ and other legislation regarding the rights of employees with disabilities
- criminal law lawyers should know the law regarding an accused being found not criminally responsible, and the special rules regarding witnesses with disabilities
- family law lawyers should be familiar with the implications of disability in property, support, custody, and child protection matters
- immigration law lawyers should know the law and policy relating to entry of persons with disabilities into Canada

2.4 Client Under A Disability

2.02(6) When a client's ability to make decisions is impaired because of minority, mental disability, or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal lawyer and client relationship.

Commentary

A lawyer and client relationship presupposes that the client has the requisite mental ability to make decisions about his or her legal affairs and to give the lawyer instructions. A client's ability to make decisions, however, depends on such factors as his or her age, intelligence, experience, and mental and physical health, and on the advice, guidance, and support of others. Further, a client's ability to make decisions may change, for better or worse, over time. When a client is or comes to be under a disability that impairs his or her ability to make decisions, the impairment may be minor or it might prevent the client from having the legal capacity to give instructions or to enter into binding legal relationships. Recognizing these factors, the purpose of this rule is to direct a lawyer with a client under a disability to maintain, as far as reasonably possible, a normal lawyer and client relationship.

A lawyer with a client under a disability should appreciate that if the disability of the client is such that the client no longer has the legal capacity to manage his or her legal affairs, the lawyer may need to take steps to have a lawfully authorized representative appointed, for example, a litigation guardian, or to obtain the assistance of the Office of the Public Guardian and Trustee or the Office of the Children's Lawyer to protect the interests of the client. In any event, the lawyer has an ethical obligation to ensure that the client's interests are not abandoned.

Disability-Related Commentary

Because this rule is specifically related to disability, the entire Commentary found in the *Rules* is reproduced in the box.

Representation of a client whose ability to make decisions is impaired is one of the most difficult areas of professional responsibility for a lawyer. It clearly constitutes professional misconduct for a lawyer to act on behalf of a client who does not have the requisite mental capacity to instruct them. Doing so could result in legal and professional responsibility ramifications. It also constitutes professional misconduct for a lawyer to act ostensibly on a client's behalf through the instructions of a person other than the client, where the client is capable to instruct.

It is important that lawyers not base an assessment of a client's capacity on stereotypical views of disability. There is no reason to believe that a person who is non-verbal, for example, and communicates through Blissymbolics (a picture-

based communication system) or a spelling board is not mentally capable. On the other hand, a person who lives with a bipolar mood disorder may be highly articulate but may also, at times, lack the requisite mental capacity to instruct counsel.

In law, there is no single test or definition for mental capacity. However, a commonly accepted definition of mental capacity is “the ability to understand information relevant to making a decision and the ability to appreciate the reasonably foreseeable consequences of a decision or lack of decision.”⁸ Whether an individual is mentally capable depends on the type of decision to be made. Individuals can be capable of making some types of decisions, but not others. A person is not mentally incapable simply because others may believe their decisions to be foolish or irresponsible. Various pieces of Ontario legislation, as well as court decisions, address capacity. They each articulate tests for capacity in different contexts. The most comprehensive Ontario laws that address consent and capacity are the *Substitute Decisions Act, 1992*,⁹ and the *Health Care Consent Act, 1996*.¹⁰ These laws should be consulted when representing a client whose mental capacity is at issue.

In difficult cases, a lawyer may have to seek their client's consent to obtain a professional's assessment of capacity, before deciding whether to accept their client's instructions.

In all cases, if the capacity of a client is or may be an issue, a lawyer should document carefully how any decision regarding the client's capacity was made, and on what basis it was made.

2.5 Confidentiality and Conflicts of Interest

2.03(1) A lawyer at all times shall hold in strict confidence all information concerning the business and affairs of the client acquired in the course of the professional relationship and shall not divulge any such information unless expressly or impliedly authorized by the client or required by law to do so.

2.04(1) a “conflict of interest” or a “conflicting interest” means an interest

- (a) that would be likely to affect adversely a lawyer's judgment on behalf of, or loyalty to, a client or prospective client, or

- (b) that a lawyer might be prompted to prefer to the interests of a client or prospective client.

2.04(2) A lawyer shall not advise or represent more than one side of a dispute.

2.04(3) A lawyer shall not act or continue to act in a matter when there is or is likely to be a conflicting interest unless, after disclosure adequate to make an informed decision, the client or prospective client consents.

Disability-Related Commentary

For many clients (especially those living with psychiatric disabilities, for which they often face social stigmatization), their disabilities are understandably considered personal and private matters. Disability-related information should therefore be held in confidence. Lawyers must be careful not to reveal the fact of, or information related to, a client's disability without authorization to do so from a client.

The role of a supporting person to a client with a disability has been discussed above under rule 1.02. Where a client has a supporting person involved, particular care must be taken by the lawyer to ensure that no breach of confidentiality or conflict of interest arises, either on the part of the supporting person or the lawyer.

A supporting person will be privy to confidential information passing between the lawyer and the client, and it is the lawyer's responsibility to ensure that this information remains confidential. Consideration should be given to advising both the client and the supporting person in writing, and in an alternate format as necessary, about the importance of confidentiality, to asking the supporting person to sign a confidentiality agreement, and to asking the client to sign a direction permitting the lawyer to convey confidential information to the supporting person.

A supporting person may be present when the client is giving instructions to the lawyer. As set out above, the lawyer must be careful to ensure that it is the *client's* instructions that are being received and the *client's* interests that are being advanced. If the supporting person has a direct or indirect personal interest in the matter under consideration, this may place the lawyer in a potential situation of conflict of interest, if the lawyer is not clear about who is providing the

instructions. The lawyer should take care not to be perceived as acting on the instructions of, or even in the interests of, the supporting person rather than the client. In these circumstances, the lawyer must advise the client that a different supporting person will be required, if the client is unable to proceed independently.

Situations in which the lawyer should be very careful regarding the role of a supporting person include some that are relatively easy to identify:

- the person with a disability is making a will and the supporting person is a potential beneficiary
- the person with a disability is reporting abuse and the supporting person may be the abuser, or someone who has failed to act appropriately to protect the person
- the person with a disability has been charged criminally and the supporting person may be suspected of involvement in the same crime

But in other situations the potential conflicts are more subtle or hidden. For example:

- the person with a disability is making a will and the supporting person may dislike a potential beneficiary
- the person with a disability is reporting abuse and the supporting person may be concerned that if a case goes forward it will cause embarrassment to the family of the person with a disability
- the person with a disability has been charged criminally and the supporting person may believe strongly that formal or informal diversion should be sought so the person will not have a criminal record, while the individual charged may want the opportunity to prove in court that he or she is not guilty of the charge

In all of these situations, lawyers must respect the role and contribution of the supporting person while ensuring that the supporting person does not become the real client.

2.6 Withdrawal from Representation

2.09(1) A lawyer shall not withdraw from representation of a client except for good

cause and upon notice to the client appropriate in the circumstances.

Disability-Related Commentary

An exceptionally difficult situation arises for lawyers if it appears that a client with a disability is no longer capable of providing instructions. The dilemma is most acute if the client is vulnerable, and the matter is especially important to him or her. Options which lawyers may consider include: trying to link the client to a case worker who will help the client to understand the relevant issues; involving a litigation guardian; and contacting the Public Guardian and Trustee.

2.7 Making Services Available

3.01 Lawyers shall make legal services available to the public in an efficient and convenient way that commands respect and confidence and is compatible with the integrity and independence of the profession.

Disability-Related Commentary

Persons with disabilities and their families are an important part of the public and all segments of the legal profession and justice system should be made available to them.

Making a lawyer's services available to persons with disabilities means not only that the lawyer is obligated to provide accommodation to existing clients. It means also that the lawyer is obligated to provide accommodation to prospective clients. This entails ensuring that the lawyer's office is physically accessible, that the lawyer may be contacted through accessible means of communication, and that the lawyer is, for example, prepared to secure sign language interpretation services when such is necessary for a consultation.

The professional obligation to make services available for persons with disabilities requires law firms to engage, at least, in self-administered audits in which barriers to access are identified and plans for removal are prepared and implemented.

Note that the proposed "*Accessibility for Ontarians with Disabilities Act, 2004*,"¹¹ (AODA) provides for the establishment of accessibility

standards that will apply to persons and organizations that provide services to the public.

2.8 Discrimination and Accommodation

5.04(1) A lawyer has a special responsibility to respect the requirements of human rights laws in force in Ontario and, specifically, to honour the obligation not to discriminate on the grounds of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, record of offences (as defined in the Ontario *Human Rights Code*), marital status, family status, or disability with respect to professional employment of other lawyers, articled students, or any other person or in professional dealings with other members of the profession or any other person.

Commentary

The Society acknowledges the diversity of the community of Ontario in which its members serve and expects members to respect the dignity and worth of all persons and to treat all persons equally without discrimination.

This rule sets out the special role of the profession to recognize and protect the dignity of individuals and the diversity of the community in Ontario.

Rule 5.04 will be interpreted according to the provisions of the Ontario Human Rights Code and related case law. . . .

There is no statutory definition of discrimination. Supreme Court of Canada jurisprudence defines discrimination as including

(f) Differentiation on prohibited grounds....

(g) Adverse effect discrimination. An action or policy that is not intended to be discriminatory can result in an adverse effect that is discriminatory. If the application of a seemingly “neutral” rule or policy creates an adverse effect on a group protected by rule 5.04, there is a duty to accommodate. For example, while a requirement that all articling students have a driver’s licence to permit them to travel wherever their job requires may seem reasonable, that requirement effectively excludes from employment persons with disabilities that prevent them from obtaining a licence. In such a case, the law firm would be required to alter or eliminate

the requirement in order to accommodate the student unless the necessary accommodation would cause undue hardship.

Human rights law in Ontario includes as discrimination, conduct which, though not intended to discriminate, has an adverse impact on individuals or groups on the basis of the prohibited grounds. The Ontario *Human Rights Code* requires that the affected individuals or groups must be accommodated unless to do so would cause undue hardship....

5.04(2) A lawyer shall ensure that no one is denied services or receives inferior service on the basis of the grounds set out in this rule.

5.04(3) A lawyer shall ensure that his or her employment practices do not offend this rule.

Commentary

. . . The Supreme Court of Canada has confirmed that what is required is equality of result, not just of form. Differentiation can result in inequality, but so too can the application of the same rule to everyone, without regard for personal characteristics and circumstances. Equality of result requires the accommodation of differences that arise from the personal characteristics cited in rule 5.04.

The nature of accommodation as well as the extent to which the duty to accommodate might apply in any individual case are developing areas of human rights law. However, the following principles are well established.

If a rule, requirement, or expectation creates difficulty for an individual because of factors related to the personal characteristics noted in rule 5.04, the following obligations arise:

The rule, requirement or expectation must be examined to determine whether it is “reasonable and *bona fide*.” If the rule, requirement, or expectation is not imposed in good faith and is not strongly and logically connected to a business necessity, it cannot be maintained. There must be objectively verifiable evidence linking the rule, requirement, or expectation with the operation of the business.

If the rule, requirement, or expectation is imposed in good faith and is strongly logically connected to a business necessity, the next step is to consider whether the individual who is disadvantaged by the rule can be accommodated.

The duty to accommodate operates as both a positive obligation and as a limit to obligation. Accommodation must be offered to the point of undue hardship. Some hardship must be tolerated to promote equality; however, if the hardship occasioned by the particular accommodation is “undue,” that accommodation need not be made.

Disability-Related Commentary

The Ontario *Human Rights Code* provides that persons with disabilities have a right to be free from discrimination because of their disabilities with respect to services. Like all other services in Ontario, legal services are subject to the provisions of the *Human Rights Code*. Lawyers and law firms have a legal obligation to ensure that services are offered that are accessible to persons with disabilities and do not discriminate. The obligation to not discriminate includes an obligation to accommodate persons with disabilities, up to the point of undue hardship.

In 2000, the Ontario Human Rights Commission released its revised *Policy and Guidelines on Disability and the Duty to Accommodate*.¹² This document sets out in detail the current views of the Commission regarding accommodation for persons with disabilities. While not legislation, the *Guidelines* are an essential starting point for understanding the duty to make appropriate accommodations, short of undue hardship, for persons with disabilities. The *Guidelines* provide an overview of the considerations that should be taken into account when accommodating persons with disabilities. These include a balancing of the following kinds of factors with respect to different options for accommodation:

- appropriateness of different options to the individual
- dignity implications of different options
- cost of different options
- health and safety implications of the options

It should be emphasized that the *Guidelines* do not contain a formula for determining which accommodations must be provided. This is because accommodation is an individualized process, and will require different solutions in

different cases depending upon the needs of specific clients. The *Guidelines* leave considerable room for discretion and judgment in each particular case.

When applying the *Guidelines*, it is important to be careful when identifying available options. Sometimes, specialists must be consulted. If the issue is building accessibility, for example, it is essential to consult with an architect who has specific expertise in barrier-free design. An architect lacking this expertise may provide, inappropriately, alternatives that are unnecessarily costly, undignified, or which, while eliminating one barrier, create another. Always, the client should be consulted. For instance, if the issue is accessibly formatted materials, keep in mind that many persons with disabilities use adapted computers, and accessibility in some cases may simply require sending documents electronically. Clients can advise regarding, and provide authorization for, their receipt of documents or communications electronically and the formats that are compatible with their systems.

It is important to emphasize that since law firms are obligated to provide accommodations, the costs of accommodations must be borne by law firms. Expenditures on accommodations (e.g., sign language interpreters) are not disbursements that may be charged back to clients.

Some accommodation measures entail no costs and are accomplished by changes to law firm policies. For instance, broad policies prohibiting all animals from offices have the effect of preventing access to persons with guide dogs and hearing-ear dogs. An amendment to such a policy, to except disability-related service animals from the application of the policy, would cost nothing at all.

While accommodation is often thought of as a technical issue involving buildings and equipment, it is crucial to understand that accommodation also has an *attitudinal* component. All staff members of a law firm should have a basic understanding of appropriate attitudes and language regarding, and comportment toward, persons with a range of disabilities. Condescending or patronizing behaviour toward a new client may get the lawyer/client relationship off to a very poor start. Conversely, appropriate conduct may help to smooth over difficult situations. If a client who is not accommodated appropriately receives a prompt and sincere apology, together with a

promise to rectify the situation, then this will go far to minimize the negative impact of the oversight.

3. GENERAL INFORMATION REGARDING ACCOMMODATION

As has been indicated, there is no one formula for providing accommodation. Lawyers are advised to ensure that their offices are barrier-free and to ask clients what accommodations, if any, are needed. Lawyers are further advised to educate themselves with respect to specific disabilities and common accommodations associated with such disabilities. Lawyers can do this, for example, by accessing information provided by organizations that provide services for persons with particular disabilities. Lawyers can also learn by visiting the web sites, some addresses for which are listed in the next section, of disability organizations and government agencies.

What follows is a brief description of some accommodation issues and measures that pertain to some generally-classed disabilities. The information is provided to illustrate what accommodation can entail in some, selected, circumstances.

3.1 Hearing Disabilities

For clients with hearing disabilities, it will be necessary for lawyers to consider accommodation measures that pertain to facilitating communication between themselves and their clients.

A teletypewriter (TTY), also known as a text telephone, is an important aid for communication, in written format, over telephone lines. This small machine has a typewriter keyboard, an electronic display, and an attached roll of print-out tape. Users place standard telephone headsets into cradles on the machine and proceed to type messages to receiving parties. The message is transmitted to a TTY on the other end, which also has a real-time electronic display, and may also generate a printed copy of the conversation. The other party sees the message on their own screen (and on a print-out) and types back. Using a TTY is similar to using chat technology over the internet.

Communicating via a TTY can, unfortunately, be time-consuming (depending

upon the typing skills of interlocutors). However, one benefit for lawyers is that exact records of conversations, including instructions, are created by the resultant print-outs.

It should be borne in mind that some individuals who became deaf before the development of an oral language may have a first language that is gestural (the most commonly-used gestural language in Ontario is American Sign Language). They may therefore have difficulty expressing themselves in written English and/or French since these languages are, for them, second languages. Such clients may find it difficult to communicate problems, concepts, and even basic questions through a TTY. In such circumstances, it is preferable to meet in person in the presence of a qualified interpreter.

Bell Canada offers a service known as the Bell Relay Service, in which an operator will relay messages between persons using regular telephones and persons using TTY machines. For lawyers who have not yet purchased TTY machines, this is a useful service. Bell Relay operators observe a strict code of privacy for calls. Bell also offers other services for persons who can speak but not hear and for persons who can hear but not speak.

The Bell Relay Service is accessed by calling the following special national access numbers:

TTY 711
Voice 1 800 855-0511

There is no charge for local calls. Regular long distance charges apply to voice-initiated calls, but there is a 50% discount for TTY-initiated calls.

For some persons who are hard of hearing, the preferred accommodation is through assistive listening systems. Such technology can render oral spoken communication at meetings, courts, and tribunals accessible through wireless sound transmission. With this technology persons who are hard of hearing wear wireless receivers while speakers use microphones. A transmitter converts the sound into infrared or FM signals which are beamed to those wearing receivers, whereupon the signals are converted back into sound.

Another accommodation measure for persons with hearing disabilities is written captioning. Meetings, for instance, can be made accessible to persons with hearing disabilities (who have sufficient written language skills) by providing

real time captioning, a word-for-word transcription of oral communications projected onto a screen by a specially-trained stenographer. As with the TTY, an advantageous by-product of this form of accommodation is a written record of the event for which the captioning was provided. To locate companies that offer captioning services, look in the Yellow Pages under Transcription Services, or contact the local branch of the Canadian Hearing Society.

E-mail is often used by clients with hearing disabilities, who have computers and sufficient written language skills, to communicate just as it is used by hearing individuals. Chat on the internet is also used. Once again, these forms of accommodation produces an advantageous by-product for lawyers, which is a record, in writing, of solicitor-client communications and instructions.

For many persons who are deaf, the most important accommodation measure for lawyers to provide will be sign language interpretation. Ontario Interpreter Services (OIS), is a provincial organization that books qualified interpreters. It is provincially co-ordinated by the Canadian Hearing Society and the Ontario Association for the Deaf. Both groups are part of the OIS Advisory Council. The Council establishes the fees charged for interpreting services and maintains a registry of qualified interpreters throughout Ontario. An ethical code as well as a code of confidentiality bind qualified interpreters to act solely as a communication channel.

To arrange for an interpreter, the law firm must call their local Canadian Hearing Society office and ask to speak with the OIS staff person. Advance notice of at least two to three weeks is usually required to ensure that a request can be met, although it is possible that an interpreter may be made available on shorter notice. There is a chronic shortage of interpreters in Ontario. Few work full time and those who do are usually booked weeks, if not months, in advance.

For persons who are deaf-blind, intervenors may be used to interpret in-person communication. Intervenors are individuals who communicate with persons who are deaf-blind using a tactile form of language.

For appearances before courts or tribunals, lawyers should contact the relevant registrar to make requests for the accommodation of their clients. For the purposes of a deaf client being a

witness in a proceeding, for example, it may be necessary for both a sign language interpreter and a real-time captioner to be present. A sign language interpreter can communicate most of the dialogue that occurs in a legal proceeding, but a person who is deaf may require real-time captioning in addition to sign language interpretation. Through reference to real-time captioning, a person who is deaf can access oral concepts that were not translated by their interpreter and, furthermore, they can check to ensure that their interpreter is correctly rendering, orally, their evidence given through sign language.

Lawyers must remember subrule 4.06(8) of the Ontario *Rules of Civil Procedure*¹³ when commissioning an affidavit for a client with a hearing disability who has limited proficiency in written English or French. As an accommodation, the Rule requires the lawyer to certify that the affidavit was interpreted to the client by an interpreter who swore or affirmed to interpret the contents correctly.

3.2 Vision Disabilities

For clients with vision disabilities, lawyers must ensure that written communications are provided in an accessible format.

For clients who have access to and are familiar with computers with specialized software, documents can be transmitted in electronic text format. The advantage of communicating electronically is that it permits individuals with different levels of vision to be able to convert documents into the specific formats that they prefer.

For clients who have access to e-mail, this form of communication may be the easiest way to send advice and receive instructions.

For clients who are blind, the preferred format for documents (and business cards) may be in Braille. Braille is a system that permits persons to read by running their fingers over a series of configurations of six raised dots. With technological change, use of Braille is becoming less common. For offices equipped with Braille printers, documents may be converted into Braille before being sent to clients who require documents in this format.

Some persons who are blind prefer written materials to be read onto audio tapes as their main

conduit to the “printed word.” Even for those fluent in Braille, tapes can be important because they are often easier and cheaper to prepare and transport than Braille materials.

Lawyers who receive written correspondence on behalf of clients who are blind can use scanning technology to convert such documents into text formats, ready for electronic transmission to their clients. For lawyers who lack scanning technology, it is important to orally or electronically (*i.e.*, through e-mail) advise clients of the contents of such correspondence, once received.

For appearances before courts or tribunals, lawyers should contact the relevant registrar and other parties to ask that certain accommodations be provided. For instance, a request can be made for evidence to be converted, in advance of a hearing, into an accessible format so that a client will be able to understand the evidence and instruct their lawyer accordingly during a hearing.

Lawyers must remember subrule 4.06(7) of the *Rules* when commissioning an affidavit for a client who is blind. As an accommodation, the Rule requires the lawyer to read the affidavit to the client and certify as to the client’s understanding of the contents.

3.3 Communication Disabilities

A communication disability describes a restriction in a person’s ability to speak in a manner that can be readily understood, which is associated with a physical or mental impairment. For persons with communication disabilities, communication through electronic means may be advantageous for relaying day-to-day information.

At in-person meetings, lawyers can accommodate persons with communication disabilities by cooperatively using systems designed to augment or serve as alternatives to speech. Persons who have limited verbal skills may use one or more augmentative communication devices or systems. Augmentative communication systems make use of objects, pictures, graphic symbols (such as those depicted on communication boards), manual signs, finger spelling, or artificial voice outputs. The latter may be controlled by push buttons, puffs of air, or even eyebrow wrinkles. Persons who have severe speech or language impairments often rely on gestures and facial expressions and body movements.

There are a number of augmentative communication systems available to persons who are non-verbal. Blissymbolics, one example, is a graphic language often printed and presented on the surface of a tray, but sometimes in books and increasingly frequently on personal computers. Symbols accompanied by the equivalent word are written within squares. Symbols may have to be presented one at a time. Each can be pointed to and the client asked if it is the desired one, or a light can scan the symbols and be stopped at the desired one. Some persons who use Blissymbolics have mastered a few thousand symbols and can express virtually any idea using them. In addition to Blissymbolics, other codes such as numbers, letters, or shapes can also represent phrases. To use the codes, both communication partners must know the codes or have a chart.

For persons who use symbolic languages, an interpreter who is familiar with the person’s particular method of communication may be very important, especially when it comes to interpreting symbols that are newly generated from existing vocabulary. However, because interpreters often are family members of, or provide care to the client, lawyers must be aware of potential conflicts of interest between the client and the interpreter, and the possibility that the interpreter may try to influence the client. It may be necessary to bring in a neutral interpreter to ascertain the client’s wishes.

3.4 Disabilities that Affect Mobility

For persons with mobility disabilities, the primary form of accommodation that will be required of lawyers is the removal of physical and architectural barriers in law offices.

While the *Human Rights Code* provides that facilities must be made accessible to persons with disabilities, no standards are set out for developers to follow. There are accessibility standards in the *Building Code Act, 1992* and its associated regulations,¹⁴ but these apply only to new or renovated buildings. These standards are quite minimal in some respects. There are more comprehensive standards available from the Canadian Standards Association Guidelines for public sector buildings have not been developed pursuant to the *Ontarians with Disabilities Act*.¹⁵ However, the proposed *AODA* provides for the establishment of accessibility standards for buildings.

The National Building Code of Canada sets out accessibility standards. A new edition of this code will appear in 2005, with accessibility as a core objective.

Accessibility related to structural elements within a building is only part of the broader issue of access. There are potential barriers that are created by badly placed furniture, unsuitable floor coverings, and poor lighting. There are also potential barriers in the environment outside of buildings, including inaccessible sidewalks, inaccessible parking spaces, and uncleared snow and ice.

Transportation can be a major barrier to persons who use mobility aids. It is important to check transportation arrangements carefully with clients who use specialized public transportation services such as Wheel-Trans (Toronto) or Para Transpo (Ottawa). For example, some services require three or four days, or sometimes weeks, of notice for ride bookings, and this has to be taken into account when planning client meetings. Unexpected emergency meetings may have to take place in the homes of persons with mobility disabilities who rely upon public transit services.

It is important to ensure that appropriate (*i.e.*, accessible) parking spaces are available for clients who bring their own vehicle and that the entrance to the building is accessible. If someone else drives the client, then a safe and accessible drop-off area for the client, and a parking area for the person who drove them, is also required.

For appearances before courts or tribunals, lawyers should contact the relevant registrar to ensure that accessible rooms are booked for proceedings involving clients with mobility disabilities. Unfortunately, there are still many court houses with inaccessible rooms.

3.5 Psychiatric Disabilities

Psychiatric disabilities are controversial within the field of disability studies. Some individuals view psychiatric illnesses as specific disease entities, perhaps genetically determined, while others dismiss such 'illnesses' as labels applied to persons who are socially disadvantaged for the purpose of social control.

For those who subscribe to the medical model, psychiatric illnesses will include a range of disorders and diagnoses so numerous and different that it is difficult to describe their scope. "Anxiety

disorder," "schizophrenia," "substance abuse disorder," "oppositional defiant disorder," and "depression" are all listed in the *Diagnostic and Statistical Manual of Mental Disorders (DSM)*¹⁶, a publication of the American Psychiatric Association, which is used as the primary aid by medical professionals in diagnosis and treatment of psychiatric disabilities. The contents of the DSM have changed over the years, representing changes in thinking in society as a whole. Until fairly recently, for instance, "homosexuality" was inappropriately included in the DSM as a disorder.

In opposition to the medical model, some persons consider that the disorders included in the DSM-IV-TR, the most recent edition of the DSM, are not disorders at all, but are rather legitimate individual responses to — often difficult — life experiences. They argue that psychiatrists and many other psychiatric service-providers have been conditioned by their "medical model bias" to label serious life or existential crises as "symptoms of mental illness" or "mental disorders" when instead they are valid responses to individual situations. Individuals who have experienced institutionalization and/or what they believe were inappropriate medical interventions tend to call themselves "survivors," or "consumer/survivors" of the "industry of psychiatry."

Because of this controversy, an important dignity-enhancing accommodation that lawyers can provide will be to ask clients how they prefer to be described in particular contexts. By doing so, the lawyer can find out if the client would prefer to be called, for example, a "psychiatric patient", "client", "consumer", "consumer/survivor", or a "survivor". The words used by clients to describe themselves are illustrative of how they think about themselves in relation to the larger "psychiatric system." By adopting the language that clients prefer, lawyers are able to make their clients feel comfortable and understood.

Persons with psychiatric disabilities may take medication that significantly interferes with their lives, inhibiting clear thinking, interfering with short and/or long term memory, and making it difficult to follow a fast-paced, information-packed conversation.

Lawyers should inquire of clients as to any such side-effects, so that accommodation can be provided, both in a law office and in court.

3.6 Intellectual Disabilities

The term “intellectual disability” is used to refer to individuals who have significantly lower-than-average intellectual abilities and deficits in social and adaptive functioning, which manifest before the age of eighteen years. Persons with intellectual disabilities typically have limitations in areas such as communications, social interactions, daily living activities or movement skills.

The hurtful terms “mental retardation”, “dumb”, and “slow” were used in the past for this disability, but are now avoided because they carry such pejorative connotations. Lawyers can accommodate their clients with intellectual disabilities by ensuring that appropriate, dignity-enhancing, language is used to describe the disabilities.

It is often assumed that individuals with intellectual disabilities are unable to instruct counsel by virtue of their disability. This assumption is not necessarily true. Given the wide range of functional adaptation possible for persons with intellectual disabilities, it is important that each person be assessed individually. See the discussion regarding capacity to instruct, section 2.4, *supra*. In addition to a consideration of the functional abilities of individual persons, it is also necessary to consider the environment in which they have spent their lives. Many persons with intellectual disabilities have led sheltered lives, either with their parents, in a group home, or increasingly rarely, in an institution. They may have been denied educational opportunities. They almost certainly have been denied social opportunities. As a result, some persons with intellectual disabilities are shy and easily intimidated, and they may not be aware of things in the common experience of others. Because of their vulnerability and dependence on others they may be afraid to express their own ideas without support.

Clients with intellectual disabilities should be treated like others unless there is a compelling reason not to do so.

Do not underestimate the capacities and potential of clients with intellectual disabilities. Most individuals with intellectual disabilities can communicate if they are given the opportunity. When talking with clients, lawyers should use clear and concise concepts and avoid complex sentences. Repetition and careful explanation are

important. When something is *really important*, lawyers should say so explicitly to clients. Be alert to the possibility that clients may misinterpret jargon or technical terminology, while seeming to use it appropriately.

A client with an intellectual disability may benefit from the support of a person whom they know and trust (*e.g.*, a family member, friend, or an advocate) when they meet with lawyers. As with other clients with disabilities, it is important to find out from a client with an intellectual disability what accommodations are required.

3.7 Learning Disabilities

A learning disability is defined as a neurological dysfunction that interferes with the brain's capacity to accurately store, process, or produce information, either spoken, written, or tactile. It is *not caused* by visual, hearing, or motor impairments, or by intellectual or psychiatric disabilities. Learning disabilities are frequently found in association with a variety of general medical conditions (*e.g.*, Fetal Alcohol Syndrome and Fragile X Syndrome).

Generally, individuals with learning disabilities have few obvious problems collecting information, but they may experience difficulties screening, interpreting, recalling, processing, or translating that information.

Some specific learning disabilities are: dyslexia (severe problems reading); dysgraphia (severe problems writing); dysphasia (severe problems developing spoken language); and dyscalculia (severe problems doing mathematics).

While learning disabilities do not disappear, individuals living with them can learn strategies to compensate for their disabilities.

Because learning disabilities are largely invisible, they are often not taken seriously. It is important to clients with learning disabilities that their lawyer accept and respect their disability and accommodation needs.

Clients with learning disabilities may take more time than others to reason through a situation or set of facts. Lawyers may have to provide accommodation in the form of longer meetings with clients with learning disabilities. Other forms of accommodation may include the provision, in advance, of a written schedule for a meeting, a written summary of meeting minutes, reminders for meetings, or a written list of tasks to

be completed. Lawyers must discuss with their clients what forms of accommodation are desired when the working relationship first begins. Accommodation measures can be assessed, periodically, to determine whether they are working.

4. WEB RESOURCES

For further information, the following web sites may be consulted:

- **ARCH**
<http://www.archlegalclinic.ca/>
- **Accessibility Directory**
<http://www.accessibilitydirectory.ca/>
- **Council of Canadians with Disabilities**
<http://www.ccdonline.ca/>
- **Disability Research Information Page**
<http://www.ccsd.ca/drip>
- **Disability Weblinks**
<http://www.disabilityweblinks.ca/>
- **EnableLink**
<http://www.enablelink.org/>
- **Legal Aid Ontario**
<http://www.legalaid.on.ca/>

NOTES

- 1 ARCH is a legal resource centre for persons with disabilities. The intention of this article is to assist the legal community in Ontario with respect to the provision of appropriate services to clients with disabilities. It is also intended to support the equity initiatives of the Law Society of Upper Canada, and to elucidate the requirements of the *Human Rights Code*, R.S.O. 1990, c. H.19 (*Code*) and the *Rules of Professional Conduct* (Toronto: L.S.U.C., 2000) (*Rules*). The original version of this article, entitled “Accessibility of Legal Services for Disabled Persons: A Practical Guide for Legal Professionals” was written for use in the Bar Admissions Course by Sandra Goundry, then a student at ARCH, in 1988. It was rewritten and extra sections were added by Stan Delaney, then Co-ordinator of Education and Development at ARCH, in 1992, and renamed “What if Your Next Client has a Disability?” The article was again renamed and substantially revised in 2001 by Hester Ascah, a Community Legal Worker at ARCH and Harry Beatty, then Director of Research and Policy at ARCH. Further revisions were made by Bill Holder, a Staff Lawyer at ARCH, in 2002 and 2003, and by Heidi Lazar-Meyn, also a Staff Lawyer at ARCH, in 2004. The most recent revision by ARCH staff was in December 2004. Because our understanding of disability continues to evolve over time, and because the law relating to disability continues to change, this article will always be a “work in progress.” ARCH welcomes comments, criticisms, and questions regarding the provision of legal services for clients with disabilities, or on any other aspect of this article.
- 2 *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11.
- 3 *Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Montréal (City); Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Boisbriand (City)*, [2000] 1 S.C.R. 665.
- 4 *Granovsky v. Canada (Minister of Employment and Immigration)*, [2000] 1 S.C.R. 703.
- 5 *Nova Scotia (Workers' Compensation Board) v. Martin; Nova Scotia (Workers' Compensation Board) v. Laseur*, [2003] 2 S.C.R. 504.
- 6 *Ontario Disability Support Program Act, 1997*, S.O. 1997, c. 25, Schedule B.
- 7 *Code*, *supra* note 1, as amended.
- 8 Wahl, Judith. “Decision Making: The *Substitute Decisions Act, 1992*.” In Monticone, George (ed.), *Long-Term Care Facilities in Ontario: The Advocate's Manual*, 3rd ed. (Toronto: Advocacy Centre for the Elderly, 2004), at p. 7.7.
- 9 *Substitute Decisions Act, 1992*, S.O. 1992, c. 30, as amended.
- 10 *Health Care Consent Act, 1996*, S.O. 1996, c. 2, Sched. A, as amended.
- 11 *Bill 118, An Act respecting the development, implementation and enforcement of standards relating to accessibility with respect to goods, services, facilities, employment, accommodation, buildings and all other things specified in the Act for persons with disabilities*, 1st Sess., 38th Leg., Ontario, 2004.
- 12 Ontario Human Rights Commission, *Policy and Guidelines on Disability and the Duty to Accommodate* (Toronto: O.H.R.C., 2000).
- 13 *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194.
- 14 *Building Code Act, 1992*, S.O. 1992, c. 23.
- 15 *Ontarians with Disabilities Act, 2001*, S.O. 2001, c. 32.
- 16 American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders*, 4th ed. rev. (Arlington, VA: American Psychiatric Publishing, Inc., 2000).