

## COBA Conference 2008

### Session #2: Accommodating Diversity – Stakeholder Perspectives

#### Outline for session on Access to Agencies and Tribunals by People with Disabilities

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1. Experiences of people with disabilities before tribunals in Ontario. A description of what ARCH Disability Law Centre has heard from the disability community.
2. People with disabilities are diverse. Each person who has a disability is a unique individual.
3. The legal context of disability, including statutory definitions (e.g. Ontario's *Human Rights Code* and the *Accessibility for Ontarians with Disabilities Act*) and jurisprudence. Situate legal treatment in relation to the predominant model employed by disability scholars and the United Nations *Convention on the Rights of Persons with Disabilities*.
4. Because of the barriers people with disabilities experience in accessing tribunals, accommodation is often required. In the context of disability, accommodation must be individualized and respect the dignity of the person. Several players have a role to play in the accommodation process, including the tribunal members, its staff, counsel/representatives and the person with the disability.
5. The Law Society's *Rules of Professional Conduct* contain two relevant rules. These are Rule 2.02(6), Client Under a Disability and Rule 5.04 which addresses the obligation not to discriminate.
6. Practical approaches to accommodating people with disabilities and resources that can be accessed. Accommodation is often not difficult or expensive.
7. One problem of particular concern relates to people whose mental capacity is affected. This includes seniors as well as people with disabilities.

They may have difficulty understanding the hearing and/or other aspects of the process.

8. Addressing the complex problem of parties who are or may be perceived to be mentally incapable requires a multi-faceted approach. The approach should be guided by the principle of respecting the individual's autonomy as much as possible. Often, the person is able to exercise his/her ability to participate once accommodations are provided by the tribunal. Looking to substitute decision-making alternatives should be a last resort.

9. The approach tribunals should take in relation to substitute decision makers should be guided by balancing the principles of fairness and efficiency. The *Statutory Powers Procedure Act* has no specific provision to address this problem. Enabling legislation may also be silent on this issue. However, the *SPPA* does give tribunals the power to control its process and make rules governing the practice and procedure before it (s.25.0.1). These rules could be amended to address the issue of incapable parties. Much confusion would be eased by amending the *SPPA* to include specific provisions in this regard. This would necessarily require canvassing views of all those stakeholders who have expertise in and are affected by this problem.