

THE COVID-19 PANDEMIC, ACCOMMODATIONS AND LEGAL EDUCATION

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As law professors are preparing to teach remotely during COVID-19, the issue of accommodations is significant, particularly for students with disabilities. Law faculties have consistently struggled with how to appropriately accommodate students with disabilities (Lorne Sossin and Benjamin Berger, 2017; Bruce Pardy, 2017). Often, law students with disabilities have felt marginalized in the process of requesting and receiving reasonable accommodations. As a law student with a disability recently explained, “wow, it took a pandemic for me finally to receive accommodations.”

The COVID-19 pandemic challenges law professors to ensure that all of our students are accommodated. We must rise to the challenge of asking how we can alleviate student stress and how our institutional structures may impact or exacerbate mental health issues amongst law students. How do we factor in the intersectional nature of discrimination? What about those students without highspeed internet and social supports? What about those students with childcare and care-giving responsibilities? What is the appropriate pedagogy for teaching remotely? How will this impact their mental health and vulnerabilities? Will our law students ultimately be able to find jobs in the legal market when this is all over? There are so many questions. In regard to the challenges of teaching remotely and alternative modes of delivery, we, as law professors, often prioritize the following issues: grading schemes, the educational, emotional, financial and employment impacts of the pandemic on students, the pros/cons of asynchronous, synchronous and blended teaching options and the requirements that we as educators must adhere to when considering which approach we will ultimately adopt. But have we seriously contemplated the impact COVID-19 has on law students with disabilities? In this article, I highlight the barriers law students with disabilities face vis-à-vis accessing appropriate accommodations during COVID-19 and various approaches law professors and law schools can adopt to address these barriers. As a law professor and disability rights

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advocate, I use an intersectional framework drawing from the social model of disability framework, while applying the principles of equity, diversity and inclusion to legal education and institutional structures.

Recognize the Barriers and the Intersectional Nature of Discrimination

Law students with disabilities face multiple barriers in law school pre-pandemic, which are clearly exacerbated by the COVID-19 crisis (National Educational Association of Disabled Students, 2020). The process of requesting and receiving appropriate accommodations is daunting, particularly given the heightened and rigid requirements of providing medical documentation within Canadian law schools (Roxanne Mykitiuk and Tess Sheldon, 2020). Often, the primary barrier to inclusion and accessibility for law students with disabilities is attitudinal. Many students who request accommodations often feel marginalized in the process, worried about confidentiality, attaining a formal diagnosis/medical documentation and disclosing their private medical information. Specific barriers that law students with disabilities experience include “prejudice; discrimination (from peers and faculty); lack of accommodation and support; difficulty finding employment; being told that accommodations were considered to be too expensive; disclosure of disability leading to adverse treatment; being marginalized...and instances of harassment” (Law Society of British Columbia, 2001; Roxanne Mykitiuk and Tess Sheldon, 2020).

These barriers are further complicated as intersecting identity characteristics impact disability such as race, gender identity, gender expression, ethnicity, sex, sexual orientation, family status, culture and social class (Ruby Dhand, 2016). For those law students with disabilities who ultimately receive appropriate accommodations, they often face the “allegation” from other students and faculty members that they are trying to “game the system” (LSUC, 2005, pg. 40; Roxanne Mykitiuk and Tess Sheldon, 2020). Consequently, it is not surprising that many scholars have identified how the competitive law school experience exacerbates mental health issues, particularly amongst students with disabilities. As Gallacher argues “[t]here is little question that the law school experience causes many students to suffer psychological harm” (Ian Gallacher, 2010, pg. 35). The evidence regarding the high rates of depression and anxiety amongst law students and within the profession is uncontested. But, what impact

will COVID-19 have on law students with disabilities? What can we as law professors do to appropriately accommodate and provide supports for them?

We must first recognize the barriers that law students with disabilities experience and the intersectional nature of discrimination. When we are debating whether to adopt synchronous, asynchronous or blended remote learning approaches, we must ensure our materials (powerpoints, videos etc.) and exercises are accessible for students with disabilities. We should be aware of how the “digital divide” (access to the appropriate tools required for online learning) may adversely impact students with disabilities (UNESCO, 2020; National Education Association of Disabled Students, 2020).

Endorse the Social Model of Disability and the United Nations Convention on the Rights of Persons with Disabilities

Our accommodation processes, teaching and related practices should adopt the social model of disability. The Supreme Court of Canada used the social model of disability in *Granovsky v Canada* explaining: “[e]xclusion and marginalization are generally not created by the individual with disabilities but are created by the economic and social environment and, unfortunately, by the state itself” (*Granovsky v Canada*, 2000 SCC 28, para 30). This is further recognized in the *United Nations Convention on the Rights of Persons with Disabilities (Convention on the Rights of Persons with Disabilities, 2006)*. In contrast, law faculties often focus on the medical model, which defines disability as an illness that requires formal diagnosis and medical intervention (ARCH Disability Law Centre, 2013; Dianne Pothier, 1992). Consequently, accommodations are often only provided to law students on the basis of the medical model, creating “disabling” barriers for law students with disabilities. By embracing the social model of disability and recognizing that disability is socially constructed, we can create a “culture of accessibility” (Mahadeo Sukhai and Chelsea Mohler, 2017, p. 57-59; Ruby Dhand and Dipesh Prema, 2019) within legal education during the COVID-19 pandemic and for the future.

Integrate Empathy as a Core Lawyering Skill

We cannot ignore how law students' existing vulnerabilities along with systemic, procedural and attitudinal barriers to inclusion impact law students with disabilities during COVID-19. We must strive to understand the impact of ableism and injustice within legal education. We have an obligation to challenge our own beliefs, values and attitudes. In the context of COVID-19, we should remind ourselves that some law students are more vulnerable than others because of their existing disabilities and other social factors. Some law students are sick with COVID-19; some are immunocompromised and have to take additional precautions to protect themselves; some are experiencing mental distress; some require home care and some are caring for family members and friends with COVID-19. Many of our students are worried about the future job market prospects. *We have to listen and show empathy.* As Henderson suggests, empathy is a "form of understanding, a phenomenon that encompasses affect as well as cognition in determining meanings; it is a rich source of knowledge and approaches to legal problems - which are, ultimately, *human problems*" (Lynne Henderson, 1987). Pre-pandemic course and accommodation processes implementing the duty to accommodate pursuant to human rights legislation should be modified and flexible to ensure accessibility, particularly in regard to medical documentation. The process of receiving appropriate accommodations for law students with disabilities should not be stressful or arduous.

Students with disabilities must be involved in the conversations regarding online teaching, alternative delivery options and accommodations; their voices should be heard and prioritized. As COVID-19 evolves and unprecedented changes occur, the timeline for when Canadian law faculties will resume to face-to-face classes is still unclear. Law faculties need to be accountable to ensure that the delivery of teaching is accessible, additional supports are available for students with disabilities and accommodation processes are inclusive and accessible. During COVID-19, we should critically analyze how we can offer law students accommodations and supports appropriately with multiple options such as extra time allowances; alternative formats of exam and assignments content; adjusted start times; take home-exams; mentorship and flexible course load requirements.

Embrace Human Rights and Provide Support

We need to critically examine how the rapid rise of infection rates during COVID-19 will continue to impact the mental health of all of our students, and particularly those with disabilities. We cannot ignore the fact that those with lived experience of disability will “worry that priorities or the way access criteria are interpreted and applied, whether deliberately or through oversight, will put people with disabilities at or near the bottom of the priority list for care” (Roxanne Mykitiuk and Trudo Lemmens, 2020). We must raise these significant human rights and access to justice issues within our virtual classrooms. As lawyers, we have an obligation to require governments to be accountable and affirm the human rights of people with disabilities during COVID-19 (Roxanne Mykitiuk and Trudo Lemmens, 2020; ARCH Disability Law Centre, 2020).

For law students with disabilities in COVID-19, the anxieties and fears of not being a “priority” for access to health care transcend to legal education. It is without a doubt that law students with disabilities often fear asking for accommodations and, therefore, do not request them during law school and beyond in articling or job placements. We must support our law students to ask for accommodations and find ways (formal and informal) to support them to receive appropriate accommodations, through individualized and systemic measures. This is essential. Our crisis planning needs to prioritize the voices of law students with disabilities. We must also analyze and identify the unique transmission risks and develop appropriate and equitable responses for law students with disabilities to resume face-to-face classes, along with their peers.

Conclusion

The pandemic has significant implications for the future of legal education and the legal profession. COVID-19 is disproportionately impacting our students with disabilities and their voices must be heard. We cannot entrench more inequities for law students with disabilities. Instead, our choices and support can impact their access to an equitable education, mental health and quality of life. By recognizing how law students experience disabling and intersecting barriers to accessibility during COVID-19, we can embrace the social model of disability in our approach to providing accommodations and teaching. We must adopt an empathetic approach to providing accommodations for law students with disabilities and prioritize the voices of students with disabilities in our

crisis planning. Now is the time for us to create transformative changes to increase accessibility, diversity, inclusion, and equity in legal education and the profession.