

UNIVERSAL DESIGN IN LEGAL EDUCATION IN A TIME OF COVID-19

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Introduction

When the University of Ottawa announced on March 13, 2020 that it would no longer be offering courses in person because of the COVID-19 outbreak, the Common Law Section of the Faculty of Law promptly struck an *ad hoc* committee of tech savvy professors (or in my case, an aspiring tech savvy professor) to support colleagues who were less familiar with online learning tools. From the outset, the committee was chiefly concerned with how the transition to distance learning would impact our students who already faced challenges in their studies. The members of the committee worried about students who would have to finish their classes with young children at home, about the unique and heightened barriers faced by those with learning disabilities, about those who experienced significant anxiety and those who did not have laptops, adequate workspaces for learning or fast internet connections because of their financial situation. With these students in mind, we swiftly developed what turned out to be a fairly comprehensive guide for our colleagues in French and English regarding various distance learning tools and strategies. When we reached out to professors to offer our assistance, even those who had always relied exclusively on conventional teaching and evaluation methods echoed our concerns. Later, when another committee was created to provide guidelines on final evaluations, it urged professors to offer students an alternative to three hour final exams. It was recognised by nearly everyone that this would be not be a fair or effective way to evaluate students in light of the circumstances. Just like that, universal design seemed to have become a common value shared by nearly everyone at the Faculty and I was absolutely overjoyed about it.

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Part I - What is Universal Design

Universal design is a concept that originated in architecture that means “designing products and environments to be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design”². It is inspired by the “social model” of disablement that advances the view that disability-related limitations or exclusions are caused not by biomedical conditions but by environmental, attitudinal, communication and organisational barriers related to disabilities and disabled people.³ In the context of education, universal design means considering “the differences between students and differences that characterize groups of individuals when making design choices to avoid creating barriers”⁴. It requires adapting one’s teaching, educational activities, assessments and evaluation methods to different learning styles, skills, abilities and circumstances. The approach aims to give every student a fair opportunity to succeed in his or her own unique way.

Most law classes before the pandemic did not adopt universal design. Lengthy class lectures with little student engagement have been shown to create barriers to learning for students with attention disorders, mental health issues and certain learning disabilities. In fact, these types of lectures are even ineffective for students without disabilities. Most detrimentally, high stakes three-hour written exams pose significant challenges for various students including those with children, those with mental health issues, and those with learning disabilities. All of this is confirmed by research. But we professors also know this to be true because we are inundated with requests for accommodation from students. Critical disability scholars who subscribe to the social model of disablement would contend that the significant number of students seeking accommodation in law schools says little about these students and more about the norms and standards to which they are being held. In fact, they would claim that this is a telltale sign of ableism.

Accommodation practices in law faculties are often touted as evidence that we take the removal of barriers to education seriously. This is not the

2 Ronald L. Mace, Graeme J. Hardie, Jaine P. Place, “Accessible Environments: Towards Universal Design” in W.E. Preiser, J.C. Vischer, and E.T. White, eds, “Design Intervention: Toward a More Humane Architecture,” (New York: Van Nostrand Reinhold, 1991) at 195.

3 Michael Oliver and Colin Barnes. *The New Politics of Disablement*. (Basingstoke: Palgrave Macmillan, 2004) at 22.

4 Ontario Human Rights Commission, “Guidelines on Accessible Education” (28 September 2004) at 12, online : Ontario Human Rights Commission http://www.ohrc.on.ca/sites/default/files/Guidelines%20on%20accessible%20education_2004_0.pdf12

case. Accommodation should always be viewed as a Plan B when it comes to equality and inclusion. Plan A is universal design. When the needs and circumstances of a variety of students are considered from the get-go, accommodation is often not required. In addition to being a more inclusive way of teaching and evaluating law students, universal design is also actually more reflective of the panoply of skills required to succeed in the smorgasbord of career paths available to jurists. Some of our graduates are in court every day and rely nearly exclusively on oral advocacy to advance their clients' interests. Others spend months, if not years combing through the minute details of international trades deals. For some, the work of a jurist is one of solitude, while others always work in large teams. As educators, we ought to strive to provide educational activities and evaluation methods that allow each student to discover what career path will be more suitable for them and showcase their personal strengths.

What baffles me the most is that conventional teaching and evaluation methods in law schools are not actually reflective of the requirements of our profession. They do not reflect how students will acquire and convey their knowledge once they become lawyers. Clients do not spontaneously walk into lawyers' offices, present them with complicated fact patterns and ask them to mechanically emit all of the possible legal causes of actions relating exclusively to solely one area of law. Even if this situation were to occur, it would be irresponsible for a lawyer to attempt to provide an answer in three hours based solely only on their existing knowledge without conducting further research or consulting other colleagues as required. Moreover, legal practice requires other important skills, such as problem-solving, listening, empathy, conflict resolution, negotiation, advocacy, which are not taught or examined in the traditional lecture/exam model of law school. This makes conventional teaching practices and evaluations methods that are known to adversely impact certain groups of students indefensible from a human rights perspective. Canadian human rights case law recognises that once a norm or standard is proven to have a disproportionate impact on a group protected in the legislation, it must be shown that it was established with a purpose that is rationally connected to a legitimate objective. When this is not the case, the norm or standard in question must be eliminated.⁵

⁵ *British Columbia (Public Service Employee Relations Commission) v. BCGSEU*, [1999] 3 SCR 3, para 54.

Part II - Giving everyone an equal chance to succeed

I saw first-hand the devastating impact that widespread failure to adopt universal design in law school education can have on certain students. During my time working as the Director of the French-language Law Practice Program, I had the great privilege of crossing paths with over fifty individuals who had graduated from law school and who, for various reasons, did not or could not pursue the conventional path of articling. Many of them faced multiple barriers that prevented them from having an equal chance to excel in law school classes that adopted traditional teaching styles and with high stakes exams. One of them, who came to Canada as a refugee, studied law as a mature student while working night shifts at McDonald's in order to provide for his three children. Two of them were autistic. He explained to me that he often did not perform well during exams, particularly when they were scheduled in the morning when he would not have time to rest after finishing his shift. I sympathized with him. Though I did well on exams when I was in law school, I didn't have children at the time. Any law student with a toddler knows that they are just one midnight bed wetting away from being transformed into a headless zombie in the morning destined to drastically underperform in an exam.

Despite his variegated law school transcript, this individual did wonderfully in both the practice and training component of the Law Practice Program. He had a knack for explaining the law in an accessible manner. He was kind and compassionate with his coworkers and supervisors and was gifted at resolving interpersonal disputes. His ability to weigh strategic considerations and real world context when approaching a legal problem was masterful. He was just one of the many other very capable individuals who took part in the Law Practice Program whose true talents often went unseen in conventional law school classes. These individuals have gone on to work for government, in prestigious law firms, community legal clinics and non-for-profit organisations. I am incredibly proud to have played a small part in helping them to find their place in the legal community. Access to justice is better served and the legal profession is enriched because these individuals with diverse backgrounds, abilities, and life experiences are now lawyers.

As a human rights lawyer, inclusion and equality have always been values very close to my heart. They are also important to me because of my own

lived experience. More than a decade after finishing law school, I learned I was dyslexic. I had always experienced challenges in reading and writing. It was never about content but about form. While in university and in the workplace, I attributed my frequent typos and lack of attention to detail to my background. I am the first and only child in my family to finish high school, let alone go to university. I figured I made these errors because I simply did not have the same strong genetic predispositions as my classmates and colleagues who seemed naturally more skilled than me because their parents were mostly professionals.

I got tested in my late thirties. After telling me I had severe dyslexia, the person who had administered the test asked me what I did for a living. She laughed in disbelief when I told her I was a lawyer. After all, writing and reading is what we are paid to do. She was even more shocked when I told her I completed graduate studies at Oxford. Fortunately for me, such attitudinal barriers did not prevent me from achieving the goals I set out for myself because I did not know I was dyslexic. Perhaps if I had known all along that I was dyslexic, I would have believed the commonly held stereotype that people like me cannot become lawyers or academics. Yet, until now, I have rarely disclosed to others around me that I am dyslexic. It is telling that I would rather people perceive me as careless in my work than disabled.

Looking back, I now realise that I had universal designed my own career without even knowing it. I have always loved working in a team and I have intuitively gravitated toward collaborating with remarkably patient and meticulous lawyers who selflessly detect my frequent errors. I am particularly grateful for the generosity and compassion of members of the Caring Society legal team and staff.⁶ These individuals have supported me not because human rights legislation requires them to but because each member of the team is deeply respectful of the skill set that each member brings to the table. We share our work based on each team member's skills, interests, availability and other obligations such as child care. People with dyslexia are often creative and big picture thinkers. I like to think that these strengths helped me contribute to some of the original arguments we developed that were adopted by the Canadian Human Rights Tribunal in its historic decisions affirming the equality rights of First

⁶ The author thanks in particular David Taylor, Sarah Clarke, Barbara McIsaac, Dr. Cindy Blackstock, Andrea Auger, Robin McLeod-Shabogiesic, Spenser Chalmers and the entire Caring Society team as well as Justice Sébastien Grammond prior to his appointment to the bench.

Nations children. In other words, I think I have been able to contribute not *in spite of* my disability but *because of* it.

Since July 2019, I have had the great privilege to join the Programme de common law en français at the University of Ottawa. I am frankly awestruck by the beautiful mosaic of talent at the faculty. My colleagues are nationally recognised television personalities, international human rights advocates, grass-roots anti-poverty activists, dedicated pedagogues, Indigenous leaders and community organisers. If there is one profession that adopts universal design par excellence, it is academia. Indeed, two weeks before the lockdown, both my daughters were sick. Though our productivity was impacted, my partner (who is also a professor) and I were able to seamlessly adjust our work schedules without making a formal request for accommodation to our employer. I am deeply grateful for the inherent flexibility in our jobs that allows each one of us to define our own success based on our interests and strengths in a way that adapts to our individual circumstances. I hope I will never ever take this for granted. Each academic is able to thrive in their own unique way. It's time for us to also seek to provide this opportunity to our students.

Conclusion – Build back better

In early May 2020, the University of Ottawa announced that all of the courses in the fall 2020 would be offered online. As professors, we have no choice but to break from the past. At the same time, we are being propelled to make deliberate decisions about our pedagogy. We too can build back better after the pandemic.

The good news is that online platforms already available in most law schools lend themselves well to teaching and evaluating students with various learning styles and in different circumstances. In fact, they were designed precisely with this objective in mind. We can transfer knowledge and engage students through videos, texts and audio. We can intentionally design assessment and evaluation methods that aim to reduce some of the barriers that can come with online learning. We can establish flexible schedules and seek to measure the wide range of skills it takes to succeed as jurists. This will make us better educators to all of our students. Indeed, disability advocates have been telling us this for decades: universal design does not just benefit people with disabilities. It benefits everyone. A parent with a baby in a stroller can easily navigate

through a wheel-chair accessible building. Likewise, research shows that even the most attentive students tune out after more than fifteen minutes of passive online content. Adopting universal design in our classes moving forward will provide each of our students with a fair opportunity to shine at a time where all of us need more light in our lives.⁷

⁷ For more tips on designing an accessible course, visit CAST, online (last visited on 1 June 2020) : <http://www.cast.org/our-work/about-udl.html#.XtUx2C97QdU>