

Inclusive Education: Opportunities for Re-Design

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1. Introduction

Recent developments in international law and Canadian education policy have affirmed Canada's commitment to inclusive education. Canada has ratified the United Nations *Convention on the Rights of Persons with Disabilities* ("CRPD"),¹ thereby binding itself to fulfill the obligations set out in the treaty. One such obligation is article 24, which recognizes the right of people with disabilities to education and obligates States Parties to provide inclusive education systems. The objective of inclusive education, as articulated in the CRPD, is reflected in Canadian domestic laws, such as Ontario's *Human Rights Code* ("Code")² and other provincial human rights statutes. In addition, recent Ontario education policy has articulated Ministerial expectations regarding inclusive education.³

Despite these developments, inclusive education in Canada, and in Ontario, continues to be a source of tension among stakeholders in the delivery of public education services. At the root of these tensions are debates regarding the interpretation of individual versus collective rights, limited funding and resource allocation, collective agreements, disciplinary measures, and what constitutes appropriate accommodation. The very definition of inclusive education and how it is implemented can, in and of itself, be a great source of tension.

One factor that contributes to the persistence of these and other tensions

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¹ UN GAOR, 61st Sess., 76th Mtg., UN Doc. GA/10554 (2006), online: United Nations Enable <<http://www.un.org/disabilities/documents/convention/convoptprot-e.pdf>>.

² *Human Rights Code*, R.S.O. 1990, c. H.19.

³ Ontario Ministry of Education, *Policy/Program Memorandum No. 119, Developing and implementing equity and inclusive education policies in Ontario schools*, 24 June 2009 ("PPM 119"), online: Ontario Ministry of Education <<http://www.edu.gov.on.ca/extra/eng/ppm/119.html>>.

is that much of the discussion regarding inclusive education and the accommodation of students with disabilities occurs within a framework of services that are already available. Education experts who make decisions regarding which education setting a student will be placed in and what educational resources will be provided to that student do so by considering the range of existing services and resources. Rarely does this assessment include an examination of the education system as a whole, with a view to creating more inclusive school environments that are readily accessible to students with disabilities.⁴

Universal design offers an alternative approach, which focuses on ensuring that education systems are inclusive and accessible at the outset, without the need for after-the-fact modification. Instead of confining discussions about inclusive education to existing services, resources and procedures, a universal design approach to education asks how education systems and structures can be adapted to meet the needs of the broadest possible community of learners. The approach is not bound by the status quo; rather new possibilities for inclusive education can be imagined. Employing a universal design approach can assist in developing a framework for the delivery of education services that facilitates and promotes inclusive school cultures. Such a framework may well address many of the tensions that surround inclusive education in Canada.

In this paper we discuss universal design as an emerging international legal obligation and as a mechanism for achieving and implementing inclusive education. In the international law context, we consider the *CRPD* and the implications of Canada's ratification of the treaty for inclusive education. Next we discuss universal design as a concept and provide examples of the ways in which it has been applied to education. Finally, we outline the *Accessibility for Ontarians with Disabilities Act* ("AODA"),⁵ Ontario's accessibility legislation, and discuss the role it can play in enhancing the implementation of inclusive

⁴ A. Wayne MacKay & Janet Burt-Gerrans, "Inclusion and Diversity in Education: Legal Accomplishments and Prospects for the Future" (Paper presented to the Canadian Association for Community Living National Conference, November 3-5, 2002) [unpublished] at 4, 5.

⁵ S.O. 2005, c. 11.

education. We suggest that adopting a universal design approach to the AODA obligations can facilitate the creation of inclusive school cultures.

2. Inclusive Education: Canada and the International Community

2.1 Inclusive Education as a Commitment in the *CRPD*

On December 13, 2006 the United Nations adopted the *CRPD* and its *Optional Protocol*.⁶ The *CRPD* opened for signature on March 30, 2007 and received the highest number of signatories to a U.N. convention in history on its opening day.⁷

Article 24 of the *CRPD* provides for the right to education for people with disabilities and states that:

States Parties recognize the right of persons with disabilities to education.

With a view to realizing this right without discrimination and on the basis of equal opportunity States Parties shall ensure an inclusive education system at all levels and lifelong learning directed to:

- a) The full development of human potential and sense of dignity and self-worth, and the strengthening of respect for human rights, fundamental freedoms and human diversity.
- b) The development by persons with disabilities of their personality, talents and creativity, as well as their mental and physical abilities, to their fullest potential.
- c) Enabling persons with disabilities to participate effectively in a free society.⁸

Part 2 of article 24 requires States Parties to ensure that children with disabilities are not excluded from public primary or secondary education on the basis of disability; that children with disabilities have equal access to inclusive,

⁶ *CRPD*, *supra* note 1; United Nations General Assembly, News Release/Communiqué, "General Assembly Adopts Groundbreaking Convention, Optional Protocol on rights of Persons with Disabilities" (13 December 2006), online: United Nations <<http://www.un.org/News/Press/docs/2006/ga10554.doc.htm>>.

⁷ United Nations Enable, "Timeline of Convention Events", online: United Nations Enable <<http://www.un.org/disabilities/default.asp?navid=22&pid=153>>.

⁸ *CRPD*, *supra* note 1, art. 24.

quality and free primary education; that support required to facilitate effective education is provided; and that effective individualized support measures that will maximize the academic and social development of children with disabilities are implemented. Significantly, article 24(2) establishes that the goal of these provisions of the *CRPD* is “full inclusion”.⁹

Debates surrounding the development of the *CRPD*, and article 24 in particular, provide much insight into the meaning of inclusive education as envisioned by Canada, other country delegations, and non-governmental organizations (“NGOs”) that participated in the drafting of the *CRPD*.¹⁰ In May 2004, during the third session of debates, states and NGOs discussed the issue of whether inclusive education, as a goal and obligation in the *CRPD*, should include “special” education for students with disabilities outside the general education system. Canada did not support this definition of inclusion, arguing instead that “...every child should be included in an education system that meets his or her individual needs, optimizing the opportunity to learn and be included in a supportive education system.”¹¹

During the seventh session of debates one of the issues discussed was the use of a qualifier in the draft article on education. The draft article stated that inclusive education must be provided “to the extent possible”. This wording was supported by countries who felt that making general education systems inclusive would be too onerous an obligation for some nations. Canada was strongly opposed to the qualifier, and instead proposed that the qualifier be omitted and the article read: “... persons with disabilities can access inclusive, quality, free

⁹ *Ibid.*, art. 24(2).

¹⁰ By General Assembly resolution 56/168, the United Nations established the Ad Hoc Committee on a Comprehensive and Integral International Convention on Protection and Promotion of the Rights and Dignity of Persons with Disabilities. This Committee was charged with drafting what became the *CRPD*. The resolution also invited states and non-governmental organizations who were not members of the Committee to make submissions on the Committee’s work.

Comprehensive and integral international convention to promote and protect the rights and dignity of persons with disabilities, GA Res. 56/168, UN GAOR, 56th Sess., UN Doc. A/56/PV.88 (2001), online: United Nations <<http://www.un.org/esa/socdev/enable/disA56168e1.htm>>.

¹¹ Ad Hoc Committee on a Comprehensive and Integral International Convention on Protection and Promotion of the Rights and Dignity of Persons with Disabilities, 3^d Sess., vol. 4, no. 5, Daily summary of discussions related to Article 17: Education, UN Convention on the Rights of People with Disabilities (2004) 4, online: United Nations Enable <<http://www.un.org/esa/socdev/enable/rights/ahc3sum17.htm>>.

primary and secondary education on an equal basis with others”.¹² To address the concerns regarding the burden of creating an inclusive general education system, Canada proposed that a subparagraph of the draft article read: “... States Parties shall ensure that effective individualized support measures are provided in environments which maximise academic and social development, consistent with the goal of full inclusion.”¹³ Several countries and many NGOs supported Canada’s proposal.¹⁴ Ultimately, Canada’s proposals were accepted and the qualifier “to the extent possible” was omitted from the final article. Paragraph 2(b) of article 24 enshrines the right to inclusive education without any of the qualifications sought by some country delegations and NGOs, suggesting that inclusive education in the *CRPD* has the meaning ascribed to it by those who advocated for an unqualified right to education for students with disabilities in the general education system. Canada played a significant role in the debates surrounding article 24, demonstrating a strong and definitive commitment at the international level to inclusive education and the inclusion of students with disabilities in regular classes.

In 2007, after the adoption of the *CRPD*, *A Handbook for Parliamentarians on the Convention on the Rights of Persons with Disabilities* (“Handbook”) was disseminated by the U.N. Department of Economic and Social Affairs, the Office of the United Nations Commissioner for Human Rights, and the Inter-Parliamentary Union. The Handbook provides guidance for politicians to encourage and facilitate the implementation of rights contained in the *CRPD*. Chapter Six of the Handbook specifically addresses the right to inclusive education, incorporating the meaning of inclusive education discussed above. It

¹² Ad Hoc Committee on a Comprehensive and Integral International Convention on Protection and Promotion of the Rights and Dignity of Persons with Disabilities, 7th Sess., Contributions by Governments: Canada (2006), online: United Nations Enable <<http://www.un.org/esa/socdev/enable/rights/ahc7canada.htm>>.

¹³ *Ibid.*

¹⁴ Ad Hoc Committee on a Comprehensive and Integral International Convention on Protection and Promotion of the Rights and Dignity of Persons with Disabilities, 7th Sess., vol. 8, no. 7, Daily summary of discussion at the seventh session (2006) online: United Nations Enable <<http://www.un.org/esa/socdev/enable/rights/ahc7sum24jan.htm>>.

identifies the rationale for the approach to education put forward in the *CRPD* as being:

...based on a growing body of evidence that shows that inclusive education not only provides the best educational environment, including for children with intellectual disabilities, but also helps to break down barriers and challenge stereotypes. This approach helps to create a society that readily accepts and embraces disability, instead of fearing it. When children with and without disabilities grow up together and learn, side by side, in the same school, they develop a greater understanding and respect for each other.¹⁵

In addition to article 24, there are other provisions of the *CRPD* that relate to education. These articles not only place additional obligations on States Parties with respect to education, but also provide helpful context for understanding the intent and objectives underlying article 24. For example, the Preamble to the *CRPD* recognizes the importance of access to education in enabling people with disabilities to fully enjoy all human rights and fundamental freedoms.¹⁶ In addition, article 8 obligates States Parties to adopt immediate, effective and appropriate measures to raise awareness throughout society, foster respect for the rights and dignity of people with disabilities, and combat stigma and stereotypes. Towards this end, States Parties commit to fostering an attitude of respect for the rights of people with disabilities at all levels of the education system and for all children.

These links between inclusive education, awareness-raising and full enjoyment of human rights demonstrate an understanding that providing rights and entitlements to individuals with disabilities is necessary but not sufficient to achieve the goal of full inclusion. Rather, States have the additional responsibility of creating conditions in which all citizens, whether disabled or able-bodied, are taught to value, respect and uphold the rights of people with disabilities.

Recognizing the important role schools play in socialization and citizenship

¹⁵ UN, *From Exclusion to Equality: Realizing the Rights of Persons with Disabilities, Handbook for Parliamentarians on the Convention on the Rights of Persons with Disabilities and its Optional Protocol*, (Geneva: UN, 2007) at 82-83, online: United Nations Enable <<http://www.un.org/disabilities/documents/toolaction/ipuhb.pdf>>.

¹⁶ *CRPD*, *supra* note 1 at (v). Part (v) of the Preamble to the Convention recognizes the importance of accessibility to physical, social, economic, cultural environment, health and education, information and communication.

building, the *CRPD* directs that such education and awareness-raising must occur in a pro-active manner, at all levels of the education system, so as to foster an inclusive, respectful society.

The *CRPD* articulates a global understanding and vision of inclusive education. Building on previous international commitments to inclusive education, such as the Salamanca Statement,¹⁷ the *CRPD* provides a framework of goals and obligations for States Parties. This framework demonstrates clear and unconditional consensus from the international community on inclusive education. Article 24 also represents great progress in consensus-building within the global disability community. Inclusion International, a world-wide federation of family-based organizations advocating for the human rights of people with intellectual disabilities, reported, “(i)nclusive education has long been a contentious issue for the disability community. The negotiation process provided an opportunity to craft a common position on inclusive education.”¹⁸ This stronger support for inclusive education, globally, domestically, and within the disability community, coupled with the adoption of a clearer framework for inclusive education, may assist in shifting debates about education away from ideology and into the realm of the practical. Such a shift may very well play a role in reducing some of the tensions experienced at the micro level by students with disabilities.

2.2 Ratifying the *CRPD*: Implications for Canada

Canada signed the *CRPD* on March 30, 2007 and ratified it on March 11, 2010.^{19 20} By ratifying the *CRPD*, Canada bound itself to the treaty and assumed

¹⁷ United Nations Educational, Scientific and Cultural Organization, *The Salamanca Statement and Framework for Action on Special Needs Education*, (Salamanca, Spain: UNESCO, 1994), online: UNESCO <http://www.unesco.org/education/pdf/SALAMA_E.PDF>.

¹⁸ Inclusion International, *Better Education for All: When We're Included Too*, (Spain: 2009) at 38, online: Inclusion International <http://www.inclusion-international.org/site_uploads/File/Better%20Education%20for%20All_Global%20Report_October%202009.pdf>.

¹⁹ United Nations, online: United Nations Treaty Collection <http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-15&chapter=4&lang=en#EndDec>

²⁰ *Ibid.* Canada made the following declaration and reservation upon ratification:

the responsibility of ensuring that its obligations under the treaty are respected.²¹ Ratification of the *CRPD* was, therefore, a significant step in confirming Canada's commitment to the principles and obligations set out in the *CRPD*, namely to promote, protect and ensure the full enjoyment of human rights by people with disabilities. In particular, ratification demonstrates Canada's commitment to the goal of full inclusion for students with disabilities, as articulated in article 24 of the *CRPD*.

In Canada the usual method of implementing international human rights treaties is to rely on existing Canadian legislation and policies.²² Often Canada ratifies international human rights treaties after it has determined that existing legislation, policies and programs conform and comply with the principles and obligations set out in the international treaty. Federal government officials examine the provisions of a given treaty and determine whether existing federal laws and policies already conform to the treaty obligations. A similar review is conducted at the provincial and territorial level. Before ratifying a treaty the federal government seeks formal support from the provinces and territories. Typically, no new legislation is enacted to specifically implement the treaty into Canadian domestic law. In circumstances where new federal, provincial or

Canada recognises that persons with disabilities are presumed to have legal capacity on an equal basis with others in all aspects of their lives. Canada declares its understanding that Article 12 permits supported and substitute decision-making arrangements in appropriate circumstances and in accordance with the law.

To the extent Article 12 may be interpreted as requiring the elimination of all substitute decision-making arrangements, Canada reserves the right to continue their use in appropriate circumstances and subject to appropriate and effective safeguards. With respect to Article 12 (4), Canada reserves the right not to subject all such measures to regular review by an independent authority, where such measures are already subject to review or appeal.

Canada interprets Article 33 (2) as accommodating the situation of federal states where the implementation of the Convention will occur at more than one level of government and through a variety of mechanisms, including existing ones.

²¹ Armand de Mestral & Evan Fox-Decent, "Rethinking the Relationship Between International and Domestic Law" (2008) 53 McGill L.J. 573 at para. 48.

²² Canada employs a "dualist" model, meaning that once a treaty has been signed and ratified by the federal executive it still requires incorporation into domestic law to be enforceable at the national level. Due to the nature of Canadian federalism, responsibility for implementing the *CRPD* falls to both the federal and provincial/ territorial governments. The federal government can legislate to implement the *CRPD* in areas that fall within federal jurisdiction, but cannot do so in areas within provincial/territorial jurisdiction. Human rights obligations with respect to education fall squarely within provincial and territorial jurisdiction. It is, therefore, provincial and territorial governments that have the legal authority to create new laws or policies to implement the obligations relating to education as set out in the *CRPD*.

territorial legislation is required, such new legislation will be passed prior to ratification.²³

This appears to be the approach being taken with respect to the *CRPD*. Between signing the *CRPD* in March 2007 and ratifying it two years later, the federal government sought the views of the provinces and territories on the extent to which provincial and territorial laws conform to the *CRPD*.²⁴ Upon ratifying the *CRPD* the federal government announced that it had done so with the full support of the provincial and territorial governments. Rob Nicholson, Minister of Justice and Attorney General of Canada, stated that upon ratification, the *CRPD* will complement domestic laws.²⁵

If this is indeed the approach being taken to the *CRPD*, it is significant, as it signals Canada's position that the *CRPD* was ratified on the basis that existing Canadian law and policy conforms to and complies with the treaty. This includes law and policy on inclusive education, indicating that the Canadian government's view is that these laws and policies are already consistent with article 24. To date no new legislation has been enacted to implement the *CRPD* into Canadian domestic law, and based on the approach being taken, it appears unlikely that new legislation will be enacted in the future. On the one hand this may be construed to mean that Canada's ratification of the *CRPD* is unlikely to result in large-scale changes or improvements in accessibility and inclusion for Canadians with disabilities.

However, if it is presumed that Canadian domestic law complies with the *CRPD* it follows that domestic law should be interpreted and implemented in

²³ de Mestral, *supra* note 14 at para. 48, 49; See also Canada, Parliament, "Canada's Approach to the Treaty-Making Process" by Laura Barnett, Legal and Legislative Affairs Division, PRB 08-45E (24 November 2008).

²⁴ Foreign Affairs and International Trade Canada, News Release, No. 368, "Government of Canada Tables Convention on Rights of Persons with Disabilities" (3 December 2009), online: Foreign Affairs and International Trade Canada <<http://www.international.gc.ca/media/aff/news-communicues/2009/368.aspx?lang=eng>>.

²⁵ Foreign Affairs and International Trade Canada, News Release, No. 99, "Canada Ratifies UN Convention on the Rights of Persons with Disabilities" (11 March 2010), online: Foreign Affairs and International Trade Canada <<http://www.international.gc.ca/media/aff/news-communicues/2010/99.aspx?lang=eng>>.

accordance with the international obligations contained in the treaty.²⁶ In the education context, this implies that relevant provincial legislation, including education laws, human rights laws, occupational health and safety laws and others, should be interpreted and applied in a manner that is consistent with the article 24 obligation of ensuring an inclusive education system. The fact that education falls within provincial and territorial jurisdiction does not detract from this implication, since the federal government ratified the *CRPD* after consulting with and receiving full support from provincial and territorial governments. States who ratify the *CRPD* bind themselves to an inclusive education system, an objective that is clearly articulated in the treaty. It follows that provincial and territorial governments, administrators, policy makers, school boards, educators and others should all be guided by the principles contained in the *CRPD* when developing education systems, and when interpreting and applying legislation that governs the delivery of education services.

In addition to ensuring that the *CRPD* is used as the guide to interpreting domestic legislation, ratification may also result in administrative and/or policy changes within Canada. Article 31 requires States Parties to collect statistics and data to enable the state to formulate and implement policies to give effect to the obligations in the *CRPD*, assess the implementation of the *CRPD* obligations, and identify and address barriers faced by people with disabilities in exercising their rights.²⁷ Article 33 requires States Parties to establish a national implementation and monitoring body specific to the *CRPD*.²⁸ States must consider establishing a coordinating mechanism within government to facilitate action at various levels of government and across various sectors. Such a coordinating mechanism may be particularly helpful with respect to education services in Canada, as it could prompt provincial and territorial governments to take steps to ensure that provincial and territorial education laws, policies and

²⁶ Elisabeth Eid & Hoori Hamboyan, "Implementation by Canada of its International Human Rights Treaty Obligations: Making Sense out of the Nonsensical" in Oonagh E. Fitzgerald *et al.* eds., *The Globalized Rule of Law: Relationships between International and Domestic Law* (Toronto: Irwin Law, 2006) at ch. 13.

²⁷ *Supra* note 1, art. 31.

²⁸ *Ibid.*, art. 33.

practices conform to article 24 and other obligations in the *CRPD*. Article 35 requires States Parties to submit a comprehensive report on measures taken to give effect to the obligations in the *CRPD*.²⁹ Reports are to be submitted to a Committee on the Rights of Persons with Disabilities, which is composed of members elected by States Parties to the Treaty.³⁰ The Committee will make suggestions and recommendations on the report, and may require the state to provide additional information on measures taken to implement the *CRPD* obligations. The Committee reports every two years to the U.N. General Assembly and the Economic and Social Council.^{31 32}

3. Inclusive Education and Universal Design

3.1 The *CRPD* adopts Universal Design

Canada has committed to creating an inclusive education system, both at the international level and by ratification at the domestic level. However, the issue regarding what steps must be taken to implement and achieve this objective remains. The *CRPD* provides some specifics on the ways in which some of the goals of inclusive education can be realized. For example, article 24(4) requires States Parties to employ teachers who are qualified in sign language and/or Braille and to train educators on disability awareness and the use of appropriate augmentative and alternative modes of communication, educational techniques and materials to support students with disabilities.³³ However, additional tools, such as universal design, are needed in order to facilitate compliance with article 24.

²⁹ *Ibid.*, art. 35.

³⁰ *Ibid.*, art. 34.

³¹ *Ibid.*, art. 36.

³² The Optional Protocol to the *CRPD* provides a mechanism for individuals and groups, who have exhausted all domestic avenues of redress, to have claims of discrimination considered by the Committee on the Rights of Persons with Disabilities. This mechanism may prove to be of significance in ensuring that rights provided for by the *CRPD* are not violated. However Canada is not a signatory to the Optional Protocol, and therefore international redress for violations of the *CRPD* is not available to Canadians.

³³ *CRPD*, *supra* note 1, art. 24(4).

The *CRPD* expressly incorporates universal design, and defines this concept as:

...the design of products, environments, programmes and services to be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design. “Universal design” shall not exclude assistive devices for particular groups of persons with disabilities where this is needed.³⁴

One of the general obligations that States Parties who sign the *CRPD* undertake is to conduct or promote research and development of universally designed goods, services, equipment and facilities “... which should require the minimum possible adaptation and the least cost to meet the specific needs of a person with disabilities, to promote their availability and use, and to promote universal design in the development of standards and guidelines.”³⁵

While universal design is not mentioned explicitly in relation to article 24, it is evident that the overall approach of the *CRPD* draws on principles of universal design. Article 3 of the *CRPD* lays out the principles that apply to all of the articles in the treaty. These principles include equality of opportunity, accessibility, and full and effective participation and inclusion in society.³⁶ These same principles are reflected in the concept of universal design. Universal design emphasizes equitable use and the goal of fostering inclusion and social participation for diverse populations by maximizing accessibility.

The inclusion of universal design in the *CRPD*'s general obligations and the *CRPD*'s broad application of universal design to goods, services, equipment, facilities, standards and guidelines demonstrates an intention that universal design be applied widely and in tandem with other, more specific obligations in the *CRPD*, including article 24. Universal design can be viewed as a vehicle to achieving the many goals outlined in the *CRPD*, including inclusive education.

³⁴ *Ibid.*, art. 2.

³⁵ *Ibid.*, art. 4(f)

³⁶ *Ibid.*, arts. 3 (c), (e), (f).

3.2 What is Universal Design?

Universal design is a proactive approach towards ensuring that services, products and environments are accessible and usable by the broadest possible community without the need for specialized adaptations, additional modifications or after-the-fact redesign. It is a process that puts high priority on diversity and inclusiveness. As a concept, universal design is not specific to disability issues, but nonetheless addresses accessibility for people with various disabilities, including physical, vision, hearing, speech and cognitive disabilities.

Universal design reflects a focus on ensuring that the environment is equally available, appealing and useful to a diverse population by providing the same means of use to all users and avoiding the segregation or stigmatization of any users. Universal design, as conceived by the Centre for Universal Design at North Carolina State University, espouses seven principles which are aimed at ensuring the most number of users are considered when designing new spaces.³⁷ The principles include the need to ensure that the design is useful and flexible to accommodate a wide range of diverse abilities and preferences. Universal design is premised on the need for the design to be simple and intuitive to use, as well as that the design is easy to understand regardless of the user's experience, knowledge, language skills or cognitive ability.

³⁷ The seven principles are:

1. Equitable use: the design is useful and marketable to people with diverse abilities;
2. Flexibility in use: the design accommodates a wide range of individual preferences and abilities;
3. Simple and intuitive use: use of the design is easy to understand, regardless of the user's experience, knowledge, language skills, or current concentration level;
4. Perceptible information: the design communicates necessary information effectively to the user, regardless of ambient conditions or the user's sensory abilities;
5. Tolerance for error: the design minimizes hazards and the adverse consequences of accidental or unintended actions;
6. Low physical effort: the design can be used effectively and comfortably and with a minimum of fatigue; and
7. Size and space for approach and use: appropriate size and space is provided for approach, reach, manipulation, and use regardless of user's body size, posture, or mobility.

The Centre for Universal Design (1997). *The Principles of Universal Design, Version 2.0*. Raleigh, NC: North Carolina State University. Copyright © 1997 NC State University, The Centre for Universal Design.

Also see Molly Follette Story, "Principles of Universal Design" in Wolfgang F.E. Preiser *et al.* eds., *Universal Design Handbook*, (New York: McGraw-Hill, 2001) at 10.3.

Initially developed in the context of architecture and the built environment, universal design and its principles have been applied in contexts far removed from architecture.³⁸ Universal design can play a practical role in many aspects of social life, including the provision of services, transportation, information, communications and employment. Universal design can be applied to social planning in order to proactively redress barriers, prevent future barriers and create more inclusive social environments.

3.3 Universal Design as applied in Education

Universal design is hardly a new concept in education. Often referred to as Universal Design for Learning (“UDL”), it is increasingly being applied to pedagogy to develop methods of teaching that provide all students, including students with disabilities, with equal opportunities to learn. According to the National Universal Design for Learning Task Force, UDL is a research-based framework for designing curricula, goals, methods, materials and assessments that enable all students to gain knowledge and skills. The principles of universal design in education promote flexibility above all. UDL provides instructional materials, techniques and strategies that enable teachers to provide differentiated instruction to meet the needs of diverse student populations.

A universally-designed curriculum is created from the outset to meet the needs of the greatest number of students, making individual, after-the-fact modifications to the curriculum unnecessary.³⁹ For example, instead of relying exclusively on textbooks, which are inaccessible to some children, universal design emphasizes that concepts be taught using a wide variety of methods, media, and materials. The same lesson could be presented using oral lectures, textbooks, charts or diagrams, audiotapes, or videos. A video, for example, would not only benefit students who have reading difficulties but it would also benefit students who are visual learners. A lesson could take the form of reading

³⁸ For examples of a variety of contexts that universal design can be applied to, see online: University of Washington <<http://www.washington.edu/doiit/Brochures/Programs/ud.html>>.

³⁹ National Universal Design for Learning Task Force, Universal Design for Learning Questions and Answers, 2007, online: NUDLTF <<http://www.advocacyinstitute.org/UDL/CASTfaqs.shtml>>.

textbooks, selecting photographs and placing them in sequential order, or having a student work with a peer. Students should be able to demonstrate their grasp of material through various formats, not only written tests. Some students could, for example, complete a longer paper while students who find written expression difficult could complete an oral presentation or a slideshow.⁴⁰ SMART Boards can be used to provide students with a variety of ways to access curriculum and content. UDL has been recognized by policy makers, including Ontario's Ministry of Education, as an approach to teaching that can benefit all learners.⁴¹ Educators are well-positioned to put such policy recommendations into action, as many resources already exist to support the incorporation of UDL into curricula, classrooms and schools.

Article 4 of the *CRPD* expressly obligates States Parties to promote universal design in services and programmes and in the development of standards and guidelines. This broader application of universal design is also reflected in the Ontario and New Brunswick Human Rights Commissions' respective policies on human rights and education. Both Commissions have adopted principles of universal design in their policies, and have explained that universal design can ensure that human rights laws are upheld in the delivery of education services. Both policies stress the preference for barrier prevention as

⁴⁰ For more examples of Universal Design for Learning see D. H. Rose & A. Meyer, *Teaching Every Student in the Digital Age: Universal Design for Learning* (ASCD, 2002), online: CAST <<http://www.cast.org/teachingeverystudent/ideas/tes/>>; see also P. Lewis & M. Abell, "Universal Design for Learning: A Statewide Improvement Model for Academic Success" (2005) 11(1) *Information Technology and Disabilities*, online: Rochester Institute of Technology <<http://people.rit.edu/easi/itd/itdv11n1/abell.htm>>.

⁴¹ Ministry of Education, "Education for All: The Report of the Expert Panel on Literacy and Numeracy Instruction for Students With Special Education Needs, Kindergarten to Grade 6" (2005) at 11, online: Ontario Ministry of Education <<http://www.edu.gov.on.ca/eng/document/reports/speced/panel/speced.pdf>>; See also Dr. S. Burnett & Hon. K. Wynne, *Special Education Transformation: The Report of the Co-Chairs with the Recommendations of the Working Table on Special Education – Final Report to the Minister of Education* (2006), online: Ontario Ministry of Education <<http://www.edu.gov.on.ca/eng/document/reports/speced/transformation/transformation.pdf>>; Although not yet official policy, the Ministry of Education released *DRAFT Learning For All K-12* in June 2009. The document expressly adopts universal design for learning and differentiated instruction as key instructional approaches to respond effectively to all students. See online: Council of Ontario Directors of Education <http://www.ontariodirectors.ca/L4All/L4A_en_downloads/LearningforAll%20K-12%20draft%20J.pdf>.

opposed to barrier removal. The New Brunswick Guideline on Accommodating Students with a Disability states that whenever possible, “facilities, programs, policies and services should be structured and designed at the outset to avoid discriminatory impact on students with a disability, instead of relying on case-by-case after-the-fact adjustments, modifications and exceptions.”⁴² Ontario’s Guidelines on Accessible Education states that, “(w)hen constructing new buildings, undertaking renovations, purchasing new computer systems, launching new websites, designing courses, setting up programs, services, policies and procedures, education-providers should keep in mind the principles of universal design.”⁴³ Both policies affirm the connection between universal design, human rights and inclusion, pointing out that universal design is based on positive steps to ensure that the design and delivery of education services is equally accessible to all students, including students with disabilities.⁴⁴

There are many opportunities to infuse universal design in the every-day functioning of a school, at little or no cost. Ensuring that the school and classroom culture does not tolerate forms of bullying and harassment can be achieved proactively when a climate of inclusiveness is seen by all administrators and staff as a priority within the school and classroom. For example, beginning-of-year orientation sessions for all parents that incorporate rights education, establish and confirm a climate of anti-bullying and anti-discrimination, and provide information regarding disability accommodation would send a clear message from the outset that all students of all backgrounds and abilities are

⁴² New Brunswick Human Rights Commission, *Guideline on Accommodating Students with a Disability*, (NBHRC: October 15, 2007) at 16, online: NBHRC <<http://www.gnb.ca/hrc-cdp/e/g/Guideline-Accommodating-Students-Disability-New-Brunswick.pdf>>.

⁴³ Ontario Human Rights Commission, *Guidelines on Accessible Education* (OHRC: September 29, 2004) at 10, online: OHRC <<http://www.ohrc.on.ca/en/resources/Guides/AccessibleEducation/pdf>>.

⁴⁴ The inclusion of universal design in the Ontario and New Brunswick Human Rights Commissions’ policies is significant, as these policies represent the respective Commissions’ interpretations of provincial human rights legislation and are intended to assist the public to understand and comply with their legal rights and obligations under this legislation. In Ontario policies prepared by the Human Rights Commission are also intended to provide guidance to tribunals on interpreting and applying provisions of the *Human Rights Code* (*Code, supra* note 2, s. 30). In a human rights proceeding, the Human Rights Tribunal of Ontario must consider policies that are approved by the Commission if a party or intervenor to the proceeding so requests. If no such request is made, the Tribunal has discretion to do so (*Code, supra* note 2, s. 45.5(2)).

welcome in the school. For students, similar annual orientation sessions can instill a strong understanding of equity within the school. Including information about the right to receive disability-related accommodations and the process by which such accommodations may be requested and provided would enable students to access such support more readily. Creative strategies for delivering annual orientation sessions to children can be employed, such as the inclusion of role-playing which has been found to be an effective way of teaching empathy and diminishing prejudice.⁴⁵ Other examples include ensuring that morning school announcements are delivered in a medium that is most accessible to the largest group of students, and that written communication with parents is provided in alternate or multiple formats to be accessible to the largest number of parents, even in the absence of accommodation requests. Schools should have procedures in place to enable students to raise concerns and difficulties in accessing appropriate accommodations. Such procedures should be readily available to students, be flexible enough to accommodate disability and circumstances, and ensure that students understand the manner in which the school will respond.

4. New Legal Obligations in Ontario

4.1 The Enactment of Accessibility Legislation in Ontario

The *AODA*⁴⁶ became law in 2005. Its purpose is to develop, implement and enforce accessibility standards in order to achieve accessibility for Ontarians with disabilities by January 1, 2025 with respect to goods, services, facilities, housing, employment, buildings, structures and premises.⁴⁷ The barriers contemplated by the drafters of the *AODA* include, but are not limited to, physical

⁴⁵ P.W. Corrigan & A.C. Watson, "How Children Stigmatize People with Mental Illness" (2007) 53 *Int. J. of Soc. Psychiatry* 526 at 537.

⁴⁶ *Supra* note 5.

⁴⁷ *Ibid.*, s. 1(a).

barriers, architectural barriers, information or communication barriers, attitudinal barriers, technological barriers, and policy or practice.⁴⁸

The *AODA* enables the Lieutenant Governor in Council to create accessibility standards that set out measures, policies, practices and other requirements that individuals and organizations must take to identify, remove and prevent barriers to accessibility in the areas identified by the legislation.⁴⁹

Accessibility standards become regulations under the *AODA*, and are legally enforceable. To date, only one standard, the *Accessibility Standards for Customer Service* (“*Standard*”),⁵⁰ has been passed into law. Additional standards dealing with employment, information and communications, public transportation, and the built environment are expected to become law in the near future.⁵¹

Universal design is not explicitly incorporated into the legal obligations enacted in the *AODA*. Instead, the approach adopted by the *AODA* emphasizes barrier identification, removal and prevention. While barrier identification and removal are important and necessary steps towards enhancing accessibility, legislation that focuses on these elements risks producing a reactionary approach to accessibility, one that considers accessibility as an afterthought rather than a central component that is built into every design, policy and procedural choice. Barrier prevention, however, is closely related to universal design in the sense that accessibility must be considered when new structures, policies or services are designed and created so as to avoid setting up new barriers. The prevention of new barriers may assist in the creation of environments that are accessible up-front, without the need for retrofitting, thereby contributing to a society which is accessible and usable by the greatest number of people, including people with disabilities. Thus some elements of the *AODA* emphasize barrier identification and removal, while other elements are consistent with principles of universal design.

⁴⁸ *Ibid.*, s. 2.

⁴⁹ *Ibid.*, ss. 6(1), (6)(a).

⁵⁰ O. Reg. 429/07.

⁵¹ For more information on the status of the various draft standards, see the Ministry of Community and Social Services website, online: MCSS <<http://www.mcscs.gov.on.ca/index.aspx>>.

The *Standard* became law on January 1, 2008. It applies to, among other actors, every district school board as defined in section 1 of the *Education Act*,⁵² and school boards have been required to comply with the *Standard* since January 1, 2010.⁵³ Under the *Standard*, school boards must fulfill a limited number of obligations aimed at improving the accessibility of their services. Among these obligations are:

- the establishment of policies, practices and procedures governing the provision of goods and services to people with disabilities;⁵⁴
- training of staff and others who deal with the public regarding the provision of goods and services to people with disabilities;⁵⁵ and
- the development of a process for receiving and responding to feedback about the way in which goods and services are provided to people with disabilities.⁵⁶

Under the *Standard*, policies, practices and procedures that school boards are required to develop should ensure that education services are provided to students in a manner that respects the dignity and independence of students and other persons with a disability; that services for students and others with disabilities are integrated with other services unless an alternate measure is necessary to enable the person with a disability to obtain, use or benefit from the service; and that students and other persons with disabilities are given equal opportunity as others to obtain, use and benefit from the services. The *Standard* requires that the policies deal with the use of assistive devices by people with disabilities to obtain, use or benefit from the services. Further, the *Standard* requires that when communicating with a person with a disability, education service providers must do so in a manner that takes into account the person's disability.⁵⁷

⁵² R.S.O. 1990, c. E.2.

⁵³ *Standard*, *supra* note 51, s. 1.

⁵⁴ *Ibid.*, s. 3(1).

⁵⁵ *Ibid.*, s. 6(1).

⁵⁶ *Ibid.*, s. 7(1).

⁵⁷ *Ibid.*, s. 3(4).

School boards are required to provide training to every person who deals with members of the public or other third parties on behalf of the board and to every person who participates in developing the provider's policies governing the provision of its services. This can include employees, volunteers, agents, management and other board personnel.⁵⁸ The training must include a review of the *AODA* and the *Standard*, as well as instructions on how to interact and communicate with people with various disabilities, how to interact with people who use assistive devices or are accompanied by a service animal or support person, how to use equipment or devices available at the school that could assist the person with the disability, and what to do if someone has difficulty accessing the board's services.⁵⁹ The *Standard* requires that training be provided as soon as practicable after the person is assigned his/her duties and that it be provided on an ongoing basis.⁶⁰

Under the *Standard* school boards are required to establish a process for receiving and responding to feedback about its goods and services.⁶¹ Information about this feedback process must be made readily available to the public and the process must allow for the provision of feedback in person, by telephone, in writing, by email, or in other formats.⁶²

The obligations enacted in the *Standard* are fairly limited. While school boards may have to develop new policies to comply with the *Standard*, others may already have existing policies on interacting with and accommodating people with disabilities that require only minor adjustments. Similarly, some school boards may have to develop new feedback mechanisms; however others will already have complaint policies in place. Training required under the *Standard* may be provided as part of ongoing professional development activities. Moreover, some requirements in the *Standard*, such as permitting a person with a disability to be accompanied by a service animal or support person

⁵⁸ *Ibid.*, s. 6(1).

⁵⁹ *Ibid.*, s. 6(2).

⁶⁰ *Ibid.*, s. 6(3).

⁶¹ *Ibid.*, ss. 7(1), (3).

⁶² *Ibid.*, ss. 7(1), (2).

and providing documents in alternate formats,⁶³ reflect the well-established and long-standing obligations that school boards have under Ontario's *Code*.⁶⁴

The extent to which the *AODA* and the *Standard* will improve accessibility to education services and the quality of those services depends on the approach taken to its implementation. Despite the emphasis in the *AODA* framework on barrier identification and removal, it is possible to take an approach that prioritizes barrier prevention elements of the framework in a manner that is consistent with universal design. Such an approach would view the requirement to comply with the *AODA* and the *Standard* as an opportunity to advance the goal of creating inclusive schools in which all students, including students with disabilities, have access to quality education services and participate in the school community. This goal could be accomplished by taking a proactive approach to preventing barriers and creating inclusive, accessible schools.

4.2. Taking a Universal Design Approach to the *AODA*

While limited in some regards, the *AODA* provides an opportunity to rethink existing models of service delivery and adopt new frameworks that are easily accessible to the largest possible community. Applying universal design principles to the three *AODA* obligations set out above demonstrates how the *AODA* can be implemented in a manner that assists in achieving inclusive school cultures.

4.2.1. Establishing Policies, Practices, and Procedures

In conducting research for this paper, the policies, practices and procedures developed pursuant to the *Standard* were obtained from a sampling of Ontario school boards.⁶⁵ One observation made from this review is that when

⁶³ *Ibid.*, ss. 4(2)-(6).

⁶⁴ *Code*, *supra* note 2, s.1. The *Code* protects students with disabilities from discrimination and requires school boards to provide education services and individually accommodate students with disabilities up to the point of undue hardship. Complying with the *Standard* does not render school boards immune from complying with their obligations under the *Code*.

⁶⁵ The school boards sampled will remain anonymous. The purpose of this review was to observe strategies taken in response to the *Standard* and to consider effective practices.

establishing policies, practices and procedures under the *Standard*, school boards may develop generic policies that are short in length; mirror the language of the *Standard* almost identically; do not go beyond the requirements of the *Standard*; limit the board's actions to ensuring compliance with the *Standard* only on a going-forward basis; and do not set out specifics of how the board will implement the obligations in the *Standard*.

A universal design approach warrants a more expansive view of the AODA obligations. Equitable use, flexibility, simple and intuitive use, and perceptible information are important elements in developing policies, practices and procedures on how school boards will consider accessibility and inclusion when designing and creating new buildings, curricula, school services, board policies and purchasing equipment. Attention would be directed not only to barrier prevention in the built environment and in the areas outlined in the *Standard*, but also to technology, policies and procedures, attitudes, information systems, equipment and curricula. A preferable approach that school boards can adopt is to develop detailed policies and accessibility plans that outline specific steps already taken to identify and remove barriers and specific steps that will be taken to prevent new barriers from being erected. Such policies and plans would go well beyond the requirements of the *Standard* and be tailored to the unique needs of the schools and communities within the particular board. Specifics regarding the roles and responsibilities of various actors for implementing the requirements of the *Standard* would be included.

School boards may consider consulting with students and members of the public who have disabilities in order to identify existing barriers and create effective procedures to monitor ongoing barrier identification, removal and prevention activities. The goal of such an approach would be the creation of inclusive school environments through greater inclusion of students with disabilities, the provision of inclusive education resources for teachers, and the incorporation of teaching about human rights, diversity and anti-ableism.

4.2.2. Establishing a Feedback Mechanism

From the sampling of feedback mechanisms developed by some Ontario school boards pursuant to their obligations under the *Standard*, it is evident that the predominant approach is to rely on a short, online feedback form that is posted on the particular board's website. This represents a restrictive interpretation of the obligation under the *Standard*. In contrast, an approach that is consistent with universal design would interpret the obligation more broadly, and would ensure that the feedback mechanism is accessible to the broadest possible population, that the mechanism elicits relevant information, and that a process exists for using the information to create a more inclusive school environment.

The universal design principle of equitable use would direct that any feedback mechanism needs to be available to everyone in the school community. Relying solely on a brief, online form is not sufficient as this may not be accessible for students or parents with disabilities, with vision disabilities who use screen readers, and for students and parents who do not have access to a computer. Instead, schools must take proactive steps to ensure that the school community knows of, and understands the purpose for providing feedback. This could include notices in the school's newsletter, communications with parents, and actively soliciting feedback from students in creative ways. In addition to an online form, members of the school community must be able to provide feedback in various ways, including, for example, in-person interviews, large print, and hard copy surveys.

The universal design principle of flexibility in use suggests that information would need to be solicited in diverse ways, which could include asking both open ended questions and yes/no questions, and to provide opportunities to relay experiences taking culture, language and disability into consideration. Applying the principles of simple and intuitive use and perceptible information, boards must ensure that feedback mechanisms are easy to use and can clearly solicit the sought information from a variety of stakeholders including students, parents, and the broader community.

Attention must also be given to the type of information that needs to be solicited in order to determine what proactive steps the school will take to identify, remove and prevent barriers. Such steps should be communicated to the school community in a manner consistent with the universal design principles outlined above. Moreover, feedback information should be used periodically to evaluate the board's progress on access and inclusion. Such evaluations may involve members of the community and other stakeholders.

4.2.3. Providing Training

It is well-established that the environment and culture of a school can have a direct impact on the degree to which students with disabilities are accepted and included.⁶⁶ The requirement in the *Standard* to train staff, volunteers and others provides an ideal opportunity to proactively foster and maintain inclusive school environments. Training should include practical strategies for fostering a positive and welcoming learning environment, espousing high expectations for all students, and engendering a true commitment to the success of each student. Inclusion exists when a regular classroom teacher takes full responsibility for the learning of every student in the classroom.⁶⁷ The *Standard* provides an opportunity to train staff, volunteers and other board personnel in order to confront and eradicate attitudinal barriers.

A universal design approach to training would ensure that administrators and teachers are provided with opportunities for additional training in the areas of UDL and differentiated instruction, as well as classroom management issues and available resources.

5. Conclusion

Canada's recent ratification of the *Convention on the Rights of Persons with Disabilities* is a significant step in confirming Canada's commitment to

⁶⁶ Ontario Literacy and Numeracy Secretariat, *What Works? Research into Practice, Research Monograph # 16*, (Ministry of Education, January 2009) at 2, online: Ministry of Education <<http://www.edu.gov.on.ca/eng/literacynumeracy/inspire/research/Bennett.pdf>>.

⁶⁷ *Ibid.*

inclusive education, both internationally and domestically. This commitment, together with consensus on inclusive education in the international community and within the disability community, can shift debates about education away from ideology. Canada's clear and unequivocal goal is inclusive education, and the inclusion of students with disabilities in regular classrooms.

Since Canada's ratification of the *CRPD*, provincial and territorial governments, administrators, policy makers, school boards, educators and others should be guided by the principles contained in the treaty when developing education systems, and when interpreting and applying legislation that governs the delivery of education services. Moreover, the objective of inclusive education, as articulated in the *CRPD*, is supported by domestic laws such as provincial human rights legislation and by Ministerial requirements such as the Ontario Ministry of Education's revised Policy/Program Memorandum No. 119 ("PPM 119").⁶⁸ While not specific to disability issues, PPM 119 requires all publicly funded school boards to review or develop, implement and monitor an equity and inclusive education policy. PPM 119 acknowledges that, "(a)n equitable, inclusive education system is fundamental to achieving these core priorities, and is recognized internationally as critical to delivering a high-quality education for all learners."⁶⁹ Inclusive education is also increasingly being supported by Canadian research that demonstrates that students with disabilities make greater progress in inclusive classrooms and that the academic achievement of students without disabilities is not adversely impacted when students with disabilities are included in regular classrooms.⁷⁰

Inclusive education has become firmly entrenched as a national objective, however the work of achieving and maintaining this objective remains to be done. The concept of universal design provides practical direction and an analytical

⁶⁸ *Supra* note 3.

⁶⁹ *Supra* note 3 at 1. The equity and inclusive education strategy, and PPM 119, are in effect and School Boards in Ontario are expected to comply. It is expected that by September 2010, boards will have in place an equity and inclusive education policy that will include the areas of focus and goals set out in PPM 119.

⁷⁰ *Supra* note 67; see also Jane Friesen, Ross Hickey & Brian Krauth, "Disabled peers and academic achievement" (2009) Simon Fraser University, B.C. at 26, online: Simon Fraser University <http://www.sfu.ca/~rdhickey/SOLE_Friesen_Hickey_Krauth.pdf>.

framework that can assist in implementing and achieving inclusive education. Universal design has emerged as both a legal obligation, as set out in the *CRPD*, and as a practical tool for facilitating the creation of inclusive school cultures. Universal design can be readily applied to the built environment to ensure that school premises are usable by the broadest possible community and are fully accessible to students with disabilities. Universal design for learning is the application of universal design to pedagogy in order to ensure that the broadest community of students can access the curriculum and learn effectively. Moreover, a universal design approach can be employed when implementing legislative requirements such as those contained in the *Accessibility Standards for Customer Service*. Universal design principles can be applied to the development of school policies and procedures, training of school board personnel, and feedback mechanisms that assist schools to evaluate how much progress is being made towards achieving accessibility and inclusivity.

Employing universal design principles can assist school boards to implement inclusive education, and comply with a variety of international and domestic legal obligations and Ministerial policy requirements. However, universal design is also about a shift in thinking and attitude. Instead of considering accommodations and placements for individual students within a framework of services that are currently available, a universal design approach to education emphasizes an examination of the existing educational system and structures, and asks how these systems and structures can be made inclusive and accessible at the outset. A universal design approach moves our thinking beyond the constraints of the status quo and towards imagining how education services and structures can be redesigned to create schools that include all students.