

David Lepofsky

NOTE: The speaker gives these remarks in his personal capacity and does not purport to represent the views of the Attorney General for Ontario or his Ministry.

Good morning everyone. I am very honoured to be here.

I am about to talk to you about persons with disabilities, the weirdest minority of all. This is because we are the minority of everyone – we are the minority of everyone because everyone either has a disability, or gets one if they live long enough. Disability usually comes with advancing age. If you don't have a disability, someone near and dear to you has a disability. I am not here to talk about what you can do for me because I have a disability. I am here to talk about what we persons with disabilities can do for you, so that when you get yours, you will face a world that is more accessible than the one faced by those of us who have a disability now.

Let me talk to you about the barriers people with disabilities face, in getting access to the legal profession. About twenty-five years ago, a young Attorney General named Roy McMurtry appointed a young Family Court Judge named Rosie Abella to do a study, which unfortunately you likely have not heard about. It was a Judicial Inquiry into whether the legal profession was meeting the legal needs of clients with disabilities.

Judge Abella, as she then was, found that people with disabilities were among the most underserved of any minority in this province by our legal profession. Her recommendations to correct this have largely gone unimplemented, though there has been some progress. Of significance for our discussion today, those same barriers that impede access to legal services by clients with disabilities equally impede access to legal practice by lawyers with disabilities. They impede people like me -- I got my disability before I became a lawyer -- and they impede those of you who first become a lawyer, and then get your disability later.

In a nutshell, they can be technological barriers, like the formidable use of the PDF format, which can make it extremely hard for people with vision loss or dyslexia to read with our adaptive technology. If you have ever tried sending me a PDF file, you will have got an email back, saying please send me something I can read, like a document in MS Word format, the format in which you likely wrote it originally anyway.

Some barriers we face concern physical access, impeding us from getting into buildings or offices or bathrooms. This is still an ongoing problem.

And some of the barriers we face may be workplace-related failures to provide needed accommodations. These barriers are all illegal. They have been illegal for over 25 years, since we won the right to full equality under the Human Rights Code and under the Charter. Those laws require those barriers to be removed. They are now also required to be removed by the Accessibility for Ontarians with Disabilities Act, a law which I had the privilege of leading the decade-long campaign for. It requires a fully accessible province in terms of goods, services, facilities, and employment by the year 2025. If you want to ask questions I can tell you more

about specific individual examples of these barriers, but let me tell you about what we can do about them as a collective community of the legal profession, and you as the Ontario Bar Association.

First, none of these barriers helps anyone. There is no-one out there saying "Yeah, let's raise more barriers against people with disabilities, we make more money that way!" These barriers impede a law firm's access to clients with disabilities. They impede a law firm's ability to hire people with disabilities. And, if you have colleagues or partners whose vision and mobility gets worse as they get older, they impede their ability to continue with the firm and be fully productive. These barriers don't help anyone.

But removing barriers for people with disabilities tends to help everybody. Last May, the staff at the Court of Appeal unfortunately decided to post its decisions only in PDF and not in HTML format any longer. Previously, they posted both, because HTML is accessible. When this barrier for persons with disabilities was raised with court staff, they commendably reversed that decision within twenty-four hours. Removing that barrier was very important for people with vision loss like me. But it turns out also to be very helpful for those who use Blackberry devices.

I won the two cases before the Human Rights Tribunal that now require the TTC to announce all subway and bus stops. I needed this accommodation because I am blind. Yet much of the positive feedback I get for this has been from sighted people who can't see what stop they are at on the bus when it is crowded, or dark outside, or snowing. Removing barriers that affect us persons with disabilities benefits everyone. The ramp that now enables people with wheelchairs to get to the front door of Osgoode Hall without going up steps also helps people without disabilities trailing bags on wheels. That includes most lawyers going to appear in that courthouse.

What do we do about these barriers?

Well, the first thing to know is that these barriers happen by accident. Nobody puts them up by design, to exclude persons with disabilities. However these barriers don't come down by accident. They only come down by planning. What that means is, each of your law firms needs to undertake a specific initiative, to identify barriers in your workplaces that impede lawyers, staff and clients with disabilities. Find out what the barriers are, and then come up with plans to get rid of them. You can fix some of those barriers really quickly and at no cost. Some cost more. You will want to address those over time. What if your premises are inaccessible? Most of your firms probably don't own those premises. It is open to you to go to the landlord and say, "Will you fix the inaccessibility problems?" or say, "Fine, you don't want to fix them, when our lease is up we will find a place that is accessible. I am sure you would be happier having this place unrented!" And with a bit of clever negotiation, you could get a very accessible office. More lawyers and clients will be able to get into your office, thereby helping your bottom line.

Second, the process of going out and looking for these barriers, and then addressing them, could involve your firms each separately in reinventing the wheel. So why not come up with a strategy that enables our profession to do this collectively, once only. By this approach, each firm, when undertaking its own barrier review or accessibility plan, can focus on a list of recurring law firm

barriers that our professional has collectively identified in a joint effort. How do you do that?

Why don't you set up an OBA Committee on Disability Accessibility in the legal profession? It is great if our issues are addressed by the Equal Opportunity Committee, and I commend you for that. However we have learned through long experience that, unless you task a group to deal specifically with disability accessibility issues, we just don't get the same level of attention and focused action. If you task a committee to try to come up with a comprehensive list of the kind of barriers that people with disabilities face getting legal services, or becoming lawyers, or staying in practice as lawyers, you can take that short list -- it only has to be a few pages -- ship it out to various firms, and they can do their own barrier review. Law offices can use it as a benchmark against which they can look at their own firms. It is really a constructive exercise. It doesn't cost a lot of money. You will learn a lot. You will make your workplaces better. The OBA can lead in this. It is something that would be interesting and productive to do. The other thing I would recommend is for the OBA to simply survey practicing lawyers with disabilities, asking them about the barriers they face in legal practice.

The last thing I want to do is tell you about a really good success story. This success story emanates from the same Roy McMurtry who appointed Rosie Abella, all those years ago. Back in 2005, when the Accessibility Bill was before the Legislature, Chief Justice McMurtry, as he was then, commended the Ontario Government for working toward legislation on accessibility. He said the Judiciary had to do its part, too: so he appointed a Joint Committee of Bench, Bar and Government, under the able leadership of Court of Appeal Justice Karen Weiler, to come up with an action plan on how to make the court system disability-accessible. I had the privilege of serving on that committee.

Our Committee's report—the Weiler Report-- is on the Court of Appeal website. You can find it at:

<http://www.ontariocourts.on.ca/en/accessiblecourts.htm>

That Report is short, clear, comprehensive and effective. It is a good example of how to take action, but that is not where the success story stops. The worry always is that we congratulate ourselves on having a good report, but then nothing gets done with it. That is not what happened here.

One of the Weiler Committee Report's recommendations was to create a permanent body, a Joint Committee of the Bench, Bar and Government, to oversee action on implementing the Weiler Report. That new oversight committee now exists under the able leadership of Court of Appeal Justice Susan Lang, and Ontario government Assistant Deputy Attorney General for Court Services, Ann Merritt. Your own Joy-Ann Cohen has been a fabulous representative on that oversight body for the OBA, and I understand her role has been formalized. She has made a really important contribution to our work.

As a result of the work of that oversight committee, the Ontario government is now commendably in the process of developing a multi-year plan for making our court system accessible. They have identified the barriers, they have got a prototype of what an accessible court room should look like. For each major court facility they have now appointed a disability

accessibility co-ordinator. Not new staff, but existing staff, so that if you or one of your staff has an accessibility issue, they will have one person to ask to find the solution to their problems.

Our Committee is also working on an issue in which you can take direct part. The Weiler Committee recommended that we need to train lawyers, law students and judges on how to meet the accessibility needs of clients with disabilities. This would help everyone. To that end, we have secured a Law Foundation grant to survey any legal education curriculum, from any OBA or Law Society Continuing Legal Education initiatives, as well as law school courses and other legal education programs, that might touch on meeting the accessibility needs of clients with disabilities in accessing the courts. We have two law professors collecting this data. The result of their work will be posted on a common website for everyone to use. We plan to later follow up with a new initiative, to develop new curriculum in this area in areas where we discover that there is no curriculum available now. It is our hope that this will lead organizations like the OBA to incorporate more of these topics in its continuing legal education programming. If we can provide you the material to teach, it will be easier for you to cover this topic.

My last suggestion is this: Borrow from one of the successes from the Weiler Committee. One of our recommendations was that within any organization it is beneficial to have one person to go to, if there is an accessibility issue. Not a new hire, but at least somebody who can try to stay up to speed. One of the best practices that the OBA could recommend to its firms, is simply to designate somebody within the firm with lead responsibility for co-ordinating accessibility. At the very least, if you get an articling student with a vision loss, or a lawyer who has a skiing accident with mobility issues, or a secretary or whomever with these kind of issues, have one person within the firm who has read up on this, who knows something about it. Through the OBA, that person could network with other similarly-placed individuals, to come up with easy and effective strategies to address these accessibility needs. They are usually solvable, most often quickly and at low cost, to the benefit of everyone.

Thank you again for inviting me to take part in this important discussion.