



# Giving voice

**Professor Laverne Jacobs** is an administrative law scholar with research interests that span human rights law, disability rights and comparative administrative law. She is currently studying the concept of voice and how law and regulation can overcome disability discrimination



## Could you discuss your academic background and how you became interested in issues facing persons with disabilities?

Throughout my academic career I have researched, written and taught about the administrative justice system. I am interested in the decisions of governmental administrative bodies and the jurisprudence of the courts when they review administrative decisions. I am equally committed to building a better empirical understanding of how the administrative justice system functions on the ground – namely, how well it meets its policy goals and how it impacts individuals. I use qualitative social science methods to achieve these goals. I have also been a part-time adjudicator on the Human Rights Tribunal of Ontario and for three years I was a member of the Accessibility Standards Advisory Council. In these appointments I had significant occasion to deal with issues facing persons with disabilities, including discrimination and barriers to participating in society. I became even more interested in issues relating to persons with disabilities after experiencing a spinal cord injury.

## What is the motivation for your current study to improve persons with disabilities' participation in lawmaking?

Participation in law and policy development has been emphasised since the UN's Convention on the Rights of Persons with Disabilities (CRPD) came into force in 2008. Article 4 (3) of the CRPD states that persons with disabilities should be closely consulted and actively involved in the development and implementation of legislation that affects their lives. My research is about the concept of voice and how persons with disabilities may or may not have their voices effectively heard in the development of laws that affect them. Using the consultation processes established under the Accessibility for Ontarians with Disabilities Act 2005 (AODA) as a case study, my current research project explores how persons with disabilities can voice their concerns and be heard in the lawmaking process.

## How successful has the AODA been by your analyses?

The AODA has been successful in raising public awareness about disability issues. Through multi-stakeholder standard development committees, accessibility standards have been developed in five areas: customer service, transportation, employment, the design of public spaces and information and communications. However, there were problems in the consultation process for the development of these standards, forcing the government to redress the underrepresentation of persons with disabilities on the standard development committees. Moreover, there have been significant difficulties with the enforcement of the AODA. For example, with respect to the customer service regulation, which was the first standard to come into force, only 30 per cent of businesses complied

with the reporting requirement, which asked them to outline the steps that they had taken to ensure accessibility. Unfortunately, now more than two years after the deadline, the government has still taken very few steps to pursue enforcement of the regulations.

## Why has it been informative to compare the AODA with legislation affecting persons with disabilities in the US?

The Americans with Disabilities Act has a different enforcement mechanism – it relies on litigation and does not use multiparty stakeholder consultation processes to create regulatory standards. In the US, generally, once regulations have been drafted, there is a requirement that there be a period of 'notice and comment', providing an opportunity for input from the broader community before the legislation is finalised. In Ontario, under the AODA, we have adopted this practice as well. It is instructive to see whether this aspect provides an effective forum for the voice of persons with disabilities to be heard.

## To what extent are law and social science students important to your work?

Law and social science students have much to gain from law and society research and also much to contribute. Although there are opportunities for law students to argue legal cases, there are very few opportunities for them to examine how the law is made, how it affects discrete and underprivileged groups in society and how it may or may not bring about social change. I equally enjoy working with social science and social work students because they bring a broader understanding of how law impacts society and, by working as research assistants, they are able to deepen and apply their knowledge to concrete law and social science contexts.

# Deconstructing disability discrimination

Combating Disability Discrimination by Regulation is a research project being conducted by a Fulbright Visiting Research Chair at the [University of California, Berkeley, USA](#). The study aims to understand how the voices of persons with disabilities and disability organisations can be heard and more effectively incorporated into the lawmaking process

**ABOUT 15 PER** cent of the global population live with a disability, making people with disabilities the largest minority group in the world. This figure is projected to grow in the future due to medical advances, population growth and population ageing – and it refers to individuals with a broad spectrum of impairments, activity limitations and participation restrictions. The disability minority group is the only one that any person anywhere could become a member of at any time.

In the past, persons with disabilities were often viewed as objects of pity rather than full and participatory members of society. Fortunately, significant strides made by the disability rights movement have challenged and changed this in recent decades. Today, in many countries around the world, disability rights are now framed in the broader context of human rights. Moreover, the coming into force of the UN's Convention on the Rights of Persons with Disabilities (CRPD) in 2008 marked a significant legal turning point, emphasising the need for laws that break down the barriers faced by people with disabilities on a daily basis. Crucially, this Convention also highlights the necessity of the participation of the disability community in the development of these laws and policies.

However, as increasing numbers of countries across the world ratify the CRPD, there is a need for a deeper understanding about how effective participation can be achieved. This is an area that Professor Laverne Jacobs, a Canadian law professor from the University of Windsor in Ontario, is seeking to understand. Stemming from interviews with persons with disabilities and organisations dedicated to disability issues (ODDIs), Jacobs has identified two significant problems in the realm of effective participation. The first is inadequate outreach, with government consultations – or information about these consultations – often conducted in inaccessible language or through inaccessible

methods, acting as barriers to some persons with disabilities. The second issue is inadequate feedback, whereby policy makers fail to explain why some submissions from consultations are received into law while others are not. In her research, Jacobs is focusing on identifying solutions to problems such as these.

## KEY OBJECTIVES

Currently a Fulbright Visiting Research Chair in Canadian Studies at the University of California, Berkeley, Jacobs examines disability issues through the lens of law, administrative law and social change. "My research is unique in that I couple traditional legal research with an interdisciplinary approach that uses qualitative social science research methods," she discloses. Indeed, to date her research has analysed the respective roles of administrative actors, persons with disabilities, disability organisations and government bodies in facilitating the needs of persons with disabilities into legal norms.

Jacobs is also exploring how the administrative justice system addresses the concerns of those with disabilities, using the empirical knowledge she builds to generate debate and conduct evaluations. For instance, working closely with her research assistants, she has collated and analysed all of the human rights tribunal decisions on disability and transportation throughout Canada since 1982: "We chose 1982 because this year marked an increased awareness of equality rights relating to disability due to disability being included in the Canadian Charter of Rights and Freedoms," she explains. "My analysis of these cases reveals that human rights adjudicators tend to apply analytical tools narrowly in reaching decisions about whether disability discrimination exists in the context of accessible transportation."

## EXAMINING A LEGAL EXPERIMENT

In her most current research project, Jacobs is evaluating how a new antidiscrimination law in Ontario is working out in practice. This law constitutes a legal experiment that is attempting to enact mandatory standards of accessibility for people with disabilities through consultation processes leading to binding regulations. Entitled the Accessibility for Ontarians with Disabilities Act 2005 (AODA), the legislation is novel in that it requires the government, industries and other relevant bodies to work alongside people with disabilities in standard development committees to draft accessibility standards. It also endows the government with strong law enforcement tools to ensure the compliance of those that are subject to the standards.

Jacobs' study is focusing on the ways in which people with disabilities and ODDIs are participating in the development of disability-related laws. There are two main parts to her project, with the first part concentrating on building a better understanding of the effective participation of the disability community in the lawmaking process generally. To achieve this, Jacobs and her colleagues are conducting interviews with persons with disabilities and

## A book project

Drawing on the fieldwork that she has conducted as a Fulbright scholar in the US, Jacobs is currently in the process of writing a book about promoting the voices of persons with disabilities in the lawmaking process. The book starts by examining where and why voices may not have been heard in the past and then moves on to examine the process that led the proactive regulatory approach embedded in the AODA. Jacobs also describes the respective roles of administrative actors, persons with disabilities, ODDIs and executive government officials in introducing legal norms that protect and advance the rights of those with disabilities. Drawing on her extensive case studies from both Canada and the US, Jacobs explores and discusses the issues from legal, theoretical and empirical perspectives.

ODDIs, primarily focusing on laws regarding accessible transportation and housing. This part of the study is comparative, taking examples from both Canada and the US. The second element of the study is a case study that evaluates the effectiveness of the AODA's consultation processes. Together, Jacobs and her team are aiming to broaden their knowledge about the positives and negatives of this process and identify better strategies for engaging people with disabilities in policy making.

So far, Jacobs has conducted multiple interviews with persons with disabilities and ODDIs in both Ontario and California. These interviews reveal the extent to which these people and organisations perceive that their voices have been heard in multi-stakeholder decision-making processes. They also enable Jacobs and her team to analyse the common ground on which different stakeholders agree about various issues of disability. Moreover, in addition to these interviews, Jacobs has devoted considerable attention to analysing examples of how multi-stakeholder parties deal with issues relating to persons with disabilities in both Ontario and the San Francisco Bay Area.

## A FAIRER FUTURE

Jacobs' research has important practical implications, carving future benefits for the disability community and the wider public, as well as for law and public administration scholars and government policy makers in the drafting of new regulations. Furthermore, her work is successfully advancing both the theory and practice of deliberative democracy, in which authentic dialogue is seen as an essential tool for the advancement of social policy. "I am sure that deliberative democracy will only grow as an underlying idea for the development of disability-related legislation in countries around the world," Jacobs asserts. "It is therefore paramount to conduct and share research across jurisdictions as deliberative approaches to address law and policy in the realm of disability rights become ever more prevalent."

## INTELLIGENCE

### COMBATING DISABILITY DISCRIMINATION BY REGULATION

#### OBJECTIVES

- To examine the efficacy of regulation-making processes in providing those with disabilities a participatory voice
- To explore the human rights struggles experienced by members of the disability community in combating discrimination, and the effectiveness of government-designed, antidiscrimination standard-setting processes in alleviating that struggle

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DR LAVERNE JACOBS joined the University of Windsor's Faculty of Law in 2007, where she is Associate Professor, and was appointed Director of Graduate Studies for the Faculty in 2010. She is a recognised administrative law scholar who teaches in the area of public law. Her research interests include administrative law and justice, human rights law, disability rights, ombuds oversight, comparative administrative law, and qualitative empirical research methodology. Her work has been cited by government and courts, including the Supreme Court of Canada.



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