# David Lepofsky: Education Standard for the AODA - Transcript

We live in a world, a society, that is designed, built, and operated on a fundamentally absurd, ridiculous, and unfair basis. It is designed on the assumption that people with disabilities aren't gonna be there to participate fully in it. The buildings we go to, the schools where we study, the universities, the public transit systems we use, the stores where we shop, and the products we buy, the workplaces where we go to work, and even the laws that govern us, all are written on that basis. They assume that they are there for people with two eyes that work, two ears that work, same for the two arms and legs, for people who are neurotypical and don't have a neurological disability don’t have a mental health, learning or intellectual disability -- that don’t have a disability at all. Of course the idea is ridiculous. In Ontario right now, at least 1.8 million have a disability. Across Canada, at least 4 million, around the world at least a billion people have some kind of disability. Those numbers are huge. But those numbers don't tell it all because well, let's do a little survey.

This is entirely nosey, and totally unscientific -- but heck, I’m a lawyer. (Right? That’s what we do.) I want you to raise your hands if this subject does not touch you -- I want you to raise your hand if you have no disability now, and you are certain that you’ll never get one. Raise your hands please -- I don’t see any hands. Welcome to the minority of everyone. Everyone either has a disability now or has someone near and dear to them (brother, sister, parent, spouse, child) who has a disability, or will get a disability as they get older because the most common cause of disability is getting older. So we live in a society absurd as it sounds that is over and over been designed and operated as if the minority of everyone isn’t there. Well, you folks are learning to work in our education system in the earliest years and guess what? What I’m talking about applies equally to our entire education system. Preschool programs, school kindergarten through grade 12, colleges and universities.

Well what’s wrong with our education system if we’re one out of every six kids? And by the way, I think those numbers are understated. Tell you why in a few minutes. Well, what’s wrong with the education system? Our public schools, publicly funded school system has been designed and operated for decades on the idea that it was aimed at serving -- well what they used to call them were “normal” students. Those were the kids I just talked about. Right? Two eyes that work, ears that work, mouth, arms legs, no disability at all -- and by the way, they’re also not gifted. Cause giftedness is defined as being a special education need. So it’s kind of the fictional middle, as if it exists. They were called “normal students” and that’s actually the word they used. And everybody else, all the kids that weren’t “normal”, were called “exceptional pupils” and the condition that defined them was called an “exceptionality”. Now we’ve dropped the normal word, but we haven’t dropped the exception word. And you’re only exceptional if you’re not normal; so it’s still lurking out there by implication. Now the very concept is discriminatory and unfair.

Can you imagine a workplace that said now we have normal employees, and then we have the ones that need to use the women's washroom. That’s a little sexist, don’t you think? What if we had a workplace that said, we have normal employees and then we have employees whose skin isn’t white coloured? That’s kind of racist. But our education system was premised on just that conception of students with disabilities- that they are abnormal, they’re exceptions. What they have is ‘special education needs’, what they receive is ‘special education’. The entire language is inherently exclusionary and discriminatory. Now I’m not a big words guy, I’m an actions guy as you’re gonna find out really quickly. But before you find out what you gotta do to fix something, you gotta find out what’s wrong. Now when I say, the school system is designed on this base-- what do I mean? Well the first thing I mean is that the buildings the schools have historically been designed as if the students who are gonna learn in there have no mobility disabilities. The Toronto District school Board has a total of 550 schools. And last year we were told at the start of last year on the special-education advisory committee that I chair, we were told by the school board that the number of schools of those 550 schools, how many are wheelchair accessible? Just 85.

The vast majority of schools are ones where kids using mobility devices and parents, and grandparents, and teachers, and staff, and members of the public can't even get in and around and you can’t learn there if you can’t get in there. But that's not all; the teachers that teach in the regular classroom were trained as if the students they're going to teach were basically so-called “normal students”. We historically have had two categories of teachers; you're trained to be one or the other. You're either a teacher in the regular classroom (ie. trained to teach so-called “normal” students), or you’re a special education teacher. The implication is we have kind of two worlds and if you teach-- don’t train to be a special education teacher, you’re not trained to teach those kids! But guess what? There will not be a school room in this province as far as I can figure that won’t have a child with some special at least one kid with special education need, since we’re what? One out of every 6 kids. So the teachers aren’t trained historically to teach everyone.

Well we passed a law -- and I’m gonna talk law for like like two minutes, passed a law, and if any of you going to work in the school system you're going to get exposed to it a one-way or another. They amended our Education Act in 1980 and then passed regulations under those amendments to setup a system for figuring out what we do with these kids and their families to come forward with a shoehorn trying to shoehorn their way and it was system that was not designed as if they were going to be there. And it's all viewed as kind of what can we do for you to help you either fit it or to provide for you separately. And it contemplates that there are two places you could be educated either in the regular classroom or in a separate place, and I’m gonna call it a segregated classroom. Now the government or the Toronto district School Board, they use more gentle words, they call them “congregated” classes.

I call them what they are. Congregation -- it sounds like you’re going to a church or mosque or synagogue; it doesn't fit. But we’ve historically worked on the basis that either you get regular education, or you get segregated education which they call “special education”. Special. And before I explain to you, well there’s a bunch of problems with it and they’re going to be clear as I explain it to you, and then I’m gonna talk to you about what some of us in the advocacy were trying to do about it, and then I’m gonna talk to you about what you might want to do about it. So the first thing you need to know is that our special education legislation defines exceptional pupils and if you don't fit that definition, you don't fit the system. And the definition is not only troubling in terms of the names, as I’ve told you, but it's also troubling in terms of who it includes-- or more importantly who it doesn’t include. It does not include children with all kinds of disabilities. It lists, it identifies certain exceptionalities and that’s all it covers. And one common disability that it does not cover by name, are children with mental health conditions.

The only thing it covers that could fit, are called “behavior”. In other words, if you got a mental health disability-- mental health condition, and it's leading to behaviour problems, then you’ve got an exceptionality that the school board is prescribed to act upon. But, if it hasn't risen to the stage of a behaviour problem, you're out. You're not covered. I don’t mean you're out of school, but you're not covered by our special-education regime. Incredibly out of date. But to tell you the rest of what it covers I got to stop for a minute and say, how should we address the needs of an individual child? And I’m gonna suggest you just as a matter of basic sense, and this doesn’t require any educational jargon or knowledge of any-- just practically speaking, I'm going to suggest the steps. First, you figure out what needs the child has in order to ensure that they can fully participate in, and be fully included in, and fully benefit from, an educational program. First figure out what their needs are. Then figure out what services or supports they will need to meet those needs. And then finally figure out where in the school board is the most effective place or placement for them to learn and to deliver those services.

After you get to your “placement”, then the school board is required to develop what's called an “individual education plan”. I believe in this course you’ve heard about that, an IEP. And in that you identify the child’s needs (which should’ve been the first thing we did) the IPRC can look at that but only for placement, then you figure out what services and supports they need (that should've been done before we got to placement). Then school board can decide in conversation with the family, or in consultation with the family, what services and support they’ll provide. And if you the parent, or family member, or even the student aren’t happy you think ‘that's not good enough they're not doing enough for me’ does the education act provide you an appeal? Somewhere to go to so that's not enough that's not good enough that's not fair? And the answer is no it doesn’t, not at all. So that means that we have up to 334 thousand students in Ontario who could be getting an IEP and if they're not happy with what the board offers them the education act says “well heck”. Or if you're happy with what the IEP says but the school board isn't delivering you got a place to go under the legislation to say that's wrong will you order them to do what they said they’ll do? And the answer is no.

Is that the end of my law talk? No it ain’t. But it’s only gonna go on for another four minutes and then I going to get into more action. See, the good news in Ontario is that we have three important laws on the books and I’ve had the privilege as a volunteer disability community organizer and advocate in my community who have taken part with many other people in the advocacy to get us those laws. Let me tell you about them. The first was passed by a guy named Prime Minister Trudeau, he’s the daddy of the fellow who’s our Prime Minister Trudeau. And he passed in 1982, he brought to Canada our Charter of Rights, and the Charter of Rights include rights that we all enjoyed the governments must respect. And one of those rights is equality. And equality in our Charter of Rights includes freedom the right to equal benefit of the law without discrimination because of the physical or mental disability. By the way when he proposed the Charter it included a equality but not disability, we fought to get it in there (and a number of us fought, and we won) back in ‘82 it was very exciting. And in fact when I had the privilege of appearing before the joint committee of the Senate and the House of Commons back in 1980 to argue why they should include disability, if you watch the video on YouTube the only thing useful about it is I had hair back then. Equal education law opportunity for kids with disabilities was one of the issues we raised as showing why we need a constitution. A system that does not provide full equality to students with disabilities is a system of education that raises serious equality problems under our constitution.

There's a second law, it's called the Ontario Human Rights Code. The Ontario Human Rights Code also makes it illegal to discriminate in access to goods or services or facilities and education is a service or a facility. And it bans discrimination on grounds like disability, I also had the privilege of taking part of the fight back in 1980 to ‘82 to get disability into that law. How do you enforce it? You can file an individual discrimination complaint, and part of what the Charter Of Rights and the Human Rights Code guarantee in the guarantee of equality is it says that if you've got an organization that doesn’t fully extend full and equal benefits to folks because of their disability, your organization has a duty to accommodate them. You have a duty to adjust your practices to accommodate their disability related needs. Is it an unlimited duty? No, it's a duty to do so up to the point of undue hardship. A school board would have to show that providing more accommodation to an individual student to ensure their disability doesn't impede them from acquiring a full education. They’d have to show it’s impossible for the school board to do more for that student without undue hardship to the entire school board. It’s a pretty hefty burden, a hard one to meet. And so the Human Rights Code is an enormously important document, you see parents or children who seek accommodation seek to get the school board to fully respect -- or a preschool program or college or university, to fully respect the right to equality and education. If they’re not happy they can file a court action under the Charter of Rights, or a human rights complaint under the Human Rights Code. And they can rely on that duty to accommodate. So when I said what is a parent to a child do at the school board if the individual education plan doesn't actually adequately meet the child's needs or isn't fully complied with, there’s nothing under the Education Act but you can go to the Human Rights Tribunal and file a constitutional claim -- only if you do that, you gotta get lawyered up and the school board gets lawyered up, and you have a big fight on your hands. And it could take years, and it's conflictual, and most folks don't want to do it. And that by the time you win, you may win the right to kindergarten when the child is ready to finish elementary school -- may not take that long but it can take years. Especially if they are appeals.

So I said there were three laws, what’s the third one? Well take it back in history about 22 years. A bunch of us decided that the Charter of Rights was a great law for people with disabilities, and the Human Rights Code was a great law for people with disabilities. But after 10 years of having them on the books from 1982 to around 1992 maybe ‘94, we were finding we weren't making enough progress. And we banded together to say we need a new law, a better law, not to replace the Charter and Human Rights Code, but to make them work. And I had the privilege of leading the decade long fight from ‘94 to ‘05, that led to that enactment of that legislation -- I chaired the Coalition that fought for it. We had many wonderful volunteers, we organized all around the province including right here at Ryerson, and mounted a political campaign that led to the enactment of this legislation. Why did we need it? Well, we needed it for two reasons-- and this is all going to bring it right back to the school system very fast, to the education system very fast.

The first reason we need it is cause we said it's wrong for organizations to just keep doing business the way they are and we got to grab a shoehorn and try to fit in. It would be better if we had organizations remove and prevent the barriers to accessibility they have, (and I don’t mean just physical disability, I mean all the kind of barriers I talked about at the start of this talk) and told them what they gotta do. If the classroom is a barrier-free place it would be easier to get more kids with disabilities into that classroom. Having to shoehorn them into a system that’s designed as if they’re not there makes it much harder to allow for their full inclusion. So we said we want a law that tells organizations what they gotta do, in detail.

What we decided, the AODA Alliance, several years ago, that while we're making progress to the AODA’s goal of full accessibility by 2025, things aren’t moving fast enough. So we started pressing the Ontario government to pass a series of new accessibility standards-- they passed some, but not enough. Well one of the ones we urged that the government pass, would be an Education Accessibility Standard.

What could that do? It could direct organizations that provide preschool educational programming, or early learning, or K-12 schools, or colleges, or universities, postsecondary programs, it could direct them what barriers they need to fix and by when. Well we campaigned for it. We got many major teachers unions to endorse it, and they weren't saying “don't make us do it”, they were saying “do make us do it”. And finally on December 5th, 2016 in the Ontario Legislature, to her credit, Premier Kathleen Wynne stood up when asked by an opposition member and said that the government will develop, will create, will enact, an Education Accessibility Standard. So we see the future as a place where we can propose and try to get enacted specific provisions to ensure that the buildings where we study and our children study, the teacher training for those in teach us, the curriculum, the digital equipment, the playground equipment, all aspects of the education system will include requirements for full accessibility. We would also like to see an Education Accessibility Standard that will cover all disabilities not just those that our outdated special education law refers to as “exceptionalities”. We also would like to see the Education Accessibility Standard provide for a modernized, fair, fast, inclusive process for deciding what accommodations a student with a disability will get.

We have found from feedback from families around Toronto and I'm sure this is replicated around the province, that too often parents who approach the Toronto District School Board, with children with special education needs find it exceedingly difficult to get the most basic information about what options are available for their children and who to go to, to discuss or advocate for them.