Sixteenth Report

Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities (HUMA)
42nd Parliament, 1st Session

Study
2018 Centennial Flame Research Award

2018-2019 Annual Report on the Administration of the Centennial Flame Research Award Act

Pursuant to section 7 of the *Centennial Flame Research Award Act*, the Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities (the Committee) is pleased to submit its 2018-2019 annual report on the administration of the *Centennial Flame Research Award Act*.

On Tuesday, September 18, 2018, the Committee agreed that Tara Collins be the recipient of the 2018 Centennial Flame Research Award.

On Wednesday, March 6, 2019, Benjamin Kane Fulton, recipient of the 2017 Award, submitted his research report, entitled *The Story of David Lepofsky: Effective Advocacy in Action* to the Committee.

On Friday, March 8, 2019, a cheque for $2,750 representing the second and final instalment of the Award was sent to Mr. Fulton. The total value of the 2017 Award was $5,500.

The 2018-2019 Annual Financial Statement of the Centennial Flame Research Award Fund and the report of Mr. Fulton are attached.

A copy of the relevant *Minutes of Proceedings* (Meetings Nos. 108 and 143) is tabled.

Respectfully submitted,

Bryan May
Chair

The Story of David Lepofsky: Effective Advocacy in Action

by Benjamin Kane Fulton

Acknowledgements

I would like to start by acknowledging the fact that I cannot begin to identify all the people who helped in this project. To list the names of everyone involved would take more pages than this article has in it. The few individuals mentioned within the article is not to detract in any way from the contributions of others, but merely to illustrate how a dedicated individual can make a difference, and hopefully to inspire others to become that dedicated individual. To everyone who helped out in this project, or with the work of David Lepofsky, you have my gratitude.

That being said I would like to personally thank Roxanne Mykitiuk for her support in applying for the research grant that let me complete this report, and extend many thanks to Hart Schwartz, Jerome Bickenbach, Lorne Sossin, Martha Simmons, and Paula Boutis for giving of their time to conduct interviews about their work with Lepofsky. Their input was a valuable insight about Lepofsky both professionally and personally. I would like to thank my colleague Kevin Gray for helping with edits, and my partner Anna for putting up with me taking on extra projects while in law school.

I would also like to thank HUMA the Parliamentary Committee on Human Resources, Skills and Social Development and the status of persons with a disability for accepting my proposal, and allowing me to conduct this research. I found it a fascinating project, and I learned a lot about advocacy. I am hoping that this research will reach others, as intended. Finally, I would like to thank David Lepofsky himself, for acting as a role model for the community, a personal mentor to me, and for doing all the wonderful work that made him the subject of this article, and the recipient of many awards.

Introduction

David Lepofsky was born in 1957. He had no vision in his right eye from birth. His left eye was very near-sighted and by 1978 he was no longer able to see from his left eye either. Not slowed down by this undiagnosable condition which his doctor jokingly referred to as “Lepofsky Syndrome”, he finished grade 13 a year early completed 2 years of studies at York University, and was enrolled at Osgoode Hall Law School by the age of 19. Precocious by any standards, David completed his articles at Lang Michener, and then completed a six month contract with the Ministry of Health, before receiving his masters in law from Harvard, by the time he was 25.

As if this wasn't enough, David did all of this while serving as the volunteer constitutional spokesperson for the Canadian National Institute for the Blind and a member of the Ontario Division Board of Management of the CNIB. During this time, he also made written submissions about the need to include disability as a prohibited ground of discrimination, in the patriation debates of 1981.

David not only involved himself in the Federally enacted Charter of Rights and Freedoms, but also with the work on Ontario human rights legislation. In 1979 the Ontario government was considering passing a disability rights bill that would extend many of the protections against discrimination already contained in the existing Ontario Human Rights Code, to persons with a disability. Opponents of this proposed legislation formed the Ontario Coalition for Human Rights for the Handicapped. This coalition was created for the sole purpose of opposing the separate but equal legislation and requiring the Ontario government to amend the existing human rights code. After the bill was withdrawn, and the government was considering amending the human rights code, Lepofsky joined the coalition. He was part of the team figuring out what amendments were needed, and pressing that case to the Legislature. The purpose of these amendments was to put disability on the same level as the other prohibited grounds of discrimination, and the coalition dissolved shortly after the proposed amendments were adopted.

This single purpose coalition foreshadowed, in many ways, the ODA committee that was to come years later. After disability rights were effectively injected into both Federal and Provincial statutes, effective enforcement mechanisms were needed. In addition to enforcement mechanisms, it was clear that guidance was needed to inform companies about accommodation for persons with a disability. Beyond just a constitutional guarantee, what was needed were clearly articulated standards. Ironically, the same people who opposed creating a disability act in the late 70s advocated for the creation of the Ontarians with a Disability Act, in the 1990s. By that time it had become clear that the unique nature of disabilities required creating a statute specifically to deal with those challenges.

In chronicling the history of this advocacy, I hope to illuminate some of the strategies that were effective. I also want to emphasize that this project was an enormous undertaking, involving hundreds of people countless hours of labour and many years of dedication. Officially formed in 1994, The Ontarians with Disabilities Act Committee fought for over 7 years before provincial disability legislation was first passed. The committee worked for an additional 4 years to get the legislation strengthened, and it's successor organization the Accessibility for Ontarians with a Disability Act (AODA) Alliance continues to fight to this day, 13 years after the passing of the amended Accessibility for Ontarians with Disabilities act in 2005, for the implementation of the existing legislation, and for improvements to the statute that would improve the conditions of persons with a disability by implementing the removal of barriers.

I also want to look at the other advocacy initiatives Lepofsky has contributed to during his legal career. By looking at his work with the TTC, his published work, his professional career, and his advocacy initiatives I hope to present the reader with a wide range of tactics to be employed when engaging in public advocacy.

The history of the Accessibility for Ontarians with Disabilities Act (AODA) reveals certain re-occurring trends. By examining those trends I hope to illustrate how effective advocacy may proceed in the future. Interestingly enough, at the start of his legal career David was faced with impending Federal legislation, and a comparable need to work at improving the provincial legislation. As I write this, almost 40 years later, at the start of my legal career, there is similarly impending Federal legislation, namely Bill C-81 the Accessible Canada Act and a pressing need for effective implementation of the AODA, both of which David Lepofsky is heavily involved in.

Stage 1: Injecting Disability Equality Rights into the Charter:

In 1981 Prime Minister Trudeau was interested in patriating the constitution. He devoted many resources to this goal. Public forums were held across the country, and debates about patriation occupied parliament's attention for most of that year. A significant feature of what emerged as part of the newly patriated constitution was the Charter of rights and freedoms.

The Charter of Rights and Freedoms provides constitutional protection to the rights and freedoms contained therein. These rights and freedoms and their guarantee exert considerable influence over affairs of state, the enacting of legislation, cases appearing before the courts and even the private transactions between individuals.

Although private corporations are not bound by the charter, government action, such as passing legislation, is within the jurisdiction of the charter, and as such, the charter has the power to influence the laws that regulate the interactions that properly belong to the private sphere.

Although many rights and freedoms are guaranteed by the charter, Lepofsky's work has mostly focused on section 15 of the Charter, which states that:

15. (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

The initially drafted s.15 made no mention of disability; however, before a bill becomes law there are parliamentary debates and 3 readings in the house of Commons before the bill goes to Senate for further debate and review. If the bill passes the Senate committee then the bill can go back to the House of Commons for final approval. After that point the bill will then become a statute and carry the force of law. It is during this lengthy debate period that amendments can be proposed and approved. Interestingly enough, out of all the proposed amendments that were made and the numerous submissions made from a plethora of interested parties, the only additional right that was added to the Charter of Rights and Freedoms to be approved of during the 1981 patriation debates was the addition of disability as a prohibited ground of discrimination.

There were three forums where the case for inserting disability into section 15 was argued. Firstly, in public forums and debates, and letters directed at Members of Parliament, during the entire year of 1981. Secondly, the Special Committee of the House of Commons on the Disabled and the Handicapped was struck in 1980 to look into the position and needs of persons with a disability and propose necessary reforms. Thirdly, in front of a special joint committee called the "Hays-Joyal Committee" spokespersons from key organizations like the Coalition of Provincial Organizations of the Handicapped (COPOH), and the Canadian National Institute for the Blind (CNIB) made submissions about possible amendments to the Charter.

To say that David made substantial contributions in all these forums would be to understate the case. He was involved in letter writing campaigns, and keeping pressure on politicians by making sure that disability rights were raised during public debates. He was involved in ensuring that the special committee heard about the importance of enshrining disability rights in the charter, and he was the spokesperson for the CNIB in front of the Hays-Joyal Committee.

Inserting disability rights into the Charter was a tremendous effort made by hundreds if not thousands of individuals. I can not begin to list the organizations and people that came together to achieve this amendment. Focusing on the role David played is not in any way to diminish the contributions of others, or imply that David was alone in facing this Goliath. There were people there to help him all along the way. Such sweeping changes would not have occurred without a large number of contributions. Nonetheless, it is indeed all the contributions put together that have a combined effect. That being said, David Lepofsky certainly made significant contributions, that went a long way toward advancing the cause.

Stage 2 working with Provincial legislation

Lepofsky's interactions with the provincial legislation serves as an excellent example of skilled advocacy at work, and how the provincial organization founded around the idea of disability rights legislation in Ontario can be used as a model for anyone seeking to bring about social change.

Twelve years after the enactment of the charter it was becoming abundantly clear to a number of individuals that something more than just the charter was needed to put an end to barriers facing persons with a disability. Although the Charter guarantees everyone the right to equal treatment and freedom from discrimination, the charter is limited in its' application to actions of government actors. That is to say, the Charter does not apply to the actions of private individuals, including corporations.

The newly amended Ontario human rights code included disability as a prohibited ground of discrimination, and therefore went a long way towards guaranteeing that the services being provided by non-government actors were available to persons with a disability. Nonetheless, while both these statutes talked about the rights of persons with a disability to be free from discrimination and have equal access

to goods and services, and equal treatment, neither document mentioned how to ensure that the rights of persons with a disability were being provided for by the people responsible for providing them.

Neither document described how to remove barriers to persons with a disability, or what barriers to persons with a disability look like. Although the preamble to the Ontario Human Rights Code mentions as its' goal promoting fair and equal treatment, it does not describe how this is to be achieved for individuals who require accommodation. There is an obligation for service providers to accommodate an individual with a disability up to the point of undue hardship, but the legislation lacks guidelines for individuals to use when attempting to prevent or remove barriers. It is also unclear what undue hardship means, and it can vary depending on the service provider in question.

Larger companies are in a better position to make more costly accommodations, and complicated corporate structures can be used to attempt to avoid providing otherwise available accommodations. All this guesswork can lead to added expenses and resources taken away from providing the accommodations in the first place.

All this led many to the conclusion that effective provincial legislation was needed to fill the gap left by the other statutes. The reason the legislation had to be provincial was in part due to the constitution act 1867 which places jurisdiction of certain matters, like commercial activity, exclusively within the province. For the legislation to be effective at reaching into the private sphere where most services are provided, the legislation had to be provincial. Furthermore, for the people living in Ontario it made the most sense to focus their efforts on a local initiative. It was felt that provincial legislation would have more impact on them personally, than Federal, or even International laws. Hence, the members of this organization decided to focus on the enactment of provincial legislation, to accomplish their goal of inclusion.

Early on the organization set one clear goal, and had only one criteria for membership. Their goal was the enactment of effective provincial legislation that would remove barriers for persons with a disability. The only criteria for membership in the organization was the commitment to that goal. The committee avoided any discussion or debate over whether the goal they were working towards was the best approach to the problems confronting persons with a disability. There are many different avenues, and possible solutions, but the Ontarians with Disabilities Act (ODA) committee kept their momentum by setting their sights on a goal and steadily moving towards that goal. It is often said that chasing two rabbits will catch you neither. Many organizations get bogged down by endless debates over the remedies they seek, and whether they should be pursuing one goal over another. The ODA committee never questioned whether provincial legislation was the goal that they should be working towards. Those who would rather spend their energy on other avenues were welcome to pursue their own advocacy initiatives. To be welcome in the ODA committee you really had to believe that provincial legislation was worth working toward.

The exact contents of the legislation were left for later examination. The ODA committee knew early on that if they spent excessive time trying to pin down the wording of the legislation it would open them up

to controversy, and take valuable time away from the work they needed to do in order to get the Legislature to even consider tabling the legislation, let alone the years it would take to actually push a bill through.

The committee established 11 principles early on that were agreeable to the widest possible audience, they could imagine. In summery the 11 principles set out that the purpose of the disability legislation should be the achievement of a barrier-free Ontario for all people with disabilities. It should cover all disabilities, whether physical, mental or sensory. It should cover all barriers, not just physical barriers.

All public and private sector providers of goods, facilities and services should be required to remove and prevent barriers in their organization. Time lines and standards for removing and preventing barriers should be decided upon through a consultation with all stakeholders. The legislation should set out the time lines for developing these standards and a process for consultation.

The same requirements should apply to all employers. There should be an effective and speedy way to enforce the law, besides filing human rights complaints for each barrier in individual circumstances. People with disabilities should be able to propose regulations which the Government must consider adopting in order to set standards for barrier removal and prevention, sector by sector and industry by industry. Regulations are laws which the ODA would permit the provincial Cabinet to make, and that would set out the detailed standards for removing and preventing barriers.

By generating mass appeal the committee was able to garner the support that was needed to bring about changes in provincial legislation, and the enactment of the Ontarians with a Disability Act 2001, and an even stronger Accessibility for Ontarians with a Disability Act in 2005. Although the newest legislation still leaves a lot to be desired. The successor to the committee that fought hard to implement the legislation in the first place is now the Accessibility for Ontarians with Disabilities Act(AODA) Alliance, and they fight for the implementation of the existing legislation, using the tools that are available, and simultaneously continuing to advocate for improvements to provincial statutes.

The committee knew that once there were serious discussions in parliament about a provincial disability act, that they could shift their focus to the content of the legislation, and they could iron out the details at a time that was more appropriate. This understanding of when to shift focus, and what to focus on, in a time sensitive manner, proved to be one of the more effective tools employed by the committee.

By setting a clear goal early on the committee was then able to identify the steps that they needed to take towards that goal. With a goal clear in mind it becomes easier to determine whether particular actions will advance the cause of your goal or not. With a clear idea of the steps needed the committee had a sort of road map.

Although there were a lot of areas uncharted, and warnings that there be tigers the committee was nevertheless able to forge a path forward, and this was possible because every member believed in working toward the same goal.

Another important decision the committee made early on was the decision to remain non-partisan. The ODA committee stated quite openly their willingness to work with any party that would work with them. They dedicated themselves to obtaining commitments from all parties, to support the enactment of provincial legislation that would give effect to the 11 principles that the ODA committee had already drafted. This meant that no matter what party eventually took office, the ODA committee would be able to turn towards the commitment that party made, and thus hold the government of the day to following through on their pre-election promises.

Of particular note in this saga is the letter that Mike Harris wrote, dated May 24 1995, where he committed to passing strong and effective legislation within his first term, if elected. The committee was able to refer again and again to the promise, in the premier's own hand, that swore to pass the very legislation the committee sought.

Remaining non-partisan also allowed the committee to make use of opposition motions. Almost 1 year after the date of the letter signed by Mike Harris, NDP Candidate Marion Boyd tabled a resolution vote that called on the legislature to vote on whether or not they would resolve to carry out the very thing Mike Harris had promised to do. This was very effective, because the government was placed in a very awkward position. To vote against the resolution would be publicly announcing that they had no intention of fulfilling their campaign promises. Although the resolution itself is not binding, significant press coverage around resolutions went a long way towards convincing the conservative government to eventually pass the ODA.

Early on the ODA committee learned an important lesson for anyone interested in public advocacy. The media does not cover issues, the media covers events. To get your story into the news it is important to link the development of your issue to concrete events that the media can focus on.

The day the resolution was debated, and unanimously passed in the legislature, the committee arranged a press conference to ensure maximum exposure. They were able to make the event even more media friendly by arranging for a number of their members in wheelchairs to attend and highlight how the legislature was not accessible to persons with mobility impairments.

This was cruelly ironic as the people attending to observe the debate over the rights that concern them the most, were excluded from the very participation that is a constitutional right. The press was quick to respond to this media friendly focus, and the coverage accelerated the growth of the ODA committee as other people became interested in what the committee was doing, as a result of what was being broadcast. Therefore, the ODA committee learned the importance of the media for two reasons. Firstly, it is important to get public support to make your issue of central importance to politicians. Secondly, by broadcasting your message broadly you caste a wide net and get the involvement of people who are interested in devoting their time and resources to helping your cause. The work of the volunteers in the committee was an instrumental and indispensable part of the successes the committee enjoyed. Without the contributions of the hundreds of people involved none of the work would have been possible.

The formula for the success of the ODA committee was simple. First, agree on a clear goal. Secondly, identify the steps to take towards achieving that goal. Third, take the steps that have been identified. Fourth, be willing to shift focus from one part of the plan to another, as time requires. Finally, stay focused and persevere. Take the concessions that are given and work with what the parties give you, but continue to advocate for the changes you want to see, and never accept a compromised solution as the final result.

Early on the steps that needed to be taken involved obtaining commitments from all the parties. Once those were obtained, the committee was in a better position to engage in recruiting activities and swelling their ranks to gain public support in holding the parties to their pre-election commitments. During peak election times the committee had to stay focused on making sure their events made it into the news. The committee had to respond quickly to last minute notices, to make the most use out of contemporary events and media coverage. The committee also found it useful to tie their messages to seasonal events, like Halloween or Christmas. Using slogans like "is this legislation a trick, or treat?" and "This legislation is last year's shoes wrapped up as a new Christmas present".

Remaining time sensitive to events let the committee know when they needed to shift their focus to attending to internal matters like increased membership and starting new regional chapters, or when they needed to work furiously towards getting their issue debated in the house of Commons, and when they needed to get the media working for them. The committee also learned a lot about how to get the media working for them. Taking advantage of slow times for news events is a good way to make sure that your issue stays live. Giving press something to cover when there is not as much going on can really help boost relations with the press and the public at large.

The committee developed and implemented a number of tools that helped this initiative to be more effective. This included holding political action labs where participants were shown effective ways at communicating with politicians and administrators, and how to get other members of the community involved. These labs provided participants political action kits that contained useful information like contact details for MPP's and political party members, as well as template letters for sending messages supporting the ODA cause to interested parties. The committee discovered that providing people with a template letter increases the chance that they will send a message, and thereby add their voice to the political discourse. It was also important to focus on a wide range of people and engage with administrators and government officials on all levels not just MPPs.

One event requiring quick attention, involved Minister Bassett making a derisive comment about the AODA calling for job quotas, the AODA immediately launched a province wide letter writing campaign to Minister Bassett and mike Harris, asking the government to desist from making inaccurate claims. The government subsequently dropped that tactic and Minister Bassett conceded on CBC Radio that the AODA Committee was not seeking job quotas. These wins were important to ensure that the committee had public support. If the public was poisoned against the legislation by erroneous claims then the committee would be fighting an uphill battle. Thus, letter writing campaigns were an effective part of the committee's success. It was instrumental at forcing Minister Basset to formally recognize their position on Radio.

Letters also helped make sure that the politicians stayed focused on disability rights legislation, especially during critically important times, like elections.

Being sensitive to timelines required the committee to consider what steps to take in any given moment. For instance, in 1997 when Minister Mushinski announced that her target for a meaningful AODA with teeth was late 1998 the committee turned off the media focus as a sign of good faith, and focused their efforts on developing and solidifying their platform. The 11 principles could serve as excellent guideposts, but what was needed in preparation for the legislative debates was a more fleshed out understanding of what the statute should contain. Constantly being willing to shift their focus was one way the committee remained responsive to current events, and successfully navigated the turbulent political waters of the late 1990's.

The committee needed to remain nimble during the late 1990's responding to last minute press releases, private consultations and a government more interested in passing legislation that would not have a serious impact on private commerce than in effectively removing barriers for persons with a disability. The ODA committee effectively used resolution votes to get the conservatives to commit to supporting their cause. In 1995 the committee was able to get the conservatives to commit to keeping the promise contained in Mike Harris's letter, and in 1998 the committee obtained the resolve of the conservatives to uphold the 11 principles drafted by the ODA committee.

The committee was careful to draft the resolutions in a way that forced the conservatives to support them, by phrasing the resolutions in a way where voting against the proposed resolution would make the conservatives appear to be breaking earlier commitments. Basically, voting against the resolutions would have been political suicide for the conservatives. Also, the non-binding nature of a resolution vote made it more likely that the resolution would pass, while still giving the ODA committee substantial leverage.

Despite these resolutions, and other commitments made by the conservative party, the government seemed to be desperate to ram through legislation that ignored the input of the committee and the very community members that the legislation was designed for. The government decided, against the advice of the ODA committee and other community organizations, to hold private consultations, rather than public forums to gather input about the new legislation.

The committee responded by contacting everyone they knew and furnishing them with input to deliver during the private consultations. Many of the people contacted attended the private consultations and made submissions in keeping with the 11 principles of the committee. The committee also held shadow hearings where the public was invited to attend and give their input. The committee remained dedicated to working with the government, despite the obvious slights they received. The committee prepared detailed documents for the minister in preparation for the legislative debates. The ODA committee also responded quickly when the government released a discussion paper in a low profile manner. The paper called for such Ludacris oxymorons as voluntary laws. Obviously, if something is optional you cannot call it a law. The committee was quick to react to this. Although the release of the document received very

little exposure from the government, the committee made sure that it was widely publicized, along with their criticisms.

The ODA committee also had to use the Freedom of information act to force the government to disclose the results of the private consultations. The paper released by the government gave no voice to the submissions the committee knew had been made, because the ODA committee knew some of the people making them. Armed with the notes of the consultations the committee was able to demonstrate that the government was misleading the public about the results of the consultations. However, the committee again was forced to confront the reality of news media. What captured attention in the summer of 1998, more than the fraudulent conduct of elected officials, was a situation where a presentation to a delegation containing blind individuals focused heavily on slides. After the members of the delegation asked, the presenters did read their slides aloud, and that is what the media covered. This is because footage of an official awkwardly reading slides aloud makes more compelling footage than a paper trail obtained through bureaucratic processes.

The ODA committee used the otherwise slow summer months in 1998 to gain a lot of media coverage, and combined with the public forums and other activities of the committee this resulted in a groundswell of support. The committee knew how to turn this support to their full advantage, frequently setting up regional chapters after holding a public forum in a new location. By using their advocacy and skill in presentation, ODA supporters at these forums would use them as an opportunity to recruit more volunteers to their cause, and the committee adopted an informal structure that made volunteering easy.

When the initial ODA was first placed before the legislature in the fall of 1998 it was a “toothless 3-page bill” as the Toronto Star called it. The Star printed the bill in its entirety to demonstrate to the public how bereft of substance the legislation was. The committee responded quickly by opposing the legislation. This might seem antithetical to some. Why would the committee that fought so hard to pass disability rights legislation now be opposed to the very thing they were asking for? The answer was simple of course. The bill is not what the committee advocated for.

The bill did not give effect to the 11 principles the conservative party resolved to uphold. Some members were willing to settle with ineffective legislation rather than nothing, but the committee decided that this weak legislation would not accomplish the goal they sought. The committee resolved to continue working toward the implementation of an effective ODA and to settle for nothing less. Thankfully, the bill was defeated, and the committee went back to work, getting a new and better disability act back in the house of commons.

It took another 3 years of tireless advocacy involving heroic efforts like Paul Rushton’s all-nighter personally emailing every member of the Ontario legislature, pressing them not to pass another toothless bill in 2000, before an Ontarians with Disabilities act was finally passed. Paul Rushton was originally scheduled to attend a major AODA event but was forced to cancel because of a serious illness in the family. Working from home he was able to tend to the needs of his family while continuing to contribute to the cause.

In many ways, this mirrors a similar situation in 1995 when ODA supporter Carole Riback had to go to a hospital on an emergency basis. She continued her advocacy work by calling from the hospital bed, and informing every Toronto news outlet, to let them know about the major event happening in Queen's park the next day. Being adaptable to changing situations and thinking of alternative ways to promote their cause gave this committee a real edge when it came to pressing their agenda. Politicians and policy makers soon learned to expect constant pressure from the committee, and a relentless pursuit of their goals.

Volunteerism was a key part of this ability to exert pressure on politicians. In fact, the organizational structure of the committee was an important part of their success as a whole. Completely reliant on volunteer members, no one in the committee was paid for their efforts, aside from reimbursements for legitimate expenses. There were no paid positions within the committee. There was also little in the way of hierarchy. When spreading their message around the province, the need for regional committees became clear. The title of regional contact was created. The ODA committee left the organization of the regional committees to the region. A formal constitution was never drafted and the organization never got bogged down with red tape. They had one clear and simple goal, and the willingness to work with whoever would help them attain it.

The way the committee engaged with their volunteers was crucial to their success. Many public interest committees, social organizations, advocacy groups, or other groups which rely heavily on volunteers can learn a lot from the example set out here. Volunteers commit themselves to a cause because they genuinely want to help. Giving them the freedom to help in the ways that work best with them ensures that you will be getting the most effective and productive use out of both your time, and theirs.

The Organizations that bog themselves down in procedure and red tape, or stifle themselves with internal debates, are destined for a quagmire of missed opportunities. By embracing one single goal, and being willing to employ a wide variety of tactics the ODA committee was able to take advantage of every opportunity that came their way. Rather than excluding people by using rigid structures, they included the different approaches of many different individuals. This collaborative approach was incredibly useful to the committee, and represents a hallmark of David Lepofsky's work in general. Anyone who has worked with David over the years has commented on how he engages intellectually with those he works with, and takes their ideas seriously.

It is worth taking a careful look at the tools the committee used to advance their goal of enacting effective provincial legislation. By examining these tools, I intend to illustrate how others may engage in effective advocacy. Public forums are an effective tool for a number of reasons. A public forum is a newsworthy event that can get media coverage and spread your message to a wide audience. Public forums give people the opportunity to come out and get involved, and the forum can be used as a recruitment device for the organization. The organizational structure of the organization represents another tool used by the committee. When choosing an organizational structure, it is important for organizations to choose one that aligns with their ideology, but it remains important for the organization to also consider the functionality of the structure they choose. The informal structure worked well for the ODA committee for a number of reasons, not the least of which was the simplicity in their purpose. The singular focus on

disability rights legislation served the committee well in allowing them to remain focused and to streamline their efforts.

Their strategy was effective because they did not waste a lot of resources considering irrelevant issues or chasing tangential issues. Other organizations would do well to consider how a concrete target serves as an impetus.

The ODA committee also employed effective letter writing campaigns, press conferences, Phone in programs, and radio shows. media coverage, T.V. news and the internet were all forums used by the committee during the late 90’s. Technology helped the committee broadcast their message more broadly. Not having the funds to print a newsletter, the advent of the email meant the committee could circulate regular publications for very little cost. Email also allowed the committee to organize and communicate more effectively with their members.

One of the ODA committee volunteers, Patti Bregman, came up with the idea to focus Media coverage on a “barrier-free election” and this turned out to be a fabulous way to get the media involved. The idea of a “barrier-free election” was something the media could sink their teeth into, and happily the media ran with it. Another gimmick was the “call Mike” campaign, where the premiers phone number was circulated and people were implored to call Mike and ask him about his “oldest unfulfilled promised” referring to his letter dated May 21, 1994.

David received proof of how effective this was when his phone number was circulated by mistake and he returned to find his machine filled with messages from people demanding to know what he was going to do about enacting effective disability rights legislation.

The shadow hearings were an effective tool at showing the committee’s willingness to work with the government, and it also served the purpose of getting the information properly placed before the legislature in a compelling manner. The Freedom of Information Act is another tool available to anyone engaging in advocacy. The committee effectively used this tool to gain the information they needed to support their cause. Although, this tool proved less useful than many of the media tools, it is still an important part of the overall toolkit and needs to be considered as one of the arrows in the advocacy quiver.

Time sensitivity was also an important part of this advocacy and one tool the committee employed to good effect was the use of countdowns. When Mike Harris promised to enact effective legislation during his first term in office this created a timeline that the committee could use to its advantage. With 1998 set as a target by Minister Mushinski the committee could again focus on a calendar date to apply pressure. Both these situations illustrate that focus on a calendar date serves as an important impetus for motivating politicians into action.

Everything in politics is run on dates, election dates being the most important. Setting deadlines for action then forces the action, because after the deadline passes the politician is then responsible for breaking commitments, and this became very important in the campaign for the provincial legislation.

Perhaps the most effective tools used by the committee involved giving other people the tools they needed to engage in effective advocacy. The Political action labs and the accessibility action kits described above were concrete examples of where the committee engaged with others to encourage more people to engage in advocating for their cause. By providing people with ready made kits, and templates the committee enabled rapid deployment of advocates, to the areas where they were most needed.

In 2001 Ontario proposed the new Ontarians with Disabilities Act. Although more robust than the 1998 legislation, the bill was still deficient in many ways. The ODA committee got to work right away preparing a packet of amendments to the legislation. They then furnished their members with this information, again empowering people to engage in the powerful advocacy that was needed on multiple fronts. While the conservatives made amendments to 15 of the bill's 33 provisions, the amendments they made did not go far enough towards advancing the 11 principles as was needed.

The committee maintained pressure on the government throughout the readings of the legislation in the house, and after the bill was passed. Despite the shoddiness of the original legislation the committee nonetheless encouraged the government to declare the provisions into force as soon as possible. The committee also took on the role of monitoring how the legislation was being implemented. Again demonstrating their ability to shift focus and work with the most effective tools available to them, the committee committed to working with the legislation to remove the barriers that they could. The committee was also able to use the amendments that were proposed by the Liberal party during debate of the bill to encourage the Liberal party to enact a more effective Accessibility for Ontarians with Disabilities Act in 2005.

After Ontario passed the Ontarians with Disabilities act in 2001, and the amended Accessibility for Ontarians with Disabilities Act in 2005, the ODA committee was wound up and David formed a transition committee to transition from the ODA committee to the AODA Alliance, and became the AODA Alliance chair in 2009.

The AODA Alliance immersed itself in social media. David Lepofsky's use of twitter is legendary within the disability community. You can follow him on twitter, as he will tell you five times during a guest lecture, or disability rights talk. Social media has transformed coverage of events and the AODA Alliance has remained as current and adaptable as it's predecessor. Their robust web presence is a testament to the hard work of dedicated members.

Even though the medium has changed many of the principles remain the same. Things have to be snappy and attention getting. The ODA committee understood the importance of catchy new slogans like "half a decade is long enough" and used gimmicks to grab people's attention. One thing David notes is that 1.5 million Ontarians has more public appeal than saying 15% of the population. After realizing this truth David has ran with it and the AODA webpage uses this number to make their point. Soundbites need to remain quick and current and creativity is needed to come up with new ways of keeping the public interested.

Embracing technology and using social media to grab public attention is an important tool for anyone conducting advocacy in our current culture. Social media has become one of the most important tools in this new battle. Twitter and the use of hash tags generate a lot of attention in a short period of time. Politicians are forced to respond to these comments. As David would say, sending a party official a tweet is like firing a shot across their bow, it necessitates a response.

One of the more successful campaigns has been the #AODA Fail hash tag where people's attention is brought to barriers that have been created despite being a direct violation of the existing legislation. Videos posted to YouTube where the barriers are both graphically depicted as well as verbally described by David are linked to the twitter and Facebook accounts for the AODA Alliance, and finding their messages online is easy to do. Go to www.AODAAlliance.org or search for AODA Alliance on Facebook or Twitter. Even performing a general internet search for the AODA provides hits for AODA Alliance and Lepofsky's Twitter feed.

Still using old tactics, the AODA Alliance has armed themselves with a pre-election campaign promise from Ford, and they will use this letter in a similar way they used the Mike Harris letter of 1994, to require the government to fulfill their commitment to removing barriers for persons with a disability. Now that the legislation is in place the main focus of the AODA Alliance is in making sure that it is enforced.

<u>Grappling with Federal Legislation</u>

As one of the founders and later the chair of the ODA committee and current chair of the AODA Alliance Lepofsky played a very central role in the Ontario legislation. On the national level there are larger organizations, and larger numbers to consider. Although, Lepofsky's role here may not be as central as on the Provincial arena, he has nevertheless made significant contributions to Federal legislation, both through his earlier work on the Charter described earlier, but also on the impending Accessible Canada Act.

David was formerly the co-chair and part of the steering committee for Barrier Free Canada(BFC). Barrier Free Canada is dedicated to making Canada accessible to all persons with a disability through the enactment and implementation of effective federal legislation that will apply to areas of Federal jurisdiction. Provincial legislation is not enough. Even if every province had in force disability legislation that was as strong and effective as that called for by the AODA Alliance, there would still be matters governed by the Federal government that would remain outside the jurisdiction of any and all the provinces.

As I write these pages, the Accessible Canada Act otherwise known as bill c-81 has passed third reading and has gone to the senate for review. As was discussed earlier, before a bill is enacted into law it must

pass three readings in the house of commons, then be reviewed by the Senate, and then sent back to the House of commons for further amendments.

During this review process the Senate may recommend amendments to the bill, and the house is free to adopt those amendments or create new ones. The House will then send the bill back to the Senate, where the bill would hopefully be approved.

Barrier Free Canada is currently making submissions about amendments needed to strengthen the legislation. Part of their strategy involves drawing on the support of powerful national organizations. Barrier Free Canada created a non-partisan coalition to advocate for the creation of a Canada Disability Act, and now that bill c-81 is before the senate it is important to keep the focus on making the legislation as strong as is possible.

David withdrew his involvement with Barrier Free Canada in 2017 when they decided to become an official legal organization, that would be subject to the rules governing non profit organizations in Canada. It was a proposed change that he did not agree with, and it makes a lot of sense. The ODA committee and later AODA did very well with an informal structure as mentioned before.

The requirements imposed by the legislation regulating official organizations is cumbersome and onerous, and Lepofsky of all people would know. Because BFC was eager to make this change without his approval Lepofsky withdrew his involvement with Barrier Free Canada and focused more on making contributions to Federal legislation through the AODA Alliance. The ODA committee fought from the Provincial government far more than anyone thought was possible, and they are now working to ensure the Federal legislation is robust, effective, and enforced.

Many of the same tools used in the effort to obtain provincial legislation proved useful to the fight for a Federal Statute. Action kits play an important role in their advocacy, and on their homepage you will find letters of support from a number of organizations, as well as a commitment to remaining non partisan. Implementing changes at the national level required working with National organizations like the Canadian Hearing Society (CHS) the Canadian National Institute for the Blind (CNIB) and the MS Society, among others. This collaboration was integral to making nationwide changes to federal legislation. Barrier Free Canada also took advantage of International events like the international day of Persons with a Disability, leveraging Canada's international commitments to advance the case for enacting a Federal disability statute. The lessons about the importance of media appeal were not lost on this organization, and they cleverly used time sensitive campaigns to garner support. Of critical importance to this initiative was the ongoing monitoring efforts. Barrier Free Canada made sure that updates to the legislation were posted on their site at regular intervals, and their site became a source where one could find up to date and relevant information more readily than on the government websites.

Keeping the public informed in just one way that Barrier Free Canada ensured that their campaign maintained its' momentum. They are also a completely volunteer run organization, and they do not charge

a membership fee. It is important to consider this when setting up an organization. For many volunteers, even a nominal fee acts as a barrier to participation. More people are willing to join a cause that doesn't require a financial contribution. Those able to contribute financially will find a way to contribute, even if it is not through direct financial contributions. An interested member might pay for the gas to car pool people to an event, or pick up the tab for printing flyers or posters.

There are many ways to contribute to the success of a campaign, and by remaining open to accepting the contributions volunteers were able to make, the organizations David Lepofsky has been involved with have benefited from the willingness of devoted supporters to commit what they could to the cause.

Barrier Free Canada and the ODA committee have fought tirelessly for Federal and provincial legislation respectively. That is because, out of all the tools in the public advocate's arsenal, legislation is perhaps the most powerful. Once the laws are in place, the organizations have a mechanism they can use to force companies to remove barriers to goods and services.

The organizations spent a fair bit of time focusing on the enforcement mechanisms contained within the statutes themselves. That is because what the legislation says is determinative of the venue where redress will be sought. Challenges to unconstitutional legislation, appeals from decisions of quasi-judicial bodies, and straight-out litigation are all part of the legislative framework at play when it comes to advancing disability rights in Canada. In the next section I will demonstrate how David was able to use existing legislation to remove a specific barrier to the public transit system in Toronto. This story is one of excellent advocacy in action, and shows how escalating techniques can be used to increase pressure on officials, until you are finally successful in your endeavors.

Battling the TTC

No story about David Lepofsky's advocacy would be complete without a description of his work with the Toronto Transit Commission (TTC). Sometime in the 1970s, the TTC tried an experimental run with having an automated system audibly announcing subway stops. However, the speaker system was atrocious, and the short trial run was quickly ended amidst complaints from passengers. David recalls reading one of these complaint letters in a newspaper and considering writing a letter to the editor explaining why the announcements were a good idea, and how they would make a difference to blind and visually impaired patrons, but also people whose vision may be obscured for other reasons, like obstructions in the window or between the bus and street signs.

Almost 20 years later in June of 1994, while becoming increasingly active in community advocacy through his work with the ODA committee, David decided to send a letter to the TTC making a simple request that they announce all subway stops. David wasn't seeking an expensive automated system. The subways were

already equipped with a speaker the driver could use to make announcements. David just wanted them to start using that system to call out the stops.

The response David received said the TTC would not have the crews announce the stops, but sometime in the future they would be installing an automated system. David was unable to get any kind of commitment or timeline from the TTC and three months later he filed a complaint of discrimination with the Ontario Human Rights Commission

The Ontario Human Rights Commission was a government organization that administered the Ontario Human Rights Code. The Ontario Human Rights Commission underwent a serious reform in 2006 that will be discussed later in this report.

The Ontario Human Rights Code provides that

Every person has a right to equal treatment with respect to services, goods and facilities, without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, marital status, family status or disability.

Hence, persons with a disability have the right to the same provision of services as everybody else and companies providing services have an obligation to make sure that persons with a disability are able to make use of their services. To this end a company is required to accommodate an individual requesting services. This accommodation may cause the company some hardship. It is only when the imposition of the accommodation rises to the level of imposing hardship that is “undue hardship” that the company is able to argue that the company is not able to feasibly provide the accommodation sought. At all times what constitutes “undue hardship” is a matter for the tribunal, but suffice to say that larger companies will be in a better position to provide accommodations, as they have access to greater amounts of resources. A large company like the TTC would have a difficult time claiming that providing an accommodation would impose an undue hardship on the company.

When an individual experienced discrimination they could bring a complaint forward to the Ontario Human Rights Commission, and that is exactly what Lepofsky did. The same day David filed his complaint about the TTC with the commission, he had an interview on CBC radio explaining the nature of the complaint he was just about to file. On that radio program an official from the TTC was explaining that the TTC was actually busy at work implementing an automated audio system. This became leverage David could use to support the claim that the TTC themselves felt that this was a good idea. They must have, if they were busy at work implementing it, - mustn’t they?

Following the interview on CBC an official from the TTC contacted David saying that they wanted to have a meeting to discuss the audio signals on the subway. David went in to that meeting prepared to argue stringently for the audible route stop announcements, but was surprised to find within the first few minutes of the meeting that the TTC was willing to require their crews to announce subway stops, pending their plans to later install automated route stop announcements. So, David suspended his human rights complaint while the TTC worked on making their system more accessible.

In 1995 subway crews started to announce subway stops, but the service was intermittent and unreliable. On some trains, there would be no subway stop announcements at all while on others there would be a announcement that was unintelligible. David would complain about this to the TTC and be asked to provide the number of the train with the defective signal. Then David would take care to record the train number, the next time he encountered a similar problem. He would report the train number to the TTC, and be told that they were looking into the matter. For over six years David kept up his letter writing, and reporting defective subway route stop announcements, but with no results.

In 2001 David filed a new complaint with the Ontario Human Rights Commission. The TTC tried to argue that David's earlier complaint barred him from proceeding in the matter. They claimed that by agreeing to suspend further action, that he gave the TTC carte blanch to put in whatever measures they felt like, no matter how inadequate they really were. They insisted that their ineffectual efforts were sufficient to satisfy their obligations to provide accommodations. The TTC insisted that the automated audio system would be up and running in a few years, and David asked whether that meant that they were required to have the TTC employees announce the stops in the interim. Basically, he put the TTC to task on how long they were allowed to drag their heels, before they provided the accommodations they were required to provide, by law.

This time Lepofsky's complaint was heard by the Human Rights Tribunal of Ontario (HRTO). The HRTO is an adjudicative body that hears complaints, and makes decisions about individual rights within Ontario. At the tribunal Justice Rosenberg found in Lepofsky's favour. He decided that the TTC had had quite long enough to implement these changes, he ordered the subway crews to consistently announce route stops pending the installation of the automated stop announcements that ttc had planned to install, and he appointed Matthew Garfield, a former chair of the Ontario Human Rights Commission, to supervise the implementation of the TTC's plan.

Shortly after winning his victory with the commission, and in fact even before the matter was concluded, David had people coming up to him and saying that he should make sure that the TTC also implement audible stop announcements for buses. In fact, the audible route stop announcements are even more important for buses, because the bus may not stop at every stop, meaning the technique of counting all the stops that someone could use on a subway would not work, and therefore, the requirement for accommodations was heightened for buses.

One simple reason that David had not made the buses part of his initial complaint was simply that he rarely rode buses at the time. However, by 2005 David had moved to a neighbourhood in Toronto where he was more frequently riding the bus. This is important because, as a blind person taking the bus, David could argue that his rights were being directly affected. This gave him standing to file the complaint with the commission. In the proceedings before the commission Lepofsky represented himself, but relied on pro bono counsel to adduce his own testimony, and had junior counsel to assist him as he presented the rest of the case.

One thing that was somewhat baffling was the TTC's reluctance to grant the accommodations, especially in light of the earlier 2001 decision. It would seem obvious to most that if the subway must announce stops, so to must the bus. Although the TTC disagreed, Justice Rosenberg did not. He found that the same obligations applied to the bus system, and again ordered the TTC to get their act together. Justice Rosenberg also ordered the TTC to hold public consultations about the accessibility of their service. Although the TTC was initially reluctant, due to the success of the initiative the TTC voluntarily continued with annual public access meetings, and they have continued with them to this day.

One thing David asked the HRTO to order, that was not granted, was the appointment of an Ombudsperson at the TTC that would be responsible for handling accessibility concerns and complaints. Just like the public forums the TTC may realize that this initiative will benefit them in the long run. However, that remains as yet to be seen.

Following the decisions of the tribunal David filed a Freedom of Information application with the TTC. As a public company they are required to make certain aspects of their business transparent. David was curious to find out how much they spent on legal fees fighting his requests. At the end of the day the TTC spent $450,000 resisting accommodations they were obligated to provide anyway.

By the time Lepofsky won the second case against the TTC the McKinty government had passed the AODA, and there was a committee in place reviewing what the transportation standards should include. Although this committee was supposed to consider the concerns of the people with disabilities it was intended to protect, the committee refused to hear submissions about the need for audio signals, and other issues of concern. Subsequently, the committee initially proposed fairly weak regulations, that require amending to provide effective protection of disability rights, and you can read all about them on the AODA Alliance web page.

Throughout the struggles with the AODA and the TTC there is the theme of working with the existing legislation where it exists, and working towards changing the legislation where it is needed. With the legislation in place, it becomes possible to use the legislation as a tool to implement the changes required. In this way when advocating for a legislative change, it is like building the tool that you will then use later. Like forging a hammer, that you will then use to drive in your nails.

Throughout his legal career Lepofsky has been keenly aware of these nuances and has used them all strategically to his advantage. In the next section I want to show how he has influenced others through his professional career, his volunteerism, and his scholarly work. By showing the impact made through these contributions I wish to expand the readers understanding of the scope of his advocacy. By looking at the examples of Lepofsky's work I hope to illustrate some effective techniques for influencing others and being a successful advocate.

Influencing others through his work

Professional Career

After completing his articles of clerkship, and obtaining his LLM from Harvard, Lepofsky went to work for the Ministry of the Attorney General for five years in the crown law civil office. From 1983 to 1988 he held this position, before transferring to work for the constitutional law branch where he worked from 1988 to 1993. In 1993 he started working for the criminal appeals division. David continued with criminal appeals for 23 years before retiring from litigation practice in 2015. Although David no longer practices law as a lawyer, he has continued to make contributions to the legal profession through his work at Osgoode Hall Law School. In 2013 Lepofsky was awarded a McMertry Fellowship, and he continues to give guest lectures and presentations as a visiting professor. He has been quite involved in the ARCH Disability Intensive offered at Osgoode, and his scholarly work has been a boon to disability advocates everywhere.

Working for the Attorney General gave Lepofsky the opportunity to engage with the Charter in a profound way that appealed to his personal interest in human rights. Early on, Lepofsky was given the chance to work as junior counsel for the Attorney General of Ontario acting as an intervener on the B.C. Motor Vehicle reference case. This was a uniquely interesting case because it had an internal complexity that was particularly significant to an interpretation of the charter. The applicant sought to have a law declared unconstitutional because it was believed by the applicant to be at odds with the principles of fundamental justice.

Section 7 of the Charter states

s.7

Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

This provision is important to consider in light of section 1 of the Charter that provides

s.1.

The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

The Supreme Court of Canada (SCC) had developed the famous Oakes test, which was to be applied when determining whether government action was permissible when it infringed on one of the rights guaranteed by the charter. The charter, as a constitutional document, applies to government, but private citizens and companies are not held to the same standard, and hence a company may violate one of the rights provided by the charter. Hence, the charter serves only to limit the actions of government officials. Nonetheless, by restricting the ways that the government can act, and hence enact laws, the Charter has secondary effects on the private sector, as evidenced by instances where legislation governs the action of private companies, or individuals. While human rights legislation such as the Ontario Human Rights Code may set restrictions on how non-government entities must act, the legislation must do so in a way that is in keeping with the constitution. Hence a law that requires organizations not to discriminate based on a prohibited ground of discrimination, but then makes an exception that allows for discrimination that would otherwise not be permitted may be found unconstitutional and struck down. The law may be struck down in whole, or the offending provision may be struck, allowing the rest of the law to operate, as was found in the Justine Blaney case.

Justine Blaney was a young girl who wanted to play hockey in an area where the only available team was all male. At the time, the Ontario Human Rights code allowed sports teams to discriminate based on gender. After a long struggle through the Human Rights Commission, the Ontario court of justice, and finally the Ontario Court of Appeal, Blaney was successful at having the provision allowing the discrimination struck down. Striking down this provision allowed Blaney to benefit from the legislation, that was otherwise designed to help end discrimination.

This case provides an example of how powerful the constitution is in shaping legislation, that then has an effect on the private sphere, and how an applicant can overcome the burden imposed by the Oakes test.

As the court in Oakes affirmed, for a limit on a Charter right or freedom to be justified it must first be prescribed by law. No government action may infringe a right, unless some statute allows for the infringement. By requiring limits to be codified into law, the constitution ensures that such limits can be analyzed with suitable scrutiny.

Providing that the limit is prescribed by law it still must pass a three-part proportionality test where the court first asks if the law is rationally connected to its' objective; secondly, whether the measures adopted are reasonable; and thirdly, whether the deleterious effects of the infringement outweigh the salutary benefits of the law. Thus, the Charter already has a fully articulated limiting provision, complete with a common law test laid down by the Supreme court to facilitate the analysis.

In the BC Motor Vehicle Reference case, Lepofsky was junior counsel, assisting senior counsel making submissions on behalf of the Attorney General for Ontario. The AG Ontario was here acting as an intervener. In this case the applicant sought to impose a further limit on the enactment of a law, arguing for a limiting provision to be located in s.7 of the Charter. Whereas, the Attorney General was concerned with limiting the limits on legislation, to the Oakes test set out above.

In the end the court held that the reference to the fundamental principles of justice in section 7 did in fact constitute an additional limitation to the enactment of legislation. In this case the B.C. Motor Vehicle Act made it an offense punishable by imprisonment of 7 days to 6 months to drive a vehicle without a valid driver's license, even if the person did not realize that their license was suspended or revoked. Justice Lamer ruled that a law cannot prescribe imprisonment for an offense where the guilty party lacks the intention to commit the offense, because it violates the fundamental principles of justice. Hence, the law was considered a violation of the constitution without the need to use the limiting provision found in section 1 of the Charter. Although the court rejected the arguments made by the Attorney General in this case, by working on this case Lepofsky gained valuable legal experience, and helped to develop the landscape of constitutional law.

To understand the contributions Lepofsky was making, it is important to understand the role of an intervener in the Canadian judicial system. In cases of significance, especially if they concern the application of the Charter, interested parties may make submissions to the court, Even though they are not parties to the action. A Party to the action will be directly affected by the outcome of the decision, and will be named either an applicant or a respondent. Other parties may request to make submissions to the court as an intervener. The court may consider these submissions when making a decision, so in this way the submissions can be influential. In Canadian courts interveners play a significant role; therefore, it is important to carefully consider the position this role occupies when thinking about effective tools for advocacy.

During the 33years Lepofsky worked with the Attorney General, he worked on hundreds of cases, and was promoted to the level of General Counsel. This title is reserved for a select few attorneys, and recognizes the variety and excellence of Lepofsky's work. While there are far too many cases for me to write about here, I want to focus on a few highlights to illustrate the range of Lepofsky's contributions. Lepofsky's work went beyond the three departments he directly worked for, and many cases required collaborating with multiple departments, sometimes as an intervener as mentioned above, or as co-counsel. Not every influential case involved the role of lead counsel. Effective advocacy takes many forms and Lepofsky proved himself as capable of acting in a supporting role, as he was at taking the lead.

One case Lepofsky notes as having a profound influence on his career, is the case of R. v. Squires. This case involved the controversial issue of whether or not cameras should be allowed inside Canadian courtrooms. There are two main reasons this case stands out so profoundly. Firstly, it was one of the first cases Lepofsky worked on that had such broad implications. It was a major charter case that would impact how courtrooms in Canada are managed. The spectacle created by cameras in courtrooms, and the changes made to advocacy and litigation would seriously impact on the legal system. Secondly, it was a

major case involving years of preparation, research and litigation, and it continues to influence legal scholarly debate to this very day. David continues to give lectures or debate the issue at panel discussions at Osgoode and elsewhere, and he has written about this issue in his personal capacity.

In R. v. Squires CBC challenged the ban on Cameras in the courtrooms, saying it violated the right to the freedom of the press as provided for under section 2(b) of the Charter. Lepofsky was first assigned to this case in 1984. He was a junior lawyer at this time, and worked under a senior lawyer with the MAG. He did a lot of research on this case, decided in 1992, and felt it was an important part of his career. Lepofsky was responsible for arguing most of the case to support the claim that the ban on cameras was a justifiable limit under the Oakes test set out above, and was splitting the work of questioning witnesses with other, more senior, counsel.

The main thrust of the argument centered around demonstrating how banning cameras from courtrooms has a positive effect on maintaining the decorum of the court. Part of Lepofsky's research involved showing how the administration of justice has changed in jurisdictions where cameras are allowed. The evidentiary record can be a vitally important part of proving any case, and the next case I want to look at provides an example of Lepofsky assisting the court by supplying submissions on the evidentiary record, as an intervener.

In the case of the Toronto Star v. the Attorney General (AG) Canada, Lepofsky provided counsel to the AG Ontario, acting as an intervener in the matter. This case also involved the media. His work focused primarily on the evidentiary record that was used to support the AG's claim. , but he also wrote and presented all the legal arguments. The Toronto Star challenged the law that automatically granted, to the accused, a publication ban of a bail hearing, upon request. Basically, if an accused requested the court to order a publication ban of a bail hearing, it was automatically granted. The Toronto Star claimed this infringed s.2(b) of the Charter. The Toronto Star wanted the accused to go through a lengthy process known as a Dagenais application to support why a publication ban was needed. This would hold the accused to the high bar of getting through the Oakes test set out above, before the court would grant the publication ban. Lepofsky, as counsel, provided evidence to support the claim that asking an accused person in custody to pass an oakes test before ruling on whether to ban the publication of the bail proceedings would not be justified. The evidentiary record contained details of the position of most accused people, and why asking them to overcome the hurdle of an Oakes test would be unreasonable. Decided 18 years after the Squires case this illustrates how important media is to the administration of justice.

There have been many cases where this is a theme. I have highlighted these two just to demonstrate the central importance of this theme. David has engaged with the media as an advocate, but has also seen how the media engages with advocates in ways that shape how courtroom proceedings are managed. There are many intricate intersections, and studious advocates would do well to keep these in mind.

As I mentioned before Lepofsky worked on hundreds of cases during his time with the Attorney General. I would like to focus on one that shows how the duty to accommodate arises outside the context of a disability, and the Charter. The Ontario Human Rights Code offers protection to minority groups in a similar fashion to that provided by the Charter. Specifically, section 3 of the Ontario Human Rights Code states:

> **3** Every person having legal capacity has a right to contract on equal terms without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, marital status, family status or disability.

In the above provision creed has been interpreted to mean religion. Hence, the Ontario Human Rights code provides protection to religious minorities in the context of labour. It is important to have provincial legislation, because the regulation of commerce within a province is the jurisdiction of that province, and not the Federal government. However, the question of jurisdiction is a little more complicated than that, and is beyond the scope of this report.

The case of Gohm v. Domtar provides an example of how the Ontario Human Rights Code interacts with religious rights in the context of a labour union, and sheds light on the scope of Lepofsky's work.

In the case of Gohm v Domtar (1990) Lepofsky was counsel representing the Human Rights Commission of Ontario. At that time the structure of the commission was considerably different than it is today. There was a section that would investigate complaints and serve a prosecutorial function. Now the Human Rights Legal Support Center provides only limited help with individual cases, and the services provided are much less robust. The HRTO today has fewer duties than in the past, and they serve more primarily an adjudicative role. This is one change Lepofsky opposed that I will discuss more in depth later. For now I want to show how his representation in this case was instrumental to shaping how the human rights code applied in the labour context.

Mrs. Gohm was a seventh day Adventist who was prohibited from working on Saturdays due to her religion. She was working in a unionized environment. The union required all employees to work at least one Saturday every six weeks. The place where she worked was open on Sundays and the employer was amenable to Mrs. Gohm working on Sunday instead of Saturday.

However, the union agreement also contained provisions providing employees working on Sunday overtime pay. The employer did not want to pay the extra amount of wages to have Mrs. Gohm work on a Sunday, and the union did not want to let her work on Sunday without receiving overtime pay. Mrs. Gohm was caught in the middle. All she wanted to do was keep her job. She was fine with working on Sunday for the same wage. She would have taken the employers offer, but the union wouldn't let her accept the offer. As a result of this infighting, Mrs. Gohm lost her job. She then filed a complaint with the Human Rights Commission to recover her lost wages.

Lepofsky was instrumental at leading arguments concerning the liability of both the employer and the union in this case. It was held that both the employer and the union had a concurrent duty to accommodate Mrs. Gohm. Evidence was led to demonstrate that allowing Mrs. Gohm to work on Sunday without overtime would not have imposed undue hardship on the union. Evidence was also led demonstrating that paying the overtime wages to Mrs. Gohm would not have placed undue hardship on the employer. In the end damages were recovered against both the employer and the union. Mrs. Gohm was successful at regaining her lost wages and receiving additional compensation for loss of dignity. This case has been cited with approval in many others, and has proven to be a landmark decision on how the duty to accommodate intersects with unions. When the union is responsible for creating a barrier to employment, through attitudes or policies, they will be held accountable. By successfully making these arguments Lepofsky contributed to the protection of religious freedoms in Canada and these contributions represent just one small aspect of Lepofsky's professional career.

Volunteerism.

Lepofsky has undertaken a variety of volunteer activities over the years. Although there are many activities that go unnoticed and I cannot possibly hope to capture the entirety of Lepofsky's volunteer commitments, the following section is intended to be a relatively comprehensive look at Lepofsky's volunteer activities.

As mentioned earlier, Lepofsky's volunteerism started before he completed getting his law degree. In 1980 he was the volunteer spokesperson for the Canadian National Institute for the Blind (CNIB) presenting arguments in front of the joint committee of the senate and house of commons. Additionally, just after getting his law degree, Lepofsky also worked, from 1980 to 1982, on the leadership team of a broad disability coalition that successfully advocated for inclusion of protection against discrimination based on disability in the Ontario Human Rights Code. The organization dissolved after they were successful in their reforms, but many of the same members found themselves joining another provincial coalition almost a decade later.

The Ontarians with Disabilities Act committee and later Accessibility for Ontarians with Disabilities Act(AODA) Alliance discussed earlier represents the largest outpouring of volunteer work Lepofsky did for a single organization. The success of this organization is a testament to Lepofsky's advocacy, and if his volunteer work stopped there his contributions would already be magnificent.

However, Lepofsky's volunteerism does not stop there. From 2015 to 2016 he co-chaired Barrier Free Canada advocating for the enactment of the Accessible Canada Act, discussed earlier. Although no longer active with this committee Lepofsky did continue to make contributions to the struggle for new legislation, via the AODA Alliance. He involved himself in organizing a campaign around an open letter of proposed amendments, that now has the support of 95 organizations. As discussed earlier, the bill is being debated

in Senate, as I write this, and the hope is that they will approve of some of the amendments needed to make the Federal legislation more robust.

Lepofsky also volunteers with the Toronto District School Board's Special Education Advisory Committee, and has since 2015. From 2016 to 2017 he sat as the chair, and now sits as a member of the committee. While chairing the committee he drafted 6 major reform motions and focused on making the advice provided by the committee a balance between the input from the staff of the school board and the members of the committee. By fostering a collaborative atmosphere and focusing on clearly identified goals Lepofsky injected into the committee a bit of the vigor that was a key element to his successful advocacy initiatives.

In December 2016, the Ontario Government appointed him as a member of the K-12 Education Standards Development Committee. Created under the AODA that Lepofsky fought to enact. That committee is mandated to develop recommendations on what the Ontario Government should include in an Education Accessibility Standard, to be enacted under the AODA. This standard will be designed to tear down the many barriers that impede students with disabilities in Ontario from full inclusion in Ontario's education system.

Lepofsky also volunteers for Views for the Visually Impaired. An organization dedicated to bringing together parents of visually impaired children, and advocating on their behalf. Many times, the barriers parents witness their children struggling with seem unsurmountable, and having an organization where parents in similar situations can provide each other support goes a long way to alleviating the stress of parents of visually impaired children. Lepofsky co-wrote a brief to the Minister of Education that outlined the situation in Ontario, compared with other provinces, and the United States of America, in relation to the requirements for teachers of visually impaired students.

Currently in Ontario, teachers can be certified as a Teacher of the Visually Impaired (TVI) if they have completed only one of the three 125 hour modules available. Even teachers completing all three modules would be far behind the requirements to teach visually impaired students in many states, and some provinces. One can currently qualify in Ontario to be a teacher of the visually impaired without having any hands-on experience teaching a student with vision loss, or any training in the latest technology.

Things have changed a lot since David was a student. Technology has revolutionized the way visually impaired people interact with their environment. Sensitive to this issue, and concerned with promoting the education for the next generation of advocates, the brief focuses on the need to include technology training, so blind students know how to interact with the online world of today, using the adaptive software available. Teachers unfamiliar with screen reading software are not in a good position to instruct visually impaired students, and learning how to interact with this technology is a serious commitment that should not be taken lightly. Requiring instructors to devote the necessary hours to developing competency before instructing students would go a long way towards promoting the educational needs of visually impaired students. Hopefully this brief will influence the Minister and result in the adoption of improved standards that will facilitate the education of visually impaired students.

Throughout these various volunteer commitments is the theme of written advocacy as an effective way of influencing others. David says he sees his role as a community educator. He brings the information forward for review, and encourages the decision makers to decide in a certain way. Beyond his influence in the organizations where he had a direct involvement he has also had the opportunity to influence decisions through his writing as a published scholar.

Influencing others through writing:

Nowhere can the impact of Lepofsky's legal writing be seen more clearly than in the case of the Canadian Council of Disabilities (CCD) v. Via Rail. Via Rail is a major transportation company in Canada. Every day thousands of Canadians rely on Via Rail to safely transport them to their destinations. In 2000, Via contracted to purchase some 139 new train cars that were not accessible. They could not be used by someone in a wheelchair, and the CCD responded by filing proceedings with the Canadian Transportation Agency (CTA).

The victory the CCD initially won at the CTA was somewhat on the pyrrhic side of things. They were able to show that the new barriers were an undue barrier to persons with a disability, but Via Rail could still avoid making any changes to these new purchases, because the cost of undoing their decision to purchase inaccessible train cars would constitute an undue hardship. To make matters worse, at the Federal Court of Appeal Via Rail was successful at having the decision quashed, claiming they did not have enough time to comply with the new requirements. At this point in the case Via Rail could effectively get away with doing nothing, and the matter was to be heard by the Supreme Court of Canada (SCC).

It was at this stage when Lepofsky wrote a case comment, making a persuasive argument that had not been present in the decisions he was reading at the time. Lepofsky argued that when it comes to creating new barriers the assessment of undue hardship needs to come at the time when the decision to create a new barrier was made. Basically, what we need to focus on is the difference between purchasing accessible cars in the first place, compared to purchasing the inaccessible cars that Via Rail did purchase. The comparison between these two numbers is the relevant consideration. The company should not be allowed to rely on the cost of retrofitting train cars that were purchased at a time when accessible train cars were available, especially when the company knew that they were creating new barriers by purchasing these inaccessible cars.

Lepofsky argued that to allow a company like Via Rail to purchase new train cars that are inaccessible, and then claim that making subsequent changes would cause undue hardship gives the company a free pass to continue to discriminate with impunity. The major problem concerning barriers to persons with a disability is the way they are created without proper foresight. Hence Lepofsky argued that, the purpose of the legislation is to create a positive obligation on companies to consider accessibility issues when purchasing new equipment. Failing to consider the needs of persons with a disability when creating

infrastructure should not then allow the company to rely on the cost to retrofit the already implemented design. Rather, the company should be forced to establish the higher burden, that implementing the accessible system would have been an undue hardship at the installation stage.

This is vitally important to consider because the cost of purchasing something more accessible in the first place is usually a fraction of the cost of making changes to a system that is already in place.

This novel argument on the relevant time to consider when implementing the accommodation was advanced by Lepofsky in an article published before the decision was before the SCC. At the Supreme Court level Justice Abella ruled in favour of the CCD, citing Lepofsky's article with approval. Abella found that there was a positive obligation not to create new barriers and that companies, especially major companies like Via Rail, were under an obligation to contemplate accessible design when purchasing new infrastructure, and that by not considering accessibility at the proper stage Via Rail had unnecessarily created a barrier that need not exist. Via Rail was required to make the necessary changes, as though they would have been implemented in the first place.

This illustrates the efficacy of written advocacy. Motions take a long time to go through the courts, and the effort of gaining intervener status requires a lot of resources. In some cases it can be easier to write a journal article and have it published. Here Lepofsky wrote an article instead of a factum, but in the end it had the same result.

Over the years Lepofsky has written and co-written dozens of articles, chapters in law books, and other material for improving advocacy. He created a guide for the bench, to inform adjudicators about how to accommodate persons with a disability, that guide was then adapted to serve as a guide to mediators, in the context of mediations. David Lepofsky and Martha Simmons worked on adapting the guide for the purposes of mediation. The adapted guide was then used in a chapter on Simmons book dealing with the theory and practice of mediation.

This is just one example of how the scholarly work of Lepofsky has helped to influence and inform our understanding of disability. Listing the examples of others using his work would take several pages. His wake sends out ripples that have changed the waters of Canadian disability rights advocacy. Those who have known him and worked with him say that his influential nature is nothing short of awe inspiring.

Perhaps the most inspiring aspect of Lepofsky's work is the way it inspires others. Dedicating much of his advocacy to improving the situation for future advocates, Lepofsky has worked in the field of education at all levels, from Kindergarten to law school. He continues to give guest lectures and to give of his time to the future generation of advocates. He always considers the opinions of others, and encourages those he works with to compete as equals. While addressing the Deans of all the law schools across Canada Lepofsky advocated for changes to the law schools that would enable students with disabilities to more fully participate in the law school experience. Of particular note, he mentioned setting up a mentorship program where a student with a disability could turn to a faculty member for guidance, advice, and assistance in navigating the law school. To a limited degree he was able to provide this to me as he was acting as a visiting professor, while I was enrolled in my first year at Osgoode.

I am grateful for the time he was able to help me in advocating for Osgoode to implement changes to the way they provide accommodations to students with a disability. During my time there, and with Lepofsky's assistance, I was able to create a student Organization to advocate for students with a disability. This organization was able to work with the law school administration to implement changes to the way online material was provided. These changes improved accessibility for students who are blind or visually impaired.

The organization also lobbied for improved wheelchair access, and Osgoode is in the process of making physical design changes that will improve wheelchair access, as well as accommodate the needs of blind and visually impaired individuals. One cruel irony in this saga is that 22 years after Lepofsky's "Access to Law Schools" lecture, Osgoode underwent a major renovation that decreased the physical accessibility of the law school. This just goes to show that while progress can be made in some areas, it is never absolute, and is in constant danger of being retrenched. Blind users of technology know this all too well. A screen reader is a wonderful piece of software, but the web pages need to be designed to work within certain parameters if the screen readers are to work properly. Often times this is not even considered by developers making a new system, or "upgrading" an old system. More than once a system upgrade has made a formerly accessible platform unusable because the developer did not even realize how the changes would effect blind individuals. We see the same thing in architecture when buildings create new barriers for people with mobility issues. Implementing the legislation that creates the positive obligations is one step in the battle, enforcing them is another, and working to maintain the gains achieved remains a constant vigil.

The ones that got away

Throughout his career Lepofsky has had many successes, but also some setbacks. In this section I will take a close look at the simple fact that nobody wins every battle. This should help give strength to advocates in times of failure. Just because a particular gain is lost, or the court rules against you, does not mean that you should ever give up. Even when winning partial victories Lepofsky has taken the wins afforded him, and pushed even harder for the changes he didn't get.

In the case of the TTC the one thing Lepofsky was not able to get was the appointment of an Ombudsperson. Lepofsky believes that if there was one person responsible for addressing the concerns of disabled patrons and taking these concerns to the board, that the TTC would be in a better position to provide accommodations, and this would actually save the TTC dollars in the long run. The TTC has been reluctant to grant any of the accommodations, despite the fact that they receive positive feedback every time they do so. When the TTC put in the audible route stop announcements sighted patrons commented on the improved utility. It can be stress relieving not to crane your neck around a crowded bus to see your stop. When the TTC started their annual accessibility forums it was with great reluctance, yet the positive

response motivated the TTC to continue the initiative under their own directive. Nonetheless, they still haven't appointed an ombudsperson, but that doesn't mean they wont.

Another sad chapter in this saga involves the previously discussed reform of the Ontario Human Rights Commission. In 2006 the Ontario Human Rights Commission underwent a serious transformation. The prosecutorial and investigatory functions were so drastically reduced as to be considered eliminated.

The current Human Rights Legal Support Center (HRLSC) provides limited support to individuals who need assistance with filing an application. This would include filling out an application for a visually impaired individual, or scanning in material and providing digital copies of information. The HRLSC also provides legal advice over the phone, and will represent applicants at mediations or hearings at the HRTO. The HRLSC is considered an independent organization, and the support they provide to applicants is far below the level of service provided before the transformation. The Human Rights Tribunal of Ontario HRTO now serves a purely adjudicative function and the Ontario Human Rights Commission (OHRC) acts to advise businesses and corporations about how to comply with the Ontario Human Rights Code.

David had formerly been involved with the Ontario Human Rights Commission, as discussed above in his work on the case of Gohm v. Domtar. He also used the commission to pursue his complaint against the TTC. He was invested in the way human rights were resolved in the province, and advocated against the proposed reforms. He fought hard to stop the government from making the changes that they did. He employed all the same tactics, organizing around an issue, mobilizing volunteers to support the cause, and working with the media to garner public support. Unfortunately, this battle was different on a few levels. The movement didn't lend itself as easily to sound bytes as the earlier ODA committee. The issue of the media covering events instead of issues posed an insurmountable challenge. There were just not enough media worthy events to grab public attention. Perhaps another reason for the failure of this initiative involved the timelines and the nature of the goal. Instead of setting his sights on a goal and then working towards it, in this case Lepofsky was forced to confront an impending disaster, and move to stop it quickly. Although Lepofsky had managed such feats before, when the Harris government was threatening to enact feeble legislation, there was already an established movement of supporters mobilized behind the issue. Here there just wasn't enough time to gain the attention and support needed to head off the reform. Even though this was a major collaborative effort involving many advocates, including some legal clinics that represented racialized communities and some labour unions, the reform still occurred, much to the chagrin of minorities, and minority rights advocates.

The current system has been in place for over a decade, and there is a noticeable decrease in the effectiveness of antidiscrimination enforcement mechanisms. However, mobilizing around this issue proves to be elusive. Although the system in place is not what it was, there still is a tribunal that hears complaints, and services being provided to applicants. Rallying support for an improved system is difficult when the public sees the system in place as being adequate.

Changing this opinion has not been an easy task, and in the end sometimes you have to choose your battles. Lepofsky continues to lobby to improve the functions of the HRTO, but is also working towards

the implementation of the AODA and the Accessible Canada Act. It is important to work on many fronts, as Lepofsky has demonstrated.

Lepofsky commented that he used to carry a caseload, but now that he is retired he has more time to focus on his volunteer activities. In this way each organization becomes like a new client. Just as a good lawyer knows when not to take on a new client, Lepofsky understands the importance of remaining dedicated to the issues he is involved with, and sometimes that means not taking on other responsibilities.

Another organization Lepofsky used to chair was known as the Canadian Association of Visually Impaired Lawyers (CAVIL). Lepofsky knew of a number of blind and visually impaired lawyers, so he decided to approach them about founding an organization. It seemed like a good idea at the time, and for awhile there was a fair bit of email chatter, and a number of networking events. Unfortunately, unlike the other organizations Lepofsky helped organize, this organization did not have one clear goal in mind. It was an attempt to improve the social networking opportunities for visually impaired lawyers, and there was some hope that by sharing challenges they could help each other overcome the challenges faced in the profession. However, because there was not much of an agenda, and everyone involved in the organization had the busy career of a legal professional, the organization slowly lost momentum, and eventually ground to a halt. Although not formally dissolved, this organization has not had any activity in over a decade. It became a lost cause as more focused projects took over. Again, there is something to note here in the importance of having a clearly identified goal; even if it narrows the focus of the organization, and results in the exclusion of some activities, it serves as a coalescing attribute for the organization, and helps keep everyone moving in a positive direction.

Although there have been a number of failed initiatives along the way Lepofsky has not let this slow him down. Understanding when to shift focus is an important tool for any advocate. Although there are bound to be pitfalls, dangers, and even setbacks, it is important not to lose heart and persevere. The victories Lepofsky won took decades of dedicated work to accomplish. The setbacks can take a few short months. The most advanced advocates will not win every battle, but it is their perseverance and dedication to the long game that makes their accomplishments truly remarkable.

Putting it all in Perspective

I would like to take a moment now to reflect on Lepofsky's achievements by recognizing the honors he received over the years. He was invested in the Order of Canada in 1995 for his disability advocacy. The Order of Canada is the highest honor awarded to civilians. This shows his contributions were recognized even at an early stage. In 2007 he was awarded the Order of Ontario for the work done in the province, both with the TTC and the AODA, among others. He was inducted into the Terry Fox Hall of Fame for his tireless, and incredibly effective, advocacy for persons with a disability. He has awards from the City of Toronto, the Ontario Bar Association(OBA), The Advocates Society(TAS), Community Living Ontario (CLO)

and he has received honorary doctorates in Law from Queen's University, the University of Western Ontario, and the Law Society of Upper Canada (LSUC).

Looking back over his lifetime of accomplishments it is not difficult to see how Lepofsky earned these awards. Recognizing the contributions of others goes a long way towards fostering an environment conducive to improving the situation facing historically disadvantaged groups. By encouraging others to take on the torch Lepofsky inspires others to rise to his level of competence, which is a very high bar indeed.

While talking with the colleagues Lepofsky worked with over the years, I was struck with an overwhelming theme. Those who worked with Lepofsky said the biggest difference between working with David as compared to other colleagues was that it was exhausting. Lepofsky would put them to task taking on the work of creating arguments to match his own. They would take opposites sides of the debate to flesh out arguments, and somehow Lepofsky would end up on top. He never shirked in his work or delayed taking action, and his speed-reading ability is legendary. He runs his competition into the ground with skill and stamina.

Despite his personal skill and the many advances made in disability rights advocacy, there are still a few attitudinal barriers and stereotypes present in Canadian culture. Lepofsky has encountered a number of these and remains dedicated to breaking them down whenever he can and there are a few anecdotes to illustrate this point.

One thing to note about David is that he quite enjoys his lunch, and will often arrange meetings around this. While at dinner with the coauthor of "equality Rights and the Physically Handicapped", Jerome Bickenbach, the waiter asked Jerome whether David wanted salt. To which Jerome promptly replied, why don't you ask him. In many situations, there persists an assumption that someone who has a disability in one area, is not capable in other areas either.

The faulty nature of the assumptions and attitudes towards disability were made abundantly clear in one windowless courtroom. When the power suddenly went out. The other lawyer, who had been making his argument stopped. Then David offered to make his argument to the court. The judge replied that he would not be able to take notes while David was talking, and so the court would have to wait. Lepofsky then pointed out that he was prepared to make his submissions, and it was in that moment when the court was disabled. By pointing out how the court was the one disabled Lepofsky sheds light on the transitory and ephemeral nature of disabilities, and alters the way people perceive accommodations. Saying that providing people light is providing them an accommodation illustrates how everyone needs accommodations to function. Without the proper tools to work everyone is disabled. Providing someone the necessary tools should not be considered the exception, but rather the rule.

Recently Canadian Lawyer Magazine recognized Lepofsky as one of the 25 most influential lawyers, and certainly nobody now would question his skill and excellence. However, the most impressive thing about

Lepofsky is the way he works tirelessly to make sure everyone is given the same respect. He encourages people he works with to come forward with their ideas and input, rather than relegating them to repetitive tasks. He has worked toward improving access to education and employment opportunities, while maintaining a balance with political forces and winning public support for his ideas. His writings provide a rich source for advocates and scholars, and the acceptance he received from the Supreme Court has improved the situation for anyone facing discrimination, but especially those people with a disability. By eroding barriers to education and employment Lepofsky is making it possible for the next generation of advocates to more successfully carry this initiative forward. By encouraging participation Lepofsky and others have swelled the ranks of those with a disability who are able to study, and work effectively in todays economy. This shifts the balance of political power, and makes it possible for those advocates to accelerate the rate of change. We still have a long way to go to achieve a level of integration in society that would be tolerable, let alone achieve the target of a truly universal design, but the efforts of Lepofsky and others have certainly advanced the cause and made positive shifts in that direction. Although he certainly has not won every battle, the story of Lepofsky is truly a story of effective advocacy in action that can serve as a source of inspiration to anyone who is interested in disability or minority rights.