

# A Forgotten Cohort: Citizenship Through Work and Persons with Disabilities

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*Though the United Nations has recognized that access to work is a fundamental human right, access to this right is commonly denied to persons with disabilities throughout the world. Their exclusion from full participation in the labour force has generated, and continues to generate, both economic and social disadvantages while also preventing them from accessing a key feature of citizenship: the right to work. The authors argue that improving persons with disabilities' access to, and participation in, employment will allow them to take—and also to give back—the full benefits of industrial citizenship. An examination of various international instruments, including the Convention on the Rights of Persons with Disabilities, provides an overview of the commitments made to persons with disabilities regarding fair and equal employment. The authors use the case studies of Australia and Canada as a means to examine the effectiveness of two very different strategies for increasing employment for persons with disabilities—anti-discrimination legislation and sheltered workshops. The authors ultimately conclude that only policies that increase persons with disabilities' access to the open labour market, such as anti-discrimination legislation and the imposition of duties of reasonable accommodation, have the potential to allow persons with disabilities to access full citizenship at and through work.*

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## **Introduction**

Over the last six decades, significant changes have occurred with respect to persons with disabilities. Many of the old stereotypes are being broken down, education is more widely available and access to buildings, transport and information has improved. Yet there remains much to do to bring persons with disabilities onto a level playing field. In this article, we focus on one area in which nearly every nation still struggles to ensure equality: allowing persons with disabilities to become full and productive members of the labour force. In a 2013 Resolution, the United Nations Human Rights Council expressed that it was “deeply concerned that many persons with disabilities in all regions continue to face significant obstacles in exercising their right to work on an equal basis with others”.<sup>1</sup> It is the giving of effect to that right with which this article is concerned. Specifically, we argue that improving persons with disabilities’ access to, and participation in, employment will further their status as full citizens at work and will lead to many societal benefits. We argue that this goal is best achieved through anti-discrimination legislation, including the imposition of duties of reasonable accommodation.

1. *The Work and Employment of Persons with Disabilities*, HRC Res 22/3, UNHRCOR, 22nd Sess, UN Doc A/HRC/22/L.4 (2013) 1 at 2.

We situate this article at the intersection of two existing bodies of literature: literature on citizenship at and through work and literature on the modern human rights-based approach to understanding disability. Our aim is to bring these two fields together in order to analyze the barriers to full citizenship for this group of workers (and potential workers) and to propose some constructive means to redress their inequality at work. Using Canada and Australia—two countries with similar federal structures and similar international human rights obligations—as our case studies, we challenge readers to generally consider how important and achievable citizenship at work for persons with disabilities is.

At the outset, Professor Ron McCallum wishes to say that, from his own experience as a person with a disability, it is very difficult for persons with disabilities to find secure and satisfying employment. Statistics bear this out across the world: Compared to persons without disabilities, persons with disabilities are more likely to be unemployed and, if they are employed, are less likely to be in full-time employment.<sup>2</sup> This is especially true for persons with certain types of disabilities, such as intellectual and psychosocial disabilities.<sup>3</sup> It is also the case that many persons with disabilities are confined to part-time positions in low-paying jobs requiring minimal skills. If they are working, persons with disabilities are more likely to be among the “working poor”, as a result of being employed less than full-time and in low-paying, precarious jobs with poor career prospects and working conditions.<sup>4</sup>

Part I of this article examines the employment situation of persons with disabilities by canvassing their unacceptably low labour force participation rates around the world and explaining why this is a problem. This examination is grounded in the premise that persons with disabilities both can, and should, be allowed to work in the open labour market for

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2. See Australia, Commonwealth, Australian Bureau of Statistics, *Catalogue 4433.0.55.006 - Disability and Labour Force Participation, 2012* (Canberra: Australian Bureau of Statistics, 2015), online: < [abs.gov.au/ausstats/abs@.nsf/Latestproducts/4433.0.55.006Main%20Features12012?opendocument&tabname=Summary&prodno=4433.0.55.006&issue=2012&num=&view=](http://abs.gov.au/ausstats/abs@.nsf/Latestproducts/4433.0.55.006Main%20Features12012?opendocument&tabname=Summary&prodno=4433.0.55.006&issue=2012&num=&view=) > [*Labour Force Participation, 2012*].

3. *Ibid.*

4. See Secretariat to the Convention on the Rights of Persons with Disabilities, *Economic Empowerment Through Inclusive Social Protection and Poverty Reduction Strategies*, UNCRPDOR, 6th Sess, UN Doc CRPD/CSP/2013/2 (2013) at 2 [*Economic Empowerment*].

fair and equal remuneration and with fair terms and conditions. To allow people with disabilities to enter, remain and advance in the workplace is to allow them to take—and also to give back to society—the full benefits of industrial citizenship.

Part II explains the international law framework governing the rights of persons with disabilities in order to establish the obligations—both firm and aspirational—of the international community with respect to persons with disabilities. The fullest statement of the rights of persons with disabilities is the United Nations' *Convention on the Rights of Persons with Disabilities (CRPD)*.<sup>5</sup> We will briefly explain this Convention and its monitoring Committee and we will consider what it has to say about work for persons with disabilities. We will also comment on the work of the Human Rights Council, which in 2013 also discussed the employment of persons with disabilities, and on the employment aspects of the *International Covenant on Economic, Social and Cultural Rights (ICESCR)*.<sup>6</sup> Lastly, we will consider the normative standards set by the International Labour Organization (ILO) on the employment of persons with disabilities.

Having explained these standards, Part III will consider the reality and compare attempts that have been made to bridge the gap between the ideal and reality by improving persons with disabilities' access to work, their participation in work and ultimately, their status as full citizens at work. We will focus on two very different approaches to increasing employment for persons with disabilities which are pervasive in the international community: anti-discrimination legislation and sheltered workshops.

Parts IV and V will consider the use of these two approaches in Australia and Canada. Anti-discrimination legislation, including the duty to make reasonable accommodations, operates to make the open market more accessible to persons with disabilities. Sheltered workshops and modified wage systems set persons with disabilities aside from the open market and offer them modified, usually diminished, conditions. We argue that only the former approach truly has the potential to allow persons with disabilities to access full citizenship through work.

5. 13 December 2006, 2515 UNTS 1 (entered into force 3 May 2008) [*CRPD*]; *Optional Protocol to the Convention on the Rights of Persons with Disabilities*, 12 December 2006, 2518 UNTS 283 (entered into force 3 May 2008) [*Optional Protocol*].

6. 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976) [*ICESCR*].

# I. The Fundamental Importance of Industrial Citizenship

The 2011 joint World Health Organization and World Bank report on disability showed that fifteen percent of the world's population—approximately 1 billion people—are persons with disabilities.<sup>7</sup> In most nations, disability is synonymous with poverty and often with social exclusion.<sup>8</sup> That is true across the world,<sup>9</sup> even in developed countries like Canada and Australia. Although there are many complex factors that put and keep people in poverty, access to fair and productive employment is a particularly important one. Of the 1 billion persons with disabilities in the world, at least 780 million are of working age.<sup>10</sup>

## *A. Industrial Citizenship as a Human Right*

Work and employment define us as persons. The right to work is a fundamental human right. As the Office of the High Commissioner for Human Rights has identified

[t]he right to work is essential for realizing other human rights and forms an inseparable and inherent part of human dignity. Work usually provides livelihood to the person and her or his family and, insofar as work is freely chosen or accepted, it contributes to the person's development and recognition within the community.<sup>11</sup>

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7. World Health Organization & The World Bank, *World Report on Disability* (Geneva: World Health Organization, 2011) at 27, 29, 44, online: <who.int/disabilities/world\_report/2011/report.pdf> [*Report on Disability*]. See also Jody Heymann, Michael Ashley Stein & Gonzalo Moreno, *Disability and Equity at Work* (New York: Oxford University Press, 2014).

8. *Report on Disability*, *supra* note 7 at 29–32, 39; Australian Bureau of Statistics, “Disability, Ageing and Carers, Australia: Summary of Findings, 2012” (13 November 2013), online: <www.abs.gov.au/ausstats/abs@.nsf/Lookup/4430.0Chapter2002012> [“Disability, Ageing and Carers”].

9. See *Report on Disability*, *supra* note 7 at 235.

10. See generally *Economic Empowerment*, *supra* note 4.

11. Office of the High Commissioner for Human Rights, *Thematic Study on the Work and Employment of Persons with Disabilities*, UNHRCOR, 22nd Sess, UN Doc A/HRC/22/25 (2012) at 3 [*Thematic Study*].

One of the hallmarks of citizenship is employment or self-employment. In most social situations, after names have been exchanged, the next words will be, “what do you do?” In other words, “what sort of person are you, and how are you contributing to the progress of the nation through your work and with your skills?” This is equally true for persons with disabilities as it is for everyone else and it is an indicator of the social weight given to work as a measure of citizenship.

A related but distinct concept, which has been well developed in the literature, is the concept of citizenship *at work*, or industrial citizenship. The Canadian pioneer of this concept, Harry Arthurs, conceived of industrial citizenship as membership in a community and the enjoyment of rights—created by a process of public and private legislation—by virtue of membership in that community.<sup>12</sup> While Arthurs’ concept has its limitations,<sup>13</sup> his notion of a world of rights and duties, freedoms and responsibilities offers a useful framework for analyzing the extent to which persons with disabilities are included in the world of work.<sup>14</sup>

### *B. Industrial Citizenship as a Social Good*

As well as being a human right, decent and fair work for persons with disabilities is also a social good. Work not only enables us to earn remuneration to support ourselves and our families, it also allows us to contribute to the growth of our nation through the utilization of our skills. There is a close connection between lack of access to work—or to decent and fairly remunerated work—and poverty and social exclusion.

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12. See generally Harry W Arthurs, “Developing Industrial Citizenship: A Challenge for Canada’s Second Century” (1967) 45:4 *Can Bar Rev* 786. Professor McCallum has previously considered the theory of industrial citizenship as it applies in Australia. See generally Ron McCallum “La citoyenneté au travail” in Michel Coutu & Gregor Murray, eds, *Travail et citoyenneté: Quel Avenir?* (Québec City: Les Presses de l’Université Laval, 2010) 71. For an English version, see Ron McCallum, “Citizenship at Work: An Australian Perspective” online: (2011) 11:17 SSRN <ssrn.com/abstract=1769271>].

13. See generally Michel Coutu & Gregor Murray, “Towards Citizenship at Work?: An Introduction” (2005) 60:4 *Relations industrielles/Industrial Relations* 617 and the articles in that special edition, principally, Judy Fudge, “After Industrial Citizenship: Market Citizenship or Citizenship at Work?” (2005) 60:4 *Relations industrielles/Industrial Relations* 631.

14. There is little literature on the subject of whether and how persons with disabilities are afforded access to industrial citizenship.

Ensuring that all people have decent and fairly remunerated work is the most effective way to prevent individuals from falling into welfare dependence and a cycle of marginalization, poverty and social exclusion. Employment can lead to economic independence, increased living standards and improved physical and mental health.<sup>15</sup> In a report on the National Disability Insurance Scheme, which strongly supported a system that encourages and facilitates employment, the Australian Productivity Commission noted that the benefits of employment include “higher income, social connectedness, health benefits and the contribution they could make to the Australian community, (and [that] the evidence for such benefits is strong)”.<sup>16</sup>

Increasing the workforce participation of persons with disabilities, at the levels of both individual businesses and national economics, leads naturally to broader economic benefits. It was predicted in Australia that a cumulative \$43 billion increase in gross domestic product over the period 2011–2021 would result if the unemployment and labour force participation gaps between persons with and without disabilities were reduced by one third.<sup>17</sup> The “business case” for employing persons with disabilities has been thoroughly articulated by various authors<sup>18</sup> and is promoted by organizations such as the ILO Global Business and Disability Network. We discuss the activities of the ILO further below.

Notwithstanding these benefits, access to employment remains one area in which nearly all nations struggle to achieve full inclusion for persons with disabilities, who really are a forgotten cohort. One of the central modern social and economic problems is that so many persons with disabilities are unemployed, underemployed or under-utilized,

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15. See Catherine E Ross & John Mirowsky, “Does Employment Affect Health?” (1995) 36:3 *J Health & Social Behavior* 230.

16. Australia, Commonwealth, Productivity Commission, *Disability Care and Support: Productivity Commission Inquiry Report* (Report No 54) (Canberra: Australian Government Publishing Service, 2011) at 28.

17. See Deloitte Access Economics, *The Economic Benefits of Increasing Employment for People with Disability* (Sydney, NSW: Deloitte Access Economics, 2011) at 25, online: <[and.org.au/data/Conference/DAE\\_Report\\_8May.pdf](http://and.org.au/data/Conference/DAE_Report_8May.pdf)>.

18. See e.g. *ibid*; Panel on Labour Market Opportunities for Persons with Disabilities, *Rethinking Disability in the Private Sector: We All Have Abilities. Some Are Just More Apparent Than Others* (Ottawa: Human Resources and Skills Development Canada, 2013) at 15–20, online: <[publications.gc.ca/site/eng/436446/publication.html](http://publications.gc.ca/site/eng/436446/publication.html)> [*Rethinking Disability in the Private Sector*].

or employed on terms and conditions—including remuneration and job security—which are less favourable than those for persons without disabilities.

## II. The International Law Framework

The international legal framework is strongly in favour of the equal and fair employment of persons with disabilities. In recent years, the Human Rights Council, which is based in Geneva, has held an annual interactive debate on different aspects of the lives of persons with disabilities. In March 2013, the Human Rights Council held an interactive debate on the high levels of unemployment among persons with disabilities throughout the world. It adopted a resolution exhorting governments to do much more to increase the employment of persons with disabilities.<sup>19</sup>

Various international instruments, including the *Universal Declaration of Human Rights*,<sup>20</sup> the *ICESCR*,<sup>21</sup> the *Convention on the Elimination of All Forms of Discrimination against Women*<sup>22</sup> and the *CRPD*,<sup>23</sup> articulate the right to work. In this Part, we will focus on the *CRPD*, the newest and most complete of the international conventions to affirm the right of persons with disabilities to work.

### A. *The Convention on the Rights of Persons with Disabilities*

The *CRPD* was open for signature at the United Nations on March 30, 2007. Both Australia and Canada have ratified the *CRPD*, and the overall ratification of it has been very speedy indeed. As of February 2016, 162 countries, and also the European Union, have ratified the *CRPD*. This Convention has been more speedily ratified than any of the other United Nations Human Rights treaties other than the *Convention on the Rights of the Child*.<sup>24</sup> This is because governments have recognized the need and

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19. *Thematic Study*, *supra* note 11.

20. GA Res 217A (III), UNGAOR, 3rd Sess, Supp No 13, UN Doc A/810 (1948) 71 at 75.

21. *Supra* note 6.

22. 18 December 1979, 1249 UNTS 13 (entered into force 3 September 1981).

23. *Supra* note 5, art 27.

24. 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990).



the opportunity to protect the human rights of persons with disabilities, which have only in recent times been enshrined in the domestic legislation of most nations. The purpose of the *CRPD* is stated in the first sentence of Article 1: “The purpose of the [*CRPD*] is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.”<sup>25</sup> The *CRPD* does not give persons with disabilities special rights or privileged status. Instead, it ensures that persons with disabilities are able to fully enjoy all of the human rights which most able-bodied persons take for granted. It does not attempt to give them privileged citizenship, but does require them to be given *full* citizenship.

The *CRPD* seeks to alter social attitudes by ensuring that governments, persons and bodies recognize that persons with physical, sensory, mental or intellectual impairments possess the same human rights and fundamental freedoms as do all other persons. Uniquely among the human rights conventions, the *CRPD* includes a statement of overriding principles: Article 3 sets out eight principles which underpin the Convention.<sup>26</sup> These principles require governments, persons and bodies to treat persons with disabilities with respect, to acknowledge their inherent dignity and to ensure that their disabilities do not restrict their full participation in society.<sup>27</sup>

### (i) The Social Model of Disability

The concept of disability is explained in the second sentence of Article 1 as including “those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others”.<sup>28</sup> This broad definition of persons with disabilities adopts what is known as the social model of disability. The social model requires governments, employers and society in general to recognize that disability is not just an inherent personal characteristic, but something that results from a world where systems, processes and structures do not accommodate the wide variety of skills, needs and capabilities that

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25. *CRPD*, *supra* note 5, art 1.

26. *Ibid*, art 3.

27. *Ibid*.

28. *Ibid*, art 1.

make up humanity. It puts the onus equally on individuals and on society to take responsibility for the situation of persons with disabilities. For example, in the employment context, it recognizes that a person who has a vision impairment and is having trouble finding employment is not simply a victim of their own physical limitations. Rather, they are being prevented from full participation in employment by a combination of their impairment and the inability or unwillingness of potential employers to consider how they may be able to do the job.

The *CRPD* recognizes that disability “is an evolving concept” and that persons with impairments are often prevented from exercising all of their human rights and fundamental freedoms not solely because of their personal limitations, but also because of the attitudinal and environmental barriers which have been placed in their way.<sup>29</sup> Article 8 of the *CRPD* furthers the aims of the social model by obliging countries to adopt measures that raise awareness of the rights of persons with disabilities in order to combat stereotypes, harmful practices and prejudices.<sup>30</sup> In the context of employment, this means recognizing that the factors that are disabling of them are not merely their inherent biomedical characteristics or limitations. Instead, it is those factors in interaction with the features of a workplace which operate to exclude them from full participation.<sup>31</sup>

Aimed at removing or modifying features of workplaces and workplace environments which are *disabling*, another key concept in the *CRPD* is that of reasonable accommodation. Reasonable accommodation is defined in Article 2 of the *CRPD* as “necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms”.<sup>32</sup>

It is not the same as ensuring accessibility, but ensuring accessibility may well be a means of implementing a reasonable accommodation for

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29. *Ibid*, Preamble, (e).

30. *Ibid*, art 8.

31. As was recognised by the Supreme Court of Canada in *Quebec (Commission des droits de la personne et des droits de la jeunesse) v Montréal (City)*; *Quebec (Commission des droits de la personne et des droits de la jeunesse) v Boisbriand (City)*, 2000 SCC 27, [2000] 1 SCR 665 (where it was said: “[i]n fact, a person may have no limitations in everyday activities other than those created by prejudice and stereotypes” at para 77) [*Montréal (City)*].

32. *Supra* note 5, art 2.

persons with disabilities in the employment context.<sup>33</sup> We will discuss reasonable accommodation further below in the context of how it is applied in Australia and Canada.

Article 27 of the *CRPD* is headed “Work and Employment”.<sup>34</sup> It is a lengthy and detailed article, however, its essence is as follows: It exhorts governments to implement programs to facilitate the undertaking of work in the open labour market by persons with disabilities. It requires countries to “safeguard and promote the realization of the right to work”,<sup>35</sup> and recognizes that the right to work is a fundamental right and one which is to be enjoyed by persons with disabilities on an equal basis with others. Full enjoyment of the right to work includes the right to the opportunity to gain a living by work freely chosen or accepted in the labour market, and the right to a work environment that is open, inclusive and accessible to persons with disabilities. It requires freedom of access to the open labour market, as well as just and favourable conditions of work. The *CRPD* recognizes self-employment as a form of work and promotes education and vocational training as paths towards full employment.<sup>36</sup>

Under the *CRPD*, the right to work is both an accessibility and discrimination issue. Article 27(1) stresses the importance of legislative frameworks in protecting the right to work.<sup>37</sup> It specifically refers to legislation as a means of taking “appropriate steps”, and sets out, in subparagraphs (a) to (k), a non-exhaustive list of steps that States Parties should take.<sup>38</sup> Legislation is essential to many of these steps, such as the prohibition on discrimination on the basis of disability with regard to all matters concerning all forms of employment. Article 27(1)(a) specifically requires the provision of reasonable accommodation in the workplace.<sup>39</sup>

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33. On reasonable accommodation under the *CRPD*, see generally Janet E Lord & Rebecca Brown, “The Role of Reasonable Accommodation in Securing Substantive Equality for Persons with Disabilities: The UN Convention on the Rights of Persons with Disabilities” in Marcia H Rioux, Lee Ann Bassler & Melinda Jones, eds, *Critical Perspectives on Human Rights and Disability Law* (Leiden, Neth: Martinus Nijhoff, 2011) 273.

34. *Supra* note 5.

35. *Ibid*, art 27(1).

36. *Ibid*, art 27(1)(a)-(k).

37. *Ibid*.

38. *Ibid*.

39. *Ibid*, art 27(1)(a).

*B. The Committee on the Rights of Persons with Disabilities*

The Committee on the Rights of Persons with Disabilities (“the Committee”) mirrors the other human rights treaty monitoring bodies in structure and function. Article 34 of the *CRPD* establishes a committee of independent experts charged with monitoring the implementation of the *CRPD* in member states.<sup>40</sup> It comprises eighteen members who are elected by the States Parties. Article 36(1) of the *CRPD* gives power to the Committee to examine reports—which Article 35 requires States Parties to submit within the first two years after ratification and subsequently every four years<sup>41</sup>—and to “make such suggestions and general recommendations on the report as it may consider appropriate”.<sup>42</sup> The manner in which the Committee examines these reports, which culminates in a constructive dialogue with the reporting country, is much the same as is the examination of States Parties’ reports by the other United Nations treaty bodies. Its members read the report from the country, and also alternative reports, which are usually supplied by disabled persons’ organizations from that country, and then the Committee engages in a constructive dialogue with the States Party.

What is unique about the Committee is its composition. It consists almost entirely of persons who have disabilities: Past and current members have had disabilities such as blindness, difficulties with mobility, loss of limbs and psychosocial disabilities. There is no parallel among the other treaty bodies of a monitoring body whose members are both independent experts and uniquely rights holders owing to their disabilities. While the members of bodies like the Human Rights Council and the Committee Against Torture are certainly rights holders themselves, the Committee is unique in the way that it models and promotes inclusion and reasonable accommodation. The Committee, by its very presence as well as its work, challenges the stereotypes and social barriers described in Article 8(1)(b) of the *CRPD*.<sup>43</sup> No doubt for some government officials—particularly those from countries without strong disabled persons’ organizations—their constructive dialogue with the Committee is the first occasion

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40. *Ibid.*, art 34.

41. *Ibid.*, art 35.

42. *Ibid.*, art 36(1).

43. *Ibid.*, art 8(1)(b).

where they have found themselves questioned directly by knowledgeable and articulate persons with disabilities.<sup>44</sup>

It is still early days in the work of the Committee and not until a larger number of countries have dialogued with the Committee will it be appropriate to make a more detailed study of its concluding observations. It is, however, abundantly clear, even from the Committee's early concluding observations, that it takes its educative role seriously. Often, its recommendations seek to educate governments on the manner in which persons with disabilities should be treated, and perhaps this flows from the life experiences of its members with disabilities.

The Committee has expressed its concern that the rates of unemployment and underemployment of persons with disabilities are consistently higher than for other population groups. It seems that the Committee members recognize from their own life experiences the difficulties confronting States Parties in increasing the level of employment of persons with disabilities.

The Committee has so far focused its attention on the types and conditions of work engaged in by persons with disabilities in the countries with which it has held constructive dialogues. The recent concluding observations on Germany give a sense of the Committee's approach to the issue of employment.<sup>45</sup> In those concluding observations, the Committee expressed its concern that the German labour market was segregated with respect to persons with disabilities and that there were financial disincentives against employees transitioning from sheltered workshops to the open labour market.<sup>46</sup> The Committee recommended that Germany phase out sheltered workshops, ensure that employees transitioning to the open labour market suffer no reduction in their social security payments and that Germany take steps to create more employment opportunities for persons with disabilities in the open labour market.<sup>47</sup> In earlier concluding observations, the Committee had expressed its particular concern that persons with disabilities who are

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44. See also Ron McCallum & Hannah Martin, "Comment: The CRPD and Children with Disabilities" (2013) 20 Australian Intl LJ 17 at 25.

45. Committee on the Rights of Persons with Disabilities, *Concluding Observations on the Initial Report of Germany*, UNCRPDOR, 13th Sess, UN Doc CRPD/C/DEU/CO/1 (2015).

46. *Ibid* at 8.

47. *Ibid*.

employed are often to be found in segregated or restricted occupations, such as the occupation of “blind massage” in China.<sup>48</sup>

The Committee has commended States Parties that have implemented various quota systems—such as the Peruvian requirement that 3% of its public sector work force be comprised of persons with disabilities<sup>49</sup> and Argentina’s 4% quota<sup>50</sup>—but has noted that quota systems must be followed through and implemented so as to increase employment of persons with disabilities.<sup>51</sup> For example, only 22% of Austrian private sector employers who are required to comply with this type of quota actually do so; the remainder prefer to pay the non-compliance tax.<sup>52</sup> We express caution about quota systems. When governments establish them, they are usually not fully observed and often become a type of cop-out for the governments concerned. Governments say “we have a quota, so everything is fine.” As we will discuss further below, governments ought to take more positive steps to increase employment in the open labour market, for example, by establishing training programs.

The Committee has also proposed a number of other options that could improve employment of persons with disabilities, such as tax incentives (which the Committee notes that Argentina has adopted), self-employment programs, the inclusion of persons with disabilities and their representatives in national labour regulation organizations and awareness-raising campaigns designed to break down cultural barriers. It will be interesting to see the development of the thinking of the Committee on Article 27 in its future concluding observations.

In addition to developing its jurisprudence through concluding observations, the Committee also develops the law through its decisions on individual complaints, which it is empowered to hear under the

48. Committee on the Rights of Persons with Disabilities, *Concluding Observations on the Initial Report of China*, UNCRPDOR, 8th Sess, UN Doc CRPD/C/CHN/CO/1 (2012) at 6.

49. Committee on the Rights of Persons with Disabilities, *Concluding Observations on the Initial Report of Peru*, UNCRPDOR, 7th Sess, UN Doc CRPD/C/PER/CO/1 (2012) at 7.

50. Committee on the Rights of Persons with Disabilities, *Concluding Observations on the Initial Report of Argentina*, UNCRPDOR, 8th Sess, UN Doc CRPD/C/ARG/CO/1 (2012) at 7.

51. *Ibid.*

52. Committee on the Rights of Persons with Disabilities, *Concluding Observations on the Initial Report of Austria*, UNCRPDOR, 10th Sess, UN Doc CRPD/C/AUT/CO/1 (2013) at 7.

*Optional Protocol*.<sup>53</sup> The most interesting complaint concerning Article 27 of the *CRPD* was brought by Ms. Marie-Louise Jungelin against Sweden.<sup>54</sup> Ms. Jungelin is visually impaired and, in 2006, she applied for a position with the Swedish Social Insurance Agency as an assessor/investigator of sickness benefit and sickness compensation applications. The agency refused her application because, after investigation, it was of the view that the computer systems could not be adapted either for braille or for synthetic speech. Many of the paper documents were handwritten and these would have to be read to Ms. Jungelin.<sup>55</sup>

The Swedish Equality Ombudsman brought the failure to employ Ms. Jungelin before the Swedish Labour Court. The issue was whether, under Swedish anti-discrimination law, the agency had failed in 2006 to accord Ms. Jungelin reasonable support and adaptation measures. In 2010, the Labour Court dismissed the proceedings, holding that the suggested support and adaptation measures of altering the computer systems and employing a person to read the handwritten documents were, in all of the circumstances, not reasonable.<sup>56</sup> As the incident predated the *CRPD* and its *Optional Protocol*, Ms. Jungelin's complaint to the Committee was confined to arguing that the 2010 holding of the Labour Court was contrary to Article 27 of the *CRPD* as it failed to afford her reasonable accommodation.<sup>57</sup> In *Ms Marie-Louise Jungelin v Sweden* the complaint was dismissed.<sup>58</sup> The Committee held that the assessment by the Labour Court was thorough and objective, and that it was open to the Labour Court to find that the suggested support and adaptation measures would constitute an undue burden for the social insurance agency.<sup>59</sup> The importance of this case is that it demonstrates that the duty of reasonable accommodation as expressed in the *CRPD* is not absolute; it

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53. *Supra* note 5.

54. Committee on the Rights of Persons with Disabilities, *Communication No 5/2011*, UNCRPDOR, 12th Sess, UN Doc CRPD/C/12/D/5/2011 (2014) at 1 [*Communication No 5/2011*].

55. *Ibid* at 4.

56. *Ibid* at 4–5.

57. *Ibid* at 5.

58. *Communication No 5/2011*, *supra* note 54. As well as relying on Article 27 of the *CRPD*, Ms. Jungelin also relied upon Article 5 of the *CRPD*, which is the general prohibition of discrimination provision.

59. *Ibid* at 13.

does not make employers—or prospective employers—insurers of persons with disabilities. Their obligation is, instead, to make accommodations if, and to the extent, that those accommodations are reasonable.

### C. *The International Labour Organization*

The ILO has also worked to improve the employment rates of persons with disabilities. The starting point is the ILO's 1983 *Vocational Rehabilitation and Employment (Disabled Persons) Convention (VREDPC)*,<sup>60</sup> which should be read together with its *Vocational Rehabilitation and Employment (Disabled Persons)* recommendation.<sup>61</sup> The year 1981 was designated by the United Nations as the International Year of Persons with Disabilities and, in part, this recognition prompted the ILO's *VREDPC*.<sup>62</sup> Whilst the language of that Convention strikes the current ear as a little old fashioned, it does outlaw discrimination on the grounds of disability and encourage the employment of persons with disabilities.

The most forthright and interesting document of the ILO is the *ILO Code of Practice: Managing Disability in the Workplace*<sup>63</sup> (*Code*) which was finalized and unanimously adopted at the tripartite meeting of experts in Geneva in October 2001.<sup>64</sup> Like the *CRPD*, the *Code* adopts the social model of disability. Its aim is to assist employers in adopting a positive strategy to manage disability-related issues in the workplace. The *Code* is explicit in its recognition of the business case for employing persons with disabilities,<sup>65</sup> and in recent years the ILO has continued to engage business people through its Global Business and Disability Network. That network comprises multinational enterprises, employer associations

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60. International Labour Organization, *Convention Concerning Vocational Rehabilitation and Employment (Disabled Persons)*, 20 June 1983, Convention No 159, ILC 69th Sess (entered into force 20 June 1985) [*ILO Convention*].

61. International Labour Organization, *Vocational Rehabilitation and Employment (Disabled Persons)*, 20 June 1983, Recommendation No 168, ILC 69th Sess.

62. *ILO Convention*, *supra* note 60.

63. International Labour Organization, *ILO Code of Practice: Managing Disability in the Workplace* (Geneva: International Labour Office, 2002), online: <[www.ilo.org/wcmsp5/groups/public/---ed\\_emp/documents/publication/wcms\\_103324.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_emp/documents/publication/wcms_103324.pdf)> [*Code*].

64. *Ibid* at VII.

65. *Ibid* at VI.



and disability organizations, and its aim is to raise awareness about the positive relationship between the inclusion of people with disabilities in the workplace and business success.<sup>66</sup>

Though we very much support the work of the ILO, we urge caution about the extent to which the business case and the modern focus on “productivity” should dictate or restrict access to a human right. It will be our argument, however, that the employment of persons with disabilities as a human rights issue is not necessarily incompatible with modern constructions of productivity in employment, because there is a means to reconcile the two: the concept of reasonable accommodation.

### III. Setting the Scene: Australia and Canada

In this Part, we use the case studies of Australia and Canada to assess how the international law framework governing the rights of persons with disabilities described above has been applied in practice. Canada and Australia both signed the *CRPD* upon its opening for signature on March 30, 2007. Both countries have ratified the *CRPD*—Australia ratified it on July 17, 2008 and Canada on March 11, 2010—and, thus, both have agreed to undertake the obligations and responsibilities it lays out. We will begin this Part with a brief overview of the employment statistics of persons with disabilities in both countries and will then proceed with an analysis of some of the initiatives.

This article does not purport to be a comprehensive survey of the relevant law in the two countries, let alone their many and varied states and provinces. Rather, our aim is to explore examples of the efficacy of two very different policy approaches designed to increase employment for persons with disabilities that are commonly employed in the international community: anti-discrimination legislation (including the duty to provide reasonable accommodation) and sheltered workshops. In this Part, we will set the stage for this analysis by providing a brief overview of the employment situation of persons with disabilities in Australia and

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66. We acknowledge Ms. Barbara Murray of the ILO for her assistance and for her work on ILO programs to increase the employment of persons with disabilities. Much of the ILO’s work on increasing employment of persons with disabilities is in developing nations and, while it is outside the scope of this article, we note the variety of programs run by the ILO.

Canada and of each country's stated policy objectives regarding this situation. Parts IV and V will explore these countries' use of reasonable accommodation and sheltered workshop strategies, respectively, in order to assess each policy's successes and failures. We ultimately conclude that only the strategy of reasonable accommodation has the potential to allow persons with disabilities to access full citizenship through work.

#### *A. The Employment Experiences of Persons with Disabilities in Australia and Canada*

Turning first to the employment rates of Australians, “[j]ust under one in five people (4.2 million people or 18.5% of Australians) reported having a disability in 2012.”<sup>67</sup> The labour force participation rate (which is a measure of the proportion of the population who are either employed or actively looking for work) for those persons in Australia has been, and remains, significantly lower than for persons without disabilities. In 2012, the Australian Bureau of Statistics provided an update to its detailed 2009 survey of disability in Australia, and the updates revealed that the labour force participation rate of Australians aged fifteen to sixty-four had remained steady over the previous three years for those with a disability (54% in 2009 and 53% in 2012), however, it remained well below the rate for those without a disability (83% in 2012).<sup>68</sup> This is troubling because, whereas the labour force participation rate for workers without disabilities had been growing since 1993, the labour force participation rate for persons with disabilities stayed steady throughout that period and appears to be continuing at a similar rate rather than growing.<sup>69</sup>

It is encouraging that the participation gap is smallest among the fifteen to twenty-four age group.<sup>70</sup> However, as the demographics of the workforce change with the aging of the population, it may be that the more profound disabilities of older workers will increase the participation

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67. See “Disability, Ageing and Carers”, *supra* note 8.

68. *Ibid.* See also Australia, Commonwealth, Council of Australian Governments Reform Council, *Disability 2010–2011: Comparing Performance Across Australia* (Report to the Council of Australian Governments) (Sydney, NSW: COAG Reform Council, 2012), online: <[library.bsl.org.au/jspui/bitstream/1/3187/1/Disability\\_2010-11-Full\\_report.pdf](http://library.bsl.org.au/jspui/bitstream/1/3187/1/Disability_2010-11-Full_report.pdf)>.

69. See *Labour Force Participation, 2012*, *supra* note 2.

70. See *ibid.*

gap between workers with disabilities and the general workforce. It is also problematic that gender and type of disability create further differentials. The participation rate for women with disabilities appears to be lower but has remained stable, whereas the slightly higher rate for men with disabilities had decreased as of the last available figures.<sup>71</sup>

Similar to Australia,

Canada's initial report to the Committee on the Rights of Persons with Disabilities gave a disability rate of 14.3% (in 2006), meaning that over 4.4 million Canadians, or about one in seven, had an activity limitation or participation restriction associated with a physical or mental condition or health problem: 8.6% reported mild to moderate disabilities, while 5.7% reported severe to very severe disabilities.<sup>72</sup>

According to the latest available Canadian survey on disability, which is compiled every five years, an estimated 3.8 million adult Canadians reported being limited in their daily activities due to a disability in 2012.<sup>73</sup> This represents 13.7% of the adult population.<sup>74</sup> In the previous survey from 2006, there were 2,457,350 people with activity limitations in Canada between the ages of fifteen and sixty-four who could have potentially participated in the labour force.<sup>75</sup> Of this group, 1,259,980, or (51.3%) were employed, with 119,340 (4.9%) unemployed and 1,078,020 (43.9%) not in the labour force.<sup>76</sup> Compared to the population without disabilities, there was a larger proportion of people with disabilities who were not in the labour force. For people without disabilities, 75% were in the labour force, 5% were unemployed and 20% were not in the labour

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71. See "Disability, Ageing and Carers", *supra* note 8.

72. Government of Canada, *First Report of Canada on the Convention on the Rights of Persons with Disabilities*, Catalogue No CH37-4/19-2013E-PDF (Ottawa: Her Majesty the Queen in Right of Canada, represented by the Minister of Canadian Heritage and Official Languages, 2014) at para 6, online: Council of Canadians with Disabilities <[ccdonline.ca/en/international/un/canada/crpd-first-report](http://ccdonline.ca/en/international/un/canada/crpd-first-report)> .

73. Statistics Canada, *Disability in Canada: Initial Findings from the Canadian Survey on Disability*, Catalogue No 89-654-X-No 002 (Ottawa: Statistics Canada, December 2013) at 4.

74. *Ibid* at 3.

75. Statistics Canada, *Participation and Activity Limitation Survey 2006: Labour Force Experience of People with Disabilities in Canada* by the Social and Aboriginal Statistics Division, Catalogue No 89-628-X No 007 (Ottawa: Statistics Canada, 2006) at 7.

76. *Ibid*.

force.<sup>77</sup> We refer to the comprehensive analysis of Canadian statistics on employment of persons with disabilities undertaken by Banks, Chaykowski and Slotsve.<sup>78</sup>

In both Australia and Canada, the type of disability a person possesses also has a significant effect on their ability to gain employment. In Australia, in 2012, people with sensory or speech impairments had the best labour market outcomes with a participation rate of 56.2%, whereas people whose disability was psychological had the lowest participation rate (29.1%).<sup>79</sup> Even among those who were employed, those with intellectual or psychosocial disabilities worked for fewer hours per week compared to those with sensory or speech disabilities.<sup>80</sup> Similarly, in Canada, persons with more severe disabilities have a lower employment rate, even accounting for other variables affecting employment.<sup>81</sup>

We conclude this section by noting that there are, of course, often multiple complex factors inhibiting a person's ability to be and remain productively employed. We do not attempt to give a comprehensive account of the factors that limit employment. In their landmark survey, The World Bank and World Health Organization cited several factors that influence labour market outcomes, including "productivity differentials; labour market imperfections related to discrimination and prejudice, and disincentives created by disability benefit systems".<sup>82</sup> The Canadian Council for Disability has noted that only half of those with disabilities who are outside of the labour force indicate that they are completely prevented from working due to their disability.<sup>83</sup>

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77. *Ibid.*

78. Kevin Banks, Richard P Chaykowski & George A Slotsve, "The Disability Accommodation Gap in Canadian Workplaces: What Does It Mean for Law, Policy, and an Aging Population?" (2013) 17:2 CLELJ 295 at 295.

79. See *Labour Force Participation, 2012*, *supra* note 2.

80. See *ibid.*

81. See Statistics Canada, "Persons with Disabilities and Employment", by Martin Turcotte, Catalogue No 75-006-X (Ottawa: Statistics Canada, 3 December 2014) at 1.

82. *Report on Disability*, *supra* note 7 at 235.

83. Council of Canadian with Disabilities, "Renewed Political Commitment and Leadership: An Imperative for the Realization of the Human Rights of Canadians with Disabilities", (submission to the United Nations Human Rights Council Universal Periodic Review of May 2013, 9 October 2012), online: <[www.ccdonline.ca/en/international/un/canada/upr-2012](http://www.ccdonline.ca/en/international/un/canada/upr-2012)> .

Social and economic barriers also play a role in limiting labour market participation.<sup>84</sup>

*B. Australia and Canada's Stated Policy Objectives Regarding the Employment of Persons with Disabilities*

While it is our argument that much more remains to be done, we do note that the issue of employment for persons with disabilities has been considered by the governments of both Australia and Canada and we commend government initiatives in both countries to bring the issue more squarely into focus. As Arthurs identified, industrial citizenship is a product of both public and private legislation.<sup>85</sup> It is not foreign to a free labour market that governments have a role to play where the issue at hand is a matter of social and economic consequence.

In 2010, the Australian Government introduced its *National Disability Strategy 2010–2020 (NDS)*, one goal of which is to “[i]ncrease access to employment opportunities as a key to improving economic security and personal wellbeing for people with disability”.<sup>86</sup> While the *NDS* is aspirational rather than binding, it is a common cause between federal, state and territory governments and was adopted by the Council of Australian Governments (COAG) in February 2011. In relation to employment, the *NDS* notes that “[t]he vast majority of people with disability can and do want to work and be as financially independent as possible, but employment is one critical area where Australia is lagging behind other countries.”<sup>87</sup> Australia also has a *National Mental Health and Disability Employment Strategy*, which aims to increase the employment of persons with disabilities, promote social inclusion and improve economic productivity.<sup>88</sup>

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84. *Ibid* at para 18.

85. Arthurs, *supra* note 12.

86. Australia, Commonwealth, Council of Australian Governments, *National Disability Strategy 2010–2020* (Canberra: Australian Government Publishing Service, 2010) at 42, online: < [www.dss.gov.au/sites/default/files/documents/05\\_2012/national\\_disability\\_strategy\\_2010\\_2020.pdf](http://www.dss.gov.au/sites/default/files/documents/05_2012/national_disability_strategy_2010_2020.pdf) > .

87. *Ibid*.

88. Australia, Commonwealth, Australian Government, *National Mental Health and Disability Employment Strategy* (Canberra: Australian Government Publishing Service, 2009) at 5.

More recently, on December 10, 2014, the Australian Attorney General announced that the Australian Human Rights Commission would be commissioned to conduct a major inquiry—led by the Age and Disability Discrimination Commissioner—into employment discrimination against older Australians and Australians with disability.<sup>89</sup> That inquiry will investigate matters including

the obstacles faced by older persons and persons with disabilities in actively participating in the workforce; discrimination against older persons and persons with disabilities as a systemic problem and a considerable barrier to their enjoyment of human rights; [and] the economic and social costs . . . that result from discrimination against older persons and persons with disabilities in employment.<sup>90</sup>

The inquiry is due to report by July 2016.<sup>91</sup>

In the 2012 Canadian federal budget, the Government announced the creation of an Employment Panel to report to the Minister of Finance and the Minister of Human Resources and Skills Development (now called Employment and Social Development) by December 2012 on best practices within the private sector on the employment of persons with disabilities.<sup>92</sup> Its report, entitled *Rethinking Disability in the Private Sector*, contains the results of surveys of a range of Canadian businesses and adopts a strong position on the business case for disability-inclusive employment.<sup>93</sup>

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89. Australia, Commonwealth, Australian Human Rights Commission, *Willing to Work: National Inquiry into Employment Discrimination Against Older Australians and Australians with Disability*, (Issues Paper) (Sydney, NSW: AHRC, 2015) at 3, online: <[humanrights.gov.au/our-work/disability-rights/publications/issues-paper-employment-discrimination-against-australians](http://humanrights.gov.au/our-work/disability-rights/publications/issues-paper-employment-discrimination-against-australians)> .

90. *Ibid* at 4.

91. *Ibid* at 3.

92. Canada, Minister of Finance, *Jobs Growth and Long-Term Prosperity: Economic Action Plan 2012*, tabled in the House of Commons 29 March 2012, Catalogue No FI-23/3-2012E (Ottawa: Public Works and Government Services Canada) at 143, online: <[budget.gc.ca/2012/plan/pdf/Plan2012-eng.pdf](http://budget.gc.ca/2012/plan/pdf/Plan2012-eng.pdf)> .

93. *Rethinking Disability in the Private Sector*, *supra* note 18.

## IV. Increasing Access to the Open Labour Market

It is abundantly clear that there remains work to be done before any nation can truly say that its persons with disabilities are full and productive members of the workforce. Yet, even where nations have agreed that this is a desirable goal, they have found it less easy to implement in practice. In this Part, we will explore Australia and Canada's use of anti-discrimination legislation and the imposition of duties of reasonable accommodation or adjustments as a means to increase the employment rate of persons with disabilities. We will argue that strategies such as these, which increase access of persons with disability to the open labour market, have the greatest potential to allow persons with disabilities to access full citizenship through work.

### *A. Anti-Discrimination Legislation*

One of the first and most significant attempts by governments to ensure that persons with disabilities were able to find work was the passage of anti-discrimination legislation that prevented persons with disabilities from being denied a job or discriminated against at work on the grounds of their disability. Canadian and Australian law have each developed two distinct categories of discrimination: direct and indirect (also known in Canada as "adverse effect" discrimination). Put briefly, direct discrimination occurs when the action taken is discriminatory on its face and results in less favourable treatment. On the other hand, indirect discrimination is made out where the condition or requirement placed upon the person is facially neutral, but where it has the effect of disadvantaging a person with disabilities.

The aim of anti-discrimination legislation is to address "labour market imperfections",<sup>94</sup> and to level the playing field by counterbalancing the prejudices and employer barriers that can prevent persons with disabilities from using the market in the same manner as their non-disabled peers. Effective anti-discrimination laws protect both current employees and potential employees, and also operate as both a "shield" and "sword"—protecting them from detrimental actions by others and requiring others to take reasonable steps to accommodate their particular needs.

94. World Health Organization and The World Bank, *supra* note 7 at 235.

Effective anti-discrimination legislation can also play a part in breaking down employer assumptions and prejudices. In a 2014 Australian Human Rights Commission survey, in which persons with disabilities described work and employment as one of the human rights issues most important to them, respondents ranked “addressing negative attitudes and stereotypes” as the most important sub-issue related to work and employment.<sup>95</sup> Comments made by respondents to the survey show that outright discrimination and a lack of awareness about the capabilities of persons with disabilities cause persons with disabilities to be unemployed or unsatisfied in their employment.<sup>96</sup> The codification and articulation of the right not to be discriminated against is an important step toward realization of that right.

Australia’s mosaic of federal, state and territory human rights laws prohibit discrimination against persons with disabilities on grounds such as employment, education, accommodation and in the provision of goods and services. The primary statute is the federal *Disability Discrimination Act 1992 (DDA)*, in which disability is broadly defined.<sup>97</sup> The *DDA* makes it unlawful for a person to discriminate against another person in a variety of employment contexts (including in offering employment, in the terms and conditions of employment and in ending their employment) because of their disability. The *DDA* prohibits discrimination where an employer refuses to employ, demotes or dismisses an employee, or subjects the employee to any other detriment.<sup>98</sup>

Similarly, the *Canadian Human Rights Act* prohibits discrimination on the ground of disability.<sup>99</sup> Canadians have further protection in the form of the *Canadian Charter of Rights and Freedoms*.<sup>100</sup> Article 5 of the *CRPD* (concerning equality and non-discrimination) has much in common with section 15, which is the “equality provision” of that *Charter*.

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95. Australia, Commonwealth, Australian Human Rights Commission, *National Disability Forum 2014 Summary of Results*, (Sydney, NSW: AHRC, 2014) at 5–6, 10–11, online: <[humanrights.gov.au/our-work/disability-rights/publications/national-disability-forum-2014-summary-survey-results](http://humanrights.gov.au/our-work/disability-rights/publications/national-disability-forum-2014-summary-survey-results)> .

96. *Ibid* at 11–12.

97. *Disability Discrimination Act 1992* (Cth), s 4(1) [*DDA*].

98. *Ibid*, s 15(1)–(2).

99. *Canadian Human Rights Act*, RSC 1985, c H-6, s 3(1).

100. Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11.



## *B. Reasonable Accommodation*

As well as operating as a shield against discriminatory practices, which can contribute to a denial of opportunities and precarious employment, effective anti-discrimination legislation requires employers to make (reasonable) positive accommodations to equalize opportunity for persons with disabilities. This obligation is summed up as the obligation to make “reasonable adjustments” or “reasonable accommodations”, and has a place in both Australian and Canadian anti-discrimination law. A requirement to make reasonable accommodations is critical, because these are the sorts of modifications that can make the difference between a person with a disability being productively employed and being unemployed.

In Australia, under the *DDA*, direct and indirect discrimination can be made out where the discriminator fails to make a reasonable adjustment.<sup>101</sup> “[A]n adjustment to be made by a person is a reasonable adjustment unless making the adjustment would impose an unjustifiable hardship on the person”.<sup>102</sup> The concept of unjustifiable hardship is broadly defined to require that all of the circumstances are taken into account, including the effect of the disability, the financial cost and the availability of financial assistance programs.<sup>103</sup> Consequently, no discrimination will occur where it can be shown that even with reasonable adjustments, the person, because of their disability, cannot carry out the inherent requirements of the job<sup>104</sup> or where it can be shown that the required reasonable adjustments amount to an unjustifiable hardship to the employer.<sup>105</sup>

Similarly, in Canada, a range of federal and state anti-discrimination laws place a positive duty on employers, among others, to provide reasonable adjustments to persons with disabilities.<sup>106</sup> As in Australia, there are exceptions when providing an accommodation would impose “undue hardship” on the person providing it. Up to the point of undue

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101. *Supra* note 97, ss 5(2), 6(2).

102. *Ibid*, s 4(1).

103. *Ibid*, s 11.

104. *Ibid*, s 21A.

105. *Ibid*, s 21B.

106. See generally Laura Barnett, Julia Nicol & Julian Walker, “Background Paper: An Examination of the Duty to Accommodate in the Canadian Human Rights Context” (10 January 2012), online: < [www.parl.gc.ca/content/lop/researchpublications/2012-01-e.pdf](http://www.parl.gc.ca/content/lop/researchpublications/2012-01-e.pdf) > .

hardship, however, an employer must engage in what Michael Lynk has described as a “four-step process”, which involves canvassing and considering: (1) an employee’s existing job; (2) possible modifications to that job; (3) any other available jobs; and (4) possible modifications to any other available jobs.<sup>107</sup>

In the recent single-judge decision of Mortimer J in *Watts v Australian Postal Corporation*, the Federal Court of Australia held that the range of adjustments required by the *DDA* for a worker to enable them to perform their role is largely open-ended and is driven by the individual’s needs, technological change and the particular circumstances.<sup>108</sup> This is a significant decision because it suggests that employers have far more substantial obligations than was previously thought.<sup>109</sup> Ms. Watts, who was employed as a bid manager for Australia Post, applied for a position in a leadership program but was refused. This refusal led to Ms. Watts suffering from a psychological condition containing elements of anxiety and depression and at no time was the genuineness of this adjustment disorder questioned by her employer. Ms. Watts ceased work and applied for workers’ compensation but later returned to work under a return to work plan. The essence of her dispute with Australia Post was whether they had made reasonable adjustments. Justice Mortimer held that between April 2010 and May 2011, Australia Post failed to make reasonable adjustments to enable Ms. Watts to perform work and, accordingly, had discriminated against her.<sup>110</sup>

When considering the scope of the required “adjustments”, Mortimer J further opined that

[t]he adjustment is to be enabling or facultative. There is, in my opinion, no reason in the text . . . to construe the word “adjustment” in a way which might arbitrarily limit the kinds of modifications or alterations required to enable a disabled worker to perform his or her work. Technology changes and advances at an increasing pace and disabled people can be the beneficiaries of such changes and advances. The technological advance which

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107. See generally Michael Lynk, *The Duty to Accommodate in the Canadian Workplace: Leading Principles and Recent Cases* (Sault Ste Marie, Ont: Ontario Federation of Labour, 2008).

108. [2014] FCA 370 [*Watts*].

109. See also *Huntley v Corrective Services (NSW)*, [2015] FCCA 1827 (in which the Federal Circuit Court of Australia found that the New South Wales Government had failed to provide reasonable adjustments to an employee with a disability).

110. *Watts*, *supra* note 108 at para 10.

enables Professor Stephen Hawking to compose text and communicate orally through cheek movements detected by an infrared switch mounted on his spectacles is but one well-publicised example of an “adjustment” that, a decade or two ago, may have been little more than a theory.<sup>111</sup>

This decision is important because of the broad interpretation that Mortimer J gave to the concept of reasonable adjustments. Her Honour appreciated that this concept sprung from Article 2 of the *CRPD* and in commenting on Article 2, Mortimer J said that

[a]lthough the phrase chosen by the Parliament [reasonable adjustments] is slightly different [from the reasonable accommodation phrase used in the *CRPD*], it is clear that these amendments were made in pursuance of Australia’s international obligations under the Convention. If there is a constructional choice . . . [an interpretation] which is consistent with those obligations should be preferred, insofar as the text and context otherwise allow.<sup>112</sup>

It is our observation that while the Canadian courts and tribunals commence with an equality premise, the Australian courts and tribunals appear to be more textually bound to the detailed wording of the relevant provisions. This is perhaps because Australian statutes are generally more detailed than their Canadian counterparts. The “equality premise” may also be due to the fact that human rights legislation, including anti-discrimination legislation, has a “quasi-constitutional” place in Canadian law, whereas Australian human rights legislation is purely statutory and has no backing from a bill of rights or *Charter*-type document.

Canadian readers will be familiar with the seminal cases on reasonable accommodation.<sup>113</sup> In the more recent case of *Canada (AG) v Johnstone*,<sup>114</sup> the Federal Court of Appeal considered the boundaries of the duty to accommodate as laid out in the *Canadian Human Rights Act*.<sup>115</sup> In that case, it was decided that accommodation was required for a person who had

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111. *Ibid* at para 23.

112. *Ibid* at para 20 [citations omitted].

113. *British Columbia (Public Service Employee Relations Commission) v BCGSEU*, [1999] 3 SCR 3, 176 DLR (4th) 1; *British Columbia (Superintendent of Motor Vehicles) v British Columbia (Council of Human Rights)*, [1999] 3 SCR 868, 181 DLR (4th) 385; *Montréal (City)*, *supra* note 31. See also Peter Barnacle & Michael Lynk, *Employment Law in Canada*, 4th ed (Markham, Ont: LexisNexis, 2015) (loose-leaf updated 2015, release 61), ch 5.

114. 2014 FCA 110, [2015] 2 FCR 595.

115. RSC 1985, c H-6, s 5 ff.

child care responsibilities. The relevance of the decision to the disability context is in the nuanced manner in which the Court approached the issue of accommodation. The decision confirms that employers who are required to make accommodations for the person must consider that specific person's circumstances and tailor any general policies to the person's needs and requirements.<sup>116</sup>

The anti-discrimination provisions of the Australian *DDA* are mirrored in the Australian *Fair Work Act 2009* (*Fair Work Act*), which similarly prohibits an employer, or potential employer, from taking "adverse action" against employees or prospective employees on discriminatory grounds, including physical or mental disability.<sup>117</sup> As Belinda Smith identified, the inclusion of these provisions in the *Fair Work Act* unambiguously makes equality a workplace issue.<sup>118</sup> However, as a result of the different wording in the *DDA* compared to the *Fair Work Act*, the principles regarding anti-discrimination in the industrial sector have developed slightly differently. As Perry J said in the recent case of *RailPro Services Pty Ltd v Flavel*, the adverse action provisions protect persons against only a "subset" of that which the *DDA* protects them against.<sup>119</sup> In the adverse action context, the task of the Court is to identify the actual (subjective) reason for which the person took the alleged adverse action.<sup>120</sup> This means that the actual existence or nature of a person's disability is relevant, but its relevance is as filtered through the knowledge and understanding of the person who allegedly took the adverse action. Further, in the adverse action context, the disability must be real and of the person in question, not merely perceived or of an associate of the person in question.<sup>121</sup>

In *Flavel*, the Federal Court of Australia upheld an appeal from a decision in which the judge had found that the employer took adverse action against Mr. Flavel because of a disability.<sup>122</sup> On appeal, the Federal Court found that it was "glaringly improbable" that the employer was

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116. *Johnstone*, *supra* note 114.

117. (Cth), s 351 [*Fair Work Act*].

118. Belinda Smith, "Fair and Equal in the World of Work: Two Significant Federal Developments in Australian Discrimination Law" (2010) 23:3 *Austl J Lab L* 199 at 219.

119. [2015] FCA 504 at para 113 [*Flavel*].

120. See generally *Board of Bendigo Regional Institute of Technical and Further Education v Barclay*, [2012] HCA 32.

121. See *Flavel*, *supra* note 119 at para 112.

122. *Ibid.*

aware of his (at the time undiagnosed) condition at the time of employment and, therefore, that the employer could not have dismissed him because of his disability.<sup>123</sup> The decision demonstrates that, although a person with a disability who brings an adverse action claim has the benefit of the “reverse onus” provision—which requires the employer to *disprove* the reason for which the conduct was taken—the subjective test requires the decision maker to have actual knowledge of the person’s disability, and perhaps even knowledge that a person’s behaviour is a symptom of their disability.<sup>124</sup>

While this may limit rather than expand workplace protection for persons with certain types of disabilities, the inclusion of anti-discrimination provisions in the *Fair Work Act* can protect persons with disabilities when their basic labour rights are denied because of their disability. Recently, an employer was found to have discriminated against a young vision-impaired worker on the grounds of disability by requiring her to do more than a month of unpaid training before being paid a flat rate of \$7 to \$8 an hour, which was below the \$10 to \$17 an hour she should have been paid.<sup>125</sup> The remedy for the employer’s breach of the law was back pay to the employee, an amount of compensation for non-monetary loss and the payment of a fine.<sup>126</sup> In ordering the employer to pay a civil penalty for contravention of the adverse action provisions of the *Fair Work Act*, Emmett J of the Federal Circuit Court of Australia noted that when the employer first offered her employment, it was on the understanding that she was in receipt of government benefits and “that they were enabling her to ease into an employment situation in the light of her age and disability”.<sup>127</sup> This is symptomatic of some employers’ attitudes towards disability and of a welfare mindset that positions persons with disabilities as recipients of charity (here, the opportunity to work) rather than as workers on equal footing with others. Whilst this did not

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123. *Ibid* at para 128.

124. See also the earlier full Federal Court decision in *State of Victoria v Grant*, [2014] FCAFC 184 at para 73 (where it was held that knowledge of a protected attribute—such as a mental disability—is a necessary, but not a sufficient condition for a finding that a person took adverse action for a prohibited reason).

125. *Fair Work Ombudsman v Rocky Holdings Pty Ltd & Ors*, [2013] FCCA 1549 [*Rocky Holdings*].

126. *Ibid*.

127. *Ibid* at para 34.

excuse the employer's violation of the *Fair Work Act*, it did lead to some reduction in the penalty for the employer. It did not, however, allow the employer to avoid making good the underpayment to her.

We conclude this part by noting that anti-discrimination laws, including a duty to make reasonable accommodations, whether imposed under general discrimination law or labour law, are a necessary but not sufficient condition for improving labour market access. As we have explained, the most fundamental purpose of anti-discrimination legislation is to equalize opportunity and to remove, where possible, characteristics of the labour market which are themselves disabling of employees or prospective employees. Yet as Banks, Chaykowski and Slotsve have described, there are accommodations that are necessary for persons with disabilities to work that are outside the scope of what is legally required and, indeed, there is an "accommodation gap" between the kinds of accommodations that are required and those which are provided.<sup>128</sup> Ultimately, solutions for improving access to, and participation in, employment must be broad, constructive and rooted in the policy reasons for improving employment for persons with disabilities that we set out earlier in this article.

## V. Australia's Use of Sheltered Workshops and Modified Wage Systems

In this Part, we explore an alternative strategy to anti-discrimination legislation and reasonable accommodation that seeks to increase the employment rate of persons with a disability—that of sheltered workshops and modified wage systems. We focus on recent legal challenges to sheltered workshops in Australia, highlighting the limits of the sheltered workshop and modified wage systems in allowing employees with disabilities to access citizenship through work.

Sheltered workshops, being special occupations and workplaces open only to persons with disabilities, usually to those with a particular type of disability, have a long history in the disability sector. Sheltered workshops often employ persons with disabilities on a modified wage system. "Modified" inevitably means "reduced", sometimes in a manner calculated by (purported) reference to a person's productivity, as compared

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128. Banks, Chaykowski & Slotsve, *supra* note 78.

to the productivity of a person without a disability. Though sheltered workshops may have their merits, ultimately they serve to strengthen the divide between persons with and without disabilities. Thus, they do not have the potential to allow persons with disabilities to access full citizenship through work.

Under the *CRPD*, sheltered workshops and modified wage systems are problematic because the *CRPD* protects the right of persons with disabilities to work, like everyone else, in the *open* labour market. Similarly, in its *General Comment No 5: Persons with Disabilities*, the Committee on Economic, Social and Cultural Rights stated that “the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts’ (art. 6 (1)) [of the *ICESCR*] is not realized where the only real opportunity open to disabled workers is to work in so-called ‘sheltered’ facilities under substandard conditions”.<sup>129</sup> Like the Committee on the Rights of Persons with Disabilities, the Committee on Economic, Social and Cultural Rights promotes the employment of persons with disabilities in the open labour market and regards sheltered employment as a last resort.

Sheltered workshops have long been controversial on the international plane and indeed, caused controversy during the drafting of the *CRPD*.<sup>130</sup> Whilst the text of the *CRPD* clearly now promotes work in the *open* labour market, many advocates, parents and caretakers of persons with disabilities argue that sheltered workshops have an important role to play. Ken Baker, the Chief Executive of the National Disability Services—the peak body for sheltered workshops in Australia—has promoted sheltered workshops on the basis that “if [persons with disabilities] want to work and they gain the benefits of work which are not just wages: which are friendships, social networks, a sense of dignity, a sense of contributing to society; these are very important benefits and people should be entitled to those benefits”.<sup>131</sup>

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129. Committee on Economic, Social and Cultural Rights, *CESCR General Comment No 5: Persons with Disabilities*, UNESCOR, 11th Sess, UN Doc E/1995/22 (1994) at 7.

130. See Anna MacQuarrie & Connie Laurin-Bowie, “Our Lives, Our Voices: People with Intellectual Disabilities and their Families” in Maya Sabatello & Marianne Schulze, eds, *Human Rights and Disability Advocacy* (Philadelphia: University of Pennsylvania Press, 2014) 24 at 29.

131. Melinda James, “What’s Fair Pay for People with Intellectual Disabilities?” *Australian Broadcasting Corporation Radio National* (28 September 2014), online: < [www.abc.net.au](http://www.abc.net.au) >

While we recognize that these are positives, it is our argument that those very same benefits can flow from employment in the open labour market, in accordance with the *CRPD*. Rather than breaking down barriers to employment, sheltered workshops reflect and reinforce one of the most pervasive impediments to increasing employment by persons with disabilities: the attitudinal barriers that mainstream persons and employers have against employing persons with disabilities in the open labour market. As the World Bank and World Health Organization have argued, “[a]most all jobs can be performed by someone with a disability, and given the right environment, most people with disabilities can be productive.”<sup>132</sup> It is our contention that governments and employers should focus on that message, rather than any preconceived attitudes about what persons with disabilities, or certain types of disabilities, can or should be allowed to do.

In Australia, sheltered workshops take the form of Australian Disability Enterprises (ADEs), which are non-profit organizations that offer work exclusively to persons with disabilities. There are around 194 ADEs in Australia, most of which just break even or run at a loss. The work completed by employees of ADEs is low-skilled and primarily involves simple manufacturing or assembling. In that respect, ADEs compete with cheap overseas labour and prison labour.

As part of the Australian wages structure, employees who are not covered by a collective agreement have many of the terms and conditions of their employment governed by 1 of 122 federal awards. These awards, which are occupation and industry-specific, detail amongst other measures, wage rates relating to skill measurements and market considerations. The Supported Employment Services Modern Award 2010 is the industrial instrument governing conditions in ADEs.<sup>133</sup> When the current “modern awards” were promulgated in late 2009 and in early 2010, the Supported Employment Services Modern Award 2010 included a formula called the “Business Services Wage Assessment Tool” (BSWAT), which was used to calculate the wage rates of persons with disabilities who were employed in ADEs.<sup>134</sup>

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132. *Report on Disability*, *supra* note 7 at 235.

133. Australia, Commonwealth, Fair Work Commission, *Support Employment Services Modern Award 2010* (Canberra: Australian Government Publishing Service, 2010).

134. *Ibid.*



In most cases, a person who receives a modified wage is also eligible for some government social security payments.

It is not only in sheltered workshops that persons with disabilities can have their entitlements reduced because of their disability. Other industrial instruments (such as other modern awards, enterprise awards and enterprise agreements) can also propagate modified wage systems in the open labour market. While there is a general prohibition on those instruments containing “discriminatory” terms,<sup>135</sup> terms that discriminate against “all employees with a disability, or a class of employees with a disability” are expressly allowed.<sup>136</sup> Thus, modern awards can contain provisions for a “Supported Wage System” which pays employees a percentage of the relevant minimum pay rate in their award based on their assessed capacity. For a person’s wage to be reduced in this way, they must be “unable to perform the range of duties to the competence level required of an employee within the class of work for which the employee is engaged because of the effects of a disability on their productive capacity”<sup>137</sup> and must also meet the “impairment criteria for receipt of a Disability Support Pension”.<sup>138</sup>

For employees with a disability who are not covered by an award or agreement, the national minimum wage creates a “floor” for their remuneration. If a person in this situation has a disability which does *not* affect their work, they are entitled to the “special national minimum wage 1”, which is the same as the general national minimum wage.<sup>139</sup> For employees whose disability *does* affect their work, they receive “special national minimum wage 2” which is essentially a reduced portion of “special national minimum wage 1”, reduced to a percentage which reflects the person’s “assessed productive capacity”.<sup>140</sup> As with the Supported Wage System, a person must be properly assessed, their disability must affect their productivity and they must meet the criteria for receipt of the disability support pension.<sup>141</sup> The absolute minimum rate of “special

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135. *Fair Work Act*, *supra* note 117, ss 153(1), 195(1).

136. *Ibid*, s 195(3)(b).

137. Australia, Commonwealth, Fair Work Commission, *National Minimum Wage Order 2014* (Melbourne: Fair Work Commission, 2014), clause 7.1(a).

138. *Ibid*, clause 7.1(b).

139. *Ibid*, clause 6.2.

140. *Ibid*, Schedule A.

141. *Ibid*, clause 7.1.

national minimum wage 2” is \$80 per week (compared with \$640.90 per week for “special national minimum wage 1”).<sup>142</sup>

The Committee on the Rights of Persons with Disabilities was succinct in its observations when it considered Australia’s record on employment of persons with disabilities, but it did speak strongly against reduced wages, specifically the BSWAT. The Committee exhorted Australia to immediately discontinue the use of the BSWAT and to ensure that the Supported Wage System was modified to secure correct assessment of the wages of persons in supported employment.<sup>143</sup>

In 2012, the BSWAT was challenged on behalf of employees in an Australian Disability Enterprise in the Federal Court of Australia as being discriminatory contrary to the *DDA*.<sup>144</sup> At first instance, the Federal Court held that there was no discrimination.<sup>145</sup> However, on appeal to a full Federal Court comprising three judges, it was held that the tool was discriminatory and, consequently, the employees were entitled to back pay.<sup>146</sup> The Government was unsuccessful in its application for leave to have the matter heard on appeal by the High Court of Australia.<sup>147</sup>

The decision directly affected around 10,000 workers. The Government—and some ADEs—then sought an exemption for three years from the *DDA* to enable it to develop a new wage tool and to give ADEs a transition period before being required to pay increased wages. This application for an exemption went before the Australian Human Rights Commission, which granted the Government a twelve-month extension.<sup>148</sup> Just prior to the expiry of the extension, the Government sought and was granted a further interim exemption. However, that exemption was overturned on appeal to the Administrative Appeals Tribunal on the grounds that persons with disabilities had not been given

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142. *Ibid*, clauses 6.2(a), A.3.2.

143. Committee on the Rights of Persons with Disabilities, *Concluding Observations on the Initial Report of Australia*, UNCRPDOR, 10th Sess, UN Doc CRPD/C/AUS/CO/1 (2013) at 50.

144. *Nojin v Commonwealth of Australia*, [2011] FCA 1066.

145. *Ibid* at para 103.

146. *Nojin v Commonwealth of Australia*, [2012] FCAFC 192 at para 139.

147. *Ibid*, leave to appeal to HCA refused.

148. *Notice of Grant of a Temporary Exemption* (29 April 2014), online: Australian Human Rights Commission, online: <[www.humanrights.gov.au/sites/default/files/20140429\\_Notify\\_of\\_Exemption\\_BSWAT.pdf](http://www.humanrights.gov.au/sites/default/files/20140429_Notify_of_Exemption_BSWAT.pdf)>.

a fair hearing in relation to the interim exemption.<sup>149</sup> The BSWAT has also been removed by the Fair Work Commission from the Supported Employment Services Modern Award. Thus, as at the time of writing, the situation is that ADEs are not exempt from discrimination law. Although the legal position is now clear and ADEs have been given government funding to assist the transition, there remains some resistance in the government and in ADEs to the full embrace of a new wage system.

In December 2013, a class action was commenced on behalf of employees subject to the modified wage system.<sup>150</sup> The Australian Government responded in 2014 by introducing legislation establishing a new payment scheme for persons who previously had their wages assessed under the BSWAT.<sup>151</sup> Eligible persons will be entitled to payments under this scheme for past and future work. The “catch” is that to be eligible for the scheme, a person must not be involved in the class action or subsequent similar proceedings.<sup>152</sup> On December 16, 2015, the Australian Government announced that in order to facilitate a settlement of the class action, the disabled workers will receive 70% instead of 50% of their back wages.<sup>153</sup> On December 21, 2015, the lawyers acting for the workers agreed to settle the class action on this basis.<sup>154</sup> On February 11, 2016, amending legislation to give effect to the settlement was introduced into the Australian Parliament.<sup>155</sup> It passed through the House of Representatives and on March 1, 2016 it was introduced into the Australian Senate. It will shortly be passed into law and the settlement will occur.

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149. *People with Disability Australia v Australian Human Rights Commission*, [2015] AATA 416 (interlocutory decision).

150. “Workers with Intellectual Disabilities Class Action” *Maurice Blackburn Lawyers*, online: < [www.mauriceblackburn.com.au/current-class-actions/workers-with-intellectual-disabilities-class-action](http://www.mauriceblackburn.com.au/current-class-actions/workers-with-intellectual-disabilities-class-action) > [“Class Action”].

151. *Business Services Wage Assessment Tool Payment Scheme Act 2015* (Cth). See also *Business Services Wage Assessment Tool Payment Scheme (Consequential Amendments) Act 2015* (Cth).

152. *Ibid.* See generally “Class Action”, *supra* note 150.

153. See The Honourable Christian Porter, Minister for Social Services & The Honourable Alan Tudge, Assistant Minister for Social Services, Media Release “Delivering Certainty for the Supported Employment Sector” (16 December 2015), online: < [christianporter.dss.gov.au/media-releases/delivering-certainty-for-the-supported-employment-sector](http://christianporter.dss.gov.au/media-releases/delivering-certainty-for-the-supported-employment-sector) > .

154. “Class Action”, *supra* note 150.

155. *Business Services Wage Assessment Tool Payment Scheme Amendment Act 2016* (Cth).

It is disappointing that the employees who worked in ADEs will not be able to receive full payment. In our view, the recent disputation around the Supported Wage System only serves to reinforce the fact that there are better alternatives which provide support to both employers and employees in the open labour market. One such alternative is the *Wage Subsidy Scheme*, which provides a financial incentive for employers to employ workers with disability under normal labour market conditions.<sup>156</sup> There is also a *Disabled Australian Apprentice Wage Support Scheme*, which promotes the employment as apprentices of persons with disabilities.<sup>157</sup> Pursuant to that scheme, an employer must enter into a training contract with the employee and agree to meet all legal requirements relating to the employee under the relevant employment industrial instruments.<sup>158</sup>

## Conclusion

There is one other crucial strategy that should be adopted to increase the employment of persons with disabilities: increasing their access to education. Access to education merits an article to itself, however, we mention it here in closing because we would be remiss to conclude this article without commenting on, and advocating for, the importance of education. Without education, persons with disabilities will not be able to fully access the many opportunities in the open labour market. Ron McCallum wishes to note in this edition of the *Queen's Law Journal*, which is a tribute to Professor Bernard Adell, that in supervising his LLM major dissertation at Queen's University, Professor Adell assisted him in attaining a foothold on the academic ladder that led to his successful career as a labour law academic who became the Dean of the University of Sydney Law School.

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156. Australian Government, "Wage Subsidy Scheme" (1 February 2016), online: Department of Employment <[www.employment.gov.au/wage-subsidy-scheme](http://www.employment.gov.au/wage-subsidy-scheme)> .

157. Australian Government, "About Support for Australian Apprentices with Disability" (July 2015), online: Australian Apprenticeships <[australianapprenticeships.gov.au/programmes/support-australian-apprentices-disability](http://australianapprenticeships.gov.au/programmes/support-australian-apprentices-disability)> .

158. See generally *Rocky Holdings*, *supra* note 125. Justice Emmett was critical of the fact that, while the employer failed to pay the employee the amount to which she was entitled, the employer was receiving benefits under the *Disabled Australian Apprentice Wage Support Scheme*. Thus, the total actual cost to the employer of her employment was only \$3.59–\$4.59 per hour, and the employer was receiving \$104.30. *Ibid* at paras 39–41.

We trust that this article on the employment of persons with disabilities will provoke further discussion to ensure that this cohort is no longer a forgotten one, excluded from the full benefits of citizenship through work. As we have shown, there remains much work to be done before Australia and Canada—and indeed nearly every nation—could say that all of their citizens and residents with disabilities have access to industrial citizenship on an equal basis with others. That is, that they have access to work that is decent, fairly remunerative and no less precarious than the work of persons without disabilities.

While old notions of separate, modified and ultimately unequal employment should be abandoned, the contemporary discourse of productivity is currently an inappropriate lens through which to understand the employment of persons with disabilities. Only once human rights concepts such as reasonable accommodation are truly embraced within the labour market can productivity be a fair or equitable touchstone for the inclusion of persons with disabilities in work and employment. Then it will be clear that the omission of persons with disabilities from full access to citizenship through work has both human rights and economic opportunity costs.

We hope that we will soon observe further steps toward a change in social attitudes so that the public, unions and employers believe that people with disabilities need and deserve employment, with the appropriate supports and protections where necessary—all towards the goal of persons with disabilities attaining fully fledged citizenship through work.

