

**Violence Against Students With Disabilities:  
Prevention Strategies in Canadian Schools**

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### **Abstract**

Students with disabilities are more likely to be victims of bullying and sexual and physical abuse than non-disabled children (Canadian Human Rights Commission, 2017; Cappadocia et al., 2011; Hershkowitz et al., 2007). Girls with disabilities are more likely to be victims of sexual violence, dating violence, and repeat victimization (Alriksson-Schmidt et al., 2010; Mitra et al., 2012; Vernon & Miller, 2002).

This study critically examines the barriers and risks Canadian students with disabilities face concerning their education, legal rights, and the legal responsibilities of schools and teachers to protect and support them. The results of this study culminate in practical strategies that Canadian schools can implement to reduce violence against students with disabilities.

I engage in a critical thematic analysis of research documents and legal analysis to explore the risks Canadian students with disabilities face in school, their legal rights and legal responsibilities of Canadian schools relating to violence, bullying and discrimination, and ultimately, and how schools can decrease rates of violence against said students. I find that schools need to implement a whole-school approach that can reduce bullying towards students with disabilities through disability awareness and inclusion. In addition, in order to reduce sexual violence, teachers must offer comprehensive and inclusive sexuality education to all students.

*Keywords:* students with disabilities, bullying, sexual violence, physical violence, sexuality education

### Résumé

Les étudiants handicapés sont plus susceptibles d'être victimes d'intimidation, d'abus sexuels et physiques que les enfants non handicapés (Canadian Human Rights Commission, 2017; Cappadoce et al., 2011; Hershkowitz et al., 2007). Les filles handicapées sont plus susceptibles d'être victimes de violences conjugales et sexuelles et d'agressions à répétition (Alriksson-Schmidt et al., 2010; Mitra et al., 2012; Vernon & Miller, 2002).

Cette étude détermine les obstacles et les risques auxquels sont confrontés les étudiants canadiens handicapés en ce qui concerne leur éducation, leurs droits légaux et les responsabilités légales des écoles et des enseignants afin de protéger et soutenir ces étudiants. Les résultats aboutissent à des stratégies que les écoles canadiennes peuvent mettre en œuvre afin de réduire la violence à l'égard des étudiants handicapés.

Basé sur une analyse thématique critique de documents de recherche et des analyses juridiques, je traite des risques auxquels les étudiants canadiens handicapés sont confrontés à l'école, de leurs droits légaux et des responsabilités légales des écoles canadiennes en matière de violence, d'intimidation et de discrimination et enfin de la manière dont les écoles peuvent réduire les taux de violence à l'égard de ces étudiants. Une approche globale de l'école peut réduire les intimidations à l'égard des élèves handicapés grâce à la sensibilisation et à l'intégration des personnes handicapées. Afin de réduire les violences sexuelles, les enseignants doivent offrir une éducation sexuelle complète et inclusive à l'égard des élèves handicapés.

*Mots clés:* étudiants handicapés, intimidation, violence sexuelle, violence physique, éducation sexuelle

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I have been fortunate to find support both academically and personally. To everyone who helped guide me through this process, I thank you from the bottom of my heart.

### **Contribution of Authors**

Chapter 4 of my manuscript-based thesis comprises a published article in the *Education & Law Journal*. I am the sole author of this publication. Before its submission, the article was reviewed internally by McGill law student Kimia Towfigh, a fellow researcher for iMPACTS. Kimia's primary focus was on reading fluency and recommendations of legal concepts. Kimia reviewed the article twice but did not contribute to the writing. The article was then peer-reviewed by two legal academics in keeping with the high scholarly standards of the *Education & Law Journal* and its Editor in Chief, Professor Dickinson. The peer reviewers made various constructive suggestions and recommendations, which I incorporated. Professor Dickinson reviewed the article once more before the authority to publish was granted. I wrote the English abstract, and the publishers, Thomson Reuters, translated the abstract into French.

## **CHAPTER 1: INTRODUCTION**

My thesis provides an overview of the enduring social and emotional struggles experienced by students with disabilities (especially girls) because of the violence, both physical and sexual, and bullying they endure. My thesis critically examines the barriers and risks these students face, their legal rights, and the legal responsibility of schools, teachers, and administrators in reducing violence towards them. I also provide practical recommendations for how schools should employ prevention strategies to reduce bullying and physical and sexual violence. Based on the theoretical framework of critical disability theory, my thesis operates with the understanding that the oppression that students with disabilities face is due to the power imbalance embedded within society. In order to emphasize the severity of the topic and call for social change, I explore how Canadian students with disabilities are affected by an imbalance of power relations through bullying, physical altercations, and sexual abuse and the risks and barriers to their educational development. I use document analysis and legal analysis to bring awareness to this problem and help schools comprehend their role in violence prevention towards students with disabilities.

### **Research Questions and Objectives**

I explore the following questions:

1. What risks do Canadian students with disabilities face in schools?
2. How does the Canadian legal system view the rights of Canadians with disabilities in regard to sexual violence and bullying?
3. What are the legal responsibilities of Canadian schools relating to violence, bullying, and discrimination for students with disabilities?
4. How can schools decrease rates of violence against Canadian students with disabilities?

My study's primary objective is to provide educators with a clear understanding of the risks towards Canadian students with disabilities. My conclusions will provide a sound understanding of the barriers and risks of Canadian students with disabilities, their rights, and the legal responsibilities and ramifications of teachers and schools to improve schools' violence prevention strategies.

### **Background on Women and Girls With Disabilities**

A study conducted in 2017 found that 23% of Canadians experienced some form of disability (Furrie, 2018). Women experience a higher prevalence rate of disabilities compared to men (Burlock, 2017). Inspired by the World Health Organization's (WHO) characterization of disabilities, the Federal Government of Canada uses the following definition of disabilities, which states:

Disabilities is an umbrella term covering impairments, activity limitations, and participation restrictions. An impairment is a problem in body function or structure; an activity limitation is a difficulty encountered by an individual in executing a task or action; while a participation restriction is a problem experienced by an individual in involvement in life situations. (Human Resources and Skills Development Canada, 2013, p. 2)

Based on this understanding, disabilities encompass physical and cognitive limitations that constrain full participation in society.

Sexual violence is a gender-based issue where women experience higher victimization rates than men, and women with disabilities experience higher rates than non-disabled women (Cotter & Savage, 2019; Status of Women Canada, 2020). WHO defines sexual violence as:



Any sexual act, attempt to obtain a sexual act, unwanted sexual comments or advances, or acts to traffic, or otherwise directed, against a person's sexuality using coercion, by any person regardless of their relationship to the victim, in any setting, including but not limited to home and work. (2002, p.149)

Sexual violence includes sexual acts such as rape, sexual abuse, sexual harassment, and sexual assault (WHO, 2002). Canadian children with disabilities have a 40% likelihood of being sexually or physically abused compared with 27% of children without disabilities (Cotter, 2018). Before the age of 15, nearly 24% of women with disabilities will be victims of sexual abuse by an adult (Cotter, 2018). Girls with disabilities are more likely to experience dating violence and sexual violence than non-disabled girls (Mitra et al., 2012).

These students not only experience higher rates of violence but also face educational disadvantages. A report by Statistics Canada outlined the educational experiences of men and women (aged 15 and older; with and without disabilities) and concluded that 32.3% of Canadian women with disabilities do not hold a certificate, degree, or diploma from an educational setting, compared to 28% of men with disabilities not holding a certificate, degree, or diploma and are significantly less likely than women without disabilities wherein 17% do not hold a certificate, degree, or diploma (Burlock, 2017).

Physical violence, including physical abuse or assault, is "the intentional use of force against a person without that person's consent" (Department of Justice Canada, 2017, para. 7). Physical acts of violence, causing physical pain or injury, include, but are not limited to, shoving, kicking, punching, stabbing, holding someone down, or locking someone in a room (Department of Justice Canada, 2017). When these violent acts are because of a person's gender, gender identity, or perceived gender, it is considered gender-based violence (Status of Women Canada,

2020). Women with disabilities will experience higher rates of violence such as physical, sexual, and emotional abuse (Plummer & Findley, 2012).

In addition to physical and sexual violence, students with disabilities also experience higher levels of bullying (Cappadocia et al., 2011). Bullying is the unequal power relation between two individuals and hurtful actions (either direct or indirect) repeated over time (Public Health Agency of Canada, 2016). In 2012, a parental report from a Canadian study stated that 75% of children with disabilities are affected by bullying (Cappadocia et al., 2011). In 2020, the WHO released a survey measuring the rates of bullying for 11-year-olds who have been bullied at least twice in the preceding months; Canada placed 26<sup>th</sup> out of 35 countries (Inchley et al., 2020). Compared to students without disabilities and regardless of their gender, students with disabilities are at a greater risk for bullying, and female students with disabilities are at a greater risk for sexual and physical violence (Mitra et al., 2012). When bullying, physical violence, or sexual violence occurs to students by other students, school personnel, or on school campuses by an outsider, it is considered school-based violence (Furlong & Morrison, 2000).

These statistics demonstrate the rising concern for disability awareness and addresses gender-based violence against girls with disabilities. Canada has set forth legislation to reduce barriers to a fulfilling and meaningful education for students with disabilities. Quebec's and Ontario's provincial legislation outlines the legal requirements of violence prevention in schools (*Education Act*, S.Q., 1988; *Education Act*, R.S.O., 1990). However, given these statistics, legal consequences and comprehensive prevention strategies must be in effect to support these students and in Canadian schools. To best protect students, a greater understanding from educators of the challenges they face is essential.

### **Thesis Overview**

My research focuses on the binary gender system wherein someone's gender and biological sex align. Until recently, much of the research on violence against girls and women used this male-female system, providing an effective approach for understanding generalizations about populations. However, this does not undermine the intersecting identities of non-binary and transgender individuals with disabilities and their heightened risk for violence (Morgan et al., 2011). Non-binary and transgender individuals with disabilities merit further investigation, which I address in this thesis' 'future research' section.

The thesis comprises six chapters:

Chapter 1 provides an introduction with a focus on the Canadian context of disability awareness. It provides the reader with an overview of this study's questions and objectives.

Chapter 2 provides a Literature Review focusing on the prevalence rates of disabilities across Canada while concentrating on Quebec and Ontario provincial legislation. It explains the definition of students with disabilities, discusses different models of disabilities, such as the medical, social, and international model of disabilities, and assesses bullying, physical and sexual violence rates against individuals with disabilities.

Chapter 3 covers the study's theoretical framework and methodology. I evaluate critical disability theory as the guiding framework, critical document analysis as the chosen methodology, and thematic analysis as my analytical approach. Finally, I describe the various methods used to carry out the research, document analysis and legal analysis, and I discuss how the theoretical framework contributes to my analysis.

Chapter 4, my published manuscript, "Prevention Strategies in Canadian Schools", outlines prevention education requirements to protect students with disabilities. It

begins with an analysis of the rates and risks of violence towards students with disabilities, especially girls with disabilities. After which, it discusses schools and educators' legal responsibilities to protect those students, includes a legal analysis regarding violence against students with disabilities, and concludes with strategies to reduce violence towards students with disabilities.

Because Chapter 4 is my published manuscript from the *Education & Law Journal*, the chapter conforms to legal citation guidelines. The legal citations appear as footnotes within the article. With the exception of Chapter 4, this thesis follows APA citation guidelines. The legal references found in Chapter 4 can be found in the reference list at the end of the thesis as APA citations.

### **Manuscript-Based Thesis**

As Chapter 4 is a manuscript, my thesis falls under the category of a manuscript-based thesis. The *Education & Law Journal* published what comprises Chapter 4 in December 2020 (Peris, 2020). Chapter 4 addresses all of my research questions by conducting an in-depth document analysis, and legal analysis. To determine the rates and risks of violence for students with disabilities, I focus on their educational lives. Following the in-depth document analysis, I conduct a legal analysis and review Canadian cases regarding the sexual exploitation of a person with a disability (focusing on Section 153.1(1) of the *Criminal Code* (1985)) and examine the violation of the position of trust or authority within schools. The perpetrators of violence hold positions of trust, creating a power differential over their victims. In educational facilities, the teachers, administrators, coaches, or school personnel hold the position of trust.

I also focus on schools and educators' legal responsibilities under Quebec's and Ontario's provincial legislation and Canada's federal legislation to protect their students. Firstly, I focus on

Quebec's and Ontario's regional guidelines for reducing violence in schools because of my positionality as a special needs' teacher in Quebec. Secondly, the *Education & Law Journal* is an Ontario-based journal. After reviewing schools' legal obligations, the thesis focuses on different prevention strategies such as a whole-school approach and a comprehensive sexuality education curriculum to reduce violence against students with disabilities.

In Chapter 5, 'Discussion and Recommendations', I evaluate the research findings, address the research questions, and discuss their implications for teachers and school legislation. Utilizing the critical document analysis, I discuss teachers' legal responsibility to educate their students on violence prevention and educators' legal duties to reduce violence against students with disabilities. The results culminate in advocating for anti-violence prevention and understanding the critical role of a comprehensive sexuality education curriculum. Based on the results of the study, I created a teacher's toolkit (see Appendix A) to advance the knowledge mobilization of my findings and increase its accessibility for educators. I also outline the implications, limitations, and recommendations of this study.

Chapter 6, my concluding chapter, provides a summary of the research, the risks associated to students with disabilities and connects violence prevention and sexual assault prevention through a comprehensive and inclusive sexuality education curriculum. It discusses the importance of a coordinated response from educational faculties, communities, and the Canadian legal system to address violence against individuals with disabilities as well as outlines future research.

Following the conclusion are the references and appendices. Appendix A contains screenshots of the teacher's toolkit that I created and have disseminated through a research grant, conferences, and networks of teachers.

## **CHAPTER 2: LITERATURE REVIEW**

For my literature review, I have utilized various sources that provide statistical and contextual information to demonstrate how violence against students with disabilities is a critical problem within Canadian school systems, particularly in Ontario and Quebec. To contextualize disabilities within Canada, I will be reviewing the rates of disabilities per province as well as Quebec's and Ontario's educational legislature. Following that, I will be re-addressing the definition of disability within the context of this study. I continue with an analysis of various models of disabilities, violence against children with disabilities as well as bullying. Finally, I conclude with corporal punishment in schools and address the lack of prevention strategies in sexual assault programs.

### **Provincial and Territorial Rates of Disabilities in Canada**

Canadian women are consistently more likely to have a disability than Canadian men, presumably because women live longer than men and may experience various disabilities as they age (Burlock, 2017). According to Statistics Canada, in 2011, 14.5% of Canadian adults over the age of 15 identified as having a disability (Burlock, 2017). These numbers increased to 23% in 2017 (Furrie, 2018).

Manitoba accounts for the highest prevalence of Canadian women with disabilities with 16.6% of the population; however, Manitoba men with disabilities account for 14.7% of the population, which is not the national highest rate (Burlock, 2017). Ontario and Atlantic Canada (Newfoundland and Labrador, New Brunswick, Prince Edward Island, and Nova Scotia) have similar rates of women with disabilities, 16.4% and 16.3%, respectively. Atlantic Canada accounts for the highest prevalence of men with disabilities: 15.8% of the population. Ontario men with disabilities account for 14.5% of the population. For rates of disabilities for women,

the numbers decrease in Saskatchewan, British Columbia, Alberta, and the territories: 15.3% equally, 14.6% and 14.4%, respectively. The prevalence of disabilities for Quebec women is substantially lower than the preceding provinces and territories, with 9.8% of the female population. Quebec men also account for the lowest rates of disabilities, with 8.9% of the male population. These numbers provide an understanding of prevalence rates in Canada among adults aged 15 and older. However, these statistics do not provide information regarding the age of the subjects and considering how age may account for discrepancies of disabilities among men and women, a closer examination of children with disabilities is required.

### **Provincial and Territorial Rates of Canadian Children With Disabilities**

In 2006, the Canadian government issued a national survey of people with disabilities, called the Participation and Activity Limitation Survey (Government of Canada, 2011). Based on their findings through interviews and questionnaires, 3.7% of the Canadian population aged 0-14 identified as having a disability in 2006 (Government of Canada, 2011). Nova Scotia accounted for the highest prevalence rate of children with disabilities, with 4.6% of the province's population aged 0-14 considered having a disability. Manitoba, Prince Edward Island, and Alberta all had a prevalence rate of 4.1% equally, while New Brunswick, British Columbia, and Yukon Territory all had a prevalence rate of 4.0%. The numbers decreased slowly from Newfoundland (3.9%), Saskatchewan (3.9%), Ontario (3.8%), Quebec (3%), Northwest Territories (2.9%), and Nunavut (2.6%). Quebec would account for the lowest prevalence rate if the survey grouped the territories, as in the previous study for adults with disabilities. Quebec self-identified as having fewer children with disabilities than Ontario and had nearly half of Nova Scotia's prevalence rate (Government of Canada, 2011). However, it is unclear why Quebec accounts for the lowest rates of adults and children with disabilities.

For students with disabilities, age 5-14, 56.9% attend schools for the general population of students (also known as inclusive education), compared to 43.1% of students with disabilities who attend special education schools (also known as segregation) or schools with special education classes (also known as mainstreaming; Government of Canada, 2011). Inclusive education is a child-centred philosophy that bases its approach on the diversity of learners within a given classroom; whether they have disabilities or not, all children are included (McLaughlin, 2006; Dixon, 2005). It requires restructuring the physical environment, providing curriculum differentiation, and implementing changes in teachers' and students' attitudes and beliefs (McLaughlin, 2006). Inclusive education places the student in the classroom full-time (Dixon, 2005). Prince Edward Island had the highest rate of inclusive education for students with disabilities (73%), followed closely by New Brunswick (72%), then Nova Scotia (69%; Statistics Canada, 2007). Ontario has close to 55% of students with disabilities in inclusive education, while Quebec has the lowest rate of all provinces with 48% of students with disabilities in inclusive educational settings (Statistics Canada, 2007).

Students with disabilities who are not in inclusive education settings are typically mainstreamed or segregated to special education schools (Statistics Canada, 2007). As opposed to inclusion, mainstreaming removes students with disabilities from the classroom to be placed in remedial or resource rooms for 20-60% of the day (Ware, 2006). If students require 60% or more time in remedial placement, they could be segregated to a self-contained special education classroom or school (Ware, 2006). Segregation allows for individualized attention from specially trained teachers (Dixon, 2005). However, there are debates regarding the best placement for a student with disabilities and what placement is in a student's best interest.



### Defining Students With Disabilities

Statistics Canada released a survey based on the participation and activity limitations of children with disabilities (2007). *Students with disabilities* are defined as children with chronic limitations, either physically, cognitively, emotionally, or in combination. These conditions are chronic, lasting longer than six months, have been diagnosed by a professional, and can affect the type of activity a child can perform. *Students with special needs* is another term that could describe students with disabilities. However, students with special needs can also include students with above-average intelligence, also known as gifted (Kaya, 2015). Gifted students are not considered disabled but require special accommodations in course materials (Kaya, 2015). This study does not include gifted students but focuses on the former definition (physical, cognitive, or emotional disability).

The provincial legislature of Quebec and Ontario represent students with disabilities differently. Quebec's *Education Act* (1988) specifies students with disabilities as students with handicaps, social maladjustments, or learning difficulties. The *Act* does not define these three categories further. However, in Quebec's *Act to Secure Handicapped Persons in the Exercise of Their Rights With a View to Achieving Social, School and Workplace Integration* (2004, c. 31, s. 1.), a handicapped person is defined as "a person with a deficiency causing a significant and persistent disability, who is liable to encounter barriers in performing everyday activities" (s. 1. g). Therefore, if a student corresponds to the definition by the *Act*, they would be considered as handicapped.

Without a clear definition from Quebec's legislation, the Ministry of Education released a report entitled "Organization of Educational Services for At-Risk Students and Students with Handicaps, Social Maladjustments or Learning Difficulties" (Quebec Ministry of Education,

2013). First, legislation states that a health professional must diagnose students with handicaps, severe behavioural disorders, or combinations. Furthermore, the disability and limitations must hinder or prevent the child's ability to follow the Quebec Education Program (Quebec Ministry of Education, n.d.-a) or hinder the child's ability to achieve social integration. Finally, the report stated that support measures must be in place for the child to function within the school setting (Quebec Ministry of Education, 2013). These three categories (handicapped, severe behavioural disorders or combination) are specified as students requiring consideration, support, accommodations, and interventions based on the *Education Act* (1988).

Ontario's *Education Act* (1990, s. 1) uses the term *exceptional pupils*. An exceptional student is "a pupil whose behavioural, communicational, intellectual, physical or multiple exceptionalities are such that he or she is considered to need placement in a special education program by a committee" (s. 1). Exceptional pupils include students with learning disabilities or with hearing or visual impairments.

### **Terms for This Study**

Within the context of this study, I decided to use the term students with disabilities. This term emphasizes person-first language instead of disabled students, which is disability-first language (American Psychological Association, 2019). I chose not to use the term handicap because it is considered outdated by the National Disability Authority and Americans with Disabilities Act National Network (2000; 2017). It is my assumption that Quebec continues to use the term "students with handicaps" because of the direct translation from French: *élèves handicapés*. Exceptional pupils could have been a reasonable option; however, students with disabilities are more prevalent in research than exceptional pupils.

### **Models of Disabilities**

There are competing discourses based on the differentiation and classification of the umbrella term individuals with disabilities. The term could encompass several types of disabilities, impairments, or both. According to Tom Shakespeare, “[d]isability is a complex interaction of biological, psychological, cultural, and socio-political factors which cannot be extricated except with imprecision” (2006, p. 38). Individuals with disabilities are among the only minority groups that anyone may join, whether through the loss of physical ability, the sudden onset of psychological problems, or age (Procknow et al., 2017). By utilizing opposing models (such as the medical model of disabilities, the social model of disabilities, and the international classification model) in unison to address a widely encompassing understanding of disabilities, these relationships will have different effects, depending on the observer. For example, policymakers may base their plans for funding on a model that differentiates between individuals with disabilities and those without (Shakespeare et al., 2006). Together, these models form the basis of disability studies and diverse disability theories by capturing the full spectrum of disabilities in different contexts.

#### **The Medical Model of Disabilities**

The medical model views the disability as a biological impairment, functional limitation, or both (Williams, 2001). Whether the disability is cognitive or physical, the issue lies within the individual and not the environment. In this model, the individual is the center of the problem, which needs to be cured, prevented, or treated to improve one’s quality of life (Shakespeare, 2017; Williams, 2001). By performing medical interventions, the disability would be reduced or corrected (Berghs et al., 2016; Goering, 2015). The medical model provides an efficient approach for disabilities that are treatable or suitable for rehab.

However, the medical model of disabilities has several limitations. To begin, this model places the onus of all the disability-related problems on the individual dealing with or affected by the disability, which can lead the individual with disabilities to feel oppressed or pitied (Goering, 2015). Not surprisingly, this model has been unsupported by disability movements and disability rights advocates, who strongly believe that the individuals are not the problem but that the barriers and limitations fall within the socially constructed environment.

### **The Social Model of Disabilities**

The social model of disabilities is the most widely used and accepted model for disability studies (Watson & Vehmas, 2019). As opposed to the medical model, where the problem lies with the individual, the social model focuses on the dualism between the individual with disabilities and the social environment (Shakespeare, 2017). It also champions the difference between impairment and disability, wherein disability is the social oppression and impairment is the physical limitation (Watson & Vehmas, 2019; Berghs et al., 2016; Shakespeare, 2017). Based on the social model, a person with disabilities faces barriers because of the socially constructed environment, the cultural discourse that is biased against disabilities or is inherently ableist, and social oppression that hinders full participation in society (Shakespeare, 2017; Crow, 1996). For example, if a person in a wheelchair cannot climb stairs, the problem does not lie with the person (as the medical model would postulate), but rather with the lack of elevator or ramp (the environment's barrier of not being accessible by wheelchair). The social model of disabilities is grounded in civil rights—not charity or pity—but on full and equalitarian rights (Shakespeare, 2017). If this model prioritized our understanding of disability, there would be accessible public transport, appropriate education for all children, and workplace integration to include and

encourage people with disabilities. According to this social model, in this utopic ideal, where accessibility would not be an issue, disabilities would no longer exist (Finkelstein, 1981).

Michael Oliver initially presented the social model of disabilities in 1983 out of disability movements. Oliver created this model to remove barriers, create anti-discrimination policies, and promote independence (Shakespeare, 2017). The social model has fostered policy development in the WHO, United Nations, World Trade Organization, World Bank, and many countries (Watson & Vehmas, 2019). To date, 147 countries have signed the *UN Convention on the Rights of Persons with Disabilities*; Canada signed the convention when it was first presented in 2006 and has since ratified the convention in 2010 (Council of Canadians with Disabilities, 2011).

While praised and supported, the social model of disabilities has certain limitations. Even with legislation and the UN convention, barriers and discrimination remain; the barrier-free utopia has not been realized and may never be (Finkelstein, 1981). Unfortunately, old buildings are not easily converted, natural settings (such as mountains) are challenging for individuals with mobility issues, and the plethora of disabilities require unique and varied solutions (Shakespeare, 2017). An example of the latter is that an individual in a wheelchair will prefer ramps and smooth surfaces, whereas an individual with sight loss will prefer steps and defined pavement (Shakespeare, 2017). While the social model of disabilities has advocated for social reform with success, we should not overestimate its ability to solve all of the problems that people with disabilities face.

### **The International Classifications**

In 1980, the WHO published the *International Classification of Impairments, Disabilities, and Handicaps*, also known as the ICIDH (Bickenbach, 2006). Some scholars argue that the ICIDH is simply the “international underpinning of the medical model of disability”

(Hurst, 2000, p. 1083). However, the WHO has disagreed, stating its intention was to overcome the medical model's individualism and recognize the importance of socially related consequences (Burry, 2000). There remains disagreement amongst disability theorists on whether this model relates more closely to the medical or social model of disabilities.

The ICIDH went through several revisions and, by 2001, is now known as the *International Classification of Functioning, Disability and Health*, or ICF (Bickenbach, 2006). The ICF explains disability as the "impairment of body function, activity limitations, and participation restrictions" coupled with the interaction of health and environmental conditions (Bickenbach, 2006, p. 969). The ICF has shifted how we view individuals with disabilities, from labelling and highlighting the disability to having a broader view of the spectrum of ability and functionality (Bickenbach, 2006). The Government of Canada follows this model and the definitions they provide.

Because of competing views and models of disabilities, there is a discrepancy towards the best approach to rights, equality, and solutions within disabilities (Pothier, 2014). Supporters of the medical model argue that disabilities are a personal deficit, whereas the social model argues that disabilities are due to social oppression and environmental barriers (Pothier, 2014). Consequently, governments and professionals must navigate the tensions between these two schools of thought for policies and programming (Pothier, 2014). Data collected by Statistics Canada helps identify Canadians with disabilities and any hindrance they experience to their full participation in society. More so related to the social model of disabilities, Canada seeks to identify and eliminate any barriers its citizens may encounter, creating an inclusive Canada (Furrie, 2018).

### **Assessing the Field: Physical and Sexual Violence Against Students With Disabilities**

The types of violence students with disabilities face vary from sexual abuse, physical abuse, verbal threats to bullying and taunting. These variations in abuse create discrepancies in being able to calculate an exact victimization rate. Different studies focus on one or more types of violence perpetrated against individuals with various disabilities. Due to the gendered nature of sexual violence, I choose to focus primarily on sexual violence and abuse against girls with disabilities; however, I will also provide a critical examination of the lives of students with disabilities and the oppression they face.

### **Violence Against Children With Disabilities**

Students will spend most of their lives in the classroom, meaning that many childhood victims of physical or sexual abuse are most likely attending school and students with disabilities are more likely to be abused than non-disabled students while attending school (Stalker & McArthur, 2012). In 2012, Stalker and McArthur released a scoping study evaluating the abuse of children with disabilities between 1996 and 2009. The authors determined that children with disabilities were significantly more likely to experience abuse than non-disabled children (Stalker & McArthur, 2012). A study out of the United States by Sullivan and Knutson (2000) investigated the prevalence rate of abuse for children with disabilities. It concluded that children with impairments (a school-based criterion for disabilities) were 3.4 times more likely to experience maltreatment (synonymous with child abuse) than children without impairments. Children with disabilities were also more likely to experience multiple forms of abuse, with neglect being the most frequent form of abuse. The authors also determined that children with communication difficulties or behavioural disorders were five to seven times more likely to experience maltreatment than non-disabled children. A Norwegian study by Kvam (2004) found

that 44% of 302 deaf adults surveyed experienced unwanted sexual experiences during childhood and that they experienced higher rates of severe sexual abuse. Similarly, Akbas et al. (2009) confirmed that when comparing childhood sexual abuse victims with and without disabilities, children with disabilities were more likely to experience severe forms of sexual abuse, such as vaginal penetration for girls with disabilities. A survey of 101 college students with disabilities by Findley et al. (2016) concluded that 62.3% of the participants had experienced physical, sexual abuse, or both, before turning 17 years old.

### **How Gender Affects Physical and Sexual Violence**

The prevalence rates of physical and sexual violence between boys and girls with disabilities are inconsistent. In Sullivan and Knutson's 1998 study, they concluded that more girls with disabilities experienced sexual abuse than boys, but physical abuse or neglect rates were similar among the genders. Contrary to the previous study, Hershkowitz et al. (2007) concluded that while girls with disabilities were more likely to experience sexual abuse, boys with disabilities were significantly more likely to experience physical abuse. Furthermore, in 2016, an investigation regarding childhood abuse of college-aged students with disabilities concluded that more women reported physical and sexual abuse than men with disabilities within the study (Findley et al.). When determining the prevalence rates of dating violence among secondary school students with disabilities, the authors determined that females with disabilities were more likely to experience dating violence compared to non-disabled students (Mitra et al., 2012). Consistent with the previous study results, Alriksson-Schmidt et al. (2010) concluded that adolescent girls with physical disabilities were more likely to be physically forced into sexual intercourse.



Although I will not be addressing it in this study, researchers must acknowledge the crucial considerations regarding the rates of sexual abuse of boys with disabilities. Sadly, the rates of childhood sexual abuse for deaf men were more than 3 times higher than for hearing men (Kvam, 2004). Therefore, compared to women with disabilities, men with disabilities may not experience higher rates of sexual abuse; however, men with disabilities may experience a higher risk for sexual abuse than non-disabled men.

### **Bullying Against Students With Disabilities**

Bullying affects one in three adolescent students in Canada, and nearly half of all Canadian parents report that their child has been a victim of bullying (Canadian Institutes of Health Research, 2012). The prevalence rates for bullying against students with disabilities are not easily quantified; some studies range from 0-100% (Rose et al., 2011). It is essential to consider how bullying is defined, why there are such high discrepancies in bullying data, and what effect the educational placement (inclusive, mainstream, segregated) has on victimization rates for students with disabilities.

### **Defining Bullying**

Analogous to determining an exact definition of disabilities, determining a universal definition of bullying has proved challenging. Many researchers and scholars will employ similar, yet not identical, definitions throughout their research. According to Rose et al. (2011):

First, for an act to be considered bullying, there must be an imbalance of physical, social, or emotional power between the victim and the bully. Second, the act of perpetration is systematic with intent to cause emotional or physical harm to the victim. Third, victimization and/or perpetration are generally repeated over the course of days, months, or years. (p. 115)

Being perceived as weaker or lower in status creates a power imbalance and makes certain students more susceptible to bullying. Bullying can be physical, verbal, or indirect acts intended to cause harm. However, not all aggressive behaviours are considered bullying; these include instrumental or retaliatory aggression and jostling (Rose et al., 2011; Doll & Swearer, 2006). Instrumental aggression ensues when individuals defend their property, reputation or protect a fellow peer. Retaliatory aggression occurs when an individual reacts hastily and impulsively to a stressful situation (Rose et al., 2011). Jostling is more understood as mutually rewarding, pushing and shoving experiences that can be enjoyable (Doll & Swearer, 2006). One critical consideration of what defines bullying versus other aggressive behaviour is the imbalance of power between two peers and that the behaviour is repeated (Nansel et al., 2001).

### **Discrepancies in Bullying Data**

In a literature review entitled ‘Bullying perpetration and victimization in special education: A review of the literature’, Rose et al. (2011) investigated the relationship between bullying victimization and perpetration and its correlation to acts of school violence. The researchers evaluated 32 peer-reviewed articles dating from 1989 to 2006 from different countries to accurately determine the rate of victimization, perpetration, and disability characteristics. This review intended to provide special educators with the rate of bullying victimization of students with disabilities and rates of perpetration, focusing on the student’s type of disability, personal characteristics, and the educational placement of the student (inclusive, mainstream, special education schools). In terms of victimization, results from the articles ranged from 0-100%. Some research samples included four students, and few were over 100, making them relatively small sample sizes. Compared to students without disabilities, students with disabilities experienced higher rates of “fighting, relational perpetration, victimization,

cybervictimization, and relational victimization” (Simpson et al., 2016, p. 303). Therefore, students with disabilities experience higher prevalence rates of both victimization and perpetration.

Students with more severe disabilities experience higher rates of bullying, which is usually in direct relation to their educational placement (Kaukiainen et al., 2002). Victimization and disability characteristics varied greatly. Studies relating to language impairments resulted in a 20% increase in bullying for students with disabilities than typically developing peers (Davis, et al., 2002; Knox & Conti-Ramsden, 2003; Sweeting & West, 2001). In 2002, Little determined that 94% of students with Asperger’s experienced bullying in the previous year.

According to Rose et al. (2011), the high rate of bullying data discrepancies may be accounted for by the lack of a universal definition of bullying and disabilities. Another possible issue is that researchers tend to group students with disabilities into larger categories, affecting generalization (Bear et al., 2015). In 2015, Bear et al. conducted a study focusing on bullying victimization for students with and without disabilities. In the study, the researchers discuss the issues of bullying discrepancy rates and establish that prevalence varies on the type of disability, including the behavioural association to the particular disability. Bullying prevalence rates also vary significantly depending on the specific measure of bullying utilized in the study and which criteria to classify bully-victims students (Bear et al., 2015). Bear et al. reference these reasons why Rose et al. (2011) could have bullying victimization rates ranging from 0-100%.

During the investigation, Bear et al. (2015) used two methods of assessments to account for varying definitions of bullying: one lower cut-off measure wherein any response other than ‘never’ constituted bullying and another wherein the cut-off measure included responses of ‘once or twice a month’. When the lower cut-off measure was used (responses other than never),

bullying victimization ranged from 0-66.7% for the different disabilities assessed. Using the cut-off measure of 'once or twice a month,' prevalence rates ranged from 0-41.7% (Bear et al., 2015). When the researchers viewed the prevalence rate of bullying by type of disability, they concluded that students with emotional disturbances experience the highest rates of bullying, 41.7% and 66.7%, based on the cut-off criteria. After emotional disturbances, students with health impairments, mild intellectual disabilities, and blind or visual impairments experience the highest victimization rates. Students with autism spectrum disorder experience a 50% risk of being bullied (Bear et al., 2015). Based on the research conducted by Bear et al. (2015) and regardless of the cut-off criteria used, they concluded that students with disabilities experience bullying victimization at a higher prevalence rate than students without disabilities.

### **Bullying and Educational Placement**

While researching the rates of bullying for students with disabilities, the findings must consider the student's educational placement. Rose et al. (2011) determined a positive correlation between educational placement and the least restrictive academic environment such as integration. Students with disabilities placed in more restrictive educational settings, such as segregation, typically have more severe disabilities. As previously mentioned, students with more severe disabilities tend to be victims of bullying at higher rates than students with less severe disabilities (Kaukiainen et al., 2002), assuming that inclusive environments increase acceptance and reduce stereotypes (Rose et al., 2011). In 2009, Rose et al. conducted a comparative analysis of bullying victimization for students with disabilities and its correlation to educational placement. Participants included over 14,000 high school and middle school students in the United States. The results indicated that students with disabilities experience bullying at higher rates than typically developing peers, and bullying victimization decreased with the least

restrictive educational placement. Therefore, students with disabilities in inclusive settings are victims of bullying at lower rates than students placed in segregated classrooms (Rose et al., 2009). However, for students with disabilities placed in inclusive settings, it may be a protective measure against bullying by removing them from potentially harmful situations unless their peers accept them (Martlew & Hodson, 1991; Rose et al., 2009). Based on these findings, strict consideration regarding the student's best interest and educational placement is necessary.

### **Corporal Punishment and Students With Disabilities**

Schools' responsibility for the violence committed within them, or school-based violence, and how the legal system reacts to such claims has important considerations. In the United States, 19 states permit corporal punishment in schools (MacSuga-Gage et al., 2020). Corporal punishment includes using a wooden paddle to strike a child, even choking, punching, and slapping a student (Mitchell, 2010). Research indicates that some populations of students are more likely to experience corporal punishment, including Black, Hispanic, and those with disabilities. In Alabama, Mississippi, and Arkansas, students with disabilities were 50% more likely to experience corporal punishment (MacSuga-Gage et al., 2020). During an investigation of 130 excessive force cases by school personnel, students with disabilities were more likely to experience seclusion, restraints, corporal punishment, and law enforcement referrals (Katsiyannis et al., 2019). Even though students with disabilities represent 12% of the student population, they accounted for 28% of referrals to law enforcement or arrests (Katsiyannis et al., 2019).

The Canadian justice system outlawed corporal punishment in schools in 2004. In a 6 to 3 landmark decision, the Supreme Court of Canada banned corporal punishment, or excessive force, including the use of straps and other disciplinary instruments for all school personnel. However, many school boards and provinces had already outlawed corporal punishment; the

Toronto Board of Education prohibited corporal punishment in 1971. Between 1989 and 1997, several provinces and territories (Nova Scotia, New Brunswick, Prince Edward Island, Newfoundland, Yukon, Northwest Territories, Nunavut, and Quebec) barred excessive force in schools through the amendment of their education acts (Axelrod, 2010).

### **Addressing the Gaps**

While many studies are showing the problems facing students with disabilities, there is a tremendous lack of research in prevention and intervention strategies for reducing violence against students with disabilities. The comprehensive literature review on sexual assault prevention for women with intellectual disabilities presented by Barger et al. in 2009 concluded that prevention research is lacking even though research indicates the high prevalence rate of sexual violence towards women with disabilities. They analyzed the length of prevention programs, structure, design, including self-defence, assertiveness, and awareness for both men and women. The legitimacy of the programs is problematic given limitations in funding and the dearth of longitudinal evidence. One identified prevention strategy that is missing is sexual education in school. Johnson et al. (2002) interviewed 25 Australian men and women with disabilities; the participants expressed that their experience of sexual education was disjointed, irrelevant, or embarrassing. Akin to the previous study, McDaniels and Fleming (2016) completed a comprehensive literature review based on ineffective sexual education. They concluded that inadequate sexuality education results in individuals with intellectual disabilities experiencing a greater risk of abuse, sexually transmitted diseases, and misinformation.

Prevention strategies to protect students with disabilities are incomplete. According to Rosen (2006), there are profound limitations to supporting students with disabilities, such as teachers lacking the necessary information, women and girls with disabilities who are

uninformed about their rights, and men and boys who are uninformed about masculine gender roles. Often left out of sexual assault prevention strategies, programs must include men and boys in reducing rates of sexual assaults. Engaging men and boys to adopt non-violent and egalitarian attitudes could effectively reduce violence against women and girls (Miller et al., 2013).

According to Vernon and Miller (2002): “One-shot workshops are helpful, but an ongoing, comprehensive program that addresses the problem at all age levels is essential” (p. 32). One considerable problem to improving prevention strategies that Barger et al. (2009) highlighted is that research has primarily focused on college-age students. Therefore, I am left pondering how schools can integrate a comprehensive, longitudinal, and inclusive sexual assault prevention program.

This literature review has provided the basis for my investigation. Considering that teachers are lacking the necessary information is a limitation to prevention strategies (Rosen, 2006) and that research has narrowly focused on college-age students (Barger et al., 2009), vital information is missing for teachers in the elementary and secondary sectors. My research focuses on elementary and secondary-aged students. Evaluating the lives of Canadian students with disabilities with regards to violence, their rights, schools’ responsibilities in protecting said students, and how schools can reduce violence against students with disabilities are all necessary to address the current deficiency in the Canadian educational system.

### **CHAPTER 3: THEORETICAL FRAMEWORK, METHODOLOGY, AND METHODS**

This investigation focuses on the risks for students with disabilities, their rights, and schools' responsibility relating to violence, bullying, and discrimination. By modifying the educational environment to best suit the students' needs, the social model of disabilities may provide the necessary insight into eliminating educational barriers. Based on the definition of bullying proposed by Rose et al. (2011), highlighted on page 25 in Chapter 2, bullying is an imbalance of physical, social, or emotional power between victims and perpetrators. In keeping with the social model of disabilities, I utilize critical disability theory as the lens I apply to my study, particularly regarding relationships to power and the unique concerns for girls regarding power dynamics. Critical disability theory also provides the framework for my chosen methodology: critical document analysis.

#### **Critical Disability Theory**

Critical disability theory challenges the oppression faced by individuals with disabilities and uses a human rights approach for equality in all facets of one's social life (Gillies, 2014). This theory works with the understanding that ableists socially construct beliefs about disabilities through power relationships (Kang et al., 2017). "Disability, then, refers to a form of oppression where individuals understood as having impairments are imagined to be inferior to those without impairments, and impairments are devalued and unwanted" (Kang et al., 2017, p. 37). In an ableist social system, individuals with impairments are the problem as opposed to society.

Critical disability theory has moved beyond the social model of disabilities to include conditions such as learning disabilities, usually ignored in discourse about disabilities (Meekosha & Shuttleworth, 2009). Procknow et al. (2017) base critical disability theory on six concepts:



(a) ableism is invisible, (b) epistemic violence is experienced by the disabled, (c) ableism creates a binary view (able vs. not-abled) when it is more accurate to consider a continuum, (d) disability is a socially constructed phenomenon, (e) the disabled have the right of autonomy and self-determination, and (f) the medical industry commodified the disabled. (p. 365)

Ableism believes that individuals without a disability, impairment or chronic illness are the norm in society, resulting in the discrimination and oppression of those that deviate from the established norm (Procknow et al., 2017). When Procknow et al. (2017) stated that ableism is invisible, they refer to the offender of ongoing discrimination against individuals with disabilities who may not be consciously aware of their ableist stance.

Epistemic violence is the disregard for individuals with disabilities' sense of being and identity as valuable knowledge. This form of violence is not physical or sexual but derogatory, and it reduces someone to be less than a person (Ymous et al., 2020). For example: "Technology for disabled people is often developed by nondisabled populations, producing an environment where the perspectives of disabled researchers – particularly when they clash with normative ways of approaching accessible technology – are denigrated, dismissed or treated as invalid" (Ymous et al., 2020, para.1). When an individual with disabilities' sense of being is devalued and dismissed, an ableist society continues to hold the power of knowledge.

Critical disability theory suggests that the continuum of disability should be viewed merely as a human variation and not relating to a binary of 'normal' vs. 'disabled.' Procknow et al. (2017) provide an example of an individual born with one blue eye and one brown eye, an unusual human variation but not considered a disability. In contrast, being born with one eye is considered to be a disability or deficit. By acknowledging the arbitrary categorization of a

disability, critical disability theory is motivated to do away with insufficient and unconstructive binary labels.

A human rights approach, which means that people with disabilities deserve and are entitled to a certain standard of treatment by society and institutions by the mere fact that they are human beings, forms the basis of critical disability theory. This approach is helpful for providing broad social reform goals and refocuses the blame on the oppression of people with disabilities and not people with disabilities themselves (Moisio, 2013). As Williams (2001) states “If disability is seen as a personal tragedy, disabled people are treated as the victims of circumstance. If disability is defined as social oppression, disabled people can be seen as the collective victims of an uncaring discriminatory society” (p. 134). Based on human rights, critical disability theory strives for equal access for all individuals in society with regards to housing, employment, and education (Oliver & Barnes, 1993).

### **Critical Disability Theory: Power and Oppression**

Critical disability theory focuses on creating social change, primarily through alleviating oppression or inequality, by addressing issues of power (Blackstone, 2012). “Disability is not fundamentally a question of medicine or health, nor is it just an issue of sensitivity and compassion; rather, it is a question of politics and power(lessness), power over, and power to” (Devlin & Pothier, 2006, p. 2). One fundamental idea from this theory is that power relationships withhold societal benefits only to be redistributed as a privilege later on (Gillies, 2014).

When individuals with disabilities live in a society operating with able-bodied supremacy, restrictions are placed upon them, resulting in societal oppression. If society is responsible for providing economic support, full rights to participate in the community, and legal

and social rights, the failure to provide these rights and benefits to people with disabilities is frequent and often goes unnoticed. The deprivation of these human rights creates social oppression and discrimination against those with disabilities. When disability is due to social oppression, as opposed to a medical condition, the solution is “reformation of economic, social, and political policies and the redistribution of power, control, and autonomy to persons with disabilities” (Gillies, 2014, p. 1349). Policies could include increased social services, financial aid, accessibility ramps and adapted transport, as well as informed medical training.

### **Critical Disability Theory: Power and Feminism**

Critical disability theory and feminism have similar views concerning power and social oppression. Disabled feminist theorists were sensitive to the domination of men in politics, political engagement, and political power (Meekosha & Shuttleworth, 2009). According to Garland-Thomson (2017), critical disability theory and feminist studies engage with each other through analyzing the political implications between gender or disability and their relationship to power. Critical disability theory focuses on the societal oppression experienced by individuals with disabilities by revealing power dynamics, and feminist disability theorists examine power dynamics regarding gender and disability (Meekosha & Shuttleworth, 2009). Improving the lives of oppressed individuals through social change is the goal of both critical disability theory and feminism.

In a sexist society, women with disabilities have sexism to contend with and prejudice against their disabilities; for example, women with disabilities are affected by a lower socioeconomic status than men with disabilities. With the multiplied burden of having oppressed intersecting identities, women with disabilities require extended consideration when it comes to oppression. Girls with disabilities will experience higher rates of physical and sexual violence

(Mitra et al., 2012). Their intersecting identities expose culminating realities of gender-based violence and disability-based violence.

Based on the gendered nature of sexual violence, it is essential to evaluate the power struggles, oppression, and inequality experienced by girls and women with disabilities. By considering critical disability theory and feminist theories, we have the holistic and thorough framework to examine their plight.

### **Critical Disability Theory: Implications**

Critical disability theory has important implications for this investigation. First, I take the position that violence against students with disabilities is an infringement of their human rights. The dehumanized treatment of students with disabilities is often enabled and enacted by able-bodied teachers, coaches, and fellow students. The injustices that students with disabilities face through their increased risk of physical and sexual violence, bullying, and discrimination are violations of their human rights. By illustrating the power dynamics embedded in schools, we can understand the societal oppression against students with disabilities. Secondly, a lack of resources pertinent to their successful educational outcome is the result of holding the disadvantaged position in the existing power dynamic, and this only further contributes to that disadvantage of power: “the lack of education disempowers individuals” (McGilloway et al., 2020, p. 61). If schools do not provide the necessary resources for their educational success, it infringes on their rights.

### **Methodology: Critical Document Analysis**

Based on the critical disability framework, and in order to answer my research questions, I conducted a qualitative research design called critical document analysis. The purpose of selecting a critical document analysis as the preferred methodology is to understand a specific

societal concern (in this case, violence towards students with disabilities) and evaluate the research to comprehend the magnitude of the situation.

To begin the critical document analysis, I engaged in a critical thematic analysis as my analytic approach and employed two methods: document analysis and legal analysis. A critical thematic analysis is an analytic approach in which the researcher analyzes qualitative data for emerging themes developing from the research (Lapadat, 2010). “Thematic analysis is suited for integration with critical perspectives especially as an analytical approach for qualitative research that works toward social justice goals” (Lawless & Chen, 2018). The ultimate goal of my investigation is to provide social reform goals by highlighting the associated risk of violence towards students with disabilities. By critically analyzing the power relationships between student and teacher/coach, disabled and non-disabled students, and individuals with disabilities and the state, I developed my recommendations and plan for these imperative changes that the current deficits in the education system demand.

Document analysis is “a systematic procedure for reviewing or evaluating documents — both printed and electronic (computer-based and Internet-transmitted) material” and is considered to be an effective process for data selection (Bowen, 2009, pg. 27). Thankfully for researchers, public documents are readily available online. The information regarding pertinent Canadian laws, Ontario and Quebec’s provincial legislation regarding education and peer-reviewed articles based on children and adults with disabilities provided context and background knowledge necessary to conduct a broad range of research. Because I focused on legal documents, peer-reviewed articles, and government official documents, document analysis provided the initial information to guide my research. However, this methodology does have some limitations, such as biased selectivity (Bowen, 2009). If there is an incomplete collection of

data or the inclusion of so-called “grey literature” (produced by an organization with a clear agenda), the selected documents may be biased towards a particular point of view (American Psychological Association, 2019, p. 329; Bowen, 2009). To reduce selection bias, I conducted a thorough and intense critical analysis of the documents, and by choosing documents from esteemed organizations that Canada follows, such as the United Nations, WHO, and The DisAbled Women's Network of Canada, I cross-referenced information before its selection.

Since the critical disability framework focuses on “how the construction of knowledge and the organisation of power in society generally, and in institutions such as schools, hospitals, and governments specifically, can lead to the subjugation or oppression of particular individuals, groups, or perspectives” (Reeves et al., 2008, p. 633); critical document analysis is a consistent methodological choice through its ability to perform in-depth research on the oppression of Canadian students with disabilities within the context of society and the social structure of power.

### **Methods**

In order to accurately answer the research questions, I utilized two specific methods, namely document analysis and legal analysis. Document analysis provided the necessary background and information needed to answer Research Question 1 (“What risks do Canadian students with disabilities face in schools?”) and Question 3 (“What are the legal responsibilities of Canadian schools relating to violence, bullying, and discrimination for students with disabilities?”). Secondly, I used a legal analysis to evaluate pertinent Canadian law cases involving students with disabilities, sexual violence, and bullying, the legal responsibilities of schools, and answer Research Question 2 (“How does the Canadian legal system view the rights of Canadians with disabilities in regard to sexual violence and bullying?”). Together, the

information derived from the document analysis and legal analysis answered Research Question 4 (“How can schools decrease rates of violence against Canadian students with disabilities?”).

### **Document Analysis Method**

To answer Research Question 1 (“What risks do Canadian students with disabilities face in schools?”) and Research Question 3 (“What are the legal responsibilities of Canadian schools relating to violence, bullying, and discrimination for students with disabilities?”), I conducted qualitative research using document analysis as the method. Through an in-depth examination of public records and a literature review on the topic, I collected, interpreted, and analyzed various written documents to determine the various levels of power inequality that contribute to students with disabilities’ experiences at school. There is a significant amount of information on students with disabilities within their educational environments since students spend the majority of their time in school. While analyzing their lives as students at school, the rates of sexual violence, physical violence, discrimination, and bullying they experience provided data that legitimizes the severity of this problem.

To begin my study, I focused on Question 1: “What risks do Canadian students with disabilities face in schools?”. To answer this question, I started by creating a list of documents to analyze. I began searching for documents about Canadian students’ right to an education. My focus was on Canadian students; therefore, I limited my search to Canadian legislation. This search brought me to several legislative pieces and governmental documents, such as the *Education Act* (S.Q., 1988; R.S.O, 1990), *Act to Secure Handicapped Persons in the Exercise of Their Rights with a View to Achieve Social, School and Workplace Integration* (S.Q., 2004), the *Constitution Act or Canadian Charter of Rights and Freedoms* (1982), the Canadian Human Rights Commission and Statistics Canada, as well as anti-bullying legislation. Next, I

conducted a document analysis of peer-reviewed literature using WorldCat. I entered different subject searches, such as “student with disabilities + violence,” “student with disabilities + sexual violence,” and “student with disabilities + bullying.” Yielding numerous results, I evaluated the results in terms of relativity, such as the date of the study’s report or location. I focused on research with similar demographics to Canada, such as the United States, Australia, and Europe. This process culminated in sections one and two of the published manuscript found in Chapter 4.

To answer Research Question 3: “What are the legal responsibilities of Canadian schools relating to violence, bullying, and discrimination as it relates to students with disabilities?”, I continued my document analysis focusing on bullying prevention in Canadian schools, which led me to the Canadian government’s Public Safety Canada website. Then I switched my focus to provincial legislation; I concentrated on Quebec’s and Ontario’s regional guidelines for reducing violence in schools because of my work as a special needs teacher in Quebec and considering *Education & Law Journal* is an Ontario-based journal. I wanted to analyze legislation concerning the responsibilities of teachers and students in anti-violence policies at schools. For Quebec, this brought me to an analysis of the *Education Act* (1988) and *Bill 56: An Act to End Violence* (2012). For Ontario, I analyzed the *Education Act* (1990) and *Bill 13: Accepting Schools Act* (2012).

After the provincial analysis, I wanted to evaluate what measures are in place if a teacher witnesses school-based violence. What are the teacher’s legal responsibilities in this situation? This question brought me to the ‘duty to report’ and the understanding that teachers and educators must act *in loco parentis*, commonly known as prudent parents to their students (Government of Quebec, 2018; Bowal & Rollett, 2019). During the manuscript’s peer-review



process, an editor suggested I analyze The Fourth R, a top-rated program employed in Ontario and other provinces to reduce dating violence, bullying and peer violence (Crooks et al., 2008).

This process resulted in section five of the published manuscript found in Chapter 4.

### **Legal Analysis Method**

To answer Research Question 2: “How does the Canadian legal system view the rights of Canadians with disabilities in regard to sexual violence and bullying?”, I conducted a qualitative research method using legal analysis. The legal analysis method focused on analyzing court documents, judicial evidence, and legal implications. Canadian students with disabilities affected by violence perpetrated by an individual in a trust or authority position or by a fellow peer connected the legal cases and allowed for a critical analysis of the power dynamics within the legal doctrine. I evaluated the results based on shared or common experiences, namely sexual violence, and bullying.

Legal analysis research focuses on the analysis of legal cases and case law. Legal databases contain the primary sources of information. However, given that laws, statutes, and acts are subject to change, information found within a legal analysis could be subject to inaccuracy over time. In addition, as opposed to reviewing one case, analyzing multiple legal cases does not allow for the same level of in-depth analysis.

Before studying the legal cases, it was essential to comprehend the legal rights of Canadians with disabilities. I reviewed Section 15 of the *Constitution Act (1982)* focusing on discrimination policies and the Canadian Human Rights Commission, the *Canadian Human Rights Act (1985)*, the *United Nations Convention on the Rights of Persons with Disabilities (United Nations Enable, 2020)* and *Bill C-81: An Act to Ensure a Barrier-Free Canada (2019)*. During this process, I also evaluated pertinent legal cases in education, such as *Eaton v. Brant (County) Board of Education (1996)*. I continued the legal literature review by

focusing on the sexual exploitation of persons with disabilities; for this, I reviewed the *Criminal Code of Canada* (1985) and peer-reviewed articles. This analysis focused on the power that positions of trust or authority hold, the fiduciary duties of educators and schools, and their vicarious liability thus creating a background of legal knowledge before commencing the legal case analysis.

Using the search engines CanLII and Lexus, I researched Section 153.1(1) of the *Criminal Code* (1985): sexual exploitation of a person with a disability. Canadian cases limited the search results. The search yielded 14 appropriate cases to review. I omitted one case because the defendant was also disabled and another due to an overturned conviction. Six cases were class actions against different provinces. I rejected one case because the statute of limitations barred it, and I eliminated another because it was in the province of British Columbia. Four class actions against Ontario's province remained, of which I ultimately accepted two because of their similarities and how recently they occurred. I reviewed three cases for peer-on-peer violence, keeping one for its inclusion in the manuscript. Ultimately, the legal analysis included six cases:

- Two class actions lawsuits against the Province of Ontario: *Seed v. Ontario* (2012) and *Welsh v. Ontario* (2016)
- Three cases regarding students with disabilities and sexual violence perpetrated by an individual in the position of trust or authority: *R. v. Levert* (2001), *K.M. v. Marson* (2018) and *R. v. M.R.* (2015)
- One case alleging peer-on-peer bullying: *JT v. School District No. 36* (2010)

When I evaluated these cases, numerous other cases were referred to and included as corroborating judicial evidence. By unveiling these existing and controlling power dynamics, and the legal oppression faced by those assumed to be of lower status, my study has been

adequately informed about how the legal system contributes to the experiences of students with disabilities in schools. This process resulted in sections three and four of the published manuscript found in Chapter 4.

One critical theme became apparent by combining all of the data analyzed: the need for a comprehensive sexuality education curriculum. This emerging theme resulted in section six of the published manuscript found in Chapter 4. The results of the critical document analysis also discuss a whole-school approach to reducing bullying and violence in schools, and ultimately, answered Research Question 4: “How can schools decrease rates of violence against Canadian students with disabilities?”

## CHAPTER 4: PREVENTION STRATEGIES IN CANADIAN SCHOOLS

### Sexual and Physical Abuse of Students with Disabilities: The Legal Responsibility to Provide a Preventative and Inclusive Sexuality Curriculum in Canadian Schools

Carolyn Anne Peris<sup>1</sup>

*Within schools, girls with disabilities are at a greater risk of violence including bullying and sexual and physical violence compared to students without a disability. This article reports on research from CanLii and Lexis databases to evaluate relevant Canadian cases involving students with disabilities and sexual abuse where the student is the victim. Under provincial legislation in Canada, schools have a legal responsibility to protect their students. Moreover, school administrators and educators have a legal responsibility to support and teach their students on anti-violence prevention measures, including sexual violence. Teachers must be aware of risks facing students with disabilities in order to prevent violence. As such, faculties of education must provide adequate teacher training for sexuality education which includes students with disabilities and a greater understanding of the risks they face.*

*Dans les écoles, les élèves handicapés sont plus exposés à la violence, y compris l'intimidation et la violence sexuelle et physique, que les élèves non handicapés. Cet article rend compte de la recherche des bases de données CanLii et Lexis pour évaluer les cas canadiens pertinents impliquant des étudiants handicapés et des abus sexuels dont l'étudiant est la victime. En vertu de la législation provinciale au Canada, les écoles ont la responsabilité légale de protéger leurs élèves. En outre, les administrateurs scolaires et les éducateurs ont la responsabilité légale de soutenir et d'enseigner à leurs élèves les mesures de prévention contre la violence, y compris la violence sexuelle. Les enseignants doivent être conscients des risques auxquels sont confrontés les élèves handicapés afin de prévenir la violence. À ce titre, les facultés d'éducation doivent fournir une formation adéquate des enseignants à l'éducation sexuelle qui inclut les étudiants handicapés et une meilleure compréhension des risques auxquels ils sont confrontés.*

#### 1. INTRODUCTION

Violence within schools is a pervasive and global issue. Among students, some are more at risk for violence (including sexual violence) than others. Within schools, girls with disabilities are at a greater risk of bullying, sexual and physical violence compared to students without disabilities.<sup>2</sup> Nearly 24% of Canadian women with a cognitive deficit have been sexually abused

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<sup>2</sup> Monika Mitra, Vera Mouradian, and Maria McKenna, "Dating Violence and Associated Health Risks Among High School Students with Disabilities" (2012) 17:6 *Matern. Child Health J.* 1088 at 1088.

by an adult before the age of fifteen.<sup>3</sup> As these students mature, women with disabilities will likely experience lasting effects from such violence, such as emotional and physical trauma, neglect, psychological abuse and financial exploitation.<sup>4</sup> These statistics clearly demonstrate the relevance and importance of the risks to students with disabilities, and specifically female students with disabilities.

The implementation of a whole school approach to violence is a feasible measure as part of anti-bullying and anti-violence plans.<sup>5</sup> As the name suggests, a whole-school approach involves the collaborative effort of the entire school (including students, staff and stakeholders) as well as the families and community, to minimize or prevent violence.<sup>6</sup> In a meta-analysis conducted by Goldberg et al., the researchers established that implementing a whole-school approach resulted in a small, yet positive impact on the students' wellbeing, which included their social and emotional learning, behavioural impacts and internalizing symptoms.<sup>7</sup> Studies have shown that a whole-school approach can minimize the risk of violence towards all students and staff members.<sup>8</sup>

Teachers must be aware of the associated risks faced by girls with disabilities in order to intervene in and prevent sexual violence.<sup>9</sup> Research has indicated that promoting healthy sexual relationships with a comprehensive curriculum reduces the rate of risky sexual behaviour, a risk

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<sup>3</sup> Adam Cotter, "Violent Victimization of Women with Disabilities" *Statistics Canada* (March 15 2018) online: Statistics Canada <<https://www150.statcan.gc.ca/n1/pub/85-002-x/2018001/article/54910-eng.htm>>.

<sup>4</sup> *Ibid.*

<sup>5</sup> See *Education Act*, S.Q. 1988, c. 1-13.3, s. 75.1. The governing board must approve the anti-bullying and anti-violence plans.

<sup>6</sup> Kathryn S. Whitted and David R Dupper, "Best Practices for Preventing or Reducing Bullying in Schools" (2005) 27:3 *Children & Schools* 167 at 169.

<sup>7</sup> Jochem M. Goldberg et al., "Effectiveness of Interventions Adopting a Whole School Approach to Enhancing Social and Emotional Development: A Meta-analysis" (2018) 34:4 *Eur. J. Psychol. Educ.* 755 at 770.

<sup>8</sup> Neil Humphrey and Judith Hebron, "Bullying of Children and Adolescents with Autism Spectrum Conditions: A 'State of the Field' Review" (2014) 19:8 *Int. J. Incl. Educ.* 845 at 853.

<sup>9</sup> McCay Vernon and Katrina R. Miller, "Issues in the Sexual Molestation of Deaf Youth" (2002) 147:5 *Am. Ann. Deaf* 28 at 32.

factor in sexual victimization for victims and perpetrators.<sup>10</sup> Sexuality education has shown to decrease the risk of sexual violence, unwanted pregnancies, and sexually transmitted infections and increase the knowledge and skillset for students with disabilities.<sup>11</sup>

In Quebec, teachers are legally mandated to adapt curriculum expectations to meet the diverse needs of their disabled students.<sup>12</sup> Teachers have a legal responsibility to support and educate their students on violence prevention measures, including bullying and sexual violence, as well as a legal obligation to teach and adapt the sexuality education curriculum to best suit the needs of their students.<sup>13</sup> When left to the discretion of the teachers and governing boards, providing a quality sexuality education curriculum can be overlooked and curriculum expectations not fully met.

Adequate prevention strategies for reducing sexual violence are lacking at best. Given time and financial restraints, and insufficient empirical evidence, programs aimed at reducing the risks of sexual assault often lack concrete evaluation procedures.<sup>14</sup> As such, adequate and ongoing teacher training is essential. Schools must prioritize violence prevention methods and be prepared to offer a comprehensive and inclusive sexuality education program in order to raise awareness and ultimately prevent future risks of sexual violence against students with disabilities.<sup>15</sup> Faculties of education must strive to provide adequate teacher training on the topic,

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<sup>10</sup> Kathleen C. Basile et al., “Stop SV: A Technical Package to Prevent Sexual Violence” (2016) *Cdcgo* online: Cdcgov <<https://www.cdc.gov/violenceprevention/pdf/SV-Prevention-Technical-Package.pdf>> at 19.

<sup>11</sup> Pamela S. Wolfe and Wanda J. Blanchett, “Sex Education for Students with Disabilities” (2003) 36:1 *Teach. Except. Child.* 46 at 47.

<sup>12</sup> *Education Act*, above note 5, at s. 85. Teachers have the legal responsibility to adapt programs of studies to meet the specific needs of the students.

<sup>13</sup> *Ibid.* at s. 96.14. Teachers are required to adapt curriculum expectations for students with disabilities. This is commonly referred to as an individualized education plan to best suit the needs of the student.

<sup>14</sup> Erin Barger et al., “Sexual Assault Prevention for Women with Intellectual Disabilities: A Critical Review of the Evidence” (2009) 47:4 *Intellect. Dev. Disabil.* 249 at 259.

<sup>15</sup> Brad McDaniels and Allison Fleming, “Sexuality Education and Intellectual Disability: Time to Address the Challenge” (2016) 34:2 *Sex. Disabil.* 215 at 223.

otherwise students with disabilities may be uneducated about their rights,<sup>16</sup> while men and boys may be uneducated about masculinity and gender roles.<sup>17</sup>

The overall purpose of this paper is to examine the risks associated to students with disabilities, highlight their civil and legal rights, and affirm the critical role of an inclusive sexuality education curriculum as preventative education. The paper provides an overview of the rates and risks of violence against students with disabilities and a content analysis of the disability rights of Canadian citizens, including under the *Charter of Rights and Freedoms, Bill C-81*,<sup>18</sup> sexual exploitation of persons with a disability and the position of trust or authority. Subsequently, there will be a review of relevant Canadian case law involving the sexual abuse of students with disabilities perpetrated by individuals in a position of authority or a fiduciary position and peer-on-peer violence such as bullying. Following the case analysis, I will review the duty to report and bullying prevention programs under Quebec's *Education Act, Bill 56: An Act to End Violence*<sup>19</sup> and Ontario's *Bill 13: Accepting Schools Act*.<sup>20</sup> Teachers must have a sound understanding of their legal responsibilities to reduce violence against students with disabilities and they must be prepared to teach a comprehensive and inclusive sexuality education.

## 2. STUDENTS WITH DISABILITIES: BARRIERS AND RISKS

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<sup>16</sup> Daniel B. Rosen, "Violence and Exploitation against Women and Girls with Disability" (2006) 1087:1 *Ann. N. Y. Acad. Sci.* 170 at 175.

<sup>17</sup> Basile et al., above note 10 at 15.

<sup>18</sup> Bill C-81, *An Act to ensure a barrier-free Canada*, 1st Sess., 42nd Parl., 2019 (assented to 21 June 2019). Also referred to as the *Accessible Canada Act*, S.C. 2019, c. 10.

<sup>19</sup> Bill 56, *An Act to Prevent and Stop Bullying and Violence in Schools*, 2nd Sess., 39th Leg., Quebec, 2012.

<sup>20</sup> Bill 13, *An Act to amend the Education Act with respect to bullying and other matters*, 1st Sess., 40th Leg., Ontario, 2012.

In Quebec, education is a fundamental right to its citizens.<sup>21</sup> Students with disabilities<sup>22</sup> are granted the same legal rights as their non-disabled peers. All are entitled to a fulfilling and meaningful education. However, students with disabilities face fundamental barriers within the Canadian educational system. Notably, 10% of Canadian students with disabilities drop out of school before reaching their full potential<sup>23</sup> and over 25% of students with disabilities are bullied because of their disability.<sup>24</sup> The 2012 Canadian Survey on Disability identified four main barriers that students with disabilities face with regards to their education, including “lack of accommodation and support, lack of services and funding, ineffective dispute resolution and lack of special education and disability supports on First Nation reserves.”<sup>25</sup> Section 15(1) of the *Canadian Charter of Rights and Freedoms*<sup>26</sup> guarantees that every citizen has the right to be free from discrimination.<sup>27</sup> As affirmed by the Supreme Court of Canada in *Moore v. British Columbia*, failing to accommodate and support students with disabilities constitutes discrimination.<sup>28</sup> This landmark 2012 decision held that Moore was discriminated against when the school failed to provide additional support to accommodate his needs. Consequently, the Supreme Court of Canada (“SCC”) found the school district responsible and awarded the Moore family compensation for his tuition, half of his transportation costs and \$10,000 damages for

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<sup>21</sup> *Education Act*, above note 5, s. 1.

<sup>22</sup> See *Act to secure handicapped persons in the exercise of their rights with a view to achieving social, school and workplace integration*, S.Q. 2004, c. 31, s. 1(g). According to the *Act*, individuals with disabilities are defined as follows: “‘handicapped person’ means a person with a deficiency causing a significant and persistent disability, who is liable to encounter barriers in performing everyday activities.” See also the *Education Act*, above note 5, s. 1. Students with disabilities are considered if they correspond to the definition provided by the *Act* as a ‘handicapped person.’

<sup>23</sup> Canadian Human Rights Commission, “Left Out: Challenges faced by persons with disabilities in Canada’s schools” CHRC (2017) online: CHRC <<https://www.chrc-ccdp.gc.ca/eng/content/left-out-challenges-faced-persons-disabilities-canadas-schools>> [CHRC] at 1.

<sup>24</sup> *Ibid.*, at 6.

<sup>25</sup> *Ibid.*, at 4.

<sup>26</sup> Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11 [Charter].

<sup>27</sup> Every person in Canada is equal under the law and cannot be discriminated against based on age, gender, race, ethnicity, mental or physical disability. *Ibid.*, s. 15(1).15. [Constitution Act]

<sup>28</sup> 2012 SCC 61, CarswellBC 3446 (S.C.C.), [2012] 3 S.C.R. 360 [*Moore*].



injury to his dignity.<sup>29</sup> In this powerful decision, Justice Abella stated, “adequate special education, therefore, is not a dispensable luxury. For those with severe learning disabilities, it is the ramp that provides access to the statutory commitment to education made to all children.”<sup>30</sup> Moreover, budgetary restraints are not a justification to deny adequate education to disabled students. The costs of not providing such education could be much higher for all involved. When schools fail to accommodate students with disabilities, those students’ rights are violated, and schools are legally responsible.

An additional barrier within the educational system exists when families of students with disabilities are compelled to seek legal counsel for matters of accommodation or individualized education plans.<sup>31</sup> Access to justice is a social issue of increasing concern in Canada, and rising litigation costs are identified as a primary barrier.<sup>32</sup> Litigation is often an ineffective method of dispute resolution and is extremely problematic for low-income families or those families residing in remote locations, such as fly-in First Nations communities. First Nations children with disabilities are faced with an inadequate educational system, often resulting in inadequate funding for special education and a lack of disability-related services and social services.<sup>33</sup> Although the federal government has stated it is committed to closing the funding gap,<sup>34</sup> Canada is still attempting to resolve and improve the educational disparity of First Nation and Métis

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<sup>29</sup> *Ibid.*, at para 56.

<sup>30</sup> *Ibid.*, at para 5.

<sup>31</sup> CHRC, above note 23 at 5.

<sup>32</sup> Kim Taylor and Ksenia Svechnikova, “What Does it Cost to Access Justice in Canada? How much is “too much?” And how do we know?”, *Canadian Forum on Civil Justice* (February 2010), online: <Cfcj-fcjcorg <<http://cfcj-fcjc.org/sites/default/files/docs/2010/cost-litreview-en.pdf>>.

<sup>33</sup> CHRC, above note 23 at 5.

<sup>34</sup> Liberal Party of Canada, “Real Change: A New Plan for a Strong Middle Class”, *Liberal* (October 2015), online: Liberal <<https://www.liberal.ca/wp-content/uploads/2015/10/New-plan-for-a-strong-middle-class.pdf>> at 47.

children.<sup>35</sup> Even after students with disabilities overcome these educational barriers to attend school, they find themselves at an increased risk for school-based violence.<sup>36</sup>

### *What are the Rates and Risks of Bullying?*

Bullying is pervasive in many schools worldwide. However, its exact definition varies from study to study, often resulting in inconsistent data and conclusions. Nevertheless, there are fundamental similarities among definitions. Common elements include an imbalance in power (e.g. physical, social, emotional); an act intended to cause physical or emotional harm; and repetition of that act over time.<sup>37</sup> Students who are victims of bullying tend to be categorized as passive or provocative victims. As the term implies, provocative victims (also known as “bully victims”) tend to react aggressively due to repeated exposure to victimization.<sup>38</sup> Conversely, passive victims tend to be characterized as physically weaker, with a smaller social circle, dependency on others, observable differences and a lack of social skills.<sup>39</sup> Many characteristics of passive victims are similar to those of students with disabilities. Sadly, they are dependent on others (such as a teacher’s aide) for help and generally have fewer friends and support systems in place.<sup>40</sup>

Frequently referred to as the “perfect victims,”<sup>41</sup> students with disabilities, such as Autism Spectrum Disorder, often lack social skills. They require additional support from adults (such as

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<sup>35</sup> The discrimination and oppression of First Nations children with disabilities is worthy of increased research aimed at improving the educational system and overall success of those students, notably the unequal distribution of funds and resources on reserves. CHRC, above note 23 at 5.

<sup>36</sup> Mitra, Mopuradian, and McKenna, above note 2 at 1088.

<sup>37</sup> Chad A. Rose, Lisa E. Monda-Amaya, and Dorothy L. Espelage, “Bullying Perpetration and Victimization in Special Education: A Review of the Literature” (2010) 32:2 *Remedial Spec. Educ.* 114 at 115.

<sup>38</sup> Denise L. Haynie et al., “Bullies, Victims, and Bully/Victims” (2001) 21:1 *J. Early Adolesc.* 29 at 32.

<sup>39</sup> Rose, Monda-Amaya, and Espelage, above note 37 at 119.

<sup>40</sup> Anna K. Moffat, Gerry Redmond, and Parimala Raghavendra, “The Impact of Social Network Characteristics and Gender on Covert Bullying in Australian Students with Disability in the Middle Years” (2019) 18:4 *J. Sch. Violence* 613 at 613.

<sup>41</sup> Ami Klin, Fred R. Volkmar, and Sara S. Sparrow, *Asperger Syndrome* (New York: The Guildford Press, 2000) at 6.

teachers or teacher's aides) and are seemingly different from their peers. Put simply, the traits that often characterize students with disabilities are risk factors for bullying. Being perceived as "odd," "weird" or "different" due to disability characteristics is enough to cause verbal harassment, taunting, name-calling, or mimicking.<sup>42</sup> As such, they are often socially excluded, isolated and victimized for their differences.

Differing definitions of bullying and disabilities, and variations in data collection (e.g. self-reporting, parental reports, teacher's perceptions) are all factors that must be considered when determining the exact extent of bullying against students with disabilities. In 2012, a parent report based on Canadian children with disabilities concluded that three out of four children with autism were bullied in the previous month.<sup>43</sup> Even though scientific variability exists between studies, some studies estimate rates of bullying against students with disabilities are as high as 94%.<sup>44</sup>

Students with disabilities are at a heightened risk of bullying, physical violence, and sexual violence throughout their educational careers. Girls with disabilities are often targeted due to their sexual naivety,<sup>45</sup> or the perception that they are powerless, both to resist the assault and to report the incident.<sup>46</sup> Girls with disabilities are vulnerable to dating violence, sexual violence including sexual perpetration and repeated victimization.<sup>47</sup> Given the heightened risk towards

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<sup>42</sup> Rose, Monda-Amaya, and Espelage, above note 37 at 120.

<sup>43</sup> M. Catherine Cappadocia, Jonathan A. Weiss, and Debra Pepler, "Bullying Experiences among Children and Youth with Autism Spectrum Disorders" (2011) 42:2 *J. Autism Dev. Disord.* 266 at 269.

<sup>44</sup> Liza Little, "Middle-Class Mothers' Perceptions of Peer and Sibling Victimization among Children with Asperger's Syndrome and Nonverbal Learning Disorders" (2002) 25:1 *Issues Compr. Pediatr. Nurs.* 43 at 45.

<sup>45</sup> Vernon and Miller, above note 9 at 31.

<sup>46</sup> Ann I. Alriksson-Schmidt, Brian S. Armour, and Judy K. Thibadeau, "Are Adolescent Girls with a Physical Disability at Increased Risk for Sexual Violence?" (2010) 80:7 *J. School Health* 361 at 362.

<sup>47</sup> Mitra, Mouradian, and McKenna above note 2; Irit Hershkowitz, Michael E. Lamb, and Dvora Horowitz, "Victimization of Children with Disabilities" (2007) 77:4 *Am. J. Orthopsych.* 629 at 633.

students with disabilities, stringent legal consequences for their abuse, as well as prevention education in the form of an inclusive sexuality education curriculum should be established.

### 3. THE RIGHTS OF CANADIANS WITH DISABILITIES

#### *The Rights of Persons with Disabilities in Canada*

Canadian human rights legislation including the *Charter* aims to protect vulnerable populations in Canada. As stipulated in section 15 of the *Charter*, each citizen is equal under the law and cannot be discriminated against based on age, gender, race, ethnicity, or mental or physical disability.<sup>48</sup> People with disabilities who experience discrimination may also file a complaint with the Canadian Human Rights Commission<sup>49</sup> if the allegedly discriminatory body or person is under federal jurisdiction or with provincial human rights commissions in cases of discrimination by individuals or bodies in matters controlled by provincial legislation (such as education, housing and so on).<sup>50</sup> Approximately half of all the complaints received by the Human Rights Commissions and Tribunals are disability related. Under international law, Canada also ratified the *United Nations Convention on the Rights of Persons with Disabilities*, which establishes a full and equal opportunity to human rights and freedoms.<sup>51</sup> Canada's implementation of equal opportunity for individuals with disabilities is monitored by the Committee on the Rights of Persons with Disabilities and a progress report is submitted to the

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<sup>48</sup> *Charter*, above note 26 at s.15(1).

<sup>49</sup> Canadian Human Rights Commission, "The Rights of Persons with Disabilities to Equality and Non-Discrimination: Monitoring the Implementation of the UN Convention of the Rights of Persons with Disabilities in Canada" online: Canadian Human Rights Commission <<https://www.chrc-ccdp.gc.ca/eng/content/rights-persons-disabilities-equality-and-non-discrimination>> at 7.

<sup>50</sup> Quebec's *Charter of Human Rights and Freedoms*, 1975, c-12, s. 10; Ontario's Human Rights Code, R.S.O. 1990, c. H.19, s.10(1); *Canadian Human Rights Act*, R.S.C., 1985, c. H-6, s.3(1)

<sup>51</sup> United Nations, *Convention on the Rights of Persons with Disabilities (CRPD)*, United Nations online: Unorg <<https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html>>.

UN every four years.<sup>52</sup> While Canadian legislation is intended to reduce discrimination against persons with disabilities by promoting social integration and inclusion into society, it must be viewed within the best interest of the individual. In the Supreme Court case of *Eaton v. Brant County Board of Education*, the court ultimately decided that segregating a disabled student did not constitute discrimination under the *Charter* because it was deemed in the best interest of the child.<sup>53</sup>

Bill C-81: *An Act to Ensure a Barrier-Free Canada*<sup>54</sup> was given Royal Assent on June 21, 2019. The purpose of this federal *Act* was to identify, remove and prevent barriers for all Canadians, especially those with disabilities. Individuals with disabilities are often faced with barriers such as “employment, the built environment, information and communication technologies, the procurement of goods, services, and facilities, the design and delivery of programs and services, and transportation.”<sup>55</sup> The goal of the *Act* is for all Canadians to have barrier-free access to opportunities and equal participation in society. In addition to removing barriers, the *Act* states that Canadians with disabilities must be involved in the development of laws, policies, programs and services.<sup>56</sup> Considering the various ways in which individuals with varying disabilities may interact with the environment, their input is necessary for the removal of such barriers.

### *Sexual Exploitation of Persons with a Disability*

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<sup>52</sup> Government of Canada, *Rights of people with disabilities - Canada.ca*, Government of Canada (2018), online: Canada <<http://www.canada.ca/en/canadian-heritage/services/rights-people-disabilities.html#a2a>>.

<sup>53</sup> *Eaton v. Brant County Board of Education*, [1997] 1 S.C.R. 241, at para. 72.

<sup>54</sup> Bill C-81, above note 18.

<sup>55</sup> *Ibid.*, s. 5.

<sup>56</sup> *Ibid.*, s. 6.

In 1998,<sup>57</sup> section 153.1(1) of the *Criminal Code* was added to explicitly criminalize the sexual exploitation of persons with a disability.<sup>58</sup> Prohibited sexual acts against a disabled person include directly or indirectly touching, inciting, or counselling a victim to touch their own body, the perpetrator's, or someone else. There is no definition of disability in the *Criminal Code*. It encompasses all forms of mental and physical disabilities.<sup>59</sup> The key component of the crime is the position of authority or trust. Consent cannot be freely provided when there is an imbalance of power created by the position of trust or authority. The mental state of an accused required for culpability is knowledge or recklessness regarding the complainant's disability. Therefore, an accused who is in a position of trust or authority can be convicted if he or she knowingly and willingly engages in a sexual activity with a disabled person. Section 153.1(1), at the election of the Crown prosecutor, can be charged as an indictable offence with a prison sentence of up to five years, or a summary conviction offence carrying a maximum penalty of imprisonment for eighteen months. In contrast, the offence of sexual assault carries a maximum of ten years' imprisonment. Typically, custodial sentences imposed for sexual offences against disabled persons and children range from three to five years.<sup>60</sup>

#### *The Position of Trust or Authority, Fiduciary Duties, and Vicarious Liability*

Certain stakeholders hold positions of trust or authority within the educational system. Typically, this group includes teachers, administrators, guidance counselors, or those who regularly work in the school. The fiduciary duties of educators encompass their legal obligations. Legally, teachers are expected to teach and supervise their students. Section 22 of Quebec's

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<sup>57</sup> Janine Benedet and Isabel Grant, "A Situational Approach to Incapacity and Mental Disability in Sexual Assault Law" (2013) *S.S.R.N. Electronic J.* 1 at 6.

<sup>58</sup> *Criminal Code*, R.S.C. 1985, c. C-46, s. 153.1(1) [Code].

<sup>59</sup> David Watt and Michelle K. Fuerst, *The 2018 Annotated Tremear's Criminal Code* (Toronto, ON: Thomson Reuters, 2017) at 288.

<sup>60</sup> See, e.g., *R. v. Thompson*, 2017 SKCA 33, *R. v. V.S.*, 2013 ONSC 6026, and *R. v. D.M.* 2019 ONSC 5407.

*Education Act* outlines teachers' obligations to adhere to educational standards, intellectual and personal development of students, a respect of human rights and high level of professionalism.<sup>61</sup> Failure to do so can result in actions for educational malpractice.<sup>62</sup> Teachers are also expected to supervise students to assure their safety and wellbeing. Failure to do so can result in tort actions for negligent supervision.<sup>63</sup> Ethically, teachers' professional governing bodies expect them to show respect, trust, care, and integrity.<sup>64</sup>

The fiduciary duties of teachers are based on the understanding that the teacher-student relationship is built on trust and a relationship in which one party (the teacher) is duty bound to act in the best interest of the other party (the student).<sup>65</sup> As such, teachers should not have any inappropriate physical or sexual contact or relations with students.<sup>66</sup> Based on a teacher's position of trust or authority, consent cannot be freely given due to the imbalance of power within that relationship. Individuals outside of school settings may also hold positions of authority, such as coaches, tutors, doctors, mental health professionals or care facility workers.<sup>67</sup> However, this research focuses on individuals in a position of authority or relationship of dependency within the school setting.

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<sup>61</sup>*Education Act*, above note 5 at s. 22.

<sup>62</sup> Cases involving alleged educational malpractice have rarely been successful as courts have been reticent to consider educational malpractice a viable cause of action. For a recent example, see *Wall v. Newbridge Academy*, 2016 NSSM 33 2016 CarswellNS 828, 2016 NSSM 33, 271 A.C.W.S. (3d) 536 at para. 48.

<sup>63</sup> See *Myers v. Peel County Board of Education*, [1981] 2 S.C.R. 21, 1981 CarswellOnt 579, 1981 CarswellOnt 612, [1981] A.C.S. No. 61, [1981] S.C.J. No. 61, 123 D.L.R. (3d) 1, 17 C.C.L.T. 269, 37 N.R. 227, 9 A.C.W.S. (2d) 265, J.E. 81-724 for negligent supervision when a student was critically injured during a physical education class.

<sup>64</sup> See, e.g., Ontario College of Teachers, *Your Professional and Ethical Standards*, Ontario College of Teachers (2020), online: OCT <<https://www.oct.ca/members/know-your-college/your-professional-and-ethical-standards>>.

<sup>65</sup> Brett G. Scharffs and John W. Welch, "An Analytic Framework for Understanding and Evaluating the Fiduciary Duties of Educators" (2005) *S.S.R.N. Electronic J.* 159 at 165.

<sup>66</sup> See *Ontario College of Teachers Act*, 1996, S.O. 1996, c. 12, s. 30.2, for professional misconduct and sexual abuse; Any person, including teachers, in a position of trust can be found guilty of sexual exploitation under s. 153(1) of the *Criminal Code*.

<sup>67</sup> For the position of trust or authority under case law, see *R. v. Edwards*, 2003 BCCA 47 2003 CarswellBC 129, 2003 BCCA 47, 172 C.C.C. (3d) 313, 177 B.C.A.C. 24, 291 W.A.C. 24, 56 W.C.B. (2d) 188, 56 W.C.B. (2d) 235; for the relationship of dependency under case law, see *R. v. Galbraith*, 1994, 30 C.R. (4th) 230, 90 C.C.C. (3d) 76 (Ont. C.A.)

In 1999, the Supreme Court of Canada ruled that an organization was vicariously responsible for the wrongful actions of its employees.<sup>68</sup> The Children's Foundation, a non-profit organization for emotionally troubled children, operated two residential care facilities. Its employees were expected to take a parental role with the children. This role included general supervision and bathing and tucking the children in at bedtime.<sup>69</sup> Mr. Curry, an employee of the organization, utilized his time during bathing and tucking in to sexually abuse one of the children, Mr. Bazley. Once the organization was made aware of Mr. Curry's behaviour, he was immediately dismissed. Mr. Curry was ultimately charged with 19 counts of sexual abuse, two of which related to Mr. Bazley.<sup>70</sup> However, Mr. Bazley also sued the foundation for vicarious liability for Mr. Curry's misconduct. Based on the Foundation's having provided Curry with the opportunity to abuse, specifically the parental role and intimate duties assigned to him involving the children, the Foundation was held liable.<sup>71</sup> In an important recent case, *C.O. v. Williamson and Trillium Lakelands District School Board*,<sup>72</sup> the Ontario Superior Court imposed vicarious liability on a school board for one of its teachers' historical sexual assault of a pupil. The former pupil was awarded \$500,000 in damages. As such, it has become even more likely that schools will be found vicariously liable for the intentional torts, such as sexual assault, committed by their employees, including teachers, administrators, custodians, coaches, and counsellors.

#### 4. REVIEW OF PERTINENT CANADIAN CASES

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<sup>68</sup> *Bazley v. Curry*, 1999 SCR 534 1999 CarswellBC 1264, 1999 CarswellBC 1265, [1999] 2 S.C.R. 534, [1999] 8 W.W.R. 197, [1999] L.V.I. 3046-1, [1999] S.C.J. No. 35, 124 B.C.A.C. 119, 174 D.L.R. (4th) 45, 203 W.A.C. 119, 241 N.R. 266, 43 C.C.E.L. (2d) 1, 46 C.C.L.T. (2d) 1, 62 B.C.L.R. (3d) 173, 99 C.L.L.C. 210-033 [*Bazley*]

<sup>69</sup> *Ibid.*, at para. 2.

<sup>70</sup> *Ibid.*, at para. 4.

<sup>71</sup> *Ibid.*, at para. 5.

<sup>72</sup> 2020 ONSC 3874. For a useful comment on this case and others involving vicarious liability of school boards, see Loretta P. Merritt, *School Board Liability for Sexual Assaults by Teacher*, Torkin Manes Legal Point, July 14, 2020, online: <<https://www.torkinmanes.com/our-resources/publications-presentations/publication/school-board-liability-for-sexual-assaults-by-teacher>>.



For this article I used CanLII and Lexus databases to identify pertinent Canadian cases in which the defendant was accused of sexual exploitation of a student with a disability and was in position of authority within the school.<sup>73</sup> After a discussion of these cases, I will turn to an examination of a case involving peer-on-peer violence, notably bullying, in which the victim was a student with disabilities.

(a) A Breach of Fiduciary Duties: *Seed v. Ontario* and *Welsh v. Ontario*

In *Welsh*<sup>74</sup> and *Seed*,<sup>75</sup> both victims attended a provincially funded school for students with disabilities, notably the visually impaired and the deaf. Both plaintiffs alleged mental, physical and sexual abuse by the staff members, resulting in class action lawsuits against the province of Ontario.<sup>76</sup> Mr. Seed attended the W. Ross MacDonald School for the visually impaired for eleven years. During this time, Seed and his classmates were subjected to emotional<sup>77</sup>, physical<sup>78</sup> and sexual abuse.<sup>79</sup> Seed alleged that the defendant, the Province of Ontario, must have known about the abuse perpetrated against the students, yet failed to protect the students, thereby breaching its fiduciary duties. Like most of the students, Seed lived in residence; hence the school had parental or *in loco parentis* standing.<sup>80</sup> Given the students' vulnerability, the provincial government had

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<sup>73</sup> I omitted one case in which the defendant was also disabled: see *R. v. Taylor (W.H.)*, 1995 CarswellNfld 309, [1995] N.J. No. 301, 134 Nfld. & P.E.I.R. 181, 28 W.C.B. (2d) 377, 417 A.P.R. 181; and another case because the conviction was overturned: see *R. v. Hall*, 2013 ABQB 418, 2013 CarswellAlta 1886, 2013 ABQB 418, [2013] A.W.L.D. 5197, [2013] A.W.L.D. 5198, [2013] A.J. No. 1078, 109 W.C.B. (2d) 423, 570 A.R. 272.

<sup>74</sup> *Welsh v. Ontario*, 2016 ONSC 5319 2016 CarswellOnt 13377, 2016 ONSC 5319, [2016] O.J. No. 4435, 270 A.C.W.S. (3d) 22 [*Welsh*]. The class action settlement was judicially approved: see 2018 ONSC 3217.

<sup>75</sup> *Seed v. Ontario*, 2012 ONSC 2681 2012 CarswellOnt 5544, 2012 ONSC 2681, [2012] O.J. No. 2006, 31 C.P.C. (7th) 76 [*Seed*]. See also *Cavanaugh v. Greenville Christian College*, 2020 ONSC 1133.

<sup>76</sup> National Post, "Alleged victims of physical, sexual abuse from teachers at blind school reach \$8M settlement with Ontario", *National Post* (2017), online: National Post <<https://nationalpost.com/news/canada/alleged-victims-of-physical-sexual-abuse-from-teachers-at-blind-school-reach-8m-settlement-with-ontario>>.

<sup>77</sup> *Seed*, above note 75 at paras. 19, 21, 23, 47-48. Students were bullied, and humiliated. They were force-fed or denied meals, and verbally abused.

<sup>78</sup> *Ibid.*, at paras. 20, 41-44.

<sup>79</sup> *Ibid.*, at paras. 31, 35, 61-62, 67.

<sup>80</sup> Peter Bowal and John Rollett, "In Loco Parentis - LawNow Magazine", *LawNow* (2019), online: LawNow Magazine <<https://www.lawnow.org/in-loco-parentis/>>.

the legal responsibility to protect the students in school and in the residence, which they failed to do. The class action suit succeeded and a gross \$8 million dollar settlement fund<sup>81</sup> was established.

In the *Welsh* action, Mr. Welsh sued the Province of Ontario for failing its fiduciary duties concerning three provincially funded schools for the deaf. As in the *Seed* action, Welsh alleged that the Crown must have known about the rampant physical, sexual and emotional abuse being perpetrated at their schools, yet did not take the necessary steps to protect the students, thereby failing in its fiduciary duties.<sup>82</sup> Following a review of school records, it was found that the school had failed to follow proper staff training, hiring and supervising procedures and students had been disciplined in harsh and unfair ways, lived in unsafe environments, and received a substandard education.<sup>83</sup> The *Welsh* action resulted in a gross \$15 million dollar settlement.<sup>84</sup>

Both cases ended up costing the province of Ontario \$23 million in settlement funds. The province's negligence and breach of fiduciary duties betrayed families' trust that their children would be supported, educated and properly cared for. The students were vulnerable; many had no other choice of school which they could attend. The students were rampantly abused, and the schools failed to properly screen, hire and supervise the staff. The *Seed* and *Welsh* cases involved four provincially run and operated schools in which thousands of vulnerable and disabled children suffered from the negligence of those running and overseeing the schools. These cases highlight the importance of schools' upholding their fiduciary duties and is a warning signal to all schools: protect vulnerable children or risk liability for substantial damages.

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<sup>81</sup> *Seed v. Ontario*, 2017 ONSC 3534, 2017 CarswellOnt 8867, 2017 ONSC 3534, 10 C.P.C. (8th) 126, 280 A.C.W.S. (3d) 286 at para. 9.

<sup>82</sup> *Welsh*, above note 74 at paras. 3-4.

<sup>83</sup> *Ibid.*, at para. 26.

<sup>84</sup> *Ibid.*, at para. 2.

(b) Grooming the “Perfect Victim”: *R. v. Levert*

P.G., the complainant, was between five and six years old when he first met the accused, Mr. Levert.<sup>85</sup> P.G. had been diagnosed with and prescribed medication for several disabilities. He was unable to read, write, or count, and had memory issues.<sup>86</sup> Levert took a guardianship role over P.G., taking him on outings and sleepovers at his home. P.G. accused Levert of touching his penis on two occasions when he was nine or ten years old.<sup>87</sup> Levert was charged with sexual interference. He was convicted and sentenced to six months in jail and two years of probation.<sup>88</sup> Levert appealed the conviction but his appeal was denied.<sup>89</sup>

While this case seems straightforward, there are some notable considerations. Levert was a schoolteacher for nearly thirty years<sup>90</sup> and was convicted of sexual interference with a young boy. Following his conviction, Levert lost his teaching licence with the Ontario College of Teachers.<sup>91</sup> At trial, the Crown made several references to P.G.’s being the “perfect victim.”<sup>92</sup> On appeal, Levert argued for his conviction to be set aside, because the verdict was unreasonable and because the use of the term “perfect victim” prevented him from receiving a fair trial. On appeal, Levert attempted to discredit P.G.’s testimony because of his poor memory. The defence argued that Levert’s trial was tainted based on the Crown’s use of the phrase “perfect victim.” The appeal judges agreed that it was improper for the Crown to use such a phrase:

This line of argument is based on the inadmissible theory that the appellant had a propensity to sexually assault young boys and was just looking for the “perfect victim”. The substantial attack

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<sup>85</sup> *R. v. Levert*, 2001 CarswellOnt 3479, [2001] O.J. No. 3907, 150 O.A.C. 208, 159 C.C.C. (3d) 71, 51 W.C.B. (2d) 289 [Levert].

<sup>86</sup> *Ibid.* at para. 3.

<sup>87</sup> *Ibid.* at para. 4,6.

<sup>88</sup> *Ibid.*, at para. 38.

<sup>89</sup> *Ibid.*, at para. 43.

<sup>90</sup> *Ibid.*, at para. 38.

<sup>91</sup> *Ontario College of Teachers v. Levert*, 2002 ONOCT 15.

<sup>92</sup> *Levert*, above note 85 at para. 37.

on the credibility and reliability of the complainant by the defence because of the complainant's learning and other disabilities did not justify this attack on the appellant's character.<sup>93</sup>

However, the court ruled that the use of such inadmissible evidence did not render the trial so unfair as to justify ordering a new trial.

Attempts to discredit the intelligence and memory, and hence the testimony, of an individual with disabilities are one of the barriers victims face within the legal system. In 2005, Bill C-2 *An Act to Amend the Criminal Code (Protection of Children and Other Vulnerable Persons)* was given Royal Assent.<sup>94</sup> This intent of this *Act* was to provide for testimonial support for children and vulnerable adults, including those with mental or physical disabilities. When a person with a disability or a child testifies in court, testimonial aids such as screens, support persons and video-recorded statements may be utilized.<sup>95</sup> Furthermore, in a landmark 2012 majority decision, the Supreme Court of Canada agreed that a victim with a cognitive disability could testify in her own sexual assault case, even though she could not articulate the nature of the obligation to tell the truth in court.<sup>96</sup> Initially, the charges against the accused were dismissed because the victim's testimony and out-of-court comments were deemed inadmissible, as a result of the victim's inability to articulate the difference between a truth and a falsity.<sup>97</sup> However, Chief Justice

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<sup>93</sup> *Ibid.*, at para. 23.

<sup>94</sup> Bill C-2, *An Act to Amend the Criminal Code (Protection of Children and Other Vulnerable Persons)* S.C. 2005, c. 32 (assented to July 21, 2005).

<sup>95</sup> Department of Justice, "Testimonial Support Provisions for Children and Vulnerable Adults (Bill C-2): Case Law Review and Perceptions of the Judiciary", *Department of Justice* (2015), online: Justice Canada <[https://www.justice.gc.ca/eng/rp-pr/fl-lf/famil/rr10\\_vic3/p0.html](https://www.justice.gc.ca/eng/rp-pr/fl-lf/famil/rr10_vic3/p0.html)>.

<sup>96</sup> See *R. v. I. (D.)* 2012 CarswellOnt 1089, 2012 CarswellOnt 1090, 2012 SCC 5, [2012] 1 S.C.R. 149, [2012] S.C.J. No. 5, 280 C.C.C. (3d) 127, 288 O.A.C. 1, 345 D.L.R. (4th) 385, 427 N.R. 4, 89 C.R. (6th) 221, 99 W.C.B. (2d) 328 [*I. (D.)*]; see also Carol Goar, "Supreme Court ruling gives Canadians with mental disabilities full equality in court", *The Star* (2012), online: The Star [https://www.thestar.com/opinion/editorialopinion/2012/02/14/supreme\\_court\\_ruling\\_gives\\_canadians\\_with\\_mental\\_disabilities\\_full\\_equality\\_in\\_court.html](https://www.thestar.com/opinion/editorialopinion/2012/02/14/supreme_court_ruling_gives_canadians_with_mental_disabilities_full_equality_in_court.html).

<sup>97</sup> *I. (D.)*, above note 96 at paras. 9-11.

McLachlin reasoned that the lack of an abstract understanding of the obligation to tell the truth does not mean that the victim cannot promise to tell the truth:

Inquiries into the witness's understanding of the nature of the obligation this promise imposes are neither necessary nor appropriate. It is appropriate to question the witness on her ability to tell the truth in concrete factual circumstances, in order to determine if she can communicate the evidence. It is also appropriate to ask the witness whether she in fact promises to tell the truth. However, s. 16(3) [of the *Canada Evidence Act*<sup>98</sup>] does not require that an adult with mental disabilities demonstrate an understanding of the nature of the truth *in abstracto*, or an appreciation of the moral and religious concepts associated with truth telling.<sup>99</sup>

She also noted that there were also strong underlying policy reasons for allowing witnesses with mental disabilities to testify, including the need to bring sexual predators to justice, not further marginalizing already vulnerable victims, and ensuring fair trials.

Therefore, there is no requirement to question a witness with a disability about her abstract understanding of the obligation to tell the truth and failing to do so does not compromise the defendant's right to a fair trial.<sup>100</sup> Together, the *Criminal Code* amendments and the Supreme Court's interpretation of the *Canada Evidence Act* in *I.(D.)* facilitate the testimony of individuals with disabilities and thus go a long way toward eliminating a litigation barrier faced by disabled victims of sexual violence.

(c) The Lasting Effects of Sexual Abuse on a Child: *K.M. v. Marson and The Hastings and Prince Edward District School Board*

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<sup>98</sup> R.S.C. 1985, c. C-5. [*Evidence Act*]

<sup>99</sup> *I.(D.)*, above note 96 at para. 74.

<sup>100</sup> *Ibid.*

The plaintiff, K.M., was 13 and 14 years of age and attending school between 1978 and 1980 when he was sexually abused by his science teacher, Robert Marson.<sup>101</sup> Decades later, K.M. made the allegations of abuse. At the time of the trial, K.M. was 51 years old. K.M. sued the Hastings and Prince Edward District School Board (“School Board”) for negligence and breach of fiduciary duty. Marson groomed and lured K.M. to a remedial room, mini petting zoo and storage closet at the back of his science classroom. Marson performed oral sex on K.M. on five occasions. As a child, K.M. had average intelligence; however, he had learning difficulties with dyslectic tendencies. As an adult, K.M. suffered from “major depression with dysthymia, post-traumatic stress disorder, substance abuse, and personality disorder of the antisocial and borderline type.”<sup>102</sup> K.M. argued that these major health issues resulted from the sexual abuse he experienced as a child. He also had difficulty with interpersonal relationships and maintaining employment. The court held that K.M.’s adult struggles were caused by the sexual abuse he suffered as a child.<sup>103</sup> The School Board admitted liability and negligence on their part regarding Marson. They did not take the necessary steps to ensure the safety and wellbeing of the students, especially after K.M.’s parents alerted the principal about their suspicions about Marson. The School Board failed to take the necessary steps to protect K.M. from Marson.<sup>104</sup> Consequently, K.M. was awarded \$2.4 million in damages.<sup>105</sup>

This case is critical to understanding the lasting and harmful effects of sexual abuse on a child. K.M. was experiencing learning difficulties in school and had an unstable home life. He was already vulnerable because of these challenges; however, the sexual abuse he faced changed

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<sup>101</sup> *K.M. v. Marson*, 2018 ONSC 3493, 2018 CarswellOnt 15036, 2018 ONSC 5278, 297 A.C.W.S. (3d) 322, 83 C.C.L.I. (5th) 213 [*Marson*].

<sup>102</sup> *Ibid.*, at para. 6.

<sup>103</sup> *Ibid.*, at para. 7.

<sup>104</sup> *Ibid.*, at paras. 18-19.

<sup>105</sup> *Ibid.*, at para. 737. In the 2018 correction notice, *K.M. v. Marson*, 2018 ONSC 5278, K.M. was awarded a total of \$3.1 million. At paras. 23-26.

the course of his life. The lengthy hardships K.M. faced as a child and continued to suffer as an adult are indicative of the devastating psychological and long-term effects of sexual abuse.<sup>106</sup> Childhood victims of sexual abuse often take many years before disclosing the abuse. Rates of disclosure depend on the severity of the abuse, the relationship between victim and perpetrator and the age of the victim.<sup>107</sup> It was estimated that severe cases may surpass 15 years to disclose.<sup>108</sup> Based on the understanding that sexual abuse victims may take many years to disclose trauma, Ontario amended its *Limitations Act* in 2019 and removed all limitation periods for civil claims based on sexual assault.<sup>109</sup> Schools and school boards have a legal responsibility to protect their students, otherwise, they may be held responsible and obligated to pay millions of dollars in damages.

(d) Trusted Coach or Foe? *R. v. M.R.*

A.B. was a high school student and volleyball player when he met his physical education teacher, M.R.<sup>110</sup> A.B. and M.R. engaged in a sexual relationship for many years following high school. They eventually separated after A.B. discovered that M.R. was HIV positive. Nearly ten years after their separation, A.B. filed a report against M.R. alleging two incidents of sexual assault when A.B. was under the age of 18 and one count of sexual exploitation occurring in 1994.<sup>111</sup> A.B. had several learning disabilities, attended a “specific learning disability class”<sup>112</sup>

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<sup>106</sup> Shanta Dube et al., “Long-Term Consequences of Childhood Sexual Abuse by Gender of Victim” (2005) 28:5 *Am. J. Prev. Med.* 430 at 434. For relevant case law concerning the impact of sexual assault on children, see *R. v. McGraw*, [1991] 3 S.C.R. 72 at 81, *R. v. L.(D. O.)*, [1993] 4 S.C.R. 419 at 439-442, *R. v. Morrissey*, 2000 SCC 39, and *R. v. Friesen*, 2020 SCC 90.

<sup>107</sup> Cassidy R.D. Wallis and Michael D. Woodworth, “Child Sexual Abuse: An Examination of Individual and Abuse Characteristics That May Impact Delays of Disclosure” (2020) 107 *Child Abuse & Neglect* 1 at 7, 8.

<sup>108</sup> *Ibid.*, at 7.

<sup>109</sup> *Limitations Act*, 2002, S.O. 2002, c. 24, Sched. B, s. 16 (1) h.

<sup>110</sup> *R. v. M.R.*, 2015 ONSC 7825 2015, CarswellOnt 20591, 2015 ONSC 7825, [2015] O.J. No. 7085, 128 W.C.B. (2d) 525 [*M.R.*], at para. 2.

<sup>111</sup> *Ibid.*, at para. 4.

<sup>112</sup> *Ibid.*, at para. 33.

and was accommodated throughout high school and college.<sup>113</sup> M.R. was acquitted of all charges. The two incidents of sexual assault were deemed as accidental touching. In A.B.'s final year of high school, M.R. changed schools and was no longer A.B.'s volleyball coach. Even though M.R. was in a position of trust and authority over A.B. for many years, at the time of the alleged sexual exploitation, he was no longer A.B.'s teacher or coach. He was no longer in a position of authority over his former student because between 4 and a half to 6 months had passed since M.R. coached A.B.<sup>114</sup> The court found that A.B. was no longer dependent on M.R. for anything and that even if the position of trust persisted beyond the time when they were in a teacher/coach-student/athlete relationship, there was a reasonable doubt that the trust had been breached. Although coercion per se is not required for a breach of trust, the law requires there be at least a subtle form of inducement.

This case raises an important consideration. M.R. was A.B.'s teacher and coach for years. However, the court concluded that the position of trust ended a few months after M.R. went to teach at a different school. Students and children with disabilities are extremely vulnerable to victimization. When the position of trust or authority is construed narrowly by the courts, as in this case, a student's rights could be infringed. Given the vulnerability and victimization rates of students with disabilities, a broader approach toward the position of trust could help support victims of abuse.<sup>115</sup>

(e) Harassment and Bullying: *JT v. School District No. 36*

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<sup>113</sup> *Ibid.*, at para. 34.

<sup>114</sup> *Ibid.*, at para. 151.

<sup>115</sup> See *R. v. Alsadi*, 2012 BCJ No 826, 2012 CarswellBC 1202, 2012 BCCA 183, [2012] B.C.W.L.D. 4084, [2012] B.C.W.L.D. 4086, [2012] B.C.W.L.D. 4087, [2012] B.C.J. No. 826, 101 W.C.B. (2d) 234, 285 C.C.C. (3d) 316, 320 B.C.A.C. 149, 543 W.A.C. 149. This case addresses the issue of whether a civilly committed psychiatric patient can provide consent to engage in a sexual act with a security guard, or whether this constitutes an abuse of power. Establishing the relationship of trust or authority between the person with a disability and the defendant, which was construed narrowly, proved difficult and the defendant was acquitted of all charges.



In *JT v. School District No. 36*,<sup>116</sup> The father of student JT filed a complaint with the British Columbia Human Rights Tribunal alleging that his daughter was discriminated against contrary to section 8 of the *Human Rights Code*.<sup>117</sup> JT alleged that T's school, Erma Stephenson Elementary School ("school"), discriminated against her based on her mental and physical disability.<sup>118</sup> He claimed T was bullied, insulted and harassed by three other students and that the school therefore did not provide a safe and respectful learning environment.<sup>119</sup> JT alleged that his daughter was repeatedly called names such as "dumb, retarded, messy, weird legs, [and] stupid."<sup>120</sup> Even though complaints were filed with the principal, the school took insufficient action. In September 2008, T was struck in the head with a music stand by one of the perpetrators.<sup>121</sup> JT was dissatisfied with the principal's reaction to the incident because the students remained in T's class.<sup>122</sup> The bullying was continuous, resulting in T's suffering from major depression.<sup>123</sup> Considering the lack of appropriate responses to his daughter's bullying and the negative effect it had on her, JT filed a complaint with the Human Rights Tribunal; the School District argued before the Tribunal that the complaint was not filed on a timely basis. The Tribunal ruled, however, that the complaint involved a "continuing contravention of the *Code*"<sup>124</sup> and therefore was timely. The complaint was thus accepted as filed. No further proceedings appear to have occurred. A reasonable assumption is that the matter was settled by mediation or other means.

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<sup>116</sup> 2010 BCHRT 299, 2010 CarswellBC 3065, 2010 BCHRT 299, [2011] B.C.W.L.D. 209 [*J.T.*].

<sup>117</sup> R.S.B.C. 1996, c. 210.

<sup>118</sup> *J.T.*, above note 116 at para. 8.

<sup>119</sup> *Ibid.*, at para. 14.

<sup>120</sup> *Ibid.*, at para. 9.

<sup>121</sup> *Ibid.*, at para. 11.

<sup>122</sup> *Ibid.*, at para. 10.

<sup>123</sup> *Ibid.*, at para. 11-12.

<sup>124</sup> *Ibid.*, at para. 22.

*J.T.* demonstrates parents' and students' expectation that principals, teachers, and school boards will respond effectively to allegations of bullying, harassment, and discrimination. Indeed, the law also expects them to do so. Creating a learning environment free from discrimination is fundamental to students' wellbeing and success. As the Supreme Court of Canada held in *Ross v. New Brunswick School District No. 15*,<sup>125</sup> schools have a legal obligation to create a safe learning environment free of the poisonous impact of discrimination so that all students may reach their full potential in a caring and respectful learning environment. If schools fail to do so, they will be held accountable.

## **5. THE RESPONSIBILITIES OF SCHOOLS RELATING TO VIOLENCE, BULLYING, AND DISCRIMINATION**

### **(a) Bullying Prevention in Canadian Schools**

Part of Public Safety and Emergency Preparedness Canada, the National Crime Prevention Centre (NCPC) was established to reduce crime, bullying and victimization through social development.<sup>126</sup> NCPC prioritized the reduction of bullying within Canadian schools and has conducted studies assessing school-based anti-bullying programs. First, a whole-school approach is critical. Schools must have policies in place which include a needs assessment, multiple stakeholders, an evaluation, and re-assessment based on relevant needs of the school, including students at risk. According to the NCPC, there must be a whole-school anti-bullying initiative that is strategic, which includes students and materials for teachers with appropriate interventions and a plan for sustainability of pro-social behaviours. The second identified practice was a community approach. Notably, the top five successful programs all “intervened at three program

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<sup>125</sup> *Ross v. New Brunswick School District No. 15*, [1996] 1 S.C.R. 825, [1996] S.C.J. No. 40, [1996] A.C.S. no 40.

<sup>126</sup> See Public Safety Canada, “Bullying prevention in schools”, *Government of Canada* (2020), online: Public Safety Canada <<https://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/bllng-prvntn-schls/index-en.aspx>>.

levels (universal, indicated and selected), addressed the attitudes, behaviors, and interpersonal and emotional skills of students, involved parents in the initiative and involved the larger community.”<sup>127</sup> Bullying cannot be viewed in isolation but must be approached comprehensively, with clear policies and action plans. NCPC also outlined five areas that require further research with regards to bullying and the best intervention practices. The needs of students with disabilities was identified as one area requiring further research.<sup>128</sup>

(i) *The Education Act and Bill 56: An Act to End Violence*<sup>129</sup> (Quebec)

In 2012, Quebec enacted Bill 56, *An Act to Prevent and Stop Bullying and Violence in Schools*, which aimed to reduce violence in schools. Bill 56 made several amendments to the *Education Act*. It stipulates that school boards and schools across Quebec have the responsibility to provide a healthy and secure learning environment free from any bullying or violence allowing each student to develop to their full potential. Specifically, the *Act* demands that all public and private educational institutions adopt an anti-bullying and anti-violence plan. The principal is the stakeholder primarily responsible for implementing the plan, which includes clear prevention measures, intervention, and follow-up procedures. Responsibility for bullying prevention under the *Act* is shared between school principals, school staff, students, parents, school boards and governing boards.

(ii) *The Education Act and Bill 13: Accepting Schools Act* (Ontario)

In 2012, Ontario passed Bill 13: the *Accepting Schools Act*,<sup>130</sup> which amended the *Education Act*. Amendments included updating the definition of bullying to include cyber-bullying. These

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<sup>127</sup> *Ibid.*, at s. 2.2.

<sup>128</sup> *Ibid.*, at s. 3.3.

<sup>129</sup> *Bill 56*, above note 19.

<sup>130</sup> *Bill 13*, above note 20.

amendments aim to create inclusive schools that offer a safe learning environment, regardless of race, gender, sexual orientation, family status or disability. Other aims include promoting a positive school environment and preventing negative behaviour relating to “bullying, sexual assault, gender-based violence and incidents based on homophobia, transphobia or biphobia.”<sup>131</sup>

The term “inclusive” appears frequently throughout the new *Education Act* and is viewed as a component of a positive school environment. Ontario’s *Act*, like Quebec’s, requires that all school boards develop and implement an equitable and inclusive education policy. Every two years, the schools must evaluate the effectiveness of their policies using surveys. The *Act* also includes a province-wide Bullying Awareness and Prevention Week to bring awareness of bullying and improve the overall school environment. The *Act* focuses on reducing bullying within schools and requires clear prevention and intervention procedures.<sup>132</sup>

### (iii) *The Fourth R: Relationships*

The Fourth R is an evidence-based approach for promoting positive and healthy relationships while reducing violence (bullying, peer and dating violence), unsafe sex and substance abuse for adolescent youth.<sup>133</sup> Initially developed in Ontario, the program has been implemented in over

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<sup>131</sup> *Ibid.*, s. 300.01.

<sup>132</sup> See *Education Act*, R.S.O. 1990, c. E.2, ss. 169.1 (1) (a.1) (which requires boards to “promote a positive school climate that is inclusive and accepting of all pupils, including pupils of any race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, marital status, family status or disability”), 169.1 (1) (a.2) (which requires boards to “promote the prevention of bullying”), 170 (1)7.1 (requiring boards to “establish and provide annual professional development programs to educate teachers and other staff of the board about bullying prevention and strategies for promoting positive school climates”), and 170 (1) (7.2) (which requires boards to “provide programs, interventions or other supports for pupils who have been bullied, pupils who have witnessed incidents of bullying and pupils who have engaged in bullying, and the programs, interventions and other supports may be provided by social workers, psychologists or other professionals who have training in similar fields, as determined by the board.”). Section 301 (1) (7.1) also requires the Minister of Education to “establish policies and guidelines with respect to bullying prevention and intervention in schools.” See Ontario Ministry of Education, Policy/Program Memorandum No. 144, “Bullying Prevention and Intervention”, October 17, 2018, online: < <http://www.edu.gov.on.ca/extra/eng/ppm/144.pdf> >, which contains details about the province’s bullying prevention and action strategies and procedures, including the various duties of those in the school community.

<sup>133</sup> Claire V. Crooks et al, “Development, Evaluation and National Implementation of a School-Based Program to Reduce Violence and Related Risk Behaviours: Lessons from the Fourth R” (2008) 2 *IPC Review* 110 at 111.

350 provincial schools and adapted to six other Canadian provinces.<sup>134</sup> The program was developed to meet the guidelines of the Grade 7-9 Health and Physical Education curriculum for Ontario-based schools with a 21-lesson plan curriculum<sup>135</sup> and engages parents and community involvement.<sup>136</sup> The Fourth R was shown to reduce physical dating violence and increase condom use for sexually active adolescent boys compared to the control students,<sup>137</sup> and increase the protective impact on maltreated youth and decreasing violent delinquency compared to nonintervention schools.<sup>138</sup> In addition, it has shown to increase peer resistance skills where students were seven times more likely to use delay responses and twice more likely to use negotiation skills compared to the control group of students.<sup>139</sup> Teachers also viewed the program's success due to its clear curriculum-based lesson plans, and evidence of having a positive impact on students.<sup>140</sup> However, teachers must be properly trained in order to successfully implement the program.<sup>141</sup> The Fourth R has demonstrated through evidence-based research to be a valuable consideration to the Health and Physical Education curriculum for both students and teachers at promoting healthy relationships and reducing violence.

**(b) *Duty to Report and in Loco Parentis***

Educators are crucial in the identification and prevention of school-based violence. Teachers must act as prudent parents to students, under the common law doctrine of *in loco parentis*; like

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<sup>134</sup> *Ibid.*

<sup>135</sup> *Ibid.*, at 113.

<sup>136</sup> *Ibid.*, at 114.

<sup>137</sup> David A Wolfe et al., "A Universal School-Based Program to Prevent Adolescent Dating Violence: A Cluster Randomized Trial" (2009) 163:8 *Arch Pediatr Adolesc Med* 692 at 697.

<sup>138</sup> Claire V. Crooks et al., "Understanding the Link Between Childhood Maltreatment and Violent Delinquency: What do Schools have to Add?" (2007) 12:3 *Child Maltreat.* 269 at 276.

<sup>139</sup> David A Wolfe et al., "Observations of Adolescent Peer Resistance Skills Following a Classroom-Based Healthy Relationship Program: A Post-intervention Comparison" (2011) 13:2 *Prev Sci.* 196 at 201.

<sup>140</sup> Crooks et al., above note 133 at 125.

<sup>141</sup> *Ibid.*, at 117

parents, they are responsible for the students' safety and wellbeing.<sup>142</sup> In Canada and many countries, teachers and school officials are legally mandated to report to the appropriate child protection agency if they suspect that a student is being abused or neglected. In fact, the duty to report is considered a legal and ethical obligation for teachers.<sup>143</sup> In Ontario, principals and teachers who fail to report and act upon bullying behaviour can be found guilty of professional misconduct by the College of Teachers,<sup>144</sup> disciplined by their employer, and found liable for negligence in a civil suit by the victim and his or her parents. One study found that educational professionals are instrumental in detecting the abuse of adolescent girls with physical disabilities. The authors argued that educational professionals must be aware of the heightened risk for girls with disabilities and concluded that greater effort must be made to reduce such risks.<sup>145</sup> Given the vulnerability of students with disabilities and the duty to report abuse, teachers must be aware of their legal responsibilities and comprehend the risks associated to such students.

## **6. THE CRITICAL ROLE OF SEXUALITY EDUCATION IN PREVENTION STRATEGIES**

A comprehensive and inclusive sexuality education curriculum is the missing link between anti-violence prevention strategies and sexual assault prevention. Both pieces are legally mandated by education legislation<sup>146</sup>; teachers must be properly educated on the rates and risks

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<sup>142</sup> Bowal and Rollett, above note 80.

<sup>143</sup> Quebec, "Duty to Report - Reporting a situation to the Director of Youth Protection (DYP)", Quebec (2020), online: Quebec <<https://www.quebec.ca/en/family-and-support-for-individuals/assistance-and-support/reporting-a-situation-to-the-director-of-youth-protection/duty-to-report/>>.

<sup>144</sup> See O. Reg. 437/97: Professional Misconduct, made under the *Ontario College of Teachers Act, 1996*, S.O. 1996, c. 12. Section 1 (27) provides that failure to abide by a member's responsibilities under the *Child, Youth and Family Services Act, 2017*, S.O. 2017, c. 14, Sched. 1 (which includes reporting child abuse) constitutes professional misconduct.

<sup>145</sup> Alriksson-Schmidt, Armour, and Thibadeau, above note 46 at 366.

<sup>146</sup> For example, in Quebec, by the *Education Act*, which includes anti-violence prevention (see above note 5, s. 75.1) and the sexuality education curriculum, which includes themes of sexual violence prevention: *Sexuality*

of sexual violence against girls with disabilities and equipped with an inclusive sexuality education curriculum for all students. Prevention of sexual assault against students with disabilities must also be part of a comprehensive curriculum, which includes themes such as social skills, relationships, assertiveness and self-confidence.<sup>147</sup> As opposed to a simplified overview of the biological aspects of sexuality, students with disabilities deserve an inclusive and comprehensive education on their sexuality and sexual relationships just as their non-disabled peers. Research has indicated that failing to teach sexuality education to students with disabilities can increase their risk of sexual abuse, exploitation and sexually transmitted diseases.<sup>148</sup> Unlike students without disabilities, who view school-based sexuality education programs as a valuable source of information, students with disabilities feel they lack accessibility and usefulness.<sup>149</sup> Emphasis must be placed on educating teachers on the risks faced by students with disabilities in the context of sexuality and how to properly support the teaching of the sexuality education curriculum to be inclusive to all students. Often overlooked in prevention strategies for reducing violence against women is unifying men as allies. It is important for curricula to address young men's role in the prevention of sexual violence. Mobilizing men as allies focuses on creating healthy relationships and positive views of masculinity and gender.<sup>150</sup> Together with imparting an understanding of the risks to students with disabilities, an inclusive sexuality education program would seek to unify all students as prevention education.

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*Education* Ministère de l'Éducation et de l'Enseignement supérieur, Éducation et Enseignement supérieur (2020), online: Education Québec <<http://www.education.gouv.qc.ca/en/teachers/dossiers/sexuality-education/>>.

<sup>147</sup> Barger et al., above note 14 at 256.

<sup>148</sup> McDaniels and Fleming, above note 15 at 219.

<sup>149</sup> Patsie Frawley and Nathan J. Wilson, "Young People with Intellectual Disability Talking About Sexuality Education and Information" (2016) 34:4 *Sexuality and Disability* 469 at 482.

<sup>150</sup> Basile et al., above note 10 at 15.

In 2018, the Ministry of Education in Quebec announced a new sexuality education program mandated across all schools. Students from kindergarten to secondary five (grade 11 equivalent) will be exposed to various topics and issues pertaining to sexuality.<sup>151</sup> Elementary students are taught how to recognize signs of sexual assault and prevention. In secondary school, sexual violence, consent, recognizing symptoms of violence and solutions to prevent or deal with violence are addressed.<sup>152</sup> As of 2019, elementary students in Ontario (grades 1-8) follow an updated health and physical education curriculum.<sup>153</sup> In grade 1, students are taught the correct names of body parts in order to communicate clearly in case of injury or abuse; however, the topic of sexual abuse is not taught at that level.<sup>154</sup> High school students follow a revised 2015 health and physical education curriculum which is divided into active living, movement competence and healthy living. In Grade 9, students are taught about sexual harassment and gender-based violence.<sup>155</sup> Given the severity of the risks associated with students with disabilities, teachers should strive to integrate within these curricula a focus on reducing the risks as preventive education.

## 7. CONCLUSION AND RECOMMENDATIONS

The statistics on the rates of violence against students with disabilities clearly demonstrates their heightened risk. Legislation sets standards and expectations of schools with respect to bullying detection and prevention. However, meeting such standards and expectations may not

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<sup>151</sup> Sexuality Education, above note 146.

<sup>152</sup> “Summary Table - Themes and Learning Content in Sexuality Education”, *Education Québec* (2018), online: Education Québec <[http://www.education.gouv.qc.ca/fileadmin/site\\_web/documents/education/adaptation-scolaire-services-comp/Contenus\\_tableau-synthese-EN.pdf](http://www.education.gouv.qc.ca/fileadmin/site_web/documents/education/adaptation-scolaire-services-comp/Contenus_tableau-synthese-EN.pdf)>.

<sup>153</sup> “Health and Physical Education in Grades 1-8”, *Ontario* (2019), online: Ontario <<https://www.ontario.ca/document/health-and-physical-education-grades-1-8#section-1>>.

<sup>154</sup> “Human Development and Sexual Health education by grade”, *Ontario* (2019), online: Ontario <<https://www.ontario.ca/document/health-and-physical-education-grades-1-8/human-development-and-sexual-health-education-grade>>.

<sup>155</sup> “Health and Physical Education: The Ontario Curriculum Grades 9-12”, *The Ontario Curriculum* online: Edugovon <<http://www.edu.gov.on.ca/eng/curriculum/secondary/health9to12.pdf>> at 38.



be possible without providing adequate resources and professional development. Given the vulnerability of students with disabilities, teachers and school administrators must be trained in detection and intervention when victimization occurs.<sup>156</sup> And despite a lack of negligence on their part, school boards may nonetheless be found vicariously liable for the tortious acts of their employees, including both intentional acts (such as sexual assault or exploitation) and negligent ones. Common principles from different cases demonstrate that schools have the obligation to provide a safe learning environment for all students. In addition, courts should consider taking a broader approach to the position of authority or trust with respect to an individual with a disability. Research should perhaps be carried out to examine the extent of victim reliance on and trust in their abusers and to explore policy rationales for potentially expanding the current legal approach toward determining the boundaries, temporal and otherwise, of the trust relationship. Further research should also focus on the barriers to reporting, increasing service-seeking behaviours and community awareness to support victims.

Creating an inclusive sexuality education program will support the teacher's ability to properly teach the curriculum. It is also incumbent on provincial governments to develop and provide comprehensive guidelines on sexual education so that it is consistently taught. Considering that a current lack of adequate teacher training on the topic is a profound limitation of violence prevention strategies, faculties of education must focus on providing educators with the necessary knowledge regarding the risks associated to students with disabilities. An inclusive sexuality education program will also reduce the risk of sexual violence against girls with disabilities by educating the staff and educating young girls about their rights and

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<sup>156</sup> Vernon and Miller, above note 9 at 32.

responsibilities,<sup>157</sup> in addition to unifying boys as allies.<sup>158</sup> A comprehensive sexuality education can reduce rates of sexual violence against girls with disabilities through appropriate and ongoing preventive education. Research studies that may produce results that could enhance such programs could include teachers' evaluations of the lesson plans for the sexual violence prevention component of the comprehensive sexuality education curriculum, pre- and post-observational studies on students' perceptions of how to recognize a sexual assault situation, and strategies to differentiate lessons according to the diversity of the students within a class.

The verdict rendered in *R. v. I. (D.)*<sup>159</sup> interpreting provisions of the *Canada Evidence Act*<sup>160</sup> suggests it has become easier to include the testimony of individuals with cognitive disabilities; the acceptance of such testimony can be granted based on only a determination that the witness can communicate the evidence and also a promise to tell the truth. Thus, the inclusive and comprehensive sexuality education could educate students on how to recognize violence, report a crime, report events clearly, and identify body parts.

Finally, as discussed above, a whole-school approach to end violence is essential. Through anti-violence prevention, coupled with a comprehensive and inclusive sexuality education curriculum, educators can instill pro-social attitudes and behaviours. A whole-school approach could be adopted to change the mindset of students from one that is tolerant of bullying and harassment to one in which differences are accepted. The starting place is understanding. Once there are awareness and understanding of the prevalence and kinds of violence that students with disabilities face, there can be critical reflection and policy action on the missing link within the

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<sup>157</sup> Rosen, above note 16 at 175.

<sup>158</sup> Basile et al., above note 10 at 15.

<sup>159</sup> *I. (D.)*, above note 96.

<sup>160</sup> *Evidence Act*, above note 98.

educational system. Undoubtedly, this action should require faculties of education to prioritize a comprehensive and inclusive sexuality education curriculum for teacher candidates.

## **CHAPTER 5: DISCUSSION AND RECOMMENDATIONS**

While Chapter 4 provides insights into Canadian students' lives with disabilities, Chapter 5 focuses on the disempowering relations students with disabilities face, its effects of school-based violence and discrimination, and schools' and teachers' liability. The discussion section of this chapter addresses the barriers and risks of students with disabilities, their legal rights and the critical importance of sexuality education will expound to address sexual violence prevention and reduce sexual violence against students with disabilities. The discussion ends with the implications of the research and recommendations to ameliorate the problems discussed and includes a Teacher's Toolkit that I created to increase knowledge mobilization in an easy-to-use manner.

### **Discrepancies Between Gender-Based Violence and Legal Analysis**

The analysis conducted in Chapter 4 illustrates that, compared to typically developing students, students with disabilities experience higher rates of bullying and physical and sexual violence (Canadian Human Rights Commission, 2017; Cappadocia et al., 2011; Hershkowitz et al., 2007; Humphrey & Hebron, 2015; Little, 2002; Moffat et al., 2019) and female students with disabilities experience higher rates of sexual violence, including dating violence than typically developing students (Alriksson-Schmidt 2010; Mitra et al., 2012; Vernon & Miller, 2002). Due to these facts, I expected to find an abundance of cases of victimization of girls with disabilities. However, sexual assault is among the least-reported crimes, with nearly 78% estimated unreported (Department of Justice Canada, 2015). With the exception of the class-action lawsuits involving male and female students, all victims in the reviewed cases were male. Possible explanations for this could be due to the chosen methodology's limitations, the number of cases

analyzed, or the victims' reporting nature. Nevertheless, the legal analysis illuminates the struggles of students with disabilities and the risk of violence.

### **The Barriers and Risks for Students With Disabilities**

The barriers that students with disabilities face can be responsible for dropout rates: 10% of students with disabilities abandon their studies (Canadian Human Rights Commission, 2017). The dramatic repercussions of students who drop out of high school are more likely to be unemployed or work in low-paying positions (Christle et al., 2007), become involved in criminal activity, or depend on welfare programs (Martin et al., 2003). When a student with disabilities, who is already more likely to live in poverty (according to Powers et al., 2009) drops out, their chances of successful integration into society and the workplace diminishes. Lack of employment affects the individual and has consequences for their family and communities at large (Christle et al., 2007). Without meaningful work, society also likely has to make adjustments for the individual by means of welfare programming. Therefore, the dropout rates of students with disabilities should be a cause for concern for schools, educators, community members, and politicians.

As part of decreasing the prevalence of bullying in schools, educators must comprehend their legal responsibilities regarding bullying and discrimination and acknowledge the heightened risk for students with disabilities. Ignorance and negligence are insufficient reasons for inaction and can make a school legally liable for harm it failed to prevent. It is essential that teachers also comprehend that these concerns extend to cyberbullying. Quebec's Bill 56 (2012) mandates that schools must establish "procedures for reporting, or registering a complaint concerning, an act of bullying or violence and, more particularly, procedures for reporting the use of social media or communication technologies for cyberbullying purposes" (s. 75.1.4).

Therefore, teachers are responsible for the physical learning environment and virtual space of their students.

### **Fiduciary Duties, Vicarious Liability, and Class-Action Lawsuits**

Teachers are legally obliged to maintain an educational standard that contributes to students' intellectual and personal development, respect for human life, the education system's professional reputation, and supervision of the students (*Education Act*, S.Q. 1988, s. 22). If they cannot fulfill these duties, teachers are liable for educational malpractice (*Wall v. Newbridge Academy*, 2016). Their fiduciary responsibilities maintain an understanding of the relationship between teacher and student wherein the teacher must act in the student's best interest.

A school or school board has vicarious liability when held legally responsible for its employees (including teachers, administrators, custodians, coaches, and counsellors) intentional torts. The court found vicarious liability to merit a conviction in *Bazley v. Curry* (1999) and, more recently, in *C.O. v. Williamson* (2020). Since schools that have students with disabilities can require teachers to change soiled students or come into close contact with them, they are vicariously responsible if their employees violate the position of trust and their fiduciary duties.

In the case of *Bazley v. Curry* (1999), the defendant, Mr. Curry, used his responsibility of bathing [his students] to assault his victims sexually; the school was held liable.

Schools have a responsibility to protect their students, and in situations of gross misconduct involving several students, the victims can file class-action lawsuits. *Welsh v. Ontario* (2016) and *Seed v. Ontario* (2012) were class-action lawsuits against the Province of Ontario on behalf of the victims enrolled in four provincially funded schools. These cases cost Ontario and its taxpayers \$23 million CAD in settlement funds.

### **The Rights of Canadians With Disabilities**

Canada's human rights legislation, including the *Charter of Rights and Freedoms*, has set provisions protecting vulnerable populations, such as individuals with disabilities, from discrimination (1982, s. 15.1). However, the legal analysis has illustrated two issues in the legal system hindering the conviction under Section 153.1(1). These issues include defining the position of trust or authority and discrediting the testimony of individuals with disabilities.

#### **Violating the Position of Trust or Authority**

In 1998, the *Criminal Code* added s.153.1(1), sexual exploitation of a person with a disability, due to the rise in disability awareness and understanding of their vulnerability regarding sexual violence (Benedet & Grant, 2013; *Criminal Code*, 1985). As I found in my research of sexual violence against women with disabilities, a critical factor in section 153.1(1) is the position of trust or authority, and it is a potential barrier to convictions of sexual assault (Peris, forthcoming). According to Benedet and Grant (2013), the sexual exploitation of a person with disabilities requires two burdens of proof. Firstly, the sexual activity in question must occur between an individual with a disability and an individual holding a position of trust or authority. Secondly, there must be proof of non-consent. While the position of trust or authority is not always clearly established, the relationship between pupil and teacher or coach is more acceptable as a position of trust (*R. v. Alsadi*, 2012; Peris, forthcoming). However, that did not prove to be the case in *R. v. M.R.* (2015), when the student's coach changed schools and began a sexual relationship with the student six months later, who became the plaintiff. Even though he had coached the young man for several years, the courts could not establish the position of trust or authority of the defendant after he spent six months in a different school. Given the high

victimization rates of students with disabilities, it is challenging to comprehend this narrow approach to the position of trust or authority (Peris, forthcoming).

### **Discrediting the Testimony**

Attempts to discredit the testimony of an individual with disabilities are among some of the difficulties individuals with disabilities face within the legal system. For example, in P.G.'s case (*R v. Levert*, 2001), after an Ontario schoolteacher victimized him, the defence attempted to use his disability to discredit his testimony. Striking a balance between a fair trial for the accused and the victim can be challenging. Understanding that considerations must be in place for testimonial support of individuals with disabilities, Canada implemented Bill C-2, *An Act to Amend the Criminal Code (Protection of Children and Other Vulnerable Persons)*; 2005). Accommodations, such as support persons, screens, or video-recorded statements, are now available for individuals with disabilities when they utilize the legal system; otherwise, they may never receive the justice they deserve.

In addition, the Supreme Court ruling in *R. v. D.A.I.* (2012) significantly impacted the special-needs community by adjusting the cognitive requisites needed to provide testimony. By majority decision, the Supreme Court of Canada ruled in favour of including the testimony by a victim with a cognitive disability in her own sexual assault case. The requirements for testimonial consideration indicate that a person with disabilities can testify if they can communicate the evidence and promise to tell the truth when an individual's mental capacity is challenged (*Canada Evidence Act*, 1985).

The inclusion of such testimonies has widespread implications for Canadians with disabilities. Firstly, it secures their right to have a voice in criminal proceedings. As outlined by Chief Justice McLachlin and set a precedent in Canadian law promising, to tell the truth, is



sufficient during cross-examination (*R. v. D.A.I.*, 2012). Individuals with disabilities may lack the ability to comprehend the philosophical or abstract understanding of truth-telling, yet they can still understand the importance of telling the truth. Secondly, this ruling secures a victim with disabilities the ability to qualify as a reliable witness (with the requirement also being to promise to tell the truth). The capacity to be eligible as reliable witnesses may decrease the belief that people with disabilities who need to consult the legal system are powerless, which might ultimately increase the prosecution rate for guilty parties (Peris, forthcoming).

### **Sexuality Education: The Link Between Anti-Violence and Sexual Violence Prevention**

The critical document analysis provided evidence that schools and teachers must prioritize reducing school-based violence against students with disabilities, and this could be accomplished by thoughtfully fulfilling their legal obligation to provide anti-bullying and sexual violence prevention curricula. Implementing a comprehensive and inclusive sexuality education curriculum could reduce the risk of sexual violence by laying the foundation for young children to understand their bodies, relationships, and social skills (Barger et al., 2009). If sexuality education is not taught appropriately to students with disabilities, it increases their risk of sexual abuse, sexual exploitation, and sexually transmitted diseases (McDaniels & Fleming, 2016).

When taught correctly, sexuality education can also reduce perpetration risks (Wolfe & Blanchett, 2003). As young girls with disabilities mature into women, their struggles with sexual abuse continue. Women with disabilities have a higher probability of experiencing poverty, social isolation, and difficulty accessing shelters; all of these factors further increase their vulnerability to sexual predators (Powers et al., 2009). This increased vulnerability may create a vicious cycle of abuse where girls with disabilities are likely to be abused, followed by isolation and poverty, which once again increases the risk of sexual violence. A comprehensive sexuality

education can have lifelong effects on the students and reduce the overwhelming threat of sexual violence towards students with disabilities. Teachers are also integral to detecting sexual violence, and their conscientiousness reduces sexual violence against all students (Alriksson-Schmidt 2010; Vernon & Miller, 2002).

The popular Ontario-based program called ‘The Fourth R’ shows promising success in creating positive and healthy relationships while also reducing risky sexual behaviour, substance use and violence for adolescent youths (Crooks et al., 2008). ‘The Fourth R’ refers to relationships and the program can be taught similarly to the other ‘three R’s’ (reading, writing, arithmetic; Crooks et al., 2008). Firstly, it is an evidence-based approach that contains 21 lesson plans for teachers to follow (Crooks et al., 2008). Initially designed for the Ontario curriculum, teachers would be responsible for integrating this program into their teaching. Evidence indicates that it can reduce bullying, dating violence, peer violence, unsafe sex, and substance abuse (Crooks et al., 2008). In conjunction with Ontario’s health and physical education curriculum, ‘The Fourth-R’ could be a valuable solution to reduce violence in schools, especially in Ontario. However, for sexual violence prevention to be more effective, it should begin at a younger age and build up to the topics addressed in ‘The Fourth R’s’ lesson plans. The Ontario health and physical education curriculum only cover sexual harassment and gender-based violence in Grade 9, when students are approximately 14-15 years old. For students with disabilities, who may take longer to achieve curriculum goals and therefore need to begin learning the material earlier to comprehend the information, Grade 9 may be too late. Nevertheless, given the successful nature of this program, educators should teach ‘The Fourth R’ in conjunction with Ontario’s health and physical education curriculum.

Quebec students begin covering sexual assault and prevention at a much younger age compared to Ontario's curriculum. Quebec's sexuality education curriculum for elementary students discusses sexual assault in Grades 1, 3 and 5. Students begin by learning about recognizing situations of sexual assaults, how to report such incidents to an adult, different forms of sexual assaults and their prevention. By Grade 5, students cover topics such as preventing and coping with sexual assaults in real-life or cyber contexts. In high schools, students in secondary II-III cover sexual violence. Students learn about preconceptions and myths surrounding sexual assault, consent, preventing and reporting sexual assaults and strategies to support victims of sexual assaults (Ministry of Education, 2018b). For students with disabilities, it is beneficial to begin teaching these concepts at a younger age, allowing them many years to grasp the material. However, the Quebec government only mandates 5-15 hours of sexuality education in increasing intervals per year.

As childhood and adolescence developmental periods are essential building blocks for adult behaviours, education and experiences during these periods can significantly affect moral reasoning, attitudes, and beliefs about violence and ensure lifelong well-being (*Preventing Multiple Forms of Violence*, 2016). Therefore, it is crucial that students receive inclusive and comprehensive sexuality education to reduce sexual violence against students with disabilities and reduce sexual violence in general.

### **Teacher's Toolkit**

To make this critical information more accessible, I created a Teacher's Toolkit for educators and educational facilities (see Appendix A). The toolkit summarizes my research findings in an easy-to-use and colloquial manner; its purpose is to increase the accessibility of the research findings and reach as many educators as possible. The critical information from the

research includes strategies to help reduce violence in schools and support students with disabilities in a practical manner. The purpose of this toolkit's inclusion is due to the importance of increasing knowledge mobilization, especially when it can have real-life repercussions.

By putting research into practice, the toolkit provides educators with an overview of the research in a straightforward and easy-to-understand manner. The toolkit begins with a 'Did you know?' section, which contains three bullet points about school-based violence against students with disabilities and sexual violence against girls with disabilities, followed by a statement that reads, "Teachers must be aware of the risk factors associated with students with disabilities and understand their legal responsibilities to prevent school-based violence". The next page focuses on contextualizing students with disabilities in Canada. The purpose is to inform the reader about the lives of Canadian students with disabilities and the barriers and risks they face, and it allows the reader to understand that these statistics are happening locally and not in a foreign or less developed country.

After this contextualization, the following page intends to bring awareness directly to girls with disabilities. The whole page focuses on communicating the vulnerability of this population and, therefore, increasing teachers' understanding of the risk factors towards girls with disabilities. The next page is entitled 'Legally Speaking' and contains legal information based on the legal analysis. It pulls important legal information from Bill 56 (2012) towards anti-violence requirements and vicarious liability. It also includes two notable cases in education: *Ross v. New Brunswick School District No. 15* (1996), which sets the case law regarding teachers' responsibility to create a learning environment void of discrimination, and *Moore v. British Columbia (Education)* (2012), which focuses on the best interest of the child and the importance of providing meaningful and fulfilling education.

The final three pages of the toolkit focus on sexuality education and its implementation to reduce sexual violence against students with disabilities. The first page is called “Sexuality Education”. It highlights four bullet points from the research, which focuses on the teacher’s responsibility to adapt and modify curriculum expectations to suit their students’ needs and how this extends to the sexuality education curriculum. Emphasizing the value of teaching sexuality education during important developmental stages of a child’s life, students with disabilities deserve the same access to information and inclusion in all sexuality education curriculum goals. This page’s importance culminates in the final point, which states that teachers are integral in detecting sexual violence.

The second to last page has the top ten reasons why sexuality education is essential for students with disabilities. The reasons include that sexuality education reduces the rate of risk for sexual behaviour, sexual violence, unwanted pregnancies, sexually transmitted infections and sexually transmitted diseases, sexual abuse, sexual exploitation, and sexual misinformation (Basile et al., 2016; Wolfe & Blanchett, 2003; McDaniels & Fleming, 2016). Meanwhile, it also provides knowledge and skills for positive sexual identity (Wolfe & Blanchett, 2003). Therefore, sexual education should be considered an essential educational requirement for all adolescents.

The final page comprises tips and strategies for teaching sexual education. It begins by stating the importance of teachers familiarizing themselves with the curriculum based on provincial expectations and understanding its significance while also being aware that it is legally mandatory to teach. Some strategies suggested on this page includes talking to colleagues about lesson plans, sharing resources, and integrating sexuality education into different subjects. It suggests that teachers request professional development seminars on how to teach sexuality education to students with disabilities from their administrators or school boards. The page

concludes with an enlarged statement saying, “You can help reduce sexual violence against girls with disabilities by teaching a comprehensive sex ed program”. I added this declaration to inspire, motivate, and accentuate the critical importance of sexuality education and preventing sexual violence against girls and noting the vital role of educators in accomplishing this task.

### **Implications**

The results of this study have practical implications for educational faculties if the suggestions provided are applied. Professional development seminars on teachers’ fiduciary liability could instill a profound understanding of educators’ and school boards’ legal and ethical obligations. Teachers and educators must also comprehend their legal obligations to protect and report school-based violence.

The Canadian legal system should consider broadening the interpretation of the position of trust or authority to protect individuals with disabilities. Secondly, discrediting the testimony of individuals with disabilities due to failures in accommodations should not be accepted. The Canadian judicial system must comprehend the vulnerability of this population and increase conviction under s. 153.1(1) for guilty parties.

Teachers are integral in preventing and detecting sexual violence, and they must prioritize sexuality education as violence prevention. Implementing a comprehensive and inclusive sexuality education curriculum has been empirically shown to reduce rates of sexual violence, unwanted pregnancies, and sexually transmitted infections and broaden students’ knowledge and understanding (Wolfe & Blanchett, 2003). The comprehensive sexuality education curriculum should educate all students, especially those with disabilities, to reduce their risk of sexual violence and identify sexually violent situations and how they should react. Students should learn appropriate reactions to sexual assaults, such as informing an adult

(teacher, guardian, parent) and how to report the incident to the police. If a student with disabilities requires a police report, they must learn the anatomically correct name for body parts and what constitutes sexual assault. Educating students with disabilities on these critical topics can reduce their risk of sexual violence and increase reporting of sexual assaults. If victims learn about the dangers of sexual violence, they may understand the importance of reporting the crimes, increasing prosecution.

### **Limitations**

It was beyond the scope of this study to evaluate Quebec's nor Ontario's sexuality education curriculum. The research did not consider a thorough evaluation of the curricula because priority was on learning about sexual violence against students with disabilities. In the Canadian context, the intersecting identities of Indigenous and First Nations children with disabilities were not thoroughly evaluated either, in part because, Indigenous and First Nations children would have additional struggles (lack of resources and funding, teacher shortages, isolated or fly-in communities), and those children merit a thorough evaluation and recommendations.

### **Recommendations**

#### **Implementing a Whole-School Approach**

If schools can comprehend the disempowering nature of unequal education and the intersectional risks students with disabilities face, they will strive for educational reform. Based on the document analysis regarding bullying and school-based violence, if schools want to change, they should consider implementing a whole-school approach to reducing violence against students with disabilities. Supported by Public Safety and Emergency Preparedness Canada, the whole-school approach is a method that involves collaboration between teachers,

staff members, students, families, and local communities to reduce violence in schools (Whitted & Dupper, 2005). Studies have shown that a whole-school approach can reduce the risk of violence to both students and staff members (Humphrey & Hebron, 2015).

Schools can implement a whole-school approach to address the legal obligations specified in Bill 56, *An Act to End Violence* (2012), and Bill 13, *Accepting Schools Act* (2012). The whole-school approach must contain strategic plans involving students and provide materials for teachers with suitable lesson plans. Having a 'Bullying Awareness Week' is insufficient to cause the necessary change to support students and reduce violence towards those at risk. It requires a school culture enacted by all school members and is inclusive, supportive, and instills prosocial behaviours.

When students with disabilities drop out of school, there is a ripple effect from the individual to society. Poverty, unemployment, and isolation are barriers that hinder their long-term success and integration into the community. In order to increase retention rates of students with disabilities, schools must be aware of their responsibilities to provide services to students with disabilities that best meet their needs. Students with disabilities are more likely to succeed academically by reducing their educational barriers through disability awareness, accommodations, and bullying prevention.

### **Understanding Civil Duties for Teachers**

Teachers must fully comprehend their legal responsibilities towards their students, especially considering the heightened risk of bullying and violence towards students with disabilities and the possibility of them being held legally liable in cases of school violence. Professional development seminars and teacher conventions should provide this critical information for teachers. The study of civil duties should be mandatory and thoroughly explained



for Bachelor of Education students. As previously mentioned, negligence or ignorance of bullying or intentional torts in a school's environment and cyberspace does not negate a school's legal responsibilities and could result in legal consequences. Therefore, ensuring that schools and school boards are aware of their fiduciary duties and that they can be held responsible for their employees' actions or inactions is essential.

### **A Broader Approach to the Position of Trust or Authority and Testimonial Support**

The Canadian courts should consider implementing a broader approach to the position of trust or authority for the sexual exploitation of a person with a disability (Peris, forthcoming). This population is vulnerable to sexual violence and repeated victimization, and severe lawful consequences must be in place. The legal analysis I conducted indicates that the position of trust or authority remains unclear and is not easily defined, which requires immediate rectification to ensure that justice is possible (*R. v. Alsadi*, 2012; *R. v. M.R.*, 2015; Peris, forthcoming). A broader position of trust or authority could increase prosecution rates for guilty parties.

By implementing Bill C-2, *An Act to Amend the Criminal Code (Protection of Children and Other Vulnerable Persons)* (2005), and the Supreme Court ruling in *R. v. D.A.I.* (2012), testimonial support for individuals with disabilities should be commonplace within the judicial system. Applying a broader approach to the position of trust or authority and testimonial support could increase the protection of individuals with disabilities.

### **Teaching a Comprehensive and Inclusive Sexuality Education Curriculum**

Teachers in schools must teach a comprehensive and inclusive sexuality education curriculum. Quebec requires 5-15 hours of sexual education per year, with hours increasing as the students mature (Ministry of Education, n.d.-b). However, students with disabilities may require more time to comprehend curriculum goals and fulfill expectations; therefore, five hours

of instructional time for elementary students with disabilities may be insufficient to achieve curriculum goals. Teachers must be able to adjust the learning expectations and modify the curriculum to best suit the needs of their students. Canada's Ministry of Education should require more instructional time if the students are not comprehending the material in the allocated time.

By connecting anti-violence legislation to the understanding that sexuality education is legally mandated, students will be taught sexual assault prevention, among other sexuality education curriculum goals. From ages 6-21, Quebec's students with disabilities are eligible for school, which provides substantial time within the educational sector, thus increasing its effectiveness in sexual assault prevention programs (*Education Act*, S.Q. 1988, s. 1). Teachers should achieve the curriculum goals based on the recommendation to increase instructional time for students who need it.

Schools can teach sexuality education cross-curricular, meaning many teachers can provide knowledge and information regarding sexual education when discussing relevant topics. If implemented correctly, this shared responsibility can increase the instructional time without monopolizing one teacher's subject, meaning one teacher would not have to find a minimum of 15 hours of instructions during the year. For example, in Quebec's sexuality education curriculum, Secondary II students are expected to cover preconceptions and myths surrounding sexual assault. Language Arts teachers could create a lesson plan with various true or false statements about sexual assault, whereas a mathematics teacher could challenge the students to research sexual violence statistics. Arts education students could create drama, dance or visual art depicting the prejudices of sexual assaults. Students in Ethics and Religious Culture could discuss the ethical impact of sexual assault prejudices. It is important to note that it must be a

shared responsibility and not a divergence of responsibility. All teachers must value and comprehend the importance of sexuality education in reducing sexual violence.

### **Professional Development Seminars and Specialized Courses for Teachers and Educators**

Providing sufficient and ongoing teacher training is essential to many of the issues discussed; faculties of education should create a specialized course to educate teaching candidates on their legal responsibilities, the risks associated with students with disabilities, and how to differentiate and implement a comprehensive sexuality education to reduce rates of sexual violence. Featuring these topics in seminars and professional development could highlight and bring awareness to these issues' severity. Although these are problems that will require broad social reform to solve, the primary responsibility for enacting the changes will fall on the teachers and educators in schools; it is, therefore, essential that supporting their education in these issues is prioritized.

## CHAPTER 6: CONCLUSION

This study reiterates the importance of utilizing educational methods to protect children with disabilities, especially girls with disabilities, from sexual violence. My research findings highlight the disempowering struggles that students with disabilities face and attest to the significance of providing educational pathways for students with disabilities to reduce disability-based and gender-based violence by uncovering the barriers and risks they endure. Faculties of education must be prepared to provide teachers with the necessary training in order to teach a comprehensive sexuality education curriculum to alleviate this societal oppression. Schools' statutory commitment or legal responsibilities to educate, support, and protect students with disabilities is essential to reduce oppression and subsequent risks of violence.

### Overview

This research has explored bullying and violence, both physical and sexual, against students with disabilities. In Chapter 1, the introduction outlined the objectives, goals, and research questions of this thesis. The brief overview illustrates the rising concern for disability awareness, particularly regarding the quality of life and education of children with disabilities. In Chapter 2, the literature review discussed the provincial and territorial rates of disabilities, how students with disabilities are defined, models of disabilities, and rates of physical and sexual violence and bullying towards children with disabilities. Based on the literature review, gaps began to emerge: notably, the lack of research into prevention and intervention strategies to reduce violence against students with disabilities. Chapter 3, Theoretical Framework and Methodology, discussed critical disability theory and its application through a document analysis using two qualitative data methods (document analysis, and legal analysis). Using critical disability theory as the guiding theoretical framework, the unequal distribution of power in

schools that disadvantages students with disabilities were acknowledged and explained. This theory operates to understand that inequality and violence lie within the ableist construct of society, as opposed to the problem being the individual with disabilities. Chapter 4 contained the published manuscript and addressed all four of the research questions established in Chapter 1. The investigation in the published manuscript provided insight into the barriers and risks of students with disabilities, the responsibilities of schools and school personnel, and illuminated the critical importance of sexuality education. Chapter 5, Discussion and Recommendations, discussed the research findings, the teacher's toolkit I created after being informed by this research, and further recommendations derived from the study, namely that a comprehensive sexual education curriculum and a whole-school approach are needed to reduce violence against students with disabilities. This final chapter outlines the importance of this research, its value in advocacy and community outreach.

### **Addressing the Gaps**

By addressing the gap between existing violence prevention in schools and the need to reduce sexual violence against female students with disabilities, a comprehensive and inclusive sexuality education curriculum will connect violence prevention with sexual assault prevention. A comprehensive curriculum is a feasible option since both anti-violence prevention and sexuality education are legally required to be provided by schools. For example, Quebec's Bill 56: *An Act to End Violence* (2012) mandates violence-prevention requirements and sexual education curriculum, which is supposed to address sexual assault and sexual violence in schools (Ministry of Education, 2018b).

As previously mentioned, many sexual assault prevention programs lack effectiveness due to the length of time allotted and lack of teacher awareness. Embedding prevention

education into schools could resolve issues, such as the deficiency of allocated time (Vernon & Miller, 2002). The research also addresses the lack of teacher awareness, which I have addressed by creating a teacher's toolkit to help disseminate information, bringing attention to this critical issue, and providing a detailed overview of the lives of Canadian students with disabilities for teachers and educators.

### **Research Findings**

Research confirms that students with disabilities are vulnerable to bullying and violence based on the qualitative methodology of document analysis. It is clear that female students' intersecting identities with disabilities make them vulnerable to sexual and physical violence, dating violence, and repeat victimization (Alriksson-Schmidt et al., 2010; Mitra et al., 2012; Vernon & Miller, 2002). By providing insight into Canadian schools' necessary provisions and their responsibilities to protect all their students from violence, schools must comprehend their legal obligations to educate and protect students with disabilities. The document analysis compiled numerous studies, peer-reviewed journals, and public records to evaluate the experiences of students with disabilities in Canada. It also assessed important legislation for disability rights, fiduciary duties, and vicarious liability for educators and schools.

The legal analysis exemplified the rights of students with disabilities, such as those established in *Moore v. British Columbia (Education)* (2012) and successful class-action lawsuits in *Seed v. Ontario* (2012) and *Welsh v. Ontario* (2016). The legal analysis also reinforced the need for testimonial support for individuals with disabilities and broaden the position of trust or authority to increase prosecutions and convictions.

Schools should implement a comprehensive sexuality education curriculum and a whole-school approach within their violence-prevention strategies to reduce violence against students

with disabilities. Sexual education bridges Canadian schools' legal responsibilities towards reducing violence by preventing sexual assault. A comprehensive and inclusive sexual education curriculum adheres to schools and teachers' legal responsibilities while effectively reducing violence against students with disabilities. A whole-school approach to bullying can effectively reduce discrimination against students with disabilities.

Canadian students with disabilities have fundamental rights to meaningful education and lives free from discrimination (*Constitution Act*, 1982). Through advocacy, disability awareness, and anti-violence strategies, students with disabilities can succeed in school, leading to employment and social integration. The toolkit will assist in achieving this goal by providing accessible information to educators to reduce the risk of violence against students with disabilities.

### **Future Research**

Future research on this topic should address the rates and risks of Indigenous and First Nations children with disabilities and Canada's legal responsibility toward Indigenous and First Nations children with disabilities, primarily through allocating funds and services and supporting remote communities. The critical document analysis illustrated the added disadvantage of children with disabilities living on reserves; therefore, how the Canadian government can better support these communities is worthy of increased research.

### **Non-Binary Students With Disabilities**

The data collected operated under the gender binary system. Future research should address the rates of violence towards non-binary and LGBTQ2S+ (Lesbian, Gay, Bisexual, Transgender, Queer or Questioning, Two-Spirit and numerous other identities) students with disabilities. LGBTQ2S+ are more likely to be victims of violence, and therefore, further research

should investigate the intersectionality of LGBTQ2S+ students with disabilities and how schools can reduce violence against said students.

### **Pre-and Post-Teacher Observations**

Subsequent inquiries into sexuality education curricula could access teachers' pre-and post-observations to ensure its successful implementation. Since this study did not evaluate Quebec and Ontario's sexuality education curriculums' efficiency and effectiveness, reflections and feedback from the teachers would be beneficial in ensuring the successful delivery of the material.

### **COVID-19**

Additional research could also investigate how COVID-19 has affected the prevalence rates of violence against students with disabilities. Subsequent investigators could use this thesis as a benchmark for comparison against statistics and research during and after the COVID-19 pandemic. Considering that students with disabilities were not in the classroom and were participating in school online, future studies could examine if or how COVID-19 has affected the lives of students with disabilities towards school-based violence.



## References

- Act to secure handicapped persons in the exercise of their rights with a view to achieving social, school and workplace integration, Quebec, c. 31, § 1.g (2004).  
<http://legisquebec.gouv.qc.ca/en/ShowDoc/cs/E-20.1>
- Akbaş, S., Turla, A., Karabekiroğlu, K., Pazvantoğlu, O., Keskin, T., & Böke, O. (2009). Characteristics of sexual abuse in a sample of Turkish children with and without mental retardation, referred for legal appraisal of the psychological repercussions. *Sexuality and Disability*, 27(4), 205–213. <https://doi.org/10.1007/s11195-009-9139-7>
- Alriksson-Schmidt, A., Armour, B., & Thibadeau, J. (2010). Are adolescent girls with a physical disability at increased risk for sexual violence? *Journal of School Health*, 80(7), 361-367. <https://doi.org/10.1111/j.1746-1561.2010.00514.x>
- American Psychological Association. (2019). *Publication manual of the American psychological association: 7th edition, 2020 copyright* (7th ed.). American Psychological Association.
- Americans with Disabilities Act National Network. (2017). *Guidelines for writing about people with disabilities*. ADA National Network. <https://adata.org/factsheet/ADANN-writing>
- Axelrod, P. (2010). No longer a “last resort”: The end of corporal punishment in the schools of toronto. *The Canadian Historical Review*, 91(2), 261–285.  
<https://doi.org/10.1353/can.0.0313>
- Barger, E., Wacker, J., Macy, R., & Parish, S. (2009). Sexual assault prevention for women with intellectual disabilities: A critical review of the evidence. *Intellectual and Developmental Disabilities*, 47(4), 249–262. <https://doi.org/10.1352/1934-9556-47.4.249>
- Basile, K.C., DeGue, S., Jones, K., Freire, K., Dills, J., Smith, S.G., & Raiford, J.L. (2016). *Stop SV: A technical package to prevent sexual violence*. Division of Violence Prevention,

- National Center for Injury Prevention and Control, Center for Disease Control and Prevention. <https://www.cdc.gov/violenceprevention/pdf/SV-Prevention-Technical-Package.pdf>
- Bazley v. Curry, 1999 CanLII 692 (SCC), [1999] 2 SCR 534. <http://canlii.ca/t/1fq1w>
- Bear, G. G., Mantz, L. S., Glutting, J. J., Yang, C., & Boyer, D. E. (2015). Differences in bullying victimization between students with and without disabilities. *School Psychology Review*, 44(1), 98–116. <https://doi.org/10.17105/spr44-1.98-116>
- Benedet, J. & Grant, I. (2013). A situational approach to incapacity and mental disability in sexual assault law. *SSRN Electronic Journal*. <https://doi.org/10.2139/ssrn.2201883>
- Berghs, M., Atkin, K., Graham, H., Hatton, C., & Thomas, C. (2016). Implications for public health research of models and theories of disability: a scoping study and evidence synthesis. *Public Health Research*, 4(8), ISSN 2050-4381. <https://doi.org/10.3310/phr04080>
- Bickenbach, J. (2006). International classification of functioning, disability, and health (icf/icidh). In G. L. Albrecht (Ed.), *Encyclopedia of disability* (Vol. 1, pp. 967-970). SAGE Publications, Inc., <https://www-doi-org.proxy3.library.mcgill.ca/10.4135/9781412950510.n454>
- Bill C-2, *An Act to Amend the Criminal Code (Protection of Children and Other Vulnerable Persons) and the Canadian Evidence Act*, S.C., c. 32 (2005). [https://laws-lois.justice.gc.ca/eng/annualstatutes/2005\\_32/page-1.html](https://laws-lois.justice.gc.ca/eng/annualstatutes/2005_32/page-1.html)
- Bill C-81, *An Act to Ensure a Barrier-Free Canada*, 1st Session, 42nd Parliament, c. 10 (2019). <https://www.parl.ca/DocumentViewer/en/42-1/bill/C-81/royal-assent>

Bill 13, *An Act to Amend the Education Act with Respect to Bullying and Other Matters*, 1<sup>st</sup>

Session, 40th Legislature, R.S.O. (2012). <https://www.ola.org/sites/default/files/node-files/bill/document/pdf/2012/2012-06/bill---text-40-1-en-b013ra.pdf>

Bill 56, *An Act to Prevent and Stop Bullying and Violence in Schools*, 2nd Session, 39th

Legislature, S.Q., c. 19, § 75.1.4 (2012). <https://canlii.ca/t/52mll>

Blackstone, A. (2012). *Principles of sociological inquiry: Qualitative and quantitative methods*

(Vol. 1). Saylor Foundation. [https://saylordotorg.github.io/text\\_principles-of-sociological-inquiry-qualitative-and-quantitative-methods/](https://saylordotorg.github.io/text_principles-of-sociological-inquiry-qualitative-and-quantitative-methods/)

Bowal, P., & Rollett, J. (2019, September 3). In Loco Parentis. *LawNow*.

<https://www.lawnow.org/in-loco-parentis/>

Bowen, G. A. (2009). Document analysis as a qualitative research method. *Qualitative Research*

*Journal*, 9(2), 27–40. <https://doi.org/10.3316/qrij0902027>

Burlock, A. (2017, May 29). *Women with Disabilities*. Statistics Canada.

<https://www150.statcan.gc.ca/n1/pub/89-503-x/2015001/article/14695-eng.htm>

Burry, M. (2000). A comment on the ICIDH2. *Disability & Society*, 15, 1073–1077.

<https://doi.org/10.1080/713662025>

Canada Evidence Act, R.S.C., c. C-5, § 16.3 (1985).

<https://laws-lois.justice.gc.ca/eng/acts/C-5/FullText.html>

Canadian Human Rights Act, R.S.C., c. H-6, § 3.1 (1985). [https://laws-](https://laws-lois.justice.gc.ca/eng/acts/h-6/)

[lois.justice.gc.ca/eng/acts/h-6/](https://laws-lois.justice.gc.ca/eng/acts/h-6/)

Canadian Human Rights Commission. (2015). *The rights of persons with disabilities to equality*

*and non-discrimination: Monitoring the implementation of the UN convention of the rights of persons with disabilities in Canada*. (Cat.HR4-29/2015E-PDF).

<https://www.chrc-ccdp.gc.ca/eng/content/rights-persons-disabilities-equality-and-non-discrimination>

Canadian Human Rights Commission. (2017). *Left out: Challenges faced by persons with disabilities in Canada's schools*. (Cat. No. HR4-41/2017E-PDF).

<https://www.chrc-ccdp.gc.ca/eng/content/left-out-challenges-faced-persons-disabilities-canadas-schools>

Canadian Institutes of Health Research. (2012, September 24). *Tackling Bullying - CIHR*.

Government of Canada. <https://cihr-irsc.gc.ca/e/45822.html>

Cappadocia, M. C., Weiss, J. A., & Pepler, D. (2011). Bullying experiences among children and youth with autism spectrum disorders. *Journal of Autism and Developmental Disorders*, 42(2), 266–277. <https://doi.org/10.1007/s10803-011-1241-x>

Cavanaugh et al. v. Grenville Christian College et al., 2020 ONSC 1133. <http://canlii.ca/t/j6460>

Charter of Human Rights and Freedoms, c-12, § 10 (1975). LegisQuebec.

<http://legisquebec.gouv.qc.ca/en/showdoc/cs/c-12>

Child, Youth and Family Services Act, S.O., c. 14, Sched. 1 (2017).

<https://www.ontario.ca/laws/statute/17c14>

Christle, C. A., Jolivet, K., & Nelson, C. M. (2007). School characteristics related to high school dropout rates. *Remedial and Special Education*, 28(6), 325–339.

<https://doi.org/10.1177/07419325070280060201>

C.O. v. Williamson, 2020 ONSC 3874. <http://canlii.ca/t/j8vtm>

Constitution Act, 1982, Schedule B to the Canada Act 1982 (UK), c 11, s 15 (1982).

<https://canlii.ca/t/8q7l#sec15> [Charter of Human Rights and Freedoms]

Cotter, A. (2018). *Violent victimization of women with disabilities*. Statistics Canada.

<https://www150.statcan.gc.ca/n1/pub/85-002-x/2018001/article/54910-eng.htm>

Cotter, A., & Savage, L. (2019, December 5). *Gender-based violence and unwanted sexual behaviour in Canada, 2018: Initial findings from the survey of safety in public and private spaces*. Statistics Canada. <https://www150.statcan.gc.ca/n1/pub/85-002-x/2019001/article/00017-eng.htm>

Council of Canadians with Disabilities. (2011, February). *UN convention on the rights of persons with disabilities: Making domestic implementation real and meaningful*.

<http://www.ccdonline.ca/en/international/un/canada/making-domestic-implementation-real-and-meaningful-feb2011>

Criminal Code, RSC 1985, c. C-46, s. 153.1(1) <https://laws-lois.justice.gc.ca/eng/acts/C-46/page-35.html?txthl=disability#s-153.1>

Crooks, C. V., Scott, K. L., Wolfe, D. A., Chiodo, D., & Killip, S. (2007). Understanding the link between childhood maltreatment and violent delinquency: What do schools have to add? *Child Maltreatment*, 12(3), 269–280. <https://doi.org/10.1177/1077559507301843>

Crooks, C. V., Wolfe, D. A., Hughes, R., Jaffe, P. G., & Chiodo, D. (2008). Development, evaluation and national implementation of a school-based program to reduce violence and related risk behaviours: Lessons from the fourth R. *IPC Review*, 2, 109–135.

<https://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.605.9625&rep=rep1&type=pdf>

Crow, L. (1996) Including all of our lives: Renewing the social model of disability. In J. Morris, *Encounters with strangers: Feminism and disability* (pp. 206-226). London: Women's Press.

- Davis, S., Howell, P., & Cooke, F. (2002). Sociodynamic relationships between children who stutter and their non-stuttering classmates. *Journal of Child Psychology and Psychiatry*, 43(7), 939–947. <https://doi.org/10.1111/1469-7610.00093>
- Department of Justice Canada. (2015, January 7). *Bill C-46: Records applications post-mills, A caselaw review*. [https://www.justice.gc.ca/eng/rp-pr/csj-sjc/ccs-ajc/rr06\\_vic2/p3\\_4.html#f88](https://www.justice.gc.ca/eng/rp-pr/csj-sjc/ccs-ajc/rr06_vic2/p3_4.html#f88)
- Department of Justice Canada. (2017, July 26). *About family violence*. <https://www.justice.gc.ca/eng/cj-jp/fv-vf/about-apropos.html#phys>
- Devlin, R., & Pothier, D. (2006). Introduction: Toward a critical theory of dis-citizenship. In D. Pothier & R. Devlin (Eds.), *Critical disability theory: Essays in philosophy, politics, policy, and law*. Toronto, ON: UBC Press.
- Dixon, S. (2005). Inclusion — Not segregation or integration is where a student with special needs belongs. *The Journal of Educational Thought (JET) / Revue De La Pensée Éducative*, 39(1), 33-53. <http://www.jstor.org/stable/23767481>
- Doll, B., & Swearer, S. M. (2006). Cognitive-behavioral interventions for participants in bullying and coercion. In R. B. Mennuti, A. Freeman, & R. W. Christner (Eds.), *Cognitive-behavioral interventions in educational settings* (pp. 183–201). London: Routledge
- Dube, S. R., Anda, R. F., Whitfield, C. L., Brown, D. W., Felitti, V. J., Dong, M., & Giles, W. H. (2005). Long-term consequences of childhood sexual abuse by gender of victim. *American Journal of Preventive Medicine*, 28(5), 430–438. <https://doi.org/10.1016/j.amepre.2005.01.015>

Eaton v. Brant County Board of Education, 1996 CarswellOnt 5035, 1996 CarswellOnt 5036, [1997] 1 S.C.R. 241. <http://canlii.ca/t/1fr3z>

Education Act, R.S.O. 1990, c. E.2. (1990). <https://www.ontario.ca/laws/statute/90e02>

Education Act, S.Q., c1-13.3, §§ 1-75.1-85-96.4 (1988).

<http://legisquebec.gouv.qc.ca/en/showdoc/cs/i-13.3>

Findley, P. A., Plummer, S. B., & McMahon, S. (2016). Exploring the experiences of abuse of college students with disabilities. *Journal of Interpersonal Violence*, 31(17), 2801–23.

<https://doi.org/10.1177/0886260515581906>

Finkelstein, V. (1981) To deny or not to deny disability. In A. Brechin et al. (eds) *Handicap in a Social World*. Sevenoaks: Open University/Hodder and Stoughton

Frawley, P., & Wilson, N. J. (2016). Young people with intellectual disability talking about sexuality education and information. *Sexuality and Disability*, 34(4), 469–484.

<https://doi.org/10.1007/s11195-016-9460-x>

Furlong, M., & Morrison, G. (2000). The school in school violence. *Journal of Emotional and Behavioral Disorders*, 8(2), 71–82. <https://doi.org/10.1177/106342660000800203>

Furrie, A. (2018, November 28). *The evolution of disability data in Canada: Keeping in step with a more inclusive Canada*. Statistics Canada.

<https://www150.statcan.gc.ca/n1/pub/89-654-x/89-654-x2018003-eng.htm>

Garland-Thomson, R. (2017). Integrating disability, transforming feminist theory. In Davis, L. *The Disability Studies Reader: Vol. 5<sup>th</sup> ed.* (pp. 360-380). Routledge.

Gillies, J. (2014) Critical Disability Theory. In: Michalos A.C. (eds) *Encyclopedia of Quality of Life and Well-Being Research*. Springer, Dordrecht. [https://doi.org/10.1007/978-94-007-0753-5\\_619](https://doi.org/10.1007/978-94-007-0753-5_619)

Goar, C. (2012, February 14). Supreme Court ruling gives Canadians with mental disabilities full equality in court. *The Star*.

[https://www.thestar.com/opinion/editorialopinion/2012/02/14/supreme\\_court\\_ruling\\_gives\\_canadians\\_with\\_mental\\_disabilities\\_full\\_equality\\_in\\_court.html](https://www.thestar.com/opinion/editorialopinion/2012/02/14/supreme_court_ruling_gives_canadians_with_mental_disabilities_full_equality_in_court.html)

Goering, S. (2015). Rethinking disability: The social model of disability and chronic disease. *Current reviews in musculoskeletal medicine*, 8(2), 134–138.

<https://doi.org/10.1007/s12178-015-9273-z>

Goldberg, J. M., Sklad, M., Elfrink, T. R., Schreurs, K. M. G., Bohlmeijer, E. T., & Clarke, A. M. (2018). Effectiveness of interventions adopting a whole school approach to enhancing social and emotional development: A meta-analysis. *European Journal of Psychology of Education*, 34(4), 755–782. <https://doi.org/10.1007/s10212-018-0406-9>

Government of Canada. (2011). *Disability in Canada: A 2006 profile*.

<https://www.canada.ca/en/employment-social-development/programs/disability/arc/disability-2006.html#s8>

Government of Canada. (2018, September 7). *Rights of people with disabilities*.

<https://www.canada.ca/en/canadian-heritage/services/rights-people-disabilities.html>

Government of Quebec. (2018, February 15). *Duty to report—Reporting a situation to the Director of Youth Protection (DYP)*. <https://www.quebec.ca/en/family-and-support-for-individuals/assistance-and-support/reporting-a-situation-to-the-director-of-youth-protection/duty-to-report/>

Haynie, D. L., Nansel, T., Eitel, P., Crump, A. D., Saylor, K., Yu, K., & Simons-Morton, B. (2001). Bullies, victims, and bully/victims: *The Journal of Early Adolescence*, 21(1), 29–49. <https://doi.org/10.1177/0272431601021001002>



Hershkowitz, I., Lamb, M. E., & Horowitz, D. (2007). Victimization of children with disabilities. *The American Journal of Orthopsychiatry*, 77(4), 629–635.

<https://doi.org/10.1037/0002-9432.77.4.629>

Human Resources and Skills Development Canada. (2013). *Federal disability reference guide* (Cat. No.: HS64-17/2013E-PDF). [https://www.canada.ca/content/dam/esdc-esdc/migration/documents/eng/disability/arc/reference\\_guide.pdf](https://www.canada.ca/content/dam/esdc-esdc/migration/documents/eng/disability/arc/reference_guide.pdf)

Human Rights Code, R.S.B.C., c. 210 (1996). <http://canlii.ca/t/54r27>

Human Rights Code, R.S.O., c. H.19, § 10.1 (1990). <https://www.ontario.ca/laws/statute/90h19>

Humphrey, N., & Hebron, J. (2015). Bullying of children and adolescents with autism spectrum conditions: A ‘state of the field’ review. *International Journal of Inclusive Education*, 19(8), 845–862. <https://doi.org/10.1080/13603116.2014.981602>

Hurst, R. (2000). To revise or not to revise? *Disability & Society*, 15(7), 1083–1087. <https://doi.org/10.1080/713662026>

Inchley, J., Currie, D., Budisavljevic, S., Torsheim, T., Jåstad, A., . . . Cosma, A. Spotlight on adolescent health and well-being. Findings from the 2017/2018 Health Behaviour in School-aged Children (HBSC) survey in Europe and Canada. International report. Volume 2. Key data. Copenhagen: WHO Regional Office for Europe; 2020. Licence: CC BY-NC-SA 3.0 IGO

Johnson, K., Frawley, P., Hillier, L., & Harrison, L. (2002). Living safer sexual lives: Research and action. *Tizard Learning Disability Review*, 7(3), 4–9. <https://doi.org/10.1108/13595474200200022>

JT v. School District No. 36, 2010 BCHRT 299 (CanLII) <https://canlii.ca/t/2d5df>

- Kang, M., Lessard, D., Heston, L., & Nordmarken, S. (2017). *Introduction to Women, Gender, Sexuality Studies* [E-book]. University of Massachusetts Amherst Libraries.  
<https://openbooks.library.umass.edu/introwgss/>
- Katsiyannis, A., Counts, J., Adams, S., & Ennis, R. P. (2019). Excessive force and students with disabilities: Legal and practice considerations. *Journal of Child and Family Studies*, 28(4), 885–893. <https://doi.org/10.1007/s10826-019-01327-6>
- Kaukiainen, A., Salmivalli, C., Lagerspetz, K., Tamminen, M., Vauras, M., Mäki, H., & Poskiparta, E. (2002). Learning difficulties, social intelligence, and self-concept: Connections to bully-victim problems. *Scandinavian Journal of Psychology*, 43(3), 269–278. <https://doi.org/10.1111/1467-9450.00295>
- Kaya, F. (2015). Teachers' conceptions of giftedness and special needs of gifted students. *Tedmem*, 40(177), 59–74. <https://doi.org/10.15390/eb.2015.2885>
- Klin, A., Volkmar, F. R., & Sparrow, S. S. (2000). *Asperger Syndrome*. New York: Guilford Press.
- K.M. v. Marson, 2018 ONSC 3493. <http://canlii.ca/t/hss57>
- K.M. v. Marson, 2018 ONSC 5278. <http://canlii.ca/t/hv18w>
- Knox, E., & Conti-Ramsden, G. (2003). Bullying risks of 11-year-old children with specific language impairment (SLI): Does school placement matter? *International Journal of Language & Communication Disorders*, 38(1), 1–12.  
<https://doi.org/10.1080/13682820304817>
- Kvam, M. H. (2004). Sexual abuse of deaf children. A retrospective analysis of the prevalence and characteristics of childhood sexual abuse among deaf adults in Norway. *Child Abuse & Neglect*, 28(3), 241–51. <https://doi.org/10.1016/j.chiabu.2003.09.017>

- Lapadat, J. (2010). Thematic analysis. In A. J. Mills, G. Durepos, & E. Wiebe (Eds.), *Encyclopedia of case study research* (pp. 926-927). SAGE Publications, Inc., <https://www-doi-org.proxy3.library.mcgill.ca/10.4135/9781412957397.n342>
- Lawless, B., & Chen, Y. W. (2018). Developing a method of critical thematic analysis for qualitative communication inquiry. *Howard Journal of Communications*, 30(1), 92–106. <https://doi.org/10.1080/10646175.2018.1439423>
- Liberal Party of Canada. (2015, October). *Real change: A new plan for a strong middle class*. Liberal Party of Canada. [Archived] <https://www.liberal.ca/wp-content/uploads/2015/10/New-plan-for-a-strong-middle-class.pdf>
- Limitations Act, S.O., c. 24, Sched. B, § 16 (1) h.109 (2002). <https://www.ontario.ca/laws/statute/02l24>
- Little, L. (2002). Middle-class mothers' perceptions of peer and sibling victimization among children with Asperger's syndrome and nonverbal learning disorders. *Issues in Comprehensive Pediatric Nursing*, 25(1), 43–57. <https://doi.org/10.1080/014608602753504847>
- MacSuga-Gage, A. S., Gage, N. A., Katsiyannis, A., Hirsch, S. E., & Kisner, H. (2020). Disproportionate corporal punishment of students with disabilities and Black and Hispanic students. *Journal of Disability Policy Studies*, 1-12. <https://doi.org/10.1177/1044207320949960>
- Martin, E. J., Tobin, T. J., & Sugai, G. M. (2003). Current information on dropout prevention: Ideas from practitioners and the literature. *Preventing School Failure: Alternative Education for Children and Youth*, 47(1), 10–17. <https://doi.org/10.1080/10459880309604423>

- Martlew, M., & Hodson, J. (1991). Children with mild learning difficulties in an integrated and in a special school: Comparisons of behaviour, teasing and teachers' attitude. *British Journal of Educational Psychology*, 61(3), 355–372. <https://doi.org/10.1111/j.2044-8279.1991.tb00992.x>
- McDaniels, B., & Fleming, A. (2016). Sexuality education and intellectual disability: Time to address the challenge. *Sexuality and Disability: A Journal Devoted to the Psychological and Medical Aspects of Sexuality in Rehabilitation and Community Settings*, 34(2), 215–225. <https://doi.org/10.1007/s11195-016-9427-y>
- McGilloway, C., Smith, D., & Galvin, R. (2020). Barriers faced by adults with intellectual disabilities who experience sexual assault: a systematic review and meta-synthesis. *Journal of Applied Research in Intellectual Disabilities: Jarid*, 33(1), 51–66. <https://doi.org/10.1111/jar.12445>
- McLaughlin, M. (2006). Inclusive education. In G. L. Albrecht (Ed.), *Encyclopedia of disability* (Vol. 1, pp. 929-930). SAGE Publications, Inc., <https://www-doi-org.proxy3.library.mcgill.ca/10.4135/9781412950510.n437>
- Meekosha, H., & Shuttleworth, R. (2009). What's so 'critical' about critical disability studies? *Australian Journal of Human Rights*, 15(1), 47–75.
- Merritt, L.P. (2020). *School board liability for sexual assaults by teacher*. Torkin Manes Legal Point. <https://www.torkinmanes.com/our-resources/publications-presentations/publication/school-board-liability-for-sexual-assaults-by-teacher>
- Miller, E., Tancredi, D. J., McCauley, H. L., Decker, M. R., Virata, M., Anderson, H. A., O'Connor, B., & Silverman, J. G. (2013). One-year follow-up of a coach-delivered dating

- violence prevention program: a cluster randomized controlled trial. *American journal of preventive medicine*, 45(1), 108–112. <https://doi.org/10.1016/j.amepre.2013.03.007>
- Mitchell, C. (2010). Corporal punishment in the public schools: An analysis of federal constitutional claims. *Law and Contemporary Problems*, 73(2), 321–341.
- Mitra, M., Mouradian, V. E., & McKenna, M. (2012). Dating violence and associated health risks among high school students with disabilities. *Maternal and Child Health Journal*, 17(6), 1088–1094. <https://doi.org/10.1007/s10995-012-1091-y>
- Moffat, A. K., Redmond, G., & Raghavendra, P. (2019). The impact of social network characteristics and gender on covert bullying in Australian students with disability in the middle years. *Journal of School Violence*, 18(4), 613–629.  
<https://doi.org/10.1080/15388220.2019.1644180>
- Moisio, O.P. (2013) Critical Theory. In: Runehov A.L.C., Oviedo L. (eds) *Encyclopedia of Sciences and Religions*. Springer, Dordrecht. [https://doi.org/10.1007/978-1-4020-8265-8\\_1642](https://doi.org/10.1007/978-1-4020-8265-8_1642)
- Moore v. British Columbia (Education), 2012 SCC 61 (CanLII), [2012] 3 SCR 360.  
<http://canlii.ca/t/ftp16>
- Morgan, J. J., Mancl, D. B., Kaffar, B. J., & Ferreira, D. (2011). Creating safe environments for students with disabilities who identify as lesbian, gay, bisexual, or transgender. *Intervention in School and Clinic*, 47(1), 3–13.  
<https://doi.org/10.1177/1053451211406546>
- Myers v. Peel County Board of Education, 1981 CanLII 27 (SCC), [1981] 2 SCR 21.  
<http://canlii.ca/t/1mj1h>

Nansel, T. R., Overpeck, M., Pilla, R. S., Ruan, W. J., Simons-Morton, B., & Scheidt, P. (2001).

Bullying behaviors among US youth. *Journal of the American Medical Association*, 285(16), 2094–2100. <https://doi.org/10.1001/jama.285.16.2094>

National Disability Authority. (2000). *Appropriate terms to use*.

<http://nda.ie/Publications/Attitudes/Appropriate-Terms-to-Use-about-Disability/>

National Post. (2017, April 8). Alleged victims of physical, sexual abuse from teachers at blind school reach \$8M settlement with Ontario. <https://nationalpost.com/news/canada/alleged-victims-of-physical-sexual-abuse-from-teachers-at-blind-school-reach-8m-settlement-with-ontario>

Oliver, M., & Barnes, C. (1993). Discrimination, disability and welfare: From needs to rights. In J. Swain, V. Finkelstein, S. French, & M. Oliver (Eds.), *Disabling barriers-enabling environments* (pp. 267-277). Newbury Park, CA: Sage.

Ontario College of Teachers (2020). *Your professional and ethical standards*.

<https://www.oct.ca/members/know-your-college/your-professional-and-ethical-standards>

Ontario College of Teachers Act, S.O., c. 12 (1996). <https://www.ontario.ca/laws/statute/96o12>

Ontario College of Teachers Act, S.O., c. 12, §§ 1.27- 30.2 (1996).

<https://www.ontario.ca/laws/statute/96o12>

Ontario College of Teachers v Levert, 2002 ONOCT 15. <http://canlii.ca/t/gvdd8>

Ontario Ministry of Education. (2015). *Health and Physical Education: The Ontario Curriculum Grades 9-12*. The Ontario Curriculum.

<http://www.edu.gov.on.ca/eng/curriculum/secondary/health9to12.pdf>

Ontario Ministry of Education. (2018, October 17). *Bullying prevention and intervention*.

Policy/Program Memorandum No. 144. <http://www.edu.gov.on.ca/extra/eng/ppm/144.pdf>

Ontario Ministry of Education. (2019a, August 21). *Health and Physical Education in Grades 1-8*. <https://www.ontario.ca/document/health-and-physical-education-grades-1-8#section-1%3E>

Ontario Ministry of Education. (2019b, August 16). *Human Development and Sexual Health education by grade*. <https://www.ontario.ca/document/health-and-physical-education-grades-1-8/human-development-and-sexual-health-education-grade>

Peris, C. (2020). Sexual and physical abuse of students with disabilities: The legal responsibility to provide a preventative and inclusive sexuality curriculum in Canadian schools. *Education & Law Journal*, 29(2), 123-148.

Peris, C. (forthcoming). Barriers in reporting sexual violence: The consequences on Canadian women with disabilities. In C. Dietzel & S. Shariff (Eds.), *IMPACTS: Sexual violence in Canada: Current issues in law, education, and media*. University of Toronto Press.

Plummer, S., & Findley, P. (2012). Women with disabilities' experience with physical and sexual abuse. *Trauma, Violence, & Abuse*, 13(1), 15-29.  
<https://doi.org/10.1177/1524838011426014>

Pothier, D. (2014). *Critical disability theory: Essays in philosophy, politics, policy and law* (Ser. Law and society). UBC Press.

<http://public.ebookcentral.proquest.com/choice/publicfullrecord.aspx?p=3412304>.

Powers, L., Renker, P., Robinson-Whelen, S., Oschwald, M., Hughes, R., Swank, P., & Curry, M. (2009). Interpersonal violence and women with disabilities. *Violence Against Women*, 15(9), 1040-1069. <https://doi.org/10.1177/1077801209340309>

*Preventing Multiple Forms of Violence: A Strategic Vision for Connecting the Dots*. Atlanta, GA: Division of Violence Prevention, National Center for Injury Prevention and Control,

Centers for Disease Control and Prevention, 2016.

[https://www.cdc.gov/violenceprevention/pdf/Strategic\\_Vision.pdf](https://www.cdc.gov/violenceprevention/pdf/Strategic_Vision.pdf)

Procknow, G., Rocco, T. S., & Munn, S. L. (2017). (Dis)ableing notions of authentic leadership through the lens of critical disability theory. *Advances in Developing Human Resources*, 19(4), 362–377. <https://doi.org/10.1177/1523422317728732>

Public Health Agency of Canada. (2016, March 15). *How to recognize bullying - Canada.ca*.

Government of Canada. <https://www.canada.ca/en/public-health/services/bullying/how-recognize-bullying.html>

Public Safety Canada. (2018, January 31). *Bullying prevention in schools*. Government of Canada. <https://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/blng-prvntn-schls/index-en.aspx>

Quebec Ministry of Education. (n.d.-a). *Québec education program | Ministère de l'Éducation et ministère de l'Enseignement supérieur*. Quebec Education Program. <http://www.education.gouv.qc.ca/en/teachers/quebec-education-program/>

Quebec Ministry of Education. (n.d.-b). *Content | Ministère de l'Éducation et Ministère de l'Enseignement supérieur*. <http://www.education.gouv.qc.ca/en/teachers/dossiers/sexuality-education/content/>

Quebec Ministry of Education. (2012). Bill 56: *An act to prevent and stop bullying and violence in schools*. <http://www.education.gouv.qc.ca/en/current-initiatives/bullying-and-violence-in-the-schools/bill-56/>

Quebec Ministry of Education. (2013, August). *Organization of educational services for at-risk students and students with handicaps, social maladjustments or learning difficulties* (No. 19-7065-A).



[http://www.education.gouv.qc.ca/fileadmin/site\\_web/documents/dpse/adaptation\\_serv\\_comp/19-7065-A.pdf](http://www.education.gouv.qc.ca/fileadmin/site_web/documents/dpse/adaptation_serv_comp/19-7065-A.pdf)

Quebec Ministry of Education. (2018a, November). *Sexuality education*. Education Québec.

<http://www.education.gouv.qc.ca/en/teachers/dossiers/sexuality-education/>

Quebec Ministry of Education. (2018b, November). *Summary table- Themes and learning content in sexuality education*. Education Québec.

[http://www.education.gouv.qc.ca/fileadmin/site\\_web/documents/education/adaptation-scolaire-services-comp/Contenus\\_tableau-synthese-EN.pdf](http://www.education.gouv.qc.ca/fileadmin/site_web/documents/education/adaptation-scolaire-services-comp/Contenus_tableau-synthese-EN.pdf)

R. v. Alsadi, 2012 BCCA 183. <http://canlii.ca/t/fr506>

R. v. C.G., 1994 CanLII 215 (ON CA). [R. v. Galbraith] <http://canlii.ca/t/6jzv>

R. v. D.A.I., 2012 SCC 5 (CanLII), [2012] 1 SCR 149. <http://canlii.ca/t/fq0rb>

R. v. D.M., 2019 ONSC 5407. <http://canlii.ca/t/j2lrp>

R. v. Edwards, 2003 BCCA 47. <http://canlii.ca/t/5dx0>

R. v. Friesen, 2020 SCC 9. <http://canlii.ca/t/j64rn>

R. v. Hall, 2013 ABQB 418. <http://canlii.ca/t/g0wz0>

R. v. Levert, 2001 CanLII 8606 (ON CA). <http://canlii.ca/t/1f8w8>

R. v. McCraw, 1991 CanLII 29 (SCC), [1991] 3 SCR 72. <http://canlii.ca/t/1fshr>

R. v. Morrissey, 2000 SCC 39 (CanLII), [2000] 2 SCR 90. <http://canlii.ca/t/525j>

R. v. M.R., 2015 ONSC 7825. <http://canlii.ca/t/gn9k9>

R. v. Taylor (W.H.), 1995 CanLII 10546 (NL SC). <http://canlii.ca/t/g0978>

R. v. Thompson, 2017 SKCA 33. <http://canlii.ca/t/h3s62>

R. v. V.S., 2013 ONSC 6026. <http://canlii.ca/t/g0q96>

- Reeves, S., Albert, M., Kuper, A., & Hodges, B. D. (2008). Why use theories in qualitative research? *BMJ: British Medical Journal*, 337(aug07 3), 631–634.  
<https://doi.org/10.1136/bmj.a949>
- Rose, C. A., Espelage, D. L., & Monda-Amaya, L. E. (2009). Bullying and victimisation rates among students in general and special education: A comparative analysis. *Educational Psychology*, 29(7), 761–776. <https://doi.org/10.1080/01443410903254864>
- Rose, C. A., Monda-Amaya, L. E., & Espelage, D. L. (2011). Bullying perpetration and victimization in special education: A review of the literature. *Remedial and Special Education*, 32(2), 114–130. <https://doi.org/10.1177/0741932510361247>
- Rosen, D. B. (2006). Violence and exploitation against women and girls with disability. *Annals of the New York Academy of Sciences*, 1087(1), 170–177.  
<https://doi.org/10.1196/annals.1385.002>
- Ross v. New Brunswick School District No. 15, 1996 CanLII 237 (SCC), [1996] 1 SCR 825.  
<http://canlii.ca/t/1frbr>
- Scharffs, B. G., & Welch, J. W. (2005). An analytic framework for understanding and evaluating the fiduciary duties of educators. *SSRN Electronic Journal*, 159–230.  
<https://doi.org/10.2139/ssrn.2598765>
- Seed v. Ontario, 2012 ONSC 2681. <http://canlii.ca/t/fr77f>
- Seed v Ontario, 2017 ONSC 3534. <https://canlii.ca/t/h45zp>
- Shakespeare, T., Bickenbach, J., Pfeiffer, D., & Watson, N. (2006). Models. In G. L. Albrecht (Ed.), *Encyclopedia of disability* (Vol. 1, pp. 1102-1108). SAGE Publications, Inc.,  
<https://www-doi-org.proxy3.library.mcgill.ca/10.4135/9781412950510.n547>

- Shakespeare, T. (2006). *Disability rights and wrongs* (1st ed.). Routledge. <https://doi-org.proxy3.library.mcgill.ca/10.4324/9780203640098>
- Shakespeare, T. (2017). The social model of disability. In L.J. Davis (5<sup>th</sup> ed.), *The disabilities studies reader* (pp. 195-203). Routledge.
- Simpson, C. G., Rose, C. A., & Ellis, S. K. (2016). Gender discrepancies and victimization of students with disabilities. *Remedial and Special Education*, 37(5), 296–307. <https://doi.org/10.1177/0741932516646082>
- Stalker, K., & McArthur, K. (2012). Child abuse, child protection and disabled children: A review of recent research. *Child Abuse Review*, 21(1), 24–40. <https://doi.org/10.1002/car.1154>
- Statistics Canada. (2007, May 1). *Children with disabilities and the educational system — A provincial perspective*. <https://www150.statcan.gc.ca/n1/pub/81-004-x/2007001/9631-eng.htm>
- Statistics Canada. (2018, February 14). *Chapter D The learning environment and organization of schools*. <https://www150.statcan.gc.ca/n1/pub/81-604-x/2017001/ch/chd-eng.htm#:~:text=For%20Grades%201%20to%206%2C%20the%20instructional%20day%20is%205,days%20in%20a%20school%20year>.
- Statistics Canada. (2019, September 10). *Educational experiences of youth with disabilities*. <https://www150.statcan.gc.ca/n1/pub/11-627-m/11-627-m2019049-eng.htm>
- Status of Women Canada. (2020, October 28). *About Gender-Based violence*. Government of Canada. <https://cfc-swc.gc.ca/violence/knowledge-connaissance/about-apropos-en.html>

- Sullivan, P. M., & Knutson, J. F. (1998). The association between child maltreatment and disabilities in a hospital-based epidemiological study. *Child Abuse & Neglect*, 22(4), 271–288. [https://doi.org/10.1016/S0145-2134\(97\)00175-0](https://doi.org/10.1016/S0145-2134(97)00175-0)
- Sullivan, P. M., & Knutson, J. F. (2000). Maltreatment and disabilities: A population-based epidemiological study. *Child Abuse & Neglect*, 24(10), 1257–1273. [https://doi.org/10.1016/S0145-2134\(00\)00190-3](https://doi.org/10.1016/S0145-2134(00)00190-3)
- Sweeting, H., & West, P. (2001). Being different: Correlates of the experience of teasing and bullying at age 11. *Research Papers in Education*, 16(3), 225–246. <https://doi.org/10.1080/02671520110058679>
- Taylor, K., & Svechnikova, K. (2010). *What does it cost to access justice in Canada? How much is “too much?” And how do we know?* The Canadian Forum on Civil Justice. <http://cfcj-fcjc.org/sites/default/files/docs/2010/cost-litreview-en.pdf>
- United Nations Enable. (2020, September 30). *Convention on the rights of persons with disabilities (CRPD) | United Nations Enable*. United Nations Enable - Disability. <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html>
- Vecova Centre for Disability Services and Research. (2011, February). *Violence against women with disabilities- Violence prevention review*. Canadian Women. [https://www.canadianwomen.org/wp-content/uploads/2017/09/PDF-VP-Resources-Vecova\\_CWF\\_-Women-with-Disabilities\\_-2011.pdf](https://www.canadianwomen.org/wp-content/uploads/2017/09/PDF-VP-Resources-Vecova_CWF_-Women-with-Disabilities_-2011.pdf)
- Vernon, M., & Miller, K. R. (2002). Issues in the sexual molestation of deaf youth. *American Annals of the Deaf*, 147(5), 28–36. <https://doi.org/10.1353/aad.2012.0218>
- Wall v. Newbridge Academy, 2016 NSSM 33. <http://canlii.ca/t/gv2wq>

- Wallis, C. R., & Woodworth, M. D. (2020). Child sexual abuse: An examination of individual and abuse characteristics that may impact delays of disclosure. *Child Abuse & Neglect*, 107, 104604. <https://doi.org/10.1016/j.chiabu.2020.104604>
- Ware, L. (2006). Mainstreaming. In G. L. Albrecht (Ed.), *Encyclopedia of disability* (Vol. 1, pp. 1053-1055). SAGE Publications, Inc., <https://www-doi-org.proxy3.library.mcgill.ca/10.4135/9781412950510.n519>
- Watson, N., & Vehmas, S. (Eds.). (2019). *Routledge handbook of disability studies* (2nd ed.). Routledge. <https://doi-org.proxy3.library.mcgill.ca/10.4324/9780429430817>
- Watt, D., & Fuerst, M.K. (2017). *The 2018 Annotated Tremeeear's Criminal Code*. Thomson Reuters.
- Welsh v. Ontario, 2016 ONSC 5319. <http://canlii.ca/t/gt34d>
- Welsh v. Ontario, 2018 ONSC 3217. <http://canlii.ca/t/hs67c>
- Whitted, K. S., & Dupper, D. R. (2005). Best practices for preventing or reducing bullying in schools. *Children & Schools*, 27(3), 167–175. <https://doi.org/10.1093/cs/27.3.167>
- Williams, G. (2001). Theorizing disability. In G. L. Albrecht, K. Seelman, & M. Bury, *Handbook of disability studies* (pp. 123-144). SAGE Publications, Inc., <https://www-doi-org.proxy3.library.mcgill.ca/10.4135/9781412976251.n5>
- World Health Organization. (2002). *World report on violence and health* (ISBN 92 4 154561 5). [https://www.who.int/violence\\_injury\\_prevention/violence/global\\_campaign/en/chap6.pdf](https://www.who.int/violence_injury_prevention/violence/global_campaign/en/chap6.pdf)
- Wolfe, P., & Blanchett, W. (2003). Sex education for students with disabilities. *TEACHING Exceptional Children*, 36(1), 46-51. <https://doi.org/10.1177/004005990303600106>
- Wolfe, D. A., Crooks, C. V., Chiodo, D., Hughes, R., & Ellis, W. (2011). Observations of adolescent peer resistance skills following a classroom-based healthy relationship program:

A post-intervention comparison. *Prevention Science*, 13(2), 196–205.

<https://doi.org/10.1007/s11121-011-0256-z>

Wolfe, D. A., Crooks, C., Jaffe, P., Chiodo, D., Hughes, R., Ellis, W., Stitt, L., & Donner, A.

(2009). A school-based program to prevent adolescent dating violence. *Archives of*

*Pediatrics & Adolescent Medicine*, 163(8). <https://doi.org/10.1001/archpediatrics.2009.69>

Yin, R. K. (2014). *Case study research: Design and methods* (5th ed.). SAGE.

Ymous, A., Spiel, K., Keyes, O., Williams, R. M., Good, J., Hornecker, E., & Bennett, C. L.

(2020). “I am just terrified of my future” - Epistemic violence in disability related

technology research. *Extended Abstracts of the 2020 CHI Conference on Human Factors*

*in Computing Systems*. Published. <https://doi.org/10.1145/3334480.3381828>

APPENDIX A:

# Teacher's Toolkit



*Information and Strategies to  
Support Students with Disabilities*

Written by Carolyn Peris

Based on her article:

Peris, C. (2020). Sexual and physical abuse of students with disabilities: The legal responsibility to provide a preventative and inclusive sexuality curriculum in Canadian schools. *Education & Law Journal*, 29(2), 123-148.

## DID YOU KNOW?

- *Students with disabilities are more likely to be victims of bullying, sexual and physical violence.*

(Canadian Human Rights Commission, 2017; Cappadocia et al., 2011; Hershkowitz et al., 2007)

- *Girls with disabilities are more likely to be victims of sexual violence, dating violence and repeat victimization.*

(Aliksson-Schmidt et al., 2010; Mitra et al., 2012; Vernon & Miller, 2002)

- *Teachers have a legal responsibility to support and teach their students about violence prevention, including sexual violence.*







## IN CANADA

- *Canadian students with disabilities face lack of funding, services, support, accommodations and disability support for First Nation reserves.*

*(Canadian Human Rights Commission, 2017)*

- Canadian women with disabilities are less likely to obtain a certificate, diploma or degree from an educational setting.

*(Burlock, 2017)*

- 75% of students with autism are victims of bullying.

*(Cappadocia et al., 2011)*

- 40% of Canadian women with disabilities were sexually or physically abused in their childhood.

*(Cotter, 2018)*

## GIRLS WITH DISABILITIES

- Before the age of 15, nearly 24% will be victims of sexual abuse by an adult.

(Cotter, 2018)

- More likely to experience dating violence and sexual violence than non-disabled girls.

(Mitra et al., 2012)

- Adolescent girls with physical disabilities are more likely to experience sexual violence than their nondisabled peers.

(Alriksson-Schmidt et al., 2010)

- 3.6xs more likely to experience dating violence.

(Mitra et al., 2012)



Photo by Bill Oxford on Unsplash

## LEGALLY SPEAKING

- Schools are legally responsible for providing a safe learning environment.
- Teachers are responsible for creating a learning environment free from bullying and discrimination.

\*\*\*This includes cyberspace.

(Bill 56, 2012)

**If you know that a child is being bullied/ exploited/ taken advantage of, and you do not respond appropriately, the school can be held liable.**

- Schools cannot refuse services to students with disabilities when it is in the child's best interest, and budgetary restrictions are no excuse.

(*Moore v. British Columbia (Ministry of Education)*, 2012)

## SEXUALITY EDUCATION



Photo by Reproductive Health Supplies Coalition on Unsplash

- Educators must modify and adapt provincial curricula to best suit the students' needs and implement an inclusive and comprehensive sexuality education curriculum.
- Students with disabilities deserve more than just the 'biological aspects' of sex ed.  

(Frawley & Wilson, 2016)
- The developmental periods of childhood and adolescence are essential building-blocks for adult behaviours.  

(Preventing Multiple Forms of Violence, 2016).
- Teachers are integral to the detection of sexual violence.  

(Alriksson-Schmidt 2010; Vernon & Miller, 2002)

# 10 Reasons Why Sex Ed is Important for Students with Disabilities

(and all students)



1. Reduces the rate of risky sexual behaviour

(Basile et al., 2016)

2. Reduces risk of sexual violence

(Wolfe & Blanchett, 2003)

3. Reduces risk of unwanted pregnancies

(Wolfe & Blanchett, 2003)

4. Reduces risk of sexually transmitted infections

(Wolfe & Blanchett, 2003)

5. Reduces risk of sexually transmitted diseases

(McDaniels & Fleming, 2016)

6. Reduces risk of sexual abuse

(McDaniels & Fleming, 2016)

7. Reduces risk of sexual exploitation

(McDaniels & Fleming, 2016)

8. Reduces risk of misinformation

(McDaniels & Fleming, 2016)

9. Important part of development for all adolescents

(McDaniels & Fleming, 2016)

10. Provides knowledge and skills for positive sexual identity

(Wolfe & Blanchett, 2003)

## Tips and Strategies for Teaching Sex Ed

- ❖ FAMILIARIZE YOURSELF with the sexuality education curriculum
- ❖ Understand that IT IS IMPORTANT and LEGALLY MANDATED to teach
- ❖ SHARE RESOURCES and lesson plans with colleagues
- ❖ Ask for professional development seminars on HOW TO TEACH SEX ED PROPERLY
- ❖ Find creative ways to INTEGRATE sex ed into different subject matters
- ❖ *You can help reduce sexual violence against girls with disabilities by teaching a comprehensive sex ed program.*



## REFERENCES

- Alriksson-Schmidt, A., Armour, B., & Thibadeau, J. (2010). Are adolescent girls with a physical disability at increased risk for sexual violence? *Journal of School Health, 80*(7), 361-367. <https://doi.org/10.1111/j.1746-1561.2010.00514.x>
- Bill C-81, *An Act to Ensure a Barrier-Free Canada*, 1st Session, 42nd Parliament, c. 10 (2019). <https://www.parl.ca/DocumentViewer/en/42-1/bill/C-81/royal-assent>
- Basile, K.C., DeGue, S., Jones, K., Freire, K., Dills, J., Smith, S.G., & Raiford, J.L. (2016). *Stop SV: A technical package to prevent sexual violence*. Division of Violence Prevention, National Center for Injury Prevention and Control, Center for Disease Control and Prevention. <https://www.cdc.gov/violenceprevention/pdf/SV-Prevention-Technical-Package.pdf>
- Burlock, A. (2017, May 29). *Women with Disabilities*. Statistic Canada. <https://www150.statcan.gc.ca/n1/pub/89-503-x/2015001/article/14695-eng.htm>
- Canadian Human Rights Commission. (2015). *The rights of persons with disabilities to equality and non-discrimination: Monitoring the implementation of the UN convention of the rights of persons with disabilities in Canada*. (Cat.HR4-29/2015E-PDF). <https://www.chrc-ccdp.gc.ca/enq/content/rights-persons-disabilities-equality-and-non-discrimination>
- Cappadocia, M. C., Weiss, J. A., & Pepler, D. (2011). Bullying experiences among children and youth with autism spectrum disorders. *Journal of Autism and Developmental Disorders, 41*(2), 266-277. <https://doi.org/10.1007/s10803-011-1241-x>
- Cotter, A. (2018). *Violent victimization of women with disabilities*. Statistic Canada. <https://www150.statcan.gc.ca/n1/pub/85-002-x/2018001/article/54910-eng.htm>
- Frawley, P., & Wilson, N. J. (2016). Young people with intellectual disability talking about sexuality education and information. *Sexuality and Disability, 34*(4), 469-484. <https://doi.org/10.1007/s11195-016-9460-x>
- Hershkowitz, I., Lamb, M. E., & Horowitz, D. (2007). Victimization of children with disabilities. *The American Journal of Orthopsychiatry, 77*(4), 629-635. <https://doi.org/10.1037/0002-9432.77.4.629>
- McDaniels, B., & Fleming, A. (2016). Sexuality education and intellectual disability: Time to address the challenge. *Sexuality and Disability: A Journal Devoted to the Psychological and Medical Aspects of Sexuality in Rehabilitation and Community Settings, 34*(2), 215-225. <https://doi.org/10.1007/s11195-016-9427-y>
- Mitra, M., Mouradian, V. E., & McKenna, M. (2012). Dating violence and associated health risks among high school students with disabilities. *Maternal and Child Health Journal, 17*(6), 1088-1094. <https://doi.org/10.1007/s10995-012-1091-y>
- Moore v. British Columbia (Education), 2012 SCC 61 (CanLII), [2012] 3 SCR 360. <http://canlii.ca/t/ftp16>
- Preventing Multiple Forms of Violence: A Strategic Vision for Connecting the Dots*. Atlanta, GA: Division of Violence Prevention, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention, 2016. [https://www.cdc.gov/violenceprevention/pdf/Strategic\\_Vision.pdf](https://www.cdc.gov/violenceprevention/pdf/Strategic_Vision.pdf)
- Quebec Ministry of Education. (2012). Bill 56: *An act to prevent and stop bullying and violence in schools*. <http://www.education.gouv.qc.ca/en/current-initiatives/bullying-and-violence-in-the-schools/bill-56/>
- Vernon, M., & Miller, K. R. (2002). Issues in the sexual molestation of deaf youth. *American Annals of the Deaf, 147*(5), 28-36. <https://doi.org/10.1353/aad.2012.0218>
- Wolfe, P., & Blanchett, W. (2003). Sex education for students with disabilities. *TEACHING Exceptional Children, 36*(1), 46-51. <https://doi.org/10.1177/004005990303600106>