HEALTH JUSTICE PROGRAM

Health Justice Tuesdays

Health, Disability, and Human Rights Law

November 19, 2019

Kerri Joffe and Dr. Laurie Green

Health Justice Tuesdays – *Supported* by:

Legal Aid Ontario (Program Funding)
St. Michael's Family Health Team and Hospital (In Kind Support)
AFHTO Bright Lights Award
Nasmith Award (DFCM)

Organized by Education Subcommittee:
Gary Bloch, Emily Hill, J. Stone, R. Shoucri

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Gaa kina gwii waabamaa debwewin
All those who seek the truth
Aboriginal Legal Services of Toronto

ARCH Disability Law Centre

HALCO
HIV & AIDS Legal Clinic Ontario

NLS

St. Michael's
Inspired Care.
Inspiring Science.

Academic Family Health Team

Presenters

Dr. Laurie Green
Staff Physician, St. Michael's

Kerri Joffe
Staff Lawyer, ARCH Disability Law Centre

Presenter Disclosure

Faculty: Dr. Laurie Green

Relationships with commercial interests:

- **Grants/Research Support:** none
- **Speakers Bureau/Honoraria:** none
- **Consulting Fees:** none
- **Other:** Staff Physician, St. Michael's Hospital, Family Health Team

Faculty: Kerri Joffe

Relationships with commercial interests:

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- **Consulting Fees:** none
- **Other:** Staff Lawyer, ARCH Disability Law Centre

Disclosing Commercial Support

This program has not received financial support nor in-kind support from any commercial interests

Potential for conflict(s) of interest:

- *None*

Mitigating Potential Bias

- *Not applicable*

Objectives

- *Understand the relationship between disability and SDOH factors*
- *acquire new strategies to implement accommodations to provide accessible medical services*
- *identify patients who may have a legal issue related to their disability*
- *provide patients with relevant legal resources and appropriate referrals to legal services*

Agenda

1. *Backgrounder – Medical/ Legal*

2. *Human Rights Law and Duty to Accommodate Patients with Disabilities*

3. *Common Legal Issues Experienced by Persons with Disabilities*

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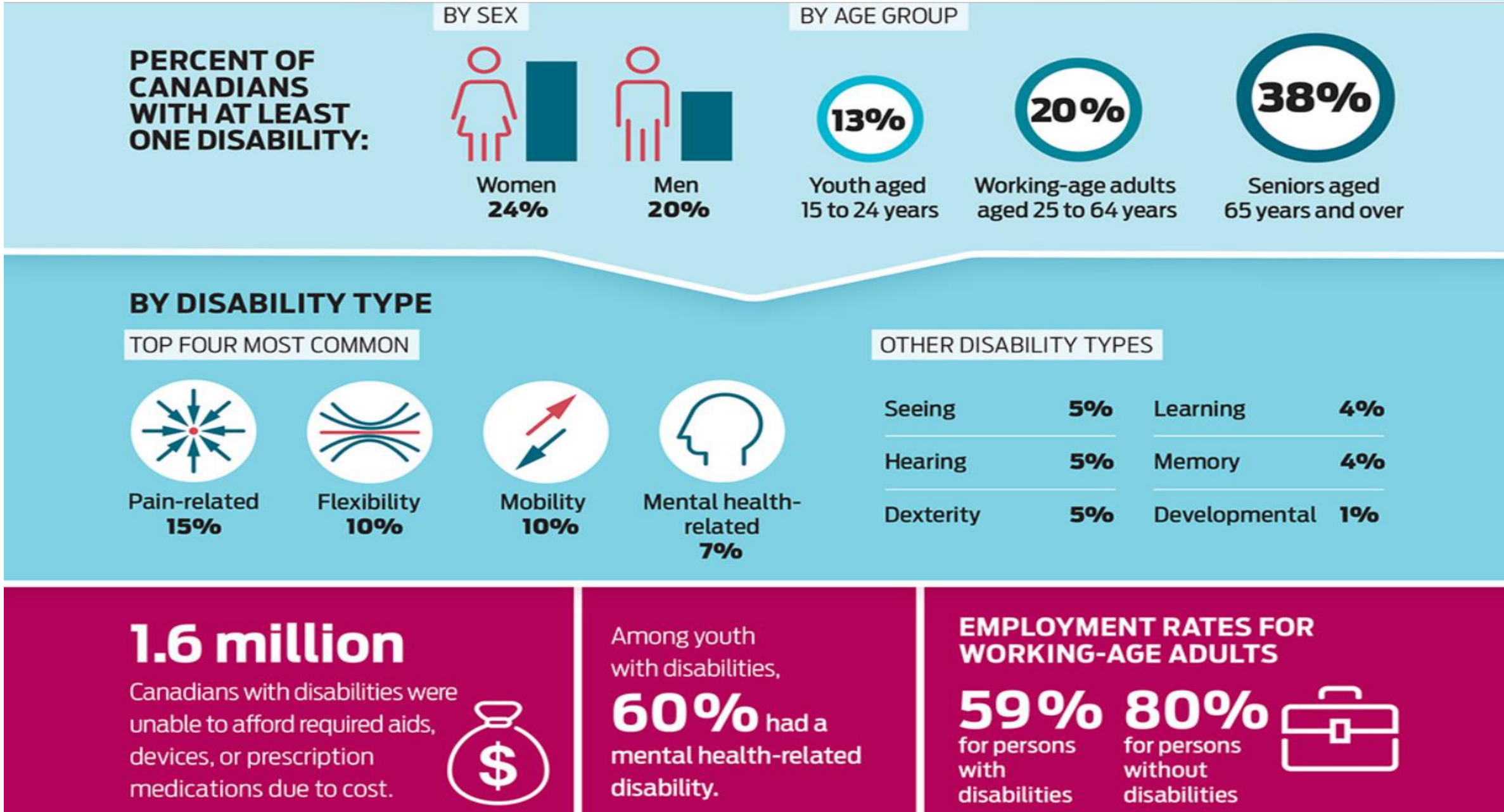
1. Backgrounder – Medical/ Legal

Statistics Canada 2017



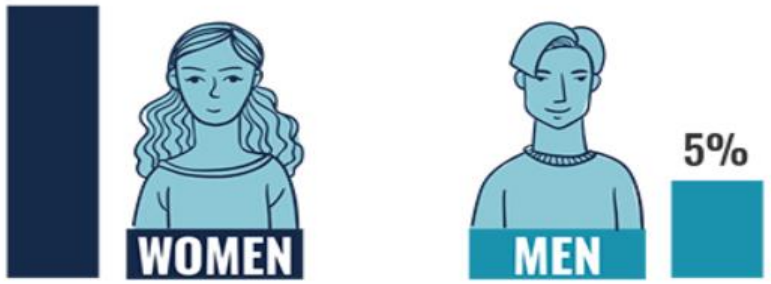
Statistics Canada 2017 – Comorbidity

OVER 2 MILLION

Canadians aged 15 years and over have a mental health-related disability. This represents **7%** of Canadian adults and youth.

Among youth, **women** are twice as likely as **men** to have a mental health-related disability.

Youth aged 15 to 24 years



Four of the most frequently reported mental health-related conditions are:

ANXIETY | DEPRESSION | BIPOLAR DISORDER SEVERE STRESS DISORDERS

4 IN 5

Canadians with a mental health-related disability **also** have **at least one other type of disability**.

63 PERCENT

of those with a mental health-related disability also have a pain-related disability.

Demographics
Disability in Ontario

Statistics Canada 2017

- *lower educational achievement levels*
- *higher unemployment rate*
- *more likely to have low income status*
- *less likely to live in adequate, affordable, accessible housing*

Experience difficulties accessing employment, housing and various services throughout Ontario.

Disability and Health Outcomes

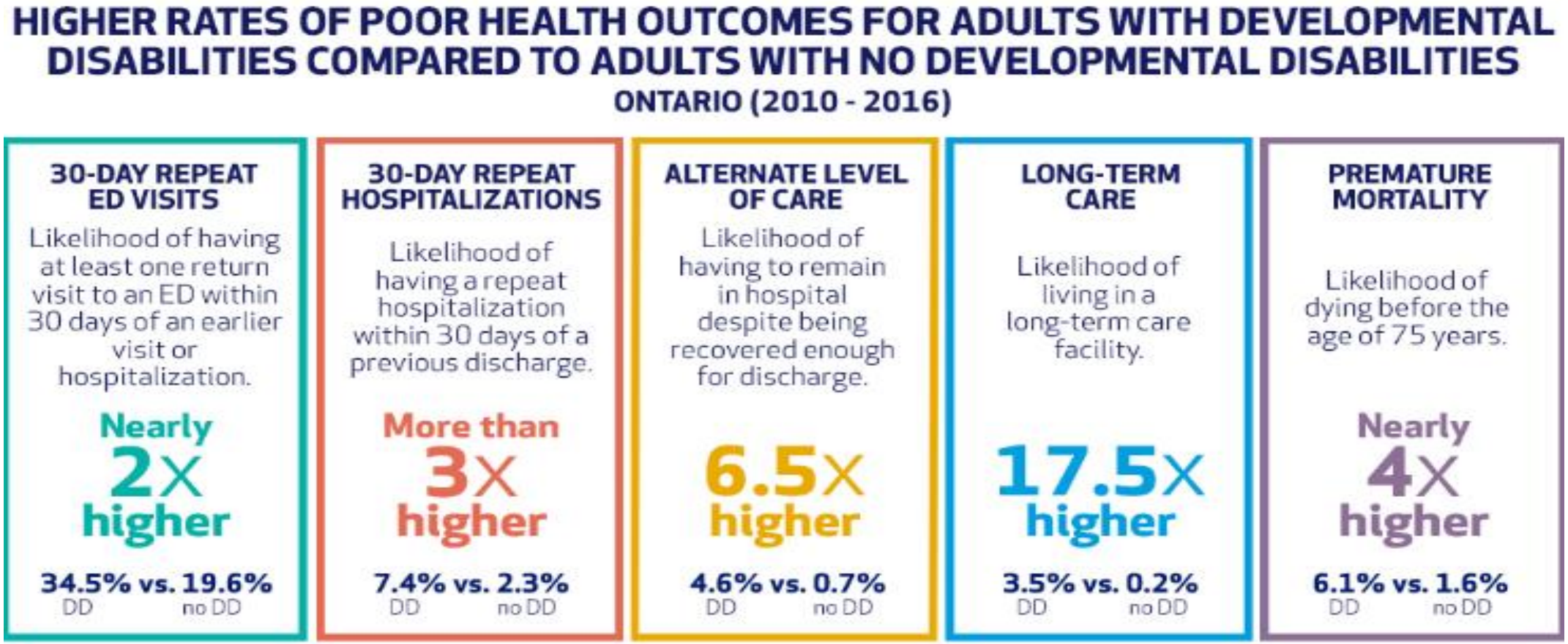
WHO World Report on Disability 2011

Increased risk of:

- *Co-morbid conditions e.g. diabetes/obesity*
- *Health risk behaviours*
- *Exposure to violence*
- *Unintentional injury*
- *Premature death*

https://www.who.int/disabilities/world_report/2011/en/

Developmental Disability and Health Outcomes



Lin E et al. *Addressing Gaps in the Health Care Services Used by Adults with Developmental Disabilities in Ontario*. ICES; 2019.

ICES *Data. Discovery. Better Health.*

Health Care Access Research and Developmental Disabilities

UNIVERSITY OF ONTARIO INSTITUTE OF TECHNOLOGY

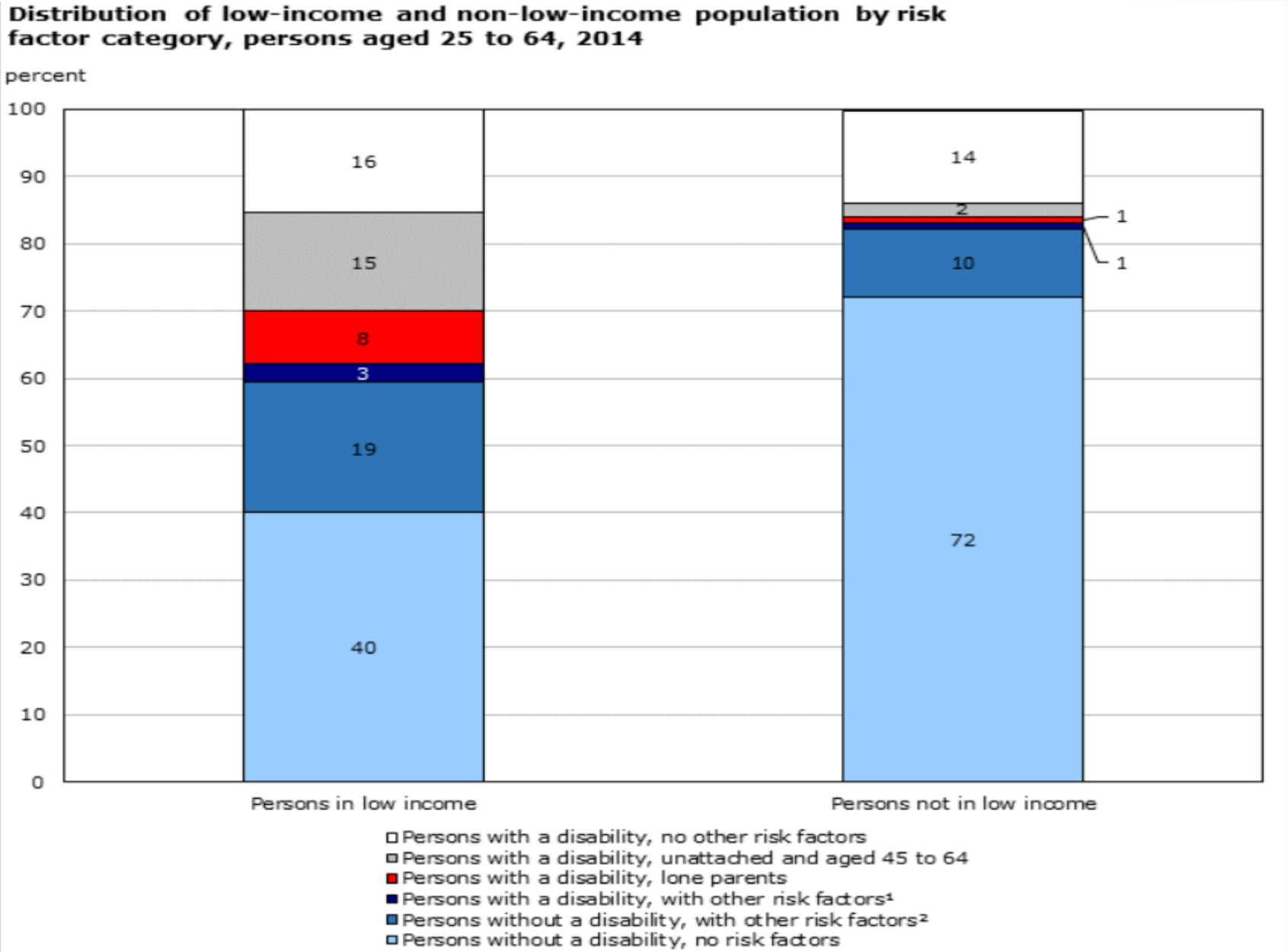
camh mental health is health

Discrimination and Disability

Ableism *- attitudes in society that devalue and limit the potential of persons with disabilities*

"Disability" *- the most frequently cited ground of discrimination in human rights cases in Ontario*

Intersectionality *– people with disabilities experience intersectional discrimination based on disability and race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, marital status, and/or family status*



1. Includes persons with a disability who are recent immigrants or Aboriginal persons and who are not lone parents or unattached persons aged 45 to 64.
2. Includes recent immigrants, lone parents, and those who reported an Aboriginal identity.
Source: Statistics Canada, Longitudinal and International Study of Adults (LISA), 2014.

https://www150.statcan.gc.ca/n1/pub/75-006-x/2017001/article/54854-eng.htm

Persons with a disability make up 41% of the low-income population, compared with 18% of the non-low-income population.

Intersectionality

People who have other risks + disability are over-represented in low-income population

CPSO

Professional Obligations and Human Rights Policy

- ***Must act in patients' best interest***
- ***Patient rights, autonomy, dignity, diversity respected***
- ***Must comply with Ontario's Human Rights Code***
- *Duty to accommodate needs of patients*
- ***May limit health services if outside clinical competence, contrary to conscience/religious beliefs (must provide referral)***

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2. Human Rights Law and Duty to Accommodate Patients with Disabilities

Ontario's *Human Rights Code*

Protects people from discrimination based on their disability in five "social areas":

- ***Receiving goods, services and using facilities***
- ***Housing***
- ***Contracts with others***
- ***Employment***
- ***Membership in a union, professional association or other vocational association***

Disability Accommodation

- *As service providers, health care professionals have a legal obligation to accommodate clients with disabilities, unless accommodating would cause undue hardship*

- *Undue hardship = unaffordable costs, no outside sources of funding, jeopardize health and safety of others*

Disability Accommodation

- ***Accommodation means steps that must be taken to prevent or avoid discrimination – to allow for full participation or equal access to the service***

Examples: Disability Accommodation in Services

- *Ensure building is physically accessible (waiting rooms, exam rooms, building entrance, washrooms, hallways, etc)*
- *Provide written materials in alternate formats for people with vision disabilities (large print, Braille, accessible electronic formats)*
- *Provide a longer appointment or several short appointments to allow patient to absorb information*
- *Give patients with cognitive or emotional disabilities more time to consider options and make a decision*

Examples: Disability Accommodation in Services

- *Be prepared with information on accessible routes to your office*
- *When scheduling appointments, ask about accommodations*
- *Provide notes or summary of appointment, decision to be made*
- *Use clear language or plain language*
- *Allow for use of symbol boards, computer, sip n puff machines, communication intermediaries, deaf-blind intervenors, etc for communication*

Practical medical tips

1. *Adapt your office practices*
   Appointment alerts for longer appointments
   Recording on appointment sheet re: special accommodations (e.g. direct to exam room, wheeltrans)

2. *Use adapted patient resources*
   Easyhealth.org.uk - health videos
   Today's visit template in EMR

3. *Use equipment in accommodative way if patient approved – e.g. word document for hearing loss*

4. *Have a resource list of consultants and services*

Support Persons

- *Patient may bring a support person to help him/her feel comfortable*
- *Patient must consent to the support person being present during appointment*
- *Role of support person:*
  - *help to communicate information in a way the patient can understand*
  - *help patient remember all information given at the appointment*
  - *ask questions to clarify information*
  - *remind patient of his/her questions, concerns*

Support Persons

- *Communicate with the patient directly*
- *Patient makes his/her own decision*

Case 1

21 y/o woman with autism and moderate intellectual delay brought to the office by her mother for management of 'tantrums', landlord has threatened eviction due to noise complaints

What actions do you need to take as the physician during this assessment?

What legal issues may exist?

Case 1 - outcomes

- *obtain consent from patient for mom to be present*
- *-assess patient's capacity to consent to treatment*
- *-ensure mom plays role of support person, doesn't speak for patient or make decisions for patient*
- *-determine whether patient needs any accommodations (plain language? Provide notes of appointment? Etc?)*
- *Accommodations are paramount to engage in shared decision making for investigations and treatment*
- *assess health (H.E.L.P), access services, write letter*
- *landlord threatening to evict is a legal issue – refer to HJI or neighbourhood clinic for legal advice*

Case 2

26 year old female university student with anxiety disorder, major depressive disorder and ADHD

Multiple life stressors

Reduced course load to part-time

OSAP cut off, unable to use university facilities

What do you recommend? Is this a legal issue?

Case 2 - outcomes

Recommendations:

- *Assess/treat according to guidelines + prior assessments*
- *Refer to accessibility services*
- *Letter to university re: 'required' accommodations due to disease-related impairments/restrictions - template letter for ADHD https://www.caddra.ca/etoolkit-forms/*

Legal:

- *OSAP terminated - refer to ARCH for summary advice*
- *? Receiving accommodations at university - ARCH*

‘Legal Prevention’

1. *Request prior assessments:*

Psychology, medical, OT, SLP

2. *Optimize health – screen for mental health*
3. *Writing letters about accommodations – see tip sheet*
4. *Connect to disability-related advocacy group if patient in agreement*

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3. Common Legal Issues Experienced by Persons with Disabilities

Common Legal Issues for Persons with Disabilities

- *Discrimination in education*
- *Discrimination in employment*
- *Access to services*
- *Discrimination in rental housing*
- *Income Insecurity*
- *Legal Capacity Issues*
- *Mental health co-morbidity*

Legal Information Resources

ARCH Disability Law Centre

- *www.archdisabilitylaw.ca/resources/fact-sheets/*
- *Attendant services, accessibility laws, human rights and education, abuse, advocacy tips*

Steps to Justice

- *www.stepstojustice.ca*
- *Criminal law, debt, family law, refugee law, health and disability, housing, human rights, income assistance, etc*

Ontario Human Rights Commission

- *www.ohrc.on.ca/en/code_grounds/disability*
- *Ableism, education and human rights, environmental sensitivities, discrimination based on mental health and addictions*

Legal Advice Referrals

ARCH Disability Law Centre

- *Summary Advice and Referral to persons with disabilities in Ontario*
- *Accessibility laws, human rights laws, attendant services, transportation, education, discrimination at work, decision-making rights, PGT*
- *Representation – only for test cases, legal aid financial qualification*

Human Rights Legal Support Centre

- *Represent some people at Human Rights Tribunal of Ontario*
- *May provide summary advice for applications, mediations*

Community Legal Clinics

- *Summary advice and representation to low-income persons in catchment area*
- *ODSP, OW, landlord-tenant and other legal issues depending on clinic*
- *www.legalaid.on.ca/legal-clinics/*

USEFUL ONTARIO BILLING CODES

- ***Visit 1: intake assessment***
- ***A911: must be 75 minutes + must document times, needs a referral note (no special certification required), billing number from referring doctor needed, requires all elements of consultation (see below), can only be billed once/year (need new referral every year)***
- ***A912: 50 – 75 minutes, same requirements as A911 OR***
- ***K002: interview with relative with or without patient (hired caregiver counts if they have the ability to make treatment decisions) OR***
- ***K704: case conference code (if other professional involved), must be MRP for patient, prebooked***
- ***K701: case conference if mental health concern, prebooked***
- ***Visit 2: complete physical***
- ***A003: in basket, full history and physical, no time documentation required, in basket OR***
- ***A006: repeat consultation***
- ***K017/K130/K131 etc: in-basket/well child visits - depending on age of child (well health check)***
- ***Visit 3: counseling/education***
- ***K005: primary mental health billed by the unit (62.75 i.e 1 unit for the first 20 min, 2 units for 46 min total, 3 units for 75 min total), have ability to add a physical assessment to this with A007 – need to document time spent on each part and have separate diagnostic code for A007) OR***
- ***K013: education and discussion around clinical diagnosis - first 3 times billed will be in basket and after that becomes a K033 which is out of basket OR***
- ***K002: interview with relative with or without patient (does hired caregiver count? - if they have the ability to make treatment decisions) OR***
- ***K704: case conference code (if other professional involved), must be MRP for patient, prebooked***
- ***K701: case conference if mental health concern, prebooked***
- ***Other considerations: A005/A905***

Systemic Advocacy

- *Universal design = designing built environment, systems so they are useable by the greatest number of people without the need for after-the-fact modifications*
- *Example: locating all light switches low down so they are reachable by persons using wheelchairs, children, adults*
- *Can changes be made to the environment or system that would achieve universal design, prevent the need for individual accommodations?*

Summary

1. *Remember who the patient is, consent/assent*
2. *Accommodations – ask what is needed, don't assume, "person with the disability is the expert"*
3. *Provide referrals for legal information and/or legal advice*
4. *Individual patient advocacy*
5. *Individual accommodation + Systemic advocacy – universal design*

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Feb. 12, 2019	Health and Housing Law - Dr. Andrew Bond and Benjamin Ries
March 19, 2019	Health and Family Law - Dr. Kathleen Doukas and Ishbel Ogilvie
April 9, 2019	Health and Income Security Law - Dr. Gary Bloch and Anu Bakshi
May 14, 2019	Health and Immigration Law - Dr. Vanessa Redditt and Jennifer Stone
May 28, 2019	Legal Issues affecting people living w HIV/AIDS - Dr. Gordon Arbess and Ryan Peck
June 18, 2019	Health, Law and Indigenous Peoples - Melissa Stevenson, Dr. Fatima Uddin and Emily Hill
Sept. 10, 2019*	Health and Capacity, Decision-Making, and Advanced Care planning - Dr. Bill Sullivan and Mercedes Perez
Sept. 24, 2019	Health and Employment Law - Dr. Andrew Pinto and Nabila Qureshi
Oct. 8, 2019	Health and Criminal Justice System - Flora Matheson and Promise Holmes Skinner
Nov. 19, 2019	Health and Human Rights Law - Dr. Laurie Green and Kerri Joffe

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Contact

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Case 3

A mother and her two young children with asthma live in subsidized housing

A smoker moved into the unit next door and since then the children have had more difficulty controlling their asthma

Their mother requests a unit transfer but the landlord uses excuses (lack of rental payment) to try to evict

What legal issues are a concern here?

Case 4

46 year old woman returns to modified duties at her management job after a disability-related absence.

Her doctor cleared her to go back to full-time work.

Employer placed her in a lower, part-time position at a lower pay rate due to incorrect assumptions that the employee could not withstand the pressures of her job because of her past medical condition.[1]