**TRANSCRIPT**

**‘Disability Rights and Workplace Discrimination in the Time of COVID-19‘ Discussion Panel**

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**Organized by the COVID-19 Working Group’s Disability Rights Hub**

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**Timothy Bott:** Alright. Hi everybody, thank you all for coming. So just before we begin, we are going to have David introduce the Center

**David Oppenheimer**: To those of you who are in North and South America, good morning; and for those of you who are in Europe and Africa- a good afternoon, and for those of you who are in Asia and Australia, thank you for staying up with us. Patrisha Domingo who is one of the organizers, is in Sydney Australia, where it's one (o’clock) in the morning, so hats off to you Patrisha. We have a terrific panel today and it was completely organized by Patrisha Domingo of the University of Technology, Sydney and Tim Bott of the University of California, Berkeley – both of them law students who are working with our Center on Comparative Equality and Anti-Discrimination Law, and I'm very grateful to them for the hard work they've done in putting together this terrific panel. And so, I would say thank you to them and I would turn it over to them, and that's the last you'll hear from me so, welcome all of you, very much

**TB:** Thank you so much David. So, hi everybody, my name is Tim Bott and as David mentioned, I hel- I helped organize the event with Patrisha. We are student volunteers with the Center, and we are with the COVID-19 Working Group and the Disability Hub within it- the Disability Rights Hub within it. So, we're delighted that you can join us for this discussion on Disability Rights and Workplace Discrimination in the Time of COVID-19.

Just to run through some housekeeping before we begin today's event: we’ll run through each of our speakers who will speak for roughly five minutes each and will be followed by a Q&A session. For accessibility we will be asking everyone to… oh apologies. For accessibility, we're going to record this event, which we are doing, and then upload it to the Center’s website. We are providing captions through PowerPoint – we recognize it's not a perfect system, but it’s what we have available. And we're hoping to have this up in- on the website within a month, along with a- an edited transcript And if you're not speaking we ask you to turn your microphone off and then if you have any questions for the panel it's just- submit it in the chat feature or uh, you can wait ‘til the Q&A session. So with that, I'm going to hand it over to Patrisha

**Patrisha Domingo:** Hi everybody, again – this is Patrisha. It is an important feature and Australian custom to pay acknowledgement to the traditional owners of the land we are on and so, as we gather here today, we invite everybody to share in this together. As a mark of respect and recognition, I would like to acknowledge the Darug people, the custodians of the never ceded land I am situated here on in Sydney and I pay my respects to elders past and present.

We take a moment to recognize that Berkeley sits on the territory of xučyun (Huichin, Hoo-Choon), the ancestral and unceded land of the Chochenyo (Cho-Chen-yo) speaking Ohlone people - also paying respect to their past and present elders. I would like to cast this acknowledgement broadly into the digital sphere in which we have all been able to gather here today and extend my respects to the traditional owners of the lands where you are all respectively based, to which the sharing of our values, knowledge and contributions are deeply indebted to.

In the spirit of disability justice, as an access note, wherever you are, in your respective places, spaces and time zones, we ask you to join us as you prefer today. We ask you to use the digital space and your physical space as you wish and however it makes you comfortable. Please feel free to have your cameras on or off, join us from your chair, your wheelchair, your bed, your couch or your floor. You may decide to stand up, move around, stretch or take breaks – any of this and all of this is welcome.

I will hand it off to Tim to introduce our first speaker.

**TB:** So, our first speaker today will be Susanne Bruyère who is a Professor of Disability Studies and the Director of the Yang-Tan Institute on Employment and Disability at Cornell’s ILR School. She has done extensive research on effective workplace practices to facilitate the full inclusion of workers with disabilities. And she is joining us today to discuss the U.S. experience around COVID-19 and employment considerations for people with disabilities. With that I’ll hand it over to Sussane.

**Susanne Bruyère:** Great. Thank you, Tim. And Patrisha, I’m gonna ask you to pull up my slides if you will. And thank you for each of your- each of you for joining us. I- this is the first time I am engaged with the Berkeley Center and I'm delighted to be so, thanks to Tim and Patrisha for organising this, and to David for the follow up phone call that allowed me to have more information about this terrific Center.

At the Yang-Tan Institute we focus on employment issues, so that is what I’ve selected to focus on today, although COVID certainly has broad implications for people with disabilities in many ways, I'm going to focus a bit on what's happening in our considerations around employment issues.

And so, the next slide, please Patrisha

So in my time to provide overarching beginning comments I'm gonna first of all just acknowledge where the US stands compared to other countries and the impact of the virus on health and mortality today, which is very significant and we are particularly concerned – those of us in the disability area – about the status of people with disabilities and their ability to stay gainfully employed in light of this. I'm also going to share what the US Equal Employment Opportunity Commission is telling us that the enforcement agency for employment disability non-discrimination are the questions that are most often coming to them. And then I'll leave you with some links to related references that will support, if you have an interest in following up in the future on this – what I present you today as- as the issues that are surfacing

So, the next slide please

So sadly, we are the country with the highest number of total infections in the in the world today. Our first confirmed case was February 22nd, and the number of daily infections currently stands at around 40,000 (cases) – we are approaching 7 million documented cases of the infection and just reached the 200,000-death rate. So, it's- it's been a- had a very heavy toll on us in the United States and we continue to try to get out in front of it but are challenged in doing so. I think other countries are as well, but we have staggering numbers at this point in time.

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This is of concern to us in light of people with disabilities because we know from historical review, looking at observations of what has happened in the past, that people with disabilities are disproportionately impacted in economic downturn, such as we're experiencing now. We’ve had unprecedented numbers of people out of employment right now, and we know from historical review of national census data, unemployment figures, that people with disabilities are often the first to be laid off and the last to be rehired when the economy rebounds in the return to work process.

And we know right now, people with disabilities are disproportionately represented in low paying jobs which may put them at risk, higher risk, in several ways. First, it may be more likely that they are an essential worker jobs and working in hospitals or other caregiving settings, that people who are infected are residing in, or being treated in. But we also know that because they are in lower paying jobs in very, often service industries, such as hospitality industry, hotels- working in hotels, in lower paying positions- service positions or in restaurants, that they are also at risk – higher risk – for layoffs.

You know, it also could be the case, and in some situations, we're hoping that that's certainly true, that they could be afforded benefits by being advantaged to be afforded remote work and- and if accommodated, that might actually be working out well for them. So, there are situations where this may help us to make the case to employers who weren’t previously affording some flexibilities like remote work, home work, or part time flexibility, that this works well and that people can be productive. So, we're hoping that might be a positive outcome of our experience today

The next slide please.

So some of the questions that the US Equal Employment Opportunity Commission is telling us are the ones that are most prevalent, that are coming to them, and that they’re writing guidance and continually updating that guidance about are, the strategies that can be used in light of COVID-19 to equitably recruit, hire and onboard new employees do the- you know, how do these guidelines apply?

The screening guidelines – what information an employer can request of an employee or job applicant, all of them, but people with disabilities in particular. Questions about reasonable accommodations and how that will assure equal employment opportunities for individuals with disabilities that don’t pose a threat to the health and safety of the individual themselves or others in the workplace. And what steps an employer must take to maintain confidentiality of medical records since the employer is likely to be collecting if they’re- if they are returning people to the workplace, a lot of medical data, if they're doing screening. And then finally, what are some accommodations, what are some considerations around reasonable accommodation and COVID-19.

And my final slide is the list of related references that people can pursue to document some of the assertions are generalisations that I had just made. And I will pause there, and I look forward to engaging after we hear the other presentations. Thank you for your attention.

**TB:** Alright, thank you Susanne. And with that, I will introduce Amita Dhanda. So, Amita Dhanda is a legal academic and Professor with NALSAR University of Law in India. Her research has always been grounded in social justice and centerd around questions of intersectional inclusion and exclusion. Amita has worked with the UN and was involved in the committee that drafted the UN Convention on the Rights of Persons with Disabilities. Amita is a leader in helping us expand our global perspective  - with her PhD being the first in India to look into the rights of people with mental illness from the perspective of law. Amita is the author behind the book, Legal Order and Mental Disorder. She is joining us today to discuss the vital connection between iniquitous working conditions and mental distress. With that, I will hand it over to Amita.

**Amita Dhanda:** And thank you David for inviting me for this conversation around workplace inequities. I'm kind of focusing attention on workplace inequities and mental health – next slide please. And primarily, I suppose, my focus is on the fact that mental health before COVID-19 was amongst, even in disability, it kind of comes last in the ranks. But as a concern it's always been seen as aberrational. You know it is like, people who are in some manner, the entire conversation around mental health, especially the one which is stemming from iniquitous social conditions, was seen as some kind of an inability of particular people not being able to cope. That is – if everyone else can manage, why can't you?

It isn't the conditions which are faulty, there's something wrong with you, kind of situation. So what you're suddenly finding with COVID-19 is that mental health has become a kind of- you know,

It's- the slide has gone away, Patrisha. I don't know what happened. Can I- I lost the slide, Patrisha.

**PD:** Are you able to see the screen?

**AD:** I can see myself. I can’t see the slide.

**DO:** We see the slide that says: Mental Health a Ubiquitous Concern

**AD:** Yeah, yeah, but I don't see it and I want to see it too. OK-

**PD:** You may have pinned your video

**AD:** I may have done what?

**PD:** If you go to where you see yourself on the screen there should be three dots…

**AD:** Yeah mmm

**PD:** And there should be an option to unpin…

**AD:** Alright. I get it. Yeah. So, basically the point I was making there, is that suddenly I find that with COVID-19 something which I had always seen as a kind of a marginal concern, you know, concern in relation to people who were in some manner not seen as being, you know, as seen as people who are not able to cope, you suddenly find that this concern of the margins has come to the center. It’s a lot of people are talking about difficulties of working from home, or not really having even a home to work from.

The other thing which I wanted to also, like to, add onto the presentation that Susanne made, I am basically focusing attention on people who have work. There is an entire range of mental distress which comes from not having work, being- being shunted out of work, I mean we have a specific kind of difficulties that we've had in relation to migrant workers in my country, in relation to a- a large amount of laying off it is happening, in relation to all of those industries wherein work has stopped or virtually halted as part of the lockdown.

I'm talking more in terms of the other sort of workplace difficulties that people are talking about. That is if you're working from home, and you have a small home, and you share it with so many other members of family, for you to be able to find space to carry on that kind of online work itself is not so very easy.

One, not getting the opportunity. Two, if you get the opportunity – the kind of distress that (opportunity) is causing. Things like screen fatigue, the inability to get access to the Internet – the sort of demands that are being made by employers primarily because of the fact that when you have a tight economic situation, you are being pushed to do things which you may not otherwise want to do. So, suddenly a lot of people, in all kinds of scenarios, are talking about mental distress, are saying that these are iniquitous working conditions, our general work package is iniquitous, the very fact that so many people could be laid off without anything at all- that without them being able to do anything at all – that mental distress.

So you’re suddenly having a lot of conversation around mental health and distress, how to cope, and no more anybody is talking, in terms of that, mental health is an issue which only concerns, you know, people who are in some ways so differently wired, that they can't cope up with conditions with which everyone else can

Next slide please

The- the other point that I wanted to stress here, because we are primarily looking at persons with disabilities, and I have started with the non-disabled population and their kinds of, you could say, their trials, or their difficulties, their trials, tribulations, in relation with their own mental distress. And what you find is, that you know, as all the men- the mental health concerns of the non-disabled community are coming to forefront, we- we are- some of the difficulties that I had pointed out, are very similar to the pre-COVID experience of persons with disabilities.

You know, when it is talking in terms of the fact of, you being the one- I mean Susanne mentioned, you being the first to be shunted out, the last to be taken back, the kinds of difficulties of trials and tribulations you have in trying to get reasonable accommodation. If you are working from home, then the fact that that's as such, like a devalued way, or making it difficult for people to work from home. All of these experiences people with disabilities have had and yet like I said, when persons with disabilities who’ve had intense understanding of this connection between mental distress and iniquitous working conditions, they are not really at the center of this conversation, when you are talking about exactly how should we address the issue of psychosocial disability, iniquitous working conditions, the kind of connection that you want to find between iniquitous working conditions and disability – that is as such not being drawn.

I am wanting to point out that when we are talking in terms or recognising that the moment you have iniquitous working conditions, there is a distress which generates, it's sort of- it triggers a distress, and those iniquitous working conditions are very often handed out to people with disabilities in a very routine kind of a way. I'm sort of seeing this- is this an opportunity, is this a chance of being able to cultivate empathy and solidarity? And also draw upon the experience of those who really know what iniquitous working conditions do to you.

Last slide please.

Next- yeah. So I'm- the proposition I want to put forth is like, can we make this crisis an opportunity? if it's equality non-discrimination center which has taken up- I think we don't just focus attention on discrimination, we also try to see is there some kind of a conversation that we can trigger by which you can create, you know, conditions by which people can start to see that, that which we are facing today, has been faced by people with disabilities for long. And they have faced it because the world was not really constructed for them.

And if those iniquitous working conditions cause mental distress to them, and iniquitous working conditions today are causing mental distress to us, then evidently the non-disabled and disabled world is not that far apart or that separated as it seemed to be. The experience of persons with disabilities has not really guided policy until now because that experience was not really accorded that kind of credence.

I am putting forth this that now when we are, like I said, having this very ubiquitous kind of all-pervading concern with mental illness and health, or mental distress and health, then possibly be validation that you are getting off, that there is a very close connection between unfair working conditions, toxic work environments, and mental distress – then that particular insight which we are all gaining in these times, should also translate to demonstrating how much, what people with disabilities experience, is part of the human experience, and draw from their experience to be making for policies to stop like addressing sys- symptoms and start to look to root causes.

Thank you so much

**PD:** Thank you Amita. This is Patrisha again. I’m just going to introduce our next speaker, who is David Gutiérrez. David Gutiérrez is a postdoctoral researcher at the Autonomous University of Barcelona. He is also a collaborating professor at the Open University of Catalonia. His research is focused on disability and comparative law regarding reasonable accommodation configuration, and he is joining us today to discuss “A European Judicial Perspective on the Impact of the COVID-19 on Disability Discrimination.”

**David Gutiérrez:** Yeah. Hello. Thank you very much Patrisha for- for the presentation. I will set up the presentation, I think it's okay. Can you see their presentation? Yeah, okay, perfect. Well, thank you very much for the- for giving me the opportunity to share some of my results. Specifically, Professor Oppenheimer, Patrisha and Tim – thank you very much for the- for the invitation

The aim of my presentation today is to examine the Impact of the Covid-19 on the Court of Justice of European Union, CJEU, hereinafter, Disability Concept, trying to determine if the existence of COVID-19 can modify disability’s current characterization. To this end, my presentation is structured in two main sections, specifically: COVID importance for disability concept and an examination of CJEU disability requirements in the light of COVID-19.

So, why COVID could be important for Disability concept? Well, in my opinion, the- there are two main factors that- that are very important. The first one is the connection between sickness and disability. HK Danmark Judgment connected- opened the door, in my opinion to a wide scenario where new diseases, such as COVID-19, could be considered a disability.

Also, the case of COVID-19 is even more relevant given its consideration as a pandemic and the existence of sequelae in- in a significant part of the people who have suffered from it.

So, if we compare COVID-19 numbers with recent coronavirus precedents that are Severe Acute Respiratory Syndrome (SARS-CoV (2003), SARS hereinafter, and MERS, that is Middle East Respiratory Syndrome Coronavirus (MERS-CoV (2012)), COVID-19, as you can see in my presentation, numbers are much higher, and therefore, it means that it will have a greater effect on the population.

So, from this point, my – my presentation wants to- wants to deal with, how COVID can be considered a disability. In order to do that, we are going to see what are the main elements of the CJEU disability definition and how it fits with COVID-19 structure or symptoms.

What are the CJEU disability elements? Well there are three elements: long term duration of the impairment, the nature of the impairment and how the impairment- the impairment hinders the full and effective participation in professional life on an equal basis with other workers. So, let’s check the three- the, the three, the three fac- the three characteristics.

First one, long term. Long term is not defined in CRPD, what hereinafter- what is Convention of Rights of People with Disabilities, neither in Directive 2000/78. The most important judgment regarding to long term characterization is Daoudi (Par. 54-57), which has pointed out that long term envisages situations in which participation in professional life is hindered over a long period of time, and the impairment does not display a clearly short-term progress.

So, in the case of COVID-19, World Health Organization suggests that the median time from onset to clinical recovery for mild cases is approximately 2 weeks and is 3-6 weeks for patients with severe or critical disease. This- that means, in my opinion, that COVID-19 symptoms developed after 6 weeks, or persist beyond 6 weeks, could be considered long term.

Regarding the second characterization, the nature of the impairment, Impairment is not defined in CRPD, neither Directive 2000/78. Also, CJEU Judgments do not define what is an impairment, but there are some interesting points in this issue. HK Danmark Judgment stated that illness, medically diagnosed as curable or incurable, can be assimilated to a disability and the origin of the disability is not relevant (Par. 40). Therefore, even curable illness could be assimilated to disability, as far as they are long term symptoms or generate long term sequelae. So, cardiovascular, pulmonary and other neurological sequelae can be, as long as they are considered to be of long duration, assimilated to disability.

There is also another aspect that I consider that is important, and it’s the psychological aspect of CJEU and CRPD disability definition. In my opinion, the- the integration of psychological aspect inside the impairment nature allows for the inclusion of indirect consequences resulting from public health measures with an impact on mental health. For example, impact of social distancing on mental health or the consequences of deferred health care on chronic disease management.

Lastly, the third element is the limitation of capacity that hinders the full and effective participation in professional life. Limitation of capacity requires a connection with professional life according to HK Danmark Judgment (37-39). CJEU established a necessary link between the result of the impairment, that is, the limitation of capacity, and full and effective participation in professional life, requiring a broad negative impact on- on work.

In my opinion, check this- check if this requirement is met on COVID-19 situations is fairly simple, since it requires to examine how sequels affect the development of professional functions. However, a vision focused only on the task development is not enough to fit the social model of disability. In my opinion, COVID-19 could be a great opportunity to extend the interpretation of the term “hindering” to issues not strictly related to task performance but connected with professional life. Thus, COVID-19 sequels that requires medical licenses or temporary abscence to work, and even not attending work to care for affected relatives as a discrimination by association, could be good examples.

Thank you for your attention. And I will pass it back to you, Patrisha and Tim.

**PD:** David (Gutiérrez), I’ll just get you to stop sharing your screen

**DG:** Yes. I will- I will- I don’t know how to- wait-

**PD:** It should be the- okay. Thank you. One moment…Thank you again, David, for your presentation, it was a lot to learn from. It is my honor now to introduce the last speaker for this panel, to give their thoughts and present to you. And that is, Laverne Jacobs.

Laverne Jacobs is a law professor and Associate Dean at the University of Windsor, in Canada. Laverne is a disability and human rights expert, informed through her professional work as a strong advocate of inclusivity towards equal rights, as well as personally, as a person with a disability. She is an innovative researcher and as the director of the Law, Disability & Social Change Project, conducts research into current legal and policy issues to help empower people with disabilities. Laverne is a regular consultant and contributor in Canada’s policy development and public debate and has held appointments on the Human Rights Tribunal of Ontario and the Minister's Advisory Council for the Accessibility for Ontarians with Disabilities Act. Laverne’s work has a focus on Canada’s accessibility, equality and human rights law, as well as on international treaties and conventions. Laverne’s forthcoming book is titled, Disability, the Right of Access and the Law: from Litigation to Citizen Participation. She has joined us to discuss “COVID-19, Disability and Workplace Discrimination in Canada".

**Laverne Jacobs:** Thank you Patrisha. Hello everyone. I'm Laverne Jacobs I thank Patrisha and Tim for the invitation to be here today, I'm very grateful to be here today and, you know, delighted to be part of this terrific event which is very respectful and accessible. And I thank my panellists as well for their thoughtful comments.

I'm going to talk about the concerns relating to work and people with disabilities that we're seeing in Canada during the pandemic. My research assistant and I have pulled together all of the media stories relating to this topic since March, when the lockdown began. We chose media stories specifically because there aren't a lot of reported legal decisions at this point in time, when the issues are still being- well still being worked out – they’re still arising and being through. I've gone through and collated the data we’ve collected and ultimately what I want to talk to you about are the three top reported concerns.

So, the first concern deals with the safe return to work – people with disabilities who are at a higher risk of contracting the virus or immunocompromized want to ensure that returning to work will be safe for them. Some also want to know whether they can simply refuse to return to work altogether. The second risk- top concern deals with workers who have family members who are immunocompromized at home. The question there is whether they can be forced back to work and whether they have the right to work at home. The third reported concern of people with disabilities, is actually one that affects the most people with disabilities in Canada. This concern deals with income security and economic inequality of people with disabilities. It's this third concern that I'm going to spend the most time on but let me first just say a few words on the first two reported concerns.

The question of returning to work and finding ways to protect oneself from the virus ultimately comes down to a question of reasonable accommodation. In Canada, as in many other jurisdictions, an employee with a disability must be reasonably accommodated at work to the point of undue hardship. What this means is that an employer must work with the employee to find an appropriate accommodation. Outcomes are determined on a case by case basis, but generally speaking, if a person is required on a job site and the site can be made both safe, from a health and safety perspective, and accommodating of the person’s disabilities, then they'll likely be respect- sorry, expected to return to work. Similarly, the situation of a person who wants to work from home to avoid any risk of bringing the virus back to family members in the home who are immunocompromized etc, will also require an analysis under our domestic human rights laws – so, namely under the statutory human rights codes and the principles they set out.

In such cases, the central question will likely be, whether it would cost the employer undue hardship to accommodate this employee so that they can work from home. What I find particularly interesting about this entire scenario, is that we have accessibility standards in Canada which theoretically should be able to assist. Accessibility standards are the latest trend in equality law instruments, designed to fight disability discrimination. I'm currently writing a book about them that Patrisha mentioned in the intro. Accessibility standards are minimum regulatory standards created to provide accessibility for people with disabilities within the community, so they address a number of social areas such as information and communications, customer service, transportation – we have two new ones in Ontario coming out dealing with health care and education.

So, accessibility standards are being adopted in several provinces and have also been enacted at federal level. The reform of proactive regulation, and by this, I mean, that they aim to remove barriers before they occur. There are standards relating to employment within the accessibility standards realm. Yet the standards deal with such things as accommodation during recruitment and interviewing, setting up accommodation plans for workers with disabilities, returning to work for people with disabilities. But even so, the standards show themselves to be weak in terms of enforcement in these current return to work scenarios.

So, enforcement is built on auditing and on-the-ground auditing has had a pretty poor track record, especially in some provinces. An employee may therefore find it challenging to rely on this group- to this root of accessibility standards to ensure that their immunocompromized condition is adequately protected. In the end, an employee would likely need to launch a case under human rights law or to demand a safe work environment under the health and safety regulations in order to bring their- their matter forward. In other words, even though accessibility standards legislation and regulations are proactive, they don't guarantee that the matter will be addressed without litigation through another route.

I want to spend the remainder of my time on the third issue that we see arising in Canada relating to COVID, disability and the right to work. And this is a concern over income security and economic inequality of people with disabilities, and as I mentioned at the outset these are the issues that are affecting the largest number of people with disabilities in the country. According to Statistics Canada, 50% of people with disabilities are unemployed in Canada. This contrasts to only 21% of Canadians without disabilities who are unemployed – that's a significant disparity, The COVID-19 pandemic exacerbated the situation. Another study done by Statistics Canada that came out just last month in August, showed that 36% of employed people with disabilities reported temporary or permanent job loss since the time that the pandemic started.

Now this has had significant tangible quality of life impacts as 40% of those who participated in the study said that because of the income loss, they had then experienced difficulty obtaining food and groceries. When we see situations exacerbated by COVID, we often ask about the social assistance safety nets that are available as backups. Here in this situation, the government response was disappointing and many in the disability community also felt that the government's response was insulting. The federal government created an emergency response benefit soon after the pandemic started. This benefit provided $500 a week or $2000 a month to any Canadians who had lost their employment due to COVID-19, but disabled members of the Canadian society who were not working – and you'll recall that was about half, 50% of people with disabilities, were ineligible for the mainstream benefit. They eventually received a one-time payment of $600, um- and that $600 is only due to come later this month, September.

In the meantime, as we all know the cost of living has gone up, as amenities such as public transportation were cut, forcing people to pay for private transportation where possible, and many people with disabilities rely on public transportation in the major cities. We all relied on deliveries which can be costly, and during the pandemic we also all saw the price of food go up in grocery stores and takeout places. So many in the disability community have expressed that they felt like second class citizens and left behind with the small benefits that covered so little and arrived so late.

There are also a number of intersectional concerns, and you know the intersection of race, gender, poverty that come into play – I'm happy to talk about those in the question and answer, or even afterwards if you'd like to contact me.

But just to conclude I want to raise this question: how do we solve these issues of income security and economic inequality faced by people with disabilities? They’re longstanding questions and this is a longstanding and large issue. I think though, that we have to consider the approach that we want to take, and I suggest that the approach to take is one where the law is used as a tool to support every individual to live through experiences like these, reasonably. So living through experiences reasonably means having- having work, having means to get to your job, food, other security at the- you know, available to you at the end of the pandemic, as well as throughout the pandemic. It also means ensuring that barriers to education which lead to unemployment are resolved, the notion of the law serving to support people so that they live through all experiences reasonably, not just pandemics, is a theory that I but I've written about that I call the ‘Universality of Human Condition’, and I'm happy to speak about this, and any of these ideas during the Q&A. So thank you, I'll turn the atten- the microphone now back to Patrisha or Tim.

**PD:** Thanks Laverne and thank you to all our speakers for presenting at the panel. I will now turn over to our Q&A section Does anybody have a question that they would like to kick us off with? Don’t be afraid to just turn your mic on and shout it out. If not, I might kick us off…a bit selfishly.

My question is directed to Laverne and Susanne specifically, but if other people- our other panellists want to jump on in, I'd welcome that too. But something similar between our disability discrimination laws is that they have the caveat of the unjustifiable hardship exception, which doesn't apply to any other discrimination law. Do you envision that going forward as we try to return to work, and be more accessible, that that exception of unjustifiable hardship, because of Coronavirus, will discriminate against disabled people even further, or be used as sort of like an excuse not to provide them with the proper equipment, and maybe because a certain company has fallen on hard times and don't quite have the money or the resources to provide that?

**SB:** Laverne, I’ll say something, and then please jump in. Is that okay? Does that work for you?

**LJ:** Absolutely

**SB:** Those questions have already been coming in to the EOC in the EEOC. People can find in the guidance in the references at the end, has said that it may be the case, because of financial exigency, that what would be a reasonable accommodation and not present an undue hardship at other times could indeed, especially for small employers, present an undoable, or an unreasonable, or an undue hardship and this- these are languages of our law at this point in time. And indeed, many small employers have already gone out of business, or are struggling to sustain business, so I think they may be differentially impacted. So indeed, we will be presented with those issues where people who would have been accommodated in some way either, whether it be allowed to remote work, or it might be a piece of equipment that could be procured for them, most accommodations aren't that expensive, but it's possible that some of the flex that that people might need might not work for some employers at this point in time because of the impact of COVID on their resources. And I'll just pause there and turn it over to Laverne.

**LJ:** Thank you Susanne, and thanks for the question Patrisha, it’s an excellent question. So, in Canada, generally speaking, reasonable accommodation attaches itself to three concepts. So, when we talk about undue hardship, we're talking about the costs of making the changes, any outside resources or funding that may be available, and any health and safety concerns or reasons for not making these changes. I think it's hard to tell, like Susanne I- I think that the jury is still a bit out as to how this will go, but I think there's also another element which is that, it might be specific to an employer, especially when it comes down to things like what available outside resources of funding might they have. The health and safety reasons, I mean they're fairly strict coming through the ‘Health and Safety Act’, so I think that most employers will need to meet them, but it's really the cost, and whether or not there is outside funding that could make her break the- the ability of someone who needs an accommodation to- to get this- to get the job that they're looking for.

So yeah, that's what I'll say. Thank you

**PD:** Thank you for your responses. David Oppenheimer has just raised, that this exception in the US is called ‘undue hardship’, and there may be an intersectional impact in the sense that 20% of white owned businesses and 40% of black owned businesses in the US have gone out of business because of the pandemic.

Lucy-Ann Buckley has raised the question in the chat, which is directed to Laverne, but Lucy would like to hear more about the intersectional impacts of COVID-19. So, I’ll pass it back to you Laverne.

**LJ:** Thank you very much to the question. Yeah so, one of the- one of the challenges is that we don't have enough intersectional data. Certainly, I can see that Statistics Canada is now starting to collect gender diversity, and just inclusion data, generally. Some things that I can tell you though, with respect to people with disabilities, and these are statistics that have been around for a while, is that women with disabilities are- most frequently live in poverty in Canada. You know, there is some information about Indigenous peoples but, you know, very little. So I think that when we talk about intersectional – or when I talk about, at the moment, intersectional concerns – I am concerned that we don't have enough information about, you know, Black, Indigenous, people of color, how people of color are- are- are doing with respect to vis-a-vis disability, in the time of COVID. And so, I'd love to see much more data and I think that many more studies could be useful in terms of tracking these disparities. Thanks.

**PD:** Thank you Laverne. We have a question from Wendy Murphy – thank you Wendy. And I’ll uh- ask these to all our panellists, you're welcome to answer if you do have an answer to this. But Wendy is wondering about the unique issues, because of domestic violence victims during COVID-19, and whether disability rights laws may offer some additional protection, in a sense because of worsening mental health or PTSD. What are your thoughts?

**LJ:** Maybe I can just offer one quick thought, which is that, when it comes to domestic violence and criminal law, I think that's an area where the disability rights work has touched on some issues. So we've touched, for example in Canada, on you know, women with intellectual disabilities and sexual assaults and the process of giving evidence. Domestic violence, not so much, and you know I really- I really would welcome studies that kind of do, on the ground- get a better on the ground understanding of the experiences of women, domestic violence and disability

**PD:** Thank you Laverne. Ah- Amita, would you have anything to add?

**AD:** Yeah, I was just wanting to add to, that I think the kind of thesis I was trying to put out in my presentation, was demonstrating the need for, you know, like recognizing the sort of difficulties that are common between, see, we- we stress on the difference, but also in terms of the commonness of, let's say inequity that you face, and I think domestic violence is one particular context, because people with disabilities as such, is an accepted fact, have had lesser access to economic resources and to employment and have been on much more on the receiving end of the domestic violence. So the need to address domestic violence issues for persons with disabilities was a, kind of, something has been pressed for long.

What you now found that you suddenly- when you cooked in a number of people in, you know, like where you had to share spaces for longer period, there was a general exacerbating which was happening. To be then saying whether disability rights law provides for additional legal protection, I would say disability rights law as such have attempted to, but not really, address this issue. I'm hoping that you know the sort of convergence, kinds of makes it important, that domestic violence should not be seen as an issue which comes in last. And you know, whether it's on people with disabilities or for any other people, you know.

And the fact of that, when family members are- even family members are in together, because that's one of the consequences of the lock down for a number of people, that you- you’re finding it difficult to cope in constricted spaces. I don't really know whether fewer resources, fewer arrests of offenders, in the main- the kind of accepting for demonstrating that yes, this happens and this needs to be addressed. I have not, at least in my country, have not seen any kind of a, you know, greater attention coming to-

The only thing which is coming is that people are recognizing that there is a certain- that this distress factor needs to be addressed. We need to be thinking in terms of, possibly, other kinds of safe spaces, especially for people who are more vulnerable. The reason why arrests and jails are not being seen as very desirable things, either which way, is because prisons are being seen as institutions where, again, the risk of infection is so high that you are trying to get out people, you don't want to be putting in any set of people, but you need to be working out other mechanisms by which safe living spaces can be promoted.

**TB:** Thank you Laverne and Amita. We just have one last question if we can squeeze it in, from Paul. He is asking if there are other- if- in the United States there have been a couple of successful lawsuits against cities for failure to accommodate people with disabilities and he's wondering if there are similar examples in other countries regarding exclusion from emergency measures. And we're wondering, this is directed to all the speakers, but we we’re wondering if David (Gutiérrez), if you had any thoughts on it?

**DG:** Yep, this is a very interesting- oh sorry, okay that’s fine. Ah yeah, this is a very interesting question and I think, in my opinion, at least from a European perspective, I think European Union is not thinking so much on- on taking emergency decisions for this kind of- of crisis or crises. And as far as I know, there are not any prejudicial questions about the impact of or- or non-impact to taking measures regarding people with disabilities. So I will- I will be very interested to know more- more information about their lawsuits against U- US cities for failure to take into account persons with disabilities in the emergency plans for crisis because I think it will be interesting to, at least from a European perspective, to- to take some ideas and- and maybe we’ll have some- some common problems, so I think it will be very interesting to, in my opinion, to know more information about that.

Thank you so much.

**DO:** May I add

**AD:** Sorry, sorry, sorry

**DO:** I just wanted to add that it’s such a good example of why you need to fight for your rights. There's no question that under the UN Convention and under American law, and I think, probably in many- well, most countries have adopted the UN Convention. A community engaged in crisis planning has to include a plan for persons with disabilities, but the likelihood is they're not going to do it unless there's pressure on them to do so. Whether it's by negligence, oversight, intent – doesn't matter, they're not going to do it unless there's pressure. And that's why, you know, that's why the work of the disability rights advocates, and since work has been so important, and as a model, I think for all of us, or certainly all of us were lawyers and or advocates, that you have to fight for your rights

**AD:** Well I just wanted to add that what we've had is, we’ve had litigation, but we've had some kind of like, front ranking advocacy from disability rights groups with their respective state governments asking for the inclusion of people with disabilities, in fact, putting out plans and demonstrating how this can be done and what needs to be done. In fact, the reason why I suppose litigation hasn't happened is that, in this particular process, for us in India, courts haven't done too well. They have in effect deferred too much to the executive in say- believing that what they have to be, they know best. what has to be done. But advocacy on the ground, whereby you were actually, you know, creating the- you are joining the dots and demonstrating to your government what exactly you can do and what you should do has fared better for us.

**PD:** Thank you everybody for your questions and thank you to the panellists for your responses and your contributions here today. I think this just about wraps up the panel for today. Again, on behalf of Tim, David (Oppenheimer) and Center, we'd like to thank everybody for attending.

If you have any additional questions any of the panellists: along with this transcript, I will put out their emails as well, so you can contact them afterwards with your direct questions if you wish. I hope everybody has a good rest of the day, a goodnight, a good afternoon – wherever you are, and wherever you come from, thank you again for joining us here today.