Beyond Woodlands:

Legal Ableism and the Post-Institutional Dialogue

S. H. Mckelvie[a]

[a]Department of Sociology, University of British Columbia

shmckelvie@gmail.com

Abstract

The Woodlands class action suit and settlement of 2009, which addressed the systemic abuse that many survivors experienced while institutionalized, is a complex moment in the legal histories of BC. The settlement and ongoing struggles for adequate provincial restitution have raised concerns regarding medico-legal conceptualizations of developmental and intellectual (dis)abilities. Using the conceptual frameworks of critical legal theory, critical disability studies, and feminist methodologies, this study draws upon three interviews with community members, discussing their insights into the history of the Woodlands school, the class action suit and the settlement process. The interviews provide alternative accounts of tort litigation within the provincial system of care. This paper examines bio-political discourses regarding 'mental capacity,' embedded in exchanges that take place at the everyday, legislative, and judicial levels that affect people with (dis)abilities. Practices of self-advocacy and service provision are complicated by past asylum knowledges and by the ontological hegemony of neoliberal polities of today. For the informants, the conditions of justice resulting from the Woodlands case remain indeterminate, inviting further investigations into anti-institutional narratives and diverse responses to 'legal ableism.'

Keywords

ableism; developmental (dis)abilities; neoliberalism, ethnography; legislative histories; institutionalization.

Au-delà de Woodlands: La capacitisme juridique et un dialogue postindustrial

Résumé

Le recours collectif et l'entente de Woodlands de 2009 qui traitaient des abus systématiques vécus par de nombreux survivants alors qu'ils étaient institutionnalisés, représente un moment complexe de l'histoire juridique de la Colombie-Britannique. L'entente et les luttes ininterrompues pour une restitution adéquate ont soulevé des questions concernant les conceptualisations médico-légales des handicaps intellectuels et du développement. En utilisant des concepts provenant de la théorie juridique critique, des études critiques dans le champ de l'incapacités, et des études féministes, cet article tente d'analyser les résultats de trois entretiens qui ont eu lieu avec des membres de la communauté afin de discuter leur regard sur l'histoire de Woodlands, du recours collectif et du processus pour arriver à une entente. Les entretiens représentent des récits alternatifs du litige civile au sein du système des soins. Le présent article examine les discours biopolitiques concernant 'la capacité mentale' qui sont enchâssés dans les échanges quotidiens qui ont lieu au niveau juridique et législatif, et qui affectent les personnes ayant des (in)capacités. Les activités de l'auto-défense et de l'approvisionnement des services sont compliqués par le savoir des asiles du passé et par l'hégémonie ontologique des régimes politiques néolibéraux actuels. Pour les informateurs, les conditions de justice résultant du cas de Woodlands reste indéterminées. L'invitation est lancée pour d'autres recherches sur les récits anti-institutionnels et les réponses possibles au capacitisme juridique.

Mots clés

Le capacitisme; handicap intellectuel; le néolibéralisme; les histoires législatives; une ethnographie de la communauté; l'institutionnalisation.

Beyond Woodlands: Legal Ableism and the Post-Institutional Dialogue

In July of 2010, the British Columbia Supreme Court approved the settlement for the former residents of the Woodlands school, fourteen years after its official closure in 1996. Established as a part of the New Westminster Psychiatric Hospital, the Woodlands school operated as a residential care facility for children and adults diagnosed with ‘intellectual disabilities’ and ‘mental disorders.’ Woodlands was one of several institutions across Canada, including residential schools and psychiatric hospital sites, that institutionalized ‘disabled’ individuals from the late 1800s and onwards. Approximately 9,125 children and adults were institutionalized at Woodlands from 1950-1996 – this number, however, does not include patients who were admitted to the hospital prior to Woodlands’ official naming in 1950 (Smith, 2009). The Woodlands survivors filed the class action *Richard v HMTQ* (2005) against the province of British Columbia in an effort to seek compensation and recognition for the decades of psychological, physical, and sexual abuse that occurred in the provincial institution. Though a settlement has been reached, in the tort proceedings the Crown successfully amended the plaintiff class to exclude any former residents who were institutionalized prior to August 1st 1974 (Kodar, 2012). By January 2013, fewer than ten claims have been filed out of the approximately 850 former residents intending to seek reparations (Disability Alliance BC, n.d.). Restitution has not been effectively reached for many of the Woodlands survivors, and the groundwork for justice remains unsettled.

Discussions of developmental (dis)abilities[1] are predominantly framed by mechanisms of knowledge and power, which classify and legislate the lives of those deemed to be cognitively impaired. As defined by Campbell (2001), ableism is “a network of beliefs, processes and practices that produce a particular kind of self and body (the corporeal standard)” (p.44). The concept of ‘legal ableism’ is essential to understanding the Woodlands story and the ongoing pursuits of the survivors and disability advocates. To address the gaps in ableist discourses specific to developmental (dis)abilities, this paper seeks to problematize the “hierarchical binary of mind and body” in legal texts and dialogues regarding the Woodlands school (Devlin & Pothier, 2006, p.5). I am guided by the following research questions: how do communities and individuals interpret the legislative and judicial processes of the Woodlands class action suit? How might experiences of developmental (dis)abilities be conceptualized in neoliberal renderings of tort proceedings and service provision? How do those who have fought for de-institutionalization and disability rights reckon with these ‘ableizing’ mechanisms, past and present? This paper presents interviews with three informants, drawing on a methodological framework that addresses both embodied and textual experiences. The interview narratives are framed by sociological discussions of governmentality, bio-politics, and the neoliberal state (Foucault, 2004). I explore the concept of the *dispositif* in order to conceptualize the bureaucratization of the ‘disabled subject’ – a phenomena that arguably exists beyond the case of the Woodlands. This paper suggests that institutional worlds are relevant to cases like

---

[1] The phrase ‘developmental (dis)abilities’ is used to address the broad diagnostic paradigm of intellectual disabilities, including mental and/or physical impairments. In each of the three interviews discussed below, ‘developmental disabilities’ was the preferred terminology of the informants. By employing ‘(dis)abilities,’ I also gesture to contextual and personal definitions of disability status.

Woodlands not solely as locations or structures of injustice, but also insofar that institutional knowledges are reconstructed by judicial and legislative powers in new and more subversive forms.

Methodology: Power, History, and (Dis)ability in Everyday Knowledge

My approach to interviews and data analysis is informed by the work of sociologist Dorothy Smith (2005). While this project is not entirely an institutional ethnography, in order to engage with legal texts, legislative bodies and institutional histories this paper incorporates ethnographic dialogues and the reflexive demands of Smith's methodology. In recognizing the tools of objective knowledge that have played a substantial role in the construction of (dis)abilities, it is also necessary to recognize how similar positivist practices have been integrated into sociology. Bannerji (2010) argues that many sociological practices and traditions are similar to those that produce psychiatric 'objectivity' in reaffirming the terms of "institutionally accredited social knowledge" (p.164). Departing from the objectifying knowledge of sociology and the social sciences, Smith's (2005) institutional ethnographic practice: 1) presents individuals' "everyday worlds" as important cartographies of power relations; 2) makes language as central to "the ethnographic discovery of how institutions are coordinated"; and 3) addresses the textual mediation of subjectivities in local experience (p.2). To further my discussion of the "complex of relations" evident in the formation and management of the institutional that includes the Woodlands school, I draw from the "work knowledges" of those currently involved in Vancouver's disability community, as well as documents relating to the Woodlands class action suit, and the ongoing settlement process (Smith, 2005, p.10/44).

The informants were recruited by email and/or telephone, and were identified by their public credentials and my working knowledge of disability services. Each interview was approximately one hour, following a semi-structured outline, with varying degrees of diversion from my original questions and themes. In each of the three interviews the act of facilitating the conversations gives way to the speakers' maps of recollection and personal reflections. Following Smith's approach, the text and talk of medical and political institutions become more readily accessible and legible when inquiry emerges from grounded positions of experience. More recent legislation and court documents from the British Columbia Supreme Court and Court of Appeals are also integrated in the interview analyses sections. The informants' experiences introduce new dimensions to the static institutional texts. The actualities of what it means to identify as having a disability or to negotiate the bureaucratic rhetoric governing 'disabled bodies' both confirm and refute these institutionalized, legal, and public knowledges.

'That coppery taste in your mouth': An Account of Woodlands Survival and Litigation

Berger (2014) argues that experiences of "injury, trauma, [and] socio-political silencing" have become the site of significant ethical questions in disability studies (p.2). His insights warrant concern, inviting us to explore how linguistic practices, including research, might trap informants "at the center of the story, testifying to the injustice" re-articulated in texts (Berger, 2014, p.2). Interviewing Bill, a survivor of Woodlands, I am intensely aware of the boundary I may be crossing and how I may be participating in a kind of linguistic violation. Bill's remark that I might as well forgo the use of a pseudonym shows how deeply he has been involved in the Woodlands class action and settlement and how much this has shaped his identity. A recognizable face connected to the Woodlands case, Bill has been acting as a representative plaintiff in the class action suit for over ten years. Referred to me by different contacts at organizations and a consistent name in various media that have covered the Woodlands case, Bill's readiness to accommodate our interview feels more like a friendly invitation extended by him to me: "I would like to see this go down in the history book. I want to see this recorded, so that it doesn't get swept under the rug […] I believe this province should never be allowed to forget the atrocities that were committed against these people."

Bill's reflections on the function and necessity of law are evident: what is at stake in the plaintiffs' legal battle is not just reconciling the past but establishing a resolution through the class action suit that is archived, publicized, and appears to be interminable. Bill presents the survivors' directive to me in clear terms, as he has described in many interviews with news teams or legal agents throughout the years. Early into our conversations via email, then on the phone to organize our interview, my initial concerns dissipate. Bill is simply better versed in this process than I and is intent on breaking with the idea that (dis)ability is simply "an object of diagnosis and treatment" (Berger, 2014, p.2). We are not speaking about anyone's account but his own; I hope to embrace what can be "dysarticulate" in experiences of (dis)ability and to locate the "impasses" of language (Berger, 2014, p.2). By exploring Bill's experiences in the judicial realm - the formation of the class action, the court proceedings, and their struggles with the settlement – and by bearing witness to institutional space, our conversation seems to present an opportunity to disarticulate what has been articulated by historical policies and the provincial settlement alike.

Self-identifying as having a developmental disability caused by premature birth and stating that he also feels he must "carry the torch" of the Woodlands survivors, Bill has developed a complex set of "work knowledges" (Smith, 2005, p.151). As Smith (2005) suggests, this knowledge should be defined generously, outside the borders of 'work' understood solely as paid employment. Bill's "work knowledge" is not specific to a traditional job but rather includes his continuous activity and investment in being a representative plaintiff and a survivor of the Woodlands School (Smith, 2005, p.151). In other words, Bill has developed a specific way to both read and navigate the political and legal institutions that have become fixtures in his life. In the group study room where we meet in a college library in New Westminster, the empty book stacks around us are transformed by Bill's story; they become a forum for his insights. In this familiar space, Bill is clearly comfortable in sharing with me his experience and journey to joining the class action, recalling an exhibit at New Westminster Library that brought him back into the history of Woodlands. As Bill shares with me, the exhibit included portraits of former residents of Woodlands, which triggered a powerful return of his experiences within the facility. This random encounter would lead to his introduction to the We Survived Woodlands group and his subsequent joining of the class action.

> I literally stumbled into this by accident because I left the so-called Woodlands School. And in June of 2004…I had pushed it away, tried to forget about it. But of course you can never forget about it. You can put it in the back of your mind somewhere but it's always there. And so one day I was up at the New Westminster Library, I wanted to brush up on my electrical theory […] They didn't have any books that you could take out

> but they had books in the reference [section]. So I went up the second floor of the library, here in New West. And there was a local artist by the name of Michael de Courcy having a photo exhibition up on the foyer…

First admitted to Woodlands in 1964 when he was five years old and returning to Woodlands periodically until his final departure in 1974, Bill recalls that until this accidental encounter at the library he had “pushed it away.” Prior to his arrival at Woodlands, Bill describes himself as “one of these rambunctious kids,” who was “bouncing off the walls” to the point that his energy exceeded that of his parents and he began to cause “trouble” in school and at home:

> Even if you were not abused yourself, just the fact that you are in that pressure cooker environment, seeing somebody near getting abused, is abuse in itself. You got to understand you would have a room with about 20-30 kids. Big bedroom, dormitory really. You would have rows of beds and they were crowded together. There was no privacy. And when you went to bed you were locked in for the night. Everything was lock down.

He suggests that he was thrown into Woodlands because that seemed to be the only solution at the time. He reflects on feeling “warehoused” in a space of constant containment. For Bill, the memory of Woodlands is best characterized as a visceral fear. Throughout our conversation, there is a recognizable gap between what he has felt and what I cannot. Recounting what fear felt like to become a child of Woodlands, he asks me to imagine a penny in my mouth and the “coppery taste.” It is a fully embodied pain that I too can sense as I speak with him.

There is a significant contrast between the image Bill presents of himself as a child before Woodlands and what Smith (2005) would call the “institutionally generated realities” of Woodlands (p.187). The dynamic child he describes pre-Woodlands is lost amidst a need to fully and accurately express the experience of institutionalization. Bill’s recollection of his own experiences and bearing witness to others’ through descriptions of spatial and physical abuse show the way in which "the lines…between 'disabled' and 'nondisabled'" were drawn by legal and punitive mechanisms that worked to erase these individuals (Carlson, 2005, p.149). Disabilities, or any other diagnoses of 'difference,' are no longer personal or dimensional when spoken about in the context of Woodlands; instead, the experience of being disabled within the institutional domain becomes homogenized under the processes of institutionalization or punishment of otherness. Bill's visual encounter with the photographs decades after his release from Woodlands also feels significant insofar that his involvement with the legal saga emerged out of a recognition of the *persons* of disability. Going "from picture to picture," Bill met with the artist, revealing that he knew some of these people. The images and the survivors are a living history for him.

Bill shares with me his in-depth knowledge of the history of institutionalization, referring to the Royal Commissions and reflecting on his own struggles to research the history and elicit the conditions of truth. Describing what he calls the Amos Gill inquiry of 1963/1964, Bill tells me that he has been unable to access those documents in the public archives in Victoria. He claims that there is a "lid of secrecy on it so tight" that even he, a former resident and plaintiff in the class action, has struggled to collect and confirm the entirety of allegations. Bill is not grasping at these histories to affirm his experiences, but there is a critical edge to his searching. Discussing the Woodlands school, he acknowledges how its residents were known as what psychiatry termed "retarded children." These kinds of classifications, which were absorbed by law and government, are "textual enactment[s] of disability" that still bear significance for Bill as a survivor (Titchkosky, 2007, p.17). Bill describes how language made it permissible for these institutions to become a “dumping ground for kids” who were then subject to the “unwritten code” of the staff.

Despite Bill’s and other Woodlands survivors’ efforts to tackle the language and legacy of Woodlands, he claims that they have been greatly hindered by the legal process. While the details of the Woodlands class action are readily available online, I am interested in having Bill take me through what he calls the “protracted court battle.” He tells me that initially there had been individual lawsuits filed against the Province by former residents, including two in 1998: *H.J. v. British Columbia* and *Boyd v. British Columbia*. Bill describes some of the legal and reconciliatory conflicts the class action and Woodlands survivors have encountered over the past several years. He mentions the Institutional Legacy Trust Fund of 2003, which was issued to survivors of several institutions in BC:

> The government came up with a two million dollar Institutional Legacy Trust Fund and they said at the time they apologized for some of the mistreatment and bad things that had happened. But they said, ‘Oh well that is only good for psychiatric or psychological help.’ And that was for people who were in Woodlands, Tranquille institution up in Kamloops, and Glendale lodge. But then you split that amongst the people that were eligible for that and that comes out to two hours of counseling? […] I remember going up with Community Living BC and we said everyone is telling us how to spend this money but nobody asked us how we felt. You know? And I’m going to make something clear here that I am very very very very lucky that I was able to get out there. It hasn’t been easy but I have been working. Working a job, living. But a lot of these people have nothing. The majority isn’t able to work. They are living in abject poverty. I want to see them be able to get some fair compensation for what they had to endure.

Bill describes how the conditions of the Fund were extremely frustrating. Though the government has made an effort to recognize their injustices, it was dictating how the Fund should be spent. For Bill it seems that the fund was less about “their small piece of the pie," but reflects how the province has made decisions without direct consultation with survivors. Bill's descriptions of the Woodlands survivors and other former residents' desires for dialogue are a recurring theme. There seems to be a constant impediment between patient experiences and legal processes. Bill notes that the province has continually denied the school's history of systemic abuse. The most significant issues that Bill brings up in our conversation are the demands of tort litigation and the Crown's use of proceedings legislation.

Before Bill joined on as a representative plaintiff he had hoped, as did the majority of the survivors, that they would be granted common experience compensation. After years of fighting for the closure of institutions and for recognition from the provincial government, Bill states that the former residents wanted a pay-out to anyone who had been institutionalized at Woodlands, regardless of the circumstances of their experience. Bill takes a wide approach to violence. It includes experiences of the "pressure cooker environment" and witnessing abuse as forms of violence. Bill tells me that they wanted to "avoid having people go through the court system and try to prove and relive the mistreatment that they had experienced." Recommendations from the *Need to Know* report of 2001, as well as the response from the Woodlands Parent Action Group in 2003, stipulated that there should be sufficient reparations and support provided to the survivors outside the judicial process (McCallum 2001).

Bill states the Fund worked out to be around five hundred dollars per former resident. Not only were the conditions patronizing, but also the amount barely addressed the extent of the survivors' needs. Hoping for greater monetary settlement and more significant provincial recognition of the abuse, the Woodlands survivors decided to seek compensation through civil law. In 2002, their counsel officially filed the class action suit *Richard v. Her Majesty the Queen* against the Crown. The rigors of tort litigation and the Crown defense would dissect the abuse claims and the tenability of the Woodlands survivors as the plaintiff group. Part of the process involved the province's appeal of the class certification, arguing that the Woodlands survivors did not meet the legal characteristics of a 'class' on a number of grounds. Bill's recollections are supported in part as outlined in the Reasons for Judgment of the Honourable Madam Justice Morrison from *Richard v. HMTQ* (2005). I quote excerpts from that section:

> [52] The defence points to the varying legal status of Woodlands residents, some who have the Public Guardian and Trustee looking after them, some who have private Committees and some persons who are now competent.
>
> [66] The defence says that the scope of the class and the issues are so wide and varied that a class action is the wrong strategy. The court needs all the information, facts and precision, and needs to examine both sides of all issues, before making such an important determination. Counsel argues that the court has a triage function, and to hear the abstract issue or issues first, is not the most direct or efficient route. Rather, the disputes must be dealt with by hearing the cases individually.
>
> [67] Other issues have to be considered, such as common law principles which may protect caregivers in some circumstances from liability and tort. It is suggested that the Woodlands staff face unique challenges. There is also a consideration of consent, according to the defence. This would require a detailed examination of evidence with regard to programs and individual treatment. There may also be an issue as to whether persons standing in the position of parents can use reasonable force on a child where necessary as a corrective measure. The defence also questions the claim of emotional abuse, and whether that constitutes an actionable tort.[2]

---

[2] Richard v. HMTQ, 372 British Columbia Supreme Court. (2005). Retrieved from Klein-Lyons website http://www.callkleinlawyers.com/wp-content/uploads/2013/12/certification_2005.pdf

These excerpts from the Position of the Defendant evidence the ways in which (1) developmental disabilities are equated with legal status; (2) systemic abuse is inversely treated as individual issues; and (3) a hierarchy and permissibility of abuse is implied. Bloom and Miller (2011) suggest that tort litigation can operate “with a distorted perspective of disability” that focuses on the medical perspective of disabilities and emphasizes how experiences of disabilities may be seen as “less than whole” by the law (p. 709). While Bloom and Miller (2011) focus on the experience of physical disabilities in tort litigation, their insights are also significant when discussing the Woodlands survivors. As Bill describes, there is a sense that the plaintiffs have been challenged on their mental capacities, as well as their right to legal dialogue. While some survivors do indeed have more severe challenges, the questioning of their “legal status” essentially erases their agency for advocacy and the legitimacy of their claims, particularly when ‘competency’ is a fundamental argument used by the Crown against the Woodlands class (*Richard v. HMTQ* BCSC 372, 2005, p. 10).

In efforts to discontinue the class certification, the province also questions how the court could levy a decision based on what they call “abstract issue[s]” (*Richard v. HMTQ* BCSC 372, 2005, p. 12). According to the defence, the systemic nature of the claims and the desire by the Woodlands plaintiffs to present a ‘common’ experience should be interrogated. The fear that Bill shared with me about reliving mistreatment seems to be evident in these arguments as well. In seeking “precision” the defence begins to divide the collective memory and challenge the specific experiences of abuse (*Richard v. HMTQ* BCSC 372, 2005, p. 12). A hierarchy of abuse, which Bill and the survivors wanted to fight against, is established as the defence questions the relevance of “emotional abuse” as an “actionable tort” (*Richard v. HMTQ* BCSC 372, 2005, p. 12). Settlements range from $3,000 to $150,000 based on the particulars of the kind of abuse to be judged by an adjudicator. Claimants must detail their experiences of abuse in order to be eligible for any compensation.

The defence’s response to the class certification also reiterates the idea that at some point the treatment of the residents was justified. A vague “analogy to children” is reiterated in their arguments, suggesting that the violence could be viewed by the law as permissible due to psychiatric evaluations of “mentally disabled adults” (Ellis, 1981, p. 1102). Although this argument may come decades after the *Sexual Sterilization Act* of 1928, it is difficult to separate these legal ontologies of developmental (dis)abilities even now:

> [50] The defendant opposes the motion for certification, saying that it is not the proper tool to “root out a few bad apples.”
>
> [53] Admission policies changed over time, some were involuntary commitments, some came in through different policies. And the statutes governing the treatment of patients at Woodlands changed with the times and possibility with different governments. Policies and manuals changed, and there was a wide variation of resident population. In the view of the defence, there was too much variety to prove systemic negligence, pointing to the residents who suffered from a variety of conditions and diseases and disabilities.
>
> [54] As far as staff were concerned, the defence refers to Woodlands as “a small city staffed by a remarkable array of different individuals with different responsibilities, skills and duties.” They ranged from doctors, nurses, social workers to security staff, groundskeepers, teachers, etc. There were also volunteers on site, family members, religious advisors and others.[3]

In her survey of sexual assault and institutional abuse, Hall (2002) argues that debates over “vicarious liability” are at the forefront of these cases (p. 163). While there

---

[3] Richard v. HMTQ, 372 British Columbia Supreme Court. (2005).

are specific perpetrators of abuse, the situation (be it residential schools, psychiatric institutions, foster homes or other state governed forms of 'care') itself and governing bodies with fiduciary duty can be held liable (Hall, 2002). In essence, the province's arguments seek to disprove that the Woodlands institution was part of "systemic negligence" and, therefore, the circumstances disallow a class to be approved and furthermore that this class can justly seek compensation from the province (*Richard v. HMTQ* BCSC 372, 2005, p. 10). In attempting to dissuade the certification, the defence argues that Woodlands existed as a disconnected site, comprised of a mess of influences and factors. The province also frames the abuse as an anomaly caused by some poison fruit, suggesting that the systemic nature of it is ultimately untraceable in the web of individuals, policies, and statutes.

> *Sylvia*: This idea of justice…you mentioned it being recognition by the government, as well as monetary compensation?
> *Bill*: Yeah, but how do you compensate people who lost a childhood? […] It's gone.
> *Sylvia*: What then do you define as justice?
> *Bill*: Well, I want to see the government admit. To own up, to take ownership.

Bill's desire for justice as "ownership" is complicated by the judicial processes and the confrontation of (dis)abilities with the Crown's defence. The province's use of the Crown Proceeding Act destabilized Bill's own eligibility for settlement within the class. According to Bill, the use of the Act rendered anyone who had been institutionalized at Woodlands prior to August 1st 1974 ineligible for a settlement with the class. First applied during the Arishenkoff case in 2005, regarding the detainment and abuse of Doukhobor children from 1953 to1959, the British Columbia Court of Appeal upheld the province's claim that the province could not be liable for any tort of nonsexual abuse prior to the passing of the Crown Proceedings Act in 1974 (Kodar, 2012). Regardless of the long-term affects of the abuse, only abuses occurring on or after August 1st 1974 could be included in the class settlement for Woodlands as well. Approximately 300 members of the Woodlands class would be excluded under the CPA defence (Kodar, 2012).

According to Kodar (2012), there is a history in BC that suggests the Crown employs “selective use of the crown-proceedings legislation” (p. 398). Kodar (2012) cites the wrongful sterilization case at Riverview Hospital (*DE (Guardian ad litem) v British Columbia*) as an example of the CPA defence *not* being used by the Crown, even though the last case of sterilization was documented as occurring in 1968. Additionally, the province is noted as providing compensation for entire “groups of survivors…such as residential school survivors” whose experiences of abuse also happened prior to the CPA cut-off (Kodar, p. 397). Despite the 1994 amendments to the Limitation Act for sexual assaults, allowing no limitation on sexual abuse claims, Kodar asserts that no further review of the Crown Proceedings Act liability has been discussed, essentially upholding the CPA defence as it is applied to particular cases. In Bill’s words, the province’s defence is a “technicality of convenience.”

‘If you can get their ear’: Neoliberal Bureaucracy and the System of (Dis)ability

While the majority of psychiatric hospitals and schools have been rendered inoperable, in their absence an often “unsaid” network has emerged. Provincial responsibility has largely been transformed from the physical psychiatric compound to a more diffuse “dispositif” or apparatus of powers (Foucault, 1980, p. 194). Immersed in past ideologies and contemporary policymaking, this apparatus functions to legislate, fund, and codify the quality of life for disabled and non-disabled subjects. In order to better understand the functions of this apparatus as they are exercised through crown agencies, provincial ministries, and judicial procedures, and their interactions with disability communities, I will draw on the experiences of Laura (pseudonym), an executive director in the non-profit sector working with people living with disabilities in Vancouver.

My interview with Laura details her personal, academic, and professional insights, providing an account of the bureaucratic actualities of ableism and the “administration of life” (Rose & Valverde, 1998, p. 541). These dimensions are particularly significant in understanding the bio-political apparatus that surrounds the Woodlands settlement and disability communities. Foucault (2009) states that bio-power and the bio-political can be roughly understood as “set[s] of mechanisms through which the basic biological features of the human species became the object of a political strategy, of a general strategy of power” (p.16). As Rose and Valverde (1998) discuss, the normative knowledges of bio-power are increasingly pervasive in legal complexes, often supported by the authority of the medical sciences (p. 543). Laura’s experiences, her use of language, and her systemic knowledge help to contextualize developmental (dis)abilities in relation to the legal complex of ableism.

My interview with Laura needed to be rescheduled twice over five weeks. Waiting for her in the organization’s office, which is an assemblage of several desks, open conversations, and posters and pamphlets covering their range of services offered, I was grateful for the brief moment we have finally managed to coordinate. It is not for lack of welcome either; the various times I’ve called, restating my name and intentions to different staff over the phone, simply indicates how for all of the hours in the day, there is only so much they can spare for matters that are not urgent. This is the first time I see my project as a personal luxury, a meandering between the past and the present as they are entangled with my own self-interest. The interviews for me have been repositories of alternative knowledges *and* activities of reflexivity but are increasingly disruptive sites. Despite my attempts to anticipate the exchanges we will have, the questions I prepare have largely proven to be ineffectual. We may talk about law, community, and disability; however, informants tend to re-arrange my 'cues' and challenge the objective 'truths' that underpin my questions.

Laura has an extensive background in political science, naming herself at one point as a "political scientist" while sharing her analysis of the political world she is embedded in. The way in which Laura and I forgo theoretical boundaries for an improvised work knowledge seems necessary at times for us to embody multiple personal and professional roles. Laura speaks to the fluctuation between her official title as executive director and the actual conditions of working within the organization:

> [I]t's my observation that a medium to small sized organization like this is kind of in the middle. We're not one of those that is basically two people or three people. So with that size of organization in that way there is sometimes less pressure because the funding requirements are smaller and I guess the expectations are smaller. But neither are we huge, like some of the larger organizations. So we are kind of in the middle…so you have quite a number of expectations. But you have fewer staff. I mean for example, you go to meetings and people from larger organizations or government will say, "Who is your HR person? Who is your communications person? Who is your media person?" And I mean…that's me, right?

Laura's brief reflection on her own positions reveals how service providers depend on modes of communication and staff in order to navigate the areas of one-on-

one advocacy, program provisions, governmental lobbying, and day to day office operations. Working from the “carbon model,” Laura is essentially the “employer” of the staff in the organization, while she reports to a board that also considers her suggestions for the direction of the organization. However, Laura laments that the “very tough funding environment” has left her, like other executive directors, spending a significant amount of time finding funding for such seemingly obvious organizational necessities as administrative support. The tension, she suggests, between the vision of the communities they serve and the ability of the organization to address them have been heavily dependent upon the political climate at the provincial level. Laura refers to their work within the realm of politicians and “crown corporations” as “systemic advocacy” – campaigning on the bureaucratic stage:

> And then we sit on a number of committees, we work somewhat closely with government and Crown Corporations. The last few years, I would say a bit more collaboratively to come up with positive policy changes. And you know that’s more on the systemic advocacy side…I mean we certainly…there are some systemic campaigns that I personally have been working on for a number of years. To try and get a change. I mean it takes years…so they are kind of an ongoing thing. We work with other organizations from the committees if necessary.

Laura describes sitting on various “committees” and at “tables” as ongoing dialogues with the provincial government. Referring to a campaign that she started on her first day at the organization in 1998, intended to make changes to the BC Guide Animal Act, Laura admits that they are just starting to see these changes come to fruition – seventeen years later. While she describes their meetings with crown agencies such as the Ministry of Social Development and Social Innovation in the last few years as less “adversarial” and more collaborative, she relays that there is still the unspoken expectation that the organization will be diligent in reiterating policy changes necessary no matter the number of times they are denied. Speaking to the “inadequacy of benefits” for people living with disabilities, Laura states that there has been consistently no movement on this issue by government parties, though the community has lobbied for years for an increase. Their consistent chorus requesting better rates and the stable denial from various ministers and provincial agents seem endless. However if they were to relent, Laura suggests that the government “would think we lost our minds.”

Campbell (2009) describes the “ableist relations,” which Laura and the organization traverse on a daily basis, as performances of complex “identities of disabled and abled” (p. 6). Laura lists ministers, deputies, assistant deputies, and various other “bureaucrats” as “gatekeepers” to the well-being and constitutional recognition of (dis)abled subjects (Carlson, 2010, p. 120). Laura’s analysis of the ‘abled’ system is significant for how it speaks to the ways in which disability communities are immersed in but not submissive to this “play of power,” constituting the bio-politics of service provision (Foucault, 1980, p. 196). Laura relies on her organization’s own “coordinates of knowledge” to respond to the many facets of government, seeing herself, the staff, advocates, and self-advocates as educators of the various political agents they encounter (Foucault, p. 196). In her words, there is a “certain lens of how you look at government” that is necessary to discern the “bafflegab” she has become accustomed to.

I read this *bafflegab,* or jargon of provincial constraint, as symptomatic of an “ontological separation” between the disability community and the functionality and interests of crown agencies (Campbell, 2009, p.6). Furthermore, this tension within the apparatus of (dis)ability services and provincial legislation in BC emerges from a confrontation of distinct political ontologies. According to Prince (2009), disability movements in Canada tend to converge and contend with the “dominant discourse of neo-liberalism,” a political framework that has had a drastic influence on the rise of “welfare state rollbacks, social program cuts, and the offloading of responsibilities” (p. 7). The health of the market and the privileging of independent market consumers/producers take precedence in neoliberal nation-states. McCready (2009) argues that neoliberalism becomes a cultural force, valorizing “the individual” at the cost of collective political mobilization (p. 165). In terms of marginalized groups, historical injustices are ignored or branded as errors of the past (McCready).

As neoliberal ideologies shape federal and provincial cultures in Canada, there is also a growing influence on legal policies and philosophies. In particular, Sherry (2014) outlines “the paradoxes of contemporary neoliberalism” and its reconstruction of human rights on a global scale (p. 16). Despite national and international commitments to inclusion projects and “disability provisions” through law, the improvement of “economic outcomes” and the transformation of global economies have simultaneously led to the stagnation of human right claims (Sherry, p. 16). Laura sees that these human rights issues are interchangeable with disability rights. Specifically, concepts like “equal opportunity” and the chance “to live with independence and dignity” have greatly informed the ways in which their organization operates. For Laura, “income is the key,” but she aptly describes how the path to an adequate income for a person living with a disability will vary greatly depending on one’s situation and available supports:

> And to kind of move forward…to have a bit more of a modern outlook of what people with disabilities can and cannot do. So really in terms of the human rights side it's really equal opportunities. Now you can't…you don't get 'equal opportunities' by treating everybody the same. You provide them with the supports they need and then, all things being equal, they will accomplish what they want. I think also on the employment side, there is a great deal of attention paid to people with disabilities in terms of what they need with a resume, training, interview training…so you can get people ready to seek work. But if there aren't any jobs, if there aren't employers who are able to offer people with disabilities jobs or who want to, then it's kind of a waste of time. I think there needs to be more of a focus on employers, educating employers and supporting them because most of the people who work here have a disability so in a sense I am an employer of people with disabilities.

While employment is important, as are substantially greater benefits, Laura suggests that there are approaches to providing income rights to people living with disabilities that can be "patronizing." With respect to employers, particularly in the "business sector," Laura argues that the "bottom line is everything," potentially positioning employees with disabilities as liabilities to profit. There is also a divide, she explains, between the professional world and the kind of employment that is more readily available for people with developmental disabilities. Jobs that require "less skills" are more easily attainable, suggesting that even employed people with disabilities may still be facing rampant "abject poverty" because of the type of labour that is being offered to them. Laura's insights reposition neoliberal policies and the increasingly privatized labour market as issues of human rights and health. "Income is a determinant of health," she states, offering a critique of the current inaction of "market contexts and government protections" in BC (Sherry, p. 20).

Prince (2009) argues that the majority of disability advocacy groups, organizations, as well as the Canadian disability movements follow the ideology of "social liberalism," arguing for the "positive function" of the state in the lives of all citizens (p. 15). Laura, in her description of Vancouver's disability community, tends to privilege "democratic dialogue[s]" that seek to reform the political – within government agencies as well as at broader social levels, such as cultural and economic sectors (Prince, p. 15). While Laura's analyses are not overtly anti-capitalist, she suggests that the expansion of the free market can compromise commitments to ensuring the "cultural, economic, and social rights" of people living with disabilities (Prince, p.18). Prince characterizes the Canadian disability movement and its social liberalism as informing a more thorough "politics of redistribution" across provincial programs, legislation, and income rights (p. 19). These kinds of reforms are part of the "systemic advocacy" that Laura describes as being an important part of the organization and community's work. By comparison, the "bafflegab" of political parties is more aptly described as a "soft politics of recognition" (Prince, p. 19). Rather than instigating structural change, neoliberal governments rely on the 'appearance' of equality or, in other words, a "soft politics" that does not penetrate the ableist structures upholding the status quo (Prince, p. 19). For disability groups, this may involve summits, conferences, ministries, or other political mechanisms that feign social justice.

Limited options for employment, minimum income benefits, the general delay of legislative changes, and the political lip service that Laura lists are fixtures of what Campbell (2009) calls the "double bind of ableism…performed within Western neo-liberal polities" (p. 12). While equality and individualism are central values to liberalism and neoliberal ideologies, there is a form of collapse that happens when these ableist systems attempt to address their own capacities for inclusion. If the "sovereign subject" is the most essential agent and commodity of the neoliberal nation-state, then conversely ableist conceptions of normativity structure (dis)abilities as political and economic aberrations (Campbell, p. 13). Therefore, in order to be recognized by the neoliberal system, processes of “systematisation and classification” must render the disabled subject legible (Campbell, p. 13). Formerly, these processes were generated by psychiatric space and the colonial legislature; however, the *dispositif* of policy has produced new mechanisms for producing and consuming identities.

Laura characterizes these processes as predominantly paternalistic; she is wary of the “Timmy’s Telethon” image that has come to publicly symbolize people living with disabilities. Recalling the television charity models that were common programming in North America in the latter half the 20th century, Laura suggests that these kinds of broadcasts have had lasting effects on the political equity and self-determination of (dis)ability communities (Longmore, 2005). Her point quickly triggers imagery in my mind of a diluted pageantry that transforms people with disabilities into what Laura calls “inspiration figures” that became socially acceptable and digestible. The “Timmy’s Telethon” image also takes on a distinct function within the rise of neoliberalism. Deleuze’s (1992) discussion of the apparatus (*dispositif*) argues that it is a “multilinear ensemble” that is formed by “lines of sedimentation,” as well as fractures (p.159). While I have employed the term ‘system’ to refer to the landscape of current social services in BC, this ‘system’ is not bound by a fixed locale or structure. Ableist power is not locatable, or traceable to a singular or specific time and site; though asylum knowledges and institutions have been greatly determined by their spatial alteriority, they are points in a vast and expanding “cartography” of knowledge and subjectivity (Deleuze, 1992, p. 159). The conditions of the apparatus seem to be significantly accentuated by neoliberal ideologies, which become bearers of “light” that cast “curves of visibility and curves of enunciation” (Deleuze, p. 160). Deleuze’s invocation of light also suggests that this affirmation is one way: the variable force that casts light is thusly made aphotic.

Laura’s remark about “Timmy’s Telethon” therefore functions as both an illumination and a haze. The idea of looking upon disability communities through the camera lens has a dual effect within the apparatus; the inseparable gaze determines how (dis)ability is made visible *and* how able-bodiedness remains both unspoken and invisible. The “Timmy’s Telethon” model, and other processes of visibility, re-enunciate the ‘disabled subject’ from psychiatric archives to the charity circuit. With reference to developmental disabilities, Laura sees that the community is highly varied, although there is a danger that under certain political and economic ideologies will cast certain individuals as “Walmart greeters.” The piecing together of perceived ‘non-abled identities’ with productive roles is simply a continuation of the Telethon narrative. As Tremain (2005) argues, the “expansive apparatus” of systems of care is propelled by “bio-power’s capacity to objectivize people” (p. 6). The Timmy’s Telethon image is a neoliberal tool for generating ‘recognition;’ however, it is also a projection of how quality of life is both promised *and* contained by bio-political governmental practices.

Logics of cognitive ability inform the type of citizenship that is granted, determining ‘appropriate’ labour for those deemed unproductive in the neoliberal market. Laura’s account reveals a partial ‘bio-political’ citizenship. The limits of this legal and political status suggest that neoliberalism propagates “constitutional fictions” of belonging (Valverde and Rose, 1998, p. 543). The ‘disabled subject’ must be complacent within the neoliberal apparatus, identifying with medical perceptions of developmental (dis)abilities in order to relish any of its rewards. My conversation with Laura suggests that the relationship between neoliberal polities and the legal complex also contributes to the establishment of these public imaginaries of (dis)ability:

> This last year we saw at the Disability Summit there's a lot of talk about supporting people with disabilities and making BC the most progressive province in Canada for people with disabilities. And I think on one level they really believe what they are saying…they have that kind of 'noblesse oblige' thing where they do want to see people with disabilities living better lives…but then what about Woodlands and why don't you do something there? And it's quite different.

Laura recalls being interviewed alongside her former executive director by Dulcie McCallum for the 2001 *The Need to Know* report, the ombudswoman's administrative review of the institutional abuse claims and recommendations for provincial compensation. She admits that during that first interview with McCallum, she had a very basic familiarity with Woodlands. Facilitating such programs as the Advocacy Access Program, Laura and the organization have since worked with many people living with developmental disabilities, some of whom would have been formerly institutionalized in BC. Laura explains that some of their work continues to involve advocating for or supporting self-advocates to transition out of long-term care facilities or hospitals such as the George Pearson Centre. Through this disability community, staff and advocates at the organization have connected with some of the Woodlands survivors, with Laura herself becoming more involved "when it became clear that the government was not going to follow up on Dulcie's recommendations." Laura claims there was always an intention by the survivors to stay outside the courts; one of the recommendations put forward by McCallum was also for an out-of-court settlement. Laura's timeline, from the closure of Woodlands in 1996 to the “failure” of the current settlement, suggests that justice has been at the whim of another force.

The concept of “noblisse oblige,” which Laura uses to describe the attitude of provincial agents, also seems be a factor behind the political and legislative responses to the Woodlands case. Luban’s (1988) discussion of the rise of “the legal profession as a link between private and public interests” outlines the transmutation of legal philosophy from the aristocratic realm to the “framework of capitalism” (p. 724). Surveying the early history of legal ethics in the 19th century, Luban (1988) outlines the prevalence of “order over liberty,” invoking de Tocqueville’s “mold of legality” that privileges the legal world as an offshoot of the state (p. 719). Luban (1988) speaks to the moral reform of legal practice leading into the 1960s and 70s, which saw the emergence of civil interest lawyers and the influence of Marxist and left political values on a formerly “elite” group (p. 719). He argues that this “progressive professionalism” significantly shaped the practice of lawyering in the US up until the 1980s, producing a new ethics that in part sought to redirect the balance of justice from the state to the public – though he notes that this is a disappearing phenomenon (p. 736). While Luban mainly considers the practices of lawyers, judges, and other legal bodies, the concept of ‘noble obligation’ or “noblisse oblige” can be seen as characteristic of the relationship between legal functionality and government power (p. 717).

When I ask Laura for her perspective on why she thinks the Woodlands class action and settlement has been elongated and complicated by the province, she responds that she just doesn’t understand it. Reflecting on her background in political science, she states that “either [on] a political level or financial level and certainly not on a moral level," the province's (in)actions in terms of McCallum's report and subsequent legal responses to the ensuing class action suit still do not "make sense" to her. This sense of surprise and confusion has been shared by all of the informants. We collide in our conversations against the barrier they face between their expectations of legal responsibility and the ability to achieve justice for the Woodlands survivors. Laura's statements on the kind of 'noble' intentions she notices in certain people from the Ministry of Social Development and Social Innovation suggest that a discourse of justice is being considered. However, as Laura describes the promises and refrains of the Ministry I can't help but imagine the way this rhetoric reiterates the questionable elitist ethics that Luban discusses. The philosophical veil of "noblisse oblige" reimagines the borders of civility and legal servitude, and subsequently the accessibility of a political presence. A critical take on the complicated dialogue between communities and the province suggests that bureaucratic ableism often functions to nurture the forces that are most politically productive – how then does 'justice' come into this transaction?

'Within the legal realm': An Account of Advocacy, Ableism, and the Politics of Care

An understanding of how the 'disabled subject' operates in bureaucracy demands alternative histories from Vancouver's disability communities, including discussions of advocacy. Bill's account of his experience as a Woodlands survivor and plaintiff, and Laura's reflections on government and non-profit relations in the neoliberal context have contributed to these histories in their own ways. Building on Bill's and Laura's legal insights, I draw on my interview with Mark – a pseudonym – who has been involved in support work and inclusion efforts in Ontario, Quebec, and British Columbia. Mark’s experiences situate our conversation of the Woodlands School and institutionalization in BC within *national* imaginaries of (dis)ability and legal interventions. His accounts of advocacy and his journey to connect with survivors of Woodlands are significant to our understanding of law and to constructions of developmental disabilities insofar that they center on the changing politics of care and the expansion of bio-political interventions.

During conversations leading up to my interview with Laura, she referred me to Mark. She identified him as a group coordinator for survivors of institutions. We arrange to meet at his apartment in Vancouver. Having worked extensively with the Woodlands survivors over the last several years, Mark seems comfortable with my emails and calls requesting an interview. While I clarify that I am not associated with any media outlet, I recognize that the Woodlands case and class action has been extensively publicized. From my own observations, it seems that over the last few years, settlement articles regarding institutions in BC, and the Woodlands in particular, do seem to be fewer in number and frequency. Has public interest and political concern for formerly institutionalized groups waned? Has the deinstitutionalization movement and inclusion models brought about such significant changes that Woodlands could be left for the history books? Stepping into the elevator on my way to meet Mark I wonder if we are now to assume that ‘settlement’ means closure.

Beginning with his education in Toronto and move to Montreal, Mark’s work within the disability community started in 1984. As a student of university researchers and educators involved in the “inclusion model,” Mark was introduced to new ways of supporting individuals living with physical and/or developmental disabilities at the onset of what would become the de-institutionalization movement. Studying under "inclusion expert" Dr. Marsha Forest in Toronto, Mark was involved with programs and advocacy that sought to integrate children with "severe disabilities into summer camps, recreational programs, and regular schools that were [formerly] segregated." Mark also studied with Dr, Herb Lovett, a clinical psychologist who has done extensive research on behavior and communication. His ideas, Mark describes, contributed to psychiatric and community understandings. Instead of managing, isolating or punishing certain 'abnormal' behaviors that might be expressed by those with more severe developmental disabilities, these complex behaviors came to be understood as different types of emotional and intellectual communication that are "telling us something" new and distinct.

The Canadian research into "social inclusion," which Mark outlines, is part of a larger shift in the standards of (dis)ability studies, treatment, and support(Clifford Simplican et al., 2014). Hughes (2007) asserts that in the medical model, which dominated understandings of disability into the modern era, diverse experiences of disability are broadly conceptualized as deficits and positioned against states of being that privilege physiological and moral ideals. Shaped largely by psychiatric and pathological diagnoses, the medical model focused on essentialist notions of physical and cognitive normalcy, equating treatment with asylums, schools, and other aforementioned institutions. Davis (1997) contends that significant developments in theories of disability are best understood as a turn from the abject body as the focus of study to the "construction of normalcy" and its social mechanisms (p. 9).

Often portrayed as the antithesis of the medical or pathological model is the social model, originating in the 1970s, the social model sees disability as a product of “social, geographical, political, and legal barriers” (Riddle, 2013, p. 24). The rise of the social model coincided with reforms directed at social organization and structural barriers (Shakespeare, 2006). According to many social model theorists, ‘disability’ is a kind of socially constructed category. Though feminist, postmodernist, and critical disability scholars have contested these ideas, by re-focusing on “socio-political factors” and institutional barriers the social model has impacted government approaches to service provision and policies in Canada (Clifford Simplican et al., 2014, p. 18). The application of inclusionary approaches to disability may come in many forms. Some of the key principles include (1) “being accepted as an individual beyond disability,” (2) expanding “social interaction” for individuals with development disabilities, and (3) increasing “community participation” (Clifford Simplican et al., p.19).

Examples of socio-political reforms include increased employment opportunities, and improved and more inclusive options for housing and support (Clifford Simplican et al.). Mark’s experiences provide an account of how specific groups in Canada argue for greater inclusion through de-institutionalization and community living reforms. Actualizing these inclusionary ideals involves confronting various legal agents who mandate access to care, community, and agency among people living with (dis)abilities. Mark’s account relays how the Woodlands survivors have made a substantial contribution to this battle. As Mark tells me, he became further involved in the de-institutionalization movement and community living advocacy as a “legal curator and public guardian” in Quebec:

> I heard about a guy who was in a horrible institution there and [I] became part of this circle of friends around this guy named Michael and in the end becoming his legal curator and public guardian, since the government was just going to let him die, and wasn't doing anything about it. […] It took ten years but Michael, who was apparently the last on the list to leave, was one of the first to finally leave. Nobody was ever leaving that place. He was going to die there.

Mark relays to me his experience of working in Quebec, including the nearly decade-long engagement he had with the province in seeking the transfer of Michael out of a Montreal hospital and into a community living arrangement. Michael had spent the majority of his life under the care of the province of Quebec in psychiatric and hospital institutions. Mark states that decisions for Michael's care were left up to a legal or "public curator" (also known as public guardians and trustees in Canada). Public curators or guardians in essence are recognized and conceptualized as financial and legal representatives for persons with cognitive disabilities that may affect their ability to self-advocate in our current health care and legal systems. Provincially appointed public guardians become the default representation when family, friends, or other individuals providing support are not present or able to act in a guardianship role. In Quebec the *Public Curator Act* was created in 1989; excerpts from the act briefly outline the "general provisions" and responsibilities:

> The Public Curator is responsible, in particular, for
> (1) supervision of the administration of tutorships and curatorships to persons of full age, of certain tutorships to minors and of tutorships to absentees;
> (2) tutorships, curatorships or other duties related to the administration of the property of others, where such duties are assigned to him by a court;
> (3) tutorship to property of minors and tutorship or curatorship to persons of full age under protective supervision who are not already provided with a tutor or a curator.
> The Public Curator may intervene in any proceedings pertaining
> (1) to the institution of protective supervision of a person of full age,

> (2) to the homologation or revocation of a mandate given by any person in anticipation of his incapacity,
> (3) to the physical integrity of a person of full age unable to give consent who is not already provided with a tutor, curator or mandatory,
> (4) to the replacement of the tutor or curator of a minor or of a person of full age who is under protection or of the tutor to an absentee.[4]

Mark's experiences contrast with the legal stipulations above, as he notes in detailing his specific observations of the functionality of public curatorship. Mark, like Laura, is attuned to the *bafflegab* of the public guardianship legislation. Appointed to perform "protective supervision," Mark argues that the curators acted instead to uphold recommendations by government policies and medical doctors (Public Curator Act, 1989). Mark portrays the lack of any attempt by the province to work outside the confines of their institutional language and the curatorship model. Mark makes a clear connection between what he describes as the "government's authority" and the conditions of Michael's care in the hospital. Despite the stipulations of the *Public Curator Act,* Mark implies that the appointment of 'guardians' didn't necessarily result in greater independence or inclusion for those living with physical and/or developmental disabilities. Mark acknowledges that the "neglect and abuse" of the public curator was a systemic issue that eventually resulted in gradual reforms to the 1989 act, reforms that would allow him to eventually intervene as a legal curator:

> They just signed off whatever doctors were doing to these people. So there was no checks and balances or protection for anybody. And those things are what led to, you know, the horrible claims that were going on against the public guardian of neglect and abuse to all the clients that they had to oversee because they didn't know what was going on. So they had to overhaul and reform the whole public guardian system in Quebec and so subsequently all across Canada they started realizing that this was a problem in every province not just Quebec or in BC. So all

---

[4] Public Curator Act C-81. (1989). Legislative Assembly of Quebec. Retrieved from http://www2.publicationsduquebec.gouv.qc.ca/dynamicSearch/telecharge.php?type=2&file=/C_81/C81_A.html

> the provinces went through guardianship and public trustee reforms, and so that was when it was allowed for someone like me to petition the courts to take over for the public guardian to be his guardian. We were in the first to submit our papers to get it happening so Michael could be not under the care of the government's authority anymore.

Rose and Valverde (1998) suggest that one key "legal mechanism" of the apparatus of bureaucracy is the creation of authorities that act in disciplinary or bio-political roles (p. 550). These authorities may be located in "legal site[s]," but are often sustained by both legal and non-legal worlds (p. 546). Following this logic, public curators are reflections of the "conceptual codes and criteria of judgment" that exist discursively in law and power relations more broadly (p. 546). As Nunkoosing and Haydon-Laurelut (2012) outline, "discourses of intellectual disability" are produced under new "surveillance and governmentality project [s]" (p. 204). They argue that there is a proliferation of experts – increasingly diversified in a network of care providers and political bodies – that diagnose, legislate, and oversee the developmentally disabled. In our conversation, Mark identifies how public curators/guardians are appointed to advocate for individuals, acting as the experts of care. Instead, Mark suggests that the curatorship role becomes an extension of the "organization of services," sometimes failing to work in the best interests of disability communities (Nunkoosing & Haydon-Laurelut, p. 201). Public guardians can be seen as authorities that affirm both legal and "para-legal forums" (Rose and Valverde, p. 550). In Mark's opinion the public guardian simply "signed off" on whatever was dictated by medical experts. Reflecting on Mark's insights, I suggest that government appointed public guardians operate as "bio-political" authorities: though they are a legal agents, they also grant standards of life based on biological/medical evaluations of cognition (Rose and Valverde, p. 550). Corroborating

Laura’s insights into the neoliberal bureaucracy of (dis)abilities in BC, Mark’s recollections describe a mentality of ‘government knows best’ dominating service provision even after asylums are closed.

Mark’s career and personal background suggest that he is actually one of the ‘experts,’ although he also sees himself as an outsider within this system of care (Nunkoosing & Haydon-Laurelut, 2012). The term “advocacy” comes up multiple times in our conversation and for him it represents something independent of government agencies. Mark’s experiences reflect on the trap of “regulatory frames” surrounding self-advocates and advocates negotiating the legal complex (Smith, 2005, p. 191). Frames can be interpreted as “the wide varieties of conceptualizations, theories, policies, laws, [and] plans” that coordinate people’s work at the everyday level (Smith, p. 191). Though Mark is a critic of the various legal conditions affecting the individuals and groups he works with, he also must adhere to the frames that manage advocacy work. Mark goes so far as to suggest that advocacy is “almost doing anything at all costs within the legal realm of what you can do to make changes.” He acknowledges that his efforts are limited by what Rose and Valverde would call the “shadow of the law” (p. 548).

Considering Mark’s experience in Ontario, Quebec, and British Columbia, I feel that this shadow does not simply capture him in the apparatus of ableism. There are striking contrasts between Mark’s “work knowledge” and the public curator legislation: protest versus supervision, agency versus incapacity (Smith, 2005, p. 151; Public Curator Act, 1989). The advocacy standpoint he adopts comes across less as a matter of representation or even erasure of persons with disabilities, and more as a collective response to the ‘able-body’ constructed by provincial legislation. As Bill expressed to mein his discussion of civil litigation, though judicial processes or agents attempt to pinpoint the ‘developmentally disabled’ as a passive legal category, everyday experiences in the community present resistant activities.

Speaking further about his insights as an advocate, a reoccurring theme Mark identifies is the ways in which existing legal and bio-political mechanisms engage with developmental (dis)abilities. Mark’s account describes several instances in which individuals with developmental (dis)abilities are either disciplined or ignored because of ableist perceptions of behaviour and personhood. First, Mark brings up the disjuncture between Michael’s ‘voice’ and the discourses that enclosed him. As Mark’s education had taught him, for some individuals with more complex cognitive impairments their physical and non-verbal actions are in fact “telling us something.” The hospital and the offices of the public curator seem to work against or in ignorance of Michael’s mode of communication. Mark describes how Michael was on a ward with about twenty-five to thirty other patients, mostly non-verbal, and two or so French-only speaking staff members. Michael’s attempts to express himself verbally and non-verbally, sometimes involving physical personal harm, would largely go unnoticed or misinterpreted as “challenging behaviour” (Nunkoosing & Haydon-Laurelut, p.198). Nunkoosing and Haydon-Laurelut (2014) suggest that many individuals diagnosed with intellectual disabilities living in group homes or other facilities, are seen as “trouble” because they express behaviour in “both excess and absence” – “too much anxiety, too much agitation…too much seeking isolation” (p.198). In Michael’s case, the law’s conception of him as too ‘incapacitated’ positions his *disability* as the problem - the barrier to his own well-being.

This is not to say that some individuals do not require additional support in their daily lives. However, the complexity of individual experiences are disregarded when developmental (dis)abilities are inaccurately universalized as having limited “mental capacity” (Hall, 2012, p. 61). Hall argues that capacity is a “medico-legal social construct” naturalized by the “language of…biological fact” (p. 61, 63). According to Hall, curatorship/guardianship legislation relies heavily on this “dominant medical paradigm of cognitive capacity,” which equates autonomy with the rational “healthy and unimpaired brain” (p. 66). These kinds of medical and legal evaluations suggest that in seeking guardianship - in conforming to the legislative codes of mental capacity - the individual loses his or her personhood under the law. In the story of Michael, these evaluations are evident: his perceived medical and legal ‘incapacity’ makes his living conditions and personal needs irrelevant. As Mark argues, these ideological constructions of the “(ab)normal mind/body” also affect relations between the Woodlands survivors and the provincial government of BC (Nunkoosing & Haydon-Laurelut, p. 198):

> *Sylvia*: You say the government was afraid of [the survivors]. Can you expand on that a bit more?
> *Mark*: Well, I mean, that's how I see it when nobody wants to be in a room with you...You can't look somebody in the eye, hold their hand or shake their hand, or just be in their presence. So we keep saying, "What are you afraid of? None of these people are going to hurt you, they are not dangerous.” Maybe they still believe that and think that all the reports about them are true from the files and they *don't* want to be in a room with them. But, you know, that’s the problem: you can't believe what you read about people in files - it's being the *only* story on that person, especially when you realize who has written it: a psychiatrist.

Recalling the years he has spent working with the Woodlands survivors, Mark describes how the groups' attempts to meet in person with certain legal and political agents - he specifies the Attorney General or the Premier - to discuss a settlement for the pre-74 generation were generally rejected. As I also discussed with Bill, some of the Woodlands survivors have been featured extensively on the news and the We Survived Woodlands Group have been active for over ten years as self-advocates, often in conjunction with other community organizations. Despite the survivors' visibility and legal actions, in Mark's opinion the government's response (or lack there of) is questionable, implying that they are actually *fearful* of the group. Mark suggests that these old institutional files have a greater influence on legal and political actors' understandings than the survivors themselves. Mark sees government agents as fearing an apparition of archaic medical knowledges. At the same time, the province relies on these textual understandings, archived in psychiatric files, thereby perpetuating the conflation of deviance with (dis)abilities. The inability of key political representatives to share space, shake hands, or otherwise connect on a personal level with the survivors suggests that not only are these agents "afraid" but also intolerant of what they perceive to be social differences. Thus, it is safer for these politicians to create distance – in an ableist apparatus, who is then is blamed for this distance? In Mark's account it is individuals and groups, stigmatized by the medicalization of (dis)abilities and furthest removed from legal representation.

Mark tells me that Michael was officially released in 1994 and has since been living in the community. "He is on very low medication now, he is much better, he is loved, and he talks a lot. He is a *happier* guy," Mark emphasizes, expressing that he is very excited about this outcome. He also tells me that though Michael was able to get out of the hospital, in Quebec the institutional model of care is still prevalent. Mark imagines that to this day Michael was probably the only one in his ward to make the successful transition into community living. Mark says, however, that he has seen more significant developments by comparison in BC, particularly due to the efforts of certain organizations (he mentions specifically Laura's organization, as well as HOMES Society); these groups, he notes, have also been allies to the Woodlands survivors. Mark is still concerned though that only part of the work is done. He cites some of the structural changes that have taken place in recent years – such as the creation Community Living BC as an extension of the Ministry of Social Development. Mandated under the *Community Living Authority Act* of 2004, CLBC is a provincial crown agency that funds and facilitates support services for adults with developmental (dis)abilities and their networks. Though CLBC works under an inclusion model, due to "underfunding" the "clock has been turned back," Marks tells me:

> Advocacy is as hard, it's not easier anymore. Now we are stuck with this system called CLBC for everybody. Service organization needs for everybody. So when the government dissolved its responsibility into this corporation to lend services, it became like a 'Telus' for disabilities, you know like a 1-800 number to call in. It's all impersonal. It takes forever, so much underfunding, and it doesn't seem any advocacy case gets resolved anymore.

Mark's account of the funding climate and the survivors' difficulties in instigating a dialogue with the current government describes a new imbalance in the "power-knowledge business of intellectual disabilities" (Nunkoosing & Haydon-Laurelut, p. 199). The effects of a highly regulated funding body suggest that there is a dominant "rationality of government" towards disability rights (Tremain, 2005, p. 11). As Tremain argues, government solutions to what they see as “problems” often involve an increase of regulation yet a decrease in the “political and economic cost” (pp. 11-12). These legal and pseudo-legal Crown entities market the semblance of community living. However, Bill, Mark and Laura suggest that there seems to be little move by these agents towards significant increases for disability benefits, which might actually allow the kind of self-determination and agency that certain communities desire.

Each of the informants experiences the political and legal conditions of ableism differently, and shares their own map of power relations in BC and the nation-state. Nonetheless, the lines that draw them back together evidence prevailing concerns regarding how constructions of developmental (dis)abilities are produced, and subsequently subsumed. For Mark, the government’s perception of certain disability groups as a ‘danger’ plays into “conceptual codes and criteria of judgement” that greatly concerns him (Rose and Valverde, p. 546). I recall here as well Bill’s discussion of the ways in which the plaintiffs’ (dis)abilities were represented in court proceedings, and Laura’s observations of how Timmy’s Telephone has become a prevailing image. These narratives – of the institutional ‘idiot,’ the bureaucratic poster child, and the ‘mad’ patient – are renderings of developmental (dis)abilities grounded in logics of bio-power and the medico-legal history of institutionalization. Constructions built on divides of ‘abled/disabled’ are naturalized within the system of care, exacerbating everyday conditions of violence.

Mark notes that the Woodlands settlement is therefore not just about monetary restitution or justice for past abuses. For the Woodlands survivors and many others in the community, a settlement with *all* individuals formerly institutionalized would be a gesture for the future; a promise by legislative powers that history will not be repeated. The legal division of the class plaintiffs in the settlement, based on precedents of other institutional abuse cases, determines not only eligibility for compensation but also which survivors can more fully build a life outside of the institution. Both Mark and Bill emphasize that as the survivors age, and face poverty perpetuated by an inadequate benefits system, the possibility of re-institutionalization against their terms is a very real threat.

What then does this 'threat' reveal about the relationship between able-ness and justice? Bill's definition of justice as 'ownership' is interesting to consider in light of Mark's and Laura's accounts of national imaginaries of (dis)abilities and the neoliberal apparatus. In the class action proceedings, the Crown pushed to deny that the abuse was systemic, drawing on arguments that disconnect Woodlands either legislatively or spatially from the province. For the provincial government to perform 'justice as ownership,' within and outside the site of the court, requires acknowledging that their categories of belonging are fragmented – a recognition that would open up fractures of the present. Much of the discussion in Mark's interview, as well as in Bill's and Laura's, suggests that under ableist legislation those deemed developmentally disabled become *subjects-indeterminate* – with whom the judicial process engages but continually must locate in relation to perceptions of productive place and cognitive capacity.

Discussion: Considerations of Legal Ableism and Future Research

On October 18th 2011 the last remaining building of Woodlands school was demolished. With several former residents in attendance, the Centre Block was leveled, offering a brief sense of relief (Feduck, 2012). As Feduck describes in her community-based study of the Centre Block demolition, each interviewee hoped to forget “the memories of forced congregation,” while also honouring “the lives of those who lived at Woodlands” (p. 78). Reflecting on their experiences at the demolition, the survivors felt an overwhelming “tension between feeling glad that the building is finally gone, and sad because of the abuse and neglect” (p. 84). This paradox of closure and remembrance has been reiterated in my own interviews. For former residents, embracing “post-institutional life” is dependent on these processes of resistance (p. 84). Whether cheering as a building is demolished or pursuing litigation, the survivors are in many ways affirming their own histories.

In part, the class action suit sought to ‘dismantle’ the institution as it is manifested in law. It is important to consider then the ways in which ‘disabled subjects’ are *enabled* – in other words, how are expectations of (dis)abilities shaping service provision, legislation and disability rights today? My approach to this question is resolved through two means: 1) textual analysis of contemporary legislation, and 2) the use of an ethnographically informed methodology for interviewing. This methodological approach allows a kind of ‘activity’ to develop, focusing on the textual experience of legal knowledges. Medina (2011) suggests that a Foucauldian reading of “memory and oblivion” provides further insight into frameworks of power/knowledge (p. 10). As discussed, this tension between memory and oblivion is particularly salient in the history of developmental (dis)abilities in BC and the contemporary “subjugated knowledges” of the informant (Medina, p. 11). Addressing the field of medicalized power/knowledge, Carlson (2010) argues that various mechanisms of medicine and psychiatry render ‘intellectual disability’ both “socially invisible and visible” (p. 46).

What is ‘known’ or ‘visible’ is closely tied to the public memory of developmental disability as an institutional object; what is ‘unknown’ or ‘invisible’ are the diverse realities and identities of (dis)abilities that are historically and currently at the edge of oblivion. The experiences of the informants therefore evidence the coordinates of past and present in the apparatus of knowledge/power. The interviews have provided an opportunity to locate inscriptions of legal ableism insofar that they are distinct to discourses of developmental (dis)abilities. In these conversations, what became apparent is an underlying narrative of ‘capacity’ that emerges in judicial landscapes. New mechanisms of ordering the ‘irrational’ legal subject are practiced, such as public guardianships that operate within the limits of provincial supports. My findings suggest that judgments of ‘mental ability’ are foreground in these relations, coded by provincial bafflegab and legislative revisions to standards of life.

However, its scale has nonetheless limited this paper, specifically by the number of interviews. Prompted by the informants’ accounts of how institutional knowledges have not easily or universally crumbled, I suggest that histories of institutionalization should be further explored in localized contexts. For example, this paper has briefly discussed the effects of class and ‘intellectual disability’ status in Vancouver. There are significant dialogues to build on, allowing groups who may or may not identity with developmental (dis)abilities to speak to the intersectional histories and to contemporaries that shape community and citizenship. Further research employing community-based methodologies would seek to understand the *experiential* dynamic of developmental (dis)abilities and the law. Anti-institutionalization movements and solutions throughout the Canadian nation-state should be addressed and shared as counter narratives to bio-political and universalized depictions of (dis)abilities.

Much of the dialogue regarding Woodlands has focused on life inside the institution. Confrontations with institutional mechanisms should not be considered complete when the walls fall. In part, this paper sought to consider how normativities of the perfect and 'human' able-mind are repeated in the everyday borders of governance. In order to refute systemic responsibility for institutional abuse, neoliberal policies in effect recast the 'disabled subject' politically and economically – the drive for justice is lost when precarious belonging overtakes daily life. If we consider then that the Woodlands school settlement is only partially 'settled,' continuing to discuss the refractions of historical injustices reveals an impasse between the past and its repetition. In doing so, a possibility arises. This approach to methodological work may generate dialogues that re-define legal ontologies, outside discourses of developmental and intellectual *disability*. If we begin to address the complicated spaces of 'justice' – be they class action suits or legislative reforms – then expectations of capability may be re-directed at the legal forum.

References

Legal Texts:

Community Living Authority Act C-60. (SBC 2004). Legislative Assembly of British Columbia. Retrieved from http://www.bclaws.ca/civix/document/id/complete/statreg/04060_01

Public Curator Act C-81. (1989). Legislative Assembly of Quebec. Retrieved from http://www2.publicationsduquebec.gouv.qc.ca/dynamicSearch/telecharge.php?type=2&file=/C_81/C81_A.html

Richard v. HMTQ, 372. British Columbia Supreme Court. (2005). Retrieved from Klein-Lyons website http://www.callkleinlawyers.com/wp-content/uploads/2013/12/certification_2005.pdf

Secondary Sources:

Bannerji, H. (2010). The tradition of sociology and the sociology of tradition. *International Journal of Qualitative Studies in Education,* 16.2.

Berger, J. (2014). *The disarticulate: Language, disability and the narratives of modernity.* New York, NY: NYU Press.

BC Mental Health and Substance Use. (n.d.) *History*. Retrieved from http://www.bcmhsus.ca/history

Bloom, A. & Miller, P.S. (2011). Blindsight: How we see disability in tort litigation. *Washington Law Review,* 86.

Campbell, F.K. (2001). Inciting legal fictions: 'disabilities' date with ontology and the ableist body of the law. *Griffith Law Review,* 10.1.

Campbell, F.K. (2005). Legislating disability: Negative ontologies and the government of legal identities. In S. Tremain (Ed.), *Foucault and the government of disability*, 108-130. Ann Arbor, MI: University of Michigan Press.

Campbell, F.K. (2009). *Contours of ableism.* New York, NY: Palgrave Macmillan.

Carlson, L. (2005). Docile bodies, docile minds: Foucauldian reflections on mental retardation. In S. Tremain (Ed.), *Foucault and the government of disability* (pp.133-152). Ann Arbor, MI: University of Michigan Press.

Carlson, L. (2010). *The faces of intellectual disability: philosophical reflections.* Bloomington, IN: Indiana University Press.

Clifford Simplican, S., Leader, G., Kosciulek, J., & Leahy, M. (2014). Defining social inclusion of people with intellectual and developmental disabilities: An ecological model of social networks and community participation. *Research in Developmental Disabilities,* 38.

Davis, L.J. (1997). Constructing Normalcy. In Davis, L.J. (Ed.), *The disability studies reader*, 9-28. New York, NY: Routledge.

Deleuze, G. (1992). What is a dispositif? In T.J. Armstrong (Ed.), *Michel Foucault philosopher*, 159-168. Hemel Hempstead, UK: Harvester Wheatsheaf.

Devlin, R., & Pothier, D. (2006). Introduction: Towards a critical theory of dis-citizenship. In D. Potheir & R. Devlin (Eds.), *Critical disability theory*, 1-22. Vancouver, BC: UBC Press.

Disability Alliance BC. (n.d.). Woodlands school. Retrieved from http://www.disabilityalliancebc.org

Ellis, J.W. (1981). Tort responsibility of mentally disabled persons. *American Bar Foundation Research Journal,* 6.4.

Feduck, Meaghan. (2012). *It's about time: The significance of the Centre Block demolition for former residents of the Woodlands institution.* Unpublished master's thesis, University of British Columbia, Vancouver. Retrieved from https://circle.ubc.ca/handle/2429/43335

Fontana, A. & Prokos, A.H. (2007). *The interview: from formal to postmodern.* Walnut Creek, CA: Left Coast Press.

Foucault, M. (1965). *Madness and civilization: A history of insanity in the age of reason.* New York, NY: Random House.

______ (1980). The confession of the flesh. In C. Gordon (Ed.), *Power/Knowledge: Selected interviews and other writings 1972-1977*, 194-228. New York, NY: Vintage

______ (2003). *Abnormal: Lectures at the Collège de France 1974-1975.* London: Verso.

______ (2004). *The birth of biopolitics: Lectures at the Collège de France 1978-79.* New York, NY: Palgrave Macmillan.

Foucault, M. (2009). *Security, territory, population: Lectures at the Collège de France 1977-78.* New York, NY: Palgrave Macmillan.

Hall, M. (2000). After Waterhouse: Vicarious liability and the tort of institutional abuse. *Journal of Social Welfare and Family Law,* 22.2.

Hall, M. (2012). Mental capacity in the (civil) law: Capacity, autonomy and vulnerability. *McGill Law Journal,* 58.1

Hughes, B. (2007). Being disabled: towards a critical social ontology for disability studies. *Disability & Society, 22.*7.

Inclusion BC. (n.d.a). Woodlands institution. Retrieved from http://www.inclusionbc.org/our-priority-areas/disability-supports/institutions/woodlands-insitution

Inclusion BC. (n.d.b). Woodlands memorial garden. Retrieved from http://www.inclusionbc.org/our-priority-areas/disability-supports/institutions/woodlands-memorial-garden

Kodar, F. (2012). The Woodlands school litigation and settlement: Further complications for historical abuse claims. *University of British Columbia Law Review,* 45.2.

Longmore, P.K. (2005). Cultural framing of disability: telethons as a case study. *PMLA,* 120.2.

Luban, D. (1988). The Noblesse Oblige tradition in the practice of law. *Vanderbilt Law Review,* 42.

McCallum, D. (2001). *The Need to Know: Administrative Review of Woodlands.* Retrieved from Inclusion BC website http://www.inclusionbc.org/sites/default/files/The_Need_to_Know.pdf

McCready, A.L. (2009). Redressing redress: The neoliberal appropriation of redress in the anti-native backlash at Caledonia. *English Studies in Canada,* 35.1.

Medina, J. (2011). Toward a Foucaultian epistemology of resistance: counter-memory, epistemologic friction, and *guerrilla* pluralism. *Foucault Studies,* 12.

Nunkoosing, K. & Haydon-Laurelut, M. (2012). Intellectual disability trouble: Foucault and Goffman on ‘challenging behaviour.’ In D. Goodley, B. Hughes, & L. Davis (Eds.), *Disability and social theory: New developments and directions*, 195-211. New York, NY: Palgrave Macmillan.

Prince, M.J. (2012). Canadian disability activism and political ideas: in and between neo-liberalism and social liberalism. *Canadian Journal of Disability Studies,* 1.1.

Public Guardian and Trustee of British Columbia. (2004). *The Woodlands Project July 2002 – June 2004.* Retrieved from http://www.trustee.bc.ca/reports-and-publications/Pages/default.aspx.

Riddle, C.A. (2013). The ontology of impairment. In Wappett, M. & Arndt, K. (Eds.), *Emerging perspectives on disability studies*, 23-39. New York, NY: Palgrave Macmillan.

Rose, N., & Valverde, M. (1998). Governed by law? *Social Legal Studies,* 7.4.

Shakespeare, T. (2006). *Disability rights and wrongs.* London: Routledge.

Sherry, M. (2014). The promise of Human Rights for disabled people and the reality of neoliberalism. In M. Gill & C.J. Schlund-Vials (Eds.), *Disability, Human Rights, and the limits of humanitarianism*, 15-26. Farnham, UK: Ashgate.

Smith, C. (2009, December 15). B.C. government announces proposed settlement for some Woodlands survivors. *The Georgia Straight.* Retrieved from http://www.straight.com/

Smith, D.E. (2005). *Institutional ethnography: A sociology for people*. Lanham, MD: AltaMira Press.

Titchkosky, T. (2007). *Reading and writing disability differently: the textured life of embodiment.* Toronto, ON: University of Toronto Press.

Tremain, S. (2005). Foucault, governmentality, and critical disability theory: An introduction. In Tremain, S (Ed.), *Foucault and the government of disability*, 1-23. Ann Arbor, MI: University of Michigan Press.