**Know Your Rights Podcast Series**

**Episode 4: Transportation**

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**Jacob:** Okay and hello, and welcome back to another episode of the Know Your Rights podcast and I'm joined by a bunch of participants today who are going to share some experiences and expertise with regards to transportation, and yes, knowing your rights. Once again, if this is your first episode, my name is Jacob Charendoff and I'm an advocate for change and advocacy in the low vision community. Today we're talking about transportation and I think it's such an interesting topic, especially in Toronto here, we think of transportation and there's so many different ways of getting around this city, whether it be taxi services, Ubers, Lyfts, TTC, Wheel-Trans. There's just so many ways of getting around, and let's not forget about everyone's favorite of walking from place to place. But how does that impact us from getting around? I know for myself; I can recall when I was younger on the TTC and taking the bus home from school, the stops weren't announced. And one day, I remember hearing, the next stop is whatever the stop was and being almost confused about that, but so grateful that such a little kind of pivot made such a big difference in my life. I had been memorizing the bus route for years as I couldn't see the street signs that were advertised or maybe couldn't hear the bus driver announcing them and all of a sudden to have a big booming voice explaining that the next stop was, maybe where I need to get off or the stop before that, made such a big difference in my life. And I know that there's instruments in place to begin this process to allow ease of transportation for people with visible and invisible difference to be able to thrive in that perspective. I'm joined by Michael here, who has a really interesting kind of circumstance that he's experienced regarding transportation issues. Michael, can you tell us a little bit about the story that I was briefly reading before we started?

**Michael:** Yes, first of all, thank you for having me today. To preface the story, I'm deaf and blind, so I'm part of your community, but emotionally part of other communities, as well. I've been using ride sharing for a while. And ultimately, the main issue is that they like to call when they arrive at their destination. That's problematic because I can't pick up the phone, I can't answer the phone independently, I can't tell them where I am, I can't communicate with the driver, and it's very frustrating. Against one of the ride sharing apps, I've filed a human rights complaint on their continued discrimination on the basis of my disability because I'm not being treated the same as other passengers because other passengers can talk on the phone, I can't.

**Jacob:** Wow, that's really surprising. How did that impact you, filing this complaint, I'm sure it was very frustrating for you to have that challenge of not being accommodated with your vision and your hearing difference. Had you ever been accommodated by any of these services in the past?

**Michael:** Thank you for those questions. For the most part, it goes well when I call the ride sharing app to pick me up at my home, because I'm think it's memorized where I am. I think when I'm calling from my home, I'm better able to control what's happening. I know the entrances that the car might take, I know kind of where it's going to end up, but say it winds up where I'm not at home. And this happened once when I was near the aquarium. I called to want a ride and the driver was trying to tell me on the phone that he didn't want to come to where I was because it was a dangerous intersection, and I had no way of understanding him, but thankfully I had a support person with me at the time that told me the information, but otherwise, I wouldn't have any idea. And so, this was just one of those points where the frustration got too much for me. In another location, I was calling near the Art Gallery of Ontario and the driver just flat out refused to pick me up and said, oh no, I'm not doing this. And I have no idea why. I was trying to explain that I have a disability and I think he must have thought that I was too much to manage. I think what we're trying to get at, Jacob, is with this podcast, we're trying to talk about how transportation should be easy as breathing and it shouldn't be something that we take for granted. But some people with disabilities, we can't because we never know what kind of challenges we'll have when we get into the automobile. And the point is, and another point is that when I tell someone of my disability, I want to feel accepted, I want to know that they understand the extent of how the disability affects me. And if I don't feel accepted, then I don't feel safe. And I think that's the critical issue here with regards to transportation. And to answer your other question, how did I feel doing the application, it was a good learning experience for me. And I think filing a human rights application is not as hard as it seems. I think I will say that for the record, but (indistinct).

**Jacob:** Thank you for sharing that, Michael. It's amazing to me that these services haven't trained their employees to be able to accommodate and understand the differences that their clients have. And it seems like such a step backwards. As I started, I was talking about the progression forward, this was 10, 15 years ago with announcing the stops on the subway. But you bring a really modern issue to the forefront of these ride share companies that offer such a crucial service almost to people from all around the world. And clearly the lack of training and understanding, empathy, and ability to adapt is so apparent with what you've experienced. And I'd like to thank you for sharing that information and really giving some light and context to our viewers and listeners of this episode because I'm sure that some of you watching this have experienced similar issues and may not have had the motivation or the understanding of applying for a human rights claim or whether that was a violation of your human rights. And I guess this is a good point to hand off here and start talking about what some of those rights and obligations from these service providers are to their clients of physical, emotional difference. Where does that kind of stand? I'm really interested to hear from you, Lila.

**Lila:** Yes, thank you, Jacob. Yeah, there is some legal obligations that transportation service providers have with regards to their clients with disabilities. One of those very important obligations is really related to their legal duty to accommodate their clients. And through that duty to accommodate, there is various legal concepts I can speak to about what does it do to accommodate me, but that duty, just to start off, does come from, in Ontario, it does come from the Ontario Human Rights Code where it states that service providers, which includes service providers that provide transportation services, do have to provide their services in a way equally to all their clients and to provide that service without discriminating against anybody. That leads us to a legal duty to accommodate their clients. Persons with disabilities have this right to be accommodated by transportation services. There is just one kind of limit, but I will expand on it. But the duty to accommodate is only up to the point of undue hardship. Undue hardship is, essentially, if the accommodation that is requested to service providers would be excessively costly to the service provider. And when I talk about excessively costly, they also have to take into account any outside source of funding or if the accommodation requested causes any health and safety concerns. Now, this is up to the service provider itself to actually prove, in a way, that the accommodation requested would reach the point of undue hardship. However, even in cases where it does reach the point of undue hardship and that it's established that yes, it is an undue hardship on the service provider, that does not mean that the service provider is completely out of their legal duty to accommodate. All that means is that they have to now look into other alternatives that would provide appropriate accommodations to the person for their disability-related needs that would not breach undue hardship. The legal duty to accommodate does involve some sort of, sometimes it could involve some sort of process where both the service provider and the person with disability could enter into some discussions about what would be an appropriate accommodation for that person to be able to access their service. Of course, from Michael's story, obviously, they cannot just deny service to persons with disabilities because they have a disability. That does amount to discrimination. The other thing, too, that I wanted to mention is I talked about the Ontario Human Rights Code and their duty in the Ontario context. There is also important to mention that there is some transportation service providers that may be what we call federally regulated, whereas it would not be the Ontario Human Rights Code that would apply, but rather the Canadian Human Rights Act that would apply.

**Jacob:** Just to interrupt here, and I am sorry for doing that. I'm just curious as to maybe some examples of modes of transportation that might apply from a federal context. Would that be airlines or railway services, things like that, or am I missing a couple of things here?

**Lila:** Actually, well there are, like you said, Jacob, the airlines are automatically federally regulated. Most of the railways are federally regulated and any buses that crosses a provincial border will be considered federally regulated. That does also include, and sometimes this is difficult for some people to see the distinction, but it could also include sometimes some city buses that crosses over into another province. The fact that it goes over into other provinces or into, for Canada, it would be to the States because we do share a border with them, that would make them federally regulated. Other cases, other types of transportation may be less obvious. If it's unclear, sometimes we would also look into whether or not they state in their initial documents of when they were created whether or not there is a statement there that says that they will be federally regulated or not. But when it comes to specifically, transportation, most of the time, it's pretty clear from the service or the type of services that they provide. In a way, buses or modes of transportations, including taxis or some share riding services, maybe if they are contained and they only stay within the province, then it would be the Ontario Human Rights Code that would apply, but for other modes of transportation that crosses a border, in those sense, it would be probably more federally regulated.

**Jacob:** Thanks for clarifying that. It's something that kind of, I guess slipped my mind as the difference between provincial and federal regulation when it comes to that, especially with how crossing borders or provincial lines. Yeah, very, very interesting. And thank you for the insight on that with regards to kind of ride sharing. And I'd like to come back to Kai here, who's been very patient with us, who also has a really interesting kind of circumstance that has occurred and pertains mainly to public transport. I know we've been speaking a lot about ride sharing and maybe more of a private approach, but when we come to public transport, I think it's a really

challenging kind of space because there are so many people all at once and I'm sure, Kai, if you wouldn't mind sharing your story in just a moment, that would be wonderful just to give some information and context to our viewers and listeners here, but Lila, I'm sure that you'll have some more insight also from the public transport perspective of where those regulations and obligations come from. Kai, welcome to the show. Sorry we've been going off a little bit here. But I'm really interested in learning a little bit more about the experience that you, and it seems like a few of

your peers also experienced from public transport.

**Kai:** Yeah, I'm having issue with my local transit, just the mainstream buses, not the specialized transit, but just the main ones, and the number of people that I am in communication with, like through CNIB who all have low vision. I'm partially sighted, so I do have some sight and can sometimes pick out landmarks, but I rely on the audio call-out

system to know where I am because I can't see street signs and such. And I guess I will start by saying that the transit, our transit has gone before the Ontario Human Rights Commission once to do a complaint because the province had determined that it was necessary that transit provide the

audio call-out systems and our transit office had decided that they weren't going to that, so they were told they do, in fact, have an obligation to have that system in place for people who are blind and visually impaired. They did install a system, but it hasn't been working effectively in many situations. Either the system sometimes is not on, and I'm not sure why, or it's a case of there is other noise happening. For instance, there has been in the past issues with drivers having personal radios and their radio sound being louder than the call system and there has been issues with it being too low in volume. It's on, but it's so low that you can't pick out what it's saying. There's also issues with the amount of speakers on the bus. And sometimes our transit operators has ordered buses that they say there's only speakers above the priority seating area and many times that seating

area's not available, is taken up by other passengers, so you have to go elsewhere in the bus where the the calls might not be easily heard. And I know during summer months, for instance, they have the air conditioning on, which, and then the winter months, they have the heating on, which you can imagine puts extra noise onto the bus making it difficult to hear what the call-outs are saying. And one thing, I know a friend of mine was just talking today is that the call-out system doesn't announce when the buses are detouring. And I was aware that the drivers are supposed to announce that the bus is detouring, but doesn't necessarily do that. I know for me; I've missed stops before because of not being able to hear it or I felt uncomfortable traveling into an area I wasn't totally familiar with because I didn't know if I'd be able to hear the call-outs. It's definitely impacted my independence and my ability to feel, I guess, safe and independent while taking transit. And yeah, I think that that basically summarizes. I have considered filing a human rights complaint, and at times have compiled all the information needed, like the information from contacting transit and reporting when the issues are arising. I know I was on the bus, and due to the pandemic, haven't been riding as much, but I was on the bus the other day and because of the air conditioning, I couldn't hear the call-out system. I have, again, considered filing a human rights complaint about the issue, but I just always keep hoping that they'll rectify it.

**Jacob:** I totally know what you're talking about and it's part of the reason I started the podcast today about that was because it was such a, I think, a big step forward when that concept was brought forward, but the execution and implementation of how it's been administered, I was totally unaware that the speakers were, in some cases, only above priority seating. And as somebody, I'm speaking from my personal experience, who doesn't appear to be visually impaired to request a priority seat sometimes can be uncomfortable. And yeah, I mean, I can totally relate to the fact that I've not heard the call-outs sometimes, I guess it's just, I'm familiar with my bus routes and have a pretty solid grip on where I'm going for the most part, but I can absolutely see the frustration that you and your peers have experienced and I'm sure many people listening to this episode. But I guess handing it back to you, Lila, from the legal obligation from these public transport’s organizations, what would be the next step in Kai's case if something was to move forward from a human rights perspective?

**Lila:** Yes, so I think there are several different options available and, of course, it's difficult sometimes to actually say exactly the exact next step without actually going through all the, having a whole confidential discussion, but just over what you've mentioned, for any types of accessibility complaints regarding public transportation, there is always could make a human rights complaint. Again, if this public transportation agency falls under the provincial jurisdiction, then it would most likely be, it would be a complaint before the Human Rights Tribunal of Ontario. And there is a one-year limitation period to file, which means that anyone would have one year after the last incident where the issue arose to file the human rights application. If the transportation agency falls under a federal jurisdiction or is federally regulated, then there is, essentially, there may be two different kinds of options. The Canadian Human Rights Act, which mirrors a lot of the same rights as the Ontario Human Rights Code, does have a Canadian Human Rights Tribunal and the Canadian Human Rights Commission, where that's where you would file a complaint under that act for anything that's federally regulated. But in the context specifically of transportation, there is also the Canadian Transportation Agency that is available to make complaints. And there is new regulations that have been put in place recently, I believe it was in June, this past June, where the Canadian Transportation Agency is also kind of more expressively took is taking charge on accessibility issues or discrimination issues that are related to federally regulated transportation. And if time permitting, where I could get into a bit more details about that, but just to know that there is, on the federal side, there is those two different options. And for anyone who is thinking about filing complaints, I think it's very, very important to get some legal advice about their particular situation. But Kai, back to your situation. There is those options for filing a complaint and there is also the option of if you are not or you don't feel ready to file a complaint or want to maybe not have to go through a litigation just yet, there is also the option of many public transportation agencies have complaints processes in place. And I don't believe I can remember right now the specific name that they use for every single agency, but as a form of a committee for accessibility of their services that can take complaints, that are there to advise the agency to better improve their services. And sometimes that is a quicker way, or a more effective way, to also bring complaints, but to bring a human rights complaint, there is no requirement that you have to go through that internal complaint within the agency. It's just another option for people to try, as well.

**Lila:** Yeah, I think that's interesting, needless to say. Hopefully that's kind of given you some light on your situation, Kai, but I'm just wondering if this is, in Kai's circumstance, something that affects a segment of the population, is it something that an organization could act on the behalf of Kai, or maybe that's what you were saying with the different organizations? 'Cause it sounds like it's not an individual discrimination. Kai's just kind of putting this situation forward, which I'm sure other people experience, as well, and would significantly benefit from the improvements required to amend this situation. Is there some form of human rights class action? I don't know if I'm totally off kilter here, but it just seems like something, at least that I'm kind of interested in knowing a little bit about.

**Jacob:** Yeah, well there is, I mean, they don't call it a class action, but that's more of a civil kind of description of a different type of litigation. But the Human Rights Tribunal, both at the provincial level and the federal level of the Canadian Human Rights Tribunal, they do have the power to also put in place what we call more systemic remedies that would impact more people than just a person bringing the application. But we do sometimes call it, as well, remedies for future compliance or remedies for public interest. And actually where, at ARCH, we do represent persons with disabilities when they wanna bring more systemic changes. In some cases, there are cases where, while it's the individual that is bringing the complaint at the Tribunal, through their complaint, they could ask for individual remedies that would affect only them personally and they can also requestsome more systemic remedies to bring in more systemic changes. For example, in your situation, Kai, it may be just off the top of my head, if there is something to the effect of better training for our drivers or if there is something to the effect of changing the way that the speakers are placed or something like that, that would affect all the buses run by that agency. I mean, these are just very random general examples, but that can be brought through a human rights application for sure, as well.

**Lila:** And Kai, it sounds like this has been an ongoing issue for you. You mentioned that recently you were on a bus and still experienced the same issues. I'm just wondering, with the kind of 12-month complaint period, how would I go about formalizing a complaint if this is spread out over possibly a number of years, and Kai, please feel free to jump in if I've kind of missed something or you have anything to add on the topic.

**Kai:** Yeah, so through both the Human Rights Code and the Canadian Human Rights Act, there is a concept that's described as a series of incidents where if there are a number of incidents that relate to a similar or the same situation, then it's really just what the date would be, like where the clock starts, in a way, would be the last incident of discrimination. If the last incident was the day before you filed, then that would be the date. And then, you would describe in the application the series of incidents. Again, I can only say just in general terms right now, but especially with issues related to a series of incidents that date back to a number of years, there is a lot of legal consideration to go through that would probably require a whole session by itself to discuss, but it would be, again, very essential to get any legal advice about whether or not all the incidents where it happened in the past few years before filing application, if they can be considered as a series of incidents under the Human Rights Code or the Canadian Human Rights Act.

**Jacob:** Yeah, maybe the two of you can connect offline. It seems like a lot of these episodes could very easily have a part two and part three, if not more to them, because they are such dense topics with so many variables. And just before we wrap up, I believe Michael actually had something he wanted to chime in here with regards to Kai's situation. Michael, feel free to chime in.

**Michael:** Yes, I have also experienced what Kai has experienced. I just wanted to add that we could always think about apps or other kinds of technology that would improve the wider experience. For example, if you had a specific app that could tell you and locate some of the stop locations or tell you where you're going, I think that would be an easy fix for a tech developer to this situation. All they need some funding to look outside of the box. That's all I wanted to mention.

**Jacob:** Yeah, thanks for that, Michael. I think that's an awesome idea, especially with the kind of technology that's in place and, Lila, correct me if I'm wrong here, but that seems like a very reasonable accommodation that might kind of not fall as to an undue hardship circumstance, especially given the, I guess, enormity of a publicly funded transportation system. That might be something, Kai, if you're looking to pursue maybe suggesting, I'm sure that you've got lots of suggestions from the sounds of it on the topic, but I'm just, I guess I'll chime in here a little bit with my experience on public and non-public transportation as somebody living with a visual impairment, as well. As I've mentioned to you guys, as we just started, and if this is your first episode, I have a form of Stargardt's disease, which is a form of macular degeneration and have no central vision. Legally, I'm blind and it may not appear that way and certainly hasn't in many forms of especially public transportation situations. Michael and Kai, I don't know if you've ever experienced this, but I know that when I get my metro pass from the CNIB, I quite frequently get accused of stealing the pass, which I don't respond favorably to, needless to say, and I'm not, I know this is kind of about transportation and we might be leading off a little bit, but I think that justto kind of wrap this up, at least my perspective would be that really the duty comes on the organization who's providing the service to train their staff through ongoing sessions about accommodations and adapting to individual needs. And just because somebody doesn't appear to be, and I don't like using this word, disabled, it doesn't mean that they don't have some sort of difference. I very specifically use the invisible or visible difference; I think is a much more appropriate way to discuss matters in this realm. But for clarity sake for organizations, people with difference or disability, however you wanna call it, shouldn't be almost put into this image of walking with a dog and cane. I think that that's a large stigma and it seems like it's a lot of what you guys have experienced, as well. Had we kind of fit that stereotype, Michael, maybe you wouldn't have had the experience you had, maybe you would have, I don't know, but what I'm saying here is it's important for organizations to be educated on how to handle the differences that we all have, whether it's invisible, visible, whether you have a diagnosed disability, everybody's different. And I think it's extremely important for our culture and our society to understand that and to not judge based on preconceived notions and understand that, I guess, to give people the benefit of the doubt. Kai, with your situation and not wanting to pick up a priority seat where there's somebody who may be sitting there that really is sitting there because it's convenient for them, not because they require the priority seat. I know I've experienced that and not wanted to make a fuss, so I've gone somewhere else or stood, but there's a large percentage that I would have been the appropriate person to be sitting in that seat. All of that to say is, I know that a lot of people who are listening to this episode or watching this episode can relate heavily to the concepts we've discussed throughout this episode. And I want to thank all of you for joining on this episode. Your stories really bring these situations to life and humanize the experience of what human rights really is. Thank you so much. I don't know if anybody has any final comments, they'd like to add in. Michael, did you have something?

**Michael:** Yes, I would just to remind everyone that they're not alone, that if you have a challenge, think about all of us here today and think about, oh, those people had an opportunity to tell those stories, so I'm not alone. You have so much support available to you that all you need to do is ask and you will be able to find a way to keep going and to ensure that all your rights are respected. Thank you.

**Jacob:** I couldn't have said it better myself. I think that couldn't be more true. And thank you for sharing that, Michael. And I guess if anybody listening or watching this wants some more information on the topic from a legal perspective, Lila, where can people connect with you, either at your firm, or what's the best way for them to connect on that front?

**Lila:** Yes, so ARCH Disability Law Centre provides summary legal advice over the phone. We do also provide via email, or if you require any other means to communicate, then we could definitely attempt our very best to accommodate your needs to be able to reach us. You can either visit our website and contact us, and all our contact information is also available on our website, as well.

**Jacob:** Yeah, anyone watching, make sure to advocate for yourself because it impacts others, and that's what this whole Know Your Rights podcast series is about. It's about knowing your rights and paving the way for a bright future so that people with visible and invisible difference can live their optimal life. Until the next time, we'll see you then.

**Narrator:** For more CNIB Foundationpodcasts, visit cnib.ca/podcasts.