

Douglas McK. Brown Lecture

PERSONHOOD AND INNOVATION IN THE CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES

The boundaries of legal personhood have always been contentious. It is only those granted legal personhood that are free to act as autonomous agents pursuing, what liberal political theorists have called, 'the good life.' For example, the recognition of an individual's legal personhood and agency is required for most of life's activities: voting, marriage, consent to medical treatment, contracting, and others. People with cognitive disabilities are often excluded from legal personhood. This includes people with intellectual disability, mental health disability, autism, dementia, and other actual or perceived impairments to cognition. This denial of legal personhood or agency occurs through guardianship, interdiction, functional tests of capacity, and other ways. The result is that people with cognitive disability are often not afforded the freedom to pursue the 'good life.' The Convention on the Rights of Persons with Disabilities (CRPD) is the first human rights instrument to address this issue. It innovatively enumerates the right to equal recognition before the law as encompassing the right to legal capacity – which includes personhood and agency. Dr Anna Arstein-Kerslake has worked with the United Nations Committee on the Rights of Persons with Disabilities to develop an authoritative interpretation of this right. She has consulted with governments around the world on legal capacity law reform – including the European Union, Ireland, Australia, Iceland, New York, and others. She also published a book on the topic in 2017, *Restoring Voice to People with Cognitive Disabilities* (Cambridge University Press). Dr Anna Arstein-Kerslake will discuss the right to legal capacity in the CRPD and the implications that it has for domestic legal systems as well as the wider human rights structures.

ANNA ARSTEIN-KERSLAKE

Senior Lecturer, Melbourne School of Law



Dr. Anna Arstein-Kerslake is an academic at Melbourne Law School where she developed, and leads, the Disability Human Rights Clinic (DHRC). From 2014-2017, she was the Academic Convenor of the Disability Research Initiative (DRI) at the University of Melbourne and she is now an Establishment Committee Member of the Melbourne Disability Institute. Prior to joining the University of Melbourne, she held a Marie Curie Research Fellowship at the Centre for Disability Law and Policy (CDLP) at the

National University of Ireland, Galway. Her work on the right to equal recognition before the law has been published widely, including her most recent edited collection, *Global Perspectives on Legal Capacity Reform* (Routledge 2018).

DOUGLAS MCK. BROWN

The Douglas McK. Brown Chair in Law was created in 1986 in honour of Douglas McK. Brown. Mr. Brown was educated at the University of British Columbia and in Cambridge, England. For many years he taught as an Adjunct Professor at the law school in addition to his busy practice in the firm of Russell & DuMoulin (now Fasken). He became the professional head of the firm and its heart for many years. Through this lectureship in his name, the Allard School of Law appoints a distinguished visitor each year. This lectureship would not be possible without the generous support of those who contributed to the endowment.

This event qualifies for 1 CPD credit.

JANUARY

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THURSDAY

12:30 –
1:45PM

CLARK WILSON
CLASSROOM
(ROOM 121)



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