

# LBS4E3- A Blind Lawyer With a Vision

Living Blind Podcast Transcript – December 2023

## Naomi

So today I'm joined by Ben Fulton. Ben is a lawyer in private practice in the GTA, that the Greater Toronto Area, his practice focuses primarily on human rights and minor criminal matters, where diversion is a practical solution. Ben belongs to the Canadian Federation of the Blind, "CFB", and focuses on advocacy for the most challenged members of society. Welcome to the show, Ben.

## Ben

Hi... welcome! Thanks for having me.

## Naomi

So, I'd like to start from the beginning. So you're a lawyer, I'm wondering how you got interested in practicing law in the first place?

## Ben

Well, you know, from a young age, I saw law as being really integral to, you know, the functions of our society. You know, it really impacts on every aspect of our lives, you know, in some way, everybody's touched by the law. And I wanted to make a difference. So, you know, I wanted to, you know, see what area of life I could focus on and, you know, make some real improvements. So, I kind of focused on human rights and restorative justice trying to make you know, a difference for kind of the more marginalized members of society, the people who, you know, need to help the most people who don't get a lot of the advantages, end up with a lot of stigma. And, you know, a lot of times these problems kind of snowball, and people end up with, you know, multiple intersecting problems with the loss. So I do my best to try to ameliorate that as much as possible.

## Naomi

All right, so right off the bat, we have a lot of different key ideas that we can talk about, I think the first one that I wanted to jump into is the idea of, as you mentioned, there's different specialties in law, and you became interested in human rights. So could you tell us a little bit more about why human rights specifically now now, you did mention that you wanted to support marginalized members of society, but maybe you can tell us a little bit more about how law intersects with human rights in your practice?

## Ben

Well, for me, human rights really centers around the idea that everyone is created equal. And that's, you know, very central to my philosophy, I really believe that people are equal, and they should be treated, treated equally. And that's the reason why I like doing the human rights work that I do. Because at the end of the day, it's about making sure that, you know, people receive that equal treatment that they are actually constitutionally entitled to. So, you know, this is, again, why it's great to be practicing in, you know, Canadian law, we have the Charter of Rights and Freedoms to draw upon. And, you know, I use section 15 a lot in my work. And that's the provision that guarantees people that equality of

treatment, you know, despite whatever characteristics they may possess. And to me, that's, at the end of the day, the most important, you know, part of the equation is just making sure that, that equality, that sameness is afforded is provided to, to everybody, regardless of their status.

### **Naomi**

I think that's a good connection into another term that you mentioned, which is marginalized people. So to me, marginalization means, well, pushing people to the margins of society. So that means that they have less opportunities that they are not treated equal. So can you give us some examples of how people in Canada and Canadian society are marginalized and what situations they might need support with asserting their human rights?

### **Ben**

So, you know, many people are denied service or they're denied access to service because of a disability. And, you know, they might be trying to access medical services, you know, with a hearing or visual impairment that makes it impossible for them to communicate with the staff and you know, even do the most basic rudimentary step of setting up an appointment. You know, the, you know, person may not be able to, you know, schedule an appointment for someone who can't phrase it in English, you know, and they might, you know, not even interact with that person in any sort of meaningful way. So, you know, it's important that you know, people you know, who are are deaf who can't speak English who can't speak at all, or can't speak English, you know, still have, you know, access to these medical services that that are essential. Or, you know, it might be somebody in a wheelchair who, you know, can't access a hotel, because there's like a three inch lip at the beginning of the hotel, and it needs, you know, the simplest, smallest little ramp, but, you know, the hotel staff doesn't, you know, consider it their responsibility to provide that. So, you know, these, these services are important for people, you know, that person might need that hotel to stay because they have a job interview in a town the next morning. And it's important for them to arrive and be well rested, and, you know, be able to make that job interview on time and in a position to perform their best, but, you know, their best chance of getting that job. So this is how I was talking about things snowballing, you know, when somebody has denied the services, then they don't get that job interview, and it might have been actually very difficult for them to get a job interview, because they are marginalized, because they have a disability or, or some other stigma. And, you know, because of this hotel thing, then they don't get the job interview, or they're late or something happens and, you know, they remain unemployed, and continue to experience these, you know, multiple layers of oppression. So that's why I try to focus on you know, bringing people up, ameliorating them out of that position, and trying to, you know, make sure that I'm doing what I can to improve the situation.

### **Naomi**

So I think for some of us, who are maybe not lawyers, or therapists for whom their experience with law is, you know, looking at courtroom scenes on TV, I'm curious if you could describe the process that, where you support people with asserting those human rights violations. So let's say there's somebody who's, like you said, someone in a wheelchair who doesn't have a ramp to get into a job interview? Where do they start in terms of making that change, and being able to get access like everyone else.

### **Ben**

So in the first instance, you know, you can certainly make a complaint to the Human Rights Tribunal of Ontario. And they have, you know, services online, they, they have some assistance to help people in, you know, filling out these applications. That's basically what I would say is your first remedy. But now, in some situations, like one I personally experienced, the remedy goes a little farther than that, and you actually need legislative change. So let me just tell you a little bit about my own experience. I, myself am a blind lawyer. I used to be a blind law student. And when I was a student, I was in need of a place to stay near the university. And I experienced a lot of discrimination. Landlords didn't want to rent to me, just because I was blind, for no other reason. Some would be very blatant about it and say, to my face, that, you know, they didn't think renting to a blind guy was a good idea that, you know, I might have an injury, and they just didn't want to risk it. And, you know, they didn't really care if it was discrimination, I could just, you know, looked for a place elsewhere. And in many of these situations, you know, any of that kind of would have been very difficult to prove. It basically, my word against the landlord, and I was very troubled by it. In one situation, I actually sent a text message to the landlord, disclosing the fact that I was blind. At that point, I had been to well over a dozen places, just within the last month of looking, and I was tired of going and being told no. So I put it in a text message that I was blind. And I got a response saying that the landlord didn't want to rent to me because I was blind. That to me seemed like really good, you know, written proof that this discrimination was occurring. And when I made my complaint with the Human Rights Tribunal, I found out about a provision in the Human Rights Code section 21 sub 1 of the Human Rights Code of Ontario, that actually allows landlords who share a kitchen or a bathroom to discriminate against anyone. It could be for a disability, it could be for the race, religion, any reason at all whatsoever, they can do that with impunity. So at that point, the remedy looks a little bit different. And I actually had to you know, launch a charter challenge to that provision, asking for the tribunal member to find it unconstitutional. And basically read it down, the tribunal member does not have the authority to strike it down. But if we get a favorable decision, we can then go to the superior court ask for a judicial declaration, and actually have that legislation struck down. Where we're at in the stage right now, as we've made our submissions to the tribunal. There was actually a fairly lengthy hearing. The tribunal member, you know, considered evidence for both sides, and is now waiting on a decision. So that decision will hopefully be out by the time this podcast airs. And people should be able to check it out on my website, which is BenLaw.ca, for anybody interested in trying to find out that information.

### **Naomi**

So it sounds to me because you've been practicing for a little while now, at least a few years. So. And this started when you were in school. So I imagine that this process can take a really long time for people.

### **Ben**

Yes, I mean, the process of just a complaint itself can take well over a year, the process of going through a full blown charter application to challenge the very legislation itself? Well, let's just say we're on three years in counting.

### **Naomi**

Wow. I can imagine for people with disabilities, they might say, "well, I don't really have the time to wait that long," or, you know, "this is this is about my life, this is a place to live." So I can imagine that it was

a frustrating process, but I wish you the best. Hopefully, we maybe we can update this podcast, once we hear back about the results.

**Ben**

Yeah, maybe providing a link would be great. And I would say, you know, for me right now, I mean, as noted, I'm now no longer a student, you know, my need for that housing is not, you know, as present, there are still, you know, some places in Toronto that I'd like to rent that aren't really available. But, you know, in terms of this specific instance, I think a lot of people might have given up by now just saying, "well, you know, that was when I was a student, that was three, that was four or five years ago now. Why am I continuing to fight?" And well, for me, it's about getting that legislative change that will, you know, provide people with the remedies that they need on a go forward basis, so that other people aren't waiting three years to get a rep in, or more.

**Naomi**

Yeah, I think that's a good perspective to think even though, you know, it may take a very long time for the person who's in the situation, and justice can take a really long time, at the end of the day, it does benefit everyone, when legislation changes to become more accessible and inclusive.

**Ben**

Yeah, that's the goal. Absolutely.

**Naomi**

So you know, in addition to you sharing your challenges with finding housing, for my understanding your time at Osgoode law school, there were other accessibility challenges. I'm wondering if you could touch a little bit on those.

**Ben**

Yeah, it took a long time to get the course material. It wasn't you know, born accessible, it needed to be remediated through the library. And the library needed like a reading list and the professor's were not good about providing it in a timely fashion. So it resulted in delays in me getting my course material and not having it, you know, at the start of class when I should have had it. In some cases, waiting several months and not getting the material until just before the final exams, like about a month before finals. So, you know, I really, you know, address this sort of problem at the university level and said, you know, accessibility, access to digital material needs to be improved. And, you know, there were other access issues. Some of the classrooms were not accessible to people in wheelchairs at all. A number of them if you were in a wheelchair, you you had to be in the very back. So any professor trying to teach in one of these classrooms wouldn't be able to get to the front to teach. There were, you know, other issues that needed to be addressed. So, I basically formed a Student Association. We call ourselves "The Dare Devils in Training Organization". I thought it was a, you know, clever sort of take on on it. And they're now calling themselves "Access to Osgood". A little more administrative sounding. The work continues, we were able to, you know, make improvements to accessible, you know, the provision of digital material, some wayfinding, you know, carpet runners in certain areas to make it easier to navigate. Some of the more systemic, or sorry, not systemic, sorry, just more structural

changes that needed to happen to you know, give better access to students in wheelchairs... that wasn't that hadn't happened yet. I'm not sure where, where they're at with it now, actually.

**Naomi**

And just for my own interest, Osgoode Law School, can you where remind me, where is it located?

**Ben**

Oh, it's part of the campus at York York University. So in North York,

**Naomi**

Okay. And North York and Toronto.

**Ben**

Yeah.

**Naomi**

Okay. I'm not as familiar with York University. But when I think about accessibility, and universities, I mean, I went to University of Toronto, and I can think of a lot of lecture halls that were not accessible. So it's absolutely very important work that, that you've started, and I'm glad to hear that it's continuing now that you've left the school,

**Ben**

You know, the shame is that a lot of this infrastructure is is is new. Like the fairly newly constructed TTC station. I think it went in in like, 2017, 2018 right around there, just just before I graduated. And, you know, their there are major problems with it, you know, problems with one of the handrails are located, problems with where the elevators are located. And given the age of the structure, it's really disappointing that there were, you know, the number of deficiencies that there are.

**Naomi**

Right, yeah. So, so TTC, just for our international listeners, our is the Toronto Transit Commission. So essentially, the subway, and so, you know, like you were saying, Ben, unfortunately, some of the older stations, yes, they are being retrofit, but that work is was taking quite a long time. But like you're saying at this point, you know, it's 2017, I would assume that there are accessibility guidelines for buildings in place. Clearly, it's not enough.

**Ben**

It'd be beyond just guidelines. I mean, there's there's legislation the AODA, the Accessibility for Ontarians with a Disability Act. You know, that specifically legislates that, you know, these spaces are to be accessible. David Lepofsky, who is a another blind lawyer of some note in Toronto, and the chair of the "AODA Alliance" has hashtagged these "# AODA Fails" when, you know, the government themselves fails to meet their own legislative requirements. So again, the problem is fairly systemic and needs a lot of work.

**Naomi**

Absolutely. We actually had David Lebowski on the show. So I would highly recommend for those listening in to, if you're interested in learning more about David's work to listen to one of our previous seasons where we get into his work on advocacy.

**Ben**

Yeah, there are a number of blind lawyers in Toronto and across Canada. And I'm actually the sort of chair of the Canadian Association of Blind and Visually Impaired lawyers. There's about 20 of us in the group, and it's, you know, basically a mailing list for us to share stories, experiences and ideas for helping navigating the legal system in Canada. And certainly a resource for any students who would be looking to enter the field as you know, we have different practice areas and can provide different perspectives.

**Naomi**

For sure. I think I appreciate you sharing that resource. Because that that is a good point for someone who you know who's listening in who is blind or visually impaired, partially sighted and wants to become a lawyer, I can imagine it might be a little bit daunting to think well, how many other people are out there, like me or who might face the same struggles.

**Ben**

It's actually one of the better professions for blind people. It's what I went to after I discovered I wouldn't be able to be a racecar driver. And there's quite a lot, there's a lot in the States, there's the "National Federation of the Blind". And I was on their mailing list, I just found it was very centered to, you know, the US law. And we have different law in Canada. And there are important and significant differences. So I was basically reaching out to any blind lawyers I could find for their advice and tips and sort of out of that grew this association. That's more of a mailing list than anything really, nonetheless, a resource,

**Naomi**

Oh, I can, I can speak as an Occupational Therapist. I'm on a few mailing lists, and I would say they're, they're really good resources, it's nice to have a group of people you can kind of throw out there, you know, "hey, I'm have this problem. You know, do you have any suggestions", and it's just nice to have to be able to pick people's brains. So no mailing lists are a great resource for support in your career.

**Ben**

No, absolutely. Yeah, mailing lists, and mentorship is another, you know, resource. And so certainly, you know, as a student, I was, you know, interested in getting the perspective of, you know, members in the field. And, you know, now being in the field myself, you know, if there's any way I can give back to somebody who's, you know, just entering and interested in how to navigate, then I'd certainly be happy to help.

**Naomi**

Did you have mentorship where, while you were in school, or even today?

**Ben**

Yeah, I mean, David Lepofsky, for one, had a number of other blind lawyers on the mailing list, and a number of lawyers that I've met through the Criminal Lawyers Association, which is something I wanted to talk about. You know, one of my my real passions is restorative justice. Basically, we're just trying to restore the victims in some way to help repair the damage that's caused. Basically, restorative justice feels that, you know, if there's a crime, there is some injury, right. And it focuses on repairing that harm, fixing that injury, rather than assigning blame and punishing the perpetrator. So it gives more back to the victim. And it results in better outcomes for not only them, but also the perpetrators.

**Naomi**

So essentially, restorative justice, you're trying to keep somebody from going to jail or being you know, I'm making quotes "punished" for their crime.

**Ben**

Yeah, it's a process that requires the person to take accountability. And in a meaningful way, address the injury, harm damage, that is a result of their actions, and to work with the community in the best way possible, to engage in that healing process. In the criminal sphere, the charges are withdrawn, the person isn't, you know, charged, there's no trial. And there's no criminal record, which is also really important for people who are maybe racialized in some way, marginalized, you know, and if they get a criminal record, it just compounds that marginalization. So now they're, you know, a racialized minority with a criminal record, and their chances for employment plummet. So, you know, trying to ameliorate that situation through restorative justice, not only gives back to the victim, but also results in better outcomes for everyone.

**Naomi**

So for my understanding, and from what I've read, incarceration, going to jail, it doesn't really benefit the community in the long run. So to your point, the idea that we can work with or you can work with someone to take accountability for their actions and avoid a sentence, in the long run, will benefit that person more and benefit their community more than then sending them to jail.

**Ben**

Yeah, and also about giving back to the victims as well. You know, in terms of looking at the numbers and the results there, there is the "Young Adult Diversion Project" that was completed a few years ago. Just google that and I'm sure the listeners will be able to find it. And it shows basically, the positive outcomes, you know, the, yeah, the difference between, you know, having somebody incarcerated and you know, what that looks like in terms of their likeliness of reoffending and job prospects, and you know, what a diversion looks like in terms of, you know, those same kinds of factors. And in addition to, resulting in more positive outcomes for offenders, it gives back to the community. You know, in one situation, four youth were convicted of destroying a historic bridge. And they were ordered to be a major part of restoring that bridge and replacing it. In another arson case, a youth who was convicted of burning down a unoccupied hunting cabin, you know, was shown through the process of restorative justice, the importance of that hunting cabin, on the individual who relied on hunting for food and the provision of his family. And so he actually had to rebuild that cabin and spent his whole summer doing it. So it shows you know, the consequences of your actions, you know, taking accountability for it and doing something meaningful, that gives back to the community that restores the victim. So that's where,



you know, when I say restorative justice, I focus on you know, how it restores the victim. And, you know, through the process of restoring the victim also heals the offender,

**Naomi**

I think I'm starting to understand a little bit better. So the restorative part is about restoring what was taken away from the victim. And, you know, that's the first and most important part, but then, as a consequence, or what follows from that is often the person who committed the crime comes to understand the consequences of their actions.

**Ben**

Yeah, it's sort of it's all part of this process. And it doesn't happen quite as linearly as all of that, right. It's kind of you go back and forth, where, you know, there's a healing circle where people, you know, air their grievances and discuss possible solutions. And then solutions are crafted and worked on and through that process, offenders learn better patterns of behavior, and the consequences of their actions become, you know, lived. And that's the process that if we can get people engaged with has the most promise of, you know, providing positive outcomes.

**Naomi**

I think that's the part that I'm interested in. Next is how do you get this started? How do you get people engaged in this process in the first place?

**Ben**

Well, for me, it starts with awareness. A lot of people aren't really aware of what restorative justice even is, you know, there is a victim and witness act that, you know, says victims and witnesses have the right to be informed of these options. However, I find that it's, again, a piece of legislation that isn't always given good effect, would be the best way to phrase that. It's not that it's not being followed. But if nobody's bringing this to the victims, and the witnesses, how does this right become realized? So by talking about it, by getting the word out there, you know, I can educate people, and they can consider it as an option. So when something happens, and they want a better mechanism for dealing with it, they know that these better mechanisms exist. Now, once this is more prevalent in the public conscience, people see it as a viable option, they can present it, and then we can start crafting solutions that have a restorative justice centered approach. Without the knowledge, we really don't get anywhere, though.

**Naomi**

Yeah, I'm getting the sense that one of the big parts of your role is raising awareness, whether it's, you know, raising awareness of the rights that people have, raising awareness of the options that people have when they're in a situation where they've been charged, but just giving alternatives that helps people, I guess, for lack of a better word, help them not be further marginalized by our legal system.

**Ben**

Yeah, raising awareness and providing information is definitely a major part of what I do. You know, providing legal advice to any one client involves, you know, a full understanding of the law in that situation, you know, finding out the options, what is available, what is possible, informing the client as to what their options are, and then, you know, taking instructions. You know, it's important for me to know



from the client, what, what they want to do, because there there are different options, and, you know, understanding what options are out there, I think is basically the best tool I can give anybody.

**Naomi**

Speaking of raising awareness, or passing on knowledge for the people listening to the show, and thinking "maybe I'd like to be a lawyer" or, you know, "I wouldn't mind getting involved in human rights or the justice system in some way", what advice do you have for people who are listening and and maybe thinking about pursuing a career like yours?

**Ben**

Follow your heart, you know. If that's what you want to do, just go for it! It was a long journey for me to get where I am. But it just starts with taking a step and keeping you know, your mind focused on where you want to be, and reaching out to people who can help you along the way. Finding people who, you know, share your goals, you know, finding people who have attained some of the things you'd like to attain and asking them, you know, how they got there, you know, what, what steps they took, you know. Get yourself a mentor, or a couple, I have more than one, I've got a civil law, mentor, a criminal law, mentor, mentors for different occasions. I think it's important to really kind of, you know, think about, you know, how each person you're going to work with is going to help you in those specific ways. And try to think about, you know, the different things that you want to accomplish, you know, it's complicated, there's going to be, you know, a number of different things you're going to need to focus on. So, you'll need different tools for focusing on each one of those different things.

**Naomi**

So mentorship is a big part of that. Are there any, just thinking very practically, you know, are there any tools that served you well, along your path, whether maybe it was technology or... anything goes really?

**Ben**

Well, I mean, there's the Assistive Device Program, which is a really good program in Ontario for purchasing some of this expensive technology like "JAWS". If you can't afford "JAWS", for whatever reason, there's NVDA. And they work very similarly. You know, screen readers are important. And then you know, beyond the screen readers, really learning how to use them. I've applied for, you know, number of hours of training for JAWS, to get into, you know, how to, you know, get into a Word document and make specific headings, different level headings, you know, all the tools, how to make footnotes and navigate through them, you know, those sorts of tools that you'll need as a lawyer. So, you know, I could use "JAWS" and I could use, you know, Microsoft Word, but I wasn't a master user of them, I had to seek out those tools and get them. I mean, it's a process like, I can't necessarily give a comprehensive list on this podcast, because everybody's going to have a different list of tools that are going to work for them. You know, my biggest advice is just research, what you want to do, you know, there's the LSAT, and there's lots of resources online for how to write that. You know, if you're interested, you know, do that research, find out, you know, what it takes to write the LSAT, and there's practice examples, you know, exams that you can study from, and, you know, there's courses you can take, find out what works for you and just, like I said, pursue your goals.

**Naomi**

Just go for it.

**Ben**

Well, you know, 90% of everything in this world is just just going for it, you know, you'll figure out what to do, like I, you know, don't need to tell people how to fill out, you know, law school student applications, you know, it's available online. You know, go to Osgood, they have their application form right there you know. If you want to do it, you'll you'll do it.

**Naomi**

Now, it's well said. So thanks so much for coming on the show, then it was very interesting. Like I said, we've had a lawyer on the show before, but I think your your practice is a little bit different, and so it was helpful to get to know a little bit about how law is applied to human rights and restorative justice. So thanks for explaining that for us.

**Ben**

Right Naomi. Thank you very much for having me. It's great to speak to your listeners. And I hope they're able to take something useful out of all of this.

**Naomi**

For sure. I think you mentioned your website earlier. Is that the best place for people to reach you if they want to know more?

**Ben**

Yeah, so that's again, that's [www.BenLaw.ca](http://www.BenLaw.ca). My email if you want to send me an email is BFulton, B F U L T O N at BenLaw.ca. So yeah, that's that's definitely the best way to reach me. You can follow my cases. I do my best job to post updates for anything, you know, significant, like the charter challenge to the human rights legislation I was discussing earlier.

**Naomi**

So we'll definitely include all the information that you provided about different cases and updates on your situation with the housing, in our show notes, but all that is to say for now, I just wanted to say thanks so much for coming on the show.

**Ben**

Okay, Naomi, thank you very much for having me.