



## **The *Civil Justice System and the Public*: Communication and Access Barriers for those with Disabilities**

January 2006

**Cam Schwartz and Mary Stratton  
Canadian Forum on Civil Justice**

110 Law Centre  
University of Alberta  
Edmonton AB T6G 2H5  
[mstratto@law.ualberta.ca](mailto:mstratto@law.ualberta.ca)  
(780) 492 9426

The *Civil Justice System and the Public* is, a collaborative research project funded by the Alberta Law Foundation and the Social Science and Humanities Council of Canada. Cam Schwartz has been a Research Assistant with the project and Mary Stratton is the Research Coordinator. Details of the project are available at [www.cfcj-fcjc.org](http://www.cfcj-fcjc.org). A version of this paper was first prepared as a submission to the Ontario Committee on Accessibility to the Justice System of Persons with Disabilities. The present paper is only possible because of the contributions of many individuals. Special thanks are due to Marisa Ferraiuolo for data support for this paper. We wish to thank all of the members of our research team for their contributions to the development of the project; our project partners, research participants, field research team, and Research Directors, Barbara Billingsley, Lois Gander, Diana Lowe, Teresa Rose.

## **An Overview of the *Civil Justice System and the Public Project***

*The Civil Justice System and the Public* research is founded on the belief that a lack of effective communication, both within the system and between that system and the public, is a significant barrier interfering with access to justice. This project is a collaborative and multi-disciplinary research alliance designed to involve both the public and the justice community in identifying changes in communication practice that will improve the civil justice system. Researchers from the Canadian Forum on Civil Justice and the University of Alberta are joined by partners from across Canada in academia, the judiciary, the legal profession, court administration, public legal education agencies, community organizations, private consultants, and the public. An Alberta pilot of the project is funded by the Alberta Law Foundation, and funding for a five year national study is provided by a Community-University Research Alliance (CURA) grant from the Social Sciences and Humanities Research Council of Canada (SSHRC). The goal of the project is to make specific and clear recommendations for effective change that will ultimately improve access to the civil justice system by increasing the ability of the system to hear, involve, and respond to the public.

Over 300 participants in Alberta, Nova Scotia, Ontario, Quebec, Nunavut and British Columbia contributed to the data collected through a combination of interviews, questionnaires, observation notes, key contact meetings and focus groups. Details of this project are available on the Canadian Forum on Civil Justice web site at <http://www.cfcj-fcjc.org> . We are continuing to work with our

partners to develop and circulate research products that will ensure our findings lead to new knowledge and improved communication practices.

The focus of our project is broad and none of the research tools dealt specifically with disabilities. Nevertheless, the data include discussions and observations about the access and communication difficulties that the civil justice system can pose for people with physical, psychological and cognitive disabilities.

## **Navigating the Justice Process**

Even for non-disabled persons, barriers to communication with the civil justice system often begin well before issues of actual physical access arise. Many of our participants who did not identify themselves as having a disability told us how confusing they found the legal process, even when they could afford a lawyer. One litigant commented: “It would have been very nice if I could just go to court and type in somewhere or ask somebody ...[but] you have no idea what the process is.” (Plaintiff, accident and injury case with legal representation, 202, 150-157)

The challenges of navigating the legal system are compounded for those with disabilities. It is an unfortunate fact that many people with disabilities must rely on social assistance income and do not have the funds necessary to hire a lawyer. The availability of legal aid is extremely limited in most provinces, especially for

civil justice cases. Most of the time it is just not available for the kinds of legal problems people with disabilities face.<sup>1</sup>

**Question: “Do you have a lawyer?”**

**Response: “No, I live on disability welfare. There is no money for lawyers. I barely pay my mortgage and put some food on the table.”**

(Injured senior citizen, 184, 881-883)

Finding themselves unable to afford a lawyer, potential litigants may give up or opt to represent themselves. Such attempts are made even more difficult without adequate finances.

**I very seldom work with people that are disabled, either mentally or physically.”**

(Courthouse information desk, 338, 132-136)

Issues related to the disabilities experienced by a litigant may be the reason for going to court in the first place, but lack of understanding on the part of those working within the justice system serves to exacerbate already difficult circumstances. One self-representing participant with a disability income of \$612 per month told us that she was unable to afford the medical reports she was

---

<sup>1</sup> Although there is sometimes a legal aid appeal process for special cases, few members of the public are aware of this and our research suggests they are seldom informed of it when initial applications are rejected.

required to submit in evidence. When she explained this situation to a judge, the judge replied, “Don’t tell me your troubles and don’t come to court without proper preparation.” Then the judge dismissed the case. (Plaintiff in accident injury case, 184, 677-93).

When the disability is not visible to others, lack of awareness and consideration can be particularly acute among service providers, such as lawyers and court staff. One participant described her experience at the courthouse:

[At the courthouse] they’re always in a rush. You’ve got to sit for 45 minutes in a line....Then they say [name]...and when I went up I forgot when I needed it – and I have to go back and wait another half hour. And they’re sort of mocking me, like saying, “why are you back?” Like people would not assume that someone who forgets – that they may have a disability or a memory disorder. I don’t want to tell everybody at 48, you know, I’ve got a memory dis - I mean it’s bad enough – you know what I mean? They say, “Just go here and go there”...I hate that when people just hand you the information and say, “just read it”... I think they should know that some people are disabled. I’m not stupid...but I don’t understand legal jargon. I don’t understand anything on a piece of paper. I don’t understand.” (Plaintiff, 803 line 742-773)

There are attempts within the court system to meet the needs of people with disabilities and ensure that information is available and access possible. We heard about advances that have taken place in communication technologies that assist those with disabilities to gain information about the civil justice system. For example, the use of wireless communication systems<sup>2</sup> in courtrooms has made a tremendous difference by enabling people who are hard of hearing to

---

<sup>2</sup> Usually referred to as “FM systems” these systems consist of a hand-held frequency device that can be used by the speaker to broadcast sound to special earphones worn by a person with hearing loss.

hear clearly what is being said in court. One litigant who had previously struggled in court told us, “I’ll put some earphones in my ears and we can communicate extremely well.” (Plaintiff, family and foreclosure cases, 603,152-84) Specially adapted telephones and widely available information on the Internet can also be tremendously helpful when physical access is difficult or impossible.<sup>3</sup> Our researchers observed, however, that these tools are not consistently made available and readily accessible.

**“I told him I was deaf. He was very impatient with me.”**

(Hearing-impaired plaintiff, 603, 339-347)

Needs cannot be met without the resources to do so. Even when there is a consciousness of the needs of the disabled, the courts may lack the resources to meet them. It is rare to find a court mental health worker available for non-criminal cases and we heard repeatedly that interpreter services were not available for those who are deaf.<sup>4</sup> As one hearing-impaired participant remarked, “The scariest part of a trial is that I don’t hear, I don’t react, I don’t know what’s going on. I’m completely lost.” (603,152-184). As already pointed out, many people living with disabilities also exist on a low income and may not be able to afford computers and telephones, especially those equipped with tools that meet their

---

<sup>3</sup> Lawyer, 664, 159-84; Expert witness, occupational injuries, 222, 291-330

<sup>4</sup> Court clerk, 292, 131-53, Plaintiff with hearing loss, 603, 80-103.

needs. Unfortunately, people with disabilities are too often still treated as second-class citizens.

## **Physical Accessibility**

Across Canada our research team observed awkward or out of the way accessible entrances to courthouses. As one observer commented, “it would seem to me this is more of a token measure,”<sup>5</sup> especially when we also noted heavy doors with no power assist buttons, approach-ways that had no paving and a lack of signs indicating where to find an accessible entrance. Once inside the courthouse physical navigation can still be difficult. Our research team noted many times that courthouses were noisy, signage was poor and it was often difficult to find the way around the courthouse.<sup>6</sup> These issues are concerns for the general public and can be exacerbated for individuals with disabilities. Furthermore, once a courtroom is located, many have long, fixed wooden benches for seating that is unsuitable for anyone with limited mobility and cannot accommodate those using scooters, wheelchairs or walkers.

Although most courthouse washrooms have accessible stalls, getting to them via doors without power assist buttons can be challenging. In one courthouse the accessible washrooms were located on the second floor but the doors were kept locked and it was necessary to go to the first floor and ask someone from

---

<sup>5</sup> *Civil Justice System and the Public* “Physical Descriptions of Court Buildings Report,” pp. 3, 27, 30, 37,52. Quotation G at p.27.

<sup>6</sup> *Civil Justice System and the Public* “Physical Descriptions of Court Buildings Report,” various comments throughout the report.

security for assistance. Irritating for an able-bodied person, such a procedure becomes an exhausting ordeal for someone with a physical disability.

Access to supposedly available information is another problem area. None of the brochures and other handouts that researchers found in racks in courthouses, legal aid offices, and legal education and information centres were available in large print. If there are audio format alternatives, we did not find them. In one courthouse where information videos were playing, we noted that the volume was turned down. The closed captioning feature had not been activated although doing so would have made this information more accessible for everyone.<sup>7</sup>

## **Mental Disabilities**

A particularly problematic area is assisting people with mental disabilities.<sup>8</sup> There is a strong social stigma attached to having a mental disability and study participants coping with these challenges expressed considerable frustration.<sup>9</sup>

We spoke with one mental health court worker whose mandate only covered criminal proceedings, but she pointed out that when “people come into the court system and are mentally ill, they may not understand....So I try to sit in court and watch for people that I might be able to recognize as having a mental illness or handicap...and help them understand what the court system is about.” (850, 54-61)

---

<sup>7</sup> *Civil Justice System and the Public* “Physical Descriptions of Court Buildings Report,” p.32.

<sup>8</sup> “Mental disabilities” is a general term encompassing, but not limited to, developmental disabilities, psychiatric disorders, and those with brain injuries.

<sup>9</sup> Disabled litigant at appeal court level, 803, 742-773; Litigant with hearing loss, 603, 80-103.



Other members of the justice community expressed frustration at not being able to respond adequately and felt hopeless about prospects for change.

**I mean, there are some people you could spend hours with and they'd still go away and not understand. And I think it will always be there and it will never be changed.**

(Legal Aid Manager, 215, 248-253)

Attempts to communicate can be frightening for both those with mental disabilities and justice community staff. A legal aid officer described how angry and distressed a person with a psychiatric disorder can become. She told us, "We had a gentleman come in and he is very, very angry right now because we can't help him....He will just go on and on and yell and scream...you can't reach him....You can't make him understand. (231, 153-167)<sup>10</sup>

The attitudes and issues illustrated above raise questions as to whether people with mental disabilities are receiving appropriate and fair representation within the system, especially in civil matters. The problems involved are not easy to solve, but avoiding people with disabilities and thus denying them access to justice, when sometimes they are among those most in need of it, cannot be the answer.

---

<sup>10</sup> Lawyers also have similar concerns about ensuring informed consent and being certain that clients with mental disabilities understand what is going on. (350, 1216-1239)

## A Need for Training

Many of the barriers to access and communication with the civil justice system experienced by people with disabilities stem from a lack of awareness on the part of those working within the system. Training to raise general awareness is required to address this.

Research participants told us that there was a general need for improved communication and increased collaboration between community services and the courts. Increased knowledge about services available in the community for individuals with disabilities would assist court staff to provide better service.<sup>11</sup>

Similarly, community service workers could use increased knowledge about the legal system.<sup>12</sup>

**There just needs to be a bit more coordination ...  
It would be good if I knew somebody in social  
services I could turn people to.**

(Court librarian, 534, 250-262)

---

<sup>11</sup> Court librarian, 534, 231-262; Family court litigant with disabled children, 317, 107-110; Master, 317, 107-110; Legal Aid Regional Supervisor, 215, 165-182; rural Legal Aid Officer, 240, 155-204. The lack of inter-agency and inter-court service knowledge, along with the importance of addressing this gap has been further underlined during focus group feedback sessions we have conducted in Alberta.

<sup>12</sup> Court Registrar, 332, 657- 670.

We also heard from members of the justice community who are taking action to improve communication between themselves and those with disabilities by becoming involved in a process of consultation, collaboration and training.<sup>13</sup> Some front line courthouse staff told us that they would like to receive further training in working with and assisting those with disabilities. They recognized a need for specialized training about how to ensure people with disabilities understand what staff are attempting to communicate. They also wanted training that would help them deal more effectively and constructively with people who became frustrated or angry.<sup>14</sup>

One Law Society representative told us that seminars on dealing with mental health problems were provided for staff dealing with complaints from the public. This training covered communication with both members of the public and lawyers experiencing mental health challenges and was considered helpful in identifying ways of communication that were more effective.<sup>15</sup> We also heard from a lawyer who was willing to go to disabled clients' residences if they had difficulty meeting in his office.<sup>16</sup> It is rare to find this degree of accommodation, but it is this kind of awareness and innovation that is needed if we are to make the justice system equally accessible to all people. The research participants with disabilities underlined that the courts should consult with disability groups and

---

<sup>13</sup> Legal Aid worker, 240, 182 - 204; Disabled litigant, 803, 1241-1248.

<sup>14</sup> Court clerk, 102, 371-386; Law Society staff, 662, 463-95; Legal Aid lawyer, 531,227-262.

<sup>15</sup> Law Society staff, 662, 463-513. However, this training had not been made available to the receptionists who were the first people to encounter frustrated members of the public face-to-face or over the telephone.

<sup>16</sup> Deputy judge/lawyer, 846, 44-54.

some expressed a willingness to become personally involved in initiatives for civil justice reform.<sup>17</sup>

**“We always want to impose what we think is the best way of doing it. Why not go to those groups and say what do you consider is the best way to do it?”**

(Court registrar, 332, 703-705)

## Conclusions

People with physical or mental disabilities – visible or otherwise – encounter layers of barriers to access to justice. Data from the *Civil Justice System and the Public* project suggest that many people with disabilities encounter so much difficulty accessing the system that they become ‘invisible.’ Far too often, those who do make it to the courthouse or to a lawyer’s office are confronted with insensitivity to their specific needs.

Our research suggests that in order to allow people with disabilities to fully participate, almost every area of access and communication with the civil justice system should be reviewed to identify needed improvements. Ensuring physical access requires an awareness of the practicalities of access doors, bathrooms, courtrooms, signage and information materials for persons with disabilities. Tailored training is necessary for justice community members, including the judiciary, lawyers, court clerks and security staff. Such training should include

---

<sup>17</sup> Disabled litigant, 1241-1248.

both consciousness raising and practical strategy components for all types of physical and mental disabilities. Because raised awareness is a vital step in finding innovative solutions, this alone will have an important impact on removing barriers to access faced by many disabled people.

A first step in addressing problems is to set in place a process that directly involves individuals with disabilities and related support communities in identifying both the barriers and the solutions that will work. A committee comprised of members from both the disability and justice communities, which is dedicated to gaining broad input and finding ways to increase access to the justice system will be a good beginning. People who have personal experience of negotiating the social world while living with a disability are, however, the only ones who can offer experience-based practical insights leading to effective solutions. Involving disability communities in developing new initiatives for change will be essential to ensuring the justice system is truly accessible.