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A Qualitative Look at Serious Legal Problems for People with Disabilities in Central Canada

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EXECUTIVE SUMMARY

The research

The Disabled Women's Network (DAWN) was contracted to carry out qualitative research examining the experiences of people with physical and mental disabilities with respect to their legal problems and experiences with the justice process. Participants from Ontario and Quebec shared their experiences through interviews, an online focus group and an online qualitative survey. The results of this research help contextualize the unique experiences of people with disabilities with respect to legal problems and the justice process.

The research explored three key stages within this process, including the legal problems participants encountered, how participants navigated the justice process, and finally the impacts of the legal process on people with disabilities.

The kinds of problems encountered

While participants noted that they had encountered a number of legal problems, the problems below were the most frequently cited:

- Employment issues;
- Education barriers;
- Housing issues; and
- Inaccessible services.

People with disabilities noted how normal and expected these legal problems were for them. Indeed, more than one participant shared that these serious legal problems were in fact common barriers for people with disabilities.

How participants navigated the legal process

The research highlighted the myriad ways people with disabilities navigated the resolution process, including both informal and formal actions. Many participants noted that they initially sought an informal resolution but that they quickly turned toward formal processes as they sought a resolution.

Participants noted a number of supports they accessed to resolve their legal issues. Frequently cited supports include:

- Community groups and community advocates;
- Allied and sympathetic professionals (doctors, care workers and so on);

- Law enforcement, legal aid clinics, lawyers, paralegals and human rights tribunals; and
- Family, friends and personal support networks.

Often, no single clear or linear path was available to reach resolution, so participants often noted they were left to navigate an unclear, inaccessible and confusing process.

Participants also noted a number of barriers to the legal process specific to people with disabilities. Key and frequently cited barriers here include:

- Persistent and systemic ableism that carries over into the resolution process;
- Funding cuts and policy changes that make navigating the system and accessing supports difficult (this included confusion among case workers and community supports);
- The cost and duration of the legal process, which pressure people to give up on finding a resolution;
- A lack of accessible legal resources, meaning barriers within the legal process itself (inaccessible language etc.);
- A lack of intersectional supports; and
- Limited scope of resolutions (a focus on monetary settlements instead of systemic change and barrier removal).

Impacts of the legal process

The barriers and processes outlined above had a clear impact on participants. Some key impacts here include:

- Emotional impacts, such as trauma, anger, frustration, and reduced self-confidence;
- Financial impacts, such as debt, depleted savings, loss of income, loss of housing and more;
- Social impacts, such as loss of relationships, stress that affects personal relationships; and loss of access to community supports.

Overall, participants said that the legal process remains costly, confusing, inaccessible, traumatic and slow, and that it rarely addresses systemic barriers.

Conclusion

For many participants, the legal process remains inaccessible due to the unique circumstances and systemic barriers many people with disabilities continue to face. Participants provided some key recommendations, outlined below.

1. Conceptualize “justice” in transformative ways that address the needs of all marginalized groups, and seek resolutions that better reflect community needs, including the removal of systemic barriers.
2. Build a justice process that is not centred on individual complaints so that people with disabilities are not re-traumatized or forced to always have to fight for their rights one person at a time. This includes creating an accessible process and providing plain-language resources.
3. Invest in community organizations and supports that can address the intersectional needs of people with disabilities.

I. INTRODUCTION

In March 2020, the Disabled Women’s Network (DAWN) was contracted to carry out qualitative research examining the experiences of people with physical and mental disabilities with respect to legal problems. Covering the provinces of Ontario and Quebec, this study sought to engage people with disabilities who had encountered serious legal problems in the past three years. This study was a part of a larger series of qualitative studies exploring legal problems among various marginalized populations.

While the scope and overarching research questions had already been developed, DAWN Canada worked to make the process as accessible as possible to ensure the study reached the cross-disability community and that participants reflected the diversity of disability experiences. One of the ways the study sought to do this was through focus groups and by working with community partners. The emergence of COVID-19 and related shut downs and restrictions meant the research process had to be re-envisioned in ways that would allow the research team to connect with participants and stakeholders at a distance, as described in the Methodology section. This process included:

- An online qualitative survey in both English and French;
- An accessible virtual focus group (with the support of the Centre for Independent Living in Toronto);
- Telephone interviews for participants who were more comfortable this way; and
- Stakeholder interviews and Zoom calls to gather information to help contextualize this issue given the constraints to the research process caused by COVID-19.¹

While these adaptations enabled the research team to carry out this study, the backdrop of this pandemic, its specific impact on people with disabilities in these regions, and the overall stress and trauma related to the pandemic created research conditions that were not ideal and likely limited the research process in ways we may not yet fully understand. While DAWN’s past work in this area informed DAWN’s understanding of many of the legal issues facing people with disabilities (e.g. people with disabilities experience crime and victimization at disproportionately higher rates²), this study provided a unique opportunity to learn more about how people with disabilities navigate the legal process starting from their initial experience, how they may seek resolution, and what impacts this

¹ As many stakeholders also identified as people with disabilities who had experienced serious legal issues, their personal and professional experiences overlapped. While this has been noted throughout this report, we are flagging it here as well, as it was at times difficult to parse out stakeholder versus participant experiences.

² Cotter, A. (2018). *Violent victimization of women with disabilities*. Government of Canada.

process has on the individual and their supports. In addition, this study offers insights as to what may help remove barriers within this process and facilitate greater access for people with disabilities.

This research report is outlined as follows:

- Methodology and outreach;
- Research results and discussion;
- Recommendations and conclusion;
- A bibliography of literature which may be of use for future work;
- A list of community resources that were identified in the research process; and
- The interview and focus group guides used in this study.

II. METHODOLOGY AND OUTREACH

DAWN Canada used the themes and overarching research questions developed by the funder, Justice Canada, to undertake qualitative research on this issue. The goal here was to engage 25 to 30 participants to inform the research. DAWN adapted the questions and examples into plain language and shared materials (including questions and examples) with participants beforehand to help ensure people had ample opportunity to review, ask questions, and understand the content and intent of the research.

In total, this study engaged with 21 participants and 11 stakeholders, many of whom also identified as having a disability and experiencing legal issues, for a total of 32 participants. Where applicable, this report makes links to research and literature that support or confirm aspects of the findings.

Participants were given the option to provide demographic data if they felt comfortable doing so or to provide no such details if they preferred. Among those who shared demographic data:

- There was a nearly even split between those who identified as having a physical disability and those who identified as having a mental disability;
- Participants ranged in age from 16 to in their seventies;
- Slightly more women than men participated;
- One quarter (27%) identified themselves in the online survey as a racialized person; and
- One quarter (27%) of respondents to the English-language online survey, conducted in both Ontario and Quebec, identified themselves as being part of the LGBTQQIP2SA community, as did half of the survey respondents to the French-language survey, given only in Quebec.

While the study had limitations in terms of achieving a fully intersectional representation of people with disabilities, it was able to capture how attention to intersectionality is important in understanding the issues at hand and how these issues may impact different people with disabilities in different ways.

Additionally, with respect to the online survey screening tool, the majority of respondents in both provinces indicated that their understanding of legal issues was at least good. Specifically, 18% of respondents rated their knowledge of legal issues as excellent, 63% rated their knowledge as good, and 2% noted they found legal issues confusing (the rest did not know or did not answer).

However, throughout the research process, including in later narrative responses to the online survey, participants overwhelmingly noted that the legal process was frustrating, confusing, and taxing. While participants may feel their legal knowledge is solid, the experience of the legal process itself still seemed overwhelming to the majority of respondents. We will explore this contradiction later in this report and provide insight from participants.

III. RESEARCH RESULTS AND DISCUSSION

In this section, results are presented using three key themes from the research questions: the experience of a serious legal problem, how the problem was resolved (or not), and finally, the effects of this process on the individual and their supports.

Limitations

Results must be understood in context of the following limitations imposed by the project methodology and backdrop.

Because of some of the contextual issues noted above, it is not possible to generalize about similarities or differences across both provinces (for instance, participants had access to different supports and resources depending on location). In a similar vein, not all participants shared where they experienced their legal issues, so this study cannot provide data pinpointing specific provincial or regional (e.g., urban vs rural) issues.

On another note, the research team tried to gather intersectional data where possible, e.g. through a brief screening questionnaire. However, due to the voluntary nature of this questionnaire, the varied ways data was gathered, and the anonymous nature of the process, the intersectional information collected was not consistent across all participants. Still, where possible, this report touches on the role of intersectionality in shaping participants' access to and experiences with the justice process.

Lastly, information was gathered from participants using more than one method, which shaped how participant experiences are presented throughout this report. For example, some participants were comfortable providing single-word or short sentence responses, while others shared in greater detail. Other participants, because of the delicate and ongoing nature of their legal issues, preferred to have the researcher take notes (rather than record the interview), prepare a narrative of the story, and present it back for approval. In other cases, the research team had to remove details that could potentially identify other parties or raise privacy issues.

1. Types of problems

Participants described a number of different types of legal problems they encountered. These fall under the following key areas:

- Barriers and discrimination in accessing health care;
- Inaccessible services;
- Divorce and family law disputes;
- Inaccessible education;
- Workplace discrimination;
- Termination from a job;
- Inaccessible government services (including elections);
- Physical barriers and other types of inaccessibility in the workplace;
- Housing evictions;
- Regulations related to accessing disability supports;
- Inaccessible public transportation;
- Gender-based hate crime;
- Harassment;
- Verbal, sexual and physical violence; and
- Inaccessible job applications.

As the list above demonstrates, research participants experienced a wide range of serious legal issues. Many participants noted that these kinds of experiences were common for them as people with disabilities. What the general population may perceive as serious legal problems may unfortunately be more common experiences for people with disabilities and for others from marginalized groups. Below

are specific details participants provided to help contextualize their experiences of serious legal problems.

Employment issues

Employment was one of the key sites in which participants experienced serious legal issues. Participants also shared a number of examples of legal problems and disability barriers linked to employment, including barriers in the application process itself, the refusal of accommodation while on the job, mistreatment and harassment at work, and wrongful termination.

According to one participant, they were “fired from a job after asking for accommodation for my disability.” In this case the participant stated that they had been fired after making a simple accommodation request, as they were becoming fatigued after being asked to work longer work days (i.e. 16-hour days). The participant was not being compensated or receiving any overtime for these newly imposed longer hours. Upon termination, they were told they were not being fired because of their disability, but rather because they “lied by omission” during their interview process about their ability to do the job.

This example reinforces a theme that emerged whereby employers and potential employers seemingly understood that they could not fire or refuse to hire a person because of a disability, so instead found ways to frame their actions as necessary and unrelated to a person's disability. This barrier is reflected in research which indicates that employers rationalize the exclusion of people with disabilities in an effort to absolve themselves of discriminatory practices. The workplace was a site of rights-based violations for many of the participants; they noted discrimination, verbal and physical harassment, inaccessible job applications and web sites, and illegal termination of employment.

It is important to note the persistence of these kinds of rights-based violations within the workplace and related to employment. While clear rights-based frameworks are currently in place that theoretically protect people with disabilities from this kind of treatment, the frequency of these violations speaks to larger and more systemic issues that require other interventions that are not reliant on individual complaints. Employment, as a means of social inclusion for people with disabilities, is often a policy priority, yet the employment experience remains full of serious and systemic barriers for people with disabilities. This information points to a glaring disconnect between legal rights, policy, and the actual experience of employment for people with disabilities; that is, while there legislation at both provincial

and federal levels on employment and human rights, the lived experiences of people with disabilities does not include the protections afforded by the legal and policy framework.

Barriers and discrimination in accessing health care

Participants described their experiences of barriers and discrimination in accessing health care, including how their intersectional identities shaped these experiences. According to one participant, their experience with accessing health care, from start to finish, illustrated how “the whole system isn’t working.” A trans participant with a disability shared that they had put off accessing health care as they understood, based on their past experiences, that they would face stigma and institutional violence. For them, accessing health care is fraught with barriers and stigmatization in general. During their hospital stay they encountered several injustices they believe were a result of the staff lacking the necessary knowledge in order to provide appropriate care. As visibly trans and disabled they also noted they felt an “atmosphere of shame” within their interactions with hospital staff, as if staff were taking out their own feelings of shame on vulnerable patients.

Another aspect of health care that emerged was related to the role of support people with regard to accessibility. In one example, a participant’s partner (who identified as trans and as also having a disability) provided necessary communication support and acted as a substitute decision-maker for the hospitalized participant. However, the staff frequently told the support person they had to leave, despite the support person’s vital role in communication support and decision-making.

The issue of health care for people with disabilities has become even more pressing with COVID-19. Several high-profile cases across the country, including at least one resulting in a patient death, have been linked to medical staff denying people with disabilities access to support personnel in medical situations. As well, in some cases, doctors have made assumptions about the quality of life of people with disabilities and limited their care options accordingly. Concerns were raised in stakeholder interviews about COVID-19 triage protocols and potential health care rationing that can leave people with disabilities without access to the care they need. As an example, in a well-publicized case early in the pandemic, a 40-year-old woman with a disability in BC died because her support person was not allowed to accompany her when she was admitted to the hospital, where hospital staff subsequently designated her as needing end-of-life care rather than treating her COVID. This kind of ableism within medicine is not new, but COVID-19 has brought it into the public debate. The examples here illustrate how pressing the issue of access to health care is for people with disabilities, and how an intersectional

lens can shed light on how systemic barriers, such as ableism and transantagonism, shape access to health care.

Education

Another important issue that emerged was that of education and the rights of people with disabilities in educational settings. Participants frequently brought up education, as a site of serious legal problems they had experienced in the last three years. They also noted the formative aspects of their educations, and said this context shaped their experiences with legal issues later in life. This is an important insight as it is critical for us to understand how legal issues are experienced over the life course.

The youngest participants in the study described the ongoing barriers they faced in attaining an accessible education. These included:

- not having their needs accommodated in the classroom;
- being denied a spot on student council because they had a disability, despite being qualified;
- not being allowed to participate in school sports because of their disability, even though they had permission from their doctor; and
- lack of accessible washrooms.

With respect to lack of accessible washrooms, this participant shared that they were instructed to “not to make it a habit of using the accessible staff washroom.” To complicate this matter, they had to rely on an elevator to reach an accessible washroom that often malfunctioned and that they felt was unsafe. They also said that this elevator was often out of order and took weeks to repair.

This example is important for a few reasons. First, in the interviews, stakeholders, many of whom had disabilities, flagged the topic of education and rights-based violations. Many people with disabilities experience legal problems early in life within the education system, which can have a lifelong impact on the individual.

The question of lifelong impact was reinforced in other interviews. For instance, one participant, who is trans and has a disability, said that experiencing systemic barriers and violations throughout their life course shaped their understanding of the “full hierarchy” of how institutional systems operate (medical,

psychiatric, children's aid, police and so on) and how the interactions between these systems create barriers and can inflict trauma. This participant explained that the interconnected nature of these systems, and the way they shape experiences of oppression, makes it difficult to self-advocate or to advocate around one single issue. This complexity was echoed in conversations with stakeholders, who noted that rights-based violations often begin early in life for people with disabilities and can be relentless over the life course. This context, in part, helps to explain why the effects of the legal process can be so traumatic for many even later in their lives.

On this note, many stakeholders, who also identified as having disabilities, also flagged the following common barriers and rights issues within education settings, including colleges and universities:

- Stakeholders had serious concerns about the kinds of rights infringements children and younger people with disabilities experience, including therapies that are in fact damaging. Stakeholders also noted that decisions made on behalf of younger people by non-disabled caregivers and professionals can lead to trauma, which the person then carries over their life course. In more than one discussion, participants and stakeholders mentioned that their legal problems early in life shaped both their future and how they navigated legal issues later in life.
- Accommodation is frequently denied to students with disabilities.
- The educational setting often relies on the medical model of disability and demands continual and updated assessments about the student's condition, often at a cost to the student or their family.
- An intersectional lens illustrates how students are understood differently from one another, as racialized students are often treated as having behavioural problems and disproportionately punished because of this, rather than being seen as having disabilities that need to be accommodated. This concern is supported in the literature.³
- Accommodation can affect access to financial aid in post-secondary education. As an example, a person may not be able to access financial aid if they enroll part-time as an accommodation.

In keeping with the goal to understand the lived experience of disability through a more intersectional lens, we also want to highlight that when children and young people with disabilities experience legal

³ Bhattacharjee, K. (2003). *The Ontario Safe Schools Act: School discipline and discrimination*. Ontario Human Rights Commission.

problems, their age and the level of adult control to which they are subjected may in fact exacerbate the damage of these experiences. While the experiences of children are outside of the scope of this study, adult participants indicated that the kinds of rights violations many people with disabilities experience early in life shape how they perceive themselves and their rights. Indeed, early education is a critical influence on experiences over the life course, including access to higher education and employment outcomes in turn.

Housing

Housing was another key area that more than one participant flagged as a site where they experienced serious legal problems. One participant, who lives in co-operative housing, indicated that their needs have changed as they have aged and they now require an overnight attendant. They received a letter from the co-op informing them that they would need to pay more for their unit because of this additional “overnight guest.” The participant found the “legal jargon and confusion around supports” challenging. Having to navigate and address the situation caused considerable stress.

Participant statements about housing issues highlight not only the kinds of legal problems people with disabilities commonly face, but also that housing is connected to other systemic issues they face. One participant, a trans person with a disability, noted that they and their partner had been illegally evicted from their home. After the landlord found out about their pronouns and accessibility needs, they were served with an eviction notice. They felt that “transphobia and ableism” shaped this experience, because rather than being given accommodations, “we were harassed.” This example illustrates how intersectional factors play out in the lived experience of people with disabilities.

The frequency at which housing issues were noted speaks to a lack of accessible and affordable housing in both Ontario and Quebec, as well as persistent human rights violations where housing is concerned.

(In)accessible services

Another common area where participants experienced legal problems was their access to services, including ones provided and regulated by the government. As an example, one blind participant said that despite laws and protections, they are still unable to independently verify that they have cast their vote. They also noted their continued frustration with the use of technology and forms that remain inaccessible when they are trying to access government information and federally-regulated services.

The government plays a role in ensuring and protecting accessibility for Canadians with disabilities, yet the narratives provided by the participants show that there continue to be serious access issues. This tension speaks to the need for broad systemic change.

2. Resolution strategies and outcomes

Where did participants find support?

Participants found the following supports invaluable when they were facing legal problems:

- Community based non-profits and groups;
- Community advocates;
- Family doctors and other allied professionals;
- Unions;
- Legal aid clinics;
- Human rights tribunals;
- Family members and friends;
- Sympathetic individuals from within the institutions where their rights were violated;
- Lawyers and paralegals;
- Mediators;
- Case workers;
- Law enforcement; and
- Personal support networks.

In one case, a participant who had experienced gender-based violence noted that as a woman it was important that they were supported by women professionals, including a woman police officer, a woman investigator and a woman attorney.

Barriers to seeking resolution

This section highlights how participants worked to resolve the serious legal issues they encountered. Across the board, participants stated that these legal problems were common for them. Many noted that sometimes it is easier to “give up and move on” than to fight. This shared observation is significant, as it sheds light on one of the ways the justice process differs for people with disabilities. Indeed, the

frequency and systemic nature of violations, their inherent ableism, and the exhaustion and trauma many people with disabilities carry will influence how they decide to proceed when they encounter rights violations or legal problems. It is likely that far more experiences are hidden from researchers, as people with disabilities may have grown tired of the adversarial nature of the legal process and the labour involved in it. More than one respondent expressed this fatigue and questioned whether sharing these experiences with the research team would even change anything.⁴

Additionally, many people with disabilities have likely come to expect these experiences and have normalized them. Because of this, even when their rights are infringed, they may not recognize these problems as legal per se, but instead see them as expected outcomes of living in a hostile world that is not tailored to meet their needs.

Respondents used both formal and informal means, often together and at different times over the course of the legal process, to try to resolve their legal issues. Most participants tried to address issues informally but often later escalated to more formal processes. Several participants felt that the legal process could have been avoided if they had been listened to through informal channels. An important theme emerged as participants, even those who considered themselves well-versed in the law, indicated that the legal process is long and confusing. They also noted that the process can change along the way based on shifts in policy and law.

The majority of participants indicated that their understanding of legal issues was at least good, yet, when reflecting on their experiences and the effects of those experiences, they noted confusion and a lack of clarity. This contradiction speaks to systemic issues and a lack of accessibility for people with disabilities, both in general and with respect to the legal process.

This research suggests that not only is the law itself at play, but so, too, are the policies, procedures, funding, and supports that shape the legal experience. Some of the specific and systemic barriers participants noted in the resolution process include:

- An overall lack of knowledge about disability and ableism. According to one participant, people with disabilities “feel diminished by our disability (or disabilities), as well as feeling diminished by the legal situation and going through complicated problems.”

⁴ There is a cynicism within the disability community regarding the potential for a real and meaningful commitment to their rights and an accessible process. In more than one survey response participants shared that they did not think their responses would matter. This may have led to some answers being shorter.

- In Ontario, a few participants noted funding cuts and changes to legal aid and how this affected the process and made it harder for them to get the support they needed to navigate the legal process.
- For those who had legal representation, both the cost and the pressure to settle were issues. As outcomes are not guaranteed, settling ensures at least some result from the process.
- A general lack of resources, and of accessible resources specifically, for people with disabilities. One participant indicated that access to legal support was poor pre-COVID and that COVID has made it even more difficult.
- Even in cases where the process seemed clear, some participants felt they were steered in the wrong direction because of overall confusion within the system, such as about restrictions tied to disability benefits, and among key players, such as non-profits, legal aid, community support and case workers.
- One participant noted that while they were technically represented by a union, they found this more of a hindrance than a help and so they sought independent legal representation.
- Several participants found the length of the resolution process to be both a deterrent to seeking resolution and a barrier when they sought it.
- Some participants described the resolution processes as “unclear,” “uncomfortable” and “confusing.”
- Several participants noted that the legal process and language are inaccessible to many people with disabilities. This problem was identified by stakeholders as well.
- With regard to intersectionality, some participants mentioned that there is confusion among community support agencies about how to proceed when individuals have more than one ground on which they are being discriminated against (see the specific examples below).

Many of the findings of this research echo what the literature says about barriers. These include:⁵

- A lack of knowledge within the legal system about disability and the lived experience of disability;
- Confusing or inaccessible communication;
- The need for ongoing support for people with disabilities throughout the legal process;

⁵ Office des personnes handicapées du Québec, cyberbulletins de l'office, volume 11, numéro 2, 2017

- The need for access to appropriate services and coordination of multiple services;
- The physical inaccessibility of spaces used by legal institutions; and
- A lack of knowledge or understanding on the part of people with disabilities about the legal process.

Below are some additional examples of the most common themes when participants discussed navigating the resolution process. Stakeholders also noted that there is often not one clear linear process to follow, which can further complicate this part of the experience.

Lack of intersectional supports

Participants noted that the process tended to become more formal as they progressed. For example, when a trans participant sought to address the poor care received and barriers faced within a hospital setting, they sought the support of community groups and resources, including a trans social worker, a legal clinic, a paralegal with a disability, a human rights professional, a primary care physician, and a trans medical advocate. The participant noted that the more staff became involved, the more formal the process became, which created tension as they sought a resolution. In this example, the participant was advised by many to pick one ground for the discrimination they had experienced—either disability or gender— and to proceed in challenging their treatment this way.

This example illustrates a lack of intersectional community support and speaks to the reality that community support is often understood and provided based on isolated aspects of a person's identity and through isolated service silos. The trans participant's hospital experience also suggests that the law may not be equipped to address human rights violations that are grounded in multiple (and potentially conflated) aspects of an individual's protected rights. There may not be a clear legal route that protects all aspects of an individual's rights infringements.

Participants who felt marginalized because of aspects of their identity (e.g. women, members of the LGBTQIP2SA community, and so on) mentioned that it was important to them to be able to receive support from people who understood these barriers because of their own lived experience. One participant noted that it is rare to find a lawyer or other legal support provider who identifies as having a disability. There is a lack of legal professionals representing diverse identities, and services and supports tend to be delivered in ways that are only equipped to support certain aspects of people's lived experience.

Lack of clarity about the impacts of monetary outcomes on disability benefits

Several respondents in Ontario noted that under the Ontario Disability Supports Program (ODSP) rules, a monetary award could potentially affect their eligibility for disability benefits. In a number of instances, regulations related to disability support shaped how people proceeded in attempting to resolve their legal problems. (This was even a concern for many participants in regard to the small research honorarium provided for this study.) Participants expressed confusion regarding disability benefits and how much money they were permitted to hold or have outside of benefit allotments. This confusion often seemed to occur when individual caseworkers provided conflicting information. The unclear nature of policy and the varying information supplied by case workers resulted in uncertainty for many participants about what a potential monetary outcome would mean for their access to future benefits.

Limited scope of resolutions

When monetary settlements came up in the interviews, participants overwhelmingly said that money was not a motivating factor; several participants noted this kind of resolution did not address their main concerns. For example, one participant said they were not seeking a monetary award, but rather that they had hoped their experience would lead to some kind of systemic change that would ensure others did not experience what they had. This sentiment was echoed throughout the interviews, focus group and questionnaire responses.

As well, two respondents said they feared that the legal process would result in front-line staff being fired, and they noted these workers were underpaid and under-supported, and were often racialized. They feared that legal resolutions would be grounded in a punishment model that does not address systemic issues and that would exacerbate systemic issues by negatively affecting other marginalized people. Individual terminations or punishments would not address the trauma these participants were carrying after their experiences. Participants' responses show that it is important to think critically about how resolution may be defined within the justice process and how this definition may fail to address the kinds of systemic issues and trauma many people with disabilities reported.

A long and traumatic process

Another thread that emerged in this research relates to how hostile and adversarial the legal process can be, which may re-traumatize participants who are seeking resolution after initial instances of

trauma. For instance, one participant pursued resolution following incidents in their experience in accessing health care. Part of the resolution process involved attending meetings with five to ten people who represented the institution in which they had experienced injustice. In one of these meetings, a doctor spoke about “ICU psychosis” for the majority of the time and suggested that this was the problem, rather than the persistent discrimination the individual had faced. This suggests that ableism and other forms of discrimination shape how people are treated in these settings and throughout the legal process.

In another example, while the participant had taken copious notes throughout the incident that led to their legal problems, the legal process required a level of detail that they felt was impossible to provide. This participant described how at one point they were asked to identify a staff member who had not provided their name at the time they interacted. When the participant could not identify the person with certainty, this detail was used to discredit their entire experience and suggest their complaint was not credible. This research shows that this is a common experience among people with disabilities, including within the legal process, as their credibility is often questioned as a result of systemic ableism, while non-disabled professionals and others are often automatically granted credibility.

In another example, one participant stated that in the resolution process there was “no help available...[and] the most vulnerable are suffering.” Many participants echoed this sentiment, which speaks to both the need for more support for people with disabilities, and the ways in which the justice process is not tailored to meet the needs or value the experiences of marginalized groups.

Another participant who took a case to the Human Rights Tribunal noted that while the goal was a \$30,000 settlement, they ended up settling for \$10,000. Research participants repeatedly expressed feeling pressure to settle in formal cases and said this often did not lead to their desired outcome, but instead simply “ended the process.”

Many participants also noted that the legal process did not offer a resolution that led to the kinds of support they needed in order to deal with the lasting impacts or trauma related to the precipitating event. In one case, a participant was eventually able to negotiate for therapy to address the trauma of their experience, but this was extremely limited (three sessions) and did not provide the level of support they required. Another participant, when reflecting on the resolution process, stated that “as a person with a disability, I am never the one that wins.”

Unresolved legal problems

None of the participants who had experienced legal problems related to housing had reached any resolution. In one case, the tenants were evicted and are still seeking resolution. In another example, while the participant gathered two letters of support from the community attesting to the fact that they cannot be charged higher rent because of the presence of an overnight aide, they have yet to receive a response from their co-op. They expressed frustration that although they had worked diligently to try and resolve the issue in a timely manner, they had not yet received a response. They described the stress this unresolved issue has caused as well as their frustration with the process itself.

Aside from housing, the majority of participants' legal problems either were unresolved or had resulted in settlement. One participant noted, "I needed to move on with my life. Hanging in the balance is no way to live." Another participant indicated that although there is often pressure to settle for a number of reasons, the desire to get something out of such a long and arduous process is one of the main reasons people finally choose to do so. The complex and lengthy legal process, coupled with the marginalization and discrimination many people with disabilities already face, introduces risk without the promise of any resolution. The pressure to settle may feel like the only option, as the alternative could be no resolution at all.

Another participant spoke of the poverty and trauma many people with disabilities live with as a result of lengthy processes and unresolved legal issues: "I had to use a food bank. I worked with a psychologist to deal with post-traumatic shock and my social network changed."

The experiences described in the above sections capture many of the problems with the resolution process. To sum up, these problems include:

- The process is too slow, confusing and costly.
- The resolution does not address systemic issues.
- The legal process may introduce new tensions that put complainants at risk of losing funding and access to disability supports.
- The resolution does not undo the harm or trauma caused by the initial legal problem.

3. Impacts on participants

Participants shared that difficulties with the legal process had taken a tremendous toll on them. Below, we break down these impacts by type—emotional, financial and social—to illustrate their extent and variety.

Emotional

Participants cited emotional impacts by far the most frequently. Specifically, participants mentioned:

- A lack of confidence moving forward (related to employment issues);
- Ongoing trauma;
- Panic attacks that persist well past the experience;
- Anger and frustration; and
- PTSD.

One participant said that the process left them with “a feeling of powerlessness, of injustice. Demotivation, loss of hope, self-esteem and confidence. Above all, stress due to lack of safety.” Another participant said that “the psychological repercussions are very difficult to bear, and monetarily it was also impossible for me... very expensive, and for poor people it’s very hard.”

These emotional impacts help illustrate why the legal process can be so difficult for people with disabilities. They may also help shed light on why many participants noted their hesitancy to follow through with the legal process. Indeed, in many cases participants said that the resolution process was retraumatizing, stressful and isolating, and left them feeling hopeless.

It is likely that this emotional toll is more than simply a discomfort or lack of information about the legal process. Indeed, one respondent also noted that they had engaged in the legal process throughout their life as an individual advocate and as a part of various advocacy groups. Even with this past experience they felt that they were always learning, as there are often new laws and policies, changes to supports and to the complaints process. Given that this process is never easy or straightforward, the labour of self-advocating under ever-changing rules can take a tremendous emotional toll on those who choose to follow this route.

Financial

Financial impacts were another key theme that emerged. This included the significant cost for those who could afford to undertake a legal process or found financial help to do so, as well as barriers for those who could not afford to undertake such a process or who thought it could impact the availability of benefits. Participants mentioned:

- Significant loss of income;
- Debt and significant costs (in the tens of thousands of dollars);
- Losing the family home;
- Depleting all personal savings;
- Financial impacts on supportive family members; and
- Lack of funding to support them in pursuing a legal process.

One theme that emerged was that the cost of this process imposes limitations. Even people with means who came out with favourable settlements noted the barriers within the system. Additionally, for people who lacked financial means, cuts to community support, as well as regulations around funding and access to disability supports, served as additional barriers. Such financial aspects create particular challenges for many people with disabilities, and the legal system has failed to recognize these challenges in its processes. Indeed, in keeping with the examples noted earlier, a monetary resolution may seem like a just conclusion in some cases, but not when the complaint is related to a systemic human rights violation, when the individual has experienced trauma, or when disability benefits prevent them from accessing monetary rewards.

Social

While social impacts were not mentioned as often as others, some participants did mention key areas in which the legal process impacted them socially. These included:

- Destroying working and other relationships in employment settings;
- Stress (financial and emotional) on family members who supported the process; and
- Losing community support, when issues arose at sites of access to supports.

In sum, it is not surprising that the impacts were both particular and traumatic for many of the respondents given the kinds of barriers they face, the systemic nature of these barriers, the frequency at

which troubling experiences arise because of their marginalized status, and disability-specific constraints and barriers within the resolution process.

IV. RECOMMENDATIONS AND CONCLUSION

Fifty-nine percent of human rights complaints filed with the Canadian Human Rights Commission in 2017 were due to discrimination because of a disability.⁶ The rights-based model of legal remedy has been amply critiqued. This model, which places the onus on under-resourced people to seek individual remedies when they have been harmed, often in cases of systemic discrimination, in part helps explain why people with disabilities continue to experience both infringements on their rights and barriers to accessing justice. For example, while access to justice is an important part of the rights-based framework, some critics have noted that existing frameworks, including the United Nations Convention of the Rights of Persons with Disabilities (CRPD), fail to provide safeguards and details about how this access to justice should be ensured.⁷ While this critique has frequently been levied with regard to justice for people with disabilities more generally, the same concerns—essentially, questions of how rights are practically enforced—apply to rights-based frameworks in general.

The findings of this study indicate that the rights of people with disabilities are by and large not being enforced, and that the enforcement of anti-discrimination laws and regulations regarding disability through individual complaints processes is both ineffective and harmful to people with disabilities. Stakeholders and participants called instead for systemic change, and for the tools and resources to create that change.⁸

The study consulted 11 stakeholders engaged in disability and justice issues. This consultation included three one-on-one interviews and one online session hosted by a national disability group with eight stakeholders in attendance. These sessions were largely informal and provided a chance for the research team to describe the study being undertaken and gather feedback from stakeholders about important aspects that help contextualize the issue of how people with disabilities interact with the legal system. Many of the stakeholders with themselves people with disabilities who had experienced serious legal

⁶ The Canadian Human Rights Commission. (2017). People First: 2017 Annual Report to Parliament. Available at: https://www.chrc-ccdp.gc.ca/sites/default/files/publication-pdfs/chrc_rapport_annuel_2017_ang.pdf

⁷ Cremin, K. M. (2016). What does access to justice require?—Overcoming barriers to invoke the United Nations Convention on the Rights of Persons with Disabilities. *Frontiers of Law in China*, 11(2), 280–322.

⁸ Pooran, B. D., & Wilkie, C. (2005). Failing to Achieve Equality: Disability Rights in Australia, Canada, and the United States. *Journal of Law & Social Policy*, 20, 1.

issues. While their perspective tended to focus on systemic issues and the context in which legal problems arise, they also drew on elements of lived experience.

Two key themes emerged in the stakeholder discussions: the role of systemic barriers and the limitations of this research.

The role of systemic barriers

Significant systemic issues must be accounted for in research on disability. Ableism shapes both how people with disabilities are treated (and mistreated) in the world and the justice process itself. More than one stakeholder mentioned how common the experience of discrimination is for people with disabilities and noted that these experiences often start early in life, including in the education system. They stated that because of the pervasiveness of systemic barriers, many people with disabilities learn early on that their rights will be violated. Unfortunately, many people with disabilities experience rights-based violations as normal. Over time, they may come to expect and in some ways accept them. Acknowledging this reality, and its lifelong character, can help clarify how the situation may lead to exhaustion and trauma for many people with disabilities.

Research limitations

One key theme that emerged in stakeholder discussions was the limitations of this research process itself. Indeed, both stakeholders and participants noted that geography radically alters lived experience. While this study included a limited sample of participants from Ontario and Quebec, these provinces have very different frameworks, resources and supports, making legal processes difficult to compare between the two provinces. Province of residence and geography (e.g. urban versus rural) dictate what kinds of support people with disabilities in Canada can access, which in turn shapes the legal process in significant ways.

Stakeholders also noted the ways COVID-19 may influence data collection. COVID-19 has radically re-shaped policy on the ground (i.e. the ways people access health care, services and supports), and has also shaped the lived experiences of people with disabilities in significant ways (for instance, they are at a higher risk for COVID-19 complications and mortality). In undertaking this research at a time when people with disabilities were experiencing even more stress and uncertainty than usual and may have been without the kinds of support they had pre-COVID (home support, community support, social

networks and so on), the research team held intersectionality as an important consideration. This means the research team sought to reach members of the disability community who are often left behind in the research process. Yet intersectionality also meant that many of the most marginalized people in the community were also at the greatest risk and were the most underserved during this unusual time. This meant the participants in this study were under greater than usual stress and facing more than their usual uncertainty, which likely shaped the process.

One stakeholder also noted that terms within the legal process itself could have put restrictions on what information participants could share regarding both ongoing and resolved issues (i.e. non-disclosure agreements, confidentiality, and other limitations). While the research team tried to mitigate this by making the process as comfortable and anonymous as possible, for privacy reasons the research team could not use all the data collected.

This study helps shed light on the specific impacts the legal process has on people with disabilities and on the need to use an intersectional lens in order to properly understand these experiences. Participants and stakeholders called for real and meaningful action to reduce the frequency, harms, and systemic nature of these persistent experiences. There is often no clear, accessible, or linear way forward for them to resolve these issues. These are not isolated experiences but rather part of a larger lifelong pattern of discrimination, and the ways the justice system conceptualizes resolution do not fully meet individual needs.

Despite the skepticism noted earlier, in general participants were eager to share their insights, grounded in their lived experiences, toward potential recommendations to make the legal process more accessible. Based on these insights, we have developed the following five recommendations of areas to which the Department of Justice Canada should devote further consideration.

1. **New conceptualizations of “justice.”** Participants noted the need to conceptualize “justice” and the “justice process” in ways that are more reflective of the needs of people with disabilities and other marginalized groups. A conceptualization grounded in punitive actions has failed to effect any systemic change and may in fact perpetuate harm among marginalized groups. Here, transformative justice models and others were mentioned as models that better reflect community needs and help achieve useful outcomes.

2. **A move away from individual complaints as a tool for resolving systemic problems.** Related to this first point, current research indicates that the reliance on an individual complaint process as a tool for enforcement does nothing to address the broad changes necessary to address systemic discrimination.⁹ This was echoed by the majority of participants, who noted that they sought resolutions that ensured others did not have experiences like theirs moving forward. Additionally, given the impacts of the legal process on participants, they noted the need for solutions and processes that do not re-traumatize victims or place the onus on them to address discrimination on protected grounds.
3. **Better community legal support services.** Participants overwhelmingly noted the importance of community organizations, including ones focused on legal issues, in supporting the needs of persons with disabilities. Yet they also said that years of persistent cuts have made the availability of these supports scarce. We need to recognize and prioritize the vital role of community and grassroots agencies in supporting people with disabilities and advocating for change.
4. **Intersectionality.** On a related note, community groups and other allied groups grounded in lived experience must engage the communities they serve through an intersectional lens. Individuals should never have to choose one aspect of their identities to address in a human rights violation. The interconnected nature of their identities and experiences should always be taken into consideration and supported.
5. **Plain language resources and flexible options.** The law is difficult to navigate, even for those who feel comfortable with this process. As such, there is a need for clear and plain language resources that help individuals understand the process. We must also understand that there is often no clear or linear route to justice, so we need to ensure there are flexible and accessible routes that best meet individual needs in pursuing justice.

Overall, the data gathered for this study helps to better understand the experiences of people with disabilities with respect to the justice process. Throughout the research process, participants and stakeholders said it was crucial to move beyond merely understanding these experiences and barriers. They called for real action grounded in their needs and focused on systemic change. DAWN Canada is hopeful that this report can be a first step in moving toward this goal.

⁹ Pooran, B. D., & Wilkie, C. (2005). Failing to Achieve Equality: Disability Rights in Australia, Canada, and the United States. *Journal of Law & Social Policy*, 20, 1: 33.

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APPENDIX 1: COMMUNITY RESOURCES

The following resources in Ontario and Quebec may be of interest to people with disabilities seeking support in navigating the justice system. These resources were suggested by our stakeholders and participants and should be viewed as a “living resource” that can be updated and expanded on by the funder to support community justice efforts.

[Independent Living Centres](#) in both Ontario and Quebec can provide peer support, system navigation and referrals.

Ontario

[ARCH Disability Law](#) is a specialty legal clinic that specializes in disability rights law.

[Human Rights Legal Support Centre](#) offers human rights legal support for people who have experienced discrimination under Ontario’s *Human Rights Code*.

[Justice for Children and Youth](#) provides legal services for youth under 18 and homeless youth under 25, including in the areas of education, victimization, leaving home and interaction with the police.

[Legal Aid Ontario](#) provides legal support for low-income individuals.

Quebec

[Independent Living Montreal](#) provides peer support, system navigation and referrals.

[Legal Aid Quebec](#) provides legal services based on financial criteria.

[Quebec Community Groups Network](#) non-profit organization linking English groups across the province.

[Société d’habitation du Québec](#) provides support for people facing housing issues.

APPENDIX 2: INTERVIEW GUIDE

Introduction

DAWN Canada has been contracted by the Justice Department to carry out qualitative research examining the **experiences of people with physical and mental disabilities with respect to their legal experiences**. Specifically, we are looking to engage with people with disabilities who have encountered serious legal problems in the past three years.

Legal problems are problems that can be resolved through the legal system.

Serious legal problems are any legal issues you may have encountered that were hard to solve.

The questions here will help us explore three key aspects of legal issues:

- Experience with legal problems in the last three years.
- Resolution (or lack of resolution) for these legal issues.
- Impacts of the process.

Who should take part?

Individuals with lived experience

The following is required of individual participants:

- Self-identify as a person with a mental or physical disability.
- Take part in an online survey, telephone interview, or virtual focus group.

Intake Questionnaire

1. Have you experienced a serious legal problem in the past three years? Yes ___ No ___

2. How do you identify?

As a person with a physical disability

As a person with a mental disability

As a person with both a physical and mental disability

Prefer not to say

2. What is your age? _____

3. Do you identify as a visible minority or racialized person such as Indigenous, First Nations, Inuit and Métis; Black or Afro-descendant; Asian; Hispanic, Latinx or of Central or Latin American origin; Middle Eastern or Arab; or mixed-race?

Yes

No

Prefer not to say

If yes, how do you identify? _____

4. Do you consider yourself as a member of the LGBTQQIP2SA (lesbian, gay, bisexual, trans, queer, questioning, intersex, pansexual, two-spirit, asexual) communities?

Yes

No

Prefer not to say

5. How would you rate your knowledge of legal issues?

Excellent

Good

I don't know a lot or I find legal issues confusing

Survey Questions

Part 1: Experience of legal problems in the last three years

Legal problems are problems that can be resolved through the legal system.

Serious legal problems are any legal issues you may have encountered that were hard to solve.

Examples of legal problems:

- Dealing with the police, either if you are a victim of a crime or threats or if they have been called on you.
- Being sued or suing someone.
- Going through a divorce or child custody dispute.
- Being evicted from where you live and seeking legal support.
- Trouble accessing disability supports, social assistance or housing support.
- Purchasing a service and not receiving what you've paid for (such as a contractor working on your house who takes the money but doesn't finish the job).
- Being fired from a job without cause and seeking legal support because you think you were discriminated against.
- Receiving poor medical treatment or being harmed by a medical professional.
- Being harassed or discriminated against.
- Not being believed or supported in making a complaint.

Questions:

1. Have you experienced any of these legal problems (or others not listed) in the last three years?
2. Can you explain, using as much detail as you are comfortable with, what this problem was (what were the issues, where did this happen, who was involved?).

Note: At this stage we are only identifying the problem, we will talk about how you dealt with it and about the impacts in the next sections.

Part 2: Seeking resolution

Now that we know what kinds of legal problems you have encountered we will shift to learning about how you either resolved these or tried to resolve them.

Examples of seeking resolution:

- Reaching out or complaining to a business that did not give you a service you paid for.
- Asking your friends, family or support network to help you.
- Launching a complaint (on your own).
- Having a formal complaint made on your behalf (someone else assists you or does this for you with your permission).
- Seeking legal advice (reaching out to a lawyer, government agency or other source for clarification).
- Hiring a lawyer to represent you.

3. Did you understand what you should do, or was the process unclear?

4. How did you resolve your legal problem and who else was involved (in as much detail as you feel comfortable sharing)?

5. What shaped the decisions you made about seeking resolution? Be as specific as you can, including whether money was a factor in your decision (being able to afford a lawyer), what advice you received and from whom you received it, whether you were concerned because your problem involved someone in a position of power, what the resolution process was like (formal, informal, did you go to court or mediation, and so on), your knowledge of the law, and whether you felt you would be believed.

Part 3: Impacts

Examples of impacts can include:

- Financial: the process may have cost a lot of money.
 - Emotional: dealing with legal issues can be stressful.
 - Social: your legal problem could have led to relationship problems (break-ups, family fighting, losing friends, etc.).
6. In your own words, please discuss what the impacts of this legal issue were for you. Share as much as you feel comfortable sharing.

Summary

7. Thinking about all we have talked about today, are there other things you think people who want to understand legal problems for people with disabilities should know?

APPENDIX 3: FOCUS GROUP GUIDE

General tips and things to keep in mind

Managing time

Throughout the focus group it is important the facilitator manages the time to ensure all topics are covered. However, the facilitator is free to use their judgment here. The group may be more interested in discussing certain sections, or issues may arise that require more time.

Observing and noting the mood

What is not said is sometimes just as relevant as what is said. Be sure to make note of participants' mood. Are people reluctant to discuss things? Are some discussions more difficult than others? Do participants seem uninterested in some questions?

If and when a question receives a lot of interest from participants, please note this as well. Also try and note if there is consensus around an issue or general agreement among the group.

Breaks can be helpful, and a facilitator should suggest a short break at the halfway point. Ensure participants know they can leave at any time should they require additional breaks.

Making all participants feel comfortable and welcome

The facilitator is encouraged to use concrete examples and plain language whenever possible to help facilitate and encourage dialogue. If the group is unfamiliar with certain concepts, take the time to explain these at the beginning. It is also helpful to let all participants know that they can ask for clarification at any time.

Part of making our participants feel comfortable is using clear and plain-language examples of legal issues. While some have been highlighted in this guide, each focus group may require particular or different examples. DAWN will work with each partner in advance of the focus groups to provide ample plain-language examples geared to our participants.

Sharing results

It is important to use the reporting template to share your results. As well, feel free to include examples they have shared, keywords or phrases, important quotes (without identifying individuals) and so on.

Discussion Guide Questions

Introduction – suggested time 5-10 minutes

To begin, the facilitator and participants introduce themselves.

As well, this provides the facilitator with an opportunity to share information about the project, and explain what participants can expect from the focus group and the general format of the group.

Suggested process

- 1) The facilitator should welcome all participants and introduce themselves and the purpose of the focus group.
- 2) Have participants each introduce themselves. To engage people, the facilitator may want to ask each participant to **briefly** share something about themselves as it relates to their interest in or expertise on this topic.
- 3) Share the ground rules for the focus group—to let people share, speak and feel respected, and so on.

Note: There will likely be overlap between the three areas explored. Be flexible and open to capturing the thoughts people share when and as they are comfortable sharing them.

Questions

Part 1: Experience of legal problems in the last three years – 25 minutes

Participants need to know that...

Legal problems are problems that can be resolved through the legal system.

Serious legal problems are any legal issues you may have encountered that were hard to solve.

Examples of legal problems can include:

- Being fired by your employer without a reason.
- Dealing with the police, either if you are a victim of a crime or threats or if they have been called on you.
- Being sued or suing someone.

Part 2: Seeking resolution – 25 minutes

Now that we know what kinds of legal problems you have encountered, we will shift to talking about how you resolved these or tried to resolve them.

Examples of seeking resolution:

- Reaching out or complaining to a business that did not give you a service you paid for.
- Asking your friends, family or support network to help you.
- Launching a complaint (on your own).
- Having a formal complaint made on your behalf (someone else assists you or does this for you with your permission).
- Seeking legal advice (reaching out to a lawyer or government agency for clarification).
- Hiring a lawyer to represent you.

1. Did you understand what you should do or was the process unclear?
2. How did you resolve your legal problem and who else was involved (in as much detail as you feel comfortable sharing)?
3. What shaped the decisions you made about seeking resolution? Be as specific as you can, including whether money was a factor in your decision (being able to afford a lawyer), what advice you received and from whom you received it, whether you were concerned because your problem involved someone in a position of power, what the resolution process was like (formal, informal,

did you go to court or mediation, and so on), your knowledge of the law, and whether you felt you would be believed.

Note: Because the experiences of people with disabilities in the legal system are often fraught with barriers, it is important to remain supportive and provide prompts to help individuals identify aspects of the process they may not have considered out loud prior to this conversation. There will likely be overlap in terms of impacts this process had on individuals. Be flexible and let the conversation flow.

Before moving on, briefly summarize the key information captured. It is critical, when possible, to check back with the group to ensure you fully understood their disability-related barriers.

Part 3: Impacts – 25 minutes

While impacts have likely been noted throughout, use this block to provide prompts for aspects participants may not have considered yet and to check in with the group to ensure you are capturing these complex impacts in the ways they intended.

Examples of impacts:

- Financial: the process may have cost a lot of money.
 - Emotional: legal issues can be stressful.
 - Social: the legal problem may have led to relationship problems (break-ups, family fighting, losing friends, and so on).
4. In your own words, please share what the impacts of this legal issue were for you. Share as much as you feel comfortable sharing.
 5. Thinking about all we have talked about today, are there other things you think people who want to understand legal problems for people with disabilities should know?