

Justice Denied

People with disabilities face multiple barriers in accessing justice

IRIS recently completed a community-driven access to justice initiative (<https://irisinstitute.ca/resource/access-to-justice-for-indigenous-and-racialized-victims-and-survivors-of-crime-with-intellectual-psychosocial-and-cognitive-disabilities/>) and hosted an online forum “Access to Justice for Marginalized People with Disabilities” (<https://irisinstitute.ca/2020/12/11/panel-presentation-videos-access-to-justice-for-indigenous-racialized-and-2slgbtq-people-with-disabilities/>). A key finding from many years of work in this area is that law enforcement is not well equipped to effectively support people with psychosocial, intellectual and cognitive disabilities in times of crisis; yet appropriate community supports do not exist for people in crisis situations. Further, our local partners demonstrate that if we are to effectively address the issue of preventing violence and increasing access to justice services for marginalized people with disabilities, we need to develop community-based solutions that are designed and delivered by grassroots service providers.

What We Know

People with disabilities experience multiple challenges when interacting with the justice system as both victims and those accused of a crime. Challenges are most evident when people with intellectual, cognitive and/or psychosocial disabilities, come in contact with first responders, such as the police, largely due to communication barriers and the presentation of differential, easily misunderstood, heightened behaviour. People with disabilities with other marginalized identities, i.e., Indigenous, racialized, migrant, etc., experience an intensified vulnerability to victimization, made worse by the lack of appropriate justice services.

“Know the history of the ethnic groups that you’re working with and figure out what their ancestors went through to, again, lead up to what’s happening today, what these various marginalized ethnic groups are facing. These are the barriers these groups experience in accessing (justice) services so that they can better their lives, their children’s lives and so forth.”

Kelly Johnson, Thunder Women’s
Healing Lodge

- Key findings include: Canadians with a disability are more likely to be victimized in their own home, as close to one-third (30%) of violent incidents against a person with a disability occurred in their private residence (compared to 17% of incidents where the victim did not have a disability);

- More than one in five (23%) women with a disability experienced emotional, financial, physical or sexual violence or abuse committed by a current or former partner in the past 5 years; statistics reflect a similar proportion for men with a disability (22%)²;
- Women with disabilities are more at risk to partner violence than non-disabled women (+40% of intimate partner violence) and the violence is more severe, e.g., women with disabilities are twice as likely to report being beaten and kicked, bit, or hit with a fist. They were also 3 times more likely to report being forced into sexual activities by being threatened, held down, or hurt in some way.³ Less than 10% of all sexual assaults are reported to police, and this gap is significantly higher for women with disabilities (less than 4% of assaults reported to police) and charges are rarely laid.⁴
- Age-related disability, illness and cognitive decline increase the need for greater care which places seniors at higher risk of maltreatment, e.g., more older adults with disabilities report physical and sexual abuse by an intimate partner than non-disabled older adults.⁵
- There is also limited quantitative information on the extent of violence against Indigenous, racialized, migrant and 2SLGBTQ+ peoples with disabilities. However, if we look at the statistics that are available on people with disabilities and violence (as above) and those that exist for other marginalized population groups, it is reasonable to assume that rates of violence are elevated for people with disabilities with intersecting identities. For example, 10% of Indigenous women self-reported assault by a spouse, compared to 3% of non-Indigenous women and given that Indigenous women⁶ have a rate of disability 1.3 to 2.2 times the national average depending on their age⁷⁻⁸, we can infer that Indigenous women with disabilities experience higher rates of victimization.
- There is an overrepresentation of people with psychosocial disabilities in Canadian prisons and studies have shown that intellectual and cognitive disabilities are not recognized, often conflated with mental health. There is also an over-representation of Indigenous and racialized people in penitentiaries, many of whom evidence shows likely live with intellectual, cognitive and/or psychosocial disabilities.

“People had a lot to say in terms of what they believe is needed to improve police services that the culture and police services need to change in terms of how they treat each marginalized group, especially when they live with a disability. They need de-escalation practices, more accountability and policing repercussions for false testimony by police, mandatory use of body cameras. People also felt that they needed to take guns away from the police.”

Doris Rajan, IRIS. Reporting on the research results from IRIS' justice initiative (2017-2019)

Barriers to Accessing Justice for People with Disabilities

People with disabilities experience many barriers to accessing justice, whether they are accused of a crime or are a victim. There is a high number of people with psychosocial disabilities involved in the criminal justice system, which may relate to the de-institutionalization process started in the 1960s, where the appropriate community supports, resources and services were not put in place. First responders also lack knowledge about disability; for example, they may not practice de-escalation techniques when dealing with people with Autism, Fetal Alcohol Syndrome Disorder (FASD) and/or psychosocial disabilities in crisis situations. People with intellectual, cognitive or psychosocial disabilities who come in contact with the justice system, may not be able to explain their situation or may be fearful that they will not be believed. Some people are also afraid of the repercussions to their safety if they do describe it.

The high rate of sexual assault against people with disabilities may relate to the fact that offenders assume that people with disabilities are unable to complain, particularly if they have an intellectual and/or non-verbal disability. Further, even when a victim with a disability does report a crime, charges usually are not laid, and the abuse is enabled to continue. The main barriers to people with disabilities reporting or disclosing violence to authorities include:

- **Lack of awareness of what abuse is:** Given the life-long segregation of women with disabilities from mainstream society, many women were not even aware that what they were experiencing was abuse.
- **Fear of repercussions:** People are fearful that violence will intensify if their abuser finds out that they have disclosed the abuse.
- **Fear of losing primary care services:** There is a fear of losing the daily supports needed to live their lives, such as preparing and being fed, bathing, medication, etc. Often people with disabilities tolerate the abuse because they are in need of supports.
- **Fear that they won't be believed:** People with disabilities are often seen as not credible due to communication differences. Women with disabilities indicate that they feel like they will not be listened to. Further, due to racism and discrimination, if you are Indigenous, racialized and/or 2SLGBTQ+, the fear of not being believed is intensified because of their experiences of systemic racism and queerphobia when they interact with the justice system.
- **Fear of losing their children:** Women with disabilities are often deemed incapable of raising their own children and thus are fearful of losing custody of their children. This is intensified for Indigenous and racialized people, particularly African Canadian women, due to the over-representation of these populations' children in the child welfare system.

- **Fear of losing their immigration status:** For women with vulnerable status in Canada, often abusers will threaten deportation or use pending immigration status as a deterrent to women reporting the abuse.
- **Unable to communicate in a way that is understood:** All people communicate, but some people with disabilities may communicate in ways that are not understood by most people, e.g. speech differences.
- **Do not know where to go for help:** Related to segregation and isolation, people do not know what services are available to them. Further, in many cases, relevant services are not accessible, i.e. shelters, transportation.
- **Lack of financial resources:** Poverty is a reality for many people with disabilities and for trans, Indigenous and migrant people with disabilities, the poverty rate is even higher. A person with a disability is, therefore, more likely to be financially dependent on their abuser and/or doesn't have the financial means to leave.
- **Shame:** Men with disabilities reported feelings of humiliation for being abused. Like the rest of society, men with disabilities grow up with patriarchal notions of masculinity and thus may feel ashamed of the abuse that they are experiencing.

What is to be done?

People that participated in IRIS' project had many ideas on what needs to be done to increase access to justice including:

- More wrap around holistic supports, which means supports that address the poverty, violence and health needs of people with disabilities and their families;
- Alternative systems of justice, such as First Nations Courts and Diversion programs for people with intellectual disabilities; and
- Educate the community on what they can expect when interacting with the justice system, in terms of the processes and consequences of using services.

The key learning from this project is the need to develop and fund preventative interventions and increase population specific (i.e., Indigenous, ethno-specific and migrant) community-based supports. In response to these calls for action, IRIS has been developing Local Safety and Inclusion Solidarity Networks to develop needed community-based supports.

Learn more by visiting us at www.irisinstitute.ca

“IRIS Infosheets” provide background information about issues that are important to people with disabilities [19.02.21]

Endnotes

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