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Access to Justice for Trans People

September 2022 © Canadian Bar Association, HIV & AIDS Legal Clinic Ontario (HALCO) and *TRANSforming JUSTICE: Trans Legal Needs Assessment Ontario (TRANSforming JUSTICE)* Research Team

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The CBA acknowledges that our offices, located in Ottawa, are on the unceded, unsurrendered Territory of the Anishinaabe Algonquin Nation whose presence here reaches back to time immemorial. HALCO and the *TRANSforming JUSTICE* Research Team, both of which engage in work across Ontario, acknowledge that since time immemorial the land on which they work has been and continues to be the home and traditional territory of a diverse array of Indigenous Peoples. The CBA, HALCO and *TRANSforming JUSTICE* Research Team are committed to Reconciliation, and taking the lead from and working with Indigenous Peoples. We would like to encourage you to learn more about the land on which you reside, work and play, and the history of its peoples.

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From the outset, it is imperative to recognize the experiences of participants in the *TRANSforming JUSTICE* research project, and of other trans people who are and have been spiritually, psychologically, physically, and materially harmed through the processes of the legal system working of itself and as a tool to mete out and enforce systemic oppression. It is also important to recognize whose lives and experiences are not included in this study, as it is clear that survivor bias serves to erase the experiences of those most harmed.

While it is essential that trans people's leadership and participation in projects impacting their lives be effectively encouraged, supported, mentored, funded, and otherwise actively facilitated, it must be recognized that participation in such projects comes at a cost to trans community members. Some *TRANSforming JUSTICE* participants were re-traumatized as they recounted various experiences, including those of violence, discrimination and hostile interactions in their everyday lives including in relation to interactions with the legal system, and legal system actors. In addition, participants experienced vicarious trauma resulting from interactions with other participants, staff, etc. when others' experiences of harm were shared. Participation in this project did not provide enough hope to prevent enthusiastic participants from dying by suicide, not as a result of their participation, but as a result of the systemic and structural factors that ensure, in effect if not also in intention, that trans lives are experienced as hopeless.

Efforts, such as the one supported by *TRANSforming JUSTICE*, to reform an intrinsically oppressive system, serve to reinforce the power, authority, and legitimacy of systems that have historically and presently

implemented the harm and of those within that system that materially benefit from it, rather than to give effective power and resources to oppressed or marginalized individuals and groups. It is important to recognize that what is asked of such groups is to give up any thought of being made whole by the system(s) that inflicted trauma and restricted their material, moral, and spiritual opportunities in life, while at the same time, being required to pay the bill, in wounding, in injury, and in trauma, on our bodies, minds, and spirits, in pain, in loss and grief, in outrage, and in desperation, for any small reduction of the suffering inflicted by the system, so that the legitimacy and power of the system, and its ability to continue to inflict trauma, but more "politely" and with more "compassion", is upheld and reinforced.

In short, it must be recognized that efforts, including *TRANSforming JUSTICE*, that aim to bring about systemic change and slow the pace of harm inflicted by the system on trans and other oppressed and marginalized groups, can and do cause harm and revive suffering, and are necessarily complicit with an oppressive system. This was an uneasy trade-off that was not necessarily ours to make, and one that was made with the naïve aspiration of helping to address "the problem" and with relatively little reflection on, or ability to eliminate or mitigate, the harms that would ensue. This is further exacerbated by a system that views efforts, including those of *TRANSforming JUSTICE* as concessionary equity, diversity, and inclusion projects that serve to demonstrate its beneficence, rather than as foundational projects central to the notion of access to justice that cuts to the heart of the morality and justification of the system as a whole.

The harm, suffering, and death that this report is built on calls on those of us in the “legal community” not just for self-serving reflection about how wonderfully progressive and inclusive we are, but for a full on reckoning of how to decentre the power of the legal system to focus on removing barriers and facilitating access to resources and empowerment for people who are currently forced into the system due to the criminalization of their lives, identities, or the means available for their survival, or those who turn to the legal system for help and protection and some semblance of a Just existence.

This echoes similar calls, work, and struggles of other equity-demanding groups of whom Two-Spirit, trans, and non-binary people are an intrinsic part. And in particular, those individuals and groups made most vulnerable and impacted by the legacy and traumas of historical, and ongoing, colonization and genocide, racism, sexism, homophobia, ableism, saneism, hypocritical puritanism and whorephobia, and other forms of marginalization and oppression that impact people commonly and uniquely at every intersectional position.

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Overview

This report was produced by the Canadian Bar Association (CBA) National Access to Justice Subcommittee and Sexual Orientation and Gender Identity Community (SOGIC) Section in coalition with the HIV & AIDS Legal Clinic Ontario (HALCO) and the *TRANSforming JUSTICE: Trans Legal Needs Assessment Ontario (TRANSforming JUSTICE)*¹ Research Team.²

It aims to situate the findings of the *TRANSforming JUSTICE* study³ within the broader access to justice framework informed by the CBA's *Reaching Equal Justice* report.⁴ The combination of findings from both projects helped identify barriers and challenges for trans people in accessing justice, and to recommend improvements. Through living accounts of trans people's interactions with the legal system, the report assesses and makes recommendations to improve access to justice for trans people in Canada.⁵



The recommendations in the report are animated by the following five key factors:

01.

Trans people must be supported to lead the further development and implementation of all recommendations, as well as the development of materials, tools, etc., associated with the recommendations.

02.

An intersectional lens that accounts for the different experiences of trans people with different identities and circumstances must be employed at all stages of further development and implementation of the recommendations.

03.

Without income, housing, and access to appropriate health and social services, trans people's lives will simply not improve.

04.

Tinkering with rules, policies, laws or regulations is not enough. Rather, law reform and systemic change is necessary as many of the root causes of people's legal issues stem from past and current rules, policies, laws, regulations and systems. As part of this reform, early preventative intervention and resolution processes, as opposed to only court- and tribunal-based processes, must be implemented to effectively respond to the legal needs of trans people.

05.

This work must be done in a way that respects the sovereign rights of the Indigenous Peoples of Canada, incorporates Indigenous justice approaches and responds to Calls to Action of the Truth and Reconciliation Commission of Canada and Calls for Justice of the National Inquiry into Missing and Murdered Indigenous Women and Girls. Indigenous trans and/or Two-Spirit people must be supported to take the lead on this essential work.





01 Introduction

The access to justice crisis⁶ across Canada and around the world disproportionately impacts members of equity- and rights-seeking communities. Trans people are among the most disadvantaged groups in Canada and this report focuses on their access to justice needs. This report uses “trans” as an umbrella term to refer to a diverse array of experiences and identities, including Two-Spirit, non-binary, agender, genderqueer, genderfluid, cross dresser, transgender and transsexual, as well as those who identify as men or women with a history that involves a gender transition.⁷



Trans lives and realities are often made invisible in mainstream institutional contexts.⁸ Trans people are “increasingly advocating for their rights and employing a multitude of legal instruments to do so.”⁹ Despite the resilience of trans communities and the long-standing commitment to mutual aid, trans people continue to experience discrimination, harassment and violence in many aspects of their lives, including in relation to accessing justice, healthcare, housing and employment. These issues are intensified for trans individuals with intersecting identities, including those who are Indigenous, Black, racialized, newcomers, young, disabled, low-income, living in rural or remote locations, and/or criminalized.¹⁰

Legal and administrative systems are often the source of, rather than the solution to, trans people’s legal problems.¹³ As this report will highlight, trans people face more co-occurring legal problems as a direct result of their unaddressed legal problems. They are also less likely to formally act on their legal issues because of their well-founded mistrust of the legal system, lack of financial resources, and negative experiences with the legal system, including with legal service providers. Even if people are able to engage with existing legal processes, and even if they arrive at a successful outcome, they may be left with significant harms. For example, a post facto recognition of harm, even if accompanied by a personal and/or

Trans people continue to experience discrimination, harassment and violence in many aspects of their lives, including in relation to accessing justice, healthcare, housing and employment.

Indigenous, Two-Spirit, Black and/or other racialized people encounter particularly high rates of negative treatment, especially those who are transfeminine.¹¹ This discrimination and violence emanate from pervasive structures including colonialism, racism, sexism, homophobia and transphobia.¹² There must be redress for systemic inequities, including the state’s role in enacting and perpetuating it, including through the use of force by police against Indigenous, Black and other racialized people.

public interest remedy, will not address cascading impacts such as eviction related to a discriminatory employment termination. As a result, early preventative intervention and resolution processes, as opposed to only tribunals and courts, are required. Without these, a significant number of trans individuals will continue to find themselves in the position of experiencing problems without any form of resolution. For example, trans participants in the *Transforming JUSTICE* study reported living with violence, harassment, employment loss, lack of permanent housing, and a lack of adequate overall healthcare.

Despite the stark reality facing trans communities in Canada, and despite a notable increase in access to justice research over the past two decades, trans peoples’ experiences with legal problems and the legal system remained largely undocumented in research until recently.¹⁴





02

Approach and methodology

In 2019, HALCO, on behalf of the *TRANSforming JUSTICE* Research Team, approached the CBA with the goal of situating findings from *TRANSforming JUSTICE*¹⁵ in the broader access to justice framework of the CBA's *Reaching Equal Justice* report.¹⁶ This report was drafted by the CBA and the *TRANSforming JUSTICE* Research Team, with reviews by trans and Two-Spirit people, CBA Sections and Subcommittees, private bar and legal aid lawyers, and *TRANSforming JUSTICE* consultation and outreach committees.



This report aims to situate the findings¹⁷ of the *TRANSforming JUSTICE* report in the broader access to justice framework informed by the CBA *Reaching Equal Justice* report. The combination of findings from both projects helped identify barriers and challenges for trans people in accessing justice, and to recommend improvements to access to justice for trans people across Canada.

Trans engagement and leadership

While drafts were widely distributed and reviewed, including by trans people, we acknowledge that it would have been preferable for more trans people to have led this project from the outset, to the extent possible, as will be the case for the next steps in the CBA's advocacy on trans issues.

The goals [of this report] are to bring about **change and policy development**, as well as support more trans-led research and consultation with trans communities across the country on how Canada's legal system can better respond to their needs.

TRANSforming JUSTICE was led by a trans lawyer and 14-person trans community consultation and outreach committee comprised of people with a range of gender and ethno-racial identities. The committee, among other things, led the creation of research and reviewed drafts of the report¹⁸ that included findings from the project.

This report includes data from the initial report¹⁹ as well as unpublished *TRANSforming JUSTICE* data. The recommendations were drafted with the goal of improving access to justice for trans people.

See Annex B for more information, including a breakdown of the *TRANSforming JUSTICE* and CBA *Reaching Equal Justice* report methodologies, data, and analyses.

Limitations

The recommendations in this report are ultimately only part of the solution. They focus on certain actionable items that can improve access to justice for trans people within Canada's legal system. However, as the legal system itself is the root cause of many trans peoples' problems – and as effective solutions are generally not arrived at through that system – more must be done than the full implementation of these recommendations. Law and policy reform is required, led by trans people, as is a commitment to ongoing reform by institutions and individuals within the justice system to improve.

This report seeks to identify some significant considerations for further action. It is intended as a starting point for further discussion of the findings, not a conclusion. We invite assessments of what resonates accurately with trans people, and what warrants criticism or correction. The goals are to bring about positive change and policy development, as well as support more trans-led research and consultation with trans communities across the country on how Canada's legal system can better respond to their needs.

In this vein, the CBA has recognized its own need for an advisory group to lead and inform CBA initiatives impacting trans communities. The CBA Advisory Group on Inclusion and Access to Justice for Trans, Non-Binary and Gender-Diverse People²⁰ is expected to begin its work in the 2022-2023 fiscal year.²¹

It is particularly important that work with trans communities be trans-led, and include supports (e.g., transportation, childcare, access to counselling, referrals to services) and suitable financial compensation for study participants. In addition, it is essential that trans scholars play lead roles and that direct attention is paid to the intersecting identities and experiences of trans people across the research process. Research data and findings must also be accessible, meaningful and useful for trans communities.



Demographic limitations

While *TRANSforming JUSTICE* data was collected in Ontario, other available Canadian research suggest commonalities in issues trans people face country-wide, such as cisnormativity²² and systemic transphobia.²³ We acknowledge that the data from *TRANSforming JUSTICE* was solely collected in the common law context of Ontario, and that regional differences, including in Quebec, as well as Indigenous laws and customs, are not reflected in this report. It is important to consider this when further developing and implementing the recommendations. Above all, trans people in all jurisdictions must be centrally involved and empowered to craft and implement the solutions to the issues they have faced for far too long.

More action and research are also required in relation to issues facing Indigenous trans and Two-Spirit people, as these communities are distinct from other trans communities in Canada. “Two-Spirit” is a term claimed by Indigenous people who may also self-identify as trans, but that the term should not be conflated with Western sexuality and gender identities. In addition, Indigenous communities, unlike others in Canada, are subjected to the colonial *Indian Act*.²⁴

Further action and research are also needed in relation to issues facing Black and other racialized trans people, as well as those living with HIV, youth, older people, people with disabilities, underhoused people, low income people, those engaging in sex work, and individuals with no or precarious immigration status.

COVID-19 pandemic impacts

Both foundational projects were completed prior to the COVID-19 pandemic. This report does not document or anticipate the ramifications of the pandemic on trans people in Canada. However, there is evidence that the pandemic is having more profound and harsher effects on people who are unable to self-isolate with relative comfort, do not have secure finances, housing and/or social supports,²⁵ or who usually experience barriers accessing healthcare. It is therefore expected that many of the concerns outlined in this report have been exacerbated by the ongoing pandemic and its future impacts.





03

Overview of legal problems and effects of unmet legal needs

Trans participants in *TRANSforming JUSTICE*, reported experiencing a disproportionate number of justiciable²⁶ legal problems compared to the general population in Canada.

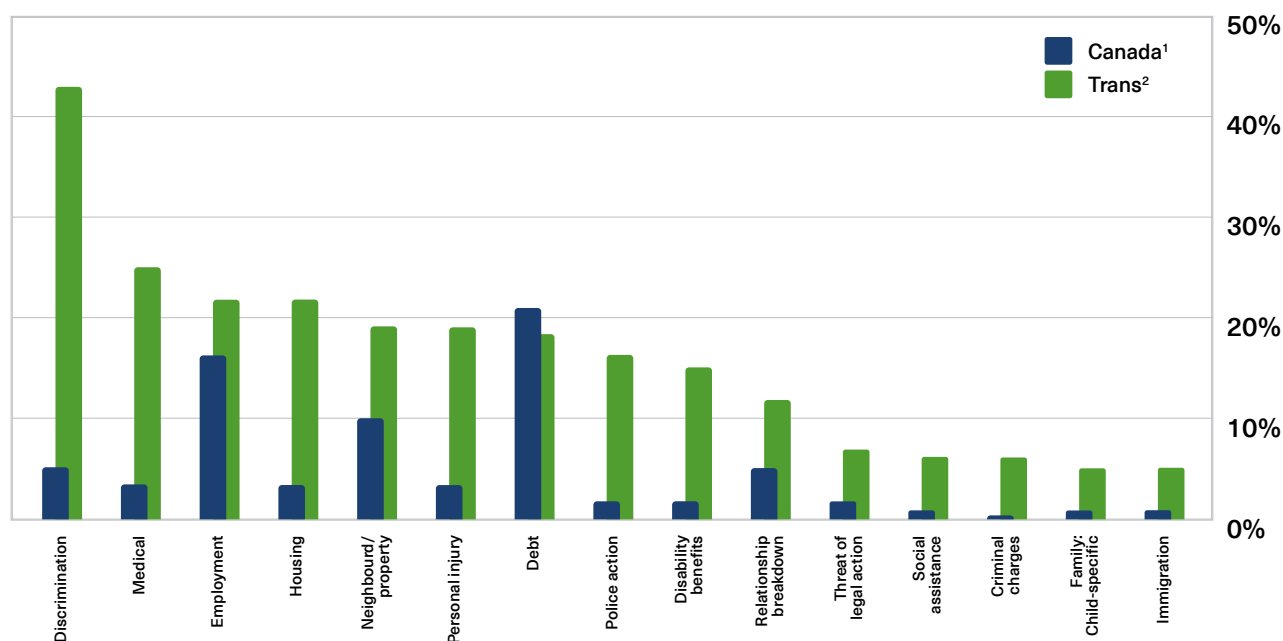


These legal problems often stem from or are exacerbated by trans-specific discrimination and can be further compounded by discrimination based on identities and intersections of identities including Indigeneity, race, gender identity, sexuality, class, and actual or perceived HIV status. Being visibly trans as well as engaging in activities such as drug use or sex work can further exacerbate experiences of discrimination.²⁷

The frequency of justiciable legal problems reported by *TRANSforming JUSTICE* trans participants is stark: in the three-year period studied (2013-2016),

71% (n=129) of the 182 survey respondents who completed the legal problems section of the survey reported at least one justiciable legal problem, compared with 48.4% of the adult population in Canada generally.²⁸ Eighty-two percent (n=18) of the 22 Indigenous respondents who completed the legal problems section of the survey reported at least one justiciable legal problem, as did 83% (n=10) of the 12 non-Indigenous racialized respondents.

FIGURE 1
Legal needs from 2013-2016: Trans people in Ontario (n=182) in comparison with general Canadian population data²⁹



¹ Farrow et al. *Everyday Legal Problems and the Cost of Justice in Canada*, Canadian Forum on Civil Justice, 2016
² *TRANSforming JUSTICE* data, 2016

As shown in the chart above,³⁰ the most common justiciable legal problem identified by trans survey respondents who completed the legal problems section of the survey was discrimination³¹ (43% compared with 5.3% of the adult population in Canada). Fifty-five percent (n=12) of the 22 Indigenous respondents who completed the legal problems section of the survey reported experiencing discrimination, as did 67% (n=8) of the 12 non-Indigenous racialized respondents. Statistically significant gender-related differences were present across age, disability status and ethno-racial group for three types of legal problems:

personal injury, legal action³² and discrimination. Trans men were less likely to report legal problems with personal injury or discrimination, though the levels of discrimination they reported were still well above the national average. Trans women were more likely to report needing to respond to legal action problems.³³ For more information on the other legal problems reported, please see Summary Report One.³⁴ This section includes information about *TRANSforming JUSTICE* findings of discrimination, the multiplicity of legal problems trans people face and the effects of legal problems.³⁵



[A] Discrimination

Participants in *TRANSforming JUSTICE* reported transphobic discrimination in both overt and covert ways, touching on many aspects of their day-to-day lives. They reported often being told directly that they were being denied housing, shelter space, consumer services, police protection, healthcare, drug treatment and/or employment because they are trans. Less blatant acts of discrimination included being denied services or resources, or being treated noticeably different after one's trans identity is shared or discovered, but not being told explicitly that they were denied based on their gender identity.

"Two days after I came out I got fired.... The only reason they could properly give me was because I wouldn't fit in." – *TRANSforming JUSTICE* Trans Focus Group Participant

"Polite discrimination. It's the worst thing. You know that they are discriminating against you, but they are being very careful to walk around the issues that you happen to be trans, but you know it. You know it when a service wants to just quickly deal with you and get you out of the way because they are uncomfortable with you, but they do it very politely." – *TRANSforming JUSTICE* Trans Focus Group Participant

"Actually, getting called for an interview, as an out trans person. That's huge. That also impacts on housing accessibility. Or not getting housing because one is an out trans person. Again, those little things, like being served properly in restaurants or trying to go to a washroom, which is even more in the news now thanks to publicity south of the border which we hear about here. Not knowing whether your application is being fairly received to try to do education, because one has been vocal." – *TRANSforming JUSTICE* Trans Focus Group Participant

71%

Percentage of trans respondents who reported at least one justiciable legal problem, compared with 48.4% of the adult population in Canada generally.

They reported often being told directly that they were being denied housing, shelter space, consumer services, police protection, healthcare, drug treatment and/or employment because they are trans.

Participants reported believing that support to address discrimination was usually unavailable to them. Most reported being reluctant to ask for help, and those who did seek formal assistance referred to additional experiences of discrimination, refusal of support from various service providers, and being blamed for the discrimination they experienced. Many reported that extreme social isolation was often their only strategy for preventing, avoiding and/or staying safe from discrimination and violence. Some focus group and interview participants reported connections between poverty, employment discrimination and housing insecurity.

Some Indigenous trans and/or Two-Spirit focus group participants spoke about the compounding effects of colonization and being discriminated against, harassed and assaulted because of the imposition of Western norms relative to gender and sexuality. Some Indigenous participants talked about having the support of their Indigenous communities and only being confronted with discrimination and intolerance for their gender identity when they left their communities. Some participants reported negative experiences from some community members which led them to leave their communities for urban settings in hopes of finding greater personal safety. These participants also reported enduring assaults and discrimination in the urban areas where they moved, based on their Indigeneity and/or Two-Spirit or trans identities. Racialized trans focus group and interview participants referred to the compounding nature of the racist and anti-trans discrimination they experienced.

Focus group and interview participants affected by HIV³⁶ reported increased stigmatization and lack of trans-competent healthcare as common compounding factors to their routine experiences of discrimination. Similar observations are reported in the Summary of the final report of the Truth and Reconciliation Commission of Canada, noting the troubling gaps in health outcomes between Indigenous and non-Indigenous people in Canada³⁷



and calling upon the federal government to acknowledge uniquely distinct health needs³⁸ of various communities.³⁹

The difficulties that people living with or affected by HIV face must be read against the backdrop of pervasive HIV stigma as well as numerous studies demonstrating how trans people's access to competent healthcare and social services is severely limited.⁴⁰ Trans focus group and interview

[B] Multiplicity of Legal Problems

Many trans respondents reported experiencing multiple legal problems simultaneously. Many reported having experienced up to/more than ten justiciable legal problems in the three-year period covered by the survey.⁴²

Equity-seeking populations tend to have statistically more legal problems than the rest of the population.

participants living with HIV reported not seeking support for the violence, discrimination or harassment they experienced for fear that their HIV positive status would become known. There were reports of people not disclosing their HIV positive status because of fear of violence. In addition, some individuals reported avoiding accessing HIV-related legal information because of concern that accessing the information may indicate to others that they were living with HIV.⁴¹ Participants also spoke about the incredible difficulties they had associated with experiences of trans-related discrimination and how completely overwhelming it was or could be to also experience HIV-related discrimination.

Being denied work and housing and being outed as HIV positive in public housing spaces were also experiences shared by participants. Participants identified experiences of transphobia-motivated sexual assault, social isolation and poverty as factors that could increase the risk of HIV infection.

"[I have been] physically assaulted and bullied. You name it, I've dealt with it. I'm so scared because the moment I feel like they will find out that I am HIV positive, they will come after me even more." – *TRANSforming JUSTICE* Interview Participant

TRANSforming JUSTICE participants also reported experiences of discrimination in immigration processes. All (n=10) of the trans focus group participants who identified going through an immigration or refugee process did so because of the violence and harassment they experienced based on their trans identities in their countries of origin. Experiences of racism by government officials, immigration board members and deportation services, both in their country of origin and in Canada, were reported by trans focus group and interview participants as well as legal service provider focus group participants.

"Very seldom, if ever do [trans clients] come with one problem. Their problems are so multi-faceted, like, we can deal with one or two issues, maybe, and then the rest are like, "not it." We have to find someplace else to service them, because there are areas of law that are above our scope of practice. Our expertise is limited. We want to make sure they get the best available service, we want to refer them to the experts. We might be able to deal with two or three things, but three or four things have to go out someplace else." – *TRANSforming JUSTICE* Legal Service Provider Focus Group Participant

"Name and gender change is complicated for some folks. The cost is a bit of a problem. If you're a trans person and you're going through a marital separation, that's hard enough anyway, but you've got sort of a double whammy if you're trying to do multiple things at once. Not every person out there understands trans identity, lawyers included, so you have to try to be extra selective sometimes. If you have the ability to do that. Money. Money affects everybody. A lot of us don't have much." – *TRANSforming JUSTICE* TransFocus Group Participant

Equity-seeking populations tend to have statistically more legal problems than the rest of the population. A large Australian study found that co-occurring legal problems are most often interconnected for three reasons:

- a. The experience of the initial legal problem triggers other legal problems;
- b. The defining circumstances of the initial legal problem create more than one legal problem; or

Certain individuals have characteristics that make them particularly vulnerable to experiencing certain legal problems.⁴³



A 2006 Australian study found that those particularly vulnerable to experiencing certain legal problems, including trans people, represented one third of their respondents, yet experienced four fifths of the country's legal problems.⁴⁴ Canadian research supports this finding: legal problems tend to cluster, multiply and have additive effects

Despite the prevalence of legal problems, few respondents were able to obtain formal support.⁵⁰ As noted in the *TRANSforming JUSTICE* Summary Report,⁵¹ multiple and complex legal problems, along with experiences of persistent discrimination and social isolation, created huge barriers preventing trans survey respondents from accessing legal help.

Respondents reported that their experiences of trying to deal with legal problems had taken an intense toll, impacting their health as well as causing family problems.

that disproportionately affect equity-seeking populations. For every problem experienced, the probability of more problems increases⁴⁵ and the individual's vulnerability increases.⁴⁶ The number of justiciable problems a person experiences also directly impacts their perception of the legal system's fairness.⁴⁷

[C] Effect of Unmet Legal Needs

TRANSforming JUSTICE survey respondents reported that their experiences of trying to deal with legal problems had taken an intense toll, impacting their health as well as causing family problems.⁴⁸ When legal issues are unresolved, they tend to cascade and multiply to create more legal and non-legal problems that affect all aspects of life. Unmet legal needs can have a devastating effect on people's lives. As a report by the Canadian Forum on Civil Justice notes:

“[w]hen people have no ability to access fair justice systems, they are left without the means to resolve grievances, protect their legal rights, livelihoods, assets or their physical security, resulting in inequity, alienation and abuse.”⁴⁹

Legal problems are not tidily compartmentalized; they are intimately interwoven with other legal and non-legal issues in people's lives.⁵²

These findings are consistent with research about the ripple effects of unmet legal needs on other aspects of life documented in the broader literature on access to justice. For example, each time a person is unable to challenge an unjust eviction and consequently becomes homeless, there are cascading impacts on the person (e.g., health) and additional costs for public institutions.⁵³

Addressing individual and community legal needs at an early stage, before they grow and affect other aspects of people's lives, benefits both individuals and society at large. A 2019 study by the Canadian Forum on Civil Justice also suggest that spending on legal aid generates a direct return on investment.⁵⁴



**“Polite discrimination.
It’s the worst thing.
You know that they are
discriminating against
you, but they are being
very careful to walk
around the issues that you
happen to be trans.”**

TRANSforming JUSTICE Trans Focus Group Participant





04 Specific Barriers

Both *TRANSforming JUSTICE* and *Reaching Equal Justice* found that participants from equity-seeking groups were generally reluctant to seek help or access the legal system. Even when individuals decided to or were able to initially engage with the legal system, they might not follow the process through to a satisfactory result. Both studies identified multiple explanations for these findings.



TRANSforming JUSTICE identified the following factors why the legal system fails to meet the needs of trans people:

- untrustworthy legal system,
- systemic racism and discriminatory experiences relating to police and the criminal legal system,
- experiences in correctional and detention facilities,
- comments on laws that criminalize trans people,
- inadequate legal services for trans people,
- negative experiences with legal service providers,
- lack of accessible and trans-specific legal information,
- lack of financial resources,
- social isolation and safety concerns,
- location and accessibility of legal services,
- identity document issues; and
- onerous court and tribunal processes.

[A] Untrustworthy Legal System

Trans focus group and interview participants in *TRANSforming JUSTICE* frequently expressed doubt about the fairness of the system, which was often cited as a reason to avoid engaging with it entirely. They had a fear—grounded in previous experience and/or awareness—of being put through a strenuous and traumatic process with unsupportive people in positions of power. The *TRANSforming JUSTICE* survey findings revealed that 97% (n=156) of trans survey respondents who answered questions about their trust in the legal system agreed or strongly agreed that the legal system works better for cisgender people than for trans people.⁵⁵

When describing their actual or anticipated experiences in the legal system, participants reported not being taken seriously because of their trans identity (including when reporting violence); legal service provider lack of trans competency;⁵⁶ biases and stereotypes against trans people; and explicit and implicit instances of discrimination. Many *TRANSforming JUSTICE* participants reported that their views on the legal system at large are shaped by their experiences with or perceptions of the police, which are particularly negative for Indigenous trans and/or Two-Spirit people as well as Black and other racialized trans people.

97%

Percentage of respondents who agreed or strongly agreed that the legal system works better for cisgender people than for trans people.

TRANSforming JUSTICE focus group and interview participants also reported that they were afraid of being outed as trans in public spaces when stopped by police as well as when in police stations, legal offices, and courts/tribunals. One participant explained how they were outed in a family court process where their trans identity was used against them in a custody matter. This outing process then led to a fear of in-person and online harassment experiences for this individual.

“I’ve found in the family court system that... they don’t always update the file system right away and you get outed every single time you have to appear in front of a judge... It took almost half the time during the proceeding just to figure out what was going on, who was supposed to be facing the judge, who I was, why it was like that. Basically, I felt like I almost had to give my life story just for them to figure anything out. It wasn’t even a closed session, so there were many people there, so I was outed in front of a whole group of people... I felt partially embarrassed and partially scared, because I didn’t know anybody in that courtroom, besides my lawyer and a couple of other people. I didn’t know if I walked out of that courthouse if I was going to be attacked by somebody because they found out how I identified in that courtroom or because of social media, if they were to find me on social media to say something about what they heard or whatever. A lot of shame came out. Shame and discomfort from being just in the spotlight because of that.” – *TRANSforming JUSTICE* Trans Focus Group Participant

In a January 2022 letter to the Supreme Court of Canada, the CBA wrote that misgendering has a profoundly stigmatizing and marginalizing impact. It signals to trans people that their identities are not seen or respected, and that they are not in a place where it is safe. When this happens in court, it becomes a barrier to access to justice. Misgendering is a uniquely dehumanizing burden on top of the already stressful circumstances of engaging with a legal system. These consequences are magnified when the misgendering comes from a person in authority, such as a judge or a lawyer, and happens



in public and is captured on the record. The result is not only discriminatory, but a strong disincentive for trans people to participate in the legal system and an impediment to free and full engagement for those who do.⁵⁷

Many *TRANSforming JUSTICE* trans focus group and interview participants reported that they would consider approaching the legal system only in extreme situations; for example, if they had no other options and the problem was so serious that it affected their ability to survive.

“[I]t would take a lot for me to go to the legal system, but I might in a really bad scenario. It would take a lot for me to do it.”

– *TRANSforming JUSTICE* Trans Focus Group Participant

“Trans people have a lot of fear... Generally speaking, I won’t bother with the law at all, I’ll suffer before.” – *TRANSforming JUSTICE* Trans Focus Group Participant

“The one [lawyer] that is supposed to be on my side, I certainly do not want to see in their eyes, oh, my god, I got one of ‘them.’ That’s what we’re afraid of.” – *TRANSforming JUSTICE* Trans Focus Group Participant.

“I think we’re so beat up that when we’re forced into these situations... we already have in our mind that we’re going to get it again. And there is one of our biggest problems because we are picked on so much, we’re already defeated before we even start a process.”

– *TRANSforming JUSTICE* Trans Focus Group Participant

These comments are consistent with the *Reaching Equal Justice* report, which noted that “(w)hen community members were asked whether the law would protect them from abuses of power, or hold a person accountable for breaking the rules, the most common response was to laugh out loud.”⁵⁸

Colonialism and racism were often mentioned as reasons the legal system could not be trusted by *TRANSforming JUSTICE* focus group participants.

“About two weeks ago, one of our members from [name of organization] had posted on Facebook about a hate crime. A member and his husband ended up in the hospital based on this gay bashing. The one person is Two-Spirit and his friend is Two-Spirit. I had asked them myself, knowing how I know the justice system and different networks and stuff like that, have you reported it as a hate crime or contacted anyone? They’re not contacting anyone, because they don’t feel there’s a point in it. It never gets resolved. If they come, it’s usually,

When community members were asked whether the law would protect them from abuses of power, or hold a person accountable for breaking the rules, the most common response was to laugh out loud.

like we said in the beginning, the myth of the drunk Indian. If there was any alcohol involved, well, you were asking for it.” – *TRANSforming JUSTICE* Focus Group Participant

“There’s not enough trust in the system, first of all, for Aboriginal people, whether they’re Two-Spirit or trans or all of the above. Looking at that one about the faith and trust in the legal system, it’s not enough. There’s really a lot of damage left behind from colonization.” – *TRANSforming JUSTICE* Trans Focus Group Participant.

An Indigenous woman in Saskatoon was quoted in the *Reaching Equal Justice* study with a similar comment: “[i]f you believe in the system and think it will help you, you’ll get burned.”⁵⁹

[B] Systemic Racism and Discriminatory Experiences Relating to Police and the Criminal Legal System

TRANSforming JUSTICE survey respondents shared examples of negative encounters with police, including being persistently misgendered after stating their correct name and pronouns, not being taken seriously and being blamed, mocked or denied help because of their trans identity.⁶⁰ Systemic racism and its expression in the excessive use of force by police is another serious problem for Black, Indigenous, and/or racialized trans people.⁶¹

Indigenous trans and/or Two-Spirit, as well as non-Indigenous Black and other racialized focus group and interview participants identified their awareness of the pervasiveness of violence and discrimination from law enforcement against their communities as additional factors in their reluctance to seek help from the legal system. Black trans focus-group and interview participants recounted numerous



encounters with police stopping them on the street, carding them, and making assumptions that Black trans feminine spectrum individuals are involved in sex work. Indigenous trans and/or Two-Spirit focus group and interview participants spoke about experiencing assault from police, police not taking their reports of violence seriously, and a lack of

people getting misgendered, even though I have explained, I don't want to trigger myself by going into those spaces and seeking help, so how do I protect myself?" – *TRANSforming JUSTICE* Trans Focus Group Participant

Because of their fear and distrust of police, they also have a generalized fear and distrust of the legal system overall and all actors in it.

knowledge and representation of Indigenous trans and/or Two-Spirit individuals in police and court spaces.

Moreover, 62% (8/13) of non-Indigenous racialized *TRANSforming JUSTICE* survey respondents reported that the police persistently misgendered and misnamed them after being informed of their correct name and pronouns, which was significantly higher than the rate reported by survey participants overall (27% (29/108)). Indigenous trans and/or Two-Spirit and non-Indigenous focus group participants who spoke about negative experiences with police described experiencing violence from police and/or witnessing or hearing about these types of incidents.

Several focus group and interview participants noted that they had a strong fear of police:

"[Indigenous people] are treated horribly by the police. There's a huge issue there. There's a huge distrust there. I can't imagine ... In this area, to be trans and non-white, essentially, and to end up in police custody, if you have the wrong police officer, you're going to have one hell of a bad night." – *TRANSforming JUSTICE* Legal Service Provider Focus Group Participant

"So, I don't think ... personally, I don't have any faith in the system. If I was to have to call, I would call a friend as opposed to calling police, which calling the police could turn out to be more deadly for you, especially for Black, Indigenous people of colour, queer, trans, etc. It can be more dangerous to call the [police] than it can be to call your friend." – *TRANSforming JUSTICE* Trans Focus Group Participant

"As a Black man, [I] cannot go to a police station and say, hey this is happening to me, because I feel like I'm not going to be listened to. And because I have experienced other

Of these participants, many expressed that, because of their fear and distrust of police, they also have a generalized fear and distrust of the legal system overall and all actors in it—including lawyers, paralegals and judges. In addition, existing research has also documented the particular effects of policing and criminalization on trans migrants.⁶²

In addition, the Final Report of National Inquiry into Missing and Murdered Indigenous Women and Girls (MMIWG Report) emphasized the need for greater awareness of 2SLGBTQQIA issues and called for changes in several areas, including policing and police services. This included calls to address transphobia in policing.

Systemic racism is pervasive in all stages of the criminal legal system. In a 2021 resolution, the CBA recognized that mandatory minimum sentences exacerbate systemic racism against members of Indigenous, Black and other equity-seeking communities by removing from sentencing judges the discretion to consider the balance of many factors, including the characteristics of the people before them. Indigenous people experience all aspects of the criminal legal system more harshly than others, considering the impacts of colonialism and systemic oppression. Mandatory minimum sentences lead to the disproportionate incarceration of members of Indigenous, Black and other racialized communities including trans members of these communities.⁶³ The CBA resolution⁶⁴ is also aligned with the Truth and Reconciliation Commission's call to action #32, which calls on the federal government to amend the Criminal Code to allow trial judges, on giving reasons, to depart from mandatory minimum sentences and restrictions on the use of conditional sentences.⁶⁵

Post sentence, governments have also erected barriers for people to reintegrate and find steady employment after serving their sentence. In particular, the approach to record suspensions, which ought to facilitate reintegration, instead prevents reintegration due to the stigma of a criminal record.⁶⁶ While Canadian law permits people to apply for record suspensions, the current pardon system



62%

Percentage of non-Indigenous racialized *TRANSforming JUSTICE* survey respondents who reported that the police persistently misgendered and misnamed them after being informed of their correct name and pronouns.

is slow, costly and inaccessible to many people.⁶⁷ These barriers disproportionately affect Indigenous, Black and other racialized people, including trans persons from these communities. Members of these communities further face compounded discrimination in obtaining employment.

The Fresh Start Coalition's spent regime model, in which an individual's criminal record is sealed after a set period of time⁶⁸, would ensure more people in Canada are able to get a fresh start and a chance at gainful employment, while also reducing significant administrative costs and enhancing public safety.⁶⁹

[C] Experiences in Correctional and Detention Facilities

Some trans focus group and interview participants reported issues with correctional and detention facilities. The most frequently reported negative experience was being inappropriately assigned to gendered cells or facilities. Respondents reported being in the wrong jail as almost always being tied to experiences of physical, verbal or sexual assault that were not addressed by institutional staff. Respondents who had been detained reported unlawful treatment, including not having access to gender affirming care or appropriate clothing or grooming items, and not being referred to by the correct name or pronouns. There were also reports of staff at detention facilities mocking or mistreating trans persons because of their trans identities.

"Oh, yeah, getting thrown in a men's jail (name of jail) when you're a fucking woman is not a very pleasant experience. I was very fortunate I was put into protective custody but even that was hell. So, yeah, it led to even more depression. ... So, no, it was not a good experience." – *TRANSforming JUSTICE* Trans Focus Group Participant

"It was just one cell and I was just stuck in there with, I think it was two or three other inmates or whatever. We just stayed in there. Actually, they took me out to go to the courthouse. But there was no real bad experience. I was lucky I guess. It was the whole thing really got to me because I shouldn't have been there because I was a woman." – *TRANSforming JUSTICE* Trans Focus Group Participant

"They voice similar issues, at least to us, in terms of what their concerns are, in terms of discrimination with how they're identified and being able to use the identifiers that they want to be able to use, whether or not the correctional service will recognize those identifiers. Also being able to access clothing that they find is appropriate to their needs. They get blatantly told that those aren't going to be funded, so if they want to have those things, they have to pay for them themselves whereas, for everyone else, they get those types of clothing paid for." – *TRANSforming JUSTICE* Legal Service Provider Focus Group Participant

"But, certainly in the criminal context, the roadblocks for transgender people are huge. They'll be incarcerated with people who are the same genital configuration as they are, not what they identify as. [...] You look at our penitentiaries. Any transgendered [sic] person I ever dealt with that had transitioned to woman was still in [name of men's prison] or [name of men's prison]. The system is nothing but roadblocks, as far as I'm concerned, for people in the trans community." – *TRANSforming JUSTICE* Legal Service Provider Focus Group Participant

The MMIWG report called on federal and provincial correctional services to engage in campaigns to build awareness of the dangers of misgendering in correctional systems and facilities and to ensure that the rights of trans people are protected.⁷⁰

Legal service provider focus group participants working with trans clients on immigration and refugee law issues noted that some of their clients who were detained did not want or did not feel safe enough to disclose their trans identities. They were therefore placed in facilities not in line with their gender identities.



[D] Comments on Laws that Criminalize Trans People

Many focus group and interview participants talked about sex work laws. Some participants reported being stopped by police who assumed they were involved in sex work, and those who were engaged in sex work reported that sex work laws made their work more dangerous.⁷¹ Fears of being criminalized for engaging in sex work were reported as deterrents to approaching police about experiences of violence, including sexual assault.⁷²

“I’ll start just quickly by just saying that if you’re walking down the street and whatnot and you’re having an issue of passing,⁷³ well then the authorities could consider you possibly as somebody that’s doing street work,⁷⁴ especially where I live.” – *TRANSforming JUSTICE* Trans Focus Group Participant

“Well if you are out there plying your business to make sure you can pay for surgery or rent or groceries or whatever, eventually you are going to get stopped by the police, if not charged for communicating or an indecent act. And I feel that there is a high number of sex workers that have no record but once they start into the sex trade, basically they are getting charged with communicating, an indecent act, whatever the case may be. And that is where they get in trouble with the legal system.” – *TRANSforming JUSTICE* Trans Focus Group Participant

afraid of getting charged now, and if they’re afraid of getting charged, trans women are less likely to be making an income. So, if they’re not making an income, they’re going to be doing riskier activities in order for them to make the money that they need to survive. For example, before, if they used to just put up escorting pages and they would just get clients coming to their home, less clients will more likely not come to their home due to the fact that they’re afraid that they’re going to get charged because that client can go to someone’s house and it’s a sting operation, and the cops are there, and they have to pay the fines. However, now they’re going to have to be working the streets, and if they’re working the streets, they’re going to be more likely to get attacked, more likely to be in a situation where they’re raped.” – *TRANSforming JUSTICE* Legal Service Provider Focus Group Participant

TRANSforming JUSTICE participants also shared concerns related to the criminalization of drugs,⁷⁶ including fears of being criminalized for using substances acting as deterrents to approaching police about experiences of violence, including sexual assault.⁷⁷

Concerns were also raised about laws relating to HIV non-disclosure,⁷⁸ including in the context of sex work. The most frequently raised HIV-related legal problem by *TRANSforming JUSTICE* focus group and interview participants affected by HIV were fears linked to the criminalization of HIV non-disclosure. Concerns included fears of increased risk of being charged based on their trans identity alone, and fears of being charged when having experienced sexual violence.

Concerns about being criminalized because of sex work, HIV non-disclosure or drugs were frequently described by *TRANSforming JUSTICE* participants in focus groups and interviews as being among the chief reasons they cannot trust the legal system.

“... [the new law]⁷⁵ puts the clients, or the johns, or whatever you want to name them, as the ones who will pay the fines, and who will get the charges if they do get caught in that situation. So, in this instance, you’re still disrupting their business either way. If you’re going to charge one, or the other, or both, there is still going to be less clients who are going to want to come because they’re going to be

While a robust discussion of criminal law reform is outside of the scope of this report, we note that these concerns about being criminalized because of sex work, HIV non-disclosure or drugs were frequently described by *TRANSforming JUSTICE* participants in focus groups and interviews as being among the chief reasons they cannot trust the legal system.



[E] Inadequate Legal Services for Trans People

Legal service providers and decision makers are currently ill-equipped to support trans people's rights so that at least some of their legal problems can be resolved. For example, even if some legal clinics are equipped to assist with name and sex designation changes on identity documents, trans clients may be unable to afford the application fees. Duty counsel may assist in completing court documents, but trans clients may be unable to pay for a process server to effect service, or transportation to get to hearings.⁷⁹

Additionally, remedies available through courts and tribunals may not lead to a helpful resolution or resolve problems quickly enough to avoid or mitigate consequential harms. For example, if a claimant wins a case at a human rights body for a discriminatory termination a year earlier, they may not be able to collect on any award and winning may not stop them from being evicted because they were unable to pay rent. It will also not solve the mental and physical health issues from the additional stress.

In Canada, few legal services or resources are geared specifically to the needs of trans people, especially outside large urban areas. Some exceptions include Trans Rights BC,⁸⁰ *JusticeTrans*,⁸¹ The Catherine White Holman Wellness Center⁸² and Qmunity,⁸³ which all offer resources and information in relation to a number of issues facing Trans communities, as well as the Queer Refugee Hearings Program Toolkit, which assists trans refugee claimants.⁸⁴

communities. Recent efforts include CBA articles, counsel introduction scripts,⁸⁸ workshops and webinars,⁸⁹ National Magazine articles,⁹⁰ enhancements to British Columbia's Lawyer Directory⁹¹ and *LGBTQ2+ Law: Practice Issues and Analysis*,⁹² in which Sam Singer wrote a chapter on Trans Competent Lawyering.⁹³ More generally, legal services, including legal aid services such as community legal clinics, should be more inclusive of and accessible to trans people. Legal service providers should be better informed and more knowledgeable about trans legal issues. Trans competent legal training should be a feature of bar exam courses and articling experiences across the country. Legal service providers that serve trans people should receive adequate funding to support their work and additional services would be beneficial to offer a more holistic approach to serving trans clients and resolving their multiple and complex legal needs. Existing and new services could serve as a resource to other legal service providers for education and consultation. And trans competency and respecting pronouns ought to be recognized as the professional responsibility that it is.⁹⁴

Trans people should be encouraged to join legal professions and be supported and mentored. Universities and other educational institutions should ensure their admission processes are free of systemic barriers and support trans students. Trans people should be supported to further advocate and lead for change in the legal profession.

Concerted efforts by all levels of government, in consultation with trans people and trans organizations, and in conjunction with public legal education and information organizations, legal aid plans, and other service providers, are needed

More needs to be done to **improve cultural competency** among lawyers and others providing legal services to trans and other equity-seeking communities.

Pro Bono Students Canada has initiatives at some Canadian law schools focused on trans rights, including a Trans ID clinic.⁸⁵ ASTT(e)Q in Montreal offers legal support and resources for trans people in Quebec on a wide range of issues including criminal, immigration, housing and social assistance law.⁸⁶ In Ontario, Black Femme Legal curates resources and legal information, and hosts workshops to support Black queer women, femmes and gender diverse people.⁸⁷

Much more needs to be done to improve cultural competency among lawyers and others providing legal services to trans and other equity-seeking

to rectify the limited availability of trans specific services in most parts of Canada.⁹⁵ Designing services to meet the specific needs of trans people helps protect them from the discrimination they face when attempting to find legal assistance. This could also potentially address the fear many trans people have when seeking legal assistance due to the systemic discrimination they face.

Public investment in legal systems across Canada is modest compared to investments in other essential services like health and education, and most of the money goes to policing and prisons. Shortfalls in legal aid funding by governments have



been chronic and persistent, with legal aid plan operators continually being asked to do more with less. Canada's legal aid plans are unable to meet the goals of providing meaningful services for members of many equity-seeking communities including trans people.

[F] Negative Experiences with Legal Service Providers

The legal system should be focused on the people it is intended to serve, rather than those it employs. One of the four main themes identified in *Reaching Equal Justice* was that the legal system is “person-dependent.” In other words, whether the service or experience was effective, fair or compassionate depended on the individual, be it the judge, lawyer or police officer.⁹⁶

The *TRANSforming JUSTICE* study found that trans people's interactions with lawyers and paralegals were largely negative. Trans respondents reported that most lawyers and paralegals had little to no knowledge about trans people and their human rights, legal service providers did not take their problems seriously, and many lawyers and paralegals kept misgendering them even after being informed of their correct name and pronouns. In addition, trans respondents reported needing to educate their lawyers about trans issues.⁹⁷ In some cases, opposing counsel used the trans person's gender identity against them in legal proceedings. Examples included opposing counsel citing the person's trans identity as an indication that they were not a fit parent, mentally unwell, and/or an unreliable individual. Most of the reported negative experiences with legal service providers were blatant, explicit, and very demeaning.

easily accessible support. In particular, trans focus group and interview participants referred to the need for all legal service providers to respect a trans person's identity (e.g., by using correct names and pronouns) and more broadly, their humanity.

While it was reported that knowledge about trans issues was largely absent, *TRANSforming JUSTICE* participants appreciated legal service providers who were already knowledgeable about trans issues. In addition, a few participants reported that they found it helpful when service providers and others (e.g., judges, police officers) were at least open to learning about trans issues. They noted that it is helpful when service providers who are already knowledgeable work to educate less knowledgeable colleagues about trans legal issues and trans competency. For example, one trans interview participant recounted how their cisgender lawyer educated opposing counsel and the judge on the importance of using correct name and pronouns. This trans study participant found this colleague-to-colleague education helpful in their proceeding. Finally, they felt it is important that legal service providers understand the cumulative effects of the various barriers and pervasive discrimination and violence woven into so many aspects of their lives.

Law society *Codes of Professional Conduct* governing lawyers prohibit discrimination by members of the profession. While some law societies have finally taken steps to encourage cultural competency in the profession on issues specifically pertaining to trans rights, much more must be done in relation to lawyers and all other legal professionals.

The Law Society of BC is currently considering gender-neutral language for its Code. In 2014, the Law Society of Upper Canada (now the Law Society of Ontario) released a guide for law firms and other organizations called *Sexual Orientation and Gender Identity: Creating an Inclusive Work Environment*. The Ontario Bar Association Foundation Chief

Trans respondents reported that most lawyers and paralegals had little to no knowledge about trans people and their human rights.

Given the extensive barriers to trans people's engagement with the legal system, *TRANSforming JUSTICE* trans focus group and interview participants reported that positive experiences with their legal service providers, while unfortunately rare, made a profound and positive difference. They commented that they would have better access to justice and legal services if more legal service providers took trans problems seriously and offered

Justice of Ontario Fellowship in Legal Ethics and Professionalism for 2019–20 was awarded to Sam Singer, to advance his work on trans-inclusive ethical and professional skills required of lawyers and judicial officers. The Federation of Law Societies of Canada's Standing Committee on the Model Code engaged in consultations to reform the *Model Code of Professional Conduct* in 2020 and has proposed more expansive protections against



discrimination and harassment.⁹⁸ There have also been initiatives to increase trauma awareness for lawyers and legal service providers.⁹⁹

[G] Lack of Accessible and Trans-Specific Legal Information

Many *TRANSforming JUSTICE* trans survey respondents who answered questions about legal knowledge and access to legal services said that they disagreed or were unsure that they knew (i) their basic legal rights as a trans person; (ii) where to access information about their legal rights as a trans person; and (iii) how to access trans-competent legal services.¹⁰⁰

Similar findings arose out of *TRANSforming JUSTICE* trans focus group and interviews, where participants reported that legal information about their rights is not readily available through the services they access and other public places they visit. They reported a dearth of trans-specific legal information available online, even for basic information about legal rights, administrative or bureaucratic processes (e.g., identity document changes), court and tribunal processes and procedures, and how to access trans-competent legal service providers.

Yet, many trans focus group and interview participants said that their avenues to legal information were primarily the internet (making the lack of information online even more problematic) and their own social networks. They also noted that the limited information they could find was unclear and written in a way that was inaccessible to them. Indigenous trans and/or Two-Spirit focus group and interview participants noted an almost complete lack of trans-competent and culturally appropriate information about their legal rights and processes.

60%

Percentage of respondents who overwhelmingly “disagreed” or “strongly disagreed” that they would have sufficient financial resources to support them through a legal process.

[H] Lack of Financial Resources

A lack of financial resources—often because of structural factors including systemic discrimination—is a significant barrier to trans people’s access to legal services. *TRANSforming JUSTICE* trans survey respondents reported experiencing pervasive discrimination and poverty. Several trans focus group and interview participants reported that housing, employment, and school-based discrimination significantly limited their ability to financially support themselves. Many reported that their main challenge was day-to-day survival, relegating concerns about legal issues to secondary status.

TRANSforming JUSTICE trans participants also frequently reported not seeking legal help because they could not afford formal legal supports.¹⁰¹ Low levels of income and employment¹⁰² were reported despite high levels of education.¹⁰³ As noted in Summary Report One, employment-related discrimination, including in hiring processes, was a key problem for trans study participants.¹⁰⁴

Of the 193 survey respondents who answered questions on the availability of resources to access legal services, 60% responded that they overwhelmingly “disagreed” or “strongly disagreed” that they would have sufficient financial resources to support them through a legal process.¹⁰⁵ A majority of respondents also indicated that they didn’t have a person who could financially support them through a legal problem.¹⁰⁶ Even when respondents said they might be able to access financial support from their social networks, they said that support would be complicated and could create more problems.

“Yeah, that’s an interesting question. Because in many cases, the gender issues have distanced them from their families, and so their families are not supportive. It might be harder for them to get a surety, and in many cases, if you can’t get a surety, you can’t get out on bail. That sort of thing can make it hard to get bail at all. I did one bail hearing where someone got out with a surety with her father, and her father, on release, started referring to her as him, immediately. She was going to be forced to live with her dad, who was clearly not supportive of the transition, so that’s a profoundly negative effect on her.” – *TRANSforming JUSTICE* Legal Service Provider Focus Group Participant

Given their generally low incomes, some trans people may qualify financially for legal aid in some regions of Canada, and some of their legal needs



might be covered.¹⁰⁷ However, this is not the case throughout Canada: provincial and territorial legal aid plans determine the income threshold for services, which is generally set at social assistance levels. These plans also determine what services are offered in their region, and many do not offer what is generally referred to as “poverty law” services, including matters concerning government benefits or tenancy issues. Issues specific to the trans communities (e.g., issues with identity documents) are not covered by all plans across Canada.

The compounding layers of problems experienced by trans people make them vulnerable to income and housing insecurity, which was exacerbated by the COVID-19 pandemic. Early in the pandemic, the federal government introduced time-limited new income security programs, including for students, service industry workers, farmers and small businesses. However, these programs had significant gaps. For example, some part-time and seasonal workers, as well as some sex workers, were unable to access the programs. People receiving Canada Pension Plan Disability benefits and some people receiving social assistance did not benefit from the programs. The insecurity created by the pandemic and government responses have informed discussion of the need for more robust income security programs and affordable housing options outside of an emergency situation.¹⁰⁸

Any income security program or affordable housing plan must be closely examined and tailored to respond to the living realities of all people in need. Persistent and prevalent poverty and income and housing insecurity among trans people, and the frequently reported incidence of employment discrimination, suggest that more robust income security programs and affordable housing options might alleviate some of the barriers to justice highlighted in *TRANSforming JUSTICE*.

While such programs would help alleviate some negative impacts of legal problems and improve access to justice for some trans individuals, legal problems for trans individuals tend to be interconnected, multiple, and involve systemic and non-legal components that are difficult to navigate. Accordingly, these initiatives alone would not ensure access to justice or adequate financial support to pay for legal services.

“... I feel like being trans and living with, say, parents, or if you’re adopted or even if you’re in ... I don’t know, whatever your living situation is. It could lead to more risk of abuse, violence or anything that might cause you to not be able to stay wherever you were living before. It can cause you to go to the street or to a shelter or

anything. And in terms of acquiring housing, I think both people turning you down for being trans, and even if you said, like in (name of city) know usually you are only renting one room. You also have to worry about who else

Avoiding public spaces resulted in an exacerbated sense of social isolation and had negative effects on wellbeing.

is renting, say, another room. Are they are going to be okay? Am I going to be safe around these people? They could still complain to the landlord and say, hey, I’m not comfortable around this person.” – *TRANSforming JUSTICE* Trans Focus Group Participant

The MMIWG report also called upon all governments to build safe spaces for people who need help and who are homeless, or at risk of becoming homeless, which includes access to safe, dedicated 2SLGBTQQIA shelters and housing, dedicated beds in shelters for trans and non-binary individuals, and 2SLGBTQQIA-specific support services for 2SLGBTQQIA individuals in housing and shelter spaces.¹⁰⁹

[I] Social Isolation and Safety Concerns

Many *TRANSforming JUSTICE* focus group and interview participants said that regular discrimination and transphobia makes them avoid public spaces.

“Usually, I feel like I need to have a reason to be outside, or else I’m just putting myself at risk. That’s what I feel.” – *TRANSforming JUSTICE* Trans Focus Group Participant

Overall, avoiding public spaces resulted in an exacerbated sense of social isolation and had negative effects on wellbeing. Social isolation and safety concerns for trans people are also exacerbated due to their inability to access supports available for other equity-seeking groups. For example, shelters for women who are survivors of intimate partner violence often exclude trans people and fail to respond to their needs.¹¹⁰



As also reported by *TRANSforming JUSTICE* participants, social isolation and isolation from family are common issues for trans people, and are associated with a lack of financial, social and emotional support. In turn, *TRANSforming JUSTICE* trans survey participants identified lack of social support and family support as key reasons for avoiding a legal process. Many reported being isolated from or unsupported by their families of origin because of their trans identity. Of the 186 respondents who answered questions on supports for going through a legal process, 27% (n=50) reported that they would not have anyone to accompany them to a lawyer's

he had nowhere to turn. He was in jail. He was arrested for something and he was in a jail somewhere in [name of city].” – *TRANSforming JUSTICE* Trans Focus Group Participant

TRANSforming JUSTICE revealed that justiciable discrimination and transphobia affect the ability of trans people to safely access public spaces including legal offices, legal clinics and courthouses.¹¹² It is incumbent on the legal system to take these harsh realities into account when considering how best to meet the legal needs of trans people. While there are logistical

Trans-positive spaces led by and staffed by trans people would help mitigate the reluctance trans clients have to using non trans-specific legal services.

office or attend a court or tribunal appearance with them. Forty-three percent (n=79) said that they would not have anyone to act as a surety for bail in a criminal law matter if they were to need one.

TRANSforming JUSTICE trans focus group and interview participants identified several obstacles to obtaining support when going through a legal process. Indigenous trans and/or Two-Spirit focus group and interview participants noted that their communities continue to deal with intergenerational trauma and deep mistrust of the legal system and are reluctant to subject themselves to additional contact with that system. Racialized trans participants spoke about forging a community among themselves to fill gaps due to loss of contact with their original home communities. They also referred to particularly intense experiences of transphobia and racism in Canada. Newcomer trans individuals, especially younger people, reported more isolation and a lack of community, social and family networks.

Social isolation can make trans people's engagement with the legal system especially challenging and further underscores their reluctance to seek justice or see legal processes through to a satisfactory result.¹¹¹

“He had his heart broken and his hopes broken so many times by his family, the person who was supposed to love him. He was abused by the people who were supposed to care for him and love him. If you don't trust anybody, you have no one to turn to. You don't trust anybody to help you. Then you wind up getting arrested for whatever reason and you find yourself in a jail cell, by yourself, you can't call family, you can't call friends, you can't call a boyfriend, you're all alone. That's when he killed himself, because

challenges,¹¹³ legal aid plans in Canada and elsewhere have explored offering comprehensive and integrated service delivery in the spirit of offering more “people-centred” justice.

Healthcare, including mental health services, was often difficult to access or inappropriate to trans people's needs when accessed. *TRANSforming JUSTICE* participants reported frequent threats to personal safety, while having a strained relationship with law enforcement. As discussed above, Indigenous and non-Indigenous Black and racialized study participants reported additional experiences of harassment or violence by police and members of the public in public spaces, based on their Indigeneity or race.

Trans-positive spaces led by and staffed by trans people would help mitigate the reluctance trans clients have to using non trans-specific legal services. Standalone offices led by and staffed by trans people offering legal services are most appropriate for trans clients.

[J] Location and Accessibility of Legal Services

Several *TRANSforming JUSTICE* focus-group and interview participants reported not seeking legal help because they lived outside urban areas. Transportation and accessibility were significant barriers to accessing justice. These participants noted that transportation systems within and to rural and remote areas are insufficient. They and legal service provider focus



group participants also noted the lack of accessible or local legal services in smaller communities and that available services appear to be under-funded and under-resourced. Participants identified the lack of easily accessible trans-competent social services in rural and remote communities as a barrier. People who experienced detention also reported difficulties accessing legal help.

“When you’re going through the system, half the time when you’re in the cells, you don’t have a lawyer, you don’t have access to call a lawyer. They tell you, you do. But you don’t get one.” – *TRANSforming JUSTICE* Trans Two-Spirit/ Indigenous Focus Group Participant

The lack of services that might offer information about legal rights and what issues are legal problems, along with the lack of appropriate support and referrals to legal service providers, on top of a serious shortage of trans-specific online legal resources, means that trans individuals in rural and remote communities often have no way to learn about their legal rights, understand legal processes, or discover trans-competent legal service providers. Urban-based trans participants in focus groups and interviews were more likely to report being able to access appropriate social services, healthcare providers, legal information, and legal services, although their access to services was still limited compared to that of the population in Canada generally.

More could be done to use technology effectively to offer enhanced services for trans people throughout Canada. Yet, the *Reaching Equal Justice* report cautions that using technology to offer more services to more people should not occur at the cost of leaving those more vulnerable behind.¹¹⁴ Not everyone can take full advantage of online resources, due to factors such as limited access to the Internet or computers, low literacy skills, significant privacy concerns — which are heightened for many trans people — and language barriers. The report emphasizes that help from an actual person should be available, in addition to online resources.

[K] Identity Document Issues

TRANSforming JUSTICE trans focus-group and interview participants reported several barriers to obtaining documents that reflect their true identity, which exacerbates their social and economic marginalization.¹¹⁵ Discordant identity documents often impede trans people’s social participation, create additional legal problems, make the legal

More could be done to use technology effectively to offer enhanced services for trans people throughout Canada.

process more inaccessible and imposing, and have serious health and safety impacts. They can affect the ability to obtain employment and housing, and lead to difficulties in obtaining services (e.g., transportation, banking, social services, health services). They can also create legal problems and add to difficulties in obtaining supports to engage with legal processes. Discordant documents can make legal processes longer and more burdensome, more exhausting and traumatic, and compromise the personal safety of trans people because use of a person’s legal name can out them as being trans in situations where they do not want this to occur.

When *TRANSforming JUSTICE* survey respondents (n=121) were asked why they have not changed their identity documents to match their identity, despite wanting to do so, these top reasons were identified:

- cost (45%, n=55)
- other (39%, n=47)¹¹⁶
- fear of being outed as trans to people such as family members or employers (24%, n=29)
- not knowing how (24%, n=29)
- not knowing where to find a commissioner, lawyer, or notary public (23%, n=28)¹¹⁷

TRANSforming JUSTICE interview and focus group participants generally reported similar barriers to changing their identity documentation. Many said they were confused about the process and could not afford the fees. The numerous steps, documentation and information initially required, along with the requirements to subsequently notify multiple institutions and agencies (e.g., schools, former or current employers, government agencies), render the process unnecessarily daunting for many trans people.

“I’ve noticed in [a jurisdiction outside of Canada], they have a legal support group for trans people, that helps them with all that paperwork, and tells them what they have to do, and when they can do it, and I haven’t seen anything like that in Ontario. I think there’s a lot of confusion about what can be done and how you do it. [A trans person’s] legal documentation is a mess right now because half of it is changed and half isn’t, so it would



be nice to have some central place where people could get that information. I think there's even inconsistent rules in government agencies, so you can change some things, and you just can't change others." – *TRANSforming JUSTICE* Legal Service Provider

"That's all legwork and phone work. It takes time out of your life to do just that and explaining it over and over again. I find that in this electronic age I don't know why that, when you change your name or your gender marker the first time, it doesn't send a flag to everybody else, and they do it automatically. It should just take one time." – *TRANSforming JUSTICE* Trans Focus Group Participant

"The name change, which really brings you out of the closet because you go somewhere, you've got to change your name on something, or your gender marker, so there's all that. That's just not even touching the icing on the cake, but, like I said, the name change, the gender marker change, if you're employed, you've got to come out to employers if they don't know you are trans, so there's job, housing, your family, your home, but it's a lot of paperwork just saying this is who I am." – *TRANSforming JUSTICE* Trans Focus Group Participant

TRANSforming JUSTICE interview and focus group participants detailed how having discordant documentation can negatively affect the quality of services they receive in their everyday lives.

"[A]n ambulance has brought me in, so I have no choice I'm brought into this hospital room. And the woman, by the time I got from the check in desk area to the x-ray area, they already were confused as to who I was and I had to re-produce my ID just to have my chart associated with my name. So that was obviously another unwelcoming experience, having to be like, no this is me for god sakes, I'm injured, let me do what I need to do and get out of here." – *TRANSforming JUSTICE* Trans Focus Group Participant

Although specific requirements for parental consent have changed in some jurisdictions, one interview participant explained how, as a youth without parental support, they had to attend court four times to change their name.

"So, at around the age of 16, I decided to pursue my transition, even though it meant getting kicked out of the house. And one of the first things that I needed to do, what I wanted to do that felt like a need, was to get my name changed. And previously, under the

old legal requirements, I needed to have my parents' permission to get my name changed. And because I couldn't do that, the only other option was to go to court and convince the court that I need the name change for necessary safety reasons, and that I don't really have ... and that the family on my birth certificate aren't the ones that are going to be signing it at all." – *TRANSforming JUSTICE* Trans Interview Participant

Discordant identity documentation is an important legal issue that greatly affects trans communities across Canada and requires an effective national solution.

The consequences of discordant documentation can be compounded when interacting with law enforcement, especially for Indigenous, Black and/or other racialized trans people who are also exposed to racial profiling and carding, as discussed in the section about participants' lack of trust in and fear of the legal system.

"[F]or myself being a trans female and Black, I get carded a lot [and then I have to prove that I am trans] and then that leads me to getting arrested. And so I have got arrested based on I said I was trans and because I didn't have any documentation to prove that I'm actually trans, they sent me to jail because they said I was falsely using somebody else's identity and trying to claim it as my own. So if you don't have proper documentation, sometimes that will hurt yourself trying to prove something that you are and the cops saying that you are not. [...] Being carded is the police's way of trying to get information where there is no information. So basically as a Black person going on the street, I could get carded anywhere and the police could just stop me because I'm Black. I don't know how to explain it, it is a system that has been put in place that discriminates against Black folks who get carded a lot." – *TRANSforming JUSTICE* Trans Focus Group Participant

Discordant identity documentation is an important legal issue that greatly affects trans communities across Canada and requires an effective



national solution. Inaccurate documentation is dehumanizing and the state has a responsibility to make name changes accessible.

[L] Onerous Court and Tribunal Processes

Many people are intimidated by the formal legal system of courts and tribunals, and *TRANSforming JUSTICE* identified factors that make legal processes particularly onerous for trans individuals. Focus groups and interviews identified how lengthy legal processes can drain emotional and financial resources, which can be particularly devastating for individuals who are already disadvantaged. Other factors reported to be particularly dangerous and dehumanizing include the length of legal processes, the number of appearances required, and the effects of compounding trauma from past negative experiences.¹¹⁸

Having to appear in court or at a tribunal is particularly intimidating for trans people. Trans identities and misgendering are sometimes weaponized by opposing counsel and parties in court proceedings. When courts don't intervene to end this behaviour, they become participants. As trans people enter a formal legal setting, the court and tribunal personnel, physical setting and laws themselves often use gendered language and a

combined with an overall lack of trans-competency and support from the legal system, are additional barriers and burdens for trans individuals who seek justice through formal legal system processes.

"I have two twin girls that I'm not allowed to see. They are currently 12 years old. I haven't seen them in years. I pay child support every month. I'm not in arrears but she [mother] doesn't want them to have anything to do with me because I'm trans... I went to duty counsel and they told me that, because I'm trans, the possibility of me getting anywhere in court to see my twins... was pretty slim. Since coming out as trans... my ex refused to allow me to see my children... [she] says that she has the right to decide what they can or cannot see. She said that she wants me nowhere near them... She has told me that if I cut my hair like a guy, started behaving like a guy, and just being a guy, then I would be allowed to see my kids." – *TRANSforming JUSTICE* Trans Focus Group Participant

"M: She won her court case? R2: That's all she won. You win your case to lose your life. I'm talking about your social, work life, everything else in the community here. You win the case. You'll lose your life. That's a terrible balance to have to negotiate, just because of who you are." – *TRANSforming JUSTICE* Trans Focus Group Participant

Trans identities and misgendering are sometimes weaponized by opposing counsel and parties in court proceedings.

systematic and rigid reliance on binary language in a way that systemically alienates, excludes and harms trans people. Examples noted by participants in *TRANSforming JUSTICE* included the customary use of binary gendered forms of address (e.g., Mr. or Ms.), conflation of sex and gender, availability of only binary options for identifying gender on intake or assessment forms, and the potential reluctance by courts to accept a social name in place of a legal one.¹¹⁹

TRANSforming JUSTICE trans and legal service provider focus group participants shared examples of trans individuals being outed in court processes and having their trans identities used against them in family law matters. Misgendering and misnaming clients in court or tribunal spaces can also lead to outing trans clients in public domains, thereby jeopardizing their safety. These systemic issues,

"The courtrooms are even designed, like a judge up high looking down on you so they're often designed to be intimidating... Clients coming to me with fairly excellent mental health find that very hard to deal with and are shaken by even being there. I think the thing that I didn't even think until you mentioned it, there are police all around, there are people in uniforms, that you have to go by a security to come in. If you've had bad experiences with police or you feel afraid of police or afraid of institutions because you're different, the first thing you experience walking through the door is be afraid... So if you're a trans person walking through the door, like my goodness, if you've had those bad experiences or look on the news, like we've heard the stories. I can only imagine how they feel walking into



that environment.” – *TRANSforming JUSTICE*
Legal Service Provider Focus
Group Participant

“And the hearings themselves, well, a hearing that goes well is usually one in which a client is reduced to tears because the members tend to grant when they see just how deeply affected people are by the whole process and by their condition.” *TRANSforming JUSTICE* Legal Service Provider Focus Group Participant

All of the *TRANSforming JUSTICE* trans focus group participants who identified going through legal processes associated with immigration or refugee law matters, as well as all (n=5) legal service providers who had assisted trans clients with such matters, reported experiences of racism by Immigration, Refugees and Citizenship Canada staff, Immigration and Refugee Board of Canada (IRB) members, and Canada Border Services Agency (CBSA) staff. Trans people and legal service providers reported difficulties before the IRB due to the refusal of some countries to issue documents with peoples' correct gender identity, as well as general barriers to obtaining correct identity documents in Canada due to the refusal of some countries to release any identity documents. Legal service provider focus group participants noted concerns with IRB members understanding trans identities, despite policy documents produced for their guidance. They further remarked on the need for country condition reports regarding discrimination and persecution facing trans people as well as for experts who can speak to trans needs and issues.

TRANSforming JUSTICE legal service provider focus group participants who work with trans clients on immigration or refugee law matters noted that some trans people experience so much discrimination, violence and shame in their countries of origin that they do not want to disclose their trans identities to their lawyers even when the reason they fled to Canada was related to trans

violence. Canadian law reform efforts in the area of sexual assault have recognized that legal processes that involve telling and re-telling of traumatic experiences in a public setting can be re-traumatizing, especially for survivors of sexual violence. Given the prevalence of sexual violence experienced by trans people, this body of research should be considered in this context.¹²⁰

In many parts of Canada, some long overdue changes have finally been implemented, after much advocacy by trans people. Although approaches have varied, courts in BC, ON, MB, NS, YK, as well as several administrative tribunals have indicated the means by which lawyers are to state pronouns and forms of address for counsel, clients, witnesses and other individuals at the beginning of a proceeding.¹²¹ The civil adjudication system has been changed to make it easier for more people to access (e.g., simplifying procedures for some matters).¹²² These are positive steps. But more must be done to make legal systems and associated services accessible for trans people and other equity-seeking groups and to make legal processes, like immigration and refugee proceedings and those related to reporting experiences of sexual violence, less onerous and harmful. Court and tribunal based strategies to identify and remove barriers to access for trans people, and periodic inclusivity reviews, would be important steps to address the experiences that tend to compound, rather than alleviate, discrimination faced by trans people when they seek help from formal legal systems. Moreover, early preventative intervention and resolution processes, as opposed to only court- and tribunal-based processes, must be implemented to effectively respond to the legal needs of trans people.

More must be done to make legal systems and associated services **accessible for trans people** and other equity-seeking groups.

discrimination or persecution. People may also have difficulty substantiating their trans identities in their countries of origin because, due to safety and privacy concerns, they did not live their lives openly, and may have ongoing safety and privacy concerns where they may not be living openly in Canada.

Many *TRANSforming JUSTICE* participants report past experiences of physical and sexual



**“I think we’re so beat up
that when we’re forced
into these situations...
we’re already defeated
before we even start
a process.”**

TRANSforming JUSTICE Trans Focus Group Participant





05 Recommendations

The recommendations in this report were prepared by the Canadian Bar Association (CBA) Access to Justice Subcommittee and Sexual Orientation and Gender Identity Community Section (SOGIC), the HIV & AIDS Legal Clinic Ontario (HALCO) and *TRANSforming JUSTICE: Trans Legal Needs Assessment Ontario (TRANSforming JUSTICE)* Research Team, with assistance from the CBA Advocacy Department. It is this collaborative group's intent that the report inform discussions and actions.



Our recommendations to address the barriers outlined above are animated by five key factors:

1. Trans people must be supported to lead the further development and implementation of all recommendations, as well as the development of materials, tools, etc., associated with the recommendations.
 2. An intersectional lens that accounts for the different experiences of trans people with different identities and circumstances must be employed at all stages of further development and implementation of the recommendations.
 3. Without income, housing, and access to appropriate health and social services, trans people's lives will simply not improve.
 4. Tinkering with rules, policies, laws or regulations is not enough. Rather, law reform and systemic change is necessary as many of the root causes of people's legal issues stem from past and current rules, policies, laws, regulations and systems. As part of this reform, early preventative intervention and resolution processes, as opposed to only court- and tribunal-based processes, must be implemented to effectively respond to the legal needs of trans people.
 5. This work must be done in a way that respects the sovereign rights of the Indigenous Peoples of Canada, incorporates Indigenous justice approaches and responds to Calls to Action of the Truth and Reconciliation Commission of Canada and Calls for Justice of the National Inquiry into Missing and Murdered Indigenous Women and Girls. Indigenous trans and/or Two-Spirit people must be supported to take the lead on this essential work.
4. Trans people should be supported to lead initiatives to address the discrimination they face in the legal profession.
 5. Legal educational institutions should educate all staff and faculty on trans identities and ensure that trans students, staff and faculty are treated with respect and dignity.
 6. Legal educational institutions should include trans-specific content in courses that address ethics, client and practice management, as well as substantive legal areas that impact trans populations. Whenever possible, this content should be developed and delivered by trans people.
 7. The Federation of Law Societies of Canada and law societies should update the codes of professional conduct to make it explicit that intentionally deadnaming, misgendering or mistreating the personal information of trans people is a breach of a lawyer's professional responsibility, and enforce existing rules calling for non-discrimination and civility.
 8. Law societies should update their practice resources, legal profession admission programs, checklists, and continuing education requirements to improve the level of trans competency and awareness among lawyers, as well as knowledge of trans-specific substantive legal issues.
 9. Law societies should update their databases so lawyers can list their pronouns, titles and correct names to avoid misgendering and deadnaming.
 10. Legal professionals should actively participate in changing the culture of the profession to combat endemic transphobia affecting trans clients, trans lawyers and students.

Support for trans legal professionals

Trans people should be encouraged, supported, mentored and funded to complete legal training. Trans people should be supported to lead initiatives intended for or affecting their communities.

Recommendations

1. Trans people should be supported to lead initiatives involving trans people and trans issues.
2. Legal educational institutions should fund endeavours to recruit students from trans communities.
3. Legal educational institutions should offer comprehensive funding and resources,

Professional training

All actors in the legal system, as well as health care providers, should be educated on trans identities.

Recommendations

11. Law societies in Canada should require at least three hours of mandatory equity, diversity and inclusion training per reporting cycle, including one hour of trans-competency training.¹²³
12. All courts and administrative tribunals should implement policies related to the use of pronouns, language and titles, including those related to safety and confidentiality.¹²⁴



13. All judges and court staff, as well as interpreters assisting clients or appearing in courts, should receive mandatory and ongoing trans-competency training.
14. All administrative tribunal staff, as well as interpreters assisting clients or appearing in tribunals, should receive mandatory and ongoing trans-competency training.
15. Legal educational institutions should integrate education and training on trans issues into their curriculum.
16. Law societies should assess competence on trans issues as part of bar and paralegal admission.
17. Federal, provincial and territorial governments should require and fund ongoing trans-competency training tailored for legal aid employees (including but not limited to lawyers), legal clinics, private practice lawyers and paralegals.
18. Regulatory bodies for healthcare professionals across Canada should require at least three hours of mandatory equity, diversity and inclusion training per reporting cycle, including one hour of trans-competency training.
19. Federal, provincial, territorial and municipal governments should require that public servants complete mandatory and ongoing trans-competency training.¹²⁵

Legal Services

Many trans people don't have access to accurate, trans-specific legal information and legal services. The legal services required include legal advice, representation and referrals, as well as community development and law reform activities. This need should be met.

Recommendations

20. Federal, provincial and territorial governments should ensure adequate and sustainable funding for legal aid services across Canada, particularly in Indigenous and racialized communities.
21. Federal, provincial and territorial governments should fund trans-led legal clinics for trans people, funded by, but independent of, government, that provide free legal services.
22. Federal, provincial and territorial governments should fund remote legal services for trans clients. When needed, travel costs and access to data and hardware should be properly funded to increase the range of legal services.

Improved Public Accountability and Transparency

Trans people's living experiences expose systemic barriers embedded in and created through rules, policies, laws, regulations, systems, programs and organizations. Public organizations that play a role in trans people's experience of justice need to improve their transparency and public accountability, with increased monitoring and course-corrective measures to improve trans inclusion.

Recommendations

23. Public and private entities should be held accountable for existing systems and individual exclusions based on gender identity or expression and made to correct them. Public and private entities should critically assess their policies and practices, report publicly on their findings, implement course-corrective measures and report publicly on progress made.

Inclusive courts and administrative tribunals

Trans people should be able to access the legal system without fear of being forcibly outed, experiencing assault, misgendering or misnaming. Courts and tribunals should be safe for trans people to work at or interact with.

Recommendations

24. All courts and tribunals should:
 - update their standard practices to include pronouns and titles to be used in the proceedings when participants are introduced.
 - adopt Counsel as a title for all lawyers rather than continuing the use of gendered titles for lawyers.
 - adopt gender-neutral language for official court positions, such as "Justice", to avoid gendered alternatives, such as "Madame Justice" or "Madame Clerk", creating a safer environment for gender-diverse individuals who want to be appointed to court positions, or potentially come out at work.
 - use a gender-neutral and gender-inclusive writing style.



- assess their facilities for safe, accessible washrooms and robing rooms for trans people, including non-binary people.
 - review their internal communications policies to ensure that all emails going in or out of the court include pronouns and inclusive language.
 - review their hiring practices for staff and clerks to ensure that gender norms do not lead to the exclusion of qualified trans candidates.¹²⁶
25. Those courts and tribunals with existing practice directives and notices to the profession about pronouns and styles of address should enforce them and prevent the use of courts and court processes to out, deadname, and misgender trans legal participants.

Employment Equity Law Reform

Ongoing employment discrimination excludes trans people from employment. Additional safeguards should protect trans people from discrimination in the workplace.

Recommendations

26. All employment equity related legislation in Canada should explicitly protect all people who face gender-based marginalization, which includes trans people of all identities.¹²⁷

Criminal Law Reform

The law itself causes many problems for trans people. Reform is required, in consultation with the communities most impacted. All such reform should be informed by an intersectional equity, diversity and inclusion analysis.

Recommendations

27. The federal government should eliminate mandatory minimum sentences.
28. The federal government should adopt a spent regime model, where an individual's record is automatically sealed after a certain time.
29. The federal government should amend criminal laws that contribute to the criminalization of trans people including in the areas of HIV non-disclosure, sex work and drugs, in consultation with trans people living with HIV, trans people engaged in sex work, and trans people who use drugs.

30. All levels of police service including the CBSA should be compelled to stop targeting, carding and over-policing trans people.

Identification documents

Many government administrative regimes related to identity documents are based on harmful stereotypes about trans people and include unnecessary barriers such as onerous proof of identity, prohibitive costs, and gatekeeping by lawyers, notaries, commissioners and doctors. This deprives many trans people of access to ID, which is not only discriminatory and dehumanizing, but impacts full participation in society. Updating ID should be as easily accessed as updating one's address.

Trans people must be issued identity documents that reflect their identity

Recommendations

31. Provincial, territorial and federal governments should immediately amend their current practices for issuing identity documents to address barriers trans people experience, including onerous application processes, a lack of coordination between government ministries, and parental consent requirements.
32. Fees associated with issuing or amending identity documents should be waived for everyone, particularly Indigenous trans and/or Two-Spirit people who want to reclaim their family lineage names.
33. Reparations for the consequences of requiring sterilizing genital surgery as a prerequisite for updating gender markers should be paid.
34. Indigenous trans and/or Two-Spirit people should be supported to reclaim Indigenous names. To assist with this, governments should, among other things:
- update their systems to Unicode so identity documents and other records can be produced showing characters not in the Latin alphabet (such as characters in Indigenous languages), and diacritic marks (which indicate pronunciation);
 - amend name legislation to allow for single-word names.
35. Provincial and territorial government agencies should end the requirement for the mandatory assignment of sex or gender on birth records, and all government records, and should remove current requirements for compulsory display of sex or gender markers on government identification.



36. Citizenship should not be a barrier to obtaining or updating identity documents.
37. Regardless of the status of a trans person's identity documents, all levels of government, legal service providers, courts and tribunals should:
 - adopt the language and gender markers trans people request and provide access to required services and facilities, such as washroom and changerooms;
 - update procedures and data management practices to protect trans people from being outed.

Finances, housing, health and social services

Trans people have statistically lower incomes than other people in Canada and often encounter discrimination, including in employment and housing. Many lack financial, social and emotional support as a result of their isolation from family. Trans people should have access to trans-informed social services.

Recommendations

38. Federal, provincial and territorial governments should implement programs to ensure income security for all¹²⁸ trans people.
39. Federal, provincial and territorial governments should implement programs to ensure affordable housing for all¹²⁹ trans people.
40. Federal, provincial and territorial governments should ensure adequate funding for trans health, including mental health, and social services for all¹³⁰ trans people.





06

Conclusion

The findings of the *TRANSforming JUSTICE* study demonstrate the significant and pervasive barriers and burdens encountered by trans people when they seek help with legal issues. In conjunction with other well-documented problems such as over-policing, threats to personal safety, economic hardship, and isolation from families, the need for improvements in access to justice for trans people is particularly acute.

Instead of encouraging trust in the legal system so that trans people feel safe and are protected, fairly treated and empowered by legal institutions and actors, the legal system can compound injustice, discrimination and social isolation at every juncture – or can itself be the very source of people’s legal problems.

It is clear that existing legal processes do not offer adequate solutions to trans people’s legal problems, and many avoid the legal system altogether because participating in the legal system necessarily involves discrimination and, at times, danger. This report is intended to place responsibility for change on the legal system and its players, and to recommend concrete measures to motivate action toward a legal system that is truly human rights based.



Annexes and Endnotes



Annexes

ANNEX A: Glossary of terms

The following definitions are borrowed from the Government of Canada, the Ontario Human Rights Commission, the Human Rights Campaign, and Egale.¹³¹ This glossary was written to help readers understand the concepts used throughout the report. Trans people and other members of the 2SLGBTQIA+ community use a variety of terms to identify themselves, not all of which are included in this glossary. Usage of specific terms varies and best practices are ever-evolving.

Agender	A person who identifies as neither a woman nor a man, either having no gender or a neutral gender identity.
Asexual	A person who does not experience sexual attraction, or who has little to no interest in sexual activity, often expressed on a spectrum.
Aromantic	A person who does not experience romantic attraction, or who has little to no interest in romantic connection, often expressed on a spectrum.
Androgynous	A word to describe a behaviour, trait, or style of expression that either blends both masculine and feminine forms of expression, or is culturally read as gender-neutral.
Bisexual	A person who experiences attraction to both people of their own gender and people of gender different from their own.
Cis/Cisgender	A person whose gender identity corresponds with what is socially expected based on their sex assigned at birth (e.g. a person who was assigned male at birth and identifies as a man).
Cisnormativity	The assumption that it is normal for a person's gender identity and expression to "match" the sex they were assigned at birth. This assumption overlooks the reality of sex and gender variance – trans people, intersex, and diverse gender expressions by cisgender people as well.
Coming out	The process in which a person begins to share their sexual orientation and/or gender identity with others.
Demisexual	A person who experiences sexual attraction to someone only after developing an emotional or intellectual connection with them.
Femme	An identity or presentation that leans towards femininity. Femme can be an adjective (he's a femme boy), a verb (she feels better when she "femmes up"), or a noun (they're a femme). Although commonly associated with feminine lesbian/queer women, it's used by many to describe a distinct gender identity and/or expression and does not necessarily imply that one also identifies as a woman or not. ¹³²
Gay	A person who experiences attraction to people of the same gender as themselves. Gay may be used by individuals of a diversity of genders, or may refer specifically to men who are attracted to other men.
Gender	The socially constructed roles, behaviours, expressions and identities of girls, women, boys, men and non-binary people. Gender is usually understood as binary (girl or woman, and boy or man), yet there is considerable diversity in how individuals and groups understand, experience and express gender.
Gender equality	Gender equality refers to equal rights, responsibilities and opportunities for women, men and non-binary people. Equality refers to the state of being equal while equity refers to the state of being just, impartial or fair. However, equality of opportunity by itself does not guarantee equal outcomes for women, men and non-binary people.



Gender equity	Gender equity refers to fairness, impartiality and justice in the distribution of benefits and responsibilities between women, men and non-binary people. Unlike gender equality, which simply provides for equality of opportunity, gender equity explicitly recognizes and actively promotes measures to address historical and social disadvantages. By “levelling the playing field,” gender equity creates circumstances through which gender equality can be achieved. Gender equity means providing all social actors with the means to take advantage of equality of opportunity.
Gender expression	External expression of gender through behavior, clothing, mannerisms, body characteristics or voice, and which may or may not conform to socially defined behaviors and characteristics typically associated with being either masculine or feminine. Gender expression may or may not align with what is socially expected based on either sex assigned at birth or gender identity.
Gender fluid	A person who does not identify with a single fixed gender or has a fluid or unfixed gender identity.
Gender identity	One’s innermost concept of self as male, female, a blend of both or neither – how individuals perceive themselves and what they call themselves. One’s gender identity can be the same or different from what is socially expected based on their sex assigned at birth.
Genderqueer	Genderqueer people typically reject notions of static categories of gender and embrace a fluidity of gender identity and often, though not always, sexual orientation. People who identify as “genderqueer” may see themselves as being both male and female, neither male nor female or as falling completely outside these categories.
Gender transition	The process by which some people strive to more closely align their internal knowledge of their own gender with its outward appearance. Not every trans person goes through a transition process and transitions may include either social or medical transition, or both. A social transition may include beginning to dress, use names and pronouns, and/or be socially recognized as another gender. A medical transition may include modifying one’s body through medical interventions such as surgeries and hormone treatment.
Heterosexual	A person who experiences attraction to people of a different gender. Also referred to as “straight”.
Homophobia	The fear and hatred of, or discomfort with, people who are attracted to members of the same sex.
Intersex	A person whose chromosomal, hormonal, or anatomical sex characteristics fall outside of the conventional classifications of male or female.
Lesbian	A person who identifies as a woman and experiences attraction to people of the same gender.
Nonbinary	An umbrella term to reflect a variety of gender identities that are not exclusively man or woman, and may be neither. Identity terms which may fall within this category include genderqueer, agender, bigender, genderfluid, or pangender.
Outing	Exposing someone’s lesbian, gay, bisexual transgender or non-binary identity to others without their permission. Outing someone can have serious repercussions on employment, economic stability, personal safety or religious or family situations.
Pansexual	A person who experiences attraction regardless of gender.
Queer	This term has been reclaimed by some 2SLGBTQQIA communities as a term of pride and affirmation of diversity. It can be used to encompass a broad spectrum of identities related to sex, gender, and attraction or by an individual to reflect the interrelatedness of these aspects of their identity. The term remains derogatory to some individuals, so is best only used after a person or community has self-identified as queer.



Sex	A set of biological attributes in humans and animals that is primarily associated with physical and physiological features including chromosomes, gene expression, hormone levels and function, and reproductive and sexual anatomy. Sex refers to a person's biological and physiological characteristics. A person's sex is most often designated by a medical assessment at the moment of birth or pre-birth based on ultrasound images. This is also often referred to as birth-assigned sex or sex assigned at birth.
Sexual orientation	An inherent or immutable enduring emotional, romantic or sexual attraction to other people. Note: an individual's sexual orientation is independent of their gender identity.
Two-spirit (2S)	The term "Two-Spirit" comes from a Native American/First Nations gay and lesbian conference in 1990, and was chosen to be a culturally appropriate umbrella term for First Nations that could replace the more derogatory term of "berdache." It is used to reflect and restore Indigenous traditions forcefully suppressed by colonization, honouring the fluid and diverse nature of gender and attraction and its connection to community and spirituality. It is used by some Indigenous People rather than, or in addition to identifying as 2SLGBTQIA.
Trans/Transgender	A person whose gender identity does not correspond with what is socially expected based on their sex assigned at birth. It can be used as an umbrella term to refer to a range of gender identities and experiences.
Transitioning	A series of processes that some transgender people may undergo in order to live more fully as their true gender. This typically includes social transition, such as changing name and pronouns, medical transition, which may include hormone therapy or gender affirming surgeries, and legal transition, which may include changing legal name and sex on government identity documents. Transgender people may choose to undergo some, all or none of these processes.



ANNEX B: TRANSforming JUSTICE: Trans Legal Needs Assessment Ontario (TRANSforming JUSTICE) and Reaching Equal Justice Methodology

[A] TRANSforming JUSTICE

TRANSforming JUSTICE is a mixed-method research study grounded in an access to justice framework that sought to identify the legal needs of trans people in Ontario. Its data is foundational to this report. It attempted to address a research deficit on this vital topic by surveying, interviewing and reporting on justiciable¹³³ legal problems experienced by trans people. *TRANSforming JUSTICE* was led by HALCO in partnership with the University of Toronto, Western University, and Toronto Metropolitan University, and funded by Legal Aid Ontario and the Ontario HIV Treatment Network.¹³⁴ Information about *TRANSforming JUSTICE* as well as initial results are in Summary Report One: Legal Problems Facing Trans People in Ontario (Summary Report One).¹³⁵ *TRANSforming JUSTICE* captured the lived experiences of trans respondents in Ontario, including some of their recommendations for how to address the barriers they face.

From May 2016 to February 2017, *TRANSforming JUSTICE* collected data from trans people and legal service providers in Ontario. Ethics approval was obtained through the research ethics board at the University of Toronto.

TRANSforming JUSTICE was guided by four committees:

- Trans Community Consultation and Outreach Committee (TCCOC)
- Legal Service Provider Consultation and Outreach Committee (LSPCOC)
- Social Service Provider Consultation and Outreach Committee (SSPCOC)
- Court and Tribunal Consultation and Outreach Committee (CTCOC)

The study attempted to document the range, nature and extent of legal problems experienced by trans people, and to identify common access to justice barriers for trans people:

- structural barriers in the legal system.
- structural barriers outside the legal system.
- reasons trans people may not seek legal help or access the legal system initially, and/or abandon legal processes.
- unequitable access to fair decision-making.

TRANSforming JUSTICE also explored the ripple

effects that justiciable legal problems frequently had on trans people's lives, including their finances, relationships and mental and physical health.

Individual trans people aged 16-years or older and living in Ontario responded to an online survey, and of the 232 respondents, 182 completed the module of the survey that specifically addressed legal problems. The *TRANSforming JUSTICE* Research Team conducted 13 focus groups with 125 trans participants, and nine focus groups with 82 legal service providers (including lawyers, community legal clinic workers and paralegals). The trans focus groups took place in nine locations across Ontario. Specific focus groups occurred for Indigenous trans and/or Two-Spirit people, Black and/or other racialized people, and those living with HIV. In addition, 19 trans people living with or affected by HIV were individually interviewed.¹³⁶

Recruitment materials were circulated by TCCOC, LSPCOC, and SSPCOC members through trans-specific community, medical, and social services organizations and programs, social media and at a number of trans community events. Legal service providers were recruited by members of LSPCOC and through professional associations. Recruitment efforts resulted in a diverse convenience sample, including with respect to Indigeneity, ethno-racial group, age, gender, and disability status.¹³⁷

Specific community-involved recruitment, led by trans recruiters, also took place to increase participation of Indigenous trans and/or Two-Spirit people, Black and/or other racialized persons, and people living with HIV. It was particularly challenging to recruit trans individuals living with HIV as committee members or study participants. Members of TCCOC advised that trans individuals living with HIV that were approached reported being too afraid of being outed as living with HIV to participate. As a result, one-to-one interviews for trans individuals affected by HIV also were conducted to ensure more privacy.

To understand current legal problems affecting trans communities in Ontario, questions in the survey (two of six survey sections), trans focus groups (one question out of thirteen), and individual interviews (one question out of thirteen) were modeled after a telephone study by the Canadian Forum on Civil Justice (CFCJ) on justiciable legal problems.¹³⁸ This national study investigated legal problems that individuals had experienced within a three-year window between 2009 and 2013.



Using these questions allowed a comparison of the frequencies of experiences of legal problems among trans people in Ontario to frequencies from the general population in Canada.¹³⁹

Trans focus group participants received an honorarium for their participation as well as food, beverages and travel costs. After each focus group with trans participants, the project lead presented a workshop on trans legal rights. As well, after each focus group with lawyers and paralegals, the project lead presented a workshop on trans competent legal service. In each of the nine locations, the trans focus group took place before the legal service provider focus group so that local and specific issues brought up in the trans focus group could be translated to lawyers in that area.

Of the 232 trans survey respondents, 39% (n=90) identified as trans women, 35% (n=81) as trans men, 14% (n=33) as non-binary – assigned female at birth and 12% (n=28) as non-binary – assigned male at birth. These categories do not adequately capture the range of diversity within and across trans communities and of survey participants. Rather, they were chosen to help identify possible similar treatment or shared experiences of justiciable legal problems. It is important to note that survey participants were also asked to self-identify in their own words, and that no two self-descriptions were identical, highlighting the diversity of trans people in Ontario. In terms of age, 27% (n=63) identified as being aged 16-24, 31% (n=72) as 25-34, 29% (n=67) as 35-54, 10% (n=23) as 55-64, and 3% (n=7) as 65 or older. In addition, 20% (n=46) identified as a person with a disability.

The study also included experiences of Indigenous trans and/or Two-Spirit people, Black and/or other racialized trans individuals and trans people affected by HIV. Fourteen percent (n=32) of survey respondents were Indigenous,¹⁴⁰ 4% were non-Indigenous Black¹⁴¹ (n=10), 10% were other non-Indigenous racialized (n=22),¹⁴² and 72% (n=168) percent were non-Indigenous white. These categories were chosen as they yielded statistically significant results and revealed shared experiences of oppression. As the categories do not adequately capture the range of diversity within and across trans communities and of survey participants (e.g., identities such as Afro-Indigenous would be excluded, although no participants in *TRANSforming JUSTICE* self-identified as such), thirteen categories¹⁴³ were included in the survey and participants were asked to self-identify in their own words and indicate if they were perceived as racialized by other people. Some participants, for example, chose Indigenous and white European categories while self-identifying as white.

A question about immigration status was answered by 211 survey respondents. Ninety-five percent

(n=201) of those who responded to the question reported that they were Canadian citizens. Eight percent (n=16) of survey respondents reported that they had obtained permanent resident status in the last three years, 5% (n=11) indicated that they obtained Canadian citizenship in the last three years and 2% (n=5) reported that they obtained refugee status in the past five years.

There were 125 trans focus-group participants. Overall, on intake forms, 15 of the 125 focus group participants identified as Indigenous and 15 identified as racialized. Eleven participants engaged in the racialized trans focus-group, and four participated in the Indigenous trans focus group. Twenty-nine participants did not answer these intake questions on their forms. Additionally, there were 19 interviews with trans individuals impacted by HIV. Among those, five identified as Black, Indigenous and/or racialized, with the remaining identifying as white.

The research team acknowledges limitations in the data relating to certain populations, including those with various gender identities other than cisgender, Indigenous trans and/or Two-Spirit people, Black and other racialized people, individuals living with HIV, youth, older people, persons with disabilities, and individuals with no or precarious immigration status. As a result, it is not always possible to include findings in relation to these various populations in this report. As noted earlier, it is important that further research and action be taken in relation to the various issues facing these populations.

It should be noted that due to convenience sampling and the sample size of the survey, the findings cannot be generalized. However, the data can identify the issues that are surfacing from trans communities. As well, findings from this study mirror larger studies indicating that these identified issues are likely pervasive and important to pay attention to.¹⁴⁴

[B] Reaching Equal Justice

In 2011, the CBA launched the Equal Justice Initiative to bring together legal system participants to develop a new strategic framework for improving access to justice across Canada. This work focussed on the general population in Canada and was not trans specific.

The consultations yielded five discussion papers: (i) access to justice metrics; (ii) national standards for legal aid; (iii) legal aid service delivery innovations; (iv) tension between pro bono and legal aid; and (v) underexplored options for ensuring access to justice for middle class people in Canada. Finally, the *Envisioning Equal Justice Summit* in April 2013 brought together 250 lawyers,



community advocates, judges, paralegals, law foundations and law societies, and members of the public to discuss the papers and identify strategies for action. The *Reaching Equal Justice* report¹⁴⁵ is the result of this work.

The project began by identifying four major impediments to substantive progress in terms of improving access to justice: (i) shortfalls in information; (ii) lack of political will and public awareness; (iii) insufficient coordination and collaboration; and (iv) the absence of tools to measure progress or define what is meant by access to justice.

At the outset, the Equal Justice Initiative recruited a national network of collaborators¹⁴⁶ who organized 13 community consultations in Calgary, Saskatoon, Toronto, Montréal and the Maritimes with various equity-seeking populations. Local lawyers and community partners were instrumental in helping to organize and facilitate these consultations, linking the CBA to community members who attended and shared their often-painful experiences. The CBA and Pro Bono Students Canada, with support from the Canadian Forum on Civil Justice, collected additional public feedback from video interviews with members of the public. The legal aid plans across Canada helped identify legal aid lawyers and other service providers, who were asked to complete surveys.

Four themes emanated from the consultations:

- Legal rights are only on paper.
- Justice systems cannot be trusted.
- Justice systems are person-dependent.¹⁴⁷
- Justice systems are difficult to navigate.¹⁴⁸

Based on these results and the discussions at the Envisioning Equal Justice Summit, the *Reaching Equal Justice* report put forward a strategy for reform, which it illustrated as three lanes on a bridge to equal justice:¹⁴⁹

- *Facilitating Everyday Justice*, which requires (i) recognition that there are many paths to justice; (ii) finding ways to deal with a larger number of legal problems through a larger range of mechanisms; and (iii) shifting attention “far upstream from the courts” by investing in timely intervention and preventative services. Facilitating everyday justice means improving legal capability, taking legal health seriously, enhancing triage and referral systems to navigate paths to justice and taking active steps to ensure that technology is well used to facilitate equal, inclusive justice.¹⁵⁰
- *Reinventing Service Delivery*, which includes not only bolstering legal aid but (i) ensuring the most effective delivery of both private and

public legal services; (ii) achieving a consensus on where responsibility for meeting legal needs falls on this spectrum, from private to public service deliverers; and (iii) reaching a better understanding of the structure and role of service providers in the middle area between private and public services.¹⁵¹

- *Transforming Formal Justice*, which includes implementing more effective court-based triage and referral solutions, developing specialized courts in appropriate cases and in conjunction with community-based justice models, and developing a range of judicial dispute resolution mechanisms.¹⁵²

In the end, the *Reaching Equal Justice Report* sought to provide a common strategy to guide legal system actors in their efforts to improve access to justice.



Endnotes

Overview

- 1 *TRANSforming JUSTICE* is a mixed-method research study grounded in an access-to-justice framework that sought to identify the legal needs of trans people in Ontario. A specific component of the research focused on trans people living with or affected by human immunodeficiency virus (HIV), and specific attention was also paid to the experiences of Indigenous as well as Black and other racialized people. Data from *TRANSforming JUSTICE*, some of which was first released in 2018 (see footnote 2) is foundational to this report. It is important to note that the research team acknowledges limitations in the data relating to various populations, including those with various gender identities other than cisgender, Indigenous trans and/or Two-Spirit people, Black and other racialized people, individuals living with HIV, youth, older people, persons with disabilities, and individuals with no or precarious immigration status. As a result, it is not always possible to include findings in relation to these various populations in all sections of this report. See Annex B for information about the study and its methodology.
- 2 The team consists of Dr. Greta Bauer, Professor, Department of Epidemiology & Biostatistics, Western University, Dr. David J. Brennan, Professor, Factor-Inwentash Faculty of Social Work, University of Toronto, Dr. William Hébert, Assistant Professor, Department of Law and Legal Studies, Carleton University, Dr. Julie James, Assistant Professor, School of Child and Youth Care, Toronto Metropolitan University, Nicole Nussbaum (Project Lead), Legal Aid Ontario lawyer seconded to HALCO, and Ryan Peck, Executive Director/Lawyer, HALCO.
- 3 This report was informed by the findings contained in J. James, G. Bauer, R. Peck, D. Brennan & N. Nussbaum, *Legal Problems Facing Trans People in Ontario TRANSforming JUSTICE Summary Report 1(1)* (Toronto: HALCO, September 6, 2018), as well as previously unpublished findings from the *TRANSforming JUSTICE* study dataset. Dr. William Hébert provided the data analysis for the section on identity documents, and Dr. Julie James provided the data analysis for the remaining sections of the report that include findings from the *TRANSforming JUSTICE*.
- 4 CBA Access to Justice Committee, *Reaching Equal Justice: An Invitation to Envision and Act* (Ottawa: CBA, 2013) (*Reaching Equal Justice*). In 2011, the CBA launched the Equal Justice Initiative to bring together legal system participants to develop a new strategic framework for improving access to justice across Canada. This work focussed on the general population in Canada and was not trans specific. *Reaching Equal Justice* is the report that came out of the Equal Justice Initiative, and it includes a strategy for improving access to justice across Canada. See Annex B for information about the study and its methodology.
- 5 The recommendations within this report focus on certain actionable items that can improve access to justice for trans people within Canada's legal system. As the legal system itself is the root cause of many trans peoples' problems, and as effective solutions are generally not arrived at through the system, broader and deeper law and policy reform is required. Since this report was initially drafted, two research projects focusing on the experience of trans people accessing justice were released: *2STNBGN Perspectives on Access to Justice: A Legal Needs Assessment* (soon to be published on the JusticeTrans website) and The Department of Justice's *A Qualitative Look at Serious Legal Problems: Trans, Two-Spirit, and Non-Binary People in Canada*. The Center for Gender and Sexual Health Equity also collected data for a community-based research project that aims to document and understand how women, Two-Spirit, trans and non-binary survivors of gender-based violence can access safe and responsive justice (See webpage). Other access to justice research that does not focus on trans people include Trevor Farrow & Lesley A. Jacobs, *The Justice Crisis: The Cost and Value of Accessing Law* (Vancouver: UBC Press, 2021); T.C.W. Farrow, "What is Access to Justice?" (2014) 51:3 *Osgoode Hall Law Journal* 957-988; L.T. Doust, *Foundation for Change* (Vancouver: Public Commission on Legal Aid, March 2011); M. Buckley, *Moving Forward on Legal Aid* (Ottawa: CBA, 2011); National Action Committee, *Roadmap for Change* (Toronto: Canadian Forum for Civil Justice, 2013).

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- 6 Farrow T., et al, *The Justice Crisis: The Cost and Value of Accessing Law*, *Ibid*.
- 7 See Annex A for a glossary of terms. The usage of the word "trans" and identities encompassed within it varies and is evolving. We acknowledge that Two-Spirit is claimed by some Indigenous persons who may also self-identify as trans, but that the term should not be conflated with Western sexuality and gender identities. See Harlan Pruden & Travis Salway, "What and who is Two-Spirit? in Health Research" (Ottawa: Canadian Institutes of Health Research: Meet the Methods Series, October 2020).
- 8 Ontario Human Rights Commission. (2014). Policy on discrimination because of Gender Identity and Gender Expression (978-1-4606-3900-9). Toronto, Ontario: Canada. G.R. Bauer, R. Hammond, R. Travers, M. Kaay, K.M. Hohenadel & M. Boyce, "I don't think this is theoretical; this is our lives": how erasure impacts health care for transgender people. (2009) 20(5) *Journal of the Association of Nurses in AIDS Care* 348-361.
- 9 Samuel Singer, "Trans Rights in Canada: Canadian Case Law and Legal Scholarship from 1973 to 2019" (Ottawa: Canadian Human Rights Commission, 2020) at 6. For a few examples from the US, see a [White House Fact Sheet](#) on trans issues, [Funders for LGBTQ](#), [The New York Times's transgender issues column](#) and the [National Center for Transgender Issues](#). For an international progress report for Europe and Central Asia, see the [EU Trans Rights Map](#).
- 10 Crenshaw, K. (1991). Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color. *Stanford Law Review*, 43(6), 1241-1299.
- 11 Bauer & Scheim, 2015; Coulter et al., 2017; Dinno, 2017; James et al., 2016; Johns et al., 2019; Krüsi et al., 2018; Loerger et al., 2015; Lyons et al., 2017; Perry & Dyck, 2014; Reisner, 2016; Russell, 2020; Taylor et al., 2019; Valente et al., 2020; Veale et al., 2015; Walters et al., 2020. Please see reference list for relevant articles, reports, and links to these documents. Several websites also include various research findings, reports, and articles, for eg. [TransPULSE project](#); [TransYouthCAN!](#), and the [Trans Murder Monitoring Project](#).
- 12 See, C. Chih, et al, *supra* note 4. See also, Coulter et al, *Ibid*; James et al, *Ibid*; Lyons et al, *Ibid*; Valente et al, *Ibid*.
- 13 William Hébert, Nora Butler Burke, Tara Santini, Frank Suerich-Gulick & Daphne Barile, *A Qualitative Look at Serious Legal Problems: Trans, Two-Spirit, and Non-Binary People in Canada* (Ottawa: Justice Canada, 2022) (A Qualitative Look). For evidence from a large Canadian survey, see J. Navarro, T. Ferguson, C. Chih, A. Jibril, M. Khatoun, S. Inkingi, D. Beaulieu-Prévost & P. Thaker, for the Trans PULSE Canada Team, [Health and well-being among trans and non-binary immigrants & newcomers](#) (2021-03-23); C. Merasty, F. Gareau, R. Jackson, R. Masching & S. Dopler for the Trans PULSE Canada Team, [Health and well-being among Indigenous trans, two-spirit and non-binary people](#) (2021-02-11); C. Chih, J. Q. Wilson-Yang, K. Dhaliwal, M. Khatoun, N. Redman, R. Malone, S. Islam & Y. Persad for the Trans PULSE Canada Team, [Health and well-being among racialized trans and non-binary people in Canada](#) (2020-11-2); J. Navarro, F. Johnstone, J. Temple Newhook, M. Smith, j Wallace Skelton, K. Prempeh, L. S., C. Lopez, A. Scheim & G. Bauer for the Trans PULSE Canada Team, [Health and well-being among trans and non-binary youth](#) (2021-06-25); F.S.E. Arps, S. Ciavarella, J. Vermilion, R. Hammond, K. Nation, S. Churchill, M. Smith, J. Navarro, P. Thaker, G. Bauer & A. Scheim for the Trans PULSE Canada Team, [Health and well-being among trans and non-binary people doing sex work](#) (2021-03-30).
- 14 See, earlier discussion, *supra* note 5.



- 15 See Annex B for information about the study and its methodology.
- 16 See Annex B for information about the study and its methodology.
- 17 James J. *et al*, *TRANSforming JUSTICE*, *supra* note 3.
- 18 James J. *et al*, *TRANSforming JUSTICE*, *supra* note 3.
- 19 James J. *et al*, *TRANSforming JUSTICE*, *supra* note 3.
- 20 Cristin Schmitz, The Lawyers Daily, CBA's new leader urges lawyers to protect trans, non-binary people, defend judicial independence, September 8th, 2022.
- 21 The CBA's previous advocacy for trans rights included letters to the Supreme Court calling for more gender inclusivity in Canada's highest court ([CBA Submission on improving transgender, non-binary and gender-diverse inclusivity at the Supreme Court of Canada](#)), and a letter to the Employment Equity Act Review Task Force calling for an expansion of the Employment Equity Act's designated groups and the use of an intersectional approach ([CBA submission to the Employment Equity Act Review Task Force](#)).
- 22 The Ontario Human Rights Commission defines "cisnormativity" as "the assumption that it is normal for a person's gender identity and expression to "match" the sex they were assigned at birth. This assumption overlooks the reality of sex and gender variance – trans people, intersex and diverse gender expressions by cisgender people as well." See, OHRC, [Policy on preventing discrimination](#), *supra* note 8. See also, G. R. Bauer, *et al*, *supra* note 11 and A. Baril, "Transsexualité et privilèges masculins. Fiction ou réalité?" in L. Chamberland *et al* (eds), *Diversité sexuelle et constructions de genre* (Québec: Presses de l'Université du Québec, 2009) at 263-295.
- 23 James *et al*, *Taylor et al and Veale et al*, *supra* note 11.
- 24 [Indian Act \(R.S.C., 1985, c. I-5\)](#).
- 25 Nason Maani & Sandro Galea, [The True Costs of the COVID-19 Pandemic](#) (Boston: Scientific American, April 2020); Julie Woulfe, PhD & Melina Wald, PhD, [The Impact of the COVID19 Pandemic on the Transgender and Non-Binary Community](#) (New York: Columbia University, September 2020).

- 26 Justiciable is defined in this context as matters capable of being settled by law or by the action of a court or an administrative tribunal.
- 27 James J. *et al*, *TRANSforming JUSTICE*, *supra* note 3.
- 28 General Canadian population statistics are taken from T. Farrow, A. Currie, N. Aylwin, L. Jacobs, D. Northrup & L. Moor, [Everyday Legal Problems and the Cost of Justice in Canada: Overview Report](#) (Toronto: CFCJ, 2016).
- 29 As data from *TRANSforming JUSTICE* demonstrates, there is a greater range of justiciable legal issues for trans people in Ontario than that defined and relied on in the CFCJ research, so comparisons are not available in relation to all legal problems addressed in this report. See, J. James *et al*, *TRANSforming JUSTICE*, *supra* note 3.
- 30 *Ibid*, at 8.
- 31 "Justiciable discrimination" is defined as "Discrimination because of actual or perceived race, country of origin, Aboriginal status, sexual orientation; discrimination because of a disability; and discrimination based on age, gender, religion, and/or HIV status." "Trans-specific discrimination" is defined as "Discrimination because of actual or perceived gender identity, or gender expression."
- 32 "Justiciable legal action problems" are defined as receiving a letter from a lawyer threatening legal action and/or having a court proceeding started against you over a civil matter, one not involving criminal charges. Definition derived from T. Farrow *et al*, CFCJ Draft Questionnaire, *supra* note 28.
- 33 J. James, *et al*, *TRANSforming JUSTICE*, *supra* note 3 at 8.
- 34 *Ibid*.
- 35 *Ibid* at 8-9.
- 36 "HIV-affected" is defined as any of the following: living with HIV, having a partner who is living with HIV, being involved in sex work, having incarceration experiences and/or using injection drugs.
- 37 Truth and Reconciliation Commission of Canada, [Honouring the Truth, Reconciling for the Future: Summary of the Final Report of the Truth and Reconciliation Commission of Canada](#), (Winnipeg: TRCC, 2015) at 160.
- 38 "Health needs" includes spiritual, mental, physical and emotional health.
- 39 Truth and Reconciliation Commission [Calls to Action #20](#) (Winnipeg: TRCC, 2017).
- 40 For example, see Greta Bauer *et al*, *supra* note 2; Rachel Giblon & Greta Bauer, "Health care availability, quality, and unmet need: a comparison of transgender and cisgender residents of Ontario, Canada" (2017) 17:1 BMC Health Serv Res 283–293; J. Navarro *et al*, "Health and health care access for trans and non-binary people in Canada", *supra* note 13.
- 41 J. James, *et al*, *TRANSforming JUSTICE*, *supra* note 3.
- 42 18% (n=33/182) reported experiencing five or more distinct legal problems in the period under study. Thirty-two percent (n=7) of Indigenous respondents who completed the legal problems section of the survey reported experiencing more than five legal issues, with 27% (n=6) experiencing nine or more. Eighty-three percent (n=10) of non-Indigenous racialized respondents who completed the legal problems section of the survey reported experiencing more than ten justiciable legal problems in the three-year period. See J. James, *et al*, *TRANSforming JUSTICE*, *supra* note 3.
- 43 Vulnerability to legal problems has been linked to demographic characteristics such as age, gender, disability status, employment and housing status, ethnicity, and others. Christine Coumarelos, Deborah Macourt, Julie People, Hugh M. MacDonald, Zhigang Wei, Reiny Iriana & Stephanie Ramsey, [Legal Australia Wide Survey: Legal Need in Australia](#) (Sydney: Law and Justice Foundation of NSW, 2012) at 14.
- 44 C. Coumarelos, Z. Wei & A.Z. Zhou, [Justice made to measure: NSW Legal Needs Survey in disadvantaged areas](#) (Sydney: Law and Justice Foundation of NSW, 2006).
- 45 Ab Currie, "A National Survey of the Civil Justice Problems of Low and Moderate Income Canadians: Incidence and Patterns" (2006) 13:3 *International Journal of the Legal Profession* 217.
- 46 Coumarelos *et al*, *supra* note 44 at 14.
- 47 CFCJ, [Justiciable Problems infographic](#) (Toronto: Canadian Forum on Civil Justice).
- 48 Of the 182 respondents who completed the legal portion of the survey, 71% (n=129) reported at least one justiciable legal problem in the three-year period studied. Twenty-two of these survey participants identified as Indigenous and twelve identified as non-Indigenous racialized. Eighty-two percent (n=18) of Indigenous respondents who completed the legal problems section of the survey reported at least one justiciable legal problem, as did 83% (n=10) of non-Indigenous racialized respondents. Many respondents who completed the section on impacts of legal problems (n=26) reported that their experiences of trying to deal with legal problems had taken an intense toll: 65% (n=17) indicated that these experiences had negatively affected their emotional/mental health, 51% (n=13) reported they had resulted in social and family problems, and 29% (n=7) said they had led to physical health concerns. See J. James, *et al*, *TRANSforming JUSTICE*, *supra* note 3.
- 49 Ab Currie, [Ten Ideas for Community Based Justice](#) (Toronto: CFCJ, 2020).
- 50 Of the 182 respondents who completed the legal problems section of the survey, only 30% (n=55) with legal issues reported receiving some professional legal support, while 7% (n=13) stated that they had received professional support for all their justiciable legal issues. However, among the latter



- group, 93% (n=12) reported only having one legal issue to address. See J. James, *et al*, *TRANSforming JUSTICE*, *supra* note 3.
- 51 *Ibid*.
- 52 Of the 26 respondents who completed the section on impacts of legal problems, many reported that their experiences of trying to deal with legal problems had taken an intense toll: 65% (n=17) indicated that these experiences had negatively affected their emotional or mental health, compared to 51% at the Canadian-population level.⁵² 50% (n=13) reported legal problems had resulted in social and family problems, and 27% (n=7) said legal problems had led to physical health concerns. Of the nine non-Indigenous racialized respondents who completed this section of the survey, 78% (n=7) reported negative impacts on their mental and emotional health and 67% (n=6) reported negative impacts on their physical health. *Ibid*.
- 53 *Supra* note 4 for discussion and references in *Reaching Equal Justice* at 53-55. Also see Canadian Forum on Civil Justice Return on Investment Infographic.
- 54 See CFCJ, *Everyday Legal Problems*, *supra* note 28.

04 Specific barriers

- 55 See Lexico English Dictionary, Definition, [Cisgender People](#).
- 56 "Trans-competent" refers to someone able to work with trans people in a respectful and positive way and with skills and knowledge to help with trans people's needs or issues.
- 57 CBA Submission, *supra* note 21.
- 58 *Reaching Equal Justice*, *supra* note 4 at 18.
- 59 *Ibid*, at 16.
- 60 Of the 232 survey respondents, 108 answered the section on experiences with police. Of those, 21% (n=23) reported that the police took their problem seriously and less than 3% (n=3) reported that the police were knowledgeable about trans issues. Twelve percent (n=13) reported that the police refused to help them because they were trans, 27% (n=29) reported that they were persistently misgendered and misnamed by police after they told the police their correct name and pronouns, 16% (n=7) were asked intrusive questions about being trans that were not related to the issue they needed help with, 10% (n=11) reported being blamed for the issue they were needing help with because they are trans, 19% (n=21) were asked for identification randomly for no apparent reason, and 11% (n=12) experienced issues because their legal identity documents did not match their gender identity. Additionally, 6% (n=7) reported being mocked or ridiculed by police because of their trans identity, 5.5% (n=6) respondents reported experiencing racism, and 5% (n=5) reported receiving verbal threats from police. See J. James, *et al*, *TRANSforming JUSTICE*, *supra* note 3.
- 61 See also M.J. Eckhouse & M.J. Saxen, "Police Brutality and why it is an LGBTQ issue" (Spring 2017) *Fusion*.
- 62 Nora Butler Burke, "Connecting the Dots: National Security, the Crime-Migration Nexus, and Trans Women's Survival" in Yolanda Martínez-San Miguel & Sarah Tobias, eds, *Trans Studies: The Challenge to Hetero/Homo Normativities* (New Brunswick, NJ: Rutgers University Press, 2016) 113; Nora Butler Burke, "Double Punishment: Immigration Penalty and Migrant Trans Women Who Sell Sex" in Elya M. Durisin, Emily van der Meulen & Chris Bruckert, eds, *Red Light Labour: Sex Work Regulation, Agency and Resistance* (Vancouver, BC: UBC Press, 2018) 203; Edward Ou Jin Lee, "Responses to Structural Violence: the Everyday Ways in which Queer and Trans Migrants with Precarious Status respond to and resist the Canadian Immigration Regime" (2019) 10:1 *International Journal of Child, Youth and Family Studies* 70-94; William Hébert, *et al*, *A Qualitative Look*, *supra* note 13.
- 63 *Just Facts: The Impact of Mandatory Minimum Penalties on Indigenous, Black and other Visible Minorities* (Ottawa: Justice Canada, 2017).
- 64 CBA Resolution 21-04-A, [Mandatory Minimum Sentences](#). Note that while the CBA resolution urged the federal government to eliminate mandatory minimum sentences for all offences other than murder, this report recommends that the federal government eliminate mandatory minimum sentences for *all* offences.
- 65 Truth and Reconciliation Commission [Calls to Action #32](#) (Winnipeg: TRCC, 2017).
- 66 CBA Resolution 16-08-A, [Promoting Reintegration of Offenders](#).
- 67 See the work of the [Fresh Start Coalition](#) to address these issues.
- 68 For more information, see [Fresh Start Coalition – Working to change the law so people can move beyond their old criminal records](#).
- 69 A "spent regime" approach would ensure that a person's record is automatically sealed after a certain amount of time.
- 70 Canada, [Reclaiming Power and Place: Final Report of the National Inquiry into Murdered and Missing Indigenous Women and Girls](#) (Ottawa: PCO, 2017) Call to Action 18.21 at 217.
- 71 See also Anrea Krüsi et al, "'They won't change it back in their heads that we're trash': the intersection of sex work-related stigma and evolving policing strategies" (2016) 38:7 *Sociology of Health & Illness* 1137-1150; Tara Lyons et al, "The impact of construction and gentrification on an outdoor trans sex work environment: Violence, displacement and policing" (2017) 20:8 *Sexualities* 881-903. Nora Butler Burke, "Connecting the Dots", *supra* note 66; Nora Butler Burke, "Double Punishment", *supra* note 62.
- 72 In response to a constitutional challenge brought by sex workers, in 2013 the Supreme Court of Canada struck down *Criminal Code* provisions that criminalized keeping a bawdy house, living on the avails of sex work and communicating in public for the purpose of sex work (*Canada (Attorney General) v Bedford* 2013 SCC 72). In response to that case, the federal government introduced the *Protection of Communities and Exploited Persons Act*, S.C. 2014, c.25, which added new criminal prohibitions against purchasing sex, public communication for the purpose of sex work in certain locations, materially benefitting from sex work, recruiting, and advertising. There have been challenges to the new law, including by the Canadian Alliance for Sex Work Law Reform, an alliance of 26 sex worker rights groups led predominantly by and for sex workers. The Alliance launched a constitutional challenge in 2021 in the Ontario Superior Court of Justice seeking to strike down these laws, arguing that the new laws have harmful impacts on sex workers and prevent them from taking steps to make their work safer. The Alliance also makes recommendations for [sex work law reform](#).
- 73 "Passing" is often a term used to describe a trans individual who can be read or seen by others as cisgender. Not being detectable by others as trans may help shield some people from transphobic discrimination.
- 74 This participant later clarified that they were discussing sex work when referring to street work.
- 75 See earlier discussion *supra* note 72.
- 76 For more on the criminalization of drug use in trans populations, see J.M.W. Hughto, S.L. Reisner, T. S. Kershaw, F.L. Altice, K.B. Biello, M.J. Mimiaga, R. Garofalo, L.M. Kuhns & J. E. Pachankis, "A multisite, longitudinal study of risk factors for incarceration and impact on mental health and substance use among young transgender women in the USA" (2019) 41:1 *Journal of Public Health* 100-109. See also, M.E. Socias, K. Deering, M. Horton, P. Nguyen, J.S. Montaner & K. Shannon, "Social and Structural Factors Shaping High Rates of Incarceration among Sex Workers in a Canadian Setting" (2015) 92:5 *Journal of Urban Health* 966-979; Nina T. Harawa



- et al, "Understanding Interactions of Formerly Incarcerated HIV-Positive Men and Transgender Women with Addiction Treatment, Medical and Criminal Justice Systems" (2017) 48 Int J Drug Policy 63–71.
- 77 In addition to decriminalization of drugs, leading civil society organizations responding to drug policy and laws, as well as the federal government's Expert Task Force on Substance Use, call for increased access to a safe supply of drugs as well as harm reduction services. It is important to note that current drug policy and laws disproportionately impact Indigenous and Black people. Reform is urgently required for a number of reasons, including in response to ongoing deaths related to opioid toxicity (over 29,000 deaths between January 2016 and December 2021). See the [Civil Society Platform on Drug Decriminalization](#) which outlines recommendations for drug policy, the Government of Canada's [Expert Task Force on Substance Use](#), and the Government of Canada's [Opioid- and Stimulant-related Harms in Canada](#).
- 78 For many years, [Canada has had the unfortunate distinction of being a world leader in criminalizing people living with HIV](#), with at least 224 prosecutions since 1989. The Supreme Court of Canada ruled in *R v Cuerrier* [1998], 2 SCR 371 that people living with HIV have an obligation to disclose their status to a sexual partner before sexual activity that poses a "significant risk of serious bodily harm." In *R v Mabior* 2012 SCC 47, the Court added that the risk exists when there is a "realistic possibility of transmission of HIV." Canada is the only known country to use aggravated sexual assault as the operative offence for HIV non-disclosure, even when (i) there is no allegation of transmission of HIV; (ii) there is no intent to transmit; and (iii) the sexual activity in question poses negligible to zero risk of transmission. The consequences related to HIV criminalization have a disproportionate impact on Indigenous, Black and gay people and are extremely serious. For example, a conviction attracts a maximum life sentence and leads to a presumptive lifetime inclusion on sex offender registries. In addition, for those who are not Canadian citizens, a conviction generally leads to deportation. Many organizations and individuals take the position that the current approach to the criminalization of HIV is unscientific, unjust and undermines public health. *Criminal Code* reform will be required to remove HIV non-disclosure from sexual assault laws, including the current mandatory designation as a sex offender, and to limit criminalization to intentional and actual transmission of HIV. See [2022 Community Consensus Statement](#).
- 79 The *TRANSforming JUSTICE* interviews were conducted before the COVID-19 pandemic, when most hearings were held in person. This is a common access to justice issue across Canada, and the CBA's *No Turning Back* report recommended that governments invest further resources to deliver justice remotely, including technology to support virtual platforms for courts, tribunals and other dispute resolution bodies - see CBA Task Force on Justice Issues Arising from COVID 19, *No Turning Back* (Ottawa: CBA, 2021) at 22.
- 80 See, [Trans Rights BC](#).
- 81 See, [JusticeTrans](#).
- 82 Catherine White Holman Wellness Centre, CWHWC.
- 83 [Trans ID Clinic, Qmunity](#).
- 84 Capital Rainbow, [Queer Refugee Hearings Program Toolkit](#) (Canada: Capital Rainbow, 2021).
- 85 For more information, see [Pro Bono Students Canada Trans ID Clinics](#). For some other examples of identity document services available in Canada, see [TransCareBC Qmunity](#) and [RainbowHealth Ontario](#)
- 86 Action Santé Travesti(e)s et Transsexuel(le)s du Québec, [ASSTT\(e\)Q](#).
- 87 See, "Know Your Rights Workshops" — Black Femme Legal.
- 88 See, [Counsel Introduction Scripts](#).
- 89 See, [CBA Equality, Diversity and Inclusion Series](#).
- 90 See, Dustin Klaudt and L.M.G Nevens, [No Need to Guess: Title and pronoun use in BC courts are changing with the times. It's only common sense](#), (Ottawa: National Magazine, 2021).
- 91 See, [Enhancements to Lawyer Directory support inclusivity](#), The Law Society of British Columbia.
- 92 Joanne Radbord, *LGBTQ2+ Law: Practice Issues and Analysis* (Toronto: Emond Publishing, 2019) chapter 5.
- 93 Samuel Singer, "Trans Competent Lawyering" in *LGBTQ2 +*, *ibid* at 59–86.
- 94 See, Samantha Peters, [Respecting Pronouns is a Professional Responsibility](#) (Ottawa: National Magazine, 2021) and Amy Salyzyn and Samuel Singer, [Challenging "Compelled Speech" Objections: Respectful Forms of Address in Canadian Courts](#) (online: Slaw, 2021).
- 95 In the 2019 federal budget, a significant sum was designated for public legal education and information.
- 96 *Reaching Equal Justice*, *supra* note 4 at 20.
- 97 Of the 36 respondents who completed this section of the survey, 22% (n=8) reported that their lawyer or paralegal kept misgendering them after being informed of their correct name and pronouns and 53% (n=19) indicated that their lawyer or paralegal was not knowledgeable about trans people and their human rights. See J. James, *et al*, *TRANSforming JUSTICE*, *supra* note 3.
- 98 See, Federation of Law Societies, [Consultation Report](#) (Ottawa: FLSC, January 2020) at 3-6.
- 99 See for example, Myrna McCallum, [The Trauma-Informed Lawyer Podcast](#).
- 100 Of the 207 respondents, 35% (n=73) of survey respondents "disagreed" or were unsure that they knew their basic legal rights as a trans person; 51% (n=106) of survey respondents "disagreed" or were unsure that they knew where to access information about their legal rights as a trans person and 84% (n=174) of survey respondents "disagreed" or were unsure that they knew how to access trans-competent legal services. See J. James, *et al*, *TRANSforming JUSTICE*, *supra* note 3.
- 101 Of the 226 trans survey respondents aged 18 years or older who completed questions on income, 41.5% (n=81) reported annual incomes below \$15,000, 58% (n=114) below \$30,000, and 16% (n=31) above \$60,000. *Ibid*.
- 102 Of the 208 respondents who were 18 years of age or older and answered the question on employment status, only 32% (n=67) of survey respondents reported being employed full-time, 21% (n=43) part-time (26% or 11/208 of these respondents were still in school), and 31% (n=64) unemployed. *Ibid*.
- 103 Among 213 trans respondents aged 18 years or older, 17% (n=33) had a graduate or professional degree, 19% (n=37) had a bachelor's degree, 10% (n=39) were in the process of completing an undergraduate education, 31% (n=60) completed or were completing college or trade school, 15% (n=29) graduated high school as their highest level of education and 8% (n=15) had not yet completed high school. *Ibid*.
- 104 See earlier discussion of employment discrimination against trans people under heading III. Overview of Legal Problems.
- 105 18% (n=35) overwhelmingly "disagreed" and 42% (n=81) "strongly disagreed" that they would have sufficient financial resources to support them through a legal process. See J. James, *et al*, *TRANSforming JUSTICE*, *supra* note 3.
- 106 Of the 160 respondents who answered questions about having people support them through a legal process, 52.5% (n=84) "disagreed" or "strongly disagreed" that anyone would support them financially. *Ibid*.
- 107 Each province and territory determines eligibility levels to qualify for legal aid and what services are offered, so it is difficult to reach clear conclusions about national availability. It is important that those with no or precarious immigration status have access to legal aid, and that legal aid professionals have appropriate training about trans people and their rights and legal issues.
- 108 An early example of such discussion is the following: Income Security Advocacy Centre, [Accessing Income Support in the wake of COVID-19 / L'accès au soutien du revenu en raison de la COVID-19](#) (Toronto: ISAC, 2020).
- 109 *Supra* note 70, Call to Action 18.25 at 217.
- 110 See for example, Jassamine Tabibi, Magdalena Kubow & Linda Baker, [A Discussion Paper Informed by November 2016 Knowledge Exchange](#) (London ON: Centre for Research & Education on Violence Against Women & Children, 2017).



- 111 See earlier discussion at Part V A.
- 112 Of the 195 respondents who answered the question on safety when attending a lawyer or paralegal's office, only 31% (n=60) agreed that they would feel safe to travel and be present at a legal service provider's office, and of the 192 respondents who answered the question on safety to attend court, only 45% (n=86) agreed that they would feel safe to travel and be present at a court or tribunal. See J. James, *et al*, *TRANSforming JUSTICE*, *supra* note 3.
- 113 See discussion in M. Buckley, PhD, *supra* note 5 at 100.
- 114 *Reaching Equal Justice*, *supra* note 4 at 47.
- 115 For Canada-wide information on identity documents, see *JusticeTrans, Canada-Wide Information*, (Canada: JusticeTrans). For a few examples of available resources, see *supra* note 81.
- 116 "Other" included factors like familial or legal obligations, immigration requirements, having a non-binary or fluid identity that would not be represented by a single legal name, gender marker availability in their jurisdiction (e.g., not all provinces allow for an "X") and the onerous nature of the process.
- 117 Overall, of the 229 respondents who answered at least one question about identity documents, 38% (n=86) indicated that they changed their identity documents and 10% (n=23) indicated that they did not want to. See J. James, *et al*, *TRANSforming JUSTICE*, *supra* note 3.
- 118 See also William Hébert, *et al*, *A Qualitative Look*, *supra* note 13.
- 119 J. James, *et al*, *TRANSforming JUSTICE*, *supra* note 3.
- 120 This same policy issue has been considered in the context of, among other things, responses to residential school survivors and reform of laws around sexual assault.
- 121 Provincial Court of British Columbia, *Notice to the Profession and Public Forms of Address for Parties and Lawyers*, Supreme Court of British Columbia, *Forms of Address for Parties and Counsel in Proceedings*, 2020.
Provincial Court of Manitoba, *Practice Directive; Forms of Address for Parties and Counsel in the Provincial Court of Manitoba*, 2021; Manitoba Court of Queen's Bench, *Practice Direction – Forms of Address for Parties, Counsel and the Judiciary of the Court of Queen's Bench*, Manitoba Court of Appeal (May 2021) *Forms of Address and Pronouns*.
Court of Appeal of Nova Scotia (July 2021) *Identification of Pronouns and Titles by Court of Appeal Participants*
- 122 See, *Reaching Equal Justice*, "Learn More: about Court Reform and Rule Changes", *supra* note 4 at 91. As a specific example, *BC Civil Resolution Tribunal*.

05 Recommendations

- 123 The implementation of this recommendation should be consistent with the Truth and Reconciliation Call to Action #27, which calls "upon the Federation of Law Societies of Canada to ensure that lawyers receive appropriate cultural competency training, which includes the history and legacy of residential schools, the United Nations Declaration on the Rights of Indigenous Peoples, Treaties and Aboriginal rights, Indigenous law, and Aboriginal– Crown relations. This will require skills-based training in intercultural competency, conflict resolution, human rights, and anti-racism." See Truth and Reconciliation Commission *Calls to Action #27* (Winnipeg: TRCC, 2017).
- 124 See CBA letter, *supra* note 21.
- 125 This implementation of this recommendation should be consistent with the Truth and Reconciliation Call to Action #57, which calls upon "federal, provincial, territorial, and municipal governments to provide education to public servants on the history of Aboriginal peoples, including the history and legacy of residential schools, the United Nations Declaration on the Rights of Indigenous Peoples, Treaties and Aboriginal rights, Indigenous law, and Aboriginal–Crown relations. This will require skills-based training in intercultural competency, conflict resolution, human rights, and anti-racism. See Truth and Reconciliation Commission *Calls to Action #57* (Winnipeg: TRCC, 2017).
- 126 See CBA letter, *supra* note 21.
- 127 See, *CBA submission to the Employment Equity Act Review Task Force* (Ottawa: CBA, 2022).
- 128 This includes those with no or precarious immigration status.
- 129 *Ibid*.
- 130 *Ibid*.

Annexes

- 131 See *Integrating Gender-Based Analysis Plus into Evaluation: A Primer* (2019) - Canada.ca, *Modernizing the Government of Canada's Sex and Gender Information Practices*: - Canada.ca, *Sexual Orientation and Gender Identity Definitions - Human Rights Campaign* (hrc.org), *Glossary of Terms - Human Rights Gender Campaign* (hrc.org), *2SLGBTQI Glossary of Terms | Glossaire des termes - Egale, OHRC, Gender Identity and Expression*.
- 132 Jamison Green, Rhea Ashley Hoskin, Cris Mayo, sj Miller, *Navigating Trans and Complex Gender Identities*, (Bloomsbury Academic, 2019), p. 152.
- 133 *Supra*, note 26.
- 134 *Supra*, note 2.
- 135 James J. *et al*, *TRANSforming JUSTICE*, *supra* note 3.
- 136 *Ibid*.
- 137 Disability included, but was not limited to, blindness, deafness, requirement for mobility device, intellectual disability, and major mental health disorder.
- 138 Definitions and examples are from T. Farrow, A. Currie, N. Aylwin, L. Jacobs, D. Northrup & L. Moor, *Survey of Justiciable Legal Problems in Civil Matters - Draft Questionnaire* (Toronto: Canadian Forum on Civil Justice (CFCJ), 2013) (unpublished). While these comparisons are important in documenting inequalities, we note that data from focus groups and interviews demonstrates a greater range of justiciable legal issues for trans people in Ontario than the range defined and relied upon in the CFCJ research. This qualitative data contextualizes the experiences of trans people within each legal problem category and highlights additional justiciable issues not captured in the survey. If broader categories of legal problems had been included, the discrepancies between the general population and the trans community data could have been greater than reported in *TRANSforming JUSTICE*.
- 139 Farrow, T. *et al*, *Everyday Legal Problems and the Cost of Justice in Canada: Overview Report*, *supra* note 28.
- 140 Of the 32 respondents who identified as Indigenous, 62.5% (20/32) identified as a Status Indian as defined by the *Indian Act*; 53% (17/32) identified as First Nations, as Métis or Inuit 31% (10/32), and 16% (5/32) as none of the above; and 56% (18/32) reported never living on a reserve, 28% (9/32) at one point living on a reserve and 16% (9/32) did not answer or



- skipped the question. In addition, when asked to self-describe their gender identity, all but five Indigenous participants did not use Two-Spirit as part of their gender identity description, and all Indigenous participants did use Two-Spirit to describe their sexual orientation. See, J. James *et al*, *TRANSforming JUSTICE*, *supra* note 3.
- 141 We cannot offer specific comments about non-Indigenous Black participants due to small sample sizes.
- 142 We cannot offer specific comments about non-Indigenous, non-Black, and non-racialized participants due to small sample sizes.
- 143 Survey participants were asked to check off all that apply to their racial and ethnic identities for the following categories: Indigenous (First Nations, Métis or Inuit), Black Canadian or African-American, Black African, Black Caribbean, East Asian, Indo-Caribbean, Latin American, Middle Eastern, South Asian, South East Asian, White Canadian or White American, White European, and Other. Survey participants were then asked, "Regardless of the boxes you checked off above, how do you identify your own ethno-racial background?" in an open-answer format. Additionally, survey participants were asked if they identify as Indigenous regardless of government-issued status and to self-describe their Indigenous identity/identities. We also asked if participants had Indian status under the Indian Act.
- 144 See articles published by the *TransPULSE Ontario* and *TransPULSE Canada* studies, examining the wellbeing and health of trans people in Ontario and Canada. Please also see the Canadian study on trans youth wellbeing and experiences of discrimination and mistreatment by A.B. Taylor, A. Chan, S.L. Hall, E.M. Saewyc & the Canadian Trans & Non-binary Youth Health Survey Research Group, *Being Safe, Being Me* (Vancouver: Stigma and Resilience Among Vulnerable Youth Centre, University of British Columbia, 2020).
- 145 *Reaching Equal Justice*, *supra* note 4 at 165.
- 146 *Ibid*.
- 147 "When community members discussed their satisfaction or dissatisfaction with the legal system, it often reflected on the particular justice professional they encountered. Whether the service or experience was effective, fair or compassionate depended on the individual, be it the judge, lawyer or police officer. A frequently repeated phrase was 'it's the luck of the draw'". *Ibid* at 20.
- 148 *Ibid* at 17-23.
- 149 *Ibid* at 65.
- 150 *Ibid* at 66.
- 151 *Ibid* at 94.
- 152 *Ibid* at 84.





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