

Access to Justice Metrics Informed by the Voices of Marginalized Community Members: Themes, Definitions and Recommendations Arising from Community Consultations¹

I. INTRODUCTION

The Canadian Bar Association's Access to Justice Committee's Building Block #1 Access to Justice Metrics seeks to develop a practical definition of access to justice. Further, our goal is to identify tangible indicators and goals to measure progress.

The Committee resolved to develop this definition from the perspective of marginalized community members affected by a lack of access to justice. Put plainly, we wanted to know what really happens when access to justice is denied.

We worked with two sub-committees (one made up of community members with lived experience in marginalization, including an Elder; and the second made up of front-line community workers) to develop a community consultation framework designed to be ethical, respectful, reciprocal, inclusive and culturally relevant. Then, in partnership with community based organizations and legal aid offices, we conducted thirteen community consultations across Canada: in Calgary, Saskatoon, Toronto, Montréal and the Maritimes. The consultations were conducted exclusively with marginalized community members: low-income adults and youth; racialized groups; Single mothers; and people with disabilities.

This paper seeks to identify the themes that emerged from the consultations and summarize the community feedback around those themes, illustrated by direct quotes from participants. Its findings are supported in part by previous public and stakeholder consultations conducted in British Columbia, Manitoba and Ontario regarding access to justice, which are periodically referenced throughout the paper.

Hearing marginalized community members' voices, practical components of access to justice emerge. At the conclusion of each section, practical definitions of "access to justice" reflective of the community's voices are offered.

¹ Paper prepared by Amanda Dodge (March 2013) for the Envisioning Equal Justice initiative for the Standing Committee on Access to Justice.

- “[Human rights] are being eroded because no good access to justice.” – ***Person with disability, Toronto***
- “Unless you have lots of money, you cannot access justice.” – ***Single mother, Moncton***
- “I could care a less; it’s broken and you just deal with it.” – ***Aboriginal woman, Saskatoon***

II. WHAT HAPPENS WHEN ACCESS TO JUSTICE IS DENIED

1. Legal Rights are Just on Paper

The vast majority of community members acknowledged that the law affords rights and protections, but felt that they were not honoured or accessible. When asked about legal rights, most participants stated plainly that they did not feel they had any legal rights.

- “To me, legal rights are an unfulfilled promise.” – ***Person with Disability, Toronto.***

It seemed that the greater one’s marginalization, the more distant the enforcement of their legal rights. The primary barrier to feeling as though one could access legal rights was, not surprisingly, a lack of financial resources.

- “I do not feel like I have legal rights. You can get them if you can afford them.” – ***Single mother, Moncton***
- “The good old dollar defines what our legal rights are.” – ***Person with Disability, Toronto***

Many other barriers were identified that stood in the way of accessing one’s legal rights and protections. Common barriers mentioned were: literacy and language barriers; disabilities, both physical and mental; racial discrimination; and level of education.

- “But for a deaf person with limited literacy or from another country, don’t think they have the same access, and for me maybe less than a hearing person.” – ***Deaf person, Durham***

Lack of information seemed to be the greatest hurdle to enforcing one’s legal rights. Not only a barrier, lack of information aggravated the *emotional impact* of going through justice processes. This is explored further later in the paper.

- “If you don’t know what your rights are, how can you have them protected?”
Single mother, Kentville
- “I never knew what was going to happen next.” – ***Domestic violence survivor, Calgary***

The community did identify that impediments sometimes depended on the individual. Community members pointed to personality characteristics, like tenacity, or attitudes, such as optimism, as determinative of whether someone would pursue legal rights and protections.

When community members were asked whether the law would protect them from abuses of power, or hold a person in authority accountable for breaking the rules, the most common response was to *laugh out loud*. The subsequent comments were, unanimously, in the negative. They pointed to significant barriers in doing so: they did not know how to make a complaint, they did not know where to go; there was not enough information about how to do it; they did not think they would be believed or taken seriously; they were intimidated and made to feel stupid; and they were afraid to challenge the more powerful party.

- “[There’s] no accountability for anyone, lawyers or judges; you are always left to flounder.” – ***Single mother, Moncton***
- “It always feels like, oh, that’s the law and there’s nothing you can do about it.”
– ***Aboriginal woman, Saskatoon***
- “I wasn’t resisting arrest and they were still forceful. They handcuffed me when I was six months pregnant. There’s no justice. I felt like I couldn’t do anything. They are on a power trip, most of them.” – ***Aboriginal woman, Saskatoon***

Reprisal was a running theme for why community members did not seek redress when a person in authority broke the rules. Many community members articulated a fear of reprisal if they were to complain or challenge someone in a position of power.

- “When I complain, they retaliate.” – ***Person with disability, Toronto***
- “Those responsible for doing unpleasant things to us are not held accountable. For every 1,000 blows, only one is compensated. – ***Person with disability, Toronto***

How does this inform a practical definition of access to justice?

Justice then transcends barriers. It is freely and equally available regardless of socio-economic status, ability, education or race. It applies equally to everyone, regardless of their status. Information about rights and how they can be enforced is readily available. Complaint and appeal avenues are accessible and safe.

2. Justice Systems Cannot Be Trusted

A very strong message heard throughout the consultations is that, inherently, the system is untrustworthy, corrupt and broken. Several people reported feeling betrayed and abused by the system.

- “The system is there to defeat you.” – ***Single mother, Montréal***
- “I think it is like a cesspool, foul.” – ***Deaf man, Toronto***
- “If you believe in the system and think it will help you, you’ll get burned.” – ***Aboriginal woman, Saskatoon***
- “Often things go off the rails ... I don’t have confidence in system.” – ***Deaf woman, Waterloo***
- “I’m a victim of the system, as well as a victim of my abuser.” – ***Single mother, Kentville***

- “I feel intimidated and bullied by the legal system.” – ***Domestic violence survivor, Calgary***
- “Justice is to protect us, not to abuse us. It has been used to overpower or manipulate us.” – ***Aboriginal woman, Saskatoon***

The brokenness of the system was evident in the frustrations expressed by community members. Both parties to disputes and adjudications reported that the systems failed them: both offenders and victims, both applicants and respondents. Neither side felt the system was fair or worked for them.

- “I was sexually assaulted. At Court I had to narrate the whole story while that guy was just sitting there and didn’t have to do anything. The guy only got six months. No one helped me. I trusted in the system but nothing came out of it.” – ***Aboriginal woman, Saskatoon***

When it came to addressing their legal problems, community members often did not feel that the systems helped them. There was a sense that they had to find justice on their own.

- “I had my court order in my vehicle so I called the police. The police officer told me that they didn’t have time to deal with stuff like that. They weren’t interested in the court order; they had other things to do. I had to hide around the block and wait for the opposing party to come home.” – ***Single mother, Moncton***
- “It’s on our shoulders to continuously do something about it (opposing party not respecting court orders). There is no enforcement mechanism. ” – ***Single mother, Moncton***

Excessive and harmful delay was an oft-cited frustration, and can be considered in two aspects. First, the system itself creates delay. Community members described having to attend Court for repeated adjournments, to wait many months to be heard in Court, to miss work for repeated Court appearances, and to wait for Legal Aid’s help. Delay is a frustrating barrier to enforcement of legal rights and attaining some measure of justice.²

² Problematic delay in the criminal justice system also observed by “Town Hall Meeting on Access to Justice: Report and Summary”, Manitoba Bar Association (2011) at p. 7.

Secondly, delay is created by the community members' lack of information. Insufficient guidance wastes their time. Often the delay is harmful creating negative consequences in other areas of the community members' lives.³

- “They keep adjourning because the lawyers don’t have their shit together! Every time it’s an adjournment and my son just sits in jail. He’s treated like he’s already guilty.” – **Aboriginal woman, Saskatoon**
- “When you leave an abusive family situation, you are dealing with the trauma of how you are changing your own life as well as disrupting the lives of your children. Then, you have to deal with the whole new trauma of finding out you have to wait so long to get into court. Then, you finally go to court and you are disappointed with the result.” – **Single mother, Moncton**
- “Due to wait times, I am in a position now where I might lose my house. If this happens, I will never be able to get a mortgage again, all because of the opposing party being in contempt – no consequences for him”. – **Single mother, Moncton**

Community members noted the hypocrisy of an ineffective system that held expectations of them. The lawyers and Courts were constantly adjourning, but expected them to be at Court. The lawyers and Courts did not have the proper papers filed, but expected them to provide required information in a timely way. The hypocrisy of this added to their frustration and distrust in the justice system.

- “They don’t cooperate with us at all, but they expect us to cooperate with them. I’m done cooperating with them.” – **Single mother, Montréal**

Many community members reported feeling pre-judged by the justice system: the judge, their lawyer, the social worker. They felt pre-judged based on their past, race, ability and age. There were frequent references to feeling guilty until proven innocent.

- “You don’t have any legal rights; you’re guilty until proven innocent as far as I’m concerned.” – **Street-involved male youth, Halifax**

³ See also: “Getting It Right: The Report of the Ontario Bar Association Justice Stakeholder Summit”, Ontario Bar Association (2007) at p. 7.

- “The first thing the social worker said to me, as she looked me up and down, was ‘Well well, (xx) years old, (x) children, (y) different fathers... We love complicated files like this! Then, you got back together with the physically abusive father? Sounds like you’re not very stable.’ She had already judged me! I thought to myself, listen, you don’t know me. You don’t know. – **Single mother, Montréal**

Some community members defined justice as the right to be heard. Many reported that they were not afforded an opportunity to be heard or to tell their stories. Even when they did get to tell their story, they were not believed or taken seriously.

- “They didn’t listen to my story.” – **Domestic violence survivor, Calgary**
- “I fled my home with nothing. Then the police did not even believe my story.” – **Domestic violence survivor, Calgary**
- “It felt like the judge wasn’t even listening to me. He ordered me to pay even though I was the lower income earner.” – **Domestic violence survivor, Calgary.**

One thing that came through very clearly was the concern that the justice system does not recognize or understand the social and personal realities of the marginalized people progressing through it.

This results in two streams of problems. One, the system and its actions actually perpetuates or aggravates the problem that got them involved in the system to begin with.

- “When I’m released from jail, that’s when I want to use, because I’ve been mistreated, locked down, abused, scared, and traumatized, so I want to hurt myself which could lead to my breaking law again and there goes the cycle. Why is there no debrief when you get out? So much money put in system, it’s ass-backwards.” – **Woman with mental disability, Toronto**
- “I have an addiction, I’m fighting it, but they use that as a tool to try to keep me there. They wouldn’t let me go to my family overnight at Christmas because they thought drugs might be there. But they’ll let me

go to group and I could get drugs on way to group if I wanted. They don't take time to find out root of problem, [it's] based on what they think and research." – ***Man with mental disability, Toronto***

- "I knew the system but the system didn't work for me. Jail was completely the wrong place for me to be." – ***Woman with mental disability, Toronto***

The second problem created by the system's seeming ignorance of social and personal realities is that it has a "spiraling and multiplying" effect⁴ into other areas of their lives, worsening them significantly.

Lastly, community members often felt that the remedies they obtained from the justice system were not meaningful or trustworthy ways to attain redress for the wrong.

For example, a group of participants in Saskatoon identified racial discrimination as their greatest barrier to justice. This group was educated about the processes of the Saskatchewan Human Rights Commission, yet they did not believe that filing a human rights complaint with the Commission would result in a meaningful response for the discrimination they faced.

Another example where remedies were deemed meaningless was with respect to enforcement; women in particular reported enduring the delay, frustration and trauma of family courts only to obtain an order that could not be enforced.

- "Once you finally get there and you get an order, there is nobody there to enforce it. This is what I needed. Now that I have an Order, it's not being respected and there is no one to do anything." – ***Single mother, Moncton***
- "The facts are before the Judge ... still nothing is done. Why did I waste my time coming to court? It makes me feel like I should have just stayed in the bad situation." – ***Single mother, Moncton***

⁴ L.T. Doust, "Foundation for Change: Report of the Public Commission on Legal Aid in British Columbia" (March 2011) at p. 21.

How does this inform a practical definition of access to justice?

Just justice systems earn the trust of the marginalized communities who access them. Just processes are effective, efficient and timely. Just systems have reasonable and fair expectations. Justice ensures that parties are heard. Justice processes and outcomes are reflective of the social and personal realities of the parties. Just outcomes are meaningful: they effectively redress the wrong or protect from wrong.

3. Justice is Person-Dependent

This was an interesting finding. When community members discussed their satisfaction or dissatisfaction with the justice system, it was often reflective of the particular justice professional they were dealing with. 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”.

- “Having right person is key.” – ***Person with disability, Toronto***
- “[I]t depends on the person ... have they had experience, sensitivity training, do they or don’t they know what [they] need to do[?] Sometimes [I] go to family law clinic and [it] depends on whether the nice lawyer shows up...” – ***Deaf woman, Durham***

There were some commendations but mainly several complaints about the quality and compassion of the justice professionals community members encountered.

- “They’re supposed to be there to help you, but that’s not what happens. If you’re asking for help, it’s because there’s something wrong with you.” – ***Single mother, Montréal***

a. Judges

There were positive comments about judges being open-minded and good listeners, and making fair decisions. However, more often there were concerns and criticisms expressed. With judges, it seems “it’s the luck of the draw”.

- “Some judges are terrific, some have no patience, some want to listen ..., others just want to get through [it].” – ***Deaf woman, Waterloo***

- “One judge is kind hearted and nice, and then another one is miserable.” – ***Aboriginal woman, Saskatoon***
- “It’s not fair for the judge to be biased and abuse their power. The judge picks the person he likes and shoves the other person in jail.” – ***Aboriginal person, Saskatoon***
- “Judges believe that they know everything about access and they really don’t. There needs to be some awareness training for them.” – ***Deaf man, Toronto***

Judges are not fully trusted and sometimes viewed as biased. Many community members felt pre-judged when they walked into the Courtroom. Some identified factors seemingly unrelated to their case that affected its outcome, such as how well the judge knows the lawyer before them.

- “How come some judges are more lenient than another if the law is the law is the law?” – ***Woman with mental disability, Toronto***

b. Lawyers

The consensus was that having a lawyer was your best bet to have help and guidance through the process. Without a lawyer one is left to flounder.⁵

However, whether one’s lawyer was helpful or effective, whether Legal Aid or private, depends again on the “the luck of the draw”. It seemed that the “good ones” are the minority of lawyers; we heard frequent comments that if you get a good lawyer, you’re “lucky”.

- “My lawyer does pro bono, she’s just awesome.” – ***Woman with mental disability, Toronto***
- “She is empathetic, cares; there is a caliber about her.” – ***Man with mental disability, Toronto***

⁵ Supported by the B.C. report, *ibid*, at p. 23.

- “With lawyers you get the good with the bad, some who care, some who don’t.” – ***Deaf man, Toronto***
- “You have to trust in the lawyer, that they know what’s right and wrong. It’s hard to put your faith in them.” – ***Aboriginal woman, Saskatoon***

Many community members discussed their dissatisfaction with Legal Aid lawyers; they expressed very negative views. They complained about poor service, delay, not caring, just wanting to “do deals”, not wanting to hear them out, and not wanting to fight for them. Community members often believed the cause of the poor service was that Legal Aid lawyers were overworked and underpaid. Also, they perceived Legal Aid lawyers as less friendly with judges than private lawyers and thus less likely to get their way in Court.

- “Legal Aid does not really help you. They are working with the cops. They don’t really help you. They are just there to make a deal.” – ***Aboriginal person, Saskatoon***
- “Their case load is so big that they cannot go through every detail of the case. It’s hard when you are trying to prove your innocence and they are not willing to fight for you.” – ***Aboriginal person, Saskatoon***
- “It’s because lawyers don’t have time or understanding. ... Lawyers need patience.” – ***Deaf woman, Waterloo***
- “Legal Aid put a program in place for lousy lawyers with lousy pay ... low-income clients deserve first class lawyers. [I’m] not talking about lawyers individually, [but] talking about [the] system, [it’s] set up for failure.” – ***Deaf man, Toronto***
- “Legal Aid lawyers burn out, so justice isn’t served. They need to open it up more; the lawyers lose passion when they are overworked and underpaid, which is unfair to lower class society.” – ***Aboriginal person, Saskatoon***
- “They try to convince you that they are working for you, but they try to make a deal. They say if you plead guilty you get this or that, you still get

- a record; they don't try to fight for you.” – ***Man with mental disability, Toronto***
- “To a Legal Aid lawyer, I am just a file or case number. In my case, I had to do all my own research on CanLII; I might as well have represented myself.” – ***Domestic violence survivor, Calgary***
 - “Legal Aid [are] out and out liars.” – ***Man with mental disability, Toronto***
 - “They don't care about you.” – ***Street-involved male youth, Halifax***

Regarding Legal Aid's scope of service, community members complained about the limits in service provision, including low financial eligibility guidelines⁶, and said that their services were reactive, not proactive.

- “[I was ineligible] simply because [I am] a hard-working, frugal and responsible citizen” – ***B.C. resident***⁷
- “My ex had to take me to Court before I could get Legal Aid to represent me. They wouldn't have represented me if I had taken him to Court.” – ***Single mother, Kentville***

Community members drew a clear distinction between Legal Aid and private lawyers. They generally had a higher opinion of private lawyers. There were repeated comments that when a lawyer was paid more money they were more likely to fight for and do a better job for them. Private lawyers were perceived as being more effective and acting more quickly. Many people credited private lawyers for “getting [them] off”. Private lawyers were perceived as friendlier with judges than Legal Aid lawyers and thus more likely to get their way in Court.

- “That's what happens when you pay for a lawyer, they work for their money.” – ***Man with mental disability, Toronto***

⁶ There is plentiful discussion in the B.C., Ontario and Manitoba reports, *supra* notes 1, 2 and 3, regarding complaints that legal aid provision was too limited in scope, mainly regarding financial eligibility.

⁷ *Supra* note 3.

- “If you don’t have enough money you can’t win the case. You do not have justice.” – ***Person with disability, Toronto***

There was some discussion about how more “good” lawyers, those working for social justice, were needed. Community members believed that financial reward elsewhere in the profession was the main reason there were fewer social justice oriented lawyers.

c. Police

Marginalized community members voiced *many* complaints and concerns about the police. They were the most often discussed justice professional, particularly around abuses of power. Police were consistently vilified for improper, unethical and corrupt implementation of the law. They are perceived as abusive, untrustworthy, intimidating, discriminatory, disrespectful, insensitive and ineffective. Community members in need of police services complained that they are often delayed or not provided at all; they gave examples where the police refused to intervene and help.

- “The cops think they can do and say whatever they want; they think they’re above everyone else because they have authority.” – ***Street-involved female youth, Halifax***
- “The majority of the cops abuse power. Everyone’s too scared to challenge them. The judge is going to trust the police. I’ve seen cops dealing drugs.” – ***Aboriginal person, Saskatoon***
- “I will never ever trust the police. I was drunk and passed out and all of a sudden I woke up and found myself out of town. My legs were sore. The police had dragged me out there and done this to me.” – ***Aboriginal person, Saskatoon***
- “They (the police) said they would take me to a dark parking lot and beat me up. They took me downtown. I tried to talk to them and they said, oh no, they wouldn’t do something like that.” – ***Aboriginal female youth, Saskatoon***
- “I was walking out of a motel with my five year daughter. I was approached by police and he asked me, in front of my daughter, if I was selling drugs. That was just because I’m Aboriginal, I wasn’t dressed fancy. Why else ask me? So wrong.” – ***Aboriginal woman, Saskatoon***

- “The police were against an emergency protection order. What is the purpose of one, then? I didn’t feel protected but betrayed by police.” – ***Domestic violence survivor, Calgary***

Although police were the most condemned in this kind of conduct, community members advised they were least likely to seek redress for it due to significant fears of reprisal. They provided several examples of police engaging in reprisal when they stood up to police or made a complaint about them. Reprisals included assault, harassment, institutional transfers, withholding medication, and needless searches.

- “If I report the cop, next time he sees me he’s going to be pissed.” – ***Street-involved male youth, Halifax***
- “You refuse them, they beat you up.” – ***Street-involved male youth, Halifax***
- “[E]very scar on my face is from a police officer.” – ***Person with mental disabilities, Toronto***
- “Sad part is that lots of us are afraid to complain because you are labeled and they make your life a nightmare, so these guys feel they can always get away with it.” – ***Person with mental disabilities, Toronto***

Even with police, feedback still supported that the quality of their services was person dependent. Community members gave some reports of good experiences with police.

- “There are some pretty good cops out there. This RCMP cop on reserve took my nephew home once after he’d passed out. But those good cops are very few.” – ***Aboriginal woman, Saskatoon***
- “Getting police to help is quite hit or miss.” – ***Person with Disability, Toronto***

How does this inform a practical definition of access to justice?

Just systems ensure consistency the quality of its justice professionals. They are consistently effective, fair, respectful and sensitive. They are not corrupt and do not engage in reprisal. The quality of their service does not depend on how much money they make. They take the time to listen, to inform, and to do a good job.

4. Justice Systems are Difficult to Navigate

Community members were consistent in their complaint that justice systems were confusing and difficult to navigate. Ignorance of one's legal rights renders them useless. Information is not readily available. People are not sure where to go for help. It is hard for them to know which forms are the right ones. People are not directed to the right place and often do not have someone to guide them. People reportedly felt like they were "running in circles". The systems are not integrated; they are in "silos".⁸

- "I think [the form] is intentionally long to dissuade people from filing complaints." – ***Person with disability, Toronto***
- "My boyfriend is working for a company. When he's not going into work he calls. He went to work on Tuesday and they fired him after missing work on Monday. He tried to call the company but the phone wasn't connected. He's worried the company folded and isn't sure what to do. Can he go to Labour Standards? Who knows where to go?" – ***Aboriginal woman, Saskatoon***
- "What if a judge screws you over? How do you deal with that? And what happens to them? Do they get "time off with pay"?" – ***Aboriginal woman, Saskatoon***
- "I'd like to sue the cops. Can you do that?" – ***Aboriginal woman, Saskatoon***

Many community members reported that lack of information and direction exacted an emotional toll. Community members described how scary and intimidating it is not to know what is happening, what their options are, what possible outcomes might be, and so on. They mentioned the anxiety, fear, frustration, discouragement and stress involved in progressing through justice systems. They also talked about their need for emotional support.

- "I feel alone and I don't know who I am supposed to contact." – ***Single mother, Moncton***

⁸ Supported by the Ontario report, *supra* note 2, at p. 6.

- “I had a lawyer; she was helpful but she didn’t educate me about what I was going to get myself into ... she didn’t explain it.” – ***Person with mental disabilities, Toronto***
- “I felt wronged by my Legal Aid lawyer. I’m not educated and I don’t know the Court process; I relied on her and she wronged me.” – ***Domestic Violence Survivor, Calgary***
- “I did not feel supported by my lawyer in court. The lawyer was talking to opposing counsel and this caused me to feel like my lawyer was not on my side. Did he not have enough experience? Is he not putting in the effort because it’s legal aid? I felt abandoned.” – ***Single mother, Moncton***

Community members described a justice system that is simply overwhelming. It is too complex, too complicated. They reported stress and discouragement over seemingly endless obstacles.⁹ Community members described the many steps involved in pursuing a right or protection, such as: obtaining the information, translating the information, paying the fee, finding an advocate, arranging for an interpreter, and then tackling the legal issue and its opposing party. It is a legalistic, lengthy and daunting process; it seems a Herculean effort is required, something very discouraging to marginalized community members.

- “It is overwhelming ... You feel incapacitated.” – ***Single mother, Moncton***
- “It is the stress of all the steps prior to getting to the step where you can even act out your rights, and you get so frustrated with process.” – ***Deaf woman, Toronto***
- “I am frustrated that the clerk tells me I need to file documents, but will not advise which ones. I am advised that I need to get a lawyer. ” – ***Single mother, Moncton***
- “My experience overall is that I had to spend entirely too much time trying to figure out the steps, the process, and the players. I often felt like I was given a jigsaw puzzle but all of the pieces were the same size and there was no colour

⁹ Supported by the B.C. report, *supra* note 3, at p. 21.

or picture and I couldn't figure out how to put them together.” – *B.C. resident*¹⁰

Several other barriers to navigating the system were identified: fears of facing the opposing party; desire for privacy (concerns about the Court/tribunal being a public forum, about lawyers speaking openly about their cases in an open hallway); poverty and financial constraints; transportation; child care; interpretive services; and arranging/funding accommodations.

- “It costs money to open a file. Why should we have to put up our money if we aren't sure we're going to win?” – *Single mother, Montréal*

These difficulties and barriers to navigating the system are frustrating, upsetting and discouraging. Community members said that, when facing or even contemplating them, they would “just give up”. When marginalized community members described experiences where they *did* pursue their legal rights or protections, it was often framed as a fight against the odds.

- “Why [are we] fighting every step of way[?]” – *Deaf woman, Toronto*
- “Am I pissed off enough to invest energy time to try to do something
- “It's just too hard; I guess all you can do is pray.” – *Aboriginal woman, Saskatoon*

How does this inform a practical definition of access to justice?

Justice recognizes that information empowers. Justice systems are informative about their processes. The processes themselves are streamlined and straightforward. Participation is not dependent on one's financial resources. Supports are in place so everyone can participate. Safety and privacy concerns are addressed in meaningful ways. The emotional health of the participants is considered and supported.

¹⁰ *Supra* note 3.

III. WHAT HAPPENS WHEN ACCESS TO JUSTICE IS AFFORDED

1. Legal Rights and Justice

Most participants believed that justice and equality were the goals and underpinnings of the law. Interestingly, the law itself was rarely criticized, it was often venerated as being fair and affording, in principle, rights and protections. They felt that *its implementation* by the justice system and justice professionals was what was unfair and unequal.

- “They can’t take away your legal rights. You still have those rights no matter what, you can’t take them away ... they are my legal rights.” – ***Deaf man, Toronto***
- “A person has a right to access and equality... I as a full citizen have responsibilities and rights to access the system.” – ***Deaf woman, Toronto***

The community provided some definitions of what justice should and can be like. Some of them might be counter-intuitive to those of us who work in justice systems. Some examples included:

- “Fairness, equality and being held accountable.” – ***Person with Disability, Toronto***
- “Due consideration of all the facts and circumstances.” – ***Man with mental disability, Toronto***
- “Being heard. Being taken seriously.” – ***Single mother, Kentville***
- “It makes it possible to fix the damage.” – ***Youth, Montréal***

How does this inform a practical definition of access to justice?

Justice is inviolable. It ensures fairness and equality for all, and moreover, respect for all its participants. Respect from just means being heard and providing an effective, meaningful outcome.

2. Information as a Prerequisite to Justice

Community members stated that people first needed to know their rights before they could enforce them. Some people said they believed they had rights, but just did not know what their rights were. Lack of information was a repeated complaint; thus the provision of legal information was a repeated recommendation. Many believed that public legal education is necessary, both generally and in schools.¹¹

- “If you’re not aware of your rights, they are easily trampled.” – ***Person with mental disability, Toronto***
- “I need education to protect my rights.” – ***Deaf man, Toronto***

It seemed that most community members know when their problem is legal in nature or has a legal aspect to it, but reported how difficult it is to find information about the legal problem and all the procedures required to address it. The community made it clear that it is not sufficient just to have information about the *law*; information about the *processes* is needed. Community members said in no uncertain terms they need to know what is going on and what is going to happen.

- “What I need to know is: where do I go, what do I fill out, how do I get this resolved?” – ***Manitoba resident***¹²

Some people said positive things about public legal education materials, that they were helpful and informative. Some mentioned their availability at libraries, courts, legal clinics, MLA/MPP’s offices and online. Some indicated that they did not know where to go to get the information and that it was difficult to find, especially for new Canadians. People with disabilities said that, even if they found the information, it was not necessarily accessible to them, e.g. in Braille.

- “Very difficult to seek legal info especially for ethno-racial communities, marginalized communities and people with disabilities.” – ***Person with disability, Toronto***

¹¹ Public legal education is also recommended by the Ontario report, *supra* note 2, at p. 7.

¹² *Supra* note 1.

- “There’s a lack of information for people of different cultures.” – ***Domestic violence survivor, Calgary***

Some complained that public legal information, like pamphlets and self-help websites, were confusing and difficult to navigate. Some said that information should be plainer and easier to read.¹³

- “I was referred to a website, but good luck dissecting that. How do people do it? The website wasn’t user friendly at all.” – ***Single mother, Moncton***
- “When I find something that’s helpful, language may be too dense, not culturally sensitive, may be too generic, and I need to do some thinking around it.” – ***Deaf woman, Toronto***

If information is power, a failure to provide information is subordination. Some community members believed they were kept in the dark on purpose, so the justice system could retain its power over them.

- “The information that we need should be provided. You are made dependent on the system, because you don’t know what to do.” – ***Aboriginal woman, Saskatoon***
- “What would happen if I go to get information and the service provider is offended that you have insider knowledge? When you have knowledge they feel threatened.” – ***Person with disability, Toronto***

How does this inform a practical definition of access to justice?

Information about law and its processes empowers. It enables community members to know what their rights are and how to enforce them. Being informed ensures equal participation in the justice system. Power is shared equitably between justice professionals and the parties accessing justice systems.

¹³ See also: Manitoba report, *supra* note 1, at p. 4.

3. Justice is about Respect

A recurring theme during the consultations is that marginalized community members did not feel heard and that their matters were not being taken seriously. They want to be treated as a respected part of justice processes.

- “I’m just a person ... [the] system needs to be ready for me as a person, not a specialty, an exceptional[ity], not about accommodation of special needs. You need to make it ready for me: [an] equal playing field.” – ***Deaf woman, Toronto***
- “The system is so impersonal. As soon as you file your documents, you lose control. You are just a number.” – ***Single mother, Moncton***

Again, information is power. Community members reported that they felt more respected if they were kept in the loop. They also felt more respected if their privacy concerns were being considered, e.g. if the Court or lawyer handled their matter discreetly.

- “When the lawyer and the crown talk-the person they’re talking about should be there.” – ***Street-involved male youth, Halifax***
- “Lawyers speak to their clients in front of everyone. I don’t feel like hearing about what’s going to happen at such and such a time because somebody hit somebody...” – ***Single mother, Montréal***

How does this inform a practical definition of access to justice?

Justice systems respect its participants. Respect is demonstrated by seeing all participants as equals, treating them kindly, respecting their privacy and ensuring they are informed.

4. Justice is a Holistic Concept with Systemic Solutions

One of the most palpable and, in my view, crucial findings of the consultations is the broad, holistic view of justice held by marginalized community members. When lawyers

and judges talk about access to justice, we usually talk about law and justice systems and the provision of legal services and information. Our vision is often limited to our frame of reference.

When marginalized community members talked about justice, they talked about what is happening outside of courthouses and law offices: poverty, education, racism, home environments and more. They highlighted the need for the resources and supports necessary to ensure that we live in *just societies*.

These supports included: access to education, meaningful employment, adequate housing and healthy home lives. They believed strongly that addressing these issues would prevent involvement in justice systems, and/or reduce the likelihood of future involvement.¹⁴

- “Before someone goes into the system, help them. Do outreach to families at risk and give them support. What is happening at home is definitely a justice issue.” – ***Aboriginal woman, Saskatoon***
- “You’ve got to look at the bigger picture. People get charged/incarcerated and then released back into the same environment where the behaviour originated from. You’ve got to deal with the home situation. That’s why kids are going out to steal cars. Maybe there are bad parents at home, not taking care of them. Or maybe they are good parents and the kids are rebelling. When I was in the system, I was learning, there was care and guidance. But the moment I was released, I was back in the same situation. Supports are needed after incarceration.” – ***Aboriginal woman, Saskatoon***
- “We need education, there’s a shortage in the trades. There are lots of capable Aboriginal kids who could be trained. Education is supposed to be protected by treaties. If the money for the foster care system was put into education that would make things better.” – ***Aboriginal woman, Saskatoon***

It was clear from the community members’ comments and stories that their legal issues are intimately interwoven with the other social and personal issues in their lives.

¹⁴ See also: Manitoba report, *supra* note 1, at p. 4.

This seems to flow in two directions. In one sense, what is happen within the justice system is having a ripple effect into their lives, like the single mother experiencing excessive delay in the family court who fears losing her house as a result. In another sense, what is happening in their lives and households creates legal problems and promotes involvement in the legal system, like the youth who flees a poor home environment and becomes easy prey for gangs on the street.

- “The law and legal terms are very broad [and go] from personal to systemic, e.g. mental health, hospitals, consumer rights, etc. [The] problem is that ... there are gaps and I’m a marginalized person. [It’s] very rare to find someone who can appreciate what my issues are.” – ***Deaf woman, Toronto***

Addressing broader issues of poverty, education, employment, housing and healthy families are as important to ensure justice as anything else, arguably the most important. They are preventative, to be sure, of involvement and repeated involvement in the justice system, but moreover, they are foundational to just societies.

How does this inform a practical definition of access to justice?

Justice is more than what is happening inside the justice system. Justice is about what is happening at home, at schools, at workplaces and on the street. A just society is foundational to an effective, fair justice system.

IV. RECOMMENDATIONS

We asked marginalized community members, “what should it be like?” We asked specifically what they needed to navigate justice systems and what the people in the justice system could do differently to help them. They gave several recommendations.

- We need more information about our legal rights and how to navigate justice systems.
- We need more comprehensive support and advocacy, including community service providers who can provide holistic support.

- Remove the barriers that we are facing within the justice system, e.g. provide correct, qualified interpreters, provide information in multiple languages.
- Have a central place with information and a “triage” service to point everyone in the right direction, e.g. both victims and offenders. Develop a checklist or questionnaire to identify people’s needs. Make sure it is flexible to respond to our realities, such as being available evenings and weekends, via telephone and the internet.¹⁵
 - “There should be a place that everyone should know about. If you have a legal issue, you can go explain your situation and they would tell you where to go, YWCA, website, etc. A sort of triage service to get you on the right track. Right now it’s all disjointed and hit or miss. It’s difficult to get good information.” – **Single mother, Moncton**
- Take a holistic approach. Involve multiple service providers on the same team. Get all the service providers on the “same page”. Encourage dialogue between them, e.g. case conferences. Ensure everyone understands everyone’s roles.
 - In my community ... people banded together because [it was] hard to be heard. We meet with police and community relations officer, he has a nurse with him, [it’s a] crisis team. ... [It] seems to help when there is group solidarity and everyone is getting the same information at the same time ... and you can speak to them one on one and clarif[y] information on rights.” – **Person with mental disabilities, Toronto**
- Equip lawyers to provide information about other service providers and sources of information.
- Provide sensitivity training for lawyers and other service providers to ensure that we are supported and more effectively served.¹⁶ The police in particular need sensitivity and cultural training.

¹⁵ Manitoba report, *supra* note 1, at p. 4.

¹⁶ Also observed in Ontario report, *supra* note 2, at p. 6 and Manitoba report, *supra* note 1, at p. 4.

- Create incentives for people in the justice system to treat us more fairly or do a better job for us. Use financial penalties and incentives to motivate people to work more effectively and fairly.
 - “There is no real incentive for a lawyer to get you off.” – ***Street-involved male youth, Halifax***
 - “I go to court and had to take a day off work. Maybe the other person should be fined.” – ***Single mother, Moncton***
 - “If I’m charged, I will be held until trial, because of the FTAs on my record. Once I was facing a bullshit charge and held on remand for eight months. I was working at the time of my charge, so I lost my job. That took away my self-confidence and my drive. At trial, I beat the charge. Those are months I’ll never get back. I don’t get any money for the time I lost. They should reimburse wrongfully accused people for lost income during the time they were held on remand.” – ***Aboriginal man, Saskatoon***

Some community members recognized that they were could be involved in building a more just society. Some mentioned getting involved politically and persuading governments to make changes to the system.

- “Native people need to get out and vote. We’ve got to reach out and start brainstorming. The government should meet us halfway to make the system work.” – ***Aboriginal woman, Saskatoon***

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