



#TALKJUSTICE

LISTENING TO SERVICE PROVIDERS

ACCESS TO JUSTICE & LAW REFORM INSTITUTE
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ACCESS TO JUSTICE
& LAW REFORM
INSTITUTE
OF
NOVA SCOTIA



#TalkJustice Project

From October 2018 to October 2019, the Access to Justice and Law Reform Institute met with sixty-four frontline service providers across Nova Scotia. The purpose of these conversations was to understand how the access to justice crisis affects both service providers and their clients.

The Access to Justice and Law Reform Institute would like to share a number of take-aways from these meetings. They include the following ideas:

- marginalized Nova Scotians are made to bear the greatest burden of the access to justice crisis in the province;
- the legal system is built for legal problems, not for people who experience legal problems;
- justice requires an understanding of legal problems outside of silos and within the context of people and their relationships; and
- service providers are filling legal gaps and are required to support a larger number of needs than ever before.

Comments from service providers indicate that in order to address the access to justice crisis in the province, resources must be directed towards supporting frontline workers. At the same time, Nova Scotia should move towards a person-centered notion of justice.

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Justice for Marginalized Persons

Justice begins with a firm understanding that the access to justice crisis in Nova Scotia is the most damaging to marginalized persons.

Service providers stated that the access to justice crisis in Nova Scotia is hardest on marginalized persons, as they are most in need of justice to address histories of discrimination and a lack of access to benefits that are available to other citizens. By withholding support from Nova Scotians who need justice the most, society forces them carry the heaviest burden of the access to justice crisis.

Access to Justice for Racialized Nova Scotians

Racialized Nova Scotians – whether newcomers or indigenous to Nova Scotia – are further denied access to justice because of barriers related to oppression, discrimination, language, and culture. Conversations with service providers revealed that systemic racism in schools, post-secondary institutes, the workforce, social services, and the justice system further deny racialized Nova Scotians access to justice and a quality of life enjoyed by other residents of the province.

While racialized Nova Scotians are the most in need of access to justice to address the lasting effects of histories of oppression and discrimination, they are also the ones who experience the greatest denial of equal access to services, education, employment, affordable housing, title to land, and environmental protections. They are also the most likely individuals to be criminalized and come under the jurisdiction of child protection authorities.

Because of the current landscape in the justice system, service providers stated that marginalized Nova Scotians are the most likely residents to find themselves in legal situations that will eventually reach a crisis point. Due to access to justice challenges, many are forced to act in ways that are not in their best interests, such as by accepting guilty pleas, waiting until medical issues becomes emergencies, or even committing offences just to gain the attention and services provided by the criminal justice system.

Access to Justice in Rural Communities

Service providers stated that Nova Scotians living in rural communities face a number of unique barriers that must be recognized and addressed to better promote access to justice across the province.

- 1. Lack of reliable transportation.** Without a means of transportation, it is difficult to access available legal services. Individuals may be prevented from attending child protection appointments, court hearings, probation appointments, and lawyer's appointments, particularly if they must travel to other counties to do so.
- 2. Lack of access to lawyer's services.** Many clients must travel far distances in order to locate a lawyer that has not met with or represented the person on the other side of the dispute. In other words, in rural areas it can be difficult to locate a lawyer who does not have a conflict of interest.
- 3. Lack of non-seasonal or permanent employment.** Paying for the services of a lawyer, legal fees, and other indirect but essential services like car maintenance and gasoline, is a tremendous access to justice barrier for individuals living at or below the poverty line in rural Nova Scotia.
- 4. Lack of access to essential services and affordable housing.** A lack of access to services such as transportation, heat, clean water, and affordable energy, combined with limited opportunities for affordable housing, can exacerbate and have a compounding effect on persons dealing with financial, health, mobility, or cognitive challenges.
- 5. Presence of mental health or cognitive challenges.** Persons with mental health challenges or elders with cognitive challenges may be more likely to suffer from social isolation and lack family supports, particularly if families have moved away. Without social networks in place, these individuals are more likely to be criminalized, become homeless, suffer harm from neglect, or become involved with child protection authorities.

The Legal System is Built for Legal Problems, Not for People Experiencing Problems

Justice requires an understanding of legal problems within the context of people's circumstances and relationships, not according to distinct areas of law.

When asked about legal justice for Nova Scotians, service providers spoke about legal gaps that are created because the legal system does not place problems within the context of people's circumstances. Instead, it views individuals in terms of their legal, economic, or social problems, which creates a siloed approach to resolving issues. Conversations with service providers suggested that a siloed approach to justice does not serve people; it works as an obstacle that must be constantly overcome as they navigate the legal system.



The current justice system is system-centered rather than person-centered...it serves justice actors above the persons who are confronted with the justice system.

Service providers also stated that individuals can be treated with disrespect while navigating the legal system. These negative experiences further reinforce their lack of trust in the system or desire to avoid the system altogether. As mentioned earlier, this avoidance and lack of trust may push marginalized Nova Scotians to crisis situations or cause them to act against their own best interests when problems escalate to crisis points.

Finally, feedback from service providers suggested that aspects of the current justice system are *system-centered* rather than *person-centered*, meaning that they serve the interests of justice actors above the persons who are confronted with the justice system. System-centered justice is characterized in several ways by service providers.

The Legal System is Characterized by Silos

- **The legal system** cuts up legal problems into silos according to criminal law, family law, social assistance law, residential tenancies law, and so on.
- **In real-life situations**, people experience a confluence of these problems and do not distinguish between them.
- **The result** of dividing legal problems into silos is that individuals are further marginalized and experience access to justice barriers. For example, victims of domestic violence often need to navigate both family and criminal courts simultaneously.

The Legal System Views Itself as a Silo

- **The legal system** sees itself as a distinct silo, separated from other systems such as the education system, the social assistance system, or the healthcare system.
- **In real-life situations**, Nova Scotians, particularly marginalized individuals, navigate multiple systems simultaneously and do not distinguish amongst them.
- **The result** is that experiences of trauma, discrimination, and disrespect within any system have a profound effect on the level of trust marginalized Nova Scotians have in the legal system.

The Legal System Fails to Recognize Systems Trauma

- **The legal system** believes trauma comes from people and their relationships.
- **In real-life situations** clients often feel traumatized by experiences with the legal system.
- **The result** is that many clients avoid the legal system or access to justice services. The risk of being retraumatized outweighs opportunities for justice presented by the legal system.

A Person-Centered Approach to Justice

Justice requires an understanding of legal problems outside of silos and within the context of people and their relationships.

Service providers encouraged the Access to Justice & Law Reform Institute to take a person-centered approach when looking at legal problems. A step towards implementing this approach is to understand the needs and support required by youth, mothers, fathers, and grandparents. This perspective allowed the Institute to see people not just as litigants, victims, or perpetrators, but as children, parents, and grandparents, thereby recognizing relationships as an integral piece of accessing justice.

Access to Justice for Youth

Service providers described instances of hidden homelessness and poverty experienced by the youth that they served. Young adults who were no longer living at home experienced difficulty finding appropriate housing and gaining employment, neither of which are being addressed by the system. For instance, unhoused youth have difficulties accessing social housing, income assistance, and even the Nova Scotia Child Benefit. Child support from parents is also extremely difficult to obtain without access to legal services.

Additional access to justice gaps were created by the 2015 reforms to the *Children and Family Services Act*, which extend services to youth over the age of 16. Due to the reforms, child protection staff must now investigate a youth's claim that he or she cannot live at home before the child qualifies for assistance. This



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creates additional bureaucracy and time delays for youth waiting on financial support. Service providers also stated that extending the duty to report to youth can jeopardize relationships of trust with clients, making service provision more difficult. For example, if child protection services determines that a child who is estranged from family members is otherwise not at risk at home, the resulting lack of access to income assistance or social housing may place the child in danger, as he or she may have no choice but to live in vulnerable circumstances.

A lack of support can be more acutely felt by youth marginalized by raced and gendered oppression. For examples, service providers stated that youth who are estranged from their families may not be able to undertake gender affirming surgeries or access medication if they are not deemed to have capacity to consent in their own right. In certain situations, transitioning youth may continue to be called by their pre-transition names in the education system, which undermines their dignity and autonomy to choose their gender identity.

Youth experiencing mental health or cognitive challenges face additional barriers, especially in the education system. Service providers commented that a lack of access to specialized health services, particularly in rural Nova Scotia, may prevent youth from receiving timely diagnoses. This can result in a lack of access to specialized services necessary for clients to succeed at school.

Access to Justice for Mothers

Service providers described access to justice gaps experienced by mothers, especially those living in poverty or suffering from domestic violence. Many encounter problems when they attempt to enforce child support and parenting orders without support. Especially in the context of family violence, women require assistance in enforcing their parenting orders.

Also, service providers stated that women experiencing domestic violence are often afraid to call police. Many fear that they will be criminalized or that child protection authorities will be notified. This concern is particularly acute for racialized women and women suffering from mental health or other cognitive disabilities. Service providers also explained that mothers have been told by child protection services that they are responsible for keeping an abusive partner

away from their children. In many cases, these women were taken to family court by the same partner because he or she wanted custody or access to the children. As cases involving abuse may go through the criminal court system, women experiencing domestic violence may not be able to bring evidence from criminal court to support their case, especially if they represent themselves in family court.

For mothers living in poverty, self-representation may be the only option due to the unavailability of fee waivers. As an example, if a woman has even one child, she will not qualify for a fee waiver to bring her case to court if she earns more than \$1,416 per month.

Service providers also mentioned that mothers living in poverty experience great difficulties when they are involved with child protection authorities. For instance, families whose children are apprehended – but where there has not yet been any final court order – may lose their Child Tax Benefit or social housing, making it harder to have their children returned.

Women who are racialized, suffer from addictions and mental health issues, or live in rural Nova Scotia have greater difficulties accessing services necessary to address the concerns of child protection authorities. Now that the timelines under the *Children and Family Services Act* are restricted to one year in total, delays caused by service access barriers can result in mothers permanently losing children to the system.

Finally, service providers mentioned that mothers who are incarcerated may raise young children in prison. As racialized women are more likely to be criminalized, it is more likely that racialized children are cared for in prison. Also, racialized children whose mothers are at risk of prison time are more likely to be raised without their mothers. The same can be said for newcomer children, who face separation from parents due to immigration detention.



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Access to Justice for Fathers

Service providers explained that the parenting strengths of fathers – particularly racialized and newcomer fathers – can be undervalued by a lack of cultural competency and systemic racism. In family law disputes, racist assumptions may serve to depict a racialized father as less deserving of custody or access when compared to their white partners.

Systemic racism in the justice system often separates racialized fathers from their families when these men are criminalized. In a vicious cycle, the criminalization of racialized men further reinforces racist assumptions about their value as fathers or abilities to raise children. As a result, racialized children are deprived the benefit of caregiving by their fathers.

Marginalized fathers, particularly those who are racialized or live in rural Nova Scotia, experience a lack of services, which renders them more likely to be criminalized and to lose their children to child protection authorities. In addition, men with disabilities and addiction issues are more likely to experience homelessness due to a lack of access to services.

Many of the problems mothers face when living in poverty are also experienced by fathers. Service providers stated that men representing themselves in court may have a difficult time raising complex arguments involving disparate areas of law such as the intersection of criminal and family law. Also, much like mothers in high conflict family law cases, fathers encounter difficulties enforcing parenting orders.

Finally, much like mothers, fathers experiencing poverty may be prevented from bringing a case to court because of a lack of availability of fee waivers. For instance, a father with even one child does not qualify for a fee waiver if he makes more than \$1,416 per month.

Access to Justice for Grandparents

Service providers stated that grandparents often step in to help address the access to justice crisis facing their families. As previously discussed, access to justice crises are more likely to hit marginalized families, including racialized families. A lack of services, housing, income, and employment is likely to lead to situations of incarceration, interactions with child protection, or

general economic vulnerability for parents. In these situations, grandparents may be required to step in and help care for their children and/or grandchildren.

Grandparents can receive financial support from child protection authorities or other services including the Canada Pension Plan, Old Age Pension, and Child Tax Benefit, which help them to raise their grandchildren. Grandparents on Canada Pension or Old Age Pension who had previously been on income assistance felt they were treated better or as more deserving of assistance when they switched from provincial income assistance to federal forms of assistance for seniors.

However, service providers also stated that grandparents can be cut off from services or financial support when they are asked to step in informally to care for grandchildren, whether this request comes from their children or child protection services. Informal agreements leave grandparents in a legal and service grey zone; they may not be legally entitled to child support from child protection services, social housing, or even the parentage rights that flow from a legal custody order. In some cases, grandparents may avoid obtaining formal orders for custody through the court system because of complicated family dynamics.

Even where grandparents do want to go to court to gain custody of their grandchildren, some do not know that they have a right to apply for custody, which creates an additional access to justice obstacle for grandparents attempting to raise their grandchildren.

Service providers also stated that legal gaps can appear when grandparents suffer from mental health or other cognitive disorders. For example, when grandparents live in rural Nova Scotia



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and their children have moved away from the area, there may be a limited support system to provide assistance if they begin to suffer the onset of dementia. On the other hand, grandparents can be financially abused by family using powers of attorney. These elders can be caught in a legal gap where police are unwilling to intervene to address the financial abuse and the victims are unable to bring the case to court on their own.

Service Providers Fill the Gaps

Justice requires shifting the system to address existing gaps.

Service providers are working to address the access to justice gaps faced by marginalized Nova Scotians. Not only do frontline service providers undertake programming for their clients, but they also connect clients with other resources including food, housing, and clothing. Essentially, they serve as systems navigators and systems advocates. For instance, because marginalized Nova Scotians are often disrespected when they attempt to access social services, service providers act as advocates to ensure that clients receive the support that they are entitled to.

The legal system and other social service systems operate in silos, which creates legal gaps for marginalized Nova Scotians. In these cases, service providers act as navigators, ushering clients and information across silos to meet access to justice needs.

In many cases, programming, advocacy, and navigator roles are within the mandate of service providers. However, many service providers noted that on a frequent basis, they are asked to fill roles that they have not taken on in the past. In many cases, they take on these responsibilities because if not, their clients may be rendered homeless, criminalized, or lose their children to child protection services. Despite the additional workload and expectations, service providers have not seen an increase in funding required to provide access to justice for their clients.

One major area where service providers have recently filled gaps is in respect to the child protection system. For example, service providers who do not usually serve clients or undertake programming for families involved in the child protection system found themselves stepping in to fill gaps to support families in need.

Conversations with service providers highlighted the fact that the access to justice crisis does not only affect marginalized individuals; it impacts service providers who fill access to justice needs. In many cases, the additional weight on service providers impacts their well-being and may have a traumatizing effect.

Conclusion

Access to justice for marginalized Nova Scotians requires supporting a person-centered approach to justice. This work includes supporting frontline service providers.

- In order to address the access to justice crisis, there must be an acknowledgement and plan to address the pressure put on frontline service providers as well as their clients.
- Without support, service providers are vulnerable to vicarious trauma and burnout.
- Access to justice for marginalized Nova Scotians involves shifting the system to focus on the interests and needs of people accessing the system. The focus should not remain on system actors or on the system itself.
- Justice requires an understanding legal problems outside of silos. Legal problems are not cleanly confined to distinct areas of law. They are defined by the circumstances and relationships of people using legal systems.