

PLAIN LANGUAGE POSITION ON ACCESS TO JUSTICE



OVERVIEW

This document is a position paper. It was made by Inclusion Canada. It is about a human right. This human right is called 'access to justice.'

This paper explains how access to justice can affect people with disabilities. This includes people with an intellectual disability.

This paper will show what Inclusion Canada believes. It will show the actions that Inclusion Canada is calling for.

BACKGROUND

People with intellectual disabilities face a lot of barriers in our society. As a group, they are often left out and forgotten. They are often ignored by the rest of society. They are not included in many ways. Sometimes laws take away their rights instead of protecting them.

This has been happening for a long time. It happens in many different ways. It is still happening. But there are some positive changes being made.

One of these changes is in the law. In 2006, a new law was accepted. It is called the Convention on the Rights of Persons with Disabilities, or the CRPD. It is just called the 'Convention' in this paper. This Convention helps people with disabilities. It makes sure they have the same rights as everyone else. It makes sure they are treated equally around the world.

Inclusion Canada's position is fully inclusive. We advocate for all people. We embrace their way of communicating. We recognize the range of their disabilities.

We believe governments across Canada have failed to fully include people with intellectual disabilities. Governments have failed to treat people with intellectual disabilities on an equal basis with others. They have failed to provide supports, resources and income so that people can be included equally.

What is Ableism?

Ableism is a form of discrimination. Discrimination is the unfair treatment of a person or group. Ableism is directed against people with disabilities. It is based on the belief that people without disabilities are 'better than' people with disabilities. Ableism views disability as a condition that needs to be 'fixed.' These kinds of views have an impact on people with disabilities. These views and actions have kept people with disabilities isolated and treated differently for a long time. Sometimes these actions are done on purpose. People with disabilities are left out. Society does not include or consider them in plans and ideas. They are not a part of the decisions that impact everyday life.

Sometimes these actions are not done on purpose. Sometimes others are not aware that they are treating people with disabilities unfairly. They may have ideas or opinions about people with disabilities that are not true. Because of these ideas, they may act in ways that exclude people with disabilities.

Ableism is harmful to people with disabilities. It undervalues them. It limits their potential. It makes them vulnerable.

Ableism and Being Vulnerable

Ableism makes people with intellectual disabilities one of the most vulnerable groups in society. Being vulnerable means that they are at risk of being harmed or having bad things happen to them. This also means that they are victims more than other groups. It means they are excluded from accessing all levels of society. This includes being able to access the justice system.

There are many examples of this. The courts often view adults with intellectual disabilities as if they are children. This leads to decisions and orders based on these false views. This also affects the rights of people with intellectual disabilities. It affects how they are valued. It affects their potential. This is a harmful practice.

The justice system has these 3 major parts.

- Police
- Courts
- Correctional services

Access to justice is connected to these parts of the system. There are different roles people can be in within these parts of the system.

The process of the legal system also has many parts. They include those listed below.

- Legislatures
- Law enforcement
- Legal services

- Victim services
- Correctional services
- Service providers
- Community members and groups

There are other social systems involved in access to justice. These include health, education and social services.

Unequal Treatment and Exclusion

People with intellectual disabilities continue to be treated as 'less than.' They are treated unequally. This is done by governments and other groups in society. This happens even more to people with complicated needs. It happens more to people who have different ways of communicating. This means that people with intellectual disabilities are excluded from every part of society. They are excluded from being members of the community.

Here is an example. When people with intellectual disabilities end up in jail they often become victims themselves. They need to have more access to different programs and other options to jail time.

Society plays a big role in how people with intellectual disabilities are treated. Society needs to become more educated and informed. Society needs to become more caring and concerned about including and valuing people with intellectual disabilities. This will make Canada a more just and inclusive country.

Inclusion Canada wants to address these issues. We want a lot of training. We want all professionals in the justice system trained. This includes police, lawyers and judges. We want them all to understand and enforce the rights of people with intellectual disabilities.

The following is a scenario, or short scene. It shows how a person with an intellectual disability might be vulnerable in the justice system.

Mary was expecting a baby. It was her first. She was nervous as her due date got closer. When it was time, the doctor sent her to the hospital. Mary delivered the baby. The birth went well. The baby was a healthy 7 pound girl. But a social worker came into Mary's room shortly after the birth. The social worker told Mary that the baby was been taken away. The social worker said Mary was unfit to be a mother because of her intellectual disability.

Indigenous Persons with an intellectual disability

Some groups of people with intellectual disabilities need more attention in the justice system. This includes Indigenous people with an intellectual disability. This group is often treated unfairly in two ways. They are discriminated against because they have an intellectual disability. But they are also discriminated against because they are Indigenous. This means that they are even more left out, ignored and forgotten.

Legal Protections and International Commitments

There are laws to protect people with intellectual disabilities. Discriminating against people with disabilities is illegal. It is against the Canadian constitution. It is against Canadian human rights laws. It is against human rights laws in the provinces and territories. There are also international laws. These include Article 13 of the Convention on the Rights of Persons with Disabilities. Article 13 is about access to justice. Canada signed and agreed to follow the Convention.

The following is a scenario, or short scene. It shows how a person with an intellectual disability might be vulnerable in the justice system.

Sam was walking home from work like usual. On the way, he was stopped by the police. He was glad when the police asked him if he wanted to take a ride in the police car. He thought this was exciting. But the police didn't take him home. They took Sam to the police station. The police told Sam that a woman had been hurt badly and sexually assaulted. The police asked Sam questions. They asked what Sam was doing before he was stopped by the police car. Sam thought the police wanted him to say he hurt the woman. He wanted to help the police so Sam said that he did it. The police accepted this as a confession. They did not do any more investigating. Sam went to jail. He got out when DNA evidence showed it was not him who hurt the woman.

Barriers in the Justice System

There are a lot of wrong ideas about people with intellectual disabilities. There is a lot of wrong information. These wrong ideas are in all systems in society. The justice system is no different. The justice system continues to believe that people with an intellectual disability cannot take part. This happens in any role. It happens at all levels. It is believed that people with intellectual disabilities cannot take part in any of the following roles.

- Assailant
- Victim
- Complainant
- Offender
- Plaintiff
- Respondent

People with intellectual disabilities cannot access these roles. This is simply due to the belief that they cannot take part due to their intellectual disability.

Here is an example. Women with disabilities experience high rates of sexual assault and abuse. The rates are much higher than women without disabilities. This means that those in the justice system should be aware of this. Officers, prosecutors and judges must trust that the victim is telling the truth. They cannot dismiss the victim's testimony just because the victim has an intellectual disability. They also need knowledge, skills and supports to get the testimony of women with an intellectual disability. This is especially true of those who communicate without speaking.

There are many reasons why a person with an intellectual disability can't take part in the justice system. But none of those reasons is the intellectual disability itself. The reasons lie within the justice system, as below.

- The system does not include many people and groups.
- The system does not respond to the needs of many people and groups.
- The system does not accommodate or provide support to people with disabilities.
- The system does not treat everyone in an equal and fair manner.

The entire system does not work well for everybody. This is against the whole idea of having laws and rules.

Here are some of the main problems.

- There is very little legal information that is accessible. It is not provided in different formats. It is not provided in plain language.
- There is not enough training for professionals in the justice system. They don't know enough about people with intellectual disabilities.
- There is not enough support for people with intellectual disabilities in the justice system. They don't have enough support to take part in the different roles of the legal process.

The following is a scenario, or short scene. It shows how a person with an intellectual disability might be vulnerable in the justice system.

Susan recently lost her sister. Her sister had a severe intellectual disability. She did not speak and used a different way to communicate. Her sister died at a residential care home. Susan's sister was very dependent on support services. Reportedly, there was neglect by a direct support worker who worked with Susan's sister. Susan requested an inquest. She asked the chief medical examiner to investigate the incident that led to her sister's death. Susan's request was denied. The department said they had done more to improve the safety of the residents and an investigation was not needed. Susan felt the improvements did not address the needs of residents like her sister. But the decision was final. Susan had no way to appeal. Susan was left with the feeling that the system had failed to provide justice for her sister.

The Role of the Federal Government

The federal government has a duty to people with disabilities. They need to remove barriers at all levels. They need to remove old barriers. They need to stop new barriers from happening. They need to make sure that people with intellectual disabilities have access to the justice system. They need to make sure the access is the same as any person without a disability.

Our society is a democracy. This means that everybody is treated equally. Some people with disabilities need help to get treated equally. This is especially true for people with an intellectual disability. This means that supports need to be provided. It doesn't matter what part of the system the person is in. They may be a victim or an offender or anything else. But either way, they need

disability support to understand and make their way through the justice system.

But the lack of support and ongoing barriers continue. This leaves people with intellectual disabilities excluded from accessing all levels of the justice system.

Our Calls to Action

Inclusion Canada is the largest national organization whose goals are to advance the full inclusion and human rights of people with an intellectual disability. We want to remove the barriers to justice. We have a big network. We have a lot of skills and knowledge. We are in a good place to lead the way to make sure the justice system is accessible for people with intellectual disabilities. We will do this in the following ways.

- We will work with other groups.
- We will work to change policies.
- We will work to remove all barriers to the justice system.

We are calling on other groups to help us. These include governments. It includes legal institutions. It includes the enforcement part of the law. It includes the media and the public. Below are our calls to action.

1. **Make a plan to put Article 13 into action.** The plan should be very detailed. It should span several years. The outcome should make sure that people with an intellectual disability have equal access to justice.
2. **Accept the barriers caused by ableism.** Focus on ways to treat a person with an intellectual disability fairly in the justice system.
3. **Accept that some groups have more barriers than others.** Work to remove the additional barriers faced by Indigenous people with an intellectual disability in the justice system.
4. **Make sure that legal information is accessible.** Make sure it is accessible to people with intellectual disabilities. Make sure it uses the communication method of the person in the justice system. One solution will not fit all intellectual disabilities.
5. **Make sure that everyone in the justice system is treated with dignity and respect.** This includes people with intellectual disabilities.
6. **Involve people with intellectual disabilities.** Make sure they are involved in developing policies and practices about access to justice.
7. **Promote understanding and inclusion.** Question and challenge the false beliefs about people with intellectual disabilities.

Inclusion Canada invites others to join our work. Those in education, community organizations and advocacy groups can help in the following ways.

1. **Partner with Inclusion Canada.** We are ready and willing to help. We will assist all plans that will improve access to justice for people with intellectual disabilities.
2. **Work together and share resources and knowledge.** This will help to address the barriers in accessing the justice system.

3. **Work together to create a justice system that is inclusive of everyone.** Make sure everyone is treated fairly no matter what their abilities are.
4. **Recognize the role of technology.** Technology can improve access to the justice system. Explore and invest in new solutions. These can help with barriers in communication, finances and other areas of accessing justice.

Conclusion: Towards a More Inclusive Society

Inclusion Canada is ready to lead the way in creating a more inclusive, equal and just society. We are committed. We have the expertise. We are dedicated to advancing the rights and dignity of people with intellectual disabilities. We want to work with other groups to ensure equal access to the justice system. We believe that joining our forces together will help to build an inclusive future for all Canadians.

We want to change the justice system so that it truly serves all people, regardless of ability. We want this statement to motivate changes in the justice system to make it inclusive of everyone in our society.