

## OVERVIEW

Persons with an intellectual disability continue to be amongst the most marginalized and excluded people in Canada. Historically, laws have undermined the rights of persons with an intellectual disability. The *Convention on the Rights of Persons with Disabilities* (CRPD)<sup>1</sup> marks a paradigm shift at the level of international law, recognizing that disability should not impede full personhood and citizenship. Their exclusion is a result of systemic ableism, rooted in historic prejudice, misconceptions, and discrimination. Governments across Canada have failed to provide appropriate supports, resources, and income to ensure the full inclusion of persons with an intellectual disability in society on an equal basis with others. Our position is fully inclusive, advocating for all persons by embracing the diversity of their communication methods and acknowledging the spectrum of their disabilities.

## POLICY CONTEXT

**Ableism** is a form of discrimination or prejudice directed against individuals with disabilities. It can manifest in both obvious and subtle ways, including through conscious biases, which are deliberate and intentional prejudiced beliefs or actions, and unconscious biases, which are inadvertent or automatic assumptions or stereotypes that influence our behavior without us realizing it. These unconscious biases are often deeply ingrained in our minds due to societal norms, cultural backgrounds, or personal experiences. Ableism also involves harmful practices that undervalue and limit the potential of individuals with disabilities. It is systemic, meaning it is deeply embedded within our societal structures, including language and policies, leading to inequality and exclusion.

### **Ableism and Vulnerability**

Pervasive ableism makes this identifiable group one of the most vulnerable in society, resulting in their disproportionate victimization and exclusion in accessing all levels of society, including the justice system. A glaring example of this is how our courts and laws often misidentify adults with an intellectual disability as children, leading to decisions and judgments based on this false categorization. This not only undermines their rights but also perpetuates harmful practices that undervalue and limit their potential. When considering access to justice, we understand the justice system as being constituted by three major components: the police, courts, and correctional services. It's crucial to highlight the interconnection between access to justice and these systems, as well as the different roles individuals can assume within them. Additionally, the administration of justice encompasses legislatures, law enforcement, legal services, victim services, correctional

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<sup>1</sup> United Nations, Convention on the Rights of Persons with Disabilities, 13 December 2006, A/RES/61/106, Art. 13 [CRPD]

services, service providers, community members, and groups, as well as other social support systems such as health, education, and social services.

### **Unequal Treatment and Exclusion**

Government and civil society continue to treat persons with an intellectual disability, particularly persons with complex or severe needs or who lack regular means of communication, as of less value and unequal worth, resulting in their exclusion in every dimension of their lives as members of our communities. For instance, individuals with an intellectual disability who are convicted of offences must have increased access to more court diversion programs and sentencing alternatives as when incarcerated they become victims themselves. Society at large, through its entrenched biases, misconceptions, and lack of understanding, also plays a significant part in perpetuating the marginalization and devaluation of persons with an intellectual disability. It is imperative that society as a whole becomes more informed and empathetic, thereby contributing to a more inclusive and just Canada. To address these issues, we call for the development of comprehensive training programs for professionals within the justice system – including police, lawyers, and judges – on the rights of persons with an intellectual disability.

Mary was experiencing some anxiety as her due date approached. Her doctor suggested she go to hospital in preparation for the birth of her first child. Shortly after the delivery of a seven-pound baby girl, a social worker approached and advised her that the baby was being apprehended on the basis that she was unfit to be a mother due to her intellectual disability.

### **The Plight of Indigenous Persons with an Intellectual Disability**

The plight of Indigenous persons with an intellectual disability requires particular attention. We are perpetuating intersectional discrimination, both on the basis of their Indigenous identity and their intellectual disability. This double burden of discrimination intensifies exclusion and marginalization.

### **Legal Protections and International Obligations**

The marginalization and discrimination imposed on persons with an intellectual disability are illegal under the Canadian constitution, federal and provincial/territorial human rights legislation, and international law. These laws include Section 15 of the *Canadian Charter of Rights and Freedoms* (which ensures equal rights and non-discrimination),<sup>2</sup> federal and provincial/territorial human rights statutes, and Article 13 of the *CRPD* (regarding equal access to justice)<sup>3</sup> that Canada has signed and ratified.

Sam was walking home from his place of work in the community when he was stopped by the police. He was pleased when the police asked him if he'd like to take a ride in their car. At the station, the police told him a woman had been badly hurt [sexually assaulted] a few blocks away. The police

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<sup>2</sup> Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11, s 15.

<sup>3</sup> CRPD, Art. 13.

question him about what he had been doing before they met up. Sam wanted to help the police so agreed, yes, he had done it. The police accepted that as a confession to the assault. Because the police did not investigate properly, Sam went to jail until DNA exonerated him and he was released.<sup>4</sup>

### Systemic Barriers in the Justice System

Due to persistent assumptions based on prejudice and misinformation, the justice system at all levels continues to assume persons with an intellectual disability are unable to participate as assailants, victims, complainants, offenders, plaintiffs, and respondents, systematically barring their access. For instance, women with an intellectual disability experience sexual assault and abuse at much higher rates than women without disabilities necessitating that investigating officers, crown prosecutors and judges trust the veracity of victims' testimony and not negate that testimony given the presence of an intellectual disability and second, have the knowledge, skills and supports to obtain the testimony of women with an intellectual disability, including those with limited or augmented means of communication. The inability of persons with an intellectual disability to fully participate in the justice system is **not** due to their disability, but as a direct result of the justice system being under-inclusive, unresponsive, unaccommodating, discriminatory, and exclusionary. This constitutes systemic discrimination at all levels, contrary to the rule of law. These systemic barriers include lack of accessible legal information, lack of training among justice professionals about intellectual disabilities, and the absence of adequate support for persons with an intellectual disability to participate fully in legal proceedings.

A woman lost her sister, who had a significant intellectual disability and communicated non-verbally, due to alleged neglect by a direct support worker at her residential care facility. The sister, highly dependent on support services, had complex needs requiring specialized care. The woman requested an inquest from the chief medical examiner for a thorough investigation into the incident. However, her request was denied, with the explanation that the ministry had implemented measures to improve residents' safety. The woman felt these measures did not specifically address the needs of residents like her sister. The finality of the decision, with no possibility for appeal, left her feeling that the system had failed to provide justice for her sister.

### The Role of the Federal Government

It is incumbent on the federal government, as a signatory and ratifying State Party, to meet its constitutional and international obligations to remove systemic historic and contemporary barriers to ensure persons with an intellectual disability are guaranteed access to the justice system on an equal basis with others. In a democratic society, the rule of law must ensure equal access to justice, securing equal treatment for persons with an intellectual disability. Any individual with an intellectual

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<sup>4</sup> These examples highlight the potential vulnerabilities that individuals with an intellectual disability might face within the justice system. However, it is important to note that persons who are included into regular employment and living situations, as opposed to sheltered workshops or group homes, often face decreased vulnerability. Inclusive environments foster better understanding, acceptance, and protection for persons with an intellectual disability, and are therefore the scenarios we advocate for. In these settings, individuals are more likely to have their rights respected, their autonomy upheld, and their interests considered, resulting in more robust protection against potential injustices.

disability who comes into contact with the criminal justice system must have access to disability-related expertise to navigate the justice system whether as a victim, complainant, alleged offender, or in fulfilling a court order to return to community if convicted. The failure to comply with the law is the direct cause of the serious and ongoing systemic barriers for persons with intellectual disabilities, excluding them from accessing any and all levels within the justice system.

### **Our Calls to Action**

Inclusion Canada, the only national organization solely dedicated to advancing the full inclusion and human rights of persons with an intellectual disability, stands committed to dismantling systemic barriers to justice. With our extensive network and expertise, we are poised to collaborate, guide policy changes, and drive the transformation towards an inclusive and accessible justice system for all.

Inclusion Canada calls on governments, legal institutions, law enforcement, media, and the public to:

1. Develop and implement a comprehensive, multi-year strategy rooted in Article 13 of the CRPD, ensuring equal access to justice for persons with an intellectual disability.
2. Recognize and address the systemic discrimination faced by persons with an intellectual disability in the justice system, dismantling the barriers rooted in ableism.
3. Recognize and address the intersectional discrimination faced by Indigenous persons with an intellectual disability in the justice system, taking steps to dismantle the compounded barriers rooted in ableism and systemic racism.
4. Ensure the provision of tailored and accessible legal information, representation, and support services to all persons with an intellectual disability, embracing the diversity of their communication methods and acknowledging the spectrum of their disabilities.
5. Guarantee that persons with an intellectual disability are treated with dignity and respect in the criminal justice system.
6. Involve persons with an intellectual disability in the development of policies and practices related to access to justice.
7. Challenge stereotypes and prejudices about persons with an intellectual disability, promoting understanding and inclusion.

We also invite educational institutions, community organizations, and advocacy groups to:

1. Partner with Inclusion Canada, an organization ready and willing to assist in all initiatives aimed at improving access to justice for individuals with intellectual disabilities. We invite all parties to contribute to this crucial effort to make the justice system more equitable and accessible.
2. Collaborate and share resources and knowledge to address the systemic barriers faced by persons with an intellectual disability in accessing justice.
3. Strive collectively to create a justice system that is inclusive and equitable for all, embracing the full spectrum of abilities.
4. Acknowledge the role of technology in enhancing access to the justice system. We

encourage all groups to explore and invest in innovative solutions that can help overcome the communication, financial, and other barriers faced by individuals with intellectual disabilities in accessing justice.

### **Conclusion: Towards a More Inclusive Society**

Inclusion Canada, armed with commitment and expertise, stands ready to lead the way in creating a more inclusive, equitable, and just society. We are dedicated to championing the rights and dignity of persons with an intellectual disability, and we are keen to collaborate to ensure equal access to the justice system. We believe that by joining forces, we can break the cycle of marginalization and build an inclusive future for all Canadians. Our resolve is unwavering, and we invite everyone to join us in this crucial endeavor. Together, let's transform the justice system into an institution that truly serves all, irrespective of ability. By driving the necessary investment and inspiring legal and policy changes, this statement will serve as a catalyst for restorative justice, enhancing the lives of everyone in society.