

**Access to the Justice System by Women with  
Disabilities Who Are Victims of Violence:  
Judges Handbook**

Prepared by

The Roeher Institute



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## ***Introduction***

"To meet the demands and expectations of our fast changing society, the justice system must inquire into itself and be its constant monitor."

Honourable Justice Charles Dubin, 1994  
Ontario Court of Appeal

The establishment of Domestic Violence Courts in Ontario<sup>1</sup> provides an unparalleled opportunity to ensure equal access to justice for all women who experience domestic abuse. However, while women with disabilities and Deaf women are at considerable risk of abuse<sup>2</sup> by their partners or caregivers, most such violence is not reported. In the rare cases that are reported and do proceed into Court, proceedings often prove to be inaccessible for numerous reasons. The net result is that women with disabilities who are victims of abuse have diminished access to our justice system.

Addressing this reality demands a comprehensive response – one that incorporates reforms in public policy, enlightened community strategies and supports and deliberate attention within the justice system. For Judges, who must recognize and integrate an equality perspective in their interpretation and application of the law, the challenge is significant. While maintaining high standards of judicial neutrality, Judges must be sensitive to the complex challenges faced by women with disabilities and, within the constraints of their judicial role, be appropriately responsive when barriers to justice come into view.

In this context, this handbook is designed to assist Ontario Court Judges by providing:

- Contextual data relevant to the issue of violence against women with disabilities;
- Information about specific barriers that affect access to justice for women with disabilities;
- Concrete examples of accommodation measures to improve access to the Courts for women with disabilities.

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<sup>1</sup> While the development of this handbook coincides with the establishment of the Domestic Violence Courts, it is hoped that it may be of more general application in Ontario and other jurisdictions across Canada. As well, it should be noted that while the primary focus of this document relates to women with disabilities, many of the issues discussed are common to both women and men with disabilities.

<sup>2</sup> There have been a number of studies in Canada reporting on the elevated levels of violence experienced by women and men with disabilities. For a review of the literature, see *Violence and People with Disabilities: A Review of the Literature*, Health Canada (1994). For a full discussion of the prevalence of violence against people with disabilities see *Harm's Way: The Many Faces of Violence Against People with Disabilities*, The Roeher Institute (1995).

### ***Who Do We Mean by “Women with Disabilities”?***

Often, when we think of women with disabilities, the image that first comes to mind is of a woman in a wheelchair. It is important to realize that ensuring equal access by women with disabilities to the justice system includes, but goes well beyond, the provision of wheelchair access to the courtroom. The category “women with disabilities” is comprised of a heterogeneous group, and includes women with:

- ***Mobility and Agility Impairments***

Mobility/agility impairments are conditions that limit a person’s movement. They can be the result of neurological conditions (such as Cerebral Palsy and Spina Bifida), orthopaedic conditions (associated with polio, arthritis, Muscular Dystrophy), or spinal cord injuries. Women with mobility impairments sometimes use wheelchairs, braces, walkers, or crutches.

- ***Vision Impairments***

Vision impairment can range in intensity from low vision to blindness. Only a small percentage of all blind women (about 1%) read Braille. Individuals who lose their sight later in life do not often learn to read Braille and may rely primarily on large print materials, taped reading materials, or require readers.

- ***Hearing Impairments***

Hearing impairments can range from partial hearing loss (hard of hearing) to deafness. Not all Hard of Hearing (HOH) or deaf people use American Sign Language (ASL). Some read lips and speak, especially those who can distinguish sound, or who have lost their hearing later in life. A TTY /Teletypewriter allows women with hearing impairments to communicate with others using the telephone. Certified court interpreters may be needed for women who are hard of hearing or deaf. Many deaf people (although not all) identify with the Deaf Community and with Deaf Culture.

- ***Learning Disabilities and Attention Deficit Disorder***

Learning disabilities are defined as neurological dysfunctions that interfere with the brain’s capacity to process information in a conventional manner. There are many different types of learning disabilities, coming in several combinations and ranging from very mild to very severe. Terms for some learning disabilities include dyslexia (difficulties reading); dysgraphia (difficulties writing); dysphasia (difficulties developing spoken language); and dyscalculia (difficulties with mathematics). It is important to remember that having a learning disability does not affect a person’s overall intelligence. Some people with learning disabilities may also have attention deficit disorders or hyperactivity. They may become easily distracted, disorganized, impulsive, and have a low tolerance for stress.

- ***Intellectual Disabilities***

The term “intellectual disability” has gradually replaced the term “mental retardation”, as a term that is less negative and stigmatizing. Women with intellectual disabilities may have delayed or limited development in learning that can affect their ability to comprehend, remember or discern. While there is a considerable range of cognitive skills within the population of women who are considered intellectually disabled, often their capacities are underestimated. Because they may have lived in institutions or in highly protective situations with their families, women with intellectual disabilities may be shy or easily intimidated. Denied suitable educational opportunities and a chance to learn about their rights, women with intellectual disabilities may fail to perceive the denial of many amenities as a violation of their legal rights.

- ***Mental Health (or Psychiatric) Disabilities***

There is a range of conditions and diagnoses that fall under this heading, such as Depressive Disorder, Schizophrenia, and Bipolar Disorder. These conditions can all be treated with medications and with therapy. Individuals may experience side effects from medication that may inhibit clear thinking, interfere with short- and/or long-term memory and make it difficult to follow a fast-paced, information-packed conversation.

- ***Speech Impairments or Limited Verbal Communication***

Speech or communication disorders generally relate to disturbances in articulation, voice production, rhythm (stuttering), neurology (e.g., cerebral palsy, hearing impairments, intellectual disability, and associated conditions) or physical causes (such as cleft palate).

It may be important to ascertain whether a person’s speech might be better understood if a particular accommodation were offered.

- ***Hidden Disabilities***

There are a number of other disabilities that may not be readily apparent. These are known as hidden or invisible disabilities and include, for example, people who are HIV positive or have AIDS, people with head injuries, epilepsy, diabetes, respiratory diseases/asthma, multiple sclerosis, or environmental illness. If the Court is apprised of the presence of hidden disabilities, it may be possible to determine what accommodations, if any, are needed to ensure the full participation of the individual.

- ***Multiple Disabilities***

It is entirely possible for someone to have more than one of the disabilities mentioned above. Having more than one disability can significantly increase one’s vulnerability to risk. In accommodating women with disabilities, it is important, therefore, to understand that accommodation requirements may be unique for each individual.

### ***What Constitutes Violence against Women with Disabilities?***

Violence and abuse against women with disabilities include acts that are widely considered in law and social policy as those against which all members of society should be safeguarded by means of deterrents and punishments. These include the range of criminal offences proscribed under Canada's *Criminal Code*. In addition to sexual and physical assaults, there are many other acts and situations to which women with disabilities are particularly vulnerable and which they experience as violent or abusive. Some of the forms of violence that people with disabilities themselves have identified as acts to which they may be particularly vulnerable are described below. Depending on the circumstances these examples may or may not be considered offences under the *Criminal Code*; however, they paint a serious portrait of what constitutes violence in the experience of women with disabilities:

- ***physical force or neglect within the context of care-giving***

For example, a caregiver forcing a woman to eat at a pace exceeding her ability and comfort; leaving her in soiled or wet clothes or bed sheets; leaving her on the toilet or in the bath for an extended period of time; pinching, slapping or pulling her hair while dressing or undressing her.

- ***unwanted acts of a sexual nature by a caregiver***

For example, a caregiver engaging in sexual touching during bathing and toileting routines; leaving the bathroom door open or coming in while a woman is dressing, bathing, or toileting; using explicit sexual language or making sexual jokes.

- ***denial of rights, necessities, privileges or opportunities***

For example, a partner or service provider having absolute control over a person's finances; petty theft by acquaintances or caregivers; the denial of food and fluids by caregivers; denying a woman with a mobility impairment assistance to get out of bed, wash or dress.

- ***acts by which social participation, communication and inclusion are denied***

For example, a paid caregiver or family member refusing to help a woman leave her home for social activities; taking away a piece of technology required for communication or social interaction; not allowing a woman with limited verbal skills to express herself; speaking to a woman with an intellectual disability in an intentionally complex or confusing way.

- ***threats, insults, harassment by partners, caregivers***

For example, demanding money for services not rendered; threatening to leave without feeding or toileting her; threatening to stop caring for her, leaving her vulnerable to being institutionalized, threatening reprisals should she complain or tell anyone.

### ***What is the Extent of the Problem of Violence against Women with Disabilities and What are the Contributing Factors?***

It is difficult to estimate the extent of the problem of violence against women with disabilities, given that many of the acts that women with disabilities experience as violent have not received research attention and most instances of abuse and violence are unreported. National crime statistics have not been classified according to whether the survivor/victim has a disability. However, the 1994 Statistics Canada survey on assault and sexual assault against women<sup>3</sup> indicated that adult women with a disability are considerably more likely than other women to be physically or sexually assaulted by their partners over the course of their married lives (39 as compared with 29%). A number of independent studies suggest that women with disabilities are one-and-a-half to two times more likely than non-disabled women to experience abuse.<sup>4</sup>

The factors that contribute to the abuse of women with a disability have been well documented. They include:

- negative public attitudes about disability;
- reliance of people with disabilities on others for care;
- social isolation of people with disabilities and their families and lack of support for caregivers;
- gender - particularly with reference to sexual abuse and domestic violence;
- poverty and other economic factors affecting people with disabilities including lack of control or choice over their personal affairs;
- lack of safe, alternative settings (e.g., accessible shelters, accessible social housing), or services (e.g., a woman who is abused by her attendant may have no alternative support);
- perceived lack of credibility of women with disabilities when they report or disclose abuse;
- socialization of women with disabilities to be compliant;
- alcohol and drug abuse by perpetrators;
- ineffective safeguards (lack of protocols and procedures to respond to abuse, to screen potential offenders, and the like); and
- lack of access to legal services/advocates for victims with disabilities.

In addition “women with disabilities” represent a highly heterogeneous group. A number of factors may compound any individual's vulnerability to abuse – the nature of her disability, her socio-economic status, race, linguistic/cultural background, geographic location, sexual orientation, age, etc. For example, the isolation of a woman with a disability who is a victim of spousal abuse may be compounded if her first language is not English. A woman with limited mobility living in a rural community may have considerable difficulty obtaining emergency transportation to a shelter.

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<sup>3</sup>Statistics Canada, Canadian Centre for Justice Statistics, 1994c, p. 6

<sup>4</sup>For a discussion of the prevalence of violence and statistics see Harm's Way: The Many Faces of Violence and Abuse Against People with Disabilities, The Roeher Institute (1995), p. 7-10.



### ***What are Some of the Difficulties Women with Disabilities Face in Seeking Help or Reporting the Violence?***

There are many reasons why women who experience violence or abuse by partners, family members, or paid caregivers, may not seek help or report the violence to the police or seek help from social services. The lack of accessible resources, limited options for support, as well as a fear that disclosures may not be believed, often inhibit women from disclosing abuse. The still widely held myth that women with disabilities are safe from abuse also sometimes prevents non-offending family members, friends, and caregivers from recognizing, and hence reporting, abusive situations.

Some of the obstacles to reporting abuse include:

#### ***Physical and Communication Barriers***

For example:

- Shelters and sexual assault centres may not be accessible to women in wheelchairs, may not have telecommunication devices, interpretation services, materials in alternate formats.
- Deaf women or women with communication difficulties may not be able to communicate what is happening without the intervention of the abuser.

#### ***Prevailing Attitudes and Stereotypes about Women with Disabilities that Would Make a Woman Reluctant to Disclose Abuse***

For example:

- There is the widespread belief that no one would want to abuse a woman with a disability or that a woman with a disability should be grateful for the “attention”.
- There is the tendency for partners and caregivers to be seen as more credible and more likely than the woman herself to be believed.
- There is the fear of the loss of an intimate relationship.
- Women with disabilities are unlikely to report abuse, because, as noted above, they may not have information about their rights, or may not feel they will be believed or provided accommodations they require.

### ***What are the Barriers to Access to the Justice System Faced by Women with Disabilities?***

Abusive acts against women with disabilities are rarely reported to the police. Even when they are reported, few cases end up in court. For this reason, it has been suggested that people with disabilities remain one of the groups least served by the justice system.<sup>5</sup>

Barriers to access to the judicial system involve attitudes, procedures, physical and/or communication barriers, as well as legislation or statutes that may militate against the participation of women with disabilities. Any or all of these barriers can be encountered at each stage of the judicial process (for example, from the moment a woman with a disability comes into contact with the police, during the police interview, at the pre-trial stage in her contact with the Crown Attorney and or/Victim Witness Assistance coordinator, or in the courtroom at the trial, in her interactions with Court officials and before the Judge).

The following are some of the barriers that have been identified in research<sup>6</sup> on violence against people with disabilities:

#### ***Attitudes***

- There is an overall lack of awareness regarding issues affecting women with disabilities, and limited understanding about how to communicate with people with various disabilities, their accommodation needs and available community resources.
- Often women with intellectual disabilities, communication difficulties, and mental health problems, are not regarded as credible witnesses in court.

#### ***Physical barriers/ communication barriers***

- Not all courts in Ontario are physically accessible to people with mobility impairments, with ramps, accessible elevators, accessible washrooms, etc.
- Women with mobility impairments may have difficulty finding accessible transportation to courts. This is particularly the case in rural settings where accessible transportation for long distances may be difficult to arrange.
- There is a lack of adequate and appropriate communication support (for example, cultural interpreters/signers). It can be difficult to find qualified signers or cultural interpreters. It is important to ensure that, for example in the case of a Deaf couple, both parties have their own certified court signers.

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<sup>5</sup> Sobsey, Violence and Abuse in the Lives of People with Disabilities: The End of Silent Acceptance?

<sup>6</sup>See studies such as Harm's Way, Violence and Abuse in the Lives of People with Disabilities, and Answering the Call. Some of these barriers were also identified in interviews conducted by The Roeher Institute for its report to the Ministry of Citizenship, Culture and Recreation on the current state of access to services and to the courts by women with disabilities in Ontario (1997).

***Procedures***

- Insufficient time for Crown Attorneys and Victim Witness Assistance Coordinators to prepare for cases involving victims/witnesses with a disability.
- Women with disabilities may fatigue more easily, or have less endurance on the witness stand. Lack of flexibility in terms of timing and the length of court appearances can put them at a disadvantage.
- Taking statements from a woman with an intellectual or mental disability numerous times can lead to confusion and lack of clarity.
- Failure to take into consideration how an individual thinks or processes ideas can be a barrier to obtaining her testimony. For example, women with an intellectual disability may not have the same sense of time and date as women who do not have such a disability. The fact that a person may not, for example, be able to say with certainty that an event happened two weeks ago may be interpreted as a sign of their lack of credibility, rather than a difference in terms of how people with an intellectual disability may understand temporal relations.
- There is no funding in place for Crown Attorneys to hire expert witnesses, as appropriate, to explain the nature/implications of a person's disability to the courts.

***Other barriers with statutory/legislative implications***

- There may be a devaluing of crimes that fails to take into consideration the impact a particular offence may have on an individual who is vulnerable to abuse.
- People who live in congregate settings such as group homes or institutions may be at a disadvantage and at risk of loss of privacy because the counsel for the accused may have access to records about their daily lives – documentation that would not be available regarding the activities/behaviours of non-institutionalized citizens.
- Depending on which model is adopted in the court, some of the Domestic Violence Courts may not handle cases involving women who are assaulted by individuals who are *not* partners or spouses, but paid caregivers or family members. The limited capacity of the Domestic Violence Courts to deal with cases of abuse by caregivers who are not spouses is a barrier for women with disabilities.<sup>7</sup>

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<sup>7</sup> At the time that this document was written, it had not been determined which models or combinations each of the Domestic Violence Courts would adopt. The “North York” model deals strictly with partner abuse, whereas the model adopted by “K Court” in downtown Toronto, allows more discretion in the definition of domestic abuse.

### ***Examples of Best Practices in the Courts***

There have been a number of innovative practices that point the way for the justice system to ensure that the judicial process is available and accessible to women with disabilities. Following are some examples of such “best practices:

- Allowing a sexual assault victim with a disability to testify via closed circuit television;
- Permitting a witness to testify by use of a Bliss communication system;
- Limiting duration of testimony (e.g., 2 hours) to accommodate a disability that causes fatigue;
- Using deaf interpreters to interpret for deaf individuals whose first language is not ASL or English. (The deaf interpreter would be fluent enough in sign that she/he would be able to understand the different signs used by the deaf individual. The deaf interpreter, in turn, interprets to the hearing interpreter in ASL, who interprets for the Court in spoken English;
- Giving permission to have a person sit beside a hard of hearing witness in order to provide real time captioning of the trial proceedings using a lap-top computer;
- Modification of the times of the court hearings, for an individual who, because of the use of medications, is unable to testify in the mornings;
- Allowing a support person to be nearby a person with a disability, if that person’s presence is going to be reassuring to the individual; and
- In determining whether a person with an intellectual disability is capable of swearing an oath or can promise to tell the truth, being flexible in terms of establishing a person’s ability to tell the difference between lying and telling the truth.
- In a cases involving a women with a multiple personality disorder, making the Court aware of the different personalities and how they might express themselves during her testimony;
- Having appropriate medical support available on site for a woman with a seizure disorder;
- A Crown Attorney, with knowledge of some sign language, who is able to determine that a deaf victim is fearful of the court interpreter because he is an acquaintance of her abuser;
- Having specialized teams of Crowns/Police who have an awareness of disability issues and who can be brought in or consulted with on particular cases.
- Crown Attorneys taking more time, speaking more slowly and providing victims/witnesses with the extra time they may require to express themselves;
- Using a smaller and less intimidating court;
- Having court proceedings moved to an accessible location outside the courthouse. There are instances in which court proceedings have been moved to a hospital or institution in which the victim/witness is being treated or where she is living.<sup>8</sup>

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<sup>8</sup> Moving the court proceedings to an accessible location should, however, be seen as an alternative of last resort. Court rooms and the buildings in which they are housed should be accessible to people with disabilities.

### ***Guidelines for Clear and Respectful Communication***

The following guidelines are provided to assist those involved in the justice system to respectfully communicate with women with disabilities.

#### ***General Guidelines<sup>9</sup>***

- When first communicating with a woman with a disability you may make some mistakes. It is better to make mistakes than not to try. An honest and open desire to communicate, and being honest with yourself and how you are feeling, will be your best ally. Also, since each woman will be the best expert on how you can communicate most effectively with her, ask her what her preferences are.
- Begin with the assumption that this person is a lot like you and easy to communicate with. Adjust your approach as seems necessary.
- If at all possible, approach the woman from the front. Recognize that if she has been recently or frequently traumatized, she may be fearful and jumpy. If she is hearing impaired, she will appreciate seeing you coming. If she has cerebral palsy, she may have a strong startle reaction to an unexpected approach or sudden noise. If she is visually impaired, introduce yourself as you approach and try to give her some indication that you are approaching.
- Try to arrange yourself so that you are on the same level physically as the person you are speaking to. For someone seated in a wheelchair or lying down, it can be tiring and disempowering to be looking up at another person. Ask the person what she is most comfortable with.
- Speak clearly and keep your face visible.
- Assume that the person is your intellectual equal, and speak to her accordingly. Speak simply and clearly. Remember that she may have just experienced some form of trauma and will appreciate clear and plain language, regardless of her intellectual capacity.
- If someone appears not to understand you, do not immediately assume that she has an intellectual disability. There are other possibilities, such as:
  - She may have just experienced shock and trauma;
  - She may be hearing impaired;
  - English may not be her first language, or one of her languages at all;
  - Your own voice or accent may be difficult for her to follow;
  - One or more of these factors may be present together.
- Remember that some neurological conditions, such as Cerebral Palsy, are often mistaken for drunkenness.

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<sup>9</sup>Adapted from *Charting New Waters: Responding to Violence Against Women with Disabilities*, Justice Institute of British Columbia (1996).

## ***Guidelines for Communicating with Women with Specific Disabilities***

### ***Women with Mobility Impairments:***

- Do not hold on to a person's wheelchair or scooter – this is a part of her body space.
- Offer assistance if you wish but do not insist. If a person needs help, she will most likely accept your offer and tell you exactly what will be helpful. If in doubt ask, “How may I help you?” and wait for a response.
- Talk directly to the person using the wheelchair, not to a third party. This is one of the most common barriers. For example, two people will be seated in a restaurant and one of them will be a wheelchair user. The server will ask the non-disabled person, “What do you want to order?” Then the server will ask, “What does your friend want?” In this way the person in the wheelchair is totally ignored.
- Try to avoid being overly sensitive or self-conscious about using words such as “walking” or “running”, since people in wheelchairs use the same words.
- Whenever possible during a conversation that is lengthy, sit down in order to be at eye level. It is uncomfortable for a seated person to look up for a long period.
- Be aware of the architectural and environmental barriers that exist in getting both to and into your premises, including washrooms and dining areas.

### ***Women with Hearing Impairments***

#### ***When a person is lip reading***

- Before speaking to a person with a hearing impairment, get her attention by gently waving your hand or touching her hand.
- Speak clearly and distinctly but refrain from exaggerating facial expressions or shouting.
- Provide a clear view of your mouth. Waving hands or holding papers in front of your face make lip reading impossible. Remember that if you have a moustache or beard, this may make lip reading more difficult.
- Speak directly to the person, never from the side or back, and avoid standing in front of a light source (e.g., a bright window) that makes your face harder to see.
- Speak expressively to persons who are deaf and cannot hear subtle changes in tone that may indicate sarcasm or seriousness. They will rely on your facial expressions, gestures and body movements to aid comprehension. However, do not speak in the same manner to people who are hard of hearing. Expressive gestures are not needed and may offend.
- Maintain eye contact when conversing, which will, in turn, convey the feeling of direct communication. If you look away while talking, the person who is deaf may think the conversation is finished.

- Be aware that nodding or shaking of the head may only convey understanding or lack of understanding of what is being communicated. These gestures do not necessarily mean “yes” or “no”. Always confirm what you understand has been decided.
- If the person’s response is not the exact answer to your question, perhaps she did not fully understand the question. In such a case, try to rephrase rather than repeat a word, phrase, or sentence. Sometimes a group of lip movements is hard to read no matter how often it is repeated.
- If you are having trouble understanding the person’s speech, feel free to ask her to repeat. If that does not work, troublesome words could be written down.

***When an interpreter is present most of the above still applies, but in addition:***

- Speak directly to the person who is hard of hearing or deaf – not to the interpreter. The interpreter is best situated beside you since this way the person who is hard of hearing or deaf can see both of you easily.
- The interpreter will interpret everything that is signed or spoken. In group situations it is important that only one person at a time speaks or signs.
- Pace yourself so that the interpreter has time to interpret everything you are saying.

***Women with Oral Communication Difficulties***

- People who are non-verbal sometimes use a symbolic communication system to augment or serve as an alternative to speech. There are a number of augmentative communication systems available to persons who are non-verbal. Blissymbolics is one example. It is a graphic language printed and presented on the surface of a tray, in a book, or on computer. An interpreter who knows Blissymbolics, and who knows the person well may be required – since each person who uses Blissymbols communicates in a personal way.

***When speaking to a person who uses Blissymbols***

- Phrase questions where possible in a way conducive to “yes” or “no” answers.
- Provide/offer appropriate interpretations of technical words.
- Adapt to the person’s general vocabulary limitations.
- Rephrase questions if they are too cumbersome or difficult to respond to.
- Be patient - the person may need to take considerable time to say what she has to say using an augmentative communication system.

***Women with Visual Impairments***

- If the person who is blind seems to need help, offer assistance. But only help if your offer is accepted. If you are not exactly sure what to do, ask the person to explain how you can help.
- To guide a person who is blind, let her take your arm and not vice versa. The individual who is blind will walk about half a step behind you, following your body motions. When you are about to encounter steps, curbs or other obstacles, identify

them, and whether you are going up or down.

- Never grab or pull on the person's cane or the guide dog's harness. You can startle the individual or distract the dog.
- Resist the temptation to pet a working guide dog. If the dog is distracted from its work, its owner can be in danger. Always ask permission of the owner before interacting with the dog.
- When guiding a person who is blind to a chair, simply guide her hand to the back of the chair.
- When talking to a person who is blind, use a normal tone and speed of voice. Blindness does not affect hearing or intelligence. Speak directly to the person who is blind, not to a third party.

### ***Women with an Intellectual Disability***

- When talking with a person who has an intellectual disability, keep your concepts clear and concise and use fewer complex sentences. Do not behave in a condescending manner. Repetition and careful explanation are important.
- People with an intellectual disability may benefit from the support of a person whom they know and trust during a conversation – a family member, advocate, friend or adult protective service worker. However, people with intellectual disabilities generally have the capacity to articulate their needs, to understand and to make themselves understood.
- Some women with an intellectual disability may lack social skills and judgment. This may affect how the person presents to others, and perceptions regarding her credibility.
- In a situation where the individual is going to a new environment, for example, the court room, a prior visit to familiarize her with the setting, together with an explanation of what will occur there, is often valuable.
- Hold practice sessions with the woman to prepare her for court (either with the Crown Attorney or Victim Witness Assistance co-ordinator).

### ***Women with Mental Health/Psychiatric Disabilities***

- It is a mistake to prejudge the mental condition of the person. Many disorders can vary greatly in their individual effects and therefore it does not necessarily follow that the person will be intellectually impaired.
- Be aware that people on medications may exhibit some idiosyncratic behaviour mannerisms. Also, many types of medication cause extreme dryness of the mouth, causing discomfort and possibly inhibiting communication. An offer of a glass of water is a simple and considerate solution.
- Listen carefully to the woman's train of thought. Do not allow what may seem to be "fantastic claims" to interfere with identifying authentic claims.



- Be patient with people who tend to ramble – guide them back on topic tactfully.

### ***Women with Learning Disabilities***

- Talk to the person with a learning disability as you would to anyone else. If the person with the learning disability cannot understand you, she will tell you so and will try to explain what you can do to make yourself better understood.
- Offer assistance if appropriate (e.g., reading for a person who has dyslexia) but refrain from insisting.
- Do not assume that errors made by people with a learning disability are due to carelessness.
- A lack of response or apparent inattentiveness should not be automatically interpreted as rudeness or indifference. In some cases a person with a learning disability may seem to react to situations in an unconventional manner or may appear to ignore you. It may be that the individual has a “processing problem” that is affecting her attention or her social skills.
- Just because a person can see does not necessarily mean that she can “understand” visual information. (A person with a learning disability might benefit from information on tape just as a person who is blind would.)
- A person with a learning disability may appear to be staring at you or sitting/standing too close as you talk. Be aware that certain learning disabilities sometimes make it necessary for the person to be more attentive than usual.

***Specific Actions to Address Access Issues in the Courts***

There are some specific actions that may be taken to address access issues in the courts.<sup>10</sup> A comprehensive strategy for identifying and removing attitudinal, physical, procedural, and communication barriers would include, for example:

- Removing physical barriers to courthouse and courtroom access (conforming to the current state of the art barrier-free design).
- Designating a court staff official as access and accommodation co-ordinator in each Court and ensuring that this individual receives appropriate training and makes contacts with community-based disability organizations.
- Ensuring the prompt availability of sign language interpretation and other communication support for hearing-impaired persons, where needed.
- Ensuring that printed materials are made available in accessible format to court participants with visual impairments and/or limited literacy skills.
- Using plain language instead of technical jargon.
- Feeling free to inquire about disability needs, where appropriate.
- Learning about and using appropriate terminology for disabilities.
- Ask complainants whether they require support to address a disability, and, if so, what support is needed.

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<sup>10</sup> Adapted from “Equal Access for Persons with Disabilities” by David Lepofsky, National Journal of Constitutional Law, 1995, pp. 183-214.

## **Guidelines for Assessing Physical and Functional Barriers**

### ***For women with mobility and agility impairments***

- Are there steps to get into courthouse? If so, is there a ramp?
- Are there steps inside the building, and if so, is there an elevator? Is it accessible?
- Is the Victim Witness Assistance office accessible?
- Are there steps up to the Judge's bench, to the witness stand, or jury box? If so, are there ramps in each of these cases?
- Are the bathrooms accessible to people in wheelchairs?
- Are the doorways and hallways wide enough for people in wheelchairs to pass through?

### ***For women with visual impairments***

- People with visual impairments may require documents in alternate format. Information saved as computer files can be made in large print, legible to many low-vision readers by reformatting a file in 18-point type. Materials can also be made available on audiocassette. Are alternative formats - large type, or audiocassette, or Braille - available for textual materials used in trial proceedings?

### ***For women with hearing impairments***

- Are sign language interpretation, transcripts, or real-time transcriptions available?

### ***For women with intellectual impairments***

- Is plain language being used to enable the individual to follow the case and participate to the extent of her abilities?
- Is a Victim Witness Assistance co-ordinator available to help the person understand the court proceedings, and to take her to the courtroom in advance to familiarize her with the environment?
- Are there ways in which the court can take a more flexible approach to the assessment of the credibility of a witness who cannot effectively communicate evidence due to an intellectual disability?

### ***For people with oral communication difficulties***

- Is an interpreter available to help communicate with the individual who has a communication difficulty? Are augmentative communication aids being used (such as Blissymbolics), when needed?

### ***For people with mental health/psychiatric disorders***

- Are there ways in which the court can take a more flexible approach to the assessment of the credibility of a witness who cannot effectively communicate evidence due to a mental disability?
- If the victim/witness is on medication, is information available to the Court about the effect that medication may have prior to putting the individual on the stand?

## **Resources**

### ***Disability Organizations***

The following is a selection of national, provincial and local disability organizations. For specific resources regarding particular disabilities or disability organizations, contact either InfoAbility or The Roeher Institute. (Phone numbers listed below.)

Advocacy Centre for the Handicapped (ARCH) (416) 482-8255

A community legal clinic specializing in legal cases involving people with disabilities as complainants, providing referrals to lawyers and community services.

Advocacy Centre for the Elderly (416) 598-2656

A community legal clinic for those 60 years and older who meet financial and case eligibility.

Canadian Association for Community Living (416) 661-9611

A national organization advocating with and on behalf of people with an intellectual disability and their families.

Canadian Mental Health Association (416) 484-7750

A national organization promoting mental health and advocating on behalf of persons with mental illness. It has 150 chapters across Canada.

Canadian National Institute for the Blind (416) 486-2500

Offers a variety of services for persons with vision loss.

Canadian Hearing Society (416) 964-9595

Provides services to people who are deaf and hard of hearing.

Canadian Association of Independent Living Centres (CAILC) (613) 563-2581

Promotes the process of citizens with disabilities taking responsibility for the development and management of personal and community resources.

Council of Canadians with Disabilities (204) 947-0303

Improves status of persons with disabilities through monitoring federal legislation as it impacts on people with disabilities.

Disabled Women's Network Ontario (705) 671-0825

An advocacy organization for women with disabilities in Ontario.

InfoAbility (416) 482-5896 or 1-800-665-9092

An information referral service for vulnerable adults in the province of Ontario.

Learning Disabilities Association of Ontario (416) 929-4311

Provides information and resources on learning disabilities.

Ontario Association for Community Living (416) 447-4248

The provincial arm of Canadian Association for Community Living. There are over 120 Local Associations for Community Living across the province of Ontario, providing information, support and services to people with an intellectual disability.

The Roeher Institute (416) 661-9611

A national policy research institute focussing on disability issues. Conducts research, provides information, education and social development.

Surrey Place Centre (416) 925-5141

Provides counselling for children, youth, and adults with intellectual disabilities.

### ***Selected Books, Articles, Training Materials***

Baladarian, Nora. J. (1998). *Interviewing Skills to Use with Abuse Victims who have Developmental Disabilities*. Washington, D.C.: National Centre on Elder Abuse.

Justice Institute of British Columbia. (1996). *Charting New Waters: Responding to Violence Against Women with Disabilities*. Vancouver, B.C.: The Justice Institute. (A training package for the criminal justice system).

Lepofsky, M. David. (1995). "Equal Access to Canada's Judicial System for Persons with Disabilities - A Time for Reform", *National Journal of Constitutional Law* [5 N.J.C.L], 183:214.

Robertson, Gerald B. (1996). *Legal Approaches to Elder Abuse and Neglect in Canada* (Chapter 2-2). Toronto, ON: Canadian Association on Gerontology.

The Roeher Institute. (1995). *Harm's Way: the Many Faces of Violence and Abuse Against People with Disabilities*. North York, ON: The Roeher Institute.

The Roeher Institute. (1993). *Answering the Call: Police Response to Caregiver and Family Violence*. North York, ON: The Roeher Institute

Sobsey, Dick. (1994). *Violence and Abuse in the Lives of People with Disabilities: The End of Silent Acceptance?* Baltimore, MD: Paul H. Brookes.

Valenit-Hein, Denise and Linda D. Schwartz. (1993). "Witness Competency in People with Mental Retardation: Implications for Prosecution of Sexual Abuse". *Sexuality and Disability*, (Vol.1, No.4).

### ***Bibliographies/Literature Reviews***

Centre for Independent Living in Toronto (CILT). Inc. (1997). *Disability, Violence and Prevention Resources: An Annotated Bibliography*. Toronto, ON: CILT.

The Roeher Institute. (1994). *Violence and People with Disabilities: A Review of the Literature*. Ottawa, ON: National Clearinghouse on Family Violence.