

DESIGNING ACCESSIBLE & INCLUSIVE ADMINISTRATIVE JUSTICE

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*ACCOUNTABLE ADJUDICATION: FROM AWARENESS
TO ACTION*

ROUNDTABLE: HOW PEOPLE ARE ACCESSING
TRIBUNAL JUSTICE

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ROADMAP

1. Accessibility for people with disabilities.
2. Access to Administrative Justice – A conceptual framework.
3. Some potential solutions – Approaching barriers to access through care.



Guiding Legal Principles - Domestic and International

Domestic:

- Accessibility legislation - Newest form of equality law, enacted at the federal level, and in four provinces including BC (June, 2021)
- Statutory human rights legislation-Human rights codes
- The Charter

ACCESSIBILITY FOR PERSONS WITH DISABILITIES

Guiding Legal Principles – Domestic (BC)

Domestic (BC):

- *Human Rights Code*

- *Accessible British Columbia Act , SBC 2021, c 19*

THE IMPACT OF ACCESSIBILITY LEGISLATION ON ADMINISTRATIVE TRIBUNALS

- Develops mandatory accessibility standards including customer service standards
- Sets out guiding principles that should be followed in serving persons with disabilities – e.g. respect for independence dignity etc. – see eg AODA Customer Service Regulations, [O. Reg. 191/11, s. 80.46](#)
- Requires accessibility plans to be developed and posted – eg [Health Professions and Health Services Appeal and Review Board - Multi-Year Accessibility Plan](#) ; See also the HSARB [Accessibility statement](#)
- Requires training of staff, tribunal members etc
- Has been used as a springboard to improve access for both tribunal members and staff as well as tribunal users – eg Accessibility [Member Practices & Procedures](#)

GUIDING LEGAL PRINCIPLES -- INTERNATIONAL

- **UN Convention on the Rights of Persons with Disabilities**

- **Article 13– Access to Justice**

1. States Parties shall ***ensure effective access to justice for persons with disabilities on an equal basis with others***, including through the provision of ***procedural and age-appropriate accommodations***, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages.

2. In order to help to ensure effective access to justice for persons with disabilities, ***States Parties shall promote appropriate training for those working in the field of administration of justice***, including police and prison staff.

INTERNATIONAL PRINCIPLES CONT'D

- **International Principles and Guidelines on Access to Justice for Persons with Disabilities (2020)**

Some key principles:

- Right to appropriate procedural accommodations (3)
- Right to free and affordable legal assistance (6)
- No one shall be denied A2J on the basis of disability (1)

CONTINUED BARRIERS TO A2J FOR PERSONS WITH DISABILITIES

Recent narratives of people with disabilities regarding access to justice still reveal concerns:

- Privacy
- Codes of conduct
 - [CIAJ Podcast](#)



FOCUS:

*HOW CAN WE WORK TO
BRING ABOUT ACCESS TO
ADMINISTRATIVE JUSTICE
FOR USERS THROUGH LAW
AND POLICY?*

ACCESS TO JUSTICE FRAMEWORK

- Procedural
- Substantive
- Symbolic
- Co-Institutional

(Macdonald, Jacobs)

CO-INSTITUTIONAL

- Mathews & Wiseman “Community Helpers” at 11 –
 - “Access to justice exists when people can pursue their goals and address their law-related problems in ways that are consistent with fair legal standards and processes; and can obtain, understand, and act on information and services related to the law, where necessary, to achieve just outcomes.”

SOLUTIONS: ACCESS TO ADMINISTRATIVE JUSTICE THROUGH CARE

Pathways:

- Connect individual personal stories with broader institutional design within the tribunal
 - What needs to change? Architecture, communications, training attitudes/ethos, other?
- Listen to the stories of users and see the implied stories behind them. There may be other factors (racism, sexism, colonialism, etc)? Find room to ask deeper questions in consultations and recognize when an issue may have deeper roots.

SOLUTIONS: ACCESS TO ADMINISTRATIVE JUSTICE THROUGH CARE (CONT'D)

- Educate (Staff and tribunal members through awareness training, self-education)
- Educate users for knowledge and empowerment
- Assistance-numerous ways to assist with navigation, can they be more user-centred?
 - Navigators, Trusted intermediaries (Community Helpers)
- Resolve access problems with care noting that not every challenge will require the same response, particularly though not exclusively in the context of disability

A HIGHWATER MARK IN TRIBUNAL NAVIGATIONAL TOOLS

The Social Security Tribunal (SST) Navigator Service:

- <https://www.sst-tss.gc.ca/en/your-appeal/navigators>

Navigators:

- guide appellants through the appeal process from start to finish
- explain the role of everyone involved in the appeal, answer questions
- help appellants prepare for their hearing and explain what happens at the hearing

ACCESS TO ADMINISTRATIVE JUSTICE & LISTENING TO MARGINALIZED COMMUNITIES

- Laverne Jacobs PhD, and Sule Tomkinson PhD, *Examining the Social Security Tribunal's Navigator Service: Access to Justice for Marginalized Communities*
 - Research Study, forthcoming at end of 2021 –available at: <https://lawdisabilitysocialchange.com/sst-report/>
- Qualitative research study that seeks to understand better the barriers faced by individuals from marginalized communities such as people with disabilities, people of colour, and people of lower income;
- Considers ways of improving access to administrative justice for individuals from marginalized communities and intersecting identities

ADDITIONAL RESOURCES

- Michelle Alton, Suman Furmah and Kayla Seyler, “Adapting the Role of Tribunal Counsel to Promote Access to Justice: How far can we go?” (2021) 34 *Canadian Journal of Administrative Law & Practice*,
- Laverne Jacobs, Ruby Dhand, David Ireland, Richard Jochelson, Freya Kodar and Odelia Bay, *Law and Disability in Canada: Cases and Materials* (Lexis-Nexis, 2021).
- Laverne Jacobs, Martin Anderson, Rachel Rohr, Tom Perry, *The Annotated Accessible Canada Act* (2021) - published open access on [CanLII](#) and on the [Law, Disability & Social Change Project](#) website.
- Roderick A Macdonald, "Access to Justice in Canada Today: Scope, Scale and Ambitions" in Julia Bass, W.A. Bogart & Frederick H. Zemans, eds, *Access to Justice For A New Century – The Way Forward* (Toronto: Law Society of Upper Canada, 2005) 19 at 104.
- Julie Mathews and David Wiseman , “Community Justice Help: Advancing Community-Based Access to Justice: A discussion paper” (June 2020).

THANK YOU

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