

Canadian  
Association of the Deaf



Association  
des Sourds du Canada

# **ADMINISTRATION OF JUSTICE: THE EXPERIENCES OF DEAF, DEAFBLIND, AND DEAF PEOPLE WITH ADDITIONAL DISABILITIES IN ACCESSING THE JUSTICE SYSTEM**

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We wish the CAD-ASC and the government ministries responsible for the administration of justice every success in addressing the recommendations stemming from this research project, as they partner with organizations to ensure that the Canadian justice system is accessible to all Deaf, DeafBlind, and Deaf people with additional disabilities citizens of Canada.

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*In the words of one participant:*

*They say they are accessible, but they are not accessible to the Deaf community; there are no supports; most legal personnel think all deaf people can lip-read or write back and forth; we are expected to accommodate to their way, not them accommodate to us. Doctors, lawyers, judges, police - all decide that an interpreter is not needed; what about my right to decide?*

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## EXECUTIVE SUMMARY

CAD-ASC applied for and received funding for this project from the Department of Justice program “Assistance for Victims and Survivors of Crime with Disabilities” to gather information from Deaf, DeafBlind and Deaf people who have additional disabilities, who use sign language and have had experience with the justice system. The goal of the research was to gather information about their lived experiences with the justice system. The words “lived experiences” refer to direct first-hand accounts and impressions of the individuals.

The words “justice system” included contact with police services, lawyers, courts, correctional centres, halfway houses, victim support services, social workers and/or parole and probation officers. For the purposes of this research, we have chosen to follow Gertz & Boudreault’s (2016) use of Deaf (capital D) to denote individuals who function by choice as members of the Deaf community. These people, in addition to significant hearing differences, subscribe to the unique cultural norms, values, and traditions of that group including the use of a signed language as their preferred choice. However, this does not imply that the hard-of-hearing experience is excluded from this study.

The research was conducted between April 2017 and February 2018. The research report identifies gaps and needs, and to provide recommendations from the multiple perspectives of the participants. The project was completed by three researchers: Dr. Patrick Boudreault, Dr. Cathy Chovaz, and Dr. Debra Russell. In addition to the research report, the researchers have created a fact sheet, a brochure, and an American Sign Language (ASL) and *langue des signes québécoise* (LSQ) version of this Executive Summary.

The research data was gathered through the use of an on-line survey for Deaf consumers. The survey was available in ASL/English and LSQ/French, in order to be accessible to the widest range of Deaf community members. In addition, six focus groups were held across Canada in order to gather more in-depth responses to the questions. Finally, targeted interviews were also conducted with Deaf people who had significant experience with the justice system (as a victim of a crime, as a perpetrator of a crime, as an inmate in a correctional facility, as an advocate for Deaf people with disabilities, and so on). We also were able to interview four lawyers, three of whom were Deaf, a psychologist who has worked on several legal matters with Deaf people across Canada, a Deaf Interpreter and non-deaf interpreter with over 30 years of experience with interpreting in legal settings, and two Judges.

**On-Line Surveys:** A total of 41 Deaf, DeafBlind, and hard of hearing members responded to the survey. The breakdown showed 28 Deaf and DeafBlind, and hard of hearing responded to ASL/English or English only survey and 13 Deaf and hard of hearing responded to LSQ/French or French only survey. No justice officials responded to the survey.

**Focus Groups:** Six (6) focus groups were conducted in both the Anglophone and Francophone Deaf communities. A total of 31 people participated in the focus groups. Focus group participants were recruited through local/provincial organizations representing Deaf people. Both project researchers and local Deaf community facilitators were invited to host meetings, and these meetings took place in London, Toronto, Vancouver, Montreal, Calgary.

**Individual Interviews:** 23 interviews with a total of 24 individuals were conducted with selected participants from the Deaf, DeafBlind, and Deaf people with additional disabilities, and psychologists, interpreters, parole officers, and other justice system personnel.

The research began with a review of the literature which identified challenges for Deaf people in accessing the judicial system across a number of countries. However, there was limited Canadian literature available, further demonstrating the need to capture the experiences of the Canadian Deaf community.

**Findings:** Across the country, Deaf, DeafBlind, and Deaf people with additional disabilities reported multiple experiences with the justice system that pointed to significant gaps. Based on those lived experiences, there is evidence that Deaf, DeafBlind and Deaf people with additional disabilities do not have equitable access to communication when interacting with the justice system. While there have been sectors and occasions when the system has responded well in terms of access, for example, the provision of interpreters for court matters, the majority of participants in this study reported major barriers in communicating with police, social workers, parole and probation officers, victim support workers, lawyers and correctional officers. In addition, there were consistent concerns expressed about the qualifications and specialized training that many interpreters lack despite working in legal settings. In addition to interpreter qualifications, it was noted that Deaf people frequently felt frustrated when placed in justice situations with interpreters who did not show up at scheduled times, were not available for follow-up appointments or were unaware of the system processes. As well there is a shortage of qualified interpreters with even fewer qualified Deaf interpreters, who possess the skills necessary to meet the communication needs of DeafBlind and Deaf people with additional disabilities. There were marked differences between urban and rural access to interpretation services for all phases of a legal event. This inconsistent access places Deaf, DeafBlind and Deaf Canadians with additional disabilities at greater risk of being misunderstood when reporting a crime, accessing legal supports and/or proceeding through the justice system as a victim. Likewise, Deaf people who have been investigated and charged with a criminal offense are at substantial risk if the quality of interpretation during the investigation is inadequate or inaccurate, which then leads to difficulties when defending themselves in court.

The interviews with judges and lawyers uncovered a willingness on the part of those working in the justice system to learn more about the Deaf community, with the judges and lawyers indicating that they often do not know what kinds of access is required by members of the Deaf community. The lawyers with experience with Deaf clients

demonstrated a much higher level of awareness of the gaps in the system, and had several recommendations to address the gaps, including training, access to resources, court advocates and policies to support accommodation.

In terms of educating the Deaf community about their legal rights and the justice system, there are no Federal government or provincial government Department of Justice websites that offer information in either ASL or LSQ. In Ontario, there has been efforts on the part of non-profit organizations to support Deaf people in accessing the justice system, for example, the Family Law Education for Women has an accessible website in ASL (See <http://www.onefamilylaw.ca/en/asl/>) and this is an excellent model for government departments to create their accessible websites. There are some initiatives to provide training via DVDs and workshops, however, there appears to be no coordinated or standardized approach to the information delivered. While workshops are useful, the use of a website with accessible training videos ensures that the training is available on demand thereby broadening the potential audience to include Deaf, hard of hearing, and DeafBlind individuals, their families and their communities. It also means that the websites can serve as a source of information for justice system personnel about equitable communication access for Deaf citizens.

One of the strongest themes across all the data sets was the need for pro-active preparation via policy development and protocols at the municipal, provincial and federal levels of government. This policy development needs to address protocols in providing consistent and quality communication access via interpretation. There is an opportunity for a national strategy and guidelines for training interpreters to effectively specialize in interpreting in legal settings and to consider whether the interpreters can be deployed in a manner that would better serve citizens regardless of their geographic location.

While Canada now has access to a national Video Relay Service (SRV Canada VRS), in which emergency 911 calls receive priority in the lineup for a VRS interpreter, the Deaf Wireless Canada Committee (2017) states that there are issues with calling 911 via VRS including technological compatibility with older 911 call centres, and the lack of training 911 operators have regarding responding to VRS calls. This has very real implications for Deaf people experiencing a legal emergency.

Based on the data, there are five priorities:

1. **Strategic Planning Level:** Policy and guidelines within municipal, provincial, and federal government for accessible communication based on the use of qualified sign language interpreters for legal interactions. This includes police services, legal aid services, court processes and correctional and rehabilitation processes, and such policy development needs to occur in collaboration with the national and provincial organizations representing Deaf people.
2. **Operational Planning Level:** Development of an accessible and centralized website that can provide access information for ASL and LSQ users about the justice system,

and offer current information for Justice System personnel about the Deaf communities.

3. **Police, Social Workers, Lawyers, Judges, Correctional Officials:** Training to help those providing significant supports in the provision of justice to understand how to effectively communicate with Deaf, DeafBlind and Deaf people with additional disabilities during a legal matter.
4. **Interpreters:** Training on strategies and practices that can ensure interpretation is effective during legal matters involving Deaf, DeafBlind and Deaf people with additional disabilities.
5. **Deaf Community:** Training through workshops and online accessible websites would help the members of both Deaf Anglophone and Francophone communities better understand their rights as well as the various processes and procedures within the justice system.

Based on the data gathered in this research project, recommendations were made to address the gaps that have been experienced by victims, those charged with criminal offences and personnel seeking to provide services to them within the justice system.



## INTRODUCTION

Canadian Association of the Deaf-Association des Sourds du Canada (CAD-ASC) applied and received funding for this project from the Department of Justice of Canada program “Assistance for Victims and Survivors of Crime with Disabilities” to gather information from Deaf, DeafBlind and Deaf people who have additional disabilities, who use sign language and have had experience with the justice system. In the spring of 2017, independent consultants, Dr. Debra Russell from Calgary, Alberta, and Deaf colleagues Dr. Patrick Boudreault from Washington D.C. and Dr. Cathy Chovaz from London, Ontario were contracted to study the experiences and needs of Deaf, hard of hearing, and DeafBlind citizens of Canada in accessing and interacting with those involved in the justice system. The purpose of the study was to obtain a snapshot of the current context to better understand the myriad issues impacting both Deaf Anglophone and Francophone communities during all phases of legal interactions, from the first contact with police officers, and/or social workers, to mediation and arbitration services, to seeking legal advice and retaining a lawyer, to navigating the legal system in a court matter, as well as correctional and rehabilitation services.

The project has identified globally accepted best practices, including technology and professional services that can be used to effectively communicate with all citizens. Through the data analysis stage, we have identified gaps and provided recommendations that can inform the development of policies and best practice. The recommendations, if adopted by provincial Departments of Justice, would result in greater equity for Deaf, DeafBlind and Deaf people with additional disabilities in accessing and navigating the general judicial system in Canada regardless of provincial legislations or procedures.

While it is clear that Canada has some outstanding resources to deal with a range of legal interactions, there are a number of key areas that require attention and improvement. This includes ensuring that all people, including Deaf, DeafBlind and Deaf people with additional disabilities, have equal access to information that is designed to ensure the administration of justice is delivered equitably to those most marginalized in the community.

It is hoped that the data and the recommendations contained in this report will be a catalyst for positive change based on a human rights model that supports access to information. Canada is a signatory to the United Nations Convention of the Rights of Persons with Disabilities (CRPD), and as such, there is an obligation for governments at all levels to ensure the inclusion of people with disabilities by committing to accessible communication for all.

## DEFINITIONS

For the purpose of this report, the following definitions are used:

**Deaf** refers to those people with little or no functional hearing, who are part of the Deaf Community, locally, provincially and/or nationally and typically use a signed language as their preferred language. For the purposes of this research, we have chosen to follow Gertz & Boudreault's (2016) use of Deaf (capital D) to denote individuals who function by choice as members of the Deaf community. These people in addition to significant hearing differences subscribe to the unique cultural norms, values, and traditions of that group including the use of a signed language as their preferred choice. However, this does not imply that the hard-of-hearing experiences are excluded from this study.

**DeafBlind** refers to a person who is both Deaf and blind. A person can be Deaf and later become blind or be born blind and later lose their hearing. There are many distinct ways of communicating with people who are DeafBlind, depending on the nature of the hearing and vision loss. Some DeafBlind people will use sign language in a modified way, others may use pro-tactile communication methods, which are based on touch, and provide greater access to communication. Others will use amplification and be able to see large print when using technology such as magnifiers.

**Deaf culture** is a social, communal, and creative force of, by, and for Deaf people based on American Sign Language (ASL) or *langue des signes québécoise* (LSQ). It encompasses communication, social protocol, art, entertainment, recreation (e.g., sports, travel, and Deaf clubs.)<sup>1</sup> Deaf culture is a positive term, indicative of pride and a communal identity, whereas terms like "hearing-impaired" and "deafness" do not connote any particular pride or sense of community.

**Signed Languages** are naturally evolving linguistic systems that are distinct and complete languages. There are over 138 documented signed language in the world, and in Canada there are three signed languages: American Sign Language, used by Anglophones and *langue des signes québécoise* (LSQ) used by Francophones. In addition to the two major signed languages, the government of Nunavut has recognized Inuit Sign Language.

**Sign Language Interpreters** are trained professionals who work with two languages of different modalities, primarily between signed and spoken language. They are usually provided by both hearing and Deaf individuals to meet the communication needs for all parties involved. In Canada, there are two primary professional body of interpretation: Association of Visual Language Interpreters of Canada (AVLIC) that provide national certification and *Association Québécoise des interprètes en langues des signes*. Training of interpreters in Canada takes place in full-time three and four-year post-secondary programs.

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<sup>1</sup> <http://www.Deafculture.com/definitions/>

**Justice system** includes police services, lawyers, judges, courts, correctional centres, halfway houses, victim support services, social workers and/or parole and probation officers.

**Consecutive Interpreting** refers to the process of interpreting where the interpreter may pause the speaker or signer at appropriate times, in order to deliver the interpretation. Russell (2002, 2005) found that consecutive interpreting is a more accurate form of interpretation in legal settings and should be used for non-English speaking witnesses.

**Simultaneous Interpreting** refers to the process of listening to English or French and interpreting into ASL or LSQ, or viewing ASL or LSQ and providing the spoken language interpretation, at the same time (i.e., simultaneously with the speaker or the signer, respectively). This is one of the unique features of sign language interpreting in that one of the languages that the interpreter is using is a visual-spatial language and the other is a spoken language, so there is no language overlap. Spoken language interpreters are not able to work simultaneously unless they are using technology, such as working in a booth or with infrared microphone systems. Russell (2002, 2005) found the error rate in simultaneous interpreting rose dramatically and that it should not be used for Direct Examination of Deaf witnesses.

## LITERATURE REVIEW

The following review presents a summary of the crucial literature that shapes the provision of communication access for Deaf, DeafBlind, and Deaf people with additional disabilities to the justice system. The literature review attempts to answer the following question by drawing on Canadian and other international publications, both government and peer-reviewed documents:

- What challenges exist for Deaf, DeafBlind, and Deaf people with additional disabilities in accessing the justice system?
- What is the current best practice approach to providing communication access for Deaf, DeafBlind, and Deaf people with additional disabilities people when interacting with the justice system?

While the review does not purport to be exhaustive, it represents the key evidence and/or best practice documents that exist at the time of writing.

### Introduction to Literature

All Canadians regardless of ethnicity, age, gender or disability may be involved in court proceedings of some kind. It is of fundamental importance that the Canadian justice system be accessible to all citizens. Legislation in Canada has ensured this right has been both ratified and enforced. From the perspective of Canadian law, Section 14 of the Canadian Charter of Rights and Freedom compels accessibility for all individuals:

*Every individual is equal before and under the law and has the right to equal protection and benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.*

Section 15 of the Charter mandates accessibility for the American Sign Language (ASL) and *Langue Signes Québécoise* (LSQ) Deaf communities who represent Canadian cultural and linguistic minorities:

*...a party or witness in any proceedings who does not understand or speak the language in which the proceedings are being conducted or who is deaf has the right to the assistance of an interpreter.*

This jurisprudence is critical and as in many other countries is fundamental to the right to full access in society.

## Brief Background

A brief background on the experience of being Deaf in a hearing world will provide the reader with the understanding of the inherent challenges that directly, and indirectly, influences access to and interactions with the justice system.

Understanding the lived experience of Deaf Canadians requires an appreciation of the influences of:

- Marginalization
- Education
- Employment
- Mental Health
- Minimal or absent language
- Interpreters

It is the intersection of these individual and systemic constructs with access to justice that informs this research.

### *Marginalization*

Marginalization refers to the delegation of a person or a group of persons to the edge of society. This process of social exclusion typically relegates certain groups to a lesser status through both direct and indirect processes. These processes may include the denial of access to rights, resources and opportunities typically enjoyed by society. Marginalized groups may be relegated to a secondary position or made to feel as if they are less important than those who hold more power or privilege in society (Kridel, 2010).

Deafness represents a complex construct and has often been viewed by society from a medical pathological perspective, as a wrong to be made right. Branson & Miller (2010) argue that deafness is actually a socially constructed disability and that the Deaf community is a minority group within the larger hearing majority. As noted earlier in this paper, the Deaf community with an upper case “D” typically refers to those individuals affiliated with Deaf culture who consider American Sign Language or *langue des signes québécoise* as their first language in addition to a shared reality characterized by unique values, traditions and history. Lower case “d” often refers to those with hearing loss not affiliated with Deaf culture. However, one might argue that the Deaf experience is more broadly the reality of all people whose living may not be based on sound, and this then means life must be lived in different ways. Miller & Andrews write that “experiences, interpersonal relationships, and ways of communication are altered.” (2017, p. 11). These alterations in experiential living have without a doubt resulted in marginalization by the larger hearing majority of this segment of the world population. The effects of marginalization have likely been most felt by those who belong to the Deaf group with differences in language and culture. It should not be forgotten, however, that any degree of hearing loss means there is potentially a difference in how lives are lived, and these differences have often meant living on the periphery (Hall, 2004). This has tremendous implications for intersections with the justice system.

Audism is a negative attitude based on the idea that one is superior over someone who does not hear (Humphries 1975; Bauman, 2004). Harlan Lane in his book *The Mask of Benevolence* (1999) wrote extensively about audism describing it as the way the hearing establishment behaves as a colonial power overseeing the needs of Deaf subjects. The Canadian Association of the Deaf (CAD-ASC) states that audism happens in all levels of government and society through direct, indirect and system discrimination. The CAD – ASC explains audism as occurring in two ways: firstly, society’s pathological view of deafness results in the attitude that Deaf people should be encouraged/forced to be as hearing as possible and secondly, society’s paternalistic assumption that decisions regarding the language, education and employment of Deaf people should be made by hearing people (CAD, 03 July 2015).

From a world perspective, the marginalization of the Deaf communities is well documented. Canada is no exception. Deaf Canadians have faced formidable challenges that the larger hearing majority has historically taken for granted. Examples have included the right to serve on juries, the right to receive appropriate training for chosen careers, the right to have sign language interpreters in all public situations, the right to choose an educational placement and the right for culturally and linguistically accessible mental health services. In 1997, a Supreme Court decision (*Eldridge v. British Columbia*, 1997) expanded the application of the Canadian Charter of Rights and Freedoms to affirm that sign language interpreters must be provided in the delivery of medical services. While Judge La Forest’s decision in the *Eldridge* case dealt specifically with the right to sign language interpreters in the health care system, the principles have been interpreted as being applicable to general services provided by government or provided by organizations carrying out specific government objectives. Although this ground-breaking legislation mandated the province of British Columbia to provide interpreters in the health care system, there was no explicit guidance from the Court as to how the province was to implement or comply with the ruling. Provinces such as Ontario did pass the Accessibility for Ontarians with Disability Act in 2006 but the reality remains that *Eldridge* had limited impact on policies and practices across Canada (Manfredi & Maioni, 2002).

The injustices and disempowerment faced by Deaf communities have been well documented. There are accounts of eugenics and forced sterilizations in the 20<sup>th</sup> century, unequal access to healthcare, challenges in emergency preparedness, barriers to government benefits, inequities in trained educators, discrimination in terminology, and systemic injustices (Ahmed & Rogers, 2016; Jaeger & Bowman, 2005; Biesold, 2002). In addition, Deaf Canadians have and continue to struggle to be viewed by the hearing majority as a cultural and linguistic group instead of being viewed from a pathological medical perspective (Gertz & Boudreault, 2016). This marginalization is a result of social prejudices and misunderstandings, in addition to an inaccessibility to effective resources and significant communication barriers (Berzoff, 2012).

### *Education*

There are significant, long-standing challenges within the education of Deaf children. These issues have included early identification and intervention, language

exposure and acquisition, effective educational models and research regarding the cognitive development of the deaf child's brain (Marshark & Spencer, 2010). Changing views of "what's right" ranging from a strictly oralist approach to the current bilingual bicultural approach currently used by schools for the Deaf in Canada. This has often left Deaf Canadian children with less than optimal practices as educators seek proper training to implement effective strategies.

The issues are complex and formidable but with the same end result. Children who are facing challenges to learn to read at a typical age level fall behind on many typical developmental tasks. Upon high school graduation, adolescents often have their sights on a college or university education. Unfortunately, the low literacy rate of Deaf adolescents (averaging a Grade 4 level) seriously limits opportunities for acceptance into a higher education institution. It is important to realize that this is typically unrelated to levels of intelligence and rather related to ineffective teaching and learning strategies to succeed in literacy (Du Feu & Chovaz, 2014).

Many Deaf students in Canada previously received provincial support to attend Gallaudet University in Washington, D.C. which is the only liberal arts university in the world specifically designed for the education of Deaf and hard of hearing individuals. Students were instructed in their first language (American Sign Language) graduating with undergraduate and graduate degrees in a wide variety of fields. These same students were then able to return to Canada with an advantage of a university degree to seek employment. There has been a significant reduction in the numbers of Deaf and hard of hearing Canadian students attending Gallaudet University since 2000. The Canadian Hearing Society (CHS) wrote a position paper attributing this alarming decline to reduced government funding as a result of systemic and policy barriers. This position paper (CHS, n.d.) provides an excellent review of the many systemic barriers facing young Canadian Deaf adults as well as legislation in support of the recommendations for action made by CHS. These barriers have a human cost for Deaf people in terms of individual well-being as well as a societal cost of reduced work productivity and increased reliance on government income support.

### *Employment*

The government of Canada has identified nine essential skills that are useful in jobs at varying degrees and levels of complexity. Among these essential skills are reading and writing as literacy is fundamental to many life opportunities. Functional literacy has a positive impact on both obtaining and maintaining employment (Finnie & Meng, 2006). The reality is that many Deaf adults struggle with English literacy (yet are fluent in their first language of ASL) and this significantly and negatively impacts life potential and outcomes.

The Canadian Association of the Deaf (1998) published *The Employment and Employability of Deaf Canadians*, finding that only 20.6% of Deaf Canadians were fully employed, 41.9% were underemployed and 37.5% were unemployed. This is similar to the USA where only 48% of Deaf people were employed compared to 72% of hearing people (Garberoglio, Cawthon & Bond, 2016). The Canadian Hearing Society also wrote



a position paper in 2016 stating that “equal access to meaningful career and employment opportunities and viable sources of income for people who are Deaf and hard of hearing continues to be a major barrier to increasing the standard of living and quality of life for this segment of the population” (CHS, 2016).

This chronic underemployment of Deaf individuals in Canada is related to a number of factors. Literacy has and continues to be an issue for Deaf individuals seeking job training opportunities and/or learning at higher institutions. Aside from literacy, only two provinces in Canada (Ontario and Manitoba) currently have provincial accessibility legislation. Yet, even in these provinces discriminatory practices continue to significantly affect the employment rates of Deaf people. Examples include employers’ refusal to provide sign language interpreters for work-related interviews and/or meetings or training opportunities. It is not uncommon for employers to have misconceptions regarding the competency and capabilities of Deaf individuals or express reluctance to hire someone who they feel may need accommodations incurring financial hardships. Deaf individuals themselves often report unrecognized support needs, lowered expectations, negative employer attitudes, inaccessible workplace environments and layouts, and isolation from other workers. Deaf individuals are underrepresented on director boards, senior administrations, and at policy levels (Leigh & Andrews, 2016). The intersection of all these factors has resulted in systemic employment and economic disadvantage for Deaf individuals (Bauman, Simser, & Hannan, 2013; Chouinard, Hall, & Wilton, 2010).

Although positive changes through increased awareness will help address attitudes, it is also hoped that stronger legislation such as the prospective federal Canadian Accessibility Act will significantly reduce employer barriers for Deaf individuals.

### *Mental Health*

Deafness is a complex biological, social and psychological construct. Deaf people are a very heterogeneous group differing on constructs such as the etiology (cause) of the deafness, degree and type of hearing loss, exposure to accessible language, use of technical devices, type of education/school attended, hearing status, presences of additional disabilities and attitudes of family members. The prevalence varies among countries and is likely influenced by socioeconomic, cultural and environmental factors (Du Feu & Chovaz, 2014).

One thing all Deaf children have in common is that their parents will react in some way to the identification of deafness. In the event of Deaf individuals giving birth to a deaf baby, the reaction is often one of excitement, contentment and relief. There is a human yearning to “know” our children, which usually includes a desire for a shared reality. The birth of a deaf child to Deaf parents means that the Deaf parents automatically have a shared reality and language with their baby. This, at times to the perplexity of the hearing majority, is cause for celebration (Du Feu & Chovaz, 2014).

Approximately ninety per cent of deaf babies however have hearing parents (Preston, 1994) and this means that the vast majority of parents of deaf babies have had little introduction to or knowledge of deafness. This can have significant implications on



attachment relationships especially if the parent figure is unaware or uninformed about necessary adjustment styles that are critical to successful dyad interactions. One example is the importance of including visually accessible forms of communication along with tactile contact (Koester, Brooks, & Traci, 2000).

The reactions of many hearing parents, to the realization that their baby is deaf, has often been experienced within the stages of the grieving process as explained by Kubler-Ross (2009). Typically, people progress through the stages of grief with denial, anger, bargaining, depression followed by acceptance. Somewhat sadly, many hearing parents of deaf children remain in the initial grief stages never fully accepting their child for who he/she is as a deaf individual (Du Feu & Chovaz, 2014). This may have profound effects on the well-being of the child in terms of feelings of belonging, feeling loved and emotional relationships with family members.

Parents of a deaf child are faced with an overwhelming amount of information requiring significant decisions such as communication mode/language (spoken English or sign language) cochlear implants, assistive devices, educational strategies and relationships with extended families. These decisions can cause both financial and emotional hardship within a family. Once the child leaves home, financial hardships may continue with ongoing costs of assistive devices, flashing alarms for the home in addition to employment challenges. The lack of extended family support during these adult years may reflect the challenges described during childhood and adolescence. For Deaf youth and adults already facing considerable systemic community barriers, this lack of family support may be a significant and negative factor in their ability to live successfully and independently.

The prevalence of mental health disorders in deaf children and adults is much higher than in the hearing population (Fellinger, 2012, Du Feu & Chovaz, 2014). Although hearing loss in itself does not cause mental health disorders, deafness may intersect with a host of familial, social, emotional and societal influences culminating in disadvantaged results (Young, Green & Rogers, 2008). Early exposure to an accessible language, the degree of acceptance by the family, emotional availability of the parent in addition to the many formidable barriers imposed by society may all contribute as stressors to well being. Financial hardship, underemployment and economic disadvantages further contribute to the marginalization of an already vulnerable population.

The resilience of Deaf people is evident. Rogers, Muir & Evenson (2003) conducted a multi-case exploratory study to identify assets that may support resilience in Deaf adults. Their findings identified intrapersonal, behavioural and environmental constructs that build bridges between the Deaf and hearing worlds. These included things such as supportive family environments, rich opportunities for participation in the community, self-advocacy, and accessible opportunities to build on personal strengths. Resilience as a positive response to a lifetime of lived inequities in the Deaf population is much more, however, than just internal strengths or family support. There are clearly a great many significant family, social, and structural barriers that if not challenged will continue to create risk and adversity for the Deaf population.

### *Access to Justice*

Deaf people's access to the justice system has many layers. The duty to accommodate must consider constructs related to the following:

**Deaf community:** includes individual and collective awareness of rights, expectations and course of legal processes;

**Police:** includes accessibility and time sensitivity of interviews, interpreter skill level, scope of practice, effective communication strategies such as turn-taking, transparency and quality control;

**Court:** includes awareness of need for qualified interpreters with specialized training for all levels of Court, awareness of legal personnel regarding cultural, linguistic, literacy and mental health issues that may affect a deaf individual;

**Prison:** includes awareness of accommodation needs of deaf prisoners, education of all prison personnel regarding cultural, linguistic, literacy and mental health issues that may affect a deaf individual.

Access to justice for Deaf individuals has been studied throughout the world. The European Union of the Deaf (EUD) recognized that Deaf persons are 2-3 times more likely to experience abuse and domestic violence than hearing individuals (Kvan, 2004) and face numerous barriers attempting to access legal and police services. The European Commission funded the Justisigns project to examine these inequities to justice on a pan-European level<sup>2</sup>. The goal of this project was to identify competencies for sign language interpreting in legal settings and then to provide training for both qualified and qualifying sign language interpreters, legal professionals, police personnel, and Deaf persons ("Justisigns", n.d.).

Olsen & Kermit (2015) reported that although Norway is generally associated with high legal standards, barriers in effective communication existed between hearing professionals and deaf clients causing severe misunderstandings potentially leading to wrong conclusions and wrongful convictions. In another Nordic country, the government of Denmark created the project "Removing Barriers for Access to Justice of Deaf and Hearing-Impaired Women" (Everyday Hero, 2017) and through it has challenged the non-existent public government services for Deaf women in Denmark who navigate the justice system to report sexual assault, rape or domestic violence. This project is seeking comprehensive solutions to the barriers which prevent Deaf and hard of hearing women victims of gender-based violence from accessing justice.

Young, Monteiro & Ridgeway (2000) examined Deaf individuals with mental health issues living in the UK who came into contact with the criminal justice system. They concluded that this was a group whose needs were not recognized or met by the system

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<sup>2</sup> [http://www.justisigns.com/JUSTISIGNS\\_Project/About.html](http://www.justisigns.com/JUSTISIGNS_Project/About.html)

due to misinformed, misdefined or misunderstood responses to their offending behaviour.

The United Nations Committee on the Rights of Persons with Disabilities reported that Australia violated the rights of two Deaf people when they were called for jury service but were then dismissed given sign language interpreters and real-time captioning was not provided (United Nations Human Rights, 2016).

The National Association of the Deaf (NAD) in the United States state that Deaf and hard of hearing individuals face greater legal challenges than hearing people due to communication barriers (National Association of the Deaf, n.d.). Miller (2001) was one of the first to describe how historically the provision of sign language interpreters for deaf suspects, defendants and offenders has been problematic in the American criminal justice system. Her analysis of 22 post-American with Disabilities (ADA) state and federal criminal cases showed very few had access to sign language interpreters or other accommodations. She also surveyed 46 professional sign language interpreters working in criminal justice settings concluding that there was a wide variability in the accessibility and skill level of interpreter services in correctional settings. Recommendations included increasing the accessibility of interpreting services, providing ongoing awareness training to criminal justice personnel, and developing training programs for deaf legal advocates. Vernon & Miller (2005) further explored the obstacles faced by Deaf people in the criminal justice system finding that Deaf people, particularly those not well educated, are at risk for serious injustices. For the most recent and comprehensive review of the multiple legal, communication and language factors affecting Deaf individuals within the American justice system, the reader is encouraged to read the relevant chapter in Leigh & Andrews (2017). Lastly, advocacy organizations such as David Greenberg's Deaf in Prison ([www.deafinprison.com](http://www.deafinprison.com)), NAD, HEARD, and the American Civil Liberties Union's National Prison Project (ACLU, 2016) are active in the United States.

An older small qualitative study reported that Deaf Canadians face attitudinal, cultural and communicative barriers within the hearing criminal justice system (Bone, 1998). The Canadian literature, however, has been relatively silent regarding general issues of access to justice for Deaf individuals. We have been guided by documents such as the Disability Law Primer (2013) which emphasizes that disability in general according to the Supreme Court of Canada should not be confined within a narrow definition but rather viewed from a sociocultural lens. The primer stresses the importance of accommodations to facilitate communication but does not touch on many of the other constructs inherent in access to justice with the Deaf population such as culture, literacy levels, experiential factors and mental health. Similarly, the Canadian Hearing Society in collaboration with the Law Foundation of Ontario produced a position paper outlining key strategies to improve access to interpretation between a signed language and a spoken language in community legal settings (Canadian Hearing Society n.d.).

## Systemic Issues

Several important factors consistently present across countries and these are critical to understanding Deaf individuals' full access to justice.

### *Individuals with Minimal or Absent Language*

Particularly challenging from a systemic perspective have been situations where a deaf person has been language deprived or language impoverished. Tuck (2010) describes the case of Donald Lang who was a deaf man in Chicago accused of two murders. Lang came from poverty in a black neighbourhood, never attended school and never learned a first language (oral or sign). Despite excellent attorneys, the Illinois court system struggled through nine judicial decisions to establish if Lang was fit to stand trial due to his linguistic incompetence. Although a mental illness was not identified, Lang was indefinitely confined to a mental institution.

Although we live in a digital age with advanced technologies and education systems, there are many Deaf individuals living in developed countries who remain language deprived. A court case in 1999 (*R v. Suwarak*; 1999) as described by MacDougall (2001) in Nunavut Territory (the most northernmost Territory in Canada) highlighted the issue of a deaf man who did not know either American Sign Language (ASL for the Anglophone community) or *langue des signes québécoise* (LSQ for the Francophone community) although he did have a signing system that he used well to communicate with people in his immediate environment. McDougall (2001) pointed out that although other Canadians had not previously recognized this sign language, a small group of Deaf people uses this indigenous sign language in Nunavut, which is the basis for their social daily interactions. Therefore, full access for Deaf people in the justice system under the Charter (sections 14 and 15) means that interpreters fluent in that language must be provided.

The complex factors contributing to minimal or absent language include the timing and accessibility of early language exposure, language acquisition, etiology of deafness, and mental health risk factors (Du Feu & Chovaz, 2014; LaVigne & Vernon, 2003). These Deaf individuals with minimal, absent or impoverished language pose formidable challenges for the Courts including the interpreters tasked with language transfer. In many situations, the court appointed hearing interpreter is paired with a Deaf Interpreter who is usually a Deaf adult with highly developed linguistic skills related to first language fluency as well as additional training to work with linguistically impoverished Deaf individuals. The ASL interpreter and Deaf Interpreter work in tandem to ensure full linguistic understanding (Boudreault, 2005). This process requires a high level of expertise on the part of both interpreters, as well as an understanding and acceptance from the Court regarding the complexity of the language exchange.

### *Interpreters*

There are a considerable number of Deaf community members worldwide who develop early sign language fluency equivalent to the language development of hearing persons exposed to early oral language acquisition. These individuals typically require and have the legal right to sign language interpreters within the justice system. Although initially the concept of translation from one language to another seems straightforward and linear, the reality of interpreting from a spoken to a signed language is anything but simple.

The Supreme Court of Canada decision (*Eldridge v. British Columbia*, 1997) confirmed the provision of sign language interpretation as a free service under the Canada Health Care Act to ensure full access to all publicly funded services. The intent of this legislation was to identify, remove, and prevent barriers which may limit the full participation of culturally Deaf, oral deaf, deafened, hard of hearing, and deaf-blind people within all public facets of society. This however has proven difficult at times to implement effectively in Canada as well as other countries with similar legislation.

There are many reports in the literature documenting how this can be a challenging process for the Deaf person, the interpreters and the Court. Interpreting in legal settings requires specialized skills and training (Gonzalez, Vasquez, & Mikkelson, 1991; Hale, 2002; Russell, 2002, 2008) including the development of a unique vocabulary and skill sets (Robertson, Russell & Shaw, 2011). Burgeoning Canadian and other international research has significantly strengthened the knowledge and understanding of the signed language interpreting context in recent years (Bontempo & Napier, 2007; Napier, 2002; Russell, 2002, 2005, 2008, 2013). In Canada, Russell (2002, 2005) has established best practices investigating the efficacy of both simultaneous and consecutive interpretation in the courtroom. The dissemination of these best practices has been difficult in a country the size of Canada.

International court interpreting studies have discussed the linguistic aspects of court interpreting, the role of the court interpreter, and ethical dilemmas faced by court interpreters (Berk-Seligson, 1990; Hale, 2004; Cooke, 2009; Lee, 2015) as well as most effective interpreter training procedures (Roy & Napier, 2005).

There are numerous accounts of Deaf people being denied jury duty as the presence of an interpreter in the courtroom was deemed problematic or exclusions were based on lack of merit. A deaf woman in Australia who could lipread but also required an interpreter to communicate took legal action in Queensland in 2012 after being excluded from serving on a jury. A High Court later ruled that she had not been discriminated against as Queensland law had no provisions to allow an interpreter to be in the courtroom (Napier & Spencer, 2008). It is noteworthy that an Australian academic Dr. Jemina Napier leading a team of researchers was recently recognized for their pioneering work establishing that Deaf people are capable of serving on juries on an equal basis to others. This research has already resulted in changes in state legislation both in Australia and Ireland allowing Deaf jurors to serve as a basic right of citizenship<sup>3</sup>.

It is clear that the provision of interpreters is only the first step in due process. Constructs such as the linguistic diversity of the Deaf population, adjudicative incompetence in some Deaf individuals (Vernon & Miller, 2005), linguistic incompetence in some Deaf individuals (LaVigne & Vernon, 2003) and the skill set of the interpreter (Robertson, Russell & Shaw, 2011) all contribute to the complexities of ensuring basic civil rights.

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<sup>3</sup> <https://www.hw.ac.uk/schools/social-sciences/news/jemina-napier-wins-top-honour-after-helping-change-court.htm>

### *Justice Personnel*

Lawyers, judges, and police officers appear often have little knowledge related to Deaf individuals regarding their language, culture and way of being in the world (Du Feu & Chovaz, 2014; Canadian Hearing Society, n.d.; Olsen & Kermit, 2015; Vernon & Miller, 2005; Leigh & Andrews, 2014). Although this lack of awareness is likely not intentional, it can have deleterious implications for due process. A document used for educating magistrates in the New South Wales Law Reform described how the development of training materials on an ongoing basis for all personnel in the justice system will lead to “best practices” and ensures that the work of the judiciary remains competent and ethical (Keijzer-Lambooy & Gasille, 2005).

An integral part of awareness training must include cultural competency. This usually refers to professionals ensuring adequate ability to effectively interact with individuals from other cultures. Cultural competency regarding Deaf people, however, must also include knowledge of typical behaviours and mores. For example, if police officers do not understand ASL or LSQ, they may assume that note writing is an adequate communication method. However, many Deaf individuals have lower literacy skills given their first language is a visual and not a spoken one. Misunderstandings and confusion from note writing may lead to errors in factual accounts of events and wrong convictions.

Another area of concern regarding justice personnel may be related to negative biases. Vernon and Miller (2005) discuss an attitude of ‘indifference and hostility’ towards Deaf persons within the American legal system. These authors also suggest that police officers may be unlikely to pursue a conviction if they feel sorry for the Deaf person, or experience an unwillingness or inability to locate an interpreter (Vernon and Miller, 2005).

The responses (or lack thereof) of justice personnel are a complex intersection of many factors including the system within which they are working. These may include but are not limited to their ability to effectively communicate with the Deaf person, the reality of under-resourced services, lack of knowledge of how to work with an interpreter and overall perceptions of Deaf people (Wakeland, 2017).

### *Victims Perspective*

There are relatively few published studies describing the experience of the Deaf individual involved in the justice system. Systemic issues are well described relating to legislation, interpreter competence and awareness of justice personnel, yet relatively few studies have directly inquired about the lived experience of the Deaf person. Lived experience of the Deaf refers to the first-hand account of living as a minority or an oppressed group. Awareness of the narrative is as instructive as analysis of the operational constructs.

Olsen & Kermit (2015) interviewed Deaf people in Norway specifically asking what barriers were faced when reporting a crime, being accused of a crime or being a witness



in court. Deaf victims of crime described challenges accessing both the language the system used as well as fully understanding the communicative intricacies of the process. Overall, Deaf victims experienced more instances where they had to make do without an interpreter than those Deaf individuals suspected of crimes.

An advocacy organization in the United States called Helping Educate to Advance the Rights of the Deaf (HEARD, n.d.) disseminates many anecdotal reports describing unfair and discriminatory experiences of Deaf individuals. For instance,

*“Philip Wolfe escaped a domestic dispute and had a friend call the police. Although the dispatcher was informed that Wolfe was deaf and required an interpreter, the police showed up without one and completely misunderstood the issue. The domestic abuse charge was never filed. Wolfe’s partner returned that night and abused him again.”*

### *The Canadian Government and Communication Access to Public Information*

The Canadian Government is required, by the Canadian Charter of Rights and Freedoms to offer “equal protection and benefit under the law, without discrimination”<sup>4</sup>. In addition, Canada is a signatory to the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD)<sup>5</sup>, which further outlines the obligations of countries that have ratified the convention. There are seven Articles that outline the responsibilities towards Deaf people who require a signed language to access communication during emergencies and these have relevance for access to justice system supports during an emergency. These are: Article 1 Purpose; Article 5 Equality and non-discrimination; Article 9 Accessibility; Article 11 Situations of risk and humanitarian emergencies; Article 19 Living independently and being included in the community; Article 21 Freedom of expression and opinion, and access to information; and Article 25 Health.

Furthermore, the UNCRDP in Article 21, states Parties shall take all appropriate measures to ensure that persons with disabilities can exercise the right to freedom of expression and opinion, including the freedom to seek, receive and impart information and ideas on an equal basis with others and through all forms of communication of their choice, as defined in article 2 of the present Convention, including by:

- a) Providing information intended for the general public to persons with disabilities in accessible formats and technologies appropriate to different kinds of disabilities in a timely manner and without additional cost;
- b) Accepting and facilitating the use of sign languages, Braille, augmentative and alternative communication, and all other accessible means, modes and

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<sup>4</sup> <http://www.efc.ca/pages/law/charter/charter.text.html>

<sup>5</sup> <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html#Fulltext>

- formats of communication of their choice by persons with disabilities in official interactions;
- c) Urging private entities that provide services to the general public, including through the Internet, to provide information and services in accessible and usable formats for persons with disabilities;
  - d) Encouraging the mass media, including providers of information through the Internet, to make their services accessible to persons with disabilities;
  - e) Recognizing and promoting the use of sign languages (United Nations: Division for Social Policy Development Disability, 2017).

On May 8, 2017, The United Nation's Committee on the Rights of Persons with Disabilities released a report on its *Concluding observations on the initial report of Canada*<sup>6</sup>. The report has shown that the federal, provincial and territorial governments still have some work to do to implement sections of the UNCRDP. Of note, are Articles 11 and 21.

For Article 21, the Committee recommends that Canada:

- a) Recognize, in consultation with organizations of deaf persons, American Sign Language and Quebec Sign Language (*langue des signes québécoise*) as official languages and their use in schools, and establish jointly with organizations of deaf persons a mechanism to certify the quality of interpretation services and ensure that opportunities for continuous training are provided for sign language interpreters;
- b) Promote and facilitate the use of easy-read and other accessible formats, modes and means of communication and grant persons with disabilities access to information and communications technology, including through the provision of software and assistive devices to all persons with disabilities;
- c) Redouble its efforts to ensure the accessibility of government websites and ensure that private entities providing services through the Internet do so in formats accessible to all persons with disabilities;
- d) Translate the Convention on the Rights of Persons with Disabilities into sign languages.

The Government of Canada is also required to follow the decisions of the 1997 Supreme Court *Eldridge v. British Columbia* decision (1997) and the 2006 Federal Court decision

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<sup>6</sup> <http://cad.ca/wp-content/uploads/2017/04/CRPD-Concluding-Observations-on-the-initial-report-of-Canada.pdf>



on the *Canadian Association of the Deaf v. Canada*<sup>7</sup>. Both decisions state that it is fundamental to an inclusive society for deaf people to be able to interact with government agencies and accommodations should be provided so that they can do so.

In sum, the equitable access of Deaf, hard of hearing, and DeafBlind Canadian citizens to justice system information needs to include the countries' national signed languages and text-based communication (World Federation of the Deaf and the World Association Sign Language Interpreters, 2015<sup>8</sup>).

Many Deaf individuals eagerly adopt new information and communication technologies (ICT) such as smart phones and tablets because they offer access to information via alternative ways such as video and text, and allow interaction over the Internet. While these technologies can create new opportunities for access, they also create new barriers. For example, YouTube videos that are not captioned/subtitled present a barrier. Universal Design principles (Design for All) when creating and utilizing new technologies are increasingly the focus of many organizations. It is much easier and more cost-effective in the long term to create and utilize technologies that are accessible for all, rather than add in accessibility features as an afterthought. Clear communications by appropriate authorities are a critical and continuous process before, during and after an emergency, which could include a legal emergency.

## Applications to Canada

The Federal Government of Canada and its Provinces and Territories have included information on its websites for Canadian about how to navigate the legal system. These websites are not accessible in either ASL or LSQ. This literature review indicates that Canada needs to address some important issues to ensure that its Deaf, DeafBlind and Deaf people with additional disabilities are not further victimized by having little or no access to information in ASL or LSQ regarding to citizen rights, processes and procedures.

## Discussion and Conclusion

This review of the literature has examined the crucial constructs that shape the provision of communication access for Deaf, DeafBlind and Deaf people with additional disabilities when interacting with the justice system in Canada. It is necessary to have a comprehensive understanding of the history including marginalization, employment, education, and the mental health status of Deaf community members to fully realize the complexities of challenges facing the justice system.

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<sup>7</sup> <https://decisions.fct-cf.gc.ca/fc-cf/decisions/en/item/52788/index.do>

<sup>8</sup> <https://wfdeaf.org/news/resources/wasli-and-wfd-communication-during-natural-disasters-and-other-mass-emergencies-for-deaf-people-who-use-signed-language-january-2015/>

We have highlighted many variables as experienced by Deaf individuals that ultimately interfere with seamless access to justice. Countries around the world have documented the need for more comprehensive interpreter training, recognition of the implications of language deprivation, the rightful inclusion of Deaf people as jurors, the expansion of the sociocultural rather than pathological lens, and the importance of advocacy organizations.

It is clear that Deaf, DeafBlind and Deaf people with additional disabilities experience even greater challenges when accessing public communications about the justice system, when interacting with the police in a Text-to-911 situation, and when required to participate on various levels of the justice system. Thus, these Canadian citizens are at an even higher risk of experiencing an event with a legal interaction without the full knowledge of how to manage it.

There is a paucity of literature in Canada specifically exploring the different perspectives of the justice system as well as the lived narratives of Deaf individuals. This forced us to carefully consider if the Canadian justice system was truly accessible to Deaf individuals. How do the roles of justice personnel include and support the lived experience of Deaf Canadians? What are the experiences of Deaf people who have been victims of crime or have been accused and/or convicted of crimes? These research questions guided this project to better understand the experiences of Canadian people who use sign language in order to access the administration of justice.

Within the Deaf Community, we were able to gather the marginalized stories and the diverse perspectives of Deaf people, including Deaf people of indigenous heritage, Deaf blind people and Deaf people who have additional disabilities. A unique aspect of this research was the use of survey tools in ASL and LSQ, which allowed Deaf respondents to have access in their first language and contributed to the success of gathering the data from this linguistic and cultural minority community. The use of focus groups with Deaf people is an effective way to ensure that the “voices” of Deaf people who may use sign language are clearly heard by a system historically based on spoken language. This approach allowed us to take a phenomenological perspective with the goal of viewing the phenomena from the perspective of the person who experienced the phenomena (Zakrzewski & Hector, 2004).

## RESEARCH RESULTS

The research project was completed in phases, and included the following activities:

**Phase One:** May -August 2017

Define project tasks; develop on-line surveys; provide bilingual versions by translating the English survey tools into French, ASL and LSQ; develop interview and focus group protocols; conduct a literature review.

**Phase Two:** September 2017 – January 2018

Gather data via the on-line surveys; conduct focus groups and interviews with appropriate stakeholders to identify strengths and gaps.

**Phase Three:** January 2018-March 2018

Analyze all data collected.

**Phase Four:** March 2018

Produce research report.

### Methodology

From July 2017 to January 2018, data was gathered across Canada from various methods. Given the dearth of the data on the judicial system by the Deaf community in Canada, the project opted to use both qualitative and quantitative methods, with the intent of capturing a snapshot of the current issues from various stakeholders. Three methods were used: 1) quadrilingual on-line surveys, 2) focus groups, and 3) individual interviews.

#### *Survey*

In the first phase of the study, members of the Canadian Deaf community were sent several e-blast announcements and social media alerts from CAD-ASC and its provincial affiliates and invited to complete a bilingual online survey. To increase the response rate, the research team send out six reminders to the Deaf organizations at regular intervals over the five months (9/6/2017 – 1/7/2018) after the first posting of the survey. The project used Survey Monkey platform with embedded unlisted YouTube ASL and LSQ videos; a total of 11 questions were used, 5 for demographics, 5 open-ended questions to assess the current judicial system, 1 multiple choice to assess the level of awareness of the juridical system, see in appendix “survey” for a complete list of questions. The survey asked the participant to identify themselves with either four groups based on hearing status and preferred language: 1) Deaf – ASL, 2) Deaf – LSQ, 3) Hearing – English, and 4) Hearing – French. A total of 167 Deaf and hearing participants accessed to the survey. Only 41 participants completed the full survey with a completion rate of 25.5%; with 50% of them being ASL users (n=25), 29.3% LSQ users (n=12), 7.3% English users (n=3), and 2.4% French user (n=1).

### *Focus Group*

Six (6) focus groups in both the Anglophone and Francophone Deaf communities were conducted. A total of 31 Deaf individuals participated in focus groups. Focus group participants were recruited through local/provincial organizations representing Deaf people. Project researchers and local Deaf community facilitators were invited to host meetings at Deaf community space using exclusively in either ASL or LSQ. These meetings took place in the following cities: Vancouver (n=10), Calgary (n=5), London (n=5), and three groups were held in Montreal (n=11), one Montreal group having 3 DeafBlind participants. Twenty-three (23) individuals were from the Anglophone Deaf community and 8 individuals were from Francophone Deaf community. The focus groups were either video recorded or notes were taken during the session and grouped by themes during the data analysis. The focus groups were semi-structured, guided with ten general questions (see appendix “questions”)

### *Individual Interviews*

In addition to focus groups, 23 interviews were conducted with a total of 24 individuals; one interview was conducted with two individuals from a professional interpreting organization (18 deaf and 6 hearing). The selected participants were Deaf, DeafBlind, and/or Deaf with an additional disability and included lawyers, psychologists, interpreters, community support workers working with Deaf, DeafBlind, and Deaf people with additional disabilities, judges, police officers, parole officers and community advocates. They were referred by their peers and Deaf community based on their past professional or personal experience with the judicial system. The interviews were either conducted using video conferencing, in person or by written email exchanges. The interview was semi-structured and used the same list of questions from the focus group (see appendix “questions”).

## SUMMARY OF SURVEY RESULTS

This section summarizes the findings from the survey in two main categories: demographics and the experience with the legal system. The data were analyzed into four groups based on hearing status and language.

### Demographics

#### Gender

A total of 19 males, 17 females, completed the surveys, with 2 respondents indicating that they preferred not to identify gender, and 2 respondents chose not to answer the question (see Table 1).

Table 1.  
*Gender distribution by hearing status/language*

<b>Gender</b>	<b>Deaf - ASL</b>	<b>Deaf – LSQ</b>	<b>Hearing - English</b>	<b>Hearing - French</b>	<b>TOTAL</b>
Male	9	9	1	0	19
Female	15	2	0	0	17
Other	1	0	1	0	2
Choose not to answer	0	1	0	1	2

#### Age

A wide range of ages were included in the study. The largest group was from 44-52 years old for both ASL and LSQ communities, and the 53-60 years old group from ASL community is also significantly represented from (see Table 2).

Table 2.  
*Age range by hearing status/language*

<b>Age</b>	<b>Deaf –ASL</b>	<b>Deaf –LSQ</b>	<b>Hearing - English</b>	<b>Hearing - French</b>	<b>TOTAL</b>
18-25	1	0	1	0	2
26-34	4	0	0	0	4
35-43	2	4	1	0	7
44-52	8	6	0	0	14
53-60	7	0	1	1	9
61-65	0	1	0	0	1
66+	3	1	0	0	4

#### Geographic location

Two provinces represented the majority of the survey, Quebec and Ontario totaling 29 participants (70.7%), followed by Alberta and British Columbia (see Table 3).

Table 3.

*Geographic Location by hearing status/language*

<b>Provinces</b>	<b>Deaf –ASL</b>	<b>Deaf –LSQ</b>	<b>Hearing - English</b>	<b>Hearing - French</b>	<b>TOTAL</b>
Alberta	6	0	0	0	6
B.C.	6	0	1	0	7
Manitoba	1	0	0	0	1
New Brunswick	0	0	0	0	0
NFLD & Lab.	0	0	0	0	0
Nova Scotia	0	0	0	0	0
Ontario	13	0	2	0	15
P.E.I.	0	0	0	0	0
Quebec	1	12	0	1	14
Sask.	2	0	0	0	2
NWT	0	0	0	0	0
Nunavut	0	0	0	0	0
Yukon	0	0	0	0	0

*Preferred Language*

The largest portion of the survey was composed of 20 Deaf respondents who indicated their preferred language was ASL (Deaf-ASL group). Five Deaf individuals indicated their preferred language was spoken English. Eight Deaf individuals preferred LSQ as their language (Deaf-LSQ) while 4 Deaf individuals indicated their preferred language was spoken French. Three hearing English speaking individuals indicated a preference for ASL and one hearing French speaking individual preferred spoken French.

Table 4.

*Preferred Language by hearing status/language*

<b>Preferred Language</b>	<b>Deaf –ASL</b>	<b>Deaf –LSQ</b>	<b>Hearing - English</b>	<b>Hearing - French</b>	<b>TOTAL</b>
ASL	20	0	3	0	23
LSQ	0	8	0	0	8
English	5	0	0	0	5
French	0	4	0	1	5

*Self-identification*

The majority of survey respondents were Deaf people who did not work in the judicial system. Some Deaf respondents answered ‘other’ such as being educator, advocate or currently working in the legal system. From the hearing-English group, one respondent was a hard-of-hearing law student and one was an interpreter (see Table 5).

Table 5.  
Self-identification by hearing status and language

Identification	Deaf -ASL	Deaf -LSQ	Hearing – English	Hearing - French	TOTAL
Deaf, not working in judicial system	20	9	0	0	29
Hearing, not working in judicial system	0	0	1	0	1
Lawyer	0	0	0	0	0
Judge	0	0	0	0	0
Judicial Administrator	0	0	0	0	0
Police enforcement	0	0	0	0	0
Social worker	0	0	0	0	0
Support to victim worker	N/A	1	N/A	1	2
Other	5	2	2	0	9

### *The Justice System: Working Well and Not Working Well*

Participants were asked to indicate what works well and what does not work well in accessing the justice system at the present time. Participants indicated the following aspects. Table 6 summarizes that data:

Table 6.

What is working well?
Court provides interpreting services
Quality of court interpretation generally high
One to one communication support
Court Administrators that are supportive
Interpreters for RCMP

In the words of one respondent:

*“I was able to use the IP Relay Service (before CanVRS appeared) to make calls to the court house. The court took care of obtaining ASL interpreters for me.”*

However, despite interpreters being available for court appearances, respondents also reported that there were a number of things that were not working well. Table 7 summarizes that data:

Table 7.

<b>What is not working well?</b>
Court delays caused by interpreters not available or court not knowing I need an interpreter
Some agencies provided inadequate quality of interpretation
Using pen and paper to communicate
Awareness of rights
Court does not understand the linguistic needs and diversity with the Deaf community
Police are not getting qualified interpreters to interview Deaf people
Police who expect me to lipread
Police who have basic sign language but think they are fluent

In the words of two participants:

*“Having an interpreter is essential in the justice system however there is a dire shortage of interpreters in Saskatchewan.”*

*“Depending on the age of the person and their awareness of their rights...example, a youth in government care....do they know to contact the Provincial Advocate for Children and Youth office in order to get access to interpreters.”*

The following quotes are representative of the sentiments expressed in addressing this question:

*“Police not accessing qualified interpreting services to communicate with me when I was witness to a major assault. I could not understand the police who questioned me. So, we did the pen and paper routine. That was still problematic due to the unnatural flow of communication even though I could write well in English to describe what I had witnessed....it was clear that the police officer was not as thorough in their use of language as they would be with a hearing witness. Imagine if I did not have strong or even functional English – this is a serious barrier that means a great deal of necessary information is likely missing.”*

*“Being asked to lipread just shows how limited the police are in their knowledge – the best lipreaders get less than half of the message!”*

*“I told the police officer we needed to get a real certified interpreter – they were nice enough, but didn’t take it seriously. Apparently, they thought the police woman’s Level 1 sign language was sufficient – it wasn’t!”*



### *Awareness of Supports for the Justice System*

Participants were asked about their level of awareness of supports that are in place to support Deaf, DeafBlind, or Deaf people with additional disabilities in navigating the justice system. Table 8 below indicates that the awareness level varies tremendously among the community.

Table 8.

*Level of awareness of supports by hearing status and language.*

<b>Level of Awareness</b>	<b>Deaf –ASL</b>	<b>Deaf -LSQ</b>	<b>Hearing - English</b>	<b>Hearing - French</b>	<b>TOTAL</b>
Very Aware [1]	3	4	2	1	10
Aware [2]	10	1	0	0	11
Limited Awareness [3]	9	6	1	0	16
No Awareness [4]	3	1	0	0	4
M/M/SD	2/2.48/0.85	3/2.33/1.03	1/1.67/0.94	1/1/0	

### *What gaps exist in the current system?*

The majority of participants (96%) felt a lack of communication with police, Crown Prosecutors and courts results in inequitable access for Deaf, DeafBlind and Deaf people with additional disabilities, when contrasted with access for those who can hear. There is confusion on how to coordinate the services and how to pay for communication access. The majority of concerns centered on access to qualified interpreters. Participants also reported that there are urban and rural differences, in that some courts do not have access to local interpreters who are trained or appropriate for courts. In the words of one participant:

*“The number of interpreters is very small in our community, which would affect the availability if the demand for service were high. Not to mention they had to bring in interpreters from two hours away as none of the local interpreters were on the court roster.”*

Additionally, participants expressed concern about the attitude and understanding about people from the Deaf community.

*“I hear too many accounts of harm towards the Deaf person due to the police not understanding or caring about cultural issues, whereas awareness and regard for them would have avoided unnecessary incidents. Even in less harmful cases, attitudes of ignorance can still be damaging – for example, the police who thought his level one signing meant we did not need a professional interpreter.”*

*“The staff turnover is high, resulting in a lack of knowledge about how to cover communication access. They asked me how to get an ASL interpreter – then suggested I bring a family member to interpret! They are clueless about accommodations...”*

*“I have seen Deaf people subpoenaed to court, only to be cancelled as the Crown’s office doesn’t want to pay for ASL interpreting services to come to our Northern community. I have also seen legal aid lawyers who will not insist their clients get ASL interpreters, but if the person needed a French or Cree interpreter, they would get them.”*

As well, Deaf people pointed out that while interpreters are generally provided for court matters that are family, youth or criminal, there is no access to interpreting for civil matters. When meeting with lawyers to prepare for legal matters, again, Deaf people cite that they are often billed for this service which places an additional financial hardship on those who are already under-employed or unemployed.

Finally, a major gap that was identified was the lack of awareness among Deaf, DeafBlind and Deaf people with additional disabilities about their legal rights and how to access the justice system. Participants also noted that trying to access information via the Internet when it was only in written English and French is a barrier for many Deaf people who are not fluent in English and French, and would prefer to access information in ASL or LSQ.

## FOCUS GROUP AND INTERVIEW RESULTS

The following section summarizes the findings from the focus groups and interviews. The data were analyzed for themes and common patterns, as well as recommendations that came from the participants, using a grounded theory approach (Glasser & Strauss, 1967). The researchers reviewed all of the video and written data using the following processes as outlined by Braun and Clarke, (2006): becoming familiar with the data; generating initial codes; searching for themes among the codes, reviewing themes, defining and naming themes, and the reporting the data.

The focus group meetings were conducted in either ASL or LSQ, allowing participants to respond in their first and preferred language. Notes were taken during the meetings and in some meetings, video recordings were made. The research team then analyzed the data for recurring themes and recommendations. The research team conducted the individual interviews, using the preferred language of the person.

As Stone and West (2012) remind us, there are limitations when using written forms to describe signed language data for publications, as some of the subtle aspects of the original sign language may not have been captured in the written English (Napier, Sabolcec, et al, 2014).

## FOCUS GROUPS WITH DEAF COMMUNITY MEMBERS

Data were collected from six Focus Groups across Canada with three major themes emerging: 1) Access to Services, 2) Education and Awareness for both legal justice personnel and the Deaf community, and 3) Attitudinal Barriers. From each three major themes, several sub-themes were identified and analyzed. Overall, Deaf participants in this study shared a similar underlying experience regardless of their background, hearing status or the preferred language use of sign language. However, based on the findings of this study, we must acknowledge there are other groups that have different challenges or experiences that set them apart from the rest of the Deaf community, namely the DeafBlind community. While every attempt was made to ensure diversity representation within the focus groups, the researchers acknowledge that there are many other sub-groups of the Deaf community that deserve further inquiry to understand their specific experience or needs which were not explored in depth in this study (e.g. LGBTQ community and elderly people).

### Access to Services

Refers to the access to services for various aspects of the judicial system, and the access to communication to ensure full participation by Deaf individuals. The recurring sub-themes are: a) the access to language, b) the access to legal services, and c) the access to legal establishments.

### *Access to Language*

In a broad sense, the Deaf community is bilingual (written language and signed language) with some exceptions for certain individuals who have different language exposure which may lead them to be mono-lingual or semi-lingual,<sup>9</sup> and for DeafBlind people, who may rely on a tactile pathway. The right to receive sign language interpreting services is protected in Canada's Charter of Human Rights and Freedoms and the provincial human rights codes, and yet participants reported many barriers in accessing the judicial system.

#### Availability and Booking:

The majority of the legal system clerical personnel are familiar with the sign language interpreting booking; however, there were many instances when it did not go as expected due to several reasons - funding, availability of interpreter, the mechanism of booking, and lack of safeguard mechanisms or a back-up plan to address the times when an interpreter has not been booked or does not show up at the court appearance. This impacts the Deaf individuals accessing the system in a timely manner.

*"The logistics is also a recurrent issue with the scheduled court appearance (months ahead) while the interpreter request was made at the last minute."*

*"Often there are no local interpreters. Interpreters from as far away as Windsor or Toronto have to travel to London to provide service. What if they don't show up on time?"*

A lack of financial planning or decentralized budget to provide interpreting services can have an undesirable impact for critical situations such as emergencies.

*"...They say "no money" for interpreters and they do not have a plan to create a budget and/or to use cost saving measures like Remote Video Interpreting for short/emergency matters."*

A new type of interpreting service was implemented in Canada with the Video Relay Service (<https://srvcanadavrs.ca/en/>) which makes it possible for Deaf Canadians to make phone calls in sign language. However, it has the unintentional consequence of reducing the availability of interpreters for the court. There is a perception that the current pool of interpreters is being siphoned off to work with SRV, and this creates a deficit in supply of qualified interpreters working for the community.

*"Aware that there is a shortage of interpreters due to the new VRS in Canada."*

#### Expertise and Qualifications:

The profession of sign language interpreting requires a considerable amount of training, let alone the additional expertise to work in the legal system, which requires

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<sup>9</sup> For a fuller description of monolingualism and semilingualism, see Boudreault, 2005.

another set of qualifications. Conducting interpreting services in the legal system is considered a high-stake interpreting assignment therefore a highly experienced and trained interpreter is critical.

*“Deaf people have no choice of an interpreter in court; if the interpreter is well-trained, then it is great, but some courts continue to use non-qualified people who may be good interpreters but lack the training for legal interpreting.”*

*“One concern - there is a limited pool of qualified interpreters to work in the court.”*

*“Courts continued to use the same interpreter for years because that is just what they did; the interpreter was NOT skilled and could not be understood. But the court said that person was well known in the Deaf Community.”*

#### Additional Linguistic and Cognitive Accommodations:

For those Deaf individuals who require additional linguistic and cognitive accommodation apart from the traditional interpreting service, there are insufficient interpreters for these cases. Currently, there are very few trained Deaf Interpreters to meet this increasing demand to serve various individuals with atypical language (i.e. mono- or semi-lingual, individuals with mental health issues, young children or elders, immigrants who do not use ASL or LSQ.) Currently, the Deaf Interpreter is becoming a critical part of effective interpreting services in the judicial system and is in high demand in Canada and in other countries.

*“... We need far more Deaf Interpreters.”*

*“Should always provide a Deaf Interpreter in court and in police stations and with lawyers.”*

The unique aspect of a Deaf Interpreter is the ability to match or adapt to the individual’s cognitive or communication abilities, to co-interpret with the hearing sign language interpreter in order to create the most accurate and effective interpretation. The costs will be higher to have an additional professional member in the team and it is often difficult to justify, let alone the logistical efforts.

*“The challenge is to justify the additional costs of DI.”*

*“Needs more time and additional logistics to obtain the service.”*

However, the higher interpreting costs are offset by the greater benefit in the long run of an equitable communication process and often a shorter number of appointments based on clear communication. Often the presence of a Deaf Interpreter ensures the quality and accurate communication is brokered between all parties involved. In many US courtrooms, it is now standard to have a Deaf Interpreter present to eliminate the

likelihood of misunderstandings based on the complex linguistic interaction during a legal process.

*“The initial report conflicted with the testimony in court, and the crux of the problem was the interpretation with a minimally linguistic client (and not having used a DI.)”*

*“One case, the judge had a positive experience with DI, wished that he had this before to prevent the complications of the legal proceeding. It happened that the judge ordered to retrial due to inconsistent interpreting work.”*

#### Considerations for DeafBlind receiving communication access services:

The DeafBlind rely on several adaptive services such as tactile interpreting and close vision communication either communicating directly or with the services of a qualified tactile sign language interpreter. Often, DeafBlind people receive inadequate or unqualified interpreters that lack the specific training to perform DeafBlind interpretation. In addition to an interpreter, Service Support Personnel (SSP) help the DeafBlind person navigate the physical environment<sup>10</sup>.

*“Must be qualified and trained DeafBlind interpreter in order to be sure of accuracy. Too often, they are not. And they must have a team of interpreters for a long and complex situation.”*

A distinction between the two groups of professionals must be identified and understood; tactile sign language interpreters focus on interpretation, providing impartial service, while SSPs may act as advocates in addition to supporting the person in the environment. For example, they may advocate by providing additional information to the lawyer on communication strategies, or resources that can support the person. There is a need to make a distinction between those roles in order for the legal system to appreciate the need for both professionals.

*“Some interpreters are willing to act as SSP – need to resolve this. I cannot get around the courthouse without an SSP, and the interpreter is only assigned for the courtroom. I require both accommodation services.”*

#### *Access to Judicial System*

Navigating and accessing the judicial system can be tedious and challenging for most, and while a great deal of amount of information is available in print (online and paper), it is often it is not accessible to Deaf individuals (see under education and

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<sup>10</sup> A support service provider or SSP can be any person, volunteer or professional, trained to act as a link between persons who are deaf-blind and their environment. They typically work with a single individual, and act as a guide and communication facilitator. They may be hearing, deaf, blind, or deaf-blind. For a greater description of SSP's see [http://www.aadb.org/information/ssp/white\\_paper\\_ssp.html#history](http://www.aadb.org/information/ssp/white_paper_ssp.html#history).

awareness for further information.) As a consequence, the underprivileged and undereducated individuals are likely more victimized due to the lack of knowledge of their legal rights.

#### Advocacy:

Having an interpreter does not solve all the challenges that a Deaf person has in accessing the judicial system. During the legal process, many experience a tremendous amount of psychological stress when navigating the complex legal system. Too often, Deaf people are left out and do not have a full understanding of the process. Across six focus groups, a recurring theme was the critical importance of having an advocate/navigator to support the Deaf client during the process. Ideally it would be best to have a Deaf professional to work directly with the client.

*“Need for an advocate, almost like Native Court Workers who can help navigate Deaf person through court system, and act as a guide to the court; however, these people need to be trained and operate as agents of court, so they are impartial.”*

*“Advocacy organizations are critical to provide assistance with deaf individuals who need support to navigate the legal system.”*

*“One’s level of literacy plays an important factor; therefore, an advocate and a DI are crucial to the success to the legal proceedings.”*

#### Legal Services:

Deaf people do seek legal services, either private or through provincial legal aid offices, to address their legal matters. However, they are subjected to additional obstacles in order to have access to legal services. Two main obstacles are to find and to retain a legal representative according to their needs, and the financial burden of defraying the interpreter costs. There is a significant hurdle for Deaf people to identify an appropriate lawyer who can meet their cultural and linguistic needs as a member of a marginalized population. Very few lawyers have an understanding of the linguistic and cultural aspects of the Deaf community, and the educational barriers that may have shaped the person’s life experience that brings them into contact with the law.

*“Tedious process and hard to find appropriate lawyer through legal aid to understand the client’s linguistic and cultural background and communication needs.”*

While identifying a legal representative, the inherent costs of having an interpreter must be taken into consideration. Participants believe that often the lawyers or law firms weigh the merits of the case against the costs of taking on the client based on the additional costs related to cover the interpreting.

*“BC Law Society should have a public access fund then lawyers could apply to it for funds to pay for interpreters.”*



*“Legal Aid – a barrier is the fee they pay to interpreters - \$35.99 an hour; clients need a Deaf Interpreter and/or an interpreter with the COI [Certificate of Interpretation] level of skill, but those interpreters will not work for a substantially lesser rate.”*

### *Access to Police, Immigration and Correctional Personnel*

The Deaf community’s interaction with the legal system personnel such as police, correctional, or immigration officers was raised in several focus groups.

#### Police:

The Deaf community’s experiences of interacting with police officers is one that is checkered with successful interactions and many more that are less than positive. The participants reported instances of mistreatment that occurred due to miscommunication. Deaf people are mindful of the likelihood of misunderstanding or possible unintentional mistreatment from the police due to the lack of appropriate communication. The nature of the interaction depends mainly on the training that the officers have received to handle a diverse population in their district or city. Deaf people demonstrated a great desire to have a direct interaction with police officer using sign language or having an officer in their district who can communicate in sign language before having a professional sign language interpreter arrive at the airport to work with customs and immigration, or at the police station.

*“Need to learn sign language to foster direct communication.”*

*“Experienced one police officer that had Deaf family, so they knew sign language as a CODA\* [Children of Deaf Adults] – I was genuinely thrilled by this experience.”*

*\*Note:* CODA is a term that refers to hearing individuals who are born to Deaf parents who use sign language, and these individuals are often considered to be native signers within the Deaf community. However, some CODAs work as interpreters, without the necessarily formal training or certification, and this can create challenges for the legal system and Deaf people.

Having an officer knowing basic sign language is useful to establish a direct connection and a rapport of trust with a Deaf person. However, they are not an impartial party during a police interrogation, so it is important to remember that having a basic communicative skill does not replace the need and the right to have professional sign language interpreter who is not performing another role for the legal system.

*“I have experienced police officers who think that they can use another officer who has taken two levels of sign language classes to act as an interpreter.”*

#### Considerations for DeafBlind interacting with the police officers:

The DeafBlind community is aware that their sensory differences pose additional challenges for the police to identify their condition. The DeafBlind have a wide range of



vision (from limited and close vision to complete blindness). DeafBlind people who rely on their residual vision may be able to navigate without a white cane during the daytime, and they may find it harder to do the same during nighttime. Their physical behaviors may be misleading for others - they may walk with little balance, may be unresponsive to commands, unable to see when in direct light (i.e. streetlight or flashlight). Their response to police commands are often ignored and leads to significant misunderstanding when it comes to a critical situation.

*“Often, Deaf Blind requests for interpreters are disregarded by the police who look at their non-verbal behavior and assume they are drunk, confused, gesturing, etc.”*

*“Encourage the police to learn basic signs or to use gestures and follow the procedure to get appropriate service. There is no need to respond physically if no response to the commands from DeafBlind individual, and don’t shine a flashlight in the face of the person.”*

A registry for vulnerable persons was put in place in Calgary which can be used as a model for other police services in Canada.

*“Vulnerable persons registry with Calgary Police Service is great for deaf seniors and deaf people with disabilities - any first responder has access to it; it provides information on the person. Ex: DeafBlind; need for interpreters; communication strategies in emergency, etc.”*

#### Correctional Facilities:

Across the focus group there is a belief that Deaf inmates are more likely subjected to human rights violations by depriving them of the right to obtain interpreting services during incarceration.

*“Provincial jails – less likely to provide interpreters based on cost.”*

*“Deaf people – serving time in a provincial or federal institution have no support inside jails or in transitioning to community.”*

The results of the lack of equitable communication access during incarceration may result in a lower chance of success for the Deaf inmate to reintegrate into society.

*“...very inconsistent use of interpreters; Federal Pen will use interpreters for some situations, but the inconsistent use means that Deaf prisoners are not able to access programs and that then leads to them being denied parole as they haven’t completed the mandatory programs (alcohol and drug treatment, anger management, counseling for sexual predatory behavior, etc.).”*

### Immigration System:

The immigration system handles a wide range of Deaf individuals with various languages and educational backgrounds when they apply for immigration, or arrive and seek refugee status in Canada. The chances of having a communication breakdown and misunderstanding is greater when immigration officers do not use appropriate interpreting services, leading to undesirable outcomes for some Deaf immigrants.

*“Immigration expects us to lip-read Farsi, for example, and the immigrant agency did not use interpreters – I ended up signing papers, no idea what they meant; meant I was locked into a lease for 6 months in very unsafe area and if I moved I would lose damage deposit. I also paid for health care not realizing that it was covered!”*

A well-established cooperation between the immigration system and local Deaf community and Deaf agencies and advocates is needed to ensure the effectiveness and the appropriateness of the immigration process for all Deaf immigrants.

*“The government moved a Syrian Deaf family into Cranbrook where there is no Deaf community and no supports for the parents and children; Deaf immigrants need consultation from Deaf community.”*

*“Settlement agencies had no idea that VCC [Vancouver Community College] existed with suitable programs for Deaf immigrants to gain access to education and training.”*

### Emergency Contexts and Communication:

This theme focused on establishing a clear protocol for handling all emergency response and for training first responders.

*“Emergency responses (911) and on-site encounters with First Responders show that they need to develop a protocol on how to handle emergencies with Deaf individuals – learn some basic sign language, be sensitive to communication, call interpreters from the scene of an accident to meet us at the hospital, etc.”*

## **Education and Awareness**

Participants identified ways to improve the accessibility and the equity of experience for Deaf community members when interacting with the judicial system. This section summarizes the suggestions centered on providing training, education and raising awareness among different constituents. Three sub-themes emerged: a) training for interpreters, b) raising awareness among legal personnel and the legal system, and c) educating and empowering Deaf and DeafBlind community members.

### *Training for Interpreters*

Although there have been as many as seven training programs available in Canada for more than three decades, there is only one program with a BA degree in interpreting and all of them provide training at the generalist level, not the specialist level that could include legal interpreting. There are workshops and professional development opportunities available to interpreters, however the length of training and quality of training varies across the country. Working in the court requires a specialized training in legal terminology, legal processes, ethical decision-making and so on, to ensure the interpreting is accurate and effective. As the participants stated during the discussions, there is a dire need to provide more training for the interpreters across Canada. In addition to formal training and mentoring, a certification process for both hearing and Deaf interpreters is necessary to screen appropriately qualified individuals to work in the legal system.

*“Interpreters used in the court rooms need more extensive training.”*

*“Judge requested certified interpreter to work in court, however there are very few in Quebec.”*

*“Both Deaf and hearing interpreters require more training and please make sure they are AVLIC (Association of Visual Language Interpreters of Canada) members and have proper specialized (legal) training.”*

### *Awareness for Legal Personnel and the Judicial System*

Across all focus groups, the participants emphasized that personnel from the judicial system do not have sufficient training and they need to be constantly re-trained with a standardized curriculum. This requires a nationwide effort to raise awareness to support the judicial personnel in understanding the needs of the Deaf community using sign language and tactile sign language.

*“In general, justice system personnel do not have a good understanding of a Deaf person’s world view and frame of reference.”*

*“In some case, the judge believed that everyone understood the process, in fact it is not the case for the Deaf person, who felt powerless and unable to express or raise concerns.”*

For a successful outcome of awareness training for legal personnel, collaboration with Deaf advocacy organizations is necessary. The training needs to be developed and delivered by a Deaf person or jointly with a legal professional.

*“Training must be provided by Deaf organizations or co-trainer with Deaf people.”*

The language used to communicate with Deaf and DeafBlind individuals is often directed by the hearing personnel's preference to use writing or lip-reading, without understanding the challenges of writing in one's second language and the myths of lipreading. A refined understanding of the Deaf member's linguistic preference, which is sign language or tactile sign language, is necessary to alleviate any communication barriers or misunderstanding.

*“Deaf people are always asked if we can read lips: not a reliable or effective way to communicate.”*

*“When asked to write down your statement, the justice system needs to understand English is our second language. I should not be forced to use their language rather than my own.”*

*“They said they are accessible but they are not accessible for the Deaf community; no supports; most legal personnel think all deaf people can lip-read or write back and forth; we are expected to accommodate to their way, not them accommodate to us. Doctors, lawyers, judges, police - all decide that an interpreter is not needed; what about my right to decide?”*

However, during one focus group, participants reflected on experienced personnel such as the Police Diversity Officer, who was very empathetic and willing to work with the Deaf community leading to positive experiences.

*“Police were really open-minded about how to deal with DeafBlind people. Our agency had the luxury of explaining information to the police and the DeafBlind person went to court well prepared – as well, the courts were open to educating.”*

This experience was mirrored by two of the Judges who were interviewed for the study. Both Judges indicated that the courts want to serve the community better and need education.

### *Educate and Empower the Deaf and DeafBlind Community*

Apart from providing specialized training for interpreters and raising awareness among legal personnel, the participants believed that educating and empowering Deaf and DeafBlind community members is also essential. This would allow the community to cope and to navigate the legal system more efficiently. Primarily, the participants believe that improving resources online in sign language and including captioning on existing resource videos will help them to access necessary resources to learn about the legal system. Participants reported feeling overwhelmed and lost when it comes to navigating the complex and staggering amount of information online, available in English or French.

*“We need videos that are in ASL, LSQ and captioned that help teach people about justice system.”*

*“Lack of resources – websites about legal processes are all in English – no captioning on videos; no ASL translation of videos and/or print information.”*

*“Many of the Deaf people get English documents and they need translation of the English – English is an immediate barrier.”*

Participants suggested that government materials must be accessible to the Deaf community across different groups (i.e. youth, immigrants, seniors, etc.) that have a desire to learn more about the legal system. The focus group participants acknowledge there are insufficient resources from the non-profit agencies as well, and it is these organizations that a Deaf person may turn to first.

*“Legal processes, Deaf people do not understand the system; there is no one to talk with; Deaf people do not have the incidental learning about how to respond; they may come to a Deaf association or a service organization, and those staff are not trained in the legal system which can mean the person is given inaccurate information.”*

*“...there needs to be support to clearly teach steps of immigration and citizenship process; had many errors based on lack of DIs and/or interpreters who do not understand the rules and obligations within refugee and immigration experiences.”*

*“Need to educate young people how to handle legal issues including how to advocate for their right to have interpreting services.”*

*Training considerations for the Deaf Blind Community.* An additional layer of training would be essential given the different sensory orientation.

*“DeafBlind need a more training and awareness on how to handle a such situation and prevent an unnecessary escalation due to communication issues.”*

## **Attitudinal Barriers**

This section describes the focus group participants’ experience of the attitudes of those who have a role in the legal system. Three sub-themes emerged from this section: equality, policy issues, and psychological impact.

### *Equality*

Obtaining access to services does not always translate into equal treatment for the Deaf community members. There are many situations in which they had to endure unnecessary delays that were perceived as unfair. In general, it may take a long time to obtain interpreting services, which is understandable given the shortage of interpreters.

However, there were some situations where the waiting time was not proportional or equal to other hearing individuals in a similar situation.

*“Police delays waiting for interpreters – not fair to deaf person, they end up staying in jail longer waiting for an interpreter for a bail hearing. Why not use Remote Interpreting Services so I can get out on bail like everyone else instead of waiting an additional 14 hours!”*

Another aspect noted by the Deaf participants was that the pace of the courtroom interaction did not allow for equitable experiences. The courts seem unaware that they are working between two different languages and two different modalities – an auditory language and a visual language.

*“The rate of the speed and the flow of communication is a significant factor for effective interpretation, however the conditions may be not suitable for Deaf people in the courtroom, which is too fast when there are multiple parties speaking at one time.”*

### *Policy issues*

Similar to the findings of the survey, there are suggestions that any change within the legal system needs to start with an examination of existing policies around accommodation, and the types of processes needed to improve access. The policy aspect pertains to communication access within police services, courts, or corrections, and deserves careful consideration. While every attempt was made in this study to obtain specific policies used, for example, by police services or the RCMP, these policies were not publically available, and upon request, were not provided. In the words of one participant:

*“At the Federal level: if there is disability legislation that passes, it may help our communities to gain access to interpreting and greater resources...”*

### *Psychological Impact*

Individuals who have experienced the judicial system reported experiencing psychological stress in many ways. Apart from the stress of the legal matter, there is the psychological stress of gaining access to qualified interpreters at each step of the process, which often requires self-advocating and constant education of legal personnel, some of whom are resistant to learning about the accommodations required. Participants also reported that the psychological impact extends to friends and family who bear witness to the stress and/or have to intervene in order to help the Deaf person obtain services.

*“CODAs (Children of Deaf Adults) were often traumatized when they were forced to interpret critical situations (between law officers and Deaf family members) and in some situations, they became depressed over the experience – family should never have to interpret for family.”*

*“On top of the legal issues, getting access to the services and communication added a considerable level of stress.”*



## INTERVIEWS WITH DEAF COMMUNITY MEMBERS

Seven overall themes were found through these interviews. Sample quotes have been chosen from the participants' comments, which provide insight into the experiences and perceptions of access to the justice system. The interviews allowed us to probe in more depth and to determine which aspects were similar to and different from the results of the focus group. This strengthens the findings as the interviews were with individuals who had all had significant interaction with the justice system as victims, defendants and inmates.

### Access to Justice System: What has worked well?

The participants noted examples of aspects of communication access related to the justice system that worked well, including examples where they felt they had equitable access to the justice system via the court interpreter and/or some individual staff who worked in the correctional system.

#### *Communication Access in Court and in Correctional Facilities*

Across the interviews, Deaf participants suggested that the courts work hard to provide competent interpreters. In terms of correctional facilities, two former inmates identified that within one British Columbia facility, the staff had picked up some sign language based on previous interactions with Deaf people, and made an effort to engage in communication. These same interviewees identified that one thing that worked well was having the parole hearings use the same interpreters who were used in court, allowing for consistency, and reducing the number of interpreters that know about the offenses within a small community. In terms of programs, one person had the experience where the correctional facility worked with an outside counsellor from the community who was fluent in ASL, allowing for direct treatment, versus going through an interpreter. One former inmate had experienced correctional facilities in Alberta and Ontario, leading the person to state that the experience in Ontario was more equitable:

*“Once I was transferred to Ontario I had regular access to interpreters – maybe because of AODA (Accessibility for Ontarians with Disability Act)? I also had regular access to programs via interpreting services that were offered twice a week at one correctional centre – I never had that in Alberta.”*

#### *Recognizing Vulnerability and Safety*

This theme centered on the correctional facility acknowledging the risk that comes with being Deaf within the general prison population. Based on Deaf inmate requests, the facilities appeared to understand the risks of not being able to hear, and the higher risk of victimization that could occur for a Deaf inmate. In the case of one inmate, the decision was to transfer the person to a unit with much older inmates, which was safer for the person.

## Access to Justice System: What has not worked well?

The participants in the study noted many examples of aspects of communication access related to the justice system that had not worked well. There was a great deal of similarity to the findings of the focus groups in terms of a “common experience” relating to access to the justice system. The main themes in this section include 1) access to educational resources, 2) communication in legal settings with interpreters and intervenors, 3) communication in specific legal interactions, 4) vulnerability and safety 5) right to a lawyer, and 6) inconsistencies within and across provinces.

### *Access to Education and Resources*

Participants reported that resource videos designed to teach about the court process are not captioned nor interpreted. As well, government websites have limited accessible information – there were no “best practice” examples with captions and signed language providing accessible information.

### *Interpreters and Intervenors*

Across all of the interview participants, there was concern expressed about the quality of interpretation with specific comments that suggested interpreters are not able to work effectively with immigrant populations and require specialized training. There was also concern that provinces such as Ontario are not using qualified interpreters through the Ontario Interpreting Service but rather putting anyone who purports to be an interpreter on the roster.

*“I would say that the interpreter’s skills and knowledge is a barrier to my access and Deaf interpreters are not readily available and those that are lack specific legal training.”*

DeafBlind participants and those working with Deaf people with additional disabilities reported that there is an extreme shortage of intervenors or SSPs. Even getting to an appointment with a lawyer can be challenging without intervenor services.

*“I don’t have ready access to intervenor services – government has cut the service, so even travelling to appointments is difficult without intervenors as is getting around a courthouse without a guide.”*

### *Communication in Specific Legal Interactions*

Similar to the focus group findings, the interviewees reported that there were challenges at every stage of a legal process, beginning with the police interaction.

#### Police

The issues reported in the interviews included delays in processing a complaint, and situations where the police wouldn’t use a qualified interpreter and wanted to use a

police officer who knew only a few signs. Only when it became obvious that the signing officer could not communicate did the police begin to secure sign language interpreting services. Participants suggested that police could code files that would alert the courts that an interpreter is needed.

Participants also noted the delays associated with securing interpreting services during an unscheduled legal event, such as an arrest and bail hearing.

*“Police should use remote interpreting via an iPad until an interpreter can come – or use Remote Interpreting Services for bail hearings so the process is not delayed for hours waiting for an interpreter.”*

A further issue related to being forced to use written communication during a police interaction:

*“Being forced to write causes more stress; I am bilingual, many others are not; writing makes me feel doubly victimized.”*

While the above examples are specific to police interactions, the themes also appeared in the description of interacting with Social Workers, who are perceived as negligent in visiting a home where they know the family are deaf and not bringing an interpreter.

Other settings such as refugee hearings, court appearances and life in a correctional center led to the following comments:

#### Refugee Hearings

The very nature of a refugee application requires specialized teams of interpreters, and Deaf interpreters need to be used as it is highly unlikely a potential refugee knows ASL or LSQ. Community advocates and Deaf lawyers all stated that all interpreters require more training in this area of law.

#### Court

Consistently, participants reported court delays based on a lack of interpreters, and two interviewees commented on the fact that within the courtroom there is no LCD display that shows the name of the case being called. While court clerks and/or court sheriffs would be willing to help the person, many Deaf people were unaware that they should advise the court personnel upon arriving in the court.

One additional comment addressed the design of the courtroom, which made it difficult to see the interpreters, so that the accused needed to move in order to see:

*“I had to sit outside the prisoner box which meant that Deaf community members watching the trial could watch my every reaction all day. I was also shackled (both ankles and hands) during the trial which was difficult.”*

### Correctional Centres

The issues related to this theme included (1) there were no interpreters for the transfer from court to the correctional centre, and (2) once an inmate begins the sentence, there was no understanding on the part of staff about the importance of interpreters for programming and meetings, as revealed in these quotes:

*“The jail wanted to use their teacher who knew a bit of sign language as the interpreter for my meetings – then when I read my file everything was wrong! Use real interpreters please!”*

*“Programming was delayed for a full year as the institution didn’t want to provide interpreting based on the cost. In the end, they used interpreters from another province and did it remotely – the technology was not great, so often I couldn’t understand them, and it meant I had no access to communicating with the other guys in the group during that treatment program. It would have been better to use local interpreters for me to actually benefit from group interaction and support.”*

Former inmates cited numerous misunderstandings based on writing as a form of communication:

*“I thought FREE meant I was free to go – I got up and was immediately attacked by guards and placed in ‘the hole’ for 7 days – FREE referred to a specific correctional centre. I had no idea!”*

### Psychological Stress

The key findings relating to this theme focus on the lack of daily communication and the very real sense of isolation for Deaf inmates that increased the psychological stress.

*“The lack of everyday conversation leads to isolation and mental health challenges which then leads to safety issues...it was more difficult for me than other inmates.”*

*“Given the lack of human communication I asked for a TV – other guys had radios but I cannot hear a radio so a TV with captions would have been equivalent, but that was denied.”*

The safety and psychological concerns were also clear in the words of this participant, who had to share cells with hearing inmates:

*“I cannot hear so hardly slept thinking I would be raped at night... no sleep, no coping. I asked to share with another Deaf inmate but that was denied, too.”*

### Gaining Legal Representation

The major challenge raised here was that lawyers are rarely equipped to deal with a Deaf client. Further, getting access to legal aid is challenging. On-line applications are difficult for those struggling with literacy issues; Legal Aid resists paying for an interpreter for the application appointment; and typically a legal consultation is free for 30 minutes but

takes longer with an interpreter. There is a perception that the lawyers who accept legal aid clients are stressed and busy and often do not want to take the extra time needed with a Deaf client and interpreter.

### Inconsistencies across and within Provinces

Finally, the inconsistencies among and within provinces were cited. For example, some provinces cover interpreting for addiction treatment, mediation, women's shelters, etc., but other provinces do not, resulting in inequity among Deaf community members. As well, in Montreal, there is a perception by Anglophone Deaf community members that there are more resources for LSQ community than for the ASL using community

## **Interviews with Professionals**

Interviews were also conducted with professionals who have had experience with Deaf people. The interviews included lawyers, psychologists, community advocates, educators, interpreters, and judges. Similar to the Deaf community responses, we note the emphasis on communication and access. The themes focus on attitudinal barriers, literacy, communication with interpreters, the lack of awareness on the part of the justice system about Deaf people and signed language access, and inequities across jurisdictions.

### *Systemic Attitudes*

Across all of these interviews there was a common thread of Deaf people being disenfranchised by the attitudes of those working within the system. It was suggested that 90% of the Deaf community who have contact with the legal system are disenfranchised. However, staff don't recognize the complexity of the issues such as literacy, poverty, limited formal education, addiction and mental health challenges, etc. Attitudinal aspects can stem from a lack of awareness, such as police who request that Deaf people lipread or write instead of providing them with an interpreter, and remand centre staff who believe yelling will ensure the Deaf person understands, or in the views of social workers working with deaf parents who believe that it is better to hear and therefore Deaf parents are less capable. This audism can be subtle or overt, and can dramatically affect the experience for Deaf people, including financially. In the words of one lawyer:

*“Legal fees can go up tremendously for Deaf people based on inadequate interpretation services and lawyers’ lack of knowledge with minorities and Deaf community.”*

Participants stated that the staff working in all aspects of the legal system require much more understanding of interpretation processes, for example, the attitude of the courts or lawyers who think that once an interpreter is provided then *“everything will be fine”*, when it is not. There was strong emphasis that with education, attitudes can change, for example, several Deaf lawyers commented on how the courts learned to accommodate them with interpreters and/or captioning for hearings and court appearances, which was viewed as positive.

### *Education and Resources*

This theme crosses all data sets from surveys, focus groups and interviews. The emphasis is that many Deaf people are not aware of their rights or of the services that are designed to support people interacting with the legal system. Given the complexity of Deaf clients who may come in contact with law enforcement officers, referring the person to a resource in the hearing community may not be helpful at all. For example, a person who is Deaf with mental health and addiction challenges may not benefit from services that do not have any expertise in serving the Deaf community. Collaboration is needed across agencies so that organizations that work with Deaf people are known to the regular legal services designed to educate and support community members. There are Deaf agencies that can provide sight translation from English to ASL for a legal document, for example, but the staff may lack the knowledge of legal documents needed to provide accurate information to the Deaf client. These interviewees also identified the need for written materials to be written at a more accessible literacy level and the need for information on websites to be in ASL or LSQ.

*“Many Deaf people cannot read to the level of the legal documents; so they misunderstand and do not show for court, etc. Costs extra money and time for lawyer to explain to Deaf person the meaning of the forms.”*

### *Quebec Differences*

The participants identified that Quebec has a unique history based on the education system that has favored oral education, and this has impacted both the development of sign language services and interpreter services. There is one agency that is well positioned to train interpreters for legal work (known as SIVET) and they do provide services in the Montreal area. However, research conducted in Quebec in 2013 verified that legal interpreting in Quebec is a huge need (Parisot and Villeneuve, 2013). Quebec, like other provinces, has challenges in providing interpreter services outside of the large urban centres. One challenge for Quebec has been the formal training of interpreters that is offered on a part-time vs. a full-time basis, which can mean it takes longer to become a qualified interpreter in that province. In addition, it was noted that if Deaf Interpreters are in short supply in provinces such as British Columbia and Ontario, where there are established training programs, there are even fewer Deaf Interpreters in Quebec.

### *Interpreting*

Several of the participants addressed interpreting, emphasizing the need for specialized training for interpreters who wish to work in legal settings, including the skills needed for interpreting psychological assessments. There are very few psychologists in Canada who can conduct a valid assessment directly using ASL or LSQ, hence most assessments are performed with interpreters. When interpreters do not understand the nature of the standardized tests, or the interview processes, it can lead to a very skewed report which is then not helpful to the courts or the person.

It was noted by participants that the quality of interpretation can be tied to the interpreter's knowledge and application of comparative research on consecutive and simultaneous interpreting in legal settings (see Definitions) (Russell, 2002, 2005). This research presents evidence that the rate of errors increases with the use of simultaneous interpreting. The errors are often due to the complex cognitive demands of processing two languages at the same time, and the patterns are found in both signed and spoken language interpreters.

There is also a need for greater clarity on when to use a Deaf Interpreter. In the words of participants:

*“The use of DI with immigrants does not equal interpretation – gesturing is not complete communication - highly problematic for testing and for testimony.”*

*“The biggest challenge? Quality of interpreting is poor and interpreters appear to be unaware of how bad they are – creating alternate narratives that are not even close to what the Deaf person said! Deaf people will not complain about interpreters as they are under stress with the legal event – double victimization.”*

Lawyers expressed concern that interpreters are not accessing preparation materials that provide content and context via affidavits which would allow them to do better work. The interpreters seem not to know they can/should ask for these materials.

Interpreting standards are perceived to be weak and inconsistent across provinces. There is a desire for a standardized assessment tool to ensure the interpreters are qualified.

*“Ministry of Attorney General in Ontario needs to develop a better training and screening processes for interpreters; use deaf and interpreter experts to develop a valid tool and hire interpreters with the COI designation (AVLIC Certificate of Interpretation).”*

Funding of interpreting services was identified as a key problem, especially for interviews between lawyers and clients. One lawyer suggested that the Law Society could create an access fund to cover this aspect, and that all civil courts should automatically cover costs where Deaf people are participants. Interpreting fees typically do get covered, however it takes a great deal of time to educate the courts prior to getting approval.

One example pertained to out-of-court settlement processes that require interpreting. Often these matters require that the Deaf person cover the interpreting costs, which can turn out to be a large percentage of an actual settlement. The access costs must not be part of the settlement, just as one would not assume a person in a wheelchair would be charged the costs of building a ramp in order for them to access a law office.

Finally, funding is lacking for SSPs to support DeafBlind people to travel to meet with a lawyer or to attend a court appearance.



### *Vulnerability and Safety*

All of the participants interviewed had significant experiences with Deaf community members and all acknowledged that in their experience, remand centres and correctional facilities are not meeting the needs or the human rights of Deaf inmates. They also believe that the DeafBlind community are frequently misunderstood by police officers who assume they are drunk or ignoring orders, which can lead to harsher treatment.

All participants were asked to offer recommendations and these have been considered in the final section of this report.

## DISCUSSION OF FINDINGS

The following section provides a discussion of the results that emerged from online surveys, focus groups and individual interviews.

There is awareness on the part of professionals working within the Justice System of the need to improve access to communication with Deaf, DeafBlind and Deaf people with additional disabilities. However, there is inconsistent municipal, provincial and federal policy development that takes this need into account.

In this research, people from a variety of locations in Canada reported that they have experienced challenges and significant gaps within the justice system when it comes to communication access. While there have been settings, such as courts, that do regularly provide sign language interpreters, there are many other aspects of the justice system where interpreting is not provided or it is not provided at the necessary level of quality. This inconsistent access places these Canadians at greater risk when interacting with the justice system. However, it is also important to recognize that providing an interpreter is just one aspect of creating an equitable experience in accessing the judicial system. It is not the ultimate solution to the problems described in this data set – it is one part of a complex constellation of issues to be addressed, and as such should not be seen as the panacea for all of the challenges.

The lived experiences of the participants reveal that police, social workers, lawyers, court administrators, correctional services and rehabilitation services have little or no working knowledge of what it means to experience the world as a Deaf, DeafBlind or a Deaf person with additional disabilities. This aspect is a key issue as it shapes the attitude of those providing services and influences their uninformed assumptions about access.

What is also clear across the literature and data is the amount of psychological stress that is placed on the Deaf, DeafBlind or Deaf person with additional disabilities when interacting with the judicial system, in terms of having to self-advocate for accessibility services and information. If the legal system were better informed and prepared to work with members of the Deaf community, it is possible the amount of psychological distress could be reduced.

In terms of educating the Deaf community about their legal rights and the justice system, we see very few resources that are accessible in ASL or LSQ. Providing access to information is not simply a matter of hiring an interpreter and translating content – the content needs to be chosen and presented by Deaf people familiar with how to educate in ASL or LSQ so that the maximum accessible format and content can be determined.

One of the strongest themes across all the data sets was the need for pro-active preparation via policy development and protocols at the municipal, provincial and federal levels of government. There is also an opportunity and need for a national strategy and guidelines for training interpreters to effectively interpret in legal settings.

While Canada now has access to a national Video Relay Service, its hours of service are limited. This means that should a Deaf person experience an emergency during non-peak business hours, they must rely on others to contact emergency services, or use Text to 911. Text to 911 is also a relatively new service and it is not available in all places in Canada. The Deaf respondents also indicated that the 911 operators require more training to effectively respond to a Deaf caller.

The associations of Deaf and DeafBlind are ready to partner and provide awareness training to those wishing to understand how to effectively communicate with them. However, those associations are frequently managed by volunteers, and lack the needed funding to develop the training. They are also willing to partner on translating website content so that the most appropriate formats can be used to share information that is currently available in only English and French.

Based on the data, there appear to be five priorities:

- 1. Strategic Planning Level:** Policy and guidelines within municipal, provincial, and federal governments for accessible communication based on the use of qualified sign language interpreters for legal interactions. This includes police services, legal aid services, court processes, and correctional and rehabilitation processes.
- 2. Operational Planning Level:** Development of a linguistically and culturally accessible and centralized website that can provide information for ASL and LSQ users about the justice system. Such a website could also offer current information for Justice System personnel about the Deaf and DeafBlind communities.
- 3. Police, Social Workers, Lawyers, Judges, Correctional Officials:** Training to help those providing significant supports in the provision of justice to understand how to effectively communicate with Deaf, DeafBlind and Deaf with additional disabilities people during a legal matter.
- 4. Interpreters:** Specialized training on legal terminology, legal processes, and the legal system, and strategies and interpretation practices that can ensure interpretation is accurate and effective.
- 5. Deaf Community:** Training through workshops and online accessible websites would help the members of both Deaf Anglophone and Francophone communities better understand their rights as well as the various processes and procedures within the justice system.

Based on the data gathered in this research project, recommendations were made to address the gaps that have been experienced by both victims and those charged with criminal offences.

## RECOMMENDATIONS

The following recommendations are rooted in the findings of the surveys, focus groups, and individual interviews. The recommendations are not meant as criticism of any institution or government department but are designed to address the gaps within the system that were identified through this research project. There are many more recommendations that can be generated from this report, however we have attempted to place priority on the following areas. The recommendations have been organized in sections and themes. The grouping of recommendations is system based and would improve communication access.

The findings of the research project confirm that for Deaf people, the best access method is via sign language interpreters, with a preference for Deaf Interpreters in some legal environments (refugee hearings, for example). For DeafBlind people the accommodation depends on the nature of the visual and hearing loss, so it can be a combination of tactile or low vision interpreting services, Support Service Personnel/Intervenors, and/or braille. For Deaf people with additional disabilities, the communication access may be an interpreter, and other additional service depending on the type of disability, which could range from a physical disability to a cognitive disability.

### System: Governments - Municipal, Provincial, and Federal

- 1. Government agencies responsible for Justice:** design policies and protocols that are consistent with international conventions such as the United Nations Convention on the Rights of Persons with Disabilities, and national and provincial human rights legislation to address communication access for Deaf and DeafBlind people. This includes municipal and provincial policing, government programs that provide justice services such as probation and parole, courts, and correctional centres. Deaf community consumers and legal experts must be included at all stages of policy development if the policies are to reflect what is needed. This would reflect the UNCRPD philosophy of “*nothing about us without us*”.

### System: Operational Planning Level

#### 2. Training:

- 2.1 For the Justice System:** CAD-ASC partner with other organizations representing Deaf people with other disabilities and DeafBlind people to provide regular in-service training for the Justice System about the specific communication access rights of the Deaf and DeafBlind community, and how best to establish effective and equitable communication during legal interactions. This can take the form of in-service workshops, on-demand webinars, websites etc.

- 2.2 For Deaf and DeafBlind:** CAD-ASC partner with provincial government ministries responsible for the judicial system, to educate the Deaf community about their legal rights and how to navigate the legal system, delivered by Deaf instructors in ASL and LSQ. This training needs to be accessible to the broadest reach within the community, which may mean video clips on a Ministry of Attorney General website, and/or dedicated websites for the community, and DVDs and community presentations. As well, there is a need to adapt websites, so they are accessible for those with vision impairment, so that the information can be read by accessibility software such as JAWS<sup>11</sup>.
- 2.3** Ensure all **videos on websites and emergency alerts** are accessible by providing captioned information, and in Quebec and New Brunswick, captioning in English and French (for example, currently in Quebec, Amber Alerts are only in French). Ensure captioning is white on a black background for regular information and has a red background for emergency messages. Ensure captioning speed is such that it does not prohibit readability.
- 2.4** Ensure all **videos are also accessible via an ASL or LSQ** translation.
- 2.5 System Advocate/Navigator:** The Deaf Community looks to the model of the Aboriginal Court Workers that are available in some provinces as a potential model that could support Deaf people as they navigate the legal system. While the numbers of Deaf people going through the legal system at any one time may be small, the suggestion is that a number of provinces could share the Deaf Court Workers. These Deaf Court Workers can be available to people via video, and could also guide the legal system/and or courts on educational media appropriate for the Deaf community and interpreting services.
- 3. Justice Funding & Booking Ease:** Ensure funding is in place to cover sign language interpreting services required during interactions with Deaf community members. This could include collaborative and creative efforts to create a national accessibility fund that would specifically cover sign language interpreting for the ASL and LSQ Deaf communities, DeafBlind interpreting for both Anglophone and Francophone communities, and Support Service Personnel for DeafBlind persons in all phases of a legal interaction.
- 3.1** Create a process whereby a file is coded as requiring a sign language interpreter when the file moves from the police process to the court process, ensuring that Deaf people do not arrive at court and find that the courts are unprepared for them.
- 3.2** While many courts have moved to remote interpreting, this must only be used in limited settings, for example, a bail hearing, or an appearance to set a date. Given

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<sup>11</sup> See <http://www.freedomscientific.com/Products/Blindness/Interpretype> for a fuller description of the software programs available to support DeafBlind people.

the very nature of a visual-spatial language, face to face interpreting provides the greatest access.

4. **Courts and Police:** Ensure processes are in place for interpreting services by having a roster of trained and appropriate interpreters. For longer and difficult matters, trained interpreters from outside of province should be used where there is insufficient or inadequate capacity in the province or territory.
5. **Correctional Centres:** Ensure Deaf inmates have interpreters for orientation, and for all programs designed to support rehabilitation, counselling, assessment and parole hearings. Provide training for officers who will have contact with the Deaf inmate in order to reduce misunderstandings based on linguistic and cultural differences. Consider the opportunity to have Deaf inmates in regional centres, increasing the amount of communication available to the inmate in the same way that other inmates can communicate with others on a daily basis. This is not unlike the First Nations programs operating in some correctional facilities, where the linguistic and cultural needs of the inmates are considered in the overall design of correctional programs.

### **System: Training for Interpreters and Support Service Providers (SSPs)**

6. **Specialized Legal Interpreter Training:** Create partnership opportunities between the justice system and professional associations and post-secondary institutions to provide the additional legal interpreter training necessary for DeafBlind support service providers<sup>12</sup> (SSPs, also called intervenors) and interpreters to work in legal settings. The bar needs to be raised for the qualifications to work in legal settings, and a national training program would be an efficient way to train a cohort of interpreters.

**6.1 Create national standards** (at minimum all interpreters must be members of AVLIC and possess the training required to work in legal settings) and a potential performance exam for all ASL and LSQ interpreters who wish to work in court settings. The Ministry of the Attorney General in Ontario has such a test, however it has never been implemented and may not be appropriate. In order to develop a valid and reliable test, the legal system will need to contract with Deaf and Interpreter researchers who are familiar with creating standardized assessments. There are evidenced based best practices for the provision of interpreting in legal settings and if implemented in Canada they would result in greater equity for Deaf, DeafBlind and Deaf people with additional disabilities.

7. **Specialized Training for Professionals working with DeafBlind:** SSPs and Interpreters working with DeafBlind people require specialized training, which is in short supply in Canada. It is recommended that Ministries of Education in

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<sup>12</sup> The preferred term of many DeafBlind citizens, as they do not see themselves in need of “intervention”, but rather communication support.

British Columbia, Alberta, Manitoba, Ontario, Quebec and Nova Scotia work with the six interpreter education programs and consumer organizations such as the Canadian DeafBlind Association, to determine the most effective way to produce a specialized program for working with DeafBlind people.

- 8. Funding for SSPs and Interpreters working with DeafBlind people:** Those who provide communication access for Deaf and DeafBlind people are working professionals and as such need to be remunerated for their services. Government funding for access must include communication access for DeafBlind citizens, provided by trained and qualified support service personnel and interpreters. The use of volunteers or service providers who lack the appropriate training and experience compromises access to information and exacerbates risk for the DeafBlind person.

### Accessible Legal Advice: Deaf Lawyers

Several participants desired an opportunity to deal directly with their lawyer, which at the current time is possible only in Winnipeg with a non-deaf lawyer who signs fluently. While there are Deaf lawyers in Canada, none of them practice family or criminal law at this time. Participants suggested that just as you can access pre-recorded legal advice, or one can have a fifteen-minute free consultation with a lawyer, it would be helpful if there were a regional or national roster of lawyers who can sign fluently or who are Deaf and who can thereby provide accessible legal advice. Such a roster could also play a role in constantly educating the legal system about the needs of the Deaf community.

### Law Schools & Police Academies

Consider the opportunity to include content about the Deaf community and sign language, thus heightening the awareness of new lawyers and police officers.

## CONCLUSION

This report has provided an overview of the experiences of Deaf, DeafBlind, and Deaf people with additional disabilities in accessing the justice system. This project was designed to provide a picture of the current experiences of Deaf victims in navigating all aspects of the legal system, to identify gaps in service, and to highlight recommendations for closing the gap.

Canada is a signatory to the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD). Planning for and providing communication access for Deaf and



DeafBlind Canadians at all stages of the justice system would ensure compliance with the tenets of the charter.

The research has identified the gaps and needs from the varied perspectives of consumers: Deaf, DeafBlind, and Deaf people with additional disabilities, from both Francophone and Anglophone Deaf communities. It has also encouraged professionals within the justice system to share their perspectives and experiences, providing a fuller picture of the challenges and opportunities ahead.

It is clear that the stakeholders who participated in this research want to see all levels of government take bold steps to provide equitable communication access for the Deaf, hard of hearing, DeafBlind and Deaf people with additional disabilities.

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## APPENDIX

### Questions for Deaf community

1. Tell me about your experience with the Canadian justice system.
2. What services did you access to support you as you navigated the justice system for your particular circumstance?
3. What accommodations were provided by the justice system?
4. What did the system personnel do that was helpful for you?
5. Is there anything that you experienced that was not helpful?
6. What do you wish had been provided in order for you to feel you had equal access to the justice system?
7. What recommendations do you have to improve access to the justice system for other deaf, deaf blind or deaf people with other additional disabilities?
8. Were there challenges for you to be a full participant in the justice system?
9. What might be done to deal with those challenges?
10. Are there other questions I should have asked you?

### Questions for Justice Personnel

1. What role do you play in the administration of justice in Canada?
2. Have you had any experience with deaf participants?
3. Please tell me about that experience.
4. What services did you access to support you in communicating with the deaf, deaf-blind or deaf person with other disabilities??
5. What accommodations were provided by the justice system?
6. What did the system personnel do that was helpful for you?
7. Is there anything that you experienced that was not helpful?
8. What do you wish had been provided in order for the deaf person to have equal access to the justice system?
9. What recommendations do you have to improve access to the justice system for other deaf, deaf blind or deaf people with other additional disabilities?
10. What were the challenges for you within your role, in ensuring the deaf person was able to access the justice system?
11. What might be done to deal with those challenges?
12. Are there other questions I should have asked you?

## Survey Questions

### Demographics:

1. Gender:
  - Male
  - Female
  - Other
  - Choose not to answer
  
2. Age Range:
  - 18-25
  - 26-34
  - 35-43
  - 44-52
  - 53-60
  - 61-65
  - 66 +
  
3. First Language
  - English
  - ASL
  - French
  - LSQ
  - Other
  
4. What services have you accessed in the past:
  - Legal Aide
  - Legal advice via a Lawyer
  - Preparation for court with a Crown Prosecutor
  - Court Administrator
  - Social worker
  - Police Officer
  - Court Proceedings
  - Other
  
5. What province or territory did you access services in?
6. What worked well for you in accessing the justice system?
7. What challenges arose for you in accessing the justice system?
8. How did you address those challenges?
9. How aware are you of services that are in place to support deaf, deaf blind or deaf people with other disabilities in navigating the judicial system?

- Very Aware
  - Aware
  - Limited Awareness
  - No Awareness
10. What gaps do you see in the current services provided to deaf citizens in the administration of justice?
11. What are your concerns when thinking about deaf or DeafBlind or deaf people other disabilities accessing the justice system? Please describe: