

Equal Access to the Canadian Justice System

for

Persons who are hard of hearing or deafened

Guidebook

Prepared by the

The Canadian Hard of Hearing Association

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PURPOSE AND DEFINITIONS

Purpose of this guidebook

This document is intended as a set of guidelines to be used in the context of the Canadian justice system for addressing accessibility issues in respect of persons who are hard of hearing or deafened. It provides valuable information for persons who are hard of hearing or deafened, as well as for a wide variety of professionals, including lawyers, paralegals, researchers, bar associations, the judiciary, court personnel, law enforcement officers and front-line social workers and counselors.

While this guidebook is focused on the court-related needs of persons who are hard of hearing or deafened, some consideration is also afforded to hearing access issues in the areas of law enforcement and victim/witness support services. For more information on the hearing accessibility measures discussed in this document or for assistance in understanding how to deal with hearing accessibility issues at the police station, in the lawyer's office or in the courtroom, please contact the Canadian Hard of Hearing Association.

Definition of the Canadian justice system

The Canadian justice system is composed of the civil and criminal justice systems, as well as federal and provincial administrative tribunals. These general guidelines should be useful in all of these contexts.

Court decisions can have a major impact on individual Canadians. To ensure fairness and transparency in the justice process, it is important to ensure the equal participation and integration of persons with hearing disabilities, whenever such persons are involved in some aspect of this process. With respect to administrative tribunals, while hearing accessibility measures are important in all hearing rooms, the federal and provincial Human Rights Tribunals should consider their particular

leadership role in this area, due to their special responsibility to sanction human rights violations involving persons with disabilities.

Definition of persons who are hard of hearing

This guidebook focuses on accessibility measures for persons who are hard of hearing according to the definition officially sanctioned by the Canadian Hard of Hearing Association. A person who is hard of hearing is “a person with any level of hearing loss, from mild to profound, whose primary method of communication is the spoken language.”¹

This definition includes persons with any degree of hearing loss, whether or not they use a hearing aid. It includes persons who are oral deaf and deafened adults. A person who is oral deaf is a “person with a profound level of hearing loss, occurring congenitally or with an onset early in life, whose primary method of communication is the spoken language.”² A deafened adult (sometimes referred to as “late-deafened”) is a “person with a profound level of hearing loss, acquired in adulthood.”³ The term “hard of hearing” also applies to persons who have a cochlear implant (i.e., set of devices that include a collection of electrodes surgically implanted in the inner ear and an external decoder).

In summary, this guidebook outlines accessibility measures for persons with any degree of hearing loss who primarily communicate using a spoken language (e.g., English, French, Spanish or Italian). However, it should be noted that responding to hearing accessibility needs requires flexibility, as there is no “one size fits all” solution. For example, persons who have some useful residual hearing may prefer to use assistive listening devices (ALDs), while deafened adults, persons with cochlear implants and persons who are oral deaf may be more comfortable using a form of

¹ Canadian Hard of Hearing Association (CHHA), *A Self-Help Guide for Better Hearing*, December 1991 [Revised Edition], page 26.

² Ibid, page 26.

³ Ibid, page 26.

print interpretation (e.g., real time captioning). Special needs due to tinnitus (i.e., ringing or other noise in the ear that occurs with or without hearing loss) may also have to be considered. In all cases, the hard of hearing person is the expert as to the type of accommodation best suited to his or her needs.

While many of the accessibility measures featured in these guidelines may be of benefit to persons who are Deaf (i.e., culturally Deaf), in most instances their needs and the appropriate accommodation are different from those for persons who are hard of hearing. For this reason, this document should not be considered as a guide for accommodating persons who are Deaf. While these persons have a profound degree of hearing loss, they do not fall within the definition of “hard of hearing” because they rely primarily on sign language for communication, not on a spoken language. In most cases, persons who are Deaf were either born profoundly deaf or acquired deafness in early childhood (i.e., pre-lingual deafness). Accommodation for persons who are Deaf usually relies in large part on the provision of sign language interpretation services. The vast majority of persons who are hard of hearing do not use sign language at all.

BACKGROUND

The Canadian Hard of Hearing Association

The Canadian Hard of Hearing Association (CHHA) is Canada's only nation-wide non-profit bilingual consumer organization run by and for hard of hearing and deafened people. It works cooperatively with professionals, service providers and government, and provides information about hearing loss issues and solutions.

The mandate of the Canadian Hard of Hearing Association includes raising public awareness concerning issues that are important for persons who are hard of hearing or deafened, to promote their integration in Canadian society, to remove any barriers to their participation, and to make every community in Canada a better place for persons with hearing loss. Among its many objectives, CHHA encourages Canadians who are hard of hearing or deafened to understand their rights and to learn how to obtain access corresponding to their needs. This includes providing them with useful and up-to-date information concerning laws, regulations, policies and practices, as well as the operation of the Canadian justice system.

Hearing disabilities represent the most frequently encountered type of disability in Canada: over 2 million Canadians have a hearing loss.⁴ With a rapidly aging population⁵, increased noise pollution and the use of medication that can have adverse effects on hearing, the number of Canadians living with hearing loss can be expected to continue to rise substantially. This means that in every courtroom, there is a real possibility that at least one person (e.g., judge, court clerk, bailiff, plaintiff, defendant, attorney, accused, juror or witness) has a hearing loss.

⁴ Statistics Canada, HALS, 1991.

⁵ The Canadian Hard of Hearing Association estimates that currently one out of every five senior citizens in Canada has a significant degree of hearing loss.

Established in 1982, the Canadian Hard of Hearing Association has chapters and branches in each Canadian province for a current total of seven provincial Chapters and fifty-seven local Branches. Its national constituency presently numbers well over 2,200 members, which does not include the many who actively participate at the chapter or branch level without assuming national membership.

As part of the Canadian Hard of Hearing Association's self-help and education mandate vis-à-vis its membership and vis-à-vis hard of hearing and deafened Canadians generally, CHHA organizes an annual conference every year. Events at the CHHA National Conference 2002 in Ottawa on May 16 - 19, 2002 include a bilingual workshop on *Equal Access to the Canadian Justice System for Persons who are Hard of Hearing or Deafened* and the official launch of this guidebook, all in the context of CHHA's celebration of its 20th anniversary of advocacy for the full citizenship rights of hard of hearing and deafened Canadians.

The Canadian Hard of Hearing Association's motto, "A Chance to Hear - A Chance to Be Heard" is particularly appropriate when considering access to the Canadian justice system for persons with hearing loss. Every Canadian faced with going to court is entitled to understand what is going on in the courtroom and to make his voice heard. The other participants in the courtroom also have the right to expect that hard of hearing persons will understand them. Accommodating persons with hearing disabilities is in keeping with the right to a fair hearing, as well as the fundamental principles of justice and due process of law.

Disability law around the world

In many ways, Canada, at both the federal and provincial levels, is a world leader in the area of accessibility for persons with disabilities. The following provides a very broad overview of the treatment of disability issues in some other parts of the world.

Commonwealth countries

Commonwealth countries have been actively struggling to deal with disability issues. While the equality rights of persons with physical or mental disabilities have been recognized in Canada since 1982 in section 15 of the *Canadian Charter of Rights and Freedoms*⁶, the right of “equitable access” was officially recognized in Australia in the *Disability Discrimination Act 1992*.⁷ In the United Kingdom, the *Disability Discrimination Act* was enacted in 1995⁸, followed by the *Disability Rights Commission Act* in 1999.⁹ In New Zealand, the *Human Rights Act of 1993*, which came into effect on February 1st 1994, includes disability among the prohibited grounds of discrimination.¹⁰

Japan

In some countries, the situation of persons with disabilities is disheartening. In Japan, for instance, persons with disabilities have had to overcome the pervasiveness of a culture where “tradition dictated that anything not conforming to established social norms be rejected or at least hidden.”¹¹ In 1995, Japanese disability advocates pressured their government to abolish article 40 of the Japanese Penal Code. It provided that the criminal act of a “deaf-mute” (an archaic term referring to persons who are Deaf) was not punishable as an offence or punishment was to be reduced.¹²

⁶ Canada, Constitution Act, 1982, Part I, *Canadian Charter of Rights and Freedoms*, section 15.

⁷ Australia, Department of Family and Community Services, *Disability News*, June 2000.

⁸ United Kingdom, *Disability Discrimination Act 1995 (c. 50)*, 1995 Chapter 50.

⁹ United Kingdom, *Disability Rights Commission Act 1999*, 1999 Chapter c. 17.

¹⁰ New Zealand, *Human Rights Act, 1993*, no. 082, commenced: 1 Feb 1994, <http://rangi.knowledge-basket.co.nz/gpacts/public/text/1993/se/082se21.html>.

¹¹ Stephanie Strom, *Social Warming: Japan's Disabled Gain New Status*, New York Times, July 7, 2001.

¹² Japan, *The Penal Code of Japan* (Law no. 45 of 1907 as amended by Law no. 77 of 1918, Law no. 61 of 1941 and Law no. 124 of 1947) [translated by the Office of the Attorney General of Japan].

The underlying assumption was that persons who are Deaf from birth or infancy could not acquire language and knowledge, and so were prevented from achieving sufficient maturity. The Japanese Constitution recognizes fundamental human rights (article 11) and individual rights (article 13); it prohibits discrimination based on race, creed, sex, social status or family origin.¹³ Disability is not mentioned.

Japanese society is slowly becoming more open to disability issues, due to a heightened awareness of the needs of seniors, to an erosion of Japan's traditional social cohesion by concerns over the economy and to the greater visibility of persons with disabilities. In the area of legislative reform, a transportation law was enacted in 2000 requiring all public transportation to be accessible; it is widely recognized that legislators voted for it mainly as a way of helping their older constituents. Legislative provisions concerning disability insurance remain restrictive: government support for the purchase of a wheelchair that would allow a Japanese man to stand up and work was initially denied because the wheelchair would be used in a business context.¹⁴ Japanese disability advocates are hopeful for the future, but also fear the possible repercussions of current economic pressures on support services.

U.S.A.

The *Americans with Disabilities Act (ADA)* was passed by Congress in 1990. It is a federal civil rights law that guarantees equal opportunity for persons with disabilities in State and local government services, public accommodations, employment, transportation and telecommunications.¹⁵ Law enforcement agencies are components of State or local governments for example, and so are bound by the *ADA*. In addition, the *ADA* requires State, Territorial and municipal court systems to ensure that their courthouses, court proceedings, programs and activities are accessible.

¹³ Japan, *Constitution*, (May 3rd 1947) www.uni-wuerzburg.de/law/ja00000_.html,

¹⁴ Stephanie Strom, *op. cit.*

¹⁵ United States of America, *Americans with Disabilities Act*, 1990, S.933.

The *ADA* has given rise to many complaints and case law. At the outset, the U.S. Equal Employment Opportunity Commission receives complaints related to employment issues and the U.S. Department of Justice receives complaints on all other issues.¹⁶ The courts (e.g., Federal Court) hear cases on appeal.

In *Popovich vs. Cuyahoga County Court of Common Pleas*, the judge considered the situation of a hard of hearing parent in a child custody case: “If he cannot understand what is happening during the custody hearing, it will be impossible for him to refute claims made against him, or to offer evidence on his own behalf. Consequently, a state’s failure to accommodate plaintiff’s deafness may greatly increase the risk of error in the proceeding, precluding one side from responding to charges made by the opposing party, an essential element of our adversary system.”¹⁷

In *United States of America vs. North Kingstown Police Department*,¹⁸ the parties arrived at a settlement: the police department recognized its responsibility to provide accommodation to ensure effective communication with members of the public who are deaf or hard of hearing. Similar settlement agreements have involved law enforcement services in Oakland, California and Houston, Texas.¹⁹

The sheer volume of *ADA* complaints demonstrates that the American public considers disability issues to be important. But the number of cases may also indicate that there are some systemic problems in the implementation of the *ADA*. “Definitional ambiguities and debates about reasonable accommodation and undue

¹⁶ United States Department of Justice, Civil Rights Division, Disability Rights Section, *Enforcing the ADA: A Status Report from the Department of Justice*, Jan.-Mar. 2001, Apr.-June 2001 and July-Sept. 2001.

¹⁷ 2002 FED App. 0009P (6th Cir.), File: 02a00090.06, Merritt, J., at page 7.

¹⁸ *United States of America (Department of Justice) vs. North Kingstown Police Department (North Kingstown, Rhode Island)*, Department of Justice complaint number 204-66-34, Settlement Agreement, www.usdoj.gov/crt/ada/kingsett.htm.

¹⁹ United States Department of Justice, Civil Rights Division, Disability Rights Section, *Enforcing the ADA: Looking Back on a Decade of Progress*, July 26, 2000.

hardship have made the nature and the extent of obligations under the Act unclear.”²⁰ In addition, administrative funding for processing complaints and for supporting court challenges is limited. This has had a negative impact on enforcement and on incentives for voluntary compliance. Public authorities and the private sector are slow to effect change. Finally, management of the *ADA* is the responsibility of a wide range of federal bodies, lacking in overall coordination. In summary, the American model does not offer a perfect solution, and at any rate, may not be appropriate in the Canadian context considering what has already been achieved on this side of the border.

Disability law in Canada

Canada has recognized disability as a prohibited ground for discrimination since 1982 (refer to footnote 6). Instead of trying to pull together disability-related legislation into a single driving piece of legislation, Canadian federal legislation generally provides for disability issues, as appropriate, within the scope of broader pieces of legislation. For example, the *Access to Information Act*, the *Citizenship Act* and the *Canada Elections Act* take into account disability-related issues.

The federal government has already begun to recognize its responsibility for ensuring access to the Canadian justice system for persons with disabilities, particularly in respect of the criminal justice system. In April, 1997, the Minister of Justice introduced Bill C-98 in the House of Commons, containing amendments to the *Canada Evidence Act* and the *Criminal Code*. The proposed amendments received First Reading and then died on the Order Paper, but were re-introduced on October 9, 1997 as Bill S-5. The Bill S-5 amendments were passed and came into force on June 30, 1998.²¹

²⁰ Roehrer Institute, *The Americans with Disabilities Act, Research Project*, submitted to the Ontario Ministry of Citizenship, Culture and Recreation, June 3, 1997.

²¹ S.C. 1998, Chap.C-9.

The Bill S-5 amendments have improved access to the criminal justice system for persons with disabilities on several fronts. Some of these are of particular importance to persons with hearing loss.

Section 6 of the *Canada Evidence Act*²² was amended to provide for communication assistance for persons with special communication needs. For example, a witness who will have trouble hearing the proceedings must be accommodated (e.g., provided with an assistive listening device, real time captioning or oral interpretation).

A series of Bill S-5 amendments to the *Criminal Code* make it easier for persons with disabilities to serve on juries. The *Code* now provides that a physical disability (such as hearing loss) is generally not cause for exclusion if, with assistance, the person is capable of jury service.²³ Related amendments deal with the presence in the jury deliberations room of an interpreter or other person (e.g., real time captioning operator) who is assisting a disabled juror, so that the interpreter or other person is obligated not to disclose jury deliberations, as well as not to interfere or unduly influence jury deliberations.

Much of the groundwork is in place at the federal level, particularly in respect of the criminal justice system, allowing for access to the courts for persons with hearing disabilities. It is time for the other components of the Canadian justice system to actively join in this national trend to ensure that all our courtrooms provide a fair, accessible and respectful environment for all Canadians with disabilities.²⁴ The federal, provincial and territorial jurisdictions all share responsibility for the removal of physical and attitudinal barriers and for the implementation of hearing accessibility measures. The next step is ensuring that appropriate accommodations are available in

²² R.S.C. 1985, Chap. C-5, as amended by S.C. 1998, Chap. C-9.

²³ Par.638(1)(e) of the *Criminal Code*. In the United Kingdom, a similar amendment was brought in the *Disability Discrimination Act, 1995*. The related amendments to the *Criminal Code* concern s.627, ss.631(4) and s.649.

²⁴ The *Americans with Disabilities Act (ADA)*, passed by Congress in 1990, already requires state, territorial and municipal court systems to ensure that their courthouses, court proceedings, programs and activities are accessible to persons with disabilities.

practice, across the country. Provinces and territories are responsible for the administration of justice; they are the gatekeepers of access to the courts for persons with hearing loss.

With respect to the legal profession, the Canadian Bar Association (CBA) has already made valuable efforts towards raising the awareness of its members. It considers the appropriate treatment of lawyers with disabilities by their colleagues to be a matter of professional conduct.²⁵ The 1999 report of the CBA Working Group on Racial Equality in the Legal Profession contains numerous recommendations with respect to racism in the legal profession.²⁶ Subsequent discussions have caused the CBA to broaden the scope of the original recommendations to include activities of interest not only to visible minorities but also to persons with disabilities (e.g., hiring a full-time equity advisor at CBA's national headquarters and holding an annual symposium on the profession's ability to represent the needs of minority groups). The British Columbia Branch of the CBA has adopted a *Member Accommodation Policy* which states: "... CBA-B.C. will accommodate and support its members who are disabled... and will give priority to the elimination of barriers..."²⁷

Canadian disability advocates have been active across the country, highlighting a wide variety of disability issues. The proposed development and implementation of an access and inclusion lens (i.e., a disability lens) for use by legislators and policy-makers offers a new and innovative tool to ensure that disability issues are consistently taken into consideration in the designing and drafting of laws, regulations, policies, practices and programs. Government and disability advocates need to work collaboratively on the access and inclusion lens. Its development and full implementation across Canada will require a major investment in time and effort.

²⁵ Canadian Bar Association, *National Magazine*, Access & Justice, "Professional Conduct: Treating your colleagues with disabilities in a respectful, thoughtful and professional manner", Jean Cumming, January/February 2001.

²⁶ Canadian Bar Association, *Touchstone/Info-égalité* (newsletter of the CBA's Standing Committee on Equality), "Racial Equality Resolution", P.A. Neena Gupta, February 2000.

²⁷ Canadian Bar Association, *Touchstone/Info-égalité* (newsletter of the CBA's Standing Committee on Equality), "Message from the Chair: There's a Change in the Air", Priti Shah, February 2000.

This guidebook concludes with a list of some of the highlights of the federal government's commitment to the full integration of Canadians with disabilities (refer to pages 44 - 46). Persons with disabilities are being encouraged to voice their concerns in all kinds of venues. At the December 2001 meeting of the Canadian Human Rights Commission, for example, the Commission referred 11 discrimination complaints to its Tribunal, six of which related to discrimination on the ground of disability.²⁸

These are exciting times indeed!

²⁸ Canadian Human Rights Commission, Press Release, (Catherine Baratt, Media and External Relations), *Disability Discrimination Complaints Top Referrals to Tribunal*, January 3, 2002, www.chrc-ccdp.ca/news-comm/2002/NewsComm030102.

I - THE COURTHOUSE

Courthouses often contain physical barriers that needlessly create communication problems for persons who are hard of hearing or deafened.

Physical barriers

Physical barriers that persons who are hard of hearing are likely to encounter in a courthouse include:

- inadequate lighting that inhibits adequate speech reading (e.g., dark, glaring or uneven lighting)
- public telephones that do not have a volume amplifier and a flux coil, and are not located in an enclosed booth
- absence of any TTY (Tele-Type) [a device that allows persons with profound hearing loss to use the telephone by means of typing text which is communicated over telephone lines]
- placement of the jury box at an angle that does not allow the hard of hearing juror to view the judge, the witnesses and the lawyers
- poor quality of acoustics resulting in echoes, in sound not carrying sufficiently throughout the courtroom, or in the influx of background noise
- lack of an alternate medium for accessing information transmitted on a PA system
- lack of assistive listening devices (e.g., an FM system or an infra-red system)
- unavailability of real time captioning services
- non-existent or inadequate signage

In most instances, the expenses relating to hearing accessibility measures are minimal. It should be noted that the cost of incorporating access features to accommodate the needs of persons with all types of disabilities (e.g., hearing, visual, mobility, etc.) in the design of a new court building or of an addition to a court building is insignificant

considering the overall budget allotted for construction costs. However, the expenses for cross-disability access may constitute a more serious financial burden when structural changes to an existing courthouse need to be implemented.

Fortunately, in the case of hearing loss, accessibility measures generally do not require structural changes and are, as previously stated, relatively inexpensive. As an added bonus, many design features required to satisfy the court-related needs of the hard of hearing are of benefit to most persons attending at court. For example, clear signs with large bold lettering and proper acoustics in the courtroom are two design features that are of benefit to most people, whether or not they have a hearing loss.

It is important not to lose sight of the fact that courthouses need to be fully accessible to every type of potential participant. Litigants, complainants and witnesses can be hard of hearing or deafened. In addition, judges, jurors, lawyers, court personnel, defendants and persons seated in the public seating area may have a hearing disability.

Accommodations

Lighting

People who are hard of hearing rely a great deal on visual information. This explains the importance of adequate lighting. The primary concern with respect to lighting is to ensure the implementation of the best conditions to allow for speech reading. [Speech reading involves lip reading, as well as the interpretation of facial expressions and body language.]

The lighting array in the courtroom should render the features of speakers and other key participants (e.g., the accused in a criminal case) clearly visible, with a minimum of shadows. Where an oral interpreter is used, it is particularly important that the interpreter's face be clearly visible at all times. [An oral interpreter is a professional interpreter who silently mouths the words being spoken in the courtroom using a variety of strategies that make the words easier to speech read.] Appropriately placed

lighting is also required to ensure that real time captioning can be easily read. [Real time captioning involves the use of a steno-typist and a specially designed computer program that renders the phonetic spelling entered by the steno-typist into a written text, in English or in French for example. Text is produced at the rate of speech, i.e., in real time.] It should also be noted that whenever an infrared assistive listening device is used, it is necessary to shut out excessive sunlight.

Windows or skylights can provide natural and appropriately diffused lighting, but they can also be a source of blinding glare. Window coverings, capable of totally shutting out the sunlight, should be available. Speakers should never be placed with their back to a window or other source of glare because this makes speech reading difficult.

It is important to ensure proper lighting not only in the courtroom, but also in all the public areas of the court building, such as the corridors, the waiting area, the court office and the registry office. Lighting considerations may also be essential in some restricted areas, such as in the rooms reserved for jury deliberations and in the judges' chambers.

Acoustics

Proper acoustics in the courtroom are indispensable. This is clearly one area where even persons with normal hearing benefit from the implementation of hearing accessibility measures.

With respect to acoustics, the objective is twofold. First of all, it is important to remove or reduce sources of parasitical noise. For example, echoes and background noise (e.g. the motor of the air conditioning system or of the ceiling fan, the hum of overhead fluorescent lights) are distracting and often hamper or distort perception of speech. Participants wearing clanking jewelry or tapping with their hands or feet produce noises that interfere with the sound reception for a hard of hearing person who is trying to hear the proceedings using an assistive listening device or without

using such a device. As much as possible, the source of parasitical noises should be identified and eliminated, or at least reduced. Judges or attorneys should be aware of the problems associated with parasitical noise (refer to the section on *Education* for suggestions concerning awareness training) and take the appropriate measures to remove or reduce it (e.g., ask a witness to refrain from clanking jewelry, tapping a pen or drumming fingers near the microphone). Similarly, some objects produce a visual noise (e.g., large items of jewelry) that tend to distract the speech reader, making it difficult to focus on what is being said.

The second objective concerning acoustics is to create and promote favourable listening situations (e.g., lawyers should stay in front of the fixed microphones at all times when presenting their arguments). Judges and attorneys should be aware of the listening environment and take appropriate corrective action, whenever necessary. Also, in designing the courthouse, courtrooms should be located away from noisy or high-traffic areas (e.g., the cafeteria, rest rooms and outside loading dock). Using sound absorbing materials in the courthouse and especially in the courtrooms can help to reduce the noise level. Carpets, curtains, carpeted walls and cushioned seating are some examples of furnishings which can help to absorb sound.

Print interpretation

There are basically two types of print interpretation. The first is real time captioning, produced by a trained steno-typist (usually a court reporter) using a laptop computer with specialized software.²⁹ The software is designed to translate the words from their phonetic form as recorded by the steno-typist into their usual written form. A verbatim written text of the words spoken in the courtroom is produced at the rate of speech (i.e., over 200 words per minute). The hard of hearing person simply reads the text as it is produced. Real time captioning has joined assistive listening devices as one of the most effective accommodations for persons who are hard of hearing or deafened due to its speed and accuracy. Real time captioning is probably the preferred

²⁹ Action On-Line, *Entering the 21st Century with Real Time Captioning*, Spring 1998.

accommodation for most persons with cochlear implants and for deafened persons. It is relatively easy for court reporters to perform this service along with the reporting services they already provide (some training in the use of the specialized software is necessary). The Canadian Hard of Hearing Association is perfecting a remote real time captioning system that allows operators to provide their services from a remote site.

The second kind of print interpretation is computerized note-taking. A skilled typist uses an ordinary keyboard and produces a summary of what is being said, using devices such as abbreviations and paraphrasing, at a speed of approximately 60 to 100 words per minute (depending on the typist's skills). As computerized note-taking does not produce a verbatim text, but only a summary of the proceedings as interpreted by the typist, it is not appropriate for use in the courtroom. However, it could be useful in situations where the rate of speech can be more easily controlled, such as during private consultations between a lawyer and a client.

For both real time captioning and computerized note-taking, a laptop computer suffices when there is only one hard of hearing person or only one person wishing to take advantage of the service. When the service is to be made available to more than one person, the text can be projected onto a large screen visible to all persons in the courtroom.

One drawback of any type of print interpretation service is that it is often difficult to note the speaker's facial expressions and body language at the same time as looking at the text on the screen. For many people who are hard of hearing, the best accommodation may be a combination of real time captioning and an assistive listening device.

A particularly thorny issue is the question of who is responsible to pay the costs of print interpretation services. Most other types of accommodation involve the purchase of equipment or the implementation of a change in the physical environment of the courthouse and do not have any direct link with a particular court case; these

expenses are clearly the responsibility of the federal, provincial or municipal authority responsible for the courthouse. But in respect of print interpretation or oral interpretation [refer to page 24 for information on oral interpretation], the services of the captioning operator, note-taker or oral interpreter are retained in respect of one clearly identified court case or hearing.

In civil cases, the trial judge has the discretion to decide that accommodation expenses are part of the court costs, and to order the losing party to pay these costs. Otherwise, the person who ordered the services will have to pay for them. Many persons with hearing loss are not able to afford these services. For this reason, they may choose not to start legal proceedings even though they have a valid right of action, or they may opt to accept an inadequate settlement.

In criminal cases where the accused, a witness or a juror is hard of hearing and needs print interpretation or oral interpretation, it is clearly the Crown's responsibility to pay for these services.

In the case of legal aid beneficiaries, accommodation services used in any relevant context (e.g., in court or for solicitor-client communications) should be covered by the applicable provincial or territorial legal aid program. Similarly, victim/witness assistance programs should also cover such services in the context of their own activities. Both legal aid and victim/witness assistance programs should receive government funding enabling them to offer accessible services.

The courts, as well as provincial and territorial bar associations, should consider establishing a fund to assist persons with hearing loss to fully access needed accommodations and services whenever their cost is not otherwise covered.

The Tax Court of Canada enacted a policy in September 2000 that when a hard of hearing, deafened or Deaf party, witness, lawyer or articling student appears before the court, in motions or in judges' chambers, the registrar of the court will arrange for accommodation and pay the fees of a real time captionist [or of a sign language

interpreter] or any other recognized method for accommodating the needs of persons who are hard of hearing, deafened or Deaf.³⁰ The Canadian Hard of Hearing Association recommends the enactment of a policy of this nature throughout the Canadian justice system.

Assistive listening devices

Popularly referred to as ALDs, assistive listening devices come in many types. In an examination for discovery or any other courtroom situation, an induction loop, an FM system or an infrared system are all devices that can assist the person who is hard of hearing to hear more clearly what is being said during the proceedings. These devices use electromagnetic impulses, radio waves or infrared light to feed the sound directly into the hearing aid, using its T-switch. Selecting the equipment most suited to a particular situation depends on the room's specifications and acoustics, the intended use and the stated preference of the hard of hearing person. Infrared systems work best, for example, in situations where there is little sunlight or movement of people. Most assistive listening devices require the use of a receiver. In this case, several receivers should be purchased, to allow several persons to use the system simultaneously. In addition, a selection of couplers should be obtained (i.e., neck loop, single silhouette, double silhouette and head set) to allow for individual needs and preferences. Some hard of hearing people do not wear a hearing aid or wear a hearing aid that is not equipped with a T-switch. In these cases, a headset is the only useful coupler and it will be adequate only in some instances, and then only for persons with a mild to moderate hearing loss.

All courthouses should contain at least one courtroom permanently equipped with an assistive listening device. Priority access to this room would be awarded to cases involving a person who is hard of hearing or deafened.

³⁰ Tax Court of Canada, *Notice to the Profession* (September, 2000). This policy was enacted in response to a complaint to the Canadian Human Rights Commission, filed by Scott Simser, a hard of hearing lawyer employed by the federal Department of Justice.

Visual PA system

Public address systems are often used in courthouses, for example to call in a witness who is waiting outside the courtroom. As these systems rely exclusively on auditory perception, many persons with hearing loss will not be able to hear or comprehend the messages being transmitted (in some cases, the quality of the transmission is so poor that even persons with normal hearing sometimes miss an important message). In addition, for persons with hearing loss, worrying about not being able to hear these messages is a major source of stress.

Each individual courtroom should be equipped with a visual display (such as those used at airport gates) to render the message visually. At the very least, the hearing accessible courtroom (i.e., courtroom equipped with an assistive listening device) should have such a visual display just outside the door. Making sure that every message voiced is also typed into the visual display is the responsibility of the court clerk present in the courtroom. Another method would be to use a single visual display for all the courtrooms, with the information organized by courtroom number.

Where there is no visual display and where the court clerk has been alerted to the presence of a hard of hearing person, the court clerk should promise to exit the courtroom and alert the person, and not forget to do so. Should the case be adjourned or postponed, the court clerk should advise the person of this fact.

Oral interpretation

An oral interpreter is a skilled professional who silently mouths the words of a speaker and uses a variety of strategies to make speech reading easier (e.g., replacement of some words with a synonym that is easier to read on the lips, the use of natural gestures as additional clues, and the use of facial expressions to help convey the speaker's tone). It should be noted that oral interpreters are more often useful to persons who lost their hearing relatively early in life and have the benefit of many years of practice with speech reading. Some late deafened adults use an oral

interpreter. However, with the development of new and better technology, most hard of hearing people now prefer real time captioning.

Section 14 of the *Canadian Charter of Rights and Freedoms* provides that a party or witness in any court proceedings who does not understand or speak the language in which the proceedings are conducted or, who is deaf, has the right to the assistance of an interpreter. It can be argued that the party or witness who is hard of hearing may not fully understand the spoken language and therefore has a right to print interpretation (e.g., real time captioning) or oral interpretation. This argument is further supported by section 15(1) of the *Charter*, which recognizes the right of every individual to equal protection and benefit of the law.

Telephones and TTYs

While it is preferable that every public telephone in the courthouse be equipped with a flux coil in the receiver and a clearly displayed volume amplifier control, at least one telephone in every public telephone bank should be so equipped. It should be noted that today, in most parts of Canada, newer telephone banks are composed entirely of hearing accessible telephones. It is further recommended that at least one hearing accessible telephone be located in an isolated corner or an enclosed booth. This will make it easier to hear over the telephone by reducing the possibility or intensity of background noise. The placement of this particular hearing accessible telephone should be clearly indicated with appropriate signage.

Among the telephones made available to lawyers in the courthouse (such as in the lawyers' lounge, near the library and at the court office), at least one should be properly equipped for lawyers who are hard of hearing.

There should be at least one TTY (Tele-Type) available to the public in the courthouse, and its availability and position should be clearly indicated by several signs. A TTY is a device that allows a person who has a severe or profound hearing loss to communicate by telephone via typed messages instead of by voice. A TTY

looks like a small portable computer with a small display screen where the messages appear. It is very easy to use.

“TTY” is an acronym for “Tele-Type” – in the past, this equipment was called a TDD (an acronym for Telecommunications Device for the Deaf) – however, since this device is used not only by persons who are Deaf, but also by persons who are hard of hearing and persons with a speech disability, the use of the more generic term “TTY” is recommended.

Seating arrangements

All courtrooms should be designed taking into consideration that any participant could be hard of hearing. Seating arrangements should keep open the lines of vision between strategic positions in the courtroom. For example, a hard of hearing witness should be able to see the real time captioning monitor or screen, the judge, the jurors and the lawyers. Some provincial family courts already use flexible seating arrangements where the judge, the parties and their representatives may sit closer together and/or on the same level.

Alarm systems

Flashing light alarms (i.e., warning concerning a fire or other emergency requiring immediate evacuation of the premises) are required at strategic points throughout the courthouse, especially in rest rooms and similar areas where a person who is hard of hearing or deafened may be isolated. A judge’s chambers could be equipped with a flashing light alarm if the judge or the judge’s assistant is hard of hearing, but a more mobile system might be preferable. A judge who is hard of hearing could be provided with a special portable pager attuned to the alarm system. The pager will vibrate in the case of a fire alarm or other emergency. The advantage of the pager is its portability throughout the building; hence the hard of hearing judge will be warned of the sounding of the fire alarm not only when he is in his office, but also if he is in a remote corner of the library, for example.

Signage

The installation of clear and uniform signs with large, well-spaced lettering and sharp colour contrasts are useful to all sighted persons entering the courthouse. Signs using symbols (instead of words) should be used whenever possible (e.g., the familiar international symbols indicating the location of the rest rooms, the cafeteria or the telephones). For persons who are hard of hearing, clear signs reduce the need to ask directions and to have difficult conversations with strangers in poor acoustic settings.

Specific to hearing accessibility, it is important to use signs to indicate the availability and location of accommodation services and equipment. The international hearing symbol (the blue ear with broken bar) can be used to indicate, for example, the courtroom where an assistive listening device is located, the site of a telephone equipped with a volume amplifier, the location of a TTY, and so on. Using a secondary symbol, specifying the type of accommodation offered, is also helpful. For example, to indicate the placement of a TTY, the international hearing symbol can appear over a second symbol representing a TTY.

Disability Accommodations Coordinator

Assistive technology and specialized services for providing access for persons with disabilities are varied, sometimes complex, and constantly changing and improving. To make efficient use of what is available and to keep abreast of new developments, the courts need the advice of a variety of experts in different fields. In addition, some persons with disabilities will know what works for them and will request specific equipment or services, while others will not be aware of what is available. Knowing where to get the technology and services and knowing how to set them up and use them effectively may require some expertise and time on the part of the courthouse staff and the individuals with hearing loss.

To prevent instances of discrimination and to ensure effective participation of persons with disabilities in the courts, including persons with hearing loss, a disability accommodations coordinator should be appointed in each courthouse by the appropriate judicial or administrative official. The role of this coordinator would include:

“... to develop procedures for receiving requests for accommodations from individuals with disabilities and for responding with reasonable accommodations that meet the needs of the individual, including, where appropriate, removal of architectural barriers, modification of rules and practices, and provision of auxiliary aids and services.”³¹

³¹ American Bar Association, Section of Individual Rights and Responsibilities, Commission on Mental and Physical Disability Law, National Conference of Administrative Law Judges, *Report*, Zona F. Hostetler and Hon. Richard Teitelman, February 2002.

II - LAW ENFORCEMENT

Law enforcement officials are often the first line of contact between the person who is hard of hearing and the Canadian justice system. Police agencies have a responsibility to provide accommodation for persons with hearing loss, whether these persons are suspects, victims or witnesses. Whenever police officers assist, question, arrest, incarcerate or otherwise deal with a member of the public who is hard of hearing or deafened, they must be able to accommodate the communication needs of this person. This involves training police officers in communicating with persons with hearing loss (i.e., training offered by hard of hearing and deafened persons from the community, speaking on their real-life experiences and offering concrete tips for communication, as outlined in Appendix I). Where the hard of hearing person is a suspect, being able to demonstrate appropriate accommodation may be crucial to later establishing in court that the accused was appropriately informed of his rights prior to making an incriminating statement.

The responsibilities of law enforcement agencies also include having adequate technology available at the police station, such as a TTY to allow suspects with a profound hearing loss to contact their attorney and a portable FM system for the interrogation room (for accused and for witnesses).

In addition, in emergency situations, police officers are often the first on the scene and should be trained in good communication skills. Emergency services linked to the use of the 911 number should consider a computerized inventory of persons with hearing loss living in their assigned area. (In some communities, branches of the Canadian Hard of Hearing Association or other similar groups encourage their members to participate in a self-identification program centered on 911 emergency services.) The dispatcher will be able to advise the officer or other person responding to an emergency call that a person with hearing loss has self-identified as living at the particular address. The officer or other person will then be aware and ready to be more responsive to the needs of hard of hearing persons they might find on the scene.

The Department of the Attorney General and the Department of the Solicitor General of the province of Nova Scotia has a *Protocol for Investigation and Prosecution of Cases involving Persons with Special Communication Needs*.³² This document is a guideline and does not have force of law, but it is still a useful tool for police and prosecutors where a victim or witness is hard of hearing or deafened (the *Protocol* considers the special needs of other persons as well, including persons with mental disabilities, persons who are illiterate and persons with other types of physical disabilities).

The Nova Scotia Protocol states, for example, that all victims and witnesses are entitled to full, fair and equal access and participation in the criminal justice system. It recommends that prior to an interview with a disabled person, police should arrange for an interpreter or for the use of special equipment, as required.³³ A similar recommendation is directed at Crown prosecutors when arranging interviews with such persons.³⁴ Finally, the Crown is expected to take every reasonable step to provide and make use of interpreters or special equipment when a hard of hearing victim or witness is testifying.³⁵ In 1993, the Manitoba Department of Justice adopted a policy very similar to the Nova Scotia *Protocol*.³⁶

³² Nova Scotia, Department of the Attorney General and Department of Solicitor General, *Protocol for Investigation and Prosecution of Cases involving Persons with Special Communication Needs*, April 12, 1991, s.1.

³³ *Ibid*, s.2(c) and (d).

³⁴ *Ibid*, s.4.

³⁵ *Ibid*, s.9(c).

³⁶ Manitoba Department of Justice, Public Prosecutions Policy Directive, *Investigation/Prosecution of Cases Involving Persons with Special Communication Needs*, Guideline No. 2:INV:1, August 26, 1991.

III - VICTIM/WITNESS ASSISTANCE

Many persons who are hard of hearing or deafened fear the process of going to court. They may fear that they will not be able to follow the proceedings, that they will be taken advantage of, that they will appear to be stupid; in short, they may fear that their hearing disability, at the very outset, will set them at a grievous disadvantage.

This fear is not limited to the courtroom, but also exists in the context of a police investigation, in the lawyer's office, at the rape crisis centre and in other similar situations. Victims of crime who have a substantial hearing loss may decide not to report the crime out of fear that the justice system will not be accessible. Older seniors who are hard of hearing and who have no prior exposure to the justice system often experience these concerns.

Access to programs designed to assist victims of crime is often difficult for persons with disabilities, including persons who are hard of hearing.³⁷ Many programs may consider that the needs of persons who are hard of hearing or deafened are so specialized that they cannot be properly accommodated or that their cost is not justified. They may erroneously believe that the number of persons who need this special assistance is insignificant. Evidently, they have lost sight of the fact that the reason why the number of their beneficiaries with disabilities is limited is that the services they offer are not accessible.

Counselors and social workers involved in victim/witness assistance programs need to acquire only very simple skills to improve basic communication with persons who are hard of hearing or deafened (refer to Appendix I). Further accommodation relies mainly on the provision of some simple technological supports, for example

³⁷ On the subject of transition houses, women's shelters and rape crisis centres, the Disabled Women's Network of Canada (DAWN Canada - Shirley Masuda and Jillian Riddington) developed a manual entitled *Meeting Our Needs: Access Manual for Transition Houses*, which states (at page 56): "Although hearing disabled women are never refused shelter because of their disability, accessibility for these women is appallingly absent."

providing at least one hearing accessible telephone in the shelter or providing a portable individual assistive listening device for support group meetings. Funding assistance from government or private sources should be available to offset the modest cost of such technology.

Each judicial district should have a victim/witness assistance program that is responsive to the needs of persons who are hard of hearing or deafened. The program should include components related to hearing accessibility measures,³⁸ such as:

- a) Routine training of police officers, social workers, counselors and other front-line interveners on how to communicate with a person who is hard of hearing or deafened
- b) Plain language information on the accommodation of the persons who are hard of hearing or deafened. This information is not only for professionals, but also for persons who have hearing loss and may not be aware of the various types of accommodations that are currently available. Providing hearing access information to victims and witnesses who are hard of hearing or deafened may enhance their confidence in functioning adequately in the courtroom and encourage them to report the incident
- c) Ensuring that support services are accessible for persons who are hard of hearing or deafened (i.e., providing appropriate accommodations).

³⁸ The national office of the Canadian Hard of Hearing Association has basic resource materials on hearing access, which can be made available to provincial chapters or local branches. Skilled CHHA volunteers can provide training, as well as information on hearing accessibility measures.

IV - ATTITUDINAL BARRIERS

Court personnel, including the judiciary, who are not familiar with the problems associated with hearing loss, will not be able to offer proper assistance to a person who is hard of hearing or deafened. Worse yet, they may aggravate the situation by being impatient or unresponsive.

Court officials may wrongfully assume that a hearing loss reduces the person's ability to participate in the judicial process and that this challenge cannot be overcome. Or they may not understand the barriers to communication faced by a person with a hearing loss, viewing the person as disrespectful, slow or senile.

It is important that court officials receive adequate training so that they understand that with the right accommodation, persons who are hard of hearing or deafened can participate in the judicial process in the same measure as persons with normal hearing. At the same time, it is crucial to recognize that the needs of one hard of hearing or deafened individual are not the same as those of another, and that a person's needs may change due to fluctuations associated with some types of hearing loss or due to a change in the listening environment.

Another possible systemic barrier to be considered is that persons who are hard of hearing or deafened are just as likely as their hearing counterparts to be unfamiliar with legal terminology, but they face the added problem that it is practically impossible to speech read unfamiliar words. Patience, frequent rephrasing and the use of plain language are all common sense devices that can help to overcome this particular barrier.

As hearing loss is a disability that impairs the ability to communicate, it tends to cause feelings of isolation and stress, even under normal circumstances. In a courtroom situation, the increased stress, the stifling atmosphere, the unfamiliar legal terminology and the obscure courtroom proceedings, as well as the desire to

understand all the goings-on, combine to worsen the stress and to affect the ability to concentrate which is crucial to focused listening and to effective speech reading. In the case of persons who have tinnitus (i.e., ringing or other noises in the ears), the added stress may increase the intensity of the symptoms, affecting the ability to hear and to concentrate. Treating persons with hearing loss in a manner that is just, fair and compassionate will help to alleviate much of this stress.

V - EDUCATION

Access can be defined as a passage allowing communication. Every person should have access to the Canadian justice system. To properly access the justice system, communication between the participants must be accurate and timely.

Miscommunication can lead to inaccurate and unfair decisions. Persons who are hard of hearing or deafened are generally not able to properly access the justice system when participation involves purely verbal communication without any accommodation. To provide information on accommodations and to remove attitudinal barriers, comprehensive professional and public education is necessary.

Targeted audiences

The primary focus of education should be to sensitize all persons who are likely to come into contact with a person who is hard of hearing or deafened in the context of the civil and criminal justice systems or in the context of an administrative tribunal. Therefore, educational efforts should be directed for example at members of the judiciary, court personnel, court reporters, lawyers, Crown prosecutors, notaries, law students, police officers, prison guards, probation officers, social workers and other professionals.

Some other persons, while less likely to come directly in contact with a person who is hard of hearing or deafened and who needs assistance in gaining access to the courts, nevertheless have an important role to play in ensuring this access: policy-makers and architects (including builders and technological experts). Policy-makers can enhance access through the development and enactment of laws, regulations, bylaws, policies, practices and programs, while architects can design buildings that are more accessible for persons who are hard of hearing or deafened. Professionals involved in building design should already be aware that the National Building Code and its provincial counterparts contain relevant provisions for new and renovated structures.

Some people who are hard of hearing or deafened are not aware of the different types of accommodation available to allow them to properly access the justice system. They need tools that will allow them to assume responsibility, at least in part, for ensuring that their needs are met. Information can be distributed through the disability network, by means of conferences, magazine articles, web sites and publications. Written documentation, such as this guidebook, should be available at courthouses and at appropriate government offices.

Program content

The basic program should contain, as a minimum:

- a) an explanation of the definition of “person who is hard of hearing”, as well the nature and potential impact of hearing loss
- b) the principle of equal access (including *Charter* rights)
- c) tips on how to communicate with a person who is hard of hearing or deafened
- d) precise information on the types of accommodation available, an explanation of their use and information on how to obtain them
- e) information on resources currently available in the community or elsewhere.

This basic program must always underscore the importance of respecting the particular needs and accommodation choices of each hard of hearing or deafened individual.

In addition, where appropriate, role-specific programs should be developed to provide information and training directly linked to the responsibilities of a particular type of justice professional. These programs could include:

- a) substantive law concerning persons with disabilities (e.g., *Charter* rights, federal and provincial human rights acts)
- b) barriers to physical access to the court rooms and accommodation measures to overcome these barriers
- c) communication strategies tailored to the role of the specific type of justice professional
- d) information on successful programs that resulted in enhanced access for persons with hearing loss.

The development of the basic and role-specific programs should involve representatives not only from the hearing disability network, but also professionals offering the perspective of the bar associations, the judiciary and the police, as appropriate. Institutions already responsible for professional initial and/or continuing education (e.g., law schools, federal and provincial bar associations) should also be invited to participate in program development.

Forums

There are a variety of forums that may be considered appropriate professional education:

- a) courses on the topic of “persons with disabilities and the law” in law schools, legal training programs and continuing education programs

- b) distribution of this guidebook and other relevant materials to attorneys, court personnel, and the judiciary and others
- c) articles appearing in professional newsletters, web sites, etc.
- d) presentations at conferences, such as those hosted by the National Judicial Institute, the Canadian Bar Association and the provincial bar associations.

It is important to emphasize that institutions of higher learning, for example Law schools, must strive to be accessible for persons who are hard of hearing or deafened. A few Canadian universities have done just that by setting up a special needs unit on campus with resources intended to accommodate persons with disabilities, including hard of hearing students and faculty members.³⁹

³⁹ Reach, *Advancing Professional Opportunities and Employment Accommodation for Lawyers and Other Law Graduates Who Have Disabilities*, (Allan McChesney, Richard Nolan and Martin Schmiegl), Ottawa, March, 2001.

VI - LINKAGES WITH THE DISABILITY NETWORK

Professionals working within the Canadian justice system at all levels should form partnerships and collaborate with the hearing disability network (i.e., groups representing the interests of hard of hearing and deafened Canadians) and in particular with the Canadian Hard of Hearing Association, to enhance effective and equitable access to the justice system. These professionals include the judiciary, court clerks, law enforcement officials, Crown attorneys and the practising bar. Personnel involved in corrections, both federal and provincial, should also consider calling upon the assistance of the disability network, particularly if the penitentiary or prison has one or more hard of hearing or deafened inmates.

Officials in the Departments of Justice and Offices of the Attorney General of each province and territory are responsible for the administration of the courts. These officials need to be more consistent in consulting the hearing disability network. Consultations could focus on the development of an accessibility plan for courthouses, the provision of information on the court-related needs of persons who are hard of hearing and how to obtain appropriate accommodation, the review of court rules and procedures in order to make the judicial process more accessible, and/or the development of programs and materials for the education of the judiciary and other court officers about the needs of persons with hearing loss.

Hearing disability organizations, such as the Canadian Hard of Hearing Association, can provide experienced hard of hearing volunteers ready to help local authorities to address the court-related needs of persons with hearing loss.

Successful projects that result in improved access for persons who are hard of hearing should be documented and shared with all levels of the justice system, including policy development officials in each province and territory, the judiciary, court personnel, court reporters, the practicing bar and the disability network. This

information could be further publicized in professional, governmental and community newsletters, magazines and web sites.

Cooperation between the disability network and the various professionals involved in the Canadian justice system could result in a diversity of educational projects, many requiring few resources. Judges could volunteer to speak at local branches or provincial chapters of the Canadian Hard of Hearing Association, at its annual national conference or at events held at local senior citizens' centres. Tours of the local courthouse (including mock hearings) and captioned videos are all examples of potential joint efforts involving the justice system and the disability network.

Linkages between the justice system and the disability network should focus on two main objectives:

- a) education of the judiciary, court personnel, court reporters, lawyers, social workers, police forces and persons with hearing loss
- b) hearing accessibility.

VII - SUMMARY: A CHECKLIST

The following is a broad checklist of the main recommendations outlined in this guidebook.

The Court House - Accommodations

Adequate lighting

Proper acoustics

Print interpretation, particularly real time captioning

Assistive listening devices

Visual public address system

Oral interpretation

Hearing accessible telephones

TTYs

Flexible seating arrangements

Visual and vibratory alarm systems

Clear and uniform signs

Disability accommodations coordinator

Law Enforcement

Training of police officers

Implementation of hearing accessibility measures in situations involving police officers

Victim/Witness Assistance

Accessible programs for victims/witnesses of crime

Training of counselors, social workers and other frontline interveners

Provision of information on accommodations

Provision of accessible support services

Attitudinal Barriers

Solutions provided under *Education*

Education

Development and implementation of basic and duty-specific programs

Development and distribution of guidebook, articles, publications, presentations and other materials

Establishment and maintenance of web sites

Linkages with the Disability Network

Education as a joint effort involving justice officials and the disability network

Implementation of court access through the collaborative efforts of justice officials and the disability network

CONCLUSION

Making the Canadian justice system accessible to persons who are hard of hearing or deafened can help to ensure equal access to justice and open the legal profession to persons with hearing disabilities. Federal, provincial and territorial authorities should encourage and provide concrete support to implement hearing disability access and to look for creative ways to make the justice system more accessible to all Canadians.

In Canada, there has been a great deal of progress in respect of Canadians with disabilities over the past two decades. The following are some of the highlights at the federal level:

- 1981: the International Year of Disabled Persons initiates a progressive movement across Canada
- 1982: persons with a physical or mental disability are included in *the Canadian Charter of Rights and Freedoms*
- 1985: section 15 of the *Charter* comes into effect; it guarantees “Equal protection and equal benefit of the law... without discrimination based on... mental or physical disability”
- 1985: Canada signs the *Declaration on the United Nations' Decade of Disabled Persons*
- 1987: the federal all-party Standing Committee on Human Rights and the Status of Disabled Persons is established (it was preceded by a succession of parliamentary committees which reviewed disability issues from various perspectives)
- 1991: the federal government launches the National Strategy for the Integration of Persons with Disabilities,

a five-year \$158 million initiative involving collaboration with the disability community to achieve the goals of equal access, economic integration and effective participation

- 1992: the Secretary of State of Canada tables a historic bill, asking Parliament to consider legislation dealing exclusively with concerns of Canadians with disabilities (Bill C-78) which brings improvements in the areas of elections, transportation, acquiring citizenship, testimony in criminal court and access in alternate formats to records and personal information under the control of to government. Bill C-78 is passed later that year
- 1996: the Federal Task Force on Disability Issues (the Scott Task Force) releases its report, *Equal Citizenship for Canadians with Disabilities, the Will to Act*. The report raises the profile of disability issues across government and makes many recommendations, including one that the federal government introduce criminal law amendments to make the Canadian justice system more accessible to persons with disabilities
- 1997: the Minister of Justice introduces Bill C-98 (later re-introduced as Bill S-5) containing amendments to the *Canada Evidence Act* and the *Criminal Code*, dealing with the accessibility of the justice system for persons with disabilities. It came into force on June 30, 1998
- 1998: the Federal-Provincial-Territorial Ministers Responsible for Social Services release a document entitled *In Unison: A Canadian Approach to Disability Issues*, a policy framework to guide future government action in the area of disability issues

- 1999: the federal government publishes *Future Directions*, outlining the future directions the federal government believes it must take to move towards full citizenship for all Canadians with disabilities, in a manner consistent with joint work already begun with provinces and territories
- 2000 to date: federal interdepartmental committees and federal-provincial-territorial committees are working laterally to achieve a more consistent approach to disability issues, an initiative known as the Government of Canada's Disability Agenda.

The inclusion of persons with disabilities has been a concern of the provinces and territories as well. To give just one example, both British Columbia and Alberta have amended their *Jury Act* to eliminate unwarranted discrimination against jurors with disabilities.

Federal, provincial and territorial legislative reform initiatives, while necessary, are not a complete solution. Guidelines, policies, practices and programs are also required to ensure that Canadian courtrooms are accessible and that justice professionals and front-line interveners, are trained to deal with persons who are hard of hearing or deafened. It is important not only to provide accommodations, but also to ensure that a clear and easy-to-use process is in place so that persons with hearing disabilities can easily get the accommodations they need. The appointment of disability accommodations coordinator in each judicial district, with the assignment of appropriate resources, would be a big step in the right direction.

Just remember, persons who are hard of hearing or deafened are entitled to

*A CHANCE TO HEAR
A CHANCE TO BE HEARD*

APPENDIX I – TIPS FOR BETTER COMMUNICATION

Tips for lawyers, judges, police officers, and court personnel or for anyone communicating with a person who is hard of hearing or deafened:

1. Accept that good communication is partly your responsibility.
2. Move away from background noise.
3. Make sure that the light is on your face and that the person who is hard of hearing or deafened has his or her back to the source of the light.
4. Stand or sit so that the person who is hard of hearing or deafened can see your face, particularly your mouth.
5. Ensure that the person who is hard of hearing or deafened is looking at you before you begin to speak.
6. Do not obstruct your mouth with any object (e.g., hands, a cigarette or a pen) and do not chew food or gum while speaking. A neatly trimmed mustache or beard allows for better visibility of the lips.
7. Speak in short, clear sentences. As much as possible, use plain language.
8. Do not shout, nor whisper.
9. Speak clearly and slowly, without undue exaggeration.
10. Speak expressively, using common gestures, facial expression and body movement, as appropriate.

11. Make sure that the person knows the topic of conversation, and is made aware of any changes in the topic.
12. Repeat a misunderstood sentence once; if still not understood, rephrase the sentence. If all else fails, write what you are trying to say.
13. Write important information (e.g., court dates), as well as information that is hard to speech read (e.g., names of persons or places).
14. Ask the person what you might do to make conversation easier. (Keep in mind that sometimes persons who are hard of hearing or deafened are reluctant to seek accommodation for their disability because they are fearful of calling attention to it.)
15. When requested by a person who is hard of hearing or deafened, provide accommodation to improve communication.

The accommodation requested could be, for example, an assistive listening device, real time captioning or an oral interpreter. It could be something very simple such as personally alerting the hard of hearing person that his or her presence is required in the courtroom. It is important not to substitute what has been requested with another type of accommodation or technology (e.g., not all persons who are hard of hearing are able to make use of an oral interpreter; some persons prefer one specific type of assistive listening device or print interpretation system and are uncomfortable or unable to successfully use an alternative type).

One last tip

The golden rule is CONSISTENCY. Hearing persons are often careful to follow these tips at the outset, but as everything seems to be proceeding smoothly, they become forgetful and fall back into the “regular” way of doing things, making communication difficult for the hard of hearing person.

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APPENDIX III - EVALUATION FORM

Equal Access to the Canadian Justice System for Persons who are Hard of Hearing or Deafened

It would be appreciated if you would complete this evaluation form and send it to:

Canadian Hard of Hearing Association
2435 Holly Lane, Suite 202
Ottawa, Ontario K1V 7P2
Fax: (613) 526-4718

Your comments are very important to us.

In general, did this guide meet your expectations?

Yes ___ Somewhat ___ No ___

If you were looking for specific information, did you find it?

Yes ___ Somewhat ___ No ___

Did you find the guide well organized (i.e., was the information easy to find?)

Yes ___ Somewhat ___ No ___

Did you find the language appropriate and easy to understand?

Yes ___ Somewhat ___ No ___

Did you find the content of the guide to be appropriate?

Yes ___ Somewhat ___ No ___

How satisfied were you with the amount of information provided?

Very satisfied ___ Somewhat satisfied ___ Not satisfied ___

What did you especially like about this guidebook? What aspects could be improved?

Other comments:

