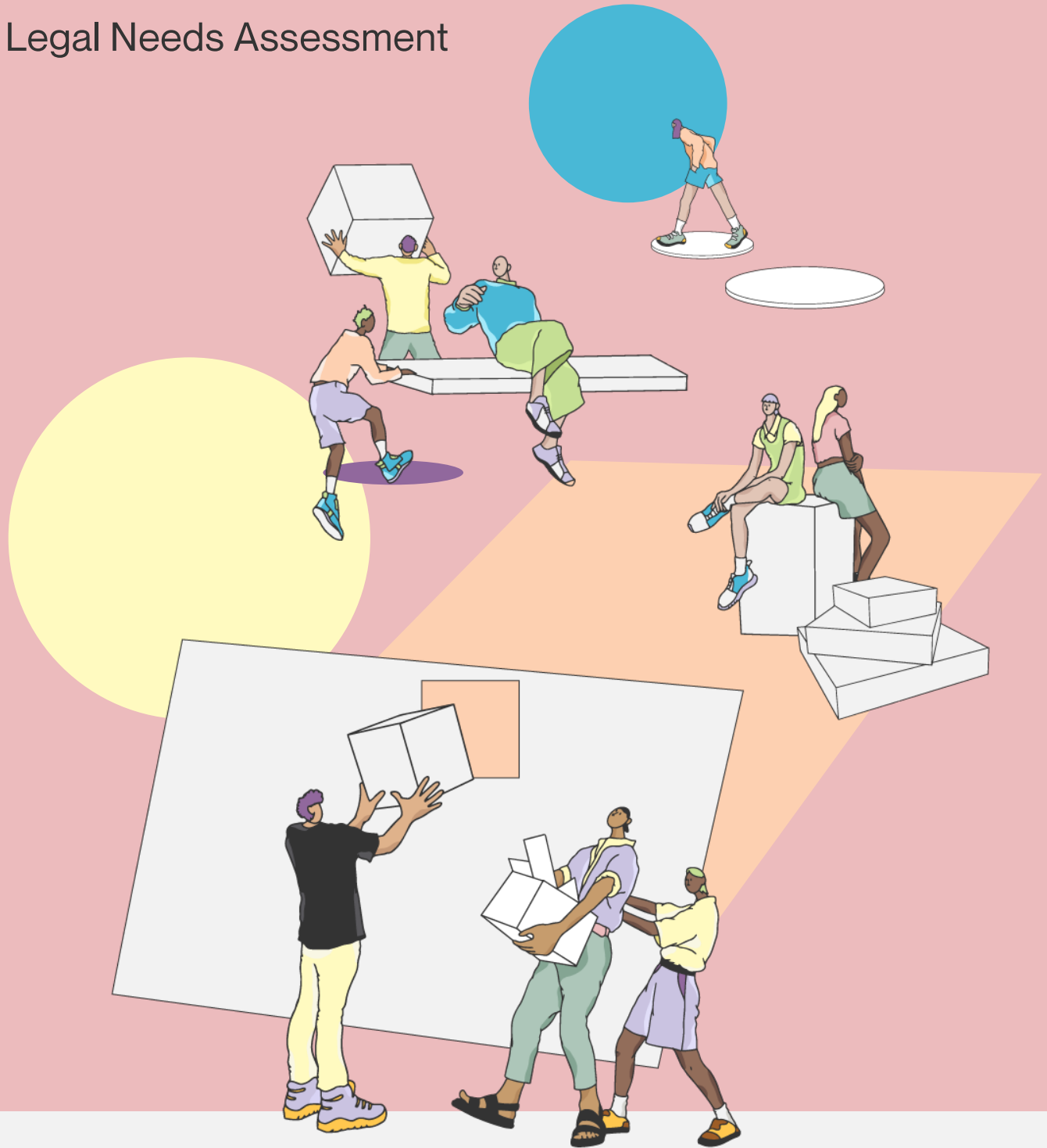


May 2022

2STNBGN Perspectives on Access to Justice:

A Legal Needs Assessment



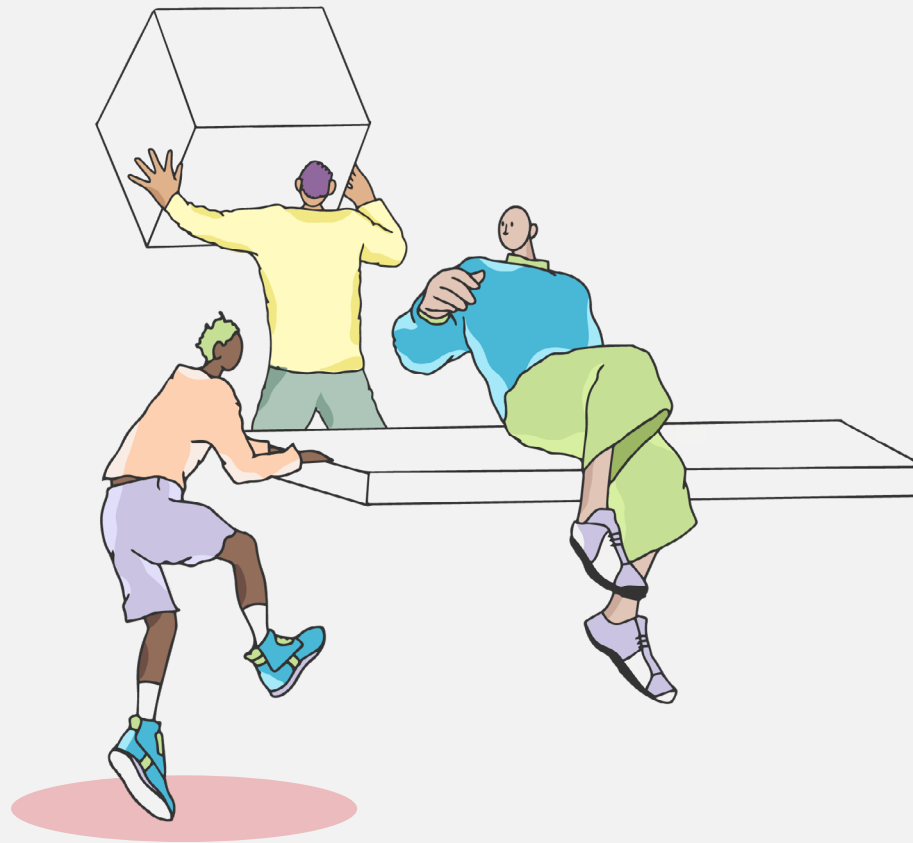
Women and Gender
Equality Canada

Femmes et Égalité
des genres Canada

About: JusticeTrans

JusticeTrans is federally registered not-for-profit corporation with the mission to improve access to justice for Two Spirit, trans, non-binary and gender non-conforming (2STNBGN) communities. We aim to create a world free of transphobia, systemic violence, and injustice, where 2STNBGN people can thrive.

justicetrans.org



JusticeTrans would like to acknowledge the support of Women and Gender Equality Canada, whose generous funding has made this project possible. We would also like to acknowledge the support we have received through Carleton University, as well as the University of Saskatchewan's Social Innovation Lab on Gender and Sexuality.



Women and Gender
Equality Canada

Femmes et Égalité
des genres Canada

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This work was conducted by participants and research team members living across the lands known as Canada. We recognize Indigenous nations as the rightful stewards of these lands and waters and commit ourselves to combatting the many forms settler colonialism takes in our work. The steps done to put this into practice in this research project included but were not limited to: implementing aspects of the First Nations Principles of Ownership Control Access and Possession (OCAP), providing Indigenous participants funding to access spiritual and cultural supports such as tobacco or other medicines, consulting with Indigenous community leaders, and creating data sharing agreements with Indigenous organizations.

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We would also like to thank Samuel Singer, William Hébert, Julie James, and Nicole Nussbaum for providing guidance and insight in the early stages of this project.

We would also extend deep gratitude to the members of the Community Research Council, who helped shape the project in significant ways. Your input helped shift the direction of our research and our organization towards more community minded methods of work. The Community Research Council included (but was not limited to): Pree Rehal, Keegan Prempeh, Tele Kapkirwok, Cheyenne Mihko Kihêw, and Zayden Potter.

Much of this work was also created through engagement and partnerships with community-based organizations providing vital on the ground programming and supports for Two Spirit, trans, non-binary and gender nonconforming (2STNBGN) people across Canada. We would like to acknowledge our community partners on this project:

- Black Queer Youth Collective - <https://www.blackqueeryouthcollective.org/>
- Edmonton 2 Spirit Society - <https://e2s.ca/>
- Elevate Equity - <https://www.elevateequity.ca/>
- Rainbow Refugee - <https://www.rainbowrefugee.com/>
- Social Innovation Lab on Gender and Sexuality - <https://law.usask.ca/socialinnovation-lab/>

Finally, and most importantly, this work would not have been possible without the 2STNBGN participants who trusted us with their experiences and stories. Thank you.

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Executive Summary

JusticeTrans' project 2STNBGN Perspectives on Access to Justice is a mixed-method research study. It seeks to understand Two Spirit, trans, non-binary and gender nonconforming (2STNBGN) people's access to justice needs across Canada, with a particular focus on the barriers faced by 2STNBGN people within formal legal systems.

Research Design

The research was designed by the JusticeTrans research team in collaboration with 5-8 community consultants consisting of 2STNBGN researchers, organizers, advocates, and artists who reviewed research tools and design, helped focus analysis through reviewing codebooks, and commented on this report, its findings, and its framing of issues.

Data Collection

Data was collected in two phases. The first phase consisted of a survey that was distributed over social media, and through community-based organizations between September 1, 2021 and November 15, 2021. The survey collected demographic information as well as whether participants had experienced any of 24 categories of legal issues. As part of the survey, participants were asked whether they would be interested in a follow-up interview or focus group. 703 survey responses were collected and a total of 11 follow-up focus groups and 17 interviews were conducted, with a total of 61 2STNBGN people between October 21, 2021 and January 15, 2022. The focus groups and interviews asked participants about how they understood and navigated their legal issues, and what a more just, safe, and accessible world could look like.

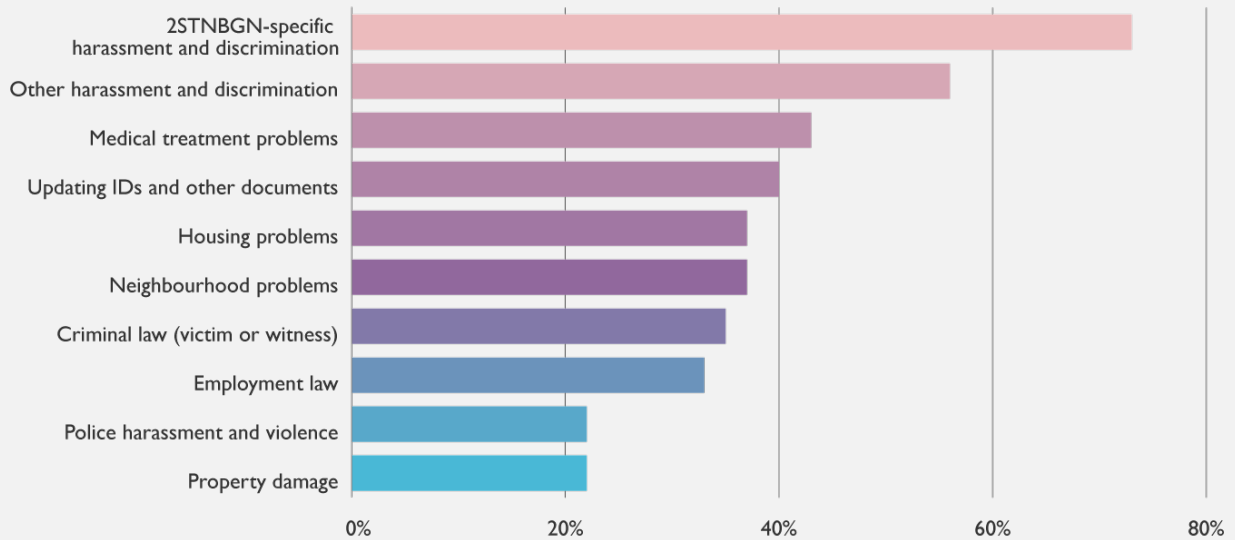
Key Findings

Participants were asked whether they had experienced a series of legal issues at any point during their lifetime. It was found that over their lifetime, 93% of participants had experienced at least one legal issue, while 54% had experienced 5 or more legal issues in their lifetime.

Of the legal issues surveyed, the most common issues were harassment and discrimination, both 2STNBGN specific (73%) as well as discrimination and harassment founded on other bases (56%) such as racism, ableism, classism, etc. Importantly, it was also found that harassment and discrimination were implicated in many other legal issues such as housing, employment, and medical treatment. The 10 most common legal issues are listed below.

Top 10 Legal Issues

By percentage of survey respondents



This report identifies significant themes amongst participants' experiences through a series of participant quotes collected as part of the survey, focus groups, and interviews. These experiences shed light on several social and legal issues currently faced by 2STNBGN people across Canada.

Through both qualitative survey data, as well as interview and focus group transcripts, JusticeTrans identified several significant barriers faced by 2STNBGN people when attempting to access justice through formal legal systems. There is a significant lack of trust in legal processes, systems, and actors including lawyers, courts, tribunals, and importantly, police forces, including the Canadian Border Services Agency (CBSA). This distrust is founded both on community knowledge of systemic discrimination embedded within these systems, as well as individual experiences that left participants feeling frustrated and powerless. Beyond a distrust of legal and justice systems, processes, and actors, 2STNBGN participants faced several other barriers attempting to access justice including intersecting forms of systemic discrimination and harassment; the risk of taking legal action; material barriers including a lack of stable housing, employment, or finances; and feelings of exhaustion and powerlessness.

When asked to imagine a more just world, some 2STNBGN participants spoke directly to how they believed existing systems could be improved or reformed through increased education and funding. Reforms that can provide immediate harm reduction for 2STNBGN people include the decriminalization of sex work, removing police from mental health calls, and expanded healthcare coverage.

Other participants drew on Black and Indigenous frameworks of abolition and decolonization and joined calls for the full abolition of prisons and police and the decolonization of the legal system. These calls build on the literature that states that while funding, education and reform can act as temporary measures to address acute situations and reduce harm, nothing short of abolition and decolonization will lead to the liberation of all 2STNBGN people (and indeed all people) and address the systemic racism, colonialism, and transphobia upon which the legal and justice systems are built.

Conclusion:

Participants reported experiencing a high number of legal issues over their lifetime with the most common issue being harassment and discrimination. This issue was also found to impact and often act as the foundation of legal issues in many other categories. Despite experiencing high numbers of legal issues, 2STNBGN participants often felt powerless and dehumanized by the legal system, regularly avoiding legal and judicial processes, systems, and actors out of a sense of distrust, or a lack of the material conditions such as stable housing, employment, or income necessary to access and engage the legal and justice systems.

Introduction



Despite positive legislative developments in Canada concerning Two Spirit, trans, non-binary, and gender non-conforming (2STNBGN) people – such as the inclusion of gender identity and/or expression in human rights legislation and the ability to change one’s name and gender marker on government documents without having to undergo gender affirming surgery – recent data suggest that 2STNBGN people continue to suffer significant injustices. Additionally, a global rise in far-right extremism over the past several years has led to a notable increase in transphobic rhetoric across Canada, mirroring a similar increase in transphobia seen in many other countries, notably the United Kingdom (UK) and the United States (US). This has highlighted the importance of understanding the needs of 2STNBGN communities across Canada, in order to better promote 2STNBGN liberation and justice, and aid in the fight against anti-trans hate.

To date, there has been no published study investigating the access to justice and/or legal needs of 2STNBGN people across all of Canada. The existing literature suggests that trans and non-binary people are at risk of discrimination in all venues of public life, have high rates of un/under-employment, and are vulnerable to transphobic violence (James et al., 2016; Chih, 2020; Trans PULSE Canada, 2020). Large-scale studies investigating trans people's legal needs in the US have revealed their experiences of discrimination in a wide range of public services, ranging from health services, housing and shelters, employment, education institutions, washrooms, at borders and airports, and through policing, prisons, and detention centres (Grant et al., 2011; James et al., 2016). TRANSforming Justice, an Ontario study of trans people's legal needs, confirms that these findings likely extend to Canada (James et al., 2018). This study builds on the work of TRANSforming Justice (James et al., 2018), and the work of Samuel Singer at the University of Ottawa around trans rights and legal strategies for accessing trans justice (Singer, 2020).

The aim of this project is to better understand 2STNBGN people's specific legal issues and access to justice needs across Canada. Specifically, the JusticeTrans research team sought to answer the following primary research question:



What barriers (systemic or otherwise) prevent 2STNBGN people living in Canada from accessing justice and what do 2STNBGN people need to address those barriers?



Additionally, this project sought to answer the following sub-questions:

- What are the most common legal issues experienced by 2STNBGN people?
- In what ways do 2STNBGN people currently access justice following legal issues?
- What barriers prevent 2STNBGN people's access to justice?
- How might these barriers to accessing justice be remedied, and new pathways created, to advance justice?
- How are access to and visions of justice shaped by intersecting structural oppressions?

As part of the project, the research team conducted an on-line survey, a series of focus groups, and one-on-one interviews before coding and analyzing survey responses and focus group and interview transcripts. This report is grounded in the experiences and realities that participants shared as part of the survey, focus groups, and interviews. As one participant, a land defender at Fairy Creek, noted during an interview, the process of selecting quotes and experiences to share is political in nature, and works to legitimize certain narratives.

“I would love [the findings] to be just right in people's faces... where maybe it will actually get through to people that our justice isn't justice, our systems aren't systems that serve even more than one person. As well as validating these communities, because validation is another really important thing. People aren't really going to pay attention to things that no one else [cares] about. [Research has power to] legitimize and validate words, and actions, and experiences.”

Another participant, a refugee, also shared the political nature of this research, noting the importance of research in creating political power for those who cannot access such power through mainstream methods, like voting.

“Right now [participating in research] is my only way to make valid my rights, because I'm not allowed to vote... this is my only way to express myself and share this, and make my opinion valid, at least a little bit.”

More details about the research process can be found in the Methodology section.


This project was conducted by the research team at Justice-Trans, a trans-for-trans, national not-for-profit organization whose mission is to increase access to justice for people who do not identify with the sex or gender they were assigned at birth. This project was also conducted in collaboration with several community members and community organizations, who significantly improved the project. Details of the project team can be found on page i.

This project was funded by Women and Gender Equality Canada (WAGE) and was conducted from November 2020 to March 2022.

This report has five sections:



- 1 A survey of the literature around 2STNBGN legal issues
- 2 A description of the research methodologies used to collect and analyze data,
- 3 A section outlining the results of this research, broken down by the type of legal problem identified by participants,
- 4 An analysis of these results that identifies major barriers to accessing justice and 2STNBGN people's visions of justice, and
- 5 A conclusion with an action plan based on the above results.



How to use this report

This report can be overwhelming to read, particularly due to its length and difficult content. In order to make it more accessible and to help readers find relevant information more easily, this subsection provides a guide to readers

Certain sections and/or subsections may be more useful to some than they are to others. For instance, healthcare workers may be most interested in the subsection of the Results section that discusses Medical Treatment Issues, and lawyers or advocates may be most interested in the subsection of the Analysis section that discusses Barriers to Accessing Justice that the research team identified. The report is written so that sections can be easily read independently of one another. Consequently, quotes that reflect experiences relevant to multiple subsections or sections are occasionally used in more than one section. Readers should feel free to focus on sections that are most relevant to their own work, as they will find that 2STNBGN people are impacted by the actions of people working in all sectors.

Going through the report in order, the next section you will find is a Project Background Literature Review. This section, separated into abridged and full-length versions, summarizes the existing academic literature the research team considered relevant for this project, including literature relating to access to justice, 2STNBGN communities living in Canada, and 2STNBGN justice more broadly and theoretically. This section is written in a more academic style, and will be most useful to fellow researchers and academics, or others interested in the theory this research was based on. The abridged version is designed to be more accessible and approachable, giving readers a quick overview of the relevant literature that contextualizes this project without requiring reading too much academic language.

Following this, the Methodology section explains in detail how this project was conducted, again with an academic focus and references to the theoretical basis of the project. This section will be of interest again to academics and researchers, but also to anyone curious about how the project was conducted, or with an interest in building on this research or conducting similar research. The methodology section also includes reflections on the accommodations participants requested throughout the research process, which may be of use to other researchers or event planners looking to learn what accommodations their participants may need and seeking data supporting the need for accommodations they wish to fund.

The next section is the Results section, which lays out the details of the research findings from the survey and interviews with participants. This section starts with a brief overview of the demographics of those who completed the survey, before diving into a detailed look at the legal issues participants reported. This section is divided into the following subcategories of legal issues: Discrimination and Harassment, Medical Treatment Issues, Gender Marker and Identification Issues, Housing Issues, Neighbourhood Issues, Employment Issues, Social Assistance and Disability Benefits, Experiences of Violence, Migrant and Refugee Experiences, and Experiences with Sex Work. This Results section is where most of the findings can be examined, and may be of interest to anyone with an interest in this report. With the length of the report in mind, it was written so that each individual subsection can be read and understood without having to read previous subsections. Thus, it is recommended that readers who do not have time or capacity to read the report in its entirety focus on subsections relevant to the legal issues that interest them.

Following the Results section is an Analysis section. This section also includes quotes from participants, and focuses on how the legal issues discussed in the results section extend to participants' views of and experiences with the legal system and their conceptions of justice. This section also names and discusses the main barriers to accessing justice that the research team identified through data analysis. They include: intersecting forms of systemic discrimination and harassment, fear of the risks surrounding taking legal action, financial and temporal barriers, bureaucratic mismanagement, feelings of exhaustion and powerlessness when interacting with formal legal systems, and general distrust of the legal systems, legal counsel, and other judicial actors.

Finally, the report includes a plan of action and a conclusion detailing potentials for follow-up research and summarizing the findings. The plan is based on the research team's interpretations of the findings, and focus on broad ideas that will allow for 2STNBGN liberation and justice going forward.



Content Warnings

This report contains content about traumatizing experiences. Below is a list of content warnings and the pages and sections/subsections on which this content is found. This list is non-exhaustive. Readers should be aware that they may find other material in the report triggering, and approach the report accordingly.

Physical Violence:

In the Discrimination and Harassment, Migrant and Refugee Experiences, Experiences with Sex Work, Experiences of Violence, and Employment Issues subsections of the Results section, and in the Barriers to Accessing Justice subsection of the Analysis section. Pages 28, 46, 57, 63 through 68, 85, and 87.

Domestic Abuse:

In the Experiences of Violence subsection of the Results section and the Visions of Justice subsection of the Analysis section. Pages 70, 85, and 92.

Sexual Assault:

In the Discrimination and Harassment, Medical Treatment Issues, Employment Issues, Experiences with Sex Work, and Experiences of Violence subsections of the Results section, and the Barriers to Accessing Justice subsection of the Analysis section. Pages 29, 30, 31, 37, 54, 55, 76, 72 through 81, and 90.

Fatphobia:

In the Discrimination and Harassment, subsection of the Results section. Pages 28 and 31.

Ableism:

In the Discrimination and Harassment, Housing Issues, Employment Issues, and Social Assistance and Disability Benefits subsections of Results section, and the Barriers to Accessing Justice subsection of Analysis section. Pages 31, 32, 37, 45, 54, 55, 60 through 61, 85, and 93.

Slurs:

In the Experiences of Violence subsections of the results section. Page 54, 78.

Experiences of Housing Instability:

In the Housing Issues, Gender Markers and Identification Issues, Employment Issues, and Social Assistance and Disability Benefits sections of the Results section, and the Barriers to Accessing Justice subsection of the Analysis section. Pages 42, 44 through 48, 53, 53, and 87.

Unsafe Living Situations:

In the Neighbourhood Issues and Housing Issues subsections of the Results section. Pages 45 through 50.

Police Violence:

In the Experiences of Violence subsection of the Results section and the Barriers to Accessing Justice subsection of the Analysis section. Pages 78 through 80 and 90 through 94.

Anti-Black Racism:

In the Medical Treatment Issues subsection of the Results section and the Barriers to Accessing Justice subsection of the Analysis section. Pages 37 and 94.

Anti-Indigenous Racism:

In the Medical Treatment Issues, Employment Issues and Experiences of Violence subsections of the Results section, and all subsections of the Analysis section. Pages 56, 80, 84, 92, and 99.

Racism:

In the Discrimination and Harassment, Medical Treatment Issues, Employment Issues, Experiences of Violence subsections of the Results section, and all subsections of the Analysis section. Pages 30, 31, 54, 56, 74, 80, 83, 92, and 99

Medical Mistreatment:

In the Medical Treatment Issues and Social Assistance and Disability Benefits subsections of the Results section. Page 61.

Suicide:

In the Medical Treatment Issues subsection of the Results section and the Barriers to Accessing Justice subsection of the Analysis section. Pages 7, and 92.

Gender-Based Violence:

In the Experiences of Violence subsection of the Results section. Pages 76 through 77.

Transmisogyny:

In the Neighbourhood Issues and Experiences of Violence subsections of the Results section, and the Barriers to Accessing Justice subsection of the Analysis section. Pages 50, 76, and 77.

In addition to this specific list of content warnings, a general content warning for experiences of transphobia and 2STNBGN-specific harassment and discrimination applies to the report as a whole.

If you need any support while reading this report, province and territory-specific resource lists are available on the JusticeTrans website, justicetrans.org. Additionally, readers can find resources compiled into a pdf document that you can access in English [here](#) or in French [here](#).

Language

The language choices made in this report were done with intention and in order to be mindful of the work language does in upholding systems of oppression. As such, the research team felt that certain word choices merited a brief justification of their use.

This report uses the acronym Two Spirit, trans, non-binary, and gender non-conforming (2STNBGN) in order to broadly refer to anyone who does not identify with the gender they were assigned at birth. Two Spirit is an umbrella term that originated in 1990 at the Third Annual Intertribal Native American/First Nations Gay and Lesbian Conference in Winnipeg (Elhakeem, 2007). It was coined by Cree grandmother and Elder Myra Laramee to challenge binary categories of sex and gender in settler culture, and to refer to the many Indigenous gender and sexuality systems that exist in various nations across Turtle Island (Fiola and Ruprai, 2019; Robinson, 2020). Two Spirit is included separately to recognize that not all Two Spirit people identify as trans, and to recognize Indigenous systems of gender and sexuality as different from settler ones. The research team would also like to acknowledge that not all Indigenous gender non-conforming people identify as Two Spirit, due to it being pan-Indigenizing and a word in a settler language. Many prefer to use their own nation's terminology exclusively, to recognize the distinct differences between genders and sexualities across Indigenous nations. Two Spirit is first in this acronym to reflect the wishes of Two Spirit people and to reflect the importance of decolonizing 2SLGBTQIA+ spaces. Non-binary and gender non-conforming are also included as separate terms to reflect that many non-binary and gender non-conforming people identify with those specific terms rather than as trans, for a variety of reasons. The acronym 2STNBGN allows us to refer to experiences shared by all people who do not identify with the gender assigned to them at birth, without forcing the label of transness upon those who do not use it. This report does however use the word trans when referencing work done by other authors, in order to maintain consistency with the language those authors used.

The term transphobia is used to refer to discrimination against all 2STNBGN people. While 2STNBGN discrimination would be a more accurate term, the research team recognizes that transphobia is the term most commonly used and known by community members, and continue using it in order to keep this report more accessible, to condense word usage, and to reflect the language used by community. This is also the reason the report does not use terms such as trans-antagonism or 2STNBGN hate, which some individuals prefer as they contest the validity of the term "phobia" when referring to a type of hatred.

This report uses the word "Canada" to refer to the lands governed by the legal system of the Canadian state. Canada is used to recognise the existence of the Canadian state and its settler-colonial legal system, but this use is not necessarily a recognition of the legitimacy of the state or its legal system (see for e.g., Borrows, 1999).

It is recognised, however, that the state is the result of non-consensual assertion of European sovereignty on the lands occupied and stewarded since time immemorial by Indigenous Peoples and that its existence has led to land dispossession, genocide and other forms of oppression (Borrows, 1999; King and Pasternak, 2019; National Inquiry into Missing and Murdered Indigenous Women and Girls, 2019; Truth and Reconciliation Commission of Canada, 2015; *Tsilhqot'in Nation v British Columbia*, 2014 SCC 44). The names of the provinces and territories of Canada are used for this same reason.

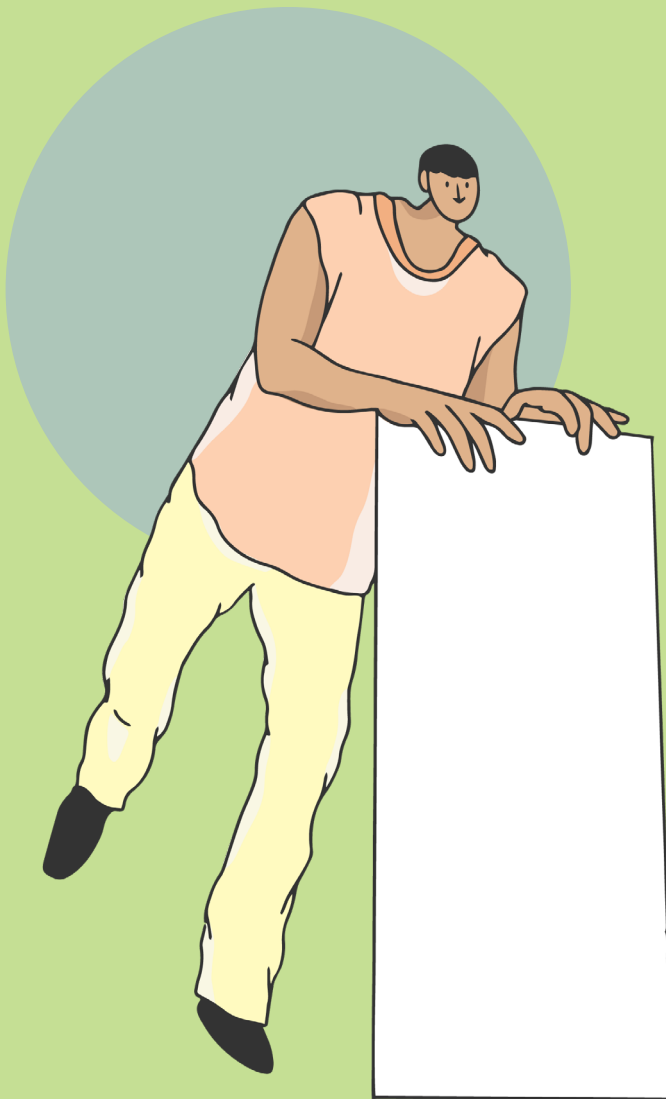
Identity-first language is used to refer to disabled people, following the wishes of prominent disability activists who understand disability as a part of one's identity that should be worded as such. Person-first language comes from a worldview that emphasizes personhood because it sees disability as negative and as detracting from personhood. Just as one would typically refer to someone of above-average height as "a tall person" as opposed to "a person with tallness." This report refers to disabled people as just that, with disability as a descriptive characteristic (Titchkosky, 2001; Brown, 2011).

Transmisogyny is referenced repeatedly in this report, and it refers to the specific type of discrimination and violence experienced by trans women, trans feminine people, and some non-binary people who were assigned male at birth. Transmisogyny occurs at the intersection of transphobia and sexism (Serano, 2007). While all 2STNBGN people can experience transphobia and sexism, the specific intersection that occurs through transmisogyny casts transmisogyny affected (TMA) people as "violent imposters and intruders" in cisgender women's spaces. Importantly, transmisogyny is founded on the idea that trans women are sexual predators, or that cisgender men who are sexual predators will pose as transgender women in order to violently and non-consensually gain access to women's spaces and bodies. As a result of this foundational fear, transmisogyny is often excused in the name of "protecting white cisgender women and girls," while simultaneously reinforcing traditional (cis) sexist gender categories and expectations (Haines, 2021).

Finally, this report avoids using the term "justice system," as this research generally shows that formal legal systems do not necessarily provide justice. Instead, the report uses the term legal system for the system as a whole, and criminal legal system for the arm of the system that criminalizes people, such as prisons and police. The report does not use the term 'criminal' to reinforce 'criminal' as a class of people, but rather to point towards the ways this system criminalizes people.

Project Background and Literature Review

This section is separated into an abridged and full-length version. For readers with some interest in the academic context of this report but without the time or ability to read a full summary of the literature consulted, the Abridged Literature Review provides a shorter summary of the knowledge that contextualizes this report.



Abridged Literature Review

Discrimination and Legal Protections

Trans people have been protected in human rights legislation in Canada as early as the 1980s (Singer, 2020). Prior to the recent amendments to provincial, territorial, and federal human rights laws that added 'gender identity' and/or 'gender expression' as protected grounds, human rights tribunals have interpreted the grounds of 'sex' and/or 'disability' to include trans' experiences. Trans rights are not limited to the human rights system, and other legal tools have helped to secure trans recognition and justice. This includes victories such as appropriate identification before the courts for matters of family law (i.e. use of lived name and gender), and access to social assistance (Singer, 2020).

The social and legal environment is indeed shifting with respect to trans recognition and rights. At the same time, discrimination against trans people is still common. Large-scale studies investigating trans people's legal needs in the US have revealed experiences of discrimination in a wide range of public services, ranging from health services, housing, employment, education institutions, washrooms, and in policing, prisons, and detention centers (Grant et al., 2011; James et al., 2016). The most extensive research into trans people's legal needs in Canada comes from the TRANS-forming Justice project, which relies on survey data from trans people in Ontario (James et al., 2018). The findings show that trans people experience far more legal issues than the general population, with the most common legal issue faced being discrimination (43%). Discrimination was intensified among those who were Black, Indigenous, and people of colour (BIPOC) (James et al., 2018). The Department of Justice also recently released a report based on 27 semi-structured interviews with 2STNBGN people living across Canada dealing with complex legal problems (Hébert, 2022). One of the most significant findings of this research is the way that the legal system itself can become a legal problem in 2STNBGN people's lives (Hébert, 2022).

Employment, Social Assistance, Housing, and Healthcare

Research emerging from Canada has revealed overwhelming experiences of discrimination among trans people in the realm of employment, rendering it difficult for many to find and maintain a job, particularly after transition (Irving, 2015; Kattari et al., 2016; Waite, 2021). Employment discrimination only serves to worsen structural issues of poverty and the disproportionate rates of homelessness among this population (Devor and Strudwick, 2020; Kattari et al., 2016; Trans PULSE Canada Team, 2020).

The low-income levels documented among trans and non-binary people (Trans PULSE Canada Team, 2020) may also be increased by the high rates of those living with a disability, despite the fact that most are not receiving disability income support (Arps et al., 2021). Government assistance and social benefits are raised as predominant legal issues among trans people (Singer, 2020; James et al., 2018), indicating that government support could be more inclusive in order to support more people.

The discrimination trans people experience in housing is directly tied to the broader issues of poverty and un(der)employment (McDowell, 2021). The prevalence of transphobia among landlords is compounded by structural injustices that worsen poverty among trans people of colour and those who are refugees and migrants, incarcerated, disabled, mentally ill, and living with addictions (Devor and Strudwick, 2020; Jacob, 2020; Trans PULSE Canada Team, 2020).

Finally, trans people's experience with the healthcare system is often characterized by discrimination and transphobia at the hands of medical practitioners, ranging from blatantly transphobic comments and invasive questions to a lack of trans-informed education among service providers (Spade, 2003). These experiences are particularly present among those living in rural settings, who may not have access to trans-informed health care practitioners or who may be forced to travel to secure trans-related care (Knutson et al., 2016). Trans youth are often prevented from making their own health care decisions autonomously (Ashley, 2019), despite health care consent legislation in many provinces such as Ontario, which presumes that anyone can make decisions about their body, regardless of age (Lena, 2019).

Identity Documents

2STNBGN people living in Canada have the legal right to change their legal names and gender markers to reflect their current lived identities. Gender markers may be changed to display the options of 'M', 'F', 'X', or 'undisclosed', regardless of surgical status. However, the availability of these options is inconsistent across federal, provincial, territorial jurisdictions and different governmental institutions. The significant barriers associated with changing gender markers should be acknowledged. Although gender options on IDs have been expanded in attempts to better represent trans and non-binary people, critics suggest that the 'X' marker pigeonholes gender diverse people into a singular and fixed identity (Ashley, 2021; Gender-Free ID Coalition, 2018). In other words, the 'X' exists as a catch-all category which does not reflect the complexity of gender, which many experience as fluid and non-categorizable. Moreover, reforms intended to increase gender options on IDs do not respond to the cisnormative, flawed, and highly subjective practice of assigning sex at birth in the first place (Ashley, 2021; Gender-Free ID Coalition, 2018).

Having the option to change one's legal gender does not make up for the harmful social and legal practices that automatically categorize people based on their sex assigned at birth. Finally, critics anticipate that the use of the 'X' marker may increase visibility among 2STNBGN people in a manner that enhances their vulnerability to discrimination and violence (Gender-Free ID Coalition, 2018; Starks, 2018).

Systemic Discrimination and the Criminal Legal System

Contemporary discrimination in the law must be contextualized within historical anti-queer penal practices. Queer sex has been regulated and controlled through laws prohibiting 'gross indecency' and 'buggery' laws (later renamed as 'anal intercourse'), the Royal Canadian Mounted Police (RCMP) surveillance of queers and the purge from public services between the 1950s and 1990s (Kinsman and Gentile, 2010), the persistent police raids of queer spaces and bathhouses that lead to mass arrests (Hoopers, 2018) and the criminalization and regulation of queer sex in public places (Walby, 2009). While overt discrimination within the law has been significantly reduced, the enforcement of certain laws and widespread issues in the legal system may be understood as having the effect of systemic discrimination. Two such laws that have discriminatory effects on the 2STNBGN population are those governing sex work and HIV non-disclosure.

Laws governing sex work have a disproportionately negative effect on many 2STNBGN people, particularly those who are BIPOC, refugees and migrants, houseless and/or street-involved, and youth. The criminalization of sex work, or aspects thereof, is known to foster an unsafe working environment among trans people who sell sex (Laidlaw, 2018; Lyons et al., 2017).

In addition, the regulation of the industry fosters an environment in which police officers can surveil, profile, stop, and harass trans women of colour, and threaten or enact charges as a tool of punishment or deterrence (James et al. 2016; Woods et al., 2013). The laws prohibiting HIV non-disclosure also have discriminatory effects on 2SLGBTQIA+ people who are overwhelming targeted and charged with sexual offences as a result (EGALE, 2017; Knight et al., 2018), especially those who are BIPOC and who work in the sex industry (Bauer et al., 2012; Longman Marcellin, Bauer, and Scheim, 2013; Taylor, 2009). This has a disproportionate impact on Black people, particularly Black men, and on Indigenous women (Hastings et al., 2022). Black and Indigenous people also have higher conviction rates for HIV non-disclosure and are more likely to be incarcerated if convicted (Hastings et al., 2022). The stigma and threat of criminalization restricts access to testing and therefore access to health care for those who are HIV-positive (Canadian HIV/AIDS Legal Network, 2009; Canadian HIV/AIDS Legal Network, 2019; Canadian Coalition to Reform HIV Criminalization, 2022).

Violence and the Barriers to Legal Redress

Studies have documented trans people's increased vulnerability to emotional, physical, and sexual violence. Violence against trans people is a prevalent issue in intimate partner relationships (Guadalupe-Diaz and Jasinski, 2017). This is a notable issue among those who are Indigenous, due to histories of intergenerational trauma, dislocation, and isolation arising from colonization (Ristock et al., 2019). In addition to intimate partner violence, trans people are at risk of all forms of public violence. Emotional, physical, and sexual violence is much more common against Indigenous Two-Spirit and trans people (Taylor, 2009) and trans and non-binary people of colour (Chih et al., 2020). Sometimes, this violence is motivated by hate.

In 2017, with the passing of Bill C-16, 'gender identity' and 'gender expression' were added as protected grounds to the hate crime provisions of the Criminal Code (ss. 318(1), 319(1), 319(2), and 431(4.1)) and allowed for increased penalties when a criminal offence is determined to be motivated by bias, prejudice, or hatred (s. 718.2(a)(i)). Prior to this amendment, anti-2STNBGN hate crimes may not have been accurately recorded under these provisions. There are difficulties involved in compiling accurate statistics about anti-2STNBGN violence that includes the underreporting of violence to police.

Distrust of Police and the Criminal Legal System

It has been well documented that trans and non-binary people, and particularly those who are BIPOC, are often reluctant to report violence, hate crimes, and other forms of victimization to police (Angeles and Robertson, 2017; Chih et al., 2020; Guadalupe-Diaz and Jasinski, 2017). In fact, one-third of 2STNBGN people of colour surveyed as part of the 2019 Trans PULSE Canada project indicated that they avoided calling emergency police services in the past 5 years due to a fear of police (Chih et al., 2020). This fear is even stronger among those who are newcomers and migrants (Navarro et al., 2021) and those working in the sex industry, due to fears of criminalization and of police violence (Laidlaw, 2018; Lyons et al., 2017).

At the same time, the distrust of police may not simply be considered a barrier to accessing justice. Rather, the very institution of policing, and the broader criminal legal system, may stand in opposition to more transformative visions of justice held among 2STNBGN people who are more likely to engage with this system by virtue of both criminalization and victimization.



Full-Length Literature Review

This literature review covers scholarship relevant to 2STNBGN access to justice issues in Canada, drawing primarily on scholars doing work in Canada and the United States. The review covers some of the demographics and social context that frames access to justice needs for 2STNBGN people. It also outlines the legal needs and legal protections experienced by 2STNBGN people, with a specific focus on employment, housing, social assistance, gender-segregated institutions and spaces (e.g. prisons, washrooms), and identity documents. It then looks to the literature about 2STNBGN people and the criminal legal system, outlining some of the factors that contribute to the criminalization of 2STNBGN people – especially Black, Indigenous, racialized and disabled 2STNBGN people – including systemic discrimination in the criminal legal system. Finally, the review looks at the violence that 2STNBGN people experience and what the literature has to say about 2STNBGN people’s barriers to accessing justice, including a distrust of police and criminal legal institutions.

This review also aims at presenting an intersectional analysis of 2STNBGN people’s experiences. Intersectionality accounts for the way in which one’s lived experience of privilege and oppression is shaped by their multiple, inseparable identities (Crenshaw, 1989, 1991). Compounding issues of sexism, racism, classism, ableism, and other systems of oppression will be raised whenever possible as it pertains to the legal issues documented among 2STNBGN people thus far.

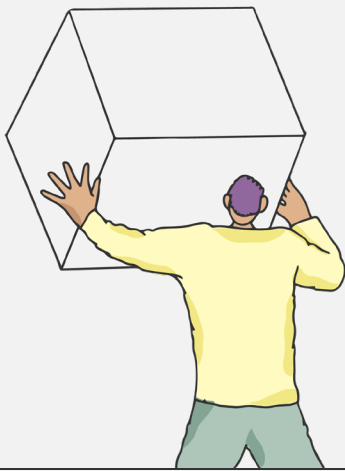
Demographics and Social Context

The 2021 Census estimates that 0.33 percent of the Canadian population (15 years old and older) or 1 in 300 persons is trans or non-binary (Statistics Canada, 2022). This proportion increases to 1 in 100 persons for young adults aged 20 to 24. 59% identified as transgender, while 41% identified as non-binary. Given the limits of this data, community-based and academic research provides important additional insight into the demographics and social, economic, health, and legal needs of the 2STNBGN community.

Based on the available data, the 2STNBGN community faces socioeconomic marginalization arising from intersecting issues of widespread discrimination in public services, health and mental health issues, and structural injustices. The Trans PULSE Canada Team (2020)² found that of trans and non-binary adults over the age of 25, 40% were living in a low-income household and a quarter (24%) reported a personal annual income of less than \$15,000. Additionally, a US national study surveying 6,456 trans people across all 50 states revealed that 11.4% have experienced houselessness, with an additional 16.3% who have sought temporary alternative housing arrangements, arising from gender discrimination (Begun and Kattari, 2016). There are also notably high rates of trans and non-binary people in Canada who are disabled (19%) and have a mental illness (43%) (Trans PULSE Canada Team, 2020).

Indigenous Two-Spirit, trans, and non-binary people on average experience elevated rates of both disability and mental illness, are more likely to live in a low-income household, and are less likely to have full-time employment and post-secondary education, compared to the general trans and non-binary population (Taylor, 2009; Merasty et al., 2021). Additionally, trans people of colour are also more likely to identify as disabled and experience poor health, compared to the general trans and non-binary population, although they reported similar rates of education, employment, and income levels (Chih et al., 2020). Trans and gender nonconforming migrants, refugees, and people with no status also experience more housing insecurity and poverty (Jacob, 2020; Kia et al., 2020).

Finally, the COVID-19 pandemic has exacerbated many structural injustices already experienced by 2STNBGN people. Early research into the effects of the pandemic on trans and non-binary people revealed that over half (52.9%) have not been able to meet their financial obligations or pay for essential needs (Trans PULSE Canada COVID Cohort Working Group, 2020b). Additionally, the pandemic has resulted in unmet physical and mental health care needs, including access to transition-related care (Trans PULSE Canada COVID Cohort Working Group, 2020a), and has generated concerns related to maintaining social ties, family stress due to confinement within the home, and the increase of surveillance and policing measures (Trans PULSE Canada COVID Cohort Working Group, 2020b). Trans newcomers who do not have family ties or are far away from family also experience extreme isolation, with little access to information, resources, or communities (Jacob, 2020, Khan 2015).



Discrimination and Legal Protections

Trans people have been protected in human rights legislation as early as the 1980s (Singer, 2020). Prior to the recent amendments to human rights legislation that added 'gender identity' and/or 'gender expression' as protected grounds, human rights tribunals have interpreted the grounds of 'sex' and/or 'disability' to be inclusive of trans experience. Trans people's human rights applications have proven successful in various areas prior to these recent amendments, with tribunals affirming trans people's right to be free of discrimination in employment (Commission des droits de la personne et des droits de la jeunesse (ML) c Maison des jeunes, 1998 CanLII 28, [1998] RJQ 2549), in washrooms (Sheridan v Sanctuary Investments Ltd, 1999 BCHRT 4, 33 CHRR D/467), during police strip-searches (Forrester v Peel (Regional Municipality) Police Services Board, 2006 HRTO 13), and in prisons (Kavanagh v Canada (Attorney General), 2001 CanLII 8496, 41 CHRR 119). Tribunals and courts have also articulated trans people's rights to change their legal gender markers on their birth certificates regardless of surgical status (e.g. XY v Ontario (Government and Consumer Services), 2012 HRTO 726; CF v Alberta (Vital Statistics), 2014 ABQB 237) and, recently, have mandated more expansive options to reflect gender diversity on government-issued IDs, such as to choose an 'X' or to not disclose one's gender to better accommodate non-binary and other gender diverse people (e.g. TA v Manitoba (Justice), 2019 MBHR 12; Centre for Gender Advocacy c Attorney General of Quebec, 2021 QCCS 191). Furthermore, gender identity, on its own (as an analogous ground) and under the enumerated ground of sex, is protected under the right to equality of the Canadian Charter of Rights and Freedoms (CF and Centre for Gender Advocacy, above). While certainly not an exhaustive list, the cases referenced here are intended to exemplify the diversity of successful applicants in a breadth of public services across various institutions in Canada in the name of trans rights.

Large-scale studies investigating trans people's legal needs in the US have revealed experiences of discrimination in a wide range of public services, ranging from health services, housing, employment, education institutions, washrooms, and policing, prisons, and detention centres (Grant et al., 2011; James et al., 2016). Currently, the most extensive research into trans people's legal needs in Canada comes from the TRANSforming Justice project (James et al., 2018). The report relies on survey data of 232 trans respondents and focus groups involving 125 trans participants in Ontario. The findings reveal that trans people experience disproportionate legal issues compared to the general population, with the most common legal issue being discrimination (43%). Discrimination was intensified among those who were Black, Indigenous, and people of colour (BIPOC), migrants and refugees, or otherwise marginalized within the 2STNBGN community (James et al., 2018; Jacob, 2020; Kia et al., 2020). The Department of Justice also recently released a report based on 27 semi-structured interviews with 2STNBGN people living across Canada dealing with complex legal problems (Hébert, 2022). One of the most significant findings of this research is the way that the legal system itself can become a legal problem (Hébert, 2022). Other Canadian studies confirm trans people's reports of discrimination in a range of public services, ranging from employment (Irving, 2015; Waite, 2021), housing (McDowell, 2021), shelters and social services (Lyons et al., 2016), prisons (Hébert, 2020), and health care (Trans PULSE Canada Team, 2020), which will be addressed in what follows.

Employment, Social Assistance, and Housing

Trans people frequently report discrimination in the realm of employment, making it hard for this population to find and maintain a job, particularly post-transition (Irving, 2015; Kattari et al., 2016; Waite, 2021). Discrimination in the realm of employment can be both overt and covert. This ranges from blatant transphobic verbal and physical violence to more hidden forms of discrimination such as when employers deny a 2STNBGN person a job on the basis that there were allegedly more 'qualified' applicants.

Data from the Public Service Employee Survey (PSES) in 2020 suggests that gender diverse people are more likely (20%) than cis men (7%) and cis women (7%) to report experiencing employment discrimination within the last 12 months, and that this was primarily perpetrated by authority figures (75%) and coworkers (55%) (Government of Canada, 2021). Studies seeking to understand the root of trans employment discrimination explain how workplaces are one of many sites in which expectations for gender normativity are enacted and maintained, which result in the oppression of those who refuse to adhere to normative, binary ways of expressing gender (Irving, 2015).

Another factor compounding the issue of employment discrimination is immigration status and the ability to work in Canada. The fear of discrimination is felt by trans people, generally, when their current gender identity is not reflected on their government-issued identity documents (IDs) used to secure employment (Irving, 2015). However, this is further complicated for refugees and migrants when transphobia, racism, and xenophobia intersect. This occurs when showing potential employers their documents, such as work permits or the Refugee Protection Claimant Document (RPCD), which ‘outs’ them both as a trans person and as a non-citizen (Jacob, 2020). What is particularly troublesome is the way in which trans migrants may enter Canada to seek refuge from anti-2STNBGN persecution (Navarro et al., 2021) but are met with discrimination in various aspects of life upon arrival, including but not limited to the realms of employment and housing (Jacob, 2020).

Irving and Hoo (2020) expand on the issue of trans employment discrimination in light of the introduction of human rights protections for ‘gender identity’ and ‘gender expression’ and argue that the human rights framework is unequipped to protect trans people from this form of discrimination. Additionally, although anti-discrimination legislation exists to resolve claims of anti-trans discrimination for those who have the means to access these legal processes, no such protections exist for those experiencing discrimination based on immigration status (Jacob, 2020).

Finally, it is also important to acknowledge how recent shifts to include trans people in the workplace, for example through ‘diversity hires’, may tokenize and fetishize this population while offering no systemic support or improvement in the workplace, enacting yet another layer of discrimination that this community faces (Devor and Strudwick, 2020). This literature is critical of the extent to which rights-based protections have improved the employment rates and working conditions of trans people.

Employment discrimination exacerbates structural issues of poverty among trans and non-binary people (Trans PULSE Canada Team, 2020). This may account for greater rates of participation in the sex industry among trans people as it offers an independent source of income (Butler Burke, 2018; Orchard et al., 2021). While sex work should be understood as a legitimate employment choice (in the absence of duress), the fact remains that its criminalization can foster additional complications to finding and maintaining other forms of employment, as, for example, potential employers may respond negatively to the results of criminal record checks.

Issues of employment and poverty experienced by 2STNBGN people are also informed by one’s (dis)abilities. A recent study investigating pathways to poverty reduction among Two-Spirit, trans, and non-binary people in BC indicated that 50% of them were living on income support, most of whom were living with a disability (83%) (Devor and Strudwick, 2020). High rates of trans and non-binary people who identify as disabled and live with disabilities may account, in part, for low-income levels among the population. Of those who took part in the national Trans PULSE Canada study, 19% identified as disabled, although a greater number indicated that they were neurodivergent (31%), mentally ill (44%), or that they lived with chronic pain (22%), which can fall within the scope of disability (Arps et al., 2021). Despite high rates of disability within trans and non-binary communities, only 8% of participants reported collecting disability benefits (Arps et al., 2021). While not all participants may be eligible for disability benefits, this finding highlights that 2STNBGN people may be unaware of the parameters of government support or may be unjustly excluded from them. In fact, government assistance and social benefits have been noted as predominant legal issues among trans people (Singer, 2020; James et al., 2018). It is also possible that trans people may attempt to resist the stigma associated with disability, with respect to the broader historical, social, and medical context in which trans identity has been incorrectly conceptualized as a mental illness (Suess Schwend, 2020).

Inextricable from the broader issues of poverty and un-(der)employment is the discrimination that trans people experience in the realm of housing (McDowell, 2021). A US national study indicated that nearly one-quarter (23%) of trans people experienced housing discrimination in the past year, which includes being denied housing or being evicted from their homes because of their gender identities (James et al., 2016). Moreover, a recent study of 2SLGBTQIA+ individuals within the Canadian housing sector determined that those who have recently migrated to Canada, who have been previously incarcerated, and those who are disabled, mentally ill, or have addictions experience heightened difficulties obtaining affordable and secure housing (McDowell, 2021). For example, landlords' expectation that potential renters provide references for previous rental experience and North American credit history disadvantage trans and gender non-conforming refugees and migrants (Jacob, 2020). These classist expectations are likely to extend to other low-income groups. The prevalence of transphobia among landlords is therefore compounded by structural injustices that condition and exacerbate poverty among trans, non-binary, and gender non-conforming people who are refugees and migrants, people of colour, incarcerated people, and those who are disabled, mentally ill or living with addictions (Devor and Strudwick, 2020; Jacob, 2020; Trans PULSE Canada Team, 2020).

Gender-Segregated Services

Gender-segregated institutions, such as prisons, shelters, and washrooms, are sites in which 2STNBGN people are particularly vulnerable to violence, harassment, and discrimination. This emerges by virtue of the fact that these institutions mandate and enforce binary ways of being.

Gender-based discrimination in the Canadian federal prison system has been an issue raised before human rights tribunals decades prior to the introduction of Correctional Service Canada's trans-informed policy in 2017 (e.g. *Kavanagh v. Canada (Attorney General)*, 2001 CanLII 8496, 41 CHRR 119). Prisons are structured according to hegemonic norms of masculinity and femininity, which fosters an environment conducive to violence and gender-policing for those who transgress these norms (Arkles, 2012). The Correctional Service of Canada introduced the Interim Policy Bulletin no. 584 (gender identity or expression) that permitted federally incarcerated 2STNBGN to request gender-based accommodations in placement, identification, searches, clothing, and in other protocols. However, recent research into these reforms indicate that this has not remedied discrimination by virtue of the fact that this policy is individualized, highly discretionary, and subject to limitations (Hébert, 2020). Because the introduction of a trans rights-informed prison policy does not disrupt the binary structures of prisons, discrimination against 2STNBGN people within Canadian prisons will always prevail because the binary system will always be conducive of discrimination and harassment among those who transgress gender norms.

Many of the issues experienced by imprisoned trans people have likewise been documented within the shelter system (Begun and Kattari, 2016; Lyons et al., 2016; Pyne, 2011). The issue of trans women's exclusion from women's shelters has been heard before the British Columbia Human Rights Tribunal in 2002. The tribunal found that the plaintiff had been discriminated against when the shelter prohibited her from attending volunteer training because she "had not been a woman since birth" (*Nixon v Vancouver Rape Relief Society*, 2002 BCHRT 1). The award was reversed by the Court of Appeal (*Vancouver Rape Relief Society v Nixon*, 2005 BCCA 601). While the majority confirmed that Ms. Nixon had been discriminated against, the court found that the shelter fell within a provision of the Human Rights Code that shields certain non-profit organizations from the application of the code in particular circumstances. Nonetheless, 2STNBGN inclusion may not resolve the gender-policing that occurs in women's shelters, which manifests in the form of harassment, microaggressions, and violence against trans women (Lyons et al., 2016; Pyne, 2011). This leads many who are street-involved and living within the shelter systems to hide their gender identities for the purposes of survival (Begun and Kattari, 2016).

Finally, bathrooms are also sites in which 2STNBGN people report routine experiences of violence, harassment, and discrimination. 2STNBGN individuals often feel surveilled and stared at, may be accused of being in the 'wrong' bathroom, or may be the victim of physical and sexual violence in these spaces (McGuire, Anderson, and Michaels, 2022). The situation in the United States is particularly precarious with the implementation of so-called 'bathroom bills' across various states which remove human rights protections for trans people by mandating all individuals use bathrooms that align with their assigned sex and permits the criminalization of those who resist (Murib, 2020). Canadian research examining the cisnormative structure of bathrooms has identified the negative and discriminatory effects that gendered bathrooms have on trans students in primary schools (Ingrey, 2018) and in the post-secondary context (Laidlaw, 2020). One recent study of Ontario school board policies offered an optimistic outlook for the future of trans students' rights, insisting that school boards' creation and implementation of rights-informed policies inform everyday practices of creating a world that is more accommodating of gender diversity (Kirkup et al., 2020). Others, however, offer a more critical outlook on the effects of rights-based policies, as they are often created and enacted based on a narrow politics of inclusion that displaces trans people to a few separate and closed spaces, such as single-stall bathrooms, while maintaining the binary norm (Ingrey, 2018; Laidlaw, 2020). By virtue of the fact that rights-informed approaches fail to offer equitable access to gender-neutral bathroom options, 2STNBGN people who use gender-neutral washrooms continue to be disadvantaged relative to their cisgender counterparts.

Identity Documents

2STNBGN people living in Canada have the legal right to change their legal names and gender markers to reflect their current lived identities. Gender markers may be changed to display the options of 'M', 'F', 'X', or 'undisclosed', regardless of surgical status. However, the availability of these options is inconsistent across federal, provincial, territorial jurisdictions and different governmental institutions. In some cases, amendments to policies and legislation that governs IDs to include additional gender options were introduced in response to human rights complaints launched by trans and non-binary people who successfully argued that the binary options, of 'M' and 'F', failed to include and represent the breadth of gender diversity (e.g. *Center for Gender Advocacy v Attorney General of Québec*, 2021 QCCS 191; *TA v Manitoba (Justice)*, 2019 MBHR 12). However, the significant barriers associated with changing gender markers should be acknowledged.

Although gender options on IDs have been expanded in attempts to better represent trans and non-binary people, critics suggest that the 'X' marker pigeonholes gender diverse people into a singular and fixed identity (Ashley, 2021; Gender-Free ID Coalition, 2018). In other words, the 'X' exists as a catch-all category which does not reflect the complexity of gender, and which many experience as fluid and non-categorizable. Moreover, the 'X' marker is critiqued for perpetuating the cisnormative, fallible, and highly subjective practice of assigning sex at birth (Ashley, 2021; Gender-Free ID Coalition, 2018). Put differently, providing the opportunity to change one's gender designation does not remedy the problematic nature of assigning gender on birth certificates in the first place – the very practice that is at the root of trans erasure and oppression. Furthermore, providing the option to change gender markers on IDs does not remedy the barriers involved in this process. For example, there are financial barriers that deter low-income individual from applying for new birth certificates, as well as age restrictions (age of majority) that negatively impact trans youth, particularly those with unsupportive parents or guardians (Starks, 2018). This is further complicated for trans and gender non-conforming refugees and migrants who may be unaware of their right to change their legal names and genders, may experience difficulty navigating this legal process, and may experience cost as a barrier (Jacob, 2020; Smith, Rehaag, and Farrow, 2021).

Courts have heard cases involving trans youth requesting waivers of the parental consent requirement, and have succeeded where the individual can demonstrate that their parents do not meet the legal definition of 'lawful custody', such as in cases where the youth live independently from their parents (Singer, 2020). At issue is the way in which the legal identity (name and gender) of trans youth remain determinative by parental consent, given the prevalence of transphobia and familial rejection experienced by this group (Abramovich, 2016), and prompting an influx of legal challenges to simply secure their legal recognition (Singer, 2020). Additionally, legal processes are often difficult to navigate for trans refugees and migrants, who often have few resources, experience language barriers, and are unfamiliar with the specific legal processes (Smith, Rehaag, and Farrow, 2021). Having to navigate the legal process to change their name and gender compounds with the legal issues involved in making a refugee or immigration claim. Legal aid is therefore necessary for those who are refugees and migrants, although it is not widely available (Smith, Rehaag, and Farrow, 2021). While the option to change one's gender marker exists for some, there are additional barriers to doing so that require additional legal services, and in the case of refugee claimants, it is not possible.

Finally, critics of the ID reforms anticipate that the use of the 'X' marker will increase visibility among trans and non-binary people in a manner that enhances their vulnerability to discrimination and violence (Gender-Free ID Coalition, 2018; Starks, 2018). It is commonly argued that displaying the 'X' marker on government-issued IDs, used to secure housing, employment, and access other public services, will 'out' individuals as trans or non-binary and therefore enhance issues of discrimination noted above. Another issue arises with respect to travelling with the 'X' marker, and particularly when travelling to countries where being an 2SLGBTQIA+ person is illegal. Passport Canada issued a statement of caution to those who amend their passports to an 'X' to ensure that their agency is not liable if damages occur as a result of their identification.

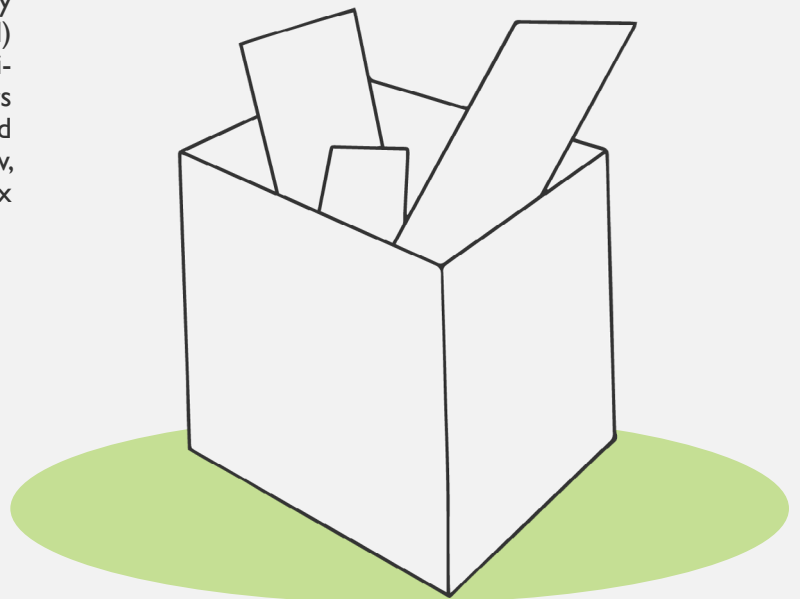
Many agree that the expansionary approach to gender markers will not remedy, but only reify, discrimination against trans and non-binary people (Ashley, 2021; The Gender-Free ID Coalition, 2018; Starks, 2018). These critics suggest that gender markers should be removed from all government-issued IDs so that gender is no longer used as a means of classification, identification, and surveillance. At the same time, it should be acknowledged that the position to abolish gender markers is not universally held among all 2STNBGN people. Rather, some may wish to maintain gender markers on IDs, for the purposes of recognition and enhancing access to gender-segregated services, such as women's shelters (Starks, 2018). In light of the competing desires, Starks (2018) concludes that it is important that government institutions offer multiple gender options on IDs that also includes the option to not disclose.

Factors Contributing to Criminalization

A national US study surveying 27,715 trans people across all 50 states in 2015 found that 40% of trans people have interacted with police, and 2% had been arrested, within the past year alone (James et al. 2016). Currently, no such data regarding trans people's rates of police interactions or criminalization exists in Canada.

One of the most commonly cited ways that trans people become criminalized is through their involvement in the sex industry (Namaste, 2005; Butler Burke, 2018; Laidlaw, 2018). A 2012 study conducted by Trans PULSE estimated that 14% of trans people in Ontario have done sex work, and that 3% were, at the time, working in the sex industry (Bauer et al., 2012). The more recent Trans PULSE Canada research results found that 4.8% of respondents were sex workers (Arps et al., 2021). There are various Criminal Code provisions governing the sex industry, including prohibitions on the purchase of sexual services (s. 286.1), obtaining a material benefit from sex work (s. 286.2), procurement (s. 286.3), and third-party advertising (s. 286.4). Additionally, sex workers can be criminalized under the provisions that pertain to stopping or impeding traffic for the purposes of providing or obtaining sexual services (s. 213(1)(a)(b)) and communicating for the purposes of providing sexual services "in a public place, or in any place open to public view, that is or is next to a school ground, playground or daycare centre" (s. 213(1.1)). The prohibition of sex work has proven to be harmful towards sex workers, who call for the full decriminalization of the industry to best protect sex workers and to respect their agency (Bruckert and Chabot, 2010; Canada (Attorney General) v Bedford, 2013 SCC 72). However, the current prohibitions on sex work make trans people who are sex workers vulnerable to police surveillance, harassment, violence, and criminalization (Namaste, 2005; Butler Burke, 2018; Laidlaw, 2018). The negative effects of criminalizing aspects of sex work will be unpacked more thoroughly below.

The criminalization of trans people must be put in the context of overwhelming rates of poverty, un(der)employment and employment discrimination (Bauer et al., 2011; Devor and Strudwick, 2020; Irving, 2015; Waite, 2021), homelessness and lack of affordable housing (Abramovich, 2016; Devor and Strudwick, 2020; Kattari et al., 2016; Lyons et al., 2016), drug use and addictions (Lyons et al., 2015; Scheim, Bauer, and Shokoohi, 2017), and mental health concerns, often arising from histories of discrimination and violence (Bauer et al., 2013; Bauer et al., 2015; Scanlon et al., 2010; Veale et al., 2015). All factors are known to increase vulnerability to criminalization by virtue of the fact that the state's common response to social, economic, and racial issues is criminalization and imprisonment as opposed to providing the necessary resources to address the root of these injustices (Davis and Mendieta, 2005). This has a particularly negative affect on Indigenous Two-Spirit, trans, and non-binary people, to whom issues of poverty, mental health issues, HIV, and other social and health issues are exacerbated due to the social, economic and political disempowerment of Indigenous peoples through colonialism (Taylor, 2009; Trans PULSE Canada Team, 2020). In addition, their interactions with the criminal legal system (James et al., 2016) is inseparable from the systemic anti-Indigenous racism embedded in the institutions of policing, courts, and prisons (Monchalin, 2016; Nichols, 2014; Palmater, 2020).



Systemic Discrimination and the Criminal Legal System

Discrimination and the Law

The governance of queer sex has been enacted through laws prohibiting ‘gross indecency’ and ‘buggery’ laws (later renamed as ‘anal intercourse’), the Royal Canadian Mounted Police (RCMP) surveillance of queers and their purge from public services between the 1950s and 1990s (Kinsman and Gentile, 2010), the persistent police raids of queer spaces and bathhouses that lead to mass arrests (Hoopers, 2018) and the criminalization and regulation of queer sex in public places (Walby, 2009). In addition, laws and penal practices had explicitly transphobic effects, including the legal prohibition of “cross-dressing” (otherwise known as the “three articles of clothing” rule) and the removal of healthy organs and tissue in the 1960s/70s which effectively outlawed gender affirming surgeries (alternatively referred to as “sex reassignment surgery”) (Butler Burke and Namaste, 2014). While overt discrimination within the law is now relatively rare, the enforcement of certain laws and widespread issues in the criminal legal system may be understood as having the effect of systemic discrimination. This includes laws regulating HIV non-disclosure and those governing the sex industry.

While Canada has no criminal laws directly regulating HIV non-disclosure, Supreme Court of Canada (SCC) rulings have established that individuals with HIV who engage in sex acts that carry “a reasonable possibility of HIV transmission” could be charged with aggravated sexual assault or other crimes (Canadian HIV/AIDS Legal Network, 2019). The specifics of these decisions have been widely criticized by activists and scientists for not following scientific evidence about HIV and transmission (Canadian HIV/AIDS Legal Network, 2019). HIV non-disclosure laws are still evolving, largely thanks to community advocacy from organizations such as the Canadian Coalition to Reform HIV Criminalization (CCRHC), and laws vary between provinces and territories (Canadian HIV/AIDS Legal Network, 2019). An example of this advocacy is the 2022 Change the Code community consensus statement from the CCRHC, which calls for the removal of non-disclosure from sexual assault laws, reforms to ensure that the Criminal Code is not used to discriminate against people with HIV, the end of the deportation of non-citizens who are convicted, and a review of all past convictions (Canadian Coalition to Reform HIV Criminalization, 2022).

EGALE (2017) has condemned the Canadian government for having the highest rates of HIV non-disclosure prosecutions under the sexual assault provisions of the Criminal Code. The enforcement of HIV non-disclosure laws has been critiqued for its disproportionate effect on 2SLGBTQIA+ people (EGALE, 2017; Knight et al., 2018), especially those who are BIPOC and who work in the sex industry (Bauer et al., 2012; Longman Marcellin, Bauer, and Scheim, 2013; Taylor, 2009).

The stigma and threat of criminalization deters testing for HIV and therefore impedes access to essential healthcare for those who are unaware of their positive status (Canadian HIV/AIDS Legal Network, 2009). A recent qualitative study involving 76 trans women living with and/or affected by HIV in five urban centres across Canada revealed the need for trans-competent health care, for integrated health care that addresses intersecting issues of HIV and trans health, and for more expansive and culturally competent community-based social services (Everhart et al., 2022).

Laws governing sex work also have a disproportionately negative effect on 2STNBGN people who are BIPOC, refugees and migrants, houseless and/or street-involved, and youth. The criminalization of sex work, or aspects thereof, fosters an environment of police surveillance, profiling, detention, harassment, and violence against 2STNBGN people, and in particular trans women of colour, and in which charges for petty offences may be threatened or enacted as a tool or method of punishment and deterrence (James et al. 2016; Woods et al., 2013).

Studies have documented how trans women of colour are subject to an intensified degree of police profiling in public places under the presumption that they are sex workers, based purely on stereotypes (James et al., 2016; Woods et al., 2013). This type of profiling is conventionally known as ‘walking while trans’ and is motivated through anti-trans stereotypes and compounded by systemic anti-Black racial profiling at the hands of police (Carpenter and Marshall, 2017; Easterbrook-Smith, 2020; Edelman, 2014).

Furthermore, sex work legislation disproportionately impacts trans and gender non-conforming migrants who may find the sex industry a more viable source of income than mainstream employment (Butler Burke, 2016, 2018), especially in light of the intersecting issues of transphobia, racism, and xenophobia noted above (Jacob, 2020). These individuals are not only vulnerable to criminalization, but are also at risk of deportation and being denied citizenship as a result of criminal charges (Butler Burke, 2016, 2018).

Studies also note that the criminalization of sex work negatively impacts trans youth, who overwhelmingly report familial conflict and rejection due to transphobia in the home (Abramovich, 2016) and who are therefore vulnerable to houselessness and are more likely to engage in the sex industry as a form of resourcefulness to meet basic needs (Coronel-Villalobos and Saewyc, 2019; Greenfield et al. 2021). Of the 656 respondents to the 2014 Canadian Trans Youth Health Survey, 1-in-10 disclosed they had engaged in sex work, with greater rates of participation among BIPOC participants and those assigned female at birth (Coronel-Villalobos and Saewyc, 2019).

In addition, criminal law also prevents trans sex workers from seeking state protection following victimization (Laidlaw, 2018; Lyons et al., 2017). The violence experienced by trans people who sell sex is a manifestation of the intersecting transphobia and stigma surrounding the sale of sexual services (Laidlaw, 2018). However, the illegality of the industry directly impedes sex workers' ability and willingness to seek legal redress through formal legal institutions, and simultaneously informs law enforcement's failure to respond to violence against sex workers (Bruckert and Chabot, 2010). In light of the multitude of ways that the law can both enable and enact harm, as well as impede upon access to legal redress, the decriminalization of the sex industry should be understood as a mode of harm reduction (van der Meulen, 2011; Comte, 2014; Jeffrey, 2005).

Discrimination and Imprisonment

Currently, there are no official statistics regarding rates of incarceration among 2STNBGN people in Canada. In the US, 19.3% of trans women who took part in the National Transgender Discrimination Survey had been incarcerated in their lifetimes, with greater rates reported among trans women of colour (41.6%) (Reisner, Bailey, and Sevelius, 2014). The majority of the research exploring trans people's experiences of imprisonment likewise derives from the US and has focused exclusively on trans women. Studies demonstrate that trans women are predominantly confined in men's prisons, are subject to transphobic discrimination and violence at the hands of staff and other prisoners, and are denied the means to express their genders and consistent access to the means of medical transition (i.e. hormones, gender-affirming surgeries) (Arkles, 2012; Bassichis, 2007; Rosenberg and Oswin, 2015; Stanley and Smith, 2011; Sumner and Jenness, 2014; Vitulli, 2014). In the context of vulnerability to physical and sexual assault, trans women are often subject to lengthy periods of segregation (in so-called "protective custody") and may be victim-blamed for experiences of violence (Arkles, 2012; Bassichis, 2007; Rosenberg and Oswin, 2015; Stanley and Smith, 2011; Sumner and Jenness, 2014; Vitulli, 2014). At the same time, it is important to distinguish the Canadian context from that of the US, considering the recent implementation of trans prisoner policies in Canadian prisons, specifically in the federal system and provincial systems in Ontario, British Columbia, and Yukon.

In December of 2017, Correctional Service Canada (CSC) introduced Interim Policy Bulletin no. 584 (gender identity or expression), which replaced their previous policy on 'Gender Dysphoria' that was premised on a medical model of trans identity. CSC implemented an individual protocol to provide gender-appropriate accommodations to 2STNBGN people in the realm of prison placement, health care, searches and urinalysis, heightened privacy measures, and means to express gender, which mirrored the policies previously introduced in Ontario and BC in 2015 and Yukon in 2016. However, these rights are conditional, and may be overridden if there are identified 'health' and 'safety' issues that cannot be resolved.

Hébert's (2019, 2020) research into the federal reforms revealed the uneven application of trans rights under the individual protocols due to the discretionary nature of the policy. Studies have documented how prison administration and staff reproduce transphobic tropes of trans women as a risk to cis women (e.g. threat of sexual violence, or pregnancy) and to institutional security (e.g. risk of escape) in order to maintain and justify their incarceration in men's institutions (Smith, 2014; Hébert, 2019, 2020; Ricciardelli, Phoenix, and Gacek, 2020). Ricciardelli, Phoenix, and Gacek (2020) attribute the denials under CSC's trans rights-informed policy to essentialist understanding of gender as biological among prison staff, resulting in requests for gender-based accommodation being met with suspicion and distrust.

Violence and the Barriers to Accessing Justice

Studies have documented trans people's heightened vulnerability to emotional, physical, and sexual violence. Violence against trans people is a prevalent issue in intimate partner relationships in particular (Guadalupe-Diaz and Jansinski, 2017). This is a notable issue among those who are Indigenous due to histories of intergenerational trauma, dislocation, and isolation arising from colonization (Ristock et al., 2019). In addition to intimate partner violence, trans people are at risk of all forms of violence in the public sphere. For example, the 2018 Survey of Safety in Public and Private Spaces (SSPPS) indicated that trans Canadians are more likely, when compared to their cisgender counterparts, to experience physical and sexual violence since age 15 (58.9%), to experience unwanted sexual behaviours in public spaces within the past year (57.6%), and to experience discriminatory comments and other inappropriate behaviour in the workplace within the past year (69.4%) (Jaffray, 2018). Emotional, physical, and sexual violence is exacerbated among Indigenous Two-Spirit and trans people (Taylor, 2009) as well as trans people of colour (Chih et al., 2020). Since violence is often a manifestation, or compounding factor, of gender-based discrimination, it is important to acknowledge such acts as being motivated by hate.

In 2017, with the passing of Bill C-16, 'gender identity' and 'gender expression' were added as protected grounds to the hate crime provisions of the Criminal Code (ss. 318(1), 319(1), 319(2), and 431(4.1)) and allowed for increased penalties when a criminal offence is determined to be motivated by bias, prejudice, or hatred on these bases (s. 718.2(a)(i)). Prior to this amendment, anti-2STNBGN hate crimes may not have been accurately recorded under these provisions. For example, between 2013-15, Statistics Canada communicated that only nine hate crimes based on gender identity/expression were reported to police (Leber, 2017). Further, there are concerns with the narrow legal definition and interpretation of hate crime given how they often occur in subtle and covert ways (Angeles and Robertson, 2020).

Inaccurate recording procedures, coupled with high rates of un(der)reporting victimization to law enforcement generally (Dauvergne and Brennan, 2011), results in inaccurate governmental statistics of hate-motivated violence. Indeed, results from the 2019 Trans PULSE Canada research project indicated that most incidents of hate-motivated physical and sexual violence among trans and non-binary people went unreported to police, and of those that were reported, only 1-in-20 were recorded as a hate crime (Chih et al., 2020).

Independent and community-based research may paint a more accurate portrait of rates of victimization among 2STNBGN people in Canada (Angeles and Robertson, 2020; Chih et al., 2020). In 2016, the National Coalition of Anti-Violence Programs (NCAVP) compiled 1,036 incidents of anti-LGBTQ+ hate-motivated violence from various anti-violence groups across the United States (Waters, 2017). The NCAVP reported that 32% of all hate-motivated violence against LGBTQ+ people were directed at the trans community, and 21% of all anti-trans violence occurring against trans women specifically (Waters, 2017).

Contributing to the difficulties involved in compiling an accurate statistical profile of anti-2STNBGN violence is the underreporting of instances of violence to police, arising from communities' distrust of police and prior negative interactions with this institution (Testa et al, 2012; Miles-Johnson, 2013). While prior negative experiences with law enforcement, or general fear of discrimination and violence at the hands of police, are often offered as rationale for choosing not to report victimization to police, this reluctance to pursuing justice through formal legal avenues is also situated within the broader critiques of the criminal legal system (Carpenter and Marshall, 2017; Miles-Johnson, 2013).

Distrust of Police and the Criminal Legal System

It is well documented that trans and non-binary people, and particularly those who are BIPOC, are often reluctant to report violence, hate crimes, and other forms of victimization to police (Angeles and Robertson, 2020; Chih et al., 2020; Guadalupe-Diaz and Jasinski, 2017). In fact, one-third of trans and non-binary people of colour surveyed as part of the 2019 Trans PULSE Canada project research indicated that they avoided calling emergency police services in the past 5 years due to a fear of police (Chih et al., 2020). This fear is also magnified among those who are newcomers and migrants (Navarro et al., 2021) and those working in the sex industry due to fears of both criminalization and police violence (Laidlaw, 2018; Lyons et al., 2017). General reluctance is attributed to the fear and distrust of law enforcement, previous unsafe and traumatizing interactions with police officers, and unresponsiveness of law enforcement to previous reports (Angeles and Robertson, 2020; Chih et al., 2020).

Large-scale studies have documented the effects of systemic discrimination against trans and non-binary people in the institution of policing (Chih et al., 2020; James et al., 2016). A US national study found that over half (58%) of trans people who had interacted with police, and whose minority gender statuses was known or assumed, reported some form of mistreatment, including emotional, physical, and sexual violence, within the last year alone (James et al., 2016). Additionally, systemic racism and transphobia within the institution of policing intersect, rendering Indigenous (74%), Latinx (66%), and Black (61%) trans people more likely to report violence and mistreatment at the hands of police compared to white participants (55%) (James et al., 2016). Finally, studies indicate how BIPOC trans people are seldom viewed as victims in the eyes of legal actors, but are more commonly constructed as the aggressor or perpetrator in cases of victimization (Buist and Stone, 2014; Fields, 2021). Assumptions of criminality that are steeped in racism and transphobia have resulted in BIPOC trans people being criminalized for victimization and for acting in self-defence (Buist and Stone, 2014; Fields, 2021). Fears of being criminalized while seeking legal redress exist as yet another barrier to accessing formal channels to pursue justice within the criminal legal system.

The distrust of police that is strongly held among BIPOC, migrant, and sex working 2STNBGN people may be understood within critiques of the institution of policing, as well as broader critiques of the criminal legal system itself. Critiques of police as an oppressive and violent institution have always been mobilized by those that this system most affects. For example, contemporary calls to defund the police and to abolish prisons may be understood within Black radical tradition, considering how these institutions are a primary source of anti-Black subjugation, discrimination, and violence, and stand in the way of Black liberation (Davis, 2003; Maynard, 2020). Similar arguments for police and prison abolition have been advanced among trans people due to how police and prisons contribute to gender policing and anti-trans discrimination and violence, as noted above, and it is therefore argued that the liberation of trans people is dependent on abolishing these and other forms of gendered state violence (Spade, 2015; Stanley, 2014). Taken together, the distrust of police may not simply be considered a barrier to accessing justice. Rather, the very institution of policing, and the broader criminal legal system, may stand in opposition to more transformative visions of justice held among 2STNBGN people who are most susceptible to engaging with this system by virtue of both criminalization and victimization.

Methodology

Introduction: t4t

The research methods for this community-based project included an online survey consisting of qualitative and quantitative questions, and a series of 11 focus groups and 17 interviews with participants from across Canada recruited from amongst survey participants. This mixed method approach provides insight into the frequency of legal issues facing 2STNBGN people across Canada, as well as specifics about what those legal issues look like, and how they are navigated. The main objective of the research was to create a trans-Canadian access to justice needs assessment for 2STNBGN people.

Central to this work is a t4t or trans-for-trans methodology. The category, or notion of t4t emerged through Craigslist's online personals where trans people seeking to connect with other trans people would add "t4t" to their Craigslist posts. While the t in t4t was used to separate trans people from cisgender men and women, it also created a space with the potential to exist outside the constraints of cis- and heteronormative logics and expectations (Malatino, 2019). The research team sought to create such a space in this research through a careful and considered approach to research design, facilitation, analysis and knowledge translation activities.



By grounding this work in an ethics of t4t, and specifically in t4t care, the research team was able to provide greater space and safety for 2STNBGN individuals to express the full complexities of their realities. This greater space and safety was only possible through this ethos of trans care, “manifested through practice—action, labor, work—it is integral to our way of doing” (Malatino 2020, 41). In this way, a central question in the development of this project’s methodology has been: what additional action, labour, and work is required to create an environment in which 2STNBGN people can speak their truth outside the constraints of the dominant cis- and heteronormative society?

Focus groups were designed to have a 2STNBGN support worker in another room, ready to provide support to any participant that requested it. Support workers would also stay at the focus group for an hour after it finished to provide support. The conversations with the support person were not recorded nor used as part of the research. Researchers who conducted interviews were trained in Mental Health First Aid and suicide intervention that was tailored to the needs of 2STNBGN people. Interviews and focus groups were created as a space of connection as well as information and knowledge sharing. Participants were offered opportunities for collaboration in the research as well, being given opportunities to review and change their transcripts and review and offer feedback on the report before publication.

The research team worked to protect participants’ identities so that they could share any information, including illegal or criminalized acts. Participants were asked to update their names on Zoom with a pseudonym before joining a focus group or interview. The research team would ensure that participants in focus groups were using pseudonyms by allowing each participant into the zoom room one at a time and walking them through how to change their zoom names before beginning the focus group with everyone. Participants were also allowed to leave their cameras off in order to increase anonymity if they desired. The research team also developed a confidentiality framework that ensured that participants would not be reported to authorities for anything they shared, and their information would be protected in the (unlikely) incidence of a subpoena. For people under 18, the research team developed a harm reduction framework in the case that the team was legally obligated to report an instance of child abuse to the authorities (in the end, no reports had to be made). Increasing the ability of participants to be anonymous and strengthening our confidentiality framework to ensure participants knew that what they shared would not be reported to any authorities, allowed participants to talk about a range of topics, including experiences with illegal or criminalized acts.

Research Design and Ethics

While developing the ethics application for this project, JusticeTrans assembled a Community Research Council (CRC) comprised of 5-8 2STNBGN individuals (the number varied throughout the project) representing researchers, activists, and community leaders recruited through the research team’s professional and academic networks prioritizing demographic and geographic diversity. Members of the CRC were given an opportunity to review the research design, including key research questions, research tools such as the informed consent document, survey and interview guides, and a high-level consultation plan. This process led to a significant redesign of the project’s survey and interview guide, in addition to greatly simplifying the language in the informed consent document.

The resulting survey collected demographic information and asked whether participants had experienced legal issues within any of 24 different categories. The survey provided specific examples of different legal issues and a comment box for participants to type in and provide further details if desired. The survey was accessible in French and English, as well as with a screen reader, and as a result of COVID-19, only available online. This limited the reach of the survey, and in particular, failed to reach participants in remote Northern communities. The survey was created based on the TRANSforming Justice survey, Canadian Legal Problems Survey, the Community Based Research Centre’s Justice Canada Sexual Minority Survey, and the Trans PULSE 2019/20 survey.

As an alternative to the online survey, participants were also offered the option to take a short questionnaire by phone to be considered for a focus group or interview. However, no one accessed this option. This was likely due to limited visibility of research posters offering this option in community spaces due to decreased use of these spaces because of COVID-19.

The follow-up interviews and focus groups were conducted over Zoom, with participants using a pseudonym and having the option of having their camera turned on or off. Participants could respond out loud or by typing in the chat. Participants were sent the informed consent form 24 hours before their interview or focus group. Prior to beginning the focus group or interview, the research facilitator(s) would go over the relevant details of the research and read through the informed consent form with the participant(s) before obtaining oral consent. The focus groups and interviews focused on how participants navigated (or avoided) the legal issues they had encountered during their lives, and what a more desirable or just system and world could look like.

Four of the eleven focus groups were co-hosted with other community-based organizations. An Indigenous-specific focus group was co-hosted with the Edmonton Two Spirit Society, a Black-specific focus group with the Black Queer Youth Collective, a focus group for other people of colour with Elevate Equity, and a focus group for migrants and refugees with Rainbow Refugee. These groups were co-hosted with community organizations that serve the communities that were the audience of the focus group, in order to better serve their interests. Members of these community organizations were trained in research facilitation prior to co-hosting the focus groups. These members lead the co-hosted focus groups and were able to reframe and change research questions to better reflect the needs of the communities they serve. Data-sharing agreements were created with these community organizations to provide them with access to the data, and to analyze and report on it in ways that serve their specific community needs.

As part of a commitment to returning the information we gathered to the people and communities who participated in our research, we asked participants what they would like to be done with the data and experiences collected as part of interviews and focus groups.

Recruitment

The data collection component of this research included two stages: (1) an online survey, and (2) a series of 11 focus groups and 17 interviews. The survey was available from September 1st to November 15, 2021. The number of interviews (17) and focus groups (11) was determined by the research team's capacity, and the short timeframe of the grant funding the project. Six of the focus groups represented geographic regions: BC, Alberta, Saskatchewan and Manitoba, Ontario, Québec, and the Maritimes. The limited number of survey participants from the North removed the possibility of a Northern focus group, and as a result the research team prioritized Northern participants for interviews. Five focus groups were with populations who have particular experiences accessing justice including: Black people, Indigenous people, racialized people, migrants and refugees, and youth. A total of 703 participants completed the survey and a total of 61 people were interviewed in either focus groups or one-on-one interviews.

The inclusion criteria for the survey included anyone living in Canada who is over the age of 12 and identifies as a sex/gender different than what they were assigned at birth. To recruit for the survey, JusticeTrans encouraged members of the CRC to share the call with their networks, and the research team developed a list of over 100 organizations across Canada that in some way serve 2STNBGN people, including organizations in every province and territory. JusticeTrans developed relationships with a total of 31 organizations across Canada who shared the call for participants through printed posters, social media posts, and emailing lists.

The research team tracked the geographic and demographic diversity of survey participants at regular intervals and prioritized developing partnerships with specific organizations representing identities, experiences, or regions that were lacking in survey participants.

As part of the survey, participants were asked if they would be interested in participating in a one-on-one interview and/or a focus group, for which they would be compensated \$50 for participating, if selected. The research team then selected participants for focus groups and interviews from this pool of interested participants prioritizing geographic and demographic diversity, along with the number and complexity of legal issues participants faced. The research team prioritized those with the highest number of legal issues, and within that group, those who described complex and intersecting legal issues, as well as unique legal issues such as immigration of refugee claims and criminal charges related to activism.

Accommodations

In order to make the study as accessible as possible to a wide range of participants, survey respondents who chose to participate further in the study through a focus group or an interview were asked what accommodations needed to be provided in order for them to participate. Options given included live closed captioning, frequent breaks, American Sign Language or Québec Sign Language, and access to an Elder, medicines, or other cultural-specific supports. Participants were also invited to share any other accommodations that would allow them to participate in the focus group or interview. Among 446 participants who requested a focus group or an interview, 133, or 30%, had accommodation requests. The most significant request was for live closed captioning, with 88 people or 20% of participants requesting captioning services. Frequent breaks were also often requested, with 52 people or 12% of participants requesting a break at some point in the interview or focus group process. Among people who specified when they would need a break, the average break interval was every 45 minutes. Other accommodations that were suggested and used by some participants included the ability to participate through the chat box instead of verbally, the ability to participate without a camera, general flexibility and understanding of potential changing schedules or needs, time to process questions or questions being given in advance, minimal background noise or other background sensory inputs, and content warnings for certain topics.

This data points to the importance of providing accommodations when organizing events. If these focus groups and interviews had been organized without taking into account accommodations, nearly a third of attendees would have been unable to fully participate.

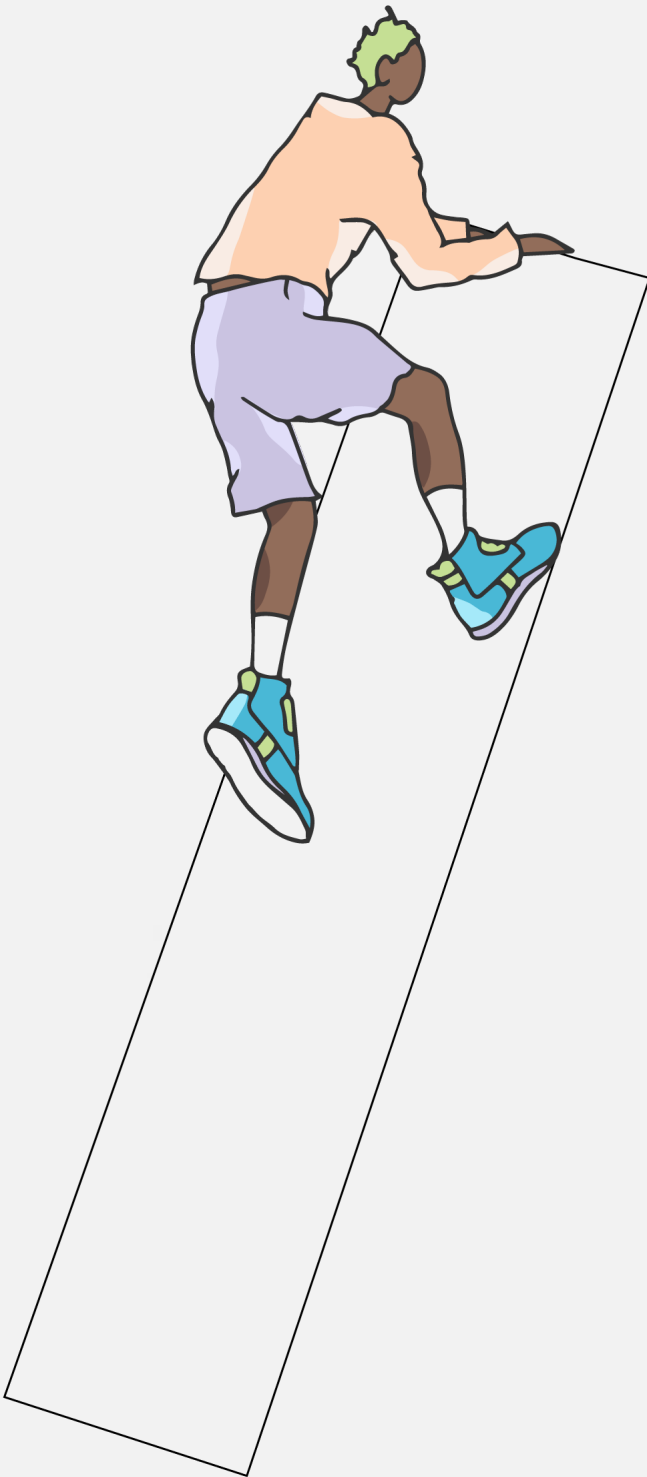
Live closed captioning and breaks every 45 minutes in particular should be built into programming without requiring participants to go through the extra labour of asking for these supports. Other supports should also be incorporated as much as possible, particularly given that many of the additional supports requested required nothing but some flexibility from organizers. In addition, supports should be clearly provided in event descriptions and promotional materials. This shows people with access needs that this event is open to them, increasing community buy-in.

Mixed Methods Approach and Coding

The research team analyzed the survey data using a mix of qualitative and quantitative methods. The quantitative data consisted of a set of demographic-related questions and a series of 24 questions querying whether or not the participant had experienced a particular category of legal issues. Using this information, the most common legal issues across Canada, and within each province or region being analyzed could be determined. The research team also analyzed the data to query common legal issues experienced by Black, Indigenous, and people of colour, migrants and refugees, youth, disabled people, and sex workers.

The survey's qualitative data consisted of a series of open "Comments" questions for each of the 24 legal issue categories. Some respondents used this comment box to list specific legal issues, while others elaborated through narrative responses. The research team used the software NVivo to code these responses, as well as the interview and focus group transcripts, to better understand the themes within the data using an open coding methodology. During this process the research team would meet weekly to discuss coding progress, new codes that were created, and insights or questions about particular survey, interview, or focus group responses.

After the research team coded the qualitative data, members of the CRC were provided with a code book, from which they selected 20 codes they believed were important, or of particular interest. The members of the CRC were also asked if there were any codes that were particularly surprising, or significant gaps in the codes that they noticed. The research team then selected a series of quotes based on the selected codes that described typical or unique situations to discuss with the CRC. Through this process the research team was able to better understand what community-based researchers and activists believed was important in the data and were able to focus and narrow the scope of the coding. Once coding was complete, the research team then revisited all codes, and combined or created new codes as needed to create a final codebook for analysis.



Conclusion: Challenges

The research team's commitment to and reliance upon 2STNBGN communities was both an asset, and at times, a challenge to the project. As part of a commitment to community driven research, partner organizations that were led and operated by communities the project hoped to conduct research with were sought out. While the team was broadly successful at connecting with many communities represented by priority populations, no successful partnerships were formed with HIV-based organizations or sex worker advocacy organizations. As a result, the project was unable to host focus groups with these priority populations. This project also recruited lower numbers than ideal for French-speaking participants and participants in Québec.

The team also failed to recruit significant numbers of respondents within the Yukon, the Northwest Territories, and Nunavut. While this project was able to connect with some community-based 2SLGBTQIA+ organizations in the North, they strongly recommended having paper versions of the survey and translating the survey into Inuinnaqtun and Inuktitut, as well as offering a phone-in option. While a phone-based recruitment questionnaire was implemented, it was not accessed, and the research team was unable to implement a paper-based and translated versions of the survey because of the limited time for the project. As a result of these gaps, along with decreased in-person programming because of COVID-19, this project largely failed to recruit respondents from the North, and was unable to host a Northern focus group, as had been intended. To compensate for this, the research team prioritized Northern respondents for interviews. Finally, due to provisions specific to Québec governing research with minors (article 21 of the Civil Code of Québec) and the lack of time to meet the requirements of this provisions once it was noticed, the team was unable to recruit minors from Québec for interviews and focus groups. Given the absence of risks associated with the survey, we were able to recruit minors in Québec for that portion of the project.

Aside from recruitment, there were also a few areas of data that, due to research design, the research team failed to collect. For example, interviews and focus groups did not ask specific questions about experiences in detention centres, prisons, and jail. While the research team interviewed people with these experiences, detailed data about these experiences was not gathered due to a lack of direct questions about incarceration. The survey also did not systematically track some important data that the research team would recommend tracking in follow-up research. This includes data regarding whether or not respondents had sought out legal counsel for their legal issues, respondents' income level, and if respondents were transphobia affected. This project did not get into specifics about how individuals experienced misogyny differently depending on their gender identity and expression, and future research could examine this topic more. The research team recommends taking these gaps into consideration when reading the results.

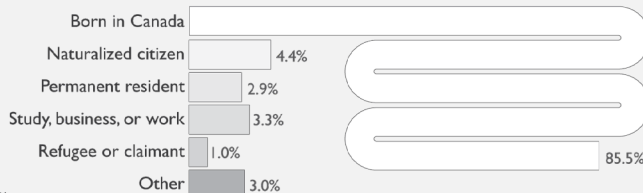
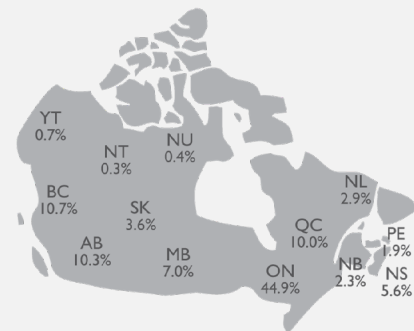
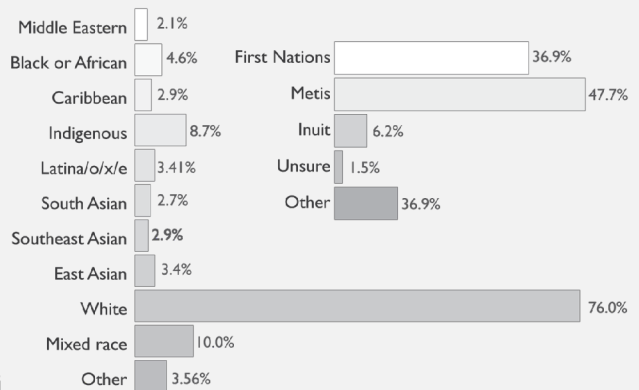
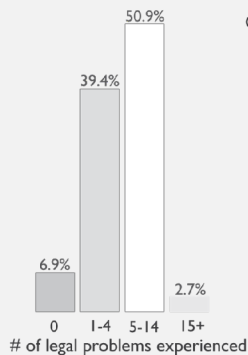
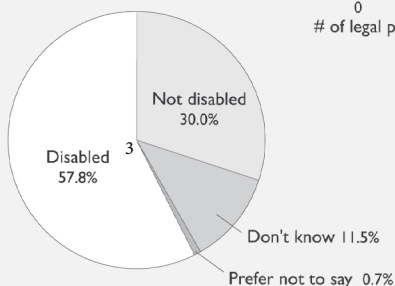
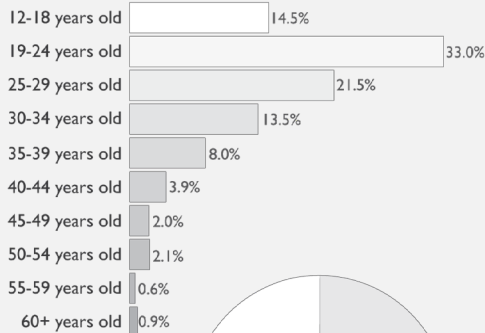
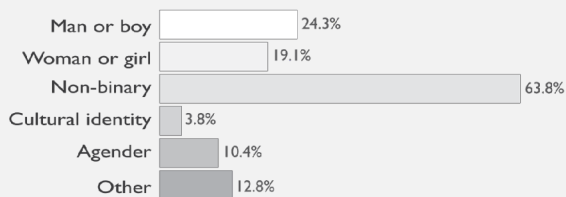
Results


These statistics represent the demographics of the Two Spirit, trans, non-binary and gender nonconforming (2STNBGN) survey respondents from across Canada who fully completed the survey (n=703). The demographic questions pertaining to Racial and Ethnic Identity, and Gender were structured as “Select all that apply” questions. The survey was designed this way in order to provide participants with more flexibility in the ways they could identify themselves in terms of race and gender, because for many, these identities can feel fluid and/or complex. As a result, the total percentage for Racial and Ethnic Identity and Gender exceeds 100%.

In these categories, participants were also invited to include identities other than those listed through a text field next to the “other” option, and many chose to do so in order to provide an accurate depiction of their identity. Some “other” options that participants chose to include that were not included in the survey itself are Settler, Mennonite, Jewish, and specific countries of origin, for racial and ethnic identities, and trans masculine or trans feminine, just trans, genderfluid, or queer, for gender identities. Demographic data was collected in this way in order to minimize the microaggressions many Black, Indigenous, and racialized people as well as 2STNBGN people experience when presented with survey questions regarding race and gender. The survey included a total of 241 unique respondents who were Black, Indigenous, or otherwise racialized (34.28%).

Survey Demographics

2STNBGN Perspectives on Access to Justice



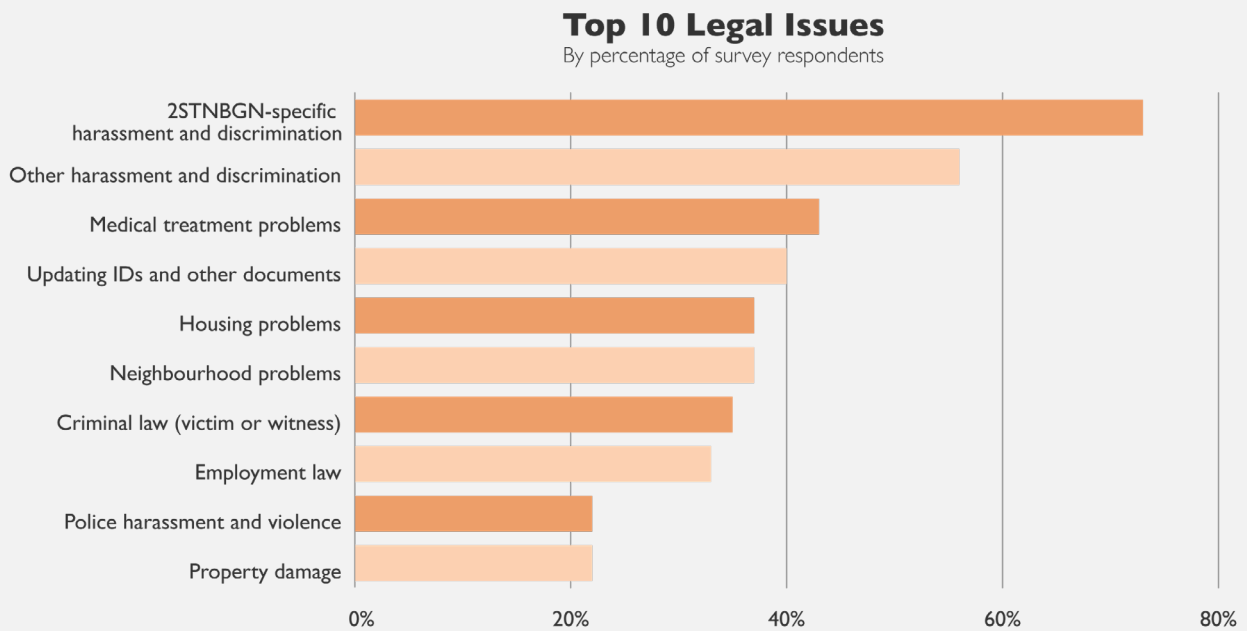


Most Common Legal Issues

This research identified the most common legal issues faced by 2STNBGN people living in Canada through the results of a survey, and supported with qualitative data from focus groups, and interviews. **Legal issues were defined broadly, as any issue that brought or ever could bring someone into contact with the legal systems, including lawyers, police, courts, tribunals, child protective services, and so on.** Participants were told that whether or not the issue brought them into contact with the legal system, if it could have, then it was considered a legal issue. A broad definition of legal issues was used to get a sense of the legal issues that 2STNBGN people are facing regardless of whether or not these issues resulted in formal interactions with the legal system. The research team opted to engage this broad definition of legal issues rather than a more typical framework of engaging only justiciable legal issues.

There was no timeframe for the survey questions so participants could talk about legal issues they had experienced at any point in their life. A broad timeframe was used in order to get a sense of both the history and present state of 2STNBGN legal issues.

The most common legal issues experienced across all survey respondents were: 2STNBGN-Specific Harassment and Discrimination (72%), Other Harassment and Discrimination (56%), Medical Treatment Issues (43%), Updating ID's and Other Documents (40%), Housing Issues (37%), and Neighbourhood Issues (37%).



The next subsections will look at the qualitative and quantitative data on these common legal issues, drawing on survey data, interviews, and focus groups to better understand how these legal issues are impacting 2STNBGN people and the barriers 2STNBGN people face in accessing justice.

Discrimination and Harassment

Approximately three-quarters (73%) of respondents reported experiencing Two Spirit, trans, non-binary and gender nonconforming (2STNBGN)-specific harassment and discrimination in their lifetime. Over half (56%) of survey respondents reported experiencing harassment and discrimination due to something other than them being 2STNBGN. It was common for participants (50%) to report having experienced 2STNBGN-specific and at least one other form of discrimination and harassment. One-fifth of respondents (19%) only reported 2STNBGN-specific discrimination, and only a small portion (4%) had only experienced discrimination due to other aspects of their identity.

2STNBGN-specific discrimination was defined as discrimination because of one's actual or perceived gender identity or gender expression. The survey identified other discrimination as including discrimination because of one's actual or perceived race, country of origin, Indigeneity, sexual orientation, Disability, age, religion, HIV status, criminal record, immigration status, or type of employment (e.g. sex work). Participants also identified fatphobia as a significant type of discrimination that the survey did not name. This finding invited the research to move beyond the legal parameters of discrimination and harassment as defined by human rights legislation, which fails to include body weight or size as legitimate grounds protected by law and prevents individuals from seeking legal remedies pertaining to fatphobia. Critically, many of the discussed experiences of fatphobia were specifically related to medicalized fatphobia and an inability to access care:

I can't access medical care around this serious health concern because of the Medicalized Fatphobia and gender-based violence that I consistently experience in healthcare settings.



Participants in the survey, focus groups, and interviews talked about experiencing discrimination and harassment in a range of public and private spaces, including in schools, online, on the streets, at work, and in gendered facilities, such as bathrooms and change rooms. Respondents identified a range of actors as the perpetrators of discrimination and harassment, including their peers, parents and family members, physicians and other healthcare providers, landlords, employers and coworkers, police and other figures of state authority, as well as unknown people on the street or in public spaces.

2STNBGN discrimination and harassment took many forms, including misgendering, bullying, name calling, slurs, and other verbal abuse both in person and online; gender policing and inability to access binary facilities (e.g. washrooms, change rooms, spas, public pools, and fitness facilities); unwanted touching and sexual comments; and threats and substantiated experiences of physical and sexual violence. Many experienced multiple forms of discrimination and harassment, often emerging alongside the threat of or substantiated acts of violence.

“I have faced [discrimination and harassment] a lot of my life, from being harassed in public, attacked and threatened with rape, touched without my consent, to being kicked out from my mom’s house.”

“I’ve been physically assaulted while walking down the street. Someone picked me up and slammed me against a stone wall because I’m trans. I’ve had guys in a van repeatedly target me try to run me over and yell hate at me because I’m trans, calling me a whore slut because I’m trans. I’ve had a knife pulled on me on a public transit bus because I’m trans. I’ve had an optical store physically throw me out of store because I’m trans.”

Participants shared that they were denied jobs, housing, competent healthcare, and access to safe and loving communities due to their gender identity and/or gender expression. This resulted in housing insecurity, poverty and debt, and health issues, including mental health issues.

“I had worked at an establishment for 5 years without [ever receiving] a verbal or written warning. Yet when I came out as gender fluid (before I realized I was trans) I was served a final warning out of nowhere for “poor attitude.” A few months later when I finally came out and told them I was going to start medically transitioning the next month, they fired me the very next day, stating that my attitude hadn’t improved even though I was the happiest I had been at that job in years.”

“Was sexually assaulted because I am intersex and out about it. Jurisdictional issues were utilized so no charges were laid. The assault led to me being HIV+ which led to me being prevented from working in the back kitchen at a job. My finances declined and I fell into debt.”

Many participants also experienced binary gendered facilities as a form of discrimination because it denied them an affirming and safe space in which to use the washroom or get changed. These sites were often the cause of microaggressions and violence, and fostered fear among participants.

“As a nonbinary person living in Québec, I lack the ability to access the vast majority of public pools, fitness facilities and spas (binary change rooms only), public bathrooms, and to register for many courses/educational programs without being misgendered... Because I look androgynous people sometimes try to prevent me from entering bathrooms or changerooms.”

“It’s better now that I’ve been on T for 6 years... but I am still scared something will happen every time I walk into the men’s room. No one deserves to be afraid when they’re going to the bathroom.”

[Translate from French] “Absence of non-gender specific toilets in many places (school, public market, work, library, etc.). Discrimination experienced, entrance blocked and comments received when using the “men’s” room.”

In addition to discrimination that was motivated on the bases of gender identity and/or gender expression, many participants experienced other forms of discrimination, including but not limited to ableism, ageism, classism, heterosexism, racism, and xenophobia. For example, participants spoke a lot about how experiences of racism intersected with their other identities and experiences, emphasizing the importance of Crenshaw's work on intersectionality in the law (1989, 1991).

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As a person of colour who is perceived as a woman, doctors visits are a nightmare because they simply don't believe my experiences of neurodivergence and disability.

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“Had multiple jobs hire me because my name is Western and white sounding and when I got to the interview they straight up said, ‘Oh we were expecting someone different’ because I am not white and I’m brownskin.”

“I’ve had numerous sexual harassments where the police were called and they just did not believe me or do further investigation. I thought it was because the cops aren’t good at their job (which is true) but also made me realize they only help their white counterpart women over racialized marginalized women.”

Participants who identified as disabled reported increased rates of discrimination and violence, particularly for disabled Indigenous, Black, and racialized participants. Many shared stories of being discriminated against because of their disabilities both by individuals and by institutions.

“Have been given terrible treatment by many institutions because of my disabilities if I tell them I’m Indigenous.”

In many cases, participants indicated that the discrimination and harassment they experienced for being a 2STNBGN person was inseparable from other forms of discrimination and harassment they experienced. In other words, participants often acknowledged the intersecting factors of identity which conditioned both their experiences of privilege and oppression.

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I think [my legal issues] were connected, the specific intersection that I exist in, as a BIPOC, as a queer person, as an Asian woman-presenting person, as someone with mental health issues - these oppressions all inform each other.

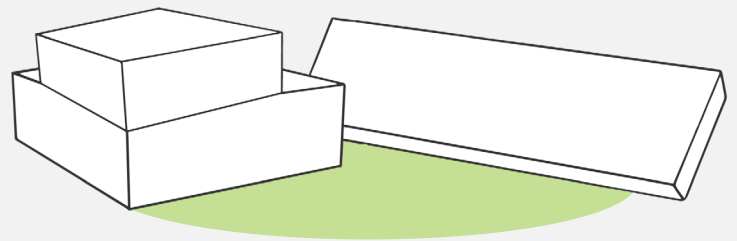
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Another participant revealed how racism and xenophobia shaped and intersected with their experiences of transphobia.

“Getting told to go back to my country slowly became part of other arguments like when I’d tell people off for asking if I have a penis or asking if I was a girl.”

In many cases, participants were uncertain if and how their experiences were related to these intersecting factors. Participants not only spoke to the perceived difficulties of ‘proving’ discrimination and harassment, but also the difficulty of identifying the exact motives of perpetrators.

“There’s no way for me to know if some of the homophobia, transphobia or misogyny I’ve experienced is connected to the racism I’ve experienced, however I believe people try to regulate the gendered and sexual expression of Black and other-wise racialized people more intensely.”

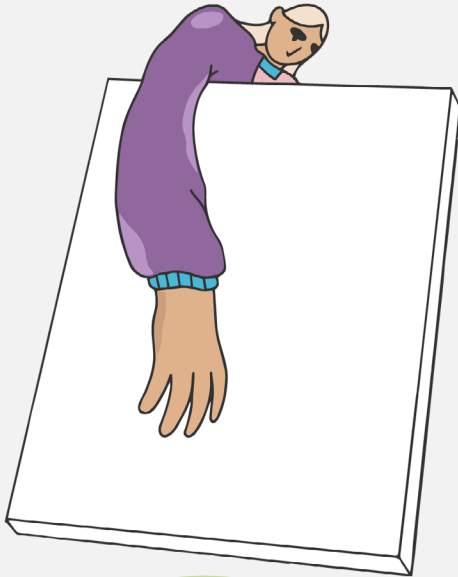


Despite some uncertainties regarding the motivating factor, discrimination and harassment were particularly routine for many 2STNBGN participants who were members of other marginalized groups. As one participant put it:

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I’m too brown, too trans, too fat, to move through life without harassment.

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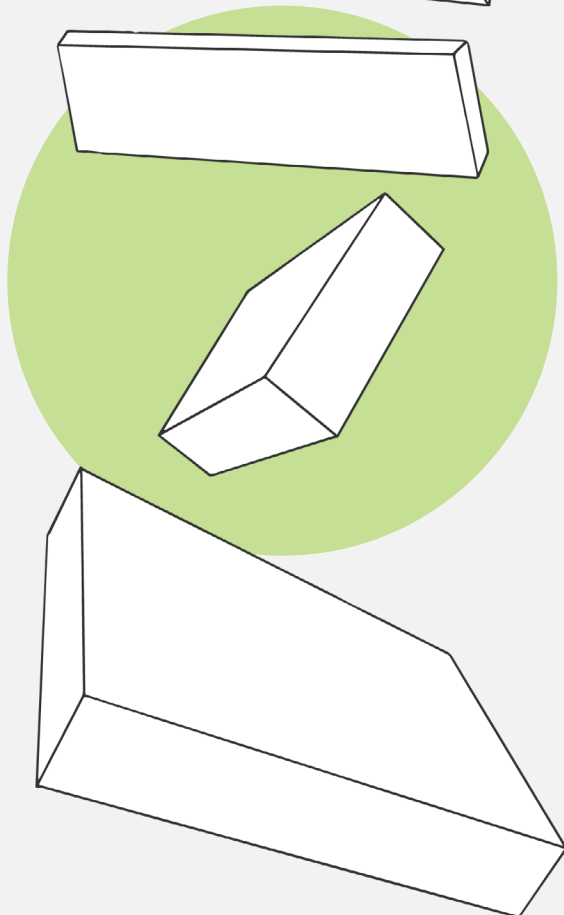
When participants were asked how they responded to these experiences, many indicated that they tried to avoid places where they felt that they might be targets of discrimination and harassment. Some indicated that they tried to avoid leaving the house altogether, others avoided specifically gendered spaces, while others were hesitant to engage in the process of gender transition at all, out of fear of discrimination and harassment which could escalate to violence.

“It feels like I need a bodyguard (cis-passing femme friend) to access women’s spaces. I won’t even go clothes shopping alone.”

“I present dominantly as masculine [because] often this leads to fewer cases of harassment. If I were to consistently present as I wished, I fear that I would be assaulted.”

Most participants expressed that seeking legal assistance to resolve or address their experiences of discrimination and harassment did not feel like an option. **Participants considered legal processes too difficult to navigate, and potentially traumatic.** As a result, participants were often left feeling powerless and unable to access justice around the discrimination and harassment that they were experiencing in their lives.

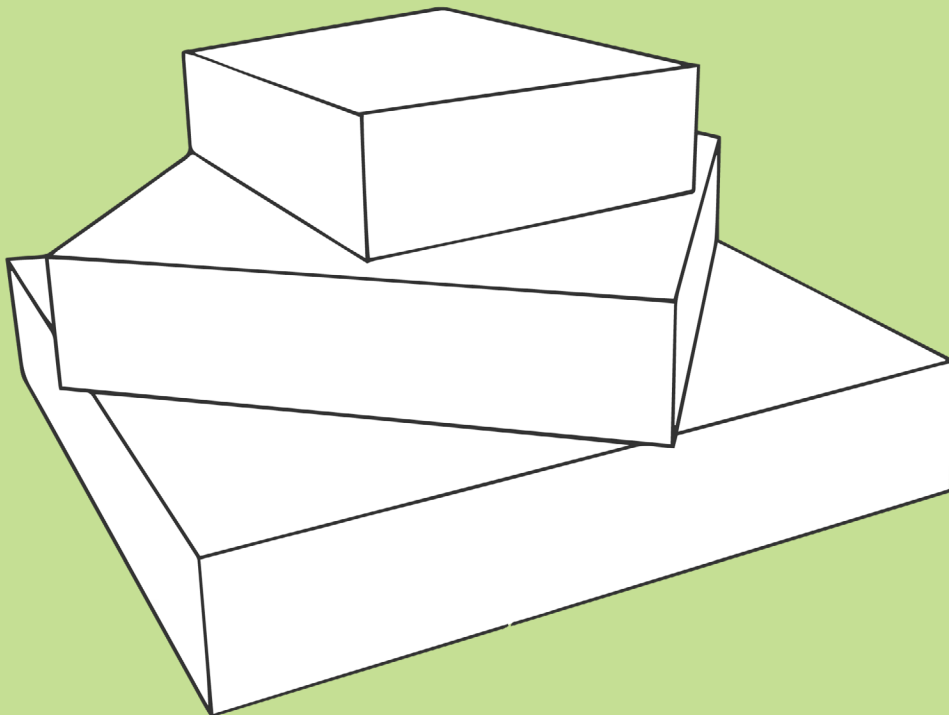
“I have faced discrimination at work for being disabled/neurodivergent (e.g. denied my accommodations, faced verbal abuse for insisting on those accommodations). I did not feel I had any power to pursue any kind of action and anyway had been made to feel as though the situation was my fault, so I did not.”



One of the most significant findings of this research has been the presence of discrimination and harassment in almost every legal issue that participants described.

In other words, transphobia, racism, ableism, fatphobia, xenophobia, ageism, classism, queerphobia and other forms of discrimination showed up for participants as they navigated legal issues in the realms of housing, employment, health-care, criminal law, access to social assistance, and more.

The following subsections provide details about the various legal issues that participants experienced and how they attempted to navigate them. Discrimination and harassment are prevalent in each of the following subsections, as an overlapping and consistent factor in participants' experiences.



Medical Treatment Issues

43% of survey respondents indicated having experienced a problem related to medical treatment, with an additional 9% selecting that they were unsure if what they had experienced was a legal issue, making it one of the top legal issues identified in this data as well as one of the legal issues respondents were most uncertain about. Specific populations experienced disproportionate rates of medical treatment issues, including sex workers (61% vs 39% of participants who had never engaged in sex work) and participants who had experienced housing insecurity (60% vs 33% of participants who had not experienced housing insecurity).

The majority of participants that reported issues with medical treatment experienced a lack of Two Spirit, trans, non-binary and gender nonconforming (2STNBGN)-competent health care. Participants described a general lack of expertise and knowledge about 2STNBGN health, and many noted being turned away by primary care physicians who said they did not specialize in 2STNBGN healthcare. However, 2STNBGN healthcare is primary healthcare (Ziegler et al., 2020).



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It is very hard to find a doctor who understands trans issues/testosterone and can prescribe.

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“I went to the hospital for dysphoria-induced suicidal ideation and had to explain to the intake nurse what the condition was, and what being transgender was, up to and including having to spell out the word dysphoria.”

Many participants talked about going to hospitals or physicians with medical issues unrelated to being 2STNBGN and were either denied treatment due to being 2STNBGN, told to stop transitioning before they were treated, or asked questions about their transition that were irrelevant to their medical issues. This is known as Trans Broken Arm Syndrome, a phenomenon where healthcare providers assume that a 2STNBGN person’s medical issues are a result of the person being 2STNBGN (Payton, 2015). Trans Broken Arm Syndrome is meaningfully depicted in these participants’ experiences:

“I went into hospital with an arm injury and the first thing the doctor suggested was to stop taking HRT before giving an examination.”

[Translate from French] “I went to the walk in for another reason and the doctor wanted to take me off hormone therapy when she saw in my medical file that I am on it.”

Others experienced transphobia from medical staff at specialist’s offices and at the hospital. Many spoke about experiences of being constantly misgendered and deadnamed⁴ while accessing the medical system. Participants noted that sometimes this treatment felt targeted, intentional, and malicious.

“I was directly told being transgender does not exist by a doctor and refused healthcare. I’ve had doctors refuse to prescribe me hormones, a counsellor who essentially attempted conversion therapy and tried to convince me I was a freak that would never be accepted by society, and a doctor who attempted to sexually assault me.”

At other times, misgendering and deadnaming were the result of systemic failures, as medical institutions often do not have systems set up to track information such as pronouns and chosen names. When medical systems do add these aspects in, staff often forget to check them or use them. Participants reported that these experiences not only caused mental and emotional damage but often prevented them from accessing the care they needed.

“A psychiatrist I got through a social program... repeatedly referred to me as a man, called me my deadname after being corrected and said that I was just a man who liked wearing girls’ clothes and clearly knew [nothing] about anything queer. This put barriers in front of me getting the medication I desperately needed.”

The lack of 2STNBGN-competent healthcare also meant that for many participants it was difficult to access 2STNBGN-specific healthcare, like hormone replacement therapy (HRT). This was due to physicians refusing to prescribe hormones, the requirement to obtain a diagnosis of gender dysphoria from a psychologist before starting HRT, and hormones not being covered by provincial health plans, among other reasons.

“It took me 4 months to get a doctor to begin prescribing me HRT and even then, it was an insufficient amount. This included dealing with my family physician, CMHA [Canadian Mental Health Association], and at least 5 (that I recall) suicidal visits to the ER. At the ER not only did they refuse to help me with HRT, but they refused me mental health support as well (two separate hospitals and health districts even). Eventually, my GP ‘started’ low dose hormones only on the basis of stopping me from killing myself. It was 6 months and a psych evaluation later I spoke to an endocrinologist that helped me.”

Youth faced particular difficulty in accessing gender-affirming care, with 31% of youth participants indicating that they had experienced issues with medical treatment. In addition to many of the medical treatment issues already discussed in this section, access issues specific to youth included difficulty obtaining a primary care provider with whom they felt comfortable discussing 2STNBGN health issues and problems related to having names and gender markers updated in medical files. In the youth focus group, multiple participants discussed the negative impacts of parental consent requirements, which caused delays in transition-related health care. Another youth participant spoke about experiencing homophobic and transphobic treatment from their physician, who conflated their gender identity and sexuality with their mental health conditions. This participant was unable to change physician and thus had to endure this treatment in order to access specialized medical care.

“I had wanted to go on hormone blockers, for example. But I wasn’t able to because I needed consent from both my parents, which I did not have.”

“My doctor is quite homophobic. When I first came out, he was like, “Oh, is that related to you liking girls?” And I was like, no. Also, he was doing a referral to a hospital and he was listing all the factors and he listed my gender identity and my sexuality, alongside all my other diagnosed serious mental health conditions.”

Participants also noted that provincial healthcare systems did not cover all the 2STNBGN surgeries they needed, especially for trans women and femmes. When provincial systems did cover these surgeries, there were lengthy wait times for the surgeries that caused emotional distress.

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One might argue that the narrow scope of transfeminine care coverage in Canada is a legal issue because procedures like FFS [facial feminization surgery] and laser hair removal aren’t covered by provincial health plans. These procedures impact the safety in which transfeminine people can navigate in society and our access to employment by virtue of our “passing,” since employment discrimination for visibly trans people is rampant.

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Many participants shared traumatizing stories from treatment in psychiatric facilities, including ongoing and active transphobia from medical staff, non-consensually being put on and taken off medications, and being discharged while still actively suicidal. There was a consensus among participants that there is a lack of available and competent emergency psychiatric care.

“In total I’ve spent about 7 weeks in mental health wards over the past 3 years (usually 2 week stays at a time) and every time I have been neglected and controlled by the staff and doctors ranging from not allowing me to shave for 2 weeks (I am a trans woman and this was unbelievably embarrassing and painful), telling me I will not be discharged until I talk to my rapist father and come out to him, not referring to me by she/her pronouns or my name after constant and repeated reminders from me and general disrespect and making me feel like less than human. These mostly happened... with the head psychiatrists and higher-ranking staff and some unchecked nurses. I was also taken off and put on medications without any informed consent.”

Several participants shared experiences of being sexually assaulted by physicians as well. Others experienced malpractice by healthcare providers leading to injuries and disabilities. Participants also talked about being neglected by healthcare staff when in crisis.

“I was discharged from a psychiatric hospital while actively suicidal, after which I attempted (again) to take my own life.”

Participants noted that transphobia, anti-fat bias, and racism were notable factors in the type of care they received. Indigenous and Black participants reported they were told that because of their identity they could not access the treatment they needed. This refusal of care resulted in negative health outcomes and further distrust of the medical system.

“I’ve had an incident hospital where an overnight nurse had to take my blood and she was not trained to do it on a fat person so she stabbed my arm about 15 times before a doctor stepped in while I was crying and having a panic attack. She also laughed at me. I never ever EVER had an issue with needles before this. Now when I need bloodwork I am instantly reminded and uncontrollably cry before I even get pricked.”

“I have many issues with medical treatment. As a disabled person who has a chronic illness and also lives with chronic pain, I’ve often been denied medical treatment. But, my personal favorite would be the fact that I went almost legally blind from a retinal hemorrhage because my, my medical concerns were dismissed repeatedly.”

“I have some health issues so someone called the ambulance. I just woke up in the hospital so I never called them. But basically they are charging me because it was me using the service. I have to pay like one hundred and sixty bucks. For using the ambulance services. And also the ambulance services, they treated me as an illegal. I called them to get more information and clarify the situation and then they treat me as an illegal because I’m a refugee claimant.”

“I have been denied medical treatment and pain meds because of my Indigenous heritage. I have CRPS [complex regional pain syndrome] Type 2 and was denied pain killers for an operation, claiming I’m more likely to develop a drug addiction.”

“When I’ve gone to hospitals to receive treatment if I’m feeling suicidal or something, I’ve literally been turned away, because of my race. [I’m Black and] they’ll say things like, “Yeah, we don’t have anyone here that can really understand you or treat you in the way that you might need.” So, I’ve literally just been turned away when I’m just super suicidal.”

Most participants did not do anything to address these numerous issues, with many stating that they had no idea what could be done. A few respondents noted reporting physicians for transphobia, negligence, and other malpractice issues to their provincial college of physicians and surgeons but for the most part, no actions came from this reporting. One participant noted reporting transphobic physicians to their hospital and being transferred care to another physician. Some respondents also said that they would avoid physicians and hospitals for fear of experiencing inadequate or harmful treatment and discrimination.

While most respondents who spoke about medical issues disclosed negative experiences, there are models for positive and affirming care that exist in Canada. One participant noted that the existence of 2SLGBTQIA+ providers at a local clinic increased their feeling of trust and safety:

“I’ve been treated really well [at the clinic] because it’s full of gay people and queer people. That particular hospital has been staffed with some really awesome queer nurses and I had a non-binary doctor recently, and I just have had really good experiences there. [...] I know that that hospital is a safe place for me.”

**2SLGBTQIA+-affirming
and culturally competent healthcare
is literally lifesaving.**

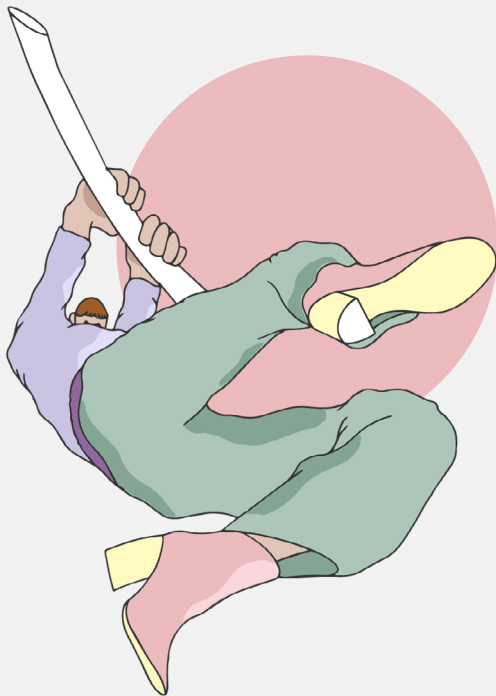
When participants knew that a clinic or hospital was a safe and affirming place for them, they were more likely to seek care when they need it, and to receive adequate care as well.



Gender Marker and Identification Issues

40% of Two Spirit, trans, non-binary and gender nonconforming (2STNBGN) survey respondents had experience with updating government identification (IDs) and other documents with their chosen name and gender identity, and another 11% were unsure if what they had experienced constituted a legal problem. While migrants and refugees reported similar rates of legal issues pertaining to updating government identification and other documents (39%), the qualitative data indicates that migrant and refugee participants had significantly more complex barriers to overcome.

Survey, interview and focus group participants frequently described the process of legally changing IDs and gender markers as frustrating, challenging, expensive, and made more complicated as a result of COVID-19. There is a pervasive feeling amongst participants that the process of changing IDs was needlessly difficult, with several barriers preventing a smooth process of changing names and gender markers.



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It’s an expensive, slow, and difficult to navigate process that places too much burden on the individual to update and collect documentation. It’s a gatekeeping process that requires a physician or psychologist letter to update gender marker which intersects with healthcare system barriers.

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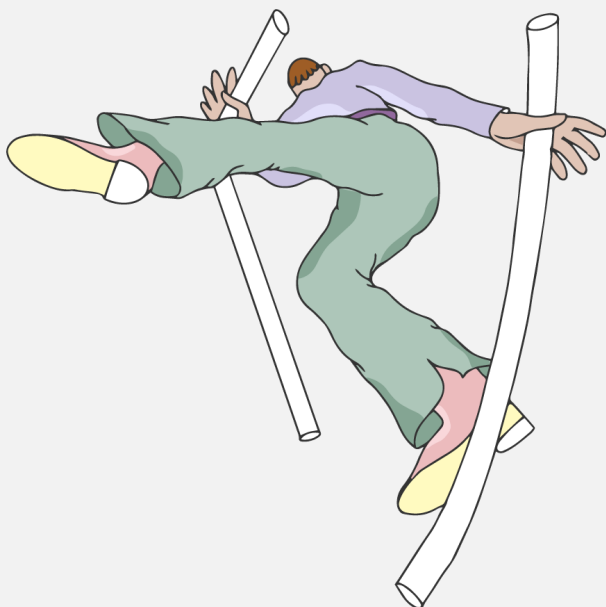
“It took me forever to get the gender marker on my birth certificate and legal name change done. I know I could have just done my drivers’ license and health card but those won’t be used towards IDs going forward. Jumping through all the extra hoops during the pandemic was a freaking trip.”

Common barriers to updating legal IDs and gender markers include financial barriers, unclear processes, administrative barriers and bureaucratic incompetence, and systemic transphobia embedded in the process. At times, participants did not complete their change of gender marker or of name because of the discrimination they faced during the process.

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I have not continued with changing name and gender on vital statistics due to offices being discriminatory or straight up not knowing what paperwork to give me/refusing to give me the right paperwork.

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Other respondents were given false information about the application process by government workers, either to deter them from going through with their name or gender marker change, or as a result of incompetence. This reflects a wider theme of 2STNBGN discrimination being indistinguishable from bureaucratic incompetence.

“I was turned away at the Service Ontario location twice when trying to change the gender marker on my health card from F to M because their policy “had recently changed” and they couldn’t tell me what “proof” was necessary to make the change.”

“When I changed my government documents, a Service Ontario employee mistakenly told me that I would lose some provincial medical insurance (i.e. coverage for pap smears) if I changed my gender marker.”

Another major barrier faced by those wanting to change their names and gender markers was the common requirement across many provinces that applicants provide a physician’s note or letter as part of the process to change their ID and gender markers. This physician’s note is required in Saskatchewan, Manitoba, Ontario, New Brunswick, and Prince Edward Island, and was only recently (as of January 2022) removed as a requirement in British Columbia. This form of gatekeeping was experienced by several respondents who noted that their family physician refused to sign gender marker change paperwork, or reported that they were forced to travel long distances to find a physician who would provide a signature. Other participants found the process difficult because of name changes and gender marker changes requiring separate forms, despite them both affecting the same documentation. Many participants wished they could change both their name and gender marker at the same time, instead of having to go through separate processes.

“It’s frustrating to have to process name and gender marker [changes] separately, and having to have a [physician’s] letter to [change] gender marker, especially as a nonbinary/ gender fluid person. The form seems like an outdated piece of gatekeeping.”

The numerous barriers mentioned above, including bureaucratic incompetence and discrimination, difficult requirements, and complex paperwork, are often enough for individuals to avoid the process altogether. Many participants who would have preferred to have a different name and/or gender on their ID chose not to go through the process to make that change because of their desire to avoid the system and the experiences of discrimination that come with it.



I am actively avoiding dealing with the bureaucraties (sic) of getting my name and gender marker legally changed on all documents, because I know that not only is it an expensive process, but it is also riddled with opportunities for discrimination and conversations that will be painful at worst and less than helpful at best.



These bureaucratic issues were particularly noted among migrants and refugees who needed to change their gender marker or name on documentation through Immigration, Refugees, and Citizenship Canada (IRCC).

“I guess the forefront issue that I’ve been facing lately is that I’m starting the process to get my gender markers changed on all of my documents... Because I’m an American citizen, it’s been difficult to communicate with the Canadian government, to try to get them to change the gender markers on [my Canadian IDs]... because I don’t actually have proof or whatever stuff they require. So just navigating this whole system in two different countries at the same time has been one of the main issues that I’ve been dealing with.”

This report more deeply explains the issues that 2STNBGN migrants and refugees face with their identification documents in the Migration and Refugee subsection.

Many obstacles were exacerbated when respondents attempted to change their ID gender marker to “X” or other non-binary options. Some respondents noted fear around changing their ID, and in particular their passport, to have an “X” gender marker, which could expose them to harm if they ever travelled abroad. On the other hand, having official documents without affirming gender options could cause dysphoria. Several participants noted that they wish they were able to change their gender marker to an “X,” but that their province or the type of document in question does not have that option. This was particularly noted in Québec and by immigrants who were unable to include an “X” gender marker on their immigration paperwork. Other participants who had changed their gender to “X” in the system experienced continued misgendering, as the system still stored a record of their assigned gender at birth.



My ID also necessarily misgenders me since there is not yet a nonbinary option [in my province].



“[Translated from French] I am rarely able to change my records to “non-binary” or “other.” Even when they try to help me, for example at the hospital, they would change my gender to “other” in the system, but when documents were printed, it still showed my sex assigned at birth because of my health insurance number, which contains a number that in their system corresponds to a sex assigned at birth.”

Many participants also described how changing legal documents was rarely the end of the process, and that updating names with other institutions including the Canadian Revenue Agency (CRA), Elections Canada, banks, and universities was an equally frustrating and difficult process. Participants found that despite a legal name change several years earlier, they would still receive voting cards addressed to their dead name from Elections Canada or the elections agency of their province or territory. This significantly discouraged them from voting, as it put them in a situation where they had to out themselves to elections staff and hope that they would allow them to vote despite their name on their IDs not reflecting Elections Canada's record.

“Their name is changed on everything, like their ID card that they take to go vote. Except for when they get the election, they get the election voter card you get in the mail. That is still in their deadname. And they have tried to change it so many times. But they just can't even really figure out how, because they have it changed everywhere except for Elections Canada, wherever they're pulling the names from.”

Another respondent experienced major difficulties with credit agencies, which, unknown to her, required a separate name change form from the form she provided to her bank. As a result of failing to change her name with the credit bureaus, this respondent's credit was destroyed. These institutional name and gender marker change processes can often lead to difficulties engaging with financial or civil institutions. Participants shared that they were continuously deadnamed and misgendered despite changing their name and/or gender in other records.

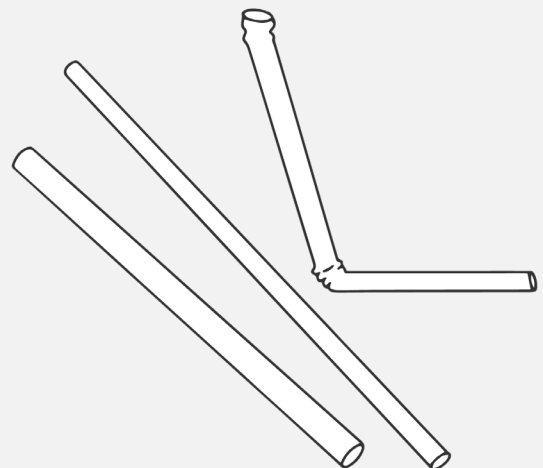
“The challenges that I am facing are with trying to get a name change sorted out, which has resulted in me having no credit, because I didn't know how many places I had to [notify that] I got a name change. I didn't know I had to send that to the credit bureaus. And so, I kept getting rejected for credit cards and then I ended up homeless for a bit.”

Many participants shared just how much of an impact being unable to change their gender marker or name on identification documents had on their day to day lives. Particularly during the COVID-19 pandemic, they often had to provide ID to access services through “vaccine passport” systems. For 2STNBGN people with ID that does not match their correct gender or name, this can forcibly out them to strangers, putting them in dangerous situations, and cause them to be unable to access services because their ID was not trusted.

“In BC, there is a law if you want access some services or restaurants or bars or some retail stores, you have to prove you are vaccinated. And to do that, you need to have a QR code that shows if you're vaccinated or not. But also you have to show an I.D. with your picture. [...] I got my QR, my vaccination proof, when I arrive at the place, the waitress told me, “I cannot allow you to enter because you don't have any ID with your name and your picture.” And I was showing my deadname, basically. And for me it's like, oh, but this is really awkward because I have to show you my deadname.”

“My ID causes me to be unsafe at bars and adult facilities.”

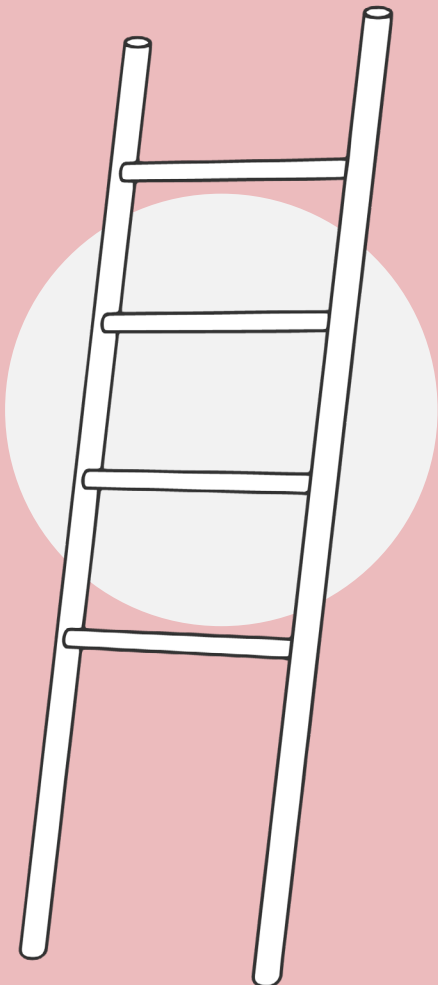
“I'm not feminine passing at all, but my ID has my full birth name and gender and all that stuff. I've gone to places like the liquor store, and people have looked at my ID and asked me like, if I've had surgery and all kinds of stuff.”



Not having the correct name or gender marker on an ID also impacted participants' employment, housing, and medical care. Participants felt this as a lack of safety in any situation where an authority figure needed to read their ID to then assess if the gender marker listed fits with the gender presentation of the person in front of them. Many participants reported harassment or fears of harassment as a direct result of being unable to change their IDs.

“If you present in a way that is different than your papers, it exposes you to violence and transphobia.”

“My doctor not signing off on name/gender marker changes has led to harassment in my workplace and out in public.”

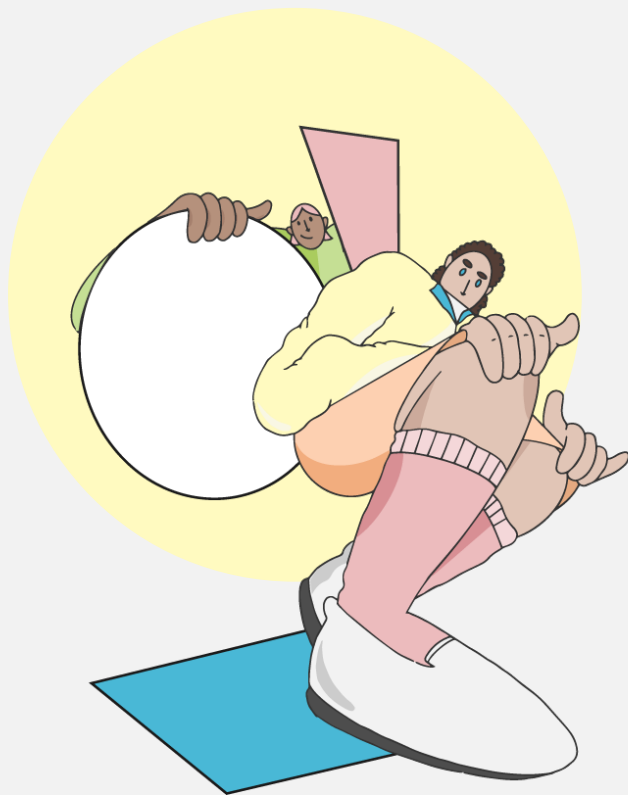


Un-affirming identification documents also cause psychological harm to many 2STNBGN people, serving as a constant inducer of dysphoria. Thus, issues of bureaucracy and discrimination making it difficult to access name and gender marker changes are a serious safety and mental health risk to many 2STNBGN people.

Housing Issues

Over 37% of Two Spirit, trans, non-binary and gender nonconforming (2STNBGN) participants reported experiencing legal issues relating to housing and 37% of respondents indicated having ever been housing insecure in their lifetime. Interestingly, only 68% of those who had experienced housing insecurity in their lifetime identified experiencing legal issues related to housing, indicating that many respondents do not consider the lack of housing a legal issue.

Youth (aged 18 and under) are at particular risk of housing insecurity: 86% of youth survey respondents reported experiencing housing insecurity at some point in their lifetime. Experiences of housing insecurity amongst youth ranged from 2STNBGN youth leaving home due to unsupportive and/or abusive parents to housing insecurity experienced as a familial unit or household.



“

The debt my father struggles with is related to housing insecurity and indirectly to our being harassed by other tenants in our building.

”

“[I was] forced to run away from home 3 different times due to financial abuse/neglect, verbal and emotional abuse/neglect, gaslighting, transphobic abuse, sexual orientation-based abuse, withholding of vital information and of adequate food, and more.”

Access to stable housing that is safe and affordable is a key issue that has important impacts on individuals’ ability to find employment, access health care, update their legal documents, and other justice issues. The data demonstrates that 2STNBGN people face significant challenges in securing adequate housing, including experiencing housing discrimination, poor living conditions, and financial barriers.

Participants noted various types of housing discrimination, including refusal to rent to 2STNBGN tenants and differential treatment in the rental application process. Housing discrimination had a wide range of impacts on participants’ daily lives, making it more likely for them to face housing insecurity and poor living conditions, among other effects.

“

Transphobia is a main problem when you’re renting a place. It’s hard to find a place because I am trans and landlords don’t want to [rent to me] because of their personal beliefs.

”

Based on the survey data, 47% of those who identified as disabled (as compared to 21% of those who do not identify as disabled) also indicated experiencing housing related legal issues. Several participants noted that their disabilities made it difficult to find housing that accommodated their needs or that landlords discriminated against them based on their disabilities. Disability also made it more difficult to take legal action against landlords and discriminatory housing practices.

“I was recently informed by NL [Newfoundland and Labrador] Housing that they will not take my disability into account in my search for an apartment with them - specifically, that they do not offer units that accommodate my particular disability.”

“I signed a sketchy lease with someone who doesn’t own the building and they used the power they had over me to control and harass me, regularly threatening eviction. I live only off of ODSP [Ontario Disability Support Program] so my housing options aren’t much.”

As the second participant’s experience demonstrates, disabled people may experience housing insecurity at higher rates because disability support programs, like ODSP, do not provide nearly enough income support to cover people’s rent and other living expenses. As a result, disabled people using disability support programs often have limited options for housing, and end up in less than desirable living situations. This participant’s experience also demonstrates how landlords use eviction as a threat and intimidation tactic – an experience that participants noted across identities, but especially felt and experienced by those who had fewer housing options due to greater marginalization.

Participants spoke to how immigration status further compounded housing discrimination. One of the participants, a refugee claimant, reported that her immigration status and mismatched identification documents (IDs) caused potential landlords to treat her with suspicion. The participant could not update her IDs due to her immigration status. As a result, landlords did not believe she was who she said she was and refused her as a tenant.

“When I’m looking for a new place to rent, and [negotiating] a tenancy agreement with a [landlord], when I meet him in person, I present myself with my name, with how I identify myself, you know... But when we were signing these tenancy agreements and contracts, I’m using another name, [my legal name]. And for them, it’s like, how can I trust you, how can I trust you’re going to pay me the rent because you’re saying you’re this person, but in reality, your papers say you have another name. To find a new place to move, oh, my God, it was so, so hard because nobody trusts me.”

Those who have lived in shelters and group homes described experiencing incidents of transphobia and not being able to access the correct facilities for their gender. According to participants, the stress resulting from housing insecurity had major negative effects on their mental and physical health.

“I’ve been evicted illegally, and I’ve had a lot of landlords verbally harassing me and stuff like that. I never feel safe and secure where I’m living, because I know that I don’t have the power to do anything if a landlord wants me out. It has a huge impact on me, mentally and even physically. It’s just constant stress and constant trauma.”

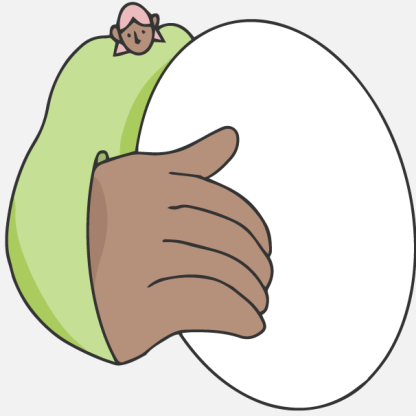
“

There’s no support or help for housing. There’s no safe place in my city for any trans, nonbinary people or queer people in general for like shelters, overnight shelters. It’s literally safer for them to be cold on the streets than be in a shelter.

”

Landlord issues were extremely common, with many participants reporting that their landlords were actively transphobic and hostile towards them. For some, this treatment meant that they were forced to conceal their 2STNBGN identity to avoid facing greater threats from their landlords or even losing their housing. Participants were largely unable to resolve these issues through formal legal processes, such as tenant boards, or through more informal means. With few or no other options, many participants were forced to endure mistreatment, harassment, and intimidation from their landlords. A few participants reported moving to a new residence to get away from their landlords.

“The ongoing issues with my landlord deeply impacted my wellbeing, employment, and mental health. I put off changing my name and gender marker legally until after I moved away from that house, as I was very concerned about staying on his “good” side. The rent there was what I could afford at the time, so moving out didn’t feel like a viable option.”



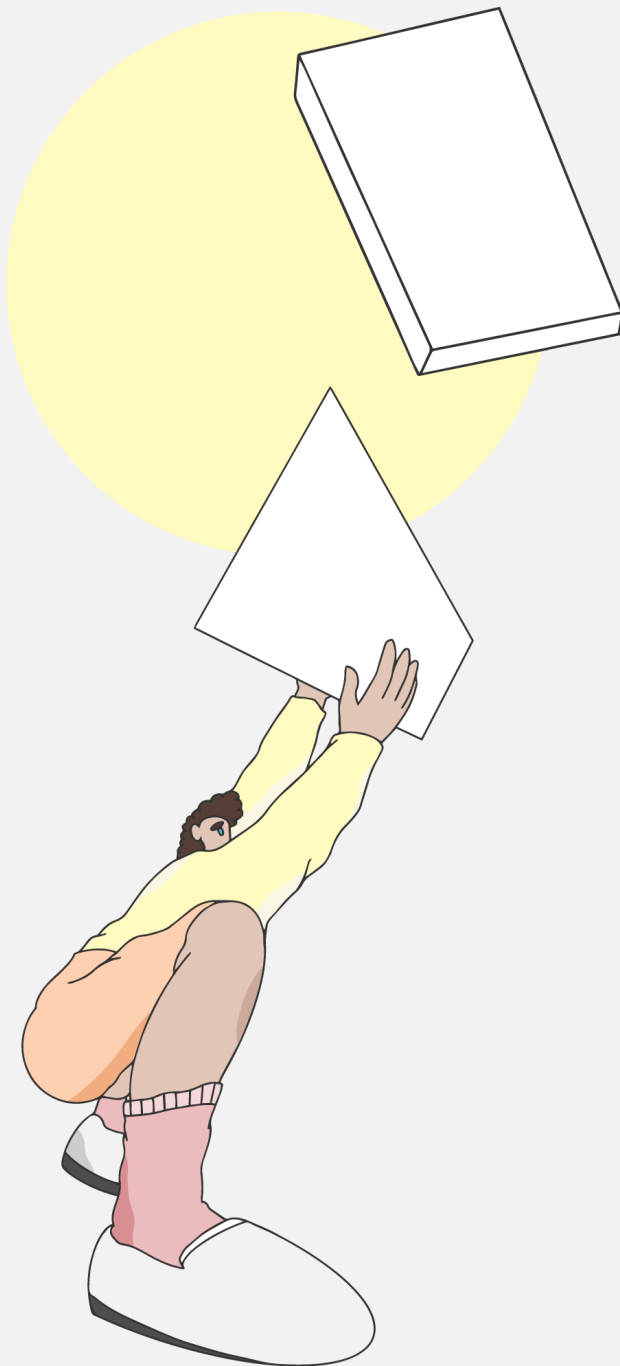
Participants commonly noted poor living conditions, including health hazards, such as mold and pest infestations, and apartments that do not meet housing codes. Many participants attributed these poor living conditions to landlords neglecting or actively refusing to perform repairs or maintenance on their apartments.

“Landlords are a scourge. I’ve lived in places with no hot water, mold, and that were always filthy, which we were blamed for. Repairs never being done, floors are warped. At one place, there was no fire escape, windows were teeny and the toilet stopped working and was not fixed for 9 months. I always pay my rent on time, and clean when I move out and I have never gotten a deposit back.”

“[Translated from French] Over 5 years: noises at night (slamming doors, climbing stairs loudly), very loud phone conversations at night, very loud phone conversations on the shared balcony at night, a lack of awareness of my presence at all hours, a lack of respect and manipulation when I address the problem.”

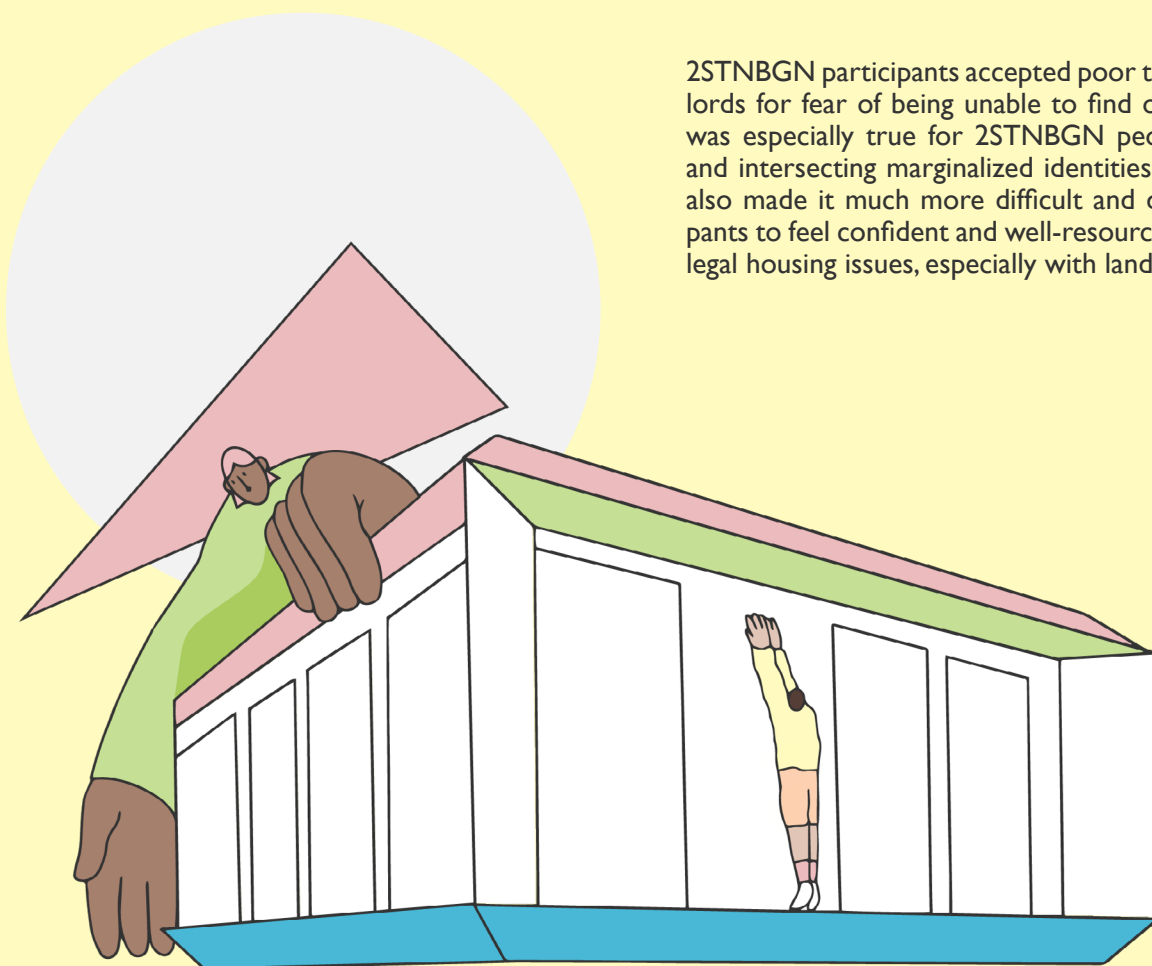
Housing costs, including rising rental prices, illegal rent increases, and landlords refusing to refund security deposits, were also frequently mentioned by participants. For some participants, the rising cost of housing contributed to their acceptance of poor living conditions and hostile landlords because they could not afford to move.

“I got really lucky. [The rent for my house], it’s only \$1100 bucks a month for a three bedroom. Which now, if I were to lose my apartment or something and have to go looking, I’d be looking at like \$2,400 a month for the same thing. Or I’m looking for a one bedroom, that’s like \$1200 bucks a month, that’s probably not going to accept dogs.”



While a few participants were able to successfully navigate their housing issues through formal legal channels, such as tenant boards, the majority were unable to take legal action. Many participants felt that they did not have the resources, power, or knowledge to advocate for themselves.

2STNBGN participants accepted poor treatment from landlords for fear of being unable to find other housing – this was especially true for 2STNBGN people with additional and intersecting marginalized identities. Housing insecurity also made it much more difficult and daunting for participants to feel confident and well-resourced to confront their legal housing issues, especially with landlords.



Neighbourhood Issues

Two-Spirit, Transgender, Non-Binary and Gender Non-Conforming (2STNBGN) respondents spoke of several commonly faced housing issues. One separate but related theme that stood out in relation to housing issues were the problems respondents faced with neighbours and within their neighbourhoods. 37% of participants had experienced neighbourhood issues at some point in their lives. This percentage increased to 40% for participants who BIPOC and further increased to 45% for participants who were Indigenous. 53% of participants who had experienced housing insecurity also experienced neighbourhood issues, versus 27% of participants who had not experienced housing insecurity. Furthermore, 50% of sex workers had experienced neighbourhood issues, versus 34% of participants who had never engaged in sex work.

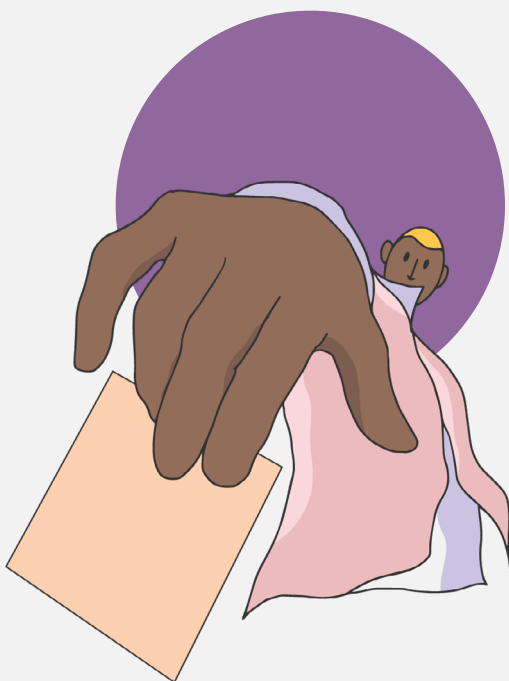
Participants often mentioned feeling unsafe in their neighbourhoods due to direct violence, harassment, and discrimination from neighbours. Several respondents noted that their neighbours had attempted to physically assault them. One respondent noted that their neighbour in a previous neighbourhood attempted to hit them with their car, while another faced attempted stabbing from a neighbour.

Even more common were experiences of verbal harassment, stalking, staring, and microaggressions. Participants mentioned break-ins and property damage that felt targeted to their identities. Some participants indicated that these experiences escalated to the point where they no longer felt safe living in their neighbourhoods and were forced to move away.

“

I had many issues when trying to fill out reports for harassment and abuse that I was facing... I had to move away because my neighbour would constantly make comments to me, early on in my transition, whenever I [wore] a dress, or a skirt, or anything that I felt was nice to wear. It got to the point that I feared for my safety still living near them in any capacity. But my worries seemed not to be [heeded] because nothing happened to the individual. Nothing was done, to my chagrin and my dismay.

”



“I know a person who left their home, because they were harassed out of their town. That person is me. I had someone break into my house. They didn’t take anything. They moved stuff around, just enough to say that it was moved. They messed with the cables on my TV. And the settings on the remote. And they opened up the drain cap on my hot water tank just enough for it to seep. This was someone who knew just exactly what they were doing. And I got threatened at the grocery store and harassed, same thing. And this is my hometown. This is a place I left and then came back to, and stayed for over 20 years... I had to leave that. My house. I had to walk away from all that, and get temporary accommodations with my employer, to move to the city. Societally, we face a lot of discrimination [in Newfoundland].”

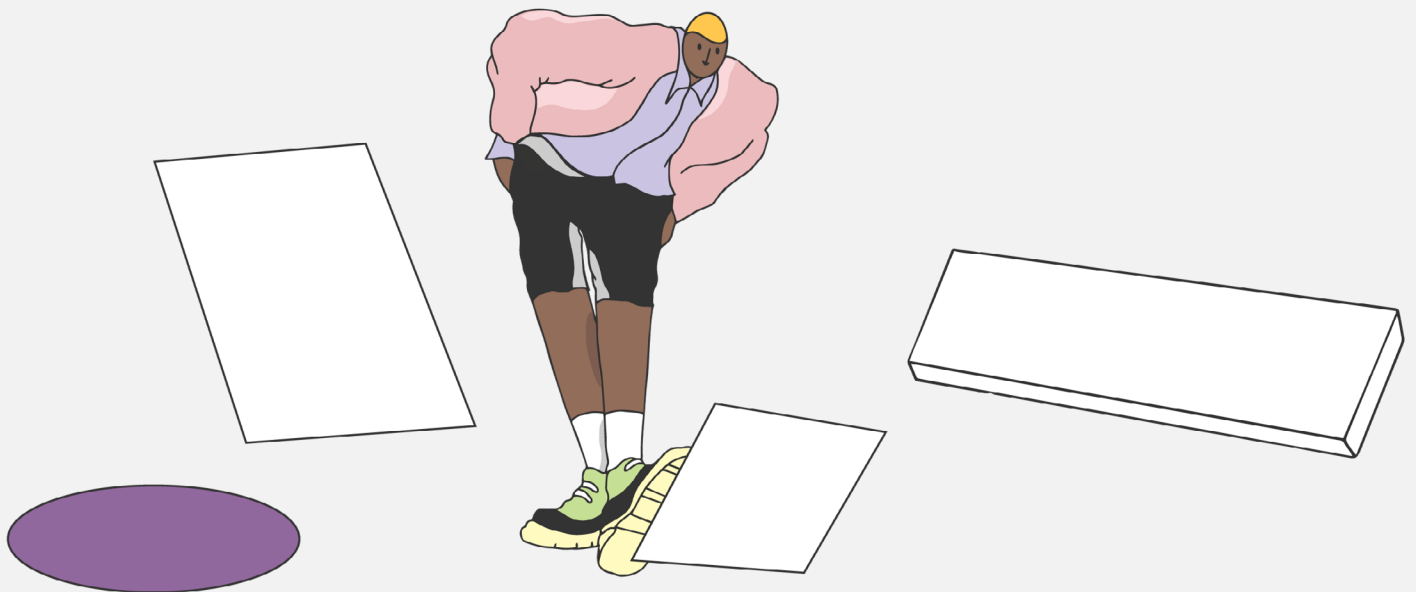
These two participants’ experiences are examples of how transmisogyny works to push trans women out of their homes and neighbourhoods, out of sight, and ultimately out of society.

Other respondents noted similar experiences of verbal confrontations between themselves and individuals in their buildings, outside their homes, or on the streets of their neighbourhood. These interactions often included negative comments about appearance, sexual harassment, transphobic/homophobic/misogynistic/classist slurs, or death threats.

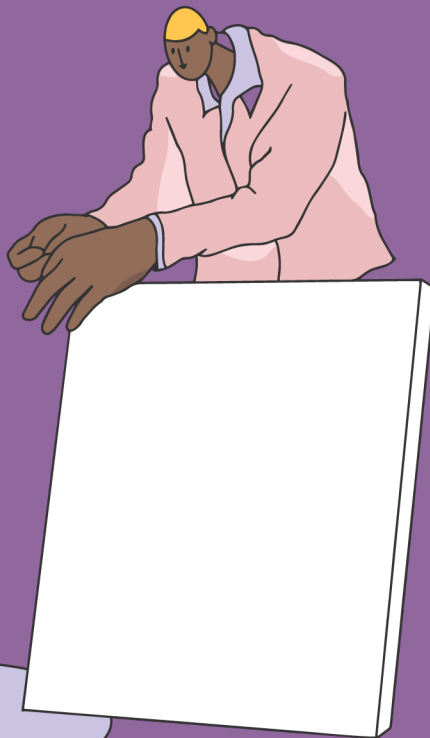
These verbal confrontations sometimes occurred alongside other instances of violence and harassment, usually directed at participants’ property. Two respondents stated that they had previously had pride flags outside their house, with one of these respondents saying that it was destroyed by another tenant, and the other respondent saying that they now receive spam mail from religious institutions telling them to get rid of it. Other participants noted that they had their tires slashed, bikes vandalized, and objects thrown at their windows.

Participants spoke of other instances of neighbour harassment which were more insidious and often precipitated direct confrontation:

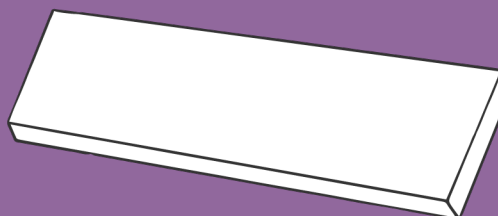
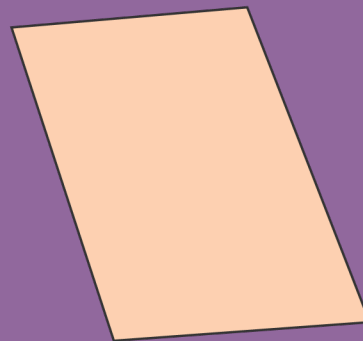
“At my last apartment a new neighbor moved in downstairs and immediately started giving dirty looks to me and only me when she saw me, would check to see if it was me entering when someone came in, and started banging on her ceiling whenever I was moving around my room past like 2pm. It escalated to her confronting me in the hall or coming to our door and making non-violent threats on more than one occasion.”



These instances of neighbourhood harassment and discrimination were often met with an unwillingness or inability to involve authorities (such as landlords or police). One participant noted that when they were advised to call the police after being harassed by their neighbour, they felt they could not. Their neighbour was a cis woman, and they were worried that they themselves would get into trouble with the police instead of her, because of ingrained transphobia and the belief that cis women are the typical victims or survivors of harassment and therefore cannot be the perpetrators, even against other gender minorities such as 2STNBGN people.



Another participant stated that the harassment they were facing in their building was coming from their housing corporation itself. Other respondents had called police about harassment and violence they had experienced from neighbours, but the police failed to act on those reports. Interactions between 2STNBGN people and police are explored in greater depth later in the report, in the Experiences of Violence and Distrust of Police subsections.



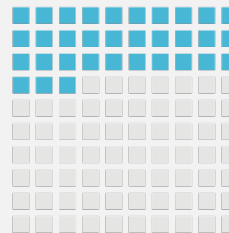
Employment Issues

From involvement in criminalized employment to workplace discrimination and harassment, employment obstacles and issues were an ever-present theme in survey, interview, and focus group responses for Two Spirit, trans, non-binary and gender nonconforming (2STNBGN) participants.

33% of participants indicated having experienced a legal issue related to employment. 14% of survey respondents indicated having engaged in criminalized employment, including sex work, manufacturing and selling criminalized drugs, and selling stolen merchandise. Employment issues occur in higher percentages amongst participants who identify as women (38%), BIPOC respondents (40%), respondents who have done sex work in their lifetime (49%), and respondents who have experienced housing insecurity in their lifetime (51%).

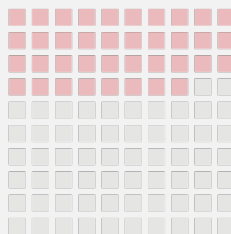
Legal issues related to employment

Women, BIPOC, and people who have engaged in sex work and/or have been housing insecure experience legal issues related to employment at higher rates than the general population.



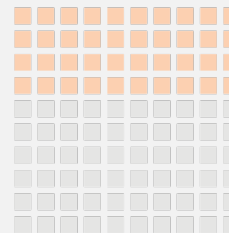
Whole sample

■ Experienced legal issue related to employment



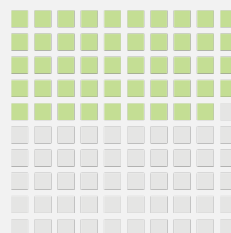
Women

■ Experienced legal issue related to employment



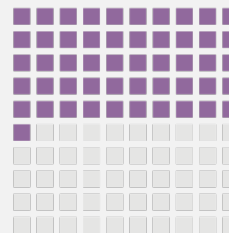
BIPOC

■ Experienced legal issue related to employment



Sex work

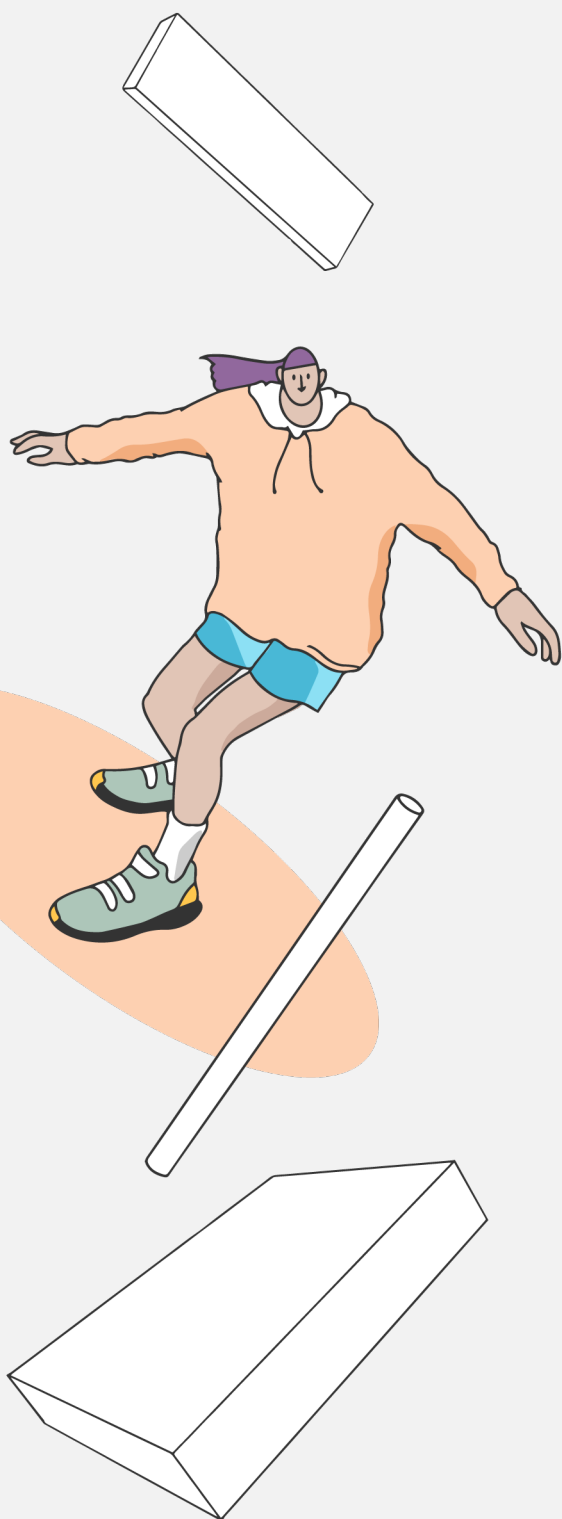
■ Experienced legal issue related to employment



Housing insecurity

■ Experienced legal issue related to employment

Experiences with workplace harassment and discrimination, under- and unemployment, and precarious employment including unsafe working conditions and working multiple jobs were often a central source of hardship for respondents.



“
We are currently facing the loss of our home due to debt, under employment and the inability to find work during the global crisis.
”

Employment issues can start before work itself does. Respondents noted that the process of finding employment can be difficult to navigate due to discrimination during the interview and hiring process, especially when the individual embodies multiple intersecting identities. One immigrant respondent noted that it is often difficult to pin down exactly why they are denied employment since they are both an immigrant and 2STNBGN. Other respondents noted that mentioning preferred names or signaling that they were 2STNBGN — either through voice or identification mismatching expectations, or through explicitly mentioning their identity — can have a detrimental effect on their interview and chances to gain employment.

“Right now, I’m in a situation where I don’t have a lot of money to spend. All I spend my money on is rent and food. I’m [living] paycheck to paycheck, and I can’t change my ID. I’m applying for jobs and anytime [identification] comes up it is the worst feeling in the world to show the interviewer your ID, and then [the job] just falls through. They’re like, “what the fuck is going on?” I don’t know, I’ve been discriminated against so often just applying for jobs.”

“I have been refused interviews because I put a preferred name on my resumes.”

2STNBGN people also face a number of challenges in the workplace itself including a lack of accessibility and accommodations for disabled 2STNBGN people, frequent gender-based microaggressions and violence, including misgendering (intentional and unintentional), a lack of appropriately gendered facilities such as washrooms, and a lack of policies dealing with gender identity/expression and dress codes.

“I constantly have to reaffirm my disability with my place of work as they choose to disregard it and continue scheduling me outside the bounds of my capabilities with diabetes.”

“I had quite a journey applying for disability when I went on leave from work. There is a lack of acknowledgement in the medical community about how growing up closeted, and keeping who you are hidden at work can affect your ability to function properly. I was constantly expected to dress in ways that felt dysphoric. There were no gender-neutral bathrooms, nobody was trained on anti-oppression issues, etc.”

“I’ve found it very difficult to be respected in the workplace. Literally one time I got fired because I was inducing anxiety to coworkers just because I was like, “Hey, please respect my pronouns, if you can’t, just use my name.” And then they made an example out of me during our pre-shift, they’re like, “We have to respect people’s identifiers, so this person here is a they/them.” And then that day, [the manager] was like, we have to fire you.”

“[I was] harassed then eventually fired from my corporate job for not prescribing to only one side of the archaic dress code.”

“

I have had to quit jobs because I just was not treated with the respect that I deserve as both a trans person and human being.

”

2STNBGN people also reported verbal, physical, and sexual harassment and violence in the workplace that often went unaddressed.

“At my old place of work I was subjected to racism and sexual assaults from my manager. As well as belittling behaviour in front of coworkers and customers when I was just being myself (dressing how I want essentially because I was ‘confusing people’). She called me a he/she multiple times and when I brought it up to HR she suddenly went on medical leave and was never terminated or had disciplinary action taken against her.”

“I had to quit due to retaliation from coworkers after reporting a coworker who physically assaulted and harassed me, and repeatedly sexually assaulted a coworker.”

“A few female coworkers started making sexually objectifying comments when they found out I was trans. One lifted up my shirt and groped me when my breasts grew in. She was not fired and received no more than a slap on the wrist. I on the other hand ended up moving locations.”

Oftentimes, due to the complexity and risk of reporting employment issues, especially as it relates to the precariousness of 2STNBGN people's employment, 2STNBGN employees are often left feeling powerless, and unable to address or access justice in relation to these issues.

“At a job that I previously had, I was frequently misgendered by my superiors... I brought it up with one of my coworkers who had been promoted to manager, who I thought that I was friends with, and she actively discouraged me from speaking to HR about it... I didn't really know if there was any legal recourse or if it would be worth the trouble of essentially putting myself out in public, saying I have been mistreated as a trans person and being able to deal with everything that comes with that.”

“I have faced discrimination at work for being disabled/neurodivergent (eg denied my accommodations, faced verbal abuse for insisting on those accommodations). I did not feel I had any power to pursue any kind of action and anyway had been made to feel as though the situation was my fault, so I did not.”

In addition to the above issues, 2STNBGN people often face overt and subtle employment discrimination from management and human resources (HR) that seeks to push 2STNBGN employees out of their existing jobs through unjust dismissals, unfair scheduling practices, and actively pressuring the employee to quit.

“I was fired immediately after coming out as genderfluid at one point. Less than 2 hours after. They refused to give me a reason or even look me in the eyes the entire time leading me to believe it was because of my gender identity.”

“

My current employer is [pressuring me] and has been for approximately 16 months, trying to have me quit my position of five years on my own.

”

“Since starting my transition, I have evidence of being scheduled unfairly at my previous job and given less hours than needed to live while everyone else flourishes. I also had an older coworker sexually harassing me physically that I did not report until I transferred to a different store within the chain.”

Participants at intersections of marginalization experienced legal issues in employment more intensely. One participant, who was undocumented, ended up working in an area of criminalized employment – the drug trade. They had to work “under the table” because of their migration status. As a result, they had no ability to protest their exploitative working conditions and no legal recourse against their employer, who took advantage of the situation.

“I started this job making \$17 an hour, last year [my employer] dropped me to \$15. And then he raised my hours from 40 hours a week, to like 80 hours a week. So at 40 hours a week I was making \$1,200 or something like that. He dropped me down to a solid salary of \$1,000 a week and now I'm working like 93 hours a week. I have literally no days off. I work from the minute I wake up until at least 8:30 at night, sometimes longer. I have no free time. I don't really do anything out of the house.”

Some participants shared that they engaged in criminalized industries, like selling drugs and doing sex work as a way to be resourceful and earn a stable income.

“I had to sell drugs so I [could] pay rent and get groceries.”

Due to the criminalization and precarity of their work, participants often could not access justice through the legal system when they experienced exploitation. These experiences are explored more in the Migration and Refugee Issues and Sex Work subsections.

Unions are meant to protect workers and worker rights, and while this is sometimes the case, many 2STNBGN people who were surveyed and interviewed had different experiences. Whether involved as a labour activist, or simply seeking out support from their union local, many 2STNBGN people had negative experiences with their union, or otherwise did not receive the support they needed.

“I’m done with the union. Like I really tried, but I can’t make a change in a broken system.”

“As a union activist, I gave the union a good chunk of me. And let’s just say I didn’t get the supports back.”

“I experienced lots of harassment at work even though there is a union. Harassment before transition, during transition and afterwards coming from co-workers, management and the union.”

A common issue raised amongst participants in our racialized focus group was the lack of intersectionality and solidarity across activists within union spaces, and the undeniable white supremacy that exists within union environments.

“So, when your union supports are also part of a white supremacist system, or not acknowledging Indigenous ways of being [...] Your supports have to expand out. These are your legal supports, like your lawyers. So, I know lots of [union] locals are really filled with lots of white people, for example, and lots of cis people and lots of white women.”

While many 2STNBGN people had negative experiences with their unions and union representatives, there were some who found particular union reps to be helpful and empathetic, and to be advocates for their needs as workers and as 2STNBGN workers specifically.

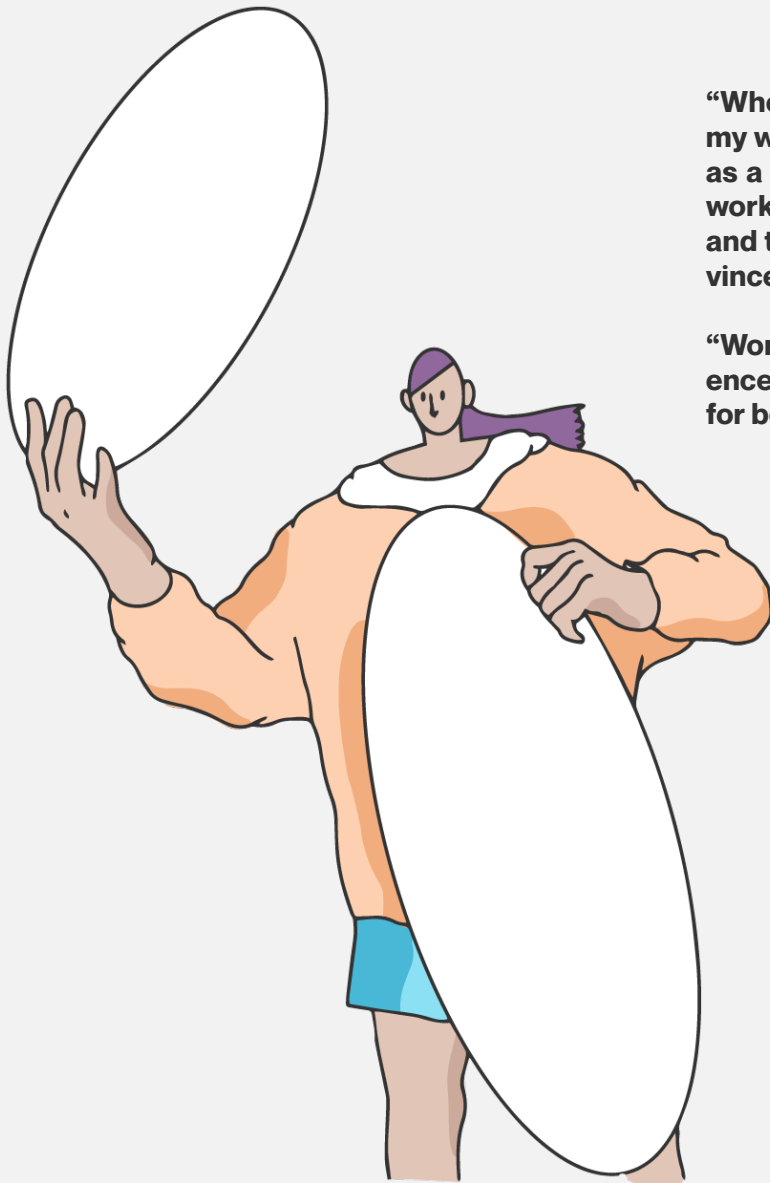
“[Union reps] were all really helpful, and they were all really empathetic. I was really lucky. Because interestingly enough, my friend who’s going through the same thing that isn’t trans is having a really hard time with their union reps. Their union reps aren’t helpful, or considerate, or any of those things. So, I don’t know if that’s a personality thing because it’s all the same people.”

“Basically, my union rep was so great. He was like, “I printed a copy of your policy, and it says right here you have to hire a third party. So, we expect a third party investigation.” And the HR director was like, “You blindsided me with this want for third party?” and my union rep is like, “I’m sorry, I can’t blindsided you with something you wrote.” And I was so grateful that that person was there to say these words because I was shell shocked. I went into complete shutdown.”

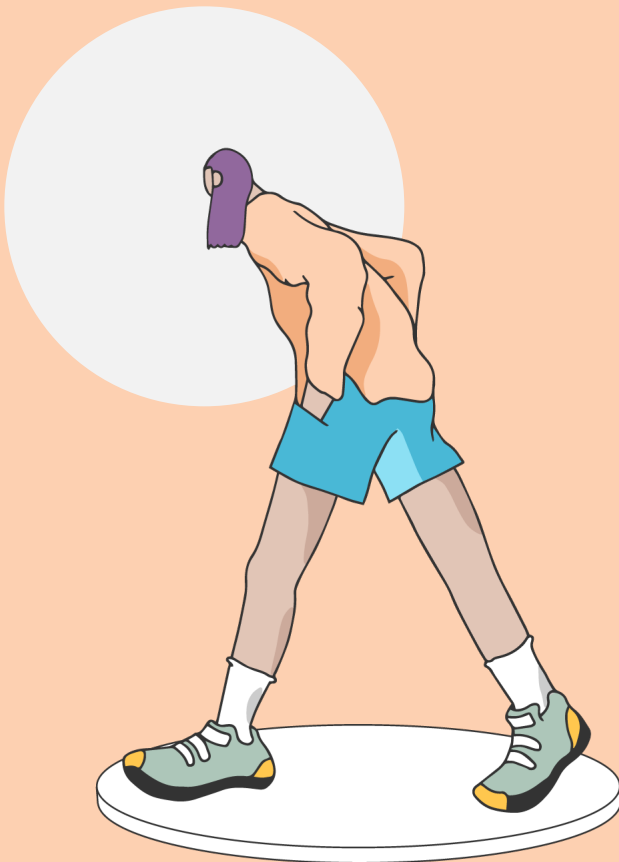
A final issue that was raised by participants was unsafe working conditions. Safety here should be considered in the context of physical safety, but also emotional and mental safety, with some respondents noting that past workplaces had resulted Complex Post-Traumatic Stress Disorder (C-PTSD).

“When I was younger, I fell off a semi-trailer because my work didn’t supply proper safety anything, such as a ladder to get in and out, and I was required to work in the rain, so it was slippery. I hurt my back and they took advantage of my innocence and convinced me it was my fault and wrote it off.”

“Workplace C-PTSD comes from poor work experiences due to poor work locations. I had no chance for better opportunities.”



Many participants described being under- and unemployed because of specific and structural instances of transphobia and transmisogyny that affected them during hiring processes, and while in the workplace.



Participants also described being pushed out of their jobs through unwelcoming or outright unsafe, hostile and violent working conditions and environments. Participants found unions could often be sites of discrimination and harassment and colonial sites of power that were grounded in white supremacy and transphobia. Employees also reported working in criminalized industries as a method of earning income. As one participant summarizes, “It’s very difficult to find work since transitioning.”

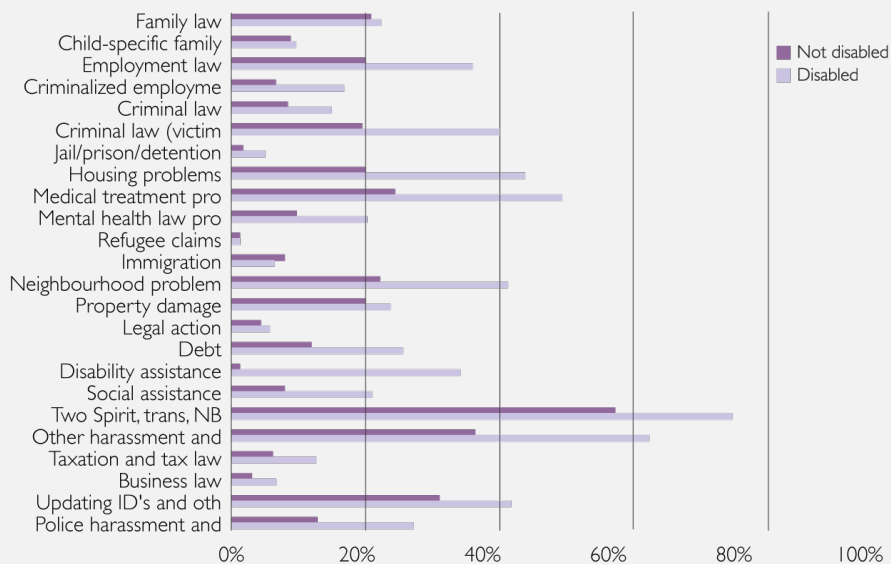
Social Assistance and Disability Benefit Issues

The survey indicated that many Two Spirit, trans, non-binary, and gender non-conforming (2STNBGN) community members are disabled, with 58% of survey respondents identifying as disabled. Disabled participants experienced legal issues at a higher rate than the general sample for nearly every legal issue listed (with the exception of immigration law). By far the most commonly experienced issue among disabled participants was experiences with disability assistance programs, with 95% of disabled participants indicating that they had experiences with these programs.

However, experiences with disability assistance were not uniform across all survey participants. In particular, participants who were not Canadian citizens (including permanent residents, those on study or work permits, refugees, and undocumented participants) were much less likely to access disability assistance programs. Only 15% of participants who indicated that they were either permanent residents, on a study or work permit, refugees or asylum claimants, or undocumented, had experiences trying to get disability assistance. Meanwhile, 54% of those participants identified as disabled, demonstrating a significant number of people who could be served by disability assistance programs but who are unable to access those programs.

Impact of disability on experiences with legal issues

Disabled participants experienced legal issues at a higher rate than the general sample for nearly every legal issue listed (with the exception of immigration law).

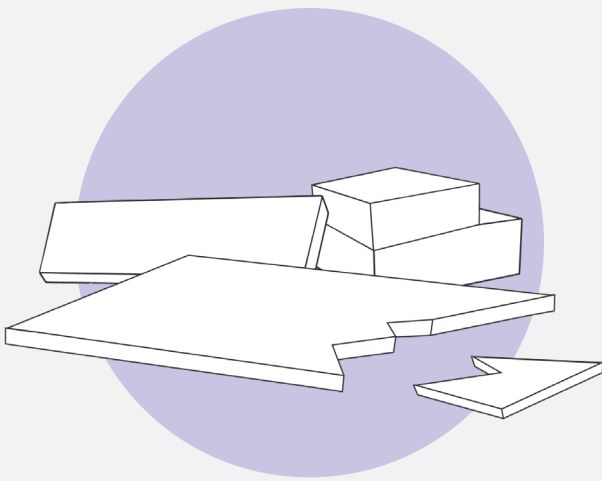


Difficulties in accessing disability assistance and other social assistance programs were commonly discussed in interviews and focus groups. Participants described a range of barriers throughout every process of the system, and difficulties once they had received assistance. Many participants were not able to even begin the application process because they lacked access to a physician that might provide them with the necessary diagnosis or because their physician simply refused to diagnose them.

“I’ve been ignored by doctors for nearly a decade now regarding my chronic pain, which means that I do not qualify for disability benefits, because I do not have a diagnosis. This has caused mental health issues, and financial issues, as my workplaces do not believe that I am unable to complete certain tasks because I do not have a doctor’s note.”



[Translated from French] I was refused treatment by doctors. They did not believe my chronic pain. For them it was in the head.



For others, the main barrier to receiving social assistance was the bureaucracy built into these programs. Particularly for those already living with disabilities, finding the time and energy to work through a labyrinth of forms, phone calls, and complex instructions was a daunting task.

“I have really struggled with obtaining the Disability Tax Credit. It is a notoriously terrible program to try to receive, the one application process I went through was exhausting and I gave up after that honestly. I haven’t had the energy to try again.”

This bureaucracy was a barrier to access for all forms of social assistance, not just disability assistance. Even once participants made it through the bureaucracy of this system, many were stuck on wait lists for long periods of time. Other participants were outright refused social assistance benefits or received less financial assistance than they were entitled to due to clerical errors or negligent case workers.

“I also think the Ontario Disability Support Program (ODSP) incorrectly calculated the amount of money I was owed in back pay - they subtracted a percentage of money I made while working a job, but as a student I was entitled to keep that money, as far as I can tell. I haven’t pursued this. I worry about drawing ODSP’s attention and being labeled a problem or having my support withdrawn. I previously had a case worker who was so incompetent it felt like she was deliberately trying to sabotage my case. I was having to drive over with printed and highlighted documents to prove I had submitted certain information, even after emailing the same documents many times over. She asked questions about many transactions in my banking history, implying I was lying or had altered records when the transactions were things like transferring \$30 from a savings account to a checking account.”

“My first caseworker with EIA (Employment and Income Assistance) wasn’t very informed, she didn’t know much about my situation, about being transgender, or about my medical coverage and what could be covered at the pharmacy. I spent a year paying out of pocket based on misinformation, because she told me that it wasn’t covered. And then I found out a year later, after spending \$1,000 on my meds, that it was covered the whole time. All of that was from my savings account, so I literally lost \$1,000 because of somebody not knowing.”

The difficulty of navigating these systems was compounded by participants’ 2STNBGN identities. Participants reported that caseworkers often did not understand why being 2STNBGN contributed to them being unable to find work, and that they received less support than cisgender people in similar situations.

“I don’t think they take being trans too seriously in Manitoba for Employment and Income Assistance (EIA). I tried applying for disability too. And it wasn’t really seen as like, oh, that shouldn’t affect anything. That shouldn’t affect your ability to get a job. But it does.”

“

I’m on long-term medical disability and have had to repeatedly fight for the same levels of support as my cisgender peers (which are still wildly inadequate and leave me well below the poverty line).

”

Participants who received some form of social assistance noted that the amounts given out by these programs was far from enough to cover their basic living expenses and that they were living well below the poverty line. This was for participants across the country, and was not isolated to any one province.

“There was a point where I was on disability. Disability was not enough to cover anything. I covered my rent, I think, barely, and then nothing else.”

Recipients noted that they were not allowed to save money, and that there was absolutely no flexibility for them to work part time or receive small honorariums without being punished by a decrease in their social assistance payments. Unfortunately, several participants explained that, because they were already receiving some form of social assistance, they were ineligible to apply for other social assistance programs.

“[PEI disability benefits are] not a very supportive system in terms of people who are able to do some work, are able to go and take some studies, and try to enrich their lives and do what they can to have that sense of community and belonging and agency. It’s constantly being undermined by that threat of being cut off. I am an advocate. So I do a lot of educational sessions and talks and stuff like that, and something I’m given honorariums. I wasn’t allowed to accept honorariums, get payment, and the labor that I did was really undermined. So, there was constant fear of “Will I get in trouble?” and “Am I going to be sued? Am I going to get in legal trouble because I made \$50?.”

“One of them [the workers at EIA] was like, “Oh, why don’t you pay your rent with the money you worked for?” And I mean, EIA, they only let you make up to \$200 before deducting, and I was like, “Oh, if only you could pay for rent with \$30” because that’s all I had.”

“

I currently receive Ontario Works (OW). It’s not even enough to cover just my rent alone, never mind other expenses, and yet I’m unable to apply for things like rent bank assistance because receiving OW makes me ineligible.

”

These participant experiences with social assistance keeping them at or under the poverty line were also reflected in the survey data specific to disabled participants.

Of survey respondents who identified as disabled, 46% had experiences with housing insecurity, compared to 21% who were not disabled. Nearly three quarters, or 74%, of people who had experienced housing insecurity also identified as disabled, compared to 47% of those who had not experienced housing insecurity. Nearly all, or 95%, of disabled participants indicated that they had experiences with disability assistance programs as a legal issue. Taken together, these numbers show that despite disabled 2STNBGN people trying to access the social assistance programs designed to keep them alive, these systems are failing to even provide them with enough income to guarantee stable housing.

Participants described issues at every stage of obtaining, or attempting to obtain, disability assistance and other social assistance programs, including issues obtaining a diagnosis, issues navigating the bureaucratic systems necessary to be approved for social assistance programs, and issues of receiving the proper amount of funds. Participants who identified being supported by social assistance programs indicated that these programs provided too little support and too many restrictions.

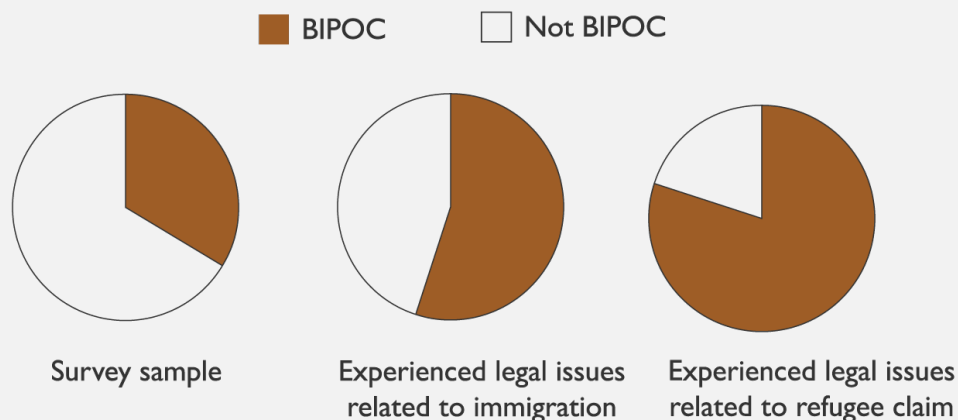


Barriers Experiences by Migrants and Refugees

The vast majority of Two Spirit, trans, non-binary and gender nonconforming (2STNBGN) participants surveyed were born in Canada (85%), with the remaining participants being 4% naturalized citizens, 3% permanent residents (PR), 3% on study or work permits, and 1% refugees.⁵ The remaining 4% had other statuses, including being undocumented. In all, 15% of participants were immigrants, migrants, or refugees with various different statuses. A total of 8% of participants experienced legal issues pertaining to immigration,⁶ and 1% had claimed or obtained refugee status. While BIPOC participants made up 34% of the total survey participants, 66% of participants who identified having legal issues related to immigration were BIPOC, and 80% of participants who identified having legal issues related to a refugee claim were BIPOC.

Legal issues related to immigration

A larger proportion of respondents who experienced legal issues related to immigration and refugee claims were BIPOC even though BIPOC participants represented a smaller proportion of the sample than non-BIPOC participants.



Participants had a variety of migration issues and related legal issues which often led to other legal issues, including employment, housing, identification documents, and healthcare issues. This project reached participants who were permanent residents, refugee claimants, on student and work visas, navigating sponsorship processes, and undocumented.

Immigration processes were described by various participants as “long and confusing,” with “so much money spent [and] so much limbo.” Participants shared that immigration processes lacked transparency and Immigration, Refugees, and Citizenship Canada (IRCC) could be difficult or impossible to contact. Participants shared that even lawyers would not know how to navigate certain processes, like name and gender marker changes on refugee applications as there is no clear process laid out by IRCC for people with no status, Protected Persons, convention refugees, or refugee claimants.

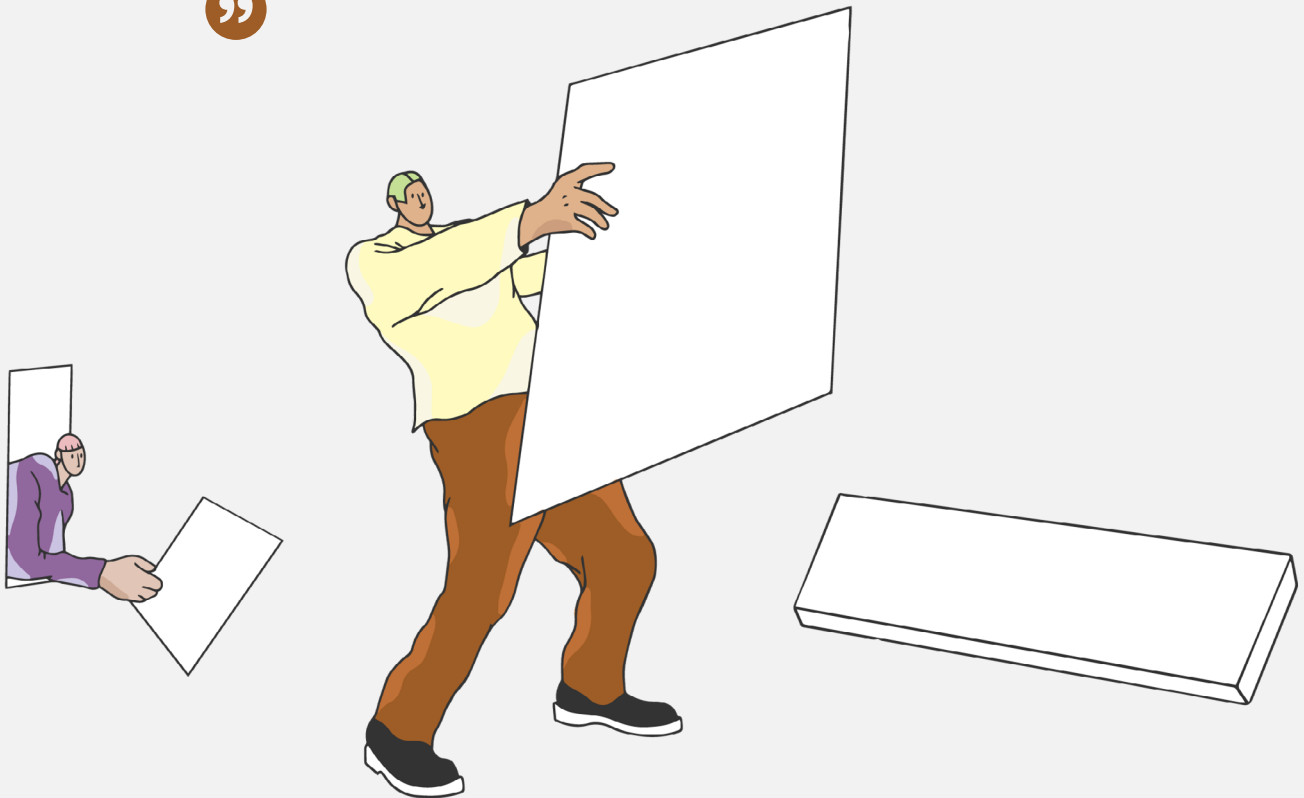
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There’s no clear guidelines how to change my gender in the documents, for instance, in my Refugee Protection Claimant Document. There’s a form IRM 0002, but nobody (my lawyer, [community-based organization]) knows how to use it: we simply added it to the submitted documents hoping for the best.

Some participants shared that their immigration applications were denied due to technical issues. One participant shared that when trying to apply for a student visa, “the website was not clear in terms of the instructions [about] how to submit your document.” Her application was denied as a result. Another participant said they had the same issue with their study permit and ended up with no status for a year. Yet another participant shared the following about his permanent resident application:

“I worked hard on my permanent residency application and submitted it. One day the [IRCC] scrapped the entire application (several hours of work) over my not yet having had a physical with a doctor, even though the application instructions specifically said I could do the appointment at a later date. When I tried to get a hold of them to find out why this happened, they sent me instructions on how to fix computer technical errors which had nothing to do with my application. When I reapplied a few months later, they said that my English test results were expired. They were not expired at the time, but by the time I could apply a 3rd time, they were. I have not reapplied since because I could not afford to and I became very sick with mental health issues.”

”



As a result, this participant has been living in Canada undocumented for several years, with no sense of what to do next with regards to his status, no money to hire a lawyer, and a deep fear that even if he did try to file an application, he would be kicked out of the country for being undocumented for too long. These issues are not 2STNBGN-specific, but for many 2STNBGN migrants, there is additional stress and fear of returning to nations of origin that can be unsafe places to live as a 2STNBGN person.

In general, participants shared the sense that the immigration system and processes were uncompassionate and caused intense stress and fear.



There was a lot of stress about what documents I should submit, and how I should go about my application, because there was an incredible amount of stress that if I make anything that can be interpreted as a mistake, that means I will not be given status. Basically, there's this immigration officer who in Canada has a lot of power to decide, and you don't know who they are, they have a year to do that, or more, right? Like there is absolutely nothing you can do after you submit your paperwork.



However, not everyone has a hard time navigating the system, especially when they had support to fill out applications. One participant, who was an international student in university, had their family support them in filling out applications. But even this participant noted that they expected people in different situations and from different countries to have a much harder time with the process.

“The immigration process honestly wasn't too much of a hassle... It took a while but, I'm a US citizen, so I think for me, it was much easier than it is for a lot of other people who are coming from different countries. It did get a little conflicting with like gender identity, since I have to put my legal gender and name on immigration documents and things.”

This project's sample did not have many participants who were Convention refugees or refugee claimants (only 1%), but those who were seeking refugee status were generally doing so on the basis of Sexual Orientation, Gender Identity or Expression, and Sexual Characteristics (SOGIESC). One issue that came up with the refugee process for migrant participants was not actually knowing that claiming refugee status on the basis of SOGIESC was an option for them, sometimes until it was too late. For others, based on their specific circumstances, they were not able to claim refugee status either.

“I wish I started my refugee claim earlier. I first arrived in Canada as a student in 2015. I was 16... I did not contact an immigration lawyer to work on my refugee claim until last year. It took me five years to realize that I am actually a refugee claimant or a refugee. And during that time, it was a process of self-discovery. I was a kid who grew up in a conservative country and didn't know what LGBTQ+ meant back then.... I have to explain [my whole process of self-discovery] to my immigration lawyer, [and] they do not necessarily understand... There's a lot of probing and questions involved. Because straight cis people, or even just cis people, might not understand your experience.”

“I contacted several lawyers and said, “Hey, I am trans and I want to claim refugee status” and they said, “What’s your background?” I told them I was a student. And they said, “No, you would not be able to [claim refugee status] because there would be like 20 to 30% chances that you will get your permanent residence through that, 70-80% chance you will just fail and you will waste your time, so better look up for other things than this.” And, and then I stopped looking for it, because I know it’s not going to help me and it should not consume my time... They say like, you cannot [claim refugee status] because you are not eligible, because you were a student, you had an international work permit... I was planning to get PR as soon as I can... I don’t want to, I even, going back to my home countries kind of scares me. I don’t even, it’s like kind of a dream that I don’t want to get every night I sleep. Because I don’t want to, I don’t want to be killed just because I’m trans, I just don’t want a stone palette on me because I’m trans.”

“Originally, you know, I went to the refugee center here and was told that, this was while Donald Trump was still president, that I could probably get refugee status here in Canada, because I have no rights as a trans person in the US. But that process can take years, it’s not guaranteed, I could be sent home. And like, I have no family anymore, like my parents passed away. So, there is no home for me to go back to, I’ve lived in Canada for my entire adult life. I’ve been here for 17 years.”

A major intersection of legal issues for migrants was between their migration issues and their (in)ability to get gender-affirming identification documents. A common experience across migrants was their inability to change their birth certificate to match their name and gender, because those documents could only be changed in their country of origin. As a result, their IDs in Canada were difficult and sometimes impossible to change to be gender-affirming. Another issue that was brought up was the lack or inaccessibility of non-binary gender options.

“When I applied to be a permanent resident, IRCC had not yet updated their system to allow for recognition of non-binary genders, so I was stuck with having ID and immigration documents that don’t match my gender. Once they did update their system the application process for updating my gender was impenetrably complex and it wasn’t clear if I would be able to travel internationally while I was waiting for an updated PR card to be issued. I have now applied for citizenship and was able to update my gender marker as part of that application, but application processing is super slow right now because of COVID and I’m stuck waiting again.”

Other participants had not even attempted to update their IDs because they aren’t sure how it would affect their immigration status and future applications and the process seemed too complicated. Discussing documents once again brought up feelings of stress and fear and anger around the waiting times that immigration processes required, especially as they caused dysphoria around incorrect, gender-unaffirming documentation.

“My main problem as an immigrant trans student (study permit), is my documents that do not match my gender identity. Since I’m not a Canadian resident I cannot change my name and gender marker. And my home country does not recognize trans and nonbinary people. So, I have to wait until I get my Canadian citizenship, which will be at least in the next 7 years. Since I am a first-year PhD student I have a long run until I got my Canadian citizenship so my main concern is how to survive these next 7 years with unmatching documents. And this makes me extremely anxious and insecure. I wish there was a separate immigration process for people like me, so that we would be able to obtain our PR and citizenship faster. Especially a PhD student like me who should wait until the graduation from the university which could be at least 5 years! I really like to pursue my post-secondary education but there is a conflict between continuing my studies and having matching document.”

Participants shared that immigration processes were further complicated by COVID-19.

“I’m applying to be a permanent resident via family sponsorship and via study permit in the meantime. [This application] took 20 months due to Covid.”

These immigration processes are also further complicated by having to navigate border crossings and dealing with the Canadian Border Services Agency (CBSA) who police the border. A few participants noted that because of their immigration status they were unable to cross the Canada/US border. One participant recounted that they had been held at the border without reason, while also experiencing mockery by CBSA agents:

[Translated from French] “I once spent several hours detained at customs. I still don’t know why. I saw the police laughing but didn’t understand why.”

Border crossings are spaces of discrimination by nature, leading to fear for many who have to navigate these spaces (Walia, 2021). Participants echoed this fear in the survey, interviews, and focus groups.

“I worry that this would cause problems for me if certain documents don’t match, or if I don’t appear like either gender marker. I also worry that an ‘X’ gender marker would mark me out for discrimination from government or border patrol agents.”

“Immigration issues have also been linked to racial harassment in terms of being stopped and questioned at the border much more often than my more white-passing peers.”

“Crossing the border? Forget that. You know how many times I get searched crossing the borders because they don’t know what’s going on [with my ID gender marker]? It’s unreal.”

Precarious and uncertain immigration status also often led to participants being unable to access vital resources. Many could not access healthcare or credit. One participant spoke about the abusive work conditions that they had to put up with because they were undocumented and had no other options. In general, echoing the participant quoted above, people felt that there were no resources or systems built for people like them, 2STNBGN migrants facing unique and complicated issues.

“When I immigrated to Canada, [it] was through permanent residency, and I was lucky in that. [But] I found that there’s absolutely no information available for trans or gender non-conforming people or people who might have paperwork that is not necessarily coherent.”

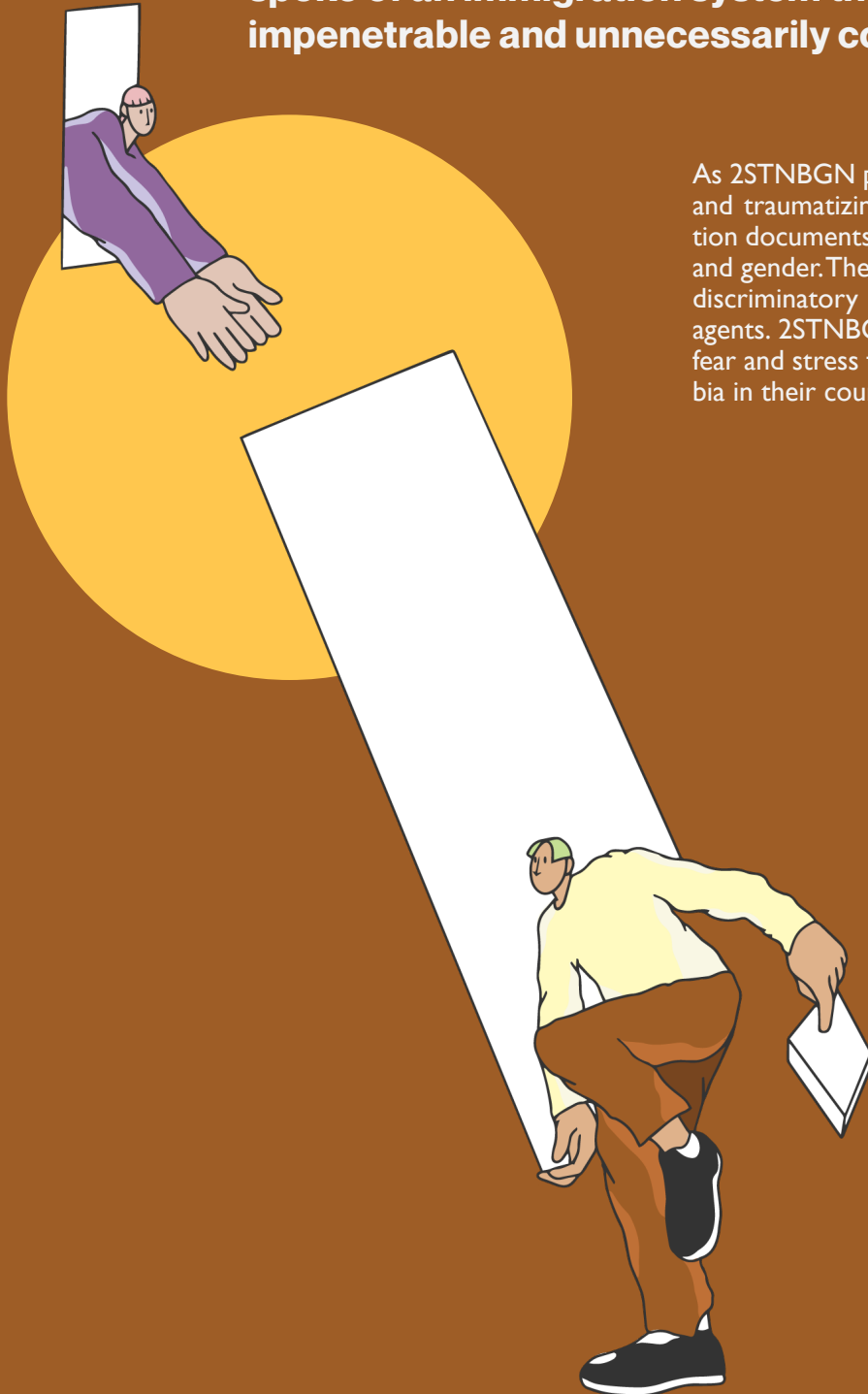
Immigration status also affected participants’ ability to work, with one participant, a refugee claimant, noting that they did not receive a work permit upon entry, and another noting that they felt like their precarious work situation was unavoidable, noting:

“
I can only work under the table because I don’t have a visa, so I don’t really have many options.

”

In general, migrant and refugee participants spoke of an immigration system that felt impenetrable and unnecessarily complicated.

As 2STNBGN people, the systems became doubly complex and traumatizing because of complications with identification documents that didn't match participants chosen name and gender. These systems were especially traumatizing and discriminatory at the border and at the hands of CBSA agents. 2STNBGN participants described feeling additional fear and stress from these systems due to fear of transphobia in their country of origin and the threat of deportation.



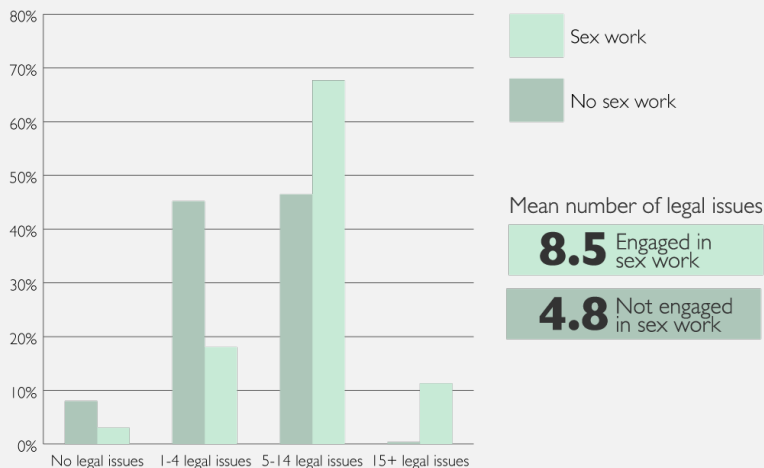
Experiences with Sex Work

A total of 19% (n=136) of survey participants indicated they engaged in sex work in their lifetime. The survey defined sex work broadly as referring “to the selling of sexual services (which may include face to face sexual services, full service sex work, online sexual services, sugaring, etc.) for money or goods (which may include housing, food, drugs, gifts, etc.)” These participants have a higher mean number of legal issues than participants who have not engaged in sex work (8.5 vs 4.8). The percentage of participants who reported 5 or more legal issues is significantly higher for participants who had engaged in sex work than for other participants (79% vs 54%).

Sex work and increased legal issues

Participants who have engaged in sex work in their lifetime experienced more legal issues than those who have not engaged in sex work.

The survey defined sex work broadly as referring “to the selling of sexual services (which may include face to face sexual services, full service sex work, online sexual services, sugaring, etc.) for money or goods (which may include housing, food, drugs, gifts, etc.)”



Descriptions of the kinds of sex work that participants engaged in were varied, with some specifying online sex work, camming, shooting pornography, escorting, full-service sex work, and a variety of other sex work related labor including less formal sex work such as exchanging “sexual favors for drinks, admission to clubs, drives home, etc.” Many participants noted moving to doing online sex work due to the COVID-19 pandemic.

Participants decided to do sex work for a number of reasons. Some used sex work to supplement their income or support them through school, while others found sex work to be an opportunity for a stable and safe primary source of income. 2STNBGN people doing sex work consistently described using this labour as a way to be resourceful and take care of themselves and their families.

“Some medications aren’t covered by non-insured health benefits. Same as pain management, so it was like okay, my day job doesn’t pay enough, what can I do to survive? And I figured it out [through sex work].”

“[I did] independent unlicensed/unregistered sex work on top of a job to support my secondary schooling.”

“I engaged in sex work at various points in my years of raising my family so that I could provide for them as a disabled single parent.”

Participants described sex work as a legitimate and important form of labour, a career, and an important option for them to engage in when they needed more stability in terms of income.

“One of the things I have been dealing with is not being allowed to have permanent or regular jobs here because the police at the border, when they gave me my papers the first time, they told me, you are not allowed to even work part time or anything. So that was one of the big struggles for me. How can I make income? When I came here, I came with my savings, but after one year I was running low. And so, I found myself like, I need to get an income soon or I will be evicted, evicted or living in the streets, and that’s not ideal. So, the only thing I could rely on, two things, basically one, began my career as a sex worker, and the second one is basically starting this refugee claim.”

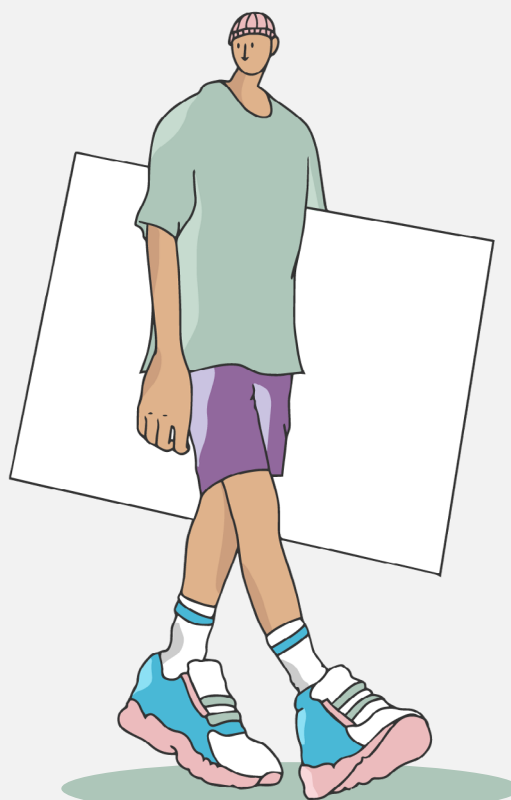
Many participants also spoke about the stigma against sex workers. Participants often did not want others to find out that they were doing sex work due to stigma, or expressed fear of employment discrimination due to doing or having done sex work.

“I did sex work privately and no one ever found out... I was able to pay my bills.”

“I was fired after admitting to a coworker that I took a job so that I could leave sex work.”

“I think what I was doing (online sex work) was legal, although I am afraid of being fired for it later (unfortunately legal I think) if I find work as a teacher. When I was involved in sex work... I was risking my public job in childcare, I was risking my family finding out, and I was also risking if anything happened to me during it, that I would not have been able to properly seek assistance.”

As this last participant notes, there are not enough resources and supports available for most sex workers. This is due to stigma and the criminalization of sex work across Canada. As one participant notes, sex workers get “legal flack and criminal records, and are further marginalized for trying to support themselves.”



Some sex workers also discussed experiences or fears of violence and wage and labour theft as part of their sex work, and the lack of legal or other recourse available in these situations due to the criminalization of sex work.

“I have engaged in sex work, and had a situation where the client did not pay me when they agreed to but I could not do anything since what I was doing was criminalized. I felt violated but was powerless.”

“In my work as a sex worker it’s horrible because say you have a client and everything goes well, but they started with this transphobic, passive aggressive comment, unnecessary commentary, you cannot say anything because this person is paying you, and if you make [them] upset, this person is leaving with your money.”

“[While] escorting I was driven to another end of [the city] and thrown out of the car after [being] told to perform acts I wasn’t ok with. I walked home after being robbed of the service payment. It was about 6 miles in February. Skirt and heels.”

The lack of legal recourse is a result of the criminalization of sex work, and how that criminalization has impacted sex workers’ previous experiences with the police. Participants’ experiences often included police inaction, overt discrimination, harassment, and violence. Importantly, the survey found that 46% of participants who had engaged in sex work reported experiencing police harassment and discrimination (vs. 16% of those who have never engaged in sex work), and 11% indicated having been previously jailed or incarcerated in some way (vs. 2%).

“I have been physically assaulted and pepper sprayed by cops. I have been intimidated by cops threatening me with physical violence.”

“I have been the victim of multiple assaults, including at the hands of the police, that were never reported. I did not report because I do not trust the police.”

“I was a sex worker as a teen and a cop raped me.”

Other participants discussed experiences with fines and other financial penalties because of the criminalization of sex work.

[Translate from French] “Sex work has already earned me several fines.”

Despite the lack of resources, especially legal ones, to support sex workers, many doing this work have found ways to support each other through community and mutual aid.



I feel more comfortable, represented and supported with the sex worker community than the trans community. With sex workers, there is cisgender women, transgender women and so on, it’s really diverse, but the thing is, we are there because we are sex workers. And I found wonderful people there, a lovely, charming, strong, and smart audience, it’s incredible.



“[Sex work advocacy] organizations work with sex workers, supporting them, giving some legal aid or some groceries, because sometimes you have money and sometimes you have nothing and you cannot pay for food. So [the organizations] provide, they provide you with those things and they take care of you, and that’s one of the things I like about the sex worker community, we take care of each other, because nobody else is taking care of us.”

Experiences of Violence

34% of participants in the survey disclosed being a victim or witness of a crime. This percentage increased to 43% for disabled participants, 51% for people who had done sex work, 55% for people who had experienced housing insecurity, and 37% for BI-POC participants. Participants reported experiencing many forms of violence, both threatened and substantiated. Specific forms of violence reported by participants included doxing⁷, blackmail, stalking, kidnapping, robbery, gun violence, physical and sexual assault, and hate crimes. The research team also characterized property damage, extortion, and theft as acts of violence because they fall within the scope of criminal law and are experienced violently by participants.

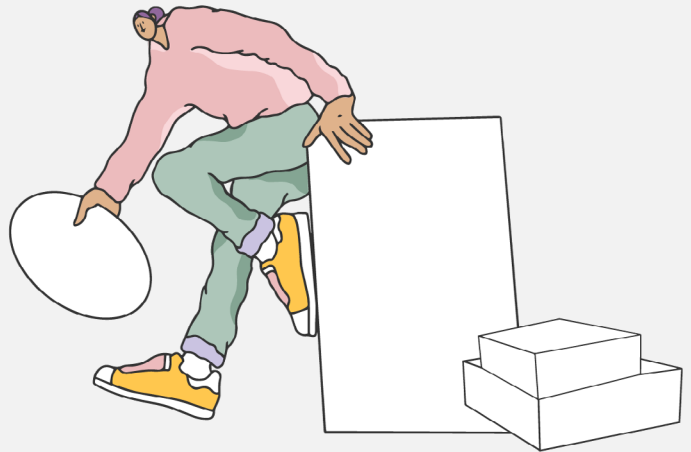
Perpetrators of violence ranged from strangers and the public, medical and legal professionals, employers and co-workers, and family, friends, and intimate partners, among others.



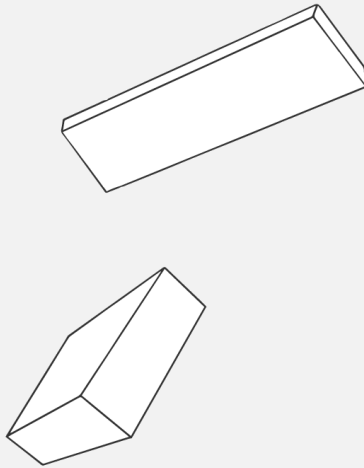
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There was a lot of stress about what documents I should submit, and how I should go about my application, because there was an incredible amount of stress that if I make anything that can be interpreted as a mistake, that means I will not be given status. Basically, there’s this immigration officer who in Canada has a lot of power to decide, and you don’t know who they are, they have a year to do that, or more, right? Like there is absolutely nothing you can do after you submit your paperwork.

”



Severe and ongoing acts of violence experienced by participants resulted in many complex mental health concerns that in some cases interfered with their daily and working lives.



“All the violence and assaults aggravated my mental and physical health, which is why I had to stop work and go on long-term disability. The continuation of transphobia just feeds my PTSD and depression.”

[Translate from French] **“I have been the victim of other criminal acts, and I am left with complex post-traumatic stress disorder. I live with these impacts on a daily basis.”**

“

My mental health issues are largely caused by trauma which was the result of bullying due to my neurodivergence, queerness, and disabilities.

”

Sexual Violence

Many participants in the survey disclosed being a survivor of sexual violence. Participants described a range of activities, from “unwanted sexual comments and touching” to rape. Sexual violence took place in a range of both ‘public’ and ‘private’ settings. It was enacted at the hands of friends, family members, strangers, and intimate partners.

“I was sexually assaulted a couple of months ago. Three times in different situations in just one month.”

Sexual violence also took place within a range of public institutions including medical settings and places of employment and education. Sexual violence enacted in these contexts (i.e. provision of goods, services, facilities or accommodation, and in the course of employment) is not only an issue of criminal law under the sexual assault provisions of the Criminal Code, but is a form of discrimination under human rights legislation.

Participants described how experiences of sexual violence jeopardized their emotional, physical, and sexual health, interfered with their ability to maintain safe and stable employment, and negatively impacted their living situations. For example, one participant disclosed how sexual assault led them to being HIV positive.

“I was sexually assaulted because I am intersex and out about it. Jurisdictional issues were utilized so no charges were laid. The assault led to me being HIV+ which led to me being prevented from working in the back kitchen at a job. My finances declined and I fell into debt.”

Meanwhile, others disclosed attempted acts of sexual violence at the hands of medical professionals and others within medical institutions, which falls not only within the scope of criminal, civil and human rights law, but also within the realm of professional discipline. Such abuse of power fosters distrust in the medical system and interferes with access to health care.

“I had a doctor attempt to sexually assault me.”

“While in the hospital I was threatened with rape by one of the other patients. The nurses refused to intervene until a family member approached them about it.”

“I was in an emergency room ... I waited for many hours alone in a room. A man was allowed to wander into the back rooms where I was, through two sets of doors and past many staff. He asked me if I wanted to have sex. I said no ... He was not at any point stopped or questioned.”

Sexual violence that arose within the context of the workplace impacted several participants’ ability to maintain stable income. Others experienced ongoing sexual violence and threats that impacted their access to education.

“I also was in the middle of a sexual assault case at work... I brought it forward, there was a third-party investigation, there was the whole HR thing ... And then I was put off work shortly after that.”

“I was violently sexually assaulted dozens of times as a trans girl at an all-boys school.”

Finally, sexual violence perpetrated by those close to them, including intimate partners and those in their communities, placed participants in precarious and unstable living situations.

“I was a victim of multiple crimes from a domestic partner who also filed falsified police reports that led to the charge for the crime I did not commit. Physical and sexual assault, along with a multitude of other crimes and abuses, including but not limited to direct involvement leading to my houselessness.”

Experiences of sexual violence often manifested as cycles of abuse, or arose within the context of abusive relationships. Participants spoke of cycles of violence and abuse within both intimate partner relationships and relationships of trust that were formed in childhood and adolescence. Cycles of violence manifested in participants’ intimate partner relationships when they were characterized by power imbalances, control, violence and fear. Cycles of abuse were also established during childhood when relationships of trust were abused by authority figures. Both of these situations had lasting effects on how participants were able to cope with and respond to violence in their lives.

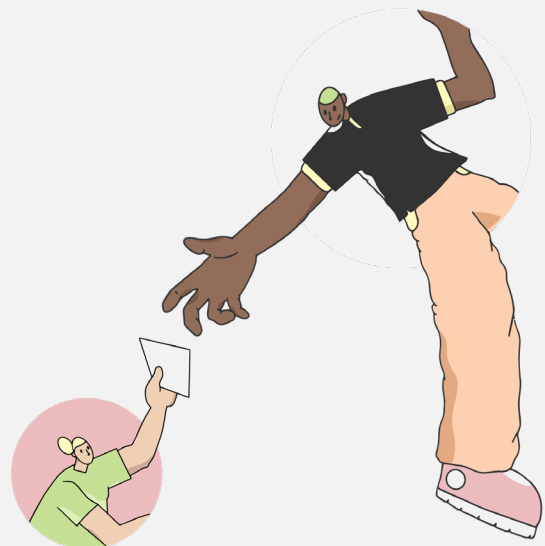
“I had like 11 years of sexual trauma, from age 3 to 14. And I think that that really shaped a lot of my situations going in ... I feel like part of why I felt like I might not be able to go to anybody about being harassed at work, would probably stem from the fact that I was sexually abused by some members of my family and to this day, I feel like I can’t tell anyone about it.”

Many other participants also disclosed instances of sexual assault as a minor and ongoing child sexual abuse. Some disclosed that family members were the perpetrators of this abuse (e.g. fathers) or other individuals in positions of trust (e.g. babysitters). Others, however, did not disclose the relationship they had with their perpetrators.

“A lot of it revolves around repeated sexual assault I endured over the course of 5 years at the hand of my biological father.”

“I was a victim in a trial in childhood against my pedophilic babysitter who was part of the same cult group and was found guilty. He was given a brief time in juvi [juvenile detention] and 3 years therapy and continued living on the same street as me.”

Cycles of violence and abuse had lasting effects on many participants’ emotional and psychological well-being, their ability to have healthy, trusting, and loving relationships, and live safely and securely in homes and communities free of violence.



Gender-Based Violence

Gender-based violence arises within the context of gendered power dynamics and can happen to both women and other gender minorities such as Two Spirit, trans, non-binary and gender nonconforming (2STNBGN) people. Many participants recounted experiences of gender-based violence, experienced as transphobia and transmisogyny. Past experiences and persistent threats of transphobic and transmisogynistic violence in public places caused a great deal of fear among participants for their safety and the safety of their loved ones.

“I would also say that in the city that I live in, which is very conservative, there is an ongoing problem for non-binary folks, and also for queer folks like myself. There’s no space for us, there’s no visible space, and it’s not safe for us to be out in public. My partner is a genderqueer person who floats in presentation, and when they’ve gone out in more femme presenting clothes, they’ve been verbally abused and experienced violence. It’s just, I think, the lack of accessible space, and also the lack of understanding.”

Others described experiences of violence from family members and others who are supposed to be sources of support based on their trans identities.

“I came out in 2017 to my parents as a trans man. I knew they were going to react poorly, so I came out over the phone. I was living in a different province at the time, and they didn’t know where my house was. They ended up using the Find My Phone [application] to figure out where I lived, breaking into my place, and physically assaulting me.”

Participants also spoke of experiences of violence enacted against them for the purpose of punishing or ‘correcting’ their genders and/or sexual orientations to align with the dominant heterosexual, cisgender norm. This form of violence, which may take sexual forms (i.e. rape), can be understood through the lens of ‘conversion’ or what is sometimes termed ‘corrective rape’.

“The gender-based violence and orientation discrimination are connected to the sexual abuse I faced. This sexual abuse was supposed to be “corrective” of my gender nonconformity.”

Finally, this project revealed the significant role that patriarchy played in fostering violence against transmisogyny affected (TMA) participants in this study. Transmisogyny is often enacted in media through the trope of the “man in a dress” which has real world implications for TMA people, as noted by the participant below.

“I had to move away because my neighbour would constantly make comments to me, early on in my transition, whenever I [wore] a dress, or a skirt, or anything that I felt was nice to wear.”

While transmisogyny can be and is enacted in many spaces, TMA people are particularly targeted in gendered spaces traditionally reserved for cisgender women. A few participants who were trans women recounted experiences of violence when trying to use the washroom.

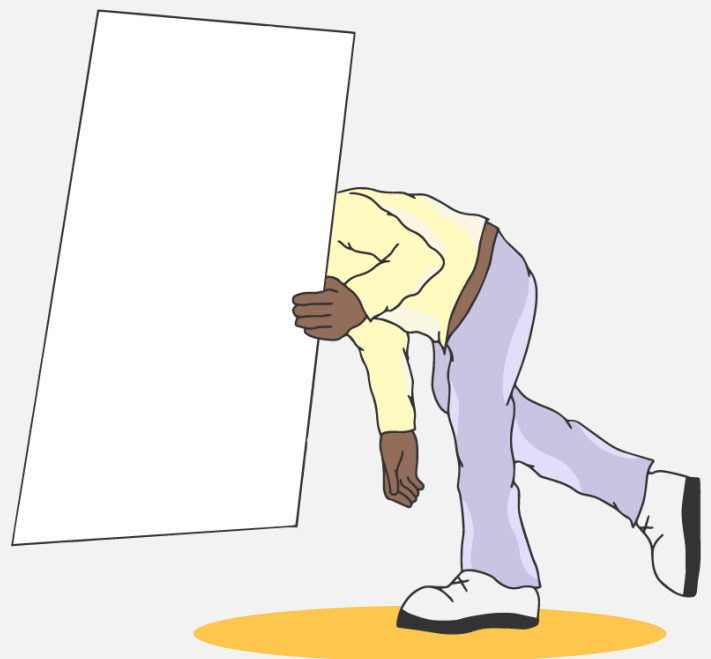
“I’ve been assaulted by a lovely gentleman who is a security guard in a [convenience store] 40 years ago. Tried to kick me to death in the back parking lot when I used the ladies’ washroom. And he caught me, and a couple of teenage girls that outed me and said, “hey, you know, there’s somebody dressed up as a woman and she just went into the washroom or he just went into the washroom.” The K-Mart guard chased me into the back parking lot, grabbed me before I could get into my car and run, had me down on the ground, kicked the living shit out of me. I still have scars all over my face.”

“So I went to the bathroom, I came out. And someone said my name. Not just the first part of my name that everybody knows me by, and all the girls called me by at the restaurant. My full name. Cause my legal name’s hyphenated. And he said my last name. He knew exactly who I was. And when I turned, he grabbed me by the throat and the crotch and pinned me to the wall.”

In gendered spaces such as washrooms, transmisogynistic violence is often excused in the name of “protecting women and girls,” such as the teenage girls who outed the participant to the security guard in the above example. Transmisogyny demonstrates the power and privilege cisgender women and other transmisogyny exempt (TME) people experience and can enact to harm trans women. As the below quote demonstrates, TMA people are often reluctant to access women’s spaces without direct supports.

“It feels like I need a bodyguard (cis-passing femme friend) to access women’s spaces. I won’t even go clothes shopping alone.”

Gendered power dynamics affect all 2STNBGBN people, but there are specific and violent dynamics directed towards TMA people.



State Violence

State violence is used as a broad term to refer to the enactment of emotional, psychological, physical, and/or sexual violence towards the Two Spirit, trans, non-binary and gender nonconforming (2STNBGN) community at the hands of government actors, particularly, but not exclusively, those in a position of direct power like prison guards or police officers. The term also serves as a challenge to some of the naturalized and legalized practices and procedures that the state undertakes which are violent in form or effect, such as the conceptualization of strip searches as a form of state-perpetrated sexual violence. While state violence may manifest in various settings, this subsection focuses exclusively on participants' descriptions of harassment, discrimination, and violence at the hands of police, border services agents, and prison guards. These experiences played a significant role in determining participants' ability to access formal methods of justice, and ultimately helped inform their broader visions of justice.

Participants' experiences of state violence were often motivated or informed by anti-2STNBGN discrimination. Nearly one-quarter of participants (22%) in the survey reported experiencing police harassment and discrimination in their lifetimes, and this figure was more elevated among BIPOC participants (32%).

Participants described being subject to transphobic slurs, invasive questions pertaining to their bodies, and experiencing poor treatment from police.

“Transphobic cops. Rough handling. Calling me a he-she, asking about my genitals. Fuck the police. Honestly. I was fully compliant and let go because I had done nothing wrong. Always male cops.”

Participants also described discriminatory and violent treatment at the hands of police during a range of interactions, including while making a report of victimization, calling for police assistance during an emergency, being questioned as a suspect, and during detention and arrest.

“When I’m in crisis, it’s really, it feels really unsafe when a lot of the time the officers rest their hands on their guns while they’re talking, while they’re trying to talk to me. That feels really dangerous and scary.”

“I was constantly harassed and unfairly treated by local police because of (unfounded, withdrawn) charge of assault (DV) [domestic violence] against me years ago. Gender transition has made this worse.”

Participants also described physical violence at the hands of police. Most often, participants described this form of violence arising most often in the context of arrest, or while interacting with police as a suspected offender.

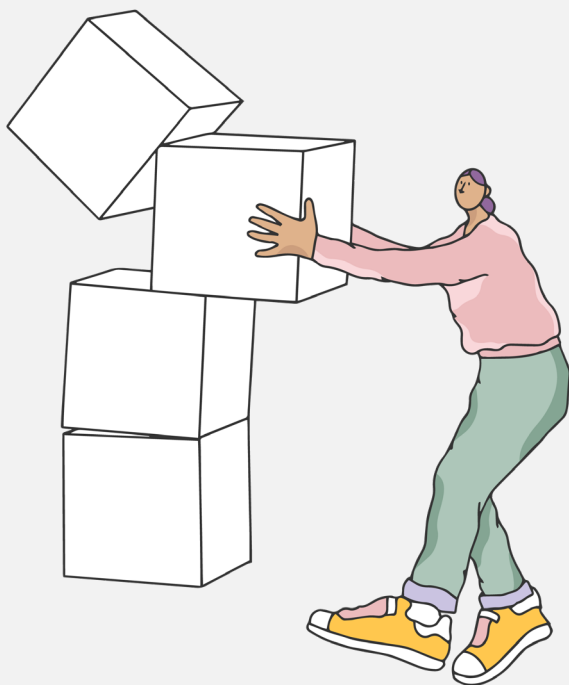
“I was stalked by police, arbitrarily arrested and detained only to have charges dropped later, and then I experienced sexual assault and harassment by police while in custody.”

“I have been physically assaulted and pepper sprayed by cops. I have been intimidated by cops threatening me with physical violence.**”**

A few participants also reported sexual abuse at the hands of police officers while they were underage. Participants described the abuses of power taking place while being apprehended as a minor for criminal offences, and while being in vulnerable and precarious positions in their lives.

“I was a sex worker as a teen and a cop raped me.”

“I was sexually abused by a police officer when I was around 13. He caught me buying marijuana, but then took me for a ride to the park “to talk about it” ... I filed charges finally one day many years later, after going through therapy for my father’s sexual abuse... I filed charges with Police sexual assault unit, and after investigation, they found no “corroborative” evidence.”



Participants’ experiences also shed light on how violence at the hands of police may manifest as institutional neglect. Institutional neglect is a form of violence that occurs when state actors fail to provide the means necessary to ensure an individual’s wellbeing and survival. For one participant, this took the form of the denial of proper health care and medication while in police custody. For several others, institutional neglect arose from improper police responses to mental health crises.

“I have been held overnight in police custody twice, both times without access to the multitude of psychiatric medication I take, and both times while withdrawing severely from alcohol dependence. The torturous feeling of both of these occurrences was heightened by being transgender, being Indigenous, and being on bad terms with the local police because of my work representing Indigenous and low-income people in local court. The second time I was held overnight (without charge), I ended up having a seizure. Then a second one. Only after the third seizure was I brought to hospital by police. I was admitted for several days to recover.”

“Cops went looking for me for a mental health arrest, found me as I was walking, and drove up onto the sidewalk to cut me off because I wouldn’t stop when they told me to. They managed to get out of the car, and threw me up against the hood. And this is from a mental health arrest. This is not an arrest.”

This project classifies improper police responses to mental health calls as a form of institutional neglect because these responses were largely considered as state failures by participants. Participants' experiences also bring up the broader question of whether police are an adequate or even appropriate response to deal with mental health calls.

Interactions with law enforcement were also mentioned frequently as dangerous for disabled and neurodivergent participants. Many participants described doing everything they could to avoid calling the police or 911 in mental health emergencies because of their distrust and fear of the police.

“I’ve been in many situations I’ve been abused by the police, and that means I, I found myself like being beat. They’ve beat me up basically, literally, you know. Because they thought I was doing drugs. But the thing is, I’m a person with some mental health disabilities and sometimes I suffer a really, really severe panic attacks or like dissociation, schizophrenia. And that means I’m not in myself, you know.”

Instead of calling 911 during emergencies, and potentially involving police, some participants described creating networks of mutual aid and care.

“I’ve put in a lot of legwork in the last year when it’s been super intense to bolster my support system of my chosen family, so that I don’t end up in situations where there’s any hospital staff or police or anything like that.”

Police posed an even higher risk for neurodivergent participants who were racialized. Because of this, many participants argued that police should not be involved in mental health care in any capacity. Participants instead suggested that trained mental health care professionals respond to 911 mental health crisis calls and wellness checks. Participants in the Indigenous focus group emphasized the importance of mental health care professionals that are a part of the communities they serve and/or that are trained in culturally-competent approaches to mental health care.

“I don’t want to have to call 911 for somebody who is having, you know, a mental health crisis or suffering from an overdose. I want to be able to call the appropriate people so that they don’t run the risk of being brutalized or arrested for something that they’re not guilty of. It’s usually the system that fails them.”

Finally, many justice advocates have argued that the very use of incarceration itself is a form of state-endorsed and legitimated violence (Spade 2012). 4% of participants reported having ever been incarcerated in a prison, jail, or a detention centre, while 7% of BIPOC participants reported the same.

For most 2STNBGN people, confinement within the binary prison system can be experienced as violence. One participant expressed fear of being incarcerated, not knowing which prison they would be sent to.



If I go to jail, God forbid, what happens? Do I get sent to a women’s prison? Do I get sent to a men’s prison? Either way, I feel like I’m going to die, or just something awful is going to happen.



This participant felt that they would be subject to violence within either institution, signaling the way in which incarceration itself would be an act of violence for a 2STNBGN person. Moreover, another participant offered an important point about the binary nature of incarceration as an Indigenous 2STNBGN person, who explained the harms of being categorized into the colonial gender binary.

“I was transgender and not falling into the colonial binary, [and therefore was] being punished by being held in a women’s prison. Because you’re [classified as] a woman and everyone is seeing you as a woman right now.”



“

I was transgender and not falling into the colonial binary, [and therefore was] being punished by being held in a women’s prison. Because you’re [classified as] a woman and everyone is seeing you as a woman right now.

”

This participant’s experience of incarceration must be understood with respect to the fact that the gender binary is a Western construct and has been mobilized as a weapon of genocide and assimilation against Indigenous people and nations (Finley, 2011). This very act of categorizing Indigenous peoples into the Western gender binary through imprisonment may be understood as a colonizing experience as it erases and inhibits Indigenous ways of being which are inherently different than the Western binary system. The harm of imprisonment, a colonial method of punishment, is therefore compounded by the harm enacted through the naturalization of the colonial gender binary.

The tension between Western and Indigenous ways of being will be unpacked more thoroughly in the Visions of Justice subsection of this report.

The issues that were covered in this section, from anti-2ST-NBGN discrimination, all forms of violence, and institutional neglect, are important context to understanding participants’ negative views and distrust of the legal systems, legal processes, and judicial actors.

Analysis

Survey participants revealed a broad range of factors that impact the ability of Two Spirit, trans, non-binary and gender nonconforming (2STNBGN) communities to access justice and successfully navigate legal issues. Widespread transphobia and intersecting forms of discrimination force 2STNBGN individuals into situations where they are more likely to interact with the legal system. While the legal system should offer protection, support, and justice to the marginalized, the reality is often much different. 2STNBGN people are often revictimized by a legal system shaped by discriminatory attitudes, practices, and laws. This means that the oppression faced by 2STNBGN individuals in their day-to-day lives is compounded by further discrimination when trying to access the legal services that might address those instances of oppression. Participants reported experiencing various forms of implicit and explicit transphobia during interactions with law enforcement, lawyers and opposing legal counsel, HR representatives, caseworkers, and other actors in the legal system. This prevented many 2STNBGN people from seeking justice through the legal system and contributed to the various forms of institutional distrust that many participants described.

“

I wish that I felt safe contacting legal services, like paralegals or pro bono lawyers. Because a lot of the time it's like you pick up the phone and they're like, "Oh, hello, sir." And I'm just like, "Okay great, we're going through this again."

”

This section unpacks a number of barriers 2STNBGN people and communities face when attempting to access justice including intersecting forms of systemic discrimination and harassment, the risk of taking legal action, material barriers, feelings of exhaustion and powerlessness, and a distrust of legal actors and processes including lawyers, courts, tribunals, and, importantly, police.

Barriers to Accessing Justice

Intersecting forms of Systemic Discrimination and Harassment

The discrimination built into the legal system often impacts people based on their intersecting identities in complex ways that render them vulnerable to further discrimination and marginalization. One example that came up frequently in this research was the inability for migrants to update their immigration documents. Migrants without permanent residency cannot update their legal documents without having first updated their identification documents in their country of origin, even individuals with SOGIESC-related (Sexual Orientation, Gender Identity and Expression, and Sexual Characteristics) refugee claims. As such, for 2STNBGN migrants, seeking legal redress is complicated by the fact that they will likely face more transphobia within the legal system as a result of not being able to update their legal name and gender marker. This makes it difficult, if not impossible, for 2STNBGN migrants without permanent residency to obtain services, legal or otherwise, and navigate society without being required to use their deadname and/or being misgendered. This situation could also result in being outed as 2STNBGN and subjecting the person to further violence here or in their country of origin.

“IRCC and The Board use my legal name and my legal gender in everything, even though they know my case is SOGIESC. There are no clear guidelines how to change my gender in the documents, for instance, in my Refugee Protection Claimant Document. There’s a form IRM 0002, but nobody (my lawyer, [community organization]) knows how to use it: we simply added it to the submitted documents hoping for the best. There’s no ability to get any sort of certificate for my preferred name, so I could use it, for instance, with banks.”

Further, and importantly, participants related how living at the intersection of multiple marginalized identities not only increased their vulnerability to violence, but also created additional barriers to reporting violence when it was experienced. This was especially true for Black, Indigenous, and otherwise racialized individuals who experience increased surveillance, violence, and intimidation from law enforcement. A significant number of BIPOC participants experienced police violence but did not file a report with law enforcement because they doubted the police would investigate or be held accountable. Similarly, Indigenous participants reported not having their concerns or experiences taken seriously by police which reflects widespread anti-Indigenous racism and a disregard for Indigenous life and wellbeing within policing and the legal system more generally.

“As an Indigenous and Two Spirit queer person—and this stems from my cousin having gone missing—another thing I live in fear of is what if that happens to me, what will the RCMP do? What will the police do? Will they also tell my parents that I must just be off with friends, partying?”

For those with intersectional identities, it often appears difficult to prove or pinpoint the basis of discrimination. Many participants were unable to confidently identify whether the discrimination they had experienced was rooted in one sole vector of oppression and instead spoke about how their various identities collectively inform how they are perceived and treated. One participant describing their experience with employment discrimination remarked:

“[A]s an immigrant, it’s always the question of when I send in a resume, is my name as an immigrant going to make them deny me employment? Or is it the fact that I’m going to show up to the interview, and they’re going to see that I’m trans? And when I inevitably get denied employment, I’m left wondering which one.”

Many participants highlighted the perceived difficulty to prove discriminatory intent or to gather positive evidence of discrimination as a reason for not attempting to use the human rights system. Intent is, however, not needed to prove discrimination (although intent may have an impact on the available remedies). A claimant only needs to prove that there is the appearance of discrimination (a prima facie).

Another major barrier to accessing justice is that while the law can recognize discrimination on multiple grounds (e.g. for both race and gender identity), it does not have a mechanism for taking into account the cumulative, or intersectional (Crenshaw 1989, 1991) effects of discrimination on multiple grounds (e.g. the racialized gender of a Black trans woman).

Risk of Taking Legal Action

The level of risk that accompanies taking legal action cannot be understated for 2STNBGN people as they often deal with precarious housing and employment, economic disparities, higher rates of criminalization, and other structural conditions that make interacting with the legal system difficult.

Many participants expressed hesitancy to take legal action because they were afraid it might result in further marginalization and criminalization by jeopardizing their employment, housing, immigration status, or other factors. One participant, a sex worker, reported that they could not seek legal recourse when their client refused to pay them for their services because their work was criminalized.

“I have engaged in sex work and had a situation where the client did not pay me when they agreed to, but I could not do anything since what I was doing was criminalized. I felt violated but was powerless.”

Participants engaged in other forms of criminalized employment echoed this sentiment, afraid of both further criminalization due to their work and the inability to consult legal services or law enforcement if necessary. One participant experienced housing discrimination but was unable to successfully seek legal recourse because they were also involved in the drug trade.

“Once when I was looking for an apartment at 17, I found this beautiful basement that was close to my work & school so I could still finish high school. When I told [the landlords] I was on welfare, they said “Sorry we don’t accept people on OW because they are very bad with paying on time and they’re sketchy.” I reported it to Tribunal of Rights and they told me to send them a letter stating that I can sue them. They then threatened to call the police on me. I let it go because I was about to get kicked off my job and was going to be selling drugs anyway.”

2STNBGN migrants also face higher risks when interacting with the legal system. Several participants did not take legal action because they were afraid that it might jeopardize their immigration status. An undocumented migrant who was interviewed could not legally change their name because to do so would require traveling internationally, consequently barring them from re-entering Canada where they have lived for years.

“I’ve never had my name change done. In order to change it on my birth certificate, I need to go back to the US and go to court. I can’t leave Canada and I didn’t want to go all the way to do that before my visa expired.”

Another participant was unable to seek legal recourse on several issues related to family law and updating their legal documents because taking legal action would notify their abusive ex-partner of their whereabouts, thereby endangering their safety.

“My divorce, ID, custody are all connected to my being in hiding from my abusive ex and his family. If I file for divorce, they will find me. If I change my name and I have to notify them, they will find me. My credit is bad because he used my info for things. If I take it to court, they will find me.”

Because of the structural marginalization of 2STNBGN communities, taking legal action can often backfire by threatening individuals’ employment, housing, and general living conditions. Many participants lacked the social and economic stability and support they would need in order to successfully navigate the legal system without becoming further marginalized or falling into cycles of criminalization that are difficult to escape from. These cycles of criminalization functionally bar many 2STNBGN individuals from seeking justice.

Material Barriers

There are tangible and material barriers to accessing justice as well. Three main themes emerged from participant’s experiences in this category: financial costs, time constraints, and administrative and bureaucratic mismanagement. These three experiences often overlapped with one another. Financial and time barriers were particularly intertwined for many, as being involved in the legal system often requires a significant sacrifice of both time and money. Of the participants who were able to start legal processes, many reported that their lack of finances and time led to poor legal outcomes.

“[O]ne time my roommate and I had a case open with Community Legal Aid. It was a situation where our landlord basically was harassing us because we had pets. We suspected that he potentially didn’t like us for other reasons, we didn’t have any proof... [the legal process] was just so much work, we constantly had to go for meetings. And there were so many steps involved, and they needed all of these forms. My roommate and I are both disabled...and we were both in school and working at the time...I think everything put together, it just became too much. We ended up dropping it.”

Even when individuals can begin the process of navigating systems and institutions to seek justice, bureaucratic and administrative mismanagement can frustrate attempts to access justice and make situations of injustice worse than they were to begin with.

“My family doctor took too long to fill out his portion of my Ontario Disability Support Program application. I contacted him numerous times about it with no meaningful response. The application ended up expiring and I’ll need to reapply. The application is extremely difficult to fill out without the assistance of someone else. The Health Status Report/Activities of Daily Living Index portion of the form is basically inaccessible to anyone who doesn’t have a provider they can trust to properly fill out their portion of the form, if they even have someone who can fill it out at all.”

Feelings of Exhaustion and Powerlessness

Access to justice barriers, whether experienced or yet to be experienced, can and do contribute to feelings of powerlessness and exhaustion. This exhaustion itself was mentioned as a reason that some avoid the legal system.

[Translated from French] “I have a deep hatred for the police and for all legal organizations. And for how hard it is to access them. And when you have the energy to access them, how hard it is to assert your rights. And then that’s not counting all the things that come with it, all the psychological stress that surrounds it.”

Underlying many of the issues participants discussed was a sense of incapacity to act, whether explicitly stated or implied. The legal system limits agency in ways that can seem arbitrary, such as bureaucratic incompetence, but which are in fact engrained in the structure of the system itself. One participant described this as the “slow violence” of the state.

“Slow violence like poverty and marginalization, and things that people consider small like not being respected for who you are, getting deadnamed, getting pushed out of spaces, and not being able to access the same resources and opportunities as other people.”



A lack of housing, employment, 2STNBGN-inclusive medical care and health insurance, and other essential needs are forms of state-sanctioned violence wherein individuals are cut off from the basic conditions needed for a livable life. Becoming worn down by cycles of poverty, criminalization, and marginalization makes it difficult to navigate the bureaucracy and complexity of the legal system, or to even feel like it's worth it to pursue justice through formal legal channels. Feelings and experiences of powerlessness and hopelessness in the face of this system is a natural consequence of a legal system that produces and reproduces systemic discrimination and oppression. This phenomenon was expressed by multiple participants in several ways covered above, but one interview participant, who also spoke of being intertwined in cycles of abuse and criminalization, stated it clearly:

“

I feel powerless anytime I try and interact with anything legal. Honestly, I feel like these systems are not designed for people like me. But it feels even more powerless when it's forced on you and there's still nothing.

”

The issues of systemic barriers to justice can sometimes be alleviated by finding support in the community, whether informally in groups of friends and family, or more formally in established community groups. Several participants mentioned the positive aspects of finding communities that had resources for accessing justice, such as finding law school students partnering with queer organizations, or sex work organizations as a source of empowerment and wellbeing. Lack of community, therefore, can be a barrier to justice. Without community, finding justice and overcoming barriers can be a difficult, if not impossible task. For a few participants, community centres and community clinics were central to the lives of queer and 2STNBGN people in their cities. Not only that, but formal community groups are often dedicated to addressing specific needs and issues that the state does not prioritize, and without these formal community groups these issues go unaddressed.

Distrust of Lawyers

Participants' experiences and feelings of distrust towards the legal system as a whole often showed itself as a distrust or avoidance of lawyers when faced with a legal problem. Among participants who had worked with legal professionals to attempt to resolve their legal issue, many found that this experience confirmed their initial feelings of distrust.

Participants often expressed distrust of lawyers based on financial reasons. There was a general understanding expressed by participants that good legal representation is expensive, and that the results of a legal case can often come down to the amount each party can afford to pay their lawyer. As a result, many were unable to pursue a legal case or felt that they received or would receive inadequate legal representation because of their financial situation.

“Every time that I’ve tried to get help from a legal aid professional or any kind of legal services, they just basically say that they can’t do anything or they can’t help. I feel like unless you have money, those services aren’t going to do anything for you.”

“

I feel powerless anytime I try and interact with anything legal. Honestly, I feel like these systems are not designed for people like me. But it feels even more powerless when it’s forced on you and there’s still nothing.

”

As the last quote illustrates, while legal aid was able to fix holes in the system caused by financial inequity for many participants, it was not a solution that worked for everyone. Some found legal aid overly complicated or unhelpful for their specific situation because of the limits on the types of assistance legal aid can provide. Many legal aid clinics are only able to provide information instead of advice, are unable to represent clients in court, or are limited in scope to certain types of proceedings or areas of the law. Others found that income restrictions of legal aid left them in limbo, as their income was too high to qualify them for legal aid, but too low to allow them to afford a lawyer on their own.

This included instances where participants lost access to their lawyer or legal services part way through addressing a legal problem, because they had gotten a job or experienced a temporary change in income.

[Translated from French] “I had to pay the lawyer, because I was making too much money to get legal aid, so it was very expensive. At least 200 dollars an hour. I’m still paying for it.”

“My experience with legal supports like legal aid was confusing, I was told my issue didn’t qualify for what they were able to provide.”

“Last year, when I got my part time job, I called legal aid because I am supposed to report any update in terms of employment. So, as soon as I updated them, they are like, “Your legal aid is canceled” and I have to pay for my own immigration lawyer.”

This demonstrates a systemic problem of income inequities impacting the legal system, and how those inequities cause 2STNBGN communities, who often make lower incomes than the general population, to distrust and avoid the legal system.

Building trust in lawyers and in the legal profession requires confronting the root of these structural problems, not just creating solutions that give more people access to a fundamentally flawed system. This is supported by a number of participants who either did not or stopped seeking assistance for a legal problem because of the amount of time it took, and the absence of any supports from their lawyers in managing this new burden in addition to their regular lives.

“I was homeless, in a very precarious situation. I went to a shelter, I tried to get a lawyer, I tried to seek representation. The litigation was going on where there’s endless court dates and this and that. But I didn’t have the resources or any support or any help to support myself or to survive at that time.”

Among participants who did work with lawyers to attempt to resolve a legal problem, many were faced with lawyers who knew little about 2STNBGN communities and terminology, or who were actively transphobic towards their clients. Some participants chose to remain closeted around legal professionals, due to fears of transphobic discrimination or harassment. This was often accompanied by feelings of discomfort in legal spaces. Some participants felt uncomfortable in legal settings and that discomfort influenced their decision to remain closeted, while others chose to remain closeted for safety and reported feelings of discomfort as a result of being closeted.

“

I have to be on guard and assume that the people there—the lawyers, and the law students and the other staff—I have to assume that they’re not supportive of me. It’s obviously risky to assume that they are. And because of that, I don’t feel like I can bring my full self to that space. And that, just by itself, is going to make me uncomfortable.

”

Among participants who were out as 2STNBGN to their lawyers, several mentioned that they were misgendered or deadnamed by their lawyer, either by accident or deliberately.

“That lawyer refuses, regardless of how many times I say, “Look, this is my legal name. This is what I’m called.” Just call it a nickname in your head if you have to, you know. He will not, he will not. [To him] I’m she, and I’m my deadname, and, you know, that’s just the way it is.”

“I’ve been misgendered by notaries when getting documents signed to change my gender on ID.”

On the other hand, the participants who were able to work with 2STNBGN-competent and 2STNBGN-affirming legal professionals were much more positive in their descriptions of their experiences. Asking a client’s pronouns or being aware that the lawyer they were working with was active in their community or in other justice movements were all mentioned as “green flags,” reassuring participants that they could be themselves with this lawyer.

“They made us both comfortable. They asked what our pronouns were right away, which made us both more comfortable. And they were affiliated with a social justice group, through the university. They actually seemed—pretty good.”

This points to a need for lawyers to actively learn about 2STNBGN issues and show that they are welcoming to 2STNBGN communities through concrete actions in order to make 2STNBGN people feel comfortable accessing legal supports, without having to take on the burden of educating their lawyer on 2STNBGN issues all on their own. Participants were often hyperaware of word choice and actions taken by lawyers and legal professionals that could signal them as either an ally or a potential danger, and lawyers should be conscious of the reality that their words and actions will have a strong impact on how much their client trusts them and feels comfortable working with them.

Community Support

Instead of seeking assistance from legal services, many participants reached out to organizations or informal community groups. Participants from across the country found support and necessary resources from many organizations for 2STNBGN communities and for 2SLGBTQIA+ communities more broadly. In particular, many participants noted that resources from community organizations made them feel less alone when confronted with overwhelming and daunting situations.

“It’s been, really, the community groups that have been wonderful advocates and supports.”

[This community organization is] “the reason I was able to access a lot of medical transition things. I wanted to mention that because they are a really great organization and I owe them a lot.”

However, this support was not without its barriers. Notably, participants who wanted to access necessary programs from community organizations were often unable to access that programming due to underfunding and overdemand.

“I think the overall issue is perhaps the lack of funding and coordination between the organizations, institutions, groups offering resources.”

“I feel like most of the problems in, in Alberta is just there isn’t enough funding for most things.”

Another issue that was noted was that community organizations often failed to take into account the experiences of Black, Indigenous, and people of colour (BIPOC) 2STNBGN people, leaving BIPOC participants who had tried to access their services feeling excluded from programming that was geared towards white people.

“I find in that organization, too, there’s a huge deficit in the service they provide towards queer, non-binary folks and trans people of colour specifically.”

[Translated from French] “The responses in general that we heard [to Bill 2] were responses from white people. Not because Black people and BIPOC organizations didn’t have anything to say, it’s just that they were erased, that they were put aside. Then, it’s often the case that, in Québec anyway, elsewhere too, but especially in our community in Québec and in Montréal. It’s often that we don’t leave room for people who have more to say. So immigrants, people of colour.”

Other issues brought up by participants who had worked with community organizations included the focus on services for 2SLGBTQIA+ youth with a lack of services for older community members, and feelings of discomfort and stress when organizations were inauthentic and services did not come from members of the community they were serving. The focus on services for youth in particular intersects with the whiteness of many organizations, as one participant explained:

“There is a lot of queer groups that are geared with an upper age maximum of 29. And lots of queer racialized people don’t come out until later on in life compared to white people. And by then can’t access quality supports.”

Beyond formal community organizations, many participants found support in informal community support networks or peer support groups. This took the form of mutual aid (such as sharing 2STNBGN-affirming resources with local networks or sharing money with community members in need), 2STNBGN friend groups who supported one another through various legal issues, and online 2STNBGN community spaces.

“Me and my friends, most of us are queer. And we do help each other, when, like, times are hard for being queer.”

“I remember there was some Facebook groups that were helpful. And they taught me things I had no idea about, because I think there’s just a lot of things that aren’t spoken about very often and so it’s helpful to have groups where people just ask very openly.”

“I think that trans people looking out for each other and showing up and you guys doing this kind of work, I feel safer.”

Overall, participants felt safest getting assistance with legal issues from other members of 2STNBGN communities, particularly people from the same groups or who had the same lived experiences as themselves. Participants formed complex webs of social support and informal mutual aid to help one another, often in response to a lack of support from underfunded or unrepresentative formal organizations.

Distrust of the Legal System

Participants learned to distrust the legal system, legal processes, and various judicial actors based on a range of experiences of state violence and based on general knowledge of the limits and potential harms involved in seeking justice through these formal institutions. Distrust of the legal system was also often founded in first-hand experience. Participants spoke of the ineffectiveness of police in attending to reports of victimization, bad experiences with judicial actors, the high cost and wait times associated with fighting legal battles, the emotional labour and potential trauma involved with the reporting processes and court procedures, and the oppressive foundation of the Canadian criminal legal system as reasons for distrusting the system.

The participants' overwhelming distrust of the legal system should be understood as a significant barrier to accessing justice, as it leads them to avoid the legal system. In this context, community-based organizations, services, and networks of mutual aid by and for 2STNBGN people offer a critical alternative to formal pathways towards accessing justice.

Distrust of Police

Many participants shared that they felt the police would fail to respond to their legal issues, or would not take their claims seriously. Some participants felt this way based on lived experience, while others felt this way based on general knowledge of the criminal legal system's failures.

“

I don't trust the cops. And I don't trust the legal system. When less than 10% of reportings are charged and less than 2% of those convicted, what's the point of this exercise, again, somebody tell me?

”

“I have been raped multiple times, beginning in childhood. However, I have not reported any of these incidences because of the lack of action I've witnessed when other people had reported rape.”

Other participants chose not to disclose their legal issues to police because of the harm caused by the criminal legal system, and a desire not to contribute to others being trapped in that system.

[Translated from French] “I try to contact [the police] the least possible. Because, they often ignore things. Things are brushed off. Then there are things that I could have gone to court for, but I don't really have any interest in seeing someone go to a carceral environment either, because I don't agree with that environment. I just prefer that everybody stays free and that I air my emotions privately.”

Most participants who disclosed reporting sexual violence to police described not being taken seriously, or even being harassed or abused by the police themselves. Police harassment dissuaded participants from pursuing charges.

“A few years ago, I disclosed a sexual assault to someone, and they kind of pushed me into going to the police, even though I didn't originally want to. The entire time I was at the police station, they continuously misgendered me, even though I would correct them multiple times. And it was an awful experience. And I later decided to drop the charges because it was so stressful. They then tried to tell me that I was recanting it instead of just dropping the charges and that I would be in a lot of trouble for lying. And that was just getting, dropping the charges without telling them, telling me I was recanting. It was a really hard issue. It was difficult.”

“I was a victim of sexual assault as a child by an adult. Years later harassment by police regarding the assault began when the perpetrator let it slip to their friend of what they had done and that friend filed a report with the RCMP. This harassment by the police regarding pressing charges and being asked numerous times to retell the story of what happened has continued for the better part of two years.”

Other participants chose to not disclose sexual assault to police because they felt it would not be taken seriously, that the reporting and court processes would be traumatic, or that charges would not be laid or no conviction would be secured.

“I never reported it because I knew first thing would happen, the cops will be, “you’re trans [...] Are you a sex worker? You’re trans, were you leading him on in the restaurant? You’re a woman, were you showing a little bit leg under the table at him?” In the meantime, I was wearing pants, alright. And you know I didn’t want to face all that, and be revictimized again.”

Participants felt that the lack of police response was shaped by problematic constructions of what constitutes an ‘ideal’ victim, indicating that they existed outside of this scope and were not believed by police by virtue of their gender, race, disability, and/or previous convictions. The belief that police would be nonresponsive to reports of victimization was strongly felt by transfeminine participants who experienced and feared transmisogyny at the hands of police, as well as BIPOC participants who were attuned to the ways Blackness, Indigeneity, and racialization are more often associated with criminality than victimhood in the eyes of judicial actors.

“I don’t trust local cops, and I don’t trust the RCMP. Part of that is because I’m Indigenous and cops don’t have a good record with us. Part because I’m queer, because I’m trans. And I knew that growing up, from a very young age, that if anything happened to me, and it came out that I was not straight, that the cops would do nothing.”

One participant summarized this stereotyping as the feeling of “being watched more closely by law enforcement than my gender-conforming, heteronormative, white counterparts.” Additionally, others spoke to systemic injustice regarding the way mentally ill people are constructed as dangerous and criminal in the eyes of police.

“After an assault, bleeding and torn up, [I was] warned that I could and would be arrested “for impersonating a female.”

“It’s like once one thing happens and you’re in “the system,” anytime you do (and don’t do) something illegal, with law intervention, it compounds and what I did in the past “is evidence” or “proves” that I’ve done the next thing. Transphobia and homophobia are systemic issues... the more visibly queer I became, the more harassed I’ve been.”

“

Complaints I filed with the police about the abuses I endured at the hands of my ex-girlfriend went unheard, or I was treated as being mentally ill and not credible.

”

In addition to the systemic discrimination that shaped institutional responses, participants also felt that they would be putting themselves in a precarious position, in which they are vulnerable to violence and retaliation, if they approached police to make official reports.

“I have filed two reports with the police as a victim of crime, and then after bad experiences did not report a more serious attack on my person because of fear for how I would be treated.”

“You’re also scared of the systemic violence that could happen when you do seek help.”

While many participants gestured to systemic injustices within the institution of policing, BIPOC participants clearly named anti-Black and anti-Indigenous racism as specific and integral forces shaping their interactions with police. These individuals felt that they would be vulnerable to police violence by virtue of their race and/or Indigenous identity.

“As an Indigenous person living down in Treaty Four, but from Treaty Six. So, I’m no stranger to hearing about violence against women, against queer people, against Indigenous people, especially at the hands of police. The police are, and the justice system is something I try to avoid at all costs. Because I don’t trust them.”

“If something happens, for example, I get robbed or something, I would feel less inclined to go to the police in Ottawa, because I know how they treat Black people specifically. And I know how they treat trans people specifically. So, for smaller things like that, I feel like in the community, we tend to just not try to reach out for help in a lot of instances, because we’re afraid of the response, and the help that we’ll actually get is just completely ineffective, and sometimes makes things worse.”

These participants speak to the ways anti-Black and anti-Indigenous racism are often rooted in specific and local histories, in these contexts, the Starlight Tours in Treaty Six⁸, and the history of how the Ottawa police has treated Black people in the past.

When survivors of violence are reframed as perpetrators of violence in the eyes of judicial actors, like the police, that reframing is based on stereotypes. Participants shared experiences of being framed as violent actors when making reports about being the victim of violence. This experience was particularly prevalent among participants who were transfeminine and BIPOC.

“I was assaulted by my ex-husband and he had the cops convinced I was the menace and was hauled off in the back of the police car, threatened with charges, finger printed, mug shot, given a court date and was released. I then tried to kill myself to escape my abusive husband, woke up in the ICU 2 days later and fled and never went to the court date.”

At times, the threat of police was used against participants as a tactic of abuse.

“My white roommate got physical with me and then called the police saying they were scared and trapped by me. They later called off the police. They knew that I was brown and they already had my name.”

Distrust of Courts and Human Rights Processes

Participants spoke to the general trauma involved in the reporting process in which survivors are expected to disclose details of the violent and discriminatory experiences to judicial actors and relive them before the courts and tribunals. This is an emotionally taxing situation that may incite feelings of defeat and powerlessness, therefore acting as a deterrent to accessing justice through these formal channels.

“**It’s absolutely traumatizing interacting with the system. In a situation where I’m already out of control, it just ends up making me feel even more powerless and takes away even the little control I do have. It definitely makes me feel helpless as well. I just don’t have any trust.**

“**A roommate and I started the process once of opening a case with community legal aid, but the process was tedious and difficult and we are both neurodivergent and struggled with it. We also were afraid of retaliation from our landlord and his probably wealthier and more powerful lawyer. We dropped the case.”**

A significant finding that emerged was the relatively few participants who discussed pursuing formal human rights processes, despite the high percentage of the sample who reported experiencing discrimination and harassment on the survey (73%). Some participants briefly mentioned launching a formal complaint due to discrimination related to gender and/or other factors, while others mentioned waiting for a resolution. Of those who discussed human rights processes, the long wait-times and costs involved in resolving their cases was noteworthy, and some participants expressed disillusionment with the human rights process as a result.

“I am currently close to \$50,000 in legal fees fighting OHIP [Ontario Health Insurance Plan] with the OHRC [Ontario Human Rights Commission] tribunal. 5 years waiting for justice and at least a year to go!”

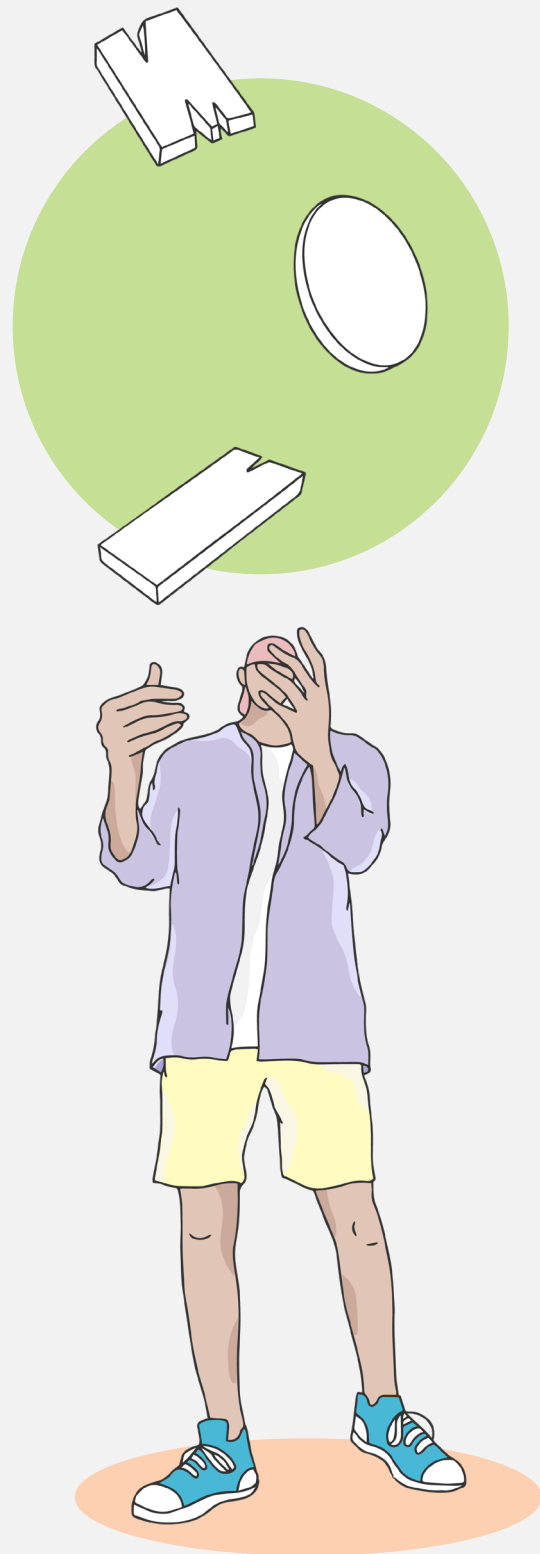
“I had a service dog for several years, and I faced so much discrimination when I had him. We would get denied access to public transit, restaurants, stores. We faced housing discrimination and harassment from a couple different landlords. It was just one of those situations where on paper I had rights, but in practice, there was seemingly just nothing anybody could do. I tried, at one point, getting in contact with the Human Rights Tribunal, I tried going to Community Legal Aid, and everybody was basically just like, “sorry, there’s nothing we can do for you. Unless you have the resources to hire an expensive disability rights lawyer, nothing is going to come of this.”

It was notable that the vast majority of participants did not indicate the outcomes of their complaints. Although this, in part, may be attributed to the signing of confidentiality agreements within the mediation processes, where most human rights cases get resolved, this finding indicates a broader trend in which most did not pursue legal processes to resolve or remedy the discrimination that they experienced. Although most participants did not unpack the rationale for not pursuing legal action, one participant expressed distrust of human rights institutions that are housed within public institutions.

“I don’t trust those who are supposed to help but are affiliated in some way with the institution that might be harming me, like patient advocates employed by the hospital, or human rights offices on university campus. In my experience, they don’t truly advocate for us. Their role is to try to smooth things over, to maintain good PR [public relations] for the institutions and prevent us from taking legal action.”

For this participant, human rights resolution processes that occur at the institutional level, as opposed to the filing of formal legal complaints, exist for the purposes of risk management: to protect the institution from lawsuits. Other participants expressed not pursuing a human rights complaint because of the fear of retaliation from the perpetrator or the institution that they are a part of.

“It was suggested to me that I might want to go to a human rights lawyer to suggest maybe bringing about a lawsuit. But for someone like myself, who is so entrenched in the health-care system, because I have to see a number of specialists here, there is a fear of speaking out against the doctor. I’d be so terrified about not getting care that I needed, because I need it to survive.”



The final issue to raise with respect to participants' distrust of and disillusionment with formal legal systems pertains to cultural differences in conceptions of justice and how it may be enacted. This issue specifically emerged in relation to the criminal legal system as a source of oppression. The important point to raise here is how some BIPOC participants may have felt a distrust of the criminal legal system by virtue of the fact that it was established through anti-Black and anti-Indigenous racism and operates to maintain the interests of the white settler state. One participant summarized many issues inherent to the white, Western, colonial legal system:

“I think as long as it’s ruled by colonial culture, it’s not really ever going to do justice. Because justice for me means justice for everyone. The justice that we have right now is predominantly white justice. Even if there is some sort of good that is given to a non-white community, it’s still from the “white savior” ... But also, when you just focus on the intersectionality, you’re like, oh, this is an Indigenous person, they’re always like, drinking or whatever, and because of that, they’re going to do more crime, or whatever. Maybe like, look back and see, okay, this is why, let’s say for example, residential school is why, intergenerational trauma is why they did this now. Let’s give them support instead of throwing them into jail. Right? Our prison industrial complex is such a huge factor in our justice system. To me, throwing someone in prison isn’t justice at all ... I feel that our justice system sees anything that’s not aligned with their colonial culture as being a criminal. And that’s where it can spiral down really fast. Where you’re just throwing people into jail, and then they’re just repeat, repeat, producing people, kids that are going to be thrown into jail again. What’s the justice in that? The justice system is the one making criminals.”

This participant’s quote signals the fundamentally oppressive nature of the settler legal system, in which colonial methods of justice, such as the use of incarceration as punishment, are being positioned as appropriate responses to the social, racial, and economic issues that the state itself has created. This participant discussed how the ‘criminal’ construction and mass criminalization of BIPOC people must be placed within the legacies and ongoing histories of Indigenous dispossession, land theft, genocide, and Black dehumanization, subjugation, and marginalization.

Participants’ Visions of Justice

Going into data collection, the research team defined justice as the ability to create the worlds that we want to live in (Farrow, 2014). The project was framed with a deliberately broad definition of justice so that participants’ specific and unique experiences and imaginings of justice could emerge. Participants were invited to imagine what justice might look like for them and how it may be achieved. One participant defined justice in terms of “universal respect,” and another defined it relative to feelings of safety. Most participants defined justice outside of a legal definition premised on perceptions of ‘criminality’, instead crafting their ideas of justice through the lens of social justice. For these participants, justice was imagined as the eradication of structural oppressions in all their forms and the elimination of poverty, with everyone having the ability to access their basic needs, like food, clean drinking water, housing, healthcare, education, community, safety, among other things. Many acknowledged the subjectivity involved in defining justice, namely the fact that “justice looks different for everyone.” Others also acknowledged the cultural relativism of justice, pointing to how justice is informed by the particular social, cultural, historical, and political contexts in which one lives.

“

Justice is a very hard term to define in our world. We have a definition for it, but when put into practice, there’s thousands of different ways that it actually transpires. And that comes from a social thing, a cultural thing – pretty much every different sociological influence you can have in life is going to impact your sense of what justice could be.

”

This subsection attends to the varying notions of and pathways towards justice that participants envisioned and situates them within broader legal and criminological theories of justice, as well as theories of liberation emerging primarily from Black and Indigenous scholarship and tradition. The visions of justice discussed by participants in this study can be situated within three broad categories: 1) formal methods of justice achieved through state institutions; 2) movements for police and prison abolition that are guided by Black radical tradition and the principles of transformative justice; and 3) decolonial justice through Indigenous resurgence and self-determination. Support for each vision of justice is discussed below, while also acknowledging the ways these frameworks of justice may exist in tension, opposition, and sometimes harmoniously.

Reform of State Institutions

Participants' lived experiences interacting with legal institutions illuminate the systemic injustices embedded within the legal system. Sometimes, these individuals, or those supporting them in navigating legal institutions, had a more cynical perception of the ability to achieve justice through state-run institutions. Other times, however, such negative experiences were the bases for participants' call for reform. Both perspectives will be unpacked in what follows.

When asked to elaborate on what they believed would bring about a more just world, some participants called for reform to law and penal institutions. Most often, participants indicated that education and training would help remedy the systemic injustices within the criminal legal system. Training those in positions of power, and offering widespread access to inclusive and socially just education materials, was offered as a solution to help counter the transphobia, queerphobia, racism, and all other forms of discrimination prevalent within these institutions and that which impedes access to justice for minorities.

“[In an ideal world] if one is having a legal issue, when you go to court, the system will work without any bias, and everything will be according to law so no one is above the law.”

Others indicated that justice would be better achieved if the current laws, policies, and procedures were better implemented, suggesting that they currently exist on paper rather than in practice. For example, one participant envisioned justice as having barrier- and discrimination-free access to institutions such as health care. This participant hoped to see institutional policy and anti-discrimination protections being followed in all institutions.

“[I envision] having standards of care policies that are followed, and if they're not followed, then having recourse that a person can take to file a grievance. I'm not someone who has navigated the legal system too much, but being able to do so anonymous without having to put your name out there, to be able to file a grievance when something goes very wrong, [is important] to protect the patient.”

While some participants called for reform to justice institutions, they simultaneously indicated disillusionment with the legal systems because of their inability to protect from and to remedy harm.

“In an ideal world, I would have been able to call the police, and they would have treated me with respect – to be believed, and to be honoured as a person who is both vulnerable and sharing their truth, and not be seen as a problem, not be seen as someone who is making it up. To call the cops and have them do what we were told they do when we were children – that little fairy tale that we were told, that the police are there to protect you, and you tell them the information, and they go find the person and they put them in jail or they punish them in some way.”

Although this participant questions the myth that police exist as a source of protection, they are also hopeful that the institution of policing can indeed be improved. For this participant, an ideal world is a world in which police are respectful and survivor-centric sources of protection and legal redress. However, the general skepticism of the ability to improve institutions of justice was notable, even among those who ultimately advocated for penal reform.

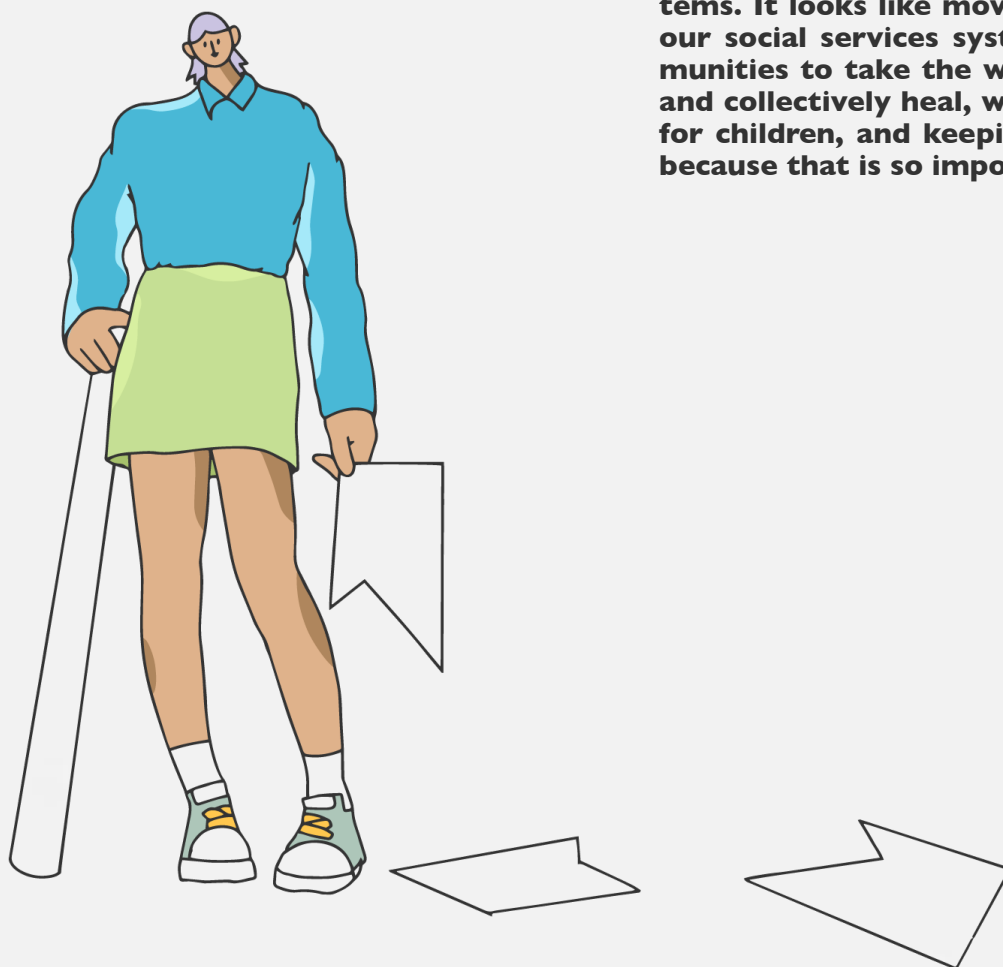
“The police could do better at respecting trans individuals and just learning. I think the easy answer would be more trainings. But you can ignore a training – you know what I mean?”

Participants' reliance on state-run institutions of justice and their desires to improve them, including policing, courts and human rights tribunals, may be influenced by the fact that these institutions are normatively positioned as the only legitimate or viable way to resolve harm, conflict, or 'crime'.

Abolition and Transformative Justice

Many participants did not believe that reforming existing institutions would bring about a more just world. Participants frequently spoke about the dangers of police and other law enforcement and understood prisons as sites of inherent harm and systemic injustice. Many did not feel that these institutions were reformable and instead advocated for the defunding and dismantling of police and prisons. Participants wished to redirect funding and resources towards non-punitive, community-based approaches to justice.

These perspectives align with abolitionist and transformative justice frameworks, which seek to move away from state institutions and interventions towards modes of justice and accountability that come from communities themselves. More specifically, abolition is premised on revealing the innate violence and oppressions embedded in state approaches to justice. Abolition ultimately seeks to dismantle state institutions like police and prisons (Kaba, 2021). Transformative justice strives to replace these institutions with community-based approaches that do not reproduce harm, oppression, or the deprivation of liberties (Piché, Walby, and Carrier, 2019; Mathiesen, 1986).



It is important to note that both abolitionist and transformative justice movements emerge from Black feminist labour and scholarship. These movements are a part of Black radical tradition, in which local movements of anti-police and anti-prison activism are mobilized towards the broader goal of Black liberation (Maynard, 2020). Black feminist scholarship has situated the contemporary institutions of policing and prisons within other anti-Black racist state practices, such as enslavement and segregation, that have been used for the political purpose of Black subjugation, white supremacy, and capitalist accumulation (Alexander, 2010; Davis, 2003; Maynard, 2020).

In the survey and interview data, many participants were skeptical of the supposed benefits and necessity of policing and prisons. When asked what justice would look like in an ideal world, participants made explicit references to a world without police and prisons, a world where the abolition of these institutions would make way for other ways of responding to harm.

“There were no prisons before white men came.”

“I would like to see an end to incarceration... A more just world to me looks like abolishing the police. It looks like destroying these systems. It looks like moving past and abolishing our social services system and allowing communities to take the welfare of their children and collectively heal, while also providing care for children, and keeping them in community because that is so important.”

Participants endorsed the abolitionist slogan of ‘defund the police, refund the community’ in discussing visions of justice. Participants rejected funneling money into institutions of policing, arguing that these resources would be better spent on funding institutions that aid in survival. Justice, for most participants, meant ensuring that the world around them is socially just, free of discrimination and violence, and that all people had access to the means of survival, including food and water, health care, housing, and education. This vision of a just world held by the participants is possible through the redirection of government funding from penal institutions to community-based organizations that do direct action work to ensure the survival and well-being of all people.

“In a perfect world, it would be defunding the police and putting that money into better systems, like mental health crisis teams, and stuff like that.”

“

[When I] think of justice, I think of taking down the current systems and rebuilding them in a way that’s really focused on human diversity and just being able to live and have access to basic needs, like housing and food and health care. ... and having consistent financial support to community groups that do so much of the labor that government systems should be doing. Making sure that they aren’t always competing for these small pots of money and never know if they’re going to have enough funding or not. Having these well-funded community groups in place that are preserving communities because they are usually better informed.

”

Participants identified state approaches to justice, like mass incarceration, as punitive and oppressive in nature, and therefore existing in opposition to participants’ visions of what an ideal world would look like. Beyond the abolition of police and prisons, participants also envisioned alternative approaches to justice that align with transformative justice frameworks.

“Someone who actually cares, looks us in the eye as a human being, and provides us with the information we need access to [would create] a true sense of justice. There is not an acknowledgement of how different types of oppressions, be it homophobia, transphobia, racism, classism, and so forth, can cause harm to people’s lives, and that needs to be taken into account when problems arise. Our communities would be safer if we had peaceful community mediators instead of police to deal with issues that arise.”

“Should responsibility be painful? No. You send somebody to jail, who’s into substance abuse ... What are they going to learn there? How to traffic better, instead of learning what led to this person getting involved in the drug trade. Why did they do that? Were they in poverty? ... If we look at a restorative justice model, we can say “this person went through this and that, and this is how they dealt with it, and they’re trying to cut pain.” ... It has to be some kind of restorative justice.”

Transformative justice is a theoretical framework that establishes new pathways towards justice that address harm and conflict through a community accountability model, outside of state institutions and interventions (Kim, 2021). While transformative justice can take many forms, participants strongly emphasized the ability of communities to better handle the prevention and resolution of harm and conflict. Their emphasis on community and collectivity reflects a desire to change the way people exist in relationship with others. Participants described reorienting approaches to harm and injustice away from punishment and retribution and instead towards accountability, healing, and trust.

“I think there needs to be a cultural shift in the way that we look at community, and how community is defined. Because we look at it in a very individualistic way, like we are all individuals part of a community. But what if a community is full of individuals? What if we flip that script, and we as a community take care of each other, instead of each other feeling alone and having to seek that care?”

“I believe in more community-based intervention instead of “justice” being determined based on punishment.”

Many Indigenous critiques of the justice system emerge from similar concerns regarding state violence, systemic racism, and white supremacy embedded in Canadian legal institutions. There are many points of convergence between decolonial visions of justice and the abolitionist and transformative justice frameworks. Nonetheless, the next section explores the specificity of decolonial justice as expressed by Indigenous participants.

Decolonial Justice

Indigenous 2STNBGN participants spoke to the harm caused by the settler criminal legal system. Although this was raised by settler 2STNBGN participants as well, Indigenous participants offered a different perspective on justice, one that is grounded in discussions of sovereignty and title to the land. Indigenous perspectives on justice move beyond Western legal conceptions and are instead premised on Indigenous traditions, which vary widely across the many different Indigenous nations and communities. This perspective is grounded in decolonial justice for Indigenous peoples as a whole. Visions of justice offered by Indigenous participants identified the harms experienced while interacting with settler institutions like police and prisons, experiencing them as one part of ongoing colonial occupation. This framework of justice is based in the recognition of Indigenous sovereignty, the right of Indigenous self-determination, and the return of stolen land (captured by the “Land Back” movement).

Critiques of formal legal systems, including police, courts, and prisons, must also consider that the Canadian legal system operates in a settler colonial context. Academic work on Indigenous peoples’ relationships with the settler criminal legal system has offered an extensive history of how the Canadian state has established law, policy, and practices as a method of assimilation, containment, and control of Indigenous people, and as a way of obtaining and maintaining control over the land (Monchalin, 2016; Nichols, 2014; Stark, 2016).

Participants pointed out the colonizing nature and effects of settler institutions of justice in a number of ways. This includes calling attention to how Indigenous people are treated unfairly within all types of state institutions, and the way Indigenous people are often criminalized and imprisoned for social issues which are products of colonization, such as addictions and interpersonal violence. Some also challenged the use of settler institutions, such as prisons, as a colonial imposition on Indigenous nations. Many Indigenous participants also discussed how they experience gender oppression differently than non-Indigenous participants. For Indigenous 2STNBGN people, gender oppression and punishment from the criminal legal system intersect as a mode of colonization, such as the binary structure of the prison system and the colonial and transphobic beliefs held by many who work for the legal system.

“When there’s like an allegation of domestic abuse between any partnership and there’s a transgender person involved or two, basically the whole system just breaks down. The police are just looking for “the guy” to throw behind bars and “the woman” to take to the shelter ... The entire system of family law is just not capable of handling a situation where there’s gender diverse people involved or Two Spirit people. It’s bad enough to be Indigenous and be involved with the family court process, but then to have to try to raise issues of gender here that aren’t being properly understood or properly addressed. The system just can’t even handle it. They barely even know what you’re talking about.”

Participants explained how their genders were misunderstood and mischaracterized within and with respect to the colonial gender binary. The policing of gender among Indigenous peoples to align with colonial constructions of ‘men’ and ‘women’ has always been advanced for the purposes of assimilation and control (Driskill, 2004). Traditional Indigenous ways of being, such as but not limited to those that fit under the umbrella term ‘Two-Spirit’, have been subject to attempted elimination by the settler state through various techniques since the point of contact. By structuring the settler criminal legal system according to the colonial gender binary, the settler legal system exists in opposition to diverse Indigenous ways of being, and therefore work against Indigenous resurgence. Resurgence is a term used to refer to the process of reviving and readapting Indigenous traditions, beliefs, and practices to contemporary times (Simpson, 2017). Indigenous participants revealed the way the resurgence of gendered traditions is inseparable from the resurgence of traditions regarding justice.

Participants of the Indigenous-only focus group established the oppositions between settler systems of punishment and decolonial justice as the starting point to imagine pathways towards a more just world.

“I wish it wasn’t in the white court system. I wish it wasn’t just based on punishment. I wish it was more about rehabilitation genuinely. And I wish that there was like, I don’t know, a therapy group or something. Just something that is not, pay your money, sign your name here, show up to court, or else the judge is going to hate you. I just wish it was more holistic of trying to see what the issue was, versus what’s the best way to punish this person to terrify them to never do this again.”

“I grew up in a space that was policed by a First Nations police force, and then later moving to the city, and having to deal with a mainstream police force. That, in itself, was kind of shocking and traumatizing. I couldn’t fathom how different the experience was and how scary it was, because I had just been accustomed to seeing the police as part of my community and my people and as really being helpers, and getting to know people, and finding out what their problems were and trying to solve problems before they started. The city police are nothing more than the opposite.”

Justice for Indigenous participants did not mean simply providing solutions to ongoing colonial harm by attempting to improve the existing colonial order of things. Rather, justice was imagined as nothing short of creating a new world that is inherently pro-Indigenous.

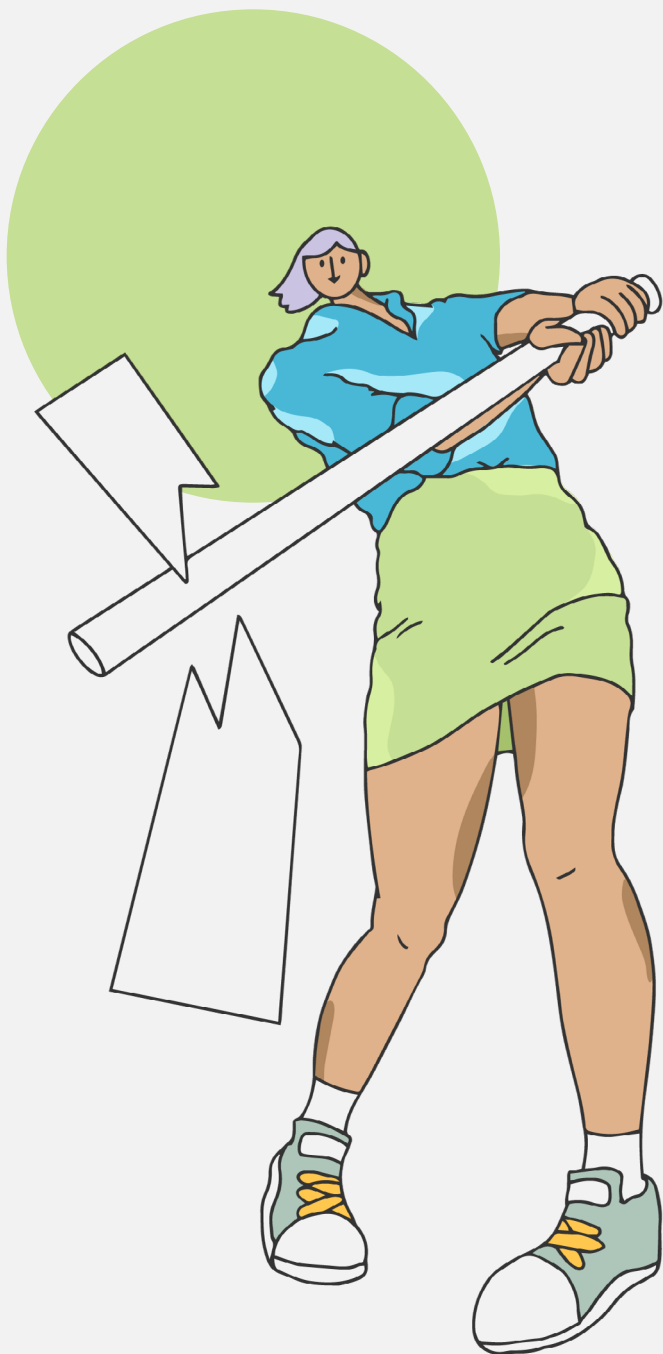
“Justice. What a fraught word, especially being in an Indigenous community. Justice has so many facets. Is it just that we have to have a safe consumption site in my community? The fact that that even has to exist is not justice, but it is justice to the community that it exists now. So, what side of that are you looking at? For me, justice is everyone being able to live a life worth living, and having that recognition that they are worthy of it, regardless of choice, regardless of circumstance, regardless of anything.”

Indigenous participants wanted Indigenous communities to have full control over conceptions and methods of justice, which requires dismantling settler state control over Indigenous people and nations. Although precise details of what this might entail were not fully articulated, participants posed possibilities that were grounded in the commitment to “centering Indigenous ways of law.” For many, this meant establishing a system premised on accountability, respect, and healing from intergenerational trauma.

“Justice to me means accountability. It means taking ownership. It means actually rectifying mistakes that are made, rectify the harm that has been done to your community, to others. It means being able to build and grow from that.”

“I heavily believe in accountability. I think in a more just world, people that wrong other people genuinely should be held accountable. But then if we look at the understanding that some of these people that might be hurting us – even if in the moment we don’t want to acknowledge it – we all know that from some form of another, we all come from our parents and their experiences and what traumas they might have experienced. We don’t necessarily have to forgive what they did, but they should have the opportunity to become a better person and to understand what they did was wrong, and to be given the tools to make themselves a better person. I’ve always kind of believed in that because, even me growing up dealing with generational trauma on my dad’s side, and emotional manipulation on my mom’s side. I didn’t feel that I was a good person until I was given the opportunity to sit with somebody and become better and understand those things.”

Participants recognized that Indigenous self-determination requires the individual and collective processes of healing from colonization, and to reestablish and strengthen the relationships that were fractured and damaged in the process.



“I do not have a very close community ties, mostly because of my family repressing Indigenous identity for so long due to shame and internalized trauma where I’m from. I was not able to physically connect with many other Cherokee people. The state is also outlawing doulas, a continuation of genocide, which adds to the loss of culture and over-policing in Cherokee communities.”

Participants expressed the interconnections and relationships between all things, human and non-human. Part of the healing and rebuilding of relationships included the relationship with the land.

“I also think for an ideal just world, there needs to be justice for the land, and that being a base level of respect. If there is justice for the land, then in turn, there’s justice for those who protect the land. I think having a sense of responsibility to the land would much better inform our social realities. And I think that as just a baseline radical renovation to the justice system would be fruitful.”

Restoring and healing the relationship with the land, as many participants suggested, is especially salient in the context in which Indigenous land defenders are targeted for surveillance and criminalization by the settler state for reasserting their title to the land. Settler control inhibits Indigenous title to, control over, and sacred relationships with the land. Justice for Indigenous 2STNBGN people and nations can only be achieved through the recognition of Indigenous sovereignty and the return of and to the land.

Conclusions

Action Plan for the Future of 2STNBGN A2J

Based on these findings and on the recommendations of participants, the research team has compiled an action plan to improve access to justice for Two Spirit, trans, non-binary, and gender non-conforming (2STNBGN) communities. The plan's four elements are offered as a starting point and will be refined in the coming years to better reflect the needs of 2STNBGN communities, through consultation with 2STNBGN communities.



1

Supporting Black and Indigenous led calls for the abolition of police and prisons and for the decolonization of the legal system.

This project has shown that the police (including CBSA) both enact violence against and ignore the needs of 2STN-BGN communities and other communities, especially those that are Black, Indigenous, or racialized. Scholars and activists have argued that police and prisons enact violence against trans and gender non-conforming people, particularly against BIPOC trans and gender non-conforming people (Kaba, 2021; Spade, 2015).

Many participants echoed the voices of Black abolitionist thinkers, such as Angela Davis (2003) and Mariame Kaba (2021), who recognize how reforms can increase funding to and strength of police and prisons. Also echoing Davis and Kaba, participants in this study shared that they believe there are more transformative ways to address and repair harm than punishment. They joined abolitionist calls for the defunding and removal of police departments as a step towards the abolition of policing and prison systems.

For many Indigenous participants, accessing justice was inherently tied to dismantling systems of colonization and of the binary understandings of gender they brought with them. Thus, this action plan echoes their calls for Land Back (the return of stolen land claimed by the Canadian state to Indigenous nations)⁹, for Indigenous sovereignty and self-determination, and for a legal system based on community-specific traditions of justice that vary across Canada.

This action plan will require that legal professionals and non-profits, as well as other allied individuals and organizations, provide tangible and material support for grassroots organizations and organizing efforts focused on defunding and abolishing police and prisons, as well as for the Land Back movement.

2

Using reforms as a means of immediate harm reduction while working towards realizing abolitionist and decolonial futures.

Participants also asked for reforms to be made to the legal system while we work towards abolitionist and decolonial futures. Certain reforms can immediately prolong and better the lives of 2STNBGN people, so long as those reforms do not give more funding or legitimacy to oppressive systems, particularly to the criminal legal system. Some examples include:

- Decriminalizing sex work.
- The full financial coverage of all transition related healthcare.
- Removing police from mental health calls.
- Removing the financial and bureaucratic barriers to changing one's name or gender marker.
- Providing more education about gender identity and expression, particularly for people who interact with members of the public (such as bureaucrats, lawyers, physicians, nurses, etc.).
- Providing 2STNBGN-specific education and resources on legal recourses, especially regarding human rights law.
- Creating more gender neutral and 2STNBGN-specific spaces, such as shelters, bathrooms, and change rooms.

Many of these reforms would have concrete impacts, to the point of being life-saving, for 2STNBGN community members. This being said, this element of the plan takes into account that reforms giving more funding or powers to the criminal legal system, or reforms that attempt to use the criminal legal system to address issues of harassment and discrimination should be rejected. The limits of rights-based approach to solving harassment and discrimination, as systemic problems, should be also noted (Spade, 2015; Ashley, 2018; Vipond, 2015).

3

Creating new social structures and systems to combat poverty and ensure everyone has access to the things they need to live a good life.

This report shows that 2STNBGN people often lack access to basic necessities like housing and medical care. This lack of access requires a thorough overhaul of how our social systems combat poverty and address the distribution of wealth and resources. Some participants proposed a universal basic income that would remove all barriers forcing people to prove their need in order to access government assistance, allowing everyone to receive the resources they need to survive. In particular, increasing access to and the amount of government assistance for disabled people is deeply important for 2STNBGN justice. Many of the legal issues participants experienced either resulted from or were left unresolved because of a lack of income. Addressing the systemic poverty 2STNBGN people face would also give them greater flexibility to address issues of housing and employment and greater ability to pay for legal support.

4

Increasing stable funding for organizations lead by and for 2STNBGN community members, with a focus on funding grassroots organizing, mutual aid programs, and organizations providing direct and accessible services.

Participants often spoke about the fact that the organizations and resources that were the most helpful to them for resolving their legal issues were not well funded enough to be stable and reliable sources of assistance. This lack of funding meant organizations were forced to close, that programming could not meet community demand, and that many were left without the supports they needed. It is clear from the findings that community knowledge already exists about how to improve on issues of 2STNBGN justice, but that the individuals and organizations already doing this work are being underpaid, overworked, and cannot keep up with the demand for their services. This plan takes into account the need for immediate increases in funding for the organizations across the country doing on the ground work for 2STNBGN communities, particularly for those that are also run by 2STNBGN people. A considerable amount of work is already being done, but there seem to be a need for better networking, sharing and collaborating amongst organizations and groups. The action plan will require significant organizing among 2STNBGN communities. This report shows that many of the problems our community members face are systemic. These systemic problems require concerted community action and organizing. Funding for the community organizations to further this organizing is an important piece of improving access to justice for 2STNBGN people.

This project has shown that justice for 2STNBGN communities will not come about through small changes to a system that is structured to exclude us. There is a need for actions that can transform the world we live in, so that 2STNBGN people can live full and meaningful lives. As we work towards this kind of liberation, immediate changes to existing systems that can improve the day-to-day lives of 2STNBGN people, without increasing funding for or legitimacy of violent systems like the criminal legal system, are needed. In the end, we believe that improving access to justice for 2STNBGN people, with a focus on the specific needs of the most marginalized among us, will improve access to justice for all.

Conclusions

The research presented in this report has shown the dismal state of access to justice for 2STNBGN people in Canada. The legal issues that most impact 2STNBGN people include discrimination and harassment, medical treatment issues, identification document issues, housing and neighbourhood issues, employment, and experiences of violence. This report has also included a special focus on the complex legal issues faced by people accessing social assistance benefits as well as 2STNBGN sex workers and migrants. A common theme throughout all of these legal issues was the constant presence of discrimination and harassment.

Analysis of the data revealed several barriers to accessing justice for 2STNBGN people, including: intersecting forms of systemic discrimination and harassment, fear of the risks surrounding taking legal action, financial and temporal barriers, bureaucratic mismanagement, feelings of exhaustion and powerlessness when interacting with the legal system, and general distrust of the legal system, lawyer, and other legal actors. These barriers likely exist for other marginalized groups as well. In general, there was a sense that interacting with formal legal processes in an attempt to resolve one's legal issues could result in more problems than solutions. Moreover, many participants believed that it was difficult to prove discrimination and harassment in order to obtain redress through formal processes. In addition, it was shown how occupying multiple marginalized identities not only increases a person's vulnerability to violence, but also often creates additional barriers to reporting that violence. Participants also expressed that a general lack of resources meant a lack of ability to engage lengthy legal processes. These barriers contributed to general feelings of powerlessness when faced with the formal legal system, and general distrust of the entire system as a result.

Participants' visions of justice build a robust and meaningful roadmap to creating a world that is more just, not only for 2STNBGN people, but for all. JusticeTrans offers our action plan as a way to build off of and concentrate on participants' demands for justice. JusticeTrans will endeavour to work on this action plan to develop it further and to engage government actors, community organizations, lawyers and legal clinics, grassroots organizers, and other relevant parties to ensure its further development and the accomplishment of its goals.

The research team suggests follow up research that focuses on the legal needs of 2STNBGN people that have the most complex legal issues, including those living with HIV, migrants, sex workers, Indigenous and Black people, and people in the North.

This information can be used to dream, create, act, and move into the worlds we want to live in, the radically caring and mutually supportive worlds that participants envisioned with us during this research.

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Endnotes

1 The term ‘trans’ is used exclusively with reference to historical human rights applications, as opposed to the use of ‘2STNBGN’, first to reflect the identity of the applicants in these cases and second to offer an accurate representation of how gender was articulated within them. Many of these cases conceptualized discrimination based on trans identity, or more specifically transsexuality, as that which arises from the transgression of gender norms associated with one’s assigned sex, and has conceptualized transsexuality through the lens of disability by appealing to the medical model.

2 Note that there were methodological limitations to the way the 2021 census collected information about who was trans and/or non-binary. The research team can anecdotally attest that many trans and non-binary people in our communities were disappointed by the formulation of the question that asked what people’s sex assigned at birth was, while others did not want the government to know they were trans or non-binary. As a result, this number is likely underreported.

3 Disability was defined as living with chronic illness, chronic pain, a mobility or physical disability, mental health condition, intellectual or cognitive or developmental disability, neurodivergence, Deafness, blindness, or have another identity or experience related to body/mind differences.

4 Referred to by the incorrect name, often the name given at birth.

5 Note that this question was a check all that apply question, as people can be both a refugee and have a work or student permit at the same time, for example.

6 This number is underreported, because several participants who identified as being permanent residents or in Canada on a work or study permit did not indicate that they had a legal issue pertaining to immigration. For example, only 53% of PRs and 39% of work and study permit participants indicated having a legal issue relating to immigration. However, by the very nature of their status, 100% of PR and work and study permit participants had a legal issue relating to immigration, and technically all these participants should have selected yes to this survey question.

7 Doxing is the act of spreading private information online without the person’s consent, generally with malicious intent. This often looks like spreading a person’s address, phone number, private email, and employer’s information, and urging people to harass them or their employer.

8 The Starlight Tours were a violent practice done by the Saskatoon police from the 1970s until the early 2000s, where they would arrest Indigenous people, usually men, for alleged drunkenness and/or disorderly behaviour, then drive them to the outskirts of the city at night in the winter, and abandon them, leaving them stranded in sub-zero temperatures (Razack, 2015).

9 For more information about Land Back, read the Yellowhead Institute Red Paper Land Back, found at <https://redpaper.yellowheadinstitute.org>.