

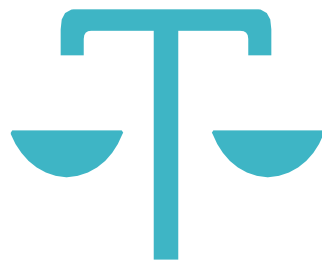
# TRANS*forming* JUSTICE

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Trans Legal Needs Assessment Ontario

Summary Report One:

## **Legal Problems Facing Trans People in Ontario**



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## **Acknowledgments**

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## Executive Summary

TRANSforming JUSTICE: Trans Legal Needs Assessment Ontario (TFJ) is a mixed-method legal needs-assessment/research study of trans<sup>1</sup> people in the Province of Ontario, Canada. A specific component of the project is focused on trans people living with or affected by human immunodeficiency virus (HIV).<sup>2</sup>

### Data collection

Research priorities were shaped by the TFJ research team with the assistance of four consultation and outreach committees:

- Trans Community Consultation and Outreach Committee (TCCOC)
- Legal Service Provider Consultation and Outreach Committee (LSPCOC)
- Social Service Provider Consultation and Outreach Committee (SSPCOC)
- Court and Tribunal Consultation and Outreach Committee (CTCOC)

A number of survey items were designed to facilitate comparison with Canadian population statistics on legal need and access to justice.

TFJ data was collected between May 2016 and February 2017 through an online survey of 232 trans people in Ontario (182 having completed the legal problems module of the survey). Thirteen focus groups were also held in cities across Ontario, with 125 trans participants in total. Additionally, 19 trans people living with or affected by HIV participated, individually, in in-depth interviews. Nine separate focus groups engaged 82 legal service providers (lawyers and paralegals).

Recruitment materials were circulated by TCCOC, LSPCOC, and SSPCOC members through trans-specific community, medical, and social services organizations and programs; social media; and at a number of trans community events. Legal service providers were recruited by members of LSPCOC and through professional associations. Recruitment efforts resulted in a diverse convenience sample, including with respect to ethno-racial group, age, gender, and disability status.

1. The project is using “trans” as an umbrella term to refer to a diverse array of experiences and identities, including Two-Spirit, non-binary, agender, gender queer, cross dresser, transgender, and transsexual, as well as those who identify as men or women but have a history that involves a gender transition. Based on a 2016 estimate from the Williams Institute, approximately 1 in 167 adults may identify as trans, broadly defined (<https://williamsinstitute.law.ucla.edu/wp-content/uploads/How-Many-Adults-Identify-as-Transgender-in-the-United-States.pdf>). This number may be higher for younger people.
2. HIV affected is defined as any of the following: living with HIV, having a partner who is living with HIV, being involved in sex work, having incarceration experiences, and/or using injection drugs.

## Key Findings of this Report

This report, as the first in a series, focuses on justiciable<sup>3</sup> legal problems experienced by trans people who participated in the study. Of the trans survey respondents, 71% experienced at least one justiciable legal problem within a three-year timeframe (2013-2016), compared to 48.4% of the adult population in Canada. Having experienced five or more legal problems was reported by 18% of the trans survey participants.

Of those with at least one justiciable legal problem, 69% of survey respondents felt they needed or may have needed professional legal help, and 30% obtained such help for at least one problem. Only 7% got professional help for their justiciable legal problems, and most of this group (78%) had only a single type of problem.

In almost all legal categories surveyed, trans survey respondents reported notably higher rates of justiciable legal problems in comparison to the adult Canadian population:

- Medical Treatment (22% vs. 3%)
- Police Action (16% vs. 2%)
- Personal Injury/Victim of Crime (19% vs. 3%)
- Housing (22% vs. 3%)
- Neighbours/Property (19% vs. 10%)
- Disability Benefits (16% vs. 2%)
- Employment (22% vs. 16%)
- Family Law (17% vs. 6%).

**The most common justiciable legal problem identified by trans survey respondents was discrimination (43% vs. 5.3% of the adult Canadian population).** Racialized trans participants reported experiencing both racism and transphobia, resulting in more frequent and complex experiences of discrimination. Two-Spirit/Indigenous trans participants also identified colonization and racism as factors complicating and exacerbating experiences of discrimination, harassment, and violence. Participants affected by HIV reported that HIV-related issues served to increase or exacerbate their experiences of stigmatization and discrimination, and that social and legal factors related to cis-normativity and transphobia served to increase risk or impacts of HIV infection.

3. Justiciable is defined in this context as those matters that are capable of being settled by law or by the action of a court or an administrative tribunal.

TFJ focus-group data associated with each legal category are provided within this summary report in the form of excerpts of participant accounts. These accounts contribute additional context within each legal problem category and also capture and highlight additional justiciable issues not easily identifiable by survey data.

### **Future Reports**

Future summary reports, which will include recommendations for actions, will address access to justice barriers and facilitators as well as needs of legal service providers. Additional reports and/or manuscripts will address other issues such as HIV legal matters, family law, trans youth, and the impact of legal problems on health and well-being.

### **Conclusions**

Trans TFJ survey participants reported higher numbers of justiciable legal problems across a wider range of legal areas compared to the adult Canadian population. Of all justiciable legal problems, discrimination was the most prevalent. Despite high levels of legal need, the majority of trans participants did not have legal assistance to deal with their justiciable legal problems. Drivers of legal burden and access to justice barriers and facilitators will be explored in further detail in the next summary report.

### **Recommended Citation:**

**James J, Bauer G, Peck R, Brennan D, Nussbaum N, *Legal Problems Facing Trans People in Ontario*. TRANSforming JUSTICE Summary Report 1(1), September 6, 2018. Downloadable in English or French at <https://www.halco.org/our-services/trans-legal-needs-assessment-ontario>**

# Legal Problems Facing Trans People in Ontario

This is the first in a series of reports on the findings from the research study “TRANSforming JUSTICE: Trans Legal Needs Assessment Ontario (TFJ).” TFJ is a province-wide study that gathered information from people about their lives, legal problems, and experiences with the legal system. Attention was paid to the specific experiences and legal needs of trans people impacted by HIV/AIDS, racialized trans populations, and Indigenous trans communities. The impact of legal issues on wellbeing and how the legal system can be improved were key areas of exploration. From legal service providers, we collected information about the delivery of legal services for trans individuals, the barriers and facilitators to providing competent service to trans clients, and what service providers need in order to strengthen their services for trans people.

This first report introduces the study and describes the most frequent justiciable legal problems trans people in Ontario faced from 2013 to 2016. Additional reports will examine the barriers and facilitators to accessing justice for trans people in Ontario and what legal service providers need in order to provide effective service for trans clients. Recommendations for action will be included in these reports. Further reports and/or manuscripts will go into greater detail on topics such as HIV legal matters, family law, trans youth, and the impact of legal problems on well-being and health.

## About TRANSforming JUSTICE

TFJ is a mixed- method research study grounded in an access-to-justice framework that seeks to identify legal needs, barriers/facilitators to service, and recommendations for change. The motivation for the project derived from the understanding that while trans people are one of the most disadvantaged groups in society, their lives and realities are often erased within mainstream institutional contexts.<sup>4,5</sup> Trans peoples’ experiences of legal problems are largely undocumented, and little information is available about what legal service providers need in order to improve their services for trans clients.

To our knowledge, there is only one other large-scale legal-needs assessment of trans people, and while vitally important, it focused on discrimination experienced by trans persons in San Francisco prior to 2003.<sup>6</sup> Also, to our knowledge, TFJ is the first comprehensive trans legal-needs assessment that focuses on a wide range of areas of law and includes both quantitative and qualitative data. It is also the first legal-needs assessment for trans people undertaken in partnership with academic institutions and the first to engage legal service providers.

4. Ontario Human Rights Commission. (2014). Policy on discrimination because of Gender Identity and Gender Expression (978-1-4606-3900-9). Toronto, Ontario: Canada. Retrieved from: <http://www.ohrc.on.ca/sites/default/files/Policy%20on%20preventing%20discrimination%20because%20of%20gender%20identity%20and%20gender%20expression.pdf>.
5. Bauer, G. R., Hammond, R., Travers, R., Kaay, M., Hohenadel, K. M., & Boyce, M. (2009). “I don't think this is theoretical; this is our lives”: how erasure impacts health care for transgender people. *Journal of the Association of Nurses in AIDS Care*, 20 (5), 348-361.
6. Minter, S., Daley, C., (2003). *Trans Realities: A Legal Needs Assessment of San Francisco's Transgender Communities*. Transgender Law Center and National Center for Lesbian Rights. San Francisco, California: United States. Retrieved from: <http://www.nclrights.org/wp-content/uploads/2013/07/transrealities0803.pdf>.

Below are TFJ's aims:

Aim 1. Conduct educational workshops throughout Ontario with trans community members and lawyers/legal service providers.

Aim 2. Assess the legal needs of trans community members.

Aim 3. Identify barriers to accessing justice, as well as the root causes of injustice experienced by trans communities.

Aim 4. Understand the needs of lawyers and other legal service providers in serving trans clients.

Aim 5. Make recommendations for policy changes and other interventions necessary to improve access to justice for trans people in Ontario.

Aim 1 was completed in late 2016, with 13 education sessions for trans participants and 9 for legal service providers held in cities across Ontario. The workshops were held after focus groups were conducted (see Methodology section for more information about the focus groups). This report begins to address Aim 2.

While the project is focused on the needs of the broader trans community, a specific component of the project is dedicated to trans people living with or affected by HIV.

The HIV & AIDS Legal Clinic Ontario (HALCO) is leading the project in partnership with the University of Toronto, Western University, and Ryerson University.

The project has been led by a team composed of the following individuals, with Nicole Nussbaum as project lead:

- Ryan Peck, Barrister & Solicitor, Executive Director, HALCO
- Nicole Nussbaum, Legal Aid Ontario staff lawyer seconded to HALCO for the project
- Dr. Julie James, Assistant Professor, School of Child and Youth Care, Ryerson University
- Dr. David J. Brennan, Associate Professor, Factor-Inwentash Faculty of Social Work, University of Toronto
- Dr. Greta Bauer, Professor, Department of Epidemiology & Biostatistics, Western University

Guidance to the project has been provided by four committees:

- Trans Community Consultation and Outreach Committee (TCCOC)
- Legal Service Provider Consultation and Outreach Committee (LSPCOC)
- Social Service Provider Consultation and Outreach Committee (SSPCOC)
- Court and Tribunal Consultation and Outreach Committee (CTCOC)

Funding for this project was provided by Legal Aid Ontario and the Ontario HIV Treatment Network. Ethics approval was obtained through the research ethics board at the University of Toronto.

## Access to Justice Framework

A comprehensive literature review and consultation process took place to create the access-to-justice framework for this study.<sup>7,8</sup> From this process, a three-pronged approach emerged. First, the study sought to document the range, nature, and extent of legal problems facing trans people in Ontario.

7. The following literature was reviewed: The Canadian Bar Access to Justice Reports (2013); American Bar Association Rule Of Law Initiative Access to Justice Assessment Tool (AJAT) (2012); existing legal needs assessments involving the trans community (as focus of study or as part of the LGBTQ community); legal needs-assessment studies that appear in academic peer-reviewed literature; peer-reviewed academic journal articles that deal with legal issues facing the trans community; and the literature produced by the Trans PULSE Project that addresses some key issues of discrimination facing the trans community in Ontario. In addition, and in relation to methodological considerations specifically, the following materials were reviewed: academic peer-reviewed literature on legal needs-assessment methodology, academic articles on methodological considerations for the trans community, and known relevant assessment tools, measures, and scales.

8. Consultations took place with over twenty professors involved in legal needs-assessment research, including researchers from the New York City Center for Court Innovation Research, researchers from the Institute for Social Research, and John Tall, AJAT (2012) principal researcher and developer.

Second, the study sought to identify the barriers trans people face in accessing justice. These barriers fall under the following four categories:

1. structural barriers that exist within the legal system
2. structural barriers that exist outside of the legal system
3. reasons why someone does not seek to access the system in the first place and/or chooses to leave a legal process<sup>9</sup>
4. access to fair decision-making

Within each of these categories, the study covers barriers that are specific to all trans people, barriers that impact racialized trans people, barriers facing Indigenous and/or Two-Spirit trans individuals, as well as barriers experienced by trans people living with or affected by HIV. A crucial element of trans-specific barriers is institutional erasure within the legal system; erasure includes both passive and active processes that create or maintain the invisibility of trans people or trans experience and results in systems without policies or plans for trans inclusion.

Third, the effects of legal problems on trans people are explored through an examination of the impact of these problems on matters such as financial status, relationships, and mental and physical health. In addition to these approaches to understanding access to justice for the trans community, the study explores specific issues relevant to particular trans populations (those who are racialized, HIV-impacted, and/or sex workers), and experiences of the legal system broadly.

## Methodology

From May 2016 to February 2017, the project collected information from trans individuals and legal service providers across Ontario.

A comprehensive online survey gathered information from trans individuals<sup>10</sup> about their lives, legal problems, and encounters with legal systems. Two-hundred and thirty-two trans people participated in the survey; 182 trans individuals completed the section of the survey on legal problems.

These survey data form the basis for the statistics calculated in the project reports. Demographics for the survey sample are described in Table 1. For purposes of our analyses, the disability category included, but was not limited to, those with blindness or deafness, those who required a mobility device, and those who reported a diagnosed intellectual disability or major mental health disorder (e.g., bipolar, borderline, schizophrenia, and dissociative identity disorder).

In addition to the survey, 13 focus groups were held in cities across Ontario that engaged 125 trans people. Nine separate focus groups engaged 82 legal service providers. As well, 19 trans people living with or affected by HIV were individually interviewed. These focus groups and interviews were recorded, transcribed and analyzed to identify key themes and provide quotes to illustrate issues raised.

9. These reasons include, but are not limited to social isolation, well-being, legal awareness, and attitudes of players in the legal system. This includes access to trans-specific medical care, documentation, and experiences of trans-related aggressions.

10. Participants that met the eligibility criteria of being over the age of 16, residents of Ontario, and trans-identified were solicited through the four project advisory committees, listservs to community organizations, and communications to organizations that serve trans clients. In addition, two community recruiters were hired to improve recruitment among racialized, HIV-impacted, and Two-Spirit trans communities.



**Table 1. Demographics of TRANSforming JUSTICE survey sample**

Demographics	Survey (n=232) %
<b>Age</b>	
16-24	27
25-34	31
35-54	29
55-64	10
65+	3
<b>Gender<sup>11</sup></b>	
Trans woman	39
Trans man	35
Non-binary, assigned female	14
Non-binary, assigned male	12
<b>Ethno-racial groups</b>	
Indigenous	14
Non-Indigenous white	72
Non-Indigenous racialized	14
<b>Disability<sup>14</sup></b>	
Yes	20
No	80

To understand current legal problems affecting trans communities in Ontario, questions in the survey (two of six survey sections), trans focus groups (one question out of thirteen), and one-on-one interviews (one question out of thirteen) were modeled after a telephone study by the Canadian Forum on Civil Justice (CFCJ) on justiciable legal problems.<sup>12</sup> This national study investigated legal problems that individuals had experienced within a three-year window between 2009 and 2013. Using these questions allowed us to compare the frequencies of experiences of legal problems among trans people in Ontario to frequencies from the general population in Canada.<sup>13</sup>

While these comparisons are important in documenting inequalities, we note that data from our focus groups and interviews demonstrates a greater range of justiciable legal issues for trans people in Ontario than the range defined and relied upon in the CFCJ research. This qualitative data not only provides further context to the experiences of trans people within each legal problem category but also highlights additional justiciable issues not captured in the survey. If broader categories of legal problems had been included, the discrepancies between the general population and the trans community may potentially be even greater than reported here.

11. Gender identity is defined as someone’s internal and individual experience of being a woman, man, both, neither, or anywhere along the gender spectrum. Trans women are those who identify as women or primarily feminine, and trans men are those who identify as men or primarily masculine. Non-binary gender identity is defined as someone who feels they do not fit into the gender binary of male or female; this can include feeling that both genders apply to them, neither female nor male apply, and/or those who identify as agender. Assigned male or female refers to someone’s sex designation at or shortly after birth, which can be female, male, or undetermined/intersex.
12. The researchers on this study provided the questionnaire used for their 2013 data collection. Farrow, T., Currie, A., Aylwin, N., Jacobs, L., Northrup, D., Moor, L. (2013). *Canadian Forum on Civil Justice 2013 Survey of Justiciable Legal Problems in Civil Matters Draft Questionnaire*. Unpublished questionnaire.
13. General Canadian population statistics derived from: Farrow, T., Currie, A., Aylwin, N., Jacobs, L., Northrup, D., Moor, L. (2016). *Everyday Legal Problems and the Cost of Justice in Canada: Overview Report*. Canadian Forum on Civil Justice. Toronto, Ontario: Canada. Retrieved from: <http://tinyurl.com/y9rpbm8h>.
14. Disability included blindness, deafness, requirement for mobility device, intellectual disability, and major mental health disorder.

# Legal Problems

This section provides information on the most widespread legal problems that faced trans people in Ontario during the three-year period from 2013 to 2016. The statistics are drawn from the survey, and further details, including direct quotes, are drawn from the focus groups and interviews. The chart below compares our survey findings to that of the CFCJ study of the general Canadian population.

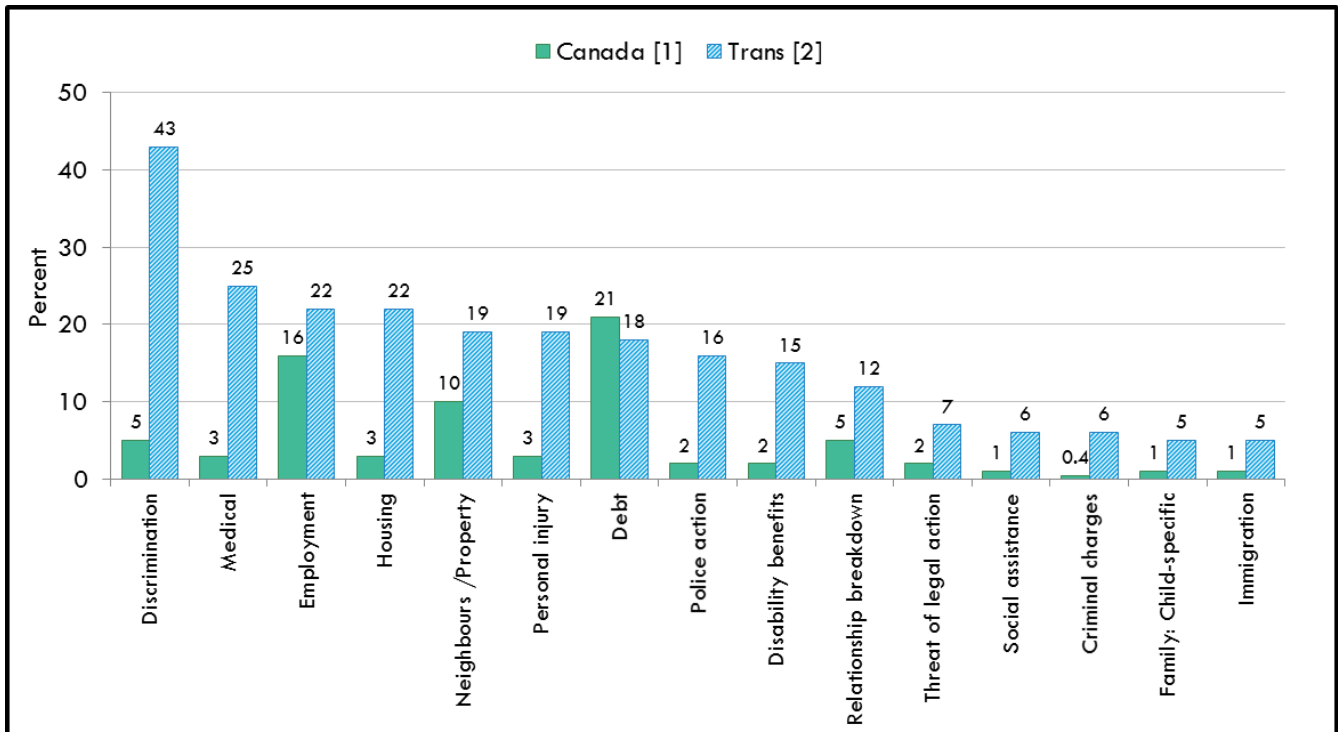
Findings from all 440 participants (trans survey respondents, trans and legal service provider focus-group participants, and HIV-impacted interview participants) reveal that trans individuals experienced justiciable legal problems in far greater proportion than the general population in Canada.

Notably, 71% of survey respondents experienced at least one justiciable legal problem within a three-year timeframe (2013-2016), with 18% having five or more different legal problems. These experiences were found to manifest in ways that

**71% of trans survey respondents experienced at least one justiciable legal problem within a three-year timeframe, with 18% having five or more different legal problems**

were often complicated by trans-specific mistreatment and barriers to full participation in social systems. Obtaining legal assistance for these problems was rare. Of those with at least one justiciable legal problem, 69% felt they needed or may have needed professional legal help, and 30% got such help for at least one problem. Only 7% got professional help for all their legal problems, and most of this group (78%) had only a single type of problem.

**Figure 1. Legal needs in the past three years: Transgender people in Ontario (n=182) in comparison with Canadian population data**



1. Farrow et al. *Everyday Legal Problems and the Cost of Justice in Canada*, Canadian Forum on Civil Justice, 2016.  
 2. TRANSforming JUSTICE data, 2016.

## Discrimination

The most common justiciable legal problem identified by trans people was discrimination: 43% of survey respondents reported experiences of discrimination within the three-year timeframe versus 5.3% of the general population in Canada. For the purposes of this project, trans-specific discrimination was queried separately from other forms of discrimination, to provide additional detail. Among survey respondents, 23% reported only trans-specific discrimination and 10% only other forms of discrimination, while 13% reported both.

Justiciable discrimination is defined as:

*discrimination because of actual or perceived race, country of origin, Aboriginal status, sexual orientation; discrimination because of a disability; and discrimination based on age, gender, religion, and/or HIV status.*

Trans-specific discrimination is defined as:

*discrimination because of actual or perceived gender identity, or gender expression.*

Focus-group and interview participants spoke about experiencing trans-specific discrimination in overt and covert ways. Explicit forms of trans-specific discrimination included being told directly that they were being denied housing, shelter space, consumer services, police protection, health care, addiction treatment, and/or employment because they are trans. Stories were shared about experiencing harassment and violence from service providers and service users (e.g., other tenants). Implicit forms of trans-specific discrimination involved denial of the above-mentioned services and being treated differently (e.g., changes to work duties, avoidance by neighbours, not being offered a second interview) after their trans identities were discovered. Some participants had difficulty identifying the ground(s) of discrimination they endured. Several participants talked about suspecting that some of their discrimination experiences were trans-specific. It was also hard for several participants to identify or separate trans-specific discrimination from other types of discrimination (e.g., HIV-phobia, racism, Indigenous-based discrimination). It was often reported that these experiences of discrimination cannot be separated from one another and are best understood in relation to each other.

**43% of survey respondents reported discrimination within the three-year timeframe versus 5.3% of the general population in Canada**

Overall, focus-group and interview participants offered stories of on-going discrimination that often started in their youth. These participants commonly experienced discrimination in multiple locations, including school, the workplace, and while interacting with health care services. Formal, legal, social-service, or community health-service support to help address this discrimination was found to be almost non-existent. Participants spoke about not approaching any institution for support, and those who did seek formal assistance discussed additional experiences of discrimination, refusals for support from service providers, and being blamed for the discrimination they experienced. Individuals often responded to discrimination through self-protection methods, the most common of which was extreme social isolation.

Trans youth focus-group and interview participants (16 to 24 years old) talked about being abused by family members, kicked out of their homes, and excluded from their communities because they are trans. Several trans youth spoke about wanting but not being able to obtain a name change or hormone therapies and other trans-specific medical procedures because of lack of parental support. Discrimination within the school system by students, teachers, staff, administration, and other parents was noted by several trans youth. Stories about discrimination within youth programs, in the child welfare system, and in public spaces were also disclosed.

**“I became it, it-girl, and it-girl got beat on. It-girl got spat on. It-girl went home and had to do things to learn how to not be an 'it' anymore in the household. Then it-girl goes on forward in life.”**

*Focus-Group Participant*

Racialized trans focus-group and interview participants talked about navigating the intersections of racialization and trans identity. Discussions of experiencing both racism and transphobia were numerous and focused on increased frequency and/or intensity of discrimination. Not being able to seek support, shelter, and assistance from their own ethno-racial communities because of their trans status was also discussed. Avoiding medical services within their cultural communities due to trans-specific discrimination was an experience also shared by participants. A lack of trust in the legal system by racialized trans focus-group and interview participants was expressed.

**“I think as a Black trans person, and . . . being a part of the Black community in general, due to the anti-Black racism that exists, Black people are not dependent on the justice system.”**

*Focus-Group Participant*

Two-Spirit trans focus-group participants spoke about the impact of colonization. Several participants talked about being discriminated against, harassed, and assaulted based on transphobic beliefs grounded in interpretations of Christianity. Moreover, several people left their reserve communities to seek safety in urban spaces after experiencing assault based on their Two-Spirit identities. Unfortunately, many then endured more assaults and discrimination in urban settings based on transphobia, homophobia, and racism against Indigenous peoples.

HIV-affected focus-group and interview participants shared experiences of increased stigmatization. Being denied work and housing, and being outed as HIV-positive within public housing spaces were experiences shared by these participants. Lack of access to trans-competent health care when dealing with impacts of HIV was also a common

theme. In addition, social factors in relation to experiences of transphobia were identified as increasing the risk of HIV infection. This included experiences of transphobia-motivated sexual assault, social isolation, and poverty.

**“[I have been] physically assaulted and bullied. You name it, I've dealt with it. I'm so scared because the moment I feel like they will find out that I am HIV positive, they will come after me even more.”**

*Interview Participant*

## Medical Treatment

Survey findings revealed that 25% of trans individuals in Ontario experienced a justiciable medical-treatment legal problem within the three-year timeframe in comparison to 2.6% of the general population in Canada.<sup>15</sup>

Stories about being turned away from emergency medical treatment and about lengthy delays in receiving urgent care were common amongst focus-group and interview participants. While trans people can experience similar medical-treatment legal problems to those who are not trans, many of the problems identified were either related to being trans, or to trans-specific medical needs. For example, concerns about being ‘outed’ and/or persistently misgendered in health-care settings were rampant. Denial of hormone treatment and gender-affirming surgeries, as well as difficulty receiving trans-competent health care also permeated the focus-group and interview narratives.

This often meant that people lived with injuries that were not properly treated, avoided hospitals even in emergency situations, and did not receive trans-specific care, let alone adequate routine health care (e.g., family-care check-ups).

15. Justiciable medical treatment problems are defined as: issues with treatment received while hospitalized, difficulty obtaining a discharge from a hospital, restrictions or conditions placed on getting discharged from a hospital, care received or not received after release from a hospital, and/or harm that occurred while being treated by a physician or a dentist. Definition derived from: Farrow, T., et al. (2013). *Canadian Forum on Civil Justice 2013 Survey of Justiciable Legal Problems in Civil Matters Draft Questionnaire*. Unpublished questionnaire.

**“I went to emerg after a car accident with injuries to my legs . . . . They kept misgendering me . . . outed me . . . I waited nine hours because they did not know what to do with me.”**

*Interview Participant*

Almost no one sought legal advice or pursued legal action for these problems. Only one focus-group participant spoke about attempting to pursue legal action to address being consistently denied medical treatment. Participants explained that acquiring legal information resources to help them understand their legal rights and potential avenues for legal recourse was onerous, daunting, and that they did not consider obtaining or were unable to obtain formal legal support.

## Employment Law

Employment law problems were defined in the study as including:

- improper employment terminations
- unfair disciplinary procedures
- persistent harassment
- unpaid wages
- health and safety matters
- Employment Insurance (EI) problems.

The survey revealed that 22% of respondents reported a justiciable employment law problem within three years in comparison to 16.4% of the general population in Canada.<sup>16</sup> It is important to note, however, that survey questions in both our survey and the CFCJ survey assessed discrimination in employment contexts and not in employment applications or hiring. Additional employment-related discrimination issues not included in the survey definition surfaced in focus

groups and interviews. As a result, the number of trans people who experienced this broader range of employment law problems is almost certainly greater than 22%.

A repeated theme that arose throughout the focus groups and interviews was the pervasive experience of overt and subtle discrimination in the workplace and employment-seeking process, including the following:

- being turned away at the interview process
- being terminated while going through a gender-transition process
- having job duties changed once identified as a trans person
- being fired for being trans
- being harassed
- being assaulted

**“I think that employment is a really big issue. The trouble is it’s so difficult to know what to do about it. I’ve been to job interviews that were going along really, really well until I self-disclosed that I was transgender. Nobody ever says, ‘Oh, you’re transgender; we can’t hire you’, but it’s pretty obvious that it was a barrier, that all of a sudden there was no longer any interest in me as a candidate.”**

*Focus-Group Participant*

Focus-group participants routinely reported being denied employment once their trans identities or histories were revealed. Discrimination in the employment-seeking process was also noted as pervasive in the focus groups and interviews.

16. Justiciable employment legal problems are defined as: being dismissed/fired unfairly, unfair disciplinary procedures, persistent harassment, obtaining EI, obtaining owed wages, health or safety issues. Definition derived from: Farrow, T., et al. (2013). *Canadian Forum on Civil Justice 2013 Survey of Justiciable Legal Problems in Civil Matters Draft Questionnaire*. Unpublished questionnaire.

“I remember the job when I started my transition . . . . They spread the word in the office, and I was bullied, alienated, overworked . . . . And then I was like, I can’t do this anymore.

So, I just ended up quitting and trying to find another job, but it was really hard finding jobs that were very accepting during that time of my transition.”

*Focus-Group Participant*

“I was sexually assaulted by a co-worker. It was reported and nothing ever happened of it . . . . I got back because I fought to get back, but it took an emotional toll. I actually went suicidal. I’m still on medication for it now. I still after four years fight with my employer. I’m still misgendered at work. They don’t take this serious[ly]. I’ve asked them to stop and they don’t stop. . . .

So what do I do? Can’t afford an attorney, I just keep putting up with the harassment. I really don’t believe that an attorney would help.”

*Focus-Group Participant*

Many focus-group and interview participants reported covert forms of discrimination once their trans identities or histories were revealed:

- increases in workload
- changes in duties (often resulting in social isolation)
- abrupt performance-evaluation alterations
- unfounded co-worker accusations
- demeaning treatment from colleagues and employers

While focus-group and interview participants often understood that there was a legal component to their problem, many stated that the discrimination seemed difficult to document and prove. These experiences were reported to have taken a significant toll on their mental health (particularly if they were in the process of transitioning gender at the time). Only a small number of focus-group and interview participants spoke about experiencing explicit discrimination such as being directly told they were fired because they were trans.

Only two focus-group participants sought legal assistance in relation to experiences of discrimination and neither resulted in formal action to support them. One person returned to work and continued to live with harassment.

## Housing

Justiciable housing problems included eviction, as well as harassment and discrimination by a landlord or other tenant.<sup>17</sup> Nearly one quarter (22%) of survey respondents reported experiencing such a housing problem within the previous three years in comparison with 2.5% of the general population in Canada.

Many of those who participated in focus groups or interviews spoke about the following:

- being denied rental accommodations because they were trans
- being assaulted by other tenants
- being evicted during transition or because of a trans identity
- having to live in unsafe or unsanitary conditions

17. The definition of justiciable housing problems used in this study is: eviction from rental housing/accommodation; getting a rent deposit back; difficulty of not getting a landlord to carry out building repairs or maintenance; problems with a landlord over hydro, water, or heating of your home; harassment or discrimination of any type from a landlord; harassment or discrimination of any type from another tenant; problems with a foreclosure or mortgage. Definition derived from Farrow, T., et al. (2013). *Canadian Forum on Civil Justice 2013 Survey of Justiciable Legal Problems in Civil Matters Draft Questionnaire*. Unpublished questionnaire.

Several of those interviewed said that they had not addressed key housing problems (e.g., mould, broken structures) due to fear that the process might reveal their trans identity or history and result in eviction.

Reports about the shelter system were especially problematic, with several focus-group and interview participants speaking about experiences of physical, verbal, and sexual assault by other residents. After reporting these incidents to staff, participants spoke about being removed from

**“There is an unspoken rule within the shelter system. . . . If you are trans, it is okay to assault you, it is okay to rape you, no one will do anything.”**

*Interview Participant*

facilities, being blamed for the assaults, and experiencing increased isolation. There were no focus-group or interview participants who, having reported a housing-related justiciable issue, also reported a positive resolution.

Given the experiences of discrimination in employment, in securing housing, and in the shelter system, several focus-group and interview participants, especially the youth participants, spoke about becoming street-involved to survive and build safety. Several trans youth focus-group participants reported that street-involved ‘families’ emerged as a form of protection, with individuals reporting that they felt there was nowhere else to get support. Indeed, all other housing options were perceived and/or experienced as hostile.

## Neighbourhood Problems and Property Damage

Nineteen percent of survey respondents reported experiencing justiciable legal problems with neighbours and/or property damage within the three-year timeframe as compared to 10% of the general Canadian population.<sup>18</sup>

Focus-group and interview participants spoke about negative treatment from neighbours because they are trans and/or when their trans identities were revealed. Issues included verbal harassment, physical assault, and sexual assault. Verbal threats of harm by neighbours and/or landlords prompted two participants to move locations. Several focus-group and interview participants reported that in order to keep safe within their neighbourhood, they would not leave their homes very often and/or would also not invite people into their homes.

**“We ended up leaving housing because of that same person . . . that assaulted me. After that, [we] experienced a lot of transphobia and homophobia in that area where we lived . . . . Some [people] kept calling law enforcement of different departments because they didn’t like us.”**

*Interview Participant*

## Personal Injury

Justiciable personal injury problems included experiencing an injury or health condition because of unsafe work conditions, of an accident in public and/or traffic, or of being a victim of a crime.<sup>19</sup>

18. Justiciable neighbourhood problems and property damage is defined as regular and excessive noise or other very disturbing activity caused by a neighbour; threats or harassment by neighbours or people passing through your neighbourhood; and/or vandalism or damage to your home, vehicle, property or garden.
19. Justiciable personal injury problems used in the study are defined as an injury or health problem resulting from having been a victim of a crime; an injury or health problem at work, in a public place, or commercial establishment, or as a result of a traffic accident or slip and fall. Definition derived from Farrow, T., et al. (2013). *Canadian Forum on Civil Justice 2013 Survey of Justiciable Legal Problems in Civil Matters Draft Questionnaire*. Unpublished questionnaire.

Of the survey respondents, 19% experienced a personal injury problem within the past three years, compared to 2.5% of the general population in Canada. Several focus-group and interview participants spoke about having experienced physical and sexual assault that left them with sustained injuries. These included incidents of severe physical assault resulting in coma, injuries to areas that have undergone trans-related surgery (e.g., breast/chest), brain injuries, memory loss, post-traumatic stress disorder, mobility issues, and suicidality. The two narratives where the incidents were reported to police did not result in charges being laid or offers of formal support.

## Police Action

Compared to 1.8% of the general population in Canada, 16% of survey respondents reported justiciable legal problems in relation to negative treatment by police between 2013 and 2016.

Mistrust of police pervaded focus-group and interview discussions. Several participants reported experiencing verbal and physical street harassment while police observed and did not intervene.

**“We feel more abused by police officers and law enforcement than embraced by them . . . . So, as a Black trans person, if I was to go to the police or was to be involved in a situation, I don’t feel like the police have the capacity to serve me without having a particular bias, and that’s obviously unfavourable in my situation.”**

*Focus-Group Participant*

Stories of the following were shared:

- police misgendering and name-calling
- police blaming the trans person for their victimization

- police not intervening to protect a trans person when they are being assaulted
- police not taking a trans person’s problem seriously
- police engaging in physical assault
- police engaging in sexual assault

There were also several focus-group and interview participants who reported positive experiences with police. These participants expressed gratitude for police who offered genuine support. Supportive actions by police included respecting the participant’s gender identity, responding to reports of violence seriously, and ensuring measures were taken to ensure the safety of the participant.

## Criminal Charges

The survey delved into criminal justice matters including coming into conflict with the criminal law. Of the survey respondents, 6% reported being charged with a criminal offence within the three-year timeframe in comparison to 0.4% of the general Canadian population.

Focus-group and interview participants spoke about issues that can bring trans individuals into increased contact with law enforcement and the justice system.

Trans youth participants talked about being kicked out of their homes and denied shelter space, becoming street-involved to survive, and having to find hormone medication outside of the medical system.

Trans adult participants talked about extensive experiences of discrimination and being denied housing, shelter space, health care, addiction services, and employment leading to poverty, on-going addiction, street involvement, and participation in criminalized economies. Trauma related to multiple and on-going experiences of violence were reported. Barriers to accessing institutional support for these issues including being denied access to services or avoidance of accessing services due to prior experiences of discrimination were discussed.



Focus-group and interview participants also talked about experiencing increased police surveillance because of their trans identities, racism, and/or street involvement. Finally, several participants shared stories about being the victims of trans-motivated violence, reporting the incident and/or seeking help from police, and then being charged with assault.

## Immigration and Refugee Issues

The survey also asked about justiciable immigration and refugee legal problems,<sup>20,21</sup> with 5% of respondents reporting such problems within the previous three years versus 0.7% of the general population in Canada.

Those who shared stories about immigration and refugee legal problems spoke about having been assaulted, harassed, and arrested for being trans in their countries of origin. While experiences with supportive lawyers were shared along with expressions of gratitude, issues of misgendering, trans identity not being believed, and not being taken seriously during refugee proceedings were also identified.

## Disability Benefits and Social Assistance

Among survey respondents, 15% reported experiencing a justiciable legal problem in relation to disability benefits<sup>22</sup> within the previous three years in comparison to 1.6% of the general population in Canada. As well, 6% reported experiencing a justiciable legal problem in relation to social assistance<sup>23</sup> within the previous three years compared to 1.2% of the general population in Canada.

**"We shouldn't have to jump leaps and bounds . . . just to get the basic necessities for care, like ODSP [Ontario Disability Support Program benefits] . . . if we're trans people and we're . . . [coming] from an abusive situation and we literally have to start from ground zero. Some of us don't have family."**

*Focus-Group Participant*

20. Justiciable immigration legal problems are defined as applying to be a permanent resident in Canada, applying for a work or student visa, sponsoring a family member to immigrate to Canada, becoming a Canadian citizen, filing a Pre-removal Risk Assessment or a Humanitarian and Compassionate Application, appealing an immigration decision through judicial review, obtaining assistance (e.g., health or social) while awaiting an immigration decision. Definition derived from Farrow, T., et al. (2013). *Canadian Forum on Civil Justice 2013 Survey of Justiciable Legal Problems in Civil Matters Draft Questionnaire*. Unpublished questionnaire.
21. Justiciable refugee legal problems are defined as making a refugee claim from inside Canada, filing a Pre-removal Risk Assessment or a Humanitarian and Compassionate Application, appealing a refugee decision through judicial review, and/or obtaining assistance (e.g., health or social) while awaiting a refugee hearing. Definition derived from Farrow, T., et al. (2013). *Canadian Forum on Civil Justice 2013 Survey of Justiciable Legal Problems in Civil Matters Draft Questionnaire*. Unpublished questionnaire.
22. Justiciable legal problems in relation to Disability Benefits are defined as problems obtaining a provincial disability pension (Ontario Disability Support Program - ODSP), problems obtaining a federal Canada Pension Plan disability pension, problems obtaining a disability pension from a private insurance company (Short Term Disability - STD, or Long Term Disability - LTD), and/or problems obtaining workers compensation in relation to an injury suffered at work (Workplace Safety and Insurance Board - WSIB). Definition derived from Farrow, T., et al. (2013). *Canadian Forum on Civil Justice 2013 Survey of Justiciable Legal Problems in Civil Matters Draft Questionnaire*. Unpublished questionnaire.
23. Justiciable legal problems in relation to Social Assistance are defined as problems obtaining Ontario social assistance benefits (Ontario Works - OW or Ontario Disability Support Program - ODSP) or with the amount of social assistance, problems obtaining Old Age Security (OAS) or the Guaranteed Income Supplement (GIS), and/or problems with any other type of government assistance, such as housing, benefits for disabled children. Definition derived from: Farrow, T., et al. (2013). *Canadian Forum on Civil Justice 2013 Survey of Justiciable Legal Problems in Civil Matters Draft Questionnaire*. Unpublished questionnaire.

**“For myself being a trans female as Black, I get carded a lot and then I have to use that I am trans and then that leads me to getting arrested. And so I have got arrested based on I said I was trans, and because I didn’t [have] any documentation to prove that I’m actually trans, they sent me to jail because they said I was falsely using somebody else’s identity.”**

*Focus-Group Participant*

## **Differences in Legal Burden within Trans Communities**

Among the respondents in the TRANSforming JUSTICE survey ( $n=232$ ), we examined whether frequencies of each specific type of legal problem varied for trans participants based on age, gender, disability status, and ethno-racial group (grouped into Indigenous, non-Indigenous white, and non-Indigenous racialized).

We found statistically significant differences by ethno-racial group in relation to the prevalence of immigration-related and refugee-related legal problems, with non-Indigenous racialized trans people being more likely to experience each of these. Statistically significant gender-related differences were present across age, gender, disability status, and ethno-racial group for three types of legal problems: personal injury, legal action,<sup>24</sup> and discrimination.

Trans men were less likely than the other three gender groups (trans women, non-binary– assigned male at birth, and non-binary–assigned female at birth) to report legal problems with personal injury or discrimination, though levels of discrimination were still well above national population levels. Trans women were more likely to report needing to respond to legal action.

In addition, legal problems varied depending on age and were generally more common between ages 35 and 54. Child-specific family law problems, debt-related problems, issues in responding to legal actions, and jail/prison experiences all occurred primarily within this age range. Those aged 25 to 54 experienced more employment issues than others and housing issues were consistent across ages 16 to 54.

Survey respondents with disabilities reported experiencing the same frequency of legal problems as respondents without disabilities, with one exception: trans people with disabilities were significantly more likely to experience a legal action problem. These issues are explored in greater detail in subsequent reports.

**“I also think that trans people, due to the fact that there are intersecting oppressions . . . . I would say as a trans person of colour . . . [are] more likely to encounter interactions with police despite the fact that [they] may not be doing anything wrong.”**

*Focus-Group Participant*

24. Justiciable legal action problems are defined as receiving a letter from a lawyer threatening legal action and/or having a court proceeding started against you over a civil matter, one not involving criminal charges. Definition derived from Farrow, T., et al. (2013). *Canadian Forum on Civil Justice 2013 Survey of Justiciable Legal Problems in Civil Matters Draft Questionnaire*. Unpublished questionnaire.

## Conclusion

It is clear from the survey, focus-group, and interview findings that trans people in Ontario disproportionately faced numerous justiciable legal problems. Our findings also revealed that it was very rare for trans people to seek legal assistance for these matters or believe that the legal system could assist them with the problems they faced.

While this initial project report is focused on providing a snapshot of legal needs, future project reports will address barriers and facilitators to accessing legal services, legal service provider needs, and measures that may help reduce negative experiences, respond to legal needs, and improve experiences of justice for trans people in Ontario.

**“If you’re mentally unsupported, unloved, you’re made to feel like a freak show, you’re dirt on the ground. How are you going to . . . advocate for yourself to get a lawyer when you’ve been sexually assaulted? [You feel] I deserved it, I’m a freak, I’m dirt on the ground. Why would I ever go get a . . . lawyer? . . . . I [don’t] think that people really understand all the emotional, psychological barriers that go to try and tax us, maybe a police station or Legal Aid or . . . HIV services, whatever it might be. It’s like, you have to fight with yourself: Am I worth it?”**

*Focus-Group Participant*



# TRANS*forming* JUSTICE

**HALCO**  
HIV & AIDS Legal Clinic Ontario

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