

International Longevity Centre (ILC) Canada



## Introduction

Access to Justice is a fundamental human right however, barriers particularly because of ageism, inhibit access to the right for older Canadians. ILC Canada calls for a UN convention on the rights of older persons to uphold this rights and other rights not fully enjoyed by older people.

### A. Definition

In Canada, there are currently no explicit laws focused on older persons' right to access to justice. However, the Supreme Court of Canada has recognized the right to access to justice based on the rule of law and on the unwritten constitutional principle of judicial independence.<sup>1</sup> The United Nations' (UN) 2030 Agenda for Sustainable Development Goals (SDGs), namely SDG16, also guides access to justice system, fundamentally embedding it within the Canadian justice system <sup>2</sup>.

### B. Scope of the right

Canadian law inculcates normative elements of the right to access to justice, and guides courts to apply legal standing equally to all litigants when relevant. The legal principles applicable in the common and the civil law system in the province of Quebec, are clear and well developed on this point.

Sadly, notwithstanding best intentions, several barriers prevail when it concerns access to justice for older Canadians, including ageism, cultural norms, unwieldy digitization, untimely legal proceedings, access to courtrooms, tribunals, legal and paralegal support, legal aid, and alternative non-judicial pathways to justice.

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<sup>1</sup> *Trial Lawyers Association of British Columbia v. British Columbia (Attorney General)*, 2014 SCC 59.

<sup>2</sup> <https://www.justice.gc.ca/eng/csj-sjc/access-acces/index.html>

Ageism insidiously and ubiquitously present in one out of every two people, negatively impacts global health and economy, and must be combatted<sup>3</sup>. In this context, access to justice can be improved, by undertaking comprehensive changes to policy and laws, education and training, and enforcement mechanisms throughout the justice system on protecting human rights of older people. There is an urgent need for a UN convention on the rights of older persons to specifically set out the right to access to justice for older persons.

A dearth of Canadian data exists regarding the influence of ageism on substantive law and on judicial proceedings. Ageism and age stereotypes can influence tribunals and calculation of damages in considering future losses and non-pecuniary damages, leading to a reduction of compensation<sup>4</sup>. Difficulty in accessing legal assistance is very real in Canada, in spite of nominal financing for specialized services through legal aid programs for economically disadvantaged older persons.

### **C. State obligations**

The state has a duty to fulfill its obligations.

### **D. Special Considerations**

The COVID-19 pandemic has mandated increased reliance on digital justice, e.g. by electronic hearings. While such initiatives may reduce barriers to physical accessibility and transportation, the digital divide often impedes access to justice for older persons. Several studies of older persons' highlight challenges including hearing difficulty, following proceedings, communicating remotely due to limited Internet access and poor technological skills.<sup>5</sup>

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<sup>3</sup> WHO Global Report on ageism. <https://www.who.int/teams/social-determinants-of-health/demographic-change-and-healthy-ageing/combating-ageism/global-report-on-ageism>

<sup>4</sup> Eugenio Mantovani, Benny Spanier & Israel Doron, "Ageism, Human Rights, and the European Court of Human Rights: A Critical Analysis of the Carvalho v. Portugal Case (2017)" (2018)11 DePaul J. Soc. Just. 1; Elizabeth Weeks, "Healthism in Tort Law" (2019) 12:1 Journal of Tort Law pp. 81-126.

<sup>5</sup> Kathy Laird, "The 'Digital Transformation' at Tribunals Ontario: The Impact on Access to Justice, (2021) 34:2 Journal of Administrative Law & Practice pp. 141-165.

## **E. Implementation**

The Canadian federal government's "people-centered approach to justice" aiming to put "individuals at the heart of justice by providing access to information, programs and policies", must be fortified for older people<sup>6</sup>.

Inclusion of older people and their representatives is critical when elaborating the plans for transforming the Canadian justice system. Such an approach must be systematically implemented.

Older persons are an extremely heterogeneous group posing significant challenges which must be addressed in reforming the justice system. Examples of common challenges encountered include physical health e.g. mobility, mental health e.g. dementia, other comorbidities, residential settings, imparting rights advice, education about their human rights, dispute prevention – all present challenges to adequately serve this population in terms of access to justice. Research in this critical area is sorely needed.

Older Canadians face significant challenges in accessing justice. Canada must embed and integrate a legally binding human rights lens in every facet of law to enshrine the right to justice.

### **Call to Action:**

ILC Canada calls for a United Nations convention on the rights of older persons with the following provision:

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

In order to help to ensure effective access to justice for older persons, Canada shall promote appropriate training for those working in the field of administration of justice, including police and prison staff.

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<sup>6</sup> <https://www.justice.gc.ca/eng/csj-sjc/access-acces/index.html>