



The National Self Represented Litigants Project

# Struggling for Accommodation: Barriers to Accessibility faced by Cognitively Disabled Self-Represented Litigants

Shannon Meikle, Silvia Battaglia, & Julie MacFarlane

November 2021

**Table of Contents**

1. Abstract.....2

2. Background ..... 2

3. Methodology ..... 5

    Recruitment ..... 5

    Study design ..... 6

    Data Collection..... 6

    Limitations ..... 7

4. Results and Discussion ..... 8

    Overview of Results ..... 8

    Overview of Discussion ..... 9

    Question 1: How did you request accommodations for your disability? ..... 9

    Question 2: Did you face any challenges while requesting accommodations? And Question 3:  
    If so, what challenges did you face while requesting accommodations? ..... 11

    Question 4: What resources did you use to help you navigate your request for  
    accommodations? ..... 14

    Question 5: Please describe any efforts the courthouse made to ensure that you knew how to  
    properly submit an accommodations request. .... 16

    The Effect of COVID-19 on the Request for Accommodations Process ..... 18

5. Recommendations ..... 19

6. Thanks ..... 21

7. Appendices ..... 22

8. References ..... 26

## **1. Abstract**

Cognitively disabled self-represented litigants (SRLs) have increasingly reached out to the National Self-Represented Litigants Project (NSRLP) detailing their frustrations with the accessibility of legal proceedings, and the barriers they have faced in requesting accommodations for their cognitive disabilities. No prior studies have examined this point. We used data collected via semi-structured interviews and qualitative content analysis to determine the nature and extent of the challenges faced by cognitively disabled SRLs while requesting accommodations, and to determine whether the onset of the COVID-19 pandemic has impacted these experiences. This study found that there is a lack of available information and accessible resources for cognitively disabled SRLs, the majority of whom are unaware of the options available to them. Their experiences requesting accommodation are often met with procedural complexity, and end in denial and dismissal – sometimes bordering on hostility – by judges. This Report serves as a sole primary source in the literature on this issue, and includes recommendations to Canadian courts and accessibility committees to improve access to justice for cognitively disabled SRLs.

## **2. Background**

Our study focused on self-represented litigants (SRLs) with cognitive disabilities and the barriers they face while requesting accommodations.

In the spring of 2020, the National Self-Represented Litigants Project (NSRLP) received an influx of messages from a number of Ontario SRLs who had brought forward motions for accommodation, rather than applying through the administrative accommodations process. The arrival of these messages coincided with the beginning of the COVID-19 pandemic, and these messages indicated that the accommodation process had worsened or become less accessible since the onset of the pandemic. People with cognitive disabilities (PWCD) face unique challenges while navigating the legal system.<sup>1</sup> If they are forced to represent themselves because they cannot afford the cost of legal services, their access to justice is further reduced. Financial barriers to the retention

---

<sup>1</sup> Government of Canada, Department of Justice. *Access to justice*, (1 September 2021), online: Government of Canada, Department of Justice, Electronic Communications <<https://www.justice.gc.ca/eng/csj-sjc/access-acces/index.html>>

of counsel is by far the most commonly cited reason for self-representation among SRLs.<sup>2</sup> In a minority of cases, PWCDs self-represent by choice due to dissatisfaction with counsel or a preference for handling matters themselves.

Little official information on the barriers faced by cognitively disabled SRLs is available – at present, no reports or publications by any major legal group have been published on the topic. Much of the evidence to this point is testimonial. An NSRLP podcast released in 2016 featuring Judy Gayton, an SRL with a brain injury, provides insight into the ways that cognitive disabilities uniquely impact a litigant’s ability to participate in the legal system:

“The disabilities I struggle with render things such as unraveling complex details like the Appeal Court rules for the Appeal Court Record extremely difficult for me. It takes me considerably longer to grasp new information, I misunderstand things, I struggle to focus, remember things etc. I am a person with disabilities. I am struggling to comply with the Courts demands of me. I am in a crisis. ... (E)veryone knows that I comply to the best of my ability and have always attempted to put my best foot forward for the Court’s consideration. So, when and if I do not, it is because I am genuinely outside the scope of my abilities as a PWD.”<sup>3, 4</sup>

As leader of the Canadian Disability Policy Alliance, Professor Mary Ann McColl points out that despite some recent efforts, disabilities are not yet appropriately accommodated by the government at a policy level. First, there is a lack of agreement within the federal government over a single definition of disability; second, disabilities manifest themselves in a number of different ways, and addressing each of them requires a highly tailored policy response. The effects of the missing governmental efforts in accommodating a number of

---

<sup>2</sup> Macfarlane, Julie. (2013) *The National Self-Represented Litigants Project: Identifying and Meeting the Needs of Self-Represented Litigants*.

<sup>3</sup> Macfarlane, Julie. *Without a litigation representative, brain-damaged plaintiff forced to represent herself by court that alters her competency designation*, (2016), online: <<https://representingyourselfcanada.com/without-a-litigation-representative-brain-damaged-plaintiff-forced-to-represent-herself-by-court-that-alters-her-competency-designation>>

<sup>4</sup> Jumping Off the Ivory Tower, *Catch 22: No capacity, no lawyer*, (16 July 2020), online: <<https://representingyourselfcanada.com/catch-22-no-capacity-no-lawyer>>

cognitive disabilities were especially evident in our participants' journeys through the accommodations process.<sup>5</sup>

There is an official procedure for requesting accommodations in every province and territory. In Ontario, the process begins with litigants self-identifying the accommodations that they require. Accommodation-seekers must locate their local Court Accessibility Coordinator's contact information and submit an official letter of accommodation request. In addition to the list of required accommodations and explanation of each measure's relevance, this letter may need to provide justification of the request under a given statute, act, or piece of jurisprudence such as the *Canadian Human Rights Act*<sup>6</sup> or *Pintea v Johns*.<sup>7</sup> Within this letter, accommodation-seekers may include letters from doctors supporting their request. Other provinces and territories follow similar procedures, though some provinces direct requests for accommodation to registrars or another court official. Between provinces, it differs whether a list of available accommodations is made publicly available. In Ontario, the Ministry of the Attorney General has published a list of available accommodations that accommodation seekers may pick from;<sup>8</sup> other provinces provide no such list.

At the beginning of the pandemic, it appeared from many of the messages we received at NSRLP that these challenges were worsened by a lack of information about how to seek accommodations, since the courts were now closed. The NSRLP posted a call for participants across Canada in order to collect details of the individual experiences of PWCD as they sought accommodation as SRLs. We subsequently conducted in-depth individual interviews (n=10) where participants shared details of their experiences. A majority of participants (8/10) were from Ontario. Unsurprisingly, many of the challenges described by Ms. Gayton have been reiterated and expanded upon by these participants.

---

<sup>5</sup> Ore, Jonathan. *6 million Canadians live with a disability. advocates say federal parties need to listen to them* / *CBC radio*, (19 September 2021).

<sup>6</sup> Canadian Human Rights Act (RSC, 1985, c H-6)

<sup>7</sup> *Pintea v Johns*, [2017] SCC 23

<sup>8</sup> Government of Canada, Department of Justice. *Accessibility for people with disabilities*, online: Accessibility for People with Disabilities - Ministry of the Attorney General <[https://www.attorneygeneral.jus.gov.on.ca/english/about/commitment\\_to\\_accessibility.php#accessible](https://www.attorneygeneral.jus.gov.on.ca/english/about/commitment_to_accessibility.php#accessible)>

This study aimed to (1) illuminate and identify commonalities in the experiences of SRLs with cognitive disabilities who request accommodations, and (2) explore the potential impact of COVID-19 on these barriers.

The information shared by SRLs in interviews was used to generate this Report and to make recommendations to the Ontario Courts Accessibility Committee in June 2021. Following this, we recorded and posted a podcast episode, “Struggling for Accommodation,” which includes some of the oral testimony we received (and was recorded and shared with permission).<sup>9</sup> Additional information about this presentation may be found on the NSRLP website.<sup>10</sup>

### **3. Methodology**

#### **Participants**

Participants were Canadian adults with a cognitive disability who had previously or were presently participating in litigation without a lawyer. Per the Ontario Human Rights Commission, ‘cognitive disability’ encompasses a variety of conditions including but certainly not limited to mental illness, developmental disability, and mental disorder, and includes symptoms which are perceived as a disability (regardless of the diagnostic cause of these symptoms) and result in unfair treatment.<sup>11</sup> Due to the flexibility of this definition, and in the interest of preserving participants’ privacy and dignity, participants’ self-identification as a person with a cognitive disability was sufficient to meet the criteria for participation.

#### **Recruitment**

Recruitment was conducted through the NSRLP’s social networking accounts (Facebook, Twitter) and was directed toward the NSRLP’s general audience and followers.

---

<sup>9</sup> Jumping Off the Ivory Tower, *Struggling for accommodation*, (21 June 2021), online: <<https://representingyourselfcanada.com/struggling-for-accommodation>>

<sup>10</sup> National Self Represented Litigants Project. *NSRLP Presents to Ontario Courts Accessibility Committee* (2021), online: <<https://representingyourselfcanada.com/nsrlp-presents-to-ontario-courts-accessibility-committee/>>

<sup>11</sup> Ontario Human Rights Commission. *Policy and guidelines on disability and the duty to accommodate*, (2000), online: <<http://www.ohrc.on.ca/pt/node/2871>>

## **Study design**

Participants answered five questions following a semi-structured interview format. Broadly, the questions were open-ended and designed to gain a sense of SRLs' experiences, and whether COVID-19 had altered these experiences. Participants also provided their names and locations and the times at which they had requested accommodations. Those who had requested accommodations both before and after the beginning of the COVID-19 pandemic (February 2020) were asked follow-up questions pertaining to their comparative experiences. The substantive questions were, in order:

1. How did you request accommodations for your disability?
2. Did you face any challenges while requesting accommodations?
3. If you answered yes to the question above, please explain. (What challenges did you face while requesting accommodations?)
4. What resources did you use to help you navigate your request for accommodations?
5. Please describe any efforts the courthouse made to ensure that you knew how to properly submit an accommodations request.

Questions 1-3 were designed to gain insight into the procedures followed by SRLs, and the problems arising from participation in the accommodations process. Questions 4 and 5 were intended to clarify the usefulness of official courthouse messaging about the accommodations process, and to find out what additional resources SRLs relied upon and considered effective.

Answers were collated and assessed by-question for themes. Following collection, a comparative analysis was conducted between the experiences of participants who had requested accommodations before and after the onset of the COVID-19 pandemic.

## **Data Collection**

In the interest of accommodation, both written and oral submissions to the survey were allowed. Oral submissions were conducted via phone interview. Research Assistants conducted

interviews using the study questions and took contemporaneous notes. Participants were given the questions beforehand as an accessibility measure, to allow for preparation. With the participants' consent, oral submissions were recorded (and some excerpts of their testimony were used in the podcast episode).<sup>12</sup>

Submissions were subjected to qualitative content analysis, with questions one, four and five coded independently and questions two and three coded together. This allowed for the identification of recurring themes within each question and revealed commonalities among participants. For clarity's sake, responses were only coded for information pursuant to the specific question being posed. Additionally, information regarding the participants' health, specifics of their disability and litigation history, and other identifying information were not coded and are not part of this Report.

## **Limitations**

Methodological challenges arise from various aspects of the present study's approach. Notably, the sample size is small, with n=10 participants. Some SRLs contacted us about participating, but then for reasons related to their health and disability were unable to proceed. Nonetheless, the results are highly consistent among participants despite their diverse backgrounds, disabilities, and legal situations.

In many cases, participants were also overcoming personal difficulties to participate in the study. As indicated above, certain cognitive disabilities may complicate tasks such as focusing or recollecting events. Multiple participants described how their disability meant that discussing their experiences was traumatic, further complicating their ability to respond to certain questions. In certain cases, participants indicated a desire to elaborate on various points, but were unable to do so owing to emotional burdens. Despite these challenges, the ten participants were determined to share their experiences, and made thoughtful and detailed contributions.

---

<sup>12</sup> Jumping Off the Ivory Tower, Struggling for accommodation, (21 June 2021), online: <<https://representingyourselfcanada.com/struggling-for-accommodation>>

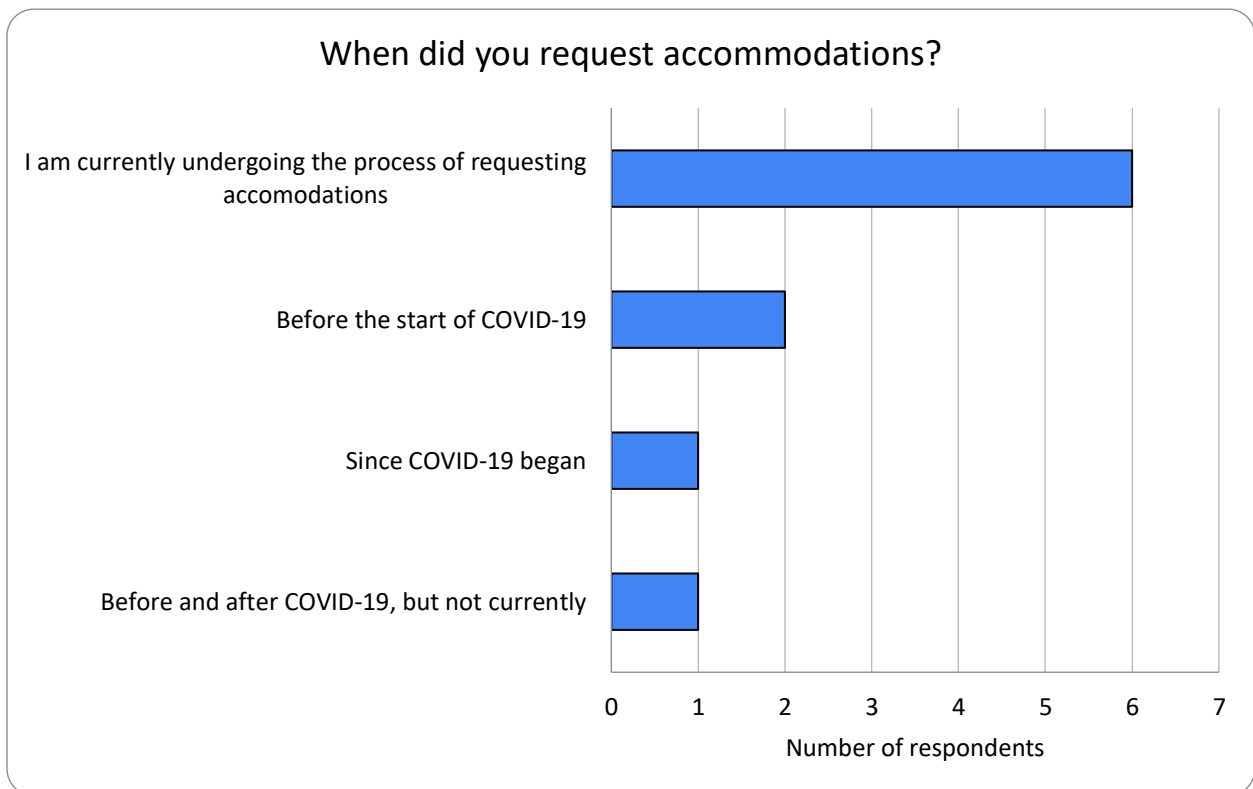


## **4. Results and Discussion**

### **Overview of Results**

Of the ten participants, eight participants were interviewed orally while the remaining two communicated their answers via email. All responses were subjected to the same qualitative content analysis regardless of submission method. Metadata was generated on a per-question basis, with the exception of data regarding the effect of COVID-19 on the participants' experiences, which was generated from a holistic analysis of all available responses.

In addition, temporal information was coded. A small majority of participants indicated that they were still in the process of requesting accommodation for their disability, whether or not this had commenced before or since the onset of the pandemic. This suggests that the results of this Report reflect current realities.



*Figure 1.* The time at which participants requested accommodations. The majority of participants indicated that they were currently undergoing the process of requesting accommodations.

## **Overview of Discussion**

A holistic analysis of responses reveals a general lack of education for SRLs with cognitive disabilities regarding the accommodations process and the assistance offered formally via Accommodation Coordinators. In addition, efforts to clarify the process or to follow intuitive methods of making a request (usually verbal submission) are often met with hostility and dismissal. The dismissive and problematic treatment of cognitive disability reported by participants speaks to a broader accessibility problem within Canadian courts: that the disabilities purported to be accommodated are fundamentally misunderstood, rendering existing accommodations deficient.

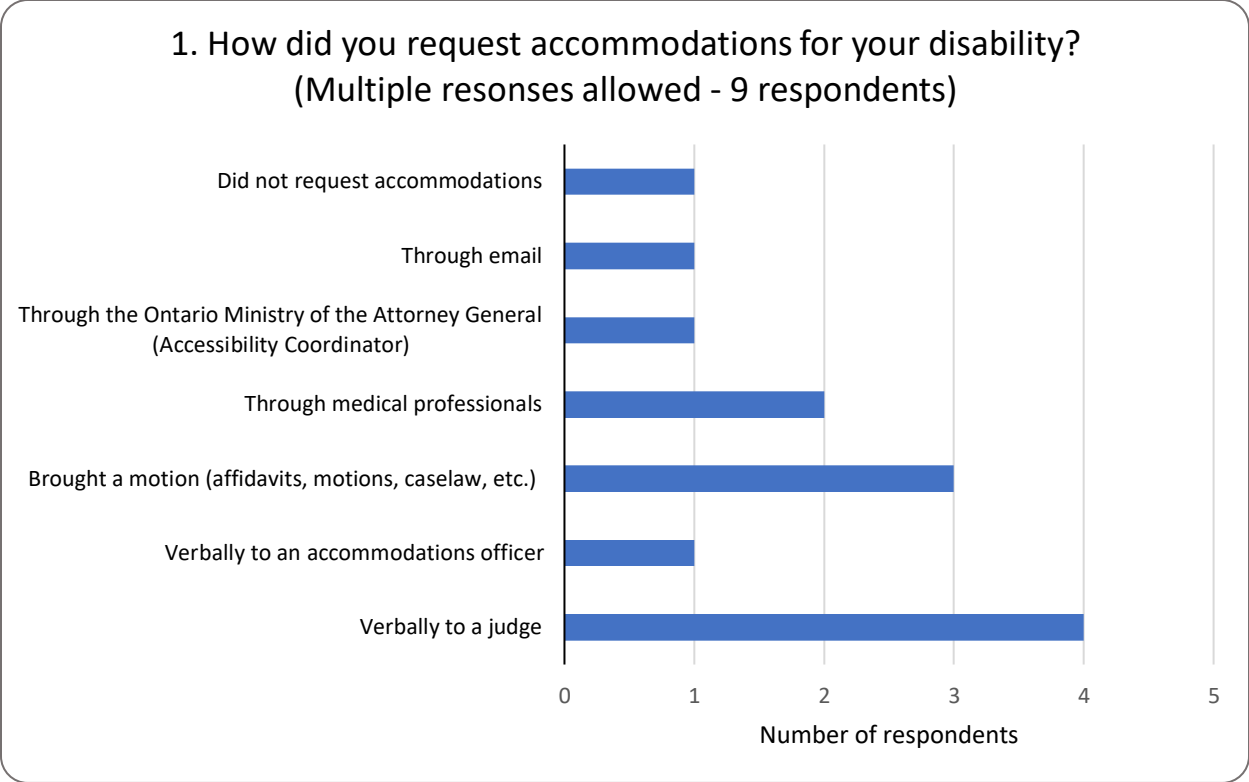
Issues with the accommodations system are present at multiple levels of the process – from SRLs’ first perusals of courthouse resources online, to their communications with courthouse employees, and interaction with judges. Consequently, it is unclear whether the bigger problem facing those seeking accommodations is the lack of messaging surrounding available options, or the lack of understanding of the nature of cognitive disabilities by the court and subsequent attitudes towards the affected individuals. It seems imperative that both the courts’ attitudes toward cognitive disability and the distribution of information be improved.

The data produced by consideration of responses on a per-question basis was also examined to illuminate other problems.

### **Question 1: How did you request accommodations for your disability?**

Of the ten participants, nine had already submitted a request for accommodation, while one had not reached the point of submitting a response due to their being overwhelmed by the process. Six methods for requesting accommodation were cited and most participants tried more than one approach: participants employed an average of 1.33 methods to request accommodation.

Of those who brought forward motions, one indicated that she had been assisted by a McKenzie friend. The one participant who followed the correct process (submitted her request through the Ontario Ministry of the Attorney General through the Accessibility Coordinator) indicated that NSRLP resources were the reason that she knew what process to follow.



*Figure 2.* The method by which participants submitted their request for accommodation. The most commonly cited method for the request of accommodations was verbal submission made before a judge or accommodations officer (n=4) or bringing a motion to a judge (n=3).

As indicated above, there is a formal resource within Ontario Courts to be utilized while requesting accommodations: the Accessibility Coordinators available through the Ministry of the Attorney General. Only one participant reported having known about or having utilised this resource. It is therefore clear that cognitively disabled SRLs are unaware of the existence of the Coordinator function or are otherwise hesitant to reach out, with participants stating as follows.

“I’m not even sure what’s available to me.”

- Anonymous participant

“I wasn’t aware that I could have accommodation... I had [a disability] that affected my executive function – memory and judgment – I still had no knowledge that I could get accommodations.”

- Anonymous participant

Instead, most participants submitted a request for accommodation verbally and in their hearing, usually to a judge. The lack of positive response suggests that judges often do not respond positively to these submissions, and indeed may respond with hostility, or may agree with the opposing side's supposition that the purported disability was used as a litigation strategy.

“Problems with speech, thought patterns, dissociation, etc.... it was treated as a ploy.”

- Anonymous participant

The NSRLP has recommended that judges be educated about cognitive disabilities and available accommodations, so that verbal requests may be handled more productively. However, ideally, the incidence of such verbal requests for accommodation and other incorrect methods of submission should also be minimized through better public information about the role of the Accessibility Coordinator (including when physical access to the courthouse is closed or limited; some PWCDs experience difficulties with physical access in normal times) and other appropriate resources.

**Question 2: Did you face any challenges while requesting accommodations? And Question 3: If so, what challenges did you face while requesting accommodations?**

Nine of the ten participants indicated that they encountered challenges while making their request for accommodations. One participant reported that she felt she had not experienced any challenges but had not received satisfactory accommodation in response to her request.

Seven broad challenges were cited by participants, with incidences of challenge being reported 25 times across participants, who were permitted to describe multiple challenges. The average number of specific challenges cited by each individual participant was 3.57.

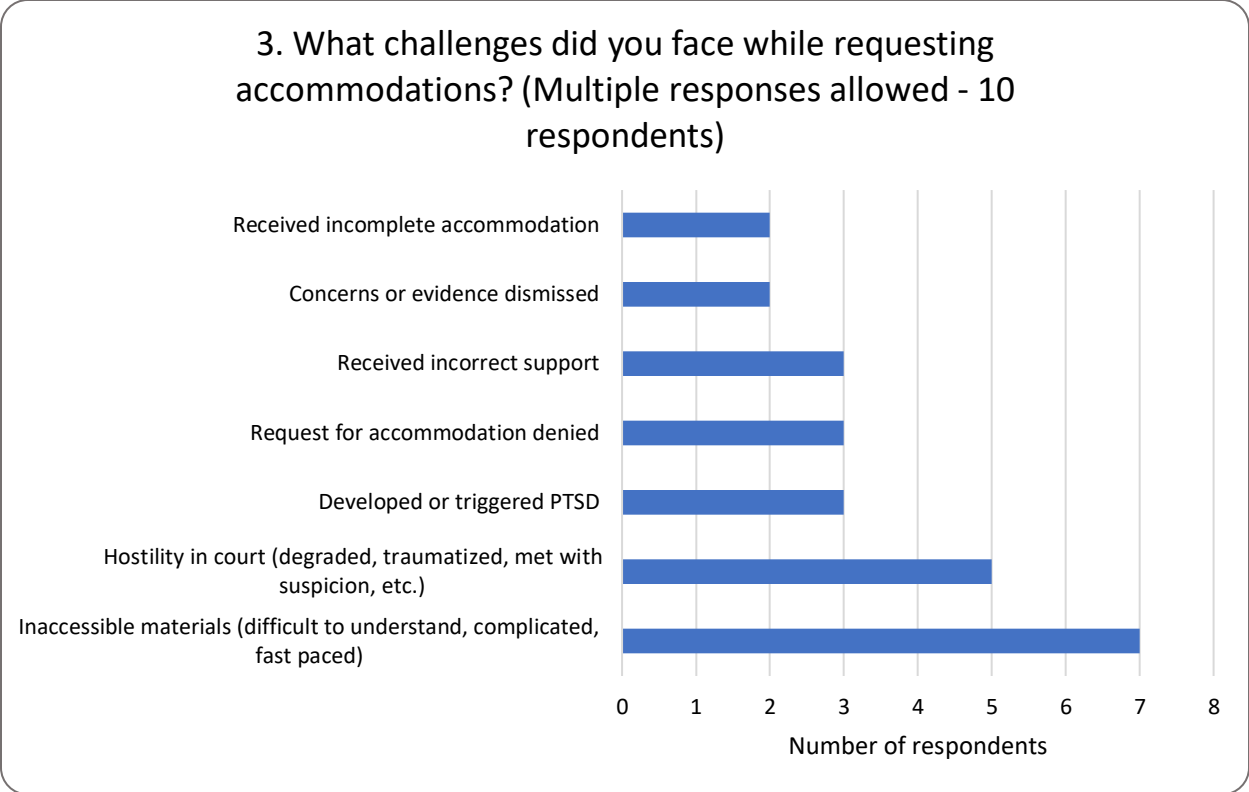


Figure 3. The inaccessibility of materials was most commonly cited as a challenge preventing or complicating the submission of a request for accommodations.

Ninety percent of respondents reported that they faced challenges while requesting accommodations. This result was not surprising – as indicated above, the NSRLP has received an influx of messages from SRLs describing frustrations with the accommodations process. Though we coded only for the procedural challenges that reportedly complicated requests for accommodation, these responses also speak to the broader experience of cognitively disabled SRLs in court, which is fraught with challenges. Inaccessibility of materials, and complexity of proceedings (both in court and administratively) were the most commonly cited challenges (incidence=7), with participants reporting that the complexity of proceedings prevented them from effective participation and that they required further accommodations, e.g., more time once their case commenced.

“She needed more time to understand the evidence and prepare for proceedings.”

- Anonymous participant, paraphrased by a research assistant

The next most commonly cited challenges were the experience of hostility in court (being degraded, traumatized, met with suspicion, etc.) (incidence=5) and the development or triggering of PTSD (incidence=3).

“A judge asked: "do you know what you're doing?... They do try to belittle you in some aspect.”

- Anonymous participant

“She developed PTSD throughout the judicial process as she was ‘degraded and traumatized.’...The difficulties she has encountered are related to her PTSD.”

- Anonymous participant, paraphrased by a research assistant

We heard from three participants that their requests for accommodation were denied, and a further two that their concerns or evidence was dismissed. Three participants said that they received incorrect support. A further two stated that that the court misunderstood the nature of their disability, resulting in inadequate or incomplete accommodation.

“I felt that my disability was dismissed. The system was looking at it as a ploy or tactic.”

- Anonymous participant

“She once described to a judge how her dignity was being stripped by the judge and he said, “you're not on the street you're in court” and dismissed her concerns. She had a debilitating migraine, and she was told she was ‘lucky’ for being allowed to wear sunglasses when she had requested an adjournment. She stated that, ‘I felt like I was so badly marked, no one would help me.’”

- Anonymous participant, paraphrased by a research assistant

In describing the above challenges, participants occasionally used extremely graphic language to describe the impact of these experiences on them.

“She describes it as being ‘punch drunk’ or having her skin peeled from her body, as it ‘forces you to recoil from the things you're confronted with from despair.’”

- Anonymous participant, paraphrased by a research assistant

“I'm actually scared [to submit another accommodation request].”

- Anonymous participant

“When that happened, at the court that is supposed to understand, I was shaken and again wounded.”

- Anonymous participant

This speaks to the traumatic or re-traumatizing nature of the submission of requests for accommodation as they currently proceed in the absence of useful support from the Accessibility Coordinator or other court resources.

**Question 4: What resources did you use to help you navigate your request for accommodations?**

Seven specific resources helped participants navigate their request for accommodations, with incidences of resources used being reported 16 times across participants. The average participant utilized 1.6 resources while navigating their request for accommodation.

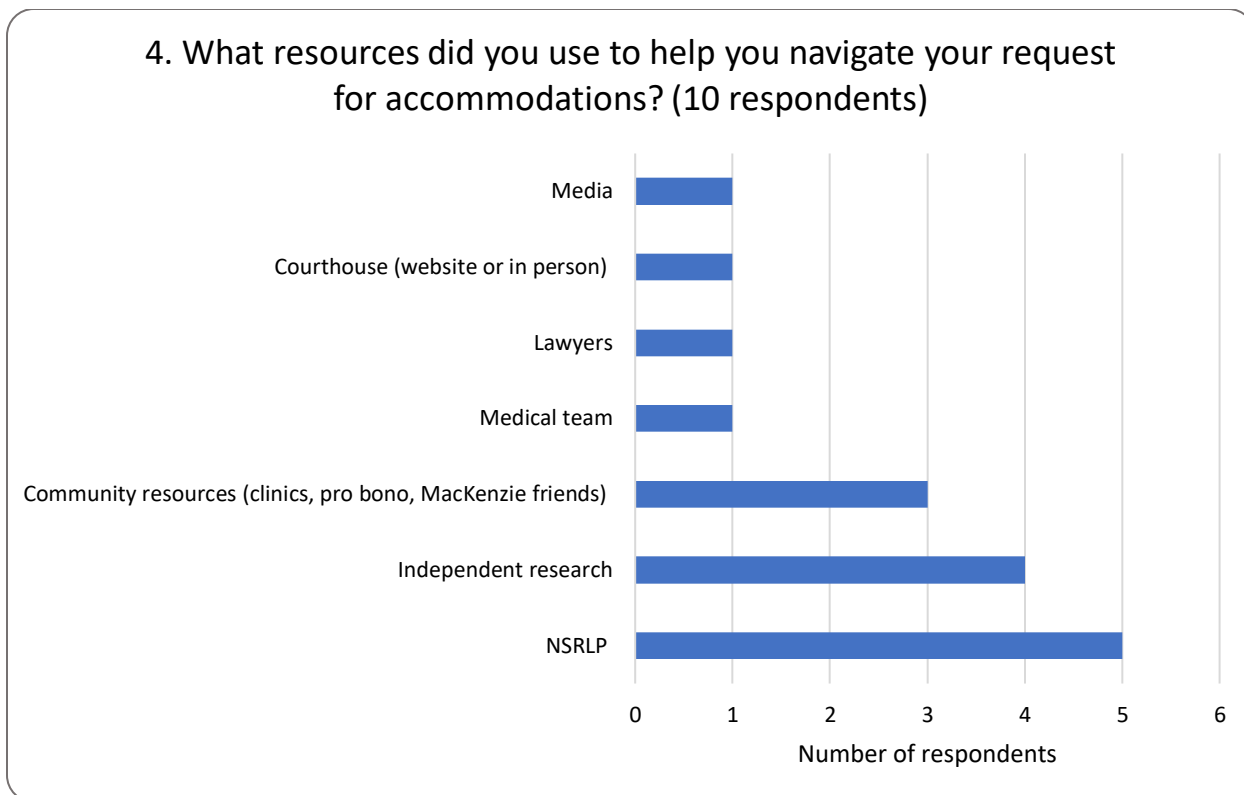


Figure 4. The NSRLP website was the most commonly cited resource used by SRLs while navigating the request for accommodations process.

The most commonly utilised resource reported by participants was the NSRLP, which has published an accessibility primer and other resources, and often redirects SRLs to appropriate sources of information. However, the general failure of participants to secure adequate accommodation for their cognitive disability indicates that there is a disconnect occurring between the NSRLP’s provision of information and SRLs’ actually requesting accommodations. Moreover, the lack of reliance on courthouse online information indicates that courthouse messaging is inadequate or inaccessible. Participants were completely unaware of the existence of appropriate courthouse resources, and therefore unable to assess the quality of the available resources. This may be due in part to the fact that some cognitively disabled SRLs find the use of digital/online resources challenging:

“Web searches are too strenuous on me.”

- Anonymous participant



“Judge Judy taught me. She would ask a litigant if they had mental problems if that person was struggling. She taught me that the court has a role. I just took it from there and keep asking for accommodation.”

- Anonymous participant

At least for one participant, it appears that an American TV judge was as useful (although misleading in many ways) and influential as the Canadian courthouse’s official messaging for SRLs bringing an accommodation request for other participants.

**Question 5: Please describe any efforts the courthouse made to ensure that you knew how to properly submit an accommodations request.**

The nine participants who responded to this question (n=9) commonly reported that they had received no support from the courthouse regarding their knowledge of the accommodations process.

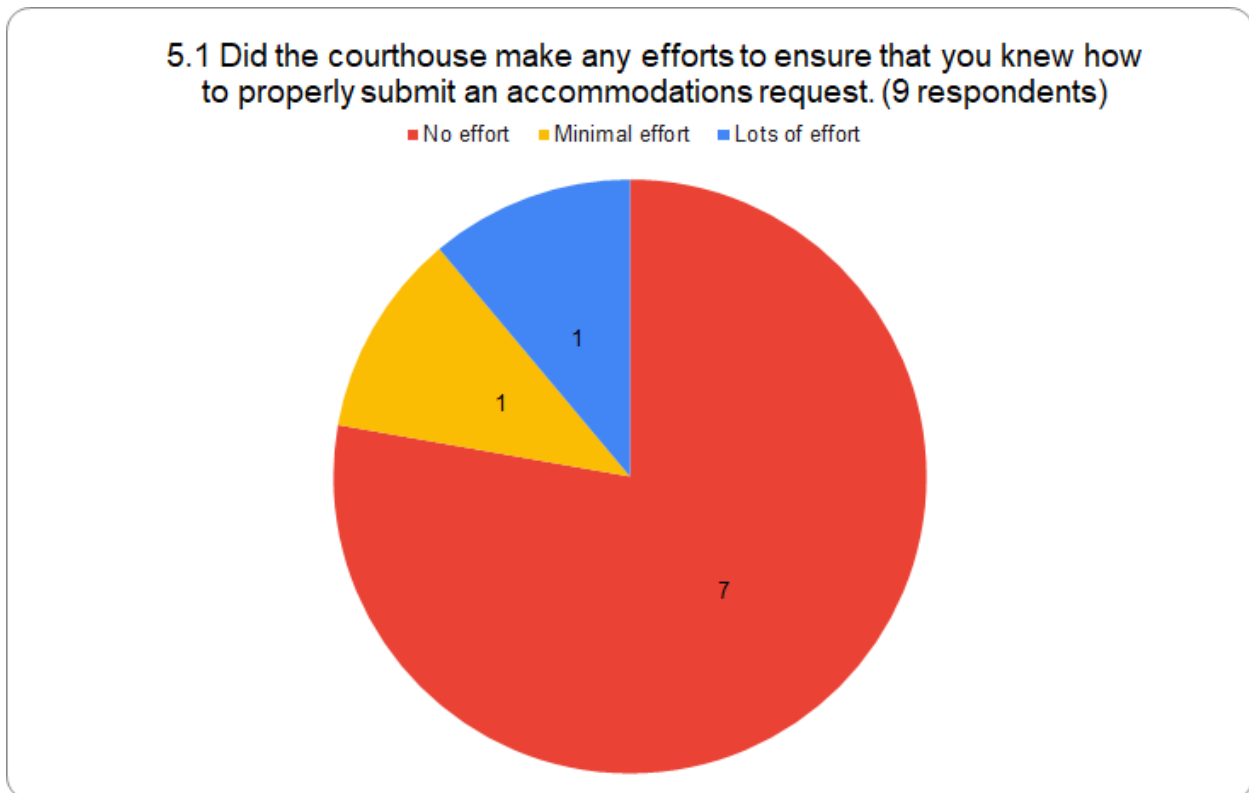


Figure 6. A majority of respondents indicated that they observed no effort from the courthouse to ensure that they knew how to properly submit an accommodations request.

Of those who reported no effort or minimal effort (n=8), we further analyzed (in a second dataset) the nature of the courthouse's failure to provide sufficient assistance.

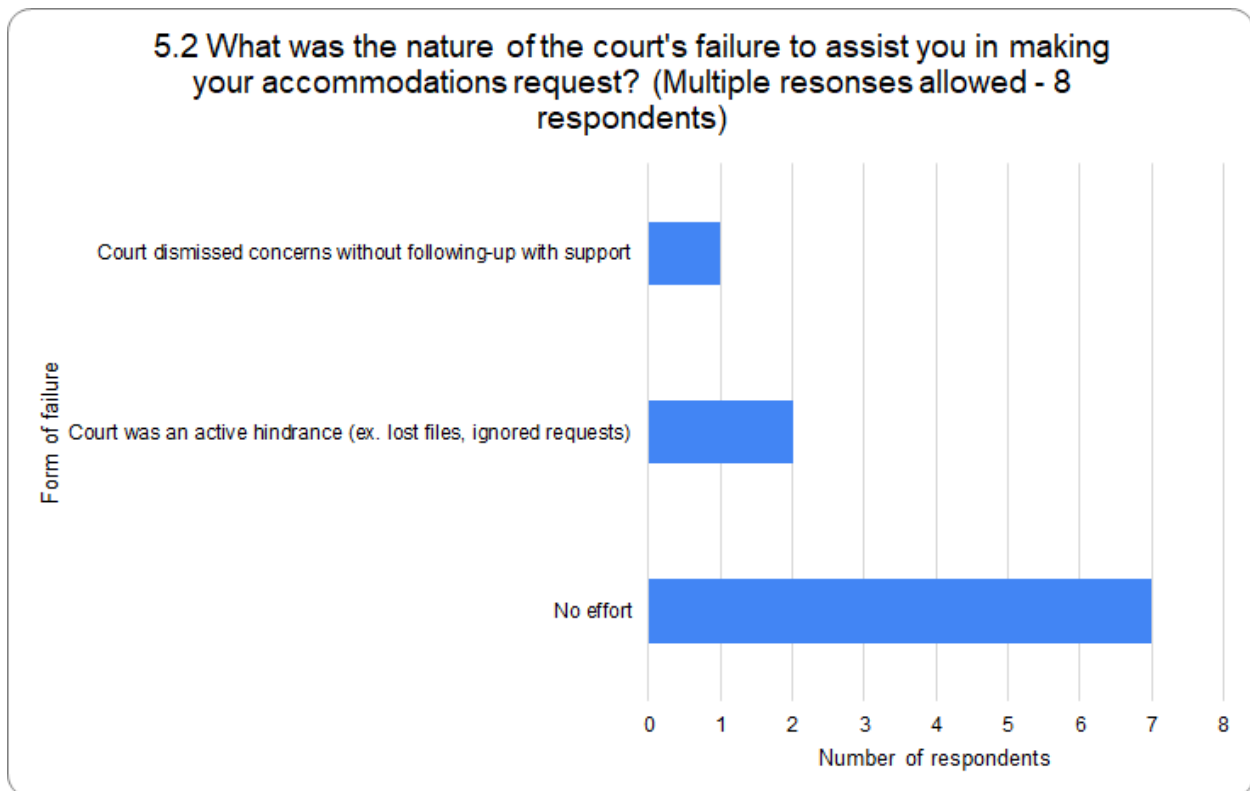


Figure 7. Of those who reported no effort or minimal effort by the courthouse in ensuring that they knew how to properly submit an accommodations request, the perception of zero effort was the most common form of failure.

Response to this question was highly consistent. Seven participants responded with some iteration of a single negative word such as ‘none,’ ‘zero,’ and ‘nope.’ Participants who answered in the negative were adamant about the lack of support they experienced. Obviously these SRLs felt that they did not receive adequate support for their disability in response to their request for accommodations – if in fact they received any support at all. The absence of effort by the court reported by a majority of participants is likely also related to the lack of accessible official messaging made available, as participants experienced challenges both working out how to submit a request, and actually submitting it. As stated earlier, many participants resorted to verbal submissions made in front of a judge – the ensuing lack of accommodation indicates that participants felt actively ignored in court. Again, it should be noted that this dismissal of the request was often accompanied by hostility:

“Nope. They made no effort. In fact, they've tried to avoid helping me at every turn... They'll tell you they can't offer legal advice when you ask about which form to use. They'll claim they can't find the files... There's a complete denial of process – a blank wall. That's it, you won't get over it... What do you do when the court pretends you're not even alive?”

- Anonymous participant

### **The Effect of COVID-19 on the Request for Accommodations Process**

The dataset was assessed holistically to compare participants' experiences requesting accommodations before and after the onset of COVID-19 in February 2020. A majority of participants had not submitted requests for accommodation prior to the onset of COVID-19 (see Fig 1 above). Comparisons illustrating the effect of COVID-19 were made by five separate participants. Three noted that the transition to online proceedings and the cessation of in-court resources had further challenged their efforts to request accommodations. Specifically, it was noted that:

- Participants did not know how to proceed with a request for accommodations following the transition to online proceedings, and had not received any information from the court about how requests for accommodations would take place within online proceedings;
- Useful in-court resources including face-to-face assistance were no longer available, and the availability of comparable resources online was unclear or inaccessible.

The remaining two comparisons dealt with judges' perceptions and responses to their disabilities or requests for accommodations. The following arose:

- In one case, symptoms of cognitive disability were dismissed as 'COVID stress' and were consequently found not to warrant special accommodation;
- One participant commented that COVID-19 produced increased concern about high-risk individuals with physical health problems and such disabilities were accommodated more

promptly following the onset of the pandemic. The response to cognitive disability by judges did not change as significantly as the response to physical disability.

While it is clear that the COVID-19 pandemic has altered cognitively disabled SRLs' experience with the request for accommodations process (through the unavailability of in-court resources and lack of messaging surrounding the transition from in-court to online proceedings), it is unclear from the existing data whether the problem has worsened or improved. This study was not designed to ascertain the overall qualitative effect of COVID-19 on cognitively disabled SRLs. For example, participants were not asked about their experience of virtual hearings. Future studies could focus on sample groups before and after the onset of the COVID-19 pandemic and might extend to assessing this element of their experience.

## **5. Recommendations**

This Report can serve as a primary source for the experiences of SRLs requesting accommodations, as it is the only current Canadian study focusing on this group of SRLs. It is clear from the information provided by SRLs that there are many barriers to justice present within the Canadian legal system for them. This calls for change.

Based on this data, we make five recommendations below. The purpose of these recommendations is to minimize confusion about the accommodations process. Similarly, we aim to improve the experiences of cognitively disabled SRLs, and to promote the utilization of appropriate accommodations. Our ultimate goal is to increase access to justice for people with cognitive disabilities. Improvement to the accommodations process may also ameliorate certain procedural issues often associated with SRLs, such as increased trial length and the need for appropriate assistance from judges.<sup>13</sup>

Following comments made by participants indicating that judges seemed to misunderstand the nature of cognitive disabilities and, following our finding that few participants were directed to the appropriate resource(s), we make the below recommendations.

---

<sup>13</sup> <https://www.scc-csc.ca/judges-juges/spe-dis/bm-2007-03-08-eng.aspx?pedisable=true>

1. Judicial training should be improved. The NSRLP recommends that judges receive training on: (1) the nature of cognitive disabilities and on how those disabilities interfere with legal participation, and (2) the available resources and the processes that PWCD should follow, in order that they may better advise SRLs who make verbal requests for accommodations. Importantly, a distinction between disability and a lack of capacity should be emphasized in any training about cognitive disabilities and accommodations; conflation of the two is detrimental to people with cognitive disabilities who, with the appropriate accommodations, are able to participate robustly in proceedings.
2. Accommodation policies and the types of accommodation available should be much more thoroughly advertised and effectively communicated to SRLs. This recommendation flows from our finding that participants saw current courthouse messaging to be ineffectual, confusing, unavailable, or all three.
3. Official court web pages should be updated to include clear information about the role and function of the Accessibility Coordinators. This information should include details about what types of accommodation the Accessibility Coordinators may provide for PWCD. Information pursuant to contacting the Accessibility Coordinators should also be elaborated to include more than an address, to enable effective and convenient communication. Finally, such information should be made accessible to a spectrum of PWCD (that is, it should be accessible by means other than online – for example by telephone or other communication method).
4. Consideration should be given to enabling SRLs to identify their disability at the beginning of the court process, i.e., when they first file, and offering an orientation session on what forms of accommodation are available and how these can be applied for.
5. Finally, NSRLP proposes that training and messaging about the barriers to justice faced by cognitively disabled SRLs be shared more effectively with members of the Bar. Participants generally indicated that, prior to their decision to self-represent, they consulted lawyers or were briefly represented by one. These participants shared their poor experiences with lawyers who misunderstood or dismissed their disabilities. Educating lawyers about cognitive disabilities and the accommodations process may

improve the experiences of PWCD within the legal system and encourage some members of the Bar to offer services specifically aimed at this group of clients as a speciality area, seeking additional specialised training.

## **6. Thanks**

The NSRLP would like to thank the SRLs who volunteered to participate in this study. For more information about this project, see:

<https://representingyourselfcanada.com/nsrlp-presents-to-ontario-courts-accessibility-committee/>

<https://representingyourselfcanada.com/struggling-for-accommodation/>

## 7. Appendices

### Appendix 1: Codified Responses to Question 1

Participant Number	1. How did you request accommodations for your disability?
1	Had a piece of new evidence and submitted it, mentioning that she had developed PTSD and required extra time in the responding of evidence. <i>She put it in an affidavit and submission of new evidence.</i>
2	<i>Initially went before the judge/tribunal.</i> Soon found that her just asking didn't have much credibility. <i>Had 5 to 6 medical professionals who have treated her complex PTSD write to the court, any disability group, etc. to try to get help with accommodations.</i> Had little/no response throughout. This was also the experience in 2020. She has submitted 'so many' requests.
3	<i>She made a verbal request.</i>
4	Both <i>verbally to the judge</i> and <i>by filing motions.</i>
5	I wasn't aware that I could have accommodation I had (illness that) affected my executive function - memory and judgment.. I still had no knowledge that I could get accommodations  seven months ago I asked for extra time then to have (a print out) of everything on hard copy  I wish I had had the opportunity to have accommodations for the four years prior 'cause I ended up signing things that I had no concept of what I was signing  <i>Through email. They set up a zoom call where I made that request.</i> I have to request more accommodations and I'm not even sure what's available to me.  No issue in making that request.
6	
7	Court would not address my request on its merits, but rather chose to grant the accommodation on basis of "Covid stress" rather than actual grounds.  I didn't know anything about (the accommodation process) so <i>I just submitted the motion with the assistance of a mackenzie friend</i> and <i>I committed the letter from my GP as well as my psychologist in support of that</i>
8	Was dealing with human rights tribunal, who said I was out of time to request a judicial review. Used the NSRLP primer and found out how to request accommodation for an extension of that deadline. Found out I could request accomodation only thanks to NSRLP primer, not because tribunal told me I could. <i>Once I decided to request that accomodation, it was a smooth and very positive process</i>
9	<i>I never got to the point of asking for accommodation because I felt it an overwhelming task to even submit the brief for my case.</i> I think I did submit paperwork for acting as an SRL but I settled before going to court So, lack of access to justice is costing taxpayers dearly.
10	unable to self represent, indigent as a result, and trying to hold the parties who disabled me, accountable. Also the very same parties who do not provide treatment for my PTSD and brain damage. For 8 years I have been holding the line. No one, and I mean no one, will help. <i>I have submitted legal cases to advance my arguement, the court ignores all.</i>

Legend	
<i>Verbally (oral submission to a judge or accessibility officer)</i>	4
<i>Brought a motion (affidavits, motions, caselaw, etc.)</i>	3
<i>Through medical professionals</i>	2
<i>Through the Ontario Ministry of the Attorney General (Accessibility Coordinator)</i>	1
<i>Through email</i>	1
<i>Did not request accommodations</i>	1

## Appendix 2: Codified Responses to Questions 2 and 3

Participant Number	2. Did you face any challenges while requesting accommodations?	3. If you answered yes to the question above, please explain.
1	Yes	Requested accommodations recently as she developed PTSD throughout the judicial process as she was 'degraded and traumatized.' Her accommodation request has just recently been submitted. She needed more time to understand the evidence and prepare for proceedings. The difficulties she has encountered are related to her PTSD. She describes it as being 'punch drunk' or having her skin peeled from her body, as it forces you to recoil from the things you're confronted from or 'recoil from despair.' This complicates the process as it makes it extremely difficult to confront tasks and the disability. "I have no confidence in the system... There are no friends in court. Not even any decency"
2	Yes	"I felt that my disability was dismissed. The system was looking at it as a ploy or tactic." Even though her disability was detailed by her medical professionals - problems with speech, thought patterns, dissociation, etc., it was treated as a ploy. "with my disability, I can't keep up with that pace." "They indirectly remind you that [SRLs] don't fit in." She would ask for time to understand things, review things, etc. and be given only a few minutes. She once described to a judge how her dignity was being stripped by the judge and he said 'you're not on the street you're in court' and dismissed her concerns. She had a debilitating migraine and was told that she was told she was 'lucky' for being allowed to wear sunglasses when she had requested an adjournment. her disabilities also prevented her from taking notes. "I felt like I was so badly marked, no one would help me." Judges wouldn't acknowledge letters or respond, just say "I got the letter."
3	Yes	Asked the judge if she could have a supporter or McKenzie friend, and the judge was very negative about it. She wanted support as someone with PTSD. He said she could ask the trial judge. The Judge was rude dismissive and not understanding.
4	No	She didn't really face any challenges but also hasn't really received much accommodation. The accommodations that have been made don't get to the heart of her disabilities - ex she is chronically fatigued and that hasn't really been met by the granted accommodations.
5	Yes	The accommodations clerk and her disagreed about what she wanted and what was possible. Felt that people that file motions will in some ways be punished/condemned/belittled by the courts ex. a judge asked her "do you know what you're doing?" "They do try to belittle you in some aspect." There were also filing problems ex. the judge said she hadn't received the accommodation request despite it already being approved. Also, pieces of writing received by the judge were illegible (despite the requirement that the Applicant's writing be legible). There was also petty actions on behalf of the court - ex. they made her wait longer in line (servers had to step up for her and suggest that she get a turn), read through her file in front of her, tried to send her away before closing because they didn't want to stay later, etc. Also found a confusion of 'lack of capacity' and disability which are not the same. "I'm actually scared [to submit another accommodations request]." "I want to be heard. I don't want that chance taken away from me."
6	Yes	RE: COVID - she is considering making another accommodations request but 'doesn't know how to proceed' in light of transitioning to zoom/changes. She hasn't received any info from the court about how to proceed. Prior to covid, I used to go to the courthouse all the time and they were pretty helpful But I can't go there anymore Web searches are too strenuous on me
7	Yes	[Justice] did grant those requests but drew it all up to "covid stress" i.e. he wouldn't acknowledge that I had other issues + he didn't actually hold an oral hearing he said that my motion materials were too long and because of that he was just giving up a written the decision I can't really remember what happens in these hearings so I've been preparing my own transcripts (I submit the request for audio and they've always released the audio to me) and I used the audios to prepare the transcript so that I can refer back to them. One of these times (in court) I quoted (something that was said at a previous hearing) my husband's lawyer objected and said "clearly she has a transcript" and demanded that I submit it. I did and when they saw that I prepared my own transcript they objected and said it was a conflict of interest and made a big deal about it. so then the court said you can't do that (receiving audios and preparing herself with transcripts) anymore I'm no longer allowed to have those transcripts so that's why I requested the accommodation that I be allowed to record because now I'm not allowed to prepare these transcripts. I put in the request and in mid February I had called the courts and I'd left a voicemail asking how to go about this and it took them three weeks to respond and then they told me to send an email (...) I had to submit a 14B motion and I didn't realize that that meant I had to send them all my evidence -I thought it was just the 14B Motion was denied and then just after that is when your primer came out right so when I got that information then I spoke to Luke's place (to discuss) whether I should do the application for accommodation an what kind I decided to do another 14B so that (I'd look good to JA). Submitted on the 13th of April and here I am 5 weeks later still waiting I heard nothing. I come across your primer and find out that I can request accommodation to extend timeline for judicial review (around third week of may) the next day the court calls me back (and) spent an hour and a half with me I was stunned by the extreme competence of this individual... very reassuring (said) we're going to make a motion to request the modified timeline Going off of the human rights tribunal and what they had told me I didn't even know that was possible- dramatic change I was filled with hope and they spend an hour half with me which is how much I could concentrate explain the bigger picture how this unfolds and and so on procedurally -- not legal advice of course and this gave me a very good orientation a very good job at it traditional review because of this gentleman is 10 out of 10 and he really make sure at the end of a 2 hours and 10 minutes of phone calls where some time add to ask him to repeat... very patient (if human rights tribunal explained how to file for accommodation) I wouldn't have needed to go to the court) absolutely no challenge AG, but wouldn't have known I could get accommodation if I weren't a go-getter, if he weren't determined to learn about my rights. so it's very worrisome that most applicants that human rights tribunal tribunal would not seek that type of accommodation support 'cause you need a bit of courage but you need determination to start bringing all those doorbell
8	Yes	have requested orders from courts for accommodation, denied, then ignored. The other problem is what accommodation? When I do not understand the process I have no idea what to ask for accommodation. In the beginning I asked for no legalease, bullet points, no more than one page, extra time, etc. But opposing council simply doubled down in denying all that, because the court denied it. So now I complain to BCHRT. And they do not understand cognitive impairment. They treat me like I am intellectually impaired, mentally retarded, and dumb down. They make decisions for me without my consent, no different than supreme or provincial courts. When that happened, at the court that is supposed to understand, I was shaken and again wounded. I lodged another complaint against BCHRT for failing to accommodate for mental disability and cognitive impairment. The problem is that BCHRT is so far behind it will take 10 years to resolve rather than 2. And my health continues to decline. I will be dead and my complaints tossed because my losses disappear with my death. That is a strategy the lawyers are also using against me. I made it known in 2019 of my failing health, to please accommodate. And they refuse. If I die, better for them.2019 was the first time in Supreme Court. Many times since then. Court does not read submissions, one has to argue on the spot, which I cannot do. I asked for accommodation in the form of a court appointed lawyer for one. The judge explained he had no authority, such as exists in criminal or family court to appoint a lawyer. Zero discussion about any accommodation outside that. I filed a discrimination complaint with BCHRT. I have since submitted requisitions for an order for the court to accommodate - all ignored. Or not read. By the time I get to telephone court to defend my position, I experience brain freeze from the PTSD anxiety, stutter uncontrollably, and am talked over by lawyer and judge. Judge always makes orders the lawyer wants without letting me argue. There is no process. I even sent a registered letter to the court manager and was referred to the Supreme Court rules. No discussion, no accommodation. It is as if they have no idea what I am talking about. Front counter staff DO NOT HELP. Their knee jerk reaction is to say "I don't give legal advice, talk to a lawyer." I am so sick of hearing that I went to CSO, court services online, to file my submissions. They reject every time but sometimes I get a hint of a reason why. I submitted a complaint to BCHRT describing the numerous times I specifically asked for accommodation from Officers of the Court, and was denied. BCHRT has yet to accept that complaint filed December 2020. However, [court official] was seconded from bchrt to Attorney General within 2 months of my complaint, and things have changed. She did a great job making Bchrt user friendly for healthy brains, just not mine. Front counter staff are now better and willing to provide some guidance. They are also cheerful. Only in the last few months. Still no accommodation.
9	Yes	
10	Yes	

Legend	
Inaccessible materials (difficult to understand, complicated, fast paced)	7
Hostility in court (degraded, traumatized, met with suspicion, etc.)	5
Developed or triggered PTSD	3
Request for accommodation denied	3
Received incorrect support	3
Concerns or evidence dismissed	2
Received incomplete accommodation	2
Participant used visceral language	4
Covid comparison	0



### Appendix 3: Codified Responses to Question 4

Participant Number	4. What resources did you use to help you navigate your request for accommodations?
1	<p>She hired several lawyers, "none of them would help her." Her evidence was deemed good but because she's been called vexatious people wouldn't help her. She has seen over a dozen lawyers in the last few years.</p> <p>Independently researched what she had to do. The guidelines for submissions were laid out, but it was terrifying because the research was representative of the traumatic elements of the legal system which caused the PTSD in the first place. COVID made her uncomfortable to go into the courtroom. She was made to come in and file by hand, and send by registered mail by each party. They wouldn't accept a fax or email. I had to do it physically. "They made me do it physically, I had no choice." She was asked by a lawyer to pay for travel expenses if they were ordered to go in person.</p>
2	<p>She had a great medical support team who stepped in and 'took over.' They wrote letters to court services, legal aid, etc. The COA had the registrar go over things with her and detail how things would proceed. She was also allowed to bring in a McKenzie friend. She learned about the McKenzie friend from the NSRLP. "I visited your site religiously." Her doctors had never heard of it. "I wish there would be better education within the legal system or justice system... I also wish there was some kind of support... There was nothing, no support, no resources. No matter who I phoned."</p>
3	<p>She used the NSRLP a lot, including the primers. There's also an online forum called the 'Ottawa Divorce Forum' which is "hit and miss" in terms of material. She is doing all of her own resources.</p>
4	<p>She called the courthouse and requested information/talked to court staff. She also got guidance from pro-bono law, and viewed court websites.</p>
5	<p>Reading case law (CanLII) and different disability websites (CLEO). She also looked at the Human Rights Code, Rules of Procedure, and knew it from her background filing cases with her employer.</p>
6	<p>None, I'd go there in person</p>
7	<p>NSRLP Primer, Luke's Place support worker.</p>
8	<p>Primers on NSRL</p>
9	
10	<p>Judge Judy taught me. She would ask a litigant if they had mental problems if that person was struggling. She taught me that the court has a role. I just took it from there and keep asking for accommodation.</p> <p>I tried the NSRLP handout for disabled but no help for cognitively impaired. The focus was on physical disabilities. I wrote the court to ask for a navigator, because of mental disability. Nothing.</p> <p>I have found that I can no longer anticipate what accommodation I need. It is still a court appointed lawyer despite EVERYONE telling me I don't stand a chance. Well, until the court experiences financial hardship, there is a lot they can do. However, It makes no difference. No matter what I do it is a brick wall. Hopefully Bchrt will crack it.</p>

Legend	
NSRLP	5
Independent research	4
Community resources (clinics, pro bono, MacKenzie friends)	3
Medical team	1
Lawyers	1
Courthouse (website or in person)	1
Media	1

## Appendix 4: Codified Responses to Question 5

Participant Number	5. Please describe any efforts the courthouse made to ensure that you knew how to properly submit an accommodations request.
1	"Nope. They made no effort. In fact, they've tried to avoid helping me at every turn." "They'll tell you they can't offer legal advice when you ask about which form to use. They'll claim they can't find the files." "There's a complete denial of process - a blank wall. That's it, you won't get over it." "What do you do when the court pretends you're not even alive."
2	None. "as a matter of fact, when my doctors would submit an accommodations request... it was just dismissed." One judge said "you're not the only one who comes in here with anxiety." "There was a complete disconnect [in judges understanding her invisible disability]." She didn't find that this judicial apathy/misunderstanding toward her invisible disability has changed since COVID. The response to her autoimmune disease has changed, since people are more aware of who is high risk. One of the reasons she was released on judicial release is for her arthritis. Not for her rheumatoid arthritis.
3	"No, nothing." Following her request, she was not directed to any formal resources by the judge (who shot her down). "There was nothing to encourage me down that path." "Especially since the pandemic, there is not really anything provided. As far as I can tell they have not transitioned to anything virtual."
4	No. "I really didn't get any explanation. It was awful."
5	"Absolutely none. Zero, zero, zero." "The courtrooms can be set up so that things are more accessible." "You've got to stand your ground."
6	I think I would have they would have been helpful if I had known what accommodations I could have prior to all this  They basically just said just submit this just write this thing out and will give you accommodation (as opposed to giving me an overview of what is available to me)  (in 2013 I dealt with a family law issue) and I'm not sure why (my disability) that wasn't picked up on 'cause part of executive functioning (was very visibly impaired). I just don't understand (why the courthouse didn't tell me to submit for accommodation) 'cause it was obvious I wasn't well.
7	None, but I did request assistance; did not realize they could assist. Took several weeks to respond to my mid-February inquiry, and then e-mailed me on March 3rd and said I had to submit a 14B. After I received the judgment or the endorsement that said that I was supposed to pay to get a transcript I emailed back the lady and I said is this really my only option and they didn't respond they ignored me.  I did go back and they ignored -- so I gave up  I had a settlement conference in December of 2019 –JA Timms had tried to tell me that I had to go to mediation and I said to him that when I had counsel my lawyer had said that I was not a candidate for mediation because there been domestic violence and the judge looked at me and said don't worry about that they have really nice offices and they serve pastry you'll be fine.  How safe am I – stand up for myself when i don't have a lawyer how the hell are pastries going to help me  patronized
8	amazing experience, patient and caring. they dedicated a lot of time and attention to my case . it made me feel very reassured and it gave me hope. the explained to met very clearly and plainly the procedural aspect, and remained available for any additional question
9	
10	Nope. And zero help with legal submissions. Get it wrong and I have to guess again and resubmit. My memory does not work so each submission starts from scratch. And I am always late. And lawyers always refuse to grant extension.  I am now under psychiatrists order to stop court. The PTSD sets off a stress storm that sends my blood pressure into the stroke zone. It is uncontrolled. All I can do is self medicate till the PTSD releases me. Then I feint or black out from over medication. It is a horrible roller coaster that is killing me.  I will be 62 in June and I told my psychiatrist ( who specializes in dementia not trauma), that I want to live for my grandsons. He wrote one letter and is working on a second.  My legal cases are very serious. Not simple. I am in the process of asking for written submissions going forward.

Legend	
No effort	7
Court was an active hindrance (ex. lost files, ignored requests)	2
Positive effort by the court	1
Court dismissed concerns without following-up with support	1
Neutral effort by the court	1
Hostility by the court (patronizing, minimizing)	2
Covid Comparison	2

## **8. References**

Canadian Human Rights Act (RSC, 1985, c H-6)

Government of Canada, Department of Justice. *Access to justice*, (1 September 2021), online: Government of Canada, Department of Justice, Electronic Communications <<https://www.justice.gc.ca/eng/csj-sjc/access-acces/index.html>>

Government of Canada, Department of Justice. *Accessibility for people with disabilities*, online: Accessibility for People with Disabilities - Ministry of the Attorney General <[https://www.attorneygeneral.jus.gov.on.ca/english/about/commitment\\_to\\_accessibility.php#accessible](https://www.attorneygeneral.jus.gov.on.ca/english/about/commitment_to_accessibility.php#accessible)>

Jumping Off the Ivory Tower,. *Struggling for accommodation*, (21 June 2021), online: <<https://representingyourselfcanada.com/struggling-for-accommodation>>

MacFarlane, Julie. (2013), *The National Self-Represented Litigants Project: Identifying and Meeting the Needs of Self-Represented Litigants*.

Jumping Off the Ivory Tower,. *Catch 22: No capacity, no lawyer*, (16 July 2020), online: <<https://representingyourselfcanada.com/catch-22-no-capacity-no-lawyer>>

Macfarlane, Julie. *Without a litigation representative, brain-damaged plaintiff forced to represent herself by court that alters her competency designation*, (19 July 2021), online: <<https://representingyourselfcanada.com/without-a-litigation-representative-brain-damaged-plaintiff-forced-to-represent-herself-by-court-that-alters-her-competency-designation>>

National Self Represented Litigants Project. Representing yourself Canada, (30 July 2021), online: <<https://representingyourselfcanada.com>>

Ontario Human Rights Commission. *Policy and guidelines on disability and the duty to accommodate*, (2000), online: <<http://www.ohrc.on.ca/pt/node/2871>>

Ore, Jonathan. *6 million Canadians live with a disability. advocates say federal parties need to listen to them*. CBC radio, (19 September 2021).

Pintea v Johns, [2017] SCC 23