



# Canadian Hard of Hearing Association

NEWFOUNDLAND & LABRADOR

## CHHA-NL Position Paper

### Improve Accessibility of the Justice System for Persons with Hearing Loss

#### Introduction

The Canadian Hard of Hearing Association (CHHA-NL) advocates for better hearing for everyone, everywhere. In the justice system, hearing accessibility means not only the formal courtrooms, but also the conference rooms in every Courthouse ("Courts"), and anywhere else a person with hearing loss needs to hear, understand and communicate so that their legal rights are upheld. CHHA-NL therefore advocates for better infrastructure and supports in the Court system so that an individual's hearing loss does not pose an additional barrier to their ability to access justice.

#### Background

Section 15(1) of the Canadian Charter of Rights and Freedoms ("the Charter") states: "Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on ... mental or physical disability." The right to equal protection and equal benefit of the law includes equal ability to access justice. For hard of hearing people, their hearing loss poses an additional barrier to accessing justice, specifically the ability to participate in the justice system at all levels.

As stated in the Article entitled "Disability Civil Rights Law and Policy: Accessible Courtroom Technology" (12 Wm. & Mary Bill Rts. J. 825 (2004)) ("*Disability*") at page 830 " [T]he lack of accessibility to people with disabilities manifests itself in a variety of ways:...[I]ndividuals with hearing loss may be able to physically access the courtroom, but may not be able to engage in the proceedings because of a lack of a sign language interpreter (CHHA-NL added – or assistive hearing technology), or because dim lighting or seating arrangements prohibit lip reading".

In the article "Understanding the Rights of Deaf and Hard of Hearing Individuals to Meaningful Participation in Court Proceedings" Douglas M. Pravda wrote at page 928 "A deaf or hard of

hearing lawyer... or a deaf or hard of hearing judge, party, juror, witness, or spectator who is unable to participate in a court proceeding for lack of appropriate accommodation is plainly denied her right of access to the Courts." (45 Val. U.L. Rev. 927(2011)) ("Valparaiso"). We cannot allow such a plain denial of the right of access to the Courts in this day and age.

### **CHHA-NL Position on Hearing Accessibility in the Court System**

**It is the position of CHHA-NL that the Government of Newfoundland and Labrador should introduce a program to ensure that persons with hearing loss have Hearing Accessibility in the Court System in Newfoundland and Labrador.**

It is further recommended that the components of the Hearing Accessibility in the Court System strategy should include, but not necessarily be limited to:

#### **1) Hearing Assistive Technology (HAT)**

Improve quality and accessibility of the courts with Hearing Assistive Technology (HAT), also known as Assistive Listening Devices (ALDs). Courts should be outfitted with an amplification system and disposable ear sets should be available to eliminate the sanitization risk. Telecoil neck loops and other various configurations should be available, advertised and updated based on technological changes. Real Time Captioning should be implemented to assist all legal participants.

#### **2) Improve the Acoustical Environment**

Improve the environmental acoustics of the Courts. All Courts should be outfitted with sound absorbing panels and Hush-Ups to absorb background noise. This would assist not only the self-identified individuals with hearing loss, but also the judge in listening to testimonies and the lawyers engaging in discussions with, or questioning of various witnesses.

#### **3) Awareness and Sensitivity Training for Court Personnel**

Training of hearing related issues and communication techniques for all court staff and judges should be implemented. There should be a designated individual in each judicial district to serve as a liaison between hard of hearing litigants and the legal system. This would ensure that when the matter is called in Court, proper effort is made towards ensuring that the hard of hearing person is notified when their matter is called and that the appropriate accommodations are made.

#### **4. Promotion of Protocols**

These protocols should be advertised at the Court Registry, on the Court website and by publication to all legal professionals so that the police, public, lawyers and litigants are all aware of the issues and accommodations available to persons with hearing loss.

#### **Rationale**

##### **1. Hearing Assistive Technology (HAT)**

Currently, the Courts have access to an Assistive Listening Device (ALD) if requested. However, these ALDs have minimal ability for modification. For example in the Gander Courts, the available ALDs have a single earbud. There are a number of issues with this set up. First, it presupposes that an individual has a hearing loss in one ear and does not wear hearing aids. This discriminates against those with hearing loss in both ears, and those that wear hearing aids. For these individuals to use the listening device they would have to bring their own headsets to be able to use the device. Secondly, there is a health risk associated with having multiple users utilize a single earbud. These limitations, further denies those with a hearing loss from having meaningful access to the Courts. There is widespread agreement among the legal community that the number of self-represented litigants has been increasing. Therefore for individuals with a hearing loss, not only do they have the challenge of finding their way through the Courts; they also have the additional barrier of seeking accommodation only to find out that that the accommodation is inherently limiting (i.e. not compatible with their hearing aids) or even worse, there are not enough ALDs to accommodate all of the individuals with a hearing loss.

Currently, the microphones set up in the courtroom are not intended to amplify one's voice; they are for one purpose and one purpose only, to allow the proceedings to be transcribed. The ability for this technology to be expanded to assist those with a hearing loss to fully participate in the court proceedings has not been fully realized. Universal design is a concept whereby all participants can take advantage of the technologies available (*Valparaiso* at 941). For example, the microphones can be used to amplify the transmission to loudspeakers placed around the courtroom, or to an FM transmitter, thereby benefiting all participants (*Valparaiso* at 941). For example, one deaf lawyer in America noted that after using an ALD, "the court subsequently acquired additional wireless microphones and has used them in trial not involving any deaf or hard of hearing individuals because they provide for greater ease in understanding what others have said" (*Valparaiso* at 941).

As stated, the microphones set up in the Courts currently do not amplify one's voice. They are solely to allow the proceedings to be transcribed. Real Time Captioning would allow for the

"simultaneous transcription of the proceedings to appear on a display monitor, which is an aid to all participants, with and without disabilities". (*Disability* at page 835). For example, "[w]hile real-time transcription is used in classrooms, conferences, and conventions, and to caption live television broadcasts, Broadway plays and sporting events, this technology is particularly appropriate for use in the courtroom setting..."

A judge can use real-time transcription to look back at earlier testimony during a lawyer's examination of a witness. A lawyer can make private annotation on the real-time transcription for use during cross-examination, closing argument or jury instructions... In short, independent of the benefit such transcriptions provide for a deaf or hard of hearing individual, these real-time transcriptions are becoming much more prevalent throughout the legal profession." (*Valparaiso* at 938-39). With the aging population there are more and more individuals with hearing loss in our society. The incidences of having more than one person in a courtroom having the need for hearing accommodations will only increase.

## **2. Improve the Acoustical Environment**

The physical set up of the Courts is also problematic for those with hearing loss. The woodwork and lack of soft sound absorbing materials, makes the acoustic environment problematic for the individual with a hearing loss. In addition, when the court is ready to call a matter, in some judicial districts, the court clerk would page the individual. This set up is very problematic for an individual with a hearing loss as they would most likely miss their name being called and therefore their time in court. This can have negative legal consequences for the individual. To put this issue in perspective consider an individual with a visual impairment and a court system whereby the court clerk would flash the persons name in order to signal their turn in court. It is not hard to imagine that this set up is inherently discriminatory and currently is discriminatory for those with disabilities.

## **3. Awareness and Sensitivity Training for Court Personnel**

While having the proper infrastructure would greatly help in ensuring that persons with hearing difficulties have the ability to participate in the legal system, it is also imperative that judges, lawyers, and court staff understand that these technologies exist and how to use them. It is also essential that their availability be communicated with the public. As one lawyer with a hearing loss stated "the problem those of us with hearing impairments face is not so much resistance to the idea of accommodations but rather ignorance on the facility's part (and sometimes that of the hearing impaired person) as to what technology is available, and how to use it" (*Valparaiso* at 964). Therefore, all the technology in the world could be made available, but it would not serve its purpose unless everyone is informed of its availability and how to use it.

#### **4. Promotion of Protocols**

By advertising court protocols related to improving services for persons with hearing loss, everyone will be made aware of the services that are available and increase the use of such services. This will ensure that everyone has equality of access to the court system and are able to fully hear proceedings, understand what is happening with respect to a person's case, and most importantly, it would ensure that justice is executed efficiently and effectively and there would be no grounds for a future mistrial due to inadequate communications. The hearing loss protocols should be mandatory training for all court personnel.

#### **Conclusion**

In conclusion, while having assistive technologies available in the Courts would benefit the individuals with a hearing loss, it would also benefit other participants as well. With the legal community and other stakeholders attempting to improve access to justice, this is one area where barriers to meaningful access to justice can be diminished. It is CHHA-NL's position that's The Courts be outfitted to be accessible to everyone, including those with a hearing loss.

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## **General Information about CHHA-NL**

The Canadian Hard of Hearing Association Newfoundland and Labrador (CHHA-NL) is a non-profit, charitable organization committed to advocacy, awareness, prevention and the provision of programs and services that promote a better quality of life for hard of hearing and late-deafened people of all ages and their families in Newfoundland and Labrador.

CHHA-NL was founded in 1984 under the name of the Newfoundland Hearing Association (NHA). In 1994, the NHA became the Canadian Hard of Hearing Association-Newfoundland Chapter (CHHA-NC) when it became part of the Canadian Hard of Hearing Association (CHHA). In 2002, when the province changed its official name to Newfoundland and Labrador, the association changed accordingly to its current name of the Canadian Hard of Hearing Association-Newfoundland and Labrador (CHHA-NL).

The association is run by and for hard of hearing people of the province. Its operations are guided and conducted through the efforts of a Board of Directors, seven full-time staff, and volunteers. While it has a paid membership of all ages, the association provides a diversified program of support services to its members and the public at large.

To obtain additional information about the association, or to request a copy of the association's Annual Report, including information related to the ongoing operations of the association (financial, fundraising, strategic plans, types and delivery of programs and services), please contact the Executive Director, Leon Mills, at (709) 753-3224 (voice), by fax (709) 753-5640, by cell (709) 689-8239 or by e-mail at [lmills@chha-nl.ca](mailto:lmills@chha-nl.ca).