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Ab Currie

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CIVIL JUSTICE PROBLEMS AND THE DISABILITY AND HEALTH STATUS OF CANADIANS

AB CURRIE*

RÉSUMÉ

Cette analyse, basée sur l'Enquête nationale de 2004 sur les problèmes de la justice civile au Canada, révèle que la mauvaise santé et l'invalidité sont liées à une incidence plus élevée de treize catégories de problèmes de justice civile parmi quinze qui ont été identifiés. Les personnes qui souffrent d'un problème de santé ou d'invalidité sont plus susceptibles que le reste de la population à percevoir que les problèmes sont réglés de façon inéquitable, de trouver que la situation s'est aggravée dans les cas où les problèmes n'ont pas été réglés, et d'éprouver des problèmes persistants faisant référence à des problèmes non résolus qui durent depuis au moins trois ans. Les travaux laissent supposer que les personnes ayant des problèmes de santé ou d'invalidité éprouvent un sentiment d'exclusion sociale à un degré relativement élevé.

INTRODUCTION

This paper examines the relationship between experiencing justiciable problems and experiencing some form of disability or other health problem. Establishing the connections between justiciable problems and problems experienced by people in domains such as health care is important because it extends the potential value to society of providing assistance with justiciable problems beyond achieving strictly legal objectives or outcomes. To the extent that justiciable problems and a range of other types of problems involving health care and other social issues are interconnected, providing legal or related assistance to resolve the justiciable problem may have salutary effects on the non-legal ones. Connecting access to justice policy with other public policy domains strengthens the case for addressing the unmet legal needs of the public.

This paper examines the relationships among fifteen types of civil justice problems and two measures of health/disability status: (1) the presence of a self-reported health or disability problem and (2) whether the individual was receiving a disability pension. The data are drawn from a 2004 national survey of civil justice problems conducted by the Department of Justice, Canada. Methodological details are presented in a section later in the paper. This is a preliminary analysis, using data that were not originally designed to examine these relationships. The analysis presents

* Ab Currie is Principal Researcher, Access to Justice and Legal Aid, Department of Justice, Canada. The views expressed in the paper are those of the author and do not represent the position of the Department of Justice.

statistical relationships between problem types and health and disability status. The data, however, do not support any form of causal analysis. The perspective adopted in the paper is that experiencing justiciable problems is one aspect of the broader problem of social exclusion. Therefore, the paper also examines several aspects of civil justice problems that suggest degrees of social exclusion in relation to reporting a health or disability problem.

In this paper, the term “justiciable problem” is used in preference to “legal problem.” The term is used to denote a problem with a legal aspect and a potential legal solution, but one that may be resolved, possibly more appropriately, by other means. The term “justiciable problem” has become popular in the research literature following the publication of Hazel Genn’s landmark study of civil justice problems in England and Wales.¹ The kernel of the idea seems to lie in the work of Phillip Lewis, who has famously remarked that calling a problem a legal one says more about one possible course of action than about the nature of the problem itself. The problem might be best solved in some other way. “For instance if a tenant in a flat has a leaking roof, he may be regarded as having a legal problem ... [I]s the mechanism of the courts adequate to ensure quick action? [H]e may [better] choose to get a ladder and not a lawyer ... ”² The term “justiciable problem” is a concept sufficiently flexible to recognize that the most appropriate and effective solution to a problem may lie at any point along a continuum of service from legal information enabling self-help to legal representation in court, depending on the nature of the problem. The problem might be effectively dealt with by an advocate without legal credentials but with substantive expertise and knowledge of the law. A problem might be best solved with a combination of legal and non-legal approaches. The concept also recognizes the reality that problems often occur in clusters of legal and non-legal issues, intertwined in such a way that although a problem has a legal aspect and is justiciable, the best solution may not be uniquely legal. The costs and the protracted and conflict-oriented nature of litigation as a solution might even exacerbate related aspects of a problem or problem cluster³ to the extent that bargaining in the shadow of the law may be preferable.

There is also a methodological consideration with respect to the choice of terminology. The justiciable problem concept seems more appropriate in terms of the self-report methodology used in sample surveys to determine the incidence of what might otherwise be termed “legal” problems. People are asked to indicate if they have experienced certain problems that are carefully conceived to have possible legal aspects. However, the nature of the problem experienced by the survey respondent is

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1. H. Genn, *Pathways to Justice: What People Do and Think about Going to Law* (Oxford: Hart, 1999).
 2. P. Lewis, “Unmet Legal Needs”, in P. Morris, R. White, & P. Lewis, eds., *Social Needs and Legal Action* (London: Robertson, 1973) at 79.
 3. M. Stratton & T. Anderson, *Social, Economic and Health Problems Associated with a Lack of Access to the Courts* (Ottawa: Department of Justice, forthcoming 2007) at 24.

not precisely known. Given this inherent uncertainty about the precise nature of the problem, the terminology must be left open to the broadest possible framework. The terms “civil justice problem” and “justiciable problem” can be used interchangeably as general descriptions without creating difficulties. Overall, the term “justiciable problem” captures the complexities of the issue.

JUSTICIABLE PROBLEMS, DISABILITY AND HEALTH, AND SOCIAL EXCLUSION

Several recent studies have demonstrated how pervasive justiciable problems are in the everyday lives of people in contemporary societies.⁴ There is a legal framework for most of the activities of everyday living because of the degree to which the civil law regulates activities in spheres of everyday life, such as such as the purchase of consumer goods, housing, employment, domestic relations, and child custody and access. Therefore, legal principles and processes, and legal assistance can be very important for the well-being of people when problems occur in the normal activities of modern life, especially the most vulnerable in the society.

A significant body of research shows the linkages among justiciable problems, health, and health issues. Pleasence *et al.* demonstrate “a significant association between individuals’ experience of a range of justiciable problems and health status”.⁵ Other research has shown a relationship between non-violent family problems and psychological health problems.⁶ Housing that is overcrowded or in a poor state of repair has been associated with physical and psychological health problems.⁷ Research has found that mortgage indebtedness can adversely affect health⁸ and, in particular, mortgage arrears and repossession of property has been linked to health issues.⁹

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4. Recent national studies include American Bar Association, *Legal Needs and Civil Justice: A Survey of Americans* (Chicago: American Bar Association, 1994); H. Genn, *supra* note 1; H. Genn & A. Paterson, *Paths to Justice Scotland: What People in Scotland Do and Think about Going to Law* (Oxford: Hart, 2001); Gabrielle Maxwell *et al.*, *Meeting Legal Service Needs* (Wellington: New Zealand Legal Services Board, 1999); Pascoe Pleasence *et al.*, *Causes of Action: Civil Law and Social Justice* (London: Legal Services Commission, 2004); Ben C.J. van Velthoven & Marijke ter Voert, “Paths to Justice in the Netherlands” (Paper presented at the Fifth International LRSC Conference, Cambridge, March 2004).
 5. P. Pleasence *et al.*, “Civil Law Problems and Morbidity” (2004) *Journal of Epidemiology and Community Health* 58 at 554.
 6. P.R. Amato, “The Consequences of Divorce for Adults and Children” (2002) *Journal of Marriage and the Family* 62 at 1269; G.R. Kitson & L.A. Morgan, “The Multiple Consequences of Divorce: A Decade Review” (1990) *J. Marriage Fam.* 52 at 913.
 7. British Medical Association, *Housing and Health: Building for the Future* (London: British Medical Association, 2003); S. Hunt, “Housing and Related Disorders” in J. Charleton and M. Murphy, eds., *The Health of Adult Britain* (London: Stationery Office, 1997) at 1841.
 8. S. Nettleton & R. Burrows, “Mortgage Debt, Insecure Home Ownership and Health: An Exploratory Analysis” (1998) *Social Health* 20 at 731.
 9. S. Nettleton & R. Burrows, “When a Capital Investment Becomes an Emotional Loss: The Health Consequences of the Experience of Mortgage Possession in England” (2000) *Housing Studies* 15 at 463.

Other studies have linked debt problems to ill-health.¹⁰ Similarly, research has shown a relationship between discrimination and health problems.¹¹ Also, experiencing employment problems has been linked to ill health.¹² Legal-needs research carried out in the United States by Dale demonstrates high levels of legal need among the physically disabled, particularly in areas of discrimination, wills and estates, consumer problems, and health care. This research also showed high levels of unmet need among the mentally disabled, especially with respect to public benefits and family law problems.¹³

Both justiciable problems and health-related problems can be thought of as aspects of social exclusion. Some social exclusion literature links the protection of rights and social exclusion. Silver identifies three paradigms that explain different aspects of social exclusion. In each of these areas she points to the enforcement of rights as part of the solution to social exclusion.¹⁴ Similarly, Galabuzi observes that social exclusion from civil society arises, in part, because of legal sanctions, institutional mechanisms, or discrimination.¹⁵ However, there has been little attention paid in empirical research to the role of justiciable problems in social exclusion¹⁶ and, by extension, little attention to the role of legal assistance and other forms of access to justice to alleviating it.

Situating a discussion of justiciable problems in the context of social exclusion is important because it emphasizes that the benefits of providing assistance to resolve justiciable problems can extend beyond the legal problem per se to beneficial effects on a broader range of related problems. According to one definition, the term "social exclusion" is "shorthand for what can happen when people suffer from a combination of linked problems such as unemployment, poor skills, low incomes, poor housing, high crime, bad health and family breakdown".¹⁷ This idea of multiple and

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10. M. Plumpton & J. Bostock, *Income, Poverty and Mental Health: A Literature Review* (North Tyneside: NHS Mental Health Trust, 2003); S. Sharpe & J. Bostock, *Supporting People with Debt and Mental Health Problems* (North Tyneside: NHS Mental Health Trust, 2002).
 11. G.C. Gee, "A Multilevel Analysis of the Relationship between Institutional and Individual Racial Discrimination and Ill Health" (2002) *American Journal of Public Health* 92 at 615.
 12. S.H. Wilson & G.M. Walker, "Unemployment and Health: A Review" (1993) *Public Health* 107 at 153.
 13. D.M. Dale, *The State of Access to Justice in Oregon* (Portland: Oregon State Bar Association, 2000) at 25.
 14. H. Silver, "Fighting Social Exclusion" in *Social Exclusion and Social Inclusion* (Belfast: Regency, 1995) at 9–14.
 15. G. Galabuzi, "Social Exclusion" (Paper presented at the Social Determination of Health across the Life Span Conference, Toronto, 2002) at 2.
 16. A. Buck, N. Balme, & P. Pleasence, "Social Exclusion and Civil Law: Experience of Civil Justice Problems among Vulnerable Groups" (2005) *Social Policy and Administration* 39 at 302; P. Pleasence *et al.*, *supra* note 5 at 552.
 17. Social Exclusion Unit, *Preventing Social Exclusion* (London: Cabinet Office, 2001).

linked problems may be viewed not only as a condition but as a dynamic process.¹⁸ According to Giddens, “[E]xclusion is not about graduations of inequality, but about mechanisms that act to detach people from the social mainstream”.¹⁹ The justiciable problem may be the triggering mechanism in the development of a complex set of problems, or may be a central element in a set of problems emerging from the same set of conditions. If the justiciable problem is a central feature, this opens the possibility that assistance with the justiciable problem might be a salutary intervention that interrupts the dynamic and is a strategic intervention in breaking apart the Gordian knot of social exclusion.

There is a body of opinion in the literature on legal services in England that the lack of access to legal assistance is a factor in bringing about or maintaining social exclusion. A joint paper by the Lord Chancellor’s Department and the Law Centres Federation expresses the following point of view:

A lack of access to reliable legal advice can be a contributing factor in creating and maintaining social exclusion. Poor access to advice has meant that many people have suffered because they have been unable to enforce their legal rights.²⁰

In describing the benefits of the Community Legal Service in the United Kingdom, Stein states that

legal advocacy and advice for the poor and excluded is an effective engine of social inclusion and fighting poverty through insuring and expanding rights to critical benefits and services.²¹

THE NATIONAL SURVEY OF CIVIL JUSTICE PROBLEMS

This analysis draws on data from a survey of civil justice problems conducted by the Department of Justice Canada in March 2004. The Justice Canada survey was a national sample of 4501 respondents. The margin of error for a sample of this size is +/- 1.5 per cent nineteen times out of twenty. Interviews were conducted by telephone. The survey was limited to low- to moderate-income Canadians. Respondents were included in the survey if they were eighteen years of age or older and had incomes at or below \$35,000 for individuals and below \$50,000 for families.

The study identified fifteen problem categories: consumer, employment, money and debt, income assistance, disability pensions, housing, immigration, discrimination, treatment by the police, threat of legal action, family problems related to divorce

18. T. Burchardt, J. Le Grand, & D. Piachaud, “Social Exclusion in Britain 1991–1995” (1999) *Social Policy and Administration* 33 at 228–32.

19. A. Giddens, *The Third Way* (Cambridge: Polity, 1998) at 104.

20. Lord Chancellor’s Department and Law Centres Federation, *Legal Advice and Services: A Pathway out of Social Exclusion* (London: Lord Chancellor’s Department, 2001) at 11.

21. J. Stein, *The Future of Social Justice in Britain: A New Mission for the Community Legal Service*, Centre for Analysis of Social Exclusion (London: London School of Economics, Paper No. 48, 2001) at 48.

or separation and children, other family-related problems,²² wills and powers of attorney, personal injury, and conditions of hospital release. Data were collected on seventy-six specific problems, all having potential legal aspects, and aggregated to the fifteen categories for purposes of analysis.²³ Respondents were asked to indicate if within the past three years they had experienced specific problems that were difficult to resolve from the detailed list of justiciable problems. The percentages of respondents reporting one or more problems in the fifteen problem categories are reported in table 1.

INDICATORS OF DISABILITY AND HEALTH STATUS

Measuring health and disability problems is notoriously difficult. National and international surveys show that rates of disability and health problems can vary widely. Cultural and class-based definitions of disability and differences arising from research approaches are among the major factors that account for the variations.²⁴ This analysis will employ two measures of health and disability: a self-report indicator and one related to disability pensions.

The self-report indicator is based on a standard Statistics Canada methodology. The survey of civil justice problems included two questions from the Statistics Canada Health and Activity Limitation Survey (PALS), 2001.²⁵ Respondents are asked, "Do you have any difficulty hearing, seeing, communicating, walking, climbing stairs, bending, learning, or doing any similar activities? Does a physical or mental condition or health problem reduce the amount or kind of activity you can do?"

Respondents are asked if the activity limitation occurs sometimes or often and are usually counted as having a disability if they answer either "sometimes" or "often".

These items were used as screening questions on the PALS survey to construct a sample for administering the main questionnaire. They are meant to be additive. In this analysis the responses from these two questions were combined, eliminating duplicate answers to both questions, in order to construct a measure of self-reported disability/health problems. Including both the "sometimes" and "often" responses,

22. This category includes guardianship, actual or apprehended child abduction, securing independent legal representation for a child, and child apprehension by state authorities.

23. After having been asked about the seventy-six specific types of problems, respondents were asked if there were any other types of problems that had been missed. A small number of respondents responded in the affirmative. However, none of the other problems identified were different from the seventy-six explicit problem types. It is assumed on the basis of this result that the problems covered are a comprehensive profile of civil law problems affecting Canadians.

24. M. Bajekal *et al.*, *Review of Disability Estimates and Definitions*, In-House Report No. 128 (London: National Centre for Social Research, 2004).

25. Statistics Canada, *A New Approach to Disability Data: Changes between the 1991 Health and Activity Limitation Survey and the 2001 Participation and Activity Limitation Survey*, catalogue no. 89-578-XIE (Ottawa: Housing and Family Statistics Division, Statistics Canada, 2002).

this produced an initial estimate of 34.3 per cent of respondents ($n = 1543$) self-reporting some level of disability or health problem. The PALS methodology has been used in a number of national surveys, and despite the standardization of the filter questions, Canadian surveys have produced a wide range of incidence of health or disability problems. Disability rates range from 13.7 per cent on a post-censal survey to 31.3 per cent from the Canadian Community Health Survey.²⁶ These were surveys of adults in the entire population, not restricted to the low- and moderate-income population, as is the case with the civil justice problems survey. It is well known that lower-income populations experience higher rates of health problems.²⁷

There are several possible explanations for the variation in rates, including sample design and language and cultural factors. One is a “context effect” in which responses are higher in surveys, such as the Canadian Community Health Survey (CCHS), that ask questions about health and disability on instruments that have an overall focus on problems. The problem orientation of the Survey of Civil Justice Problems may have produced a similar context effect because the health and disability questions are being asked in the context of questions about justiciable problems. This might explain the apparently high reported incidence of disability and health problems. One solution that has been proposed for minimizing the context effect in the CCHS is to include only respondents who reported that activity limitations occurred often.²⁸ Therefore, an alternative self-report measure of health and disability problems was derived using only responses indicating that the activity limitation occurred often. This produced an estimate of 21.0 per cent ($n = 957$) of the sample with a self-reported health or disability problem.

Respondents to the Justice Canada survey of justiciable problems were also asked to indicate their occupational status and source of income. One of the income categories was being in receipt of a disability pension. Being in receipt of a disability pension indicates that a private or public pension plan has determined that individuals suffer a long-term disability due to a physical or mental impairment to the extent that they are unable to work full time²⁹ and require an income supplement. This variable is a stringent indicator of a health or disability problem. In this sample, 2.3 per cent ($n = 101$) of all respondents were receiving a disability pension.

The survey does not provide information on specific health or disability problems. It does not provide any indication of time ordering or causal sequencing between the occurrence of problems and the onset of health or disability problems. This limits the

26. Participation and Activity Limitation Surveys, 13.7% and 14.8%; Census, 18.5%; Survey of Labour and Income Dynamics, 20.5%; Canadian Community Health Survey, 31.3%.

27. R. Wilkenson, *Unhealthy Societies* (New York: Routledge, 1996); R. Wilkenson & M. Marmot, *Social Determinants and Health: The Solid Facts* (Copenhagen: World Health Organization, 1998).

28. Information provided by Statistics Canada and Social Development Canada.

29. In certain cases an individual can have the ability to work full time and still qualify for a disability pension in some provinces.

present analysis to a very broad analysis of the incidence of justiciable problems and disability/health care issues.

JUSTICIABLE PROBLEMS AND DISABILITY/HEALTH STATUS

Respondents to the survey of civil justice problems reporting a disability or a health issue reported having experienced one or more justiciable problems to a much greater extent than the overall sample. In the total sample, 47.7 per cent reported having experienced one or more justiciable problems. On the basis of the self-report indicator, 53.9 per cent of respondents who self-reported as disabled or having health problems experienced one or more problems. Finally, 71.1 per cent of respondents who received a disability pension reported having experienced one or more civil justice problems over the three-year reference period.

Figure 1: Percentage reporting one or more justiciable problems

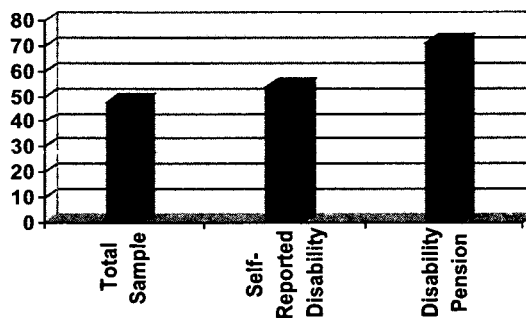


Table 1 shows the percentage of respondents who reported having experienced one or more problems in the fifteen problem groups queried in the survey. The table compares the reported incidence of problems for the entire sample with the percentages of respondents with those who have some form of disability reporting justiciable problems. The data show a clear pattern of a greater likelihood of experiencing justiciable problems among people experiencing health or disability problems.

It is remarkable that in every category except one (respondents receiving a disability pension reporting a police action problem), people are more likely to report civil justice problems if they experience a disability or health problem. As indicated by the higher percentages of respondents receiving disability pensions who report justiciable problems, the results are stronger using the more stringent disability pension variable as an indicator, compared with those self-reporting a health or disability problem. Higher percentages of respondents receiving a disability pension report justiciable problems in every problem category compared with the self-report group.

Table 1: Percentage of respondents reporting one or more justiciable problems

Problem type	Total sample	Respondents self-reporting any form of disability problem	Respondents receiving a disability pension
Consumer	19.2	24.2	30.7
Employment	17.4	19.8	19.8
Debt	27.4	31.7	40.6
Social assistance	3.5	8.9	15.8
Disability pension	2.6	8.0	19.8
Housing	5.4	7.3	11.9
Immigration	0.8	0.5	3.0
Discrimination	3.5	7.2	10.9
Police action	3.1	4.5	3.0
Threat of legal action	3.7	6.2	6.9
Relationship breakdown	5.2	6.8	10.9
Other family law	2.4	3.7	4.0
Wills and power of attorney	4.0	6.3	11.9
Personal injury	4.3	9.7	15.5
Conditions of hospital release	2.2	4.5	8.9

Table 2 shows the statistical relationship between the disability/health problems indicators and experiencing one or more of the fifteen justiciable problem types.³⁰

Generally speaking, with the exception of immigration problems, people with disability and health care problems are more likely than others in the population to experience problems in all types of civil justice matters. The odds ratios indicate that problems involving social assistance, discrimination, personal injury, and conditions relating to hospital release are especially common.

Multiple regression analysis was carried out with the number of problems entered as the dependent variable to determine if the two disability variables would show an independent effect on experiencing justiciable problems in the presence of other predictors. Table 3 provides the results of the two regression models, reporting the effects of the major variables that are of theoretical interest.

30. The measure used to show a relationship is the odds ratio. This measure expresses the degree of relative risk. It is interpreted as the number of times more likely to experience an event an individual in a specific group is, compared with the total sample. This is shown in column four. The confidence interval for the odds ratio, reported in column five, shows the range within which the odds ratio could fall, given the probability of statistical error. The chi-square test indicates whether the results found in the sample can be generalized to the population as a whole. This is shown by the probabilities of the chi-square statistics reported in column one. For example, a chi-square with an associated probability of $p < .0001$ indicates that the relative risk expressed by the odds ratio would be incorrect due to sampling error is less than one in a thousand. Any statistical relationship with a probability of error less than .05 is acceptable by conventional standards.

Table 2: The importance of disability/health problems on the incidence of justiciable problems

Problem type	Disability/health problem indicator	Chi-square and probability of sampling error	Odds ratio	Confidence interval for the odds ratio
Consumer	Self-reported	$\chi^2 = 18.2, p < .0001$	1.5	1.4 to 1.8
	Disability pension	$\chi^2 = 8.7, p < .003$	1.9	1.2 to 2.9
Employment	Self-reported	$\chi^2 = 12.8, p < .0003$	1.3	1.1 to 1.5
	Disability pension	$\chi^2 = 3.6, p < .08$	1.3	0.97 to 1.7
Debt	Self-reported	$\chi^2 = 11.3, p < .0008$	1.3	1.1 to 1.5
	Disability pension	$\chi^2 = 9.1, p < .003$	1.8	1.2 to 2.6
Social assistance	Self-reported	$\chi^2 = 89.1, p < .0001$	4.6	3.2 to 6.4
	Disability pension	$\chi^2 = 45.6, p < .0001$	5.6	3.2 to 9.8
Disability pension	Self-reported	$\chi^2 = 141.8, p < .0001$	7.7	5.1 to 11.3
	Disability pension	$\chi^2 = 121.8, p < .0001$	11.1	6.5 to 18.8
Housing	Self-reported	$\chi^2 = 8.8, p < .003$	1.5	1.2 to 2.1
	Disability pension	$\chi^2 = 8.6, p < .003$	2.4	1.3 to 4.5
Immigration	Self-reported	$\chi^2 = .82, p < .36$	0.6	0.3 to 1.7
	Disability pension	$\chi^2 = .79, p < .37$	0.994	0.989 to 0.996
Discrimination	Self-reported	$\chi^2 = 48.6, p < .0001$	3.0	2.2 to 4.1
	Disability pension	$\chi^2 = 6.7, p < .0001$	3.5	1.9 to 6.8
Police action	Self-reported	$\chi^2 = 8.4, p < .004$	1.7	1.2 to 2.5
	Disability pension	$\chi^2 = .008, p < .95$	1.0	0.3 to 3.0
Threat of legal action	Self-reported	$\chi^2 = 21.3, p < .0001$	2.1	1.5 to 2.9
	Disability pension	$\chi^2 = 3.1, p < .05$	2.0	0.9 to 4.3
Relationship breakdown	Self-reported	$\chi^2 = 5.7, p < .02$	1.4	1.1 to 1.9
	Disability pension	$\chi^2 = 6.8, p < .009$	2.3	1.2 to 4.4
Other family law	Self-reported	$\chi^2 = 8.2, p < .004$	1.8	1.2 to 2.7
	Disability pension	$\chi^2 = 1.03, p < .31$	1.7	0.6 to 4.7
Wills and powers of attorney	Self-reported	$\chi^2 = 17.1, p < .0001$	1.9	1.4 to 2.7
	Disability pension	$\chi^2 = 16.5, p < .0001$	3.4	1.8 to 6.3
Personal injury	Self-reported	$\chi^2 = 66.0, p < .0001$	3.1	2.3 to 4.0
	Disability pension	$\chi^2 = 28.5, p < .0001$	4.0	2.3 to 7.0
Conditions of hospital release	Self-reported	$\chi^2 = 31.5, p < .0001$	3.0	2.0 to 4.5
	Disability pension	$\chi^2 = 21.6, p < .0001$	4.7	2.2 to 9.8

The disability indicators remain in the regression models at acceptable levels of statistical significance in the presence of other predictor variables. The t value for self-reported disability is larger than all other variables. The other variables with the greatest predictive values are being in receipt of social assistance and being a single parent. This means that those with a disability or health issue were more likely to experience justiciable problems, even when controlling for the effect of other factors such as education, age, gender, and family status.

Table 3: Predictors of Justiciable Problems

Variable	Self-reported disability		Disability pension	
	t value	Probability	t value	Probability
Age > 29	2.62	$p < .0001$	2.34	$p < .02$
Less than high school education	- 4.28	$p < .0005$	- 4.11	$p < .0001$
High school education	—	—	- 3.60	$p < .0003$
Single parent	6.54	$p < .0001$	6.40	$p < .0001$
Income > \$5000	- 3.29	$p < .001$	- 3.59	$p < .0003$
Not working	2.02	$p < .04$	—	—
Receiving social assistance	7.79	$p < .0001$	8.28	$p < .0003$
Disability/health problem	8.91	$p < .0001$	3.14	$p < .0001$
Foreign born	3.42	$p < .0006$	3.80	$p < .0001$
Female	3.45	$p < .0006$	3.67	$p < .0001$
English speaking	3.95	$p < .0001$	4.51	$p < .0001$
Intercept	9.19	$p < .0001$	4.40	$p < .0001$
Explained variance	R-square = .17		R-square = .15	

SOCIAL EXCLUSION, JUSTICIABLE PROBLEMS, AND DISABILITY/HEALTH STATUS

Justiciable problems and health/disability problems may be viewed as parts of a larger problem complex referred to as social exclusion. Social exclusion may be viewed as a continuum, rather than a simple division between those who are socially excluded and those who are not.³¹ People who are socially excluded are, in varying degrees, unable to participate fully in society. The experience of justiciable problems is one aspect of the complex of problems referred to as social exclusion, and certain aspects of justiciable problems can be viewed as degrees of social exclusion. The occurrence of multiple problems, the existence of problems that are long-term or persistent in nature, problems that are unresolved, whether the situation relating to unresolved problems has become worse, and whether resolutions to problems are perceived to be fair may be viewed as degrees of social exclusion. The sections below examine the extent to which aspects of the experience of justiciable problems that may reflect a greater degree of social exclusion are related to health and disability problems.

UNRESOLVED PROBLEMS

About one third, 33.9 per cent, of all respondents reported that the problems experienced during the period covered by the survey had not yet been resolved.³² This

31. L. Richardson & J. Le Grand, "Outsider and Insider Expertise: The Response of Residents of Deprived Neighbourhoods to an Academic Definition of Social Exclusion" (2002) *Social Policy and Administration*, 36 at 499.

32. Several reasons may account for unresolved problems other than lack of access to assistance. System backlogs can also play a role in delaying the resolution of problems.

percentage increases to 38.7 per cent for respondents self-reporting a disability or health problem and to 49.7 per cent for respondents receiving a disability pension.

Figure 2: Percentage with unresolved justiciable problems

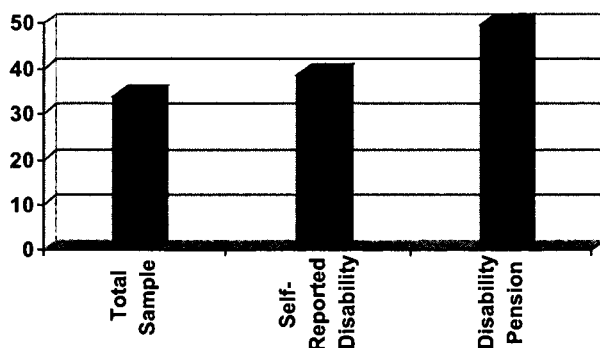


Table 4 shows the percentages of respondents with unresolved problems, comparing the self-report sub-sample with the disability pension sub-sample.

Table 4: Percentage of respondents reporting unresolved justiciable problems

Problem type	Total sample	Respondents self-reporting some form of disability or health	Respondents receiving a disability pension
Consumer	28.8	31.1	53.3
Employment	32.9	44.3	63.6
Debt	32.3	39.8	63.0
Social assistance	58.0	62.3	63.0
Disability pension	55.4	60.9	66.7
Housing	41.1	35.4	42.9
Immigration	63.5	75.0	—
Discrimination	59.8	67.4	80.0
Police action	36.3	36.4	50.0
Threat of legal action	36.0	30.3	50.0
Relationship breakdown	41.6	38.5	37.5
Other family law	31.5	35.7	—
Wills and power of attorney	42.5	54.6	44.4
Personal injury	46.4	56.7	55.6
Conditions for hospital release	33.9	42.9	55.8

Respondents with health and disability problems are more likely than the overall sample to have unresolved problems in nearly every category. There is an especially large difference in the extent of unresolved problems between people on disability pensions and the overall sample in the three economic problem types: consumer,

employment, and debt. This is most clearly not the case in family law problems relating to relationship breakdown.³³

Although the self-report indicator remained in the equation at a statistically significant level, the disability pension indicator did not. The results of the two regression equations are shown in table 5. In the model shown in the top panel of table 5, self-reported disability/health problems exert an independent effect on having unresolved problems. Also, being Aboriginal, native-born, and female all have an independent effect. The bottom panel of the table shows the results of the regression model that examines the independent effect of the disability pension indicator.

Table 5: Predictors of unresolved justiciable problems

Variable	Chi-square and probability of sampling error	Odds ratio	Confidence interval for the odds ratio
Self-reported disability or health problem			
Aboriginal	$\chi^2 = 8.9 p < .003$	1.4	1.2 to 1.8
Foreign born	$\chi^2 = 15.8 p < .0001$	1.5	1.1 to 1.4
Female	$\chi^2 = 10.5 p < .001$	1.2	1.1 to 1.6
Disability/health problem	$\chi^2 = 11.7 p < .0006$	1.3	1.1 to 1.5
Intercept $\chi^2 = 1.0 p < .31$ R-square = 0.05			
Disability pension			
Aboriginal	$\chi^2 = 9.3 p < .002$	1.4	1.1 to 1.8
Native born	$\chi^2 = 14.0 p < .0002$	1.4	1.2 to 1.7
Female	$\chi^2 = 11.0 p < .0009$	1.2	1.1 to 1.5
Disability pension	$\chi^2 = 2.2 p < 0.15$	1.7	0.8 to 1.5
Intercept $\chi^2 = 2.4 p < 0.12$ R-square = 0.05			

In this model, receiving a disability pension fails to achieve the conventional level of statistical significance in the regression equation. The chance that the odds ratio of 1.7 reflects a distribution that is a result of a statistical error is 15 per cent. The other factors that have a statistically independent effect on unresolved problems are the same as in the other model—self-identification as Aboriginal, being native-born, and female.

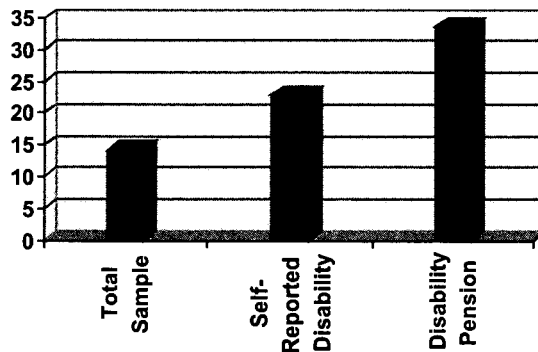
MULTIPLE JUSTICIABLE PROBLEMS

A characteristic feature of social exclusion is having multiple and possibly interlocking problems. Figure 3 compares percentages of respondents with multiple problems. In the overall sample, 14.1 per cent report problems in three or more problem categories. More than one-fifth, 22.9 per cent, of respondents self-reporting a disability

33. Logistic regression models were computed to determine the independent effects of the two disability/health variables on problem resolution. As indicated by the low R-square values, the regression models were very weak.

or health problem reported three or more problems, and 33.7 per cent of respondents receiving a disability pension reported multiple justiciable problems.³⁴

Figure 3: Percentage with multiple justiciable problems



PERSISTENT JUSTICIABLE PROBLEMS

Another possible feature of social exclusion is having persistent (and unresolved) problems. The survey recorded the date on which problems first occurred. By combining data on whether problems were resolved with the date that problems first occurred, it is possible to examine this aspect of the experience of justiciable problems. Justiciable problems that first occurred at least three years prior to the survey date and remaining unresolved were selected as long-term or persistent problems. The data show a slight tendency for respondents with health and disability problems reporting long-term justiciable problems to have fewer of them resolved, compared with the overall sample.

Table 6: Percentage of long-term justiciable problems resolved

Percentage of long-term problems resolved	Total sample	Self-reporting a disability or health problem	Receiving a disability pension
None (0%)	42.8%	44.7%	55.2%
0% to 33%	1.6%	2.1%	3.5%
33% to 50%	3.7%	6.3%	10.3%
50% to 100%	54.7%	46.8%	31.0%

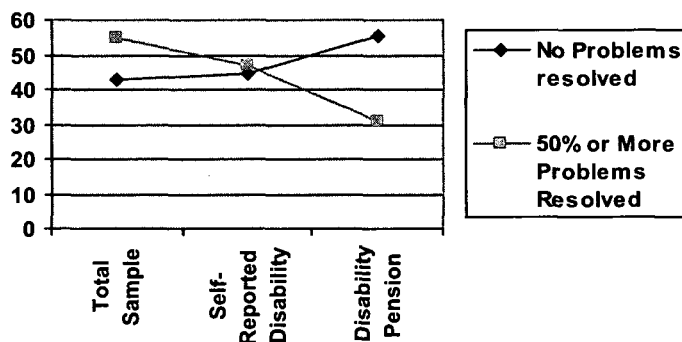
Most respondents had a tendency to report that either none of their long-term justiciable problems had been resolved or that more than half had been resolved. There is virtually no difference in the percentage of respondents self-reporting disability and

34. Multiple regression models were attempted to determine the independent effects of disability/health status. The model was very weak and the disability variables did not remain in the regression equations at conventional levels of statistical significance. Further, regression models were attempted for the segments of the analysis presented below, persistent problems, problems that became worse, and unfairness all with similarly poor outcomes. These data are not presented.

health problems that had not resolved any of their problems, 44.7 per cent, compared with the overall sample, 42.8 per cent. However, 55.2 per cent of those receiving a disability pension reported that none of their persistent justiciable problems had been resolved. Combining the smaller percentages for up to 50 per cent of long-term problems resolved, 5.3 per cent of all respondents had resolved up to half of their persistent justiciable problems compared with 8.4 per cent of those self-reporting health and disability problems and 13.8 per cent of people on disability pensions. About half, 54.7 per cent, of all respondents had resolved all of their long-term problems. This figure compares with 46.8 per cent for the self-reporting group and 31.0 per cent of the sub-group receiving disability pensions. People with health and disability problems tend to have more unresolved long-term justiciable problems, compared with the remainder of this sample.

Most respondents reported that either none of their long-term problems had been resolved or more than half had been resolved. Figure 4 shows that respondents with some form of disability or health problem are more likely not to have resolved any of their persistent justiciable problems and less likely to have resolved at least half of them.

Figure 4: Percentage of long-term justiciable problems resolved



PROBLEMS THAT BECAME WORSE

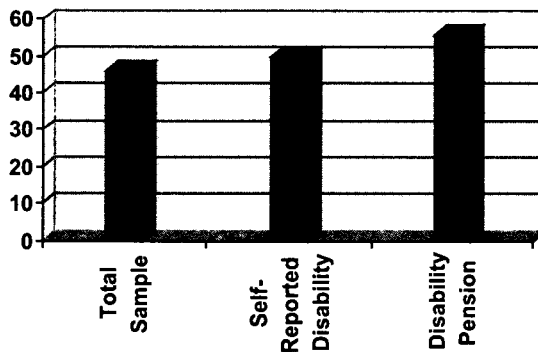
Social exclusion can be described as the inability to participate fully in the normal activities and share in the benefits of the society due to structural inequalities. Thus, having difficult justiciable problems that remain unresolved, in which the situation has become worse, may be an indicator of the absence of access to resources to deal with the problems of everyday life, and thus an indicator of social exclusion. In the overall sample, 31.9 per cent indicated that, although the problem remained unresolved, the situation had become better, 46.1 per cent indicated the situation had become worse, and 22.1 per cent were uncertain.³⁵ Respondents reporting problems

35. $\chi^2 = 58.1, p < .0007$

with social assistance (63.8%) and disability pensions (74.4%) were more likely to report that unresolved justiciable problems had become worse than the overall average of 46.1 per cent.

Respondents who self-reported disability or health problems were more likely to indicate that unresolved justiciable problems had become worse, 49.8 per cent compared with 46.1 per cent of all respondents with unresolved problems. In terms of relative risk, respondents who self-reported a disability or health problems were about 1.5 times more likely to indicate that unresolved justiciable problems had become worse, compared with others with unresolved problems.³⁶ An even larger percentage of respondents receiving a disability pension, 56.7 per cent, indicated that unresolved justiciable problems had become worse.³⁷ Respondents who were receiving a disability pension were 1.5 times more likely than all others to report that unresolved justiciable problems had become worse.³⁸

Figure 5: Percentage with justiciable problems that became worse



RESOLVED PROBLEMS AND THE FAIRNESS OF OUTCOMES

Social inequality or, as Silver puts it, deficiencies in the social fabric, is one of the root causes of social exclusion.³⁹ Differences in life conditions are a normal part of any society, and inequality is not necessarily viewed as illegitimate. However, social exclusion that arises involuntarily, through no fault of the individual, may be perceived as illegitimate. To the extent that it is viewed negatively, social exclusion may take on another aspect that not only reflects a flawed social fabric but may be destructive to the social fabric. According to Breton and his colleagues, “That’s not

36. $\chi^2 = 6.1$ $p < .01$, odds ratio = 1.4, confidence of the OR = 1.1 to 1.8

37. Not statistically significant

38. $\chi^2 = 2.5.1$ $p < .12$, odds ratio = 1.5, confidence of the odds ratio = 0.9 to 2.5

39. Silver, *supra* note 14.

fair,' is a definitive condemnation of the state of affairs in any domain of life."⁴⁰ Social cohesion is threatened by the existence of social exclusion, and the perception of fairness is an important aspect. "Fair treatment nourishes loyalty to the society and makes people more willing to contribute to its functioning. In contrast, unfairness is socially destructive."⁴¹ Thus the extent to which people feel that situations are unfair is an important normative aspect of social exclusion.

Respondents were asked if they considered the outcome of problems that had been resolved to be fair. Overall, 68.5 per cent indicated that they perceived outcomes to be fair and 29.6 per cent thought that the outcome of problems that were resolved were unfair. Only 1.9 per cent were uncertain.⁴² Respondents with self-reported disability and health problems were more likely to feel that outcomes were unfair. Among this group, 33.2 per cent felt that outcomes were unfair, 63.7 per cent considered the outcomes of resolved problems to be fair, and a small 1.9 per cent was uncertain.⁴³ In terms of relative risk, respondents with self-reported disability and health problems were a slight 1.3 times more likely than those not reporting such problems to feel a sense of unfairness about the outcomes of problems.⁴⁴

CONCLUSION

This research has demonstrated that disability and poor health are associated with a wide range of justiciable problems. The causal linkages between justiciable problems and disability could not be examined with the available data. However, there are disability and health impacts of being shut out of the social, economic, cultural, and political systems that determine access to society's resources.⁴⁵ As Pleasence *et al.* observe, "[P]roblem types do not have to cause or follow one another for there to be a connection between them. Connections can also stem from coinciding characteristics of vulnerability to problem types, or coinciding defining circumstances of problem types."⁴⁶

Justiciable problems and disability are both aspects of the broader complex referred to as social exclusion. The social exclusion perspective emphasizes the way in which social disadvantage is the product of a linked set of problems. It would be expected that the precise nature of the linkages would be different, depending on the type of justiciable problem and the particular health or disability issue. Even though we do

40. Raymond Breton *et al.*, *A Fragile Social Fabric? Fairness, Trust and Commitment in Canada* (Montreal: McGill-Queen's University Press, 2004) at 33.

41. *Ibid.* at 33.

42. $\chi^2 = 91.3 p < .0001$

43. $\chi^2 = 35.6 p < .15$

44. $\chi^2 = 11.6 p < .0007$, odds ratio = 1.3, confidence interval of the OR = 1.1 to 1.5

45. G. Galabuzi, "Canada's Creeping Apartheid: The Economic Segregation and Social Marginalization of Racialized Groups" (Paper presented at the CJS Foundation Conference, Toronto, 2001).

46. *Supra* note 4, Pleasence *et al.* at 37.

not have empirical evidence describing the causal chains linking health and disability problems with justiciable problems, the research suggests that providing assistance to resolve the justiciable problems should be done in a way that recognizes the linkages that exist between them and that such assistance may also have a salutary effect upon disability and health issues.

The link between justiciable problems and health and disability status suggests that the social value of legal assistance extends beyond the protection of rights to one important aspect of a broader social policy agenda, the health and disability status of the population. From a wider perspective, the lack of access to justice may be viewed as one of the root causes of social exclusion. Conversely, the provision of access to justice services is one of the tools available to promote social inclusion. Access to justice accomplishes more than the protection of rights in formal legal processes. The connections between justiciable problems and disability and health problems shown in this and in other analyses suggests a much broader social value in the provision of legal and other access to justice services.