

Capacity to Attend to the Needs of Persons with Dual Diagnoses in the Criminal Justice System: Views of Mental Health and Criminal Justice Professionals

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**Abstract**

Currently, individuals with intellectual disabilities are overrepresented within the Criminal Justice System (Griffiths, Taillon-Wasmond & Smith, 2002). A primary problem within the Criminal Justice System is the lack of distinction between mental illness and intellectual disabilities within the *Criminal Code*. Due to this lack of distinction and the overall lack of identification procedures in the Criminal Justice System, individuals with disabilities will often not receive proper accommodations to enable them to play an equitable role in the justice system. There is increasing evidence that persons with intellectual disabilities are more likely than others to have their rights violated, not use court supports and accommodations as much as they should, and be subject to miscarriages of justice (Marinos, 2010). In this study, interviews were conducted with mental health (n=8) and criminal justice professionals (n=8) about how individuals with dual diagnosis are received in the Criminal Justice System. It was found that criminal justice professionals lack significant knowledge about dual diagnosis, including effective identification and therefore appropriate supports and accommodations. Justice professionals in particular were relatively ill-prepared in dealing effectively with this population. One finding to highlight is that there is misunderstanding between mental health professionals and justice professionals about who ought to take responsibility and accountability for this population.

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# DUAL DIAGNOSIS IN THE CRIMINAL JUSTICE SYSTEM

## Capacity to Attend to the Needs of Persons with Dual Diagnoses in the Criminal Justice System: Views of Mental Health and Criminal Justice Professionals

### **Introduction**

*"Everyone has the right to recognition everywhere as a person before the law" and are "equal before the law and are entitled without any discrimination to equal protection under the law." (International Council of Human Rights Policy, 1948, Article 6 & 7 respectively)*

The Canadian Criminal Justice System has a responsibility to protect the rights of all individuals within society regardless of age, race, class, gender, socioeconomic status, ability or mental status to ensure equity. A discrepancy arises about how professionals in different service agencies interpret the meaning of equality, and in this case specifically for persons with intellectual disabilities and dual diagnoses. Intellectual disability is defined by the American Association on Intellectual and Developmental Disabilities (2013) as "a disability characterized by significant limitations in both intellectual functioning and in adaptive behavior, which covers many everyday social and practical skills" (p. 1). An intellectual disability originates before the age of 18. Dual Diagnosis is defined as an individual who has a coexisting intellectual disability and mental health needs (CMHA Ontario Division, 1998; Endicott, 1991).

Several pieces of legislation have been enacted to enforce the equal treatment of persons with disabilities, including, for example, Section 15 of the *Canadian Charter of Rights and Freedoms* (Government of Canada, 1982) and *The United Nations Convention on the Rights of Persons with Disabilities* (United Nations, 2006). Although it is

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beneficial to achieve the goal of equality, and provisions within these pieces of legislation have been implemented, gaps remain in the application of these principles within the Canadian Criminal Justice System. The legislations listed above and the lack of enforcement of equality for persons with disabilities will be discussed in detail within this paper through the use of a Critical Disability framework.

A range of literature has identified that the Canadian Criminal Justice System has been designed to better attend to the needs of individuals within society who do not suffer from mental incapability's and intellectual disabilities (Marinos, 2010; Sobsey, Stainton & Watson, 2011). Those who must contend with a mental illness and/or an intellectual disability frequently fall through the cracks of the Canadian Criminal Justice System, often never having their needs appropriately met. "Mental illness is defined by the centre for addictions and mental health as a serious disturbance in thoughts, feelings and perceptions that is severe enough to affect day-to-day functioning" (CMHA, 2012, p. 3). Those in need of special accommodations while progressing through the in-depth system often find themselves lost and misunderstood. Individuals, who have an intellectual disability, mental illness or dual diagnoses, require distinct supports when they find themselves in contact with the law (Canadian Mental Health Association, 2014). Often specific supports are not provided, and these individuals find themselves with a lack of understanding of their rights and responsibilities within the Canadian Criminal Justice System.

### **The Nature of the Disabling Condition**

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Research from the University of Sydney in Australia suggests that the prevalence of mental illness is 50 percent in individuals with a severe intellectual disability and approximately 20 to 25 percent in individuals with a mild intellectual disability (Riches, Parmenter, Wiese & Stancliffe, 2006). A document released by the Centre for Addiction and Mental Health in Canada reported that people with developmental disabilities are three to six times more likely to develop mental health problems compared to the general population of individuals who do not have a disability (Lunsky & Weiss, 2012). Developmental disability is defined as "a state of functioning that begins in childhood and is characterized by significant limitations in both intellectual capacity and adaptive skills. This term is generally used to describe life-long impairments that are attributable to mental, neurological and/or physical disabilities" (Government of Alberta, 2010, p. 2). In the Criminal Justice System, most often a person is not recognized as having dual diagnoses because the intellectual disability is often unidentified.

Considerable research reveals that individuals with intellectual disabilities are overrepresented within the Criminal Justice System (as cited in Griffiths, Taillon-Wasmond & Smith, 2002; as cited in Jones 2007), and are also more likely to be victimized, most often once they have been placed in custodial facilities (Endicott, 1991). There is evidence internationally that persons with intellectual disabilities are more likely to experience rights violations, not use court supports and accommodations as much as they should, and be subjected to miscarriages of justice (as cited in Marinos, 2010). Although the criminal offences committed by persons with intellectual disabilities are most often less severe than those who do not have disabilities, they are overrepresented within the Correctional system (Griffiths et al., 2002). The reasons behind this



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overrepresentation are as follows: "those with intellectual disabilities are more likely to be apprehended, confess to the crime, incriminate themselves, be led by the interviewer, plead guilty, waive their rights without full comprehension of the process, and less likely to plea bargain or appeal judgment, understand the implications of their statements or be able to afford appropriate defence counsel" (Marinos et al., 2008, p. 128).

Studies have shown that between 4.5 and 10% of the prison and jail populations have been identified as having a disability (Petersilia, 2000). Approximately 4 to 5 times as many youths with disabilities enter the correctional system than their peers who do not have a disability (Polloway, Patton, Smith, Beyer & Bailey, 2011). White and Wood (1992) found that 50% of young offenders, and 56% of adult offenders in a community probation/parole programme had a developmental disability. The problem becomes that most often when they are placed in the correctional system they are not treated appropriately and inadequate accommodations are provided, such as placement into segregation cells for "their own safety" and the discontinuation of prescribed medications.

The current study will explore the perspectives of criminal justice and mental health professionals' perspectives within the framework of Critical Disability Theory. Critical Disability Theory brings to the forefront the inequalities faced by persons with mental impairments within society and disputes the dominant ideologies of 'normalcy' which rejects disability as a way of being in the world (Titchkosky & Michalko, 2009). Criminal justice professionals and mental health professionals were interviewed. The questions were geared towards asking both cohorts about their interactions with persons

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with dual diagnoses. Additional questions to mental health professionals were geared towards how criminal justice professionals handle dual diagnosis.

### **Disabilities and the Law**

In order to provide a context for understanding the perceptions of criminal justice and mental health professionals, it is important to set out a context about disabilities and the law.

A number of important statutes exist internationally and for Canadians, that are meant to specifically address inequalities for persons with disabilities. As Article 1 of the UN Convention on the Rights of Persons with Disabilities states, the purpose of this Convention is to "promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity" (United Nations, 2006, p. 4). The general principles outlined by this Convention are as follows:

- a. Respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons;
- b. Non-discrimination;
- c. Full and effective participation and inclusion in society;
- d. Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;
- e. Equality of opportunity;
- f. Accessibility
- g. Equality between men and women;
- h. Respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities (United Nations, 2006, p. 5).

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All of the above principles are expected in order for persons with disabilities to have equal access and fair treatment within the Criminal Justice System. In order for persons with disabilities to have equal opportunities, their disability must be recognized and acknowledged as requiring special accommodations. If these principles were included in criminal justice training, there could be hope for a more effective understanding amongst criminal justice professionals about what is required for persons with disabilities in order for them to experience the Criminal Justice System in the same manner as their 'normally functioning' counterparts. In recognizing difference in the Criminal Justice System, accommodations allow for the achievement of equality. As the Law Commission of Canada (2012) states, "legislators have to act on the assumption that assistance, support and protection are necessary in order to permit persons with disabilities to achieve equality and full participation in society as a right rather than a privilege" (p. 43).

The *Canadian Charter of Rights and Freedoms* (1982) guarantees the rights and freedoms of all individuals in society. Section 15(1) of the Charter specifically makes mention of disabilities and their right to equal protection and benefit under the law:

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 race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.  
(p. 1)

Part (2) of section 15 also states:

Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin,

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colour, religion, sex, age or mental or physical disability.  
(p. 1)

Although it is outlined that persons with disabilities should have equal rights under the law, there is evidence that this is not always the case. Marinos (2010) highlighted that persons with disabilities are more likely to be subject to rights violations and miscarriages of justice. Most often, due to the lack of identification of persons with intellectual disabilities and dual diagnoses in the Criminal Justice System (Hamelin, Marinos, Robinson & Griffiths., 2012; McAfee & Gural, 1988), they do not receive the assistance and proper accommodations that they require. The difficulty becomes, which will be discussed later, what does it mean to provide equal treatment to persons with intellectual disabilities and dual diagnoses under the law?

### ***Accessibility for Ontarians with Disabilities Act (2005)***

The province of Ontario has been proactive in setting out a plan for equity for persons with disabilities in the public sphere. The Act is explicit in demonstrating the expectation that all service agencies in Ontario must be accessible to all persons within society by January 2025. The Act specifically states,

1. Recognizing the history of discrimination against persons with disabilities in Ontario, the purpose of this Act is to benefit all Ontarians by,
  - (a) Developing, implementing and enforcing accessibility standards in order to achieve accessibility for Ontarians with disabilities with respect to goods, services, facilities, accommodation, employment, buildings, structures and premises on or before January 1, 2025; and
  - (b) Providing for the involvement of persons with disabilities, of the Government of Ontario and of representatives of industries and of various sectors of the economy in the development of accessibility standards (2005, p. 1).

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Part 2 of the Act states, "This Act applies to every person or organization in the public and private sectors of the Province of Ontario, including the Legislative Assembly of Ontario" (2005, p. 1). Although the above two Acts are not explicitly outlined or discussed within the Criminal Justice System, it is the expectation that through extensive training more knowledge about the needs of persons with disabilities can be achieved and, in turn, we will be able to see significant changes in their accessibility within service agencies by January 2025.

### *The Canadian Criminal Code (1985)*

#### **Mental Disorder**

A contributor to the lack of knowledge of intellectual disabilities and dual diagnosis in the Criminal Justice System is the over reliance on a diagnosis of 'mental disorder' within the *Criminal Code*. 'Mental disorder' under section 2 of the *Criminal Code* is defined as a 'disease of the mind' (p. 1) and is utilized as a defence under s.16 of the *Criminal Code*. The definition in the *Criminal Code* of 'disease of the mind' and the provisions that need to be satisfied in order to assert a defence of mental disorder are as follows:

Disease of the mind embraces any illness, disorder or abnormal condition which impairs the human mind and its functioning, excluding, however, self-induced states caused by alcohol or drugs as well as transitory mental states such as hysteria and concussion. In order to support a defence of insanity the disease must, of course, be of such intensity as to render the accused incapable of appreciating the nature and quality of the violent act or of knowing it was wrong (R. v. Cooper, 1980, p. 1159).

The definition of 'mental disorder' under the *Criminal Code* is relatively broad in nature and encompasses both intellectual disabilities and dual diagnosis. The issue, currently, is

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that the Criminal Justice System is not well equipped to recognize intellectual disabilities and dual diagnosis. This is due to the lack of specialized knowledge, training and education about how to appropriately handle persons with these impairments.

Theoretically, the law is set up to recognize and address the needs of persons with intellectual disabilities and dual diagnoses, but it appears that persons with intellectual disabilities and dual diagnoses are poorly identified, or not identified at all. This can be attributed to the fact that proper identification procedures have not been implemented to specifically identify intellectual disabilities and dual diagnosis. There is presently, a lack of knowledge, awareness and understanding of the issues surrounding intellectual disabilities and dual diagnosis, which makes it difficult to appropriately attend to and assist them. This is often cause for the violation of the equality rights for individuals with intellectual disabilities and dual diagnoses (Griffiths et al., 2002).

### **Fitness to Stand Trial**

In Canada, Section 2 of the *Criminal Code* defines 'unfit to stand trial' as unable 'on account of a "mental disorder" ' to conduct a defence because of an inability to understand the nature or object of the proceedings, understand the possible consequences of the proceedings, or communicate with counsel (Department of Justice, 1985). Testing an individual's fitness relates solely to his or her capacity to understand the proceedings and his or her ability to instruct counsel for the purposes of the trial (Pauls, Pearson & Bailey, 2002). It is often assumed that those with disabilities will benefit from the same provisions when they may not. The threshold for participation in the justice system is relatively low. In the *R. v. Taylor* (1992) case, the Ontario Court of Appeal held that an individual is not required to have analytical capacity but merely a basic "factual

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understanding". This means that he or she need not be able to make decisions within his or her best interests (Bloom & Schneider, 2006). The low threshold places persons with mild to moderate intellectual disabilities or dual diagnoses at higher risk than other accused persons of not making decisions in their best interests or having their rights violated (Bloom & Schneider, 2006).

A major challenge within the Criminal Justice System is the fact that assessments of individuals with disabilities for 'fitness to stand trial' are being carried out by professionals within the mental health field. This is disadvantageous because most mental health professionals lack specialized training or are not experienced in working with individuals with intellectual disabilities or dual diagnoses (Marinos et al., 2008). This, in turn, places those with mental health issues and those with disabilities in the same category when in fact the difficulties faced by each are distinct and as such, should be responded to in a different manner. It is a common misconception in the Criminal Justice System that the mental health field deals with all persons with vulnerabilities without recognition that different needs arise for different diagnoses, and professionals in the mental health field deal primarily with mental illness.

Marinos et al. (2008) elaborated three reasons why an individual with an intellectual disability may be found unfit

"(1) Accused persons with intellectual disabilities may be unfit because of a mental disorder, but the condition is sensitive to rehabilitation, such as depression.

(2) Unfitness might be a permanent state that is the result of cognitive impairment that would not be sensitive to rehabilitation or education.

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(3) They may be unfit due to ignorance of the court proceedings, expectations and roles. In this case the accused may become fit if it can be demonstrated that they have acquired knowledge of the nature and object of the court proceedings, the consequences of the proceedings, and can communicate with counsel"

(p. 133-134).

The utilization of one distinct method of assessment of fitness is not suitable for all forms of impairment; mental illness, intellectual disabilities and dual diagnosis, due to the distinct nature of each individual impairment. A lack of training and knowledge, as well as a lack of services within the Criminal Justice System for individuals with disabilities is cause for the severity of their impairments not being recognized. In turn, this is cause for inappropriate resources being provided to persons with intellectual disabilities and dual diagnoses to participate meaningfully in the justice process. The assessment of 'fitness to stand trial' is not always clear cut, and individuals need to be provided with services that suit their specific needs, despite being 'fit'. Individuals with disabilities require very different services in comparison to those with mental illness. It cannot be expected that the same methods used for an individual with a mental illness will be suitable for an individual experiencing an intellectual disability or dual diagnoses.

Until 2004, persons with disabilities encountered inequalities in the determination of fitness to stand trial. Once an individual was found unfit to stand trial, most often they are sent to a psychiatric facility where the goal was to provide treatment in order to eventually make them 'fit' for trial. The difficulty for persons with disabilities, that was not acknowledged, is that their condition cannot necessarily be improved through the use of treatment and drug therapies, unlike those with a mental illness. In turn, persons with disabilities often sat in psychiatric facilities for extended periods of time receiving



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improper care. Pauls et al., (2006) discussed the fact that due to the provision that persons who were found unfit could not be provided with an absolute discharge, a person with a disability, whose condition is usually permanent could end up spending a life sentence in a psychiatric facility. Most often their time is disproportionate to their offence. Although an individual's intellectual disability is permanent (Pauls et al., 2006) they were being treated in the same manner as persons who were mentally ill, who could be improved through psychiatric treatment and drug therapy.

As a result of the Demers case (2004, S.C.C.), some changes have been made to the procedures under 'fitness to stand trial' for persons who are permanently unfit (often those with intellectual disabilities). Prior to the Demers case, Part XX.1 (Mental Disorder) of the *Canadian Criminal Code* (1985) dealt unfairly with permanently unfit accused persons who were not a significant threat to the public safety. The procedures for 'unfitness' under the *Criminal Code* did not provide an end to the prosecution. Individuals who were found permanently unfit were subjected to several violations on their liberty and many forms of restrictiveness, which resulted from the disposition orders implemented by the review board or the court (Demers, 2004). Also before the changes implemented as a result of the Demers case, the courts and review boards were not able to order more than one psychiatric assessment for an accused. This, in turn, made it impossible to determine the accused's current circumstances at each review board hearing.

The continued supervision and detention of a permanently unfit accused could only be related to that individual's mental status. Further to the Demers case (2004), an application would be available to both dangerous and non-dangerous permanently unfit

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accused for a stay of proceedings resulting from an accused's *Canadian Charter Rights* under section 11(b) to a trial within a reasonable time. Through provisions made in the Demers case (2004) it is now expected that all permanently unfit accused who do not pose a significant threat to the public safety should be granted a stay of proceedings. A stay of proceedings halts all further processes in a trial within 30 days under section 24(1) of the *Canadian Charter of Rights and Freedoms* which reads, "anyone whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances." The 30 day period is perceived to be sufficient in allowing the provincial health authorities to seek a protective order under their mental health regime if they consider it necessary (Demers, 2004).

### **Not Criminally Responsible**

Section 16 of the *Criminal Code* states,

No person is criminally responsible for an act committed or an omission made while suffering from a mental disorder that rendered the person incapable of appreciating the nature or quality of the act or omission or of knowing that it was wrong (Department of Justice, 1985, p. 5).

In order for a verdict of not criminally responsible on account of a mental disorder to be made, two requirements must be satisfied. First, it must be determined that the individual is in fact guilty of committing the crime. Second, it must be proven that, at the time of the act, the individual suffered from a mental disorder, which caused the defendant to be incapable of appreciating the nature and quality of the act or the incapacity to know that the act was wrong (Pauls et al., 2006). Once the above two requirements have been determined, the judge may order a psychiatric assessment.

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Based on the results of a psychiatric examination and a determination of not criminally responsible on account of a mental disorder, the judge may hold a disposition hearing. Although the judge is not responsible for sentencing the individual, judges are able to make an initial disposition order until the review board determines an effective sentence, which could take up to 90 days from the date of the verdict (Byrick & Walker-Renshaw, 2012). The review board has three options for disposition orders: (1) accused be kept in a psychiatric facility (2) conditional discharge or (3) absolute discharge (Byrick & Walker-Renshaw, 2012; Pauls et al., 2006). If the disposition order is to send an individual to a psychiatric facility, the board must hold a disposition hearing every year in order to reconsider the order. In order to decide on a new disposition order, the review board considers an accused person's mental health, his or her need for treatment, and whether he or she is a threat to others (Byrick & Walker-Renshaw, 2012).

### **Not Criminally Responsible and Persons with Disabilities**

Since mental disorder under the *Criminal Code* encompasses persons with disabilities, the defence is available to them. Although the defence of not criminally responsible is available for persons with intellectual disabilities, this defence is not as commonly utilized (Pauls et al., 2006). First, there is the perception that this defence has been reserved for defendants who have treatable mental disorders (Pauls et al., 2006). Due to the fact that many intellectual disabilities cannot be improved through treatment, most criminal justice professionals view the mental disorder defence as inapplicable (Pauls et al., 2006). Second, there is the idea that this defence is more applicable in the case of a mental illness where an individual's perception of right and wrong is distorted due to a delusion or psychotic condition (Pauls et al., 2006).

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Persons with disabilities often try to mask their disability, which is known as the cloak of competence (Smith, Polloway, Patton, & Beyer, 2008). Often persons with intellectual impairments do not want to make their disability visible; they may view this defence as stigmatizing and, consequently, refuse to allow their counsel to raise this defence on their behalf (Pauls et al., 2006). Often another issue that may arise is that the courts may not view an individual's disability as being severe enough to warrant a declaration of Not Criminally Responsible. It may be falsely presumed that a cognitive impairment does not impact an individual's ability to enact moral judgement, which is required for the mental disorder defence (Pauls et al., 2006). Another issue that may arise, as mentioned earlier, is that an individual's impairment may not be severe enough to be deemed Not Criminally Responsible. Moreover the impairment is not well understood to decipher whether or how it may have impacted intent to commit the offence.

### **Progress in the Criminal Justice System**

The *Criminal Code of Canada* and the *Canada Evidence Act* have made progress in the area of assisting vulnerable groups within the Criminal Justice System. Specifically, persons with mental or physical disabilities have been allowed to testify in court based on several criteria that will be discussed below. As well, modifications have been made for persons with mental or physical disabilities to the ways in which they are permitted to provide their testimony.

The *Canada Evidence Act* (1985) outlines specific guidelines that must be met in order for persons with a challenged mental capacity to testify. Section 16(1) states,

If a proposed witness is a person of fourteen years of age or older whose mental capacity is challenged, the court shall,

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before permitting the person to give evidence conduct an inquiry to determine  
(a) Whether the person understands the nature of an oath or a solemn affirmation;  
and  
(b) Whether the person is able to communicate the evidence (Department of Justice, 1985, p. 5).

Section 16(2) states, "A person referred to in subsection (1) who understands the nature of an oath or a solemn affirmation and is able to communicate the evidence shall testify under oath or solemn affirmation" (p. 5). Section 16(3) on the other hand states, "A person referred to in subsection (1) who does not understand the nature of an oath or a solemn affirmation but is able to communicate the evidence may, notwithstanding any provision of any Act requiring an oath or a solemn affirmation, testify on promising to tell the truth" (Department of Justice, 1985, p. 5).

In *R. v. D.A.I.* (2012) the accused challenged the victim's competency to testify during trial. The victim (K.B.) was asked several questions to determine her ability to understand the difference between the truth and a lie. However, although she displayed knowledge of the difference between the two, the trial judge was still unsatisfied and began asking her abstract questions. The trial judge was not satisfied with K.B.'s responses to the abstract questions, which was cause for the exclusion of her evidence. The Supreme Court of Canada did not agree with the lower court's decision and determined that the trial judge applied the *Canada Evidence Act* incorrectly. The Act does not require the judge to question the witness on his/her ability to understand abstract terms. Through this case it was decided that an adult witness with mental disabilities must only be able to: (1) Communicate evidence and (2) Promise to tell the truth.

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Section 6(2) of the *Canada Evidence Act* read, "If a witness with a mental disability is determined under section 16 to have the capacity to give evidence and has difficulty communicating by reason of a disability, the court may order that the witness be permitted to give evidence by any means that enables the evidence to be intelligible" (p. 2). Consistent with section 6(2) of the *Canada Evidence Act* the *Criminal Code of Canada* outlines several modifications to the ways in which persons with mental impairments are permitted to testify before the courts. Section 486.1 (1) of the *Criminal Code* states,

In any proceedings against an accused, the judge or justice shall, on application of the prosecutor, of a witness who is under the age of eighteen years or of a witness who has a mental or physical disability, order that a support person of the witness' choice be permitted to be present and to be close to the witness while the witness testifies, unless the judge or justice is of the opinion that the order would interfere with the proper administration of justice" (Department of Justice, 1985, p. 236).

Another modification that has been implemented under the *Criminal Code* section 486.2 (1) is as follows:

Despite section 650 (accused to be present in the courtroom), in any proceedings against an accused, the judge or justice shall, on application of the prosecutor, of a witness who is under the age of eighteen years or of a witness who is able to communicate evidence but may have difficulty doing so by reason of a mental or physical disability, order that the witness testify outside the court room or behind a screen or other device that would allow the witness not to see the accused, unless the judge or justice is of the opinion that the order would interfere with the proper administration of justice (Department of Justice, 1985, p. 237).

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The specific modifications under section 486.2 of the *Criminal Code* include the ability to testify through the use of a closed-circuit television or from behind a screen in order for the victim, especially in sexual assault cases, not to have to face the accused directly, which may be detrimental to their testimony.

### **Problem in Practice**

There are significant gaps for accused persons in receiving accommodations under the *Canadian Criminal Code* and the *Canada Evidence Act*. Modifications have not yet been implemented to specifically support accused persons with disabilities progressing through the Criminal Justice System. On the other hand, it is clear that there have been significant advances in the development of accommodations for victims and witnesses in the Justice System that are used for persons across all three domains, those with mental disorders, intellectual disabilities and dual diagnoses in the court system.

Although advances are being made, a discrepancy still exists in the application of accommodations for persons with disabilities. Due to the lack of knowledge within the Criminal Justice System (Canadian Mental Health Association, 1998) of the impairments faced by persons with intellectual disabilities and dual diagnoses and a lack of knowledge, in turn, of the modifications they may require, most often the accommodations are not applied. This discrepancy between policy and practice will be discussed more in-depth through the thematic analysis of participant responses to interview questions. This problem brings up the dilemma of a lack of training amongst criminal justice professionals and the need for more emphasis to be placed on teaching persons in this profession about the needs of vulnerable groups, such as individuals with intellectual disabilities and dual diagnoses. Ultimately training is required to

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appropriately support vulnerable groups when they come in contact with the Criminal Justice System.

The analysis of mental disorder under the *Criminal Code*, fitness to stand trial, not criminally responsible and accommodations under the *Criminal Code* and *Canada Evidence Act* in relation to intellectual disabilities is important to discuss. This analysis raises two particular issues: one, there are significant limitations to how the law is structured around dealing with persons with intellectual disabilities and dual diagnoses, and two, when the law is too broadly defined, there is the potential for a lack of specific attention to some groups.

Currently, legislations outside of the Criminal Justice System have been developed in order to push for change in all service agencies in the ways in which they respond to persons with disabilities.

### **Increased Attention**

We are currently seeing increased attention to persons with disabilities within official literature in Canada. The Law Commission of Canada Report and the Mental Health Commission Reports have outlined specific challenges for persons with disabilities, suggestions for change and the expectations throughout service agencies in how they respond to persons with disabilities.

### **In Unison**

In Unison (2013) is a Canadian approach to disability issues, which outlines the ways in which to promote the integration of persons with disabilities in Canada. This document sets out a vision that seeks to promote the full participation of persons with



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disabilities in all aspects of Canadian society. It includes recognition that in order to achieve this vision there is a responsibility of all Canadians to attend to this issue. The vision prides itself on notions and values of equality, inclusion and independence for all persons with disabilities.

### **Law Commission of Ontario**

The Law Commission of Ontario (2012) set out a framework for the law as it affects persons with disabilities. This report looks specifically at assisting individuals who develop, interpret, implement or assess laws, policies or practices that affect persons with disabilities. It is the hope that through this report, persons with disabilities will benefit as the law, policy and practice will be more effective, just and accessible for them. This report builds on the foundations of the *Charter* and human rights laws, the United Nations *Convention on the Rights of Persons with Disabilities*, and government policy frameworks, such as In Unison, discussed above. Four key themes were discussed. The themes include invisibility, negative attitudes and stigma, complexity, overlap and silos and implementation and access to justice issues. The four key themes were used as a framework to guide us through the disadvantages faced by persons with intellectual disabilities and where particular changes need to be made.

### **Mental Health Commission**

The Mental Health Commission of Canada released a new Ontario Human Rights Policy in June 2014 titled, "Policy on Preventing Discrimination Based on Mental Health Disabilities and Addictions". The policy specifically addresses the human rights of persons with mental health or addiction disabilities. This policy seeks to provide

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guidance to service agencies on how to assess, handle and resolve human rights violations for persons with disabilities. The policy specifically addresses,

- Discrimination
  - Rights of persons with disabilities in all services that they access
  - Prevention and elimination of discrimination within organizations
  - Creation of inclusive environments
  - Duty to accommodate
- (Mental Health Commission of Canada, 2014)

During the development of this policy, the Ontario Human Rights Commission relied extensively on the input received from another report released by the Ontario Human Rights Commission in September 2012, titled, "Minds that Matter: Report on the Consultation on Human Rights, Mental Health and Addictions." This report was a province-wide consultation on the human rights violations experienced by people with mental health disabilities or addictions. It is a summary of information gathered from 1,500 individuals and organizations across Ontario.

Another area of increasing attention is to those with dual diagnoses. This diagnosis makes achievement of equity more challenging because mental health concerns often overshadow our attention to those with both mental health concerns and an intellectual disability. Dual diagnosis was briefly acknowledged by the Mental Health Commission Report (2012).

### **Misconceptions about Mental Illness and Intellectual Disabilities**

Although most often persons with disabilities and individuals with a mental illness are responded to in the same manner within the Criminal Justice System they are very functionally distinct (Pauls et al., 2006). An individual with a mental illness does not

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necessarily experience an intellectual impairment or adaptive deficits like those with an intellectual disability would. On the contrary, persons with mental illness are most often capable of functioning intellectually and enacting adaptive behavior or both. Their impairment most often includes delusions and psychotic episodes (Pauls et al., 2006). Although mentally ill persons display incompetent behavior due to their disabling condition, they do not lack the intellectual capacity to understand their rights, the court process or instruct counsel (Pauls et al., 2006). Persons with disabilities experience impaired decision-making because of an intellectual inability to practice proper judgement. On the other hand, a person with a mental illness may have impaired decision-making due to his or her inability to recognize the imagined versus the reality (Pauls et al., 2006):

Mental Illness is frequently temporary, cyclical, or episodic, whereas a developmental disability remains relatively constant through life, although the deficits in adaptive behavior which combine with reduced intelligence to define such a disability are usually amenable to improvement through appropriate services and positive relationships (Endicott, 1991, p.9).

Within the Criminal Justice System it can be argued that there is a common misconception that mental illness and intellectual disability are one and the same. As Pauls et al. (2006) argued the current response of the law is to distort the cognitive realities, which would view disability and mental illness as distinct entities, and instead look at them on the same continuum based on degrees of capacity. The Criminal Justice system lacks widespread knowledge of the major differences between mental illness and intellectual disabilities. When reviewing articles, it became evident that most laws and

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services provided by the Criminal Justice system are suited to the needs of those with mental illness rather than those experiencing intellectual disabilities (Desai, 2003).

Although services and accommodations have been put in place, they are still not utilized to a high degree within the Criminal Justice system, particularly in Canada (Desai, 2003). A significant reason for the lack of implementation of accommodations in practice is the insufficient awareness within the Criminal Justice System about how to recognize the existence of an impairment. This lack of knowledge contributes to the under identification of persons with disabilities. Other significant reasons for the under-identification of persons with disabilities include: "inadequate testing, inadequate experience of psychologists and psychiatrists with persons with disabilities, the defendants' attempts to conceal the disability, and inadequate training of criminal justice personnel" (Bonnie, 1992; as cited in Griffiths et al., 2002, p. 393). In fact a pilot study by Marinos et al. (2014) found that professionals within the Criminal Justice System lack clarity about the differences between intellectual disabilities and mental illness.

Despite the disparity described above, the Criminal Justice System has been using the same procedures for those with intellectual disabilities and dual diagnoses that have been broadly designed specifically for those with a mental disorder. To date, a formal, validated procedure for fitness to stand trial for those with an intellectual disability or dual diagnoses has not been found for use within the Canadian Criminal Justice System (Marinos et al., 2008). As Pauls et al. (2002) argued, until the functional reality of persons with developmental disabilities is recognized as a separate entity, the Criminal Justice System cannot hope to effectively respond to the needs of vulnerable individuals in order to demonstrate fair and equitable treatment.

### **Defining Inequality and Finding Solutions**

The analysis of disability and law is grounded in a broader discussion about inequality and the role of law. It is clear that there is the expectation of equal treatment amongst all members of society, but the difficulty becomes, what does this mean for persons with disabilities? Does equal treatment entail treating all individuals the same regardless of whether they have a disability, or do we need to have special accommodations in place for persons with disabilities to interact fairly and equally and experience the same rights and benefits, substantively, within the justice system? While the law is meant to ensure that all persons who come into contact with the legal system have rights guaranteed to equity, we know that the law is limited in guaranteeing equity.

### **Formal or Substantive Equality?**

**Formal Equality.** This model of equality sets out to treat all individuals, those with disabilities and those without, the same (IWRAW Asia Pacific, 2001). It is expected that persons with disabilities will be treated under the same rules and standards as the able-bodied and will be provided with the same opportunities. Formal equality fails to recognize the fact that persons with disabilities are unable to have access to or benefit from the same opportunities as able-bodied individuals due to the wide array of differences between them (IWRAW Asia Pacific, 2001). Formal equality does not take into consideration the differences in ability and mental capacity amongst individuals in society. This, in turn, is the cause of the inequitable treatment of individuals with unique needs. As Hosking (2008) points out, any approach at a systemic level that seeks to make disability invisible is incapable of effectively protecting the rights of individuals with intellectual disabilities and dual diagnoses.

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The equality sections of the *Canadian Charter of Rights and Freedoms* demonstrate that equality may be present in conditions of disadvantage that are prevalent through historical disadvantage, stereotyping and prejudice (Peppin, 2002). Peppin (2002) described the concept of equality of effects, which means that "the result of the behaviour should itself not be unequal" (p. 565). For example "individuals in wheelchairs who could enter a theatre only by means of stairs would have equal opportunity in a formal sense, but would not have achieved equality in terms of effects until they could reach the top of the stairs" (p. 565). The look at equality of effects supports the idea of substantive equality, which is a significant contributor to having equal treatment amongst all members of society, including those who do not fit within the able-bodied population.

***Design of the Law.*** The Law Commission of Ontario (2012) highlighted that in general, able-bodied persons design laws. This is most often cause for a lack of consideration of the needs of persons with disabilities in the development and implementation of the laws. In the design of laws by the able-bodied, there is the assumption that only individuals who are 'able' will try to access the laws. Consequently, the design of the law is made for only those who fall within the 'norms' of society and exclude persons with disabilities (Law Commission of Ontario, 2012). Laws that do not take into consideration the needs of persons with disabilities provide formal equality (Law Commission of Ontario, 2012), which results in a lack of regard for this population. Consequences that may arise for individuals with disabilities that can result from the inappropriate implementation of laws include: "inappropriate use of restraints, lack of appropriate supervision or safety procedures in institutional settings, and inadequate

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discharge planning for those individuals with mental health disabilities transitioning from institutional settings to the community" (Law Commission of Ontario, 2012, p. 45).

Disability advocates and persons studying Critical Disability Theory support inclusive laws rather than laws designed by and for able-bodied individuals. Provisions within inclusive laws take into consideration the existence and specific circumstances of individuals with disabilities (Law Commission of Ontario, 2012). Inclusive laws are linked to the idea of substantive equality.

**Substantive Equality.** Substantive equality acknowledges difference and makes persons with disabilities more visible in order to achieve inclusivity and equality. A major difference between formal and substantive equality is the 'dilemma of difference', which is prevalent when the decision arises of whether to acknowledge differences amongst people through the recognition of it or through ignoring it (Hosking, 2008). Substantive equality is most concerned with equal access and equal benefits rather than equal treatment (IWRAW Asia Pacific, 2001). It recognizes that persons with disabilities are different and require different treatment and different adaptations in order to equally benefit (Hosking, 2008). In order to sufficiently achieve substantive equality, the ways in which persons with disabilities differ from neurotypically developing individuals need to be considered and responded to appropriately by policy or legal interventions and programmes (IWRAW Asia Pacific, 2001).

In adopting substantive equality, there would be the requirement that laws and policies are changed in order to make the rules and provisions more suitable to the needs of persons with disabilities, ultimately enhancing equality and allowing persons with

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disabilities the same opportunities as those without. The International Women's Rights Action Watch Asia Pacific (2001) stated that the goals of substantive equality are: equal opportunity, equal access to the opportunity and equal results. Ultimately, inclusive laws, which will contribute to substantive equality, is the goal that disability advocates hope to achieve.

### **Rights Violations**

There is evidence to suggest that persons with intellectual disabilities and dual diagnoses are vulnerable to rights violations within the Criminal Justice System (Marinos, 2010).

### **Experiences of Individuals with Disabilities in the Criminal Justice System**

**Incidence.** The response of the Criminal Justice System towards those citizens who have an intellectual disability is informal, inconsistent and inequitable (Jones, 2007). "Although police protocols and court-diversion schemes attempt to improve the identification of individuals with intellectual disabilities, many individuals are still overlooked or misidentified" (Jones, 2007, p. 727). Approximately 75% of offenders with disabilities are not identified at arrest, and 10% are not identified until prison (McAfee & Gural, 1988). Identification becomes even more difficult when an individual has a mild intellectual disability, because their outward presentation is not overtly different from the population without disabilities (Pauls et al., 2006; Salekin, Olley & Hedge, 2010). Some claim that less than 10% of all offenders with an intellectual disability receive any specialized treatment (Riches et al., 2006). Hayes (2007) has reported that a need exists for increased training and education for all professionals in the Criminal Justice System,



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including police, probation and parole staff, court staff, custodial staff and the magistracy and judiciary. She has reported that only one-third of a sample of UK police participated in training about disabilities and three-quarters of those police officers reported that the training was inadequate (Hayes, 2007).

Within the Criminal Justice System individuals with disabilities face increased vulnerability due to their lack of knowledge and understanding of their rights and the legal process as a whole. Individuals with intellectual disabilities are more likely than others to experience vulnerabilities in the Criminal Justice System, to confess to a crime, be found incompetent to testify or stand trial, be led by the interviewer, be denied bail, and be sentenced to incarceration (Marinos et al., 2008). Many individuals with disabilities may not be law breakers themselves but instead should be viewed as lower-functioning people who lack the proper education on how to appropriately function within society (Griffiths et al., 2002). Persons with disabilities are frequently used by other higher functioning criminals as a means to do their 'dirty work' and commit their crimes for them. This is often the case because individuals with disabilities do not have an understanding of their involvement in crime or its consequences (Griffiths et al., 2002).

**Criminal Justice System Lacks Knowledge.** The analysis above looks at the structure of the law and its effect on persons with intellectual disabilities and dual diagnoses. As we have seen, there is a relative lack of attention to these specific groups within the law despite statutes and legal guarantees to equality. The lack of attention within the law has effects on the resources put towards education and training of professionals who apply the law on a day-to-day basis. In fact The Canadian Mental

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Health Association has revealed that Professionals within the Criminal Justice System have a tremendous lack of knowledge of the specific needs and adaptations required for those with disabilities (Canadian Mental Health Association, 1998). The Criminal Justice System is challenged when individuals with intellectual disabilities enter the system. A major difficulty is the need to "maximize the cognitive and social factors that may help the participants interact with the courts, and at the same time, satisfy the requirements of the legal system" (Perlman, Ericson, Esses & Isaacs, 1994; as cited in Griffiths et al., 2002, p. 392).

Several opinions discussed in an article by Cant and Standen (2007) demonstrated the lack of patience and understanding towards individuals with intellectual disabilities held by criminal justice professionals. One police officer stated, "the law has to take its course; you can't make one rule for one and one rule for another" (p. 177). This police officer disregarded the differences in understanding and functioning in those with disabilities compared to those without. He demonstrated a lack of knowledge about the needs of those with disabilities. Another judge stated, "You've got to make sure you're not giving too many advantages, or unjustified advantages to defendants. You mustn't make it less easy for the Crown to get a conviction" (Cant & Standen, 2007, p.177). What is not being understood by court professionals is that accommodations are not an advantage that is being given; they are simply a way in which an individual with a disability can have the same benefits in court that any other citizen would have (Law Commission of Ontario, 2012). Accommodations are necessary because without them an individual with a disability may be unable to understand the court proceedings or what is

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expected of them unlike an individual without a disability. In other words it ensures equity with the neuro-typical individual and not advantage.

**Prior to Court.** When an individual with a disability is arrested, his or her unique behaviours may lead a police officer to believe that the person is resisting or not complying with the officers demands (Polloway et al., 2011). Greater training on the topic of individuals with disabilities could help police officers better understand why certain behaviors are occurring rather than making the common misconception of defiance or deviance. Cockram, McAfee and Wolfe (2001) (as cited in Hayes, 2007) stated that police react differently to crimes committed by those with disabilities but in inconsistent ways, demonstrating either over-tolerance or a lack of tolerance. It is believed that this inconsistency in reactions is indicative of a need for further training of police about how an individual with a disability who has committed a crime should be treated (Hayes, 2007).

At the first stage of the Criminal Justice System individuals with intellectual disabilities face difficulties in understanding 'cautions' or 'rights' provided to them by police due to their poor comprehension skills (Jones, 2007). A study by the New South Wales Law Reform Commission (1996) discussed in an article by Hayes (2007) found that more than three-quarters of those interviewed with intellectual disabilities admitted that they would sign anything the police requested. Members of the Criminal Justice System must be made aware of the number of vulnerabilities faced by those with disabilities within the court system. Simply gaining knowledge of disabilities through specialized training can help to minimize the violation of rights for all individuals with special needs who find themselves in contact with the law.

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Individuals with intellectual disabilities have difficulty with understanding their *Canadian Charter Rights*, which are recited to them by police without any explanation of their meaning (Cockram, Jackson & Underwood, 1993; Smith et al., 2008). In a study by Smith et al., (2008) it was found that approximately 67% of individuals with intellectual disabilities had little to no understanding of one or more of the parts of their *Canadian Charter Rights*. Polloway et al. (2011) stated that significantly more persons with disabilities did not understand any of the meaningful portions of the following warnings – right to remain silent, potential use of statements in a court proceeding, and the right to an attorney before and during questioning (Polloway et al., 2011). The waiving of *Canadian Charter Rights* is also viewed as problematic amongst those suffering from a disability, because the question arises about whether they understand the effects or impact of the waiver process (Polloway et al., 2011).

The high prevalence of the lack of understanding of rights emphasizes the need for individuals with disabilities to have their counsel present at the time the *Canadian Charter Rights* are read and before the individual confirms an understanding of their rights (Smith et al., 2008). Often individuals with a disability are not provided with the advantage of having their counsel present, because police may be unaware that an accused has a disability at all. This is also cause for the need for greater training for individuals working within the Criminal Justice System.

The interrogation process is often one of the first aspects of the Criminal Justice System that individuals must face after an arrest has occurred. During an interrogation session the goal of the police officer is to gain a truthful confession. In order to accomplish this goal a police officer will set up the interrogation room as a place of total

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control in which the accused individual feels a complete sense of powerlessness (Smith et al., 2008). Individuals with disabilities often experience many difficulties when faced with the atmosphere of control involved in the interrogation process. Persons with disabilities are often susceptible to suggestibility and the adoption of the information provided and requests made by officials, which can work to their disadvantage while responding to an interrogation officer (Smith et al., 2008). Smith et al. (2008) describe three types of strategies used in interrogation settings that may have a negative impact on those who possess high levels of suggestibility. The three strategies are as follows; responses to negative feedback, responses to lead in questions and responses to repeated questions. Each of the following tactics can lead an individual with a disability to unintentionally confess to a crime (Smith et al., 2008). It was found that individuals with disabilities were more likely to modify their answers in order to act in the best interests of the interrogator (Polloway et al., 2011).

During the interrogation process police officers tend to rely heavily on a set of behavioural cues that assist in determining whether an interviewee is lying or telling the truth (Hayes, 2007). As Hayes pointed out, to the detriment of those with intellectual disabilities, many of the cues that are looked for in an interviewee most often coexist with having a disability (Hayes, 2007). Such cues that indicate an interviewee is not telling the truth may include fidgeting, changing posture, and placing the hand over the mouth or eyes when speaking. Due to the fact that most of the following cues are aspects of the behaviours of individuals with intellectual disabilities, they are often not believed, and their story is likely to be dismissed as untrue (Hayes, 2007).

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As Cant and Standen (2007) argued, protocols must be put in place at the initial stages of the Criminal Justice Process so as to avoid an individual with a disability progressing through the entire system without any recognition of their disability. If individuals with disabilities are to be provided with the appropriate supports, they have to be identified as soon as possible after entering the Justice System (Cant & Standen, 2007). Further training for police services relating to intellectual disabilities would be beneficial to assist in recognizing an individual's disability at the time of the charge (Cant & Standen, 2007). This would help lawyers and court officials put special accommodations in place immediately so that an individual with a disability could have a fair chance within the Criminal Justice System. If an individual's disability goes undetected within the Criminal Justice System several problems can occur, such as a misinterpretation of behaviour as deliberate, obstructive or evasive, and an individual may also be more vulnerable to the pressure and coercion that occurs within interview settings (Cant & Standen, 2007).

**In Court.** Research by Marinos et al. (2008) pointed to the relationship between the individual's disability, the offence and how the individual participates and reacts within the criminal process. They stated: "Individuals with disabilities often enter the Judicial System without evaluation or consideration as to how the nature of their disabling condition may have affected commission of the crime, understanding of rights, pre-trial testimony, understanding of possible outcomes, or their ability to provide consistent and accurate testimony" (Marinos et al., 2008, p. 132). Marinos et al. (2008) stated that it is the court's belief that a nonverbal individual cannot verbally express their

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promise to tell the truth and are therefore unable to understand the expectation of the promise.

Within the Criminal Justice System those with disabilities who are nonverbal may be denied the opportunity to give their testimony even if they are completely able to nonverbally communicate the circumstances that occurred (Marinos et al., 2008). Recently, as a result of *R. v. D.A.I.*, as mentioned above, more specific guidelines have been set in place to support persons with disabilities to be able to effectively testify in court. It is positive to see that advances are being made, but again the problem still exists that if a person is not recognized as having a disability, which often occurs within the Criminal Justice System, then they are not provided with the appropriate accommodations that they are entitled to.

There is wide spread concern about effective legal representation for individuals who have a disability. Lawyers are often unaware that persons with intellectual disabilities lack knowledge about the nature of court proceedings; they have a greater likelihood to admit guilt, and have a tendency to provide self-incriminating material (Polloway et al., 2011). An individual with a disability should have the opportunity to be represented by a lawyer who has specialized training and knowledge of disabilities; the difficulty is that this knowledge is very rare amongst lawyers. Lawyers are expected to play a significant role in ensuring proper accommodations for their clients with disabilities. Often times an individual with a disability is represented by a lawyer who has very little or no experience with disabilities. In many cases individuals with disabilities progress through the court system undiagnosed (Marinos et al., 2008). The lack of

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knowledge of disabilities held by criminal lawyers puts an individual with a disability progressing through the court system at even more of a disadvantage.

### **Dual Diagnosis in the Criminal Justice System**

Often when an individual with a developmental disability enters the Criminal Justice System they have a co-occurring mental illness. Studies have shown that psychiatric disorders are one of the leading causes of secondary disability in individuals who have a developmental disability (CMHA Ontario Division, 1998). It is distressing to know that individuals who have dual diagnoses must face potentially significant struggles in the Criminal Justice System on top of coping with the debilitating factors caused by the mental illness and disability itself. It is also discouraging that it is so difficult for individuals with dual diagnoses to receive treatment for both their illnesses simultaneously.

Very few facilities identify individuals with dual diagnoses as their primary population of focus. In fact "service providers and communities are often uninformed and unaware of the complex problems and issues associated with dual diagnosis. This can lead to misdiagnosis, perpetuation of stereotyping as "hard to treat or serve" and increased stigma" (CMHA Ontario Division, 1998, p. 21). Individuals with dual diagnoses will ultimately find it difficult to find services that will specialize in providing assistance for both their mental illness and their intellectual disability (Dorfman & Awmiller, 2003; Riches et al., 2006). "Consequently, when a consumer/survivor is in a developmental setting and develops a psychiatric crisis, staff may not necessarily have the specialized psychiatric or crisis intervention training that is needed" (CMHA Ontario Division, 1998, p.18).



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There are at least three gaps found when dealing with persons with intellectual disabilities:

- Professionals in the mental health field feel that persons with intellectual disabilities are not mentally ill and therefore not suited for their programs and resources
- The developmental disability agencies do not have specific services for offenders with disabilities and
- The correctional system does not want persons with disabilities in their environment because it is a setting that is inadequate and inappropriate for persons with intellectual disabilities (Griffiths et al., 2002).

It is clear that services are significantly lacking to appropriately deal with individuals who have intellectual disabilities who become involved with the law, but those with dual diagnoses face tremendously more difficulties trying to get both their mental illness and their intellectual disability addressed.

Research has shown that mental health professionals lack effective training regarding individuals with developmental disabilities, and by the same token, individuals who specialize in working with developmentally disabled individuals have limited training in mental illness (CMHA Ontario Division, 1998). More specialized training is needed within the realm of dual diagnosis for mental health professionals and professionals specializing in developmental disabilities. Current research shows that most individuals within the Criminal Justice System cannot identify those who have dual diagnoses and cannot identify the differences between mental illness and developmental disability (Hamelin et al., 2012).

### **Critical Disability Theory**

More broadly, Critical Disability Studies point us in the direction of understanding the inequity of persons with dual diagnoses as a broader social issue, and acts as a theoretical framework for the project. The dominant theory in the 20th century for understanding disability has been the medical model; this model attributes the source of disadvantage faced by persons with disabilities to their disabling condition. The medical model views disability as an inherent aspect of an individual that occurs due to an impairment of the mind or body (Hosking, 2008). Professions such as medicine, rehabilitation, counselling, and special education view disability only as a problem that is in need of a solution (Titchkosky & Michalko, 2009). In turn, due to this perception disability is seen as something to be prevented. If prevention is to fail, the second motivation is to cure the disability; if this also fails, the final strategy is to make “disabled individuals” feel and appear to be normal (Titchkosky & Michalko, 2009). The latter motivation is driven by the definition of disability as a physical, sensory, emotional, or intellectual ‘abnormal condition’ that occurs in a select few individuals (Titchkosky & Michalko, 2009).

Critical Disability Studies challenge the idea that the entire person is disabled due to a specific impairment (Devlin & Pothier, 2006). Devlin and Pothier (2006) stated their belief that disability is not a question of medicine or health but rather "a question of politics and power(lessness), power over, and power to" (p. 2). There appears to be tension between the two models. On the one hand, the medical model seeks to eliminate the impairment of persons with disabilities, while on the other hand, the social model values and accepts persons with disabilities as equal and integrated members of society

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(Hosking, 2008). Critical disability theory attempts to explore this tension by evaluating and questioning,

Concepts of personal independence and interdependence, the social construction of 'nondisability' as well as disability, the concept of normalcy, fundamental values of individual dignity and respect in democratic societies, and issues at the intersection of disability with class, gender, race, sexual orientation, ethnicity and other socially constructed categories (p. 8).

In terms of the law,

A critical jurisprudence of disability (1) identifies the overt and covert sources of oppression within the law and legal institutions and, by means of that exposure, seeks to relieve disabled people from that oppression and (2) identifies the potential positive role of law and seeks to create law, use existing law and enlist legal institutions in the struggle for the emancipation of disabled people which is the rationale for Critical Disability Theory itself (p. 16).

### **'Normalcy'**

Disability is viewed as an 'abnormal' condition that is embedded within a few 'normal' persons (Titchkosky & Michalko, 2009). Disability studies abandon the dominant ideologies of normalcy that is prevalent within able-bodied perceptions of disability. In disability studies, disability is not studied as something that is distinct from society but rather an entity that is integrated within it. It is not measured up against the standard of normalcy that is perceived as the best form of life (Titchkosky & Michalko, 2009). In disability studies, disability is viewed as an essential part of the diversity of human life, individually and collectively. Disability is not viewed as an unfortunate or negative happenstance; instead, it is seen as a legitimate way of being-in-the-world

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(Titchkosky & Michalko, 2009). Challenging conceptions of 'normalcy' is important because it emphasizes the responsibility of society to integrate disability into the idea of 'normalcy'. It emphasizes the fact that persons with disabilities need to be included within the dominant aspects of society in order for significant changes to occur in the way in which they are responded to and supported.

Disability studies re-evaluates normalcy and challenges the taken for granted visibility of normalcy within society. Disability studies calls for an outright interrogation of the notion of 'normalcy' within society. 'Normalcy' conceives disability as a devalued life in which the only way to live efficiently is to overcome disability, and adapt to the expectations that 'normalcy' upholds (Titchkosky & Michalko, 2009). Edgerton (1967) makes mention of the fact that individuals with intellectual impairments will do everything they can to claim a place within society. This is where the concept of the cloak of competence originates from. Persons with intellectual disabilities are guided by the need to integrate themselves within society and avoid the stigmas that surround their impairment. Edgerton (1967) said that in order to gain "legitimate entry into the 'outside world'... they will lie and cheat. They practice their deceptions in order to claim a place in the 'normal' world, not to deviate from it" (p. 209). Critical Disability theorists attempt to break down this barrier through making disability a visibly acceptable form of human life that should be acknowledged and appropriately attended to, without judgement. The view of disability as an essential part of human diversity will help to break down stigmas and allow all individuals to participate in a society that is accepting of their individuality and differences.

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'Normalcy' views itself as the only legitimate way of human existence and those with impairments are its casualties (Titchkosky & Michalko, 2009). These negative views contribute to persons with disabilities expressing and demonstrating shame with regards to their disability and enacting the cloak of competence. This makes it more difficult for persons with disabilities to get assistance and services, because their disability is often not identified. The lack of identification could also be a result of an individual with a disability's attempt to hide it for fear of being marginalized.

Disability studies attempts to resist the dominant ideologies of 'normalcy' by making disability visible (Titchkosky & Michalko, 2009). There is the hope and expectation that through visibility, persons with disabilities can be recognized as equals and be provided with accommodations to increase liberty within their lives. The difficulty is having this view adopted amongst all of society, across all service agencies in order to implement specific accommodations for persons with disabilities. Through making disabilities more visible, Critical Disability Studies holds the belief that ideologies around equal and fair treatment for persons with disabilities rather than pity and protection could be adopted.

### **Liberalism**

Critical Disability Studies challenge the assumptions made within a liberalist perspective in order to promote full participation of persons with disabilities into contemporary society (Devlin & Pothier, 2006). Liberalism makes assumptions that portray disability as a misfortune which needs to be prevented and cured, and expresses notions of privileging normalcy over the abnormal, which through a liberalist lens would

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include persons with disabilities (Devlin & Pothier, 2006; Hosking, 2008; Titchkosky & Michalko, 2009). The concept of “normal” contributes to the notion that persons with disabilities are in need of charity and pity rather than equality and inclusion, which reinforces the notion that fortune, must be better than misfortune (Devlin & Pothier, 2006). These beliefs and values contribute to the experiences of inequality throughout service agencies that persons with disabilities must endure.

The ultimate goal of Critical Disability Theory is a change towards the domination of substantive equality over formal equality. Liberalism has been continuously unwilling to support and move towards this form of equality, which has contributed to the continuous subordination and unequal treatment of persons with disabilities (Devlin & Pothier, 2006).

### **Changes to the way we see disability**

Within Critical Disability Theory there is the expectation of a change from looking at disability from a charity-based approach to viewing it from a human-rights-based approach (Devlin & Pothier, 2006). This would contribute to a higher degree of acceptance and a greater response to the needs of persons with disabilities. As Titchkosky and Michalko (2009) mentioned, the idea of normalcy sees no other possibilities of human existence than its own, which is cause for the exclusion of persons with impairments. Disability studies also evaluates context by looking at the prevalence of inequality based on disability, which puts more responsibility on the social contexts that marginalize and cause inequality rather than the disability itself as the cause of subordination (Devlin & Pothier, 2006). This takes responsibility away from persons with

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disabilities with respect to the expectation that they must adapt to the rules and regulations of service agencies. Rather it places accountability on the service agencies to change their provisions to support persons with disabilities (Devlin & Pothier, 2006). As mentioned in Devlin and Pothier's (2006) article "a person is a person through other persons" (p. 12).

### **Social Model of Critical Disability Theory**

According to Devlin and Pothier (2006) disability is a social construct that develops and is marginalized through ideologies of able-bodied members of society who perceive 'normalcy' as the primary means of being in the world. The social model states that disability is not caused by impairment but rather by the social restrictions that are placed upon individuals with disabilities (Thomas, 2007). The greatest challenge for persons with disabilities is the unwillingness of "mainstream society to adapt, transform, and even abandon its 'normal' way of doing things" (Devlin & Pothier, 2006, p. 13).

Hosking (2008) expressed that the social model is based on three distinct principles. The principles are as follows:

- (1) Disability is a social construct, not the inevitable consequence of impairment
- (2) Disability is best characterized as a complex interrelationship between impairment, individual response to impairment, and the social environment
- (3) The social disadvantage experienced by disabled people is caused by the physical, institutional and attitudinal (together, the 'social') environment which fails to meet the needs of people who do not match the social expectation of 'normalcy' (p. 7).

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Based on Hosking's three principles it is clear that in order to have equality and fair treatment for persons with disabilities society needs to change its perceptions and ideologies around disabilities. A primary goal of disability theory is to force dominant society to break out of its normal ways of thinking and move toward a society free of barriers for persons with disabilities (Devlin & Pothier, 2006). In order to reach equality for all within society whether disabled or not, The Law Commission of Canada (2012) has suggested that we have to work on the assumption that all of society will benefit when persons with disabilities are appropriately attended to and included within society.

This research makes contributions to our theoretical understanding of disability and mental disorder under the law in Canada, raises awareness of the disadvantages faced by persons with dual diagnoses in the Criminal Justice System, and illustrates some important systemic changes to be made in the justice process so that persons with disabilities are treated equitably.

### **Summary**

Although the definition of 'mental disorder' under the *Criminal Code* encompasses both intellectual disabilities and dual diagnosis, more specific changes need to be made in order to better support these populations. The literature suggests that identification, education, training, resources and specialized supports and accommodations that specifically attend to the unique needs of persons with intellectual disabilities and dual diagnoses need to be developed. The particular impairments and needs of persons with intellectual disabilities and dual diagnoses need to be better embedded within the structure of the law.



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Currently, the literature reveals that the response to persons with intellectual disabilities and dual diagnoses in the Criminal Justice System is inequitable due to the enactment of formal equality across the system and the norms of the able-bodied. The notion of substantive equality needs to be adopted for more significant changes to be made. Through substantive equality the differing abilities and unique needs of individuals become visible, which make the ability to appropriately respond to these populations more efficient. Critical Disability Theory seeks to advocate for the visibility of disability in a society that has been taught to reject it. It emphasizes the need for societal views to be changed in order for persons with intellectual disabilities and dual diagnoses to experience equality and fairness across service agencies.

It is not clear from the review of the literature the extent to which criminal justice professionals and mental health professionals adequately understand the intricacies of dual diagnosis in Canada. It is important to understand criminal justice and mental health professionals' perceptions and views about their interactions with persons with dual diagnoses and the challenges that all parties face. Therefore the following questions are addressed in this research:

- (1) What are criminal justice professionals' perceptions about how dual diagnosis is received and interpreted in the Criminal Justice System?
- (2) What are mental health professionals' perceptions about how dual diagnosis is received and interpreted in the Criminal Justice System?

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(3) How do mental health and criminal justice professionals compare and contrast in their perceptions of how dual diagnosis is received and interpreted in the Criminal Justice System?

This research will make contributions in the areas of theory, practice and policy. First, the study will add to a more nuanced perspective of the legal concept of the "mentally disordered" offender, currently lacking within the case law. Second, this research will look into emphasizing the necessary changes that need to be made if we are to appropriately deal with persons with intellectual disabilities and co-occurring mental disorders who are charged with criminal offences. It is the hope that through raising awareness of the needs and current lack of equality and rights violations faced by persons with intellectual disabilities and dual diagnoses in the Criminal Justice System that significant changes in the response of the justice system to these vulnerable populations will be made.

### **Method**

#### **Research Design**

A problem-based case study was employed as a framework for conducting this study. Case study research involves the study of a specific case within a real-life context or setting (Creswell, 2013). The treatment of persons with dual diagnoses by the Criminal Justice System was explored and described as the primary problem within this research project. The issue of dual diagnosis in the Criminal Justice System was discussed through the utilization of two distinct cohorts. The two cohorts included eight criminal justice professionals and eight mental health professionals.

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A significant and relatively unrecognized issue within the Criminal Justice System is the prevalence of individuals with dual diagnoses entering the system and never being recognized or diagnosed. This issue raises additional concerns within the criminal justice system of both the lack of knowledge about this issue and the need for change within criminal justice practices. It was concluded that utilizing a case study methodological approach would make for the most effective analysis of the problem.

Specifically, a collective case study was completed which looked at one concern or problem but utilized multiple sources of information to demonstrate the problem (case) (Creswell, 2013). Dual Diagnosis in the Criminal Justice System was analyzed and compared through the use of interviews of both criminal justice and mental health professionals. Following the processes of a collective case study, several different sources of information (interviews with mental health and criminal justice professionals) were utilized in order to analyze the case of dual diagnosis in the Criminal Justice System. Criminal justice professionals were asked about their own experiences with dual diagnosis while mental health professionals were asked about their perceptions of how dual diagnosis is dealt with by criminal justice personnel including lawyers, police, crown attorneys and judges.

### **Participants and Setting**

Participants (n=16) were selected through a non-probability sampling method (convenience sampling). Specifically a snowball or chain sampling method was employed. Creswell (2013) defines snowball sampling as the identification "of participants of interest from people who know people who are confident the participant

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they are suggesting will have rich information on the case/topic of interest.” The first two participants were selected through the recommendation of the researchers' supervisors. Each participant was asked to suggest someone they believed had knowledge of the presenting issue and the same was done with each participant that followed. A relevant strength of this sampling method was that the researcher was able to collect data at a much faster rate than if a pre-sampling survey were completed. The researcher was able to interview criminal justice and mental health professionals as they agreed to meet.

The range of participants included eight (n=8) criminal justice professionals, which included two police officers and six defence lawyers selected primarily from the Toronto and St. Catharines area and eight (n=8) mental health professionals which included persons working within the mental health service sectors across various parts of Ontario. Criminal Justice Personnel had between 15 to 30 years of experience, and 100 percent (n=8) were male. Mental health professionals, conversely, had between 15 to 25 years of experience, and the participants were 50 percent (n=4) males and 50 percent (n=4) females. The researcher was not particular about gender, age or years of experience. The study was open to all participants who had a basic rudimentary understanding of mental disorder and intellectual disabilities. Participants were relatively diverse and heterogeneous within their respective cohorts.

Since the purpose of the study was to understand the perspectives of professionals in an in-depth way, a large sample size was not required. The objective was not to make estimates about views and attitudes to any wider populations. Second, the researcher was keenly aware of the strengths and limitations of case studies. As Creswell (2013) submitted, "having enough information to present an in-depth picture of the case limits

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the value of some case studies" (p.102). In the current study, the sample size is acceptable and provided rich results, but as mentioned above, a greater variety of criminal justice personnel could have contributed to greater diversity of responses amongst participants.

Three considerations were kept in mind in order to be sure that a purposeful sampling strategy was employed. Creswell (2013) described three considerations that contribute to purposeful sampling, which include; the participants that make up the sample, the types of sampling used and the sample size. As an interviewer it is required that we make sure the participants chosen to participate in our study have a background that pertains to the issues that are being analyzed.

Guest, Bunce & Johnson (2006) stated that "a common element (in purposeful sampling) is that all participants are selected according to predetermined criteria relevant to a particular research objective" (p. 61). In this particular study criminal justice professionals were strategically chosen with consideration of their direct involvement with the Criminal Justice System. Criminal Justice professionals are the individuals that need to be provided with the most knowledge of the growing issue of dual diagnosis in the Criminal Justice System. It was important to hear from criminal justice professionals about their perspectives on, knowledge about and experiences with dual diagnosis in the Criminal Justice System. Mental Health Professionals were chosen as a comparative cohort, because it was believed that they had firsthand experience collaborating with criminal justice professionals. It was also prevalent amongst criminal justice professionals that they believed the mental health system played an integral role in dealing with individuals in the vulnerable sectors. The primary researcher wanted to analyze mental health professionals' perceptions about how they felt criminal justice

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personnel interacted with persons with mental disorders, intellectual disabilities and specifically dual diagnoses when they came in contact with the Criminal Justice System.

The type of sampling that was used in this research is termed by Creswell (2013) as critical cases. This type of sampling provides specific information about a particular problem and convenience cases that represent individuals from which the researcher can easily collect data (Creswell, 2013). Participants were chosen through convenience sampling that allowed for a much faster pace of gathering participants. Due to the participants' being suggested by previous interviewees, information about the knowledge and understanding the next participant had of the problem of dual diagnosis was provided ahead of time and assisted greatly with a much more efficiently paced recruitment of participants.

The sample size is also a very important aspect to purposeful sampling. A significant sample size allows one to achieve saturation in their research. The most common form of saturation is known as 'theoretical saturation'. Glaser and Strauss (1967), (as cited in Guest et al. 2006) defined 'theoretical saturation' as the point at which no more significant themes are arising as the data set increases and a replication of themes becomes prevalent. One can become confident that the data set has reached a level of saturation when the significant themes within the data are not changing significantly or being modified with each addition of more participants. Guest et al. (2006) said that most of the codes that seem to be important in the beginning stages of one's analysis most often remain significant throughout the remainder of participant responses.

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Guest et al. (2006) stated that in qualitative research 12 participants are the smallest acceptable sample size in order to declare saturation within one's research. Again, as mentioned above, the current study was completed with 16 participants including eight criminal justice professionals and eight mental health professionals. Through an initial analysis of data it was clear that an additional four participants contributed to a wider variety of relevant themes and to declare saturation because of the replication of themes, and new themes were not continuing to arise. The process of documenting the progression of theme identification is known as the codebook structure (Guest et al., 2006). In Guest et al.'s (2006) study they analyzed interviews in increments of six, adding six more interviews to the study after each analysis. Guest et al. (2006) discussed the steps that they followed:

We monitored the code network and noted any newly created codes and changes to existing code definitions. We also documented frequency code application after each set of six interviews added. The reasoning behind this latter measure was to see if the relative prevalence of thematic expression across participants changed over time (p. 65). After analyzing all thirty interviews from Ghana, the codebook contained a total of 109 content-driven codes, all of which had been applied to at least one transcript. Of these codes, 80 (73%) were identified within the first six transcripts. An additional 20 codes were identified in the next six transcripts, for a cumulative total of 100, or 92% of all codes applied to the Ghana data. As one would expect, the remaining 9 codes were identified with progressively less frequency. Clearly, the full range of thematic discovery occurred almost completely within the first twelve interviews- at least based on the codebook we developed (p. 66).

The researcher is confident that within this study a purposeful sampling strategy was achieved.

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### **Recruitment and Consent**

As mentioned earlier, participants were recruited through the recommendation of previously interviewed individuals. They were asked to recommend individuals they felt had relevant experience and knowledge of the topic of interest.

Recommended individuals were invited to participate in the study through an invitation sent by email (Appendix A). Each potential participant was sent an outline of the purpose of the study and the potential benefits and risks if they chose to volunteer to participate in the study. Creswell (2013) stated that it is important to receive a participants' written permission to be involved with the study. A consent form (Appendix B) was sent in a secondary email to the participant if they expressed interest in being interviewed. The consent form was required to be returned to the researcher before the interview could commence.

### **Design and Procedure**

**Interviews.** A semi-structured interview approach with open-ended interview questions was utilized in order to allow for deeper exploration into the comments made by interviewees. Open-ended questions allowed participants to express themselves in their own words, minimized the suggestibility of the researcher, "avoided format effects and allowed complex motivational influences and frames of reference to be identified" (Foddy, 1993, p.128). As Yin (2011) suggested, "qualitative interviews aim at understanding participants on their own terms and how they make meaning of their own lives, experiences, and cognitive processes" (p. 135). The structure of open-ended



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questions in the current study allowed participants to elaborate in-depth on their answers to each question, which contributed to the retrieval of much richer data.

The interview questions were structured in such a way that made it easy for participants to interpret and understand what was being asked of them (Foddy, 1993). Participants were asked about their background training and their knowledge and experience specifically with dual diagnosis. Participants were also asked about the identification processes taken, if any, within the Criminal Justice System to recognize an individual with dual diagnoses. Another significant question asked specifically about any accommodations set in place for this particular population. The interview questions asked in this research project are displayed in Appendix C.

Interviews were conducted primarily over the phone by the primary interviewer due to scheduling conflicts and for convenience. Two out of the sixteen interviews were completed in person, one-on one. Engaging in interviews over the phone allowed the interviewer to complete all 16 interviews in a more timely fashion. All interviews, with consent from the participants, were recorded using a digital recorder. Interviews were transcribed verbatim and are currently stored on a locked laptop that only the primary interviewer has access to.

### **Data Collection**

Data collection consisted of the completion of interviews. In case study research interviews are one of the primary forms of data collection. In case study research an "investigator explores a real-life, contemporary bounded system (a case) or multiple bounded systems (cases) over time, through detailed, in-depth data collection involving

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multiple sources of information (interviews) and reports a case description and case themes" (Creswell, 2013, p. 97). In this particular research, multiple sources of information were analyzed, which encompassed an in-depth look at dual diagnosis in the Criminal Justice System; this is termed by Creswell (2013) as a multisite study. The problem of dual diagnosis in the Criminal Justice System was looked at through interviews with several professionals in both the mental health and criminal justice fields.

Following each interview, the audio recording was transcribed by the primary interviewer. When transcriptions were completed, they were sent back to each participant. Each participant was asked to read over his or her interview and consent that he or she was satisfied with the information he or she provided. This important step in the interview process is defined as member checking. Member checking is used as a "quality control process by which a researcher seeks to improve the accuracy, credibility and validity of what has been recorded during a research interview (Harper & Cole, 2012, p. 510-511). Member checking ensures that the data set is credible, dependable, confirmable and transferable.

### **Data Analysis**

The researcher utilized a Thematic Analysis as described by Braun and Clarke (2006) in order to interpret the data set. Thematic analysis is a method utilized to identify, analyze, and report patterns and themes found within a particular data set (Braun & Clarke, 2006, p. 6). This form of analysis can be an essentialist or realist method that specifically looks at the experiences, meanings and realities of participant responses (Braun & Clarke, 2006). Thematic analysis can be particularly useful when a topic that

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has limited research available is being investigated or when participants' knowledge and understanding on the topic are not well known. This method is primarily used for new and innovative topics, because it allows for more in-depth exploration into the responses of participants and provides a rich overall description of the data (Braun & Clarke, 2006).

In this particular study the researcher analyzed the experiences of persons with dual diagnoses in the Criminal Justice System through interpretation of mental health and criminal justice professionals' responses to interview questions. Inductive Analysis was predominantly used, which signified that the themes arose solely based on the responses of research participants. Themes were not made to fit into pre-existing ideas or researcher preconceptions (Braun & Clarke, 2006). Inductive Analysis, which is also known as bottom-up analysis, is entirely driven by the data set (Braun & Clarke, 2006). Throughout the analytic process there is a progression from description, where the data have been organized into patterns, to interpretation, where there is an attempt to understand the significance of the patterns and their broader meanings (Braun & Clarke, 2006).

A rich description of the data set was established through the completion of a recursive constant comparative analysis. The researcher completed both 'inductive within interview analyses' and 'cross interview analyses'. The process of distillation was utilized in order to extract the essential meaning and most important aspects of the data set. Firstly, within each cohort (cohort A: Criminal Justice Professionals; cohort B: Mental Health Professionals) the researcher looked for patterns and salience within each interview. This was known as an 'inductive within cohort within interview analysis'. After an in-depth analysis of each interview a 'within cohort cross interview by question

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analysis' was completed for each cohort distinctly. Significant patterns were developed within each cohort based on participant responses to interview questions.

Thirdly, the researcher collectively interpreted the within cohort within interview analysis and the within cohort cross interview analysis by question and looked for significant and common patterns amongst each stage of the coding process thus far. This stage was utilized as a means to extract the most important and relevant patterns and take out patterns that were not significant due to either a lack of responses or a lack of relevance to the research questions. This step was completed for each cohort separately.

The next stage of analysis involved 'cross cohort analysis'. Utilizing the final patterns developed from the previous step the researcher looked for common patterns amongst the two cohorts in order to develop overarching themes that would capture the essence of what the research questions were asking. Based on in-depth analysis of the relevant patterns developed throughout the coding processes five themes were developed. Braun and Clarke (2006) stated that, "the 'keyness' of a theme is not necessarily dependent on quantifiable measures- but in terms of whether it captures something important in relation to the overall research question" (p.10). The five themes developed within this research study were as follows; (1) Awareness, knowledge and understanding, (2) Identification, (3) Readiness and Preparedness, (4) Accommodations, and (5) Accountability/responsibility.

After the development of overarching themes, the researcher organized all of the patterns from each cohort separately under the theme with which they fit best. This allowed the researcher to see the relevance of each theme based on the high number of

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patterns that complemented that particular theme. After the organization of patterns, the researcher highlighted the patterns that were common across cohorts. The final step in the coding process was to deductively integrate the literature to confirm or disconfirm participant responses.

This research project specifically followed the steps of thematic analysis outlined by Braun and Clarke (2006) but has been modified to fit the needs of this analysis. Creswell's (2013) data analysis spiral will also be referred to in order to discuss the methods of analysis:

**1. Familiarizing, reviewing, reading, memoing and organizing the data** - During this phase the data were transcribed and organized into files on the computer. Following transcription each interview was read over in detail and aspects and phrases that were found to be significant were highlighted. Notes were written in the margins on the particular relevance of specific statements made by participants to the research topic. Through in-depth reading of each interview the researcher was able to be better familiarized with the data, which made cross referencing between interviews much more efficient.

**2. Describing, classifying, interpreting data and generating initial codes** - During this phase the researcher initially looked for patterns that stood out amongst each interview individually. Secondly, the researcher went through each interview question and developed patterns that arose across all interviews within cohort. After the initial coding was completed, the most relevant patterns were extracted from each cohort. The

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researcher took out patterns that lacked relevance to the research questions or did not have a high volume of participant responses. Creswell (2013) stated,

I begin with a short list, "lean coding" I call it- five or six categories with shorthand labels or codes- and then I expand the categories as I continue to review and re-review my database. Typically, regardless of the size of the database, I do not develop more than 25-30 categories of information, and I find myself working to reduce and combine them into the five or six themes that I will use in the end (p. 184-185).

The reduction of patterns/codes into themes was prevalent within the next two phases of the thematic analysis. Before the reduction of the initial coding of patterns into themes, approximately 26 broad patterns existed, or as Creswell (2013) described it, categories of information for each cohort.

**3. Describing, Classifying, and Interpreting Data into themes** - Codes/patterns were organized into potential themes. Themes were developed based on an overall examination of the patterns that were developed across both cohorts. Themes, as described by Creswell (2013), are "broad units of information that consist of several codes aggregated to form a common idea" (p. 186). This step consisted of starting to analyze the developed codes and considering how different codes may be combined to form overarching themes (Braun & Clarke, 2006). Within this phase of analysis, the researcher began to think about the relationship between the many different codes, between themes and between the different levels of themes (Braun & Clarke, 2006). After the development of initial themes, it was clear that the four main themes related to the overall arching theme of accountability and responsibility.

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4. **Reviewing Themes** - This phase was completed in order to determine whether all themes related well to the initial research questions being asked. This step was very significant in order to determine that the patterns fit within each theme and that the themes developed were significant to the research study and appropriate in response to the research questions being asked. Braun and Clarke (2006) described two levels of this phase; level one involves the evaluation of the developed codes and the consideration of whether they form a coherent pattern, which in turn can be combined to develop an overarching theme. If a coherent pattern is found amongst all codes, this level has been satisfied. In the current research, it was found that patterns stood out amongst several codes to form a significant theme. The second level of this phase involved the consideration of the validity of each individual theme to the data set. It was found in this research that the developed themes were important in relation to answering the research questions in detail, and provided a significant framework for discussing the results of this research study.

5. **Defining and Naming Themes** - In this phase the themes were defined in order to represent the patterns in the broadest sense. Themes were analyzed in-depth in order to determine what each theme was supposed to demonstrate with respect to the data set. Themes were neutralized in order to encompass a variety of patterns that could fit within the theme in their own unique and distinct way. For example one of the themes that developed was called Awareness, Knowledge and Understanding. This title was used in its broadest sense rather than being more specific and referring to the theme as Lack of Awareness, Knowledge and Understanding which allowed for a greater number of patterns to fit within this theme. Themes were thought about in detail and the researcher

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wrote notes under each pattern in order to justify why a specific pattern fit within a theme.

The final phase that will be discussed is specific to Creswell's (2013) data analysis spiral.

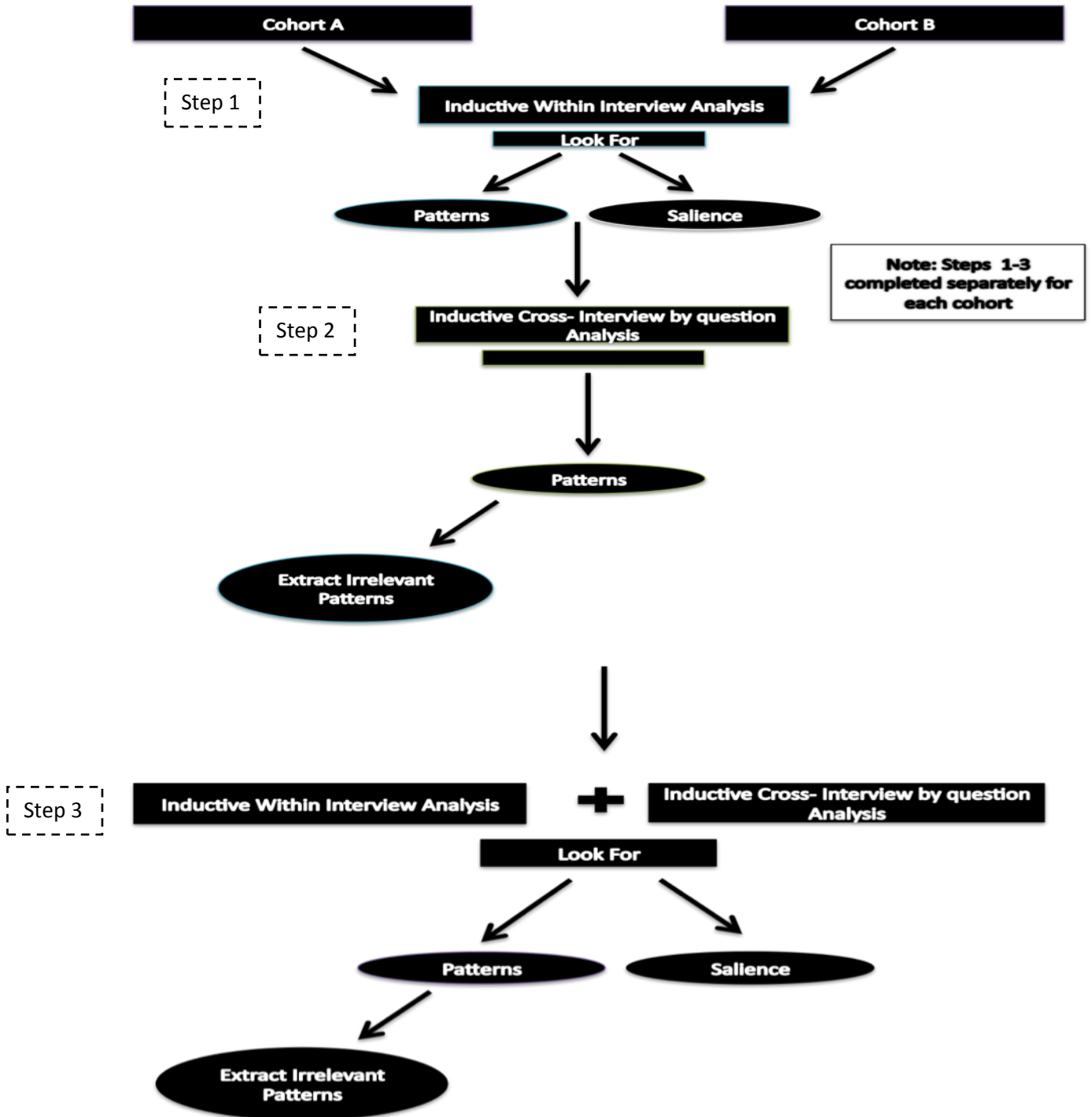
**6. Interpreting the data** - When looking in-depth at the data and interpreting the larger meaning of the data it was determined that one of the five themes was more significant and stood out more than the others. The four themes; awareness, knowledge and understanding, readiness and preparedness, identification and accommodations fit under the theme accountability and responsibility in their own unique way. The particular relevance of the theme accountability and responsibility will be discussed in detail in the results and discussion sections. The recognition of the significant nature of this theme demonstrated to the researcher that codes and themes should not be taken at face value. Interpretation of the data and all of the coding that was conducted was important in order to determine underlying meanings and the significance of the patterns within the data set.

(Braun & Clarke, 2006; Creswell, 2013)

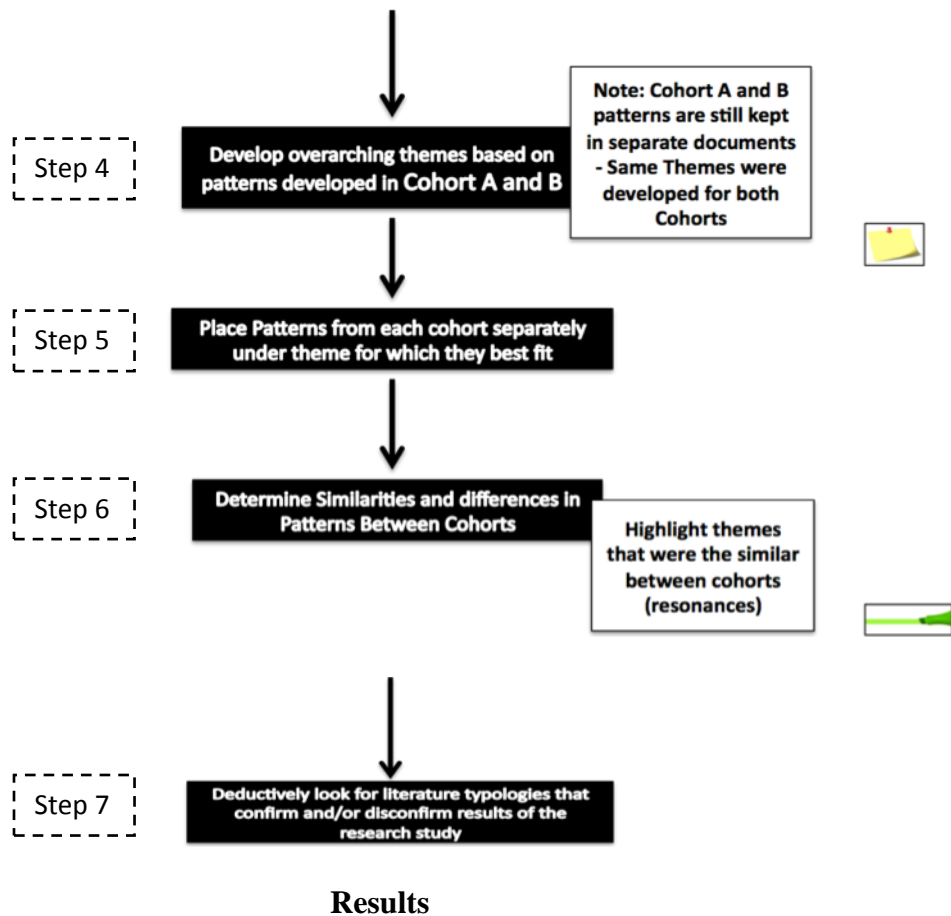


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Figure 1: Data Analysis Process



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In the results section presented below, the patterns that were developed were based on participant responses to interview questions. Five main overarching themes were found to be prevalent throughout the research interviews. The five main themes are as follows; (1) Awareness, Knowledge and Understanding (2) Identification (3) Readiness and Preparedness (4) Accommodations and (5) Accountability and Responsibility.

### **(1) Awareness, Knowledge and Understanding**

This theme looks specifically at the lack of knowledge and understanding that criminal justice professionals have about persons with dual diagnoses. Several patterns

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have been used to demonstrate participant responses that explicitly demonstrate criminal justice professionals' lack of knowledge and awareness of the issue of dual diagnosis in the Criminal Justice System. As well, patterns have been extracted specifically from mental health professionals that demonstrate their perceptions about the lack of knowledge and understanding that criminal justice professionals have about how to appropriately attend to persons with dual diagnoses.

This theme also encompasses a series of patterns from both mental health and criminal justice professionals' responses that describe the lack of knowledge persons with dual diagnoses have about criminal justice practices and procedures. These patterns specifically demonstrate the inability of persons with dual diagnoses to be able to effectively interact with the court system.

**Lack of Knowledge and Understanding of Dual Diagnosis.** Criminal justice professionals lack knowledge and understanding of the nature of dual diagnosis as a mental disorder. In turn, there is a lack of knowledge about the appropriate procedures with which to identify and approach individuals with dual diagnoses who enter the Criminal Justice System. This pattern was particularly prevalent amongst both of the cohorts analyzed within this research project. All of the criminal justice professionals who were interviewed agreed that there is a lack of understanding and knowledge of dual diagnosis within the Criminal Justice System. For example, one defence lawyer (P16) specifically stated, "How am I going to recognize that it is intellectual deficit and not some delusional activity or some psychotic activity like that, how am I going to be able to tell that?" Also over three-quarters of mental health professionals (88%) agreed that criminal justice personnel lack in-depth knowledge about dual diagnosis. Amongst all

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participants, 94 percent (15 out of 16 participants) were in agreement. One defence lawyer (P14) who was interviewed said:

We're not knowledgeable yet about it, um most of us. In the regular courts you know there's still a lot of learning to be done I think. There's a lot of people that work in the mental health court, Judges and Crowns and Defence Counsel that really don't know too much about mental illness generally, like we have a superficial knowledge about it.

One defence lawyer (P13) specifically stated: "I have a basic, rudimentary understanding of dual diagnosis." Another quote from a defence lawyer (P6) demonstrated the lack of knowledge and ability for criminal justice professionals to effectively support persons with dual diagnoses: "For the most part my colleagues, I don't think have the equipment or the knowledge to effectively assist an individual with an intellectual disability."

Mental health professionals were also confident in stating that they believed criminal justice professionals were not well informed, and in turn, lacked an understanding about dual diagnosis. Two mental health professionals specifically stated, "The key problem is a lack of understanding, knowledge and awareness." (Administrator of a Mental Illness Program, P3; Worker in a Dual Diagnosis Program, P8). Another mental health professional was blunt in saying:

We have police who have absolutely no idea, absolutely no idea how to approach and speak with somebody with an intellectual disability and have absolutely no idea for how to create a rapport with somebody who has a mental disorder, absolutely no idea. They are lost you know, and as a result they end up doing things that simply escalate the situation (Worker in a Dual Diagnosis Program, P8).

**Lack of Time and Patience.** Most criminal justice professionals lack the time and patience to spend with clients who have vulnerabilities such as dual diagnoses. In

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turn, lawyers are not interested in learning about these populations and try to avoid taking cases that involve them. A perception was found amongst criminal justice personnel that knowledge about persons with dual diagnoses is not required within their profession. This pattern was distinct to criminal justice professionals with six out of eight professionals agreeing. One mental health professional in particular mentioned this perception as being prevalent amongst criminal justice personnel. In fact, one defence lawyer (P13) acknowledged, "There are very few lawyers that do this area of law because it takes a great deal of time and effort."

Some comments by two criminal justice professionals stood out in demonstrating the prevalence of this particular pattern. The first was a comment by a defence lawyer (P6) who said:

We will take the shortcut but in the long term that shortcut could be an injustice down the road if the person then comes back to court with a far more severe offence. He's charged with a far more severe offence because we never recognized, we had the opportunity to recognize the deficiency but we never did anything about it.

The second criminal justice professional, also a defence lawyer (P10), described two different categories of lawyers that exist when it comes to supporting clients with dual diagnoses. He believed:

With myself or the people I deal with they tend to fall into two camps, those who are willing to make the effort to assist and seek out that knowledge and others who would just say you know what give them to somebody else, they are just too much work. Probably most lawyers in the Criminal Justice System fall into the latter category.

Only one mental health professional discussed that he believed criminal justice professionals had a lack of time and patience to spend with persons with dual diagnoses.

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The mental health professional, who is currently an Administrator of a Dual Diagnosis Program (P2), stated that, "The justice system is very rigorous and has its own timelines so its capacity to be flexible is way less then you know what a community service provider might try to do."

**Persons with a dual diagnosis lack skills to understand and interact with the court system.** The presence of a dual diagnosis complicates an individual's experiences within the Criminal Justice System, because the individual may be unable to understand the court processes and what is being asked. In some cases an individual will lack the ability to express him/herself and may present behaviours within court that could be incriminating. The pattern of the individual with dual diagnoses lacking skills was significant amongst both criminal justice and mental health professionals' responses to interview questions. It was found that all mental health professionals made mention of this pattern. On the other hand, although still significant, only five out of eight criminal justice professionals discussed this issue (63%).

Three criminal justice responses that best support this pattern stood out and suggest that persons with dual diagnoses will have significant complications as they progress through the Criminal Justice processes. A defence lawyer (P6) stated, "Yes absolutely, an individual with dual diagnoses could have serious complications in the judicial system." Three other defence lawyers describe the difficulties faced by persons with dual diagnoses in more detail by saying, "Ya sure, I mean it's harder for them to comprehend the process, it's harder for them to think in the abstract about like hypothetical's" (P14). The second defence lawyer stated:

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Probably makes it more terrifying for people, it's such a foreign thing. Ya, sure it makes it harder. You know it's hard enough if one is mentally disordered and let's say stabilized but you're not going to stabilize an intellectual disability so the whole thing remains kind of mystifying (P11).

The third defence lawyer said:

Oh absolutely, they don't know what's going on. They really don't understand what's going on or why. People with dual diagnoses I mean the problem is that they don't understand what's happening in the system, what in the system they will be going through and certainly I think that requires more time to be spent (P10).

Two in-depth and significant statements were said by two different mental health professionals. The first mental health professional, a Chief Forensic Psychiatrist (P7), stated:

Oh certainly, Criminal Justice is designed for people who know what they're doing and can either be reasonable help, accountable or learn from their experience of punishment. Basically that does not apply to the intellectually disabled group although some degree of personal accountability and how to control one's behavior is a thing that they can learn and need to understand, but not within the mainstream Criminal Justice System. The service is designed with the assumptions of the accountability that don't apply to them and of course if they get in mainstream prison, their risk of being abused or suffering in the correctional system is quite significant. Plus of course whatever their problems are that give rise to offending are unlikely to be altered by any criminal justice sanctions much less by imprisonment.

The second mental health professional, a worker in a Dual Diagnosis Program (P8), discussed the correctional system specifically:

Absolutely, absolutely, ya there's definitely complications. The minister of correctional service has their own mandate and their philosophies are so very different from the ministry of community and social services. So when I'm going into the jail they you know this person needs positive

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reinforcement, they need, you know, we need to be working on appropriate skill building and what have you. They don't care about that, you know they are there, this is a punitive measure right and so that complicates things. You know if the person has a behaviour support plan it's not going to get followed in jail and we know through research and observations and data analysis that behaviour support plans likely is being effective and it gets thrown out the window once they get into jail. So a lot of complications with our folks in there.

A Behavior Therapist (P15) discussed the appalling response of several judges:

They can never be either victims, and I've heard this from judges they can't be victims because they don't understand they have been assaulted or abused. So there's the expectation that anyone with dual diagnoses just doesn't get it and that they can't even be witnesses in trials that involve them, which is something we're fighting against.

### **(2) Identification**

This theme encompasses an in depth look at the lack of identification of dual diagnosis in the Criminal Justice System. The interviews reveal that there are no standard measures that are specific within the Criminal Justice System to identify this population of individuals. Most often individuals with dual diagnoses will progress through the system without ever being recognized as having a diagnosis. The majority of criminal justice professionals interviewed believed that individuals with dual diagnoses often are not identified unless they enter the Criminal Justice System with a diagnosis already in place. In the Criminal Justice System it is more likely that an individual's mental illness will be recognized while the intellectual disability is masked or camouflaged by the diagnosis of mental illness, known as diagnostic overshadowing (Riches et al., 2006).

A significant statement made by a defence lawyer (P10) demonstrates identification as the biggest issue facing persons with dual diagnoses. He stated, "The



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biggest issue is being identified early on and then having the support network in place to guide them to the system because they often, I mean legal representation is one thing but legal representation doesn't really assist them in the social aspect and that is really where they need to be assisted."

Several patterns that arose based on both criminal justice and mental health professionals' responses to interview questions that pertain to the above theme are presented below.

**Dual Diagnosis is not identified.** In the Criminal Justice System often persons with dual diagnoses are not identified and more often than not they go undetected. Due to the lack of identification criminal justice professionals are unaware that these individuals require specific support, accommodations and modifications. The majority (75 percent) of both criminal justice professionals and mental health professionals agreed that persons with dual diagnoses in the Criminal Justice System most often are not identified.

One defence lawyer (P6) stated, "It's unfortunate but it's undetected and I think there may also be a stigma and reluctance on the part of the lawyer for that matter or the system itself to say, hey, this person is intellectually challenged." Another criminal justice professional discussed the fact that it is the choice of the client to divulge his or her disorder or disability and whether to allow criminal justice personnel access into his or her background. This particular lawyer was specific about what he believes. As lawyers, they are not allowed to explore the lives of their clients without the clients consent. He said:

In the Criminal Justice System you can't get evaluations of people without their consent unless they are considered to

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be unfit to stand trial or suspected of being unfit to stand trial. So as much as we would want to know everything we can about that person to help them when they get in the Criminal Justice System the laws are set up to allow that person not to speak and not to volunteer information. So the information that I receive from my clients for my evaluation is what he will give me. You know I can make my own sort of assessment, reading between the lines but if my client says don't talk to my family, don't talk to my support worker, don't talk to my doctor then I can't talk to them you know I can't. I just can't do that and a judge can't order my client to submit to an assessment just to find out what his or her diagnosis is (Defence Lawyer, P14).

Two mental health professionals also provided statements that demonstrate their belief that a lack of identification of dual diagnosis occurs in the Criminal Justice System. An Administrator of a Dual Diagnosis Program stated, "There is a larger amount of people within the jails that have, may have, an intellectual disability or functioning at the borderline IQ level that aren't picked up." Another mental health professional, a Manager of Specialized Services (P4), said,

They go undetected and what happens is unless they have an advocate they go undetected. They need someone to advocate because otherwise it goes undetected. Like even let's say someone had fetal alcohol right, like they're not going to, no one is going to identify that unless there is an advocate doing that for them. If someone has bipolar disorder no one is going to know that unless of course they have been through CAMH but then again they would still have to have an advocate that would have been helping them.

After hearing this statement, the researcher followed up by asking, "Do you think that there is a high prevalence of advocates for them? The participant responded with, "I do not." (P4)

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The next pattern that will be discussed looks at the fact that there are no standard measures or screening processes in the Criminal Justice System to identify persons with dual diagnoses. A quote will be used as a means to lead into the discussion of the next pattern. A Head of Forensic Psychiatry (P5) demonstrates the need for standard screening to be done in the Criminal Justice System when he said:

I think they often go undetected. So you can imagine that if the courts are making the first assessment they have almost no training in mental health issues so I suspect that they often overlook problems that might have been found if there was a regular screening.

**No standard measures of identification.** The majority of mental health professionals mentioned that there is a lack of a standard measure for identification of dual diagnosis within the criminal justice system, and in turn, many who require assistance will go undetected. This was evident in mental health professionals' answers to interview question number eight as shown in appendix C. On the other hand, only a small number of Criminal Justice professionals admitted to the lack of standard measures of identification in the Criminal Justice System.

Three significant statements were extracted from mental health professionals' responses. An Administrator of a Dual Diagnosis Program (P2) commented on the lack of standard measures in the Criminal Justice System in saying:

No, there aren't standard measures. They may not even ask if there's an intellectual disability. The assessment tools are quite crude and rudimentary because the capacity for them to do an assessment in the first place for those staff to do an assessment in the first place is problematic. They do not have the capacity, knowledge or skills to assess.

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A mental health professional in a Dual Diagnosis Program (P8) said, "There is no standard measure when an individual comes in now." An Administrator of a mental Illness Program (P3) shared his firsthand experience while working in a detention center. He said, "Having seen their initial screening form, there is nothing there about a developmental disability. So ya I would say that there isn't any kind of screening or assessment done in the jail." In agreement with this statement a Chief of Forensic Psychiatry (P7) stated, "There is limited screening in provincial corrections to detect those people. So we are probably missing people in the court." Only two Criminal Justice Professionals made mention of the belief that there are no standard measures for the identification of dual diagnosis in the Criminal Justice System. One defence lawyer (P11) said specifically, "Are there standard measures in terms of intellectual disabilities? Not really."

**Dual Diagnosis is only identified if a diagnosis is already in place.** The majority of criminal justice professionals believed that persons with dual diagnoses are only identified if they enter the Criminal Justice System with a diagnosis already provided or if they are informed by family or support services that the client is involved with. It was also mentioned that sometimes criminal justice personnel will find out about the existence of a diagnosis through self-report but that occurs much less often. This pattern was not very prevalent amongst mental health professionals, with only two out of eight mentioning it. One criminal justice professional stated, "If you have a dual diagnosis issue, inevitably, I'm going to have some other social workers or mental health professionals that are there to assist. If a diagnosis is there it's because somebody else has made it" (Defence Lawyer, P10). This statement demonstrates the lack of identification

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that occurs within the Criminal Justice System. As this pattern shows, most often if a diagnosis is in place, it is made by someone outside of the Justice System.

A police officer (P1) described specifically the disadvantages of Criminal Justice Professionals in relying on outside sources such as the family for a means of identification. He said, "So a lot of times this (the identification of a dual diagnosis) has to be brought out by the family and a lot of times you know the mentally ill person, the family, that guy goes his own way or she goes her own way, they are usually homeless a lot of times and they are out on the street." This police officer is explicitly stating that persons with dual diagnoses, due to their diagnosis, may have no supports in place and no one to speak on their behalf if they find themselves in contact with the Criminal Justice System. In turn, as mentioned above most often an individual will become lost within the complex system never having his or her diagnosis recognized, and in turn, never having the appropriate supports in place to navigate the system.

**Mental Disorder Masks Intellectual Disability.** Individuals with dual diagnoses are frequently not recognized as having two presenting problems because of diagnostic overshadowing (Riches et al., 2006). This is not surprising given that under the *Criminal Code* a mental disorder is most often equated with mental illness (Department of Justice, 1985). This theme was prevalent only amongst Criminal Justice Professionals' responses and the majority of them believed this to be true. A defence lawyer (P6) stated, "I don't think an individual can be clearly identified as dual diagnoses. From my perspective it's very rare; what I believe happens is the person is identified with a mental disorder."

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The interviews demonstrate a clear picture of how the Criminal Justice System automatically categorizes all impairments under a homogeneous umbrella of “mental disorders” without appreciation of specific diagnoses. A police officer (P1) said, “We just deal with them as mentally disturbed.” In support of this statement a defence lawyer (P10) stated, “I’m not sure that dual diagnoses people uh individuals, I suspect they are just dealt with as mental health issues.” The same defence lawyer (P10) said, “By the time they come into contact with the Criminal Justice System there’s an upfront identification made, there’s a suspicion that there are mental health issues never mind intellectual issues, at least mental health issues.” A statement by a police officer (P12) supports this belief: “When somebody is arrested and there appears to be some issues I think we often just sort of take the leap that it’s a mental health issue and we will recommend a mental health assessment sometimes.” The last two quotes demonstrate the lack of consideration of intellectual disabilities amongst criminal justice professionals. Again, as mentioned above, it shows the heavy reliance on the umbrella term of “mental disorder” as equivalent to “mental illness” across the Criminal Justice System.

**Severity of Disability.** Persons who have more severe disabilities are the most likely to be identified. This response was prevalent amongst only a small number of mental health professionals (three out of eight) but the researcher felt that it was a relevant issue to present. One Administrator of a Dual Diagnosis Program (P2) stated, “The most egregious ones are picked up in the sense of the most obvious who particularly appear to be slow, you know cognitively impaired.” A Chief of Forensic Psychiatry (P7) said:

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People generally with IQ's below 60 functional levels that are often very impaired and so there is no problem with detection of the persons who may have this problem. The ones for whom there are issues of detection are really people with functional IQ's in the 60-70.

The final statement in support of this pattern was by a Dual Diagnosis Program Worker (P8) who stated:

When a person does go into jail they meet with a classification officer that classifies where they need to go depending on those needs. So if there is an evident developmental disability they would flag that but if it's not evident such as fetal alcohol syndrome, they certainly have deficits and challenges that needs to be addressed and they often go undetected.

These statements are relevant in demonstrating that unless a disorder or disability is obvious and can be seen outwardly through behavior or physical features often they are not recognized in the Criminal Justice System.

### **(3) Readiness and Preparedness**

This theme pertains to the lack of training available within the Criminal Justice System, which contributes to criminal justice professionals not being appropriately prepared to deal with populations such as persons with dual diagnoses. Specifically, this theme involves patterns that pertain to the lack of preparation provided to criminal justice professionals in order to be able to appropriately respond to this population. Due to the lack of training, criminal justice professionals find themselves having to rely on common sense and on-the-job experience, which is not ideal for persons with dual diagnoses. Persons with dual diagnoses have unique needs that cannot be effectively met if the professionals are not aware of how to attend to these needs. Several patterns will be presented below in order to analyze this theme in more detail and provide a greater

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understanding about the lack of criminal justice training and its implications. Also it was prevalent amongst half of the mental health professionals' responses that they too, lack the skills and training to appropriately respond to persons with dual diagnoses. Mental health professionals specialize in mental disorder but lack specific training, for the most part, about intellectual disabilities and the co-occurrence of the two.

**No Formal Training.** The majority of criminal justice professionals stated that they had no formal training provided to them about how to appropriately attend to persons with dual diagnoses. A defence lawyer (P10) specifically stated when asked if he had any training: "No, none whatsoever." A mental health professional also stated his belief about the training within the Criminal Justice System. He said, "So just you know so I think they have appalling training" (Worker in a Dual Diagnosis Program, P8). Two significant quotes demonstrate criminal justice professionals' lack of training on persons with intellectual disabilities and dual diagnoses more specifically. One defence lawyer (P14) stated:

There wasn't any training. There's very little, well almost no formal training. In fact I was exposed to people with disabilities through my work because I was a staff lawyer in the central criminal court in downtown Toronto. So I was, in the first few years, I was always coming into contact with people who were mentally ill and who were facing prosecution and there was no formal training at that time.

This particular lawyer mentions that he had no formal training on dual diagnosis but then he begins to discuss the fact that he has had on-the-job exposure to disabilities. This quote is one example of how the term disability is used interchangeably with mental illness. He begins by discussing his exposure to disabilities but finishes by reiterating



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what he previously said with the use of the term mental illness. The same defence lawyer

(P14) goes on to explain:

I would say that a program that is directed specifically towards persons with concurrent disorders, that is to say mental illness and intellectual disabilities is not very common. There hasn't been specific training requirements like you can represent a mentally ill person or a person with an intellectual disability without any formal training you know you don't, now, you don't have to have any to act as their counsel.

This participant utilizes the term concurrent disorder to refer to persons with an intellectual disability and a mental illness when, in fact, in Ontario this is referred to as dual diagnosis.

A powerful inductive finding was that mental health participants responded that they, too, lacked training on dual diagnosis within their profession. As will be discussed in the accountability and responsibility theme, criminal justice professionals made mention of the fact that they believed it was the responsibility of mental health professionals to deal with this population of persons with dual diagnoses. Although only half of the mental health professionals interviewed agreed with the locus of responsibility, it is still relevant to highlight because there were no mental health professionals that specifically mentioned they had training on dual diagnosis. Either it was mentioned that they had none or they did not offer anything about their particular training on this population. Two significant quotes by mental health professionals will be presented to demonstrate this point. The first, an Administrator of a Dual Diagnosis Program (P2) said:

In terms of dual diagnosis, in particular, you know it's not provided to train. Certainly when I went through it was not

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provided specifically to this field or to developmental disabilities in particular and currently it's still not provided kind of as a focus. You can get it as an elective in a placement and so on but other than that it's not a big core aspect to the training in social work.

A director of clinical and educational services (P9) said, "There was no training at the time for people who have dual diagnoses so I didn't have a lot of training."

***Training was helpful.*** The difference between the two cohorts when it came to the question of training was a minor pattern that arose amongst mental health professionals' responses only. Although mental health professionals did not have any particular training on dual diagnosis, the majority of the participants (six out of eight) expressed that they found their training to be helpful. It was their belief that they received training specific to what they do (two mental health professionals, specifically an Administrator of a Mental Illness Program (P3) and a Manager of Specialized Services (P4)). The interviews revealed one limitation – the mental health sector has not been expanded to include persons with intellectual disabilities, and in turn, mental health professionals do not deal with dual diagnosis. Mental health professionals do not view this as a problem, however, because they have never been expected to include specific accommodations and provisions for persons with dual diagnoses and intellectual disabilities within their organizations.

**No Specific Guidelines.** In the Criminal Justice System there are no specific guidelines in place for responding to persons with intellectual disabilities and dual diagnoses. In turn, the Criminal Justice System is not effectively prepared to deal with these individuals when they do get involved with the system. All criminal justice professionals interviewed agreed with the lack of preparedness by the system. However

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this pattern was not prevalent amongst mental health professionals. As one police officer (P1) stated, "there is no real guideline for us. No special guidelines." Similarly, a defence lawyer (P10) stated, "there's really not a lot that is out there to assist lawyers." Therefore criminal justice professionals believe they are not adequately prepared to deal with persons with dual diagnoses when the situation arises.

A defence lawyer (P6) provided detail about the inability of the Justice System to respond to the needs of this specific population because of a lack of guidelines:

The guidelines with respect to the mental disorder are there in the Criminal Code. They are specified and one can avail himself of the defence of the old what we call it, not criminally responsible and we got specific guidelines. However, when it comes to the intellectual disabilities I'm at a bit at a loss being there is very little guidelines or guidance when it comes to individuals with intellectual disabilities and that's unfortunate. If a person has intellectual deficiencies there is no specific guidelines that say, hey let's order a report to see how deficient this person is when it comes to their intellectual cognitive skills and there is very little there. So the Criminal Code unfortunately is heavily focused on mental disorder but when it comes to intellectual capacity there is very little.

Under the Criminal Code mental disorder is defined as any "disease of the mind" and in turn criminal justice professionals attribute both intellectual disabilities and, although they lack knowledge of this concept, dual diagnosis as a mental disorder or mental illness as well. The Criminal Justice System is not appropriately prepared to understand and respond to the distinct nature of persons who have dual diagnoses.

**Learn through experience on the job.** The majority of criminal justice professionals (88 percent) said that they learn through experience on-the-job and they utilize their common sense in dealing with issues relating to vulnerable populations,

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specifically, persons with intellectual disabilities and dual diagnoses. Three responses demonstrate participant responses in support of this pattern. For example, one police officer (P1) said, "Experience dealing with these people, that is a motive that is probably the best." Two defence lawyers also expressed their agreement with this pattern. The first said, in dealing with persons with intellectual disabilities "we have to utilize our own experience and utilize resources outside of the office" (P6). The second lawyer stated, "It becomes on-the-job training, I don't think there is, I'm not aware of much that's available in terms of assisting/learning about how to deal with people with intellectual disabilities or the mental health" (P10).

**Dual Diagnosis is not well known.** Due to the lack of training amongst criminal justice professionals, they are ill-prepared to deal with persons with dual diagnoses in the Criminal Justice System. It was found that dual diagnosis is an issue within the Criminal Justice System that is not well known amongst criminal justice personnel. In fact seven out of eight criminal justice professionals believed that dual diagnosis was not well known in the Criminal Justice System. Six out of eight mental health professionals also believed this to be true. In total of the sample of 16 participants, 81 percent were in agreement.

One quote from a police officer (P1) described the lack of knowledge about dual diagnosis in the Criminal Justice System, and the overall tendency of the criminal justice field to attribute all mental impairments to a mental illness. The officer stated: "No I don't think it is as well known as it maybe should be but again we don't diagnose these people you know, we just deal with them as mentally disturbed." A second police officer (P12)

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also stated, "I really don't know, I have to be honest, I really don't know a lot about that concept or term."

Another significant quote mentioned by a defence lawyer (P14) was as follows:

It's not well known, it's becoming, it's still not well known among lawyers that don't do mental health work in criminal courts regularly. And it's more understood as a term relating not to mental illness and intellectual disabilities but mental illness and addictions that's where, that's how the term is used most frequently but even that term is not really well known.

As mentioned earlier, the lawyer is referring to a concurrent disorder or addiction and mental health problems (Centre for Addiction and Mental Health, 2012), whereas a dual diagnosis is defined as an individual with a mental illness and a co-occurring intellectual disability (Canadian Mental Health Association, 2014).

Two quotes by mental health professionals stood out as demonstrating the significance of the pattern that dual diagnosis is not well known. The first quote was by a worker in a Dual Diagnosis Program (P8) who said:

I don't think it is [well known]. The intellectual disability piece, the dual diagnosis piece, I don't think that is as well known as I think, what I can attest to that is that we get so many referrals and we get so many questions I just don't know what to do with this person. So that's a reflection of the lack of understanding and the lack of understanding about it.

When asked if dual diagnosis is well known in the Criminal Justice System a Director of Clinical and Educational Services (P9) stated, "I don't think so no. We have a great deal of difficulty sometimes in getting the criminal justice field to respond well or appropriately to people who have intellectual disabilities or a dual diagnosis."

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**What more should be done?** Questions about improvements and future reforms was included in the study in order to look deeper at what both criminal justice and mental health professionals believe could be done to better support persons with a dual diagnoses. For example, if more resources were available and services to send persons with a dual diagnoses or to divert them outside of the Criminal Justice System more progress could be made in supporting these clients. The theme of readiness and preparedness incorporates the need for Criminal Justice professionals to be equipped with a level of knowledge about dual diagnosis, which includes exactly what an individual's impairment entails, what can be done for him or her specifically around systematic accommodations, and what resources within the community are available. Providing criminal justice Professionals in advance with the knowledge of the resources and services available to these individuals would assist with much smoother transitions and prevent clients with mental illness, intellectual disabilities and dual diagnoses from becoming lost or misplaced within the Criminal Justice System.

All but one participant (94 percent) provided suggestions when asked both the interview questions, "What more should be done?" and "What resources could help you expedite a case for persons with dual diagnoses?" Several significant responses to the first question will be provided. Three significant mental health responses are as follows: "I think there really needs to be a really clear look at what kind of training, but not just training, but to see whether or not the training actually works" (Director of Clinical and Educational Services, P9).

I actually think that jails and institutions are bad places to look after people with intellectual disabilities. So if I were in charge of things I would put more resources into

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prevention, helping people avoid coming into conflict with the law in the first place, helping them to be more integrated into the community with adequate support so that they can live normal lives in the community rather than waiting for them to come into contact with the law and then expecting them to adapt to something that is really designed for people without intellectual disabilities. (Head of Forensic Psychiatry Division, P5)

There needs to be a thorough review of the continuum of care. So having a network of secure care that is available for people and highly supported community care is important for the people who have not been charged as well as the people who have been charged with criminal offences. And the presence of highly structured and supported community care that is well resourced and appropriate for the challenges will prevent people from going into the Criminal Justice System in the first place. (Chief Forensic Psychiatrist, P7)

When Criminal Justice Professionals were asked about what more they thought should be done in the Criminal Justice System in order to better support persons with a dual diagnoses, one defence lawyer stated:

It should be recognized in the legislature, in other words codification. Like the Criminal Code should have something, and as soon as we recognize it lawyers jump all over it, judges jump all over it. Until that's done it's just going to go over our heads and we're just going to basically continue doing more of the same. But if it's recognized in the legislature something will be done. So I would like to see it codified as a term in the Criminal Code that judges, the courts and the lawyers would have to consider when one taking a plea or finding an individual guilty. Everything seems to be in place but we have to sort of expand it for the intellectual aspect of it and that's lacking so we need more attention, and like I said, if we codified it all of a sudden it's something that we could then push the professionals to give us the appropriate opinion on. I think we have to get the Parliament through our representatives to recognize dual diagnosis and somehow incorporate it into the Criminal Code (Defence Lawyer, P6).

I think that lawyers should be encouraged to do more training that involves consideration of mental illness and

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intellectual disabilities and I actually think that probably like specific training with respect to intellectual disabilities is important. You have to combine that training with conventional training about the law for lawyers (Defence Lawyer, P14).

A mental health professional also commented consistently with the sentiments above:

The entire treatment approach has to flex around the borderline diagnosis. Everything from the approach, the assessment, staffing supports, all that have to be tailored to it so I think the issue of the dual diagnosis really has to come at the forefront and it can't just be a part of treatment and approach, I mean everything has to be structured around it (Behaviour Therapist, P15).

When asked the second question about what resources need to be in place to expedite a case for a person with dual diagnoses, several significant statements arose from both mental health and criminal justice professionals'. Two statements from mental health professionals included:

Having resources in the community, having the housing and clinical supports and adequate level of staffing supports in the community where they can go and have an address to live. That's one of the major reasons they are kept in way longer than they need to be. Clarification of links between the jail, police and community providers who to go to (is required) (Administrator of Dual Diagnosis Program, P2).

I think having better access to, and knowing what the resources are and shorter waits for those resources. I think that having readier or more readily available accessible access to things like case management and housing and psychiatry. It's difficult to find psychiatry for people with a dual diagnosis (Administrator of Mental Illness Program, P3).

In contrast to mental health professionals' responses, criminal justice professionals emphasized the fact that they believed resources needed to come from the mental health profession. Three significant responses from defence lawyers are presented below:



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Resources would have to be coming from medical practitioners like somebody beyond the courtroom, which is beyond the judge and the lawyers. It would have to be, it doesn't have to necessarily be a doctor, it could be a social worker who is able to provide a court with a report or a psychiatrist or a psychologist. So definitely the mental health resources would have to be expanded (P6).

There is one problem, there is not enough beds in the hospital so people languish in jails waiting to be sent to CAMH for instance to be assessed. So I mean the government needs to pump more money into more available assessment beds in the hospital because people are just lining up and being warehoused in the jails while they are waiting to be sent to be assessed to see if they are fit or to see if they are criminally responsible so that is a big problem (P11).

If more resources were devoted to having professionals more accessible instead of having, so let's say for example, I have a typical client especially with a dual diagnoses that client may have to wait two months to initially be seen by a professional. If that time could be cut down it would benefit everything, it would benefit the justice system, it would benefit the accused person more than anything. The quicker that person is exposed to a system the better it is for that person (P13).

**Equality.** The majority of both criminal justice and mental health professionals agreed that persons with dual diagnoses are not treated equitably under the law. Two significant responses and one unique response from criminal justice professionals will be presented. A defence lawyer (P6) stated, "I would have to say no [they are not treated equally]. I would have to say that with a definite no. We should spend; have more resources to determine whether someone had dual diagnoses." This statement also coincides with the above pattern because he discussed the need for more resources to be implemented for persons with dual diagnoses. Another defence lawyer (P11) also said, "Well no [they aren't treated equally] because you got sick people stuck in jail with not

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sick people who everything's magnified, it's horrible you know." A different defence lawyer (P16), provided a unique response:

Ya [they are treated equally] but that's not, I don't think that is a good thing. I think they should be treated differently. So that's what I was getting at when I was referring to I think there should be more diversion, more mental health courts. Treating everyone equally is not a good thing; some people have different needs so treating them the same as everyone else doesn't help. Isn't that the whole point of accommodation is that you don't treat everyone the same? Which you want as a goal of justice but sometimes justice is served by treating people different."

This statement demonstrates that there are some criminal justice professionals that understand the meaning of equality for persons with vulnerabilities. Two mental health professionals' responses also stood out amongst the responses within this theme. The first mental health professional, an Administrator of a Dual Diagnosis Program (P2), said:

Access to resources or services for people with an intellectual disability or developmental disabilities is inequitable across the whole system whether you're talking about health, health care, justice social services, they are the most vulnerable and marginalized group in our systems from my perspective.

The second mental health professional, an Administrator of a Mental Illness Program (P2), stated:

No, it's not equitable for people with dual diagnoses. The expectation to show up at probation meetings, the expectation to show up at court, I think these people need support and reminders to do that and I don't think that that's provided in the justice system which doesn't give them equitable access to moving through the system (P3).

### **(4) Accommodations**

**Lack of specific accommodations and appropriate resources and services.** Although accommodations are available in the Criminal Justice System for

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anyone with a mental impairment the difficulty is that the accommodations span all three impairments, intellectual disabilities, mental illness and dual diagnosis. Respondents noted that accommodations have not been developed to suit the distinctive needs of each vulnerable population. This pattern was more prevalent amongst mental health professionals, with seven out of eight participants referring to it. Amongst these responses some mental health professionals stated that they believe there are no appropriate resources or services available for accused persons with dual diagnoses. On the other hand, a small number (three out of eight) of criminal justice professionals admitted to the lack of accommodations in the Criminal Justice System for persons with dual diagnoses. Although the other five participants did not explicitly state that they believed there are no accommodations available, they did not readily provide any specific accommodations that they felt were in place for persons with dual diagnoses.

Three significant statements made by mental health professionals illustrate the belief about the lack of accommodations. A Manager of Specialized Services (P4) stated:

For accused there are absolutely no accommodations and in fact one of the reasons there is an overrepresentation is when a police officer does an arrest, they don't necessarily know the person has a developmental disability or a dual diagnoses.

A Head of a Forensic Psychiatry Unit (P5) said:

I don't think they would be accommodated at all, that's part of the problem of the Criminal Justice system is that it's not particularly dealing with the individual. It deals with large numbers of people and they have standard protocols that they tend to impose. Expect people to adopt the protocol rather than the other way around.

An administrator of a dual diagnosis program (P2) made reference specifically to the lack of resources available for persons with dual diagnoses. He said:

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Appropriate services haven't been accessed or been able to manage what those behaviors are. It's also an access issue; they may be ending up as an accused in the Justice System because there aren't any other appropriate services and less intrusive services.

Criminal Justice responses to this pattern were not prevalent. Three defence lawyers stated that accommodations for persons with dual diagnoses are lacking in the Criminal Justice System. One particular defence lawyer (P11), when asked if he felt accommodations were available said, "No specifically no."

The next two patterns that will be presented are minor patterns within this theme but the researcher believed they were still relevant to highlight.

*Difficulties faced by persons with Dual Diagnosis.* Criminal Justice Professionals made mention of the fact that persons with dual diagnoses will have difficulty communicating, and in turn, this may be a detriment to their own defence. They may not be able to testify in their own best interests or effectively express their 'side of the story'. One defence lawyer (P14) stated:

They're going to have limitations with communications, with you know, with understanding questions and communicating or providing answers in intelligible ways and remembering things. You know they're going to have all these problems.

Emphasizing and discussing the lack of communication is significant because the Criminal Justice System needs to be made aware of the ways in which they need to make modifications to accommodate persons with dual diagnoses.

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Two Criminal Justice professionals discussed specific difficulties faced by victims who have an intellectual disability or dual diagnoses in the Criminal Justice System. The first, a defence lawyer (P6) stated:

Well as victims it's a horrible process being you know cross-examined. It's a terrifying process and you take someone that is vulnerable if the case goes the distance and their being cross-examined. It's traumatic being cross-examined by lawyers being suggestive to them that they are being untruthful; it's tough. It's tough they feel they are not being taken seriously, they are being mocked, it's not pleasant for people who are completely sane and you know fully functioning intellectually. It's tough but you know you throw in those variables and it's more than tough.

Another police officer (P12) discussed the difficulty of witness credibility and persons with a dual diagnosis. He said:

It's difficult sometimes to deal with them as victims because sometimes there, you know when they do their statements and that sort of thing things change. So the Criminal Justice System has a hard time because they are not consistent so it causes a problem for the case and the case sometimes collapses because of that.

The interviews revealed that accommodations need to be made for alternative ways to testify, in addition to those that are already available such as video recorded testimonies or testifying behind a screen.

*Accommodations may be made but they are not the best.* Participants discussed specifically the positive leaps that have been made towards having accommodations made for vulnerable sectors. They highlight, however, that most of the accommodations in place currently have been developed for persons with mental illness specifically, so individuals who have an intellectual disability or a dual diagnoses are being dealt with as

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a person with a mental illness exclusively; the various problems and issues faced by them in particular are being disregarded.

Two significant statements by mental health professionals will be presented below. The first professional, an Administrator of a Mental Illness Program (P2), discussed two accommodations in particular that she believed were in place, but again, do not support persons with dual diagnoses effectively:

I have seen yes, that you know people try to make accommodations for people with dual diagnoses in the justice system. I've seen but I wouldn't say that those accommodations are necessarily the best, but I think that they are what's available. So I have seen people with dual diagnoses kept in seclusion while they are in jail just to kind of protect them from the rest of the population. Not because they have been difficult because they don't seem to have any other options to kind of support that person to not be involved. I have seen people with dual diagnoses be put through the forensic system trying to avoid them having to go to jail but that forensic system, um mental health system isn't designed for people with a developmental disability. So they often kind of get stuck. It makes it the double stigma of having a mental health and forensic triple stigma and a developmental delay makes it even harder to find community support and housing for them. So I think that yes, people recognize that something different needs to happen for these people but their hands are tied with what they are capable of doing to accommodate them.

The second mental health professional, a manager of specialized services (P4) stated:

What they do tend to do frequently in (an Ontario) Detention Center is they get placed in jail and this is my experience everywhere working with people all over Ontario is that they will put them in solitary for fear they may get hurt. Nobody gets treatment in jail. In fact they will have been on medication and the medication is not given to them. For example, I just had a kid in jail last week who was on, who has severe Attention Deficit who we had been treated in the clinic with Dexedrine and when he went in jail they refused to give him his dose of

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Dexedrine and here he was in solitary confinement with no Dexedrine for his ADHD.

### **(5) Accountability/Responsibility**

This theme looked specifically at where both mental health professionals and criminal justice professionals believe the responsibility lies in dealing with persons with dual diagnoses. The question becomes: who is accountable for making justice services specifically accessible for persons with dual diagnoses? Both groups of respondents were asked questions related to this issue.

**Criminal Justice Professionals do not feel responsible.** The interviews revealed that Criminal justice professionals believe it is the responsibility of mental health professionals to deal with persons with dual diagnoses. Mental health professionals responded that they believe the Criminal Justice System is not responsible or equipped to deal with persons with intellectual disabilities or dual diagnoses. Mental health professionals' responses showed that they believed criminal justice professionals could do better in gaining knowledge about vulnerable populations.

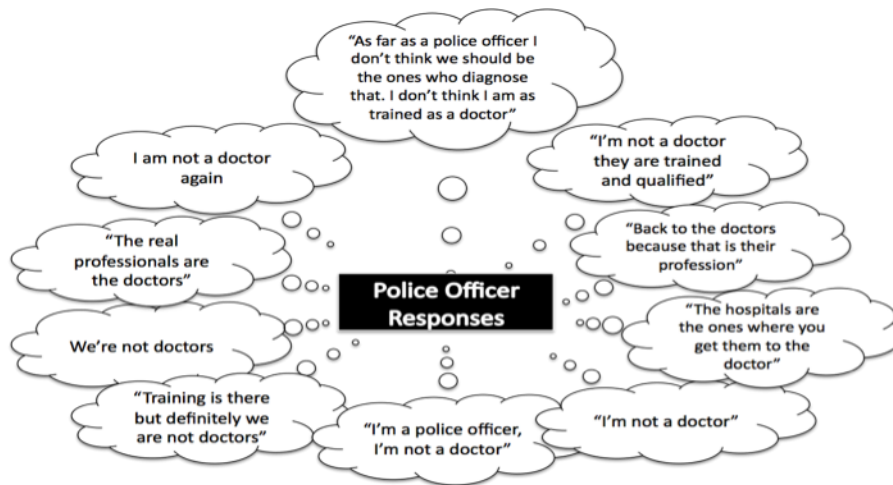
The majority of criminal justice professionals (five out of eight) believed it was the responsibility of mental health professionals to deal with persons with dual diagnoses. Two quotes stood out as significant in demonstrating the opinions of criminal justice professionals. One defence lawyer (P13) said, "I'm not, again, I'm not a health care professional. I am not a psychiatrist or a doctor or a health care professional." The second defence lawyer (P14) stated,

You're not a medical professional; your knowledge is always a little bit superficial. You know there is a big debate right now among people who are trying to make the

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courts more sensitive to persons with disabilities, intellectual disabilities or mental illness. There is a big debate as to how much lawyers really need to know, you know I mean I think there's a lot of people who would say they don't really need to know that much, they need to know a bit but we, you know, we are lawyers and judges and Crowns, we're not clinicians and we shouldn't pretend that we are going to be or pretend that we are.

Figure 2: Significant police officer (P1) responses throughout interview that demonstrate responsibility and accountability pushed on to the mental health profession.



Two significant quotes will be presented below that demonstrate mental health professionals' opinion about the limits of their own responsibilities vis-à-vis understanding persons with intellectual disabilities and dual diagnoses. An Administrator of a Mental Illness Program (P2) stated, "I don't think there is a big effort to understand what having a developmental disability or dual diagnosis means when somebody is in jail or in the justice system." A Worker in a Dual Diagnosis Program (P8) said:

No [doesn't think criminal justice professionals feel a responsibility to be knowledgeable about dual diagnosis]. Ok let me clarify, I don't feel that the legal professionals care, they don't want to know unless it specifically will help their case. All they want is like three sentences, this is what I have done, these are the services I have connected them to. They don't even care what the service is as long as on a paper it says this person is connected to this community



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agency. They kind of look at everyone the same and that's where we kind of step in and say you cannot treat this individual the same as this individual because they have very unique needs, exceptionalities what have you, and those are all playing a part specifically to why they are here today. But if I wasn't saying that I feel as though, and not just myself I am confident that my colleague would say the same, that they would just kind of throw down the hammer and sentence them like they would any other individual.

The several quotes shown above illustrate that responsibility is shifted on to mental health professionals. Criminal Justice Professionals reported not feeling specific responsibility to be knowledgeable about dual diagnosis and they do not take any initiative to learn more about the vulnerabilities these individuals may have.

**Mental Health Professionals do not feel responsible.** The majority of mental health professionals (63%, five out of eight) did not feel any specific responsibility to be knowledgeable about persons with intellectual disabilities and dual diagnoses. Three specific quotes from two separate mental health professionals demonstrate this pattern. An Administrator of a Mental Illness Program (P2) stated, "I don't see that responsibility, I actually see almost the opposite. A lot of people saying this is a mental health facility so we don't work with people with disabilities." The second mental health professional, a Behavior Therapist (P15) said, "I think the majority unfortunately don't feel an obligation to know about special populations. I think slowly it's changing but right now the majority of people in my field are pretty ignorant on that." A Chief Forensic Psychiatrist (P7) stated:

I certainly, where I am here, and this is sort of true of New Zealand, most psychiatrists feel they have skills in working with people with serious mental illness, and to some degree personality disorder, but most of us feel much less

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competent in working with people with intellectual disabilities.

Two very minor themes that arose will be presented next. Although there was a lower response rate for the two themes, the researcher believed they were important to highlight. The following two themes demonstrate some progress within the mental health field.

*Should serve persons with intellectual disabilities.* This pattern looks specifically at two mental health professionals' beliefs that the mental health sector should be responding to persons with intellectual disabilities and dual diagnoses.

An Administrator of a Mental Illness Program (P2) stated:

I think that even if it is a forensic unit we should still be serving people that have developmental disabilities because I don't think that people should be siloed. Like no, they have a developmental disability so they have to be served by the disability group. I think that everybody here has a mental health issue so we should all kind of work from that framework. So part of my role and philosophy is making sure that our team has the skills to be able to do that the skills and support to be able to do that.

A Director of Clinical and Educational Services (P9) said:

We need to be serving people with intellectual disabilities who have a wide variety of needs. I believe that some organizations are less likely to take somebody who has a dual diagnoses or who has a very significant problem behaviour but we're more likely to take them.

*Obligation to inform and educate the legal system.* Three mental health professionals in particular believed that they had an obligation to inform and educate legal professionals about persons with intellectual disabilities and dual diagnoses. Two specific responses from mental health professionals to support this pattern are as follows:

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A large aspect of addressing these issues is education of providers in the Justice System of how to recognize someone with cognitive difficulties. Whether they be due to mental illness, ABI or intellectual disabilities and adapting some of their interventions (Administrator of Dual Diagnosis Program, P2).

My obligation is to inform the legal system because there is just such a lack of knowledge in terms of developmental disabilities and the legal system. So if I am working in the legal system I believe that I have an obligation to inform lawyers, police, Crown attorneys, victims, witness, court reporters you know court workers I believe that is my role (Manager of Specialized Services, P4).

**Resources from mental health profession.** This pattern was also mentioned previously within the readiness and preparedness theme but it is also significant to the theme of accountability and responsibility. Criminal justice professionals discussed that the justice system is in need of more mental health involvement and more psychiatric care linked directly to the justice system, rather than having to make outside referrals. They are adamant in saying that they believe resources should come from the mental health service sector. Although some criminal justice professionals make mention of the fact that they need to provide more mental health resources within the Criminal Justice System, there is no real specification as to who they believe is responsible and accountable for making this happen.

Three quotes from defence lawyers' responses to interview questions will be presented below. The first stated, "There is a greater need for psychiatric care, for psychiatric assessment in the justice system. I would say that as a whole that is a resource that is woefully lacking" (P10). The second defence lawyer (P13) said:

It would be helpful if more resources were devoted to having, I'm not sure if I'm suggesting that the criminal court system turn into a social agency but it's unfortunate that a

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lot of individuals are taken in by police because they are charged with a criminal offence because of their disability. So I would like to see more resources devoted in that respect in terms of whether it entails having more health care professionals, maybe having more staff doctors on there at the courts. What would be helpful is if there's a situation where a person instead of being housed in the jail but is in custody if there could be more resources devoted into beds in hospitals which is something that's been an issue within the Criminal Justice System for years.

The last defence lawyer (P13) specifically discussed the gaps between criminal justice and mental health services, which slows down the process of getting clients assessed. He expressed that the disconnect needs to be reduced and mental health services should be provided directly within the Criminal Justice System. He said:

More resources should be made available. There is a bit of a disconnect so if there were more agencies or more access in the court system itself, instead of having referrals made to outside agencies. It would speed up the process if there was more of a direct connection between courthouse and the actual programs or professionals that are helping this person.

**Collaboration.** This final pattern under the theme of accountability and responsibility is the end goal one expects to occur in order to best support and identify individuals with intellectual disabilities and dual diagnoses in the Criminal Justice System. Having shared responsibility between both mental health professionals and criminal justice professionals will allow for more effective resources to be developed and appropriate accommodations within the Criminal Justice System for persons with dual diagnoses. Through collaboration both service sectors can learn from each other and more progress can be made at a much faster pace. Through an analysis of participant responses it was evident that some professionals have been collaborating frequently with

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other service agencies already and it assists with supporting clients in the best way possible.

The majority of both mental health and criminal justice professionals (75 percent) agreed that collaboration is required in order to more effectively attend to the needs of persons with dual diagnoses in the Criminal Justice System. Most responses from both mental health and criminal justice professionals outlined collaboration that is already taking place between the criminal justice and mental health sectors. Two defence lawyers made statements that both represent the collaboration that is currently taking place and the need for more guidelines and collaboration that is required. A defence lawyer (P6) stated that they usually have mental health supports but there is a need for more collaboration as well:

When it comes to individuals that are mentally challenged or are intellectually disabled or challenged I should say we usually get reports from psychiatrists that work closely with the court system, forensic psychiatrists for example, and those reports assist us a great deal. I personally, when I have an individual with a deficiency intellectually or mental difficulties I have to obtain the services of a psychologist, a psychiatrist, or the social worker a triage team to give me a report exactly how this individual is faring in the community.

If someone is intellectually challenged we should have more guidelines and more professional input from the experts like forensic psychiatrists or sociologists or psychiatrists or social workers that may be in the best position to say these are the challenges that are present when it comes to intellectual disabilities and in that we're lacking I think severely in the Criminal Justice System.

This defence lawyer stated that he tries to seek outside assistance when he comes across a vulnerable client but it is not a common act by most criminal justice professionals. The second defence lawyer (P10) stated:

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If you have a dual diagnoses issue inevitably I'm going to have some other social workers or mental health professionals that are there to assist. If a diagnosis is there it's because somebody else has made it. I get that assistance from the social professionals on really how to deal with these people in a more effective way. We will get a mental health professional involved to assist at the beginning stages to identify any issues that the person would have and then that helps us in figuring out how we're going to approach it, helps me in terms of how I'm going to approach the situation and advocating on their behalf.

Two mental health professionals also discussed what specifically is required in order for effective collaboration to take place. An Administrator of a Dual Diagnosis Program (P2) stated:

In terms of the interprofessional, it's about that the skills needed to work effectively with this population is a multidisciplinary team but working in a way that is more integrated and not sort of each individual doing their own thing but more working effectively together with clarity of roles and purpose.

A Behavior Therapist (P15) said:

Start from the ground up, hire a team of you know clinicians and possibly advocates that know dual diagnosis. Get them trained on the Justice System, start to collaborate the talks there and then build up and I think what is needed is one big cave for someone with a dual diagnoses to be served well in the Justice System, provided the support, the advocacy and the education is seen through regardless of the outcome. Ongoing education and collaboration with the mental health sector and the Justice System (is required).

### **Revelatory Phrases**

Revelatory phrases within this research were statements made by participants that really stood out to the researcher and made one think more deeply about the comment and its significance. Several revelatory phrases were found amongst both mental health and criminal justice professionals' responses to interview questions. Four revelatory

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phrases from criminal justice professionals will be demonstrated below and they will be analyzed in detail in the discussion section. One defence lawyer provided the first two revelatory phrases. The second phrase was made by a different defence lawyer and the last statement was said by a police officer. The phrases are as follows:

There has been a culture of regarding what happens inside the courtroom as the most important thing. You know like we're not concerned with the persons like outside the courtroom, we're concerned about you know finding out what happened in this particular case and whose guilty and whose not (P14).

I actually think what our biggest problem is that in the justice profession anyways, is that we we're not vigilant enough in respecting the autonomy of persons with impairments. You know we underestimate their ability to participate in the process; when they're adequately accommodated they often can. (P14).

The Criminal Code is void to a degree to individuals with a dual diagnoses. It's unfortunate there's not a great deal of legislation when it comes to people with dual diagnoses. As I indicated the emphasis is mental capacity to understand the right from wrong and whether the person can appreciate the consequences of his or her actions (P6).

When we have reasonable grounds to lay a charge we do that and people aren't separated by you know, I have a mental health issue or I have that issue or this issue, they are all sort of pushed into the same sort of flow (P12).

### **Figure 3: They Know How to Play the System**

Several significant quotes from a police officer (P1) are demonstrated in this table. All of the quotes within the table center on the idea that persons with dual diagnoses, intellectual disabilities and mental illness know how to “play the system”.

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They Know How to Play the System
“Don’t get me wrong though because a mentally disturbed person knows how to play the system as well, people don’t believe that but their smart enough. They know if they calm down when they go to the hospital and they’re not a danger to themselves they’re going to actually get out”
“The person who is disturbed knows how far they can go because they can play the system too, it’s a two way street here. They know how to play the system.”
“I have been fooled. I don’t think anybody is fool proof because no matter how you look at it some of these people are very smart, it's like they know how to turn it on and how to turn it off”
“But the smart ones they are very smart don’t get me wrong and we have dealt with enough of them. They know exactly which buttons to try to push”
“Well to put it bluntly it’s the people who are disturbed who can really fool the system. That’s my real judgement of this because obviously mentally ill people they can turn it off and turn it on as well as anybody I know.”

In support of the chart above, one mental health professional said:

One of my individuals unfortunately, again another individual that has borderline, very misunderstood by the court incredibly manipulative and was able to you know talk his way out of charges and manipulate the courts such that he was allowed free reign of the court house whenever he wanted. So all charges were dropped, so he could roam around the court house free whenever he chose to (Behaviour Therapist, P15).

Five revelatory phrases from mental health professionals are illustrated below and they will be discussed in detail in the discussion section.

It seems to me that all the kind of normal thinking that the Justice System would do completely goes out the window with someone with an intellectual disability (Administrator of a Dual Diagnosis Program, P2).

I hear the references often our jails are now the new mental health institutions because the percentage of inmates is so profound in there (Worker in a Dual Diagnosis Program, P8).



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There is an overrepresentation of them (persons with intellectual disabilities) in the legal system and each case is individual. In fact one of the reasons there is an overrepresentation is when a police officer does an arrest they don't necessarily know the person has a developmental disability or a dual diagnoses right, so they take them in just like they would anybody else and they interrogate them just like they would anyone else. The problem is the people we support don't know their legal rights so they end up giving things up or saying yes, because of compliance issues (Manager of Specialized Services, P4).

Jails and institutions are bad places to look after people with intellectual disabilities (Head of Forensic Division of Psychiatry, P5).

In terms of perpetrators it's either one or the other in that either they're perceived to be incredibly dangerous sexual deviants solely because they have a dual diagnoses or that they are innocent children and have no idea what they were doing and they should be let free to roam the streets. It's usually the latter in my experience. On the one hand, clients who are very aggressive and may have hurt people may not be charged by the police because they are seen as vulnerable and poor unfortunates and they shouldn't go through the Justice System (Behaviour Therapist, P15).

### **Discussion & Conclusions**

#### **Equality in the Criminal Justice System: Fair or Unfair?**

The *Canadian Criminal Code* provides and reinforces formal equality for all persons within Canada. Formal equality is meant to ensure that all individuals within society are the same and consequently equality is achieved when all are treated and responded to in the same manner (IWRAW Asia Pacific, 2001). This view of equality disregards the specific needs of persons with disabilities and can make their differences invisible in modern society. In turn, persons with disabilities often experience rights

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violations and the lack of availability of accommodations. Through an analysis of section 15(1) of the *Canadian Charter of Rights and Freedoms* it was believed that the *Canadian Criminal Code* was advancing away from a formal sense of equality and attempting to adopt a more substantive way of viewing equality where persons with disabilities were made visible and difference was embraced (Hosking, 2008). However, a significant problem that exists in the implementation of Section 15(1) of the *Canadian Charter of Rights and Freedoms* is that it is broad and relatively benign. Although the breadth of equality as a guarantee under the Charter is an opportunity to be inclusive of a variety of marginalized groups, it is not clear, as it stands, what equality may mean for an individual with an intellectual disability or a dual diagnoses compared to an able-bodied individual. Therefore "equal treatment before the law does not translate into equality under the law" (Pauls et al., 2006, p. 7)

It became evident in the Supreme Court Decision of *Andrews v. The Law Society of British Columbia* (1989) that section 15 of the *Canadian Charter of Rights and Freedoms* continues to enforce the idea that equality is achieved when all citizens are treated the same, which in some cases can be cause for inequalities amongst certain individuals. Andrews was a British citizen and a lawyer who moved to Canada with the intention of joining the Law Society of British Columbia. He discovered that he was unable to become a member due to s.42 of the *Legal Profession Act* which limits membership to Canadian citizens only (*Andrews v. Law Society of British Columbia*, 1989). He sued the Law Society, claiming that the provision contradicted his s.15 *Charter Rights*. The British Columbia Court of Appeal ruled that the requirement of Canadian citizenship to practice law was unacceptable and unfair, and in turn, did violate s.15 of

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the *Canadian Charter of Rights and Freedoms*. It was declared that the practice of law is a private profession that did not require Canadian citizenship in order to effectively complete the duties of the job (*Andrews v. Law Society of British Columbia*, 1989).

Although this case is not specific to persons with disabilities it brings up important points about the lack of specificity of the true meaning of equality for different groups of people under s.15 of the *Canadian Charter of Rights and Freedoms*. Section 15 is not a guarantee of equality for persons with disabilities under the law because it does not include recognition of the distinct needs of persons with impairments. The *Ontario Human Rights Code* outlines that individuals should be protected if they have a disability. The difficulty becomes that it is not specific in outlining what exactly this means for persons with disabilities and how they should be protected. It must be recognized under the law that the differential treatment of persons does not necessarily result in inequality. However identical treatment, which is the expectation under Section 15, can contribute to significant inequality amongst persons with vulnerabilities, such as intellectual disabilities and dual diagnoses.

The Criminal Justice System continues to struggle with the idea of full recognition of vulnerable persons with unique and distinct needs under the law as requiring distinct modifications. Although progress is being made, significant advances are still required in order to achieve substantive equality. The Law Commission of Ontario (2012) has identified that in order for persons with disabilities to achieve equality there must be recognition that they require assistance, support and protection, and as such, may require special modifications in the legal system. Accommodations for

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vulnerable groups, therefore, should not be seen as contradictory to the achievement of equality.

A significant question remains: To what extent should the Criminal Justice System accommodate to ensure substantive equality? The challenge lies with the fact that Criminal Justice Professionals follow the rules and procedures outlined within the *Criminal Code* and case law which reflect the notion of formal equality. There is the perception by criminal justice professionals, as indicated in Cant and Standen (2007), that implementing special protocols for persons with disabilities puts them at an advantage over other individuals in the court system. This perception, in turn, reduces the motivation within the Criminal Justice System to develop a greater understanding and knowledge of vulnerable individuals. As such, a move towards the development of more appropriate accommodations and services for persons with intellectual disabilities and dual diagnoses in the Criminal Justice System are not as well established as they should be. This perception also continues to reinforce a sense of formal equality within the Criminal Justice System.

The Law Commission of Ontario (2012) expects that the Criminal Justice System should act on the assumption that assistance, support and protection are necessary for persons with disabilities to achieve equality. The lack of accommodations would increase their risk of rights violations. It can be argued that it is counterproductive for the Criminal Justice System not to provide the appropriate accommodations to persons with dual diagnoses. This can be attributed to the fact that persons with dual diagnoses may experience rights violations and inequalities due to their lack of ability to appropriately interact with the court system if accommodations are not provided to them. Individuals

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with impairments require accommodations in order to be able to participate effectively within the Criminal Justice System (Law Commission Ontario, 2012).

Criminal justice professionals are applying the law according to the *Criminal Code* and making decisions consistent with case law and their professional guidelines.

The needs of persons with intellectual disabilities and dual diagnoses are specialized, and greater attention on a systemic level is required. Critical Disability Theory stresses the fact that disability is a social construct (Devlin & Pothier, 2006), which is not caused by impairment but results from the social restrictions that are imposed upon persons with disabilities (Thomas, 2007). The notion of the structural limitations of the law and ensuring that the needs of persons with intellectual disabilities and dual diagnoses are met was clearly articulated by a defense lawyer in the current study:

It should be recognized in the legislature, in other words codification. Like the Criminal Code should have something, and as soon as we recognize it lawyers jump all over it, judges jump all over it. Until that's done it's just going to go over our heads and we're just going to basically continue doing more of the same. But if it's recognized in the legislature something will be done. So I would like to see it codified as a term in the Criminal Code that judges, the courts and the lawyers would have to consider when one taking a plea or finding an individual guilty. Everything seems to be in place but we have to sort of expand it for the intellectual aspect of it and that's lacking so we need more attention, and like I said, if we codified it all of a sudden it's something that we could then push the professionals to give us the appropriate opinion on. I think we have to get the parliament through our representatives to recognize dual diagnosis and somehow incorporate it into the Criminal Code (P6).

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This quote demonstrates the perception that changes need to be made structurally in order to have intellectual disabilities and dual diagnosis appropriately recognized and accommodated within the Criminal Justice System.

Additionally, although accommodations are in place in the Criminal Justice System, the lack of training, knowledge and identification procedures in place (Canadian Mental Health Association, 1998; Marinos, 2010; McAfee & Gural, 1988; Pauls et al., 2006) is one reason that accommodations are not likely used as frequently or appropriately for persons with dual diagnoses.

### **(1) Awareness, Knowledge and Understanding**

It was evident from the interviews with the criminal justice professionals that there is a paucity of sufficient knowledge about persons with dual diagnoses and their particular needs. Due to the lack of training that is received in the Criminal Justice System professionals working within the field find themselves with little comprehension about how to support clients that do not fit within the 'able-bodied' society. As one lawyer (P13) stated, criminal justice professionals have a very "basic rudimentary understanding of dual diagnosis." It is important to increase their awareness about intellectual disabilities and dual diagnosis and invest in specific training.

The finding of professionals' lack of knowledge can be attributed to the emphasis on able-bodied individuals within society with little recognition of those with impairments (LCO, 2012). The Law Commission of Ontario (2012) highlighted that because laws are designed and implemented by those of power within society, they are more likely to consider the needs of the 'able-bodied'. In turn, persons with disabilities

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and dual diagnoses often become excluded from mainstream society. Therefore, when persons with disabilities find themselves involved within the Criminal Justice System, several problems, attributed to a lack of knowledge and understanding of criminal justice personnel, arise. Most often criminal justice professionals are unaware of the problems that persons with dual diagnoses specifically face and, as such, they lack knowledge of how to identify and respond to the client's unique needs (CMHA Ontario Division, 1998). This was supported by a worker in a dual diagnosis program (P8) who bluntly stated that he believed police were significantly under-qualified and lacked knowledge of how to appropriately speak to persons with intellectual disabilities and effectively respond to their needs.

Critical Disability Theory takes the perspective that society should abandon ideas around 'normalcy' and study disability not as a separate entity but as something that is embedded within the notion of 'normalcy' (Titchkosky & Michalko, 2009). Until disability is recognized as something that is to be visible in society, a lack of knowledge and appropriate readiness to deal with such populations will be prevalent. Accepting the ideologies of critical disability theorists contributes to a leap towards substantive equality where difference amongst individuals in society is recognized and accepted (Hosking, 2008). Although there have been minor steps towards substantive equality, significant gaps in the understanding of intellectual disabilities and dual diagnosis still remain and the ability to effectively assist these individuals, in the Criminal Justice System, is still a significant problem (Marinos, 2010).

The respondents in this study revealed they lacked the necessary time to attend to persons with disabilities and dual diagnoses. The analysis demonstrated that their lack of

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attention is influenced by their lack of knowledge and understanding of the needs of persons with disabilities, and more so, of those with a dual diagnoses. There is no expectation within the Criminal Justice System that lawyers and police attend to the needs of persons with disabilities. As a result, criminal justice professionals are likely less inclined to take the time out of their busy schedules to address the needs of such individuals.

Within the Criminal Justice System, it is not the expectation that criminal justice professionals are knowledgeable and aware of how to identify and respond to persons with intellectual disabilities and dual diagnoses (Cant & Standen, 2007). In fact, several criminal justice professionals mentioned in their interview that they are not doctors or mental health professionals. It is not expected by the Criminal Justice System that criminal justice professionals have the knowledge, understanding and skills to respond to vulnerable populations in the same manner that professionals in the mental health field would.

In order for changes to occur with respect to lawyers' attentiveness to persons with intellectual disabilities, systemic adaptations must occur. The *Criminal Code* would require reformation to recognize intellectual disabilities and dual diagnosis in order for lawyers to change their perceptions and begin to take responsibility for these unique clients. There is a need for intellectual disabilities and dual diagnosis to be further embedded within the structure of the law in order for more significant changes to occur. Reiman (1998) argued that the justice system prides itself on the values of fairness and equality. It protects the rights of all and sentences proportionately those who violate laws. However, in some cases the Criminal Justice System violates these goals by violating the



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rights of vulnerable individuals who come in contact with the law, therefore reinforcing social inequalities.

Although the term mental disorder under the *Criminal Code* includes intellectual disabilities and dual diagnosis within its definition, the interviews reveal that the difficulty is the lack of emphasis on what those impairments individually require. The results suggest that if intellectual disability and dual diagnosis were better highlighted within the definition of mental disorder under the *Criminal Code*, perceptions at all levels of the Criminal Justice System would change, and knowledge and understanding about and motivation to assist persons with disabilities could occur. The problem is increased by the lack of understanding of Criminal Justice processes by persons with dual diagnoses (Encinares & Golea, 2005; Jones, 2007; Marinos, 2010; Polloway et al., 2011). The compounding nature of a lack of knowledge by persons with dual diagnoses of how to interact with the justice system and criminal justice professionals' lack of skills to identify and respond to persons with dual diagnoses increases the risk of rights violations and inequalities.

Two professionals within the study, namely a Chief Forensic Psychiatrist (P7) and a Worker in a Dual Diagnosis Program (P8), demonstrated that there are a lack of appropriate procedures and supports in the Criminal Justice System to respond effectively and appropriately support vulnerable populations, and persons with dual diagnoses in particular. This finding is consistent with a study by Cockram et al. (1993), for example, who similarly found that there is a complete lack of legal representation for persons with disabilities in the Criminal Justice System. The current study suggests that criminal justice professionals are often not aware that their client requires assistance and therefore

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the difficulties that persons with dual diagnoses face when interacting with the court system are not recognized.

A main difference that arose when looking at the responses of criminal justice professionals compared to mental health professionals was that they each placed blame on different sources. Criminal justice professionals, in their responses, emphasized the difficulties that persons with dual diagnoses have and why they do not fit within Criminal Justice practices. Many responded that the system is meant to primarily serve the 'normal' accused/offender, assumed to be rational, hedonistic and therefore culpable. As critical disability theorists suggest, a significant reason as to why persons with intellectual disabilities and dual diagnoses do not fit within the Criminal Justice System is because, society expects 'normalcy' and those that are on the outskirts of that expectation do not fit into society (see also Law Commission of Ontario, 2012; Titchkosky & Michalko, 2009). Criminal justice professionals do not have the skills and knowledge to appropriately cater to the needs of persons with dual diagnoses because of the assumption that only the able-bodied in society would access them (Law Commission of Ontario, 2012). Titchkosky & Michalko (2009) discussed the perception that within society 'normalcy' is the only way of life and, in turn, disability is defined as an impairment that requires adjustment in order to sustain that sense of 'normalcy'. This perception shows us that unless disability is attended to and cured, which is the liberalist perspective (Devlin & Pothier, 2006), they are not welcomed amongst able-bodied individuals as 'normal'; they become segregated, marginalized and labelled as 'abnormal' (Titchkosky & Michalko, 2009).

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The views that persons with disabilities should adapt to the rules and procedures of the Criminal Justice System reflect an individualistic perspective which coincides with liberalist ways of thinking, privileging 'normalcy' over the 'abnormal'. Liberalism makes assumptions that disability is a misfortune that needs to be prevented and cured (Devlin & Pothier, 2006; Hosking, 2008). On the other hand, most mental health professionals in the study discussed the neglect of the Criminal Justice System in changing laws and procedures in order to allow persons with dual diagnoses, keeping in mind all of their difficulties, to be able to be actively engaged in court processes. In the current study, many mental health professionals emphasized the fact that changes need to be made at a structural level in order for persons with dual diagnoses to be effectively and equally included in the Criminal Justice System. This finding supports the perspectives of critical disability theorists by emphasizing the social construction of disability, as mentioned above (Thomas, 2007).

On the other hand, the mental health professionals believed that it is the Criminal Justice System that does not have the appropriate modifications in place to efficiently support persons with dual diagnoses. This demonstrates the blaming effect, which supports the theme of accountability and responsibility, to be discussed later. This finding reveals that there is a lack of clarity around who is responsible for providing support and accommodating persons with dual diagnoses.

### **(2) Identification**

Based on the results, it is evident that there is a lack of identification of dual diagnosis in the Criminal Justice System, due to an overall lack of knowledge and

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training of criminal justice personnel. This finding is consistent with research by Hamelin et al. (2012) and McAfee & Gural (1988). Often when persons with disabilities enter the Criminal Justice System there is no consideration as to how their impairment may have affected the commission of the crime (Griffiths & Marini, 2000). It was found in a study by McAfee & Gural (1988) that 52.4% of individuals with intellectual disabilities were not identified by the court after their allegation, and 9.1% were not identified at their trial or at the imprisonment stage. It was also found that only 27.3% are identified at the time of arrest. Consistent with the above prevalence rates, Smith et al. (2008) found that 75% of persons with disabilities in the Criminal Justice System are not identified. In fact most often persons with disabilities are overlooked, misidentified and undiagnosed (Jones, 2007; Marinos et al., 2008), which further marginalizes this population of individuals and contributes to a lack of equality. Persons with dual diagnoses require special adaptations to be made but without the knowledge to identify them (Hasssan & Gordon, 2003), the need for accommodations is not recognized. This further reinforces the invisibility of persons with dual diagnoses in the Criminal Justice System. Consequently, the goals of substantive equality and Critical Disability Theory, seek to make the invisible visible (IWRAW Asia Pacific, 2001; Titchkosky & Michalko, 2009), are contradicted.

A Manager of Specialized Services (P4) discussed the need for persons with dual diagnoses to have advocates available to them in order to assist them throughout Criminal Justice processes (Encinares & Golea, 2005). Although this particular professional felt that advocates were necessary in order for persons with dual diagnoses to be detected, the reality is that the availability of advocates is very low in the Criminal Justice System. This is where a major breakdown occurs in assisting persons with dual diagnoses. There

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is a lack of collaboration between the mental health sector and the Criminal Justice System and, as such, these vulnerable groups are not receiving the supports and advocacy that they require, which subjects them to a greater risk of rights violations compared to able-bodied individuals in the justice system. Criminal Justice Professionals do not have the knowledge to identify vulnerable clients and provide advocacy on their behalf.

A major problem that was discovered in the current study, and which is a significant contributor to the lack of identification, is the lack of standard measures in the Criminal Justice System for recognizing persons with dual diagnoses (Hamelin et al., 2012; Pauls et al., 2006). This finding is significant because it emphasizes the need for more standardized methods of identification to be developed within the Criminal Justice System. There is a need for changes to be made at a systemic level so that there are specific protocols for criminal justice professionals that can be implemented and therefore followed. Clearly the implementation of identification tools in the Justice System is a critical step for persons with dual diagnoses in the Criminal Justice System.

In order to better prepare professionals working within the Criminal Justice System in the identification of persons with intellectual disabilities and dual diagnoses, Pauls et al. (2006) outlined seven guidelines for criminal justice professionals to follow in order to recognize the existence of an intellectual disability. The guidelines are as follows:

- Difficulty understanding questions and instructions
- Responding inappropriately or inconsistently to questions
- Short attention span
- Receipt of a disability support pension
- Residence at a group home or institution

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- Education at a special school or in special education classes and
- Inability to understand the caution (p. 22)

Another significant pattern of responses was an emphasis that identification most often comes from sources outside of the Criminal Justice System. The professionals reported that often information about a diagnosis will come from a clinician, or a family member; sometimes but less often self-reports may occur. A police officer (P1), as discussed in the results section, stated that most often vulnerable persons do not have family support and they are usually homeless. This finding is supported by Endicott (1991), who argued that the offender with an intellectual disability most often has little family or community supports. The heavy reliance on persons entering the system with a diagnosis already in place is detrimental. This leads to inconsistency in information and a lack of reliability of information, all leading to challenges in providing adequate supports. Still others progress through the system without ever being identified and, in turn, do not receive the court supports that they are entitled to (Marinos, 2010). Moreover the implementation of standard measures could also eradicate the dependence on outside sources as a means of identification.

It was also found in responses from mental health professionals that reliance on them, as clinicians, as a means of gaining a diagnosis may not be sufficient. This was found to be the case, because the results showed that many mental health professionals do not have a well developed knowledge of dual diagnosis and, in turn, would not be well qualified or knowledgeable enough to provide that type of a diagnosis. Marinos et al. (2008) provided support for this issue in saying that, "the general mental health professional may have limited knowledge of persons with intellectual disabilities and

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little, if any, real experience in interviewing, questioning, or evaluating the abilities of someone so labeled" (p. 131).

Finally, reliance on self-reports can be misleading, because most often persons with disabilities try to mask or hide their disability, in order to avoid the stigma that is associated with the diagnosis of intellectual disability within society; this is known as the cloak of competence (Edgerton, 1967; Polloway et al., 2011). If specific identification procedures are not in place in the Criminal Justice System, this issue can contribute to persons with a dual diagnoses not being identified.

The above literature demonstrates the lack of effective identification tools that are currently used and relied on by criminal justice professionals. This bodes for a need for more standardized measures to identify dual diagnosis in the Criminal Justice System. Again, as Critical Disability Theory states, we must begin to make changes at the structural level because disability is constructed by the ways in which they are responded to by society. Changes within the *Criminal Code*, which make disability and dual diagnosis visible, as is required in order to gain substantive equality, could contribute to significant positive changes in the perceptions and knowledge that criminal justice professionals have on intellectual disabilities and dual diagnosis.

There were two other significant factors, mentioned by both criminal justice professionals and mental health professionals, which contributed to the greater difficulty in identifying persons with dual diagnoses. The first factor, discussed only by criminal justice professionals, looked at 'diagnostic overshadowing'. Since mental disorder is broadly defined as "a disease of the mind", and is broad enough to include a number of

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mental impairments (Department of Justice, 1985), persons working within the Criminal Justice System can have considerable difficulty distinguishing between an intellectual disability and a mental health issue (Hamelin et al., 2012). Although it was not found in the results of the current study, some literature points to the reverse -- the intellectual disability can camouflage the mental health concern due to communication difficulties that persons with disabilities may face (Luckasson, 1988; Riches et al., 2006). Diagnostic overshadowing contributes significantly to a lack of identification of persons with dual diagnoses and is likely often the cause for the inappropriate or ineffective accommodations.

The second factor, which was discussed only by mental health professionals in this study, relates to the severity of a disability as a contributor to whether an individual with dual diagnoses is likely to get identified. It was found in the results and supporting literature that disabilities that are more obvious and severe were more likely to be identified (Griffiths et al., 2002; Hayes et al., 2006; Jones 2007; Pauls et al., 2006). Individuals with more moderate disabilities are viewed as having the capability to interact with the Criminal Justice System and, consequently, they most often do not receive special accommodations, such as the ones discussed in the *Criminal Code* Sections 486.1 and 486.2 (Department of Justice, 1985).

It has been demonstrated that individuals with disabilities who appear to be higher functioning, have a higher verbal capacity, and are skilled at concealing their disability will be less likely to receive accommodations. On the other hand, an individual with a disability who has lower verbal skills but is still capable of understanding complex information is more likely to be provided with accommodations (Pauls et al., 2006). The

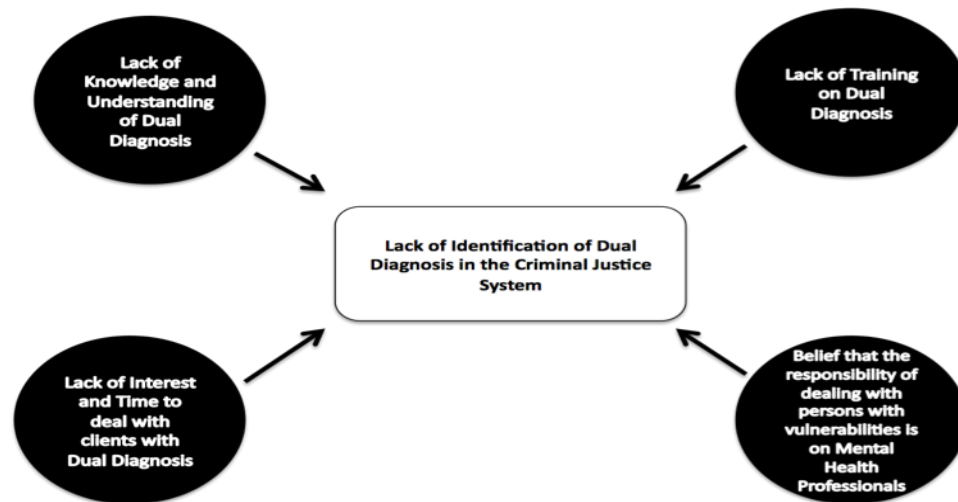


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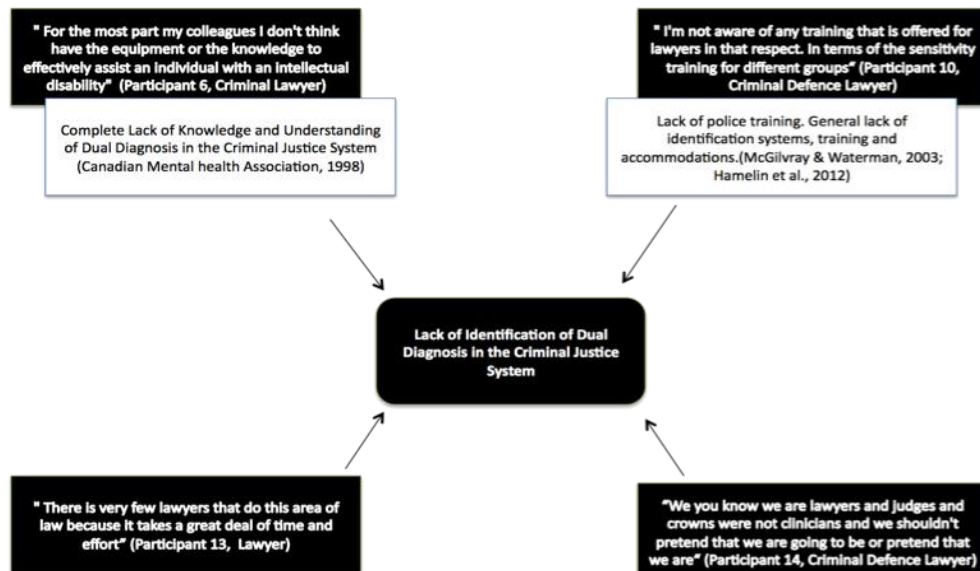
challenge becomes that since criminal justice professionals do not understand the in-depth nature of persons with intellectual disabilities and dual diagnoses, they base their decisions of whether to accommodate based on outward appearance and behaviours. Marinos (2010) noted that many individuals with intellectual disabilities do not display any outward physical features that might alert criminal justice professionals that an intellectual impairment exists. Outward behaviour is not a sufficient indicator of the need for accommodations because often, poor behaviour is interpreted as non-compliance and can be the cause for more charges rather than accommodations (Pauls et al., 2006). Since the 'able-body/able-mind' is the basis for theories of criminal behaviour and the administration of justice, particular behaviours such as lack of eye contact, non-response or a delay in response, for example, are more likely to be interpreted as indicators of guilt (Cant & Standen, 2007). Most often the Criminal Justice System is not designed to attribute disruptive behavior to an impairment of the mind, because bad behavior is punished, not excused. Therefore standardized training should be implemented in the Criminal Justice System in order for criminal justice professionals to become more knowledgeable about persons with intellectual disabilities and the specific struggles they may encounter. Through standardized training we can hope that criminal justice professionals will gain a better understanding of what an individual with dual diagnoses may require in order to interact more effectively in the Criminal Justice System.

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**Figure 4- Factors attributed to the lack of identification of dual diagnosis in the Criminal Justice System**



**Figure 4.1- Examples illustrating challenges in identification**



### **(3) Readiness and Preparedness**

The interviews illustrated that there is no formal training on dual diagnosis provided within the Criminal Justice System; this is consistent with the literature

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(Hamelin et al., 2012; McGilvray & Waterman, 2003; Pauls et al., 2006). Without formal training in the Criminal Justice System it cannot be expected that substantive equality will be adopted. Without training there will be a lack of identification and appropriate accommodations will not be provided (Hamelin et al., 2012).

Training needs to be ongoing in order for the Criminal Justice System to keep up to date on the current needs of persons with impairments and the services that are available within the community (Endicott, 1991; Hayes et al., 2006). Without ongoing training, persons entering the Criminal Justice System with impairments are unlikely to have their unique needs addressed. To reiterate, as the social model of Critical Disability Theory suggests, systemic changes need to be made in order for a change in the perceptions and attitudes of criminal justice professionals to occur. The tenets of Critical Disability Theory should be acknowledged and emphasized in order to reiterate the fact that disability should be made visible and included as an entity within 'normalcy'. This paradigm shift should occur in order for their rights and sense of equality to be identical to that of all other individuals in the Criminal Justice System (Titchkosky & Michalko, 2009).

Another significant issue that was discovered, based on mental health professionals' responses, is that they, too, lack training and, as such, considerable knowledge and understanding of dual diagnosis (Marinos et al., 2008). This is a critical finding, because criminal justice professionals attributed responsibility for dealing with vulnerable clients with mental health issues onto mental health professionals. Criminal Justice Professionals also rely on mental health professionals for collaborative purposes, and yet, the individuals interviewed acknowledged that their knowledge of dual diagnosis

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was limited. In addition, the lack of knowledge of mental health professionals about dual diagnosis makes it difficult to provide appropriate supports and advocacy for accommodations in the courts. The issue of diffused responsibility allows each professional discipline to shift or avoid accountability for acquiring needed expertise. It would be most effective for all agencies that provide services to vulnerable groups to be responsible for acquiring the appropriate knowledge and skills to effectively provide for these clients. Knowledge of dual diagnosis needs to become more prevalent across all service agencies and collaboration with developmental services would also increase the understanding of persons with intellectual disabilities (Jones, 2007).

As noted in this research, dual diagnosis is not well known in the Criminal Justice System. With most criminal justice professionals reporting their knowledge was limited to on-the-job experience. This ad hoc approach to learning about the needed supports for persons with dual diagnoses does not provide professionals with in-depth, well-rounded knowledge on how to approach such individuals. If criminal justice professionals were better prepared to deal with these populations, then mistakes, such as generalizing between disabilities and disorders would be made much less frequently, and persons with dual diagnoses in the Criminal Justice System, could expect more from their experience through the administration of justice.

Under this main theme of readiness and preparedness, two other significant patterns arose. Participants were asked what more they felt was needed to be done in order to better support persons with dual diagnoses. First, there was an emphasis on a need for more training. Another suggestion was that more resources should be provided for prevention purposes, because jails have been found to be challenging places to house

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persons with impairments (Endicott, 1991; Jones, 2007). Suggestions of both training and resources are consistent with literature on disabilities and the justice system (CMHA, 1998; Encinares & Golea, 2005; McAfee & Gural, 1988). More resources should be allotted to getting more hospital beds in psychiatric facilities, so as to avoid patients' being stuck in jail or on the streets while waiting for a bed to become available.

Participants also mentioned that better supported community care is required to more effectively assist persons with dual diagnoses (Desai, 2003). The final suggestion was the need for codification of dual diagnosis in the *Criminal Code*, in order for dual diagnosis to gain more recognition across the Criminal Justice System. In addition guidelines do not exist for supporting persons with intellectual disabilities and dual diagnoses specifically. The suggestion is that intellectual disabilities and dual diagnosis should be more effectively embedded within the law. More broadly, it suggests that systemic changes should be made in order for identification, education, training, resources and specialized supports and accommodations to be developed for this population. Again, this emphasizes the social model of Critical Disability Theory by emphasizing the need for changes at the systemic level rather than making individualized changes.

The second question that was asked related to whether criminal justice and mental health professionals believed that persons with dual diagnoses were treated equally within the Criminal Justice System. This question generated several perspectives. It was noted that due to the lack of readiness and preparedness of professionals working within the justice system, there is a lack of awareness of what it means to treat someone with a dual diagnoses equally or fairly. Lack of identification is one of the biggest issues contributing to inequalities amongst persons with dual diagnoses in the Criminal Justice

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System. If persons with dual diagnoses are not identified, they cannot be assisted and supported and, in turn, they find themselves enmeshed in a system that they do not understand (Billinghurst & Hackler, 1992).

### **(4) Accommodations**

Although some study participants reported different accommodations, the result is that for many individuals their diagnosis remains unidentified and therefore the accommodations, although possible in the law, are not made available. Consistent with the literature, the interviews, mainly from mental health professionals' responses, illustrated that there were a lack of specific accommodations and availability of appropriate resources and services for persons with dual diagnoses in the Criminal Justice System (Hamelin et al., 2012; Pauls et al., 2006). Due to the broad nature of mental disorder under Section 2 of the *Canadian Criminal Code*, intellectual disabilities and mental illness are included under the same umbrella term within the Criminal Justice System and, as such, they are viewed as having the same needs and, in turn, requiring the same modifications and accommodations (Department of Justice, 1985). The *Criminal Code* outlines special provisions for accommodations for witnesses and victims of crime (Department of Justice, 1985), but accused persons with dual diagnoses, as mentioned by a Manager of Specialized Services (P4), have absolutely no accommodations in place for them. A quote, by an Administrator of a Dual Diagnosis Program (P2) that should be looked at deeper stated,

I don't think they would be accommodated at all that's part of the problem of the Criminal Justice System is that it's not particularly dealing with the individual. It deals with large numbers of people and they have standard protocols

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that they tend to impose. Expect people to adopt the protocol rather than the other way around.

This quote is significant because it demonstrates that, although accommodations have been developed, they are not as frequently used as they should be. The Criminal Justice System is not designed, in large part, to consider individual difference; it deals with the aggregate in the same manner and lacks time to attend to special circumstances. Another issue, which was mentioned in the identification theme is the fact that identification procedures are not in place and most often criminal justice professionals are not even aware a diagnosis exists, and consequently accommodations are not utilized (Hamelin et al., 2012). As was discussed previously, it is the expectation of the Justice System that individuals should adapt to criminal justice procedures rather than changing criminal justice practices to suit the unique needs of vulnerable persons.

Petersilia (2000) made the following suggestions for effectively accommodating persons with developmental disabilities in the Criminal Justice System:

1. Increased justice-related education for clients and their family/care providers;
2. Establishment of a legal advocate to assist arrestees;
3. Routine education of justice system personnel on developmental disabilities;
4. Implementation of a system to identify offenders with developmental disabilities at jail intake;
5. Education of public defenders on how to represent people with disabilities;
6. Establishment of appropriate sentencing options for people with developmental disabilities, including diversion where appropriate; and
7. Management of the transition from prison to community (p.409).

### **(5) Accountability and Responsibility**

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Each of the four themes above could be related back in some way to accountability and responsibility.

***Awareness, Knowledge and Understanding.*** Who is responsible for increasing the awareness, knowledge and understanding of dual diagnosis amongst criminal justice professionals?

With this question unanswered we can never hope for better ways for the Criminal Justice System to support vulnerable populations, such as persons with dual diagnoses.

***Identification.*** Who is responsible for setting out guidelines for the proper and effective early identification of clients with intellectual disabilities and dual diagnoses upon intake into the Criminal Justice System so they do not get misplaced within the system and never have their needs properly attended to?

***Readiness and Preparedness.*** Who is accountable for making sure that criminal justice professionals are properly prepared to provide for and protect vulnerable populations?

Given the prevalence of this group of people in the Criminal Justice System, criminal justice professionals should be more prepared to work with them. They need more specific methods of training to increase their knowledge and understanding of vulnerable populations, such as persons with dual diagnoses.

***Accommodations.*** Who is responsible for making sure that persons with intellectual disabilities and dual diagnoses are being properly accommodated in the Criminal Justice System?



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As mentioned earlier, criminal justice professionals reported in this study that the responsibility of dealing with vulnerable populations, namely dual diagnosis, lies in the hands of mental health professionals. The problem exists that most mental health professionals did not report any specific responsibility for this population. Clearly when the Criminal Justice System does not have specialized services in place for this population, then persons with dual diagnoses will not receive supports as they progress through the system. This study would offer evidence to suggest that both groups of professionals should be responsible. The primary difficulty for criminal justice professionals is that until dual diagnosis is given attention as a mental disorder and identification systems are in place, criminal justice professionals will continue to have a profound lack of knowledge. It is the responsibility of the Criminal Justice System, with the assistance of the mental health and developmental services field to implement guidelines for how to appropriately respond to vulnerable individuals and to address specific impairments in specialized ways (Encinares & Golea, 2005). It is also their responsibility to implement specific identification procedures to reduce the percentage of persons progressing through the system without ever being diagnosed and, as such, never receiving appropriate supports.

Criminal justice professionals reported that they did not feel any specific responsibility to be knowledgeable about dual diagnosis. This finding is not surprising given that there are no guidelines or provisions within the *Canadian Criminal Code* or the *Law Society of Upper Canada's Rules of Professional Conduct* that demonstrate an expectation for criminal justice professionals to have a well-rounded knowledge of

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vulnerable populations (Department of Justice, 1985; Law Society of Upper Canada, 2000).

The majority of mental health professionals also reported that they do not feel responsible and, as a result, a significant problem arises when persons with dual diagnoses end up in mental health services in that their intellectual disability gets unattended to, because the agency only specializes in dealing with one impairment, the mental illness (Dorfman & Awmiller, 2003; Riches et al., 2006). This causes great problems for persons with dual diagnoses. They have nowhere to go that can address all of their complex needs (Hamelin et al., 2012). This gap lends support for initiatives that call for collaboration and sharing of knowledge between professionals and services that support persons with intellectual disabilities and those with mental health needs, such as the National Association for Persons with Dual Diagnosis.

Seemingly inconsistent with the above finding, a second pattern, albeit minor, indicated that some mental health professionals believed it was their obligation to educate the legal system. This finding appeared to be a definite step towards collaboration. While it is encouraging that mental health professionals are recognizing the need for better education within the Criminal Justice System, based on other results it may not be such a big leap forward. It is evident that mental health professionals also do not have a tremendous field of knowledge regarding intellectual disabilities and dual diagnosis, and it was reported that they did not feel any specific responsibility to be knowledgeable about dual diagnosis. As mentioned above, the biggest leap forward would be to include developmental service specialists in collaborative practices (Encinares & Golea, 2005). In fact the majority of respondents felt that collaboration was required within the Criminal

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Justice System in order to best support persons with dual diagnoses. Collaboration is another big step, which is required for significant changes to become prevalent (Canadian Mental Health Association, 1998).

### **Revelatory Phrases**

This section will look in-depth, with the inclusion of literature typologies, at comments from interview participants that really stood out in the analysis. These phrases provided significant issues and concerns that deserve to be highlighted.

#### **Criminal Justice Professionals Phrases.**

(1) There has been a culture of regarding what happens inside the courtroom as the most important thing. You know like we're not concerned with the persons like outside the courtroom, we're concerned about you know finding out what happened in this particular case and whose guilty and whose not (Defence Lawyer, P14)

The Criminal Justice System does not pay close attention to an individual's impairment and the influence it might have had on the motivation to commit a crime (Marinos et al., 2008). The primary concern in the Criminal Justice System is about following the procedures under the law and determining guilt or innocence. This phrase relates to the finding that professionals in the Criminal Justice System do not feel any specific responsibility to be knowledgeable regarding persons with dual diagnoses. This is relevant because it reinforces attitudes of professionals within the justice system, who pay little attention to vulnerable populations and emphasize the treatment of individuals based upon the principles of fair and consistent application of the law.

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The second pattern that was related to this phrase was that criminal justice professionals did not have the time or patience to deal with persons with dual diagnoses. This is critical because if criminal justice professionals are neither willing nor expected to provide the time necessary to attend to such clients, it is unlikely they can receive fair inclusion within the justice system. It is evident that professionals within the justice system are not interested in attending to an accused's/client's needs, and they do not have the specialized knowledge to do so either. In order for progress to be made, justice professionals need better education and training. The difficulty becomes, if they are uninterested in supporting such clients, they will also lack interest in gaining the education and training on their impairments and how to address their needs.

A critical context within this discussion is that the offence is the gateway into the Justice System and is the primary focus of those who work in policing and the courts. However there is less attention given to the causes of crime, and the relationship between impairments and criminal behaviour. As one police officer aptly described the focus of the system:

(2) when we have reasonable grounds to lay a charge we do that and people aren't separated by you know, I have a mental health issue or I have that issue or this issue, they are all sort of pushed into the same sort of flow (Police Officer, P12).

Both of the phrases above demonstrate the heavy reliance on formal equality within the Criminal Justice System, where equality is achieved when all are viewed the same and consequently treated in the same manner. On the other hand, a defence lawyer pointed to the importance of recognizing the abilities of those with disabilities:

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(3) I actually think what our biggest problem is that in the justice profession anyways, is that we we're not vigilant enough in respecting the autonomy of persons with impairments. You know we underestimate their ability to participate in the process; when they're adequately accommodated they often can (Defence Lawyer, P14)

This quote raises important insight because it reinforces the need for support and accommodations for persons with dual diagnoses. With proper identification and therefore appropriate supports, persons with an intellectual disability and/or dual diagnoses can meaningfully participate in the Justice System and have their right to a trial fulfilled. On the other hand, it is important for the system not to reinforce paternalism; supports do not mean removal of autonomy.

Hamelin et al. (2012) suggested training in this area would be important in order to teach criminal justice professionals how to properly and effectively support clients with vulnerabilities without smothering them and being disrespectful. This point was further illustrated by Cant and Standen (2007) who noted that every individual has the right to make his or her own decisions and we must give all of the appropriate support to them before we reach the conclusion that they are incompetent. Seeking support does not make an individual incompetent to make decisions. The Criminal Justice System cannot and should not rule out their independence and autonomy categorically. Through criminal justice training (Hamelin et al., 2012) criminal justice professionals could become more knowledgeable about the extent to which a client may need assistance without compromising autonomy or violating rights by providing no support and accommodations.

(4) The Criminal Code is void to a degree to individuals with a dual diagnoses. It's unfortunate there's not a great

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deal of legislation when it comes to people with dual diagnoses. As I indicated the emphasis is mental capacity to understand the right from wrong and whether the person can appreciate the consequences of his or her actions (Defence Lawyer, P6).

This phrase complements a quote that was made by the same defence lawyer. It is self explanatory in saying that the Criminal Code does not have specific provisions built in which discuss dual diagnosis and how to appropriately respond to it uniquely. As this defence lawyer argued, the term needs to be included within the mental disorder provisions in order for the system to attend to the needs of persons with a dual diagnoses on a structural level (Thomas, 2007) or we will not see modifications to the ways such persons are handled in the Criminal Justice System.

Figure 3 looks at five phrases from the same police officer (P1), which demonstrates his opinion that persons with dual diagnoses, intellectual disabilities and mental health concerns, are intelligent enough to fool the system. Although there is not much research to particularly support this claim, anecdotal evidence suggests that some persons are able to 'outwit' some justice professionals and exaggerate their disability to receive supports or to receive sympathy and therefore leniency (M. Connolly, Personal Communication, May, 2 2014). The Law Commission of Ontario (2012) suggested that this perception is alive and well. Part of the culture within an ableist society is the view that persons with disabilities will request "costly and cumbersome accommodations" that they may not particularly need (Law Commission of Ontario, 2012, p.43). In fact one police officer within the current study said "that those seeking services are attempting to 'game' the system, or obtain benefits to which they are not entitled" (Law Commission of Ontario, 2012, p. 43). One mental health professional, a Behavior Therapist (P15), also

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expressed the view that some persons with disabilities may engage in 'playing' or "fooling" the system. She discussed that her client was very manipulative and was able to talk his way out of charges and manipulate the court into dropping his charges and allowing him to roam free throughout the court house whenever he pleased. Although many people view persons with disabilities as poor unfortunates in need of pity and protection (Devlin & Pothier, 2006), it is important to reinforce the view that some have the ability to protect themselves when it is needed. Therefore changes within the justice system need to address paternalistic attitudes, ableist views, and misperceptions about offenders with disabilities.

### **Mental Health Professionals Phrases.**

(5) I hear references often our jails are now the new mental health institutions because the percentages of inmates is so profound in there (Worker in a Dual Diagnosis Program, P8).

Individuals with disabilities are overrepresented within the Criminal Justice System (Griffiths et al., 2002; Hayes et al., 2006; Smith et al., 2008). The problem with this trend is that the Criminal Justice System is ill equipped to deal with these individuals. There is a lack of identification procedures and a lack of knowledge and training about how to appropriately respond to persons with intellectual disabilities and dual diagnoses (Hamelin et al., 2012). As mentioned by a Head of Forensic Psychiatry (P5), jails and institutions are bad places to look after people with intellectual disabilities (Jones, 2007). Persons with intellectual disabilities and dual diagnoses are being housed in jails, because their offending behaviour overshadows their mental health needs.

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There is also the issue, which was mentioned previously, that service agencies are ill equipped to deal with both a person's intellectual disability and their mental health concern and, consequently, whether they are in jail or an institution their needs are not being appropriately met (Dorfman & Awmiller, 2003; Riches et al., 2006). It becomes evident that most often persons with intellectual disabilities are housed in jails because (1) they are not identified or (2) there is nowhere else to send them.

Another quote emphasizes the overrepresentation of persons with dual diagnoses in the Criminal Justice System:

(6) There is an overrepresentation of them (persons with intellectual disabilities) in the legal system and each case is individual. In fact, one of the reasons there is an overrepresentation is when a police officer does an arrest they don't necessarily know the person has a developmental disability or a dual diagnoses right, so they take them in just like they would anybody else and they interrogate them just like they would anyone else. The problem is the people we support don't know their legal rights so they end up giving things up or saying yes, because of compliance issues (Manager of Specialized Services, P4)

Here, the Manager's emphasis is on consistency in application of the law – the idea of interrogating them just like anybody else. The quote demonstrates criminal justice professionals' emphasis on formal equality and their lack of knowledge of how to recognize when an individual has impairments that need to be addressed (Griffiths et al., 2002; Hayes et al., 2006; Smith et al., 2008). The same protocols are relied on throughout the Criminal Justice System and this can cause several rights violations for vulnerable populations.

This phrase also raises another significant issue; the fact that persons with intellectual disabilities and dual diagnoses can be easily persuaded to giving things up



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that are detrimental to their defence (Encinares & Golea, 2005; Cockram et al., 1993; Polloway et al., 2011; Smith et al., 2008). This may occur due to the fear of authority that those with intellectual disabilities face and their desire to please authority figures (Polloway et al., 2011). They are easily persuaded and can be driven to provide an incorrect answer if it is the answer they believe the interrogator wants to hear. This was a very important statement because the justice system needs to be provided with the knowledge about these vulnerabilities in order to more effectively support such clients. Without the knowledge and training persons with intellectual disabilities and dual diagnoses can incriminate themselves and have an unfair disadvantage in interrogations and throughout justice processes. Polloway et al (2011) stated that persons with disabilities should be allowed to request a lawyer to be present before they have their *Canadian Charter Rights* read to them. In fact one study showed that a significant number of persons with disabilities did not have any understanding of what was meant by right to remain silent, potential use of statements in a court proceeding, and the right to an attorney before and during questioning (Polloway et al., 2011).

One professional highlighted a dichotomy in the perceived “needs” or “risks” of persons with a “mental disorder”:

(7) In terms of perpetrators it's either one or the other in that either they're perceived to be incredibly dangerous sexual deviants solely because they have a dual diagnosis or that they are innocent children and have no idea what they were doing and they should be let free to roam the streets. It's usually the latter in my experience. On the one hand, clients who are very aggressive and may have hurt people may not be charged by the police because they are seen as vulnerable and poor unfortunates and they shouldn't go through the Justice System (Behavior Therapist, P15).

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The quote reveals that mental impairment, when combined with criminal behaviour, is interpreted by justice professionals as either pointing to risk of further offending, particularly if the offence is of a violent or sexual nature, or pointing to the need for leniency and diversion from the system. This dichotomous construction of the offender with an intellectual disability illustrates the significant lack of knowledge and understanding about impairments and crime (Hamelin et al., 2012). This quote is also significant in supporting Critical Disability Theory's claim that changes at a systemic level (Thomas, 2007) need to be made in order for major changes to occur in the way with which the Criminal Justice System responds to persons with impairments. The current study revealed some important findings about the lack of awareness and knowledge of the prevalence of dual diagnosis in the Criminal Justice System. This research is significant in demonstrating the need for more training to be done in the Criminal Justice System, so they are better able to support and accommodate vulnerable populations. As mentioned above, structural changes are needed in the Criminal Justice System, in order for the most significant changes in the response to vulnerable persons to occur. Also it was prevalent that many changes are required, although small steps have occurred, for example, the implementation of accommodations for testifying. The problem becomes the generalizability amongst unique impairments, due to the lack of training and, in turn, inefficient understanding and knowledge of the unique nature of mental illness, intellectual disabilities and dual diagnosis.

### **Future Research**

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In line with the findings noted above several future research projects could be developed in order to enhance the training of professionals in both the criminal justice and mental health fields regarding dual diagnosis and enhancing interjurisdictional collaborations.

A limitation to the current study was interviews with experts in the field of intellectual disabilities, which could have enhanced the research findings. A future research study which included professionals from the developmental services sectors would be beneficial to raising greater awareness on the topic of intellectual disability in the Criminal Justice System. Through interviewing both mental health professionals and developmental disability professionals it would become more evident how collaboration between the professional disciplines could enhance the services provided to persons with dual diagnoses (Jones, 2007). Since one service agency specializes in mental health (mental illness) and the other specializes in intellectual disability, working together they could collaborate on what a service providing support for both a person with dual diagnoses' impairments should include. Professionals in the developmental service sector would also be able to provide more extensive knowledge on the specific difficulties persons with disabilities may face in the Criminal Justice System and how the Criminal Justice System could better improve in supporting them.

The current study looked at the need for a move from formal equality to substantive equality within the Criminal Justice System. Formal equality has been the preferred form of providing equality to all persons in criminal justice practices. It is believed that if all individuals are treated the same a sense of fairness will be fostered throughout the justice system. Future research should look at the different perceptions of the Ministry of Health and the Ministry of Social Services regarding what it means to

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treat individuals with equality. Future research projects could also explore methods by which the Criminal Justice System could make changes to the system in order to foster substantive equality throughout the system and potentially a standard for equality across service agencies that encounter and deal directly with persons with mental illness, intellectual disabilities and dual diagnoses.

Another suggestion for future research would be to interview individuals with dual diagnoses who have been subject to dealing with the Criminal Justice System. This could provide the Criminal Justice System with specific insight directly from the people they serve. Although this research would be more difficult to implement, it would be beneficial in teaching all service agencies more about how persons with dual diagnoses feel they are supported or not supported and whether they feel accommodations are made and are useful for them. It must be acknowledged that they are competent and they do understand when they are not being provided with the services they deserve. Sometimes hearing directly from the source provides us with the richest data.

Most of the interviews, as mentioned above, were completed over the phone. It was noted that of the 16 interviews, the two that took place in person resulted in more in-depth responses and brought about more discussion than those conducted over the telephone. In doing future research, there may be benefit to attempting to ensure that interviews were conducted in person. In person the researcher is able to see facial expressions and provide nonverbal encouragement such as nods to encourage expansion of ideas on the topic of interest.

### **Limitations**

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This study provided important research on a topic that lacks attention in current literature. This topic also provides insight into the issues faced by persons with dual diagnoses in the Criminal Justice System. The current study was only able to obtain Criminal Justice Professionals who were police officers or defence lawyers to participate in the study; access to other Criminal Justice Professionals, such as judges and crown attorneys was not possible. Despite that it provides insight into the changes that should be made to current criminal justice practices to more fully support the rights of persons with dual diagnoses.

This research study only consisted of one form of data collection, interviews, rather than incorporating, direct observations or focus groups, for example. This could be seen as a lack of triangulation (Creswell, 2013). The use of direct observation could have enhanced the data, because interviews with open-ended research questions foster responses that may be skewed based on the participant's interpretations and meaning of particular incidents and cases. Through direct observation the interviewer would be able to directly analyze real-life scenarios to see how persons with dual diagnoses are actually responded to in practice, rather than hearing about their experiences through second hand sources. Although there was a lack of data triangulation in the methods of data collection, other forms of triangulation could be declared throughout other aspects of this research. Engaging in a seven step thematic analysis was evidence of a strong triangulation of analysis and the integration of theories provided theoretical triangulation, all which provides greater confidence to the findings.

In choosing interviews, with open-ended questions, researchers must also be mindful of the bias they may carry in the coding of the data. The phrases and statements

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made by participants were up for interpretation if the meaning behind the words was not completely clear. The researcher tried to avoid bias in coding by being aware of the biases that were previously held and being open-minded in interpretation of both criminal justice and mental health professions responses to interview questions (Creswell, 2013). Bias could have been more controlled if more than one investigator assisted in gathering, interpreting and coding the data. In that case discussions could have been had about what the data is really telling us and whether different investigators made similar conclusions about the data set. This was defined by Creswell (2007) as peer review or debriefing and if multiple coders are utilized, the collaboration between investigators is defined as intercoder agreement. Including this step within research would ultimately increase the reliability of the research.

Bias could have also been prevalent due to the use of snowball sampling in order to recruit participants for my study. The bias present within snowball sampling is that participants are suggesting individuals that they know and who may have very similar experiences and beliefs as themselves. This may cause the research to be flooded by interviews with very like-minded people who would provide similar responses and patterns.

### **Concluding Remarks**

Persons with dual diagnoses are widely misrepresented within the Criminal Justice System. There is an overall lack of training, knowledge and understanding of the nature of dual diagnosis and how it affects their involvement in criminal activity. It was found that both mental health professionals and criminal justice professionals lack

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knowledge of what it means to have a dual diagnosis. This often contributes to a lack of identification of such persons in both the mental health services and the Criminal Justice System, which contributes to persons with dual diagnoses not receiving appropriate supports and accommodations. Persons with dual diagnoses often get lost within the system without ever having their needs appropriately met. The nature of dual diagnosis poses many complexities (Hamelin et al., 2012). It is misunderstood that persons with dual diagnoses have two distinct impairments that need addressing, and each is unique in its own distinct way.

This study identified that there are no specific supports that have been designed for the unique needs of persons with dual diagnoses in the Criminal Justice System. As well, it is difficult for persons with dual diagnoses to find services outside of the Criminal Justice System that will provide assistance for both their mental illness and their intellectual disability (Dorfman & Awmiller, 2003; Riches et al., 2006). A set of distinct criteria for the identification of persons with dual diagnoses does not currently exist, and there are very few practitioners who have the skills to implement appropriate supports for this population (CMHA Ontario Division, 1998). Consequently, at this point collaboration would be ineffective, because no service agency, specializing in dual diagnosis, based on the results of this research study, wants to seek out knowledge on dual diagnosis, and they do not feel it is their responsibility to gain knowledge on the topic.

The Criminal Justice System should collaborate with intellectual disability advocates and researchers in order to promote the rights of persons with intellectual disabilities and dual diagnoses (Griffiths et al., 2011). Individuals with intellectual

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disabilities and dual diagnoses should be provided with the same fair chance within the court of law as individuals without impairments. More specialized training and knowledge of disabilities amongst Criminal Justice Professionals could greatly improve the experience for these individuals progressing through the Criminal Justice system. There are still significant gaps in our knowledge about the extent to which the Criminal Justice System is equipped to adequately assist persons with intellectual disabilities (Marinos, 2010). It is to the advantage of society to gain a greater knowledge of disabilities and hopefully work towards equality amongst all individuals within society in all aspects of life.

Based on the current research project, it is evident that much more specialized training should be provided in the Criminal Justice System in order to have a more advanced knowledge of intellectual disabilities and dual diagnosis throughout the system. Currently, the *Criminal Code* does not have specific provisions in place to support the unique impairments faced by persons with dual diagnoses, which is cause for a lack of supports across the Justice System. Critical Disability Theory emphasizes the fact that disability is not caused by impairment, but results from the social restrictions that are imposed upon them by social agencies that are dominated by the 'able-bodied' (Thomas, 2007). Changes should be made at a structural level. Once the term dual diagnosis is more explicitly identified in the law and Justice System, recognition of the impairment will become system wide. More specialized training is required in order for positive changes to begin to occur. As mentioned above, the question still arises of who is responsible for implementing these changes?



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In order for structural changes to be effective, the Criminal Justice System must move away from notions of formal equality, in which the treatment of all individuals in the same manner provides fairness and equity for all (IWRAW Asia Pacific, 2001). The goal of disability advocates and critical disability theorists is a move towards substantive equality. Substantive equality reinforces the visibility of disability in a society fueled by 'normalcy'. Substantive equality comes with the expectation that in order for equality to occur, persons must be treated differently based on their unique needs (IWRAW Asia Pacific, 2001). Formal equality does not recognize the unique nature of different individuals, because it only emphasizes persons who are 'able-bodied' in nature who are not in need of special adaptations and accommodations. The current invisibility of persons with intellectual disabilities and dual diagnoses is cause for many rights violations and a sense of inequality amongst the vulnerable individuals within society.

Although generalization of results is the note objective of qualitative research, the information gained from this research is transferrable by the reader to other similar situations. Individuals reading this paper who can relate to the results based on their experiences and understandings of the topic of interest may find that the outcomes are applicable to their research and practice. This allows the findings to extend into a broader understanding of the reality within the criminal justice system and the mental health fields.

This research seeks to raise awareness of the current disadvantages faced by persons with dual diagnoses. It is the hope that through production of research on this topic changes will begin to occur within service agencies, in order to better support persons with dual diagnoses. Although substantial changes will take time and effort, it is

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the expectation that small steps will eventually lead to greater progress in supporting vulnerable populations in the Criminal Justice System in the future. The current rights violations experienced by persons with dual diagnoses in the Criminal Justice System are unacceptable throughout a system that prides itself on providing equality for all. This researcher holds the belief that naivety is currently the primary reason for the lack of services, training and knowledge on dual diagnosis. Raising awareness and educating service providers is the best way to provide knowledge of the current disadvantages that are faced by persons with dual diagnoses and to push for changes to be made in the near future.

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**Appendix A**

**Letter of invitation**

March 1<sup>st</sup>, 2013

**Title of Study:** An Examination of Mental Health and Criminal Justice Professionals views of the experiences of individuals with Dual Diagnosis in the Criminal Justice System

**Principal Student Investigator:** Christina Fergus, Masters Student, Department of Child and youth Studies, Brock University

**Faculty Supervisor:** Dr. Voula Marinou and Dr. Dorothy Griffiths

I, Christina Fergus, Masters Student, from the Department of Child and Youth Studies, Brock University, invite you to participate in a research project entitled An Examination of Mental Health and Criminal Justice Professionals views of the experiences of individuals with Dual Diagnosis in the Criminal Justice System.

The purpose of this research project is to contribute to a more profound understanding of dual diagnosis and the experiences of individuals with this diagnosis in the Criminal Justice System. This research will make contributions in the area of theory, policy and practice. It is our hope that the study will add to a more nuanced perspective of the legal concept of the "mentally disordered" offender, currently lacking within the law and legal literature. Second, one is hopeful that this research will provide directions for the implementation of new policy that may assist the Criminal Justice System in providing appropriate methods to deal with persons with intellectual disabilities and co-occurring mental disorders who commit crimes. Should you choose to participate in this research, you will be asked to answer a series of interview questions based on your knowledge of dual diagnosis in the Criminal Justice System. The interviews will be audiotaped by the interviewer. The expected duration of your interview will be approximately one hour. All of the information that you provide during the course of the interview will be kept confidential.

This research may benefit you as the interviewee as it provides you with an opportunity to express your knowledge and perceptions of individuals with dual diagnosis in the Criminal Justice System. Ultimately, you can benefit from knowing that you assisted in increasing knowledge within the seldom studied field of dual diagnosis in the Criminal Justice System.

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This research studied will be solely funded by Brock University. The interviews will take place at multiple offices of both criminal justice officials and mental health professionals. Data analysis will be completed at Brock University.

If you have any pertinent questions about your rights as a research participant, please contact the Brock University Research Ethics Officer (905 688-5550 ext 3035, [reb@brocku.ca](mailto:reb@brocku.ca))

If you have any questions, please feel free to contact me (see below for contact information).

Thank you,

Christina Fergus  
Master's Student, Child and Youth Studies,  
Brock University  
cf12fx@brocku.ca

Dr. Voula Marinos  
Faculty Supervisor  
Brock University  
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Brock University  
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This study has been reviewed and received ethics clearance through Brock University's Research Ethics Board (file #)



**Appendix B**

**Informed Consent Form**

**Date:** March 1<sup>st</sup>, 2013

**Title of Research Project:** An Examination of Mental Health and Criminal Justice Professionals views of the experiences of individuals with Dual Diagnosis in the Criminal Justice System

**Principal Student Investigator:**

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**Purpose of the Study**

You are invited to participate in a study that involves research. The purpose of this study is to examine how mental health professionals and criminal justice officials perceive the experiences of individuals with dual diagnosis within the Criminal Justice System.

**What is Involved?**

As a participant you will be asked to participate in a semi-structured interview containing open-ended questions. The interview will be tape recorded, and will be approximately one hour in length. The researcher will contact you via e-mail or telephone to organize a mutually agreed upon meeting place to conduct the interview.

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### **Potential Benefits and Risks**

The possible benefits of participation in this study are to academic, professional and community audiences. As this is an understudied area, gaining perspectives of criminal justice officials and mental health professionals on their professional encounters with persons with dual diagnosis holds both practical and academic value. The participants benefit knowing that their participation in this project may further best practices within the Criminal Justice System, or assist with informed suggestions for change to benefit those with dual diagnosis.

There are minimal psychological risks associated with participating in this study. Participants are not asked questions about specific individual cases, but their experiences of this population as a whole. If a participant becomes distressed during an interview, the participant will be given a brief break and the questioning will be re-directed to a less distressing topic or section of the interview schedule. Further, if an area of questioning makes the respondent uncomfortable, the interview will not be pursued. All participants will be informed that they have the right to refuse participation in this study, may refuse to answer particular questions and can end the interview at any time without repercussion.

### **Confidentiality**

All information provided during the course of this study will be kept confidential at all times. Anonymity cannot be guaranteed since you will be participating in a face to face interview. As well, anonymity is compromised due to the nature of a snowballing effect recruitment method. Data collected during this study will be stored in a locked storage cabinet in a secure office at Brock University. Therefore only the researcher and her supervisors will have access to the data. All information will be stored for 5 years, after which time all paper documents will be shredded and audio tapes will be destroyed.

Participation in this study is voluntary. You may refuse to answer any questions or participate in any component of the study. Further, you may decide to withdraw from this study at any time and may do so without any penalty. In the event that you do choose to withdraw from the study, all of your data will be destroyed.

### **Publication of Results**

Results of this study may be published in professional journals and presented at conferences. Your name will not appear in any report resulting from this study; however, with your permission anonymous quotes may be used. As well, identifying information will not be provided in the publication of results.

Upon completion of this study, results will be made available. If you wish to receive a copy of the results, please circle YES at the bottom of this form and provide your email

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address. Alternatively, if you wish to receive feedback at a later date, you may contact the principal investigator via email.

### **Contact Information and Ethics Clearance**

If you have any questions about this study or require further information, please contact the Principal Investigator or the Faculty Supervisor using the contact information provided above. This study has been reviewed and received ethics clearance through the Research Ethics Board at Brock University (File # 12-240). If you have any comments or concerns about your rights as a research participant, please contact the Research Ethics Office at (905) 688-5550 Ext. 3035, reb@brocku.ca.

Thank you for your assistance in this project. Please keep a copy of this form for your records.

### **Consent Form**

I agree to participate in this study described above. I have made this decision based on the information I have read in the Information-Consent Letter. I have had the opportunity to receive any additional details I wanted about the study and understand that I may ask questions in the future. I understand that I may withdraw this consent at any time.

Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Circle yes if you would like to receive a copy of the results at the completion of the research study

Yes

Email Address: \_\_\_\_\_

**Appendix C**

**Interview Questions for Dual Diagnosis and the Criminal Justice System**

This interview is conducted to explore the thoughts and experiences of persons who work in both the mental health field and the criminal justice system on their perception of the experiences of persons with intellectual disabilities and co-occurring mental health concerns in the criminal justice system

1. Please tell me about your current position?

What does it entail?

What are your duties and responsibilities?

How long have you been in this position (if recent, what position did you hold prior to your current one?)

2. Please explain the training required to obtain your position or your ongoing job training?

Within your training were you taught about/exposed to different populations?  
Sensitive groups? Individuals with mental disorder, intellectual disabilities or both

If yes, how so? What did the training entail? Was it helpful? Do you find it helpful in the practical, daily responsibilities of your work?

Is it general policy to be trained in such areas or is this something specific to your location/branch/division?

3. Do you have a philosophy that you apply to your position (what do you see as your obligations to others within and outside of the legal system)?

4. What professional guidelines do you use to guide/assist with your decisions?

Do you have guidelines that outline how to effectively respond to individuals with mental disorders, intellectual disabilities or the dually diagnosed?

5. Do you feel that professionals in the field feel any specific responsibility to be knowledgeable regarding individuals with intellectual disabilities and co-occurring mental health concerns?

Do you see this as a requirement in your position?

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6. What is your own personal knowledge or understanding of dual diagnosis (co-occurring mental disorder and intellectual disability)? What does this concept/term mean to you?

Is this a term that is known within your profession?

7. Do you think that dual diagnosis is a well known concept in the mental health field/criminal justice system?

8. Currently how are persons with dual diagnosis identified within the criminal justice system?

Are there standard measures? Are the methods of assessment appropriate?

Do they go undetected? If so why?

9. Do you have experience working with persons with dual diagnosis in your current position?

If so, to what extent? What experiences have you had? How did you know this individual had a dual diagnosis?

If no, do you know others who have? Is working with persons with dual diagnosis something that arises often?

10. Do you believe that having a dual diagnosis will further complicate an individual's experiences within the CJS?

11. What do you see as the central issues or concerns facing persons with dual diagnosis when they are involved with the Criminal Justice System?

As victims?

As accused?

12. Is it your experience that special accommodations are made for persons with dual diagnosis in the Criminal Justice System? If yes, please explain these accommodations. How often are they used? Are they sufficient? What more should be done?

13. What resources could help you expedite a case for persons with dual diagnosis?

14. Would you say that access for persons with dual diagnosis is equitable in the criminal justice system and if you had the power what would you change?

Any other comments or suggestions.