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Access to Justice as a Social Determinant of Health: The Basis for Reducing Health Disparity and Advancing Health Equity of Marginalized Communities

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Article abstract

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Access to Justice as a Social Determinant of Health: The Basis for Reducing Health Disparity and Advancing Health Equity of Marginalized Communities

Sunam Jassar[*]

Health disparity in Canada is continuing to grow with marginalized communities being disproportionately affected. Policies and actions implemented by the federal government have been ineffective in addressing underlying causes of poor health. Framing access to justice as a social determinant of health is a necessary first step to establish a comprehensive and interdisciplinary approach to address poor health outcomes. Through an analysis of the limitations of access to justice as a legal term and the application of access to justice in health outcomes, this article hopes to foster further collaboration between the medical and legal communities in this area. art I of this paper argues the need to expand the scope of access to justice beyond the legal realm. Part II highlights the increasing health disparity within Canada and critiques the current approach. Part III outlines the ways in which health disparity can be improved if access to justice is recognized as a social determinant of health. The paper concludes with discussing progress that can be made in both the legal and medical community as a result of widening the scope of access to justice. Through an analysis of the limitations of access to justice as a legal term and the application of access to justice in health outcomes, this paper hopes to foster further collaboration between the medical and legal communities in this area.

Les disparités en matière de santé au Canada continuent à augmenter, les collectivités marginalisées étant touchées de façon disproportionnée. Les politiques et mesures mises en œuvre par le gouvernement fédéral se sont avérées largement inefficaces pour aborder les causes sous-jacentes de la mauvaise santé. La définition de l'accès à la justice comme un déterminant social de la santé est une première étape nécessaire pour établir une approche complète et interdisciplinaire visant à remédier aux mauvais résultats en matière de santé. La partie I du présent document fait valoir la nécessité d'élargir la portée de l'accès à la justice au-delà du domaine juridique. La partie II souligne les disparités croissantes en matière de santé au Canada et critique l'approche actuelle. La partie III décrit les façons dont les disparités en matière de santé peuvent être réduites si l'accès à la justice est reconnu comme un déterminant social de la santé. Le document se termine par une discussion des progrès qui peuvent être effectués tant dans la communauté juridique que dans la communauté médicale si la portée de l'accès à la justice est élargie. Au moyen d'une analyse des limites de l'accès à la justice comme terme juridique et de l'application de l'accès à la justice dans les résultats en matière de santé, le présent document vise à promouvoir une collaboration accrue entre les communautés médicales et juridiques dans le domaine.

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I. INTRODUCTION

Unknown to a majority of Canadians, there is a wide and growing gap in health disparity throughout the country.[1] Tackling health disparity and heath inequity has been at the forefront of the government's agenda, but slight improvement has been made. In order to make a meaningful impact on improving health equity, it is necessary to understand and fully address the underlying causes of poor health. In particular, it is beneficial to shine light on an area that has traditionally been underexplored in the health context – access to justice as a social determinant of health. Health inequity and access to justice are two central areas that play a critical role in determining individual circumstances. Often times, these two areas are distinct and are given separate attention from their respective fields. However, health inequity and access to justice both have a combined influence on health disparity in Canada. Health inequity and access to justice are inextricably linked, particularly in poverty and low-income situations. Recognizing the correlation between limited access to justice and poor health outcomes is important in forming the basis for a comprehensive approach that can both lessen the access to justice crisis and reduce health disparity within Canada.

Canada is considered to be a leader in providing publicly funded and accessible healthcare.[2] This status masks the increasing issues we face in addressing health disparity and the underlying systemic causes of poor health outcomes. There is a significant difference in health between individuals with higher incomes, stable housing, and job security as compared to individuals on the lower end of the socio-economic scale.[3] Marginalized groups including women, immigrants, and refugees, Aboriginal peoples, and low-income individuals have been subject to poor health outcomes and tend to have an overall lower quality of life.[4] Attempting to improve health equity from a medical and public health-driven approach has proven to be inadequate. A widespread approach should be taken by recognizing the impact access to justice has on health outcomes.

Access to justice has morphed into a crisis over the years, requiring immediate action from the legal community.[5] It is of particular concern for marginalized populations and is most strongly felt by this demographic. Calls to action have been restricted to the legal domain and responses to alleviate this situation have been limited to members of the legal community.[6] It is important to recognize that access

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1 Government of Canada, *Key Health Inequalities in Canada: A National Portrait* (May 2018), online: <www.canada.ca/en/public-health/services/publications/science-research-data/key-health-inequalities-canada-national-portrait-executive-summary.html> [Government of Canada, *Key Health Inequalities*].

2 Victoria Nkunu & Kevin McLaughlin, "Why Do Some Physicians Choose to Tackle Inequities in Healthcare" (2018) 17 Intl J Equity in Health 81, online: <doi.org/10.1186/s12939-018-0790-4>.

3 Dennis Raphael et al, "Barriers to Addressing the Social Determinants of Health: Insights from the Canadian Experience" (2008) 88 Health Policy 222 online: <doi.org/10.1016/j.healthpol.2008.03.015>.

4 Juha Mikkonen & Dennis Raphael, "Social Determinants of Health: The Canadian Facts" (May 2010), online: <thecanadianfacts.org/The_Canadian_Facts.pdf>.

5 The Honorary R. Roy McMurtry called the entire justice system a crisis and recognized access to justice as one of the biggest foreseeable challenges for the legal system. See e.g. Canadian Forum on Civil Justice, "Civil Justice Reform Conference: Phase II Into the Future Remarks by the Hon R. Roy McMurtry Chief Justice of Ontario" (7 December 2006), online: <cfcj-fcjc.org/sites/default/files/docs/2006/mcmurtry-en.pdf>.

6 *Ibid* at 4. McMurtry called for the best efforts from judges, lawyers, and officials in the Ministry of the Attorney General.

to justice is not purely a legal issue. It intersects with other areas that influence individual circumstances. Most notably, access to justice is intertwined with health outcomes and plays a substantial role in addressing health disparity. Therefore, access to justice needs to be considered not only in the legal domain but also in the area of healthcare in order to establish a comprehensive approach to addressing poor health outcomes.

This article examines the connection between limited access to justice and poor health outcomes in marginalized groups. The current approach in addressing health disparity through the recognized social determinants of health is insufficient and does not accomplish the goal of achieving health equity in Canada. First, the article will explain the need to expand the scope of access to justice outside of the legal realm in order for it to be recognized as a social determinant of health. Next, it will outline the increasing health disparity within Canada and the limitations of the current approach in addressing this health disparity. Lastly, the article will explore the progress that can result in advancing health equity by recognizing access to justice as a social determinant of health. This analysis will support the final conclusion that framing access to justice as a social determinant of health is a necessary starting point for promoting health equity in marginalized populations and will consequently alleviate the access-to-justice crisis through interdisciplinary action.

II. THE SCOPE OF ACCESS TO JUSTICE IS FUNCTIONALLY LIMITED

A. Definition and Initiatives Are Limited to the Legal Domain

While the definition of access to justice has evolved to encompass its multidimensional nature, it is still not comprehensive. Access to justice was initially defined as the ability of individuals to defend themselves in court.[7] Upon recognizing the wider social context and systemic barriers faced by marginalized communities, this definition improved over the years.[8] Access to justice has shifted towards a more client-centred approach and now includes advocating for low-income individuals by considering community context and by addressing the specific barriers faced by these communities.[9] Access to justice is largely context based and cannot be addressed through generic resources or legal advice. Although the scope of access to justice continues to evolve, it has not reached the point of going beyond the legal realm to fully incorporate the multidimensional impact it has on individual circumstances. It is important to continue addressing access to justice through legal means, but it is equally important to broaden the scope and consider how access to justice intersects with poor health outcomes.

Due to the limited definition of access to justice, initiatives have been restricted to the legal community. In recent years, we have seen increased legal aid funding in certain provinces, implementation of poverty law clinics, opportunities for pro bono work, and increased resources for legal education.[10] Unfortunately,

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7 In the eighteenth and nineteenth centuries, access to justice simply involved an individual's right to appear in court to litigate or defend themselves against an order. There was no affirmative action by the government to protect this right. See the Alberta Civil Liberties Research Centre, "What Is Access to Justice," online: <www.aclrc.com/what-is-access-to-justice/>.

8 *Ibid.*

9 *Ibid.*

10 For example, the Alberta government has committed $70 million for legal aid service in the next four years, and Pro Bono Students Canada has included more projects in recent years.

these initiatives are insufficient in fully addressing the access to justice crisis and the entirety of this issue. The burden and pressure to ameliorate this crisis has been continuously placed on law schools, lawyers, and members of the legal community.[11] Many prominent legal figures have also called on lawyers to actively work towards improving access to justice and establishing a system that is accessible to marginalized populations.[12] While improving access to justice should continue to be at the forefront of the legal community, it is not solely a legal issue. Access to justice impacts other areas of life and plays a significant role in addressing systemic issues. It is thus useful to widen the scope of access to justice to engage other disciplines and to reflect the different areas that intersect with justice – the most significant being health.

B. Expanding the Definition of Access to Justice

Regardless of the expanding breadth of access to justice, it has been limited to the legal realm and is consistently viewed through a legal lens. Because of this narrow definition, individuals may not recognize the need for legal recourse in situations outside of a legal setting. Access to justice is typically associated with the law and is considered to impact only legal outcomes. This is illustrated in the community consultations surrounding access to justice as summarized by Amanda Dodge.[13] Through the various responses, it is evident that community members view access to justice as a means of obtaining a successful legal outcome.[14] For example, one individual expressed the idea that "[i]f you don't have enough money you cant win the case. You do not have justice."[15] Individuals recognize that barriers exist, but they relate these barriers as having an adverse effect on their legal situation.[16] Many of these individuals acknowledged the limitations of access to justice because they were already involved with the legal system.[17] However, failing to recognize that access to justice also contributes to poor health outcomes is another barrier faced by marginalized communities. This directly inhibits access to legal services at the initial stage in the health context – recognizing that a legal problem exists and that it subsequently influences one's health.

Another consequence of limiting the discussion of access to justice to law is that professionals, such as healthcare workers, may not recognize its widespread impact. Widening the definition of access to justice to include a health aspect allows professionals to recognize the extensive impact of access to justice and to work towards a collaborative, client-centred approach. Lack of access to justice can exacerbate existing health conditions and can influence the degree to which underlying health causes are addressed.[18] Access

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11 See e.g. *Access to Civil and Family Justice: A Roadmap for Change* (Ottawa: Action Committee and Access to Justice in Civil and Family Matters, 2013), online: <www.cfcjfcjc.org/sites/default/files/docs/2013/AC_Report_English_Final.pdf>.

12 *Ibid.* Justice Cromwell and former Chief Justice Beverley McLachlin have continuously highlighted the need for the legal community to act on the access-to-justice crisis.

13 Amanda Dodge, "Access to Justice Metrics Informed by the Voices of Marginalized Community Members: Themes, Definitions and Recommendations Arising from Community Consultations" (March 2013), online: *CBA* <www.cba.org/CBA/cle/PDF/JUST13_Paper_Dodge.pdf>.

14 *Ibid.*

15 *Ibid* at 13.

16 *Ibid.*

17 *Ibid.*

18 Robin Nobleman, "Addressing Access to Justice as a Social Determinant of Health" (2014) 21 Health LJ 49.

to justice, therefore, plays an important role in the healthcare system and needs to be explored under a different light in order to comprehensively address the link between health and justice.

Recognizing access to justice as a social determinant of health creates a tool to directly address the underlying inequitable social structures that impact health outcomes and contribute to health inequity. Incorporating a health element under the definition of access to justice will shine light on this intersect between unmet legal needs and health disparity, promoting the basis for a comprehensive approach to better address underlying causes. Identifying the intersect between justice and health by framing access to justice as a social determinant of health will promote two positive outcomes. First, individuals themselves may be able to recognize that there is a potential legal problem impacting their health. Second, healthcare workers will be encouraged to identify underlying issues that are not exclusively related to medical causes. Widening the scope of access to justice to incorporate a health-based definition can address systemic causes of health and effectively target the unjust social structures that contribute to poor health.[19]

III. THE SOCIAL DETERMINANTS OF HEALTH

In an ideal world, individuals would be treated for their health conditions, and medical intervention would be sufficient to address these health conditions completely. Nevertheless, we live in an intricate and complex web of overlapping issues that impact health outcomes. The healthcare industry has realized that, even at its highest level of functioning, it cannot improve the health of the population without addressing the root causes of poor health.[20] Medical treatments or lifestyle choices are not the only factors that shape the health of Canadians.[21] Rather, the living conditions that individuals experience have a significant impact on personal health.[22] It has long been recognized that, in order to effectively promote positive health outcomes, we need to address the conditions in which individuals live in and not solely their medical illness.[23] Regardless of the extent of medical treatment provided and the ability to access healthcare, there are other underlying causes that influence health outcomes.[24] These underlying causes are referred to as social determinants of health.

Countries have collectively adopted the World Health Organization's [WHO] definition of social determinants of health. The WHO refers to the conditions in which people are "born, grow, live, work and age" as social determinants of health.[25] WHO further states that these conditions are shaped by the "distribution of money, power and resources at global, national and local levels."[26] These underlying

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19 Robin Nobleman, "Are Health Problems Legal Problems in Disguise?" (17 July 2013), online: <cfcj-fcjc.org/a2jblog/are-health-problems-legal-problems-in-disguise/> [Nobleman, "Health Problems"].

20 Emily Benfer, "Health Justice: A Framework (and Call to Action) for the Elimination of Health Inequity and Social Justice" (2015) 65 Am U L Rev 275 at 275.

21 Mikkonen & Raphael, *supra* note 4.

22 *Ibid.*

23 *Ibid.*

24 *Ibid.*

25 World Health Organization (WHO), *Social Determinants of Health* (Geneva: WHO 2012), online: <https://www.who.int/health-topics/social-determinants-of-health#tab=tab_1>

26 *Ibid.*

causes of health relating to economic, societal, environmental and social conditions have an especially strong impact on the health of low income and marginalized communities.[27]

Social determinants of health have been identified to aid in addressing health disparity and to promote health equity.[28] Health disparity is a concern common to all countries, including developed, developing, and underdeveloped countries. Health disparity is a term specifically coined to indicate the difference in disease, injury, violence, and opportunities to achieve optimal health amongst socially disadvantaged people compared to the rest of the population.[29] Health disparity is often propelled by health inequities and is a specific metric used to measure progress towards achieving health equity.[30] To reduce health disparity and to ultimately work towards optimal health amongst all groups, health inequity must be addressed.

The explicit definition of health inequity has been a point of contention amongst academics.[31] In order to prevent misdirection and to reduce health disparity, a clear definition of health inequity is required. Academics and governments previously did not distinguish health inequity from health inequality. This resulted in ill-formed policies that failed to directly address health inequities. Recognizing the need for clarity, Margaret Whitehead, the head of the WHO Collaborating Centre for Policy Research on the Social Determinants of Health, provided a concise and intuitive definition that has been accepted by the member states of the WHO.[32] Health inequity, a subset of health inequality, refers to the specific inequalities that are deemed unfair or unjust and that are avoidable.[33] Unlike health inequalities as a whole, health inequities are the specific conditions that are preventable. The WHO has recognized the following social determinants of health as being largely responsible for health inequities: income and social status; employment and working conditions; education and literacy; childhood experiences; physical environments; social supports and coping skills; healthy behaviours; access to health services; biology and genetic endowment; gender; and culture.[34]

While the Public Health Agency of Canada has also adopted the social determinants of health recognized by the WHO, new models specific to the Canadian demographic have been established.[35] The most comprehensive model to date identifies fourteen social determinants of health: Aboriginal status; disability; early life; education; employment and working conditions; food insecurity; health services; gender; housing; income and income distribution; race; social exclusion; social safety net; and unemployment and job security.[36] Canada is working towards identifying and addressing these social determinants of health to reach its goal of eliminating health inequity. However, Canada is failing at the

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27 Benfer, *supra* note 20 at 291.

28 WHO, *supra* note 25.

29 Paula Braveman, "What Are Health Disparities and Health Equity? We Need to Be Clear" (2014) 129 Public Health Rep 5, online: <doi.org/10.1177/00333549141291S203>.

30 *Ibid* at 6.

31 *Ibid.*

32 *Ibid.*

33 Government of Canada, *Social Determinants of Health and Health Inequities* (September 2018), online: <www.canada.ca/en/public-health/services/health-promotion/population-health/what-determines-health.html>.

34 *Ibid.*

35 *Ibid.*

36 Mikkonen & Raphael, *supra* note 4.

initial stage – not recognizing that a major factor underlying health disparity is access to justice. Even the most progressive model fails to address access to justice or law as a whole.

The adopted models focus on disadvantages such as poor housing and insecure employment. When individuals are faced with these disadvantages, the negative effects on their health accumulate overtime. Many of these disadvantages can be addressed through legal services since these recognized social conditions are in fact legal issues. For instance, access to justice can resolve poor housing or insecure employment, situations that are common in exacerbating poor health. In order to delve into the underlying causes of health relating to economic, social, and environmental conditions, it is beneficial to adopt Paula Braveman's description of social determinants of health as being the "causes of causes."[37] Viewed in this way, it is easier to recognize that underlying health disparity, and, subsequently, health inequity, is access to justice. Access to justice can be framed as a cause of causes.

Access to justice falls within the WHO's description of social determinants as being a condition that arises from the circumstances in which people are "born, grow, live, work and age."[38] Similar to the recognized social determinants of health, access to justice is also strongly felt by marginalized communities. Those who are marginalized are under-represented in legal institutions and face barriers that stem from the circumstances in which they are "born, grow, live, work and age." While these conditions affect everyone, marginalized communities are particularly vulnerable because, in addition to having limited access to legal representation, their health may already be compromised by other social determinants of health.[39] Canada needs to recognize the central impact that access to justice has on health disparity. Framing access to justice as a social determinant of health will allow us to fully address the underlying causes of health and ultimately work towards achieving the end goal of eliminating health inequity.

IV. CANADA'S CURRENT APPROACH FOR ADDRESSING HEALTH DISPARITY IS INSUFFICIENT

The previous section set the background for the relationship between access to justice and social determinants of health. This next section will focus specifically on Canada's current approach in addressing health disparity and the ways in which this approach can be significantly improved by identifying access to justice as a distinct social determinant of health.

A. Where Does Canada Stand?

Canada has a reputable healthcare system, but it has been unsuccessful in trying to reduce the growing health disparities across the country. There is increasing pressure on the government from both Canadians and from the United Nations to take further action to reduce health disparities.[40] Canada has been active

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37 Braveman, *supra* note 29; Community Advocacy and Legal Centre (CALC), *Justice and Health Partnership Project Interim Report* (Belleville, ON: CALC, January 2018), online: <communitylegalcentre.ca/wp-content/uploads/2018/05/JHP-Interim-Report-2016.pdf>.

38 WHO, *supra* note 25.

39 Benfer, *supra* note 20 at 279.

40 Canada has been the subject of rebukes from the United Nations for failing to address income, housing, and food insecurity amongst women and Aboriginal groups. Raphael et al, *supra* note 3.

in international commissions on the social determinants of health and implementing health charters.[41] However, these policies have not translated into success on the ground. Marginalized communities are still experiencing deteriorating living conditions that contribute to poor health outcomes. To get a sense of the magnitude of this problem, the following statistics were released by the Canadian Health Disparities Task Group:

- Canada is one of the world's biggest spenders in healthcare, yet it has the worst records in providing an effective social safety net.
- People living in Canada's northern remote communities have the lowest disability-free life expectancy and lowest life expectancy in the country. Rates of smoking, obesity, and heavy drinking are above Canadian averages.
- Canadians in the bottom socio-economic status quintile are five times more likely to rate their health as fair or poor as people in the highest.[42]

Canada's approach in attempting to reduce health disparity has been largely unsuccessful and inadequate. The approach needs to be modified, and significant work still needs to be done by the Canadian government to resolve the growing health disparity.

B. Policies and Calls to Action

Canada has shown initiative on both a national and global scale and has pledged to reduce health inequities. The government's initiatives are aimed at strengthening "health inequalities measurement, monitoring, and reporting capacity in Canada."[43] Through these research initiatives, the government hopes to inform policy- and decision-making to be in a position to effectively reduce health inequalities and inequities.[44] There have been several policies and calls to action over the last decades, with the goal of improving health outcomes for marginalized communities in the future. While Canada has evolved its approach over time, these policies have failed to fully address health indicators, resulting in limited progress. The root failure in Canada's approach has been the inability to recognize and address the underlying health causes experienced by marginalized communities in a comprehensive manner. I will highlight the limitations of Canada's approach by exploring the main policies and calls to action that have emerged in the last thirty-five years.

1. The Ottawa Charter for Health Promotion

Canada's strong history of public policy declarations has led to the development of a series of policies and calls to action in the last few decades. In 1986, the first International Conference on Health Promotion was held in Ottawa, Canada. This conference was held in response to greater expectations of public health

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41 Canada managed two of the international commissions on the social determinants of health relating to early childhood and globalization and health. Raphael et al, *supra* note 3.

42 Health Disparities Task Group, *Reducing Health Disparities: Roles of the Health Sector Recommended Policy Directions and Activities* (December 2004), online: <www.phacaspc.gc.ca/phsp/disparities/pdf06/disparities_recommended_policy.pdf>.

43 Government of Canada, *Key Health Inequalities*, *supra* note 1.

44 *Ibid.*

and the need to take action on social determinants of health in industrialized countries.[45] The result of this conference was the creation of the Ottawa Charter for Health Promotion, which had a goal of achieving health for all by the year 2000 and beyond.[46] The Ottawa Charter focused on the basic, fundamental prerequisites of health promotion. It recognized peace, shelter, education, food, income, sustainable resources, social justice, and equity as the prerequisites for health.[47] The Ottawa Charter outlined three broad strategies for health promotion: advocate, mediate, and enable people to achieve full health potential.[48]

Recognizing the foundational basis for health promotion established a platform for Canada to build upon and measure its progress. This was a significant step towards achieving health equity through preventable conditions such as food, shelter, and resources. Decades later, however, a major concern and flaw of the principles and strategies adopted by the Ottawa Charter has been realized. The Ottawa Charter presents colonial undertones and fails to recognize the barriers inherent in the espoused principles.[49] The principles of participation, empowerment, and social justice fail to account for the systemic and social barriers faced by marginalized communities – in particular, by Indigenous people.[50] Marginalized groups are strongly impacted by health inequity, yet the Ottawa Charter fails to recognize the specific needs of this demographic. In fact, the Charter's primary purpose of responding to the needs of "industrialized countries" belies the health inequality now faced by Indigenous people.[51] Failing to explicitly recognize the underlying causes of health in the context of the communities that are at the lowest end of health disparity has resulted in a largely impractical framework.

The goal of achieving health for all by the year 2000 was far from accomplished, but the significance that arose from this conference was that a formal pledge was made to create strategies for health promotion. Despite the substantial gaps and flaws in the Ottawa Charter, the fact that it was a foundational document and was fundamental in establishing the roots of health promotion is undisputed.

2. The Canada Declaration on Prevention and Promotion

The Ottawa Charter essentially created a domino effect in giving rise to a series of policies to address health inequity. The next notable policy was the Canada Declaration on Prevention and Promotion.[52] In 2010, Canada's federal, provincial, and territorial ministers of health adopted the Canada Declaration, which was a major improvement from the policies adopted in the past. It specifically recognizes the

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45 Government of Canada, *The Ottawa Charter for Health Promotion* (November 1986), online: <www.canada.ca/content/dam/phac-aspc/documents/services/health-promotion/population-health/ottawa-charter-health-promotion-international-conference-on-health-promotion/charter.pdf>.

46 *Ibid.*

47 *Ibid.*

48 *Ibid.*

49 Karen McPhail-Bell et al, "Beyond the Accolades: A Postcolonial Critique of the Foundations of the Ottawa Charter" (2013) 20 Global Health Promotion 22, online: <doi.org/10.1177/1757975913490427>.

50 *Ibid* at 23.

51 *Ibid* at 24.

52 Government of Canada, *A Declaration on Prevention and Promotion from Canada's Ministers of Health and Health Promotion/Healthy Living* (September 2010), online: <www.canada.ca/en/public-health/services/health-promotion/healthy-living/creating-a-healthier-canada-making-prevention-a-priority.html>.

importance of the social, economic, and environmental conditions on health.[53] Most remarkably, the Canada Declaration focuses on health promotion in the context of the characteristics of the community or group that it is meant to serve.[54] As part of its vision, the declaration states that governments should work together with First Nations, Inuit, and Métis peoples to improve health and reduce health disparities.[55]

Another significant improvement is that the Canada Declaration recognizes that determinants of health lie outside the health sector, and it encourages actions to be taken that extend beyond the health sector.[56] Unfortunately, there was no further exploration of what these actions encompass aside from the suggestion that a wide range of organizations play a role in health promotion.[57] The Canada Declaration was a step forward in addressing health disparity and health inequity. It specifically recognizes that marginalized communities are strongly impacted by health inequity. It also, albeit briefly, discusses the possibility of establishing inter-sectorial action to promote health. Despite being a significant improvement from the Ottawa Charter, the Canada Declaration shares the commonality of failing to fully and comprehensively identify the underlying causes of poor health in relation to areas beyond the health sector.

3. The Rio Political Declaration on Social Determinants of Health

In 2011, member states of the WHO pledged to improve the working and living conditions that affect health through the Rio Political Declaration on Social Determinants of Health.[58] The Rio Declaration establishes five major themes surrounding health promotion: to adopt better governance for health and development; to promote participation in policy-making and implementation; to further reorient the health sector towards reducing health inequities; to strengthen global governance and collaboration; and to monitor progress and increase accountability.[59] Since adopting these five themes, Canada has shown initiative and has made progress across all five sectors.

The initiatives taken by the government focus on addressing the social determinants of health and working with non-government actors to resolve underlying causes of poor health. The particular ways in which Canada has worked to address underlying causes include working with non-government actors to improve living and working conditions, implementing provincial/territorial anti-poverty plans, increasing housing support for people with histories of chronic homelessness, and providing increased accessibility of childhood development programs.[60] Canada has also taken steps to work with marginalized communities and has tailored its response depending on the community. For example, the approach taken to improve health among new immigrants focuses on the barriers present when accessing healthcare

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53 *Ibid.*
54 *Ibid.*
55 *Ibid.*
56 *Ibid.*
57 *Ibid.*
58 WHO, *Rio Political Declaration on Social Determinants of Health* (Geneva: WHO, 2011), online: <www.who.int/sdhconference/declaration/Rio_political_declaration.pdf?ua=1>.
59 *Ibid.*
60 Government of Canada, *Rio Political Social Determinants of Health: A Snapshot of Canadian Actions 2015* (Ottawa: Public Health Agency, 2015), online: <healthycanadians.gc.ca/publications/science-research-sciences-recherches/rio/alt/rio2015-eng.pdf>.

services, whereas the approach for Aboriginal peoples and individuals with low income focuses on the accumulating patterns that lead to poor health.[61]

The extensive actions taken by Canada illustrate the government's commitment to reduce health disparity and improve health equity. Nonetheless, there has been limited improvement in actually reducing health disparity and improving conditions among communities.[62] It is worthwhile to consider that this lack of improvement is related to the failure to completely address underlying causes. Increasing housing support and employment security are steps in the right direction, but there are still factors that underlie the reasons for poor housing and insecure employment, factors that could be addressed through access to justice. While Canada's approach has progressed significantly, the government is unable to fully address the underlying causes of poor health. Canada needs to re-adjust this approach and focus on the "cause of the causes."

4. Key Health Inequalities in Canada: A National Portrait

The most comprehensive report to date has been established through a collaborative undertaking by various Canadian federal health networks. The report recognizes that interactions between material circumstances, psychosocial factors, health behaviours, and biological factors are the means by which inequities arise and contribute to poor health outcomes.[63] The report explores these various domains and builds on a set of seventy indicators of health outcomes, risk factors, and social determinants of health proposed by the Public Health Network. These health indicators include health status (diseases), physical and social environment (housing below standards), social inequities (food insecurity), working conditions (stress), and social protection (eligibility for benefits).[64]

One of the main findings of the report recognizes that there are significant and consistent health inequalities amongst Indigenous peoples, minorities, immigrants, and individuals with low socio-economic status.[65] The breadth and depth of the difference in health equity outlined in the report stimulated a call to action across all levels and sectors of society.[66] The report identifies key principles for action to address health inequity within the Canadian context. In particular, the report identifies the importance of intervening on both "proximal (downstream) and distal (upstream) determinants of health and health equity."[67] Another key principle identified is the importance of addressing material contexts such as living, working, and environmental conditions as well as socio-cultural processes of power, privilege, and exclusion.[68] This principle focuses particularly on empowering disadvantaged and marginalized communities.[69] The report concludes with a reminder that, in order to achieve health equity, we need to

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61 *Ibid* at 2.
62 Health Disparities Task Group, *supra* note 42.
63 Government of Canada, *Key Health Inequalities*, *supra* note 1 at 427.
64 *Ibid.*
65 *Ibid* at 104.
66 *Ibid* at 423.
67 *Ibid* at 425.
68 *Ibid* at 427.
69 *Ibid.*

acknowledge our interdependence and shared societal responsibility to promote optimal living and working environments.[70]

Unlike the previous policies and calls to action, this report focuses on the importance of addressing underlying systemic barriers through interdisciplinary action. It recognizes that health disparity and health inequity are impacted by inter-sectorial factors and, therefore, that a collective effort to comprehensively address poor health outcomes is needed. The government's approach, as illustrated through this report, has improved significantly in the last few decades. By recognizing that various factors within and beyond the health sector contribute to health disparity, the government is one step closer to comprehensively tackling the underlying causes of poor health experienced by marginalized communities.

Nonetheless, the progress made by the government in its most recent report should not mask the failures that are still inherent in the report. Despite the widespread recognition of health indicators and recognition of inter-sectorial action, access to justice or legal advocacy is not distinctly addressed. Indicators such as housing standards, employment conditions, and food insecurity all relate to consequences that can arise through unmet legal needs. Canada is one step closer to establishing a comprehensive approach by including indicators that have an underlying legal basis. However, failing to explicitly recognize access to justice as a distinct health determinant impedes the goal of achieving health equity. By explicitly recognizing access to justice, greater progress can be made in the areas of addressing both material circumstances and social systemic barriers.

Exploring the timeline and evaluating the policies and calls to action by Canada illustrates the progress made in working to address health disparity and health inequity. The common failure inherent in all of the approaches is the absence of factors that fully address the underlying causes of poor health outcomes. None of the policies and calls to action distinctly discuss access to justice or legal services as a means of promoting health equity. Focusing efforts on conditions such as poor housing and job insecurity creates a temporary solution for managing poor health. Given the limited progress made in reducing health disparity, it is time we examine areas that go beyond the surface of the conditions experienced by marginalized communities. It is essential to establish a permanent approach that can resolve the underlying causes of poor health at the root of the issue.

C. Front-line Approach

Canada is not only failing at the policy level, but it is also experiencing difficulties addressing health inequity through the standard medical care provided to patients. Physicians are at the forefront of the healthcare team as a result of directly providing care and engaging with the community. By directly serving patients, physicians are placed in a unique position that allows them to observe the impact health inequity has on patient care.[71] However, this relationship is rarely explored due to the limitations inherent in the standard medical model. The limitations within the healthcare model can be attributed to three main reasons. First, healthcare professions may not have sufficient knowledge required to recognize underlying health causes and social determinants of health. Second, and most importantly, even if healthcare workers are able to recognize that underlying causes exist, they have limited time to address these causes. Lastly, there is an overall lack of referral resources and measures that can be used to resolve underlying causes.

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70 *Ibid* at 429.

71 Nkunu & McLaughlin, *supra* note 2 at 1.

Addressing health inequity and recognizing underlying causes of poor health falls outside the scope of standard medical care provided by a traditional healthcare team.

Medical students, residents, and physicians in Canada are encouraged to incorporate the CanMEDS framework into their medical practice.[72] This framework was established to enhance training in the medical profession to improve overall patient care and provide a comprehensive foundation for medical education throughout Canada.[73] The framework focuses on seven main roles that are essential for physicians to integrate in their practice to effectively meet the healthcare needs of the community they serve.[74] One of the seven roles is that of a health advocate. Under this role, the framework recognizes that "improving health is not limited to mitigating illness or trauma but also involves disease prevention, health promotion and health protection."[75] This concept is further elaborated by incorporating health equity as a means to improve health. Physicians, as health advocates, are encouraged to promote health equity and recognize inequity in order to improve the health of their patients. While addressing health inequity is a large part of the CanMEDS framework, the limits inherent in the front-line approach prevent physicians from fulfilling their role as health advocates.

The first limitation is that some physicians may not have comprehensive knowledge or experience to address health inequity. A recent Canadian study found that most physicians are aware of health inequities and understand that social factors influence the health of individuals, but they become fully aware of this at different stages in their practice.[76] Physicians that have experience working with marginalized and remote communities such as at inner city student-run clinics and homeless shelters and at First Nations reserves generally become aware of health inequities through these settings.[77] On the other hand, physicians without these experiences tend to become aware of health inequities later on in their career and learn of them from sources outside of medicine, such as the news.[78] The existing medical curriculum does not place a great enough emphasis on social determinants of health, and, as a result, physicians have to look to other means or experiences to learn about health inequity.[79]

There is limited awareness about health disparity and health inequity through formal medical education.[80] The medical community understands that social factors influence health outcomes, but, in modern medicine, there is a greater emphasis placed on obtaining a biological understanding of disease and illness.[81] Primary care physicians are trained to treat patients through medical means.[82] Incomplete education and knowledge in this area translates to reduced action in addressing health inequity at the front line. Without comprehensive knowledge and experience to identify and address underlying causes of

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72 Royal College of Physicians and Surgeons of Canada, "CanMEDS: Better Standards, Better Physicians, Better Care" (2015), online: <www.royalcollege.ca/rcsite/canmeds/canmeds-framework-e>.

73 *Ibid.*

74 *Ibid.*

75 *Ibid.*

76 Nkunu & McLaughlin, *supra* note 2 at 3.

77 *Ibid.*

78 *Ibid* at 3.

79 *Ibid.*

80 *Ibid.*

81 Andrew Pinto & Gary Bloch, "Framework for Building Primary Care Capacity to Address the Social Determinants of Health" (2017) 63 Canadian Family Physician 476, online: <www.cfp.ca/content/cfp/63/11/e476.full.pdf>.

82 *Ibid* at 481.

health, physicians may not recognize health disparity. As a result of underlying causes of health being missed at the front line, intervention does not occur at all or comes at a stage where it is too late and negative effects have begun to accumulate.

The second limitation that has been a growing concern in the health industry is the time constraints inherent in the healthcare model. Physicians have many competing demands for their time, and they generally focus on treating medical conditions rather than exploring underlying social causes.[83] While the CanMEDS framework focuses on health advocacy, there is no obligation for individual physicians to adopt this role. Physicians attend to more pressing health concerns and focus on mitigating illnesses. Physicians themselves have recognized that one of the biggest barriers in addressing health inequity is the lack of time.[84] It is impractical for physicians to assess, examine, diagnose, and identify and address social determinants of health within the span of a single appointment slot. Limited time with patients reduces a physician's ability to explore possible underlying causes, but it also means limited time to advocate for individual patients. Physicians who are motivated to address health inequities typically have to seek opportunities outside of their own clinic time.[85] Lack of time is a major barrier preventing primary care physicians from addressing underlying causes of health adequately.

The last limitation inherent in the standard medical model is the lack of referral resources and means to address social determinants of health. If physicians are able to identify social determinants, they may not have the full capacity to address these problems. The type of intervention that is required is often beyond the expertise of primary care physicians, regardless of the extent of their knowledge and experience in this area. For instance, if an individual is experiencing health issues due to poor housing conditions, physicians may have limited procedural knowledge and capacity required to resolve any residential issues. This is where the importance of interdisciplinary action is truly realized. Primary care physicians do not have the time or procedural knowledge to address underlying causes that contribute to poor health. Working to resolve health inequity falls beyond the scope of the standard medical model and therefore requires an interdisciplinary approach.

Realistically, these limitations inherent in the healthcare model cannot be improved simply by recognizing access to justice as a social determinant of health. To address these flaws, the entire healthcare system needs to be modified. The Canadian Family Physician's Association has recognized the limitations in the current model that prevent physicians from addressing social determinants of health.[86] They have established committees to identify a framework that is conducive to addressing social determinants of health in a primary care setting.[87] However, rather than waiting for a new framework to be established, we can begin to resolve some of the issues by first recognizing access to justice as a social determinant of health. Framing access to justice as a social determinant of health can create a basis for a comprehensive and interdisciplinary approach to addressing health inequity. Addressing and resolving health inequity is currently outside the scope of the medical model. Introducing a legal perspective and a legal means of resolving underlying causes of poor health can promote health equity through inter-sectorial collaboration.

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83 Nkunu & McLaughlin, *supra* note 2.
84 *Ibid* at 4.
85 *Ibid* at 5.
86 Pinto & Bloch, *supra* note 81.
87 *Ibid.*

VI. IMPORTANCE OF RECOGNIZING ACCESS TO JUSTICE AS A SOCIAL DETERMINANT OF HEALTH

There is an urgent need to address health disparity and health inequity in Canada. The current approach is inadequate and largely relies on medical intervention to resolve poor health. Many conditions underlying poor health may be a result of unmet legal needs that can be addressed through access to justice. Framing access to justice as a distinct social determinant of health can promote health equity through legal services and also reduce the access to justice crisis itself through interdisciplinary measures. Recognizing access to justice as a social determinant of health is an essential step towards reducing health disparity and working to improve health equity through a comprehensive approach.

A. Promote Health Equity by Addressing Underlying Causes through Legal Advocacy

Health conditions that are prevalent in marginalized communities are often manifestations of legal problems.[88] Unmet legal needs in the form of poor housing standards or job insecurity can cause or exacerbate existing health conditions.[89] Legal advocacy, therefore, has the power to alleviate health outcomes that arise from these social conditions. Introducing access to justice as a factor in promoting health creates a basis for addressing the underlying causes that contribute to poor health and creates a means to reduce health disparity and improve health equity. Health conditions can be improved by treating the underlying social condition itself.[90] The current social determinants of health that are recognized by the WHO do not go to the extent of targeting underlying social structures and systemic causes of health. Access to justice can be used as means to target underlying causes that contribute to poor health, beyond the scope of typical medical intervention that may only result in temporary solutions.

The current medical model focuses on treating the biological basis of diseases and illnesses. This model, however, is inadequate when there are underlying causes that contribute to poor health, which is a common scenario in marginalized communities. Primary care physicians treat illnesses, and patients are then sent back to the same conditions that created the health problems in the first place. When underlying social determinants of health are not addressed, a "revolving-door" situation is created.[91] This scenario refers to diseases that can be treated through medical intervention but are retriggered upon return to the home environment.[92] An individual may visit the doctor several times for the same illness as a result of not being responsive to the medical intervention.[93] This situation results in both the patient and the physician being frustrated and confused as to the poor recovery. In such situations, access to justice through legal intervention can help individuals tackle legal problems that may be the cause of the health condition.

A common example used to illustrate the relationship between unmet legal needs and poor health is the health conditions that arise from substandard housing. An individual from a low-income family whose

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88 Nobleman, "Health Problems," *supra* note 19.
89 *Ibid.*
90 CALC, *supra* note 37 at 3.
91 Heather McCabe & Eleanor Kinney, "Medical Legal Partnerships: A Key Strategy for Addressing Social Determinants of Health" (2010) 25 Journal of General Internal Medicine 200, online: <doi.org/10.1007/s11606-010-1298-9>.
92 *Ibid* at 200.
93 *Ibid.*

rental home has a mould infestation may visit the doctor several times for asthma attacks.[94] The doctor, unaware of the individual's housing conditions, diagnoses her with asthma, develops a care plan, and prescribes medication.[95] The individual, however, continues to return to the doctor with no improvement.[96] The doctor assumes the lack of improvement is a result of the individual failing to be compliant with the care plan.[97] Both the doctor and the individual are unable to recognize that there is an underlying cause of the recurrent asthma attacks.[98] Mould infestation is a known trigger for asthma, and legal intervention can be used to have the landlord remove the mould.[99] What originally seemed to be a health problem has now become a legal problem. By recognizing that some health problems may in fact be legal issues, we can work to resolve the underlying cause through legal means and establish a lasting solution that was not possible through medical intervention alone.

Legal services can address the root causes of health conditions in marginalized communities. Access to legal services and resources can allow unmet legal needs to be dealt with and, consequently, create an impact downstream by improving health outcomes. Recognizing access to justice as a social determinant of health allows both the legal profession and the medical profession to realize the influence of unmet legal needs on individual health conditions, particularly in the context of marginalized communities. There are multiple factors that contribute to poor health outside of pathological causes, and it is therefore important to adopt a more comprehensive and holistic approach to reduce health disparity and advance health equity. Recognizing the interplay between access to justice and poor health outcomes will allow us to address the underlying causes and ultimately work towards our goal of achieving lasting health equity.

B. Improve Access to Justice through Interdisciplinary Means

Framing access to justice as a social determinant of health will not only improve health equity, but it will also alleviate the access to justice crisis itself. Access to justice is currently seen as a problem that impacts the legal profession. However, by framing access to justice as a social determinant of health and recognizing its impact on health outcomes, we can gain support from other disciplines. Bringing attention to the intersect between health and justice will integrate these services and create more awareness about the access to justice crisis outside of the legal realm. Recognizing the relationship between health and justice will raise awareness within the healthcare profession about possible underlying legal causes that are contributing to poor health.

In the current model, where health and justice are separated, primary care physicians are unaware of, or have limited capacity to address, underlying legal causes.[100] Promoting awareness about the intersect between health and law, and the subsequent impact on patient health, will draw awareness to underlying legal causes in the health profession. Integrating knowledge about health and legal services will also make

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94 Sidak Kaur et al, "Widening the Circle of Care: Adding Legal and Financial Expertise to the Health Care Team" (2 October 2014), online: <healthydebate.ca/2014/10/topic/health-promotion-disease-prevention/widening-circle-care-adding-legal-financial-expertise-health-care-team>.

95 *Ibid.*

96 *Ibid.*

97 *Ibid.*

98 *Ibid.*

99 *Ibid.*

100 Nkunu & McLaughlin, *supra* note 2.

it easier for physicians to address underlying legal causes by referring patients to legal aid or poverty law clinics. Recognizing that unmet legal needs contribute to poor health, particularly in marginalized communities, will encourage physicians to screen for underlying causes that are not specifically related to medicine. An expectation will not be placed on physicians themselves to resolve these underlying causes of poor health when it is outside of their capacity. Physicians can turn to legal resources and the legal community to help address poor health in a comprehensive manner. Providing early access to legal services will not only prevent health problems from escalating, but it will also result in long-term solutions.[101]

Extending the scope of access to justice to integrate legal services in the healthcare context will also create seamless points of access to legal services.[102] Individuals may be unaware of the connection between legal services and health problems, particularly in settings outside of a legal context. Promoting awareness in the health profession about access to justice means that individuals will be redirected to legal resources in settings where they typically will not expect to receive legal help. This results in the "no-wrong-door" approach.[103] This approach relies on the support of legal and health professions to provide appropriate referral resources regardless of where an individual looks for assistance first.[104] Introducing a comprehensive and interdisciplinary approach will allow easier access to legal services at an earlier stage where health and legal problems can be resolved.

Displaying the far-reaching implications of access to justice beyond the legal domain will also promote public and political support in this area.[105] Access to justice has a significant impact on health outcomes, and resolving unmet legal needs is a means to improve health outcomes in the long term. Recognizing that the impact of access to justice extends beyond law into other significant areas of life is a basis to argue for greater public and political support to make the system more accessible, especially for marginalized communities that are disproportionately affected.[106] If greater action is taken to improve access to justice through interdisciplinary means, and the result is a healthier society, health policy-makers will be encouraged to invest in access to justice initiatives.[107] Understanding the widespread impact of access to justice will promote support from the various health and social policy fields that can also benefit from increased access to justice. Access to justice is very much a multidimensional issue that carries a widespread impact. Recognizing that access to justice is an issue that extends beyond law and impacts the health sector will promote awareness and encourage support from other disciplines.

VI. CONCLUSION: A CONTINUOUS PROCESS OF CHANGE

While the connection between health and justice was traditionally underexplored, the inextricable link between these two areas is continuing to emerge and grow deeper. In this article, I have proposed the idea of expanding the scope of access to justice to be incorporated within the healthcare realm. By widening

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101 CALC, *supra* note 37 at 3.
102 *Ibid.*
103 *Ibid.*
104 *Ibid.*
105 Nobleman, "Health Problems," *supra* note 19.
106 *Ibid*.
107 *Ibid*.

the traditional legal boundaries of access to justice to allow it to be recognized as a social determinant of health, we can work towards a better approach to reduce health disparity and advance health equity of marginalized communities. I have also touched on the positive ramifications that an interdisciplinary approach can have on promoting access to justice. Expanding access to justice to reflect its impact on health outcomes will not only result in a comprehensive approach to address health disparity, but it will also improve access to justice itself through interdisciplinary awareness.

There still remains a need for further change and exploration in the intersect between unmet legal needs and health outcomes and the subsequent impact this has on the widening health disparity gap in Canada. Framing access to justice as a social determinant of health and exploring the link between health and justice is a necessary starting point to fully address health disparity among marginalized communities. While further collaborative work between the legal and medical community is still needed, a continuous discussion around the intersect between health and justice will support the emergence of a comprehensive approach to fully address health disparity and health inequity. Our approach has changed in the last few decades, and I am confident that we will continue to progress and evolve to better reflect the diverse legal and health needs of our marginalized communities.