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A Qualitative Look at Serious Legal Problems: Trans, Two-Spirit, and Non-Binary People in Canada

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2022

Canada 

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Executive Summary

Background: In recent years, Canada has seen significant law reforms aimed at enhancing the legal protection and recognition of trans, Two-Spirit, and non-binary people. Still, community experts and researchers report that numerous and intersecting structural barriers continue to shape these persons' access to new legal protections, their relationship to laws and legal systems, and their overall life outcomes. This report examines the extent and effects of the legal problems experienced by these individuals, by presenting evidence from a qualitative study that was co-led by a team of researchers and community experts from Carleton University and the community organization Action Santé Travesti(e)s et Transsexuel(le)s du Québec (ASTT(e)Q), with support from the Community-Based Research Centre (CBRC).

Methods: Research consisted of twenty-seven (27) semi-structured interviews with trans, Two-Spirit, and non-binary people recruited across Canada in 2020 and 2021. Seventeen (17) participants were recruited online through social media posts and emails shared across Canada. Ten (10) participants were recruited through ASTT(e)Q, because the communities of people who access that organization's services would likely not have been reached through online recruitment methods. Participants were selected to cover a range of demographic profiles. Once anonymized, interview transcripts were coded and analyzed by the principal investigator and co-investigators in collaboration with community researchers.

Section 1 – Socio-Legal Status: The term socio-legal status explains how trans, Two-Spirit, and non-binary people's legal problems are caused by interconnected and mutually constitutive social and legal dynamics. Social status refers to one's social standing relative to others in society (e.g., their gender, race, health status, (dis)ability, class, age). Our evidence demonstrates that people's legal burdens are often shaped by the interactions between and compounding effects of numerous social locations. Legal status refers to how laws, policies, regulations, and the institutions and actors who enforce them delimit people's access to legal protections and contribute to producing and maintaining their cumulative legal problems. Legal status may include one's immigration status, civil status, Indian status, or having a criminal record. Socio-legal status addresses how social and legal statuses are interconnected; how they influence or produce individuals' and communities' legal problems; and how they shape individuals' and communities' access to resources, opportunities, entitlements, and protections, including the protection of their rights.

Section 2 – Legal Problems: Findings show that many of the serious legal problems experienced by trans, Two-Spirit, and non-binary people have lasting social and legal consequences that expose them to additional problems in the future. This report therefore presents the types, severity, and immediate impacts of the legal problems that participants faced in the previous three (3) years, while also attending to the longer-term consequences of previous or ongoing problems.

- **Legal Statuses:** Interviews covered issues related to criminalization, citizenship and immigration, identity documents, child and youth protection services, and conjugal and familial relationships. Results show that legal statuses can produce and maintain legal problems by placing a person in direct conflict with legal systems and limiting or denying access to protections, services, opportunities, and advantages. Interviews also revealed that the mere existence of a law or policy can have serious and harmful impacts on people's lives, rights, and opportunities, regardless of its enforcement.
- **Economic Security and Standard of Living:** Access to employment and to safe and equitable working conditions was a significant source of problems for participants, in the context of both

legal and criminalized labour sectors (e.g., selling sexual services, selling drugs). Numerous participants relied on income support and other forms of government assistance, which they overwhelmingly described as inadequate to cover everyday expenses and difficult to access in the first place. Persons with a precarious socio-legal status were particularly likely to find themselves chronically underhoused, periodically homeless, or living in unsafe or unsanitary dwellings. Participants also reported numerous problems in the education system, with little or no recourse available.

- ***Health Care and Services:*** Several participants reported mistreatment, neglect, and abuse by health personnel. These experiences often prevented or discouraged them from accessing essential forms of care. Participants also spoke of the inadequate public health coverage available to people who seek medical transition (e.g., access to hormones and/or surgical procedures), and of the limited or non-existent administrative and legal remedies available to overcome the barriers they encountered across health care and services.
- ***Violence and Other Forms of Abuse:*** Every participant in this study reported experiences of violence and abuse, including incidents in interpersonal and institutional contexts, as well as structural forms of violence and harm across various spheres of a person's life. These experiences included verbal and psychological harassment and abuse, physical violence, and state violence. State violence refers to how state institutions, laws, policies, programs, procedures, practices, actors, and agents contribute to producing, maintaining, or legitimizing the subordination and abuse of certain individuals and communities.
- ***Detention Facilities and Law Enforcement:*** Detention was another site of serious problems for participants, not only because being incarcerated is in itself a form of extreme hardship and deprivation with harmful repercussions on people's lives and communities, but also because trans, Two-Spirit, and non-binary people face additional issues both within detention and carceral centers and upon their release. Moreover, nearly all participants who reported any contact with criminal law enforcement (especially with police) described their interactions as harmful or otherwise negative. Indigenous, Black, and racialized participants — including participants who are migrants and/or criminalized — reported the most frequent, recurring, and violent encounters with law enforcement.

Section 3 – Legal and Administrative Systems: Sources of Legal Problems and Barriers: Few participants explicitly stated that they had engaged in legal or administrative procedures with the intent of *resolving* their problems. Indeed, for most, legal and administrative systems were not the solutions to their problems but the *source* of their legal problems (e.g., laws and policies that determine their immigration status or criminalize their activities). Many laws, policies, and procedures in themselves constituted the legal problems reported by participants. This is because these laws, policies, or procedures placed participants in direct conflict with the law, law enforcement, and legal systems, or otherwise created conditions of precarity, exclusion, or marginalization.

Participants also reported numerous barriers and forms of mistreatment across legal and administrative systems, including (but not limited to) when they initiated engagement with these systems to resolve their problems. Many participants avoided contact or communication with legal and administrative systems because of the barriers and mistreatment they experienced in these systems; because these systems offer insufficient recourses to address the complexity of their problems; or because these systems are the potential source of additional legal and non-legal

problems and other harmful consequences. Notably, many Indigenous, Black, racialized, migrant, and/or criminalized participants reported avoiding contact with law enforcement (especially with police) at any cost, even in an emergency or when they were subjected to abuse, because law enforcement is a source of violence in their communities.

Section 4 – Discussion and Conclusion: This report concludes with a synthesis of findings and reflections on their significance.

- **First**, this study highlights that trans, Two-Spirit, and non-binary people's legal problems are highly complex. These problems span multiple legal and administrative systems, institutions, and jurisdictions, and they often occur over periods of several years or even decades. The effects of these problems are especially complicated, long-lasting, and intractable when individuals face multiple legal problems and/or must navigate more than one legal or administrative system.
- **Second**, trans, Two-Spirit, and non-binary people's socio-legal statuses have serious impacts on their ability to engage with and navigate legal and administrative systems. Contact with legal and administrative systems often makes their problems more — not less — complex. These systems are not only inaccessible, insufficient, and burdensome, but also harmful, dehumanizing, and potentially lethal.
- **Third**, our results reveal that certain laws and policies (independent of enforcement) generate numerous serious legal problems for trans, Two-Spirit, and non-binary people, which negatively affect many aspects of their lives. As such, many of their complex legal problems' root causes (i.e., sources) cannot be resolved without comprehensive law and policy reforms.
- **Finally**, our interviews demonstrate the essential, central role that trans, Two-Spirit, and non-binary people's communities play in helping them respond to their serious and complex legal problems, and in producing related knowledge and expertise, including legal expertise. Further, these persons — and their communities — must be recognized as experts and given leadership and decision-making roles at every step of the design, elaboration, and implementation of any strategy developed in response to their problems.

Introduction

In recent years, Canada has seen significant law reforms aimed at enhancing the legal protection and recognition of **trans** people. For example, in June 2017, the *Canadian Human Rights Act*'s list of protected grounds was amended to add “gender identity” and “gender expression,” and all provincial and territorial human rights acts/codes now extend similar anti-discrimination protections to trans individuals. Following human rights cases and advocacy efforts in various jurisdictions, other law reforms have also increased certain trans people's ability to change their identity documents, such as their passport, driver's license, and health card. A growing number of Canadian institutions, ranging from the education sector (Kirkup et al. 2020; Laidlaw 2020) to correctional institutions (Hébert 2020), have also modified their policies and practices in recognition of their new human rights obligations towards trans people.

Trans is often employed in existing literature and popular usage as an umbrella term inclusive of a diverse range of persons whose gender identity (sense of self) differs from the sex they were assigned at birth. In this report, we employ **trans** as a standalone term to reflect this broader meaning.

In this report, **legal problems** are all conflicts, barriers, or negative interactions that a person experiences...

- with a legal or administrative system, or
- as a direct or indirect result of laws, policies, rules, and regulations, or
- due to the practices of or from contact with state institutions, officers, and agents,

and which may arise in public, private, or interpersonal contexts.

Still, trans advocates and scholars report that human rights protections, legal recognition, and accommodations are out of reach and inadequate for many. Few trans people can obtain proper legal representation and few legal professionals are equipped to use available legal tools when working with trans clients (Singer 2020a; 2019; Spade 2011). Structural barriers along the axes of race, Indigeneity, gender, class, immigration status, criminalization,¹ disability, etc., shape trans people's access to new legal protections, and more broadly determine and impact their relationship to laws and legal systems and their overall life outcomes (Singer 2020b; Katri 2017; Ashley 2018; Irving 2013; Tourki et al. 2018; Butler Burke 2016; Spade 2013). Nonetheless, to date, the extent and effects of the **legal problems** experienced by trans people have not received adequate research attention in Canada, especially outside of Ontario (J. James et al. 2018).

¹ Criminalization refers to the creation, application, and impacts of criminal law, policies, and practices that make certain activities illegal, and which disproportionately target specific communities. The term is also used to include other types of punitive laws, policies, and practices that target marginalized and criminalized communities (e.g., municipal regulations, immigration regulations).

This report, commissioned by the Department of Justice Canada, addresses this gap in knowledge by presenting evidence from a qualitative study that was co-led by a team of researchers and community experts from Carleton University and the community organization Action Santé Travesti(e)s et Transsexuel(le)s du Québec (ASTT(e)Q), with support from the Community-Based Research Centre (CBRC). Research consisted of semi-structured interviews with **trans, Two-Spirit, and non-binary** people recruited across Canada. These interviews asked participants to describe the serious legal problems they experienced in the previous three years; the factors contributing to and connections between their problems; if and how they attempted to resolve their problems; the types of support they received or needed to overcome or cope with their problems; the barriers impeding their access to justice; the impacts of their problems on various aspects of their lives; as well as the social, legal, and structural transformations needed to improve their everyday lives.

The following pages present a brief overview of existing literature on trans people's legal problems and describe this study's methodology. Sections 1 to 4 then provide a thematic summary of our findings. In Section 1, we present the demographic characteristics of our sample and explain how participants' "socio-legal statuses" influenced and were influenced by their legal problems. Section 2 offers a detailed presentation of the types and severity of legal problems that participants reported having faced, and it highlights the connections between various problems as well as their immediate and long-term impacts. In Section 3, we describe participants' contact with — and avoidance of — different legal and administrative systems, which for many were the *source* of (rather than solution to) their legal problems. This section also highlights the forms of mistreatment and abuse participants experienced throughout legal and administrative systems. Finally, Section 4 summarizes our main findings, which show that "access to justice" initiatives would do little to alleviate participants' legal problems. Rather, many of the legal problems reported in this study will persist without comprehensive law and policy reform. We affirm that participants and their communities are experts on the complex legal problems they face and must therefore be given leadership and decision-making power in developing and implementing strategies to address them effectively.

In this report, we employ the phrase "**trans, Two-Spirit, and non-binary people**" to acknowledge that while these groups are often included under the trans umbrella, their realities can differ in significant ways.

When used as such, **trans** refers specifically to trans women and other transfeminine persons, as well as to trans men and other transmasculine persons.

Non-binary refers to persons whose gender identity does not (exclusively) correspond to binary gender identities (i.e., woman/girl or man/boy).

Two-Spirit is claimed by some Indigenous people "who embody diverse sexualities, gender identities, roles, and/or expressions" (Pruden and Salway 2020, 1). Still, Two-Spirit is not analogous or reducible to "Western terms of gender and sexual orientation" and is often used to resist and challenge colonial gender and sexuality systems. This study was inclusive of Two-Spirit persons who wished to participate, whether they felt a sense of connection to trans, non-binary, and other gender minority identity terms or not.

Literature Review

To date, the only Canadian research to explore the range and frequency of legal problems that trans people experience was a mixed-methods study called TRANSforming Justice (J. James et al. 2018), which was conducted in Ontario. Adapted from the Canadian Forum on Civil Justice's national legal needs assessment study, this project's survey results revealed that trans Ontarians (n=232) reported experiencing the following categories of legal problems in far greater proportion than the general adult Canadian population: discrimination, medical treatment, employment, housing, issues with neighbours or property damage, personal injury, police action, disability benefits, relationship breakdown, threat of legal action, social assistance, criminal charges, family matters specific to children, and immigration and refugee issues. Moreover, 71% of trans survey respondents experienced at least one legal problem in the preceding three years (versus 48% of the general population), with 18% reporting five or more problems.

Studies on the health and well-being of trans people more generally have also generated data on legal problems. The 2010 Trans PULSE project (based in Ontario) found that 98% of survey participants (n=433) experienced at least one incident of transphobia in recent years (Longman Marcellin et al. 2013). The 2019 follow-up national Trans PULSE Canada survey further showed high prevalence (over the preceding five years) of verbal harassment (68%), physical intimidation or threats (37%), physical violence (16%), sexual harassment (42%), and sexual assault (26%) among trans participants (n=2,873) (The Trans PULSE Canada Team 2020). The national survey data also highlighted high levels of mistrust of police and the legal system from participants who were migrants (Navarro et al. 2021), sex workers (Arps et al. 2021), or racialized (among whom one in four participants self-identified as Indigenous) (Chih et al. 2020).

In the United States, two large-scale surveys have provided relevant data on the legal problems and legal needs of trans people. The first, a national survey that included 6,456 trans participants, found a high incidence of discrimination among trans people (especially racialized trans people) compared to the general American public, across domains such as employment, housing, health care, police interactions, and jail or prison (Grant et al. 2011). The second, a follow-up national survey that involved 27,715 participants, again found important disparities between the mistreatment and discrimination reported by trans respondents (especially racialized trans people) and that reported by the general US population (S. E. James et al. 2016).

Beyond such surveys, quantitative and qualitative studies from Canada, the United States, and other national contexts have investigated trans people's experiences of specific types of legal problems. For example, some studies have examined barriers to employment, workplace discrimination, and the abuse that trans people face in both legal and criminalized labour sectors (Irving and Hoo 2020; Chu, Clamen, and Santini 2019; Devor and Strudwick 2020; D'Ippoliti and Botti 2017). Other researchers have shown that trans people confront many difficulties in finding and maintaining stable or temporary housing (Lyons et al. 2016; Abramovich 2017; Pyne 2011; Yarbrough 2021). Evidence also reveals that trans people face barriers and negative treatment in the health care system and social services (Giblon and Bauer 2017; Hébert, Enriquez, and Chamberland 2015; Lena 2019; Hébert, Chamberland, and Enriquez 2012; Bauer et al. 2009; MacKinnon et al. 2020; Sansfaçon et al. 2018).

Another body of research has explored the impacts of specific laws, policies, and regulations on trans people's lives. This includes how barriers to obtaining identity documents that reflect trans

people's gender identity can have negative effects on their socioeconomic stability, access to health care (Hill et al. 2018), perceptions of social belonging (Couch et al. 2008), and suicidal ideation (Bauer et al. 2015). Other studies have demonstrated that immigration law (Lee 2019; Tourki et al. 2018; Jacob 2020), criminal law (Graham 2014; Bailey-Kloch, Shdaimah, and Osteen 2015; Krüsi et al. 2018; McClelland 2019), and the interactions between them (Butler Burke 2016; 2018) harm and further marginalize already marginalized trans communities. Family law and courts have also been shown to disadvantage trans individuals in their conjugal and familial relationships (Singer 2020a; Pyne 2012).

Another important area of research examines how trans people interact with legal and administrative systems and the various agents and actors across these systems. Scholars have revealed that trans people report negative experiences in courts or when engaged with various legal processes (Johnson 2013; Buist and Stone 2014; Sharpe 2002). Criminal laws, policies, and enforcement practices have been demonstrated to be particularly harmful for certain trans people (e.g., racialized and Indigenous trans people, sex workers) and gender non-conforming individuals (Namaste and Tourki 2020; Namaste 2000; E. R. James 2014, Hamilton 2014). This has also been observed in correctional institutions (Hébert 2020; Jenness and Fenstermaker 2014; Sumner and Sexton 2015), community corrections (Kerrison 2018), parole (Greene and Dalke 2020), and reentry services (Greene 2019).

Finally, researchers have found that trans people are exposed to various forms of discrimination and violence in interpersonal and institutional contexts (e.g., Factor and Rothblum 2007; Jauk 2013; Kidd and Witten 2010; Jamel 2018; Stotzer 2009; 2008; Moran and Sharpe 2004). Yet, they are likely to avoid reporting instances of abuse and often face further abuse when they do (Moran and Sharpe 2001; Langenderfer-Magruder et al. 2016; Walters et al. 2020). Indeed, police and other law enforcement agencies have been shown to be significant *sources* of discrimination, violence, and other forms of abuse for trans communities (Lyons et al. 2017; Angeles and Roberton 2020; Miles-Johnson 2015; Nuttbrock 2018; Serpe and Nadal 2017).

Methodology

This report is based on 27 semi-structured qualitative interviews with trans, Two-Spirit, and non-binary people that were conducted in 2020 and 2021. The study was designed and conducted collaboratively by the principal investigator² and four co-investigators, with regular consultation with and direct contribution from community researchers at ASTT(e)Q.

There were two recruitment streams. First, 17 participants were recruited online through social media posts and emails shared by the CBRC and various community organizations across Canada. Interested individuals were instructed to fill out an online eligibility screener on Qualtrics that inquired about their demographic characteristics and experiences of various legal problems over the past three years. From this pool, participants were purposively selected to reflect a diversity of backgrounds, places of residence, and range of legal problems. Second, 10 participants were recruited through ASTT(e)Q because we (correctly) anticipated that the communities of people

² The principal investigator, William Hébert, obtained a Certification of Institutional Ethics Clearance from the Carleton University Research Ethics Board (Project #113220).

who access that organization's services — predominantly, trans women who are current or past sex workers and who experience criminalization, poverty, transmisogyny,³ and violence, many of whom are also Black or racialized⁴ migrants — would not likely be reached through online recruitment methods. Potential participants were invited to take part in the study by co-investigators or community researchers. They were informed that their decision to participate (or not) would not impact their ability to receive services at ASTT(e)Q. Every participant received an honorarium.

To be eligible for the study, prospective participants in both streams had to reside in Canada, have experienced at least one serious legal problem in the past three years, be 16 years of age or older, and be able to complete an interview in either English or French. In total, 22 interviews were conducted in English and five in French, and all took place by phone or videoconferencing (Zoom). Participants were provided with a consent form by email to review in advance of the interview date, and interviewers obtained verbal consent from them before the interview. On average, interviews lasted 1.5 hours. Interviews were audio-recorded and professionally transcribed.

Once anonymized, transcripts were coded through a combination of inductive and deductive approaches (see Willms et al. 1990; Bernard 2017; Miles, Huberman, and Saldana 2019). In collaboration with community researchers, the principal investigator and co-investigators began by reviewing transcripts and identifying emergent themes. This formed the basis for an initial code book that was also informed by community expertise and existing literature. Sections of individual transcripts were then coded with the qualitative data analysis software NVivo, generating additional inductive (“ground up”) codes that emerged throughout the coding process.

³ Transmisogyny refers to the specific forms of discrimination, exclusion, and violence that trans women and other transfeminine persons experience because of the intersecting effects of transphobia and sexism (Serano 2007).

⁴ In this report, we separate Indigenous and Black participants from other racialized participants to recognize the particular histories and contemporary manifestations of colonialism and anti-Black racism in Canada. Still, we acknowledge that grouping other participants of color under the category “racialized” may contribute to erasing the differential impacts of racism within that group.

Section 1 – Sample Characteristics

Demographic Data

Gender Identity	n
Transfeminine	14
Transmasculine	4
Non-binary	3
Transfeminine & non-binary	3
Transmasculine & non-binary	2
Other (Two-Spirit female)	1

Current Province of Residence	n
Quebec	10
Ontario	8
Alberta	3
Manitoba	2
British Columbia	2
Nova Scotia	1
Newfoundland and Labrador	1

Ethno-Racial Identity	n
Indigenous	4 ⁱ
Indigenous & racialized	1 ⁱ
Black	5
Racialized	10
White	6
Prefers not to say	1

ⁱ Two-Spirit self-identification (n=5)

Age	n
16-25	6
26-35	7
36-45	6
46-55	5
56-65	1
66-75	1
Not available	1

Citizenship/Immigration	n
Canadian citizen, born in Canada	18
Canadian citizen, not born in Canada	3 ⁱⁱ
Permanent resident	3 ⁱⁱⁱ
Protected persons without permanent residence	2
Non-status	1

ⁱⁱ With protected person status (n=1)

ⁱⁱⁱ With protected person status (n=2)

Residential Setting	n
Urban/Major city	23
Suburban	1
Small city	2
Rural	1

Research participants were selected to cover a range of demographic profiles for variables such as gender identity, age, province and setting of residence, ethno-racial identity, and citizenship status. For gender identity, participants were asked to self-identify using their own preferred terminology. To simplify, we categorized 14 participants as being within the transfeminine spectrum,⁵ meaning they were assigned male at birth but reported identifying as women, trans women, etc., and four within the transmasculine spectrum, meaning they were assigned female at birth but reported identifying as men, trans men, etc. Furthermore, three participants self-identified as non-binary, three as both transfeminine and non-binary, and two as transmasculine and non-binary. The remaining participant self-identified as a “Two-Spirit female” and stated explicitly that she did not have trans or non-binary lived experience.⁶ In contrast, the four additional participants who self-identified as Two-Spirit also self-identified with gender identity terms falling within transmasculine, transfeminine, and/or non-binary categories. In the rest of this report (as in the tables above), we list Two-Spirit self-identification separately to reflect how it is not reducible to Western terms for gender identity or sexual orientation.

Participants’ ages ranged between 18 and 74 years old, with an average of 37 years old (1 participant did not report their age). A greater proportion of participants were recruited in Central Canada, with 10 living in Quebec and eight in Ontario at the time of interviews. Five participants were recruited in the Prairies (three in Alberta, two in Manitoba), two in the Pacific region/British Columbia, and two in Atlantic Canada (one in Nova Scotia, one in Newfoundland and Labrador). Because of time constraints and the limited resources available to conduct this study, we were unable to recruit from other provinces or Northern territories. The majority of participants were living in an urban setting or major city (n=23), one in a suburban area, two in a small city (including a city in a more remote northern region), and one in a rural area.

Participants were also asked to self-report their **ethno-racial identity**. Our sample included four Indigenous persons and one person of mixed Indigenous, Southeast Asian, and white background. These five individuals all self-identified as Two-Spirit. Our sample also included five Black persons, which comprised people who self-identified with the following terms: “African,” “Afro-Latina,” “born in Haiti,” and “of Haitian and Canadian origins” (2). Additionally, our study included 10 racialized persons, who self-identified with the following terms: “Arab and West Asian,” “born in Morocco,” “Caribbean and South Asian,” “from El Salvador,” “Latin American/Hispanic,” “Latina” (2), “Mexican” (2), and “Southeast Asian.”⁷ Our sample also included six white persons and one individual who preferred not to disclose their ethno-racial identity. Finally, nine participants — two of whom were Black, seven racialized — reported being born outside of Canada. Of these participants, three were Canadian citizens at the time of interviews, three were permanent residents, two had refugee status, and one was an asylum seeker who had applied for refugee status.

In this report, **ethno-racial identity** refers to participants’ self-identified ethnicity, race, Indigeneity, country of origin, membership in/connection to cultural or other communities, etc.

⁵ All 10 individuals recruited by ASTT(e)Q were transfeminine and living in an urban setting.

⁶ For more on why we included this participant, see Pruden and Salaway’s (2020) discussion of ethical and respectful strategies for the inclusion of Two-Spirit participants in research, as well as our definition of Two-Spirit in the Introduction.

⁷ Please see footnotes 4 and 6 for more on how we categorize participants based on their self-reported identities.

Some elements of our research design help explain the high proportion of Black, Indigenous, and racialized persons in our sample. On one hand, we recruited through a specific organization, ASTT(e)Q, that works extensively with trans women who are current or past sex workers and who experience criminalization and poverty, many of whom are also Black or racialized migrants. On the other hand, in the other recruitment stream, Black, Indigenous, and racialized individuals filled out the online screener in a greater proportion to begin with.

Socio-Legal Status

In this report, we employ the term **socio-legal status** to explain how trans, Two-Spirit, and non-binary people's legal problems are caused by interconnected and mutually constitutive social and legal dynamics. Our results reveal that certain participants were particularly susceptible to facing more severe legal problems and experiencing more harmful contact with the legal system and other state institutions. Due to the qualitative nature of our study, we cannot draw conclusive comparisons between or across demographic groups, but the term socio-legal status helps explain how people's legal problems are determined by their *differential* position relative to social norms *and* to laws, legal (and other state) systems, and legal actors. In other words, socio-legal status addresses how individuals' interwoven **social and legal statuses** influence or produce their legal problems and shape their access to resources, opportunities, entitlements, and protections, including the protection of their rights.

At one level, **social status** refers to one's social standing relative to others in society. This position is determined by economic status and social, cultural, and legal norms, which create hierarchies based on characteristics such as gender, race, health status, (dis)ability, class, age, etc. As our evidence will show, people's legal burdens are often shaped by the interactions between and compounding effects of numerous social locations. For example, Indigenous, Black, and racialized participants regularly expressed how various aspects of their identities were inextricable from their experiences of legal problems:

I think it's multilayered, because as a person who is non-white, there's also race in play, right? So, sometimes I have to endure racism, but also homophobia, or transphobia, and, you know, it's a multilayered issue, right? It's not just one. (Kaiden, non-binary and transmasculine, racialized)⁸

Hence, the concept of social status highlights that many of the legal problems experienced by trans, Two-Spirit, and non-binary people are not the result of transphobia, or of transphobia alone. Moreover, the evidence we present in this report will underscore that participants' social status was not the only source of their legal problems.

⁸ Participants selected their own pseudonyms.

Indeed, at another level, the term socio-legal status addresses how individuals' recent experiences of legal problems are influenced by, and likewise influence, their **legal status**. Legal status refers to people's status vis-à-vis specific laws, policies, and their enforcement. For example, a person's legal status can refer to their immigration status, civil status, Indian status, or to having a criminal record. A person's legal status also includes whether certain laws and policies situate them in conflict with legal and administrative systems and actors and at risk of punitive or otherwise negative consequences for going about their daily activities (e.g., earning income, using certain substances, being present in public space or in certain areas of town, exchanging consensual and remunerated sex, engaging in one's spiritual and religious traditions, customs, and ceremonies, exercising one's treaty rights). People's legal statuses may be determined by numerous and intersecting laws, policies, and enforcement practices (e.g., youth protection, immigration, criminal, municipal, family, health, housing). These laws and policies can have serious consequences on people's lives, rights, and opportunities, even if those people manage to avoid interaction with law enforcement. As such, the term legal status recognizes how laws, policies, regulations, and the institutions and actors who enforce them delimit people's access to legal protections and contribute to producing and maintaining people's cumulative legal problems.

Individuals' and communities' social statuses are constructed and informed by their legal statuses — and vice versa. Additionally, some aspects of a person's status can be simultaneously social and legal. For example, their age determines their status relative to others in their immediate and broader communities (e.g., position and power within family structures), but it is also a legal status that determines their legal control over various aspects of their life (e.g., guardianship, age of majority). Similarly, a person's health status can have both social (e.g., stigma, exclusion from certain spaces due to inaccessibility) and legal components (e.g., inadmissibility on health grounds in immigration law, criminalization of HIV non-disclosure). We conceptualize these mutually constituted and interconnected relationships as the socio-legal status of participants.

The concept of socio-legal status stresses that people's current or recent legal problems cannot be fully understood if considered in isolation from other legal problems, including previous and/or ongoing problems. This is because many serious legal problems have lasting social and legal consequences that contribute to people's exposure to additional problems in the present and future. Alexa's narrative provides an illustrative example.

Alexa's most recent legal problems included barriers to obtaining permanent residency and difficulties finding housing, obtaining legal employment, and accessing education. But the occurrence and substance of these problems cannot be disentangled from her previous/ongoing problems, nor from these previous/ongoing problems' connections to and impacts on her socio-legal status. Alexa shared that, many years before, she pleaded guilty to criminal charges despite having accrued them for acting in self-defense when she was assaulted. She did not fight these charges on the advice of her criminal lawyer, a strategy aimed at getting her released as soon as possible from the men's facility where she was held in pretrial detention. Alexa described being detained among men — under correctional policies that determined trans people's placement based on their genitalia rather than their gender identity — as a frightening and “traumatizing” experience.

Alexa's criminal lawyer did not adequately inform her about the long-term legal and socio-economic effects that her guilty plea would have, nor did she anticipate them. Among other consequences, Immigration, Refugees and Citizenship Canada (IRCC) denied Alexa's permanent residency application because of her criminal record. In turn, both her criminal record and her

status as a refugee without permanent residency subsequently caused significant barriers to housing, legal employment, and education. These barriers were made worse by her inability to change the name and gender marker on her identity documents because of her immigration status. Furthermore, the risk of deportation lingered as a significant source of fear for Alexa because she had previously been ordered by immigration to abide by strict probation-like conditions to maintain her status in Canada. Alexa's fear of deportation was amplified because one of her close friends, a trans woman from the same country of origin, had been murdered after being deported from Canada.

While Alexa's guilty plea may have prevented continued imprisonment at the time, it nonetheless created conditions of life she called "*prison-like*":

[translation]

My status is a refugee status. It's been several years, it's been like 15 years already, and then I didn't manage to get residency, because of... a case where I had to declare myself guilty in front of the court. [...] In fact, I was not really guilty. Because of that, it closed all doors for me. Not able to study, not able to work, not able to do anything, as if locked in a bubble that cannot be broken. [...] As they say, it's almost like a prison... you can't do anything... (Alexa, transfeminine, racialized)

In sum, Alexa's already precarious socio-legal status made the consequences of criminalization more severe and long-lasting, and these consequences likewise worsened her socio-legal status.

In Section 2, we present the various types of serious legal problems that participants reported having experienced in the previous three years. As will become clear in this and subsequent sections, while we explicitly asked participants to describe their recent problems, interviews often revealed that these problems were exacerbated by, or directly stemmed from, the enduring effects of earlier legal problems.

What our report reveals is that we cannot gain a robust understanding of the legal burden that trans, Two-Spirit, and non-binary people face in Canada if we only or narrowly examine recent legal problems or their immediate impacts. Instead, connections must be traced between people's previous and current legal problems; the intersecting and reinforcing impacts of different types of legal problems; legal problems' impacts on people's socio-legal statuses; and people's statuses and the political, economic, legal, and social forces that shape them. Throughout this report, when possible, we make these connections explicit through our selection of quotes and in our synthesis and interpretation of interview data.

Section 2 – Legal Problems

In this section, we provide an in-depth overview of the types, severity, and immediate impacts of the legal problems that participants described having faced in the previous three years, while also attending to the longer-term consequences of previous or ongoing problems. We categorize legal problems thematically under five domains:

- **Legal Statuses**, which covers issues related to identity documents, citizenship and immigration, criminalization (e.g., the criminalization of certain activities, having a criminal record), child and youth protection services, and conjugal and familial relationships;
- **Economic Security and Standard of Living**, which includes problems related to employment, income support, housing, and education;
- **Health Care and Services**, which addresses problems such as access to medical care, insurance coverage, and mental health services;
- **Violence and Other Forms of Abuse**, which includes isolated or sustained experiences of verbal and psychological harassment and of physical violence, committed by state and non-state actors; and
- **Detention Facilities and Law Enforcement**, which comprises incarceration, other forms of detention, and contact with police/law enforcement.

Legal Statuses

As explained in Section 1, legal status refers to one's status vis-à-vis numerous and intersecting laws, policies, regulations, and the institutions and actors who enforce them. A person may be afforded certain legal statuses that offer protections, services, opportunities, and advantages. Likewise, legal statuses may produce and maintain legal problems by placing a person in direct conflict with legal systems, and by limiting or denying access to protections, services, opportunities, and advantages. Importantly, the mere existence of a law or policy can have serious and harmful impacts on people's lives, rights, and opportunities, regardless of its enforcement.

Criminalization

Numerous people in our study described how criminalization impacted their lives. By criminalization, we refer to the following situations: participants whose activities and/or labour were criminalized, even if they did not directly engage with law enforcement or legal systems; participants who spoke about being profiled and targeted by police; participants who interacted with criminal law enforcement and prosecution as a "suspect" or "offender" (e.g., arrest, police custody, pre-trial detention, criminal trials) and who described how these events disturbed their lives; and participants who were found guilty of criminal offences (at the outcome of trial or from entering a guilty plea) and had to cope with the detrimental consequences of having a criminal

record. Like other legal problems, criminalization had long-lasting effects for certain participants and often led to future problems, including additional conflicts with the law, law enforcement, and legal systems. We note that many of the people who identified criminalization as one of their main legal problems explained that their initial contact with criminal law enforcement was related to the criminalization of drugs and/or sex work.

The consequences of the criminalization participants experienced were numerous (e.g., on housing, employment, familial relationships, immigration status) and cumulative, as early criminalization's effects on participants' socio-legal statuses often resulted in more criminalization and harsher penalties later on — in particular if their status was precarious to begin with. One participant, who worked as a sex worker and repeatedly faced criminal charges for selling her services in public, described this cumulative effect:

[translation]

Each time, what would happen was, since it was always the same charge, well each time [...] it would give the judge the opportunity to hit harder. Then, it ended up... leading to incarceration, but it really took a long time before it came to that. (Darya, transfeminine, Black)

Another participant described a similar path of escalating contact with criminal law enforcement, which also culminated with time in prison and criminal inadmissibility resulting in loss of permanent resident status — what she called a “*vicious circle*” (Miri, transfeminine, racialized).

Participants mentioned that the problems caused by criminalization emerged not only from being charged for a criminal offence or from the detrimental effects of charges and convictions, but also from having to manage the potential harmful consequences of criminalization. In other words, participants described how their everyday lives were negatively impacted by the risks associated with criminalization and their potential devastating effects on their lives. In particular, participants who reported being current or former sex workers spoke about the risks generated by sex work criminalization and about other forms of punitive regulation they face (e.g., receiving fines for loitering when working on the street, being evicted for involvement in sex work). Moreover, sex workers reported that the risks and harms of criminalization jeopardized their safety and exposed them to violence, including from police:

I had clients attack me, charge at me and everything, but I couldn't call the cops because I would... I was afraid I was gonna get in trouble. So, I would have to suck it up, kick him out, and then have another day. Try another day to have a good day, basically. (Star, transfeminine, Black)

[translation]

Well, regarding the police... I was degraded, I was... listen... I was insulted, belittled, you know, when you say control, there is a certain way of sometimes controlling a

person. [...] *Listen, I was... ah! Demoralized, demeaned.* (Miri, transfeminine, racialized)

As we will return to later, some trans, Two-Spirit, and non-binary people are subjected to increased surveillance by, and more frequent and harmful contact with, law enforcement than others; this includes those who are Indigenous, Black, racialized, and/or sex workers.

The significant impacts of the criminalization of HIV non-disclosure⁹ — which can lead to charges of aggravated sexual assault and can result in a lengthy prison sentence, lifetime registry as a sex offender, and, for people without citizenship, deportation for criminal inadmissibility — were also made evident in some interviews. In one example, a participant living with HIV described how she faced criminalization for HIV non-disclosure after she was sexually assaulted. Following the assault, her assailant began to contact her dozens of times a day, threatening to kill her if she contacted police and warning that police would not believe her if she did, on account of her gender identity and immigration status. The participant then contacted the police to request a restraining order, and she disclosed her HIV status to police officers. Instead of attending to her safety, the police shared the participant's HIV status with the man who assaulted her. He subsequently pressed charges against her for not disclosing her HIV status during the assault. She described the entire ordeal as a waking “nightmare”:

[translation]

I felt like... it was the end for me, I was afraid to go to prison [...] that it was all over, I don't know, it was very hard for me. The nightmare was not over. (Maya, transfeminine, racialized)

Furthermore, the police did not intervene when the person who assaulted the participant continued to stalk and harass her for months following the assault, even after the charges against her were dropped. Maya did not pursue any legal recourse pertaining to the police's disclosure of her HIV status to the assailant, in part because of the considerable time and resources required, but more significantly because she believed that further contact with law enforcement might create more legal problems or endanger her safety. As we will discuss in Section 3, many of the criminalized participants in this study avoided contact with legal and administrative systems whenever possible, because of the possibility that it would worsen, rather than resolve, their legal problems.

⁹ In Canada, the law that criminalizes people living with HIV was established in *R v Cuerrier*, [1998] 2 SCR 371, which declared it a legal obligation for people living with HIV to disclose their HIV status before any activity that poses “significant risk of serious bodily harm.” In *R v Mabior*, 2012 SCC 47, the Supreme Court determined that “significant risk” applies whenever there is a “realistic possibility of transmission of HIV,” which they defined as any situation that does not meet two conditions: (1) a condom is used, and (2) the person living with HIV can prove that their viral load is lower than 1,500 copies/mL. Effectively, this law exposes all people living with HIV to the risk of criminal prosecution or other harmful consequences for going about their daily activities. This constant risk of criminalization compels people living with HIV to devise strategies to avoid prosecution, which negatively impacts and predetermines their options and decisions, whether they are subjected to prosecution or not. For more information, see *The Criminalization of HIV Non-Disclosure in Canada: Current Status and the Need for Change*, HIV Legal Network (2019).

It is worth noting that every participant in our sample who disclosed being involved with child and youth protection services as minors reported experiencing criminalization. People whose first contact with criminal law enforcement happened when they were minors were explicit about the devastating effects it had on their lives as young adults, as two people who served sentences in youth detention facilities explained:

Had I had support from the age when I started getting in trouble [...] in the youth justice system, it would have been better. I got an offer when I was 18, and had I stayed out of jail and out of the court rooms for like, two years, they were gonna expunge my youth record, but that didn't happen. And so, all my charges transferred to adult, so that really sucked. But had I gotten that support when I was 18... (Jason, non-binary and transmasculine, undisclosed ethno-racial status)

Even after I got out there was very little services. Like, after being in a facility for four years and being told you can't, pretty much, do anything, and having a complete routine, to basically just going into your own apartment? There was no transition that could have prepared me for that. There were no services, no halfway house, no nothing. (Yeti, transmasculine, Indigenous, Two-Spirit)

Like other persons in this study, these two participants described the harmful impacts that probation and/or parole conditions had on their lives.

Across our sample, probation or parole conditions included prohibitions on using substances, being in the company of specific people or communities, driving a motor vehicle, or being in certain neighbourhoods — including, as some participants reported, where they worked, resided, or went to school. Such conditions were described as difficult or impossible to abide by, and participants explained how they generated important barriers to accessing supports, services, employment, and community connection:

Not being able to drive to get to work or anything like that, it's [...] limited my [employment] options because, they don't look at who you are or who you're trying to be. They look at your behaviour, basically what you've done in the past through the court system and all that. (Rachel, transfeminine, white)

Participants also described how conditions could or did result in further criminalization and escalating criminal charges. For example, Alexa reported that she was forbidden from entering or circulating in a certain area of town (known in certain provinces as a red zone or a *quadrilatère*) that included her own home. This court-ordered condition effectively made it illegal for her to leave her home and perpetuated an ongoing cycle of criminal charges:

[translation]

You weren't allowed to go out... Even if you lived in [the prohibited zone]. You weren't allowed. It's like terrible, it's like [if] you're in prison at home. [...] I remember, one of my friends, he told me "OK I'll pick you up to go for a drink outside [your prohibited zone]." I said, "Okay, come get me." [...] The police saw me get into the car. It was like 11:30. The police saw me, then they were following me. Three blocks later, they arrested me. A week in jail. Just like that... for having gone out. (Alexa, transfeminine, racialized)

Several other participants likewise described being trapped in a situation where their previous criminal charges and resulting conditions made it impossible to carry out basic activities of daily life without accruing new criminal charges. This cascade effect further marred participants' life prospects, thwarted their access to employment and housing, and imperiled their immigration status, even in cases when the laws under which they were originally charged were eventually repealed. As we will explore in the next subsection, migrants were among the participants for whom criminalization had the most severe effects, determining both the immediate and the long-term conditions of their lives.

Finally, we note that many participants who were arrested for activities related to drugs or sex work were given court-ordered conditions, such as restrictions on mobility or continual reporting to law enforcement. In several cases, participants who breached their conditions received criminal charges. Notably, even participants who were ultimately declared not guilty of the original charges still had a criminal record because of the secondary charges they received for breaking court-ordered conditions.

Citizenship and Immigration

Our findings make explicit that having (or having previously had) a precarious immigration status has serious and lasting impacts on people's access to resources, opportunities, entitlements, and protections, including the protection of their rights. Importantly, this is a key area of our data that demonstrates how current legal problems are in many ways inextricable from previous or ongoing problems.

Regardless of their current immigration status, many of the migrants in our sample, and especially those who made claims for refugee or protected status, discussed the lack of support (e.g., to access housing, food, and other essentials) and guidance they received (e.g., about where and how to apply for refugee status, how to obtain income assistance) upon their arrival in Canada:

[translation]

They questioned me, then they searched me [...] everywhere, undressed, naked in a shower, unbelievable, [they broke] my shoes to search everywhere then... ah! It was unbelievable [...], it was hard. They did that for a whole evening, after that they let me go and they gave me addresses, a note where I could maybe ask for help somewhere.

But it was a Saturday. And on Saturday and Sunday everything is closed, there was nothing open. I didn't know where to go, and after that I was stuck in a bus terminal and I didn't know where to go. [...] To come here, it was very difficult. [...] Those early days were hard for me. (Anika, transfeminine, racialized)

This participant, like others, shared that the only immediate help she received was from community members or organizations. In Section 4, we will show that for the great majority of participants, the most important resource for facing their legal problems was their communities, broadly defined. Her situation also reveals how the dearth of assistance she received from Canadian border agents was compounded by the trauma she experienced from her interactions with them upon landing. Standard immigration procedures such as strip searches can be especially harmful because they have the potential to “out” migrants as trans, exposing them to the possibility of violence and discrimination.

But with or without supports, migrants expressed that their initial situation in Canada was often made worse by how burdensome and lengthy various aspects of the immigration process were (including applying for various forms of assistance):

When I arrived I made the claim as soon as I got to the airport. I was one of the [approximately 30] people that came with me on the plane. And from those it was only me and two other guys that were accepted right away. [...] And... I spent three months in the YMCA waiting to start the process of finding an apartment and getting welfare... and all of that. It took three months even though I submitted everything they asked of me. (MX, transfeminine, racialized)

[translation]

Then I had all the required documents and I had all the papers I needed to be accepted as a refugee. [...] It was very difficult because every time I asked my lawyer, he told me “Oh, the papers are still in [other city]. Oh, maybe the papers are lost.” [...] It took me a long time, like three, four years to get an answer that my papers had been found, and then to have them sent to continue the refugee status process here. (Maya, transfeminine, racialized)

Some participants discussed how their immigration status prevented them from obtaining legal employment and, as we will discuss in a later section, how it also acted as a barrier for some to securing stable or safe housing. As we explore in the next subsection, migrants who took part in our study also had some of the most significant barriers to accessing identity documents that matched their gender identities.

Migrants who arrived in Canada as minors experienced particularly serious and long-lasting problems because of their immigration status. One participant explained that she did not have access to health care for more than a decade because one of her parents, who did not accept her gender identity, refused to provide her with the documents needed to apply for the public health

care plan in her province of residence. Another explained that one of her parents kept her from obtaining citizenship for similar reasons:

The reason why I never had the citizenship before, is because my mother [would] kind of hold it against... was kind of holding it against me as in, "If you don't go by my rules, I can always send you back to [country of origin] without a problem." (Zara, non-binary and transfeminine, Black)

In another example, a migrant was removed from her family and placed in youth care shortly after arriving to Canada. As we mentioned above, every trans, Two-Spirit, and non-binary participant in our sample who disclosed being involved with child and youth protection services as minors experienced criminalization, which had long-lasting or irreversible consequences on their lives. This participant remained in youth care for around 10 years. During that period, the government youth care employees failed to apply for citizenship on her behalf. As with other migrants we interviewed, this participant's prospects of obtaining citizenship were later further jeopardized as an adult because of the criminalization she experienced as a sex worker. She and other participants in our sample were either denied or stripped of permanent residency or citizenship because of criminal inadmissibility provisions, and some were even threatened with deportation. One of these participants reported having spent more than a decade undocumented after losing her permanent residency because of a drug-related criminal conviction. When she was eventually arrested and charged for sex work-related offences, she was transferred to immigration authorities and held in an immigration detention facility for nearly a year. She only narrowly avoided deportation, and her interview revealed that she continues to live in precarity while waiting to re-establish her immigration status.

Identity Documents

Across this report, our evidence will show that for many trans, Two-Spirit, and non-binary people, having identity documents (ID) that do not correspond to their identities can have serious impacts on their standards of living (e.g., access to employment, housing), their health and well-being (e.g., access to health care and social services), and their dignity and safety (e.g., being exposed to abuse, discrimination, or harassment; negative interactions with state actors such as law enforcement and court actors). For example, one participant reported that because her immigration status prevented her from changing her ID, she faced discrimination and hostility when applying for jobs. This discrimination led her to avoid seeking formal work entirely:

[translation]

When I'd go look for work they would look at my papers, they would look at me, they would say, "No, that's not you." [...] My appearance and my papers are not the same, so I was embarrassed and that's why I didn't look for work. (Maya, transfeminine, racialized)

Some recent law reforms have reduced barriers to changing ID, including in relation to immigration status,¹⁰ but other law reforms have increased barriers, including in relation to criminal records.¹¹

Beyond these law reforms, there continue to be numerous additional barriers to obtaining identity-concordant ID that participants in our sample identified. One participant described an example of the kind of bind that many refugees and refugee claimants found themselves in when submitting applications to change their documents:

It was kind of... complicated in a way because they are asking you for documents that [are] impossible for you to get. They wanted a passport, a valid passport, or travel document. I have never taken a travel document from here. And a passport, I cannot go up and renew my passport at the embassy here from [country of origin] because they told me that if you renew your passport, it's like... you [can be accused] of thinking of going back. (MX, transfeminine, racialized)

Under Canada's *Immigration and Refugee Protection Act*, refugees without Canadian citizenship (including many of the research participants who left their countries of origin because of anti-trans violence) can have their refugee status revoked for renewing a passport from their country of origin. Even when a refugee is instructed by IRCC that such travel documents are required for immigration-related procedures, renewing a passport can be interpreted as having "reavailed themselves of the protection of their country of nationality."¹²

Different jurisdictions (provinces, territories, federal agencies) have different onerous, elaborate application requirements and processes that are in themselves barriers for trans, Two-Spirit, and non-binary people. Participants talked about the difficulties linked to obtaining the supporting documents required for applications. Depending on the jurisdiction, these required documents can include authenticated letters from medical or other professionals that "validate" the applicant's identity, or that confirm the person is on hormones or has had specific gender-affirming surgeries (the very fact of requiring medical interventions is also a barrier for many people). Other formal requirements, such as obtaining documents from one's country of origin, having to disclose one's criminal record, obtaining a police record check, and mandatory application fees and other costs, were also described as prohibitive:

When I send my application, they will send it back. Then I get the documents they ask me to send. And [...] they will send it back to me, "No, there is this and this and that..." and then, "You need to update the dates, sign again, and put the new pictures." So,

¹⁰ This decision of the Quebec Superior Court eliminated multiple barriers, including a citizenship requirement for changing legal name and sex designation. The decision was the outcome of years of advocacy led, in part, by trans migrants and allies. See *Centre for Gender Advocacy v Attorney General of Quebec*, 2021 QCCS 191.

¹¹ In 2020, Saskatchewan amended *The Change of Name Act* to allow for the refusal to register a change of name for adults convicted of Criminal Code offences that designate an individual as a sex offender. See *The Change of Name Regulations*, 1996, RRS c C-6.1, Reg number, s 5.1(2).

¹² *Immigration and Refugee Protection Act*, SC 2001, c 27, s 108(1)(a).

they will keep asking you for things that they don't mention all together. They give you one [document] and then you send it back and they will change it again, "Ah... You need this too." You see it as a pointless way for them to ask thing by thing when they could put everything in a list. [...] But no... they send it back. So, you're spending money in postage, every single time and they're asking you for documents that it will take months for you to get back from [your country of origin]. (MX, transfeminine, racialized)

My charges have gotten in the way of [changing my ID]. Apparently, I have to wait five years for my youth record to be completely sealed, and then I also have to pay money to change my name, which I can't really afford to do. So, I think maybe they should lower the rate to change people's names. [...] There are gonna be some people who are on low incomes, this is gonna help make their life more livable, you know? (Yeti, transmasculine, Indigenous, Two-Spirit)

Overall, participants said that it was difficult to get information about the procedures involved in changing their IDs and that such procedures were onerous. Participants who succeeded in changing their IDs explained that they then had to go through several steps to notify multiple public and private agencies and request updates to records and files (e.g., school records, health care and social services files). These processes were also described as time-consuming and resource-intensive.

Still, identity-concordant ID is not sufficient to resolve the problems that trans, Two-Spirit, and non-binary people face in how they are addressed and treated in public and private spaces. For example, Quin elected to change the sex designation on their birth certificate to the gender-neutral "X," but their identity continued to be disaffirmed by health care personnel and by the health system's bureaucracy:

I am still, as a disabled person, misgendered every time I go to the hospital, every time I engage with any kind of [medical setting], which is especially not great during a global pandemic because it's a deterrent to accessing health care, like I have avoided going to hospitals. [...] The X marker, as I found out later... it's just a Band-Aid, a binary gender or sex is still retained on legal documents, [...] like the [provincial health care plan], right now, they don't really have a non-binary option, it's only male or female. (Quin, non-binary, racialized)

Two other participants said that they hesitated to get the X designation on their ID, even if it would describe their gender identity more accurately than their current sex designation, because they feared it might expose them to *more* discrimination in various spheres of their lives (e.g., employment, international travel). Unlike "male" and "female" designations, the X designation immediately identifies the holder of an identity document as trans, Two-spirit, or non-binary,

effectively “outing” that person to officials and prospective employers. In sum, legal recognition via identity documents does not always improve their safety and security.¹³

Child and Youth Protection Services

The participants in this study who were involved with child and youth protection services as minors described foster families and group homes as frequent sites of abuse instead of places of respite from neglect or abuse:

[translation]

I was seeing therapists, I had a social worker, and the thing is, that evening I had bruising. So then, I went to see my therapist and I told her: “Look, this is what's happening to me at home, it's been going on for so long, and I'd like it to stop now.” [...] From then on, I was placed in a foster home. Except the problem is that they also hit us in the foster home. (Darya, transfeminine, Black)

Another participant made a direct connection between his incarceration and the negative treatment he experienced from his youth worker and in a group home, and more broadly because of the youth care system's refusal to accept and affirm his gender identity:

Jason: So, then I was put in a group home, and then I stayed in that group home for like four years, no, three years, and then I was in and out of incarceration during that time.

Interviewer: Because you were hitting people?

Jason: Yeah.

Interviewer: Can you talk a bit more about what made you hit people?

Jason: I was just unhappy in life [...] 'cause I had come out when I was like, 12, but my worker told me, it's just a phase, you'll get over it. (Jason, non-binary and transmasculine, undisclosed ethno-racial status)

This participant met further disavowals of his identity and punishment for his reactions to such abuse while incarcerated. He also reported being forcibly hospitalized in a youth mental health facility.

Another participant, who was involved with child and youth protection services from a young age and was eventually made a permanent ward as a teenager, likewise discussed the abuse and discrimination he experienced as a gender non-conforming youth in the foster care system. His

¹³ See Namaste and Tourki (2020) for a discussion of the financial repercussions that changing one's identity documents can have for migrants.

first contacts with the criminal legal system happened when he tried to run away from a group home. Significantly, this participant explained that he had been denied access to an Indian status card, despite one of his parents having Indian status, but that he was nonetheless placed in facilities overseen by Indigenous youth services, against his wishes. When asked why he would have preferred to be placed in other facilities, he answered that Indigenous services were not only notoriously underfunded, but were also primarily staffed by white personnel:

I already knew that it was gonna be shit. [...] The way that I view Indigenous people, a lot of the time, and it's gonna suck saying this but it's kind of true, we're first in line when no one wants to be first, and we're last in line when no one wants to be last. (Yeti, transmasculine, Indigenous, Two-Spirit)

Yeti further said that his experience in the Indigenous services facilities confirmed his view: “There’s a lot of stuff I didn’t get — there’s a lot of services — even the claims for drug services is crap. I’m telling you.” In contrast, this participant described how meaningful it was when he eventually connected with a youth worker who was Two-Spirit like him after he started accessing services and support at an Indigenous-led community organization.

In the next subsection, we show how this participant’s view that Canadian institutions are sources of systemic disadvantage and harm for Indigenous people was shared by another person in our sample, Riel, who confronted legal problems and contact with the court system because of his conjugal and familial situation.

Conjugal and Familial Relationships

Nearly all people in this study described conflicts with — and in some cases violence from — family members and/or intimate partners at some point in their lives in connection with their gender identity, and some specifically faced legal problems tied to their conjugal or parental status. Legal encounters and proceedings tied to these and other legal problems were often particularly negative for trans, Two-Spirit, and non-binary people in our sample.

We will return to participants’ involvement in legal procedures in Section 3, but for now, we wish to emphasize how some individuals specifically reported that legal procedures made trying to separate from an abusive partner far worse.

The first thing that you do is you’re required by law, or you’re strongly encouraged to go through mediation prior to going to court, which was difficult not because of my queer identity but because I’d been in an abusive relationship. [...] There’s lots of situations where there’s domestic violence and it’s not a black eye, it’s a coercion, they call it coercive control, and if you put these two people in the same room and expect them to go through mediation, you’re not getting the accurate depiction of the relationship. (Seth, transmasculine, white)

Seth's ex-partner also instructed his lawyer to leverage Seth's gender identity to his disadvantage during child custody negotiations. Luckily, the lawyer refused to do so. Nonetheless, this participant's example reveals that encountering a respectful and educated legal actor was not sufficient to resolve his legal problems, because many of his problems emerged from his contact with the legal system and his involvement in legal procedures. Indeed, Seth explained how both the divorce and custody procedures dragged on for years following his separation, and that his ex-partner continued to harass and attempt to control him during that time, including by employing financial manipulation and legal mechanisms such as ex parte parenting orders. In Section 3, we will show that being in contact with legal and administrative systems or being involved in legal procedures was a common source of problems for many other participants in this study.

Another participant, who was also attempting to separate from an abusive partner, explained how his precarious financial situation put him at a disadvantage in attempting to engage in divorce and child custody procedures.¹⁴ Like the participant cited above, he explained how the lengthy and burdensome nature of these legal procedures resulted in his remaining legally bound to his ex-partner years after their separation, which further exposed him to abuse:

I'm a single parent currently, and I've had a lot of difficulties with anything to do with the legal aspects of separating as a married couple, and then separating as parents, and currently my divorce status is still — or my marital status still isn't divorced even though we separated [three years ago]. And my legal status is still just... my parent-custody status is still legally joint even though I'm a primary caretaker. Yeah, I have no child support or anything in that regard. (Riel, transmasculine, Indigenous, Two-Spirit)

Riel's situation was further exacerbated when a judge refused to grant him a protection order he requested at the recommendation of the divorce mediator when his ex-partner began exhibiting particularly threatening behavior towards him. For this participant, this judge's decision, made after a hearing that lasted only a few minutes, was characteristic of how the legal system responds to Indigenous people's problems, and especially those perceived as Indigenous women:

It felt very typical of, I guess my experience of any sort of interaction about the protection of Indigenous people, particularly Indigenous mothers, when they're in danger. [My request] was just like, barely even looked at, [the judge] threw it in the garbage and that was it, I was given no direction, nothing. (Riel, transmasculine, Indigenous, Two-Spirit)

Significantly, Riel explained how he had made the choice not to present himself as a man or affirm his gender identity during court proceedings because, in his words, "*it would have made it all the more complicated and painful.*"

¹⁴ For more on the legal problems (e.g., related to child custody, appropriate recognition of one's parental role) facing trans, Two-Spirit, and non-binary people in Canada, see Singer (2020b) and Pyne (2012).

Later, we will show that Riel's fear and mistrust of the legal system and its agents, which stemmed from harmful interactions with law enforcement he and his community experienced, was shared by other Indigenous, Black, and racialized people in this study, particularly if they were also disadvantaged by their legal status(es). Next, we explore the legal problems that participants in our sample experienced relative to employment, income support, housing, and education, which we will show was often likewise exacerbated, if not caused by, aspects of their socio-legal statuses.

Economic Security and Standard of Living

Labour and Employment

According to our data, access to employment and to safe and equitable working conditions is one of the most significant sources of difficulty for many trans, Two-Spirit, and non-binary people. Legal problems reported by participants related to labour and employment included problems experienced in the context of legal labour sectors, as well as within criminalized labour sectors (e.g., selling sexual services, selling drugs).

First, participants reported facing barriers to obtaining or retaining legal employment. Participants spoke of being denied work or being fired because of various aspects of their socio-legal statuses, including but not limited to their gender identities:

I moved to [name of city] thinking I was gonna be able to get a job here, because I thought, you know, it's a bigger city, people are more open-minded. [...] I put my résumé everywhere, thinking I was gonna get a job easily. I would get interviews and because of, you know... They saw my name, a male name and everything. Once I would go to the interviews, I would never get a job. One woman actually told me that she would hire me but she's just afraid of what the clients would think. (Star, transfeminine, Black)

I was working at [store] at the time. And I personally feel like the way I was fired, like the way they terminated my contract, was really racially based. (Zara, non-binary and transfeminine, Black)

Many participants also said that it would have been difficult for them to determine or document the precise reasons why they did not obtain work or why they lost employment, which would have been required if had they sought legal recourse. Additionally, some participants' labour- and employment-related legal problems stemmed from their inability to work legally in any sector due to their immigration statuses or from employers' refusal to hire them because of their criminal records.

Second, interviews revealed that instances or patterns of discrimination and harassment in the workplace were commonplace:

Transphobia in one of the workplaces is the reason why I quit, and I never really approached dealing with that through any kind of judicial system or anything like that because it just wasn't... it was a lot of effort and a lot of time for something that, [...] with the current systems we have, I couldn't see that resulting in anything. So, I basically resigned. (Jen, non-binary and transfeminine, white)

I was just very, very anxious at work all the time — like especially after my [Black] co-worker was fired without cause, I was just very on my toes. Like what if I say something, if I talk about something that makes me uncomfortable, am I gonna get fired, am I gonna get reprimanded? Just feeling lots of anger and hopelessness as well, I'm like this fresh-out-of-school Black trans person and this white cis lady who is [...] employing me has all this power over me and I can't say anything. (Ekow, non-binary, Black)

Here again, while certain participants identified specific instances of transphobic, racist, or otherwise prejudiced treatment, others highlighted how their negative experiences were connected to multiple forms of bias. As we will discuss further in Section 3, the few participants who pursued them said that the legal recourses at their disposal to respond to or resolve such legal problems (e.g., internal complaint and accountability mechanisms, human rights complaints) did not yield adequate results, and in some cases even resulted in further problems.

Third, some participants reported enduring unsafe and inequitable labour conditions without any recourse available to remedy the situation, and with limited alternatives both within the sex industry and other labour sectors, because of their precarious financial situation and/or lack of other employment opportunities. One participant said that he was regularly misgendered by other employees at his workplace, where he was in regular contact with the public:

If my colleagues say, "Oh yeah, you can see my colleague — she's over there." [...] So then, people become confused, like, "Who? You mean that guy over there?" So, sometimes that happened, I would just pretend they're not referring to me. Just say, "What? I don't know what you're talking about." To protect myself. Because sometimes, if the person realizes that I'm a transgender person... After work, I may get beat up, or at lunch break, if I go out to get something I might get beat up in the parking lot. Or stabbed, right? What if later I need to go use the washroom and I run into that person? (Kaiden, non-binary and transmasculine, racialized)

This participant explained that he had previously been violently assaulted in a public space and that his workplace situation heightened his fear for his safety. It is worth noting here that numerous other participants who had experienced assault also reported hypervigilance in public spaces, and some said they limited their time in social or public spaces or avoided them entirely because of fear or trauma. This could also limit their capacity to access work or other services, including health care.

Fourth, it is important to note that participants also identified labour-related legal problems that resulted from a lack of legal protections in the workplace and/or that stemmed from the law itself. This included participants whose only labour options, because of their criminal record and/or immigration status, involved precarious, unsafe, or abusive employment conditions. It also included a high number of participants whose safety was jeopardized because their work-related activities were criminalized.

Most significantly, 12 participants in our sample shared that sex work was their main source of income or a way to supplement other insufficient sources of income, including government assistance. Sex work broadly refers to the exchange of sexual services for something of value, such as money, goods, access, or services. For many participants, the criminalization of sex work obstructed their access to stable income, safer working conditions, trans community supports, and/or gender affirmation. Several participants explicitly identified the current criminal legislative framework related to sex work as a source of unsafe work conditions or of fear (e.g., fear of contact with law enforcement, repercussions on other aspects of their lives such as their immigration status, housing, and income taxes).

Those with an already precarious socio-legal status were likely to be pushed into even more precarious situations by sex work-specific criminal law¹⁵ or enforcement,¹⁶ or by regulations that have punitive consequences for sex workers, even if they are not directly tied to criminal law or are not sex work-specific law and policy. In one example, a participant described the connections between the impacts of criminalization and other forms of regulations. Namely, she explained how she faced criminalization for engaging in sex work; how having a criminal record for charges unrelated to sex work later limited her options for legal work because it led to the suspension of her specialized vehicle licence; and how she was subjected to additional, repressive sex work-specific housing policies in her subsidized rental apartment. As the following quote demonstrates, these problems were not only interconnected, but also had compounding effects on her safety and well-being:

Interviewer: *So when you were doing sex work you didn't have any legal problems connected with that?*

Raelee: *No actually, I was pretty lucky. I was being found sleeping in my vehicle quite a bit though when I was doing sex work. The cops would roll up on me and ask me what I was doing, I'd just tell them I was sleeping. It was either that or you know... I don't know what else it would be.*

Interviewer: *You mean, if you hadn't told them you were sleeping you were worried you would have more serious legal problems?*

Raelee: *Oh yeah, it was very stressful for me because I shouldn't have to... they've taken my way for me to earn a living [by suspending my specialized vehicle license]. [...] It's actually why I tried to just... I didn't really walk the street, I mostly did sex work through either the rest stops or through [a website].*

¹⁵ *Criminal Code*, RSC 1985, c C-46, ss 213(1)-(1.1), 286.1-4.

¹⁶ See Durisin, van der Meulen, and Bruckert's edited book (2018) for more on the impacts of sex work legislation and regulation in Canada.

Interviewer: *And so, the fact that you're scared of having trouble with the police, does that affect your ability to earn a living?*

Raelee: *Well yeah, in several different ways. I can't drive, and I don't really want people coming to my house. For starters, I signed a contract saying I wouldn't do sex work out of [provincial subsidized housing]. My pension [...] covers my rent [but] yeah, there's nothing left for survival.* (Raelee, transfeminine, white)

Other sex worker participants also noted that the criminalization of their work had harmful impacts on their physical and mental well-being, safety, and economic security. Additional consequences of sex work criminalization discussed by participants included: being threatened with eviction from their apartments or fearing eviction; displacement from collective working and living spaces; being forced to leave temporary accommodations such as a hotel room, or fearing being thrown out; being banned from online platforms that allow for communication and pre-screening with clients and subsequent inability to establish alternate safety measures to verify clients; being banned from online platforms that provide in-call rental locations; inability to call police for assistance due to fear of criminalization; and having to travel to other cities to work in order to avoid local police harassment. One participant described how the increased police surveillance she experienced because she was known as a sex worker and because of racial profiling was one of the main reasons she had to travel for work:

I do work in other cities because [current city], it's dangerous for me. I can't go to the street. The police check me all the time. I don't know [if it's] because [they] see I'm Latina. [...] I don't know... But it's very focused on me. (Chula, transfeminine, racialized)

Finally, some participants made clear how negative work experiences that took place years or even decades ago continued to have ramifications on their current work prospects and standard of living. For example, Sailor J described herself as a victim of the Canadian military's "purge" of known or suspected sexual and gender minorities in the late 1960s (which continued into the 1990s).¹⁷ Prior to being forced to leave the military, she also experienced harassment and assaults from superiors and other military personnel. This, in combination with being a victim of conversion therapy¹⁸ and having faced numerous additional barriers to living as a woman and accessing adequate medical care throughout her life (among other lifelong difficulties) caused severe mental health problems that led her to lose her second career:

I lost my job — my proper job, in the late 1980s, because my gender dysphoria was so overwhelming, I was not able to work. My doctor recognized I was suicidal in my behavior, and he removed me from my workplace with a pension. I still grieve the loss today. (Sailor J, transfeminine, white)

¹⁷ See Kinsman and Gentile (2010) for more on the history of the Canadian military (and civil service) purge.

¹⁸ See Ashley (2020) for more on conversion therapy.

This participant further explained how, since then, her income mainly consisted of long-term disability, which often proved insufficient to allow her to progress with medical transition or afford proper mental health supports. Although this participant's legal problems primarily occurred several decades prior to her interview, her life opportunities were increasingly narrowed as a consequence of the repeated violation of her rights. Many other participants in this study also explained how legal problems and their interconnected and cumulative effects had serious and long-lasting negative impacts on their mental (and physical) health.

Income Support

Sailor J was not alone in reporting that having to rely on income support — because of problems with employment, disability, inability to work, or other forms of adversity — did not allow her to meet her needs. Given the employment problems just outlined, it should come as no surprise that numerous participants in this study relied on or had recently had to rely on income support and other forms of government assistance, including welfare, disability benefits, and employment insurance.¹⁹

These sources of income were overwhelmingly described as inadequate to cover everyday expenses, while some participants faced barriers to accessing them in the first place:

[translation]

I'm not very well. I have trouble going out, running errands, I have trouble going to pick up my medication. [...] I'm sick, and social assistance didn't accept a note the doctor gave me stating that I was sick. Social assistance wouldn't accept this note, to increase my benefits a bit. Because with the money they give me, well, I can't make ends meet. There's nothing left. (Anika, transfeminine, racialized)

Participants also noted the delays involved in applying for and receiving income support:

Ekow: It just took a long time because [...] they spent a lot of time doing research as to why I needed the EI [employment insurance], and kind of put me through this fact-finding process that usually it's for when there's like a discrepancy. [...]

Interviewer: So, you had to go, as you say, on a fact-finding mission and justifying and then eventually they accepted your application?

Ekow: Yeah, it just took a while and like maybe took an extra two or three weeks before I actually got any money in my account so that was a stressful financial time. (Ekow, non-binary, Black)

¹⁹ For more on trans, Two-Spirit, and non-binary people's experiences of employment discrimination and their access to income supports (including disability benefits), see Singer (2020a).

Such delays can have serious consequences for those with a precarious socio-legal status, including for their capacity to remain housed, as we explore next.

Housing

Many participants in this study reported issues with securing or maintaining stable housing. In some cases, participants understood that one of the main factors preventing them from accessing housing was their gender identity, due to their appearance or inability to obtain identity documents aligned with their identities. More broadly, interviews revealed that persons with a precarious socio-legal status — such as those living in poverty, without Canadian citizenship, without support from family or friends, with a criminal record, or working in a criminalized labour sector — were particularly likely to find themselves chronically underhoused, periodically homeless, or living in unsafe or unsanitary dwellings.

For example, a trans woman explained how, for the past five years, she had lived in an apartment with recurring issues — such as mould and broken or missing appliances — that her landlord had consistently refused to resolve. The landlord had even threatened her with legal action when she started documenting these problems:

I started thinking, “Okay, if I don’t document this, he’s gonna be an asshole.” So, from that time on, I kept taking pictures, recording videos, and whenever he came in, I would put the recording on, because he would threaten me. The very first time, he said, “If you think that you can do something in an illegal manner, you’re wrong. It’s gonna be very nasty for you, and you’re not gonna be happy with it. You can end up in jail. I can tell you that.” (MX, transfeminine, racialized)

Such threats were particularly unnerving for this participant, even if her landlord never followed through with them, given that she lacked Canadian citizenship. Her enduring housing problems also led to material losses (e.g., personal belongings due to mould, perishable food due to a broken fridge), health problems (e.g., asthma, injuries), and loss of income. As a sex worker, she previously received clients at home to minimize her visibility to the police. Since the onset of problems with her landlord, however, she had stopped working, as she knew her landlord could legally evict her if he had evidence that she was engaging in any criminalized labour or activities from home.

Some other problems described by participants with a history of unstable housing included: theft or being “kicked out” by roommates; having to live with persons they felt unsafe around, or in areas of town they felt unsafe in; having to remain in an abusive relationship because of a lack of alternative housing options; harassment or assault by neighbours; being lied to or taken advantage of by landlords; and facing threats of eviction or being evicted. Factors of socio-legal disadvantage tended to produce or worsen these experiences. Moreover, existing housing support services were described by some as inadequate and at times as a site of further discrimination or abuse, as one participant explained:

As a trans woman it's hard to find housing, so me showing up to viewings and making appointments and all of that, that's really difficult, I found, as a trans person. So, I reached out to [a non-governmental organization] for support, like, oh, could they help a trans person out? And nothing really happened, like they did an intake and I didn't hear back from them. [...] Two or three months later, when I ended up getting evicted, that's when they said, "Well, we can have a bed for you here at the drop-in shelter." [...] But then, there wasn't that much support from the staff — the staff were also transphobic. The staff would not respond appropriately or at all when other clients were saying or doing transphobic things. [...] And then, my mental health — the anxiety and depression — just kept getting worse, up until the point where I snapped at the staff, I swore at the staff, and then they kicked me out. (Kiva, non-binary and transfeminine, racialized)

Participants faced problems in other spheres of their lives (such as education, as we turn to next), which could further impact their housing situation. Indeed, Kiva herself explained how her experience of homelessness resulted from what she called the “interpersonal” and “institutional discrimination” she experienced especially but not exclusively in the education system, where she had “*expected differently*.” She summarized:

I experienced some pretty solid, some pretty hard discrimination and it has affected my life, my career, my education plans or educational goals, ever since I started living more openly as trans. To the point of [...] contributing to my homelessness and losing my housing and literally having to stay in a tent outside. (Kiva, non-binary and transfeminine, racialized)

Education

Like Kiva, other participants reported numerous problems in the education system, including high school and university administration refusing to affirm students' identities, as well as disrespect, harassment, and violence from other students or school personnel with little or no recourse available. Carlos, the youngest participant in our sample, explained the combination of unaddressed transphobic and racist problems they encountered in high school, including verbal and psychological mistreatment by school authorities:

Students would tell me to off myself, they would repeatedly misgender or deadname me [i.e., use their former name] — this would extend to staff or faculty. Sometimes they isolated me, and they would ask how to handle trans issues with family members. Students would say, "Get over genocide or colonization." There was an event where two students told me basically every queer- and transphobic thing in the book, and one of them being very anti-Black specifically, and [the principal] was just like, "I can't do anything." [...] The students didn't get suspended. (Carlos, non-binary, racialized)

Other participants linked the discrimination they experienced from school authorities and peers alike to the role of educational institutions in their surveillance and criminalization, particularly through collaboration with law enforcement. One example was a Black participant who was falsely accused of selling drugs on school property by school authorities, which resulted in contact with police and threats of criminalization:

Though I didn't have weed on me, they did call the cops. And I did have something written in my file until I was eighteen saying that I had, like, a warning for weed, and if I was caught with weed, well, I would actually be charged or something. (Julie, transfeminine, Black)

As we return to later, this was not the only time this participant had the police called on her without cause.

Importantly, like Carlos above, other participants who faced problems in educational settings (e.g., bullying, harassment, misgendering, delays with or barriers to changing one's name in school records) all reported that existing internal mechanisms were inadequate to address or prevent these problems. As we will see in Section 3, institutional accountability mechanisms in settings beyond the education system were likewise seen as insufficient to resolve participants' problems and were sometimes themselves sources of harm. For now, we explore how another public institution, namely, the health care system, is also a source of legal problems for trans, Two-Spirit, and non-binary people in Canada.

Health Care and Services

It is beyond the scope of this report to explore in depth the numerous difficulties that trans, Two-Spirit, and non-binary people experience in the health care system or when trying to access health services, but we wish to emphasize some key issues because of their legal implications. One of these issues is that several participants in this study reported experiences of mistreatment, neglect, and abuse by health personnel:

I don't trust policemen and nurses, I just don't, you know. 'Cause... Policemen and nurses are just the mean girls and the mean guys, the bullies from high school who just got their job because, you know, it looked good on them. The reason I'm saying that, it's because I almost died of an accidental overdose, about four years ago. And... the nurses that treated me all went to high school with me, and they treated me very badly. I died, I wake up and they tell me I have to hurry up and leave 'cause they need the beds. [...] Yeah, it was a terrible experience. I woke up without shoes, without a wallet, without anything. (Star, transfeminine, Black)

This example also illustrates how negative interactions with medical personnel can strengthen participants' mistrust of state agents at large. Another participant, Carlos, reported that the

transphobic and racist treatment they faced in the health system made them reluctant to seek out mental health supports, such as accommodations in school for neurodivergence:

[The psychiatrist], according to the testimony of two of my friends who've had him, he told my trans Filipino friend that he thought that he was trans because of his psychosis, and he told the other one that his family were, and I quote, "boat people." The counsellor that I had, [...] she repeatedly asked me how I knew I was this identity, or that identity. [...] My concerns are that, because I'm trans, or because I was assigned female at birth, or because of my race, that psychologists won't take me seriously. (Carlos, non-binary, racialized)

Additionally, participants explained that experiences of mistreatment, neglect, and abuse prevented or discouraged them from accessing essential forms of care.

Various interviews revealed how participants' socio-legal statuses impeded them from accessing health care. Carlos mentioned that, as a minor, another barrier to accessing adequate mental health supports was the legal requirements regarding parental consent, which made it impossible for them to discuss their gender identity with mental health professionals:

The protocol was that because I'm a youth my parents have to sit in [the sessions], so naturally I was trying to [withhold] as much as I could at the time, because I wasn't out yet. (Carlos, non-binary, racialized)

In a preceding section, we described the case of a migrant who did not have access to health care for more than a decade because of conflicts with her parents when she was a minor. This participant did not have access to copies of her legal records and did not know how to obtain or renew them when she moved between provinces. Other migrants in this study reported significant barriers to health care due to their immigration status. Participants also described how their lack of access to identity-concordant ID complicated their access to care or exposed them to mistreatment and abuse. One explained that he carried two pieces of ID (one with his current name and one with his former name) to lower the chances that he could be denied care or be publicly embarrassed in the health system, especially when seeking types of care that medical personnel would not associate with the sex designation on his most recent ID.

Finally, participants also spoke of the inadequate public health coverage available to people who seek medical transition, and of the limited or non-existent administrative and legal remedies available to overcome the barriers they encounter.²⁰ Sailor J explained that, due to the limited coverage for gender-affirming surgical procedures in her province of residence, and because of the multiyear waiting list for the reputable surgical clinic approved by her province's public insurance plan, she was a victim of medical malpractice. Being in her 60s at the time she sought access to surgery, Sailor J feared that she could end up being denied treatment because of her age if she

²⁰ When it comes to the eligibility of some of their medical expenses (e.g., for breast augmentation) for tax deductions, trans people are held to a higher standard than required under Canada's tax statute (see Singer 2013).

waited for her turn on that clinic's waiting list. Following the advice of her family doctor, who lacked expertise in trans health care, she finally elected to seek the care of another surgeon and to make a request for coverage under the provincial plan. Sailor J chose him not only because she would be able to access care more quickly, but also because his services were among the cheapest available internationally and, as such, she would be able to access some of the procedures that she required which were not covered by the province. She explained what happened after the province formally approved coverage for her genital surgery but not for the other procedures she required:

I was not fully, properly informed. I didn't know what my rights were, and my doctor didn't... I picked the cheapest [...] because there had been such a bottleneck built up [in the province]. [...] But my issue was age, and my skin being thin. I asked [the surgeon], "Is this an issue?" and he said, "Nope, nope — come on, I want your money." The "I want your money" was not spoken, but it was there. I recognize that. [...] He botched my genital surgery. (Sailor J, transfeminine, white)

Sailor J described the debilitating pain she continued to endure because of the improper care she received and how she was unable to find adequate post-surgical care in her province of residence.

Although problems in the health care system were a common theme across interviews, this participant was alone in seeking redress through formal legal mechanisms. Following the events described above, Sailor J filed two human rights complaints to denounce the provincial plan's lack of coverage for some of the procedures she had needed, but, after months of waiting, both complaints were rejected. She was determined to try again with a new legal representative, but also had to contend with mounting legal fees, which added to the significant debt she accumulated from medical expenses and previous legal proceedings.

Violence and Other Forms of Abuse

We have already demonstrated that trans, Two-Spirit, and non-binary people face wide-ranging forms of adversity, barriers, and harm in many interpersonal and institutional contexts. In fact, every participant in this study described being subjected to violence and abuse. Some reported isolated (but no less severe) incidents of abuse, while others revealed that violence and oppression were common, if not constant, across various spheres of their lives.

To summarize and simplify, the forms of violence reported by trans, Two-Spirit, and non-binary people in this study included **verbal and psychological harassment and abuse**. This includes isolated, occasional, or sustained behaviors or actions that intend to or have the effect of humiliating, demeaning, frightening, subordinating, coercing, or otherwise harming a person (or group of individuals). Participants also reported being subjected to **physical violence**, which includes isolated, occasional, or sustained incidents such as attacks by strangers, domestic violence, abuse by family members, sexual assault, and violent interactions with persons in positions of authority:

They jumped me from behind, they ran up and jumped me from behind and just started punching me in the head. It was one man that came up first, and then I took him on, and the other one jumped in, and both of them started attacking me and punching me. (Kiva, non-binary and transfeminine, racialized)

[translation]

He asked me if I wanted to be his... as [they say], his girlfriend. Then I agreed, for two, three months, he'd come to see me on weekends, until he asked if he [could] live with me to help me pay the rent. And since I was in school and at the same time, I was taking driving lessons, for me it was a good idea... to have company and on top of that someone who is going to provide half the rent and money to pay for my classes. [...] [When] he moved in with me, he started physically assaulting me. He wanted to have anal sex and I didn't want to. [...] He grabbed me by the throat, put a knife to my throat, took me to the bed, forced me to have sex. (Maya, transfeminine, racialized)

Here again, our findings make evident that experiences of violence and other forms of abuse are often worsened by a person's precarious socio-legal status. One participant, for example, explained how her disabilities made her more vulnerable to domestic abuse:

I have NVLD, so non-verbal learning disability, and Asperger's, or, I guess, autism spectrum disorder. [...] I can struggle in social situations like figuring out people's motives, or, I guess, if they're friends or not friends, like picking up fake friendliness, I don't really understand that. [...] I do think that definitely played a role in a lot of it, and I feel like my ex may have specifically picked me out due to some of my awkwardness and naivety. [...] I was someone who [...] would have been an easier person to victimize. (Cavatappi, Indigenous, Two-Spirit Female)

Furthermore, few participants in our sample sought to report the violence they experienced to law enforcement and/or to pursue legal remedies for it. As we will discuss more fully in Section 3, one of the key factors contributing to participants' reluctance to report abuse or seek legal redress for it was if they understood and/or had previously experienced the legal system itself to be a source of abuse. One participant described how, after she was physically assaulted, the policemen who intervened in the situation physically hurt her more than her assailant had:

I wasn't really hurt. [...] It was in the police car that they injured me, because the police officers, well, those who were driving the car to take me to the police station... they would accelerate quickly, and then brake suddenly, so that I'd hit my nose on... into the window. I was handcuffed, there, and yeah that's, it was terrible because supposedly the police are there to protect us, not to hurt us. (Alexa, transfeminine, racialized)

As such, another form of violence that our study highlights is **state violence**, which refers to how state institutions, laws, policies, programs, procedures, practices, actors, and agents contribute to producing, maintaining, or legitimizing the subordination and abuse of certain individuals and communities. To conclude Section 2, we discuss how detention facilities and law enforcement were some of the most significant institutional sources of state violence and abuse for people in our sample.

Detention Facilities and Law Enforcement

Incarceration and Other Forms of Detention

We already mentioned that some of the participants in this study were detained as a result of criminalization (e.g., pre-trial detention, sentence of incarceration, immigration detention). Our findings indicate that detention was another site of serious problems for participants in this study. Being incarcerated is in itself a form of extreme hardship and deprivation with harmful repercussions on people's lives and communities — such as on their familial relationships, immediate and long-term safety, health, and general well-being. Still, our findings suggest that trans, Two-Spirit, and non-binary people face additional issues within detention and carceral centers and upon their release from detention/incarceration.

Detention facilities are usually sex-segregated, and although there have been policy changes in some Canadian jurisdictions relating to where trans people are placed (and according to which criteria),²¹ the majority of participants in our sample who experienced detention were placed in identity-discordant facilities. Some of the transfeminine participants who were detained in men's facilities reported being harassed, threatened, or assaulted by other prisoners and correctional staff when housed in men's facilities and witnessing other transfeminine people's mistreatment:

[translation]

When I went to prison it was... it was hard. Now that was really hard. [...] It was hard because there were people who would... who were trying to intimidate me or trying to hurt me, like sometimes, [I'd get] death threats. (Anika, transfeminine, racialized)

The cops and the other guys... it's too much stress. [...] I'm a strong girl, but when I see other girls cry inside the jail, I'm like, "No, girl, you need to be strong." It's very powerful moments, cause it's my sisters and... I'm a migrant, you know, I'm stronger, whatever. I'm a fighter. But this is [a bad] part of the justice system in Canada. [...] This exists. I remember many humiliations for people, you know. (Chula, transfeminine, racialized)

²¹ For more on these correctional reforms, see Hébert (2020).

Still, another participant was explicit that the violence she faced while incarcerated in a men's facility came not from other prisoners, but from correctional staff *and* because of institutional policies and practices. Describing why she spent close to half of her two-year sentence in administrative segregation, she said:

There's a barrier there — you know, us trans women are unable to seek placement in institutions of our preferred genders, and because we are trans women — because I'm a trans woman in a men's institution — there's this belief that I am at risk of danger or abuse. The abuse I've experienced while in the provincial jail actually came from the hands of the staff working there. I have experienced a lot of the correctional officers' lack of understanding or even sensitivity. [...] One of the guards openly admitted that there was a bet out against me on whether or not I would be able to survive in [the general] population. [...] He saw me [after] I was released from segregation, and [was] like "Wooh, you're still here, [...] I didn't think you'd make it." (Kiwi, transfeminine, Indigenous and racialized, Two-Spirit)

Kiwi further expressed how practices like strip searches were especially degrading in men's institutions: *"Hard, yes, in the sense that they're laughing at you and — and making you feel...what would the word be? Um... inhuman, or like a freak. It's... [long pause] awful."*

Another person said that demeaning practices were also common when he was incarcerated in an identity-discordant youth detention facility. He explained how the treatment he received, and his reaction to it, led him to face institutional charges:

Jason: *I needed feminine products — sorry, but I still need them.*

Interviewer: *Do you mind being specific about what kind of products you needed?*

Jason: *Yeah, I wanted a pad.*

Interviewer: *And they wouldn't give you one?*

Jason: *No. [...] No, and this guard was on for two days in a row, so it was like, "Hey, can I get a pad," and she'd be like, "Yeah, I'll put your request in," and I'd be like, "You just gotta go get the pad, like, it's not the end of the world." [...] I knew right away when she put in a request, I knew it was gonna be a no. [...] So when we were out, when we were in the range, I basically just went up to her and I just punched her in the face. [...] I was just fed up. [...] I went in segregation for, I think it was like, eight days. (Jason, non-binary and transmasculine, undisclosed ethno-racial status)*

Participants reported that transfers to identity-concordant facilities did not eliminate the reality and risk of violence in detention. Jason explained how even though he eventually succeeded in being transferred to an identity-concordant youth facility after months of advocating for himself (and receiving the support of organizations to that effect), the situation was not easier in male facilities: *"I also got other agencies involved to advocate for me. So, when that happened, I got a transfer. I*

regret the transfer. Like, I had to be put in protect[ive custody] the whole time, 33.5 days.” Another participant reported experiencing sexual and physical violence after successfully being transferred to an identity-concordant facility while in the youth system.

Yet another participant succeeded in transferring from a men’s to a women’s facility, but this was years after first requesting a transfer and was the outcome of having submitted a human rights complaint against the correctional system. She explained that despite the implementation of new policies that allegedly entitled trans people to placement in the facilities they prefer, correctional authorities had the power to deny requests without justification:

You ask the warden. It takes a while, but I just got denied. They don’t give you a reason why or nothing, it’s literally their discretion, so every time I put in a request to be transferred it’s been a no and, legally, they don’t have to say why. (Rachel, transfeminine, white)

Still, upon her eventual transfer to a women’s facility, she continued to confront denials or important delays in accessing identity-affirming clothing and accessories, as well as women’s correctional programming. As such, even reformed correctional policies that claim that the identity and human rights of trans, Two-Spirit, and non-binary persons will be affirmed do not ensure these rights will be upheld, nor do they prevent institutional mistreatment or violence from taking place.

Law Enforcement/Policing

It cannot be understated that nearly all the trans, Two-Spirit, and non-binary people in this study who reported any form of contact with criminal law enforcement (especially with police) described their interactions as harmful or otherwise negative. In fact, our results indicate that positive contact with police was exceptionally rare. Moreover, Indigenous, Black, and racialized participants — including participants who were migrants and/or involved in criminalized activities (e.g., possessing or selling drugs, selling sex) — reported the most frequent, recurring, and violent encounters with criminal law enforcement.

There were three main types of circumstances through which participants in this study encountered criminal law enforcement. This included, first, participants who were victims of abuse (e.g., assault, theft), regardless of whether they wished for police to be involved or would have preferred to avoid any police involvement. In some of these situations described by participants, police did not believe participants’ versions of events, would refuse to assist them, or would turn against them, sometimes going as far as arresting or charging them:

I had asked [my ex-partner] to leave. He was in violation of the parenting order, so I said “I need you to leave,” I asked him to leave a second and third time, and then I said, “If you don’t leave, I’m going to have to phone the police,” because that’s what you’re supposed to do when they violate the parenting order. And then he stood outside

and talked with [the police]: “Oh, you know, it’s just silly, Seth is just being weird, I’m not here in violation.” And they believed him. (Seth, transmasculine, white)

[translation]

Maya: The investigator [...] asked me hard questions, that made me cry. And he’d say, “It’s not true what you’re saying. [The other person] said it wasn’t like that.”

Interviewer: Did you feel like the investigator [...] was working for him, did you feel intimidated by this person?

Maya: Yes, intimidated because [the investigator] was asking me questions. Sometimes he would bang on the table like this, he would say “No, no, no, it wasn’t like that! He said it was...” He would ask me the same question again to... to confuse me. (Maya, transfeminine, racialized)

In a similar vein, participants’ interactions with police also resulted from being witness to an event (e.g., an accident, an assault) that led to police presence or involvement. Some participants reported being treated poorly by police in such circumstances.

Second, some participants also came into contact with police because they were suspected of having engaged in criminalized activities, or because another person (e.g., neighbours, clients, partners) reported them to police. In some of these situations, police were disrespectful, if not downright aggressive:

[translation]

I was dressed as a woman and [...] they were calling me by my boy name. And then, yeah, the same nonsense they usually do. [...] At one point, one of them decided I’d been rude to him. And after that, instead of handing me my ID card, he threw it on the ground and then... Yeah, like... nonsense like that. (Darya, transfeminine, Black)

I moved to my stepfather’s place at some point. It was in a more... I wouldn’t say a white neighbourhood, but just like a bit more white than where I was living before. [...] One time, I forgot my key and I went to the back of the house. And yeah, I did look queer, like... very queer at the time, so I guess someone called the police on me, even though that was my house. Just because I looked a certain way. And yeah, [the police] came and used violence. [...] They pulled guns on me. They handcuffed me and um... Yeah, they kept me like, really stressed out like, out in the snow and stuff. (Julie, transfeminine, Black)

Numerous participants reported being exposed to surveillance and profiling, and therefore to more frequent or more negative police contact because they were suspected of engaging in criminalized activities and/or because they were known to police. Another participant spoke about being

ticketed by the police for jaywalking while passing through a commercial area where many trans women sex workers lived and worked:

Especially that one time... I was walking on [name of] street and I went between two cars to tie my shoes. I guess that was the end of the month and they needed to arrest someone. Cops gave me a ticket. Even after I kept telling them that, you know, I was a woman, "You have to call me by this [...] name." They kept calling me a guy, a male, "Oh, you're drunk!" I didn't even drink that night. So, the fact that somebody would treat me that way when I was doing nothing but walking... I can't imagine if I had [...] been caught doing work or, you know, a client. (Star, transfeminine, Black)

This participant explained that this type of police surveillance and profiling was routine for her and her friends. Not only did being visible in public carry a risk of police harassment, but working with other trans women carried additional risk of legal problems, including arrest and incarceration.

Finally, contact with law enforcement also occurred in cases where participants experienced mental health crises and family members or friends called the police to intervene. An Indigenous participant described how the police's intervention did not address her mental health situation and instead worsened it:

The police arrived. I told them my name was Jane instead of John [as per my ID], and they were like nope, you're John, this is who you are. [...] They didn't care that I was trans, they just proceeded to what they were doing and arrested me, put me under arrest. They had no reason to check my house, [but] they went in and "Oh, we've got to close your windows," they said, "just in case we have to take you in," and all that. But they didn't even take me in. They went in my house, they went all over the house. (Jane, transfeminine, Indigenous, Two-Spirit)

Jane suspected that although she herself did not have a criminal record prior to this interaction with police, the officers may have wanted to search her house because some of her family members were known to police. This participant also described that police officers left her for over an hour alone in the police car with handcuffs tightly on while they searched her house, barely checking in on her during that time and showing no concern for her well-being, even though she was clearly distressed. They even refused to loosen her handcuffs when she told them they were too tight and causing her pain.

In contrast, another participant described how his own situation unfolded in relative calm, despite being in possession of a firearm when police arrived at his home:

I was surrounded by a SWAT team. I don't know how many there were, it was at least a half a dozen, who came out of the bushes from all around me. [...] But this is where the compassion starts, well, it started on the phone even, she was very nice, very kind to me, there was no judgments going on, but the guys that took me down, I told them

— they kept yelling at me to get down on my knees and I said, “I can’t, my left leg doesn’t bend.” [...] And they’re like, “Just stand with your arms out,” they guided me the whole time, and I’ll remember that — there was nothing out of control in their voices. [...] They handcuffed me and they put me in the vehicle, but this is where they took the next step. [...] They knew I was transgender [but] they also knew I was a veteran. [...] They put [an officer with me] who was also a veteran and he stayed with me for everything. He went to the hospital with me. He stood outside the room when the doctor talked to me and then he was back in. [...] He stayed with me until I was settled in the psychiatric ward. (Journey, transmasculine, white)

The significant contrast between the police’s response in these two cases underscores the differential treatment that people will receive from law enforcement depending on their socio-legal status. This is something Journey himself reflected on. Although he had “no complaints” about how police interacted with him in this tense situation, he suspected the outcome could have been different for someone else:

Now, I think about it, and [...] I think I was safe but, what if I had been somebody else? What if I had been Native? [...] What if I had been a Black guy, would I be here to praise [police], or to complain about them? I don’t know, I just know that I was treated well. But I am still white, even though I’m trans, I’m still white. (Journey, transmasculine, white)

Black and Indigenous participants situated their own experiences of harm and abuse by law enforcement within the historical and ongoing targeted policing of, and state violence against, their families and their communities. Recalling his terror when, as a child, police were called to his home, an Indigenous participant articulated the connection between historical and ongoing state violence as follows:

I just remember being so terrified when the police were there, because I really didn’t want my dad to be hurt, and how scared I was that that was going to happen. It’s not even just from one experience, it’s just like the interactions pile up. [...] If that’s how [police] act in the worst of conditions, and especially in conditions where they think no one is looking, or listening, or caring, then you just kind of know... that doesn’t suddenly stop. [...] The history just goes back really, really far too, it’s not like a new phenomenon. If you really want to go into like, the historical origins of the first interactions of Indigenous people and police, like the North-West Mounted Police and RCMP here in Canada, it was things like... there were bounties for Indigenous people. (Riel, transmasculine, Indigenous, Two-Spirit)

Likewise, two Black participants linked their more recent experiences of police abuse and violence to their childhood, when they first learned about and witnessed racial profiling and police violence in their neighbourhoods. Zara described an encounter she and her friends had with the police in a

public park during the COVID-19 pandemic. She explained how anti-Black racism and specifically police violence towards Black people perceived as masculine inform how she interacts with law enforcement:

I was the only black person other than the ones, other than my friends that were arrested, I was the only black person within that group that was present at that moment... So, I made sure I kept six feet [apart], not only for the fine [related to social-distancing measures during the COVID-19 state of emergency], but also for my own safety. [...] That night I was getting chilly. So, my friends kind of passed me their stuff. So, I was wearing a hoodie, I had pants, and I knew I had cornrows. [...] I knew that if I was to step [...] one step in [the police's] direction with this hoody and these pants and stuff like that, they would see [me as a threat][...] I even separated myself from the group. [...] I knew that if we were all to get arrested... like the way they treated some of my black friends that were [eventually] arrested. Compared to another white person that was arrested, it was way different. [...] This is something just, me growing up in [predominantly Black neighbourhood], I've seen it, and it is something that I know, that... my parents taught me from an early age. (Zara, non-binary and transfeminine, Black)

Another Black participant made similar links between her experiences of racial profiling and police violence as an adult and what she had witnessed in her community as a child:

It's very, very much rooted in, like, what I've seen in other people [and] myself, just the story about [...] getting the cops called on me and everything. That's something that was very traumatizing. But also, as a kid, [...] I've seen, you know, kids in my neighbourhood, like eight, nine years old, get pushed on the [police] car and handcuffed. (Julie, transfeminine, Black)

These accounts demonstrate the inherent connections between, on the one hand, colonization and anti-Black racism, and, on the other hand, the legal problems that Indigenous and Black trans, Two-Spirit, and non-binary individuals experience today. Our evidence also highlights the connections between the historical and ongoing role of criminal law and law enforcement in criminalizing, regulating, and subjugating Indigenous and Black communities.

Participants with a precarious immigration status and/or who have experienced criminalization, most of them Black, Indigenous, or racialized, further spoke of the lasting and harmful effects of policing and law enforcement in their lives and communities (e.g., trans communities, sex worker communities). As we will discuss in Section 3, the historical and contemporary relationships between criminalized communities and law enforcement play a significant role in shaping and determining the ways in which trans, Two-Spirit, and non-binary people interact with or protect themselves from law enforcement and, more broadly, legal systems.

Section 3 – Legal and Administrative Systems: Sources of Legal Problems and Barriers

Points of Contact with Legal and Administrative Systems

In Section 2 of this report, we demonstrated that trans, Two-Spirit, and non-binary people experience varied and interconnected serious legal problems. Our evidence reveals numerous procedures and contexts through which the trans, Two-Spirit, and non-binary people in our study came into contact with legal and administrative systems in Canada, including:

- **Criminal law:** interacting with law enforcement, responding to criminal charges, criminal trials, bail hearings, pleas, sentencing, fulfilling probation or parole conditions, filing requests or complaints in correctional institutions (and in youth and immigration detention facilities), applications for record suspension, etc.
- **Immigration law:** applications for citizenship, permanent residency, or refugee status, border crossings, etc.
- **Indigenous legal issues:** services for Indigenous people with or without Indian status under the *Indian Act*, access to Indian status card, etc.
- **Identity documents and civil status:** name and sex designation modifications, etc.
- **Child and youth law:** youth protection services, investigations into allegations of familial abuse, placement in foster care, being designated as a permanent ward, age and legal consent, etc.
- **Family law:** separation mediation, divorce, child custody, child support, applications for protective orders, etc.
- **Government assistance:** applications for social assistance, disability benefits, employment insurance, etc.
- **Housing:** dispute resolution through tenant boards, evictions, applications for subsidized housing, etc.
- **Health law:** public health insurance coverage, access to services, etc.
- **Institutional anti-discrimination and accountability mechanisms:** partaking in internal conflict resolution and complaint mechanisms (e.g., in the workplace, in educational settings), making accommodation requests (e.g., in correctional settings), filing human rights complaints, negotiating for settlements, etc.

In what follows, we discuss some of the common themes and experiences that emerged when participants described their contact with and avoidance of various legal and administrative systems and actors. While a small number of participants in our sample explicitly stated that they had engaged in specific legal or administrative procedures with the intent of *resolving* their problems, our findings indicate that the majority did not initiate contact with these systems and procedures

as a pathway to recourse or protection. Rather, participants in this study primarily came into contact with these systems because the systems themselves created legal problems that they were forced to mitigate. This aligns with evidence we have presented in preceding sections of this report, which already made clear that the legal problems that trans, Two-Spirit, and non-binary people experience are overwhelmingly *caused* by laws, law enforcement, and contact with legal and administrative systems.

Moreover, this section presents the numerous barriers and forms of mistreatment that trans, Two-Spirit, and non-binary people face across legal and administrative systems, including but not limited to situations when they initiate engagement with these systems as a means to resolve their problems. Many participants said they avoided contact or communication with legal and administrative systems because of the barriers and forms of mistreatment they had experienced in these systems (including when reporting violence to law enforcement), because these systems were potential sources of additional legal and non-legal problems and harmful consequences, or because these systems offered insufficient recourses to address the complexity of their problems.

Laws, Policies, and Contact with Legal and Administrative Systems as Sources of Legal Problems

Our findings reveal that for most participants, legal and administrative systems were not solutions to their problems, but rather the *source* of their legal problems. Participants reported that the problematic and harmful aspects of their experiences of contact with legal and administrative systems were not solely attributable to the discriminatory attitudes or lack of education of various actors in these systems, nor to what has been termed “institutional erasure.”²² Many laws, policies, and procedures in themselves constituted the legal problems reported by participants, because they determined their legal statuses and produced or maintained their legal problems by placing them in direct conflict with the law, law enforcement, and legal systems, or otherwise creating conditions of precarity, exclusion, or marginalization.

In some cases, the mere existence of certain laws and policies created legal problems for the trans, Two-Spirit, and non-binary people in this study, even when participants did not directly make contact with legal and administrative systems or actors. For example, many participants who did not have Canadian citizenship described how immigration law and policy *created* barriers to accessing resources and legal protections. Their precarious immigration status was the *cause* of their legal problems (e.g., inability to access legal employment and income, risk of deportation due to inadmissibility), as well as what prevented them from accessing appropriate recourse to resolve or respond to their problems.

As one participant explained, although she had been granted protected status in Canada 10 years prior, she remained inadmissible for permanent residency. Consequently, she faced serious barriers to accessing health care, income support, housing, and identity documents, in addition to obtaining adequate support to navigate multiple administrative procedures.

²² “Institutional erasure” has been defined as “a lack of policies that accommodate trans identities or trans bodies, including the lack of knowledge that such policies are even necessary” (Bauer et al. 2009, 354).

[translation]

I didn't get any kind of like... like help. None... to start with, I didn't get any identity documents. I didn't know how or where, nobody wanted to help me, nobody understood my situation. Nobody understood... knew how to help me. Nobody. And I didn't know where else to go. And I didn't know where else to go, [so] I gave up, I stayed like that, just not knowing where else to go... (Anika, transfeminine, racialized)

As another example, many participants who earned income through sex work described the presence of police in their lives and work spaces as the *source* of legal problems that produced enduring consequences. As we have shown in preceding sections of this report, law and policy related to the criminalization of sex work were the *cause* of numerous criminal and regulatory offences and convictions, and a source of racial and social profiling experienced by many participants. Participants who were criminalized also reported how certain laws and policies forced them to avoid contact with or conceal information from one legal or administrative institution in order to engage with another institution without punitive consequences. One participant described how she avoided calling the police when she was having problems with her landlord and postponed going to the housing tribunal to address the conditions of her apartment:

I have restricted myself from calling the police because at the beginning I was just on the mentality that [my landlord] can... tell them that I was a working girl and then the problems will be for me, not for him. [...] I was afraid of him... 'Cause I thought that maybe they will believe him more than me if he brought it up. Like [if] he brought up the situation that I was working or something. [...] That's why it went too long for me [to take my landlord to the housing tribunal]. [...] I was afraid that he will say something and I will get in trouble. (MX, transfeminine, racialized)

Our evidence therefore indicates that being in contact with legal and administrative systems often is a major legal problem in and of itself, with substantial impacts for trans, Two-Spirit, and non-binary people. One participant explained how people who experienced sexual violence, such as himself, are at a disadvantage from the start if they engage in a court process, not only because of the negative attitudes of legal actors towards victims/survivors but also because such attitudes are reflected in legal procedures:

Particularly for [province of residence], so many of these old backwards attitudes are reflected in policy, really go to how deeply it can affect a person's life and harm an individual. I just think that knowing [how] that's so intrinsic in that process, it's a whole other reason, a whole other layer that makes this so difficult. Literally every step of the way. [Y]ou as the victim are being questioned, and you as the victim are being forced to make everyone else believe what happened. [...] There is no real support for victims in that sense. It stretches out literally in every layer of interaction with that system, [...] even the fact that I have to interact with that system or having to deal with that system, if that makes sense, already puts me at a disadvantage. (Riel, transmasculine, Indigenous, Two-Spirit)

This ties in with one of the central reasons participants cited for not pursuing specific legal and administrative procedures or for avoiding contact with state institutions and agents more broadly: namely, that they perceived that those procedures and/or contact could potentially create new problems for them, including legal problems.

Indeed, participants who were not able to respond to or resolve their legal problems through legal or administrative systems — because law, law enforcement, and legal systems were the very *source* of their problems — reported actively avoiding or trying to avoid contact and communication with legal and administrative systems and actors. Some participants avoided contact to prevent potential harmful legal consequences (e.g., to avoid being detained or to avoid negative impacts on their immigration statuses). Examples included individuals who avoided court appearances, tribunals, or other legal and administrative institutions, or who did not contact police after being assaulted in the context of sex work, in order to mitigate the risks associated with criminalization.

Participants who turned to law enforcement after experiencing abuse (e.g., reporting to police, providing testimony to support charges) often reported their interactions with law enforcement as negative. Most participants who were subjected to violence avoided reporting to police altogether. This should come as no surprise, given that, as described in Section 2, many of the participants in this study reported the harmful impacts of law enforcement and policing of trans, Two-Spirit, and non-binary people. Notably, many Indigenous, Black, racialized, and migrant participants reported that they avoided contacting law enforcement at any cost, even in an emergency or when they were victims of violence, because they feared that they or other persons involved would be harmed or even killed by police:

I think it was in [Nunavut]. This guy was drunk, he was walking along the road and the cops rolled up and open the door, hit him with the door and he was in the ditch, and they arrested him and they laughed at him.²³ [...] That's why I didn't want to call the cops on my ex-partner, 'cause what would they have done if they'd come and got her, [her also] being an Indigenous trans person? They can kill an Indigenous person, no problem, when it comes to an [Indigenous trans person], what are they gonna do, kill her too? (Jane, transfeminine, Indigenous, Two-Spirit)

The experiences of a great number of our participants highlight that law enforcement and policing are a source of violence, and that they create and perpetuate individual and collective experiences of fear, terror, and trauma. Likewise, these experiences shape and inform if, how, and when people protect themselves from law enforcement and legal systems and, more broadly, from state violence.

As per the legal problems we listed in Section 2, the experiences and legal problems that participants endured when they made contact with legal and administrative systems were shaped by their socio-legal statuses. The structural factors that produce participants' differential social locations and positions relative to laws, institutions, and legal actors in turn determine how

²³ See John Van Dusen "Nunavut Man in Violent Arrest Later 'Viciously Attacked' While in Police Cells," *CBC News* (4 June 2020) <https://www.cbc.ca/news/canada/north/trudeau-nunavut-premier-address-violent-rcmp-arrest-1.5598632>.

participants come into contact with legal and administrative systems, along with what outcomes and impacts result from their contact. As we discuss in the section below, their statuses also shape the barriers they will face in legal and administrative systems and their access — or lack thereof — to the resources they need to engage with and overcome these barriers.

Barriers and Mistreatment in Legal and Administrative Systems

Participants identified various interconnected characteristics of legal and administrative systems and procedures that were problematic and harmful. In particular, participants reported facing numerous barriers and mistreatment, regardless of how they came in contact with legal and administrative systems. In some cases, participants encountered barriers and mistreatment while they were trying to use these systems to resolve a legal problem. In other cases, their involvement in legal and administrative systems was a direct consequence of their legal problems. Some of the barriers and forms of mistreatment they described included:

- Discriminatory and disrespectful encounters with legal actors and decision makers
- Inaccessible, unwelcoming, or hostile legal venues and practices
- Power imbalances between parties and/or legal actors
- Inaccessible or insufficient legal recourses
- Burdensome financial, time, and energy resources required
- Inadequate remedies provided
- Inexistent or inadequate legal representation
- Inexistent or inadequate legal information
- Abusive encounters with state agents, such as police, correctional officers, medical personnel, etc., as we described in Section 2.

Discriminatory and disrespectful encounters with legal actors and decision makers included being misgendered by court actors, such as judges; being asked inappropriate questions (e.g., about one's identity or appearance) by state agents such as immigration officers; and having one's problems dismissed or minimized by decision makers, including mediators, union representatives, equity officers, wardens, lawyers, and judges. Participants also reported facing inaccessible or unwelcoming venues and practices within the legal system (e.g., courthouses with sex-segregated bathrooms or holding cells; the use of gendered language in state institutions). As one participant explained, these barriers and forms of mistreatment are sometimes interwoven throughout legal procedures:

I was part of the union. I did think about making a human rights complaint, but they left it for like a year and with the legal process, or the way it was explained by the union to me, the employer would try to dig up every little detail to shame me and

humiliate me and bring up every little thing from my past to try to prove that I am not believable or whatever, even though we have documented stuff about them misgendering me. And even the mediator, because we did have a mediation about it, even the mediator misgendered me repeatedly. (Quin, non-binary, racialized)

Pervasive barriers and mistreatment across legal and administrative systems led numerous participants to describe their contact with various sectors and agents in these systems as “dehumanizing”:

I don't want to go through that kind of traumatic processing, institutional processing, again, especially knowing that I don't — there isn't really anybody that I can count on to be an ally in these institutions. There's no purpose to me having to put myself through these dehumanizing systems. (Kiva, non-binary and transfeminine, racialized)

Participants also described how power imbalances negatively affected their interactions with legal and administrative systems. Among other examples, participants discussed how the “other party” in various processes (e.g., a landlord in the context of a housing dispute, an ex-partner during divorce proceedings, the state in the context of criminal or immigration procedures) was able to control the manner in which said processes unfolded, if not their outcome. Power imbalances were produced by numerous factors, such as the inability to access adequate and competent legal representation and limited affordable housing availability (e.g., the inability to move out of unsafe/unlivable housing).

As we discussed in Section 2, power imbalances also involve how legal and administrative systems disadvantage or harm certain individuals because of gendered and/or racialized norms. For example, one Indigenous transmasculine participant decided not to present as a man or affirm his gender identity during separation-related court proceedings to minimize the risk of transphobic violence by the judge. He viewed a judge's refusal to grant him a protection order from his abusive ex-partner as characteristic of the legal system's disregard for the safety and security of Indigenous people, particularly of those perceived as women and mothers.

In addition, several transfeminine participants spoke of being disbelieved and denied protection as victims of gender-based violence, particularly Black, Indigenous, and racialized participants who are often treated by various actors across legal and administrative systems as if they are inherently dangerous or aggressive. This often resulted in participants being charged with violent offences when they themselves had been the target of transphobic, sexist, and racist violence. In one example, a racialized and migrant transfeminine participant had a conflict with a client who was in her apartment. The participant and the client both called the police to request protection. When the police entered her apartment, she began filming the situation, a reflex she had developed from years of harassment and abuse by police. The participant explained:

The [policeman] immediately said: “You need to stop filming.” And I said, “Why?” “Because [we] want [to] protect you.” “Okay.” So when I close my telephone, I see they immediately [change] attitude. They... [were] racist to me because the client say

to the police I'm... I'm kidnapping him in my apartment. And the police talked to me like... you are the bad person, you know, like... I couldn't believe it. [...] It's the woman, you know, [...] the policewoman [who has no] solidarity for [older] trans women [...] like me. It's very frustrating, honestly. (Chula, transfeminine, racialized)

Others described how internal accountability or complaint mechanisms in various institutions (e.g., schools, workplaces, correctional facilities) primarily appeared to serve and protect institutional interests and rarely resulted in “justice” for the individuals involved. A participant described how human rights complaints were inaccessible to many people and oftentimes inadequate to address the root causes of many problems,²⁴ a sentiment that was echoed by other participants in this study:

I definitely recognize just how much institutions can't be depended on to help people, or at least like not in a way that actually I think addresses trans needs [or the] causes of oppression in a way that's actually useful. [...] And like I said, unless you have really concrete evidence of someone calling you a racial slur, or a video of someone telling you, “I'm not renting this house to you because you're a trans person.” It rarely comes out as plainly as that, you know what I mean? So, I think a lot of people, they get really disappointed with the tribunal process because they think they're going to be able to get the justice they're looking for, but in reality, because they don't have concrete evidence or really tangible proof of what they've experienced, it's just not gonna work out for them. (Ekow, non-binary, Black)

Even participants who experienced a positive outcome at the end of a legal or administrative procedure, such as those who received a settlement or remedies in a complaint process, often did not feel like they had received adequate compensation or that they had received “justice” more broadly speaking.

For example, participants who had engaged in internal accountability and complaint mechanisms or filed human rights complaints discussed how at the outcome of the process, they were required to sign non-disclosure agreements. They said that being prevented from discussing or further denouncing the institutional problems they had faced (or else facing punitive measures for having breached the non-disclosure agreement) stood in the way of achieving justice. One participant explained this as follows:

I feel like that's part of the puzzle here, when you have those offices to deal with those things internally, it gives the institution so much power to discriminate in a way that is hidden, right? All the stuff that happened in the actual process, I'm not allowed to share that with people, even though I explicitly didn't agree to going through the process. [...] It feels like it's just part of the oppression in this case. I understand the need for [non-disclosure agreements] in some cases, but in this case, it's just protecting the [institution] more. (Jen, non-binary and transfeminine, white)

²⁴ For more on the limits of anti-discrimination protections in legal labour sectors, see Irving and Hoo (2020).

Moreover, every participant who reported having been involved in a human rights complaint said that the offers they received as settlements or as an outcome of the tribunal's decision did not make up for the time, energy, and emotional burden involved in the process itself. Ekow, cited above, described how the burdensome complaint process they went through had been "slow," "demoralizing," and even "traumatic":

I didn't hear from the tribunal for a long time, another — this was like more than six or seven months later, actually no, it would have been longer than that, it was like nine or ten actually, a lot longer than that. [...] And then the pandemic hit and then the human rights [tribunal] was like, yeah, "We're not seeing anybody, we're not doing anything right now," so it's kind of been at a standstill since then. [...] It's definitely, like I said, been a bureaucratic, slow process that's quite demoralizing, really quite traumatic to have to recount over and over again what you've experienced [...] to people who are largely cis, largely white, who probably don't experience the discrimination that you're alleging has occurred. (Ekow, non-binary, Black)

Regardless of which legal or administrative realm these procedures pertained to (and in many cases, they were connected to more than one realm), participants overwhelmingly characterized them as burdensome. Participants identified the financial, time, and energy resources required in legal processes as among the chief difficulties they encountered across legal and administrative systems. The significant delays involved with the great majority of the legal and administrative procedures listed above meant that participants were often caught in legal processes for significant periods of time (often years), without any resolution or end in sight. Some people spoke about how their involvement in legal and administrative procedures took away from or negatively impacted other areas of their lives (e.g., education, employment, health, safety and security, interpersonal relationships). For example, a participant who was involved in a housing dispute that her landlord was purposefully dragging on explained how this legal process was a source of stress that added to the problems she experienced because of deteriorating housing conditions (which, as we described in Section 2, included health problems and material losses):

So [my landlord is] dragging the matter. He doesn't want to be exposed, probably, in front of the judge. Because he knows... that it's not going to be good for him and he's just trying to delay as much as possible. He's using... every excuse available to just drop the matter. So sometimes it can be really... it can affect people. We are already having enough in our heads and all the problems that we're having with these things [and] to keep having even more with all of that, the stress... (MX, transfeminine, racialized)

For these and other legal and administrative procedures, accessing adequate legal representation was another significant problem reported by participants. Some people lamented being unable to obtain proper representation because of their financial situation, or explained how representation provided by legal aid was inadequate. Still, being able to pay for legal representation did not guarantee adequate representation. Some participants described how their lawyers did not inform

them of the possible consequences of following their advice (e.g., how an advised guilty plea could impact a participant's immigration status and possibly result in deportation), did not respect their identities (be it their gender identity or, for some participants, their ethno-racial background), or did not appropriately advocate for them across various legal settings.

In contrast, participants who received adequate legal representation and whose lawyers were supportive, respectful of their identities and experiences, educated, and proactive reported faring better, both in terms of legal or administrative outcomes and of their general well-being throughout procedures. Yet, the list of legal and administrative procedures we provided above shows that trans, Two-Spirit, and non-binary people come into contact with legal and administrative systems through various paths. For many of the procedures they must engage in, they are not required to have legal representation or advice, or they are not entitled to it. In other words, for a great proportion of the procedures they recounted, participants had to face legal and administrative systems on their own.

Because of their socio-legal statuses, most participants did not have the legal capacity to resolve or respond to their problems, and/or they lacked the resources necessary to do so. In Section 2, we already explained that some participants could not apply for modifications to their identity documents because their immigration statuses or criminal records prevented them from doing so, and/or because they did not have the financial means to do so. Other examples included participants who were not eligible for legal aid, who did not have the financial means to seek legal representation before engaging in a legal procedure, or who did not know where or how to begin procedures.

Here, we note that numerous participants deplored how difficult it was to find legal information about how to navigate the complexities of legal and administrative systems. This is something we already discussed in Section 2, when describing how onerous and confusing it was to access gender-concordant identity documents and various procedures related to immigration. Still, numerous participants reported that despite the barriers to accessing legal information in legal and administrative systems, they had received crucial support and advice from knowledgeable people within their communities, from community organizations and programs, and from legal clinics. Some participants identified these sources of support as the key factors that contributed to their capacity to pursue — or withstand — various legal processes, as one person explained:

[translation]

I know that the community organisations [...] helped me a lot, and I know that they help a lot. And they're always there to help when a person needs and asks for help. Because if I was alone maybe I wouldn't be here [today], I would be in jail. I had good outcomes. The community organisations helped me a lot, they'd suggest lots of things. They called me to... to [follow up] and [...] they motivated me to... to keep going.
(Maya, transfeminine, racialized)

In Section 4, we will further discuss how participants' communities were among their greatest resources when facing their legal problems.

Many participants also went to great lengths to educate themselves about Canadian legal and administrative systems, even in the face of important barriers to accessing legal information:

I was lucky enough that I was, you know, savvy enough to go look online and be able to use the right words in the search [engine] and be able to find exactly what I needed. But it still was a lot of... It was a lot of research on my end. (Zara, non-binary and transfeminine, Black)

Some participants had to expend considerable energy educating legal service providers and other professionals about the complexities of the legal risks they faced, as well as about their communities' realities. Participants educated legal professionals not only to minimize potential harmful outcomes related to their own legal problems, but also to encourage legal professionals to provide less harmful and more adequate services to other trans, Two-Spirit, and non-binary people in the future.

Finally, participants also named as a deterrent or barrier to engaging in legal and administrative procedures their expectation that the potential outcomes of these procedures would not be worth the necessary time, resources, and energy. Interviews revealed various cases where participants had experienced discrimination or wrongful treatment (e.g., in employment, in educational settings) but were deterred from trying to resolve the situation or seek remedies by the time and resources involved or because of how legal procedures might affect other spheres of their lives. Some of the participants with the most precarious socio-legal statuses even explained that, given how extensive and multifaceted their legal problems were and how their lives were already so deeply enmeshed with legal systems and agents, it was in their best interest to "accept" or try to forget about their problems, rather than try to resolve them.

[translation]

I left it at that, [...] I didn't go looking for help. I just dropped the whole thing. Sometimes I give... I give up like that so that the [problems] don't drag on longer and [I don't have to] be reminded all the time of what happened, why it happened, and have it running through my head all the time. I try to, like, leave it in the past and not remember. That's why I said, "Okay [...] really, it would be great if I got help," but I forgot about it. I said, "Okay, these things happen in life," [and] I didn't pursue it. (Alexa, transfeminine, racialized)

As this section has shown, a common theme across interviews was that participants avoided or tried to avoid contact with legal systems and actors. This is not surprising, given the fear or lack of trust they felt towards various state institutions and actors (in particular, towards law enforcement), which resulted from the problems and numerous barriers they encountered when engaging with legal and administrative procedures and the abuse and mistreatment they experienced at the hands of legal actors. In sum, what our findings demonstrate is that, overwhelmingly, participants reported harmful experiences in Canadian legal and administrative systems.

Section 4 – Discussion and Conclusion

In this report, we have provided extensive evidence of the serious, wide-ranging, and interconnected legal problems that trans, Two-Spirit, and non-binary people experience in Canada. This study has demonstrated that participants confront differential legal burdens because of their **socio-legal status**, their position relative to social norms and relative to laws, legal systems, and legal actors. In other words, our findings reveal that people's socio-legal statuses in great part determine their access to resources, opportunities, entitlements, and protections (including the protection of their rights), and thus their susceptibility to experiencing legal problems. Furthermore, we have demonstrated that participants face significant difficulties when engaged with various legal and administrative procedures, and that legal and administrative systems are often the very source of their legal (and other) problems. As we have shown across previous sections of this report, participants' socio-legal status shaped the origin, trajectory, and outcome of their legal problems, and, in turn, their legal problems often reshaped their socio-legal status.

In this final section, we synthesize some of our study's main findings and provide further reflections on their significance and applicability. First, we summarize what our interviews revealed about the complex nature of the legal problems facing trans, Two-Spirit, and non-binary people in Canada. Second, we review how participants' socio-legal status had serious impacts on their ability to engage with and navigate legal and administrative systems. Third, we propose that some of the main root causes (i.e., sources) of trans, Two-Spirit, and non-binary people's complex legal problems cannot be resolved without comprehensive law and policy reforms. Finally, our interviews demonstrate the essential, central role that trans, Two-Spirit, and non-binary people's communities — broadly defined — play in helping them respond to serious and complex legal problems. This also points to the central role that communities must play in defining responses to these problems.

1. Trans, Two-Spirit, and non-binary people's legal problems are complex and persistent, spanning multiple legal systems

Participants' legal problems were generally highly complex, spanning multiple legal and administrative systems, institutions, and jurisdictions, and occurring over periods of several years or even decades. The effects of these legal problems were especially complicated, long-lasting, and intractable in cases where participants faced multiple legal problems at once and/or had to simultaneously navigate more than one legal or administrative system.

Some of the most notable and recurring sources of enduring legal problems reported by participants included:

- Criminalization, particularly of sex work, drugs, and HIV status
- Precarious immigration status and punitive immigration measures
- Historical and ongoing punitive laws and enforcement targeting Black, Indigenous, and racialized communities

- Poverty and inadequate public resources (e.g., inaccessible/insufficient government assistance, lack of affordable housing options, limited public health insurance coverage)
- Violence and other forms of abuse committed by state and non-state actors
- Criminal records, including youth and adult records
- Lack of effective protection from discrimination, harassment, and other forms of abuse

Interviews consistently revealed the interplay between legal and administrative systems and institutions (e.g., child and youth protection services, educational institutions, and the criminal legal system; immigration and criminal legal systems). The impacts of this interplay varied in severity, and in some instances had devastating consequences, such as detention/custody, risk of loss of immigration status and deportation, loss of secure housing and employment, threats to physical and mental health and safety, etc. Our data indicates that as participants became more embroiled in interconnected legal and administrative systems, their legal problems became more complicated, harmful, and difficult to resolve.

2. Legal and administrative systems offer inaccessible and insufficient remedies for trans, Two-Spirit, and non-binary people's complex legal problems, and contact with these systems is often a source of harm

When our study's participants tried to resolve their legal problems, they often found that contact with legal and administrative systems made their problems more — rather than less — complex. Participants reported that these systems and procedures were not only inaccessible, insufficient, and burdensome, but also harmful, dehumanizing, and potentially lethal. Our findings outline the pervasive barriers, mistreatment, and abuse that participants experienced within legal and administrative systems, regardless of how and why they came into contact with those systems.

Problems identified by participants included: discriminatory, stigmatizing, and victimizing encounters with legal actors, including judges, state agents, and lawyers; unaffordable, inadequate, or incompetent legal representation; unsatisfactory, insufficient, and often harmful outcomes of procedures, including accountability/complaint procedures designed to remedy legal problems; a lack of information on how to navigate complex and interconnected legal and administrative systems and procedures; the overall resource-intensive and burdensome nature of legal and administrative procedures; and underlying power imbalances between research participants and various legal actors (see Section 3 of report for greater detail). These forms of barriers and mistreatment made legal and administrative procedures even more onerous, further entrenched participants in their legal problems, and often created new legal problems and/or caused them to avoid legal systems and actors altogether.

Participants consistently reported that they could not access the adequate legal resources required to uphold and protect their rights within legal and administrative systems. Moreover, participants' socio-legal statuses — including their economic insecurity, immigration statuses, and criminal records — determined or influenced the extent and severity of the barriers and mistreatment they faced. In some cases, participants reported that the removal of certain barriers (e.g., gaining access

to legal resources, being able to afford legal representation, being treated with respect by legal actors) played a role in mitigating the burdens and harms associated with their engagement in legal and administrative systems.

Often, however, increased access to support or resources could not have resolved participants' underlying legal problems, specifically when the problems were direct results of laws, policies, and the socio-legal statuses they create. For example, improved representation could have helped reduce some participants' chances of detention and/or deportation. Still, it would not have resolved the numerous other legal and non-legal problems resulting from their precarious immigration status, such as their inability to access health care or to work legally. As such, our results clearly demonstrate that programs and reforms solely oriented towards improved contact with legal and administrative systems would not remedy or even address the sources of many participants' serious legal problems.

3. Trans, Two-Spirit, and non-binary people's legal problems cannot be resolved without law and policy reform

As we demonstrated across this report, laws and policies are the source of many participants' legal problems. These legal problems were, and are, inevitable, and will persist as long as those laws and policies exist. Without substantive law and policy reform, many trans, Two-Spirit, and non-binary people will resort to various strategies and alternative measures to mitigate or shield themselves from ongoing and future harm from laws, legal systems, and law enforcement.

Our study participants' legal problems are exceedingly diverse. We therefore cannot specify every law or policy that caused or contributed to those legal problems, given the multiple sites of creation, enactment, and enforcement of law and policy in many of the cases we described. However, a great number of participants were particularly harmed by certain punitive laws and policies, such as criminal law, as well as other types of punitive law (e.g., certain provisions under the *Immigration and Refugee Protection Act*). These laws and policies — independent of enforcement — generated numerous serious legal problems for participants which negatively affected many aspects of their lives.

For example, for many participants, the criminalization of their activities either made legal problems inevitable (such as through criminal charges) or otherwise forced them to live under constant threat of legal problems. We have shown that this threat itself constituted a legal problem and rendered it difficult if not impossible for participants to rely on the legal system to remedy their legal problems. Whether through criminal charges or through persistent threat, when participants' activities were criminalized, virtually every domain of their lives became a legal problem. Recall, for example: Alexa's court-ordered conditions preventing her from leaving her home or accessing community without the risk of arrest; MX's inability to earn income through sex work without the risk of eviction; and Maya's inability to access protection from police services following a sexual assault without the risk of prosecution for aggravated sexual assault charges based on her HIV status.

As we demonstrated in these and other cases, once participants were ensnared in criminal legal procedures, criminalization created a cycle of continuing and worsening legal problems (e.g., criminal inadmissibility within the immigration system, increased severity of sentencing within

the criminal legal system, enduring barriers to housing and legal employment, inaccessibility of/ineligibility for record suspensions). For these participants, the root cause of many if not all of their legal problems can be traced to the existence or enforcement of a criminal offence. Here, it bears mentioning that the repeal or rewriting of a given law or policy would not be sufficient to resolve many participants' legal problems. For example, we have shown that for Trans, Two-Spirit, and non-binary people who have been convicted of an offence that has since been repealed, only the expungement of their criminal records would prevent further related serious legal problems.

Although improved access to legal representation and legal procedures may assist in reducing some of the adjacent legal problems stemming from criminalization, it is evident from our data that criminalization as a legal problem can only be remedied through comprehensive law and policy reform. Short of this, participants who experienced criminalization will be subject to a continued cycle of related legal problems. In sum, this study has revealed that resolving trans, Two-Spirit, and non-binary people's legal problems cannot be achieved by merely improving their "access to justice," and, instead, many root causes of these problems (i.e., their sources) require broader law and policy reforms.

4. Trans, Two-Spirit, and non-binary people addressed their legal problems via community and trans-led organizations

For the great majority of participants in this study, the most important resource for facing their legal problems was their *community*, broadly defined. Depending on the person, community could refer to their friends, families, and other loved ones; the people with whom they worked; their cultural, religious, spiritual, or artistic communities; people in their neighbourhoods; as well as members of the advocacy or activist groups to which they belonged. One participant described how crucial the presence and support of other trans people had been for them:

It's trans people who are [...] doing suicide intervention, they're the people who will get you the hormones that you need, who will teach you about different types of surgeries or interventions. [...] So yeah, I just really believe in the power of community, and [of having] loved ones in [your] corner who share [your] identity.
(Ekow, non-binary, Black)

Overall, participants described their communities as sources of support (e.g., emotional, financial), information (e.g., for where to access services or information), and guidance (e.g., for how to navigate various legal and administrative systems).

Likewise, participants noted that when they sought out organizations to help them respond to their legal problems, they received the most useful and substantive support from organizations within their communities. In some cases, service providers in community agencies provided direct assistance to participants while they were engaged in legal procedures, even though such agencies did not specialize in legal service provision. One participant, for example, described how a staff member from a women's shelter had helped her with the process of changing her name and sex designation on her identity documents, and another mentioned how a local HIV/AIDS community

organization was in the process of assisting her in obtaining a new copy of her birth certificate. In many cases, members of their communities and trans-led organizations and initiatives offered a form of legal expertise that was unavailable elsewhere. For example, trans community supports were especially indispensable in helping participants anticipate the legal implications of a decision or course of action (e.g., Pre-Removal Risk Assessment applications for migrants facing deportation, advice with complaint and grievance processes in correctional facilities), particularly with regard to the complex forms of criminalization unique to certain trans communities. Others said that community organizations and programs were crucial in helping them find competent legal (and other) service providers or in finding legal information. Some participants reported that community organizations they worked with were sometimes required to educate their lawyers on the legal risks and problems faced by members of their communities.

Additionally, participants discussed how accessing different services and programs and having positive experiences with service providers in various community agencies was another key source of strength and support that helped them mitigate and cope with their legal problems. Some Indigenous, Black, and racialized participants noted how powerful it was for them to engage with staff from organizations and community mentors who shared their identities, even when their services or expertise were not specifically focused on the realities of trans, Two-Spirit, and non-binary people. Some participants also talked about the importance of accessing adapted, inclusive, and non-judgmental support services (e.g., mental health, harm reduction, and peer-counselling services) while they dealt with the consequences of various legal problems. They reported that community support of this kind made it possible for them to respond to their legal problems, many of which were too complex or enduring to resolve on their own or with the help of public legal services alone. Our evidence shows that participants who felt their life experience and expertise was acknowledged, understood, and respected while they were facing or responding to their legal problems reported markedly better outcomes.

One participant further remarked how trans, Two-Spirit, and non-binary people's firsthand knowledge of their legal problems must be centered in any process of decision-making about potential solutions to these problems:

I think it's very important that when decision makers get together and make these decisions, that they include the thoughts and voice of people with lived experience. They may be able to provide some detail or angle, you know, that [decision makers] would have never bothered to consider, because they just don't have that way of thinking. (Kiwi, transfeminine, Indigenous and racialized, Two-Spirit)

Throughout this report, we have endeavored to bring the thoughts and voices of trans, Two-Spirit, and non-binary people to the consideration of the Department of Justice, with the understanding that our study's participants — and more broadly, their communities — are experts on both the sources of and solutions to the serious legal problems that confront them. Trans, Two-Spirit, and non-binary communities play a vital role in analyzing their serious and complex legal problems, and in producing the necessary related legal knowledge and expertise required to respond to their problems. As such, these persons — and their communities — must be recognized as experts and given leadership and decision-making roles at every step of the design, elaboration, and implementation of any strategy developed in response to their problems.

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