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How to Accommodate People with Disabilities throughout a Workplace Investigation

Co-authored by Bryce Desrochers, Kenneth McCarthy, and Katherine Snow



While I (Ken) was hosting an event with a dunk tank in late August 2022, I saw a young man in a wheelchair watching us. He had some mobility in his left arm, but was controlling the wheelchair by way of a joystick using his chin. At the time, countless children were taking turns knocking me into the water. Pulling myself out of the tank, sopping wet, I approached the young man in the wheelchair and asked if he wanted to participate. Admittedly, I was not sure how he could. He politely declined and wheeled away.

A while later, he returned and approached me at a table while my son-in-law was taking his turn getting dunked. The young man introduced himself as Bryce (Desrochers) and asked if he could push the dunk tank target with his hand. With me moving a table out of the way and protecting the electronics on his wheelchair from the splashing water, Bryce dunked my son-in-law not once, but twice. Bryce smiled, thanked me, and told me that he never gets to do anything like that. He then wheeled away without another word.

On that day in late August 2022, Bryce Desrochers opened my eyes to a whole new world, and I am honoured to have him and my daughter-in law, Kat Snow, co-author this article with me.

I regard Bryce and his family as friends of mine. They invited me to their accessible recreational facility (the only one in our city), the Miracle League of Ottawa. The facility has extra wide ramps, a cushioned floor on the playground and a fully accessible baseball diamond with a cushioned surface and recessed bases. We have gone to a hockey game together, talked trash over social media about our favourite sports teams beating one another, and Bryce explained many of the nuances of paralympic sports to me.

So, how does this relationship between the McCarthy/Snow families and the Desrochers family offer any insights when it comes to workplace investigations?

The day at the dunk tank taught me a couple lessons. Sure, I had employment equity awareness from my days as a Canadian federal government executive. But apart from a superficial effort on my part to put the dunk tank out of the way on a flat surface (accessibility by luck I suppose), I hadn't considered participants with different needs than my own. And while I had seen Bryce at games before, I had never met him nor thought about him until that day. I also hadn't really thought too much about systemic discrimination. I had heard it come up from time to time, but it was never the central theme to an investigation that I witnessed. Or perhaps it was, and everybody missed it.

Bryce had a solution to the problem I created that day. We moved a table, removed a ball from the equation, and added a hand pushing the target. In short, we adjusted. We did it together and it cost nothing!

But, I wish I had thought of this option on his behalf. I wish I hadn't left him out of my plans.

This was a lesson I needed to learn, and it is something that all leaders, business owners, investigators (and I guess, dunk tank operators) should consider.

When you are getting ready to meet with interviewees for a workplace investigation, who are you planning for? Are their abilities the same as your own? Who are you leaving out? How

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do you even know if they have a disability, evident or non-evident? Will they tell you? Or perhaps the client will? Or maybe you will hear about it through the rumour mill?

Some individuals may not be able to disclose or communicate their needs because of the nature of their disability. Investigators should not be expected to diagnose a disability or determine an individual's functional limitations. They just need to be mindful that the disability or limitation might exist and will need to be accommodated in the process.

26 million people in the United States have some sort of disability. According to the U.S. Centers for Disease Control and Prevention (CDC), 13.7 percent have a mobility disability (difficulty walking or climbing stairs), 10 percent have a cognitive disability, close to 6 percent are deaf or hard of hearing, and 4.6 percent have a vision disability.

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Under many jurisdictions, there are processes in place that allow for individuals to self-identify and request accommodations. But what if they haven't self-identified, but still could benefit from an accommodation? How much better would your information gathering be if you make the process accessible for all? How much better would your investigation be from a procedural fairness perspective?

People with disabilities may carry a huge mental load. They have to navigate a world that is not equally accessible, both cognitively and physically. It can be fairly straightforward to accommodate people with disabilities. This does not mean that it is easy. Bryce's advice is to plan for people with disabilities first, then work from there. You should build this consideration into your investigation processes, not only because it is the right thing to do, but because it can help your investigation immensely. Bryce suggests that you consult with people with disabilities to understand their needs. And if you are going to build processes and systems around their advice, it would be worthwhile to pay these experts who helped you develop your insights.

He also notes that sometimes people with disabilities will just tolerate hurtful comments or they stay quiet about their needs because they do not want to cause problems or be an inconvenience. Further,

individuals may not believe that people with disabilities are capable of being reliable interviewees or witnesses. "How can he use a computer if he cannot even use his hands" was one statement that Bryce overheard in one of his learning environments. This terribly insensitive and ignorant statement could lead to: "how can he be a reliable witness, how can he make reliable notes of what he saw?"

Following Bryce's advice, you should ask your interviewee for their accommodation needs at your point of first contact with them. You shouldn't wait for them to be in front of you in an interview room or video monitor as you are about to start the formal interview. If they present a complex accommodation matter on the spot, it can derail your progress on the investigation and if you are not responsive to the request, you may find yourself looking foolish before a court or a tribunal at some future point. Sure, the onus is on them to disclose their accommodation needs. But why not, as Bryce says, build the accommodation consideration into your process.

If you are interviewing someone in person, ask if they have any needs for accommodation. Get ahead of it. You can scope out the entrances to the building, the doorways, the hallways, and the room itself. Build time into your schedule to find a suitable space.

If you are interviewing them by video, don't just assume that the client-approved platform is the most accessible one for the interviewee. Find out if it will work for them.

Bryce has often wondered if an interview could be something like the TV show *The Voice*. *The Voice* is a singing competition where there are four judges. In the first part, all of the judges are turned around, not facing the stage, and have to listen to the singing performance blind. The reason why Bryce thinks about this is because a lot of employers would look at someone like him as an inconvenience because he doesn't have great use of his hands. In turn, they might relegate him to a task where he would not be in the way, as opposed to what he could do to make a contribution. While a job interview is not the same as an investigative interview, the concept is still the same. An unconscious bias may kick in for an investigator if an interviewee does not look or function like them.

An interviewee with a disability may have a unique method of communicating or retaining information, that might be vital to your investigation. You need to think outside the "able-person's box" and ask how might this individual know and convey reliable information that will be helpful to you in solving the issue under investigation.

Individuals with stutters will need a specific interview approach and could easily be seen as deceitful if they take efforts to "hide" the stutter. They may sound disingenuous with their "careful choices" and "pacing" of words. You could be reading them all wrong if you don't accommodate them, or even know that you should be accommodating them.

If the interviewee is hard of hearing, your investigation would likely need to include an ASL interpreter. Find an interpreter in advance, and ensure they have the necessary security clearances to enter the buildings or be around sensitive information like the topics of your interviews.

I once accommodated an interviewee with a disability by recording interview questions and sending the audio recording to them a few minutes before the interview via a mobile device. In some cases, it may not make sense to send interview questions in advance. In this case though, it worked extremely well as the interviewee needed a bit more time to process and digest the questions before they could answer them as fully as possible. This approach was a collaborative solution between the interviewee and me.

A party to an investigation may require different methods of participating if they have a disability. The method in which they review and validate their interview notes may need to be different. Is a replay of an audio recording better than a review of a paper or electronic document? Does an interview need to be broken down into multiple, shorter discussions to get through difficult issues? How much time does a person with a cognitive disability need to review and respond to a draft investigation report? Would more than one observer/support person be acceptable if it were to help a complainant share their lived experience? I once had four observers, in three different cities, support one complainant in their case. It worked well in that case because of the disability, but it might be overkill in another case. You should share your proposed accommodation with your client, to make sure you are not setting anyone up for failure or litigation. As well, if you are prepared to accommodate one party, you need to be prepared to accommodate another.

If your interviewee is blind, it would be helpful to include HTML or Word documents instead of PDFs and images as part of your materials. Find out what type of documents are most compatible with their assistive technology, and ensure that you have everything available for them.

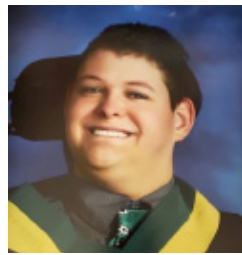
Most importantly: ask interviewees what they need. There are many disabilities and cognitive issues that could impact a workplace investigation.

There are a handful of resources online that talk about how to accommodate candidates in employment interviews or children as victims or witnesses in abuse investigations, but very little information is out there with respect to workplace investigations.

Looking to the employment interview resources, I found some useful information about timing of interviews and communication methods. According to a McGill University article on Accommodating Candidates with Disabilities During Interviews (McGill Equity), interviews should be scheduled during a time of the day when the candidate experiences the fewest disability-related barriers. For example, some people with disabilities depend

on personal care workers and Paratransit, which may restrict their availability. Medications and energy levels can also impact the timing that a candidate may request.

From a communication perspective, the same article spoke of assistive communication devices which may require the interviewer's participation (e.g., wearing a lapel microphone, typing into a Braille). The article notes that if you are unsure how to use the equipment, just ask! People with disabilities are the experts on their own needs.



Bryce Desrochers is a 20-year-old student who is studying Interactive Media Design at Algonquin College, Ottawa Canada. He was the inspiration behind the creation of *The Miracle League of Ottawa* (opened in 2015), which is a fully accessible baseball diamond and playground. Bryce is a

strong advocate for persons with disabilities in living, learning, and recreational environments. He has a particular interest in youth sport and recreation, citing that “there is always a way for everyone to play.” Bryce hopes to wear the red maple leaf representing Canada in Boccia at the 2028 Paralympics Games in Los Angeles, California.



Ken McCarthy (he/him) is the President of Integrity by McCarthy. Ken retired from the Canadian Public Service in 2020 and created Integrity by McCarthy to raise the bar in how organizations deal with matters of workplace harassment, violence, wrongdoing, and fraud. He has seen the

devastating consequences on individuals and organizations and set out to make a difference. Ken has led a workplace investigation program for a workforce of over 15,000 employees. He has also provided executive oversight in more than 500 workplace investigations and has designed and delivered investigation training sessions to 500 front-line managers. Ken is based in Ottawa, Ontario.



Katherine Snow (she/her) is the Director of Communications for Integrity by McCarthy. She has a Masters of Indigenous and Canadian Studies and a Bachelor of Journalism with Distinction from Carleton University. Throughout her Master of Arts, Katherine presented her research

in Canada and internationally. Katherine is an award-winning communicator who has worked in the field for 10 years. She is passionate about healthy workplaces, the wellbeing of her team, equality, and inclusion. She lives in Ottawa, Ontario with her partner and four mischievous cats.