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**CLINICAL BULLETIN**  
*of the*  
**DEVELOPMENTAL DISABILITIES DIVISION**

**Navigating the Judicial System with  
a Dual Diagnosis Justice Case Manager**

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In 2006 I was caught speeding. The officer who pulled me over wrote me a ticket where the speed was faster than the speed he had first quoted me. I asked to see the speed clocked on his radar. He told me that he did not have to show it to me. I was frustrated, so instead of paying the ticket, I decided to fight it by requesting a trial.

When I arrived at the courthouse for my trial, I did not know the simple etiquette of court, such as, where to go and where to stand. I was scheduled to appear at 9 am, but no one had informed me that I could wait all day. I had a job and responsibilities so I couldn't just hang around the courthouse, I explained to the administrative worker. She told me that if I left I would have to pay for the trial proceedings and would automatically be found guilty. I was surprised and irritated. As I had no other options, I went to sit in the courtroom to wait for my case to be called. Almost three hours later, when the judge called my name, I felt very anxious. I had rehearsed what I was going to say to the judge; but before any of that happened, she indicated that I needed to speak to the duty counsel. I had not yet done that so she "stood down" my case. What did that mean and who was the duty counsel?

I was redirected to a small room to a lawyer who would “act on my behalf.” He explained relevant information and told me not to speak. He would talk for me. I wondered why no one asked me what I wanted to say. We were then ushered back to the courtroom where I stood in front of the judge. I was perplexed. My heart pumped wildly, and I felt dizzy. My duty counsel cited relevant sections from the Motor Vehicles Act, and argued the right to information. I pleaded guilty to speeding at a minimum, and my case was completed. I paid no fine and lost no demerit points. We won the duty counsel said. As a reasonably intelligent person, I was overwhelmed by these unfamiliar, confusing, strict and complicated structures and processes.

In January 2007, a few months after my speeding fiasco, the Dual Diagnosis Justice Case Manager position was created. I had worked in the developmental service sector and the field of corrections for more than 15 years, and this new position seemed fascinating to me. The social services sector (Ministry of Community & Social Services or MCSS), corrections (Ministry of Community Safety and Correctional Services or MCSCS) and health (Ministry of Health and Long Term Care or MOHLTC) had identified gaps in service for offenders with dual diagnosis and special needs, primarily those with intellectual disabilities. There were many concerns about this group of vulnerable people and how the judicial system was not an accessible organization. As a result, funding discussions ensued between these Ministries, collaborations were formed and eventually, 18 full time Dual Diagnosis Justice Case Manager equivalent positions were fanned out across the province from Windsor to Thunder Bay. Mental Health had already established a presence with the growth of their court support program in urban centres, but capacity was limited as an ever increasing number of high risk and multiple need offenders found themselves in trouble with the justice system.

Despite my previous experience in the developmental service sector and the field of corrections, there was much to learn and no blue print or job description. However, the basic premise was that I was there to help people with intellectual disabilities with dual diagnosis who had offended navigate through the judicial system. Remembering my own frustrating experience at court in 2006 may have been the best training I could have received. The negative impact left me strongly motivated that we need to do a much better job informing people of their rights. We need to ensure that we educate our citizens with special needs about the justice system. If I had been frightened in traffic court, how would a person with a developmental disability, delusional thoughts and less sophisticated coping skills manage this complicated system? People with ID need education, support, awareness, and access to community programs. I knew that the Dual Diagnosis Justice Case Manager (DDJCM) needed to be part of the transition to accommodate vulnerable people.

One of the biggest barriers in supporting special needs offenders in the justice system is trying to explain that involvement in the system is a very complicated process from start to finish. For people with a criminal charge, whose strengths focus in the present with concrete concepts, attending court, having the case heard and adhering to the court’s sentence requires a great deal of flexibility, patience and long term memory. Unlike television shows that depict court matters being resolved in 30 minutes, experiences can stretch over 8 months and 10 or more court appearances. Every occurrence is different and can vary with the alleged charge and other

factors. In this role I become involved with a client at any point during the judicial process. Early intervention seems to work the best for the person charged as well as the support team and allows me to execute a plan to avoid continued involvement with the justice system. Most of the matters I deal with follow a similar pattern, and some of these barriers and solutions are explored below.

After a person has been charged with an offense, it is not unusual for the person or the staff, support team and/or family to panic. It's an anxious time, especially if this is the individual's first charge, and neither the person nor their support team have had any prior experience in the justice system. Most offenders without intellectual disability (ID) or dual diagnosis (intellectual disability and a mental health issue) do not have to consider issues, such as did staff call police, and does the organization require different staffing to assist the person? Did the crime involve a roommate or another person within the organization? Other questions arise such as: Can the family support this person in the community with the conditions of release, house arrest or a curfew? Is the person's housing, shelter or Ontario Disability Support Program (ODSP) in jeopardy if s/he is detained or incarcerated? These factors, along with many other dynamics, create a stressful and unique situation. Involvement of the DDJCM, if possible, can be most beneficial if s/he starts to plan early for the legal process.

Most referred clients and her/his caregivers will identify "how to start working in the legal system" as the biggest barrier when someone has recently been arrested. The individual and the support team, if there is one, need to decide what should be done first. If I am involved, I provide a list of local lawyers experienced in working with clients with ID. (I also have legal aid forms). I explain the differences between obtaining a lawyer and using an appointed duty counsel. We discuss proceedings and expectations for the first court appearance. This tends to lessen the person's anxiety when s/he has some idea of what will transpire at court. I tell them to bring a lunch as they may need to be there for a few hours. I also tell them that s/he will not be sentenced on that day. The first appearance shows that s/he has come to court willingly and has started to make a plan to address the charge.

Once I have obtained consents from the client to speak about the court case, I move the appearance from a regular court to the London Adult Therapeutic Court after showing the judge or crown attorney that I am working with an offender with special needs whose proceedings are best suited in such a specialized court. I begin dialogue with the assigned lawyer or duty counsel, ensuring they have a good understanding of the client, the level at which the client functions and how their disability may have contributed to decisions s/he made when they allegedly broke the law. Most lawyers are very interested in providing the best support for the client and are very receptive to any information I can give to assist. In fact, many lawyers will ask me what style of communication is best to establish rapport with a client. There are many compassionate lawyers who specialize in working with people with ID and/or mental health issues.

Cases are often decided through pre trial discussions where the client's lawyer meets with the crown attorney and ultimately will try arguing to a 'joint submission,' with both sides agreeing on

the same sentence. If they disagree, a pre trial meeting in judge's chambers is scheduled. I am often asked to attend and explain to the judge and the crown attorney about the nature of the person's disability and if his/her criminal behaviour is out of character. This gives the judge an opportunity to hear the facts of the case before hearing the highlights in court. The judge will usually indicate how s/he intends to rule, and the two lawyers will negotiate based on that information. Most of the time, outcomes are joint submissions, and lawyers and crown attorneys agree.

Once it is known what the crown attorney is seeking in terms of a sentence, I go back to the client to review the options. It is my job to provide collaboration and support, removing barriers in the judicial system. The person and the support team will decide how they wish to plead, and I am there to provide options. I rarely ask if a client is guilty of the charges. Most people choose to disclose their involvement in the incident. If a client decides to remain silent, I advise him/her to do what s/he believes right. Once a second appearance date is set, the individual is usually asked what his/her intention is in regard to the plea.

Applications of 'orders of diversion of the charges' are one of the most popular directions in courts serving the population with special needs. This means the accused would like to enter into a 12 month contract showing the charge was an incident unlikely to occur again, rather than stating guilt or innocence. During the year, the person is expected to follow terms set out by the order such as, attend counselling, anger management sessions or complete community service hours. At the end of the term, if s/he has complied with the conditions and has no other involvement with the law, the 'charges are stayed' (withdrawn) and the individual does not have a criminal record. It is imperative that the person understand exactly what they have agreed to do and that not adhering to the terms of the agreement can result in the diversion order being revoked and the person being re-charged. The diversion program requires a commitment and responsibility that can also affect the individual's support team or family. One must be able to attend sessions (with staff if the person's level of support requires this), so it is crucial that the individual and the team understand the expectations and can make this commitment.

Diversion may seem like the obvious answer, but it is not an option for certain types of criminal charges. If the charges involve a person, a child or are sexual in nature, the crime is considered a level three offense and is not divertible. If diversion is not an option for the individual's charge, the person may instead plead guilty with an explanation -- or they can state their innocence and request a trial.

Requesting a trial is a long and arduous undertaking. The length of time involved from planning the trial to getting underway can take months. Trials are always heard outside the Therapeutic Court as it does not have capacity for lengthy cases. Therefore, one will not have offences heard in front of a judge or crown attorney who may have specific knowledge of the uniqueness of a person with ID and/or dual diagnosis. Also, if there have been conditions placed on the client, like a non association order or a curfew, the accused will need to continue to follow these conditions until the trial has commenced. For this reason, many people decide to enter a plea

instead of requesting a trial. It's a very difficult decision to make as attending court everyday to defend one's self and character is extremely stressful.

In a case where a person has acknowledged that s/he has broken the law, a plea of guilt is submitted to the court. In my experience, courts demonstrate a great deal of leniency to individuals who plead guilty in a timely fashion, as the accused is viewed as not having wasted the court's valuable time and resources. Sometimes to "reward" the accused, the guilty plea will be dropped to a lesser charge with a shorter sentence of probation. For lesser, non violent crimes with possible mitigating factors, the judge may accept a guilty plea and "stay" the charges. This happened recently to a transient young man who had pleaded guilty to stealing a loaf of bread. It was reported that he had not eaten in three days and had no money. The court's attitude was that this young man, with no prior criminal involvement, had very few options and thus the theft charges were dropped.

When the process has finished, most people tend to be very excited that they have survived the justice system. There tends to be a misconception that the bulk of the justice involvement ends when the court matters have been completed, but that is not necessarily the case. Offenders with special needs may not realize that a sentence of probation for 24 months requires them to meet with a probation officer for the next two years. The probation officer can add any condition to the order, such as the requirement of attending counselling. A breach of conditions of probation, such as failure to attend counselling, can result in an additional charge and the person will return to court. As the DDJCM for London and Middlesex, one of the most important duties I have is ensure that the people I support through the justice system really understand the entire process and know what to expect when they leave the courtroom and the sentence continues.

I have focused on navigating the court system, but my involvement can occur at any point in the client's judicial experience. I find the whole judicial process is often a strong deterrent to clients and part of my job is to impress upon them to avoid the behaviours that may lead to court again. I tend to couple the negative experience of court with the good work s/he has done throughout the legal process such as, displaying appropriate behaviour and attending meetings. Someone's experience of standing in front of a judge and taking responsibility for breaking the law is often enough of a natural consequence to deter future criminal or illegal activities. However, for some people it may take more than one experience to change this behaviour. Whether a person chooses to go to trial or regardless of how many offenses a person has committed, the Dual Diagnosis Justice Case Manager (DDJCM) services through the Regional Support Associates are always available.

As the person moves further along the judicial track and transitions to probation or to a diversion order, I usually work with them during that process as well. With the person's permission, I provide the probation officer with some information about the individual who s/he will be monitoring for his/her probation terms. If the person is on a diversion track, I provide regular updates about the person's attitude and compliance and share this information with the diversion planner. In London, our Court Diversion Mental Health Nurse and I share a great deal

of information to assist one another in providing the best care to the people we serve. As needs are identified, I involve new people in the support team such as, a community integration worker or a community counselling consultant.

When working with an individual with high needs who has minimal supports, I may try to form a 'justice circle' to develop the best protocols to assist the person to break the cycle of offending and make safer choices. A justice circle is a support circle that involves key professionals in the person's plan of care. Each person brings his/her expertise to the table, and the individual and the circle's members can work on the person's challenges together which might include: addiction counselling, housing, medications, probation, family members or people in the offender's life.

One of the things I hear the most is, "How much longer do I have to come here?" Often, the individuals I support see the last day of probation, diversion, or court as the finish line. In some ways, it is the starting line to a better life. I remind clients they were arrested for a reason, and their behaviour may have been escalating for months until it reached a boiling point, and police were called. Making safer choices for offenders with special needs starts with self regulation. During this journey, they will work with many people who will help them understand why their behaviour, poor decision making or impulsivity could hurt someone or land them back in the court if not corrected. In most cases, people do not want to continue to live in harmful way and are happy for the support.

We must remember the families, staff and caregivers who provide a tremendous amount of support to the individual navigating the justice system. At times, I think this process may be just as hard for people who care for the person who has been charged. Some of these people were the ones who called the police on the individual. Some believe if they had handled the situation differently that "Johnny" wouldn't have reacted the way he did and maybe they could have done better. Sometimes there is anger at what they have had to endure with the client. Often, there is guilt about the entire situation. I often recognize the tremendous commitment on behalf of caregivers, family and staff given to the offender. Many of the clients I help navigate through the justice system are living in shelters or on the streets and do not have a bed for which to fight. These people are often the most difficult to support because of the myriad of issues that affect them and their decisions about breaking the law. Like everyone, it is easier to endure the justice system with a caring support system.

Much of my work is with the client, but a portion of my work is done in the background with the families, organizations and services which support the client. Some people simply want advice on when to call police if a person they support in the home or organization engages in questionable behaviour. Although I never give specific advice, I educate people based on my experience, about the process when police are called, the charges that may be laid and a possible sentence. It is then up to the organization and the person to decide their course of action. Relevant information provides the best opportunity for dialogue with others in the home or organization that is concerned and frustrated.

Organizations with minimal experience with offenders with special needs will often call and ask me to provide information about working with a person with ID. I meet and provide the workers with tips to foster success such as, keep explanations and language simple and concrete, schedule all related appointments for the same day and allow extra time for processing of any conversation.

About a year ago, I got a call from a probation officer in a small town who had never had a person with ID on her case load. She stated that her client was late for every single meeting, even though she would see him outside smoking before the appointments. She was angry and had labelled her client as noncompliant and a 'game player.' I agreed to meet with this man at the end of the appointment. Afterward, the probation officer asked what I had said to him. I told her that I asked him to buy a digital watch before his next appointment. I told her that the reason he was always late was because he couldn't tell time, but he could read numbers. The solution of using a digital watch solved the lateness issue. This small piece of information assisted her with understanding him, and they were both much happier at his probation meetings.

The role of the Dual Diagnosis Justice Case Manager continues to grow, and change as each person I support has a unique set of needs and characteristics. I often think that I learn more from my clients than they learn from me. I have learned two very important lessons working with offenders with special needs: 1) Never judge a book by its cover, even if you think you have read that same old story before; and 2) For heaven's sake, don't speed!

*[Edited by Maria Z Gitta & Colleen E Chryssoulakis]*

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## BOOK REVIEW

### **Downs: The History of a Disability by Dr. David Wright**

*From the publisher, Oxford University Press:*

"For 150 years, Down Syndrome has constituted the archetypal mental disability, easily recognisable by distinct facial anomalies and physical stigmata. In a narrow medical sense, Down's syndrome is a common disorder caused by the presence of all or part of an extra 21st chromosome. It is named after John Langdon Down, the British asylum medical superintendent who described the syndrome as Mongolism in a series of lectures in 1866. In 1959, the disorder was identified as a chromosome 21 trisomy by the French paediatrician and geneticist Jerome Lejeune and has since been known as Down Syndrome (in the English-speaking world) or Trisomy 21 (in many European countries). But children and adults born with this chromosomal abnormality have an important collective history beyond their evident importance to the history of medical science. David Wright, a Professor of History at the Institute for Health and Social Policy, McGill University, looks at the changing social responses to Down Syndrome from Medieval Europe to the present day in the first ever history of Down Syndrome."

**Readership:** Readers of popular science and those interested in the history of medicine and science.

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See also <http://www.cbc.ca/books/2011/11/dr-david-wright-and-the-history-of-down-syndrome.html>