

# COURT ACCOMMODATIONS FOR PEOPLE WITH DISABILITIES

Submitted by the Child Witness Institute

KEY CONCEPTS	
Access to justice	Persons with disabilities
Persons with communication disabilities	Persons with psychological or emotional disabilities
Special accommodations for persons with disabilities in court	Persons with physical disabilities
Persons with mental disabilities	Autism Spectrum Disorder
Attention Deficit Hyperactivity Disorder	Anxiety disorders

## 1. GENERAL ACCOMMODATIONS

### 1.1 Rethinking assumptions

#### **Credibility**

Persons with disabilities may, as a result of their disability, behave in ways that differ from the norm, and this can have a profound impact on the evaluation of their credibility.<sup>1</sup>

- Disability can alter the way a person perceives and understands an event.
- A person with a cognitive impairment may not, for example identify danger or realise that a particular act is unlawful.
- This perception can have an impact on memory, because a person who does not realise that something unlawful or “bad” has happened will not take note of incriminating details that could be very relevant to identification or corroboration.
- The greatest challenge to their credibility relates to the difference in the ways that they convey information to people.
- The presiding officer is required to evaluate the evidence of a case based on the credibility of a witness. This is done through an observation of the witness’s behaviour and speech, through verbal and non-verbal cues, facial expressions, eye contact and other gestures. However, persons with disabilities do not fulfil these expectations. Verbal and behavioural indicators of reliability “such as accuracy, fluency, rational and logic behavior, consistency (in substance, time and place descriptions), poised body language, lax stature and confident appearance” are often lacking or different in the accounts of persons with disabilities.<sup>2</sup>
- Persons with cognitive or intellectual disabilities often have difficulties with memory, with providing an accurate and coherent, consistent and complete account and may be more susceptible to confabulation and suggestion. In order to ameliorate these differences, various types of accommodations need to be introduced.
- The following are key accommodations for achieving this:<sup>3</sup>
  - friendlier environment in the courtroom
  - not having to confront the accused
  - framing the questions in a way that assists memory and provides reliable information
  - using expert evidence to explain the meaning of their words and conduct.

<sup>1</sup> Ziv, N. 2007. Witnesses with Mental Disabilities: Accommodations and the Search for Truth: The Israeli Case. Disability Studies Quarterly Fall. Volume 27:4.

<sup>2</sup> Ibid.

<sup>3</sup> Ibid.

## 1.2 Training

Court personnel should on a regular basis receive adequate and sufficiently in-depth training on the needs and rights of persons with disabilities so that they have greater understanding and knowledge to respond effectively to persons with disabilities within the court environment. Training should extend from ushers, interpreters, clerks, registrars, maintenance officers, prosecutors, attorneys, advocates, magistrates, presiding officers and intermediaries.<sup>4</sup> Physical or mental impairments largely affect the “probative value of the person’s testimony” and, for that reason, training becomes essential.<sup>5</sup> Training should be accompanied by awareness raising strategies and media campaigns for all judicial officer based on the human rights model of disability to eliminate prejudice.<sup>6</sup>

## 1.3 Structural accommodations

All court buildings should be physically accessible for persons with disabilities. Accessibilities would include the provision of:

- doors wide enough to accommodate wheelchairs
- ramps that provide access to courtrooms
- talking lifts equipped with Braille and having the correct dimensions
- grab rails
- witness boxes that have sufficient space for a wheelchair and are accessed by ramps
- disability toilets
- disability parking<sup>7</sup>
- signage
  - indicating the accessible route from the parking and the exterior of the building to specific court rooms
  - identifying the court, the entrance, court rooms, offices, cash halls, toilets etc.
  - signage must be simple, clear and understandable.<sup>8</sup>

In addition, persons with physical and mobility disabilities may require other forms of reasonable accommodations, like assistive technology, attendant care, and assistance with turning of pages.

## 1.4 Blindness and visual impairments

There are certain accommodations that are necessary on a practical level for persons with visual impairments to access justice. These include:

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<sup>4</sup> Department of Justice and Constitutional Development. 2021. Policy framework on Reasonable Accommodations and Measures to Access Justice, and the Management of Disability-related Complaints and Investigations in the Lower Courts. 34.

<sup>5</sup> Commission on Human Rights of the Philippines. 3 May 2017. Inputs on Access to Justice of Persons with Disabilities.

<sup>6</sup> UN Special Rapporteur on the rights of persons with disabilities. 2020. International Principles and Guidelines on Access to Justice for Persons with Disabilities. Geneva. 26.

<sup>7</sup> Department of Justice and Constitutional Development. 2021. Policy framework on Reasonable Accommodations and Measures to Access Justice, and the Management of Disability-related Complaints and Investigations in the Lower courts. 30.

<sup>8</sup> Ibid. 14.

- talking lifts
- colour contrasts at the top and bottom of stairways
- handrails
- sighted guides to assist where necessary
- admission of guides or service dogs into court buildings and courtrooms
- clear signage in large size font
- notice boards must be accessible to persons who are visually impaired whether it be in Braille, audio or manned by court staff
- any relevant court documents must be made available in Braille, large print, electronic and/or in audio format
- all public information and education material should be made available in alternative accessible formats, including Braille, large print, electronic and audio<sup>9</sup>
- where required, documents and forms must be provided in alternative accessible formats such as in large print, braille, audio book or electronic format.<sup>10</sup>

The process of identifying an accused will have to be adapted for witnesses with visual impairments and other evidence of identification, such as voice recognition, will have to be taken into account.

In order for court personnel to evaluate the evidence of persons who are blind or visually impaired, it is necessary for them to have an understanding of evidence as it is experienced by persons with this disability. This would require training of court personnel to understand the way persons who are blind or visually impaired experience the world to ensure their access to justice.

### **1.5 Deafness or hearing impairments**

There are a number of accommodations that can be introduced to assist persons with hearing impairments, and, depending on the extent of the particular impairment, these could include:

- communication support, which includes:
  - qualified sign language interpreters
  - tactile or up-close interpreters for individuals who are deafblind
  - assistive listening devices
  - real-time captioning
  - television captioning and decoders
  - computer assisted note-taking
  - oral interpretation
  - cued speech transliteration.
- Courts must ensure that there is a mechanism in place through which auxiliary aids and services are requested and provided. Clear procedures must be developed that describe how and where to request auxiliary aids and these procedures must be easily accessible and widely publicised. Information about obtaining auxiliary aids and services should be posted clearly throughout the court system, including notices in the court building as well as on court websites.

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<sup>9</sup> Ibid. 27.

<sup>10</sup> Ibid. 11.

- Extensive signage and information must be provided in court buildings to enable persons who are deaf or have hearing impairments to navigate more effectively without having to ask for directions.<sup>11</sup>
- There needs to be a different system used in courts when calling cases as persons who are deaf or have hearing impairments cannot access this method of notification.<sup>12</sup>
- Persons who are deaf and require an interpreter must be consulted before the court date with regards to the dialect or type of sign language to be used so that an appropriate interpreter can be appointed.
- Trials, where the witness or complainant is deaf or hearing impaired, should be recorded on video so that this can be utilised during an appeal process, where necessary.<sup>13</sup>

## 1.6 Intellectual and psycho-social disabilities

This category covers a wide range of disabilities, and accommodations focus mainly on the manner in which the person and their disabilities are managed within the court environment. This emphasises the need for training of court personnel on the identification of disabilities and methods of communicating within the court environment. The following are accommodations that would assist persons with intellectual and psycho-social disabilities:

- the use of intermediaries to assist persons with intellectual and psycho-social challenges
- an informal approach to court proceedings must be adopted
- the use of closed-circuit television or screens
- the simplification of court procedures
- the modification of court procedures to obtain reliable evidence from persons with intellectual or psycho-social disabilities
- the development of guidelines for judicial officers on how to manage and evaluate the evidence of persons with different intellectual or psycho-social disabilities
- the training of court personnel on the identification of intellectual and psycho-social disabilities and how to manage these within the court environment
- the provision of training to strengthen the skills of attorneys and advocates interested in litigating in disability cases<sup>14</sup>
- the introduction of a system of accrediting legal professionals suitably trained, qualified and experienced in handling vulnerable witnesses to build a network of professionals should be recognised<sup>15</sup>
- the formalisation of referral systems in terms of which court personnel have access to mental health professionals and experts for assistance
- the availability of a relaxed waiting room or interview room where the witness can be consulted and wait

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<sup>11</sup> Ibid. 29.

<sup>12</sup> Ibid. 29.

<sup>13</sup> Ibid. 29.

<sup>14</sup> UN Division for Social Policy Development. Toolkit on Disability for Africa. Module 8. Access to Justice for Persons with Disabilities.

<sup>15</sup> Department of Justice and Constitutional Development. 2021. Policy framework on Reasonable Accommodations and Measures to Access Justice, and the Management of Disability-related Complaints and Investigations in the Lower courts. 31.

- the provision of court preparation to familiarise the witness with the environment and the procedures
- the provision of information and educational material in accessible formats.<sup>16</sup>

### **1.7 Use of intermediaries**

As mentioned earlier, the court has the discretion in terms of s170A of the Criminal Procedure Act 51 of 1977 to appoint an intermediary to assist a certain category of witnesses. This is of particular importance for persons with disabilities, since they are entitled to this accommodation within the parameters of the section. It specifically refers to:

- any witness under the mental age of eighteen;
- any witness who suffers from a physical, mental or emotional condition.

The test for the appointment of an intermediary is whether the person will experience undue psychological, mental or emotional stress, trauma or suffering if they were to testify at such proceedings. Intermediaries can thus be used to assist with certain categories of disabilities.

Intermediaries can also be used as support persons to assist persons with disabilities who testify in terms of s158 of the Criminal Procedure Act 51 of 1977 as well as those who testify in court i.e. persons who are blind or deaf.

### **1.8 More specific accommodations**

There are different categories of disabilities and different levels within each category, each of which will have specific requirements. It is, therefore, essential to determine the nature and severity of a disability in order to determine what accommodations are necessary.

There are various categories of disability, and each of these will give rise to specific needs. Individuals with disabilities vary in their capacities, even those with the same disabilities, and, therefore, their needs will differ depending on the nature and severity of their disabilities. It is not possible to have a one-size-fits-all approach and the type of reasonable accommodations required will depend on the unique circumstances of each and every individual with a disability.

For example, a person who uses a wheelchair needs a ramp and wider door space to gain access to buildings; a quadriplegic would have additional and different needs to a paraplegic even though they both use wheelchairs; a person who is deaf may require a sign language interpreter while another who has a hearing impairment may require a hearing device; a child with autism has different communication needs to a child with Down's Syndrome. Therefore, reasonable accommodations have to be customised to individual needs.

Another important point to note is that disabilities also vary according to co-occurring conditions. This means that there are clusters of disabilities that may occur together. For instance, a person with Down's Syndrome may also have a visual impairment; a person with a hearing disability may also have a cognitive disability. Many individuals with disabilities are diagnosed as having multiple

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<sup>16</sup> Ibid. 31.

disabilities. Being aware of the complexity and severity of a disability enables one to better respond to the accommodations required and also to focus on what the abilities and strengths of the individual are.

## 1.9 Women and girls

The Committee on the Elimination of Discrimination against Women identified 6 basic components for women and girls' access to justice in General Recommendation No.33.<sup>17</sup> These include

- accessibility: safe access to justice and empowering women and girls to claim their rights;
- availability: establishment and continued operation of courts even in remote areas;
- accessibility: access to justice systems that are safe, affordable, accessible, adapted and tailored to the specific needs of women and girls;
- quality: judicial systems that respect and abide by relevant international standards;
- provision of solutions and remedies: the capacity to receive effective and realistic protection, deterrence and compensation for any harm that victims may have suffered;
- accountability: monitoring the effectiveness of the judicial system in line with the above standards.

The following guidelines would be applicable to women and girls:<sup>18</sup>

- Avoid judicial bias and stereotyping based on outdated cautionary rules. The focus should be on the behaviour of the alleged perpetrator and not on that of the complainant.
- Courts must take notice of the impact of trauma on victims of violence and how this affects their behaviour:
  - Disclosures are delayed
  - Victims accommodate abuse
  - Victims behave in ways that are counterintuitive to what is expected.
- The concept of consent requires particular understanding where complainants are adult women with impairments in cognition, memory, and/or intellectual development that affect their ability to understand and make decisions about their sexuality. Since women with disabilities face high levels of intervention and control in their lives, they develop a high level of compliance towards people in authority and may, consequently, not be aware that they can refuse to participate in sexual activity simply because they do not want to participate.
- Expert witness testimony must be allowed to explain the reaction and behaviour of the complainant and the impact of violence in order to counteract stereotypes.
- Presiding officers should receive training to understand the grooming processes adopted by perpetrators, especially in cases of sexual violence.
- Since a key element of violence against women and girls is the control which the perpetrator exercises over the victim, it is essential that complainants and witnesses be assured of their safety in the courtroom. They should be able to wait in a place that is separate from the perpetrator and they should be protected from having to face the perpetrator in open court by the use of alternative testifying rooms, screens or closed-circuit television.

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<sup>17</sup> General Recommendation No. 33 on women's access to justice (CEDAW/14/GC/33).

<sup>18</sup> UN Trust Fund to End Violence Against Women and Girls. 2021. Procedural Guideline of Access to Justice Standards for Cases of Violence Against Women and Girls in Formal and Customary/Community-based Justice Systems in the West Bank, Palestine. Project: "Gender Justice to End Violence Against Women and Girls." 15ff.

- Sentencing in cases of violence against women and girls must reflect the severity of the crime and the serious nature of the crime to send a clear message to the community that justice will not tolerate violence against women and girls.
- The complainant should be provided with clear information on the outcomes of the sentence and the court should ensure that the prosecution has prepared a plan for the complainant's protection, where applicable, and that this is considered at judgement or sentencing i.e. protection orders or removal from care.

## **2. ACCOMMODATING PHYSICAL DISABILITIES**

### **2.1 Visual disabilities**

#### ***DON'T MAKE ASSUMPTIONS***

- Do not assume that the individual has no usable vision. Many people who have a visual impairment can see shapes, colours and light.<sup>19</sup> This is important information to find out from the individual because it may be relevant to the substance of their testimony as well.

#### ***OFFER ASSISTANCE TO GUIDE***

- Generally people who are blind or visually impaired are perfectly capable of walking by themselves, but there may be times when they require the assistance of a sighted guide. It is appropriate to ask them first whether they would like to be guided. If this is necessary, there are certain basic techniques that should be followed:
  - Be careful and respectful and always ask before offering assistance.
  - Allow the blind person to hold one's arm just above the elbow.
  - To start walking with a blind person, place the back of one's hand on the back of the blind person's hand. This will let them figure out where one's arm is. Then, the blind person can hold one's arm just above the elbow.
  - Do not hold onto the blind person. The blind person should always have the control to let go if need be.
  - The blind person may have a cane or guide dog, in which case allow them to use the hand without their cane or guide dog.
  - Ensure the blind person is a step behind one, slightly to one's left or right side.
  - Walk at a comfortable pace.
  - Look out for any obstacles and advise the blind accordingly.
  - When guiding a blind person through a doorway, move one's arm behind one's back when going through the doorway so that their hand can remain on one's elbow.
  - When approaching a staircase, inform the blind person and tell them whether the stairs are going up or down.
  - Remain one step ahead of the blind person on the stairs and inform them when they have reached the top or bottom.
  - Do not leave the blind person stranded. Tell them when one is leaving and only leave them if they have reached their destination or are comfortable navigating their surroundings by themselves.
  - If one needs to leave a blind person alone, inform the person first and make sure there is a rail, wall or something else they can touch.

#### **AVOID TOUCHING THE CANE**

<sup>19</sup> American Foundation for the Blind. 2016. Low Vision and Legal Blindness Terms and Descriptions. [www.visionaware.org:http://www.visionaware.org/info/your-eye-condition/eye-health/low-vision](http://www.visionaware.org/info/your-eye-condition/eye-health/low-vision).

- Note that a blind or visually impaired person's cane is part of their personal space, so avoid touching it. If the person puts the cane down, don't move it. Let the person know if it is in the way and ask them to move it.

#### **READ DOCUMENTS AND STATEMENTS ALOUD**

- If any statement or document is introduced into court as evidence, the contents thereof must be read aloud to the individual.

#### **GUIDE DOGS**

- Guide or service dogs must be allowed to accompany the individual in court and sit beside them. A bowl with water should be provided for the dog, especially where the individual will be in the courtroom for an extended period. Guide dogs are not pets but are working and should not be petted without the handler's permission.

## **2.2 Hearing disabilities**

### **DEVICES TO ASSIST COMMUNICATION**

There are numerous devices that can assist communication for persons with a hearing impairment or disability. These include the following:<sup>20</sup>

- **Hearing aids**  
This is a small electronic device that fits in a person with a hearing impairment's ear or behind it. It amplifies sound so that they are better able to hear and, thus, communicate. A hearing aid consists of three parts: a microphone which converts the sound waves into electric signals which are sent to an amplifier; the amplifier increases the strength of the signals; and a speaker transmits the signals into the ear. There are 3 types of hearing aids:
  - Behind-the-ear (BTE) which is worn behind the ear and connected to an ear mold that fits into the outer ear or to a narrow tube that fits into the ear canal
  - In-the-ear (ITE) where the plastic case holding the electronics fits completely in the outer ear
  - Canal hearing aids (CIC) are made to fit the size and shape of a person's ear and are mostly hidden in the ear canal.
- **Assistive listening devices**  
Assistive listening devices help people with hearing loss understand what is being said and enables them to communicate more easily. These devices bring certain sounds directly to the ears which improves one-on-one conversations or when the person is in a classroom. Many of them work through a wireless link and can connect directly to a hearing aid or cochlear implant. Types of assistive devices include:
  - Hearing loop: this involves a thin loop of wire that circles a room through which the amplified sound of a microphone or television or public address system is transmitted and which is then picked up by the hearing loop receiver in the hearing aid
  - FM systems: this is often used in classrooms where the instructor (speaker) wears a small microphone; the radio signals from the microphone are picked up by a

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<sup>20</sup> National Institute on Deafness and Other Communication Disorders (NIDCD) website. Assistive devices for people with hearing, voice, speech, or language disorders. [www.nidcd.nih.gov/health/assistive-devices-people-hearing-voice-speech-or-language-disorders](http://www.nidcd.nih.gov/health/assistive-devices-people-hearing-voice-speech-or-language-disorders).



receiver that the student (listener) wears; the sound can also be transmitted to a telecoil in a hearing aid or cochlear implant via a neck loop that the listener wears

- Infrared systems: sound is converted into light signals which are sent to a receiver that the listener wears and these are picked up by a telecoil in the hearing aid or implant via a neck loop that the listener wears
- Personal amplifiers: these consist of a small box, approximately the size of a cellular phone, that amplifies sound and reduces background noise; some have microphones that can be placed near the sound source and this is then picked up by a receiver (headset or earbuds).
- Communication Access Realtime Translation (CART)  
CART or real-time captioning is the instant translation of what is spoken into English text using a stenotype machine, notebook computer and software. The text is displayed on an individual's computer monitor or tablet, projected onto a screen, or combined with a video presentation as captions. This enables people with hearing impairments to access information where they are able to read.
- Sign language interpreters  
The role of the interpreter is to effectively facilitate communication between deaf individuals and those who are hearing. Facilitating communication between a visual communicator and an auditory communicator can be accomplished in a number of ways and will be identified by the individual with the hearing impairment:
  - SASL Interpretation: Interpreters interpret between a South African language and South African sign language, which is the language used by deaf people in South Africa. This can be done simultaneously (the interpreter listens and signs simultaneously) or consecutively (interpreter only interprets after the speaker has spoken a sentence or a paragraph).
  - Transliteration: Interpreters transliterate between spoken English and a sign representation of English.
  - Tactile Interpretation is a method of interpreting used by individuals who are deafblind. Here the interpreter creates signs in the person's hand, while using other tactile cues to describe affect and the environment.
  - Oral Transliteration is a less commonly used visual access system. Oral transliterators silently repeat the English being spoken, while using specialized techniques to supplement the mouthing (e.g., gestures, pointing, etc.).
  - Cued Speech Transliteration is a less commonly used visual access system, whereby the transliterator uses handshapes situated in different locations near the mouth to represent English phonetic markers.

#### **FIND OUT HEARING RANGE AND COMMUNICATION PREFERENCE**

- As there is a broad spectrum of hearing loss, ranging from mild to profound deafness, it is important to find out what hearing impairment the individual has and what their communication preference is. Not all deaf people communicate in the same way. South African Sign Language (SASL), lipreading/speechreading, writing, gesturing, and speaking are all methods of communication which may be utilized by different deaf people.

### **DO NOT MAKE ASSUMPTIONS**

- Do not assume that deaf people cannot speak. Some can speak, but choose not to, while others cannot. Those individuals, who do choose to speak, will often pronounce words in a way that is difficult to understand. This should never be seen as a developmental delay.
- To a hearing person, a deaf person may appear very blunt in the manner in which they communicate, and the directness and lack of social delicacy in their interactions might seem shocking. This has been attributed by some to the lack of incidental learning regarding the appropriate use of language.<sup>21</sup>

### **USEFUL INFORMATION**

- In order to facilitate communication effectively, it is necessary to gather certain information about the person with the hearing impairment. The following information would be useful:<sup>22</sup>
  - Is the hearing impairment prelingual or did the hearing loss happen after language acquisition? This will impact on the assistance required and the person's ability to communicate. A person who is late deafened may be more effective at communicating verbally, for instance.
  - If the individual is a child, do the parents have a hearing impairment or not? This has implications for the child's capacity to use sign language. Where the parents do not have a hearing impairment, the child may have a language delay due to lack of exposure to sign language. Where the parents have a hearing impairment and already use sign language in the home, the children will acquire the language more quickly.
  - What form of communication is used at home, school or work?
  - If using sign language, how fluent are they? This is particularly important for children.
  - Does the person (especially a child) and their family use idiosyncratic or special signs that are not included in SASL? This would be very relevant to names of body parts etc in cases of sexual violence.

### **IMPORTANCE OF FACIAL EXPRESSIONS**

- Make direct eye contact with the individual as facial expressions, gestures and movements of the lips and body provide important information. The mouth and face must always be visible when communicating with a person with a hearing disability. Facial expressions are an important part of communication when signing and deaf people learn to read facial expressions when communicating with hearing people.

### **MONITORING COURT ROLE PLAYERS**

- Presiding officers must ensure that, whenever anyone in the courtroom addresses an individual with a disability, the speaker faces the individual. Presiding officers must monitor prosecutors and defence in this regard.

### **TOUCHING ARM TO ATTRACT ATTENTION**

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<sup>21</sup> Gretchen Waech. 2007. Interaction with Deaf People: A to Z.

<sup>22</sup> Oregon Children's Justice Act Taskforce, Oregon Department of Justice. January 2017. Project Ability: A Reference Guide for Interviewing Children with Disabilities. 65.

- Before speaking to a person with a hearing disability, it is important to get their attention. This is done by calling their name and, if there is no response, lightly touching them on the arm or shoulder. Touching the person's arm or shoulder to get their attention is culturally appropriate and acceptable.

#### **SPEAK CLEARLY**

- It is important to ensure that everyone speaks clearly, especially as many people who have hearing impairments lip-read. Do not exaggerate speech or lip movements as this can contribute to confusion.

#### **CLARIFYING ANY CONFUSION**

- Presiding officers must be vigilant in ensuring that any potential confusion is clarified. If there is a request to repeat questions a few times, rephrase the question in a simpler form as opposed to repeating it. Sometimes writing down a word, phrase or question can assist in clarifying a question and facilitating communication.

#### **COURTROOM LIGHTING**

- Lighting in the courtroom must be good to ensure that the person is able to see the faces of those speaking clearly. This may necessitate the switching on of lights, where applicable.

#### **DO NOT SHOUT**

- Shouting will not improve communication and can distort lip movements, which can make it difficult for persons with hearing disabilities to follow.

#### **REDUCE NOISE**

- Noise should be kept to a minimum as this will seriously impact on the ability of a person, who is hard of hearing, to hear.

#### **SIMPLIFY COMMUNICATION**

- When communicating with a person with a hearing impairment, use simple words as opposed to more complex terminology. If a word is unfamiliar, try to explain the concept behind the word. For example, use the term "gun" instead of "weapon" and "we are going to ask questions" instead of cross-examination.

#### **EVALUATING EVIDENCE**

- When evaluating or trying to understand the evidence of a person with a hearing impairment, presiding officers must be aware of incidental learning. Incidental learning is that learning which takes place outside of a formal educational environment. Hearing people come into contact with a mammoth amount of information from their environment, mostly auditory, which they process from television, conversations, radio etc. Deaf people rarely have access to this information on the same level as hearing people and they may, therefore, not have the same general knowledge base that would be considered to be obvious by most hearing people.<sup>23</sup>

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<sup>23</sup> Ibid.

## 2.3 Mobility disabilities

There are different types of physical disabilities that fall under mobile impairments and these will require different forms of assistance for effective participation in the court process.

### **HIDDEN DISABILITIES**

- Disabilities that cause mobility impairments tend for the most part to be visible because individuals who have these impairments make use of wheelchairs, canes or other forms of assistance. However, other disabilities, like arthritis, that cause mobility impairment are invisible and more difficult to recognise, even though they must be taken equally seriously.

### **ACCOMMODATIONS**

- Persons with physical disabilities require access to the physical environment of the courtroom. They must be able to reach the courtroom, whether via ramps or elevators, and the doors of rooms must be wide enough to allow the access of wheelchairs. Witness boxes or docks must be able to accommodate wheelchairs and should be fitted with grab bars for those who do not use wheelchairs but require the assistance to enter the boxes.
- Other accommodations may be required where the individual's speech has been affected. These would include:
  - Eye-gaze control technology which allows individuals to use movements of their eyes to operate a laptop, computer or speech-generating device.
  - Speech generating devices are communication systems that produce a voice for individuals who have difficulty speaking.
  - Access to computers is achieved by the use of touch screen, joystick, and trackballs.<sup>24</sup> Some persons with mobility impairments have difficulty handling a mouse and these provide alternative methods of pointing and clicking, which becomes important when using other forms of communication.
  - Eye trackers allow the user to control the cursor and interact with a computer using their eyes instead of the mouse. Commonly used by people with very limited mobility, eye tracking makes use of hardware and software. Some eye trackers are worn on the head, others are positioned on top of the screen or device being used, and some track magnetic dots placed on contact lenses. This enables the cursor to follow the gaze of the user. If they stare at a particular part of the screen for a longer period or consciously blinking in a particular way, they are able to click on icons, buttons, or a virtual keyboard.<sup>25</sup>
  - Augmentative and alternative communication (AAC) are methods of enabling alternative communication. It includes both unaided and aided modes of communication. Unaided modes of communication include non-verbal means of natural communication, as in sign language interpreters. Aided modes of communication require some form of external support, such as communication boards with symbols (e.g., objects, pictures, photographs, line drawings, visual-graphic symbols, printed words, traditional orthography) or computers, handheld

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<sup>24</sup>Pousada, T., Pereira, J., Groba, B., Nieto-Riveiro, L., & Pazos, A. 2014. Assessing Mouse Alternatives to Access to Computer: A Case Study of a User With Cerebral Palsy. *Assistive Technology*. 26.

<sup>25</sup> Zapała, D. & Balaj, B. 2012. Eye Tracking and Head Tracking -- The two approaches in assistive technologies.

devices, or tablet devices with symbols that generate speech through synthetically produced or recorded natural (digitized) means.<sup>26</sup>

### **REARRANGING THE COURTROOM**

- Use should be made of a courtroom that is equipped to accommodate persons with mobility impairments. Where this is not available, furniture in the courtroom can be rearranged to allow for appropriate placement of an individual's wheelchair or scooter. When rearranging the space, be aware of the individual's reach limits and ensure that as many items as possible are placed within their grasp. If the witness box is too high for a seated person, then alternative accommodations must be organised.

### **ALLOW WITNESS TO BE SEATED**

- Where the witness has an impairment like arthritis, provide a chair for them to sit on and allow them to testify while seated.

### **PERMISSION TO MOVE WHEELCHAIR**

- If the individual uses a wheelchair, do not touch or move the wheelchair without the individual's permission. Wheelchairs, like canes, are considered to be part of an individual's personal space.

### **CASES OF SEVERE MOBILITY IMPAIRMENT**

- Where the individual has a severe mobility impairment and is unable to sit in a wheelchair, for instance, or is not able to be moved, presiding officers must consider alternative forms of taking their evidence. Making use of legislative provisions, like s158 of the Criminal Procedure Act 51 of 1977, the following possibilities can be considered:
  - o holding proceedings in a more accessible location (in loco)
  - o allowing the testimony of a witness to be filmed using closed-circuit television, live streaming or video conferencing which will enable them to testify from home, hospital or care centre.

### **ACCOMMODATIONS FOR PERSONS WITH CEREBRAL PALSY**

- Pay attention to the individual's comfort and respiratory efficiency as they may need to be repositioned during the trial. Some individuals with this impairment drool and may require assistance to wipe away the saliva, but this should always be done with permission.
- Ask the individual how they would prefer to communicate. They may use picture/word boards or augmentative communication devices but may choose to talk. This preference should be respected and presiding officers need to ensure that court role-players remain patient and adapt their questioning styles. It is important that the individual be given an opportunity to communicate at their pace and that role-players not be allowed to rush them.

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<sup>26</sup>American Speech-Language-Hearing Organisation. Augmentative and alternative communication (AAC). <https://www.asha.org/njc/aac/> (accessed 27 June 2022).

### 3. ACCOMMODATING COMMUNICATION DISABILITIES

#### **PREPARATORY INFORMATION REQUIRED**

- Since communication impairments vary vastly, the approach taken for any particular individual will depend on the type and extent of their disorder. It is, therefore, necessary to find out what type of communication is impacted i.e. is it a speech disorder or a language disorder. The following information would be necessary to enable court personnel to provide the requisite assistance:<sup>27</sup>
  - Does the individual have speech or articulation problems?
    - What does it sound like?
    - Do they compensate for the difficulty in any way? How?
    - How do they typically respond when misunderstood?
  - Does the individual have receptive or expressive language difficulties?
  - How will the court know if something said is not understood?
  - Does the individual communicate in other ways i.e. gestures or writing?
  - Does the individual need extra time to process questions?
  - Does the individual use communication tools or aids (augmentative and alternative devices)?

#### **AUGMENTATIVE AND ALTERNATIVE COMMUNICATION DEVICES**

There are a variety of communication devices ranging from simple systems to complex computer programmes that generate speech from typed words or images. These include:<sup>28</sup>

- Picture point communication systems: these systems use pictures, photos or other visual aids, which are displayed on boards or computer applications that the individual can refer to. These are very useful for assisting children to express themselves.
- Picture Exchange Communication Systems (PECS): these are visual representations, which include photos or pictures, that enable an individual to indicate what they want. This is usually used with children.
- Break cards: this too is used by children. It consists of cards that indicate a drink of water or a rest or toilet, and the child uses the card to communicate when they need a break or a drink.
- Speech generating devices: these are electronic devices that can produce digitized speech when the user either types a message or presses on an image, word or letter.

#### **DO NOT MAKE ASSUMPTIONS**

- Do not assume that a person with a speech impairment does not understand you or has a developmental delay.

#### **AT THE BEGINNING OF TESTIMONY**

- Provide court personnel with an overview of the individual's abilities and communication method and lay down ground rules.

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<sup>27</sup> Oregon Children's Justice Act Taskforce, Oregon Department of Justice. January 2017. Project Ability: A Reference Guide for Interviewing Children with Disabilities.42.

<sup>28</sup> Ibid. 42 – 43.

- Explain to the individual that you might need to repeat their responses to ensure that you have understood exactly what they are saying and that, should you be wrong, they must please point out any misunderstanding you may have. Provide positive reinforcement when the individual does correct any misunderstandings (“thank you so much for clarifying that”), especially where the individual is a child.

#### **USE MODIFIED OATH**

- Since persons with receptive language difficulties have difficulties with understanding, it would be necessary to modify the oath or warning procedure to make it simpler and more concrete to understand.

#### **COURTROOM ENVIRONMENT**

- Ensure that the courtroom is quiet and that people are not walking around, entering and leaving, banging doors etc. as this will make it easier to communicate.
- Create a relaxed and non-adversarial environment.

#### **PAY CAREFUL ATTENTION**

- Pay careful attention to the individual when they speak and look at them. Observe whether they are using hand gestures with words when speaking. Listen patiently and carefully.

#### **DO NOT INTERRUPT**

- Do not interrupt or finish the individual’s sentence. Wait patiently until they are finished. Presiding officers must ensure that other role-players do not interrupt the individual when they are answering questions. Do not finish sentences for the individual where they stutter. Allow them to stutter, stammer and pause and resist the temptation to fill in words.

#### **USE OF COMMUNICATION STRATEGIES**

- Ensure that linguistically simple language is used. Use appropriate and proper questioning strategies:
  - Disallow tag questions
  - Disallow leading questions.
- Presiding officers must closely monitor language usage of all role-players in court, and intervene where this is necessary.

#### **USE INTERMEDIARIES OR SPECIAL INTERPRETERS**

- Use must be made of intermediaries, where possible, to simplify court language and difficult terminology. In some instances it may be necessary to make use of specialist interpreters or language experts.

#### **DIFFICULTY UNDERSTANDING**

- If there is difficulty understanding what an individual is saying, ask them to repeat what they have said. If it is still not clear, ask them to draw it, write it down or ask them to suggest another way of facilitating the communication. Then repeat your own understanding of what was said to clarify or confirm what the individual was saying.

### **USE OF EXPERTS**

- Where there is confusion or uncertainty, expert witnesses should be called to testify to clarify any confusions or misunderstandings.

### **ACCOMMODATIONS FOR RECEPTIVE DIFFICULTIES**

- Pause after a question is asked in order to give the individual an opportunity to process the question and formulate a response.
- Ask only one question at a time and give the individual an opportunity to respond before asking another question.
- Evaluate the response to determine whether the question was understood.
- Where the individual is a child, pay careful attention to the child's eye contact, body language (squirming, grimacing), and other cues, such as changing the subject or responding with a non sequitur, which might indicate the child does not understand the question.
- Presiding officers must be vigilant in ensuring that other role-players adhere to these rules.

### **ACCOMMODATIONS FOR EXPRESSIVE DIFFICULTIES**

- Again, pause after every question posed. Since the individual has difficulties with expressing language, they may require extra time to formulate their thoughts and responses before stating them.
- Find out whether it would be easier for them to write or draw or communicate in another way.
- If the individual does not use full sentences, do not complete the sentences for them. The sentence can be repeated but then paused where they stopped for clarification.

## **4. ACCOMMODATING COGNITIVE DISABILITIES**

### **4.1 Preparation considerations**

- It is essential to gather information about the mental age of the individual, especially where it is a child who has a cognitive or intellectual disability. Mental age refers to the person's current academic functioning as compared to peers who are the same chronological age.<sup>29</sup> Since mental age is a helpful indicator of the person's performance, it will assist in the choice of approach to questioning as well as the evaluation of the evidence produced.
- Be aware that a child may appear to perform better than expected in the courtroom, but this could be attributed to varying delays in different domains. For example, a 10-year-old may be diagnosed as having the capacity of a 5-year-old, but their language skills may be much better than that of a 5-year old. However, they may not be able to read and may not have reached other milestones.<sup>30</sup>
- The following information should be gathered, where possible:
  - Where it is a child, information from caregiver or school or evaluation, where possible, about the child's capacity and abilities.
  - What are the person's expressive language abilities?
    - Can they speak in full sentences?
    - Do they require an augmentative communication device?

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<sup>29</sup> Ibid. 60.

<sup>30</sup> Example from Project Ability. Ibid.



- Does the person have co-occurring disabilities?
  - How do these impact on their functioning?

## 4.2 Accommodations

The key to accommodating persons with intellectual disabilities lies in the manner in which they are questioned. The accounts of witnesses with intellectual disabilities tend to be shorter and they are more likely to agree with leading questions while the techniques of cross-examination do not elicit accurate memory reports. Persons with intellectual disabilities should be questioned in such a way that their ability to give accurate evidence in court is maximized.<sup>31</sup>

### INTRODUCTION AND PREPARATION

- Time must be taken to give the individual clear introductions and full explanations of what they are required to do.
- Explain the ground rules clearly i.e. that that must tell only what happened, that they must say if they don't know an answer or want the question rephrased, that they can ask for a break or to go to the toilet. Build rapport with the individual, taking a little time at the beginning of the proceedings to chat about inconsequentials to set them at ease.

### COMMUNICATION

- Use plain simple language but do not talk down to people with cognitive disabilities. Do not use "baby talk" as this is disrespectful. The focus is on simplifying the language as one may need to do when speaking to a foreigner.
- Assess the individual's language skills throughout their testimony and evaluate whether they are understanding the questions as they will rarely be able to recognise this themselves. This will provide guidance as to the types of questions that can be asked.
- Speak slowly, use simple words and sentences.
- It is important to assist the person with the narration of their story as they do not respond well to open-ended questions. They will provide less detailed, shorter responses. It is then necessary to ask general questions that are more focused or direct.
- Use should be made of prompts i.e. then what happened? tell me more about that.
- Only ask one question at a time and separate complex information into smaller parts.
- Use gestures and other visual props where possible.
- Do not keep repeating questions as this may suggest that the answers are incorrect or not believed. The same question can be asked again at a later stage to check consistency.
- Avoid closed-ended questions (yes/no) and multiple choice questions where possible, but if they are used, follow them with an open-ended questions.
- Leading questions are problematic and should be avoided. Persons with intellectual disabilities have been found to be more suggestible when questions are suggestive or repeated.
- Avoid evaluative and why questions and keep questions as concrete as possible.
- Ensure that there are pauses between questions and give the person time to respond as they need to process the question and formulate a response.
- Do not move to new topics without explanations i.e. can we talk about what happened in the house?

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<sup>31</sup> Kebbelle, M., Hatton, C. and Johnson, S. 2004. Witnesses with intellectual disabilities in court: What questions are asked and what influence do they have?. *British Journal of Learning Disabilities*. 29. 98-102.

### **MONITOR UNDERSTANDING**

- Persons with intellectual disabilities will not say when they do not understand because they are not able to evaluate whether they understand. It is the responsibility of those questioning the person to monitor whether they are comprehending the question or not. The presiding officer must be vigilant in observing whether the person is understanding the question or not and intervene to ensure that the questioner rephrases the question.
- Indicators of non-comprehension would include responses that do not make sense, discomfort, stress, not responding and looking down or away.

### **FREQUENT BREAKS**

- Frequent breaks are very useful as the amount of concentration required to answer questions is very tiring.
- Persons with intellectual disabilities will rarely request a break, children even less so.
- Presiding officers must closely monitor the person for indicators of fatigue or loss of concentration. Possible indicators of would include:
  - Withdrawal or not answering questions
  - Fidgeting, rocking in chair
  - Humming or groaning
  - Covering face or hiding.
- Where the person is becoming too tired or agitated to continue, it may be necessary to let the matter stand over or postpone until the next day. Research has shown that children with mild to moderate intellectual disability often perform better on the second interview as they are more familiar and comfortable in the setting.<sup>32</sup>

### **APPOINTMENT OF INTERMEDIARIES**

- The appointment of an intermediary is essential for persons with intellectual disabilities. The Criminal Procedure Act 51 of 1977 makes provision for the appointment of an intermediary where a witness is under the biological or mental age of 18. Although section 170A requires a finding of undue stress, it is submitted that this will always be present where the witness has a cognitive or intellectual impairment.

### **SUPPORT PERSONS**

- Support persons should be allowed to accompany the individual in the courtroom or the CCTV room to provide emotional comfort and support.
- The support person can be a close relative, peer or trained person.

### **ADAPTING ENVIRONMENT**

- Since the environment has an impact on the individual's ability to testify, it is necessary to make accommodations to the environment.
- Witnesses with intellectual disabilities can be allowed to testify from an alternate venue using CCTV or live streaming in terms of sections 170A and s158 of the Criminal Procedure Act 51 of 1977.
- Other accommodations include: testifying on the witness stand behind a screen; testifying off the witness stand; and removal of court gowns.

### **USE OF EXPERTS**

- Use should be made of expert testimony on the impact of the disability on the evidence of the individual and to explain certain behaviours of the individual. It can provide an assessment of the individual's capacity and assist in explaining confusions, where appropriate.
- Where augmentative and alternative communication devices are used, experts can assist the individual to communicate through pictures and/or electronic devices.

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<sup>32</sup> Ibid. 63.

## **5. ACCOMMODATING SOCIAL AND EMOTIONAL DISABILITIES**

### **5.1 General accommodations**

As with other disabilities, the approach to accommodating persons with social and emotional impairments will depend on the nature of the impairment and the extent of the impairment. As discussed earlier, this category covers a wide range of disorders, including anxiety disorders, personality disorders, post-traumatic stress disorder, obsessive-compulsive disorder and psychotic disorders.

#### **PREPARATION CONSIDERATIONS**

- Certain information is required in order to prepare appropriate accommodations for persons with social and emotional disabilities, since the nature of the disorders vary considerably. Points to note would include the following:<sup>33</sup>
  - What is the person's baseline behaviour in a neutral setting?
  - Does the person present with specific difficulties or behaviours, i.e. hyperactive behaviours, withdrawal, sensitivity to environmental stimuli like noise or crowds?
  - What behaviours indicate increased stress or anxiety?
  - What coping mechanisms does the person use when stressed, i.e. deep breathing, taking a break?
  - Does the person take medication for their disability and will this impact positively or negatively on their performance? Where possible, testimony should be scheduled when the medications are at peak performance.

#### **PREPARING THE WITNESS**

- Presiding officers must ensure that persons with social and emotional disorders receive adequate preparation before they are called to testify. The process should be explained to them and they should be given an opportunity to view the courtroom before they testify as this will contribute to a reduction in stress and anxiety.

#### **RAPPORT**

- Although rapport should be used for all witnesses, it may be necessary to spend a little more time on rapport with persons who have social and emotional disorders to set them at ease. Stress and anxiety will reduce their efficacy as witnesses as they are particularly vulnerable to stress.

#### **PATIENCE**

- Patience is key to a successful interaction with persons with these disabilities. The person may provide rambling narratives, but should not be stopped. Any issues can be addressed in follow-up questions. It is important to be patient and flexible. The strict question-answer format of testimony will have to be adapted and structured according to the person's narrative.

#### **CALM AND QUIET**

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<sup>33</sup> Oregon Children's Justice Act Taskforce, Oregon Department of Justice. January 2017. Project Ability: A Reference Guide for Interviewing Children with Disabilities. 50.

- It is important to create a calm atmosphere as persons with these disorders can become easily fearful, distracted and agitated by noise, disturbances and strangers.
- Presiding officers must limit noise and movement and keep the courtroom as calm and quiet as possible.

### **CROSS-EXAMINATION**

- Be aware of the impact that testifying, especially about a traumatic event, has on the person and the effect that this will have on their disorder. The court process is extremely difficult for a person suffering from Post-Traumatic Stress Disorder, for example.
- Presiding officers must monitor cross-examination and intervene to ensure that it is not conducted in a harsh and aggressive manner.

### **ALLOWING MOVEMENT IN COURTROOM**

- Persons with social and emotional disorders may have nervous tics or repetitive actions. Do not comment on these or try to stop them, even if they may appear distracting. It is important, however, to monitor whether the person is becoming more agitated as this may signal the need for a break.
- Where the person is a child, allow them to fidget or move around in the CCTV room as this may be their way of calming themselves down. If the behaviour becomes too disruptive then the intermediary in the room with the child should be required to set the boundaries in a gentle but firm manner by redirecting the child. Power struggles should be avoided as the child will shut down any interaction. If the child becomes too agitated, it may be necessary to introduce an activity like colouring or drawing while they testify or the court will have to adjourn for a break and reconvene when the child is calmer.

### **COURT ENVIRONMENT**

- Ensure that the courtroom is quiet and that people are not walking around, entering and leaving, banging doors etc as this will make it easier to communicate.
- Create a relaxed and non-adversarial environment.

### **SUPPORT PERSON**

- Allow a support person to be present for comfort and support.

### **COMFORT ITEM**

- Where the individual is a child, allow them to have a comfort item with them when they testify as this will calm them and give them a sense of security.

### **THERAPY DOGS**

- Where this is a possibility, the court should consider the use of a therapy dog. Therapy dogs help people, especially children, with behavioural or emotional difficulties regulate and focus.

## **5.2 Accommodations for specific disorders**

### **5.2.1 Anxiety disorders and trauma reactions**

If the individual exhibits visual or verbal signs of anxiety, the following may be useful:<sup>34</sup>

- Say the individual's name and get them to make eye contact as this will help ground them if they are dissociating or experiencing emotional numbing.
- Encourage them to take deep breaths until they are calmer and can continue.
- If they are able to continue, consider moving away from the abusive or traumatic event and instead ask more neutral questions, such as peripheral questions about the locations or clothing etc. Once the person is calmer, then the questions can return to the traumatic experience.
- If the individual is extremely upset and unable to continue, then the matter will have to stand down for a while or be postponed until a later date.

### **5.2.2 Autism Spectrum Disorder (ASD)**

#### **COMMUNICATION ABILITIES**

- The court must receive information about the person's communication abilities, their social and emotional functioning abilities and any additional information that may be useful for assisting them in the courtroom.
- If communication is a problem, find out what the particular issues are:<sup>35</sup>
  - Do they have conversations or do they speak in short sentences or utterances?
  - Does the person present with echolalia (meaningless repetition of speech) and, if so, what form does it take? Do they repeat the words and phrases over and over and eventually answer the question or do they not provide any further information?
- Do they use augmentative and alternative communication (AAC) devices for communicating?
- What is the functioning capacity of the individual? Those with higher-functioning capacity will be able to testify successfully while those with lower-functioning capacity will require significant accommodations.

#### **SOCIAL AND EMOTIONAL BEHAVIOUR**

- If socializing, emotional expression and behaviour regulation is difficult, the following information would be useful:<sup>36</sup>
  - Does the individual have difficulty expressing emotions? Are they able to express simple emotions or only provide a narrative account?
  - Do they become agitated by different sensory input i.e. the sound of an air conditioner, a lot of people? If so, is there anything in the court environment that would trigger this?
  - If they become agitated or tired, how does this present? For instance, does the echolalia increase, do they rock back and forward?

#### **WHERE IT IS A CHILD**

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<sup>34</sup> Ibid. 52.

<sup>35</sup> Ibid. 54 – 55.

<sup>36</sup> Ibid. 55.

- If the individual is a child, the following information about their strengths and abilities would be useful:
  - Does the child attend a mainstream classroom with little adult support?
  - Does the child perform at grade level?
  - Does the child use communication aids?
  - Does the child use an object to keep calm?
  - Does the child need extra time to understand processes?
- Preparation is very important and the child must, therefore, be introduced to the room and the intermediary and the process must be explained before the trial to alleviate anxiety caused by an unknown situation.
- Prepare the room where possible to have minimal distractions i.e. remove loud clocks and have limited visual distractions.

### **BE AWARE OF DIGRESSIONS**

- The individual may include irrelevant details in their responses to questions. Something may trigger a special interest and they will then ramble on about that. If this happens:<sup>37</sup>
  - Do not interrupt the narrative.
  - Listen for the relevant details and return to those.
  - If the person seems unable to move beyond special interest topics (focusing on the details of a car as opposed to the abuse that took place in the car), let them complete their thoughts and repeat the question when they are done.
  - Use focused questions to cue the child back to the relevant detail.
  - This requires a lot of patience and presiding officers must manage the role-players in the courtroom to ensure that they act accordingly.

### **HIGH-FUNCTIONING AUTISM SPECTRUM DISORDER**

- Persons with high-functioning ASD may present as though they do not have a disorder, because they have strong vocabulary skills and factual knowledge. However, they may have difficulty providing a narrative that connects relevant events in a meaningful way and struggle to provide the information about the event that is sought by the court.
- This can be overcome by the use of guided, general questions aimed at eliciting the required information.
- They may have greater difficulty with open-ended questions and require more direct questions.
- Their responses to questions may include details that are not relevant to the topic under discussion. For example, when discussing a trip to Disneyland, a child with high-functioning ASD may provide a few details about what they liked about the trip, but a lot of details about the mechanics of a particular roller coaster.<sup>38</sup>

### **5.2.3 Attention Deficit/Hyperactivity Disorder (ADHA)**

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<sup>37</sup> Ibid. 57.

<sup>38</sup> Example taken from Project Ability. Ibid. 58.

ADHD is a common neurological disorder that begins early in childhood and persist through adulthood. People with ADHD have difficulties with: response inhibition, impulsivity, verbal and non-verbal fluency, working memory, timing-related behaviour, temporal discounting, attention, planning and organisation, emotional regulation and decision-making. The estimates for ADHD in a population are fairly high, and are approximately 5% for youth and 2.5% for adults.<sup>39</sup> Since children have greater difficulty managing this disorder, they will require greater assistance.

#### **WORKING MEMORY**

- Communicate with short direct instructions and simple sentences.
- Repeat instructions.
- Break instructions into smaller steps and get the person to repeat or paraphrase them.
- Be patient and allow extra time.
- Make use of prompts and cues.
- Make eye contact.

#### **ATTENTION AND FOCUS**

- Since focusing attention is problematic, techniques must be used to keep the attention of the person focused.
- For children this can be achieved by modulating the voice so that it appears enthusiastic and has an interesting pace and varied inflection.
- Keep eye contact when talking.
- Monitor the person for signs of fatigue or loss of focus and draw them back again.
- Place emphasis on key words and phrases and use simple sentences.
- Allow breaks after short intervals to allow for movement.
- Limit distractions in the room.

#### **IMPULSE CONTROL**

- Speak slowly and clearly to create calmness and allow time for responses
- Remain calm as this will exert a calming influence. Increased excitement will result in a decrease in impulse control.

#### **MOTIVATION**

- Positive feedback or praise about behaviour is also useful. If the child sits still for a while, then the behaviour should be praised i.e. I really like how quietly you are sitting.
- Create a positive, calm environment.

#### **EMOTIONAL REGULATION**

- Use a slower pace and remain calm.
- Be flexible in terms of allowing the child to move around or taking breaks.
- Ignore minor inappropriate behaviour.
- Being patient is essential.

#### **MOVEMENT**

- Allow opportunities for the child to move and squirm in the seat or move about the room as long as they are safe. Children with hyperactive tendencies often struggle with the internal need for movement (kinesthetic energy) as opposed to having to use mental energy to focus on a conversation. When children have opportunities to

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<sup>39</sup> Cunial, K.J, Casey, L.M., Bell, C. and Kebella, M.R. 2020. Investigative interviewing of youth with ADHD – recommendations for detective training. *Psychiatry, Psychology and Law*. 27(5): 797–814.



release the kinesthetic energy inside them, they are actually able to attend better to conversations.

- Offer Play-Doh, a picture to colour or draw so that the child can be occupied while talking.
- If the child is too distracted, say the child's name and ask the child to look at you. Repeat your question when the child looks at you

## **COMMUNICATION**

- Be patient if the child speaks loudly and quickly as they might not possess the self-awareness necessary to regulate voice or pace in the moment. If the child's pace or loudness is not disrupting the narrative, then sit patiently and listen.
- If the child speaks so quickly that the narrative is difficult to track, check in with the child to make sure you understand what is being said.
- Take notes of important details in the narrative. When the child pauses or finishes a narrative, relay any pieces of salient detail and ask the child to clarify.
- Paraphrasing can help organize and direct the child to continue with a more cohesive narrative.
- Provide clear questioning instructions.
- Constantly check to make sure they are following you to assess how well they are attending.
- Observe how much you speak versus the child speaks. If you are speaking more than the child, the child may lose interest or become distracted.
- Use the child's name to ground them and retain their attention.
- Ask the child to repeat a question if there are concerns about inattention. For example: "John, I just want to check that you understood my question. Tell me in your words what I just asked."
- Only ask one question at a time.
- Listen for patterned responses from the child, which may indicate the child has disengaged from the process.