

10-1-2013

## Access to Civil & Family Justice: A Roadmap for Change

Action Committee on Access to Justice in Civil and Family Matters

Follow this and additional works at: <https://digitalcommons.osgoode.yorku.ca/cfcj>



Part of the [Law Commons](#)

---

### Recommended Citation

Action Committee on Access to Justice in Civil and Family Matters, "Access to Civil & Family Justice: A Roadmap for Change" (2013). *Canadian Forum on Civil Justice*. 58.

<https://digitalcommons.osgoode.yorku.ca/cfcj/58>

This Article is brought to you for free and open access by the Research Centres & Programs at Osgoode Digital Commons. It has been accepted for inclusion in Canadian Forum on Civil Justice by an authorized administrator of Osgoode Digital Commons.

# ACCESS TO CIVIL & FAMILY JUSTICE

---

## **A Roadmap for Change**

October 2013



Action Committee on  
Access to Justice in  
Civil and Family Matters

This report is published by the Action Committee on Access to Justice in Civil and Family Matters, Ottawa, Canada, October 2013.

---

Comments on this report can be sent to the Action Committee through the Canadian Forum on Civil Justice, online at: <[communications@cfcj-fcj.org](mailto:communications@cfcj-fcj.org)>.



Action Committee on  
Access to Justice in  
Civil and Family Matters

# FOREWORD

---

**It is a great pleasure and honour** to acknowledge the tireless dedication and endless commitment of the members of the Action Committee on Access to Justice in Civil and Family Matters by writing a foreword to this final report. As this report marks the conclusion of the first phase of the Action Committee's work, allow me to reflect on how we arrived this far.

Let me start by saying that the problem of access to justice is not a new one. As long as justice has existed, there have been those who struggled to access it. But as Canadians celebrated the new millennium, it became clear that we were increasingly failing in our responsibility to provide a justice system that was accessible, responsive and citizen-focused. Reports told us that cost, delays, long trials, complex procedures and other barriers were making it impossible for more and more Canadians to exercise their legal rights.

Fortunately, governments, organizations, and many individuals responded to the plea for change. Across the country they embarked on initiatives aimed at improving access to justice. However, too often, these initiatives proceeded in isolation from one another. Despite much hard work, it became increasingly clear that what was required was a national discussion and a coordinated action strategy to access to justice. So, in 2008, the Action Committee was convened.

The Action Committee is composed of leaders in the civil and family justice community and a public representative, each representing a different part of the justice system. Its aim is to help all stakeholders in the justice system develop consensus priorities for civil and family justice reform and to encourage them to work together in a cooperative and collaborative way to improve access to justice.

The Action Committee identified four priority areas: access to legal services, court processes simplification, family law, and prevention, triage and referral. In each area, a working group was formed to look at specific ways of improving access to justice. Each working group has now issued its final report, identifying how

accessible justice can be achieved, the tools that can assist people in dealing with their legal needs effectively and expeditiously, and changes to the system that will improve access to justice.

Under the leadership of the Honourable Thomas A. Cromwell and each working group's chair, the working groups have produced reports that outline the concrete challenges and provide a rational, coherent and imaginative vision for meeting those challenges. They focus not only on good ideas, but on concrete actions to change the *status quo*. The Action Committee's final report bridges the work of the four working groups and identifies a national roadmap for improving the ability of every Canadian to access the justice system.

Our task is far from complete. The next step is implementation – to put the Action Committee's vision into action. But it is not amiss to celebrate what we have achieved thus far: a plan for practical and achievable actions that will improve access to family and civil justice across Canada. This could not have been accomplished without the contribution of all the individuals and organizations involved with the Action Committee. I thank you all for bringing accessible justice for all Canadians a significant step closer to reality.

**Beverley McLachlin, P.C.**  
**Chief Justice of Canada**

# TABLE OF CONTENTS

---

Foreword ... i

Executive Summary ... iii

Introduction ... v

---

## PART 1

### **Access to Civil and Family Justice: Urgent Need For Change ... 01**

Overview ... 01

Purpose ... 01

Access to Justice: An Expansive Vision ... 02

Current Gaps in Access to Justice — The Problem ... 02

1. Everyday Legal Problems ... 02

2. Importance of Accessible Justice ... 03

3. The Current System Has Serious Gaps  
in Access ... 03

4. Unmet Legal Needs ... 04

5. What is Needed? ... 05

## PART 2

### **Moving Forward: Six Guiding Principles For Change ... 06**

Culture Shift ... 06

Six Guiding Principles For Change ... 06

1. Put the Public First ... 07

2. Collaborate and Coordinate ... 07

3. Prevent and Educate ... 07

4. Simplify, Make Coherent, Proportional and  
Sustainable ... 08

5. Take Action ... 08

6. Focus on Outcomes ... 09

## PART 3

### **Bridging the Implementation Gap Through Justice Development Goals: A Nine-Point Access to Justice Roadmap ... 10**

A. Innovation Goals ... 11

1. Refocus the Justice System to Reflect and  
Address Everyday Legal Problems ... 11

2. Make Essential Legal Services Available to  
Everyone ... 14

3. Make Courts and Tribunals Fully Accessible Multi-  
Service Centres for Public Dispute Resolution ... 15

4. Make Coordinated and Appropriate  
Multidisciplinary Family Services Easily  
Accessible ... 17

B. Institutional And Structural Goals ... 20

5. Create Local and National Access to Justice  
Implementation Mechanisms ... 20

6. Promote a Sustainable, Accessible and  
Integrated Justice Agenda through Legal  
Education ... 21

7. Enhance the Innovation Capacity of the Civil  
and Family Justice System ... 22

C. Research And Funding Goals ... 23

8. Support Access to Justice Research to Promote  
Evidence-Based Policy Making ... 23

9. Promote Coherent, Integrated and Sustained  
Funding Strategies ... 23

## Conclusion ... 24

---

Acknowledgments ... 25

Endnotes ... 27

# EXECUTIVE SUMMARY

---

**There is a serious access to justice problem** in Canada. The civil and family justice system is too complex, too slow and too expensive. It is too often incapable of producing just outcomes that are proportional to the problems brought to it or reflective of the needs of the people it is meant to serve. While there are many dedicated people trying hard to make it work and there have been many reform efforts, the system continues to lack coherent leadership, institutional structures that can design and implement change, and appropriate coordination to ensure consistent and cost effective reform. Major change is needed.

This report has three purposes:

- to promote a broad understanding of what we mean by access to justice and of the access to justice problem facing our civil and family justice system;
- to identify and promote a new way of thinking — a culture shift — to guide our approach to reform; and
- to provide an access to justice roadmap for real improvement.

The report does not set out to provide detailed guidance on how to improve all aspects of the civil and family justice system across Canada's ten provinces and three territories. That needs to come largely from the ground up, through strong mechanisms and institutions developed locally. Local service providers, justice system stakeholders and individual champions must be the change makers. This report can, however, help fill the need for a coordinated and collaborative national voice — a change agent — providing a multi-party justice system vision and an overall goal-based roadmap for change. The ways of the past — often working in silos and reinventing wheels — are not sustainable. A coordinated, although not centralized, national reform effort is needed. Innovative thinking at all levels will be critical for success.

When thinking about access to justice, the starting point and consistent focus of the Action Committee is on the broad range of legal problems experienced by the public — not just those that are adjudicated by courts. As we detail in part 1 of this report, there are clearly major access to justice gaps in Canada.

For example:

- Nearly 12 million Canadians will experience at least 1 legal problem in a given 3 year period. Few will have the resources to solve them.
- Members of poor and vulnerable groups are particularly prone to legal problems. They experience more legal problems than higher income earners and more secure groups.
- People's problems multiply; that is, having one kind of legal problem can often lead to other legal, social and health related problems.
- Finally, legal problems have social and economic costs. Unresolved legal problems adversely affect people's lives and the public purse.

The current system, which is inaccessible to so many and unable to respond adequately to the problem, is unsustainable.

In part 2 of this report we offer six guiding principles for change, which amount to a shift in culture:

1. Put the Public First
2. Collaborate and Coordinate
3. Prevent and Educate
4. Simplify, Make Coherent, Proportional and Sustainable
5. Take Action
6. Focus on Outcomes

Taken together, these principles spell out the elements of an overriding culture of reform that is a precondition for developing specific measures of change and implementation.

Part 3 of this report provides a nine-point access to justice roadmap designed to bridge the implementation gap between ideas and action. It sets out three main areas for reform: (A) specific civil and family justice innovations, (B) institutions and structures, and (C) research and funding:

### **A. Innovation Goals**

1. Refocus the Justice System to Reflect and Address Everyday Legal Problems
2. Make Essential Legal Services Available to Everyone
3. Make Courts and Tribunals Fully Accessible Multi-Service Centres for Public Dispute Resolution
4. Make Coordinated and Appropriate Multidisciplinary Family Services Easily Accessible

### **B. Institutional and Structural Goals**

5. Create Local and National Access to Justice Implementation Mechanisms
6. Promote a Sustainable, Accessible and Integrated Justice Agenda through Legal Education
7. Enhance the Innovation Capacity of the Civil and Family Justice System

### **C. Research and Funding Goals**

8. Support Access to Justice Research to Promote Evidence-Based Policy Making
9. Promote Coherent, Integrated and Sustained Funding Strategies

Access to justice is at a critical stage in Canada. What is needed is major, sustained and collaborative system-wide change – in the form of cultural and institutional innovation, research and funding-based reform. This report provides a multi-sector national plan for reform. The approach is to provide leadership through the promotion of concrete development goals. These are recommended goals, not dictates. Specific local conditions or problems call for locally tailored approaches and solutions.

Although we face serious access to justice challenges, there are many reasons to be optimistic about our ability to bridge the current implementation gap by pursuing concrete access to justice reforms. People within and beyond the civil and family justice system are increasingly engaged by access to justice challenges and many individuals and organizations are already working hard for change. We hope that the work of the Action Committee and in particular this report will lead to:

- a measurable and significant increase in civil and family access to justice within 5 years;
- a national access to justice policy framework that is widely accepted and adopted;
- local jurisdictions putting in place strategies and mechanisms for meaningful and sustainable change;
- a permanent national body being created and supported to promote, guide and monitor meaningful local and national access to justice initiatives;
- access to civil and family justice becoming a topic of general civic discussion and engagement – an issue of everyday individual and community interest and wellbeing; and
- the public being placed squarely at the centre of all meaningful civil and family justice education and reform efforts.

# INTRODUCTION

---

**Today we take an important step** on the road to improved access to civil and family justice in Canada. Through this report, the Action Committee on Access to Justice in Civil and Family Matters makes the case that we must make changes urgently, that we must take a collaborative, cooperative and systemic approach and, above all else, that we must act in a sustained and focused way. We are building on firm foundations, but the structure urgently needs attention. The goal should be nothing less than to make our system of civil and family justice the most just and accessible in the world. As one speaker put it recently, we must think big together.

The Action Committee is a group broadly representative of all sectors of the civil and family justice system as well as of the public. Its report is the product of a stakeholder driven process and it is offered as a report back to all of the stakeholders in the civil and family justice system for their consideration and action. While the release of this report is the culmination of the work of the Action Committee, it is only the beginning of the process for reform. We must build the mechanisms that can instigate, manage and evaluate change in ways that are suitable to the widely varying needs and priorities of jurisdictions and regions. We must define specific problems, design solutions, and implement and monitor their success or failure. We must learn how to work together more effectively in the public interest.

I hope that this report will provide an impetus for meaningful change, some effective models to facilitate the sort of collaborative and cooperative work that I believe is essential and a menu of innovative ideas and possibilities for everyone working at the provincial, territorial and local levels. The real work begins now.

The members of the Action Committee, its Steering Committee and its four Working Groups have all worked tirelessly and as volunteers to make the Committee's work possible. Working with these accomplished and committed people has been a

highlight of my professional life. We were greatly assisted by the logistical support of the Canadian Forum on Civil Justice, the Canadian Judicial Council, the Justice Education Society of British Columbia and the Department of Justice for Canada where a dedicated group of people made up our highly efficient and effective secretariat without which we could not have completed our work.

We were also assisted by funding from Alberta Justice and Solicitor General, the Law Foundation of British Columbia and the Federation of Law Societies of Canada. Owen Rees, the Executive Legal Officer to the Chief Justice of Canada and my judicial assistant, Me Michelle Fournier have contributed far beyond the call of duty. Diana Lowe, Q.C., the founding Executive Director of the Forum was instrumental in the launch of the Action Committee. Professor Trevor Farrow of Osgoode Hall Law School and Chair of the Board of the Forum has played an invaluable role not only as an active member of the Action Committee but also as the one who held the pen during the preparation of this report.

Finally, I offer my thanks to Chief Justice McLachlin for having the vision to establish the Action Committee and for providing me with the opportunity to be part of it.

**Thomas A. Cromwell**



# PART 1

## Access to Civil and Family Justice: *Urgent Need for Change*

“ [A]ccess to justice is the most important issue facing the legal system ”<sup>1</sup>

### OVERVIEW

#### **There is a serious access to justice problem in Canada.**

The civil and family justice system is too complex, too slow and too expensive. It is too often incapable of producing just outcomes that are proportional to the problems brought to it or reflective of the needs of the people it is meant to serve.<sup>2</sup> While there are many dedicated people trying hard to make it work and there have been many reform efforts, the system continues to lack coherent leadership, institutional structures that can design and implement change, and appropriate coordination to ensure consistent and cost effective reform. Major change is needed.

### PURPOSE

#### **This report has three purposes:**

(in part 1) to promote a broad understanding of what we mean by access to justice and of the access to justice problem facing our civil and family justice system; (in part 2) to identify and promote a new way of thinking — a culture shift — to guide our approach to reform; and (in part 3) to provide an access to justice roadmap for real improvement. The report does not set out to provide detailed, line-item guidance on how to improve all aspects of the civil and family justice system across Canada’s ten provinces and three territories. That needs to come largely from the ground up, through strong mechanisms and institutions developed locally. Local service providers, justice system stakeholders and individual champions must be the change makers. This report can, however, help fill the need for a coordinated and collaborative national voice — a change agent — providing a multi-party justice system vision and an overall goal-based roadmap for change. The ways of the past — often working in silos and reinventing wheels — are not sustainable. A coordinated, although not centralized, national reform effort is needed. Put simply, we should “think systemically and act locally.”<sup>3</sup> Innovative thinking at all levels will be critical for success.

---

The formal system is, of course, important.

**But a more expansive, user-centered vision of an accessible civil and family justice system is required.**

---

## ACCESS TO JUSTICE: AN EXPANSIVE VISION

When thinking about access to justice, the starting point and consistent focus of the Action Committee is on the broad range of legal problems experienced by the public — not just those that are adjudicated by courts.<sup>4</sup> Key to this understanding of the justice system is that it looks at everyday legal problems from the point of view of the people experiencing them. Historically, access to justice has been a concept that centered on the formal justice system (courts, tribunals, lawyers and judges) and its procedures.<sup>5</sup> The formal system is, of course, important. But a more expansive, user-centered vision of an accessible civil and family justice system is required. We need a system that provides the necessary institutions, knowledge, resources and services to avoid, manage and resolve civil and family legal problems and disputes. That system must be able to do so in ways that are as timely, efficient, effective, proportional and just as possible:

- by preventing disputes and by early management of legal issues;
- through negotiation and informal dispute resolution services; and
- where necessary, through formal dispute resolution by tribunals and courts.

Important elements of this vision include:

- public awareness of rights, entitlements, obligations and responsibilities;
- public awareness of ways to avoid or prevent legal problems;
- ability to participate effectively in negotiations to achieve a just outcome;
- ability to effectively utilize non-court and court dispute resolution procedures; and
- institutions and mechanisms designed to implement accessible civil and family justice reforms.

## CURRENT GAPS IN ACCESS TO JUSTICE — THE PROBLEM

### 1. Everyday Legal Problems

Civil justice problems are “pervasive in the lives of Canadians” and frequently have negative impacts on them.<sup>6</sup>

- **Many People Have Everyday Legal Problems.** Nearly 12 million Canadians will experience at least 1 legal problem in a given 3 year period.<sup>7</sup> In the area of family law alone, annual averages indicate that approximately 40% of marriages will end in divorce.<sup>8</sup> These are the problems of everyday people in everyday life.<sup>9</sup>
- **The Poor and the Vulnerable are Particularly Prone to Legal Problems.** Individuals with lower incomes and members of vulnerable groups experience more legal problems than higher income earners and members of more secure groups.<sup>10</sup> For example, people who self-identify as disabled are more than 4 times more likely to experience social assistance problems and 3 times more likely to experience housing related problems, and people who self-identify as aboriginal are nearly 4 times more likely to experience social assistance problems.<sup>11</sup>

---

**We need a stronger and more effective civil and family justice system** that is viewed and experienced as such by the public

---

- **Problems Multiply.** One kind of legal problem (for example, domestic violence) often leads to, or is aggravated by, others (such as relationship breakdown, child education issues, etc.).<sup>12</sup> Legal problems also have momentum: the more legal problems an individual experiences, the greater the likelihood that she or he will experience others.<sup>13</sup> Legal problems also tend to lead to other problems of other types. For example, almost 40% of people with one or more legal problems reported having other social or health related problems that they directly attributed to a justiciable problem.<sup>14</sup>
- **Legal Problems Have Social and Economic Costs.** Unresolved legal problems adversely affect people's lives, their finances and the public purse. They of course tend to make people's lives difficult.<sup>15</sup> Unresolved problems relating (for example) to debt, housing, and social services lead to social exclusion, which may in turn lead to a dependency on government assistance.<sup>16</sup> One recent U.K. study reported that unresolved legal problems cost individuals and the public £13 billion over a 3.5 year period.<sup>17</sup>

## 2. Importance Of Accessible Justice

To address these problems, we need a stronger and more effective civil and family justice system that is viewed and experienced as such by the public. This is critically important for the daily lives of people and for the social, political and economic well-being of society. For the system to be strong and effective, people must have meaningful access to it.<sup>18</sup>

## 3. The Current System Has Serious Gaps In Access

According to a wide range of justice system indicators and stakeholders, Canada is facing major access to justice challenges. For example, in the area of access to civil justice Canada ranked 13th out of 29 high-income countries in 2012-2013 and 16th out of 23 high-income countries in 2011.<sup>19</sup> According to the 2011 study, Canada's ranking was "partially explained by shortcomings in the affordability of legal advice and representation, and the lengthy duration of civil cases."<sup>20</sup>

These international indicators tell us two things. First, Canada has a functioning justice system that is well regarded by many countries in the world. Second, improvement is urgently needed. There is a major gap between what legal services cost and what the vast majority of Canadians can afford. Some cost indicators are:

- **Legal Aid Funding and Coverage is Not Available for Most People and Problems.** Legal aid funding is available only for those of extremely modest means. For example in Ontario, legal aid funding is generally only available for individuals with a gross annual salary of less than \$18,000, or for a family of 4 with a total gross annual salary of \$37,000.<sup>21</sup> In Alberta, legal aid funding is generally only available for individuals with a net annual salary of approximately \$16,000, or for a family of 4 with a total net annual salary of approximately \$30,000.<sup>22</sup> In Manitoba<sup>23</sup> and Saskatchewan,<sup>24</sup> the eligibility levels for individuals and families of 4 are, respectively, gross annual salaries of \$14,000 and \$27,000 and net annual salaries of \$11,800 and \$22,800. Even within these financial eligibility ranges,

---

## The “ language of justice tends to be ... foreign to most people ”

---

- participant in a recent survey on access to justice

legal aid covers only a limited number of areas of legal services.<sup>25</sup> For example, in Ontario, but for some civil matters covered by community, specialty and student clinics, legal aid coverage for civil matters does not exist.<sup>26</sup>

- **The Cost of Legal Services and Length of Proceedings is Increasing.** Legal fees in Canada vary significantly; however, one recent report provides a rough range of national average hourly rates from approximately \$195 (for lawyers called in 2012) to \$380 (for lawyers called in 1992 and earlier).<sup>27</sup> Rates can vary from this range significantly depending on jurisdiction, type of case, seniority and experience. The cost of civil and family matters also varies significantly. For example, national ranges of legal fees are recently reported to be \$13,561 - \$37,229 for a civil action up to trial (2 days), \$23,083 - \$79,750 for a civil action up to trial (5 days), \$38,296 - \$124,574 for a civil action up to trial (7 days), and \$12,333 - \$36,750 for a civil action appeal.<sup>28</sup> The length and cost of legal matters have continued to increase.<sup>29</sup>

### 4. Unmet Legal Needs

Most people earn too much money to qualify for legal aid, but too little to afford the legal services necessary to meaningfully address any significant legal problem. The system is essentially inaccessible for all of these people.<sup>30</sup> Below are some of the indicators.

- **Unmet Legal Needs.** According to one recent American study, as much as 70%-90% of legal needs in society go unmet.<sup>31</sup> This statistic is particularly troubling given what we know about the negative impacts of justiciable problems, particularly those that go unresolved.<sup>32</sup> In Canada, over 20% of the population take no meaningful action with respect to their legal problems, and over 65% think that nothing can be done, are uncertain about their rights, do not know what to do, think it will take too much time, cost too much money or are simply afraid.<sup>33</sup>
- **Cost is a Major Factor.** Of those who do not seek legal assistance, recent reports indicate that between 42% and 90% identified cost — or at least perceived cost — as the reason for not doing so.<sup>34</sup> An important result of the inaccessibility of legal services and the fact that many people do nothing to address their legal problems is that a proportion of legal problems that could be resolved relatively easily at an earlier stage escalate and shift to ones that require expensive legal services and court time down the road.<sup>35</sup>
- **Self-Representation.** As a result of the inaccessibility of early assistance, legal services and dispute resolution assistance, as well as the complexity and length of formal procedures, approximately 50% of people try to solve their problems on their own with no or minimal legal or authoritative non-legal assistance.<sup>36</sup> Many people — often well over 50% (depending on the court and jurisdiction) — represent themselves in judicial proceedings (usually not by choice).<sup>37</sup> The number is equally — and often more — significant and troubling in family court proceedings.<sup>38</sup> And statistics indicate that individuals who receive legal assistance are between 17% and 1,380% more likely to receive better results than those who do not.<sup>39</sup>

---

**What is needed is major, sustained and collaborative system-wide change** — in the form of cultural and institutional innovation, research and funding-based reform.

---

Not surprisingly, people’s attitudes towards the system reflect this reality. According to a recent study of self-represented litigants in the Canadian court system, various court workers were of the view that the “civil system [is] ... very much open to abuse by those with more money at their disposal”; and the “general public has no idea about court procedures, requirements, the language, who or where to go for help”.<sup>40</sup>

Further, according to a recent study, people expressed similar concerns about access to justice, including the following:

- “I don’t have much faith in the lawyers and the system”;
- the “language of justice tends to be ... foreign to most people”;
- “[p]eople with money have access to more justice than people without”;
- I think there are a lot of people who don’t ... understand what the justice system is or how to use it - struggling to earn a living, dealing with addictions...”; and
- the justice system “should be equally important as our health care system...”<sup>41</sup>

### 5. What is Needed?

There are clearly major access to justice gaps in Canada.<sup>42</sup> The current system, which is inaccessible to so many and unable to respond adequately to the problem, is unsustainable.<sup>43</sup> Two things are urgently needed.

- **First**, a new way of thinking — a culture shift — is required to move away from old patterns and old approaches. We offer six guiding principles for change reflecting this culture shift in part 2 of this report.
- **Second**, a specific action plan — a goal-oriented access to justice roadmap — is urgently needed. That roadmap, which is set out in part 3 of this report, proposes goals relating to innovation, institutions and structures, and research and funding.

Taken together, what is needed is major, sustained and collaborative system-wide change — in the form of cultural and institutional innovation, research and funding-based reform.

# PART 2

## Moving Forward: *Six Guiding Principles for Change*

---

**We need a fresh approach and a new way of thinking**

---

### **CULTURE SHIFT**

Many dedicated people in our civil and family justice system do their best to make the system work and many reform efforts have been put forward in past years. However, it is now clear that the previous approach to access to justice problems and solutions, far from succeeding, has produced our present, unsustainable situation.

We need a fresh approach and a new way of thinking. In short, we need a significant shift in culture to achieve meaningful improvement to access to justice in Canada — a new culture of reform. As Lawrence M. Friedman observed, “law reform is doomed to failure if it does not take legal culture into account.”<sup>44</sup>

This new culture of reform should be based on six guiding principles. Taken together, these principles spell out the elements of an overriding culture of reform. A new way of thinking, while important, is not enough. We also need innovative ideas, creative solutions and specific goals, as we set out in part 3. A full embrace of a new culture of reform is a precondition for developing those more specific measures.<sup>45</sup>

### **SIX GUIDING PRINCIPLES FOR CHANGE**

Here are six guiding principles that make up this new culture.

#### **Guiding Principles For Change**

1. Put the Public First
2. Collaborate and Coordinate
3. Prevent and Educate
4. Simplify, Make Coherent, Proportional and Sustainable
5. Take Action
6. Focus on Outcomes

---

## The focus must be on the people who need to use the system

---

### 1. Put the Public First

We need to change our primary focus. Too often, we focus inward on how the system operates from the point of view of those who work in it. For example, court processes — language, location, operating times, administrative systems, paper and filing requirements, etc. — typically make sense and work for lawyers, judges and court staff. They often do not make sense or do not work for litigants.

The focus must be on the people who need to use the system. This focus must include all people, especially members of immigrant, aboriginal and rural populations and other vulnerable groups. Litigants, and particularly self-represented litigants, are not, as they are too often seen, an inconvenience; they are why the system exists.<sup>46</sup>

Until we involve those who use the system in the reform process, the system will not really work for those who use it. As one court administrator recently commented, we need to “change ... how we do business within the context of courts.”<sup>47</sup> Those of us working within the system need to remember that it exists to serve the public. That must be the focus of all reform efforts.

### 2. Collaborate and Coordinate

We also need to focus on collaboration and coordination. The administration of justice in Canada is fragmented. In fact, it is hard to say that there is a system — as opposed to many systems and parts of systems. Justice services are delivered at various levels in this country — national, provincial and territorial, and often regional, local and sectoral as well.<sup>48</sup>

Within our current constitutional, administrative and sectoral frameworks, much more collaboration and coordination is not only needed but achievable. We can and must improve collaboration and coordination not only across and within jurisdictions, but also across and within all sectors and aspects of the justice system (civil, family, early dispute resolution, courts, tribunals, the Bar, the Bench, court administration, the academy, the public, etc.). We can and must improve collaboration, coordination and service integration with other social service sectors and providers as well.

We are long past the time for reinventing wheels. We can no longer afford to ignore what is going on in different regions and sectors and miss opportunities for sharing and collaboration.<sup>49</sup> Openness, proactivity, collaboration and coordination must animate how we approach improving access to justice at all levels and across all sectors of the system.<sup>50</sup> In sum, we all — those who use the justice system and those who work within the justice community — are in this project together. A just society is in all of our interest.

### 3. Prevent and Educate

We need to focus not only on resolving disputes but on preventing them as well. Access to justice has often been thought of as access to courts and lawyers.<sup>51</sup> However, we know that everyday legal problems mostly occur outside of formal justice structures.<sup>52</sup> This insight should lead us to fundamentally re-think how we approach legal problems in terms of preventing them from happening where possible, and when they do occur, providing those who experience them with adequate

---

To make a meaningful difference in the lives of the people who rely on the justice system, **we need to move beyond “wise words” and bridge the “implementation gap”**

---

information and resources to deal with them in an efficient and effective way.<sup>53</sup> As the Action Committee’s Prevention, Triage and Referral Working Group indicated, “Avoiding problems or the escalation of problems, and/or early resolution of problems is generally cheaper and less disruptive than resolution using the courts. To borrow Richard Susskind’s observation, ‘it is much less expensive to build a fence at the top of a cliff than to have need of an expensive ambulance at the bottom.’”<sup>54</sup>

#### **4. Simplify, Make Coherent, Proportional and Sustainable**

**We must work to make things simple, coherent, proportional and sustainable.** One aspect of this task, building on the “public first” principle set out above, is the public’s understanding of the system. The Canadian Bar Association acknowledged the system’s complexity in its 1996 *Systems of Civil Justice Task Force Report*:

“Many aspects of the civil justice system are difficult to understand for those untrained in the law. Without assistance it is difficult, if not impossible, to gain access to a system one does not comprehend. Barriers to understanding include:

- unavailability and inaccessibility of legal information;
- complexity of the law, its vocabulary, procedures and institutions; and
- linguistic, cultural and communication barriers.”<sup>55</sup>

In spite of recent efforts, the civil and family justice system is still too complicated and largely incomprehensible to all but those with legal training. As one participant in a recent access to justice survey of the public put it, we need to “make the whole thing much less complex.”<sup>56</sup> Similarly, in a recent study of self-represented litigants, respondents regularly indicated feeling overwhelmed by the complexity of the system. One respondent indicated that the “procedure as I read it sounded easy ... but it was anything but.”<sup>57</sup> Another indicated that, as a result of the system’s many procedural steps, “I was eaten alive.”<sup>58</sup>

Our current formal procedures seem to grow ever more complicated and disproportionate to the needs of the litigants and the matters involved. Everyday legal problems need everyday solutions that are timely, fair and cost-effective. Procedures must be simple and proportional for the entire system to be sustainable. To improve the system, we need a new way of thinking that concentrates on simplicity, coherence, proportionality and sustainability at every stage of the process.

#### **5. Take Action**

We need research, thinking and deliberation. But for meaningful change to occur, they are not enough. We also need action. We cannot put off, to another day, formulating and carrying out a specific and effective action plan. There have been many reports and reform initiatives, but the concrete results have been extremely modest. As the Family Justice Working Group indicated, to make a meaningful difference in the lives of the people who rely on the justice system, we need to move beyond “wise words” and bridge the “implementation gap.”<sup>59</sup>



## 6. Focus On Outcomes

Our final guiding principle calls for a shift in focus from process to outcomes. We must be sure our process is just. But we must not just focus on process. We should not be preoccupied with fair processes for their own sake, but with achieving fair and just **results** for those who use the system. Of course fair process is important. But at the end of the day, what people want most is a safe, healthy and productive life for themselves, their children and their loved ones. In a recent survey of public views about justice, one respondent defined justice as “access to society.”<sup>60</sup> According to another respondent: “We’re not even talking access to justice ... we’re talking access to food, to shelter, to security, to opportunities for ourselves and our kids and until we deal with that, the other stuff doesn’t make sense.”<sup>61</sup>

In order to make justice more accessible, we must keep in mind that we are trying to improve law and process not for their own sake, but rather for the sake of providing and improving justice in the lives of Canadians. Providing justice — not just in the form of fair and just process but also in the form of fair and just outcomes — must be our primary concern.

# PART 3

## **Bridging the Implementation Gap Through Justice Development Goals: *A Nine-Point Access To Justice Roadmap***

The third part of this report sets out an access to justice roadmap, designed to bridge the implementation gap between reform ideas and real reform. It sets out three main areas for reform: (A) specific innovations, (B) institutions and structures, and (C) research and funding. Within each, we offer specific justice development goals.<sup>62</sup> Each of the goals has been significantly influenced by the Action Committee's working group reports.<sup>63</sup> This part of the report lays out an overall approach to respond to the serious access to justice problems facing the public within our civil and family justice system.

### **Access to Justice Roadmap**

#### A. INNOVATION GOALS

1. Refocus the Justice System to Reflect and Address Everyday Legal Problems
2. Make Essential Legal Services Available to Everyone
3. Make Courts and Tribunals Fully Accessible Multi-Service Centres for Public Dispute Resolution
4. Make Coordinated and Appropriate Multidisciplinary Family Services Easily Accessible

#### B. INSTITUTIONAL AND STRUCTURAL GOALS

5. Create Local and National Access to Justice Implementation Mechanisms
6. Promote a Sustainable, Accessible and Integrated Justice Agenda through Legal Education
7. Enhance the Innovation Capacity of the Civil and Family Justice System

#### C. RESEARCH AND FUNDING GOALS

8. Support Access to Justice Research to Promote Evidence-Based Policy Making
9. Promote Coherent, Integrated and Sustained Funding Strategies

# A. INNOVATION GOALS<sup>64</sup>

## 1. Refocus the Justice System to Reflect and Address Everyday Legal Problems – By 2018<sup>65</sup>

### 1.1 Widen the Focus from Dispute Resolution to Education and Prevention

As we saw earlier in part 1,<sup>66</sup> people experience and deal with most everyday legal problems outside of the traditional formal justice system; or put differently, only a small portion of legal problems — approximately 6.5%<sup>67</sup> — ever reach the formal justice system.<sup>68</sup>

The justice system must acknowledge this reality by widening its focus from its current (and expensive) court-based “emergency room” orientation to include education and dispute prevention. As one member of the public recently commented, it would be helpful if “a little more money can be spent on education ... to prevent heading to jail or court, to prevent it before it starts....”<sup>69</sup> This shift in focus is designed to help the most people in the most efficient, effective and just way at the earliest point in the process.

To achieve this shift, the justice system must be significantly enhanced so that it provides a flexible continuum of justice services, which includes court services of course, but which is not dominated by those more expensive services (see Figs. 1 and 2).<sup>70</sup> The motto might be: “court if necessary, but not necessarily court.”

### 1.2 Build a Robust “Front End”: Early Resolution Services Sector

A key element of this expanded continuum of services is a robust, coherent and coordinated “front end” (prior to more formal court and tribunal related services), which is referred to by the Action Committee as the Early Resolution Services Sector (ERSS).<sup>71</sup> It is the ERSS that will provide accessible justice services at a time and place at which most everyday legal problems occur (see Fig. 1).

Figure 1: **Involvement of the ERSS and the Formal Justice System in the Overall Volume of Legal Problems**

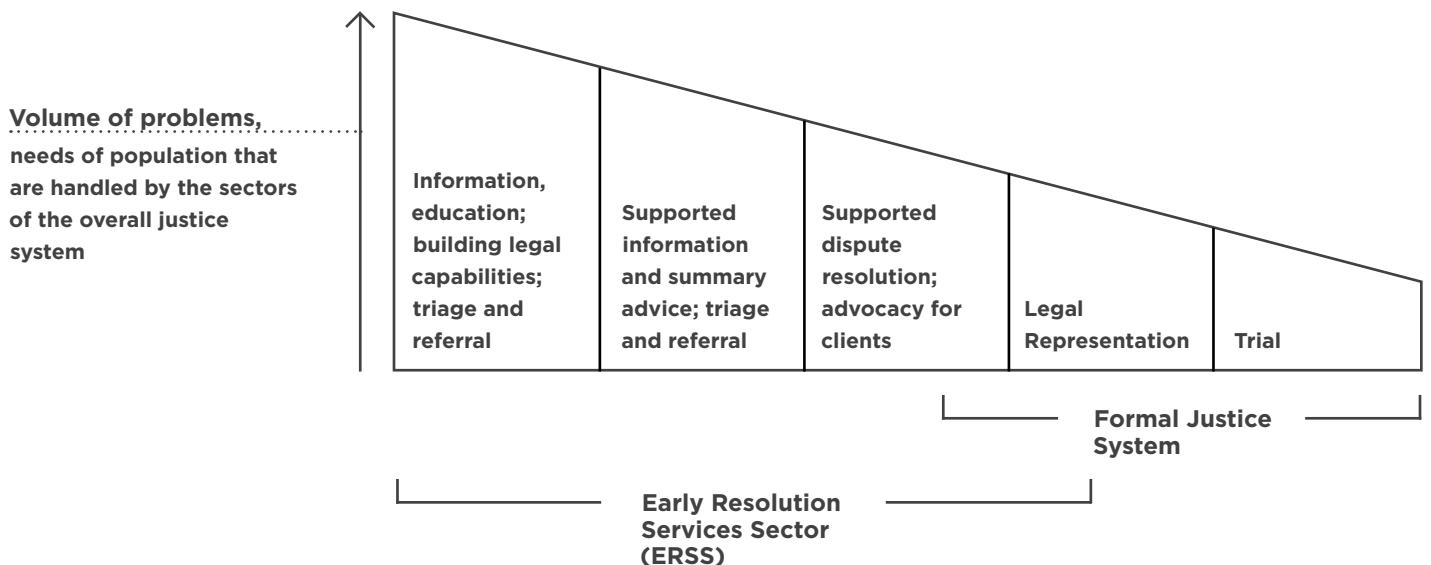
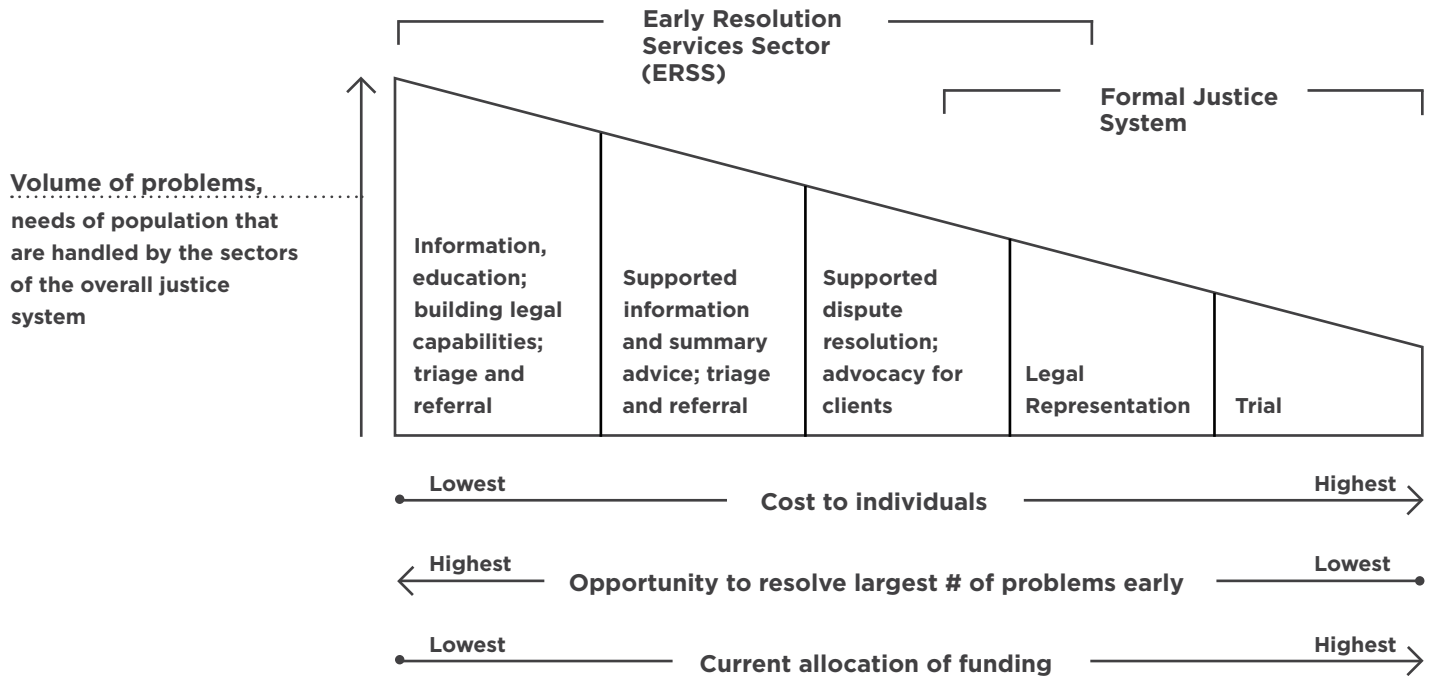


Figure 2: **The ERSS and Formal Justice System: Volume of needs vs. cost and funding allocations**



The ERSS is made up of services such as:

- community and public legal education;
- triage (i.e. effective channeling of people to needed services);
- pro bono services;
- other in-person, telephone and e-referral services;
- intermediary referral assistance (help in recognizing legal problems and connecting them with legal and other services);
- telephone and e-legal information services;<sup>72</sup>
- legal publications programs and in-person and e-law library services;<sup>73</sup>
- dispute resolution programs (e.g. family mediation and conciliation services, small claims mediation, lower cost civil mediation, etc.);
- various legal aid services, including legal clinics, certificate programs, duty counsel, etc.;
- community justice hubs;<sup>74</sup>
- co-location of services;<sup>75</sup>
- student support services including clinical services, student mediation initiatives, public interest programs, etc.; and
- others.<sup>76</sup>

Collectively, the ERSS is designed to provide resources that:

- assist people in clarifying the nature of law and problems that have a legal component;
- help people to develop their legal capacity to manage conflicts, resolve problems earlier by themselves and/or seek early and appropriate assistance;
- promote early understanding and resolution of legal problems outside the court system through alternative dispute resolution mechanisms and/or directly by parties themselves;
- assist people in navigating the court system efficiently and effectively; and
- provide effective referrals.

Given the breadth of services available as part of the ERSS, it is critical that:

- the ERSS be developed in a coordinated, deliberate and collaborative way (in the context of all justice services) in order to avoid the kinds of overlap, gaps and inefficiencies that currently exist;
- means be established by all those active in this sector and all those providing funding to engage in action-oriented consultation to define and rationalize this sector;
- adequate training for ERSS personnel be provided, including training on how to coordinate services across the ERSS; and
- the ERSS be integrated into the formal justice system as part of an expanded justice system continuum, coordinated as far as possible with the provision of other services, including social services, health services,<sup>77</sup> education, etc., all with a view to meeting complex and often clustered everyday legal needs.<sup>78</sup> Coordination and communication will be critical for this further integration to take place. Examples of this kind of coordination include community hubs, coordinated community service centres, etc.<sup>79</sup>

### **1.3 Improve Accessibility to and Coordination of Public Legal Information**

Providing access to legal information is an important aspect of the ERSS. The good news is that there is an enormous amount of publicly available legal information in Canada and that there are active and creative information providers.<sup>80</sup> But there are significant challenges. It is not always clear to the user what information is authoritative, current or reliable. There is work to be done to improve the accessibility and in some cases the quality of these resources. The biggest challenge, however, is the lack of integration and coordination among information providers. A much greater degree of coordination and integration is required to avoid duplication of effort and to provide clear paths for the public to reliable information. This could be achieved through enhanced coordination and cooperation among providers, the development of regional, sector or national information portals, authoritative online information hubs,<sup>81</sup> virtual self-help information services, certification protocols, a complaints process, etc.<sup>82</sup>

### **1.4 Justice Continuum Must Be Reflective of the Population it Serves**

Services within the justice continuum must reflect and be responsive to Canada's culturally and geographically diverse population.<sup>83</sup> We need to focus on the needs of

---

## Access to justice must become more than a vague and aspirational principle.

---

marginalized groups and communities and to recognize that there are many barriers to accessing the formal and informal systems — language, financial status, mental health capacity, geographical remoteness, gender, class, religion, sexual orientation, immigration status, culture and aboriginal status. We need to identify these barriers to access to justice and take steps to eliminate them.

### 2. Make Essential Legal Services Available to Everyone – By 2018<sup>84</sup>

#### 2.1 Modernize and Expand the Legal Services Sector

Many everyday problems require legal services from legal professionals. For many, those services are not accessible. Innovations are needed in the way we provide essential legal services in order to make them available to everyone. The profession — including the Canadian Bar Association, the Federation of Law Societies of Canada, law societies, regional and other lawyer associations — will, together with the national and local access to justice organizations discussed below (see pt.3.B.5), take a leadership role in this important innovation process.<sup>85</sup>

Specific innovations and improvements that should be considered and potentially developed include:<sup>86</sup>

- limited scope retainers – “unbundling”;<sup>87</sup>
- alternative business and delivery models;<sup>88</sup>
- increased opportunities for paralegal services;<sup>89</sup>
- increased legal information services by lawyers and qualified non-lawyers;<sup>90</sup>
- appropriate outsourcing of legal services;<sup>91</sup>
- summary advice and referrals;<sup>92</sup>
- alternative billing models;<sup>93</sup>
- legal expense insurance<sup>94</sup> and broad-based legal care;
- pro bono and low bono services;<sup>95</sup>
- creative partnerships and initiatives designed to encourage expanding access to legal services – particularly to low income clients;<sup>96</sup>
- programs to promote justice services to rural and remote communities as well as marginalized and equity seeking communities;<sup>97</sup> and
- programs that match unmet legal needs with unmet legal markets.<sup>98</sup>

#### 2.2 Increase Legal Aid Services and Funding

Legal services provided by lawyers, paralegals and other trained legal service providers are vital to assuring access to justice in all sectors, particularly for low and moderate income communities and other rural, remote and marginalized groups in society. To assist with the provision of these services for civil and family legal problems, it is essential that the availability of legal aid services for civil and family legal problems be increased.

---

The Canadian justice system is currently served by **excellent lawyers, judges, courts and tribunals.**

---

### **2.3 Make Access to Justice a Central Aspect of Professionalism**

Access to justice<sup>99</sup> must become more than a vague and aspirational principle. Law societies and lawyers must see it as part of a modern — “sustainable”<sup>100</sup> — notion of legal professionalism.<sup>101</sup> Access to justice should feature prominently in law school curricula, bar admission and continuing education programs, codes of conduct, etc.<sup>102</sup> Mentoring will be important to sustained success. Serving the public — in the form of concrete and measurable outcomes — should be an increasingly central feature of professionalism.<sup>103</sup>

## **3. Make Courts And Tribunals Fully Accessible Multi-Service Centres for Public Dispute Resolution – By 2019<sup>104</sup>**

### **3.1 Courts and Tribunals Must Be Accessible to and Reflective of the Society they Serve<sup>105</sup>**

The Canadian justice system is currently served by excellent lawyers, judges, courts and tribunals. The problem is not their quality, but rather their accessibility. While many of the goals and recommendations considered elsewhere in this report focus on the parts of the justice system that lie outside of formal dispute resolution processes (see e.g. Fig. 1), there is still a central role for robust and accessible public dispute resolution venues. Justice — including a robust court and tribunal system — is very much a central part of any access to justice discussion. However, to make courts and tribunals more accessible to more people and more cases, they must be significantly reformed with the user centrally in mind.<sup>106</sup>

While maintaining their constitutional and administrative importance in the context of a democracy governed by the rule of law, courts and tribunals must become much more accessible to and reflective of the needs of the society they serve. Put simply, just, creative and proportional processes should be available for all legal problems that need dispute resolution assistance. We recognize that much has been done. We also recognize that much more can be done. Further, the resources and support that are needed for initiatives discussed elsewhere in this report should not come at the expense of service to the public and respect for other important and ongoing initiatives that are working to improve access to justice in courts and tribunals.

### **3.2 Courts and Tribunals Should Become Multi-Service Dispute Resolution Centres**

In the spirit of the “multi-door courthouse”,<sup>107</sup> a range of dispute resolution services — negotiation, conciliation and mediation, judicial dispute resolution, mini-trials, etc., as well as motions, applications, full trials, hearings and appeals — should be offered within most courts and tribunals.<sup>108</sup> Some form of court-annexed dispute resolution process — mediation, judicial dispute resolution, etc. — should be more readily available in virtually all cases. While masters, judges and panel members will do some of this work, some of it can also be offered by trained court staff, duty counsel, dispute resolution officers, court-based mediators and others.<sup>109</sup>

Building on the current administrative law model, specialized court services — e.g. mental health courts, municipal courts,<sup>110</sup> commercial lists, expanded and accessible small claims and consumer courts, etc. — should be offered within the court or tribunal structure.

---

**“ We may well have something to learn from online dispute resolution on eBay and elsewhere.... ”**

---

- Lord Neuberger, President of U.K. Supreme Court

Online dispute resolution options, including court and non-court-based online dispute resolution services, should also be expanded where possible and appropriate, particularly for small claims matters,<sup>111</sup> debt and consumer issues,<sup>112</sup> property assessment appeals<sup>113</sup> and others. As Lord Neuberger, President of the U.K. Supreme Court recently stated, “We may well have something to learn from online dispute resolution on eBay and elsewhere....”<sup>114</sup>

### **3.3 Court and Tribunal Services Must Provide Appropriate Services for Self-Represented Litigants**

Appropriate and accessible processes must be readily available for litigants who represent themselves on their own, or with limited scope retainers. All who work in the formal dispute resolution system must be properly trained to assist litigants in ways that meet their dispute resolution needs to the extent that it is reasonably possible to do so.<sup>115</sup> To achieve this goal, courts and tribunals must be coordinated and integrated with the ERSS information and service providers (some of which may be located within courts and tribunal buildings).<sup>116</sup> Law and family law information centres should be expanded and integrated with all court services.<sup>117</sup> Civil and family duty counsel and pro bono programs (including lawyers and students) should also be expanded.<sup>118</sup>

### **3.4 Case Management Should be Promoted and Available in All Appropriate Cases**

Timely — often early — judicial case management should be readily available. In addition, where necessary, case management officers, who may be lawyers, duty counsel, or other appropriately trained people, should be readily available at all courts and tribunals for all cases, with the authority to assist parties to manage their cases and to help resolve their disputes.<sup>119</sup>

Parties should be encouraged to agree on common experts; to use simplified notices; to plead orally where appropriate (to reduce the cost and time of preparing legal materials); and, generally, to talk to one another about solving problems in a timely and cost-effective manner.<sup>120</sup> Judges and tribunal members should not hesitate to use their powers to limit the number of issues to be tried and the number of witnesses to be examined. Scheduling procedures should also be put into place to allow for fast-track trials where possible.

Overall, judges, tribunal members, masters, registrars and all other such court officers should take a strong leadership role in promoting a culture shift toward high efficiency, proportionality and effectiveness through the management of cases. Of course, justice according to law must always be the ultimate guide by which to evaluate the efficiency and effectiveness of judicial and tribunal processes.

### **3.5 Court and Tribunal Processes and Procedures Must Be More Accessible and User-Friendly**

The guiding principles in part 2 of the report — specifically including (pt.2.1) putting the public first, (pt.2.4) simplification, coherence, proportionality and sustainability, and (pt.2.6) a focus on outcomes — must animate court and tribunal innovations and reforms. The technology in all courts and tribunals must be modernized to a level that reflects the electronic needs, abilities and expectations of a modern society. Interactive court forms should be widely accessible. Scheduling, e-filing<sup>121</sup> and docket management should all be simplified and made easily accessible and all court and



tribunal documents must be accessible electronically (both on site and remotely).<sup>122</sup> Courts and tribunals should be encouraged to develop the ability to generate real time court orders.<sup>123</sup> Courthouse electronic systems should be integrated with other ERSS electronic and self-help services.

Teleconferencing, videoconferencing and internet-based conferencing (e.g. Skype) should be widely available for all appearance types, including case management, status hearings, motions, applications, judicial dispute resolution proceedings, mediation,<sup>124</sup> trials and appeals, etc.<sup>125</sup>

Better public communication, including through the use of social and other media, should be encouraged to demystify the court and tribunal process.<sup>126</sup> Overall, and in all cases, rules and processes should be simplified to promote and balance the principles of proportionality, simplification, efficiency, fairness and justice.<sup>127</sup>

### **3.6 Judicial Independence and Ethical Responsibilities**

The innovations advanced in this report do not and must not undermine the importance of judicial independence or the ethical standards that judges strive to meet.<sup>128</sup> Rather, they must complement and reinforce these important principles.

## **4. Make Coordinated and Appropriate Multidisciplinary Family Services Easily Accessible – By 2018<sup>129</sup>**

Major change is urgently needed in the family justice system.<sup>130</sup> The Family Justice Working Group Report sets out a comprehensive list of suggested reforms. That report is readily accessible and it is not necessary to reproduce all of its recommendations here. Instead we set out some of the main themes.

### **4.1 Progressive Values Must Guide All Family Justice Services**

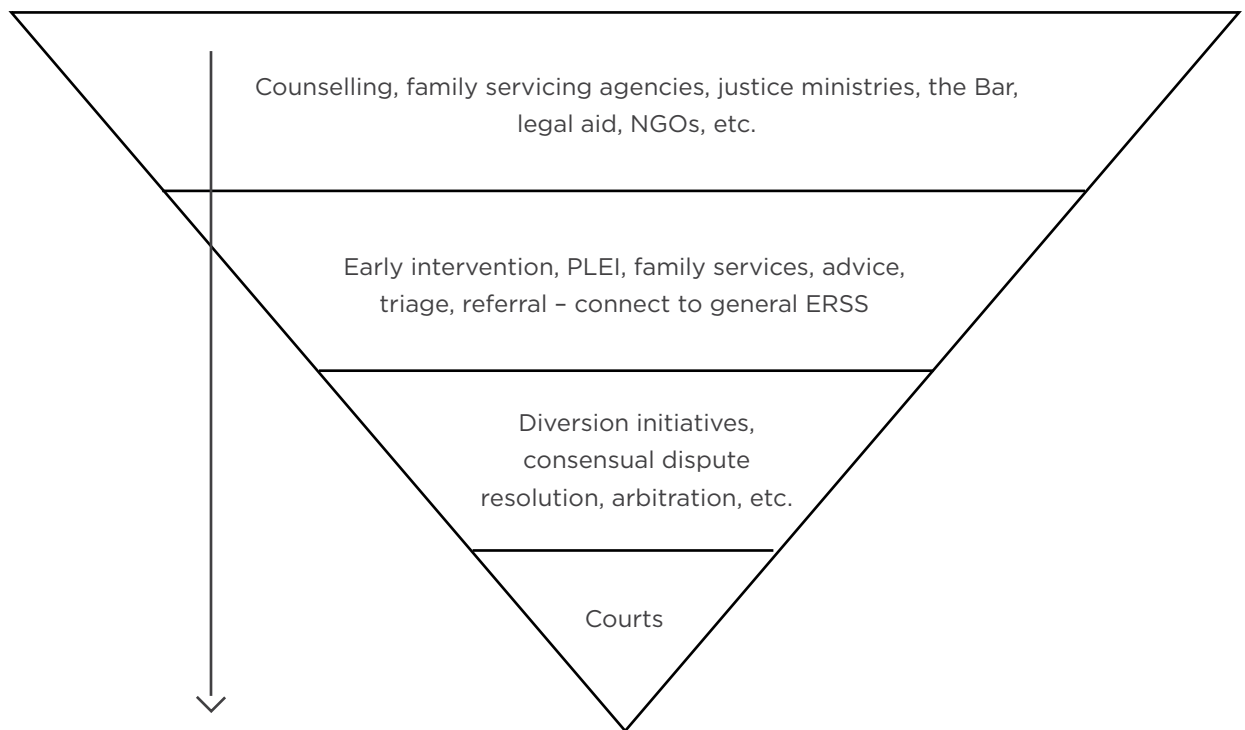
The core values, aims and principles that should guide all family justice reforms include: conflict minimization; collaboration; client-focus; empowered families; integration of multidisciplinary services; timely resolution; affordability; voice, fairness, safety; and proportionality.<sup>131</sup>

### **4.2 A Range of Family Services Must be Provided**

A range of accessible and affordable services and options – in the form of a family justice services continuum – must be available and affordable for all family law problems (see Fig. 3). The family justice services system should offer an array of dispute resolution options to help families resolve their disputes, including information, mediation, collaborative law, parenting coordination, and adjudication.

Early “front end” services in the family justice services system should be expanded.<sup>132</sup> Specifically, this means allocating resources so as to make front-end services highly visible, easy to access and user-friendly; coordinating and integrating the delivery of all services for separating families; and making triage services (i.e. effective channeling of people to required services), including assessment, information and referral, available for all people with family law problems.

Figure 3: **Family Justice Services Continuum**<sup>133</sup>



#### **4.3 Consensual Approaches to Dispute Resolution Should Be Integrated as Far as Possible into the Family Justice System**

We need to expand significantly the availability of integrated family programs and services to support the proactive management of family law-related problems and to facilitate early, consensual family dispute resolution and to support a broader and deeper integration of consensual values and problem-solving approaches into the justice system culture.<sup>134</sup>

#### **4.4 Innovation Across the Family Justice System Must Be Encouraged**<sup>135</sup>

A number of specific family justice innovations are suggested below.

- Law society regulation of family lawyers should explicitly address and support the non-traditional knowledge, skills, abilities, traits and attitudes required by lawyers optimally to manage family law files.<sup>136</sup>
- Ministries of Justice, Bar associations, law schools, mediators, collaborative practitioners, PLEI providers and — to the extent appropriate — the judiciary, should contribute to and advocate for enhanced public education and understanding about the nature of collaborative values and the availability of consensual dispute resolution (CDR) procedures in the family justice system.
- Before filing a contested application in a family matter (but after filing initial pleadings), parties should be required to participate in a single non-judicial CDR session. Rules should indicate the types of processes that are included and ensure they are delivered by qualified professionals. Exemptions should be available

---

**Free or subsidized CDR services should be available to those who cannot afford them.**

---

where the parties have already participated in CDR, for cases involving family violence, or where it is otherwise urgent for one or both parties to appear before the court. Free or subsidized CDR services should be available to those who cannot afford them.

- Except in cases of urgency and consent orders, information sessions should be mandatory for self-represented litigants and all parents with dependent children. The sessions should take place as early as possible and before parties can appear in court. At a minimum, the following information should be provided: how to parent after separation and the effects of conflict on children; basic legal information; information about mediation and other procedural options; and information about available non-legal family services.
- Jurisdictions should expand reliance upon properly trained and supervised paralegals, law students, articling students and non-lawyer experts to provide a range of services to families with legal problems.

#### **4.5 Courts Should Be Restructured to Better Handle Family Law Issues<sup>137</sup>**

Recognizing that each jurisdiction would have its own version of the unified court model, to meet the needs of families and children, jurisdictions should consider whether implementation of a unified family court would be desirable.

A unified family court should retain the benefits of provincial family courts, including their distinctive and simplified procedures, and should have its own simplified rules, forms and dispute resolution processes that are attuned to the distinctive needs and limited means of family law participants. The judges presiding over proceedings in the court should be specialized. They should have or be willing to acquire substantive and procedural expertise in family law; the ability to bring strong dispute resolution skills to bear on family cases; training in and sensitivity to the psychological and social dimensions of family law cases (in particular, family violence and the impact of separation and divorce on children); and an awareness of the range of family justice services available to the families appearing before them.

Jurisdictions that do not consider implementation of a unified family court to be desirable or feasible should take into consideration the hallmarks of unified family courts as set out above and strive to provide them as far as appropriate and possible.

Family courts should adopt simplified procedures for smaller or more limited family law disputes. The same judge should preside over all pre-trial motions, conferences and hearings in family cases.

#### **4.6 Substantive Family Law Should Be Modernized to Reflect More Consensual and Supportive Approaches to Dispute Resolution<sup>138</sup>**

Canadian family law statutes should encourage CDR processes as the norm in family law, and the language of substantive law should be revised to reflect that orientation. Substantive family laws should provide more support for early and complete disclosure by providing for positive obligations to govern all stages of a case as well as serious consequences for failure to comply. Overall, substantive family laws should be simpler and offer more guidance by way of rules, guidelines and presumptions.

## B. INSTITUTIONAL AND STRUCTURAL GOALS

### 5. Create Local and National Access to Justice Implementation Mechanisms – By 2016

#### 5.1 Create and Support Coordinated Local Access to Justice Implementation Commissions (AJICs)

No one department or agency has sole responsibility for the delivery of justice in Canada.<sup>139</sup> That, in our view, is a core reason for why the improvement of access to justice continues to be such a challenge. For coherent, collaborative and coordinated change to occur, mechanisms need to be available in all provinces and territories. Where such collaborative mechanisms already exist, they need to be supported and perhaps reformed where necessary. Where they do not already exist, they need to be created and supported. While each region will have to identify or design a structure to suit its own particular needs, some structure or institution is needed to promote, design and implement change on a sustained and ongoing basis.<sup>140</sup> Where new financial or other support is required, it should not come at the expense of service to the public and respect for local organizations and providers. After all, it will be these local organizations, along with others, who will have the important ideas for moving forward together.

In order to provide some assistance in terms of what these mechanisms might look like, particularly in jurisdictions in which such mechanisms do not already exist or are not adequately developed and supported, we set out here an example of the kind of mechanism and approach we have in mind. For the purpose of this report, we call these mechanisms local standing access to justice implementation commissions (AJICs).

#### 5.2 Broad-Based Membership

The membership of AJICs should be broadly based, with judicial and court administration participation, combined with multi-stakeholder collaboration, through top down and bottom up coherent, collaborative and consultative approaches. The public – through various representative organizations – should play a central role. The kinds of individuals and organizations that should be part of these committees include the member organizations of the Action Committee, as well as other relevant stakeholder groups and individuals.<sup>141</sup>

Members from the justice sector must be directly linked at a leadership level with their organizations and must commit for a minimum of three years. In addition to volunteer individual members, AJICs need to have administrative staff and support. The modest support needed for AJICs should come from stakeholders. The AJICs must consist of leaders who are champions of change who will form strong guiding coalitions for change.<sup>142</sup>

There are innovative and efficient ways of bringing these sorts of mechanisms together. Local centres, in-person meetings, electronic and distance participation, and other accessible methods – including the use of social media, streaming, blogging, and other broad-based and participatory tools – should be considered. These tools should also allow for meaningful public engagement and feedback where possible.

---

The AJICs must consist of leaders who are champions of change who will form **strong guiding coalitions for change**

---

### **5.3 Innovation and Action-Oriented Terms of Reference**

AJICs must be innovative and action-oriented, not just advisory. They need to inspire, lead and support change by clearly defining problems and crafting solutions and assisting with the piloting, implementation and evaluation of reforms. Early on in the process, AJICs should follow up on various recent mapping initiatives<sup>143</sup> to build on some of the good work that has been done in identifying key players and important initiatives in the access to justice communities.

Key priority areas need to be targeted and promising initiatives developed and pursued, likely through the formation of innovation and implementation working groups within the various AJICs. For example, priority areas could include legal and court services, family law, early resolution services,<sup>144</sup> legal aid, legal education in schools, homelessness, poverty and administrative law, etc. The work and recommendations of the Action Committee, it is hoped, will provide a good place to start.

### **5.4 Other Sector and Institution Specific Access to Justice Groups**

In addition to standing AJICs, other access to justice groups should be encouraged where appropriate in the context of individual organizations and sectors. For example, all courts and tribunals should have an access to justice committee designed to conduct self-studies, share best practices, review performance, develop innovations, etc. Further, all law societies,<sup>145</sup> Bar associations<sup>146</sup> and law schools should create internal standing access to justice committees. These groups should be connected to the AJICs, to avoid duplication and facilitate coordination.

### **5.5 Establish Permanent National Access to Justice Organization**

In addition to the AJICs, a national organization should be established or created within an existing organization or organizations to promote and monitor, on a long-term basis, access to civil and family justice in Canada.<sup>147</sup> Specifically, it will monitor and promote a national access to justice policy framework, best practices and standards,<sup>148</sup> identify and share information, review international developments, potentially conduct and support research on pressing access to justice issues, support “train-the-trainer” programs in the context of AJICs, etc. This organization, which will be critical for continuing the reform agenda following the completion of the Action Committee’s work, will provide a coordinated voice to the access to justice agenda in Canada.

## **6. Promote a Sustainable, Accessible and Integrated Justice Agenda through Legal Education – By 2016**

### **6.1 Law School, Bar Admission and Continuing Life Long Learning**

Law schools, bar admission programs and continuing legal education providers should put a modern access to justice agenda at the forefront of Canadian legal education. This agenda will be an important part of a new legal reform culture. While

---

**“ [J]ustice incorporates our life ... perhaps it can be taught in school as a life skill so that kids are more aware of what it means to make a choice and do the right thing for themselves and each other. ”**

---

- participant in a recent survey on access to justice

law faculties will need to develop their own particular research and teaching agendas, and recognizing that many innovative initiatives have already begun, the following initiatives should be developed and expanded.

- Modules, courses and research agendas focused specifically on access to justice, professionalism, public service, diversity, pluralism and globalization.<sup>149</sup> The needs of all individuals, groups and communities, and in particular self-represented litigants, aboriginal communities, immigrants, other marginalized and vulnerable groups and rural communities should be specifically considered.
- Increased skills based learning that focuses on consensual dispute resolution,<sup>150</sup> alternative dispute resolution and other non-adversarial skills.<sup>151</sup>
- Social, community, poverty law, mediation and other clinical, intensive and experiential programs.
- The theory and practice of family law should be promoted as a central feature of the law school program.
- Research and promotion of different ways of delivering legal services that provide affordable and accessible services to the public as well as a meaningful professional experience for lawyers, including a reasonable standard of living.<sup>152</sup>

Similarly, bar admission programs and continuing legal education providers should promote access to justice as a central feature of essentially all lawyering programs.<sup>153</sup>

## **6.2 Promote Access to Justice Education in Primary, Secondary and Post-Secondary Education**

Primary, secondary and post-secondary education should promote teaching and learning about access to justice, law and a just society. Building legal capacity through education helps people to manage their lives, property and relationships, to avoid problems and also to understand and address them effectively when they do arise. As one respondent to a recent access to justice survey put it: “[J]ustice incorporates our life ... perhaps it can be taught in school as a life skill so that kids are more aware of what it means to make a choice and do the right thing for themselves and each other.”<sup>154</sup>

A national dialogue involving Ministries of Education, Ministries of Justice, legal educators, relevant community groups and others should be promoted to push forward a common access to justice framework for schools,<sup>155</sup> colleges and universities. AJICs should play an important role here.

## **7. Enhance the Innovation Capacity of the Civil and Family Justice System – By 2016**

We need to expand the innovation capacity at all levels and in all sectors of the justice system. The national access to justice organization could be a key leader in this capacity building process, along with the AJICs, other access to justice groups, researchers and others. Research on what exists, what works and what is needed, along with evaluations and metrics of success, will all be important aspects of building innovation capacity.<sup>156</sup>

---

Money spent on the resolution of legal problems results in

**individual and collective social, health and economic benefits**

---

## C. RESEARCH AND FUNDING GOALS

### 8. Support Access to Justice Research to Promote Evidence-Based Policy Making – By 2015

#### 8.1 Promote a National Access to Justice Research and Innovation Agenda that is both Aspirational and Practical

This goal is directed primarily to researchers and governments, but additionally to all those who care about working with and improving the system – including AJICs, etc.

A national research and innovation agenda should be both aspirational and practical. Innovative and forward thinking will be central to this project.<sup>157</sup> Equally important to this process, however, will be to look at what works.<sup>158</sup> Collaboration among legal researchers, economists, social scientists, health care researchers and others should be encouraged.

#### 8.2 Develop Metrics of Success and Systems of Evaluation

Reliable and meaningful metrics and benchmarks need to be established across all levels of the system in order to evaluate the effects of reform measures. We need better information in the context of increasing demand, increasing costs and stretched fiscal realities.<sup>159</sup>

### 9. Promote Coherent, Integrated and Sustained Funding Strategies – By 2016

Although research on the costs and benefits of delivering and not delivering accessible justice is still developing,<sup>160</sup> there is meaningful evidence tending to establish the benefits of sound civil and family economic investment.<sup>161</sup> Money spent on the resolution of legal problems results in individual and collective social, health and economic benefits.<sup>162</sup>

Based on this developing body of research, a sustainable justice funding model – recognizing the realities of current fiscal challenges but also recognizing the long term individual and collective social and economic benefits that flow from sound justice investment – needs to be encouraged and developed. There are several aspects to this proposed funding model:

- increased legal aid;
- governments working with participants from all sectors of the justice community;
- funding reallocation within the justice system and across public institutions as better coordination, more effective front end services and better education produce efficiencies;<sup>163</sup> and
- AJICs (which will require sustained funding themselves) to identify key research, innovation and action items and to work collaboratively with the national access to justice organization and others toward developing realistic and sustainable funding goals and strategies.

# CONCLUSION

Access to justice is at a critical stage in Canada.... Now is the time to act.

**Access to justice is at a critical stage in Canada.** Change is urgently needed.<sup>164</sup>

This report provides a multi-sector national plan for reform. It is a roadmap, not a repair manual. The approach is to provide leadership through the promotion of concrete development goals. These are recommended goals, not dictates. Specific local conditions or problems call for locally tailored approaches and solutions. We believe that those responsible for implementing change — all local, provincial, territorial and national justice system stakeholders — will find this roadmap useful for making meaningful reforms in the service of the everyday justice needs of Canadians. The timeframes attached to each development goal are suggestions. They may change depending on the scope of the goal as well as on local needs and conditions.

Although we face serious access to justice challenges, there are many reasons to be optimistic about our ability to bridge the current implementation gap by pursuing concrete access to justice reforms. People within and beyond the civil and family justice system are increasingly engaged by access to justice challenges and many individuals and organizations are already working hard for change.

We hope that the work of the Action Committee and in particular this report will lead to:

- a measurable and significant increase in civil and family access to justice within 5 years;
- a national access to justice policy framework that is widely accepted and adopted;
- local jurisdictions, through AJICs with strong multi-sector leadership, putting in place strategies and mechanisms for meaningful and sustainable change;
- a permanent national body being created and supported to promote, guide and monitor meaningful local and national access to justice initiatives;
- access to civil and family justice becoming a topic of general civic discussion and engagement – an issue of everyday individual and community interest and wellbeing; and
- the public being placed squarely at the centre of all meaningful civil and family justice education and reform efforts.

In this report we have described the need, set out the guiding principles and provided a roadmap for change. Now it is time to act.



# ACKNOWLEDGMENTS

---

*Access to Civil and Family Justice: A Roadmap for Change* is the final report of the Action Committee on Access to Justice in Civil and Family Matters.

The Action Committee is grateful for the tireless efforts of Professor Trevor C.W. Farrow, Osgoode Hall Law School and Chair of the Canadian Forum on Civil Justice, who was the “holder of the pen” for this final report.

## ACTION COMMITTEE

The Action Committee was convened in late 2008 at the invitation of the Right Honourable Beverley McLachlin, P.C., Chief Justice of Canada as a catalyst for meaningful action to justice reform. The Action Committee, which is a collaborative, consultative and stakeholder-driven initiative, includes:

- The Right Honourable Beverley McLachlin, P.C., Chief Justice of Canada (Honourary Chair)
- The Honourable Mr. Justice Thomas A. Cromwell, Supreme Court of Canada (Chair)
- Alberta Justice
- Association of Legal Aid Plans
- Canadian Association of Provincial Court Judges
- Canadian Bar Association
- Canadian Council of Chief Judges
- Canadian Forum on Civil Justice
- Canadian Institute for the Administration of Justice
- Canadian Judicial Council
- Canadian Superior Court Judges Association
- Canadian Public (represented by Mary Ellen Hodgins)
- Council of Canadian Law Deans
- Department of Justice Canada
- Federation of Law Societies of Canada
- Heads of Court Administration
- British Columbia Ministry of Justice
- Pro Bono Law Ontario
- Public Legal Education Association of Canada

## STEERING COMMITTEE, WORKING GROUPS AND SECRETARIAT

The individual members of the Steering Committee of the Action Committee include:

- The Honourable Mr. Justice Thomas A. Cromwell (Chair)
- Mark Benton, Q.C. (Association of Legal Aid Plans)
- Deputy Minister of Justice Raymond Bodnarek, Q.C. (Alberta Justice)
- Melina Buckley, Ph.D. (Canadian Bar Association)
- The Honourable juge en chef Élizabéth Corté (Canadian Council of Chief Judges)
- Rick Craig (Public Legal Education Association of Canada)
- Professor Trevor C.W. Farrow, Ph.D. (Canadian Forum on Civil Justice)
- Jeff Hirsch (Federation of Law Societies of Canada)
- M. Jerry McHale, Q.C. (British Columbia Ministry of Justice)

The Action Committee is extremely grateful to all members of the Steering Committee for their constant leadership and guidance throughout the work of the Action Committee. Much of the work of the Action Committee, designed to look at four key priority areas, was done by four working groups: the Court Processes Simplification Working Group, the Access to Legal Services Working Group, the Prevention, Triage and Referral Working Group, and the Family Justice Working Group. Reports from these working groups (which include lists of their members) were released as a collection of final working group reports in April 2013. The Action Committee is very grateful to the

members of these working groups for their significant efforts. The working group reports can be found on the website of the Canadian Forum on Civil Justice (<http://www.cfcj-fcjc.org/collaborations>).

The Action Committee would also like to thank members of its effective and efficient secretariat at the Department of Justice for Canada who have worked tirelessly to support the work of the Action Committee, the Steering Committee and the working groups.

## FUNDING AND SUPPORT

Funding and other support for the work of the Action Committee has been generously provided by its member organizations. The Action Committee would like to thank the member organizations, as well as the individual representatives of those organizations, who have worked so hard to support the work of the Action Committee. The Action Committee would like further to acknowledge with specific gratitude the significant funding and other support from:

- Alberta Justice and Solicitor General
- Canadian Forum on Civil Justice
- Canadian Judicial Council
- Department of Justice Canada
- Law Foundation of British Columbia
- Federation of Law Societies of Canada
- Osgoode Hall Law School

## RESEARCH ASSISTANCE AND PUBLICATION INFORMATION

This report was prepared as part of the Action Committee's overall collaborative and consultative process, with direct guidance from the Steering Committee and in consultation with Mary Ellen Hodgins (on behalf of the Canadian public). Research and publication assistance was provided by the Canadian Forum on Civil Justice. The Action Committee has also relied heavily – and at times directly – on the reports of the Action Committee's four working groups.

Comments on this report can be sent to the Action Committee through the Canadian Forum on Civil Justice, online at: <[communications@cfcj-fcjc.org](mailto:communications@cfcj-fcjc.org)>.

The Action Committee consists of senior representatives from many organizations in the justice system and a representative of the Canadian public, who share a commitment to working together to improve access to justice for the Canadian public. This report offers a general consensus on the issues discussed, but does not necessarily reflect the formal position of each of the respective organizations represented.

This report is published by the Action Committee on Access to Justice in Civil and Family Matters, Ottawa, Canada, October 2013.

# ENDNOTES

---

<sup>1</sup>Rt. Hon. Beverley McLachlin, P.C., “The Challenges We Face”, citing the former Chief Justice of Ontario (remarks presented at Empire Club of Canada, Toronto, 8 March 2007), online: Supreme Court of Canada <<http://www.scc-csc.gc.ca/court-cour/ju/spe-dis/bm07-03-08-eng.asp>>.

<sup>2</sup>As the Chief Justice of Canada recently acknowledged, “Regrettably, we do not have adequate access to justice in Canada.” Rt. Hon. Beverley McLachlin, P.C., from “Forward” in Michael Trebilcock, Anthony Duggan and Lorne Sossin, eds., *Middle Income Access to Justice* (Toronto: University of Toronto Press, 2012) at ix. Similarly, according to Justice Thomas Cromwell: “By nearly any standard, our current situation falls far short of providing access to the knowledge, resources and services that allow people to deal effectively with civil and family legal matters. There is a mountain of evidence to support this view.” Hon. Thomas A. Cromwell, “Access to Justice: Towards a Collaborative and Strategic Approach”, Viscount Bennett Memorial Lecture, (2012) 63 U.N.B.L.J. 38 at 39.

<sup>3</sup>Melina Buckley, Plenary Address (Canadian Bar Association “Envisioning Equal Justice Summit: Building Justice for Everyone”, Vancouver, 26 April 2013). See also Canadian Bar Association, Envisioning Equal Justice Project, *Equal Justice Report: An Invitation to Envision and Act* (Ottawa: Canadian Bar Association, August 2013).

<sup>4</sup>See, for example, the following comments from Justice Thomas Cromwell:

In general terms, members of our society would have appropriate access to civil and family justice if they had the knowledge, resources and services to deal effectively with civil and family legal matters. I emphasize that I do not have a “court-centric” view of what this knowledge in these resources and services include. They include a range of out-of-court services, including access to knowledge about the law and the legal process and both formal and informal dispute resolution services, including those available through the courts. I do not view access to justice ... as simply access

to litigation or even simply as access to lawyers, judges and courts, although these are, of course, aspects of what access to justice requires.

Hon. Thomas A. Cromwell, “Access to Justice: Towards a Collaborative and Strategic Approach”, *supra* note 2 at 39.

<sup>5</sup>See e.g. Patricia Hughes, “Law Commissions and Access to Justice: What Justice Should We Be Talking About?” (2008) 46 Osgoode Hall L.J. 773 at 777-779. See generally Roderick A. Macdonald, “Access to Justice in Canada Today: Scope, Scale and Ambitions” in Julia Bass, W.A. Bogart, Frederick H. Zemans, eds., *Access to Justice for a New Century: The Way Forward* (Toronto: Law Society of Upper Canada, 2005) 19.

<sup>6</sup>Ab Currie, *The Legal Problems of Everyday Life: The Nature, Extent and Consequences of Justiciable Problems Experienced by Canadians* (Ottawa: Department of Justice Canada, 2007) at 88.

<sup>7</sup>See Currie, *The Legal Problems of Everyday Life*, *ibid.* at 2, 10-12.

<sup>8</sup>Mary Bess Kelly, “Divorce cases in civil court, 2010/2011” (Ottawa: Minister of Industry, 28 March 2012) at 7-9, online: Statistics Canada <<http://www.statcan.gc.ca/pub/85-002-x/2012001/article/11634-eng.pdf>> (this figure is based on marriages ending before a couple’s 30th wedding anniversary). For a discussion of the public costs of family breakdown, see Rebecca Walberg and Andrea Mrozek, *Private Choice, Public Costs: How Failing Families Cost Us All* (Ottawa: Institute of Marriage and Family Canada, June 2009).

<sup>9</sup>Everyday legal problems — often termed “justiciable problems” — include a broad range of problems that might raise legal issues and/or might be addressed by way of legal solutions. See e.g. Hazel Genn *et al.*, *Paths to Justice: What People do and Think About Going to Law* (Oxford: Hart, 1999) at v-vi, 12, and generally c. 2. See further Currie, *The Legal Problems of Everyday Life*, *supra* note 6 at 5-6; Pascoe Pleasence *et al.*, *Causes of Action: Civil Law and Social Justice* (Norwich: Legal Services Commission, 2004) at 1. For a recent Australian study, see Christine Coumarelos *et al.*, *Legal*

*Australia-Wide Survey: Legal Need in Australia* (Sydney: Law and Justice Foundation of New South Wales, August 2012).

<sup>10</sup>See Currie, *The Legal Problems of Everyday Life*, *ibid.* at 23-26. More vulnerable groups include, for example, people who self-report as aboriginal, being part of a visible minority, disabled, or being on social assistance. See *ibid.* See further Pleasence *et al.*, *Causes of Action*, *ibid.* at 14-31.

<sup>11</sup>Currie, *The Legal Problems of Everyday Life*, *ibid.* at 23-25.

<sup>12</sup>See e.g. Pleasence *et al.*, *Causes of Action*, *supra* note 9 at 37-44; Currie, *The Legal Problems of Everyday Life*, *ibid.* at 49-51. See further Pascoe Pleasence *et al.*, “Multiple Justiciable Problems: Common Clusters and their Social and Demographic Indicators” (2004) 1 J. Emp. Legal Stud. 301.

<sup>13</sup>See Currie, *The Legal Problems of Everyday Life*, *ibid.* at 42-48.

<sup>14</sup>*ibid.* at 73. See further Nigel J. Balmer *et al.*, *Knowledge, Capability and the Experience of Rights Problems* (London: Public Legal Education Network, March 2010) at 25-26, 42-43. See further Mary Stratton and Travis Anderson, *Social, Economic and Health Problems Associated with a Lack of Access to the Courts* (Edmonton: Canadian Forum on Civil Justice, March 2006).

<sup>15</sup>See Currie, *The Legal Problems of Everyday Life*, *ibid.* at 33. See further Balmer *et al.*, *Knowledge, Capability and the Experience of Rights Problems*, *ibid.* at 20-21.

<sup>16</sup>See e.g. Currie, *The Legal Problems of Everyday Life*, *ibid.* at 88-89. See further Alexy Buck, Pascoe Pleasence and Nigel J. Balmer, “Social Exclusion and Civil Law: Experience of Civil Justice Problems among Vulnerable Groups” (2005) 39(3) Soc. Pol’y Admin. 302.

<sup>17</sup>See Balmer *et al.*, *Knowledge, Capability and the Experience of Rights Problems*, *supra* note 14 at 3 [citation omitted]. See further Pleasence *et al.*, *Causes of Action*, *supra* note 9. For current research on the cost of civil justice in Canada, see Canadian Forum on Civil Justice, “The Cost of Justice: Weighing the Costs of Fair and Effective Resolution to Legal Problems”, online: Canadian Forum on Civil Justice <<http://www.cfcj-fcjc.org/cost-of-justice>>.

<sup>18</sup>As the Chief Justice of Canada has further recognized, the “most advanced justice system in the world is a failure if it does not provide justice to the people it is meant to serve.” Rt. Hon. Beverley McLachlin, P.C., “The Challenges We Face”, *supra* note 1 [citation omitted].

<sup>19</sup>Mark D. Agrast *et al.*, *Rule of Law Index 2012-2013* (Washington, D.C.: The World Justice Project, 2012) at 27; Mark D. Agrast *et al.*, *Rule of Law Index 2011* (Washington, D.C.: The World Justice Project, 2011) at 23.

<sup>20</sup>*Rule of Law Index 2011*, *ibid.* at 23.

<sup>21</sup>Legal Aid Ontario, “Am I eligible for legal aid?”, online: LAO <<http://www.legalaid.on.ca/en/getting/eligibility.asp>>.

<sup>22</sup>Legal Aid Alberta, “Accessing Legal Aid: Eligibility”, online: LAA <<http://www.legalaid.ab.ca/help/Pages/Eligibility.aspx>>. In some cases certain limited advice may be available for individuals and families earning slightly more than these amounts. See *ibid.*

<sup>23</sup>Legal Aid Manitoba, “Who Qualifies Financially”, online: LAM <<http://www.legalaid.mb.ca/>>.

<sup>24</sup>Legal Aid Saskatchewan, “Am I eligible for Legal Aid?”, online: LAS <[http://69.27.116.234/legal\\_help/eligible.php](http://69.27.116.234/legal_help/eligible.php)>.

<sup>25</sup>See e.g. Legal Aid Ontario, “Types of help”, online: LAO <<http://www.legalaid.on.ca/en/getting/typesofhelp.asp>>.

<sup>26</sup>See Jamie Baxter and Albert Yoon, *The Geography of Civil Legal Services in Ontario*, Report of the mapping phase of the Ontario Civil Legal Needs Project (Toronto: The Ontario Civil Legal Needs Project Steering Committee, November 2011) at 63 [citation omitted], online: <<http://www.lsuc.on.ca/WorkArea/DownloadAsset.aspx?id=2147486236>>.

<sup>27</sup>Charlotte Santry, “The Going Rate” (2013 Legal Fees Survey), *Canadian Lawyer* (June 2013) 33 at 34, online: <<http://www.canadianlawyermag.com/images/stories/pdfs/Surveys/2013/cljune13legalfees.pdf>>.

<sup>28</sup>*Ibid.* at 36. As a general matter, a 3-day civil trial is often considered to cost overall in the range of \$60,000 (or more depending on the amounts and issues involved). See e.g. Tracey Tyler, “A 3-day trial likely to cost you \$60,000” *Toronto Star* (3 March 2007), online: <[http://www.thestar.com/news/2007/03/03/a\\_3day\\_trial\\_likely\\_to\\_cost\\_you\\_60000.html](http://www.thestar.com/news/2007/03/03/a_3day_trial_likely_to_cost_you_60000.html)>.

<sup>29</sup>For example, in the U.K., the cost of family law cases involving children reportedly increased by 71% between 1998 and 2003, while the average length of a family law case rose from 50 weeks in 1998 to 63 weeks in 2003. See Vicky Kemp, Pascoe Pleasence and Nigel J. Balmer, “Incentivising Disputes: The Role of Public Funding in Private Law Children Cases” (2005) 27 *J. Soc. Welfare & Fam. L.* 125 at 126. Indicators of rising costs and fees have also been reported in Australia and Canada. In Australia, see e.g. PricewaterhouseCoopers, *Economic value of legal aid: Analysis in relation to Commonwealth funded matters with a focus on family law* (Australia: Legal Aid Queensland, 2009) at 15. One recent Canadian report indicates that “many [law firms] increased their legal fees in 2011 and 2012”. See Santry, “The Going Rate”, *supra* note 27 at 33. However, according to the same report, of those who responded, 56% plan to freeze their fees in 2013. See *ibid.*

<sup>30</sup>As the Chief Justice of Canada has recognized, “Among the hardest hit are the middle class. They earn too much to qualify for legal aid, but frequently not enough to retain a lawyer for a matter of any complexity or length. When it comes to the justice system, the majority of Canadians do not have access to sufficient resources of their own, nor do they have access to the safety net programs established by the government.” Rt. Hon. Beverley McLachlin, P.C., from “Forward” in Trebilcock, Duggan and Sossin, eds., *Middle Income Access to Justice*, *supra* note 2 at ix.

<sup>31</sup>Russell Engler, “Connecting Self-Representation to Civil Gideon: What Existing Data Reveal about when Counsel is Most Needed” (2010) 37 *Fordham Urban L.J.* 37 at 40 (citing Legal Services Corporation, *Documenting the Justice Gap in America: The Current Unmet Civil Legal Needs of Low-Income Americans*, updated report (Washington, D.C.: Legal Services Corporation, September 2009).

<sup>32</sup>See *supra* notes 6-17.

<sup>33</sup>See e.g. Currie, *The Legal Problems of Everyday Life*, *supra* note 6 at 55-56 and generally 55-67 and 88. Compare Ontario Civil Legal Needs Project, *Listening to Ontarians* (Toronto: Ontario Civil Legal Needs Project Steering Committee, May 2010) at 31.

<sup>34</sup>See e.g. Ontario Civil Legal Needs Project, *Listening to Ontarians*, *ibid.* at 32, 39-40; Julie Macfarlane, *The National Self-Represented Litigants Project: Identifying and Meeting the Needs of Self-Represented Litigants* (May 2013) at 39, online: <<http://www.representing-yourself.com/doc/report.pdf>>. Compare Ipsos Reid Survey (2009) in Law Society of Alberta, “Most Albertans Satisfied with their Lawyers: Ipsos Reid Poll Shows” *The Advisory* 8:3 (June 2010) 7 at 8 (“Other Challenges in Resolving Legal Problems – Expected Cost”), online: LSA <[http://www.lawsociety.ab.ca/files/newsletters/Advisory\\_Volume\\_8\\_Issue\\_3\\_Jun2010/PollCharts.pdf](http://www.lawsociety.ab.ca/files/newsletters/Advisory_Volume_8_Issue_3_Jun2010/PollCharts.pdf)>; Currie, *The Legal Problems of Everyday Life*, *supra* note 6 at 56.

<sup>35</sup>See e.g. Balmer *et al.*, *Knowledge, Capability and the Experience of Rights Problems*, *supra* note 14 at 31-36. See further Hazel Genn *et al.*, *Tribunals for Diverse Users*, Department for Constitutional Affairs Research Series 1/06 (London: Department for Constitutional Affairs, 2006).

<sup>36</sup>Ab Currie, “Self-Helpers Need Help Too” (2010) [unpublished] at 1, available online: <<http://www.lawforlife.org.uk/data/files/self-helpers-need-help-too-ab-currie-2010-283.pdf>>. See also Currie, *The Legal Problems of Everyday Life*, *supra* note 6 at 14 (citing the number at 44%); Balmer *et al.*, *Knowledge, Capability and the Experience of Rights Problems*, *ibid.* at 14 (citing the number at closer to 34%).

<sup>37</sup>See e.g. Trevor C.W. Farrow *et al.*, *Addressing the Needs of Self-Represented Litigants in the Canadian Justice System*, A White Paper for the Association of Canadian Court Administrators (Toronto and Edmonton: 27 March 2012) at 14-16. See also Macfarlane, *The National Self-Represented Litigants Project*, *supra* note 34 at 33-35.

<sup>38</sup>See e.g. Rachel Birnbaum and Nicholas Bala, “Views of Ontario Lawyers on Family Litigants without Representation” (2012) 63 *U.N.B.L.J.* 99 at 100; Canadian Bar Association, Standing Committee on Access to Justice, “Underexplored Alternatives for the Middle Class” (Ottawa: Canadian Bar Association, February 2013) at 3-4 [citation omitted].

<sup>39</sup>Canadian Bar Association, Standing Committee on Access to Justice, “Toward National Standards for Publicly-Funded Legal Services” (Ottawa: Canadian Bar Association, April 2013) at 18, citing Russell Engler, “Reflections on a Civil Right to Counsel and Drawing Lines: When Does Access to Justice Mean Full Representation by Counsel, and When Might Less Assistance Suffice?” (2010) 9:1 Seattle J. for Soc. Just. 97 at 115, citing Rebecca Sandefur, “Elements of Expertise: Lawyers’ Impact on Civil Trial and Hearing Outcomes” (26 March 2008) at 24. See further Sean Rehaag, “The Role of Counsel in Canada’s Refugee Determination System: An Empirical Assessment” (2011) 49 Osgoode Hall L.J. 71 at 87 (reporting that in refugee cases, claimants represented by lawyers were 70.1% more likely to succeed than claimants represented by consultants, and 275% more likely to succeed than unrepresented claimants).

<sup>40</sup>Farrow *et al.*, *Addressing the Needs of Self-Represented Litigants in the Canadian Justice System*, *supra* note 37 at 46.

<sup>41</sup>Trevor C.W. Farrow, “What is Access to Justice?” Osgoode Hall L.J. (in progress), excerpts of which were featured as part of the opening plenary presentation at the Canadian Bar Association, “Envisioning Equal Justice Summit: Building Justice for Everyone”, *supra* note 3. See also Canadian Bar Association, Envisioning Equal Justice Project, *Equal Justice Report: An Invitation to Envision and Act*, *supra* note 3.

<sup>42</sup>This problem has been acknowledged and described by the Chief Justice of Canada as follows: “Unfortunately, many Canadian men and women find themselves unable, mainly for financial reasons, to access the Canadian justice system. Some of them decide to become their own lawyers. Our courtrooms today are filled with litigants who are not represented by counsel, trying to navigate the sometimes complex demands of law and procedure. Others simply give up.” Rt. Hon. Beverley McLachlin, P.C., “The Challenges We Face”, *supra* note 1.

<sup>43</sup>As Justice Thomas Cromwell has observed, “I have serious concerns that we have hit the iceberg but are being too slow to recognize the seriousness of the damage.... [T]he problem is real and growing.” Hon. Thomas A. Cromwell, Address in 66 *Bulletin* (Spring 2011) 22 at 23 (on the occasion of his induction as an Honorary Fellow of the American College of Trial Lawyers, Washington, D.C., 22 October 2011).

<sup>44</sup>Lawrence M. Friedman, “Is There a Modern Legal Culture?” (July 1994) 7:2 Ratio Juris 117 at 130.

<sup>45</sup>For a recent discussion on shifting culture in the legal profession, see Canadian Bar Association, Legal Futures Initiative, *The Future of Legal Services in Canada: Trends and Issues* (Ottawa: Canadian Bar Association, 2013) at 29, 34 and 39.

<sup>46</sup>See Law Commission of Ontario, “Best Practices at Family Justice System Entry Points: Needs of Users and Responses of Workers in the Justice System” (Toronto, September 2009) at 11, online: LCO <<http://www.lco-cdo.org/familylaw/Family%20Law%20Process%20Consultation%20Paper%20-%20September%202009.pdf>>; Farrow *et al.*, *Addressing the Needs of Self-Represented Litigants in the Canadian Justice System*, *supra* note 37 at 28-30. See also generally Macfarlane, *The National Self-Represented Litigants Project*, *supra* note 34; Task Force on Systems of Civil Justice, *Systems of Civil Justice Task Force Report* (Ottawa: Canadian Bar Association, August 1996) at 17.

<sup>47</sup>See Farrow *et al.*, *Addressing the Needs of Self-Represented Litigants in the Canadian Justice System*, *supra* note 37 at 29.

<sup>48</sup>See generally Task Force on Systems of Civil Justice, *Systems of Civil Justice Task Force Report*, *supra* note 46 at 19.

<sup>49</sup>See *ibid.* at 76-78.

<sup>50</sup>According to the Chief Justice of Canada, “If we are to have any success in improving access, a coordinated, collaborative approach ... is necessary.” Rt. Hon. Beverley McLachlin, P.C., from “Forward” in Trebilcock, Duggan and Sossin, eds., *Middle Income Access to Justice*, *supra* note 2 at x.

<sup>51</sup>See *supra* notes 4-5 and accompanying text.

<sup>52</sup>See *supra* pt.1.1 and *infra* notes 66-68 and accompanying text.

<sup>53</sup>For general discussions, see e.g. Coumarelos *et al.*, *Legal Australia-Wide Survey: Legal Need in Australia*, *supra* note 9 at 207-214. In Canada, see recently Canadian Bar Association, Standing Committee on Access to Justice, “Underexplored Alternatives for the Middle Class”, *supra* note 38 at 8-9.

<sup>54</sup>Action Committee on Access to Justice in Civil and Family Matters, Prevention, Triage and Referral Working Group, “Responding Early, Responding Well: Access to Justice through the Early Resolution Services Sector” (Ottawa: Action Committee on Access to Justice in Civil and Family Matters, April 2013) at 9 [citations omitted], online: CFCJ <<http://www.cfcj-fcjc.org/collaborations>>. See further Richard Susskind, *The End of Lawyers? Rethinking the Nature of Legal Services* (Oxford: Oxford University Press, 2008) at sec. 6.7.

<sup>55</sup>Task Force on Systems of Civil Justice, *Systems of Civil Justice Task Force Report*, *supra* note 46 at 16.

<sup>56</sup>Farrow, “What is Access to Justice?”, *supra* note 41.

<sup>57</sup>Macfarlane, *The National Self-Represented Litigants Project*, *supra* note 34 at 54 [citation omitted].

<sup>58</sup>*Ibid.* [citation omitted].

<sup>59</sup>See e.g. Action Committee on Access to Justice in Civil and Family Matters, Family Justice Working Group, “Meaningful Change for Family Justice: Beyond Wise Words” (Ottawa: Action Committee on Access to Justice in Civil and Family Matters, April 2013) at 3, online: CFCJ <<http://www.cfcj-fcjc.org/collaborations>>.

<sup>60</sup>Farrow, “What is Access to Justice?”, *supra* note 41.

<sup>61</sup>*Ibid.*

<sup>62</sup>The Action Committee’s approach to the use of development goals has been directly influenced by the United Nations Millennium Development Goals (see online: United Nations <<http://www.un.org/millenniumgoals/>>). The Millennium Development Goals “range from halving extreme poverty rates to halting the spread of HIV/AIDS and providing universal primary education, all by the target date of 2015” and are designed to “form a blueprint agreed to by all the world’s countries and all the world’s leading development institutions.” See *ibid.* The Action Committee has benefitted from the work of Sam Muller and the Hague Institute for the Internationalisation of Law (HiiL). See e.g. HiiL, *Towards Basic Justice Care for Everyone: Challenges and Promising Approaches*, Trend Report/Part 1 (The Hague: HiiL, 2012). For further examples of HiiL’s work, see *infra* notes 157-158.

<sup>63</sup>Action Committee on Access to Justice in Civil and Family Matters, Final Working Group Reports, online: Canadian Forum on Civil Justice <<http://www.cfcj-fcjc.org/collaborations>>.

<sup>64</sup>Much of the detail and analysis (and examples) that animate these innovation goals can be found in the four Action Committee working group reports (discussed further in the Acknowledgments section of this report).

<sup>65</sup>Much of the material in this section of the report is very much influenced by, and in some cases directly draws on, the materials and discussions included in: Action Committee on Access to Justice in Civil and Family Matters, Prevention, Triage and Referral Working Group, “Responding Early, Responding Well: Access to Justice through the Early Resolution Services Sector”, *supra* note 54.

<sup>66</sup>See *supra* pt.1.1.

<sup>67</sup>Ab Currie, “Self-Helpers Need Help Too”, *supra* note 36 at 1. Compare earlier Currie, *The Legal Problems of Everyday Life*, *supra* note 6 at 9 (citing the number at 11.7%). See further Pleasence *et al.*, *Causes of Action*, *supra* note 9 at 96.

<sup>68</sup>As Australia’s Attorney-General’s Department recently acknowledged:

“Courts are not the primary means by which people resolve their disputes. They never have been. Very few civil disputes reach formal justice mechanisms such as courts, and fewer reach final determination. Most disputes are resolved without recourse to formal legal institutions or dispute resolution mechanisms. To improve the quality of dispute resolution, justice must be maintained in individuals’ daily activities, and dispute resolution mechanisms situated within a community and economic context. Reform should focus on everyday justice, not simply the mechanics of legal institutions which people may not understand or be able to afford....”

Access to Justice Taskforce, Attorney-General’s Department, *A Strategic Framework for Access to Justice in the Federal Civil Justice System* (Australia: Attorney-General’s Department, September 2009) at 3. Similarly, according to Marc Galanter:

Just as health is not found primarily in hospitals or knowledge in schools, so justice is not primarily to be found in official justice-dispensing institutions. Ultimately, access to justice is not just a matter of bringing cases to a font of official justice, but of enhancing the justice quality of the relations and transactions in which people are engaged.

Marc Galanter, "Justice in Many Rooms" in Mauro Cappelletti, ed., *Access to Justice and the Welfare State* (Alphen aan den Rijn: Sijthoff; Brussels: Bruylant; Florence: Le Monnier; Stuttgart: Klett-Cotta, 1981) 147 at 161-162, cited in Access to Justice Taskforce, Attorney-General's Department, *A Strategic Framework for Access to Justice in the Federal Civil Justice System*, *ibid.* at 3. It is important to recognize, however, that even in the context of informal mechanisms, the formal justice system – through the production of precedents as well as the potential recourse to its use – plays a significant influencing role. See e.g. Robert H. Mnookin and L. Kornhauser, "Bargaining in the Shadow of the Law: The Case of Divorce" (1979) 88 *Yale L.J.* 950.

<sup>69</sup>See Farrow, "What is Access to Justice?", *supra* note 41.

<sup>70</sup>See Action Committee on Access to Justice in Civil and Family Matters, Prevention, Triage and Referral Working Group, "Responding Early, Responding Well: Access to Justice through the Early Resolution Services Sector", *supra* note 54 at 5 and 10.

<sup>71</sup>See e.g. *ibid.* at 5-8.

<sup>72</sup>See e.g. Clicklaw, online: <<http://www.clicklaw.bc.ca/>>; Legalline, online: <<http://www.legalline.ca/>>. For a further discussion, see Action Committee on Access to Justice in Civil and Family Matters, "Report of the Access to Legal Services Working Group" (Ottawa: Action Committee on Access to Justice in Civil and Family Matters, April 2013) at 8-10, online: CFCJ <<http://www.cfcj-fcjc.org/collaborations>>.

<sup>73</sup>For a discussion of innovations in e-learning, see Mohamed Ally *et al.*, *Expanding Access to Legal Services in Alberta through E-Learning* (Alberta: Alberta Law Foundation, November 2012).

<sup>74</sup>See e.g. B.C.'s Justice Access Centres and Family Justice Centres. Other provinces have similar initiatives.

<sup>75</sup>See e.g. Alberta Justice and Solicitor General's current initiative designed to explore opportunities for combining services in one location to coordinate and deliver comprehensive services to the community, with a particular focus on prevention and early resolution.

<sup>76</sup>For further specific examples of these various initiatives (and others), see Action Committee on Access to Justice in Civil and Family Matters, Prevention, Triage and Referral Working Group, "Responding Early, Responding Well: Access to Justice through the Early Resolution Services Sector", *supra* note 54 at 6-8. See also Canadian Bar Association, Standing Committee on Access to Justice, "Underexplored Alternatives for the Middle Class", *supra* note 38 at 7-9. For the kinds of services that are currently available (and also that are still needed), see e.g. Canadian Forum on Civil Justice, *Alberta Legal Services Mapping Project*, online: CFCJ <<http://www.cfcj-fcjc.org/alberta-legal-services>>; Carol McEown, *Civil Legal Needs Research Report*, 2d ed. (Vancouver: Law Foundation of British Columbia, March 2009); Baxter and Yoon, *The Geography of Civil Legal Services in Ontario*, *supra* note 26.

<sup>77</sup>See e.g. the B.C. Legal Services Society's initiatives in B.C.'s Women's Hospital and at a drop-in centre in Vancouver's Downtown Eastside, which provide a lawyer for a short period per week at each location who is available to give legal advice with respect to family law, child protection and other issues.

<sup>78</sup>See *supra* pt.1.1. For a useful discussion of multidisciplinary and collaborative approaches to service delivery, see Canadian Bar Association, Standing Committee on Access to Justice, "Future Directions for Legal Aid Delivery" (Ottawa: Canadian Bar Association, April 2013) at 24-28.

<sup>79</sup>See e.g. Unison Health and Community Services, online: <<http://unisonhcs.org/>>.

<sup>80</sup>See e.g. Community Legal Education Ontario, online: <<http://www.cleo.on.ca/en>>; Justice Education Society, online: <<http://www.justiceeducation.ca/>>; Ontario Justice Education Network, online: <<http://www.ojen.ca/welcome>>, and others.

<sup>81</sup>See e.g. Australia's "Foolkit", online: <<http://www.foolkit.com.au/>>.



<sup>82</sup>For further detailed discussions, see Action Committee on Access to Justice in Civil and Family Matters, Prevention, Triage and Referral Working Group, “Responding Early, Responding Well: Access to Justice through the Early Resolution Services Sector”, *supra* note 54 at 17-18, 22-25; Action Committee on Access to Justice in Civil and Family Matters, “Report of the Access to Legal Services Working Group”, *supra* note 72 at 5-8; Action Committee on Access to Justice in Civil and Family Matters, “Report of the Court Processes Simplification Working Group” (Ottawa: Action Committee on Access to Justice in Civil and Family Matters, April 2013) at 10-13, online: CFCJ <<http://www.cfcj-fcjc.org/collaborations>>.

<sup>83</sup>See e.g. Trevor C.W. Farrow, “Ethical Lawyering in a Global Community” 2012 Isaac Pitblado Lecture, (2013) 36:1 Man. L.J. 141.

<sup>84</sup>Much of the material in this section of the report is very much influenced by, and in some cases directly draws on, the materials and discussions included in: Action Committee on Access to Justice in Civil and Family Matters, “Report of the Access to Legal Services Working Group”, *supra* note 82.

<sup>85</sup>See e.g. Canadian Bar Association, Envisioning Equal Justice Project, *Equal Justice Report: An Invitation to Envision and Act*, *supra* note 3.

<sup>86</sup>For a useful collection, see Federation of Law Societies of Canada, *Inventory of Access to Legal Services Initiatives of the Law Societies of Canada* (September 2012) at 11, online: FLSC <[http://www.flsc.ca/\\_documents/Inventory-of-Access-to-Legal-AccessLawSocietiesInitiativesSept2012.pdf](http://www.flsc.ca/_documents/Inventory-of-Access-to-Legal-AccessLawSocietiesInitiativesSept2012.pdf)>.

<sup>87</sup>See e.g. Federation of Law Societies of Canada, *Model Code of Professional Conduct* (as amended 12 December 2012) at c. 3.2-1.1. See further the various current limited scope retainer initiatives, including in Ontario and Alberta. The initiative in Alberta, for example, which involves Alberta Justice and Solicitor General, the Law Society of Alberta, Legal Aid Alberta, Pro Bono Law Alberta and the Calgary Legal Guidance Clinic, is a good example of cross sector collaboration and coordination. But see D. James Greiner *et al.*, “The Limits of Unbundled Legal Assistance: A Randomized Study in a Massachusetts District Court and Prospects for the Future” (2013) 126 Harv. L. Rev. 901.

<sup>88</sup>See e.g. Susskind, *The End of Lawyers? Rethinking the Nature of Legal Services*, *supra* note 54 at sec. 7.6.

<sup>89</sup>See e.g. the various paralegal discussions, regulations and innovations in B.C., Alberta, Manitoba, Ontario and Nova Scotia, discussed in Federation of Law Societies of Canada, *Inventory of Access to Legal Services Initiatives of the Law Societies of Canada*, *supra* note 86 at 7-8.

<sup>90</sup>See e.g. *ibid.* at 2-8.

<sup>91</sup>Outsourcing involves a number of initiatives including subcontracting legal work to other domestic or off-shore lawyers and other service providers (often under the supervision of a lawyer). For a discussion of various outsourcing trends, see e.g. Michael D. Greenberg and Geoffrey McGovern, *An Early Assessment of the Civil Justice System After the Financial Crisis: Something Wicked This Way Comes?* (Santa Monica, CA: RAND Corporation, 2012) at 35-36. See further Susskind, *The End of Lawyers? Rethinking the Nature of Legal Services*, *supra* note 54 at sec. 2.5.

<sup>92</sup>See e.g. Federation of Law Societies of Canada, *Inventory of Access to Legal Services Initiatives of the Law Societies of Canada*, *supra* note 86 at 8-10.

<sup>93</sup>See e.g. Law Society of Manitoba, Family Law Access Centre, online: LSM <<http://www.lawsociety.mb.ca/for-the-public/family-law-access-centre>>, which is designed to provide legal services primarily to middle income families. Other options include alternatives to billable hours, competitive tenders, fixed tariffs, etc. See Federation of Law Societies of Canada, *Inventory of Access to Legal Services Initiatives of the Law Societies of Canada*, *ibid.* at 16.

<sup>94</sup>See e.g. various initiatives and programs, including most extensively in Québec and also in B.C. and Ontario, discussed in Federation of Law Societies of Canada, *Inventory of Access to Legal Services Initiatives of the Law Societies of Canada*, *ibid.* at 13.

<sup>95</sup>For a recent discussion of pro bono initiatives and thinking, see Canadian Bar Association, Standing Committee on Access to Justice, “Tension at the Border: Pro Bono and Legal Aid” (Ottawa: Canadian Bar Association, October 2012). See further Lorne Sossin, “The Public Interest, Professionalism, and Pro Bono Publico” (2008) 46 Osgoode Hall L.J. 131; Federation of Law Societies of Canada, *Inventory of Access to Legal Services Initiatives of the Law Societies of Canada*, *ibid.* at 14-16.

<sup>96</sup>See e.g. Law Society of Upper Canada, *Rules of Professional Conduct* (adopted 22 June 2000), rr. 2.04 (15)-(19), which can exempt, for example, short-term pro bono legal advice from typical conflicts of interest rules, which is particularly important for lawyers who practice with larger firms and in institutional settings whose clients may have conflicting interests with those of the clients involved in the short term retainers. This initiative is also a good example of the kinds of collaborations that can occur across sectors of the justice system – in this case with the Law Society of Upper Canada and Pro Bono Law Ontario. See also similar provincial initiatives elsewhere, for example, in B.C. and Alberta.

<sup>97</sup>See e.g. Federation of Law Societies of Canada, *Inventory of Access to Legal Services Initiatives of the Law Societies of Canada*, *supra* note 86 at 16-19.

<sup>98</sup>See e.g. Law Society of Manitoba, Family Law Access Centre, *supra* note 93.

<sup>99</sup>See e.g. *Law Society Act*, R.S.O. 1990, c. L.8 at s. 4.2.

<sup>100</sup>See Trevor C.W. Farrow, “Sustainable Professionalism” (2008) 46 Osgoode Hall L.J. 51 at 96.

<sup>101</sup>See further *infra* note 149 and accompanying text. See generally Farrow, “Sustainable Professionalism”, *ibid.*; Brent Cotter, “Thoughts on a Coordinated and Comprehensive Approach to Access to Justice in Canada” (2012) 63 U.N.B.L.J. 54; Richard Devlin, “Breach of Contract?: The New Economy, Access to Justice and the Ethical Responsibilities of the Legal Profession” (2002) 25 Dal. L.J. 335; Alice Woolley, “Imperfect Duty: Lawyers’ Obligation to Foster Access to Justice” (2008) 45 Alta. L. Rev. 107.

<sup>102</sup>See further *infra* pt.3.B.6.

<sup>103</sup>The specific legal services innovations discussed above, *supra* pt.3.A.2, should be actively considered and implemented by individual lawyers as well as law societies, bar associations and others.

<sup>104</sup>Much of the material in this section of the report is influenced by, and in some cases directly draws on, the materials and discussions included in: Action Committee on Access to Justice in Civil and Family Matters, “Report of the Court Processes Simplification Working Group”, *supra* note 82.

<sup>105</sup>For a more detailed discussion of court-based innovations, see Action Committee on Access to Justice in Civil and Family Matters, “Report of the Court Processes Simplification Working Group”, *ibid.*

<sup>106</sup>As Richard Zorza has argued: “Courts must become institutions that are easy-to-access, regardless of whether the litigant has a lawyer. This can be made possible by the reconsideration and simplification of how the court operates, and by the provision of informational access services and tools to those who must navigate its procedures.” Richard Zorza, “Access to justice: The emerging consensus and some questions and implications” (2011) 94 *Judicature* 156 at 157.

<sup>107</sup>See e.g. American Bar Association, Report of the American Bar Association Working Group on Civil Justice System Proposals, *ABA Blueprint for Improving the Civil Justice System* (Chicago: ABA, 1992) at 36. See further Frank E.A. Sander, “Varieties of Dispute Processing” in A. Leo Levin and Russell R. Wheeler, eds., *The Pound Conference: Perspectives on Justice in the Future* (St. Paul: West, 1979) 65; Jeffrey W. Stempel, “Reflections on Judicial ADR and the Multi-Door Courthouse at Twenty: Fait Accompli, Failed Overture, or Fledgling Adulthood?” (1996) 11 *Ohio St. J. Disp. Resol.* 297.

<sup>108</sup>See Action Committee on Access to Justice in Civil and Family Matters, “Report of the Court Processes Simplification Working Group”, *supra* note 82 at 13-17.

<sup>109</sup>For a detailed discussion of current court-based dispute resolution options, see Action Committee on Access to Justice in Civil and Family Matters, “Report of the Court Processes Simplification Working Group”, *ibid.* at 13-17.

<sup>110</sup>See e.g. Montréal’s Municipal Court, online: <[http://ville.montreal.qc.ca/portal/page?\\_dad=portal&\\_pageid=5977,40497558&\\_schema=PORTAL](http://ville.montreal.qc.ca/portal/page?_dad=portal&_pageid=5977,40497558&_schema=PORTAL)>.

<sup>111</sup>See e.g. the newly developed B.C. Civil Resolution Tribunal, online: <<http://www.ag.gov.bc.ca/legislation/civil-resolution-tribunal-act/>>.

<sup>112</sup>See e.g. Consumer Protection BC, which is an online dispute resolution service for consumer matters (developed in 2011 with funding from the B.C. Ministry of Justice). See Consumer Protection BC, online: <<http://consumerprotectionbc.ca/odr>>.

<sup>113</sup>See e.g. Property Assessment Appeal Board of B.C., online: <<http://www.assessmentappeal.bc.ca/default.aspx>>.

<sup>114</sup>Rt. Hon. the Lord Neuberger of Abbotsbury, quoted in Catherine Baksi, “Neuberger defends judges’ right to speak out on cuts” *The Law Society Gazette* (19 June 2013), online: <[http://www.lawgazette.co.uk/news/neuberger-defends-judges-right-speak-out-cuts?utm\\_source=emailhosts&utm\\_medium=email&utm\\_campaign=GAZ+19/06/2013](http://www.lawgazette.co.uk/news/neuberger-defends-judges-right-speak-out-cuts?utm_source=emailhosts&utm_medium=email&utm_campaign=GAZ+19/06/2013)>.

<sup>115</sup>See e.g. Macfarlane, *The National Self-Represented Litigants Project*, *supra* note 34; Farrow, *Addressing the Needs of Self-Represented Litigants in the Canadian Justice System*, *supra* note 37.

<sup>116</sup>For example, in Québec, the Montréal Bar has prepared a best practices guide for litigation. In Newfoundland and Labrador, there are various booklets available both at the courts and in the Public Legal Information Association’s office on a range of legal topics. In Ontario, the Ministry of the Attorney General has created several self-help guides that clarify procedures under the family court rules. Additionally, LawHelp Ontario (a pro bono Ontario project) provides various information booklets and how-to manuals for self-represented litigants.

<sup>117</sup>In Alberta, for example, Law Information Centres provide information about general court procedures and Family Law Information Centres employ staff members who provide advice regarding family law procedures.

<sup>118</sup>See Action Committee on Access to Justice in Civil and Family Matters, “Report of the Court Processes Simplification Working Group”, *supra* note 82 at 17-19.

<sup>119</sup>See e.g. Court of Queen’s Bench of Alberta, Notice to the Profession, “Case Management Counsel Pilot Project”, NP#2011-03 (30 September 2011), online: Alberta Courts <<http://www.albertacourts.ab.ca/LinkClick.aspx?fileticket=liayJcjYAbI%3D&tabid=92&mid=704>>.

<sup>120</sup>See e.g. the Québec Superior Court initiative that uses a panel of judges who encourage early reconciliation and conciliation and, if necessary, the use of simplified procedures for various matters including latent defects, inheritance issues, property boundary issues, etc.

<sup>121</sup>For examples of jurisdictions with e-filing options, see Superior Court and Court of Appeal in British Columbia, the Court of Appeal in Alberta, the Superior Court in Newfoundland and Labrador (in estate matters), and the Federal Court of Canada.

<sup>122</sup>For example, B.C. Court Services Online is an electronic service that provides electronic searches of court files, online access to daily court lists and e-filing capacity. For its part, the Alberta Court of Appeal has a practice direction that supports e-appeals if both parties consent or if the court makes such an order.

<sup>123</sup>See e.g. the real time court order initiatives in provincial court – civil in Edmonton and Calgary.

<sup>124</sup>See e.g. Alberta Justice and Solicitor General’s Technology Assisted Mediation program, developed in 2009, which parties can now attend via Skype.

<sup>125</sup>See e.g. *Paiva v. Corpening*, 2012 ONCJ 88. See further Justice Québec, “Justice Access Plan”, online: <<http://www.justice.gouv.qc.ca/english/ministre/paj/index.htm>> (last updated 24 April 2012).

<sup>126</sup>For example, the Superior Court in Nova Scotia employs a communications director to answer questions from the general public and the media. Further, the Supreme Court of Canada, for example, is now on Twitter. See Supreme Court of Canada, online: <[http://twitter.com/#!/scc\\_csc](http://twitter.com/#!/scc_csc)>.

<sup>127</sup>See Action Committee on Access to Justice in Civil and Family Matters, “Report of the Court Processes Simplification Working Group”, *supra* note 82 at 19-20. For a discussion on current and future court simplification initiatives in the U.S., see Richard Zorza, “Some First Thoughts on Court Simplification: The Key to Civil Access and Justice Transformation” (2013) 61 Drake U. L. Rev. 845. See generally Trevor C.W. Farrow, *Civil Justice, Privatization and Democracy* (Toronto: University of Toronto Press, forthcoming) at cc. 6-7.

<sup>128</sup>See e.g. Canadian Judicial Council, *Ethical Principles for Judges* (Ottawa: Canadian Judicial Council, 1998), online: CJC <[https://www.cjc-ccm.gc.ca/cmslib/general/news\\_pub\\_judicialconduct\\_Principles\\_en.pdf](https://www.cjc-ccm.gc.ca/cmslib/general/news_pub_judicialconduct_Principles_en.pdf)>.

<sup>129</sup>Much of the material in this section of the report is very much influenced by, and in many cases directly draws on, the materials and discussions included in: Action Committee on Access to Justice in Civil and Family Matters, Family Justice Working Group, “Meaningful Change for Family Justice: Beyond Wise Words”, *supra* note 59.

<sup>130</sup>For general discussions, see *ibid.* See also Law Commission of Ontario, *Towards a More Efficient and Responsive Family Law System*, Interim Report (Toronto: Law Commission of Ontario, February 2012); Law Commission of Ontario, *Increasing Access to Family Justice Through Comprehensive Entry Points and Inclusivity*, Final Report (Toronto: Law Commission of Ontario, February 2013).

<sup>131</sup>See Action Committee on Access to Justice in Civil and Family Matters, Family Justice Working Group, “Meaningful Change for Family Justice: Beyond Wise Words”, *supra* note 59 at 3-4.

<sup>132</sup>See *ibid.* at 36-38.

<sup>133</sup>See *ibid.* at 3.

<sup>134</sup>See *ibid.* at 25-26.

<sup>135</sup>See e.g. *ibid.* at recs. 5, 7, 9, 12 and 17.

<sup>136</sup>See e.g. Canadian Bar Association – B.C., “Best Practice Guidelines for Lawyers Practicing Family Law” (18 June 2011), online: <[http://www.cba.org/bc/bartalk\\_11\\_15/pdf/best\\_practice\\_guidelines.pdf](http://www.cba.org/bc/bartalk_11_15/pdf/best_practice_guidelines.pdf)>.

<sup>137</sup>See Action Committee on Access to Justice in Civil and Family Matters, Family Justice Working Group, “Meaningful Change for Family Justice: Beyond Wise Words”, *supra* note 59 at e.g. recs. 19-27. The Working Group Report sets out a comprehensive list of reform initiatives. Only a few highlights are given here.

<sup>138</sup>See e.g. *ibid.* at recs. 29-31.

<sup>139</sup>See *supra* pt.2.2.

<sup>140</sup>See e.g. Northern Access to Justice Committee, *Final Report* (Saskatchewan: Ministry of Justice and Attorney General, September 2007), online: Government of Saskatchewan <<http://www.justice.gov.sk.ca/Final-Report-Northern-Access-to-Justice.pdf>>. See recently the Law Society of Nunavut’s Territorial Access to Justice Committee, which it started in 2011, discussed further in Federation of Law Societies of Canada, *Inventory of Access to Legal Services Initiatives of the Law Societies of Canada*, *supra* note 86 at 11. See generally Chief Justice Karla M. Gray and Robert Echols, *Mobilizing Judges, Lawyers, and Communities: State Access to Justice Commissions* (Summer 2008) 47:3 Judges’ J.; Access to Justice Partnerships, “State Access to Justice Tools – Access to Justice Checklist” (Washington, National Legal Aid and Defender Association), online: <<http://www.nlada.org/DMS/Documents/1117200283.21/>>.

<sup>141</sup>Examples include judicial associations, court administrators, government departments, public interest groups and advocacy organizations, legal aid plans, community clinics and service providers, civil and family rules committees, libraries and information providers, public legal educators, family law specialists, NGOs, academics and researchers, various cultural communities with particular justice interests and/or challenges, members of the bar, paralegals and other service providers, legal insurers and the like.

<sup>142</sup>See e.g. John P. Kotter, “Accelerate!”, *Harv. Bus. Rev.* (November 2012) 1 at 10. See earlier John P. Kotter, “Leading Change: Why Transformation Efforts Fail”, *Harv. Bus. Rev.* (March-April 1995) 1 at 62-63.

<sup>143</sup>See e.g. Ontario Civil Legal Needs Project, “Listening to Ontarians” and Baxter and Yoon, “The Geography of Civil Legal Services in Ontario”, *supra* notes 33 and 26; Canadian Forum on Civil Justice, *Alberta Legal Services Mapping Project*, *supra* note 76.

<sup>144</sup>See further *infra* note 157.

<sup>145</sup>See e.g. Nova Scotia Barristers' Society, Justice Sector Liaison Committee and Access to Justice Working Group; Law Society of Upper Canada, Access to Justice Committee; Federation of Law Societies of Canada, Standing Committee on Access to Legal Services, etc.

<sup>146</sup>See e.g. Canadian Bar Association, Access to Justice Committee.

<sup>147</sup>An example of an organization that could play this role is the Canadian Forum on Civil Justice, which was created largely for a similar purpose following the Canadian Bar Association's earlier review of Canada's systems of civil justice. See Task Force on Systems of Civil Justice, *Systems of Civil Justice Task Force Report*, *supra* note 46 at 76-78.

<sup>148</sup>For a recent discussion on the importance of national standards for access to justice, see Canadian Bar Association, Standing Committee on Access to Justice, "Toward National Standards for Publicly-Funded Legal Services", *supra* note 39.

<sup>149</sup>For a discussion of this shift in focus, see e.g. Farrow, "Ethical Lawyering in a Global Community", *supra* note 83. For recent national regulatory approaches, see Task Force on the Canadian Common Law Degree, *Final Report* (Ottawa: Federation of Law Societies of Canada, October 2009), online: FLSC <[http://www.flsc.ca/\\_documents/Common-Law-Degree-Report-C\(1\).pdf](http://www.flsc.ca/_documents/Common-Law-Degree-Report-C(1).pdf)>; Common Law Degree Implementation Committee, *Final Report* (Ottawa: Federation of Law Societies of Canada, August 2011), online: FLSC <[http://www.flsc.ca/\\_documents/Implementation-Report-ECC-Aug-2011-R.pdf](http://www.flsc.ca/_documents/Implementation-Report-ECC-Aug-2011-R.pdf)>.

<sup>150</sup>Discussed further *supra* at pt.3.A.4.4.

<sup>151</sup>See e.g. Julie Macfarlane, *The New Lawyer: How Settlement is Transforming the Practice of Law* (Vancouver: UBC Press, 2008) at 224-232; Farrow, "Sustainable Professionalism", *supra* note 100 at 100-102.

<sup>152</sup>See e.g. Farrow, "Ethical Lawyering in a Global Community", *supra* note 83.

<sup>153</sup>See e.g. Law Society of Upper Canada, "Continuing Professional Development Overview", online: LSUC <<http://www.lsuc.on.ca/For-Lawyers/Improve-Your-Practice/Education/Continuing-Professional-Development-Overview/>>, as well as other recent provincial continuing professional development ethics requirements. For a general collection, see Stephen G.A. Pitel and Trevor C.W. Farrow, eds., Special Feature - "Life Long Learning in Professionalism" (2010) 4 Can. Legal Ed. Annual Rev. 1-117.

<sup>154</sup>Farrow, "What is Access to Justice?", *supra* note 41.

<sup>155</sup>See e.g. Law in Action Within Schools, online: LAWS <<http://www.lawinaction.ca/>>.

<sup>156</sup>See further *supra* pt.3.A and *infra* pt.3.C.8. See also Federation of Law Societies of Canada, *Inventory of Access to Legal Services Initiatives of the Law Societies of Canada*, *supra* note 86 at 10-11.

<sup>157</sup>See e.g. HiiL, *Scenarios to 2030: Signposting the legal space for the future* (The Hague: HiiL, 2011); Sam Muller *et al.*, *Innovating Justice: Developing new ways to bring fairness between people* (The Hague: HiiL, 2013). For a recent innovation initiative in Canada, see the Winkler Institute for Dispute Resolution, which is being developed at Osgoode Hall Law School, and which is "devoted to innovation, research, education and the creative practice of methods of dispute resolution through mediation, arbitration and the traditional court system." Winkler Institute for Dispute Resolution, online: <<http://winklerinstitute.ca/>>.

<sup>158</sup>See e.g. Law and Justice Foundation of New South Wales, "What Works?" research program, online: <<http://www.lawfoundation.net.au/ljf/app/&id=7B11620ED3302A0CCA257464001880F4>>. See further Hazel Genn, Martin Partington and Sally Wheeler, *Law in the Real World: Improving Our Understanding of How Law Works*, Final Report and Recommendations (London: Nuffield Foundation, November 2006). An example of this kind of innovative research is the Canadian Forum on Civil Justice multi-year collaborative research project, "**The Cost of Justice: Weighing the Costs of Fair and Effective Resolution to Legal Problems**", *supra* note 17. See further Maurits Barendrecht *et al.*, *Strategies Towards Basic Justice Care for Everyone* (The Hague: HiiL, 2012) at 17.

<sup>159</sup>For a recent discussion on the importance of metrics in the context of access to justice, see Canadian Bar Association, Standing Committee on Access to Justice, “Access to Justice Metrics: A Discussion Paper” (Ottawa: Canadian Bar Association, April 2013). See further Martin Gramatikov *et al.*, *A Handbook for Measuring the Costs and Quality of Access to Justice* (Apeldoorn, The Netherlands: Maklu, 2009).

<sup>160</sup>For a recent study on costs and the civil and family justice system, see Canadian Forum on Civil Justice, “The Cost of Justice: Weighing the Costs of Fair and Effective Resolution to Legal Problems”, *supra* note 17.

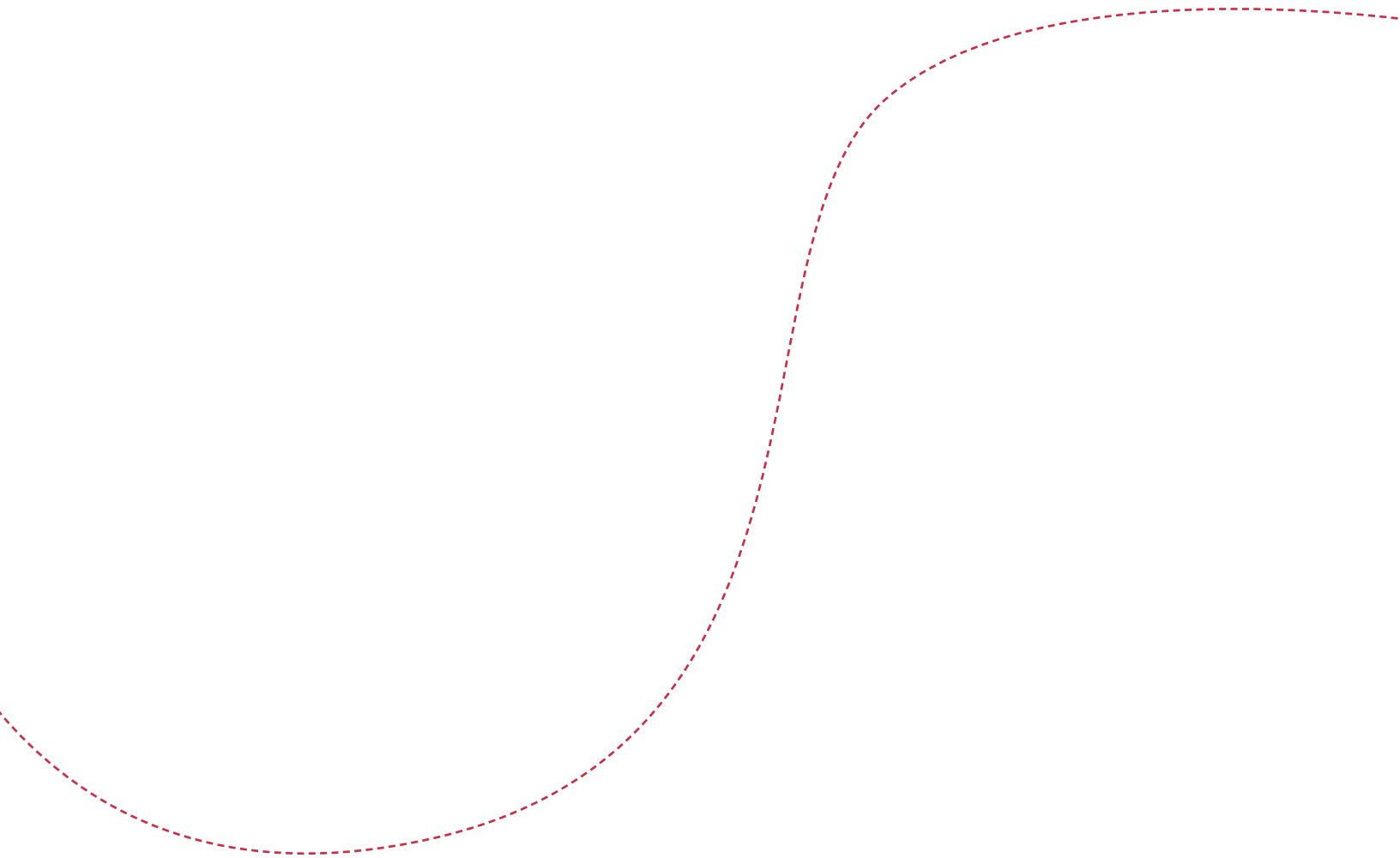
<sup>161</sup>For example, according to one Australian study in the specific context of family cases, legal aid assistance in relation to courts and dispute resolution services demonstrated a positive efficiency benefit for the justice system. Specifically, these benefits reportedly outweighed the costs of providing the services in a range from a return of \$1.60 to \$2.25 for every dollar spent. See PricewaterhouseCoopers, *Economic value of legal aid: Analysis in relation to Commonwealth funded matters with a focus on family law*, *supra* note 29 at ix and c. 5. According to a different U.S.-based study, the return on investment for every \$1 spent on civil legal aid funding was as high as \$6. See Public Welfare Foundation, “Natural Allies: Philanthropy and Civil Legal Aid” (Washington, D.C.: Public Welfare Foundation and the Kresge Foundation, 2013) at 3, online: Public Welfare Foundation <<http://www.publicwelfare.org/NaturalAllies.pdf>> [citation omitted]. See further John Greacen, *The Benefits and Costs of Programs to Assist Self-Represented Litigants, Results from Limited Data Gathering Conducted by Six Trial Courts in California’s San Joaquin Valley*, Final Report (San Francisco: Judicial Council of California, Administrative Office of the Courts, Centre for Families, Children and the Courts, 3 May 2009).

<sup>162</sup>For example, according to a recent U.S. study, money spent on civil legal assistance for protecting against domestic violence had a significant positive protective outcome. It also had a significant collective economic impact, reportedly saving costs for the Interest on Lawyers Account Fund of New York State for medical care, lost wages, police resources, counseling for affected children, etc., in the amounts of \$6 million in 2009 and \$36 million over the years 2005-2009. See the Task Force to Expand Access to Civil Legal Services in New York, *Report to the Chief Judge of the State*

*of New York* (New York: State of New York Unified Court System, 23 November 2010) at 25-26. For other reports, see e.g. Jonah Kushner, *Legal Aid in Illinois: Selected Social and Economic Benefits* (Chicago: Social IMPACT Research Center, May 2012); Laura K. Abel, “Economic Benefits of Civil Legal Aid” (National Center for Access to Justice at Cardozo Law School, 4 September 2012); Laura K. Abel and Susan Vignola, “Economic Benefits Associated with the Provision of Civil Legal Aid” (2010-2011) 9 *Seattle J. Soc. Just.* 139; Maryland Access to Justice Commission, *Economic Impact of Civil Legal Services in Maryland* (Maryland: Access to Justice Commission, 1 January 2013); The Perryman Group, *The Impact of Legal Aid Services on Economic Activity in Texas: An Analysis of Current Efforts and Expansion Potential* (Waco, TX: Perryman Group, February 2009). For a useful discussion of these and other studies, see Canadian Bar Association, Standing Committee on Access to Justice, “Future Directions for Legal Aid Delivery”, *supra* note 78 at 9-11.

<sup>163</sup>The Canadian Forum on Civil Justice, “*The Cost of Justice: Weighing the Costs of Fair and Effective Resolution to Legal Problems*” research project, *supra* note 17, is considering potential allocation issues related to various costs of civil and family justice.

<sup>164</sup>According to Justice Thomas Cromwell, “We have a window of opportunity that comes along quite rarely. Let’s not blow it.” Hon. Thomas A. Cromwell, quoted in Jeremy Hainsworth, “‘Window of opportunity’ closing to fix country’s access to justice” *The Lawyers Weekly* (10 May 2013), online: Lawyers Weekly <<http://www.lawyersweekly.ca/index.php?section=article&articleid=1895>>.



Action Committee on  
Access to Justice in  
Civil and Family Matters