

The Cost of Experiencing Everyday Legal Problems

RELATED TO LOSS OF EMPLOYMENT AND LOSS OF HOUSING



THE COST OF JUSTICE





THE CANADIAN FORUM ON CIVIL JUSTICE is a national not-for-profit organization dedicated to civil justice reform and access to justice research and advocacy. Established by the Canadian Bar Association and affiliated with Osgoode Hall Law School, the CFCJ envisions an accessible, sustainable and effective justice system for all Canadians.

Overview of the Cost of Justice Project

The Cost of Justice project (2011-2018) examines the social and economic costs of Canada's justice system. It is guided by two questions: What is the cost of delivering access to justice? And, what is the cost of not delivering access to justice? Comprised of leading access to justice researchers investigating various dimensions of cost across the country, the Cost of Justice project is producing empirical data that will inform the future of access to justice in Canada and abroad. The lead research team includes: Trevor C.W. Farrow (Principal Investigator), Nicole Aylwin, Les Jacobs and Lisa Moore.

The Cost of Justice project has been commented on by the Chief Justice of Canada, the Right Honourable Beverley McLachlin, P.C., who stated that:

"This research... by the Canadian Forum on Civil Justice will be essential in helping us understand the true extent of the problem of cost and how it impacts on the justice system. I believe that it will prove to be of great assistance to... identify concrete solutions to the problem of access to justice."

— The Right Honourable Beverley McLachlin, P.C. (2011)

The Cost of Justice project is funded by a \$1 million grant from the Social Sciences and Humanities Research Council of Canada. For more details please visit www.cfcj-fcjc.org/cost-of-justice.

Overview of the Everyday Legal Problems and the Cost of Justice

The data from this report was drawn from a nationwide survey with over 3,000 respondents conducted in 2014 as part of the "Everyday Legal Problems and the Cost of Justice in Canada" study.



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THE COST OF EXPERIENCING EVERYDAY LEGAL PROBLEMS RELATED TO LOSS OF EMPLOYMENT AND LOSS OF HOUSING¹

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In 2014, the Canadian Forum on Civil Justice (CFCJ) conducted a national survey to determine the costs, extent and consequences of serious civil and family justice problems experienced by the Canadian public. Findings from the CFCJ's national "Everyday Legal Problems and the Cost of Justice in Canada" survey (Cost of Justice survey) confirm that civil and family legal problems result in significant monetary costs to the individuals who experience them as well as to the publicly funded services that individuals access for support when dealing with legal problems. With Canadians spending almost as much to resolve their legal problems as they do on food for a year,² it is hardly surprising that for many people, the financial burdens associated with experiencing a serious civil or family justice problem cause or contribute to other legal, social, family, health and personal problems. A significant number of Canadians also report losing their job and/or their housing as a direct consequence of one or more legal problems.³

A loss of security through unemployment or a loss of housing is difficult in its own right. Unemployment or a loss of housing due to civil and family justice problems, many of which could

potentially be resolved early on, in cost-effective ways and without serious consequences, is especially troubling.⁴ For Canadians dealing with unplanned unemployment or who lose their residence, there are government-mandated programs in place that can offer some relief. For those who qualify, Employment Insurance (EI) and provincial/territorial housing subsidy programs are available. The importance of accessible and affordable housing for the well-being of Canadians was also recently recognized by the Federal Government.⁵

In Canada, significant financial and other barriers exist that inhibit access to timely and cost-effective legal problem resolution. Insofar as the consequences of this lack of access to justice include job loss and a loss of housing, reducing the number of legal problems that remain unresolved due to inadequate access may result in a drop in the number of Canadians who require Employment Insurance and access to affordable housing programs each year. This report investigates the relationship between everyday legal problems, loss of employment, loss of housing and cost.

¹ This summary report includes some basic research findings. Further reports and materials provide additional details of this research, including the methodology and further analysis of the results. See Trevor C.W. Farrow, Ab Currie, Nicole Aylwin, Les Jacobs, David Northrup and Lisa Moore, *Everyday Legal Problems and the Cost of Justice in Canada: Overview Report* (Toronto: CFCJ, 2016), online: CFCJ <<http://www.cfcj-fcjc.org/sites/default/files/Everyday%20Legal%20Problems%20and%20the%20Cost%20of%20Justice%20in%20Canada%20-%20Overview%20Report.pdf>> [CFCJ, "Overview Report"]; David Northrup, Ab Currie, Trevor C.W. Farrow, Les Jacobs and Nicole Aylwin, *Design and Conduct of the Cost of Justice Survey* (Toronto: Canadian Forum on Civil Justice, 2016), online: CFCJ <<http://www.cfcj-fcjc.org/sites/default/files//Design%20and%20Conduct%20of%20the%20Cost%20of%20Justice%20Survey.pdf>>.

² See CFCJ, "Overview Report", *ibid.* at 14.

³ For a recent discussion on the ancillary, non-legal costs of civil and family justice problems see, "CFCJ Overview Report", *supra* note 1; See further Ab Currie, "Nudging the Paradigm Shift: Everyday Legal Problems in Canada" (Toronto: Canadian Forum on Civil Justice, 2016) at 24-26, online: CFCJ <<http://www.cfcj-fcjc.org/sites/default/files//publications/reports/Nudging%20the%20Paradigm%20Shift%20-%20Everyday%20Legal%20Problems%20in%20Canada%20-%20Ab%20Currie.pdf>>.

⁴ The national Action Committee on Access to Justice in Civil and Family Matter's Roadmap to Change report highlights the importance of investing in the Early Resolution Services Sector (ERSS), where problems can be addressed when and where they occur at a lower cost to justice system users. See Action Committee on Access to Justice in Civil and Family Matters, *Access to Civil & Family Justice: A Roadmap for Change* (Ottawa: Action Committee on Access to Justice in Civil and Family Matters, October 2013) at 11-12, online: CFCJ <http://www.cfcj-fcjc.org/sites/default/files/docs/2013/AC_Report_English_Final.pdf>.

⁵ Peter Zimonjic, "Liberals detail \$40B for 10-year national housing strategy, introduce Canada Housing Benefit," *CBC News* (22 November 2017) online: CBC News <<http://www.cbc.ca/news/politics/housing-national-benefit-1.4413615>>.

Everyday Legal Problems

Findings from the CFCJ's Cost of Justice survey indicate that during a given three-year period 48.4% of Canadians or approximately 11.4 million adults will experience a civil or family justice problem that they consider to be serious or difficult to resolve.⁶ Essentially every Canadian will experience at least one serious, civil or family justice problem during their lifetime.

These legal problems often arise out of normal, "everyday" activities.⁷ They are "everyday" problems that are *justiciable* in that they have a legal aspect and a potential legal solution and, they could conceivably be resolved in the formal legal system, though they may be better dealt with in other ways. Though the legal context of these everyday problems is often missed, everyday legal problems currently account for approximately 35,745,000 separate civil or family justice problems experienced by Canadians within any given three year-period.⁸

A defining feature of the CFCJ's Cost of Justice research is that it looks at legal problems from the point of view of the people experiencing them. Figure I shows the percentage of people experiencing one or more problems in each of the problem types covered by the Cost of Justice survey. Employment problems are the third most frequently experienced everyday

legal problem type with 16.4% of Canadians or an estimated 3,869,398 people experiencing one or more employment problems within a given three-year period. Employment problems include for example, problems obtaining employment insurance benefits, problems getting overtime pay, problems getting vacation pay and issues with being unfairly dismissed from work.⁹

2.5% of adults in Canada or approximately 584,198 people experience one or more housing related problems during the course of a given three-year period. Housing problems include (but aren't limited to): arbitrary changes to rent, problems getting a rent deposit back, problems with a lease or the absence of a lease and problems with a foreclosure or mortgage.¹⁰

Outside of these two problem types, there are fifteen other everyday legal problem types that Canadians reported on in the Cost of Justice survey. Consumer and debt problems at 22.6% and 20.8% respectively are the most common problem types. In terms of population estimates, approximately 5,328,257 people grapple with one or more consumer-related problems and approximately 4,902,209 people experience one or more debt-related problems within any given three-year period in Canada.

⁶ See CFCJ, "Overview Report", *supra* note 1 at 2-6.

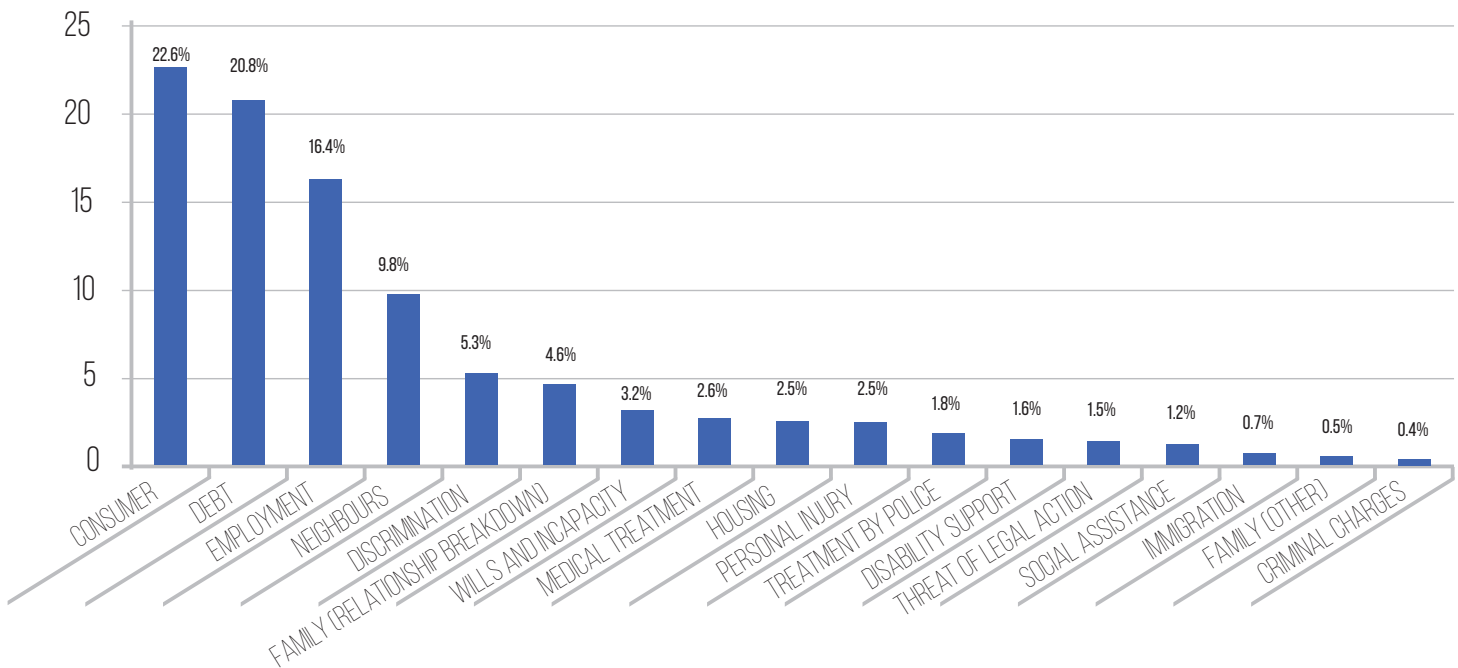
⁷ As Hazel Genn describes it in her seminal *Paths to Justice Study*: an everyday legal problem can be characterized as, "a matter experienced by a respondent which raise[s] legal issues, whether or not it was recognized by the respondent as being 'legal' and whether or not any action taken by the respondent to deal with the event involved the use of any part of the civil justice system." Hazel Genn, *Paths to Justice: What People Do and Think about Going to Law* (Oxford: Hart, 1999) at 12.

⁸ CFCJ, "Overview Report", *supra* note 1 at 7.

⁹ For more on the types of employment problems experienced by the Canadian public and their frequency, see: Canadian Forum on Civil Justice, *Everyday Legal Problems and the Cost of Justice in Canada: Employment Problems fact sheet* (Toronto: Canadian Forum on Civil Justice, 2016), online: CFCJ <<http://cfcj-fcjc.org/sites/default/files//docs/misc/04%20-%20Employment%20Problems%20-%20Everyday%20Legal%20Problems%20and%20the%20Cost%20of%20Justice%20in%20Canada.pdf>>.

¹⁰ For more on the types of housing problems experienced by the Canadian public and their frequency, see: Canadian Forum on Civil Justice, *Everyday Legal Problems and the Cost of Justice in Canada: Housing Problems fact sheet* (Toronto: Canadian Forum on Civil Justice, 2016), online: CFCJ <<http://cfcj-fcjc.org/sites/default/files//docs/misc/07%20-%20Housing%20Problems%20-%20Everyday%20Legal%20Problems%20and%20the%20Cost%20of%20Justice%20in%20Canada.pdf>>.

FIGURE I: PERCENTAGE OF PEOPLE EXPERIENCING ONE OR MORE LEGAL PROBLEMS WITHIN PROBLEM TYPES ¹¹



Cost of Everyday Legal Problems

The costs of everyday legal problems often extend beyond the monetary costs that are borne by people attempting to resolve these problems. Findings from the CFCJ’s Cost of Justice survey also confirm that experiences of serious civil and family justice problems result in high levels of stress, physical health problems, emotional problems, strains on family and personal relationships and social problems.¹² A portion of the financial, health, social and personal costs associated with everyday legal problems are passed on to the state in the form

of increased demand for publicly funded services such as health care, social assistance and housing subsidy programs.¹³ Similarly, as a direct consequence of everyday legal problems, some Canadians also report accessing personal insurance or government mandated insurance programs (such as Employment Insurance) for support. The private sector is also affected by legal problem experiences through a loss of productivity.

¹¹Figure I presents 2 categories of family problems. 4.6% of Canadians experience family problems related to relationship breakdown. 0.5% of Canadians experience “family (other)” problems that involve child-related matters, including custody, guardianship, and education related issues.

¹²See, CFCJ, “Overview Report”, *supra* note 1 at 16-19.

¹³Publicly funded social assistance programs differ from employment insurance programs to which working Canadians contribute. Everyday legal problems and their relation to social assistance is dealt with in a separate report.

Employment Insurance (EI)

Canadians and Canadian residents who contribute to the government-mandated Employment Insurance (EI) program while they are employed may be eligible to access payments from the program in the event of job loss or time off from work. Eligibility is determined by a combination of factors, including: the duration of contributions to the program, the reason for unemployment and length of unemployment.¹⁴ For people who qualify, the Employment Insurance program (which differs from publicly-funded social assistance programs) offers short-term financial assistance which is based, in part, on previous income earnings. The Canada Employment Insurance Commission (CEIC) manages and monitors Canada's Employment Insurance program, including setting contribution rates. For 2018, the rate is set at \$1.66 per \$100 of insurable earnings with Maximum Insurable Earnings (MIE) set at \$51,700.¹⁵ For most people who receive Employment Insurance, the amount that they receive is 55% of their average insurable weekly income up to \$51,700. The maximum amount individuals will be able to receive in 2018 is \$547 per week.¹⁶

Loss Of Employment, Employment Insurance And Everyday Legal Problems

Of the more than 3.8 million people in Canada who experience legal problems related to employment issues, approximately 754,842 of these problems stem from being unfairly fired or

dismissed from a job. Further, as data from the Cost of Justice survey confirms, job loss is also often triggered by other types of legal problems or is the result of issues tied to multiple legal problems, whether or not those problems are work-related.

Within a given three-year period, serious civil and family justice problems will cause or contribute to a loss of employment for an estimated 8.4% of adults in Canada.¹⁷ This is equivalent to approximately 932,416 people. Based on the results of the Cost of Justice survey, of these individuals, approximately 310,805 reported going on Employment Insurance. For Canadians who lose their job as a consequence of an everyday legal problem, the length of time that they spend receiving Employment Insurance also varies. Approximately 1.3% of respondents reported receiving income support from Employment Insurance for up to six weeks, approximately 3.9% reported receiving Employment Insurance for 52 weeks and approximately 2.7% reported receiving Employment Insurance for more than 52 weeks (see Table I). The largest group – an estimated 10.7% of people who reported going on Employment Insurance—spent 12 weeks receiving support through the program. The average number of weeks that respondents reported that they spent on Employment Insurance because of job loss from a legal problem was 21.6 weeks and the average amount that Cost of Justice survey respondents said that they received per week was \$384.¹⁸

¹⁴ Other requirements include: proof that you are actively looking for a job, ability and willingness to work. Eligibility requirements may also be determined by job category. Separate eligibility requirements exist for: farmers, fishers, teachers, Canadian Force Members, self-employed people and residents outside of Canada. See Government of Canada, *EI Regular Benefits – Eligibility*, online: Government of Canada <<https://www.canada.ca/en/services/benefits/ei/ei-regu-lar-benefit/eligibility.html>>.

¹⁵ These rates represent an increase from 2017 rates. See Government of Canada, "Canada Employment Insurance Commission announces 2018 Employment Insurance premium rate and maximum insurable earnings: News Release" (14 September 2017), online: Government of Canada <https://www.canada.ca/en/employment-social-development/news/2017/09/canada_employmentinsurancecommissionannounces2018employmentinsur.html>. (The Canada Employment Insurance Commission (CEIC) also manages Quebec's Parental Insurance Plan (QPIP), which is a separate insurance scheme offered to residents of Quebec.)

¹⁶ See, Government of Canada, *Employment Insurance - important notice about maximum insurable earnings for 2018*, online: Government of Canada <<https://www.canada.ca/en/employment-social-development/programs/ei/ei-list/ei-employers/2018-maximum-insurable-earnings.html?wbdisable=true>>.

¹⁷ In Ab Currie's "Nudging the Paradigm" shift paper, the percentage of Canadians who experience a loss of employment because of everyday legal problems is approximately 1 percentage point higher. The difference is related to different sample sizes – In Nudging the Paradigm Shift, that percentage is based on 3,263 survey respondents – cell phone and landline respondents. Data in this paper is based on 3,051 survey respondents and excludes the 212 cell phone respondents. For more information on the Cost of Justice respondent populations, see, David Northrup *et al.*, *Design and Conduct of the Cost of Justice Survey*, *supra* note 1.

¹⁸ CFCJ, "Overview Report", *supra* note 1 at 17.

Table I: NUMBER OF WEEKS ON EMPLOYMENT INSURANCE RELATED TO EVERYDAY LEGAL PROBLEMS AND PERCENTAGE OF PEOPLE

NUMBER OF WEEKS	PERCENTAGE OF RESPONDENTS RECEIVING EMPLOYMENT INSURANCE RELATED TO EVERYDAY LEGAL PROBLEMS
6	1.3%
8	3.4%
10	1.9%
12	10.7%
13	3.4%
15	5.9%
16	3.0%
18	5.9%
20	7.5%
23	2.5%
24	1.6%
30	2.4%
32	1.7%
38	6.5%
40	1.7%
42	9.5%
48	3.0%
52	3.9%
More than 52 weeks	2.7%
Not sure	21.5%
Total	100.0%

Based on these amounts, it is estimated that job loss caused by civil and family justice problems accounts for an estimated \$450 million in annual spending on Employment Insurance.¹⁹

Loss of Housing and Everyday Legal Problems

There are several federal, provincial/territorial and municipal affordable housing programs that aim to protect and support Canadians experiencing financial difficulties or whose income is not sufficient to cover their housing costs. Governments also make contributions to rent assistance and social housing programs.

In Canada, an estimated 235,000 people experience homelessness each year.²⁰ Findings from the CFCJ's Cost of Justice survey highlight the magnitude of the contribution that serious legal problems make to this problem. While the figures from the CFCJ survey include respondents who live with friends and relatives after they lose their place of residence and not solely people who live in shelters or subsidized housing, the seriousness of a loss of housing, as it relates to legal problems, should not be downplayed.

Based on findings from the CFCJ's Cost of Justice survey, an estimated 100,839 people lose their housing every year as a result of one or more serious everyday legal problems. Of these Canadians, 41.0% live with friends or relatives after they lose their housing, 53.0% reported a combination of other living arrangements and 5.7% lived in emergency housing, such as shelters. The number of weeks that respondents said that they were without their own place of residence varied (see Table II). Approximately 22.8% were without a home for less than 4 weeks while 11.3% reported that they were without a home for 52 weeks or longer.

¹⁹ *Ibid.*

²⁰ Stephen Gaetz, Erin Dej, Tim Richter and Melanie Redman, *The State of Homelessness in Canada 2016* (Toronto: Canadian Observatory on Homelessness, 2016) at 5, online: The Homeless Hub <http://homelesshub.ca/sites/default/files/SOHC16_final_20Oct2016.pdf>.

Table II: NUMBER OF WEEKS WITHOUT PERMANENT HOUSING RELATED TO EVERYDAY LEGAL PROBLEMS AND PERCENTAGE OF PEOPLE

NUMBER OF WEEKS	PERCENTAGE OF RESPONDENTS WITHOUT PERMANENT HOUSING RELATED TO EVERYDAY LEGAL PROBLEMS
Less than 4	22.8%
4	6.8%
6	3.5%
12	13.2%
14	4.1%
16	4.5%
18	2.8%
52	11.3%
Not Sure	31.0%
Total	100.0%

Costs to the State

Over the three-year reference period of the Cost of Justice study almost a million people lost their employment because of a legal problem that they had experienced and over 300,000 people lost their housing. The cost of legal problems in terms of loss of security of the person weighs upon both individuals and families. Based on the survey data, we were not able to calculate the actual financial cost to the state related to a loss of permanent housing related to everyday legal problems. However, based on what we do know, that cost is significant - for both individuals and the state. It is also an important area for further research and attention.

Conclusion

This brief analysis provides a clear indication that the cost of a lack of access to justice is greater than one might suspect. One of the findings of the contemporary body of legal problems research is the ubiquitous nature of legal problems. The very high prevalence of legal problems experienced by the public has, until recently, been hidden by the predominant paradigm of access to justice that to a large extent acknowledged legal problems only as those attracting the interest of lawyers and coming to the attention of the courts. As the public's experiences with everyday legal problems becomes more widely accepted and increasingly informs public knowledge, it has become more clear that the very high prevalence of legal problems has a range of serious, personal consequences and is also a powerful engine that can drive the costs of a lack of access to justice to surprising levels.

While the data from the CFCJ's survey of legal problems cannot tell us the extent to which everyday problems can be prevented or whether early intervention might resolve problems before they result in consequences as serious to individuals as loss of employment or loss of housing, the results of the CFCJ's legal problems research clearly point to the value of continued action-oriented research building on these results to determine what would work, to what extent and at what cost.