

The Cost of Experiencing Everyday Legal Problems

RELATED TO SOCIAL ASSISTANCE



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.



Social Sciences and Humanities
Research Council of Canada

Conseil de recherches en
sciences humaines du Canada

Canada

THE COST OF EXPERIENCING EVERYDAY LEGAL PROBLEMS RELATED TO SOCIAL ASSISTANCE¹

BY LISA MOORE, AB CURRIE, NICOLE AYLWIN, TREVOR C.W. FARROW, QUINLIN GILBERT-WALTERS AND PAUL DI LIBERO

Introduction

Experiencing a civil or family justice problem in Canada can come at a significant price. Outside of the monetary legal costs that Canadians incur when trying to resolve serious civil and family justice problems, many Canadians also pay for legal problems with high stress, emotional health problems and physical health problems. In addition, serious civil and family justice problems have also been shown to cause or exacerbate other family, personal and social problems and result in significant temporal costs that often come in the form of lost opportunity, reduced productivity, and reduced time and energy for building and maintaining family and social relationships.² For Canadians with limited resources or whose location and or circumstances create additional obstacles to access information or assistance to resolve their legal problems,

the cascade effect of these interconnected family, personal and social problems are especially onerous and can lead to social exclusion.³

For some Canadians, one of the direct outcomes of experiencing one or more difficult-to-resolve civil or family justice problems is that they will fall on hard times. In some instances, that may even mean having to resort to the publically funded social assistance program for help to mitigate financial problems that arise as a result of legal problems. Using results from the “Everyday Legal Problems and the Cost of Justice in Canada” study,⁴ this summary report will examine the relationship between social assistance and everyday legal problems.

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) at 9, 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 For a more detailed discussion on temporal costs related to civil and family justice problems, see Noel Semple, “The Cost of Seeking Civil Justice in Canada” (2015) 93 Can. Bar Rev. 639 at 660 -662.

³ See e.g. Ab Currie, *The Legal Problems of Everyday Life: The Nature, Extent and Consequences of Justiciable Problems Experienced by Canadians*, by Ab Currie (Ottawa: Justice Canada, 2009) at 44.

⁴ For an overview of the results of the Cost of Justice survey see, CFCJ, “Overview Report”, *supra* note 1.

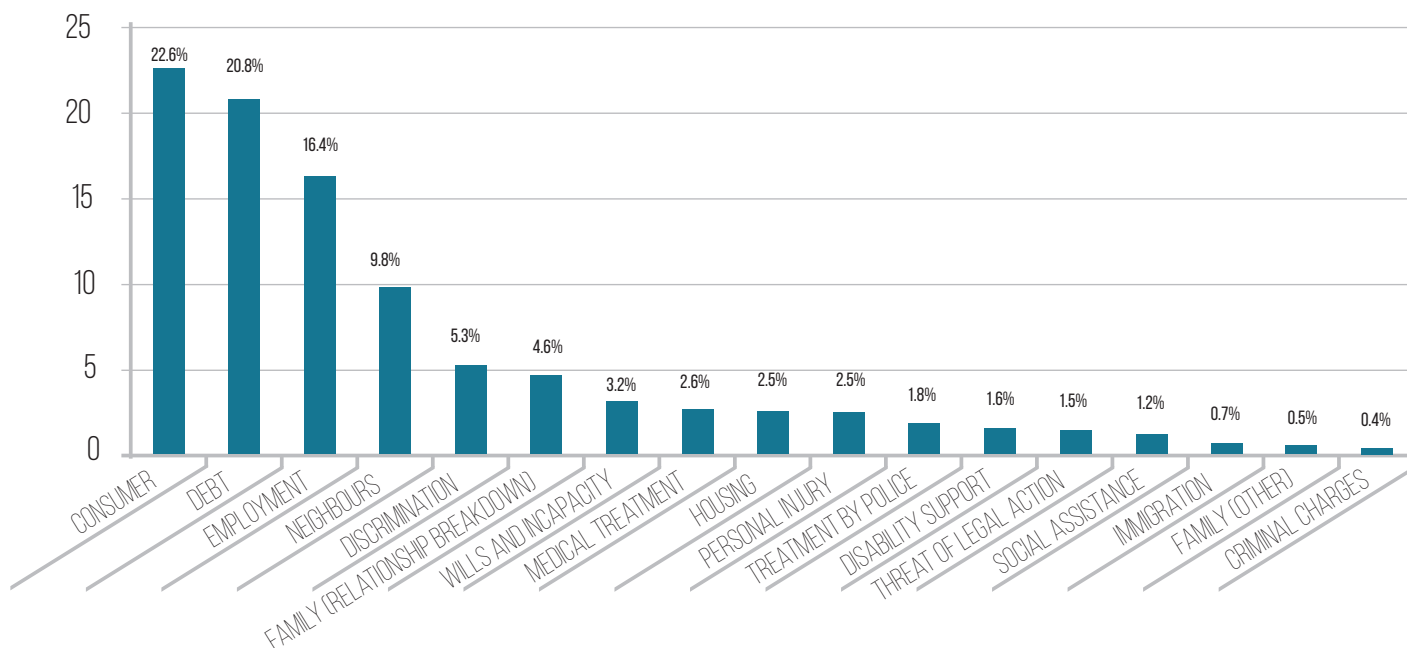
Everyday Legal Problems

An everyday legal problem is a problem arising out of life's normal, "everyday" activities that has a legal aspect and a potential legal solution. These non-criminal problems are therefore justiciable, and could be resolved within the formal legal system although they may be more reasonably dealt with in other ways⁵.

The results of the "Everyday Legal Problems and the Cost of Justice in Canada" survey (Cost of Justice survey),⁶ conducted

by the Canadian Forum on Civil Justice (CFCJ) in 2014 indicate that within a three-year period 48.4% of Canadians 18 years of age or older will experience one or more everyday legal problems that are deemed to be serious or difficult to resolve.⁷ This is an estimated 11.4 million people. There are several types of everyday legal problems (see Figure I), and Canadian adults often experience more than one problem, as well as more than one problem type during their lifetime. Of the seventeen everyday legal problem types identified in the Cost of Justice survey, consumer, debt, employment and neighbour problems rank as the most common types of everyday legal problems experienced by Canadians.

Figure I: PERCENTAGE OF PEOPLE EXPERIENCING ONE OR MORE LEGAL PROBLEMS WITHIN PROBLEM TYPES⁸



⁵ This approach follows the definition of a justiciable event developed by Hazel Genn in her landmark *Paths to Justice* study. Genn explains that a justiciable event is "a matter experienced by a respondent which raised 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.

⁶ For a detailed discussion of the analysis of the Cost of Justice survey data see David Northrup, et al., *Design and Conduct of the Cost of Justice Survey*, *supra* note 1.

⁷ See CFCJ, "Overview Report", *supra* note 1 at 2.

⁸ Figure 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.

In terms of the number of everyday legal problems experienced by Canadian adults, approximately 4,376,784 people will experience one serious civil or family justice problem during a three-year period. Approximately 2,291,551 people will experience two problems and an estimated 3,875,221 adults in Canada will experience between 3 and 7 problems. In keeping with previous legal problems surveys, Cost of Justice survey respondents were asked follow-up questions related to problem resolution and the consequences of their legal problems for up to seven problems that they experienced.⁹

Of the Canadians who experience up to seven problems within a given 3-year period, an estimated 6.7% bring their problem(s) to the attention of our formal court system.

Costs of Everyday Legal Problems

For many people, experiencing a serious civil or family justice problem disrupts their daily life. Most Canadians recognize the importance of resolving their legal problems and they try to do something about these problems, through the formal legal system or in other ways. From the point of view of the people experiencing legal problems, 73.2% said that it was important for them to resolve their first legal problem,¹⁰ and a further 87.2% said that it was important for them to resolve the second problem that they experienced during the three-year reference period of the survey. Furthermore, with respect to their first and second legal problems within three years, an estimated 43.2% of people said that the problem(s) made it difficult for them to carry on with their normal life.

While most people would like to resolve their legal problems and return to normal life, attempting to resolve serious civil or family justice problems often comes with significant (and sometimes unaffordable) monetary costs. An estimated 42.9%

of people spend some money attempting to resolve their legal problems and, depending on the problem, this can range from several hundred dollars to tens of thousands of dollars. The average amount that Canadians report that they spend on their legal problems is \$6,100.¹¹ For many Canadians, these costs are simply more than they can afford.

The costs of everyday legal problems also often extend beyond financial burdens and can include: high levels of stress, emotional problems, strains on relationships, loss of employment and even loss of housing. A portion of these costs are passed on to the state in the form of increased demand for publicly funded services. Health care, housing subsidies and social assistance are examples of taxpayer-supported services that may be affected by increased costs as a result of justiciable problem experiences.

⁹ See Ab Currie, "A National Survey of the Civil Justice Problems of Low and Moderate Income Canadians: Incidence and Patterns" (2006) Vol. 13, No. 3 International J of the Legal Professions presents the results of a 2004 Canadian survey of legal problems; See also Ab Currie, "The Legal Problems of Everyday Life: The Nature, Extent and Consequences of Justiciable Problems Experienced by Canadians" (Ottawa: Justice Canada, 2009); Ab Currie, "Lives of Trouble: Criminal Offending and the Problems of Everyday Life," paper presented at the International Legal Aid Group Conference, Wellington April, 2010.

¹⁰ Respondents who experienced up to seven serious civil and/or family justice problems during the 3-year reference period of the Cost of Justice in Canada Survey were asked how important it was for them to resolve their legal problem(s). In the Cost of Justice survey, this is question status_10. See Canadian Forum on Civil Justice, *Everyday Legal Problems and the Cost of Justice in Canada: Survey* (Toronto: CFCJ, 2016) at 21, online: CFCJ < <http://www.cfcj-fcjc.org/sites/default/files//Everyday%20Legal%20Problems%20and%20the%20Cost%20of%20Justice%20in%20Canada%20-%20Survey.pdf>>.

¹¹ See Trevor C.W. Farrow et al., CFCJ, "Overview Report", *supra* note 1 at 13.

Social Assistance

Canada's Social Assistance programs¹² provide support for individuals and families who are unable to meet their basic living needs.¹³ Federal, provincial and territorial governments contribute funding for the administration of the various jurisdictional social assistance programs. As such, the amounts allocated for social assistance in each province and territory vary. In addition, while social assistance exists to support people in financial need, among provinces and territories there are also differences in how that need is determined and the entitled amounts. Generally, eligibility for social assistance is based on a combination of factors including, age, income, financial resources, disability and/or employability and household situation.

The 2017-18 federal budget lists the Canada Social Transfer¹⁴ total, which includes federal contributions to provinces and territories for social assistance, in addition to contributions for several other social services programs, at \$13.7 billion.

The number of people receiving social assistance by province/territory differs. A 2016 Report detailing recipient populations by province/territory suggests a range from 1,074 people in one territory up to 460,100 people¹⁵ in one of the provinces. In addition to social assistance, provinces and territories offer a combination of other programs aimed at curtailing financial hardships, including child benefit programs and disability support.

For many, the need for support from social assistance or other social service programs is a culmination of multiple, difficult or crippling problems, financial and other. To the extent that the need for social assistance can arise as a direct result of one or more serious civil or family justice problems, the importance of implementing strategies and tools for timely, cost-effective legal problem resolution is thrown into sharper relief.

¹² Social Assistance is referred to by different names including, Income Assistance, Welfare, Income support, Transitional Assistance and Last-Resort Financial Assistance. See for example, Federal-Provincial-Territorial (FPT) Directors of Income Support *Social Assistance Statistical Report 2009-13*, (Federal-Provincial-Territorial Directors of Income Support, 2016) at 5, online: Government of Canada <http://publications.gc.ca/collections/collection_2017/edsc-esdc/HS25-2-2013-eng.pdf>.

¹³ Social Assistance is a publicly funded program that offers financial assistance to Canadians who are otherwise unable to financially support themselves or their families. Social Assistance is separate from Employment Insurance (which is discussed in a separate Cost of Justice report). Employment Insurance is not included in the Social Assistance figures presented in this paper.

¹⁴ The definition of the Canada Social Transfer program in the 2017-18 federal budget is a "federal transfer to provinces and territories that supports: social assistance and social services, post-secondary education and programs for children". Treasury Board of Canada *2017-18 Estimates Parts I and II The Government Expenditure Plan and Main Estimates* (Treasury Board of Canada, 2017) at page I-6, online: Government of Canada <<https://www.canada.ca/content/dam/canada/tbs-sct/migration/hgw-cgf/finances/pgs-pdg/gepme-pdgbpd/20172018/me-bpd-eng.pdf>>.

¹⁵ *The Social Assistance Statistical Report 2009-13* indicates that in 2013 there were 1,074 recipients in the Yukon Social Assistance program. In Ontario, during the same year 460,100 people were recipients under the Ontario Works program. A further 427,100 people received support in 2013 under Ontario's Disability Support Program. *Social Assistance Statistical Report: 2009-2013*, *supra* note 11.

Social Assistance and Everyday Legal Problems

Social Assistance Cases

Within a given three-year period, an estimated 1.2% of Canadians will experience one or more legal problems in accessing or obtaining social assistance benefits. That is to say, for approximately 282,610 adults their legal problems or disputes are related to difficulties obtaining social assistance or with the amount of social assistance that they receive. Table I indicates the numbers of social assistance legal problems

experienced by Canadians within a given three-year period, and the corresponding population and percentage estimates. Table II provides a further breakdown of experiences of social assistance legal problems among this 1.2% of adults in Canada, based on 4 demographic characteristics: Age, Gender, Education and Place of Birth.

Table I: NUMBER OF EVERYDAY SOCIAL ASSISTANCE PROBLEMS EXPERIENCED AND THE CORRESPONDING POPULATION AND PERCENTAGE ESTIMATES

NUMBER OF SOCIAL ASSISTANCE LEGAL PROBLEMS	POPULATION ESTIMATES
1	207,142
2	62,835
3	12,633
NUMBER OF SOCIAL ASSISTANCE LEGAL PROBLEMS	PERCENTAGE ESTIMATES
1	0.9%
2	0.25%
3	0.05%

Table II: PERCENTAGE OF PEOPLE EXPERIENCING SOCIAL ASSISTANCE LEGAL PROBLEMS WITHIN DEMOGRAPHIC GROUPS

AGE		GENDER		EDUCATION		BORN IN CANADA	
18 - 40	1.3%	Female	0.8%	High School or Less	1.3%	Born in Canada	1.2%
41 - 54	1.1%	Male	1.7%	Post High School, No Degree	1.4%	Not Born in Canada	1.1%
55 - 65	1.0%			Degree(s)	0.9%		
66 and older	1.4%						

Social Assistance and Everyday Legal Problems

Other Civil and Family Cases

Aside from these everyday social assistance problems, and within the same three-year reference period, approximately 2.1% of Canadians access social assistance as a result of experiencing everyday legal problems. In absolute terms, this

amounts to a further 238,102 Canadians who will seek out social assistance support because of their experiences dealing with a civil or family justice problems. For these Canadians, experiencing one or more legal problems results in impactful

changes to their financial stability and security. In cases where individuals do not seek support through the Social Assistance program, the profound impacts of their legal problems are often still felt through serious physical health, emotional health, social, personal and other financial problems.

In time, these additional problems could also result in a need for social assistance. Further, findings from the Cost of Justice survey indicate that the gravity of the everyday legal problems that people experience and their profound effects on the lives of Canadians often begin from the first problem. As a result of only one serious everyday legal problem experienced within a three-year period, an estimated 164,994 adults in Canada will require social assistance

Alarming, the survey results also indicates that at least one fifth of the respondents who received social assistance experienced further legal problems as a result of applying for, or retaining social assistance. Accruing further legal problems in such a position will likely increase the difficulty of returning to the workforce and also result in other social, health and personal problems.

Conclusion

Everyday legal problems can be costly. As this report suggests, justiciable problems, whether they are recognized as legal or not, can have an adverse effect on the autonomy and stability of Canadians who would otherwise play a contributory role in the workforce. The resulting increase in related social assistance expenditures are substantial and difficult to ignore from a fiscal perspective, but the personal and social costs that accompany these already difficult legal situations are equally disconcerting. Being in a position where collecting social assistance becomes a necessity is certainly not an enviable situation; the process can be embarrassing, and payments are far from wage-earning equivalencies.

Fortunately, understanding that legal problems may lead to additional requests for social assistance support provides us with an intervention opportunity. Helping Canadians to identify and manage everyday legal problems effectively could greatly improve their economic stability, security, and self-reliance.

Costs to The State of Additional Social Assistance Payments Related to Everyday Legal Problems

Diffusing, preventing, or offering more support for the types of everyday legal problems that lead to the collection of social assistance would ease public expenditure. Of the estimated 238,102 individuals predicted to have received social assistance during the three-year period of the Cost of Justice survey, the average number of weeks on social assistance was 34, and the average payment per week ranged from \$200 to \$560.¹⁶ Weighted to the Canadian population as a whole, it is estimated that public purse social assistance expenditures resulting from everyday legal problems cost an additional \$745 million over a three-year period, or \$248 million annually.

¹⁶ The total amount of payments that respondents received over the three-year period ranged from \$1,800 - \$29,100, with an average of \$8,672.