

**The Challenge of
Access to Justice**
Innovative solutions to
old problems?

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Dean UCL Laws
Access to Justice Colloquium
Toronto
27-28 January 2014



The Challenge: Similarities between Canada and UK



- **Similarity in context**
 - Constrained resources
- **Similarity in starting point**
 - Understanding of everyday legal needs
- **Similarity in approach**
 - Holistic and integrated
 - Understanding of broad DR landscape
- **Similarity in solutions**
 - Prevent and avoid
 - Educate and equip
 - Innovation in advice delivery

UK Context- LASPO 2012

“Legal Aid in its current form is no longer sustainable if the government is to reduce debt”



Justice Minister waving goodbye to civil legal aid?

Impact of LASPO on legal advice

- High street solicitors closing
- Advice agencies cutting services
- Advice agency workers being made redundant

Choice for those without advice

1. Do nothing (“lump it”)

OR

2. Do-it-yourself





BIRMINGHAM LAW CENTRE
Supporting the weak, justice

RIGHTS
AL JUSTICE
LE WHO ARE
NERABLE
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Health
Care
Court
Grants
Workers'
Fund
Services

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the public service union
SAVE
BIRMINGHAM
LAW CENTRE

UNISON
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UNISON
the public service union
SAVE Birmingham
LAW CENTRE
JUSTICE FOR ALL

UNISON campaigning
for a fairer society

Birmingham
the CAS
against

**SAVE
BIRMINGHAM
LAW CENTRE**

Civil Justice Council 2011

Access to Justice for Litigants in Person

- Serious consequences of loss of legal aid
- Disproportionately adverse effect on the most vulnerable in our society

“Those who cannot afford legal services and those for whom the state will not provide legal aid comprise the larger part of the population of England and Wales. Most members of the public who become involved in legal proceedings will have to represent themselves.”

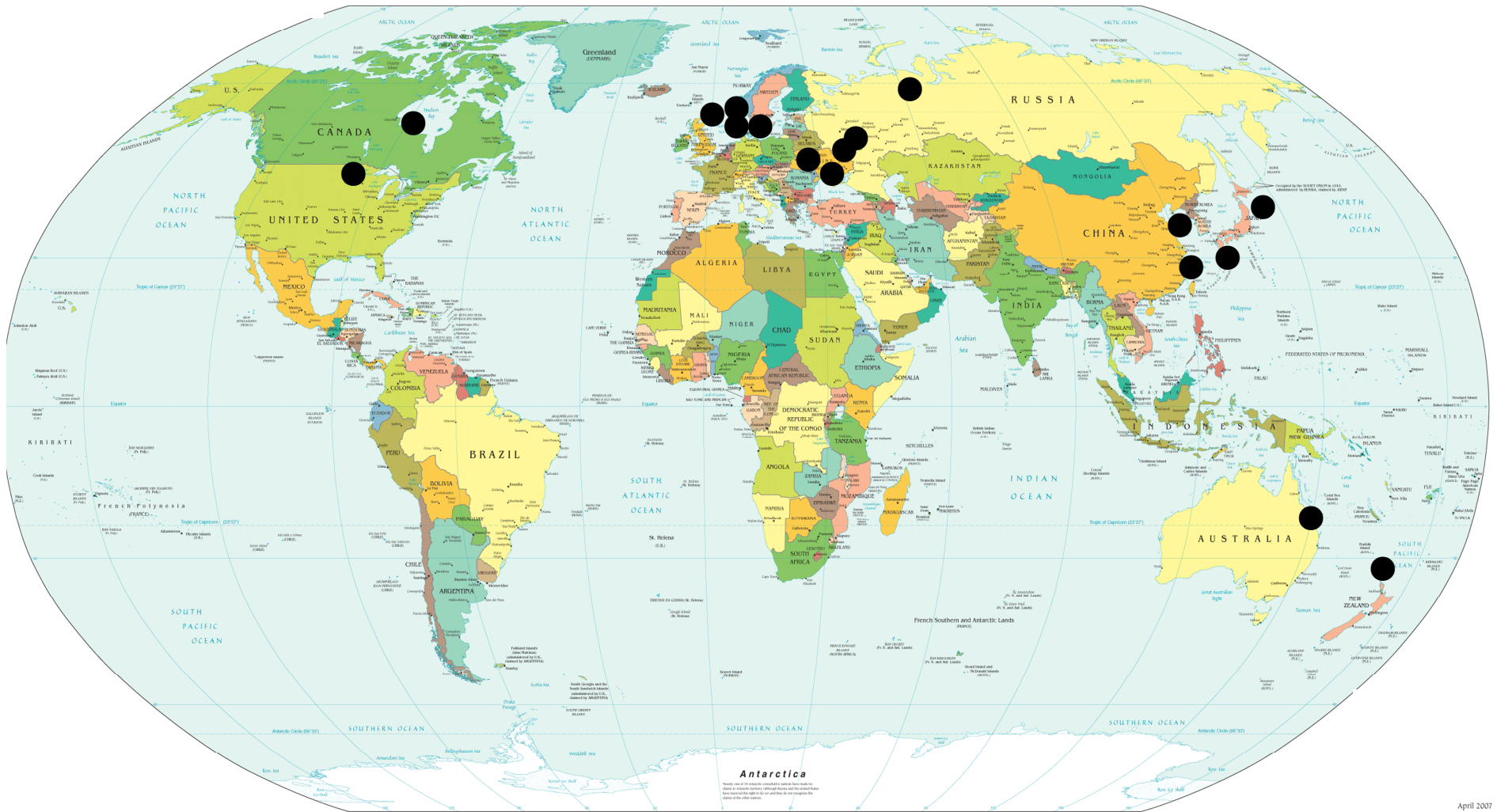
Lord Thomas LCJ

October 2013

- Growth in number of LIPs
“one of 10 most significant issues for justice system”
- Consequence of reduction in legal aid and cost of litigation
- Increase having significant impact on the courts – especially county courts and family court
- Global phenomenon



What do we know about access?



April 2007

Over the past two decades at least 26 large-scale national 'legal need' surveys in 15 jurisdictions

What have we learned?

- Justiciable problems are ubiquitous
- Problems tend to cluster and cascade
- Disadvantaged have more and do less
- People often take the wrong 'path'
- **Unmet need for information and advice**

Barriers to Advice and Representation

- Cost
- Insufficient free advice
- Going to the wrong place



Social and health effects of unresolved justiciable problems

- Family break-up
- Unemployment and loss of income
- Mental and physical ill-health



Broader implications

- Justice system often cleans up the mess from poor decisions elsewhere
- Unresolved justiciable problems lead to pressure on other services
 - Does that person need expensive anti-depressants or do they need to sort out the problem with their landlord?
- Downstream cost of unresolved problems points to need for improved access to justice

How should we be meeting
access to justice needs?



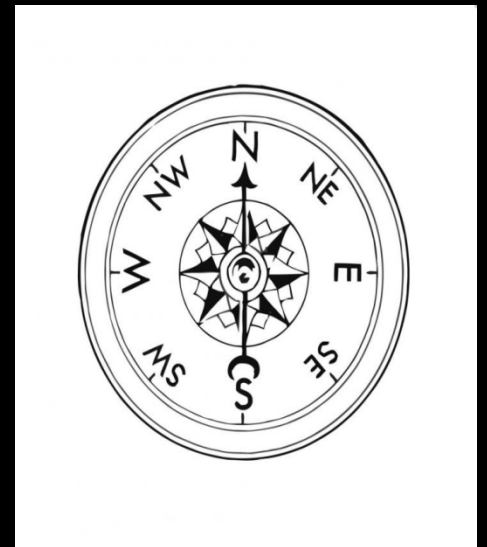
Fundamentals of Access

- Aware of rights and obligations
- Equipped to avoid legal problems
- Aware of redress/DR processes
- Able to access redress/DR process
- Able effectively to participate to achieve just outcome

'Low Commission' Jan 2014

Guiding Principles

- Early intervention
- Investment in prevention
- Simplification of legal process
- Services tailored to needs
- Investment in early advice
- Embedding advice where people go





- Education - PLE
- Reduce preventable demand
- National advice strategy
- Co-ordination of advice services
- Triage and 'navigators'
- Adapting judicial processes & 'Good Law'
- Develop range of DR processes

Civil Justice Council LIPs Report 2011

'Holistic' Approach

- Judges to be at heart of addressing what needs to be done – “creating solutions”
- Judicial case management
- Early information & advice
- “Simplify” and “demystify” law and process
- More public legal education

Access to Justice for
Litigants in Person
(or self-represented
litigants)



A Report and Series of Recommendations
to the Lord Chancellor
and to the Lord Chief Justice

November 2011

- Judge to adopt more “inquisitorial” approach where LIP involved
- More relaxed rules on lay advocates where it would help the court
- Greater use of “McKenzie friends”



JUDICIARY OF
ENGLAND AND WALES

The Judicial Working
Group on
Litigants in Person:
Report

July 2013

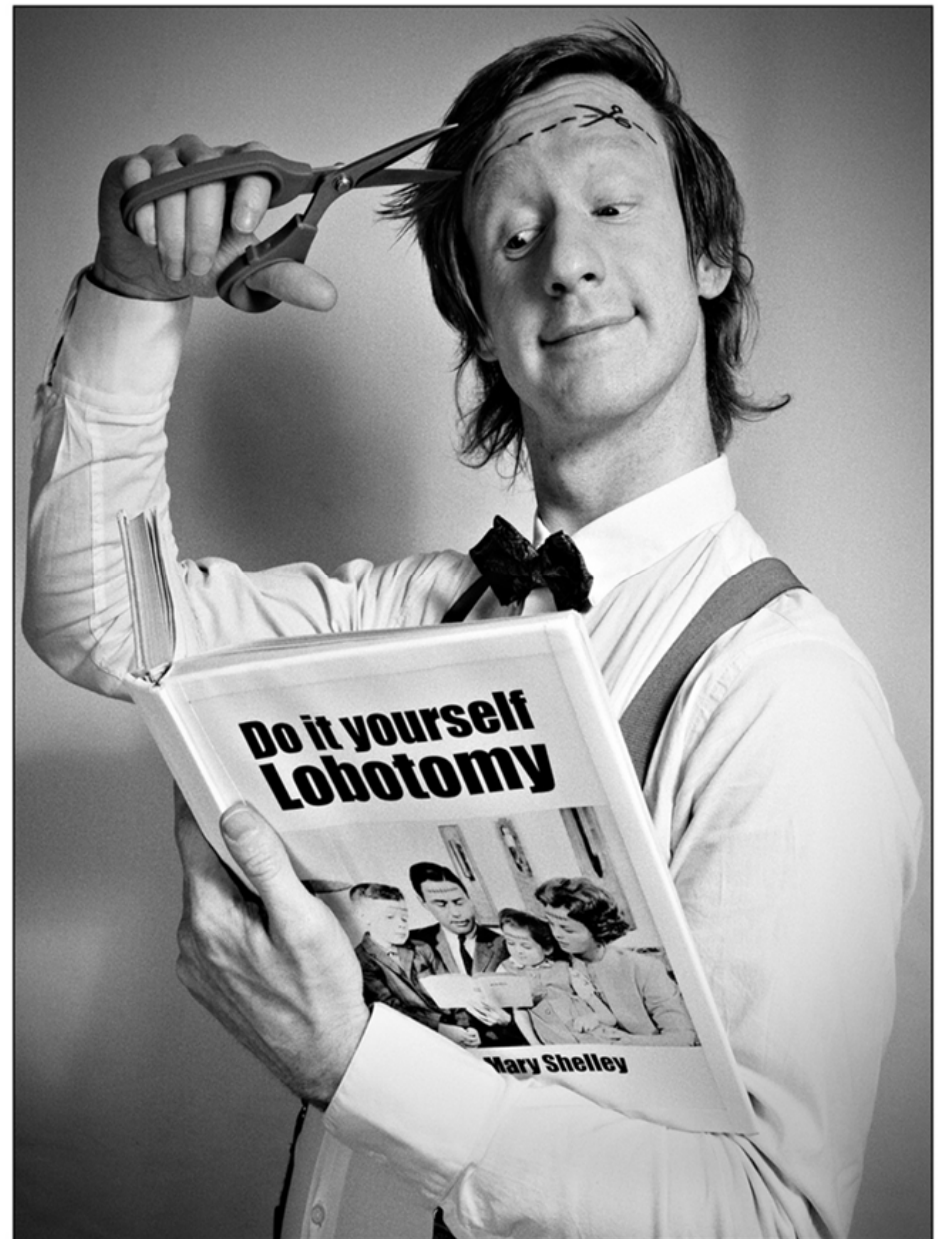
Face to Face Legal Services and Their Alternatives: Global Lessons from the Digital Revolution

“Not since the 1960s and 1970s have countries like the UK, Australia, US or Netherlands seen change at such a rate in the delivery of publicly funded legal services.”



Smith and Paterson February 2014, ILAG

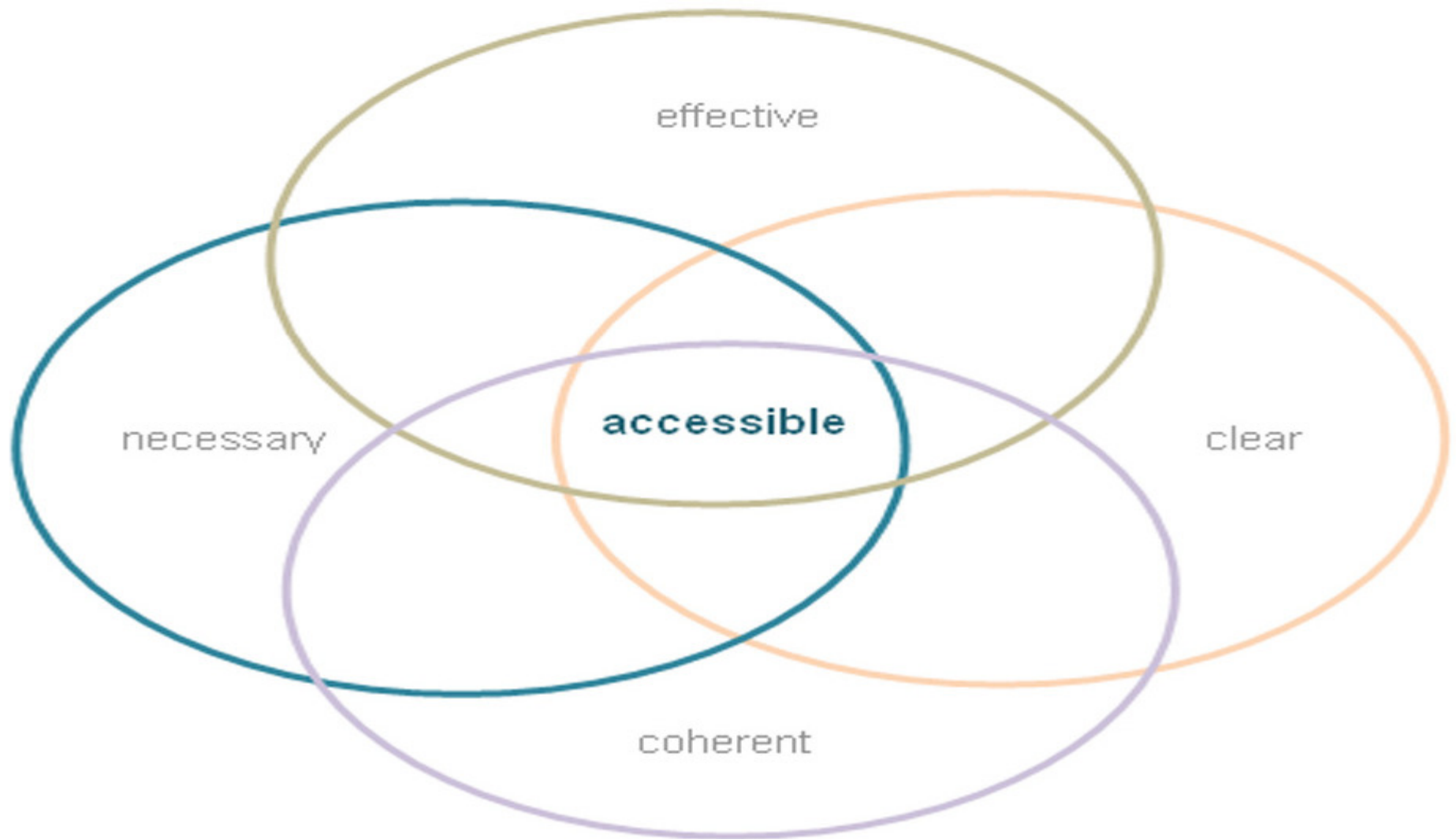
But
necessary to
understand
needs of
different
groups



Customer segmentation

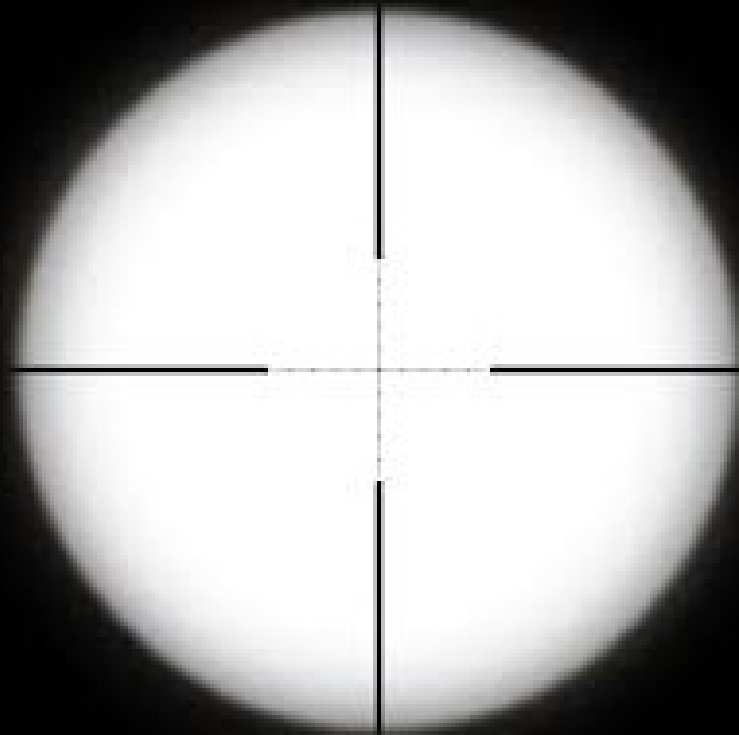


“Good Law”



The future

Re-envisioning the scope of the justice system



**The Dispute
Resolution
Pyramid**

Adjudication

**Legal problems/
disputes**

Arbitration

Settlement

Expert determination

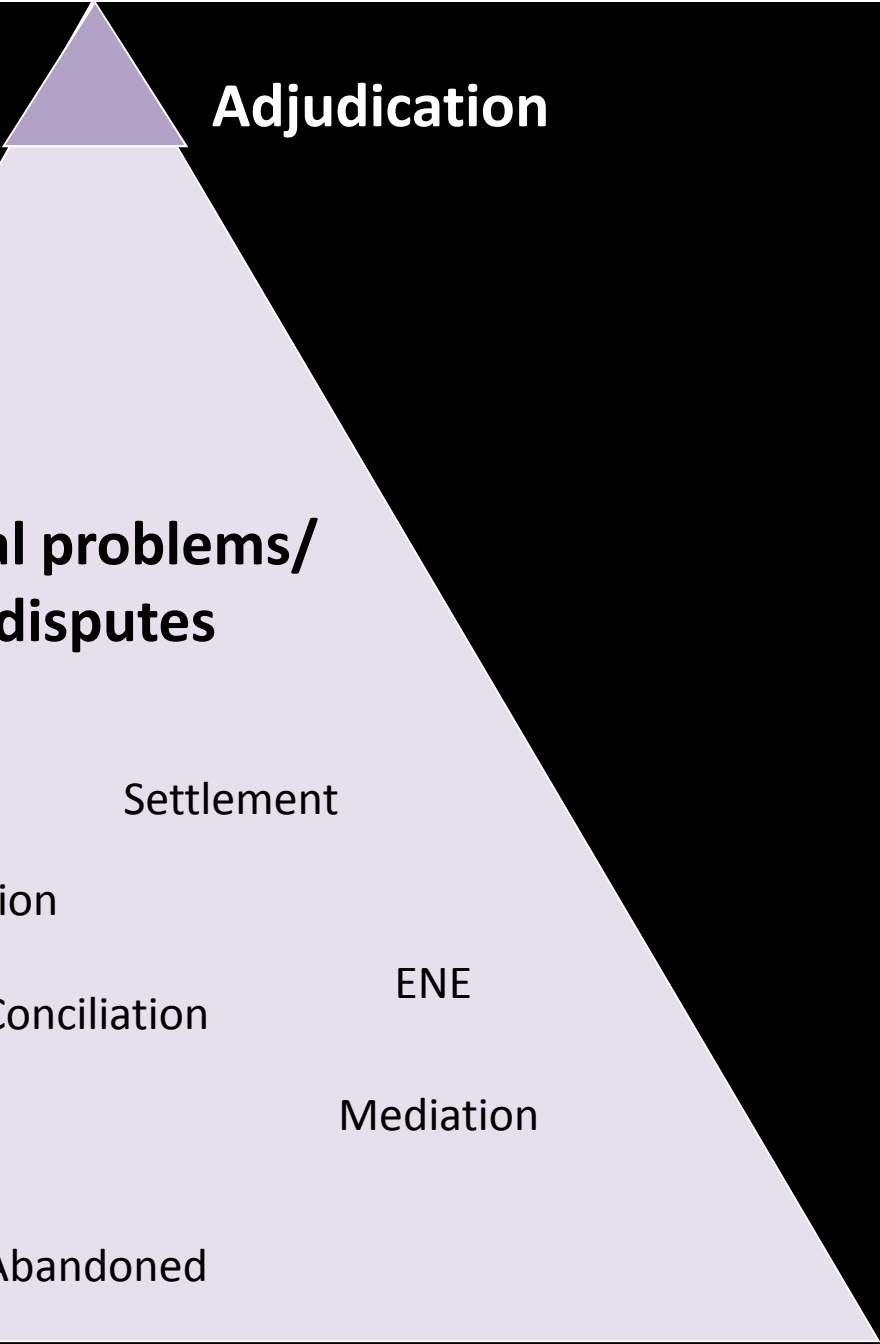
ENE

Med-Arb

Conciliation

Mediation

Abandoned





**Constellations of
other DR processes**

**Court/Tribunal
Adjudication**

Multi-Purpose Courts

- Adjudication
- Mediation
- Settlement
- Expert fact-finding
- Early neutral evaluation
- Arbitration



We need to fill the Data Black Hole



Closing thoughts

Why we must keep trying...

Civil justice system is a public good

- **Individual benefits**
 - Peaceful dispute resolution
 - Enforcement of legal rights
- **Collective benefits**
 - Rule of law in action
 - Supports “tranquillity” of the State
 - Supports economic activity
 - Supports social justice
 - Reinforces civic values
 - Framework for settlement



Equal access essential to Rule of Law

- Participation in redress systems is a measure of the health democracies
- Question is not ‘what rights do we give’ but can citizens make good those rights?’





Thank you!

