

Canadian Civil Legal Needs Surveys: A Brief Comparison

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Today, it is generally accepted that in order to effectively improve access to justice one first has to properly understand the legal needs of the ordinary person. Modern access to justice literature takes as its premise that the focus of reform must be on the problems *experienced* by the public, not just those that are adjudicated by the formal court system.¹ Perhaps the most effective way to understand the problems faced by the public is to directly ask them about their legal experiences through broad surveys.

Throughout the 2000s various jurisdictions in Canada have conducted their own legal needs surveys. For Ontario, three major surveys are of note. The first survey of interest was conducted by Ab Currie in 2006 for the Department of Justice Canada and presented in a report entitled *The Legal Problems of Everyday Life: The Nature, Extent and Consequences of Justiciable Problems Experienced by Canadians*.² A second important survey was conducted in 2009 for the Ontario Civil Legal Needs Project that resulted in two reports, the first of which is entitled *Listening to Ontarians: Report of the Ontario Civil Legal Needs Project*, released in 2010; the second entitled *The Geography of Civil Legal Services in Ontario* was released a year later.³ A third comprehensive survey of legal needs in Canada was completed in 2014 by the Canadian Forum on Civil Justice (CFCJ). This [survey](#) interviewed over 3,000 Canadians asking about the nature and frequency of legal problems in their everyday lives.⁴ Of those surveyed, approximately 1,200 respondents reside in Ontario. This survey data has yet to be fully analyzed and will become a fundamental source for new empirical findings on legal problems.

The first observation of note is the nature of judiciable instances. The Department of Justice survey noted that overall 49.4% of Ontarians experienced one or more justiciable problems over the three-year reference period.⁵ Similarly, the CFCJ survey found that approximately 50% of Canadians will experience a justiciable problem within a three year period.⁶ The Ontario Civil Legal Needs survey, however, found a smaller number. According to that survey only about 38% of Ontarians had a civil legal need over the three-year reference

¹ See e.g. Action Committee on Access to Justice in Civil and Family Matters, *Access to Civil & Family Justice: A Roadmap for Change* (Ottawa, 2013).

² 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).

³ Ontario Civil Legal Needs Project, *Listening to Ontarians: Report of the Ontario Civil Legal Needs Project* (Toronto: Ontario Civil Legal Needs Project Steering Committee, May 2010); Ontario Civil Legal Needs Project, *The Geography of Civil Legal Services in Ontario* (Toronto: Ontario Civil Legal Needs Project Steering Committee, November 2011).

⁴ Ab Currie, Trevor Farrow, Les Jacobs, Nicole Aylwin and David Northrup, *Everyday Legal Problems and the Cost of Justice in Canada* (Toronto: Canadian Forum of Civil Justice, 2014) <<http://www.cfcj-fcjc.org/cost-of-justice>>.

⁵ *Supra* note 2 at 16.

⁶ M. Jerry McHale, Nicole Aylwin and Les Jacobs, "Cost of Justice: Weighing the Costs of Fair and Effective Resolution of Legal Problems in Canada" (Lecture presented to the Law and Society Association, May 2015) [unpublished].

period.⁷ Further differences between the surveys are evident when examining the nature of justiciable problems. According to the Department of Justice survey the three most common types of incidences reported were related to either consumer problems (22.0% of all reported incidences), debt problems (20.4%) or employment problems (17.8%).⁸ Likewise the CFCJ survey found the three most common types of incidences reported to also be consumer problems (24.2% of all reported incidences), debt problems (22.2%) and employment problems (17.2%).⁹ Yet according to the Ontario Civil Legal Needs Project the three most common incidences reported were related either to family relationship problems (30% of all reported incidences), wills and powers of attorney problems (13%) or housing or land problems (10%).¹⁰ (See figure 1.) These are striking differences that warrant an explanation.

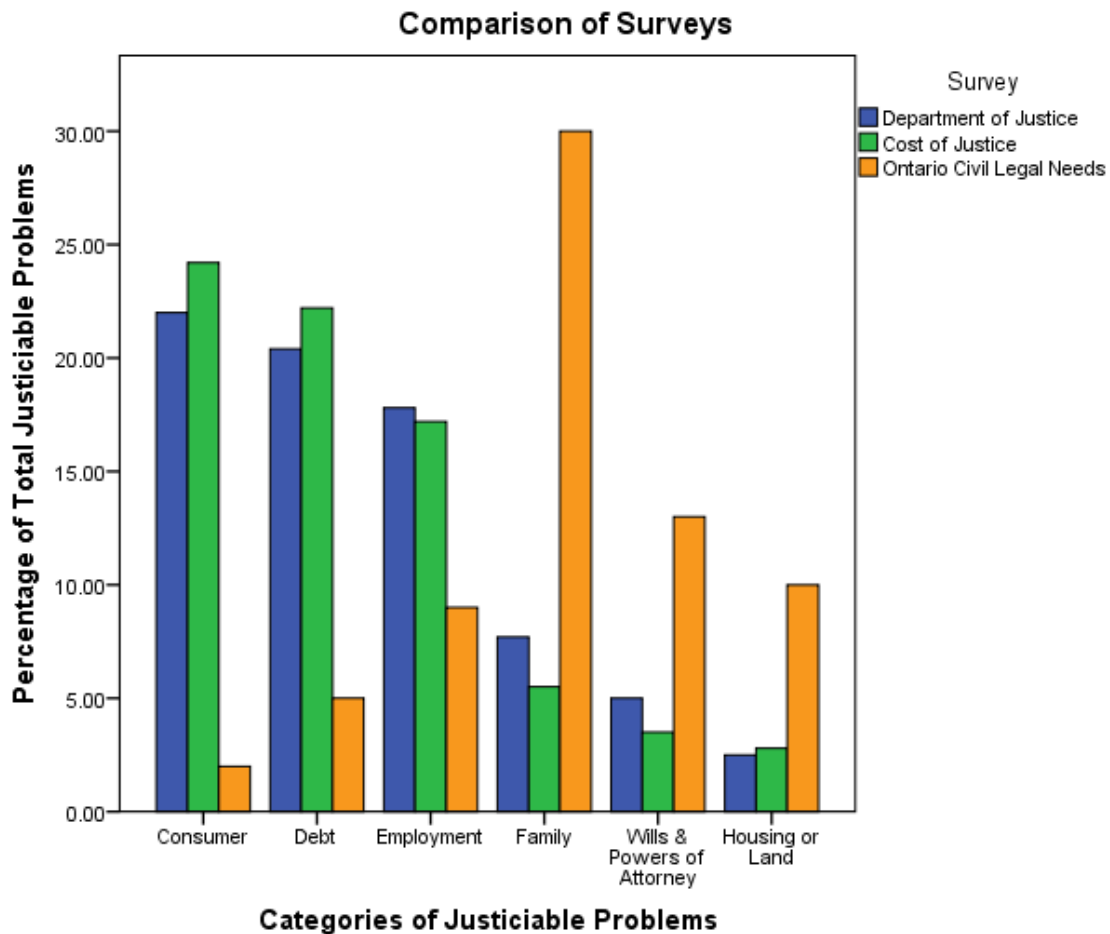


Figure 1

⁷ *Listening to Ontarians*, supra note 3 at 18 and 21.

⁸ *Supra* note 2 at 12.

⁹ *Supra* note 6.

¹⁰ *Listening to Ontarians*, supra note 3 at 21.

Fundamentally these differences are the result of how the survey questions were framed. In order to identify incidence rates, the Ontario Civil Legal Needs survey asked a single and open-ended question:

There are many different problems or issues that might cause a person to need legal assistance. What are the most likely reasons you can think of for why you or someone in your household might need legal assistance in the near future?¹¹

The problem with this question is that it requires the respondent to recall a problem, recognize that their problem had a legal element and be able to express it as such. In contrast, the Department of Justice and the CFCJ surveys asked questions about specific legal problems. For example, to find incidences of debt problems the Department of Justice survey asked each respondent if they were harassed by a collection agency, were unfairly refused credit due to inaccurate information, had a dispute over a bill or invoice, or had problems collecting money.¹² These problems may not be viewed by the general public as having a legal element because one may not engage the formal legal system to deal with them. This would help explain why the Ontario Civil Legal Needs survey found that only 5% of the incidences were classified as debt problems.¹³ It would also help explain why the Department of Justice survey and the CFCJ survey noted an overall higher incidence rate of civil legal problems since asking specific questions about issues not traditionally seen as having a formal legal element would capture a broader set of incidences.

The way in which the questions were framed also explains why the Ontario Civil Legal Needs survey concluded that 30% of all civil justice problems were related to family relationship problems.¹⁴ Those experiencing family breakdowns are much quicker to recognize the legal element inherent in the situation than those facing debt, consumer or employment related problems. The reason for this is because the law is structured in such a way that the formal legal system oversees so many aspects of a family breakdown. In order to receive a divorce one *has* to apply to the court. Once this happens issues of custody, support and division of property are also often overseen by courts. Thus, family problems are clearly seen as a civil legal need. Other problems, such as debt, consumer or employment, are frequently resolved without the use of lawyers or courts and therefore are less likely to be recognized by the ordinary person as having a legal element. Similarly, wills and power of attorneys generally require one to visit a lawyer and thus are clearly seen by the ordinary person as having a legal element to it. Hence the Ontario Civil Legal Needs survey found that wills and powers of attorney are the second most common legal need of Ontarians. What can be concluded by this is that ordinary Canadians will more likely understand a legal need to be one that requires formal access to either courts or a lawyer. However, it is clear that their lives are impacted by other issues that have a not so apparent legal element. Further analysis of the CFCJ survey findings is needed to understand

¹¹ Ontario Civil Legal Needs Project, *Civil Legal Needs of Lower and Middle-Income Ontarians: Quantitative Research* (Toronto: Environics Research Group, 2009) at “Appendix” 2.

¹² *Supra* note 2 at 94.

¹³ *Listening to Ontarians*, *supra* note 3 at 21.

¹⁴ *Ibid.*

how Canadians resolve these issues and to situate those findings into the broader access to justice debate.