



Social, Economic and Health Problems Associated with a Lack of Access to the Courts

A special report from the *Civil Justice System and the Public Project*
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EXECUTIVE SUMMARY

The purpose of this report is to further understanding about the social consequences arising from both unresolved legal problems and the process of attempting to resolve such problems through the courts. Previous research has shown that a significant portion of the population, in Canada and internationally, regularly experience problems that are both difficult to resolve and have legal implications. Furthermore, it is suggested that socially disadvantaged groups are more likely to experience serious problems, and less likely to successfully resolve them.

The research questions posed ask about the range of legal problems, the types of associated social problems and what evidence there is that legal problems are related to social problems. These questions are explored using data from in-depth interviews with litigants involved in civil cases, which were conducted as part of the *Civil Justice System and the Public*, a national collaborative action research project.

Highlights of Key Findings

Verbatim transcript data from interviews with participants dealing with multiple legal and social problems was identified and further analysed. The report uses illustrations taken directly from the interview transcripts to inform a discussion of the research questions. Based on this the following key findings emerge.

The range of legal problems: The legal problems first presented by participants spanned a wide range of substantive civil law, although matters falling under the broad definition of “Family Law” accounted for the majority of presenting and associated legal problems. A surprising number of associated problems fell into the category of criminal law.

Related social problems: six key social problem groups associated with legal problems were identified: economic, mental health, physical health, safety and security, discrimination, and language barriers. Participants with multiple legal and social problems that were not resolved were found in all income brackets. All but one participant reported economic stress due to pursuing a legal resolution and over 90% reported some kind of mental health problem, most often extreme stress related to their legal problems. Physical problems were reported in 40% of the relevant interviews. A minority of interviews raised issues of social discrimination and language barriers. However, these problems are noted by the researchers as tending to have serious legal and social consequences.

Clustering of Legal and social problems: There is substantial evidence that both legal and social problems tend to cluster. The available data suggest that this may be tied to a lack of effective and timely resolution of legal issues. However, the problems people experience have complex relationships, with no clear causal direction. Social problems can lead to legal action. Legal problems may precipitate social problems, or exacerbate those already in existence. Social problems do make accessing justice more

difficult, regardless of whether these problems pre-exist, or occur during the process of seeking a legal resolution

Social status and problem clustering: Counter to expectations derived from social exclusion theory, the data from the *Civil Justice System and the Public* interviews show that participants with multiple legal and social problems are as likely to have middle to high annual income as to fall below the poverty line. Regardless of income, participants also reported average or higher educational attainment. Regardless of economic status at the outset of the legal process, legal action does lead to financial concern for almost all litigants.

Legal counsel and legal resolution: Having access to legal counsel does not necessarily lead to a timely or effective resolution to the legal problem. A perception was noted (especially among litigants in family related matters) that legal representation exacerbates the social problems involved and the data available to this report does suggest an escalation of problems once legal counsel is involved. However, there could be many contributing reasons for this.

The legal process and social problems: Current rules of law and legal procedures are experienced as significant barriers by litigants struggling to resolve complex social and legal problems. This applies to litigants with counsel and those attempting to self-represent. At the same time, the legal system is expected to resolve problems that, at core, are not legal in nature. In particular, legal action is often taken when other social support services have failed to provide a litigant with support and resolution.

The usefulness of social exclusion-inclusion approaches: social exclusion-inclusion theory is concerned with ensuring that all citizens have equal rights and access to services, and thus has potential relevance and utility in considering solutions to barriers to access to justice. However, data from the *Civil Justice System and the Public* research challenge several assumptions of this theory. Participants had varied social status and took very active roles in information seeking about their social and legal problems. They brought to bear whatever resources they had for as long as they were able. In light of these findings it is recommend that the development of policies and programs should take a situation-specific approach that begins by asking what is needed for all citizens to have full and equitable access to rights and services – in this case to accessing justice.

1. BACKGROUND

The *Civil Justice System and the Public* is a national collaborative action research project involving 15 academic and justice community partner groups across Canada, including the Department of Justice Canada (DoJ). A multiple-method approach was taken which included short questionnaires, observation notes, key contact meetings, in-depth interviews and follow-up focus groups. Research was conducted at multiple sites and court levels in Alberta, Nova Scotia, Ontario, Quebec, Nunavut and British Columbia. A purposive sampling approach was used to obtain representative snapshots from each of the six jurisdictions. For the justice community interviews our partner organizations assisted in identifying key contacts in each area. It was more difficult to find and engage members of the public involved in a civil case. We used a variety of means such as referrals from legal aid and private practice lawyers, information tables in courthouses, and articles in local newspapers.¹ Interviews were completed with 185 members of the justice community and 105 members of the public involved in a civil case as plaintiff, defendant or witness.

The focus of the interviews was on the state of communication within the civil justice system and between the system and the public. Interview transcripts were entered into a qualitative software program (Atlas.ti) for analysis to identify themes related to communication issues.² The data obtained are very rich and offer the opportunity for further analysis related to many access to justice issues. In particular, public participants described the social context surrounding their involvement in a civil case. Although all of the participants in this research had succeeded in commencing legal action only a few had reached a final resolution of the matter. Some interview transcripts reveal that participants were dealing with multiple legal problems and associated social conditions and consequences.

2. PURPOSE OF THE REPORT

The DoJ is interested in further understanding the social consequences arising from both unresolved legal problems and the process of attempting to resolve such problems through the courts. Previous research has shown that a significant portion of the population, in Canada and internationally, regularly experience problems that are both difficult to resolve and have legal implications. Furthermore, certain groups within the population are more likely to experience serious problems, especially those who are already the most socially vulnerable or excluded (see Currie, 2005, in press, for details). There are indications that socially disadvantaged individuals are more likely to experience multiple problems and be less likely to reach a successful resolution. It seems likely that the failure to resolve legal problems exacerbates pre-existing disadvantage and carries a high level of social consequences that impact the physical, mental and economic well-being of citizens.

¹ A detailed report, “The *Civil Justice System and the Public*: Finding the Public to Talk With,” is forthcoming.

² Details of the project are available at <http://www.cfcj-fcj.org/research-cjsp.htm>

Research is needed that allows an increased understanding of barriers to accessing resolutions to legal problems. It is important to consider the social costs associated with pursuing a legal solution as well as those incurred by the failure to do so. The data collected for the *Civil Justice System and the Public* project provide an opportunity to consider some exploratory questions. This report is commissioned by the DoJ to examine related questions by analysing qualitative data from interviews with 105 members of the public.³ Results from this analysis are considered in the context of a discussion of the concept of social exclusion-inclusion theories and policies.

2.1 The Research Questions

Our analysis addresses the following questions:

- What types of legal problem do interview participants have? Which do they present as the primary problem? Are other legal problems associated with the primary problem?
- Are there social problems (such as physical or mental health, safety and security, financial, family, social status) related to the legal problems, either because of an inability to resolve ongoing legal problems, or because of a lack of access to the civil justice system (or services associated with the system)?
- When multiple legal problems exist, can a cause or effect relationship be identified among the problems?
 - Can pre-existing social problems be identified as the cause of the legal action?
 - Do pre-existing social problems make access to justice more difficult?
 - Do ongoing legal problems lead to the development of social problems, and do these require further legal action?

3. METHODOLOGY

The 105 interview transcripts forming the database for this research were searched electronically to identify passages containing information that was relevant to addressing the research questions.

³ A few interviews had more than one participant and provide multiple experiences within one transcript. Approximately another five were conducted with corporate executives and/or their in-house legal counsel. These remained part of the database but as expected, did not yield much information relevant to the questions posed in this report. It is interesting to note that the corporate participants did express concern about the costs of litigation emphasizing that they preferred to find other kinds of solutions to legal problems.

Search strings were developed and tested to ensure the capture of all relevant data. The following search strings were employed:⁴

PHYSHEALTH:=health*|illness|sick*|medic*|Physical*

FINANCIAL:=financ*|money|bills|afford|max*|bank*|mortgage⁵

SAFETY:=danger|safe*|violen*|hit|ballistic|dead|kill*destroy*

MHEALTH:=stress|mental|disab*|psych*|fear

Following the electronic search process, notes on participants and transcripts were reviewed to check that this approach had been successful in identifying all transcripts with pertinent information. A print out of the relevant data was then manually reviewed.⁶ A header was developed for each case that lists: the interview identification number; the presenting and associated legal problems involved; and, a list of associated social problems apparent within the text of each interview. The list of headers is provided in Appendix A. The discussion in this report relies primarily on the extracts from the in-depth interviews. SPSS was used to identify background demographic data relating to the sub-group of relevant interviews. Frequencies were checked against the overall sample to check for similarities or differences among the group of participants identified as experiencing clusters of legal and social problems. When relevant, researcher observation notes and other analyses conducted in connection with the *Civil Justice System and the Public* project are used to provide supplementary information.

3.1 Relevance and limitations of the data

Preliminary searching of the 105 in-depth interviews conducted with members of the public involved in a civil court case quickly revealed that regardless of personal income, case complexity or outcome, at some point in the interview almost all participants mentioned the financial cost involved. This included the participants representing corporate clients.

Applying the four search strings listed in section 3, resulted in the identification of 35 separate interviews (cases) that included passages of relevance to a consideration of social consequences associated with taking legal action through Canadian civil courts. All six national research jurisdictions were represented among these interviews and the cases encompassed a variety of substantive law issues. The discussions in the

⁴ During initial testing, the term "trust" was utilized. The literature concerning social exclusion-inclusion identifies trust as an important concept. We found that the word did occur frequently in passages potentially relevant to the research questions posed in this report. This is a finding of theoretical interest. The term was, however, too broad to be usefully discriminate among specific legal and social problems.

⁵ After preliminary testing, we dropped "money" form this string because we found that the word occurred in too general a context and did not relate to personal circumstances in the way the other terms did. The remaining string was better able to identify transcript segments relevant to the research questions.

⁶ The full text of the supporting data has been provided to the DoJ.

transcript excerpts selected by this process clearly associated social problems with ongoing legal action and provided substantial data for further analysis.

The data do have some limitations in addressing research questions about the social consequences of litigation. It must be remembered that the *Civil Justice System and the Public* interviews focussed on communication issues. The interview questions did not ask about social experiences or consequences.⁷ In early interviews the researchers actually attempted to divert such discussions, but soon learned that it was more productive to allow participants to tell their story. Even so, interviewers did not actively encourage participants to expand on these aspects of their experiences, nor did they ever ask participants to clarify statements. Under these circumstances, the fact that such detailed discussions of social consequences are present at all tends to underline the major impact they have on those attempting to access justice. Nevertheless the following issues arise:

- The *Civil Justice System and the Public* data inevitably under-record the presence of social consequences in participants' lives. Only interviews with clear discussions have been utilized.
- Because the interviewers did not pursue details of social consequence issues, the excerpts often raise questions that are impossible to answer from these interview transcripts.
- The sequence of events and relationship between one issue and another is often unclear. In part this is because of the complicated and multi-directional nature of the matters involved. However, research that set out to look at social consequences could have done much to clarify some of the situations described.

4. INTERRELATIONSHIPS AMONG SOCIAL AND LEGAL PROBLEMS: INSIGHTS FROM THE CIVIL JUSTICE SYSTEM AND THE PUBLIC DATA

As the title to this report suggests, the concern underlying this inquiry is that lack of access to the courts may have detrimental social, economic and health consequences. The research questions that are actually posed have been refined however, to better suit the nature of the available data, which concern the experiences of people who have already accessed the civil courts. Furthermore, rather than assuming any causal direction, the research questions ask about the relationships of legal and social problems. The data considered in this section of the report underscore the complex clustering and multi-directional relationship of both legal and social problems. We begin with a discussion of the range of presenting and associated legal problems experienced by the interview participants. We then move to separate considerations of six key areas

⁷ A copy of the full Interview Guide used by the interviewers has been provided to the DoJ and can be obtained on request from the Canadian Forum on Civil Justice. A Preview version of the main questions can be accessed on the Forum website at: <http://www.cfcj-fcjc.org/docs/preview%20Public%20Nat.pdf> .

of social problems present in the data: economic, mental health, physical health, safety and security, discrimination, and language barriers. As the transcript excerpts illustrate, while necessary to a coherent report, this approach imposes a linearity that is at odds with the lived experience of the participants. We draw on examples from especially complicated cases to further illustrate the complex ways in which legal and social problems cluster as litigants attempt to attain solutions via the legal system. We follow these examples with comments on the inadequacy of available legal and social support services to address the litigants' problems, and conclude this section of the report with a summary of the key findings provided by the *Civil Justice System and the Public* data.

4.1 The Range of Legal Problems

As can be seen in Table 1, the 35 interview transcripts that were subjected to further analysis involved problems in a range of legal areas, although matters falling under the broad definition of "Family Law" accounted for 66% of presenting legal problems.⁸

In Table 1, the first column, "Area of Law," lists the types of legal problems mentioned in the interviews selected for this report.⁹ The second column states the number of participants who gave each area of law as the "Presenting Legal Problem." The third column, "Associated Legal Problems" states the total number of participants who mention an additional legal problem in those areas of law. The 35 presenting legal problems produce a total of 82 reported associated legal problem, thus suggesting a tendency for legal problems to cluster.¹⁰

An association between sub-types of family problems is to be expected. The relatively high proportion of secondary legal problems that fell under the criminal justice category was less predictable. Many of these problems were also associated with family law cases. The court system, however, generally treats these sub-categories of family law as separate and discrete legal matters. As we will show in our subsequent discussion, it is very apparent from the transcript data that this practice aggravates many problems for litigants who are attempting to find a civil justice resolution for their family problems.

⁸ These data do not allow us to draw any conclusions about the heavy presence of family related legal problems. Reliable statistics on the overall breakdown of civil justice cases are not available. It is possible that people with these types of problems were more interested in talking with us than those with less complicated issues. Our interviews with members of the justice community do show that there is a widespread impression that family related cases are the most emotionally stressful.

⁹ Appendix A provides header descriptions for these data and Appendix B shows which case numbers are associated with area of law.

¹⁰ See Appendix B, Table 1A, which includes the related transcript numbers and thus provides a matrix of how problems were associated.

Table 1: Presenting and Associated Legal Problems by Area of Law

AREA OF LAW	Presenting Legal Problem	Associated Legal Problems
Family		
Divorce	10	5
Custody and Access	6	11
Child maintenance	2	11
Separation agreement	1	2
Child guardianship/ protection	3	5
Spousal support	1	3
Accident and injury	0	3
Business dispute	2	3
Property dispute	3	0
Bankruptcy/ foreclosure	0	3
Malpractice or misconduct	2	2
Immigration status	0	3
Landlord & Tenant	0	2
Human/Charter rights	2	0
Other Tort	2	1
Enforcing orders	0	3
Witness	0	1
Criminal		
Assault (all types) ¹¹	1	10
Restraining/non contact order	0	2
Property damage	0	1
Drugs	0	2
Child abduction	0	2
Disturbing the peace	0	1
Some police involvement	0	4
Traffic court	0	2

4.2 Related Social Problems

The research questions ask whether there is evidence that legal problems are related to social problems, such as financial, physical or mental health, safety and security, family,

¹¹ The criminal assault category includes incidences and accusations of spousal assault, child abuse and neglect, sexual assault and assault of non-family members. These incidences may have been a precipitating or secondary event in the sequence of legal action, but were not usually the presenting problem because the interviewers were asking specifically about civil matters.

and social status. As matters falling in the area of family law were the most dominant presenting legal problems, we did not also consider family matters as a separate social consequence of the legal problem.¹² Comments relevant to social status did occur in connection with financial and mental health issues, however, participants rarely spoke explicitly of “social status.” Twelve participants did specifically talk about experiences or perceptions of discrimination and it was therefore decided to use “discrimination” rather than social status as a distinct social problem. In addition, we added “language barriers” as a distinct problem identified by participants as having a very significant impact on their ability to access justice. Thus, six key social problem groups associated with legal problems were identified: economic, mental health, physical health, safety and security, discrimination, and language barriers.

As part of the *Civil Justice System and the Public* research, whenever possible we collected background information about the interview participants. We compared relevant variables from all 105 participants with the data for the 35 interviews identified as relevant to this report.¹³ The results show that the participants with clusters of legal and social problems do not differ significantly from the rest of the participants.¹⁴ They were no more or less likely to have previous involvement in a civil court case and equally likely to have legal representation (68%).¹⁵ One notable difference was associated with age. Among the participants in the sub-group used for this report, 83% were between 34 and 54 years of age. This age group accounted for only 70% of the total sample. However, with 66% of all reported legal problems relating to family matters such as divorce and child custody and maintenance, it is not surprising to also find that a majority of the participants in this age range.

Income and education frequencies are of some interest, primarily because, overall, they are not what might be expected. As we note in Section 2 and take up again in Section 5, social exclusion theory and some associated research suggests that it is the people who are most socially disadvantaged who will also be most vulnerable to experiencing multiple legal and social problems and less likely to reach a successful resolution. The data from the *Civil Justice System and the Public* research do not support this assumption.

Of the sub-group of participants informing this report, almost 28% do report incomes of under \$10,000 per annum, compared to 20% of the total sample. Referrals from Legal

¹² This is not to say that legal problems in other areas of law did not place stress on a family. Transcript # 802 is a clear example of when this was the case. However, because two thirds of the presenting legal problems were family related, also including family as a social consequence would be confusing and possibly misleading.

¹³ As already noted, some interviews had multiple participants. Each participant was, however asked to complete the associated questionnaire. Thus, we have 39 quantitative cases associated with the 35 interview transcripts.

¹⁴ This is not what might be expected, based on other discussions of and assumption about, social exclusion (see Section 5). Given the nature of our sample we would not claim reliable mathematical significance or non-significance, however, frequency comparisons clearly show that the sub-group mirrors the larger group quite closely.

¹⁵ This is the valid percentage, which was 70.5% for all participants. It must be remembered that a proportion of our participants were witnesses.

Aid offices were a major source of interview participants, and we might therefore expect to see bias toward low-income participants in general. This is not, however, the case with our sub-sample. Just over 34% of this sub-group had incomes of \$45,000 or more per annum and 10% of these reported over \$100,000. This was slightly more than for the full sample where 32% reported over 45,000 (8% of which earned above 100,000). A further 17% of the sub-group reported an income between \$35,000 and \$44,999, compared to only 12% of full sample. Our data do not therefore support a conclusion that people with a low income are more likely to experience multiple legal and social problems.

Similarly, the majority of participants in both the full sample and the sub-group reported educational attainment beyond high school completion. In both groups, just over 30% reported attaining a bachelor degree or better and approximately another 30% had completed a college or trade diploma. In the full sample, 8% said that they had not completed high school, compared to 3% of the sub-sample.¹⁶

We turn now to a discussion of each of the identified social problem areas with selected illustrations drawn from the transcript data. Although we attempt to use examples that highlight the social problem area under discussion, it was hard to pull out succinct portions of the transcripts without losing the context and quality. As a result, the examples we use also illustrate the tendency for problems to cluster.

4.2.1 Economic

An economic problem was recorded when a participant made a direct reference to financial issues related to his or her legal problem. As already noted, legal costs were raised by almost all of the 105 public participants in the *Civil Justice System and the Public* research. Financial strain caused by the cost of litigation had a social impact for 34 of the 35 participants identified, for the purposes of this report, as having significant social problems.¹⁷

The following list provides a summary of the kind of financial problems associated with accessing civil justice that can be observed within the transcript data:

- legal costs;
- the problem causing the legal action was financial in nature (a debt; damages; spousal support, child maintenance);
- inability to enforce a financial judgement;
- a lack of income related to social status (disabled, single parent, recent immigrant, domestic abuse) that interfered with access to justice;

¹⁶ We have no way of interpreting these quantitative findings. We can speculate that perhaps those with less education (and therefore, probably less income) did not access the civil system in the first place). It is also possible that those with more education, regardless of income, were more confident to speak to us about their experiences and issues of justice reform.

¹⁷ The remaining participant was an expert witness often involved in immigration cases and therefore was paid for his legal involvement.

- a loss of adequate income as a result of court rulings, or because of a failure to attain a legal resolution;
- loss of income to attend repeated court hearings;
- lack of income to meet basic needs (such as heating), resulting from a combination of legal and social problems.

The following excerpts provide just a few examples of the financial issues raised by interview participants:

Well I am simply self-representing because I have no choice. I spent \$10,000 in legal fees; waited 9 months for my case to get to court. I had six items on the notice of motion; only three were addressed. The second one was reduction of maintenance which I was eligible for 20 months prior and I'm still dealing with this – February, March, April, May, June – 5 months after my court date I have yet to get that settled because they are putting it off. In the interim I've been ordered to pay the previously ordered amount, which was a maintenance agreement I voluntarily signed which is four times the amount we are currently discussing. The Justice who presided over that case, Justice [name], she knew the case....Money was just one issue. I tried a settlement meeting – that cost me \$2500 and delayed the case 3 months....[At] one time, I [had] authorized the daycare to withdraw \$352 per month from my account, I was paying [my ex wife] \$314 and I had my daughter 60% of the time and I was buying diapers and everything else for the daycare. [210, male plaintiff and defendant, various family-related matters, now self representing]

Well I have a problem with that financially.... I been paying for expert reports, I've been paying, you know, for disbursements, etc. I have two humungous piles of bills outstanding and now we've come to the point where we've got our expert reports, we're ready to go to court. However the next stage is to do the damages. I need between \$30,000 and \$100,000 to have the damages workup. I can't do that. I have a family member with serious health issues, my credit cards are to the max because we each go out of town for medical treatment, I am barely making it payday to payday...I would like to be able to go to court on [one of the issues] alone and I think across Canada that would be a viable solution cost-wise, not only for the litigants but for the whole legal system. Because think of it this way. If, say I find someone to finance me for \$30,000 to \$100,000 for the rest of the workup that I need to go to court. If I go to court and I lose...I have wasted all that \$30,000 to \$100,000 on legal fees....To date...I owe one of my lawyers \$14,000...I owe \$16,000 to [another] lawyer for expert reports, I have paid out to my other lawyer \$13,000 ...for expert reports....[Now] I need 30,000 to bring my experts up for trial. [802, female plaintiff in malpractice suit]¹⁸

It's warranted and non-warranted fear. The fear of whatever you are facing as a defendant. It has a ramification. It is going to cost you money; you are going to go to jail. Whatever is going to happen it is going to cost you something.... All of the faith and confidence in the judicial system today is put in the lawyers, and the lawyers go on to be pretty huge in the problems you know by taking the cases to the point that what should cost \$5000 ends up costing \$15,000. It is all based on them milking the system. People

¹⁸ This case was eventually abandoned after the family member who was the subject of the case died much sooner than had been anticipated. Redirecting the case involved more expense. Legal bills remain in dispute.

are frightened today of the legal system because of the connotation that comes with. In other words, am I going to lose my house because I have to go to court?The lawyer, if you don't pay him, he's going to sue the hell out of you anyway and he'll have your house. Financially speaking you are caught between the devil and the deep blue sea. Mentally speaking you are not far off.... It is pretty hard to take. [225, Male defendant in divorce case, also involved in a business dispute]

It was, however, frustrating how things need to be delayed and rescheduled so far down the line. Child support was delayed three times. I ended up waiting four months to find out how much child support I am going to get against how much spousal allowance I have to pay. So I can't do the math and come up with a budget. I find it asinine that I had to wait four months to find out what I need to pay, if anything, given the spousal against child support kind of thing and not being able to do my budget and project what my needs are going to be. I've got two kids at home to take care of and to feed yet it's like I have to guess at how much money I have because the court system allowed delays that I felt were deliberate attempts at sabotage. [285, custodial father in spousal support and child maintenance dispute]

4.2.2 Mental Health

The mental health problem area is broad and includes everything from diagnosed mental illnesses and cognitive disabilities to reports of emotional stress that are specifically raised by the participant.¹⁹ Thirty-two of the 35 participants reported a mental health problem associated with the legal problem. We observed the following kinds of mental health issues within the transcript discussions:

- a cognitive or psychiatric disability that either caused the legal action or interfered with access to justice;
- trauma from abuse requiring counselling (both adult and child);
- serious to extreme emotional stress (litigant or other family members);
- mental illness of the other party in the legal action;
- erratic behaviour of the other party in a dispute, when not clearly diagnosed as mental illness, was usually related to addictions;
- repeated court-ordered psychological assessment (various family members);

Some of the transcript excerpts used to illustrate economic problems experienced by litigants, also allude to stress and mental health consequences. The complex relationships among mental health issues, legal problems, and other social problems is quite evident in the following discussions.

He tells me, "If you're not with me, I'm going to kill you and I'm going to take the kids." ... And one from his friends he told me ...when he gets divorce from you he's going to marry this woman. And he's going to... kidnap the kids....I want the lawyer to give support – child support – and if he needs access with children – but with supervise – because I can't trust him.....And I explained to the lawyer, and I told her, "He's not

¹⁹ In our notes attached to the headers for each transcript excerpt, we have sometimes noted that the participant appears to have mental health problems, but we only counted an issue when the participant acknowledged it.

normal sometimes." Sometimes I think something's wrong with him, something is damage brain.... because he not – not thinking like normal people about kids, about working – he's working sometimes for a few days and he quits.... From my first marriage too – I had to - he abused me, and I have to move to the shelter here, and... because I was new in Canada ...they brought me here to legal aid to get a certificate, and they choose for me a lawyer. I don't know a lawyer; I don't know nothing about how I can get in Canada. [811, immigrant woman involved in second divorce]

P1: *It's based around my daughter. I had a child from another relationship and the mother of my daughter is into various things - drugs, she has assaulted people. You name it, she's done it. She's crazy.... You know, I made a mistake in my life when I was eighteen years old and you know, my child has suffered for it and everybody else in my family. And the system, in my opinion, has not been there for me.... and ten years later I am still dealing with it. You know. It's almost like she gets legal aid so she doesn't pay for nothin' because she is on assistance....I've spent - I've lost count after \$40,000...to try to protect my child....It got so bad that my daughter was having nightmares*

P2 *Wetting the bed.*

P *Yeah. Like numerous things. My daughter's been seeing a psychiatrist for how many years?*

P2 *Ten years....*

P *This will be our third [psychological] assessment -*

P2 *That we've had to pay for [inaudible].*

P *Third assessment for this case in the past year. Third.... And the assessor is picked by the court. But see her lawyer always seems to find a little loophole. Well there's a problem with the assessment. They shouldn't have recommended this or they shouldn't have recommended that, when they were asked to.*

P2 *And, might I add this, every other professional that we have talked about has said never have they seen more than one assessment done every five years and that was from one of the head [name] the head psychologist. She said never has - there is something wrong with our case. There is something not right.... Like she is stunned.... And we are, like, no. There is no change. We know, I mean from our tires being slashed, from our home being robbed, the crank calls, the -*

P *Here is the bottom line. The judge looked at me and he said Mr. [name], he said, I cannot make your daughter see her mother. OK. If you cannot make her see her mother what are we doing here right now? What are we doing? We are wasting time, we are wasting money - taxpayers money, let alone my own.*

P2 *We have recorded – our phones were so bad here from this woman we had to buy an answering machine like a tape recorder and tape the calls. And she said, and I'm not stopping 'till you lose everything. So it's not child related. It's after him....Like the stuff that has gone on with our case you would never believe it unless you have lived it or read it.*

P *For ten years I have done everything this court has asked me to do. My whole family - my wife and I were assessed as parents because we were taking custody of my daughter and because the way the system is now you have to do that no matter who you are. At the time we were living with my parents because things were so bad that we had to move out of the place we were -*

P2 *For our safety.*

P *And my parents were assessed because my daughter would be living in that home at the time, you know. So I mean my entire family, even on [P2's] side, has suffered. You know, the nights staying up all night because of this case....*

- P2 *We have a very troubled little girl out there. His little girl is very -- And you know what? It's the system that has let her down....I mean even [name] of children's services was so scared that she had a car parked in the front so they could watch. She was going to...walk away from the job, this woman. Another woman took a nervous breakdown.*
- P *We don't mean to ramble on.*
- P2 *No, but this is what we've lived.* [304, Father and present wife involved in a long term dispute with his former spouse that spans multiple civil and criminal actions]

I waited three years – three and a half years. Only in December of last year – or later last year – October of last year – I went to an arbitration board in our [Mosque] community....I went to [her brother], he was no help. She had left me a message on the phone every third or fourth letter was the “F” word. I told her brother to hear it. That’s when I went. I said this is a lunatic I am dealing with....So I took it to her brother and said I don’t know what is wrong with your sister. I lent her money and she is not paying but listen to this message....I said this is the case I need my money and he talked to her and she said no way. So it went on. The arbitration people tried their best. Three months, four months she came to the table and said yes, yes I will. She never did....So I waited three months, four months and it looked like she isn’t going to come around. It doesn’t look like she has any intention. I said OK that’s what I figured out. There is no way. I need my money to live on. So the only way was to file a claim at the court. She filed a counterclaim. You couldn’t believe what she wrote..... I could have gone to court and won easy. Hands down. The lawyer would have thrown the book at her. Everything was there. NSF cheques.... She owed that \$2300. But all this time the commission she was going to pay me I got nothing or interest on the \$5000 loan or the commission..... She made the payments. The second payment she made just about last week....She paid it because it was a court order. Otherwise it would have just gone on and on.... Oh yes. You see, we were there for two and a half hours. It’s a long time for me. I have hypoglycaemia too. I am shaking right now. [245, plaintiff in a business dispute]

4.2.3 Physical Health

Physical health problems include illness, injury and disability associated with or perceived as resulting from the legal action. Such issues were reported in 14 of the 35 transcripts informing this report and fell into the following broad areas:

- disability (either causing the legal action or interfering with access to justice);
- illness of the litigant or other family member that is directly or indirectly related to the legal action (custody dispute involving a sick child; dispute involving a terminally ill family member; physical ailments exacerbated by stress related to the legal problem);
- exhaustion (related to associated legal or social problems);
- Injuries from physical abuse;
- Pain.

As with mental health issues, our participants’ descriptions of physical health problems reveal complex interrelationships. We found the linking of mental health issues to physical ailments to occur quite often in the transcripts. Participant # 245 (quoted as an illustration of mental health problems in section 4.2.2) provides one example of how

physical health concerns often did not have a direct relationship to the legal problem. Pursuing a court case might aggravate the physical condition, either directly or indirectly, or it might impede the individual during the justice process, as the following excerpts show:²⁰

I was sick for a year and time was running out for the civil case....we suffered a lot of physical abuse...as a result I have post trauma stress disorder....So we are both on pension....So we pulled out. I told my brother, "forget it." I said I didn't want to spend \$2,000...and then they say at the end, "well, we can't finish this off because you don't have enough money." So it was basically a fact of no money. I mean lack of, you know, resources....So anyhow when I went to university, they knew I had short-term memory disorder and post-trauma...I had some physical disabilities, so I needed to have a note taker.... I needed someone to walk with me....I didn't have the Paratransport – because my legs are very bad – so I was standing up on buses... I didn't have the support systems I needed...So then I took them to court. [803, female appellant in a case against a government department]

My issue was always with the children....And problems are still occurring in spite of court orders... And I find the only avenue – when court orders are being breached – is to go back to the lawyers again, and then eventually back to court again, which is more time consuming and very costly....not to mention the mental anguish that...my whole family's been through....The other issues, which is very difficult for me to deal with, is that I have two children with a very rare disease.... And these children do not have a long life span....I am very disillusioned with the legal system....that this can drag on like this....[I am] financially devastated....And I have to say...right now I cannot offer the same style of living that the children presently enjoy with their mother. [806, male applicant in a child custody case and defendant in related matters]

It's stressful. You know, you can end up with so much darn stress...and when I ended up with the rheumatologist he said...."Tell me things that led up to this." I said, "Well there wasn't too much happening in my life, I was involved with two litigations representing my company as a discovery witness. The [organization name] wanted to take away my license and kick me out of the industry, and destroy my career and I'm 56 years of age and I won't be able to support my family. And I've got some idiot by the name of [name] suing me for \$87,000 and it haunts me about once a week....Suddenly now you're paying a price physically because you get sick. Which of course affects you, you've got to go on drugs, you're not going to work because you can't work all the time. You're not making the same money you were making. It's a very destructive kind of thing when a lot of this stuff builds up. And the doctor's - both my GP and my rheumatologist said]...that conditions like this, inflammatory...what can trigger it is stress. And then your immune system goes nuts...and the only way they can do it is to suppress your immune system, so they've got to put you on drugs. And they're very serious drugs....your liver can only take so much of stuff like that before it breaks down. [613, defendant in a contract and other business related disputes]

²⁰ See also Stratton & Schwartz (2005), *The Civil Justice System and the Public: Barriers to access for those with disabilities*, for a more detailed discussion specifically about the problems the civil justice system poses for people with mental and physical disabilities.

4.24 Safety and security

Fifteen of the transcripts raised safety and security issues, most of a potentially serious nature. Given the focus of the research on civil actions this was somewhat surprising. We recorded acts or threats to physical safety or mental well-being; fears about safety, including thoughts of committing violence or suicide; and deliberate damage to property. All of the following kinds of safety and security threats are present within the transcripts:

- assault and threats of assault;
- kidnap threats;
- property violence;
- aggressive thoughts and feelings;
- psychological abuse;
- withdrawal of immigrant sponsorship;
- access orders requiring child to be taken into prisons;
- access orders placing children in care of substance addicted parent
- threatening phone calls;
- fear of asking for help (because of alack of confidentiality, or anger/attitude of service people).

Threats to safety and security were all related to family disputes, tended to be ongoing, and to involve multiple incidents. Several of the transcript excerpts already quoted in this report contain elements that refer to safety and security issues. In the following excerpt, all six areas of social problem are present. This interview was conducted through an interpreter - I stands for the interpreter, P for the participant, and R for the researcher:²¹

- R *So those [divorce] papers she received, you've translated them for her?*
I *I read them. I didn't really translate. I just said the main points.*
R *Right. So all her encounters have been through your assistance?*
I *Yes. She would have been totally lost if I wasn't here. She wouldn't have known what to do. She was very desperate at the time. She was extremely distressed. She cried from morning until night. It was the first day she got home from the hospital - after three days of Caesarean she got home and he brought this up I think on that day. But he didn't give the paper yet – the divorce paper but he confronted her with the problem. That same week, on Saturday, he gave her the divorce papers....My son told me that he is mad at me. He says, "Mom, you are in a vulnerable situation because it's a volatile situation and I don't want you to help. Because you never know if the husband loses, doesn't get his daughter, all the money that he wants – he is hiding his money – if he has to let go of the daughter and the money he'll be extremely mad."*
R *Right. So has [name] been to court at all?*
I *No. Just to the lawyer.*
R *Ok. She's going to Legal Aid?*
I *Yeah. And I got all this information from the nurses, you know the public health nurses.[The] multicultural health worker. Through her – she kind of coached me and she*

²¹ This interview took place in P's home. There was considerable discussion among the Research Team as to whether the Interview should take place at all. In the end, two researchers were sent with a cell phone and strict instructions to call in after certain periods of time. As it was, the interview was hastily terminated when P feared the return of her husband.

said take this lawyer because...I would be lost too. I have no idea what to do....On that day, the husband gave her the divorce papers both the husband and the father came to the bathroom and, kind of [P speaking] and said you know 'go sign these papers'. 'Sign the divorce papers'. She didn't want to. She refused. He's not violent. He's good. Then she phones me, crying. She said, "I have no idea what to do." So I called the police. What should we do? I was so worried that they would turn violent to her but they didn't. And the police said, if she doesn't want to sign, she doesn't have to sign. So I told her, you don't have to sign. And after that, that was the weekend, that was Saturday. I couldn't reach anybody. So I waited until Monday then I contacted, I can't remember her name, [name or name], one of the two, and they told me what to do. I also contacted Emergency Social Services Group and they were the ones who told me to, you know, go to Legal Aid. And from there on I called [name] because she is the multicultural health worker. She knows what to do. So that's how. I was lost. I didn't know what to do.... The police said, "we cannot do anything. If he turns violent then we can do something. If not, if not then we cannot help."

P: [Picking up on the word "police" starts to talk about another incident].²²

I: [Translating] This situation, like a quarrel, a big fight in her family, has happened before. The social services got involved, the police came because -

P The police pushed me like that -

I I believe the police pushed her because...they shouldn't-

P They think I want to kill my daughter. She say no. She want take my daughter, bring her back because - I say no, just like that, she angry then they - call police, then police coming. 'What the problem?' 'I don't know' But, but no coming here. Police come here...I can, cannot go home. I go to dealer...dealer?

I To car dealer. She left home and went to the car dealer.

P This is from...this accident come...my daughter sleeping like that in car seat and police push me out for no near my daughter. But she's thinking I want to kill my daughter and she check my bag. There's no knife and no anything, then, then she angry too. 'Why you want to kill your daughter?' 'I don't know. No. Why are you crazy? Why kill my daughter?'

I So what she means to say, you know. Finally the police came, and the social services got involved everything they heard from the husband's side because she didn't speak English....The situation is that here is the report from the father-in-law in Vancouver to the police in Edmonton that this mother wants to kill her daughter.... The police cars came to surround her like she was a criminal. She didn't have any knife in her bag. They thought she's a very mean person. But she cannot defend herself....I personally can understand why the police did that. They trying to protect this little girl that they thought would be killed. She was defenceless and it's horrible what happened to her.

P That's the problem of not being able to speak English.

I [name] already told her 'don't talk in court'. In court, just say yes.

P Don't talk in court just say yes, yes, like this. Quick already like that....

R Now, the lawyers for Legal Aid, do they have access to a translator for [name]?

I That I don't know.

R Have they offered one?

I Not that I know of.....

I The first day she came, the husband told her to cook for him...and they were upset about that, the nurses. They thought it was very cruel. She had the Caesarean and she should not be cooking.

²² The actual sequence and relation of these events is not clear. This may have been a separate incident, or may have occurred during the weekend that the divorce papers were first presented.

- P *Yeah, the minute they are come from hospital start home cooking...I hurt. Very hurt. My daughter crying-*
- I *They can buy food you know! He has lots of money. It makes me angry....Her husband never speaks English with her at home. Where do I go for help for someone who has no money? But, ah, whose husband is asking her to 'sign these papers' and 'get your own lawyer', he said. And 'pay for it yourself'. She never has an income....Women are at a very disadvantaged situation. In their case, the husband never gives money in her name She has to have a bank card but there is limited amount in there. Maybe like \$1500 and she always has to ask his permission to use it, you know? So she doesn't have access to any money....*
- P *[Whispering]*
- R *You think he's...going to come? Ok, Sure. [201]*

4.2.5 Social discrimination

Although research participants tended to speak about perceptions of legal and social discrimination, the discussions are clearly related to social status markers. Participants raised concerns about not receiving equal treatment due to discriminatory attitudes towards:

- gender (both men and women held perceptions of legal discrimination based on their gender)²³
- race or cultural differences;
- disabilities (especially non-visible cognitive);
- sexual orientation;
- age;
- non-English/French speaking;
- low-income.

Examples for most of these issues can be discerned within transcript excerpts provided for the previous social problem areas. The following participant, who was assisted by her Canadian-born daughter made the following comments about discrimination she perceived to be due to a combination of her gender, age and accent:

[My daughter is] my angel. She's saved me from having a nervous breakdown....If we didn't have like pro bono clinics...I think I would be dead. I think my [disabled] husband would be on the street....Some lawyers they said, " we're not trying to hurt you or to be prejudice against you, but please don't talk – let your daughter talk"....See I find out even before my daughter talk, when I get up and talk they don't like the way I look, they don't like the way I am, and they don't listen to me....Now when my daughter talks they listen to her. Like what's the difference? Because she look more beautiful, more skinny? I'm heavy, I'm ugly? Like why? My English is not bad. [Turning to daughter] She

²³ The struggles and perceptions of participants in our research must be understood in the broad social context and considered against the backdrop of what we already know. In the case of perceptions of gender bias, there is considerable evidence of systemic sexism. While participants of both genders may report experiences of discrimination, statistics still indicate that pay inequity, family violence, and the burden of childcare continue to act as barriers to substantive equality for women.

[researcher] understands it. [621, female defendant in a property dispute, self-representing with the assistance of her daughter]

4.2.6 Language barriers

Language barriers are clearly not a consequence of legal action and are unlikely to be the direct cause of a legal problem. However, it can be seen from several transcript excerpts cited previously that when language barriers were present they did tend to seriously exacerbate legal problems and associated social consequences. The excerpt from our interpreted interview with the immigrant woman quoted previously in our discussion of safety and security is a poignant example of this. Seven of the transcripts analysed for this report raise this issue. We know that this is a serious under-representation of the problem for several reasons:

- language barriers prevented people from taking part in the interviews in the first place;
- in many cases, language barriers were also noted as a problem by members of the justice community during their interview or in key contact meetings with us. This is particularly true of input from Aboriginal organizations;²⁴
- in Quebec and Toronto, we had interviewers fluent in English, French and Spanish, but still had the experience of sitting at our research tables in courthouses or legal aid offices and not being able to understand the concerns of clearly distraught litigants with other first languages;
- even when people without fluency in an official language managed to get legal counsel or advice, our examples suggest that such advice may frequently include instructions not to speak. Combined with the shortage of available translation, this seems a matter for considerable concern.²⁵

4.3 Clustering: The Complexity of legal and social relationships

As can be seen from the transcript excerpts quoted above many civil justice cases are extremely involved and the litigants are dealing with many unresolved issues. As we noted when discussing the methodology and data used for this report, research that set out to ask about the relationships between social and legal problems may have been able to more successfully untangle causes and consequences. Within the data currently available it is seldom possible to determine the degree to which a social problem preceded or followed the legal action. Some interviews do, however, clearly illustrate the multi-directional impact of social and legal problems on the process of accessing justice. The issues and the relationships among them are not straightforward. While economic problems are common, it is not simply a question of someone with low income not having resources to access the justice system. Drawing on the *Civil Justice*

²⁴ We are currently developing a report that focuses specifically on Aboriginal concerns about civil justice in Canada Stratton (2006), which is provided as supplementary material to this report.

²⁵ Our research observations are that even fluency in one official language may not suffice. Service in French is hard to find in many parts of Canada and French materials are not routinely displayed. In Quebec, outside of Montreal, service or materials in English are often entirely absent.

System and the Public findings as a whole, the most likely group to not access legal counsel at all are those in the low-middle income range, who are above the legal aid cut off, but do not have sufficient finances to hire a lawyer.²⁶

Our participants' experiences make it clear, however, that accessing legal counsel, whether through legal aid or privately, does not necessarily resolve either legal or social problems. On the contrary, a theme among many of the 35 interviews used for this analysis, is the apparent escalation of problems, both legal and social, that seems to occur once legal action is begun. One of the strongest indicators of mounting social problems appears to be the failure to successfully and permanently resolve legal issues. This is well illustrated in the family law examples given throughout this report.²⁷ Escalation in these cases invariably impacts children, and often other extended family members. An excellent example of the complexity and the clustering of both social and legal issues is provided by participant #523, who was involved in a child custody dispute. She lives in a remote location and her legal problems began in criminal court more than three years previously, after she had been assaulted by her partner. She had been to court six times since and when the interviewer asked her to focus on the civil court matters she responded:

But, you see, the civil matter of the separation agreement is tied up with criminal matters and, uh, I mean I don't know whether it's better to follow your interview process or whether to just go through the story.

She opted to tell her story:

I was assaulted by my partner and you know, that was the end of our relationship....He was charged with assault and...he was released, obviously, pending his court date and you know over that period of time there was a no contact order. Uh, he qualified for legal aid. I did not, and ended up hiring a lawyer. In [this area]...almost everybody knows everybody else, so local lawyers have to declare a conflict repeatedly and I was unable to get a local lawyer, privately and had to get my legal services out of [city]... And [the lawyer] charges 250 bucks an hour. My ex-partner of course, paid nothing for his legal services and as a result of that I would apply for, well I would prepare an affidavit and you know, try and go through the separation process and he could go back to his lawyer again and again and again and again and again, and each time I picked up the phone to talk to my lawyer, it cost me you know, a hundred bucks. So, it was really a, you know, a troubling time and I think more to the point, a lot of times I found myself

²⁶ While this is true of the *Civil Justice System and the Public* participants there are factors that may have influenced this finding. For example Small claims matters are not usually covered by legal aid and we have no way of knowing how this affected a failure to file in the first place. Secondly, residential tenancy disputes are known to have high rates of problems among low-income groups (see for example Buck et al, 2005). In Canada, however, such issues are variably under the jurisdiction of the civil courts or administrative tribunals. Therefore, our project did not capture a consistent picture of these matters.

²⁷ The excerpts included in the report have been pared down considerably. Reading the entire verbatim excerpt associated with the examples expands the illustration of how problems mount after the legal process has been put in motion

phoning my lawyer more as a counsellor than as a lawyer...he was very kind and everything else, but it really racked up the bills. The criminal proceedings against [my ex] were linked intimately with the civil proceedings because after the assault in March, he trashed my car in August, and in fact that became an annual event for three years running. And the access with my daughter, you know sometimes had to take place in jail. He was incarcerated for, for what it was that he did and - anyway, so my dealings with civil courts here come from two streams - the family law and the separation agreement, and then restitution orders. It's no simple matter....I'll start with like issues. Number one, as soon as things get to the court, common sense just goes out the window, you know what I mean. Like...sometimes no contact orders are required...and sometimes it's a case of saying you know, did my daughter eat dinner tonight? You know what I mean? I'm not allowed to ask that question, even if things are OK. As soon as I ask that question, it means that if he whacks out sometime down the line, the police are going to say, "Well, did you talk to him? Have you broken the no contact order?" You say, "Ya, you know I asked uh, what did she have for dinner?." "Well, we can't help you because you've, you haven't honoured this agreement"....All the way, it's sort of a very black and white system....I remember one judge in particular saying ah, that custody um, and I'm sure you're familiar with sole custody and shared custody, that children weren't property anymore and since they weren't property anymore, we wouldn't talk about custody. We would talk about..."shared parenting" and I felt like standing up and saying, "You know, I can hardly believe that you would let your children have shared parenting arrangements with someone who you know can't keep a job for longer than a month; who drinks every night into oblivion; who [laugh] you know, just, like urinates on their supervisor's chairs; throws rocks through windows; trashes cars; can't provide for his own self his own meals or anything else; and you want to stand up there for some virtuous value and some, you know subtle language of law and tell me that I should share parental responsibilities for my daughter with this guy? You know, what planet are you from?"

And it's not so much a sense that I disagree with the principle of shared parenting, but...look at the whole thing.... like I brought my daughter with people into prison so that she could see her father...I have made all her meals, I have made sure she had diapers, I have made sure that she had games to play while she visited with him...I went to extraordinary lengths to make sure that she had a relationship with her father, but there is absolutely- no -way I am going to share parenting with this guy, until he can get his life together...and then of course we can look at it....I think that a real issue is that a lot of times...people who work within the legal system get really jaded to what's going on and look at it as a matter of process and protocol instead of the human beings who are involved in it and who care dearly about the well -being of their children and their families and their lives and.... if it comes down to shared parenting, I'm dropping out, I'll go move to the States or something like that. And you know, to feel so alienated as a citizen, where you're ready to just abrogate your citizenship and move somewhere else because you know clearly there's no win here - there's a problem. Especially you know if you're a fighter and you try and make things work and you try and make things change. [523, mother in a remote location, involved in multiple civil and criminal matters]

This participant went on to talk about how she never was able to enforce the restitution orders and how vulnerable she had felt during this lengthy process. She provided examples of both sensitive and insensitive police interventions that took place and described the following incident that occurred during one of the criminal hearings:

Every time one of my court appearances took place, I was in that courtroom from start to finish....I had listened to prosecution joke about you know, this case or that case or whatever else and then they get to mine and they say, "Oh well, you know, he really has it in for her doesn't he and blah, blah, blah," and I'm just sitting back there listening to these clowns talk about my case and my life. I let them talk for a few minutes and then I said, "That's me that you're talking about!" "Oh, well is it? Well you know, can we talk to you now about it?" I go, "Yeah, it's real nice that you would you know. We're going to be heard by the judge in about five minutes and I've only been phoning your office for the past week and a half. Thank you for speaking with me now". And ah, it's like that's not all prosecutors of course, but it's the sort of thing that - you know, a certain sense of respect for the humanity of people involved in the whole situation, is just knocked out the window....You are just so- not - alive, you know what I mean? You're just this number or this file or this docket or this whatever and it's really, really shameful.

Regardless of whether social problems lead to legal action or vice versa, there is evidence that these lengthy and unresolved family disputes have negative multi-generational affects. The potential for this is obvious in many of the examples already provided. In other interviews, family court judges told us that they often saw before them young offenders, who, a few years earlier, had been the subject of guardianship orders. In an especially emotional interview, a grandmother fighting for custody of her grandson, told her story.²⁸

I was the wife in a violent marriage...I had no family, no support. He was very, very abusive. My oldest son had scars all around his back from being beaten as do I. We went to, first we went to the police- and I was working in the justice system at that time, and the police told me if I quit my job and stayed home it wouldn't be happening...They also told me that they would be quite happy to take me to a women's shelter but they would leave my children, so I stayed. I went through all the system of filing all the papers. My son was 14 then, my oldest son, and he struck back at his father...it was something that had been a long time coming. I don't condone it but I see it happening....I mean we had pictures from doctors from the hospital. [My son's] back... looks like something out of a slave movie. It's from the top of his hairline right down to his buttocks, criss-cross from his belt. I've got cigarette burns on my back and I was raped twice. And I was raped once with the axe handle and had to have surgery done. This was all brought up in the courtroom but nothing was ever done about it....The children were placed in care of my ex-husband, the two younger children because the older boy was being violent....the judge...he pointed at my oldest son and said you are a violent young man and you are the reason your brothers are going to go off without a mother. That was exactly what he said. My son went home and tried to kill himself that night....

We had been fighting in the court system for almost 2 years and couldn't get any satisfaction. I had, I couldn't, I wasn't eligible for Legal Aid at that time because, I quote, "made enough money" because I was getting \$1,000 a month support. \$1,000 didn't go very far when you are supporting a child and everything else. Ended up losing all my settlement that I had on a lawyer - it cost me almost \$70,000. That no-where - Um, wasn't seeing my younger children so I ran. I went to the States and then it went from a civil matter to a criminal matter. But I had gone right through the system and they let me down....it's an emotional thing and you always want to protect those you love. And

²⁸ The verbatim transcript order in this story has been altered in order to create an easier chronology of events.

it's really easy to run when things are not going right. So I spent two years in jail for it in the States. I was arrested down there. And I was charged for working without a work permit and told not to come back to Canada because my life was at risk from my ex-husband. And children were brought back...I'm eligible for a pardon right now. I don't have the money for it which is another thing. But I really, I take responsibility for what I did. What I did was wrong. But at the same time, I had tried very hard to go through the system the correct way and after two years I was losing everything I had that meant anything to me....I had get my kids out of there. And as it turned out I lost everything. I lost my two younger children and now my son is completing the circle of the violence. So, who did the system let down? Me and a whole bunch of young children [inaudible].

[My older son] is the one that I am trying to get custody of his young kids that are in the cycle. He is not physically abusive, but he is mentally abusive and he is drinking heavily and he is in a relationship that I don't think he wants to be in but he adores his little boy. I will give him that. He just worships him. And the child wants him, but he's not a safe parent. He lets the child drive the car around the yard. He is five. He expects him to...go and make supper for himself....and he is outright mean to this little girl. Making her carry firewood in minus 40 degree weather for over a mile daily....I went over there and I was physically attacked by him, so I contacted his probation officer. He was on probation. I was told there is nothing they could do. They called the police, who called Children's Services...There have been landlords who have thrown them out for growing 40 or 50 pot plants in the house. Children's Services has no desire to get involved because the children have no bruises or any physical pain. The kids are crying to come and stay with me because there is no food cooked for them, the house is an outright pig sty....My son right now is, I think he may be manic depressant. He goes on a smooth run where he is really, really happy go lucky. But when he is upset he crashes and punches holes in walls, he slaps people around, and now I'm trying to get a lawyer....I don't have money for a lawyer. So, what do I do? Do I walk away from my grandchildren?....I cannot get any help, or information or anything....you know it's going to be one of these things that you read in the paper one morning, that somebody flipped out and killed his wife and two kids and that's where it is heading. I can see it. I want those kids out of there....

Hopefully it will work this time but I don't hold out anything....I mean, my husband and I are feeding ourselves, keeping a roof over our heads and that's about it. And now we are going to see the legal bills. But, we just don't know what else to do, so -. Sorry to break down, I don't usually do that....I'm okay. I'm just weeping. That's okayI am educated. I am travelled. What happens to the poor little girl who is 19 years old with three kids and doesn't know what is going on. And doesn't have the means to get the hell out. You know, is she another statistic that's gonna pay for this and gets killed? [805, female plaintiff in guardianship application]

As we have discussed, there is plenty of evidence within our data that legal and social problems tend to cluster. When verbatim transcript excerpts are read in their entirety, there are numerous descriptions that suggest a process of escalation. At the time of the interview, 68% of the participants reported having legal representation and the interviews revealed that many others had at some point been represented by a lawyer. Several participants explicitly or implicitly suggest that the hiring of a lawyer increased the level of hostility, the ability to manipulate the situation and the associated financial and social consequences (see for example Participant #304, quoted in section 4.2.2,

and also cases 127, 208, 802, 823)²⁹ This pattern of escalation does not appear to be related to whether the participant is plaintiff or defendant, nor to winning or losing the case. Several participants did, however, suggest it was related to one party having access to legal aid, while the other had to pay a private lawyer.³⁰

As we have already pointed out, the *Civil Justice System and the Public* interviews were not designed to investigate either participants' legal or social problems and are therefore too unfocussed to offer any insight into the reasons for apparent problem escalation. As we discuss in Section 4.2, there are no notable demographic differences between the public participants as a whole and those identified as having clusters of associated legal and social problems. There are, nevertheless, a number of potential factors that might contribute to this phenomenon. For example, perhaps only the most volatile cases reach this point and perhaps the people with such complex legal and social problems were also more inclined to speak with us. Also, retaining counsel (especially when only one party does this) inevitably alters the power balance between the parties and a lawyer's expertise may lead to the identification of legal issues that the parties had not previously been aware of. It must also be kept in mind that we only heard one perspective on the situation. Even with these cautions in mind, the evidence from the *Civil Justice System and the Public* does suggest that mitigating the social costs of litigation will require more than merely ensuring access to legal counsel.

4.4 Inadequacy of legal and social support services

Within the sample transcripts, and the *Civil Justice System and the Public* data as a whole (Gander et al, 2005; Lowe & Stratton, 2004), comments about the inadequacy of legal and social support services are striking. In some case there are no services, but often participants describe actions by those who should provide support or legal services that are unhelpful, sometimes to the point of exacerbating the situation. The following are examples of the kinds of service inadequacy issues that are raised within the data supporting this report. Many of the following points are illustrated within the illustrative excerpts previously quoted.³¹

- lawyers making light of abuse cases;
- children's services workers failing to intervene or to act;
- lawyers who ignore Legal Aid or *pro bono* clients with complex cases;
- court orders that are repeated due to poor case management (usually the same matter coming before different judges);
- the failure of the civil justice rules and procedures to recognize and deal with the interrelatedness of various elements of family law situations;

²⁹ Participant #s 225 and 136, also specifically suggest dissatisfaction with the lawyer's role in the dispute in terms of unreasonable increase of costs and complications to the process.

³⁰ See for example cases 304 and 823. We have been told by justice community contacts that this has been a common complaint for many years.

³¹ It is beyond the scope of this report to fully develop all of the factors related to lack or inaccessibility of services. Elements of the problems are related in all of our reports, which are available at www.cfcj-icfc.org under the 'publications' link.

- lawyers that push adversarial tactics on clients, thus increasing costs and escalating the emotional situation;
- inadequacy of Legal Aid (either due to income cut off levels, or limits to the legal matters that are covered);
- a shortage of lawyers leading to conflict issues that require one party to incur heavy expenses to bring in a lawyer from outside the local community;
- judges making inappropriate (socially unreasonable) comments or decisions;
- police and other emergency intervention services either not knowing what to do, or not having the power to do anything;

Once again the complexity of issues involved with the consequences of social and legal problems is underlined. Obtaining legal representation and commencing a claim indicates that an individual has access to the civil justice system. However, as the *Civil Justice System and the Public* participants make clear, this cannot be equated with accessing “justice.” We return to questions concerning access to justice in our closing comments in Section 5.3, observing at this point that it is a process which has multiple points at which barriers may be encountered if active facilitation services are not provided.

The presence of efficient and sympathetic legal and related social information and referral services can make a very positive difference. One excellent example of such a service is the British Columbia Supreme Court Information Centre.³² A *Civil Justice System and the Public* participant, who had self-represented in her case recently wrote to her interviewer to tell her:

The Self Help Centre...addresses a lot of the current problems that were [raised] in reports [from the Civil Justice System and the Public project]. Mainly, the current state of communication between the civil court and the public. How the system can be improved. The Self Help Centre addresses:

- 1) *The public's need to know where to find existing information*
- 2) *Clear accurate legal information*
- 3) *Basic legal advice at key points in the process.*

I think the Self Help Centre also addresses the problem of standing at the counter (figuring out which counter to stand at) and wavering through numerous forms with the clerk. It also decreases the line-ups and frustration for both the court clerks and the individual. [620, female, self-represented plaintiff in custody and maintenance matters]

4.5 A Summary of Key Findings

Based on the previous examples and discussion of the relevant data from the *Civil Justice System and the Public* project we conclude the evidence suggests the following:

³² Once again, other reports from the *Civil Justice System and the Public* project provide more detailed discussions on useful models of assistance.

- There is substantial evidence that both legal and social problems tend to cluster. The available data suggest that this may be tied to a lack of effective and timely resolution of legal issues.
- The problems people experience have complex relationships, with no clear causal direction. Social problems can lead to legal action. Legal problems may precipitate social problems, or exacerbate those already in existence.
- Social problems do make accessing justice more difficult, regardless of whether these problems pre-exist, or occur during the process of seeking a legal resolution.
- The data from the *Civil Justice System and the Public* interviews show that participants with multiple legal and social problems are as likely to have middle to high annual income as to fall below the poverty line. Regardless of income, participants also reported average or higher educational attainment. These findings are counter to expectations derived from social exclusion theory.
- Sooner or later, legal action does raise financial concern for almost all litigants.³³ Having access to legal counsel does not necessarily lead to a timely or effective resolution to the legal problem. There is a perception (especially among litigants in family related matters) that legal representation exacerbates the social problems involved and the data available to this report does suggest an escalation of problems once legal counsel is involved. However, as discussed in Section 4.3, there could be many contributing reasons for this.
- Current rules of law and legal processes are experienced as significant barriers by litigants struggling to resolve complex social and legal problems.
- At the same time, the legal system is expected to resolve problems that, at core, are not legal in nature. In particular, legal action is often taken when other social support services have failed to provide a litigant with support and resolution.
- As taken up in the following section of this report, the *Civil Justice System and the Public* participants took very active roles in information seeking about their social and legal problems. They bring to bear whatever resources they have for as long as they can.

³³ Concerns about costs, along with a strong desire to avoid litigation are even raised by corporate clients (Bliwas, 2005; *News & Views on Civil Justice Reform* 9 (Spring), 2006, pp.9-15).

5. SOCIAL EXCLUSION–INCLUSION APPROACHES: REDUCING SOCIAL CONSEQUENCES ASSOCIATED WITH LEGAL DISPUTES

Social exclusion-inclusion theories³⁴ and related policies are primarily concerned with economic marginalization and are generally attributed to European concerns with developing social theory able to address globalization (Gray, 2000; Shakir, 2005; Stewart, 2000). Although widely applied to employment and health issues, there is little available literature that applies these ideas to access to justice concerns.

Recently, in Canada and the UK, authors concerned with civil justice reform have proffered arguments directly linking social exclusion³⁵ and access to justice issues (Buck, Balmer & Pleasence, 2005; MacDonald, 2005). Based on quantitative data from a survey of the general public in England, Buck et al (2005) conclude an association between social disadvantage (which they associate with social exclusion) and the clustering of legal problems.³⁶ They conclude that access to “suitable legal advice and assistance might play a crucial role in helping people move out of some of the worst experiences of social exclusion” (p319). They further argue that not taking action about a legal problem “points to a lack of knowledge about the seriousness of the problem” (p.320).

In a discussion specifically focussing on access to justice issues in the Canadian context, Macdonald, (2005) recognizes our pluralistic society where there may be different understandings of “justice” itself. He suggests that the concept of justice that is sought by the public is not just one of procedural fairness, but also of substantive justice. The concerns that he expresses reflect those we heard from public participants in the *Civil Justice System and the Public* research:

[a]s an access to justice concern, the idea of substantive justice means first that the rules being applied are not pre-ordained to favour one party for reasons not germane to the dispute between them. And it means that no other rules of the system, such as rules of evidence, should work to defeat an otherwise meritorious claim. What is more, the system must be responsive to the desires, needs and expectations of users and its outcomes must, from the outset, be reasonably predictable or certain. (MacDonald, 2005, p.106)

³⁴ The terms ‘exclusion’ or ‘inclusion’ are used depending on the author. A review of arguments suggests that inclusion is favoured as better representing the goal of this action-oriented theory. For example, Richmond & Saloojee (2005) argue that “social inclusion is the political response to exclusion” (p.30)

³⁵ It is to be noted that these authors refer only to “social *exclusion*” whereas theoretical discussions generally have moved to speak about “*inclusion*” policies.

³⁶ To be fair, Buck et al acknowledge that people can be poor and not excluded) p.318. This paper is worthy of a more thorough discussion than this report can accommodate. However, it should be noted that the UK sample involved anyone identified as having a potentially ‘justiciable’ problem, whether or not they took legal action. At the same time, anyone having a business related problem (even small business) was excluded from the study from which the data are drawn (Genn, 1999).S Furthermore especial attention is paid to people in rental accommodation, which correlates with both low income and youth. These are all important factors influencing the social status results for this research, and which differ from the approach taken in the *Civil Justice System and the Public* research.

MacDonald relates this point to a context of social exclusion with the following argument:

In the final analysis, disparities in social power, and our seeming unwillingness as a society to do much about them – much more than procedural glitches in processes of litigation – are the root cause of injustice. Social exclusion, as reflected, for example, in school drop-out rates, suicide rates, medical pathologies, and low voter turn-out, is not randomly distributed. Given the general withdrawal of many social groups from the mainstream institutions of civil justice and dispute resolution, it is well worth posing the question whether some relatively radical readjustment of the legal system may be required in order for it to regain the engagement, participation and respect of significant segments of the population. (p.107)

For these authors, the relevance of social exclusion to accessing justice is clear and the ideals at the heart of the exclusion-inclusion orientation appear directly applicable. Richmond and Saloojee (2005) maintain that social inclusion minimally requires formal equality, a right to be free from discrimination, reciprocal rights and obligation, barrier free access, a sense of belonging, and a commitment from the state to provide “all members of society with the resources to exercise democratic citizenship” (p.29). The purpose of the civil justice system is often described in similar terms. For example, the goal of the *Civil Justice System and the Public* project is described as: “to make specific and clear recommendations for effective change that will ultimately improve access to the civil justice system by increasing the ability of the system to hear involve and respond to the public” (Gander, Lowe & Stratton, 2005, p.803).

At the same time, the experiences of litigants that are presented throughout this report, speak to the failure of the civil justice system to meet the goals of inclusion approaches for a broad range of citizens attempting to pursue legal resolutions to problems they are experiencing. Contradictions between theoretical social purpose and practice conditions commonly exist in relation to the social structures of nations defined as democratic. This tension drives both the argument for, and the critique of, social inclusion theories and policies. We would point out, however, that most social systems purposefully have dual social functions (Stratton 2004), including education and health and particularly justice systems. These systems are intended to simultaneously enable and protect citizens, while also including rules and procedures to constrain them from socially undesirable conditions or behaviour (to maintain social cohesion). Discussions of exclusion-inclusion approaches, tend to either overlook this fact, or view systems as *either* a tool to promote citizens rights, *or* a tool to ensure social cohesion by maintaining an unjust status quo. This contributes to a number of limitations in the usefulness of exclusion-inclusion theories, which we now briefly outline.

5.1 The limitations of a social inclusion approach

Available literature underlines several limitations for the application of social inclusion theory to useful social policy initiatives:

- Shakir (2005) points out that the body of exclusion-inclusion theory was developed in Europe and “grounded in particular material conditions” of societies that are different to those present in Canada at this time (p.204) She warns that the ideas have been adapted into Canadian public policy with little recognition of these differences.
- Shakir further argues that the approach tends to offer “universally neutral solutions” (p.204) which assume that to be ‘included’ is good and desirable and to be ‘excluded’ is bad. Such an approach is at best paternalistic, “while at worst it blames the victims for their exclusion” (p.206).
- As Buck et al (2005) recognize, people can be economically poor, but not excluded; or they may be excluded, but of average or better income. Nevertheless, the tendency to equate social exclusion and poverty persists within related literature.
- We suggest that the above two points concerning how exclusion and inclusion are conceptualized are important in considering the applicability of inclusion theory to issues of access to civil justice. Few of our public research participants wanted to find themselves actively involved –‘included’ – in a legal action. In fact, those who were defendants and respondents were included involuntarily. Once involved, even those who initiated the legal action generally wished they had been able to find a resolution other than litigation. They hoped to find justice via inclusion in the system, but were frequently disappointed and disillusioned. As the transcript excerpts show, it was often inclusion in the civil justice process that led participants to express sentiments that echo elements of exclusion such as unequal access to the system and certainly to just outcomes, and experiences of discrimination and inequality.
- Other authors warn of cooptation, arguing that exclusion-inclusion policies tend to be more concerned with maintaining social cohesion and the status quo than bringing about social justice (Novic, 2001; Richmond & Saloojee, 2005; Stewart, 2000). All essentially argue that when used uncritically exclusion-inclusion concepts can justify almost any social policy, focussing on participation without attention to the fact that not all people have equal resources with which to support a choice to participate, or a choice not to do so.

We further note that the roots of exclusion-inclusion theories lie within economic, cultural and social capital theories, particularly those of Bourdieu (1993) and Coleman (1990). While some authors recognize this and see inclusion approaches as an attempt to avoid the dichotomous, measurement plagued arguments about social capital (Lister, 2000; Smith, 2000) others do not (see the Social Capital Formation Project, 2001). This is particularly true of the Canadian discussions we identified. We consider this

unfortunate as we believe there would be more utility in a critical appraisal that unites both areas of theory and moves them onto stronger ground.³⁷

5.2 Issues in applying social capital and inclusion approaches

In addition to the limitations already outlined, social exclusion perspectives sometimes tend to be socially deterministic (Dechman, 2003) and often assume that socially disadvantaged people are not motivated to strive for self-efficacy. The move toward theories that speak of inclusion is an attempt to counter this problem, but as is apparent in our discussion above, many authors challenge the success of this attempt. Similar criticisms have also been made about theories of social capital.

Other researchers applying a social capital approach challenge that view (Chambers, 1997; Stratton, 2004). Chambers (1997) argues that the degree and effect of available social capital is situational. That is, the resources that people can apply to a situation are not static. There are power hierarchies within every social situation and even the homeless have varying levels of capital to apply. His point has relevance to the involvement of lay people with the civil justice system. Like participant #803, quoted earlier, many well-educated and middle-income litigants remarked on how difficult they found it to deal with the complex legal language and process. Although he ultimately attributes the problem to social disadvantage, at the core of his remarks, MacDonald (2005) also identifies disparity of social power to negotiate the system as at the core of exclusion from access to justice.

Chambers argues that individuals, regardless of social status, constantly act to accumulate and apply whatever resources they can acquire. Stratton (2004) also makes this point in a discussion of how students successfully negotiate high school completion. Accepting that the nature and value of capital is situational she also devised a measurement approach for assessing what kinds of capital were useful to the students and how much of it this educational capital they possessed. She found that students engage in a series of negotiations to gain and apply available educational capital that can reduce risks of both academic and social failure. Currie (2005) also notes that, “a strong sense of personal efficacy may be crucial to the motivation and initiative associated with resolving one’s problems” (p.23).

Data from the *Civil Justice System and the Public research*, both cited in this report and elsewhere, strongly support a view that people generally attempt to apply whatever resources they can find to resolve social and legal problems.³⁸ As in the following example, their comments also often suggest that they have a sense of having (or not having resources (capital) which they can usefully apply:

³⁷ It is beyond the scope of this report to fully develop a discussion and critique that does justice of these complex theoretical issues.

³⁸ The available data have much to offer in terms of theoretical considerations related to social capital and social efficacy/agency and deserves more thorough attention than is possible for this report. Similarly, we have not as yet been able to pay full attention to relevant data on public legal information needs and preferences.

I'm biased in favour of the poor...like me, even though I had no financial resources, I had intellectual resources and friends, that's a privilege in itself, I was better off than some. I'm thinking of people who have nothing and are confronted with the civil justice system, a landlord who... not just housing issues, anything. I even consider people poor if they work but aren't eligible for legal aid, housing, things like that, they're in a very poor position and they need a lot of help. [140, Male, involved in a divorce and civil and criminal cases related to social activism]

Participants spoke adamantly about the importance of taking action, even when they were exhausted by the attempt and had abandoned their case. In those instances they often commented that taking part in our research was something else that they could do in the hope of contributing to eventual change. As the following comment illustrates, although some people consider that their social status works against them, potential vulnerability does not necessarily prevent them taking action to improve their situation:

I'm a very resourceful woman. I don't give up – especially when I see that it wasn't a clear-cut case...[knowing that] I had to seek information outside of the courthouse. I had to go to different places – different agencies, government as wellas an immigrant of Canada – though I immigrated to Canada at the age of 3 ½ years old – I'm still considered – even though I've had my citizenship since I was a child. It's still – there's that stigma attached. So I went to my own. I went back to the Jamaican Canadian Association. And eventually I will have to go to the Jamaican Consulate as well...I'm a person who firmly believes in seeking help, I went to a few woman's' advocacy groups, and I went to the public library, I tried to access the government through the website – but I needed something in order to download the information, so that was of no use to me. I don't know if I had enough RAM– I don't know exactly. [both laugh] Also, currently I'm on social assistance, and that became a stigma as a part of the case...but I began to involve community and social services, because they're the ones who said you have to go after the father for child support. [801, female applicant in child custody and access case]

Many similar comments are contained within the supporting data and an understanding and recognition of the drive for self-efficacy will be an essential part of developing policies that improve access to justice. What we do not know from the *Civil Justice System and the Public* data is why some individuals may not be motivated to take action. We talked only to people who were already involved in a civil justice case and further motivated to take the time to talk to our interviewers – not specifically about their personal issues, but about ways to improve the process of communication within the civil justice system. Understanding non-response is, however, a difficult problem that is an inevitable part of all research.

5.3 Asking the right questions: Using inclusion and social capital approaches

In recognition of the critiques of social exclusion-inclusion and social capital theories, we suggest that the way questions are posed may be more important than the theoretical language employed. Our data suggest that in the context of access to civil justice, concepts and measures of “exclusion-inclusion” need to be broadened beyond the traditional social status measures of income and education. The participants in the

Civil Justice System and the Public research were involved in, not excluded from the system, and most would not previously have been considered as socially disadvantaged. We recognize that this study attracted highly motivated participants, but it nevertheless, underlines that the clustering of legal and social problems cannot be reduced a problem of *priori* social disadvantage that prevents access to legal counsel.

We recommend that the development of policies and programs should take a situation-specific approach that begins by asking what is needed for all citizens to have full and equitable access to rights and services – in this case to accessing justice.

At core, social capital and inclusion theories are resource-based. A beginning question is therefore:

What resources do citizens need to access justice?

Defining what is included in the conceptualization of ‘resources’ is in our opinion the crucial next step. For example, legal information is a resource, but it is seldom equally available and accessible to all diverse groups of citizens. Much thought and care is required in how legal information is provided. Similarly, legal advice is repeatedly identified as a vital resource to accessing justice. Citizens do not all have equal economic and social resources available with which to access it, however. Some may not be able to attain any legal advice at all, while others can afford the best quality lawyers.

We suggest taking a view of resources that defines them as:

All commodities, skills and networks required to access the resources necessary to attain equitable and effective inclusion in the process of accessing justice from commencement to outcome.

The following set of questions should be posed:

- What resources do individuals need to *initiate* civil action if they wish to do so?
- What resources do individuals need to maximize their chances of a just outcome once they are involved in a civil action (whether or not they wish to be so)?
- What systemic barriers within the justice system and other associated social systems interfere with individuals’ ability to:
 - a) gather and apply the needed resources
 - b) reach solutions that are both just and effective?

- What solutions are possible that succeed in improving access to civil justice, promote social justice, and also maintain the degree of social cohesion necessary to democratic society?³⁹

Asking ourselves probing questions, such as those we suggest, very often leads to further questions and a realization that we must seek the answers from answers from the people whose needs we intend to meet. A better understanding of the issues involved in accessing the justice system will in turn contribute to evolving theories of citizen inclusion.

³⁹ We make this point about social cohesion in keeping with our comments in Section 5 concerning the need to recognize and incorporate the inevitably dual nature of social systems in democratic societies.

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APPENDIX A

LIST OF TRANSCRIPT HEADERS

LIST OF TRANSCRIPT HEADERS (Numerical Order)

Participant: 126

Presenting Legal Problem: Applicant in Family Court, Motion for custody, Respondent in spousal support adjustment.

Secondary Legal Problem: Two small claims cases

Social Consequences:

Financial (legal cost and dispute over money)

Health – mental (emotional stress of separation in family issues and adversarial process)

Safety and security (aggressive thoughts and feelings, possibility of family violence)

Notes: (original interview in French)

This individual clearly is frustrated with what he perceives as a prejudice against men in family proceedings. Regardless of what could be perceived as gender bias it highlights the mental stress and connected feeling of aggression that are present in many family law disputes. He was also speaking about experiences of a friend as well as himself.

Participant: 127

Presenting Legal Problem: Respondent in various divorce, custody (8 appearances)

Secondary Legal Problem: Spousal support

Social Consequences:

Financial – (hardship relating to division of property and support payments balancing child care and work etc.)

Social Discrimination – (claims of discrimination against sexual orientation)

Health – Mental – (strain of separation from children and frustration of long proceedings, anger in adversarial proceedings)

Safety and security – (Extreme rage and new boyfriend and feelings of aggression and threats of death, accusations of kidnapping)

Notes: (original interview in French)

This individual highlights the nexus between high stress emotional involvement with the case and the way the proceedings are carried out. Many frustrations with the system seem to be reflections of his personal frustrations in other areas of life.

Participant: 133

Presenting Legal Problem: Applicant/Plaintiff in family law matters

Secondary Legal Problem: Applicant in Child protection Matters (2), Also regular respondent in Support adjustment applications

Social Consequences:

Financial – (Job security threatened through absences for court, difficulty in receiving support payments)

Health – Mental – Stress of proceedings, constant worry for child in custody matters

Notes:

Participant highlights the difficulties in balancing priorities such as the financial concerns of pursuing custody matters and her concern for her child's well being. She also briefly mentions that the other party is mentally unstable.

Participant: 136

Presenting Legal Problem: Defendant in Civil Litigation related to small business, Plaintiff in Counterclaim

Secondary Legal Problem: Also has an ongoing divorce case

Social Consequences:

Financial – Cost of litigation results in failure of his business

Health – Mental – frustration with cost of process

Notes:

Participant is frustrated with a system that he feels forces him to go bankrupt defending himself from what he feels are baseless allegations. He feels that he will ultimately be exonerated but he may have to end his participation in the case (at least with legal representation) due to financial hardship.

Participant: 140

Presenting Legal Problem: Divorce

Secondary Legal Problem: Plaintiff in two civil suits against police officers, Defendant in seven criminal matters related to activism.

Social Consequences:

Social Discrimination – Perceived discrimination against people of little economic means

Notes:

This participant is involved with a group that helps people get information in civil cases against the Police, Prosecutors, lawyers and the Judiciary. The quote nicely highlights the differences between a poor person with social/intellectual resources and one without.

Participant: 146

Presenting Legal Problem: Expert Witness in Many Child Protection Matters

Secondary Legal Problem:

Social Consequences:

Health – Mental – Deals with many cases where one of the parties either has or is alleged to have a mental illness

Social Discrimination – (cultural differences leading to misunderstanding of legal norms and subsequent legal action)

Notes:

This participant is involved in many cases where cultural context is an issue. He highlights the difficulties encountered when individuals unfamiliar with the Canadian legal system and Canadian norms as a whole come in contact with the legal system. He also points to the need for greater cultural understanding on the part of judges.

Participant: 184

Presenting Legal Problem: Two malpractice suits

Secondary Legal Problem: Plaintiff in two auto accident suits, also involved in child support for her adult daughter, also Plaintiff in civil suit against police officer.

Social Consequences:

Financial – (financial strain from the accidents, unresolved legal disputes, cost of litigation etc.)

Health – Physical – Unable to receive money for what she perceives is necessary compensation and treatment

Health – Mental – Stress of unresolved disputes, strain of financial situation, frustration at court process.

Social Discrimination – perceived discrimination based on mental disability, language discrimination

Notes:

This participant exhibits a whole host of legal and other issues encompassing almost the entire range of issues identified in this study.

Participant: 201

Presenting Legal Problem: Divorce

Secondary Legal Problem: Police involvement in family dispute, potential spousal abuse, immigration status, child custody.

Social Consequences:

Financial – (participant has no access to money for legal representation)

Health – Physical – (threatened by abusive behaviour of other party)

Health – Mental – (sever mental anguish from abusive husband and strain of court process)

Safety and Security – (potential for violent abuse)

Language Barriers – Prevented from accessing services except through translator

Social Discrimination – recent immigrant with little access to social services

Notes:

This case highlights the potential for marginalized people to be to find themselves in truly tragic and terrifying situations. They end up scared, alone and with nowhere to turn for help.

Participant: 208

Presenting Legal Problem: Defendant in divorce proceedings over 7 years

Secondary Legal Problem: Custody, support etc.

Social Consequences:

Financial – (wanted to avoid the court because of the cost, ended up there when partner got lawyer)

Health – Mental – (the stress of mounting financial costs)

Notes:

This participant highlights the emotional impact of resorting to the court process to resolve family disputes.

Participant: 209

Presenting Legal Problem: Divorce

Secondary Legal Problem: Defendant in foreclosure, Bankruptcy, Plaintiff in Corporate litigation

Social Consequences:

Financial – (ties divorce proceedings directly to his economic woes)

Health – Mental – (talks about the stress and emotional impact of fighting over money and kids)

Safety and Security – (talks about the connection between the stress of the situation leading to family violence and murder, feelings of despair/ suicide)

Notes:

This Participant nicely sums up the, “even when you win you lose” attitude that is common among court system users. P2 is the participant’s new partner and sees the stress of litigation as leading to family violence.

Participant: 210

Presenting Legal Problem: Divorce, custody and support

Secondary Legal Problem: Defendant in abuse allegations

Social Consequences:

Financial – (there are continuing escalating costs relating to the inability to resolve the issue)

Health – Mental – (emotional stress of the situation)

Safety and security – (abduction threats)

Notes:

Participant: 225

Presenting Legal Problem: Defendant in divorce case

Secondary Legal Problem: Business litigation

Social Consequences:

Financial – Consequences like losing your house as a result of legal fees

Health – Mental – The fear and stress of the court process combined with financial pressure causes mental instability

Notes:

This participant talks a lot about the fear of litigation. He discusses the fear of financial consequences as well as the fear instilled by the system itself, which he confuses with criminal outcomes.

Participant: 242

Presenting Legal Problem: defendant in a recurring child maintenance case

Secondary Legal Problem: witness in a case (child protection?)

Social Consequences:

Financial – (lost wages, cost of litigation, travel to court)

Health – Mental – (Fear and anxiety during the court appearances)

Health - Physical – (addiction issues)

Language Barriers - English as a second language

Social Discrimination

Notes:

This participant nicely illustrates the additional problems faced by aboriginal members of society living in more remote locations.

Participant: 243

Presenting Legal Problem: Child Protection and guardianship (defendant)

Secondary Legal Problem: Landlord/tenant as landlord, defendant in traffic, profession misconduct (not being sued directly), [criminal matters? Possibly related to contempt]

Social Consequences:

Financial – (cost of litigation and representation)

Health - Mental – (an intense distrust of people in positions of authority in the court system, fear of losing her children)

Social Discrimination – Inaccessibility of information to individuals without Internet access.

Safety and Security – (death threats etc.)

Notes:

This participant displays many symptoms of ongoing mental health issues. While she does not discuss them specifically, this fact lends valuable context to the quotes

Participant: 245

Presenting Legal Problem: Plaintiff in small claims

Secondary Legal Problem:

Social Consequences:

Financial – property dispute (the case is over money)

Health – Mental (stress resulting from the unresolved problem, and possibly the mental state of other party)

Health – Physical – (hypoglycaemia makes it difficult to sit through long hearings)

Social Discord – The inability to resolve this problem is extending to the wider religious community and extended family

Notes:

This is an interesting case where the participant expresses frustration at having to go through various ADR processes and requiring a definite outcome to resolve the case. The attempts to use community arbitrators rather than the court system exacerbated the situation.

Participant: 249

Presenting Legal Problem: Respondent in family case (support review, common law)

Secondary Legal Problem: Ongoing maintenance enforcement and custody issues

Social Consequences:

Financial – (ongoing financial uncertainty, low income family)

Health – Mental – (ongoing frustration and stress at the length and unresolved nature of the conflict, counselling required for children)

Notes:

Separation of family related issues are treated separately by the court is frustrating. Not knowing her legal rights and options has possibly contributed to how the present situation has evolved.

Participant: 285

Presenting Legal Problem: Applicant in divorce (including spousal and child support issues)

Secondary Legal Problem: Witness in provincial court, plaintiff in a construction business case where defendant was bankrupt

Social Consequences:

Financial – (unsatisfactory judgment, financial insecurity because of delays)

Health – Mental – (stress of having to live with unresolved abusive relationship, financial stress, stress on children, the ex-spouse has addiction issues)

Safety and Security – Death threats, having to live in the same home

Notes:

This participant who is a professional at the management level goes on at length about the inaccessible language of the courts and their formality.

Participant: 304 (P2 is current spouse)

Presenting Legal Problem: Ongoing custody issues

Secondary Legal Problem: defending accusations of abuse; criminal issues with former spouse (drugs and assault)

Social Consequences:

Financial – (ongoing costs over 11 years – 40,000)

Health – Mental – (extreme emotional stress, mental illness of other party, repeated psychological assessments, bed wetting and nightmares (child))

Safety and security – (threatening calls, property violence, abuse of process, fear for safety requiring move)

Notes:

This case again demonstrates the inability of the legal system to deal with mental illness. While this situation would be difficult in any circumstance it is clear that the system has a difficult time balancing its objectives in this case. Note also how the participants extended and second family become involved in the case.

Participant: 501

Presenting Legal Problem: Divorce

Secondary Legal Problem:

Social Consequences:

Financial – loss of property through divorce

Health – physical – (disability makes access to justice difficult)

Social Discrimination – (Breakdown of traditional aboriginal family structure leads to difficulties in getting help)

Notes:

This individual highlights many of the problems in remote communities especially from aboriginal people. This participant has both the perspective of a court user and as an addictions counsellor working in corrections.

Participant: 523

Presenting Legal Problem: Applicant in separation agreement application

Secondary Legal Problem: Assault, no contact order, property violence, access, custody, restitution

Social Consequences:

Financial – (cost of litigation, legal costs in the north)

Health – Physical - (injuries from physical abuse)

Health – Mental - (need of counselling, mental stress of having to fight for custody)

Safety and Security – (Assault, Property violence, feeling like having to leave the country to get away, Property destruction, attempted to break in, having to take the child to jail to visit)

Notes:

This interview highlights the problems that exist when criminal matters stemming from family violence are intertwined with civil divorce proceedings. It also highlights the problems faced by residents in remote areas. There is also a similar theme to several others where the ex spouse qualifies for legal aid and therefore can continue to litigate matters repeatedly.

Participant: 603

Presenting Legal Problem: Civil suit to recover money owed

Secondary Legal Problem: divorce, custody, and foreclosure

Social Consequences:

Financial – (cost of litigation, foreclosure on house, low income)

Health – Physical – (Poor health hindered ability to deal with issues that arose, hearing loss)

Social Discrimination – (disability)

Safety and security – (death threats)

Notes:

Clustering of problems is very apparent

Participant: 606

Presenting Legal Problem: Judgement enforcement

Secondary Legal Problem:

Social Consequences:

Financial – (cost of litigation, difficulty of enforcing judgment and recovering damages makes litigation pointless)

Health – Mental – (stress in court process and examination by lawyers)

Notes:

Plaintiff won his case but cannot enforce the judgment

Participant: 613

Presenting Legal Problem: Defendant in contract dispute

Secondary Legal Problem: Defendant in business related disputes

Social Consequences:

Financial – (cost of potential settlement, loss of income from stress, potential loss of income as a result of losing ability to practice profession)

Health – Mental – (stress of dealing with the risk of losing so much)

Health – Physical – (medical conditions triggered by stress, having to take debilitating medication as a result of illness)

Notes:

Cites medical opinion that the stress of litigation caused the serious medical problems

Participant: 621 (mother with daughter assisting her in court)

Presenting Legal Problem: Defendant in a property dispute over residential house and money owed

Secondary Legal Problem: foreclosure

Social Consequences:

Financial – (cost of litigation, could lose the family home case is about money)

Health – Mental – (Stress of situation leading to near breakdown, emotionally draining, needed to seek counselling, disabled husband has many mental health issues)

Health – Physical – (disabled husband requires ongoing medical attention)

Social Discrimination – (language barriers, physical appearance)

Safety and security – (disabled partner is terrified of mortgage people and others who call)

Notes:

This case illustrates how an accident thirty years ago has led to family disputes that have put the whole family in jeopardy by leading to financial and legal problems. There are also criminal accusations.

Participant: 801

Presenting Legal Problem: Applicant in custody and access

Secondary Legal Problem: spousal abuse

Social Consequences:

Financial – (cost of litigation, limited resources on social assistance)

Health – Mental – (emotional strain of dealing with marriage breakdown and abuse)

Language Barriers – a lot of people are not fully fluent in either official language, and while this participant is fluent, the research team observed a case where a woman in a similar position had little language competence.

Social Discrimination – perceived racism in the courts, judges need more multi-cultural training, also the stigma of being on social assistance.

Notes:

This participant highlights many of the challenges faced by visible minority immigrants to Canada. She also expresses a high level of self-sufficiency

Participant: 802

Presenting Legal Problem: Plaintiff in Malpractice Suit that involves that involves a large professional organization and a government department.

Secondary Legal Problem: Possible complaint to law society

Social Consequences:

Financial – (very high cost of litigating against a rich and powerful organization, paying for experts, medical costs, maxed credit cards)

Health – Mental – (mental strain of going through the litigation process, mental anguish caused by financial problems, frustration at lack of information)

Health – Physical – (physical disability due to accident that this case is based on, medical issues of family member)

Notes:

This example highlights the degree of financial risk individuals place themselves in when they chose to pursue complex litigation. Stress in this case was extreme. There was no hope of recovery for the family member who subsequently died. The marriage

is over. The case is abandoned and now disputes over legal fees and representation remain.

Participant: 803

Presenting Legal Problem: Appellant in suit against a government ministry

Secondary Legal Problem: sexual abuse, suit against parents

Social Consequences:

Financial – (cost of litigation, on disability pension, very limited resources)

Health – Mental – (post traumatic stress disorder, stress of dealing with disability)

Health – Physical – (memory loss disability)

Social Discrimination – (disability not accommodated, inability to access educational opportunities)

Notes:

It is clear that the legal system has had great difficulty in dealing with this participant. Long-term failure of social network seems to be at the core of the issues leading to attempted use of the civil court system.

Participant: 805

Presenting Legal Problem: Guardianship

Secondary Legal Problem: Assault, children's aid, extreme violence, parental abduction, earlier spousal support and child custody.

Social Consequences:

Financial – (difficulties of getting legal aid, previous legal costs taking all the money granted in divorce settlement.)

Health – Mental – (long history of abuse and lasting emotional impact on all parties, son's attempted suicide, current emotional abuse)

Health – Physical – (appalling physical and sexual abuse requiring medical treatment, son's attempted suicide, alcoholism)

Social Discrimination – (Differing status between abuser and abused led to charges not being believed, sexist actions of police, lawyers avoiding taking on legal aid cases)

Safety and Security – (Potential for more physical abuse and neglect)

Notes:

This participant describes a circle of abuse starting with a horrific relationship with her former husband. The son she fathered with the abusive husband has now become abusive himself and she is now trying to protect his partner and her grandchildren.

Participant: 806

Presenting Legal Problem: Applicant in custody

Secondary Legal Problem: Defendant in divorce, criminal abuse investigation

Social Consequences:

Financial – (cost of litigation makes goal of shared custody impossible, never be able to financially recover)

Health – Mental – (litigation has left him emotionally devastated, dealing with family tragedy of terminal disease)

Health – Physical – (children have rare terminal disease which places added timeliness and barriers to shared custody)

Notes:

This participant's situation is unfortunate because of the tragic nature of having children with terminal illness.

Participant: 807

Presenting Legal Problem: Respondent in divorce

Secondary Legal Problem: Previous divorce, separation agreement, support, custody, CAS investigation, criminal assault charges laid on the other party, orders not enforced

Social Consequences:

Financial – (must quit legal action as no money left, cost of litigation, can't work due to stress)

Health – Mental – (children witnessing abuse, children being caught in the middle of the custody fight, stress)

Health – Physical – (accusations of mistreatment of children)

Safety and Security (kidnap threats, "understands" why men commit suicide)

Notes:

This man clearly feels discriminated as a man. Whether or not he is correct in this it illustrates the difficulties both financially and emotionally that are encountered upon family breakdown. He speaks of many examples of stress leading to violent acts in these situations.

Participant: 811

Presenting Legal Problem: Respondent in divorce

Secondary Legal Problem: Support and custody, previous divorce, immigration issues, potential child abduction, abuse threats.

Social Consequences:

Financial – (recently immigrated mother with limited income, on legal aid, husband withdrew sponsorship money)

Health – Mental – (fear of kidnapping on unsupervised visits)

Health – Physical – (health condition precludes most work in and outside the home)

Safety and security – (withdraw of sponsorship, fear of kidnapping, death threats, ex stole all legal documents)

Language Barriers – limited English makes accessing court information difficult

Notes:

This woman has had a difficult time going through two divorces since she immigrated to Canada less than 10 years ago. Her first relationship was highly abusive which led to her seeking help in a shelter. She knew none of her rights and as such would have been unable to take legal action had the shelter not assisted her.

Participant: 817

Presenting Legal Problem: Human Rights Complaint

Secondary Legal Problem: landlord tenant, involvement in immigration.

Social Consequences:

Financial – (cost of conducting frequent litigations, person of quite limited resources)

Health – Mental – (stress induced disease, many mental health issues [apparent from interview])

Health – Physical – (many physical health issues and frequent stays in the hospital, is confined to a scooter)

Safety and Security – (mention of stress of litigation leading to suicide)

Notes:

This individual clearly has many mental health issues however has experienced many of the same frustrations as other civil justice system users. The cases dated back to the 1980s. It also highlights the problems and frustrations court personal, legal professionals and others encounter when dealing with individuals with mental health issues. It also highlights the social costs that accrue when someone with such issues cannot find the appropriate supports and attempts to use the courts instead.

Participant: 822

Presenting Legal Problem: Plaintiff in civil action against the city

Secondary Legal Problem:

Social Consequences:

Financial – (cost of litigation high as well as the loss of business due to unresolved legal problems)

Social Discrimination – (talks of difficulty of accessing justice for immigrants and low income individuals)

Notes:

He notes his own problems, versus the rich and powerful, but also his ability to manage to go forward with the suit as a professional, versus someone with a low level of income and skills.

Participant: 893-897 (focus group at times difficult to separate who is talking)

Presenting Legal Problems: Abuse (sexual and spousal)

Secondary Legal Problems: Restraining order, personal injury, separation, employment, child protection, custody, support, adoption, business related matters

Social Consequences:

Financial – (cost of litigation, inability to access justice because of cost, lack of financial resources to help underlying problems such as education)

Health – Mental – (Mental trauma of abuse)

Health – Physical – (physical injuries of abuse)

Social discrimination – (discrimination against aboriginal peoples)

Language Barriers – (technical language inaccessible)

Safety and security – (abusive situations, not enough done to ensure victims of abuse are safe)

Other associated criminal charges

Notes:

This focus group contains a wealth of examples of the compounding social problems that aboriginal people face.

Participant: 898-899

Presenting Legal Problem: Applicants in custody applications (two women)

Secondary Legal Problem: separation and support agreements

Social Consequences:

Financial – (forced into debt, lost job, no money for bills, bankruptcy, loss of pension rights)

Health – Mental – (experience was traumatizing, extremely emotionally trying)

Health – Physical – (car accident further complicated things)

Safety and Security – (threats to take the kids)

APPENDIX B

Tables with Transcript numbers

Table 1a: Presenting and Associated Legal Problems by Area of Law
With matrix of Associated Transcript Numbers

AREA OF LAW	PRESENTING PROBLEM	Presenting Total	ASSOCIATED PROBLEMS	Associated Total
<i>Family</i>				
Divorce	127 140 201 208 209 225 285 501 807 811	10	136 603 806 807 811	5
Custody and Access	126 133 304 801 806 898/9	6	127 201 208 209 210 245 249 523 807 811 893/7	11
Child maintenance	210 242	2	133 126 184 208 209 245 249 807 811 893/7 898/9	11
Separation agreement	523	1	807 898/9	2
Child guardianship/ protection	146 243 805	3	127 133 210 807 893/7	5
Spousal support	249	1	127 807 893/7	3
<i>Accident and injury</i>		0	184 803 893/7	3
<i>Business dispute</i>	136 613	2	225 285 893/7	3
<i>Property dispute</i>	245 621 822	3		0
Bankruptcy/ foreclosure		0	209 603 621	3
Malpractice or misconduct	184 802	2	243 802	2
Immigration status		0	146 201 811	3
Landlord & Tenant		0	243 817	2
Human/Charter rights	803 817	2		0
Other Tort	603 606	2	140	1
Enforcing orders		0	606 806 807	3
Witness		0	613	1
Criminal				
Assault (all types) ⁴⁰	893/7	1	146 210 304 523 801803 805 806 807 811	10
Restraining/non contact order		0	523 893/7	2
Property damage		0	523	1
Drugs		0	304 805	2
Child abduction		0	805 811	2
Disturbing the peace		0	140	1
Some police involvement		0	201 243 805 893/7	4
Traffic court		0	243 184	2

⁴⁰ The criminal assault category includes incidences and accusations of spousal assault, child abuse and neglect, sexual assault and assault of non-family members. These incidences may have been a precipitating or secondary event in the sequence of legal action, but were not usually the presenting problem because the interviewers were asking specifically about civil matters.

Table 2: Social Consequences by Presenting Legal Problem
With Matrix of Associated Transcript Numbers

PRESENTING LEGAL PROBLEM	Health physical	Health Mental	Safety	Economic (financial)	Discrimination	Language Barriers
Family (number of interviews)						
Divorce (10)	201 807 811	127 201 208 209 225 501 807 811	201 209 285 807 811	127 140 201 208 209 225 285 501 807 811	140 127 501	201
Custody and Access (6)	806	126 133 304 801 806 898/9	126 304 806	126 133 304 801 806 898/9	801	801
Child guardianship/ protection (3)	805	146 243 805	243 805	243 805	146 243	146
Child maintenance (2)	242	210 242		210 242	242	242
Separation agreement (1)	523	523	523	523	523	
Spousal support (1)		249		249		
Business dispute (2)	613	136 613	136	136 613		
Property dispute (3)		245 621		245 621 822	621 822	621
Malpractice/misconduct (2)	184 802	184 802		184 802		184
Human Charter rights (2)	803 817	803 817	817	803 817	803	
Other Tort (2)	603	603 606	603	603 606		
Criminal						
Assault (1)	893/7	893/7	893/7	893/7	893/7	893/7

Notes:

- *Health Physical* includes physical illness, injury and disability associated with or perceived as resulting from the legal action.
- *Health Mental* is broad including everything from diagnosed mental illnesses and cognitive disabilities to reported emotional stress.
- *Safety* includes acts of abuse, threats to physical safety and fears about safety, including thoughts of committing violence or suicide.
- *Discrimination* includes perceptions of legal discrimination and accusations of cultural insensitivity.
- *Language barriers* are obviously not a consequence of legal action. However, where these are present they tend to seriously exacerbate other consequences. Where a participant specifically noted this, we also did so.