



“COST OF JUSTICE” PROJECT PLAN

WORKING DRAFT

October 2012

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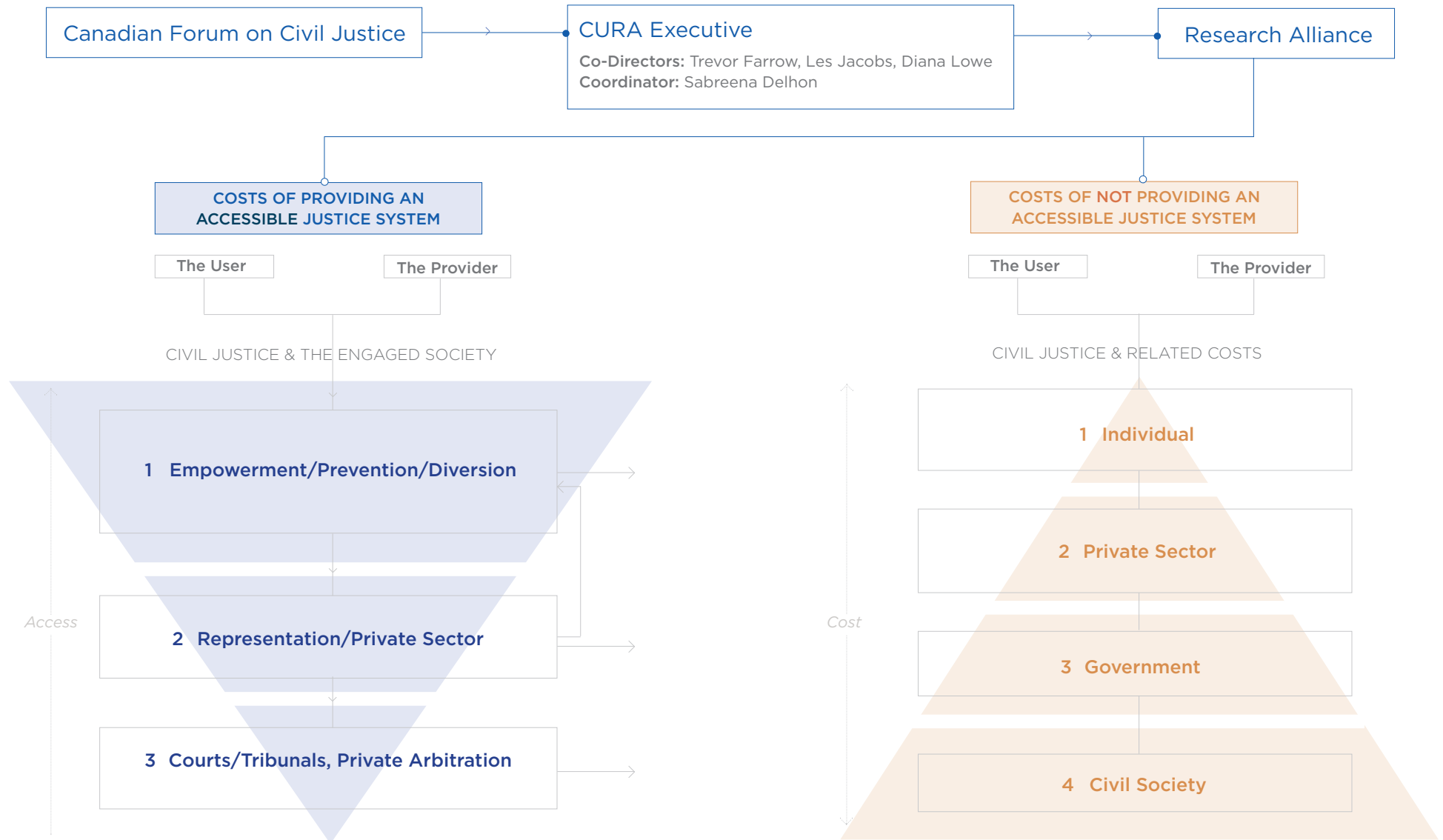
This research... by the Canadian Forum on Civil Justice will be essential in helping us understand the true extent of the problem of cost and how it impacts on the justice system. I believe that it will prove to be of great assistance to... identify concrete solutions to the problem of access to justice.

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

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Canadian Forum on Civil Justice: “COST OF JUSTICE” SSHRC CURA PROJECT



COSTS OF PROVIDING AN ACCESSIBLE JUSTICE SYSTEM

The User

The Provider

CIVIL JUSTICE & THE ENGAGED SOCIETY

1 Empowerment/Prevention/Diversion

Public Legal Education, Technology, Self Help, Triage, Diversion (e.g. Child Welfare, Immigration, Housing, Welfare, Health, Education), Dispute Resolution Services, Culturally Specific Programs, Legal NGOs, etc.

2 Representation/Private Sector

Full, Partial (Unbundled), Paralegal, Legal Aid, Insurance, Alternative Business Models, etc.

3 Courts/Tribunals, Private Arbitration

Public, Private, Hybrid (including traditional decision making), etc.

Access

COSTS OF NOT PROVIDING AN ACCESSIBLE JUSTICE SYSTEM

The User

The Provider

CIVIL JUSTICE & RELATED COSTS

1 Individual

Health, Well-Being, Power, Security, Economics, Education

2 Private Sector

Business, Lawyers and Paralegals, etc.

3 Government

Justice System, Health Care System, Other Social Services (Housing, Social Welfare, Policing), etc.

4 Civil Society

Rule of Law, Democracy, Sustainability

Cost

PROJECT STATEMENT:

This project, using a cost-benefit analysis approach, will explore and promote a major culture shift in Canada toward a public centered justice system. Evidence-based research will be the basis for a new national vision of justice care.

Using a cost-benefit analysis approach we will explore how to inform a major culture shift in Canada towards a public centered justice system.

The Cost of Justice project envisions a national justice care system grounded in evidence-based research that will:

- Empower individuals to actively participate in an engaged society that prevents disputes and addresses social issues of inequality and exclusion
- Equip Canadians with the necessary tools and resources to manage their everyday civil justice problems and needs
- Provide for a widely accessible civil justice system that is centred around multiple points of entry and exit

Through a series of sub-projects coordinated by the Cost of Justice team, which includes internationally recognized members of the Research Alliance, we will produce a thorough, action-oriented response to the question:

What are the costs and benefits of different paths to justice for civil justice system users and providers?

What are the costs of pursuing the resolution of legal problems?

Where do costs accrue and who bears which costs (governments, courts, lawyers, legal aid providers, individual litigants, corporations)?

What are the costs of resolving disputes through the traditional litigation path?

What are the costs of pursuing resolution of legal problems by alternative paths?

What are the costs of not achieving the resolution of legal problems?

Consider the tendency of unresolved legal problems to cluster.

In addition to economic costs, consider personal health and social costs associated with unresolved disputes.

Is the cost of achieving resolution economically warranted?

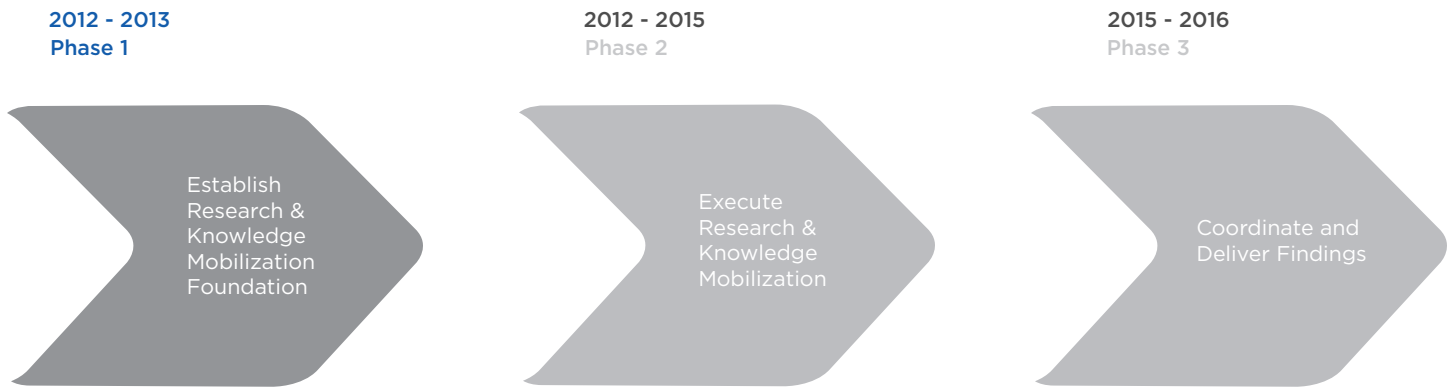
How can we better calculate, understand and balance the social value to democratic societies of ensuring an accessible, effective civil justice system with the financial costs of doing so, or the socio-economic costs of failing to provide access?

What are the methods that provide useful cost-benefit analyses?

What can be done effectively to prevent disputes and at what costs and benefits?

What methods are there for limiting or eliminating the need for legal services, through consumer protection, licensing, standard-setting and pro-active regulation, or other innovations identified by this research?

WORK PLAN & TIMELINE



PHASE 1: 2012 - 2013

Establish Research & Knowledge Mobilization Foundation

- Establish Project Administration
- Organize Research Alliance Members
- Draft Project Charter and Other Internal Documents
- Connect with Related Projects and Stakeholders, Expand Research Alliance
- Establish Communication Processes For Executive, Key Stakeholders and Entire Research Alliance
- Launch and Maintain Robust Communication Strategy
- Develop Internal and External Websites
- Assemble and Train Student Team (Undergraduate, JD, PhD)
- Establish Foundational Knowledge
- Refine Research Plan and Questions
- Develop Research Methodologies
- Initiate Early and Pilot Projects
- Develop Knowledge Mobilization Plan
- Develop Education Plan

PHASE 2: 2012 - 2015

Research & Knowledge Mobilization

- Launch Major Research Projects
 - Coordinate Research Findings
 - Launch Knowledge Mobilization Plan (Dissemination of Early Findings, Promotion of Research Plan)
 - Plan and Deliver Research Alliance Conferences, Project Meetings, Public Events
 - Collaborate With Other Stakeholders
 - Seek Out Future Funding Opportunities
 - Expand Student Team and Training Initiatives
 - Analyze and Disseminate Early Findings (Reports, Journals, Conferences, Roundtables, Workshops, etc.)
 - Execute Education Plan
-

PHASE 3: 2015 - 2016

Coordinate & Deliver Findings

- Complete Projects
- Finalize Financial and Administrative Research and Knowledge Mobilization Details
- Coordinate Research Conclusions
- Promote Major Research Findings (Print, In-Person, Media, On-line, etc.)
- Discuss Major Findings with Key Justice System Stakeholders
- Identify Future Projects, Funding and Collaborations

Comprehensive literature review: Civil justice parallels and benchmarks

What do we already know about the costs and benefits of justice and how should we consider responding to gaps in our knowledge? This review, building on the project proposal, will provide important benchmarks as well as a foundation for much of our proposed research. Identifiable gaps in our current knowledge will provide key sites of inquiry. This review will also explore important parallels (and potential collaborations) with the health, education and social policy sectors. Finally, this project will provide other researchers with a comprehensive source on costs related to systems of civil justice.

Research Team Leaders:

Trevor Farrow, Les Jacobs, Diana Lowe, Ab Currie, Sabreena Delhon

Methodological approaches: Definitions and measurements

Drawing from the comprehensive literature review, this study will identify the various methods by which to define, deconstruct and measure access and cost. Particular attention will be paid to the scope and context associated with the identified methods. This sub-project will be key to informing the methodological approaches that are used in the various research initiatives in this project. It will also be useful for other researchers and policy makers who are looking at civil justice performance and reform.

Research Team Leaders:

Trevor Farrow, Les Jacobs, Diana Lowe, Ab Currie, Jerry McHale

Issues of Cost & Access: Beyond Silos, Towards Strategies Roundtable Series

In recent years some of Canada's largest publicly funded systems have made important strides in improving access to services by rethinking dominant paradigms around cost and social inequality. What lessons from health care, early childhood education and social investment relate to increasing access to the civil justice system?

Link: <http://www.cfcj-fcjc.org/?q=events>

Research Team Leaders:

Les Jacobs, Sabreena Delhon

What is "access to justice?"

This pilot study examines the views of everyday Canadians about the purpose of the civil justice system. Through a series of focused survey questions, we will build on earlier studies by canvassing what the public wants and needs from its system of justice, all with a view towards exploring a more public-focused justice system.

Research Team Leaders:

Trevor Farrow, Sabreena Delhon

Self-represented litigants and the courts

This project, conducted in collaboration with the Association of Canadian Court Administrators (ACCA), produced a White Paper entitled: *Addressing the Needs of Self-Represented Litigants in the Canadian Justice System*. This project provided a series of recommendations designed to promote a new model of "legal assistance" at courts.

Link: <http://bit.ly/Po4Bdx>

Research Team Leaders:

Trevor Farrow, Les Jacobs, Diana Lowe, Ian Greene, ACCA Research Committee, Others

Public and private costs of civil justice problems

This study will identify the social assistance, employment, health care and insurance costs to the private sector of legal problems, especially those that are unresolved or not resolved in a timely manner.

Research Team Leader:

Ab Currie

**Supporting funds are being sought*

Social costs to the state of not resolving civil justice problems

This study will identify the cost to society in terms of mistrust in public institutions and, in particular, mistrust and lack of confidence in the justice system resulting from individuals not resolving civil justice problems.

Research Team Leader:

Ab Currie

**Supporting funds are being sought*

Self-regulation and lawyer's fees

This study will look at some of the basic legal costs and fees in the context of providing legal services largely through a self-regulated system of legal professionals.

Research Team Leader:

Noel Semple

Auto insurance disputes

This project will look at the costs associated with motor vehicle accident disputes and the potential costs and benefits of approaching those disputes through alternative – insurance-based – dispute management models.

Research Team:

Bert Kritzer, Alberta Motor Association

Self-represented litigants – ACCA follow-up study

Following up on the ACCA White Paper report (see previous page) this study will examine the costs and benefits associated with a new model of “legal assistance” in the context of court workers and court administration.

Research Team:

Trevor Farrow, Diana Lowe

Evolving legal services in Canada & access to justice

This study, funded by the Law Foundation of Ontario, considers whether there are differences in case outcomes where parties had access to and relied exclusively or primarily on Public Legal Education.

Research Team:

Community Legal Education Ontario, Les Jacobs, Ab Currie, Melina Buckley

Access to justice and health

Does health depend on access to civil justice? This project is informed by existing work from Alliance members Michael Trebilcock and Albert Yoon in connection with the Ontario legal needs survey and comparative data.

Research Team:

Under discussion and consultation

Legal insurance

Research Team:

Under discussion and consultation

Domestic violence and the courts

Research Team:

Under discussion and consultation with researchers from the University of Saskatchewan and the University of Calgary

WORKING PAPERS

Cost of Justice Background Report

Link: <http://www.cfcj-fcjc.org/cost-of-justice>

Issues of Cost & Access: Beyond Silos, Towards Strategies Briefing Papers

Link: <http://www.cfcj-fcjc.org/events>

SLAW Article: Who Should Meet the Legal Needs of Ordinary Canadians?

Link: <http://bit.ly/S1oc2j>

SLAW Article: A Multidisciplinary Approach to Meeting Family Justice Needs

Link: <http://bit.ly/wU7qUk>

REPORTS

Addressing the Needs of Self-Represented Litigants in the Canadian Justice System

Link: <http://bit.ly/Po4Bdx>

EVENTS

Issues of Cost & Access: Beyond Silos, Towards Strategies Roundtable Series (Fall 2012)

Link: <http://www.cfcj-fcjc.org/events>

MEETINGS

Toronto - May 2012

Framing Meeting with key Research Alliance members

Vancouver - October 2012

Research Meeting with key Research Alliance members

Consultation & Network Expansion

National Action Committee on Civil and Family Matters

Provided supporting assistance in the drafting of the Court Processes Simplification Working Group report. Final reports from that working group as well as the working group on Access to Legal Services were posted on the Canadian Forum on Civil Justice website.

Link: <http://www.cfcj-fcjc.org/?q=collaborations>

Community Legal Education Ontario

Les Jacobs and Ab Currie are both members of the Evolving Legal Services project being led by Community Legal Education Ontario.

Law Society of Upper Canada

Preliminary discussions about potential involvement with the Law Society of Upper Canada's access to justice initiatives.

Other

Consultations with key stakeholders and researchers in the context of future projects and initiatives.

Media Coverage

“Accessing the justice system: Exploring perceptions.” Law Society Gazette (February 2012)

Trevor Farrow and Les Jacobs profiled in a legal professional magazine published by the Law Society of Upper Canada.

Link: <http://bit.ly/TEeaQR>

OMNI News – Punjabi Edition (September 2012)

Cost of Justice project profiled local television news September 2012.

Link: <http://bit.ly/TQz3sn>

Happenstance & Occurrences, CHUO FM 89.1 (September 2012)

Trevor Farrow interviewed about the Cost of Justice project for current events show on Ottawa based community radio station.

Link: <http://bit.ly/UxBe9x>

York University YFile (September 2011)

Online article announcing the \$1 million SSHRC-CURA award to the Canadian Forum on Civil Justice.

Link: <http://www.yorku.ca/yfile/archive/index.asp?Article=17542>

Queen's University News (September 2011)

Online article describing Erik Knutsen's active participation in the Cost of Justice project.

Link: <http://bit.ly/RiLQVC>

Website & Twitter

Details about the Cost of Justice project are found on this page of the Canadian Forum on Civil Justice website:

<http://www.cfcj-fcjc.org/cost-of-justice>

Total Twitter followers: 586

Selected Twitter followers:

- Canadian Bar Association
- Hon. Tony Clement
- Lorne Sossin (Dean, Osgoode Hall Law School)
- Kim Brooks (Dean, Schulich School of Law, Dalhousie University)
- Mamdouh Shoukri (President, York University)
- Canadian Institute for the Administration of Justice
- Martin Gramatikov (Senior Researcher, Tilburg University)
- CanLII
- Catherine Brennan (Managing Editor of JUST, official magazine of the Ontario Bar Association)
- Michael A. Shepherd (Reference Librarian, Supreme Court of Canada)

Student Training & Education

Undergraduate Students: 2

JD Students: 7

PhD Students: 1

Courses: Law 343 Access to Justice
University of Victoria, Faculty of Law
Instructor: Jerry McHale
Link: <http://bit.ly/SioAIU>

Selected Presentations And Publications Related To Cost Of Justice Project Themes

Trevor C. W. Farrow, "Access to Justice: Reality, Rhetoric and Recommitment" (21st Annual F. B. Wickwire Memorial Lecture (with Hon. Thomas A. Cromwell and Emma Halpern), hosted by the Schulich School of Law and the Nova Scotia Barristers' Society, Dalhousie University, Halifax, Nova Scotia, 29 February 2012)

Trevor C. W. Farrow, "Access to Justice in Canada: Challenges and Initiatives" (President's Forum keynote address, Canadian Bar Association-Saskatchewan Branch, 2012 mid-winter meeting, Regina, Saskatchewan, 3 February 2012)

Trevor C. W. Farrow, "The Future of Civil Justice" (featured presentation at "Research Celebration", a panel of four researchers selected to represent and showcase Osgoode Hall Law School's research initiatives, York University, Toronto, Ontario, 4 April 2012)

Trevor C. W. Farrow, "Civil Justice and Civil Justice Reform: A Comparative Discussion" (presentation at "Global North and Global South Perspectives on Transnational Governance: An Indian-Canadian Conversation" conference hosted by Osgoode Hall Law School and Jindal Global Law School, Toronto, Ontario, 26 October 2010)

Trevor C. W. Farrow, "Accessing Justice Through a Culture of Justice" (presentation at "Access to Justice and Pro Bono" panel, International Legal Ethics Conference (V), Banff, Alberta, 14 July 2012)

Trevor C. W. Farrow, *Civil Justice, Privatization and Democracy* (Toronto: University of Toronto Press, in progress).

Trevor C. W. Farrow, "Proportionality: A cultural revolution" (2012) 1 *Journal of Civil Litigation and Practice* 151

Les Jacobs. "Access to Justice Through the Lens of Equality of Opportunity", Equality of Opportunity Research Workshop, Hebrew University of Jerusalem, Israel, December 6-8, 2012

Les Jacobs. "When Things Go Wrong: Health Care, Rights Violations, and Access to Justice Comparative Research on the Asia Pacific Rim," Green College Lecture Series, University of British Columbia, October 15, 2012

Les Jacobs. "Keynote Address Protecting Privacy Rights: Access to Justice Issues in a Global Digital Economy" Pathways to Privacy (P2P): Privacy for Everyone Symposium (Office of the Privacy Commissioner of Canada/Industry Canada/SSHRC) Ottawa, May 2, 2012.

Les Jacobs. "Fair Access to Higher Education: A Question of Stakes Fairness" in Heinz-Dieter Meyer, Edward P. St. John, & Xu Li (EDS.), *Access to Higher Education in a Global Society: Reconciling Excellence, Efficiency, and Justice* (Rotterdam, NL: Sense Publishers, Forthcoming November 2012)

Les Jacobs. "Adapting Locally to International Health and Human Rights Standards: An Alternative Theoretical Framework for Progressive Realization" in Mikael Rask Madsen & Gert Verschraegen, editors, *Making Human Rights Intelligible: New Theoretical and Empirical Contributions* (Oxford UK: Hart Publishing, IISJ Book Series, 2012)

Les Jacobs. "Canada Country Report - Strengthening Access to Justice" (May 2011), Pro Bono Law Alberta/Vance Center for International Justice (New York City Bar Association), available at <http://www.pbla.ca/news/article.373545>

CO-DIRECTORS

TREVOR FARROW, LL.M, PhD (Principal Investigator)
Associate Professor
Osgoode Hall Law School
Chair, Canadian Forum on Civil Justice

LESLEY JACOBS, PhD
Professor of Law & Society and Political Science
York Centre for Public Policy & Law
York University
Academic Director, Canadian Forum on Civil Justice

DIANA LOWE, QC, LL.M
Executive Legal Counsel
Court of Queen's Bench of Alberta
Chair, Canadian Forum on Civil Justice Research Committee

CO-APPLICANTS

NIGEL BALMER, PhD
Faculty of Law, University College London

BARBARA BILLINGSLEY, LL.M
Faculty of Law, University of Alberta

IAN GREENE, PhD
School of Public Policy and Administration, York University

ERIK KNUTSEN, LL.M
Faculty of Law, Queen's University

HERBERT KRITZER, PhD
University of Minnesota Law School

GEOFFREY MULHERIN, PhD
Law and Justice Foundation of New South Wales

PASCOE PLEASENCE, PhD
Faculty of Law, University College London

LORNE SOSSIN, PhD
Osgoode Hall Law School, York University

DAVID WISEMAN, PhD
Faculty of Law, University of Ottawa

COLLABORATORS

ANDREW CANNON, PhD

Magistrate's Court, South Australia Government

ALBERT CURRIE, PhD

Department of Justice Canada

JUDITH FORDHAM, PhD

Jury Research Group, University of Western Australia

DAME HAZEL GENN

Faculty of Law, University College London

DAVID HYMAN, MD, JD

College of Law, University of Illinois at Urbana-Champaign

KRISTA JAMES, LLB

British Columbia Law Institute

DOUGLAS MAY, PhD

Department of Economics, Memorial University of Newfoundland

REBECCA SANDEFUR, PhD

American Bar Foundation

NOEL SEMPLE, PhD

Faculty of Law, University of Toronto

ROLLIE THOMPSON, LLB

Schulich School of Law, Dalhousie University

MICHAEL TREBILCOCK, LLM

Faculty of Law, University of Toronto

NEIL VIDMAR, PhD

Duke University School of Law

ALBERT YOON, PhD

Faculty of Law, University of Toronto

PARTNERS

DAVID AIKENS

Nova Scotia Department of Justice

LORNE BABIUK

University of Alberta Office of the Vice President (Research)

JOHN BRIGGS

Law Reform Commission of Nova Scotia

PHILIP BRYDEN

Faculty of Law, University of Alberta

CAROLYN CAMPBELL

School of Business, University of Alberta

MICHAEL CARABASH

Dynamic Lawyers

ALEXANDRA CHYCZJI

The Advocates' Society

RICK CRAIG

Public Legal Education Association of Canada

JANET CURRIE

Focus Consultants

JIM EMMERTON

British Columbia Law Institute

JEANETTE FEDORAK

Alberta Justice

MICHAEL FINLEY

Law Reform Commission of Saskatchewan

LORNE FOSTER

York Centre for Public Policy and Law

JORDAN FURLONG

Law 21

BARB HOOKENSON

Association of Canadian Court Administrators

PATRICIA HUGHES

Law Commission of Ontario

JANE KIDNER

Centre for the Legal Profession, University of Toronto

JULIE MATTHEWS
Community Legal Education Ontario

JERRY McHALE
Ministry of the Attorney General of British Columbia

STEPHEN MIHOREAN
Department of Justice Canada

ROBERT NELSON
American Bar Foundation

GREG REINHARDT
Australasian Institute of Judicial Administration

CHRISTINE ROBERTSON
Canadian Institute for Administration of Justice

NORMAN SABOURIN
Canadian Judicial Council

GAYLENE D. SCHELLENBERG
Canadian Bar Association

CATHERINE SIMPSON
Government of Yukon, Department of Justice

GERALD TEGART
Government of Saskatchewan, Ministry of Justice and Attorney General

ANALEA WAYNE
Canadian Bar Association - Alberta Branch

MATTHEW WESOLOWSKI
Alberta Motor Association Insurance Services

JUDGE SHEILA WHELAN
Canadian Association of Provincial Court Judges

RICHARD WHITECROSS
Government of Scotland, Justice Department Services

KEN WHITEHURST
Consumers Council of Canada

FREDERICA WILSON
Federation of Law Societies of Canada

PAUL WOOD
Legal Education Society of Alberta

For more information please contact [Sabreena Delhon](#),
Cost of Justice Project Coordinator:

sdelhon@cfcj-fcjc.org
(416) 736-2100 ext. 70474
www.cfcj-fcjc.org

