“COST OF JUSTICE” PROJECT PLAN

WORKING DRAFT

October 2012
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)
# Table of Contents

1. Project Map  
4. Project Statement  
5. Project Plan  
6. General Research Questions  
7. Work Plan & Timeline  
9. Selected Preliminary & Pilot Projects  
10. Selected Projects Currently Under Development  
11. Selected Early Output & Deliverables  
15. Research Alliance
Canadian Forum on Civil Justice:
“COST OF JUSTICE” SSHRC CURA PROJECT

CIVIL JUSTICE & THE ENGAGED SOCIETY

1 Empowerment/Prevention/Diversion

2 Representation/Private Sector

3 Courts/Tribunals, Private Arbitration

CIVIL JUSTICE & RELATED COSTS

1 Individual

2 Private Sector

3 Government

4 Civil Society
COSTS OF PROVIDING AN ACCESSIBLE JUSTICE SYSTEM

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.
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
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?
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
SELECTED PRELIMINARY & PILOT PROJECTS

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


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
SELECTED EARLY OUTPUT & DELIVERABLES

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?

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.

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
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. Sheppherd (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

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.

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


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