



ACCESS TO JUSTICE THEMES:

“Quotable Quotes”

Background Paper for The Law Society of Ontario's
Access to Justice Symposium: “Creating a Climate for Change”
October 29, 2013

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DRAFT – OCT 20, 2013

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Introduction

This is the second of two background papers prepared for participants of the Access to Justice Symposium hosted by the Law Society of Upper Canada on October 29, 2013. It briefly sets out themes observed from reviewing selected Ontario and national reports on access to justice issues from the past several years. The themes are illustrated with quotations, primarily from the reports listed on the following page.

This paper does not attempt to summarize or synthesize the extensive content and recommendations contained in these reports. Nor does it draw on the many articles, books, additional reports, conferences, and symposia on access to justice issues. The themes and quotations have been put forward as “food for thought” to generate ideas, discussion and dialogue at the Symposium.

Ontario and National Access to Justice Reports 2007 - 2013	Short Title used for Citations in this Report
Access to Civil and Family Justice: A Roadmap for Change Action Committee on Access to Justice in Civil & Family Matters, Oct 2013	"NAC: Roadmap"
Reaching Equal Justice: An Invitation to Envision and Act A summary report by the CBA Access to Justice Committee, Aug 2013	"Equal Justice"
Public Legal Education and Information in Ontario Communities: Formats and Delivery Channels CLEO Centre for Research & Innovation, Aug 2013	"Public Legal Education"
CBA Legal Futures Initiative: The Future of Legal Services in Canada: Trends and Issues The Canadian Bar Association, June 2013	"Legal Futures"
The National Self-Represented Litigants Project: Identifying and Meeting the Needs of Self-Represented Litigants Dr. Julie Macfarlane, Final Report, May 2013	"National SRL"
Meaningful Change for Family Justice: Beyond Wise Words Final report of the Family Justice Working Group Action Committee on Access to Justice in Civil and Family Matters, April 2013	"NAC: Family Justice"
Responding Early, Responding Well: Access to Justice through the Early Resolution Services Sector. Final report of the Prevention, Triage and Referral Working Group Action Committee on Access to Justice in Civil and Family Matters, Feb 2013	"NAC: Prevention, Triage, Referral"
Increasing Access to Family Justice Through Comprehensive Entry Points and Inclusivity The Law Commission of Ontario, Feb 2013	"LCO: Family Justice"
First Nations Representation on Ontario Juries Report of the Independent Review by Honourable Frank Iacobucci, Feb 2013	"First Nations/Juries"
Access to Justice in French French Language Services Bench and Bar Advisory Committee to the Attorney General of Ontario, June 2012	"Access in French"
Report of the Court Processes Simplification Working Group Action Committee on Access to Justice in Civil and Family Matters, May 2012	"NAC: Court Processes"
Report of the Access to Legal Services Working Group Alison MacPhail for the Working Group on Access to Legal Services Action Committee on Access to Justice in Civil and Family Matters, May 2012	"NAC: Legal Services"
Addressing the Needs of Self-Represented Litigants in the Canadian Justice System Trevor Farrow, Diana Lowe, Bradley Albrecht, Heather Manweiller, Martha Simmons White Paper for the Association of Canadian Court Administrators, March 2012	"SRL White Paper"
The Geography of Civil Legal Services in Ontario: Report of the Mapping Phase of the Ontario Civil Legal Needs Project Jamie Baxter and Albert Yoon, Nov 2011	"Mapping"
Listening to Ontarians: Report of the Ontario Civil Legal Needs Project A report of the project Steering Committee, May 2010	"Listening"
Connecting Across Language and Distance: Linguistic and Rural Access to Legal Information and Services Karen Cohl and George Thomson for The Law Foundation of Ontario, Dec 2008	"Connecting"
Report of the Legal Aid Review 2008 Michael Trebilcock, 2008	"Legal Aid Review"
Report of the Review of Large and Complex Criminal Case Procedures Honourable Patrick J. Lesage and Professor Michael Code, Nov 2008	"Large Criminal Cases"
Civil Justice Reform Project: Summary of Findings & Recommendations Honourable Coulter A. Osborne, Q.C., Nov 2007	"Civil Justice Reform"

Importance of Access to Justice and the Need for Change

Theme #1: Access to justice is an issue of fundamental importance.

An explicit and underlying theme is the vital importance of ensuring that members of the public have access to justice, both in terms of process and substantive outcomes.

Most people agree that access to justice is a fundamental right in a democratic society.

– Listening to Ontarians, p.2

The most advanced justice system in the world is a failure if it does not provide justice to the people it is meant to serve. Access to justice is therefore critical.

– Rt. Hon. Beverley McLachlin, P.C., Chief Justice of Canada, 2007, *Justice in our courts and the challenges we face* (Address to the Empire Club of Canada)

Theme #2: There is an urgent need for significant change.

Despite the innovations and progress achieved by governments, legal organizations, community groups, and multi-stakeholder partnerships, the need for systemic change remains. The reports examined for this paper describe issues that require urgent attention, systems that are unsustainable in many respects, and the need for fundamental transformation as opposed to more modest reform.

[There is a] broad consensus on the need for significant change to improve access to justice, and an evolving consensus on the central directions for reform.... The civil justice system is too badly broken for a quick fix.

– Equal Justice, pp.1 and 13

We must make changes urgently...The current system is unsustainable. Change is urgently needed.... Now it is time to act.

– NAC: Roadmap, pp. v, 5, 24

As long as justice has existed, there have been those who struggled to access it. But as Canadians celebrated the new millennium, it became clear that we were increasingly failing in our responsibility to provide a justice system that was accessible, responsive and citizen-focused. Reports told us that cost, delays, long trials, complex procedures and other barriers were making it impossible for more and more Canadians to exercise their legal rights.

– Rt. Hon. Beverley McLachlin, P.C., Chief Justice of Canada, in Foreword to NAC: Roadmap, p.i

[T]he justice system, as it relates to First Nations peoples, and particularly in Northern Ontario, is in crisis.”

– First Nations/Juries, p.2

There is today an overwhelming consensus that if the justice system as we know it is to survive, it must undergo significant change to provide greater access to justice for the public.

– Hon. Warren K. Winkler, Chief Justice of Ontario, Opening of the Courts of Ontario, September, 2013

Theme #3: There is no common definition but a common understanding is emerging.

There is no common definition of “access to justice” and the emphasis of what it comprises has evolved over time. However, a review of recent reports indicates a commonality of thinking on the concept, especially for civil and family law. For example, there is recognition that access to justice extends beyond access to lawyers and courts; that it requires a range of ways to prevent and resolve everyday legal problems; and that it includes fair processes and just outcomes.

[Access to justice] can perhaps be thought of as encompassing a hierarchy of approaches:

- 1) Helping the largest number of people to use the system as it is (by such means as legal aid);
- 2) Changing the justice system to make it more responsive and more user-friendly;
- 3) Helping people to find other ways to avoid or resolve problems such that they do not require access to the justice system.

– Law Society of Upper Canada, Access to Justice Committee Report to Convocation, June 28, 2002, p.8

[A]ccess to justice refers broadly to the access that citizens have to dispute resolution tools of justice including but not limited to courts. Effective access to justice does not only refer to reductions in costs, access to lawyers and access to courts; but rather, it is a broad term that refers more generally to the efficaciousness of a justice system in meeting the dispute resolution needs of its citizens.

– Canadian Forum of Civil Justice website

[W]e believe that an accessible family justice system must be affordable and easy to navigate but we also believe that ensuring access to justice in the area of family law requires attention to other factors which create barriers...

– LCO: Family Justice, p.16

Our central animating principle must be envisioning a truly equal justice system, one that provides meaningful and effective access to all, taking into account the diverse lives that people live.

– Equal Justice, p.2

Providing justice – not just in the form of fair and just process but also in the form of fair and just outcomes – must be our primary concern.

– NAC: Roadmap, p.9

In general terms, members of our society would have appropriate access to civil and family justice if they had the knowledge, resources and services to deal effectively with civil and family legal matters.

– Hon. Justice Thomas Cromwell of the Supreme Court of Canada, cited in NAC: Roadmap, p.27

The NAC's "Roadmap" report succinctly summarizes problems identified with the civil and family justice system: too complex, too slow, too expensive, and often incapable of producing just outcomes (NAC: Roadmap, p.1). One approach to defining access to justice would be to state this in the positive:

Access to justice exists when the public can understand, use and afford information and services to prevent and resolve their legal disputes and to achieve just outcomes without delay.

New Directions – Cultural Shift

Theme #4: We need to put the public first

There is a strong sense that justice system structures, processes and reforms have too often been designed to serve the needs of legal professionals and service providers. This has created barriers for members of the public in addressing their legal issues and asserting their legal rights. Some reports articulate the need for a major cultural shift within the justice system to focus more on the needs of the public in general and on vulnerable groups in particular.

An inclusive justice system...focuses on people's needs, not those of justice system professionals and institutions Getting to equal justice demands that we first focus on the people who are most disadvantaged by their social and economic situation.

– Equal Justice, pp.14 and 16

The justice system, through those that work in it, must shift its focus fundamentally and see itself through a more user-centred, rather than provider-centered, lens of service.

– SRL White Paper, p.5

[M]any people continue to face significant barriers to accessing legal information, including language, literacy, disability, distance, and skill level or confidence.

– Public Legal Education, p.30

The focus must be on the people who need to use the system. This focus must include all people, especially members of immigrant, aboriginal and rural populations and other vulnerable groups.

– NAC: Roadmap, p.7

These systemic issues include...the almost universally-held view of First Nations individuals that the justice system is alien or foreign [and] the problem of inadequate legal representation of First Nations individuals, particularly in the north, resulting in virtually automatic guilty pleas.

– First Nations/Juries, p.87

[P]ersons with disabilities... are more likely to identify a civil legal problem they encounter as being very disruptive in their lives.

– Listening, p.12

[A]ccessing justice in French in Ontario can be more difficult, time consuming and expensive than accessing justice in English....In spite of the goodwill on the part of participants in the justice system, the French-speaking community continues to experience barriers to accessing justice in French.

– Access in French, pp.7 and 48

Theme #5: We need to do more at the front end and on prevention.

Many reports stress the importance of prevention strategies and the need for integrated, front-end services. Early information and access to a range of assistance and tools can help to prevent legal issues from escalating and leading to other problems in an individual's life.

[W]e should not lose sight of the value of prevention as a means of avoiding civil legal needs altogether.

– Listening, p.56

Perhaps the most pressing access innovation is to develop effective triage and referral systems in each jurisdiction.

– Equal Justice, p.20

We have adopted an underlying premise that early intervention in family law disputes can minimize the likelihood of an unnecessary protracted dispute before the court and result in better outcomes for families.

– LCO: Family Justice, p.57

The justice system must acknowledge this reality by widening its focus from its current (and expensive) court-based “emergency room” orientation to include education and dispute prevention.

– NAC: Roadmap, p.11

...[T]he “front end” of the justice system...precedes – and often obviates the need for – formal representation in the court system.

– NAC: Prevention, Triage, Referral, p.i

As with medicine where there is now a greater emphasis on prevention and health promotion, there is already a demand in certain sectors for more preventative lawyering to avoid disputes in the first place and reduce legal costs over the longer term.

– Legal Futures, p.21

A triage role should be identified for frontline staff who help diagnose the specific needs of particular SRLs and then assist those people to obtain the required information or services....

– SRL White Paper, p.42

[C]ase management initiated early on in a matter may promote the earlier resolution of the dispute.

– NAC: Court Processes, p.9

Theme #6: We need more integrated and holistic responses

The reports recognize the inter-connectedness of legal problems and various health, social and financial problems that individuals face. This calls for more integrated and holistic approaches to serve people with legal issues. Some suggest greater collaboration among legal service providers and other disciplines, for example by working with social workers and others in multidisciplinary teams.

The initial problem may be a legal problem, but without early intervention this problem may trigger subsequent problems, legal or otherwise, such as greater demands on other social welfare programs, social housing programs, physical or mental health programs, etc. Early intervention...calls for a more holistic or integrated institutional response....

– Legal Aid Review, p.vi

[A culture shift is required to] move away from the adversarial model and a reorientation to problem-solving in a multi-professional context.

– Self-Represented Litigants, p.128

[Services can be provided] through teams of lawyers, other legal service providers (like paralegals) and providers of related services (like social workers). Teams can deliver more comprehensive and holistic services tailored to people’s needs. ... Target: By 2030, 80% of lawyers in people-centred law practices work with an integrated team of service providers.

– Equal Justice, pp.27 and 28

Viable solutions require collaboration to create synergy and to respond to people's needs in a holistic way.

– Connecting, p.5

With some (important) exceptions, our system presumes homogeneity on the part of users... and for the most part, it divorces the legal problem from the other issues that attend relationship breakdown.

– LCO: Family Justice, p.53

Issues to Address

Collectively, the reports examined for this paper press for change in many areas and for various population groups. This section selects three areas that multiple reports indicate as priorities. However, this should not be taken to indicate that these three areas are necessarily the most important issues to be addressed. Other issues may be viewed as equally or more urgent.

Theme #7: The family law system requires urgent attention.

Despite many improvements in the family justice system, many reports call for further and more dramatic changes, including a greater emphasis on non-adversarial approaches and early intervention.

[F]amily relationship breakdown is the primary reason why most Ontarians enter the civil justice system.

– Listening, p.57

Major change is urgently needed in the family justice system.

– NAC: Roadmap, p.17

Canadians do not have adequate access to family justice.... Without access to the mechanisms to implement them, the substantive rules have limited value.

– NAC: Family Justice, p.1 Exec Summary

The problem [of unrepresented litigants] is particularly pronounced in family law matters.

– Equal Justice, p.9

Over the past few years, there has been considerable study and reform of the family law system. Yet problems of complexity and difficulties for unrepresented litigants in particular remain.

LCO: Family Justice, p.1

Extending paralegals' scope of practice to include family law is controversial; however we conclude that this possibility should not simply be dismissed.

– LCO: Family Justice, p.2

Respondents frequently questioned the limitations placed on the provision of assistance by paralegals, especially in relation to family matters.

– National SRL, p.13

We must concentrate our efforts on the specific areas of law with the greatest societal need and where we can have the highest impact. It is for this reason that I continue to advocate for ongoing family law reform.

– Chief Justice Warren K. Winkler, Opening of the Courts of Ontario, September 2012

Theme #8: Self-represented parties are not going away

Many reports raise the need for justice system changes in light of high numbers of self-represented persons, whether in civil, family or criminal cases. The phenomenon of self-represented persons is not expected to go away.

There is an urgent need to address the consequences of the large and growing numbers of people representing themselves in both family and civil court....[It is] likely that a substantial SRL population in the courts is here to stay.

– National SRL, pp.113 and 128

Litigants, and particularly self-represented litigants, are not, as they are too often seen, an inconvenience; they are why the system exists.... Court and tribunal services must provide appropriate services for self-represented litigants.

– NAC: Roadmap, pp.7 and 16

The system's design is premised on the presence of lawyers.

– LCO: Family Justice, p.24

[T]here is a growing gap between what most SRLs need and the services that are available at courts.

– SRL White Paper, p.5

Judges, especially in family court, now find themselves dealing with SRL's as often as with lawyers representing clients.... The influx of SRL's into the family and civil courts has dramatically altered the judicial role.

– National SRL, pp.13 and 124

Both represented and unrepresented litigants must have real access to the civil justice system.

– Civil Justice Reform, p. 4

[W]ithin a short time almost all the SRL respondents became disillusioned, frustrated, and in some cases overwhelmed by the complexity of their case and the amount of time it was consuming.

– National SRL, p.9

Figures from Ontario show that ...in 2011/12, 64% of individuals involved in applications under the Family Law Act, the Children's Law Reform Act or the Divorce Act were self-represented at the time of filing.

– National SRL, p.33

The criminal justice system often does not work as it should when an accused is not represented and cannot present or challenge the evidence in a meaningful way...Particularly in the context of long complex cases, the trial judge may find it necessary to appoint *amicus curiae* to assist the court or, in some exceptional circumstances, to appoint counsel for the accused in order to preserve the integrity of the process and ensure a fair trial.

– Large Criminal Cases, p.156

Theme #9: Creative solutions are required to make legal services more affordable

The affordability of legal services remains a critical aspect of access to justice that seriously affects low- and middle-income residents across Ontario. This is a huge factor that leads people to proceed without legal representation or to abandon attempts to resolve their legal issues. Recent reports comment on the future of legal billing practices, the need to increase legal aid funding and eligibility, and ways to increase affordability through early intervention and greater use of paralegals and multi-disciplinary teams.

A commitment to the availability of affordable legal services to a broad range of Canadians must be part of any responses to change in the next decade.

– Legal Futures, p.6

A critical barrier to the public's access to the justice system is the cost of legal services, which can be prohibitive not only for the poor but also for the middle class.

– NAC: Legal Services, p.3

Today legal representation is primarily limited to persons with relatively high incomes or the very poor, and full legal representation only in the case of those with considerable discretionary resources. Yet the system is still for the most part based on the need for a lawyer.

– LCO: Family Justice, p.23

[M]eaningful improvement in access to justice can be achieved only if the justice system can provide mechanisms for the more timely resolution of litigated disputes at a reasonable cost to both the plaintiff and the defendant.

– Civil Justice Reform, p.8

By far the most consistently cited reason for self-representation was the inability to afford to retain, or to continue to retain, legal counsel... Financial retainers and services billed at a rate of \$350-400 an hour are beyond the means of many Canadians.

– National SRL, pp.8 and 12

In many cases economic power has shifted to the consumer or client side, with buyers demanding more say on what lawyers do, how they do it, and how much and how they charge for it.... There is considerable resistance by clients to current pricing structures, including billable hours.

– Legal Futures, pp.4 and 21

Ontario lawyers should be encouraged to consider new and innovative billing methods that promote access to justice for litigants with civil legal issues who would not otherwise be able to afford counsel.

– Civil Justice Reform, p.ix

There is a growing consensus that [multidisciplinary teams are] a positive way forward, providing more affordable services to clients and adequate income to lawyers.

– Equal Justice, p.27

[Legal Aid] financial eligibility criteria need to be significantly raised to a more realistic level that bears some relationship to the actual circumstances of those in need.

– Legal Aid Review, p.177

Target: By 2020, all Canadians living at and below the poverty line... are eligible for full coverage of essential public legal services.

– Equal Justice, p.30

Making it Happen

Theme #10: Non-legal organizations have a vital role to play

Non-legal organizations play a vital role in prevention, legal information, triage and referral. They often serve as “trusted intermediaries” that help people recognize that they have a legal problem, provide preliminary information, and make referrals to legal service providers. Examples include Indian Friendship Centres, immigrant settlement agencies, shelters, violence prevention groups, disability organizations, health and social service providers, cultural and religious bodies, community centres, public libraries, and information and referral services (such as 211 Ontario). Efforts to enhance access to justice, especially at the front end, require collaboration among legal and non-legal organizations.

The key is to provide a seamless continuum of legal and non-legal services, and ensure that representation is available when needed to have meaningful access to justice.

– Equal Justice, p.16

When individuals do not recognize the legal aspect of their problem, trusted intermediaries trained to refer to appropriate legal services can provide a conduit to the justice system.

– NAC: Prevention, Triage, Referral, p.20

Trusted intermediaries play a critical role in ensuring low-income and disadvantaged people access and understand PLEI.

– Public Legal Education, p.27

Access to a “trusted intermediary” in a health, social service, or other organization is particularly important for persons who are isolated, not comfortable with technology, and less able to pursue self-help options.

– Connecting, p. 54

A more vulnerable person may need the assistance of a lawyer or paralegal while another individual may require access to clear and correct information.

– Mapping, p.7

One theory worth examining is that the market for legal services in Canada is actually growing, but that the lawyers’ share of this market is declining relative to non-lawyer providers.

– Legal Futures, p.17

The most common source of legal information for SRL's are court staff...
The conventional distinction between legal information and legal advice
requires urgent re-examination.

– National SRL, pp.10 and 117

Theme #11: Technology in the justice system has not kept pace

Various reports comment on the lack of technology developments in the justice sector, the need for specific technology solutions, and concerns about the impact of technology on vulnerable populations. Potential technology solutions include the expansion of online dispute resolution, videoconferencing, interactive court forms, simplified scheduling, e-filing and docket management, and electronic accessibility of court and tribunal documents.

While technological innovations are transforming much of modern life,
they appear to be bypassing the justice system.

– NAC: Legal Services, p.3

Overall, the justice system has not been subject to the same
technological transformation as other institutions.

– Equal Justice, p.10

The technology in all courts and tribunals must be modernized to a level
that reflects the electronic needs, abilities and expectations of a modern
society.

– NAC: Roadmap, p.16

Although online information may be helpful for many people, others will
require in-person assistance to understand it.

– LCO: Family Justice, p.1

Clients will likely expect their services to be delivered to them in familiar
ways, such as over the internet

– Legal Futures, p.17

[T]he trend away from professional services and towards a “Do It
Yourself” approach may be more closely related to the availability of
information on the internet...than any particular dislike or mistrust of
lawyers.

– National SRL, p.35

In the coming years, technology will play both a disruptive role in
challenging the status quo and a transformative role in assisting the
legal industry into new forms of service delivery, knowledge
development, communications, management and administration.

– Legal Futures, p.27

Theme #12: Leadership and collaboration can help to bridge the “implementation gap”

A key concern is an apparent lack of capacity to move from sound recommendations in a report (or series of reports) to implementing those recommendations. This has been referred to as “the Implementation Gap” (NAC: Family Justice, p.8). There is the obvious challenge of finding resources in times of fiscal restraint. However, the divided responsibilities for different elements of the system also create impediments to moving forward with systemic change. Several recent reports therefore recommend strategies and structures to foster leadership and collaboration. This includes recommendations to create coordinated local Access to Justice Implementation Commissions (NAC: Roadmap, p.20) and to appoint Access to Justice Commissioners (CBA: Equal Justice, p.37). Collaboration is seen as a vital element for bridging the implementation gap.

[T]he responsibility for access to justice transcends organizational boundaries.

– Listening, p.54

No one department or agency has sole responsibility for the delivery of justice in Canada. That, in our view, is a core reason for why the improvement of access to justice continues to be such a challenge.

– NAC: Roadmap, p.20

Improving access to justice in Canada is the responsibility of all players in the justice system, including judges, lawyers, all levels of government, paralegals, academics, NGOs, public legal educators and the public.

– NAC: Court Processes, p.25

[T]he most effective overall leadership could come by appointing access to justice commissioners, individuals given adequate resources and the mandate of striving for equal justice.

– Equal Justice, p.37

While cost is an extremely important consideration, there must also be consideration for the heavy cost both directly and indirectly in continuing to operate a confusing family justice system primarily premised on services that many people cannot afford.

– LCO: Family Justice, p.85

[T]here are many reasons to be optimistic....People within and beyond the civil and family justice system are increasingly engaged by access to justice challenges and many individuals and organizations are already working hard for change.

– NAC: Roadmap, p.24

[I]t is going to take more than wise advice to change the system.

– NAC: Family Justice, p.9