Meaningful Access to Civil Justice: What We Know and Should Know About Costs at Critical Junctures

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Rod Macdonald (2012): “good empirical scholarship on access to justice needs a theory of what the statistics are meant to tell, how they can be interpreted, and where to find “the dogs that are not barking” (p. 571)

The theoretical framework of meaningful access to civil justice can be understood in terms of impacts or outcomes for people with legal problems. Access to civil justice including in family matters is meaningful because either it helps someone resolve or address their problem, it can provide compensation or some other sort of remedy, or it has the potential to have an impact or an effect in terms of legislation, policy, or social change (Jacobs, 2014, 2015)
Traditional Focus for Access to Civil Justice Policy and Costs
The Received View: Increasing Legal Costs Leads to Decreasing Access to Civil Justice
Six Pillars of Meaningful Access to Justice

- Person-centred (as opposed to service or system-centred)
- Justiciable Problem-Focused
- Few of these problems are resolved in the formal justice system.
- The emphasis should be on trying to get upstream on these problems and in effect be proactive and take preventative measures
- How ordinary people understand and make sense of law and legality—their legal consciousness—is of fundamental importance to if and how they address their legal problems
- Within a problem-centred approach to access to justice, what matters for fair outcomes and fair processes are the paths to justice or legal journeys people take, and not so much the opportunities for legal advice available to them
For many, the surprising but consistent finding from this type of survey is the low frequency of family problems. But some of this has to do with research methodology.
Justiciable Problems and the Concentration of Public Spending on Access to Civil Justice

Emerging Justiciable Problems

Ignore the problem or don’t even identify it

Informal alternative dispute resolution

Statement of Claim – less than 10% of justiciable problems

Justiciable Problems – 5-10 million per year

Legal Information from different sources

Resolving Justiciable Problems or lumping them – 90% plus

Trial – less than 1% of justiciable problems

95% of Public Spending on Access to Justice Concentrated Here
What kind of assistance do they want?

- Better Information: 80.3%
- Explain Legal Aspects & Help With Forms: 67.9%
- Advocate to Intervene: 47.4%
- Lawyer: 32.9%
- Other: 4.2%
Four Types of Costs at Critical Junctures

- Search Costs

- Journey Costs
  - Direct State-Incurred Costs (Justice Administration/Legal Aid)
  - Personal Costs
    - Lawyer fees etc
    - Missed Work/Lost Income
    - Health Impacts
  - Indirect State-Incurred Costs (EI, Health Care, Other Social Services)

- Journey Opportunity Costs
  - Note the need for Randomized Control Trials in Legal Service Provision
  - Path Dependency and Costs of Changing Paths

- Resolution Costs
  - Fairness
  - Efficacy
Search Costs for Family Problems
Search Experiences: Family Problems

- Internet: 54.10%
- Talk other party: 84.30%
- Talk friends + relatives: 87.10%
- Contact Lawyer: 65.60%
- Contact an organization: 42.90%
- Other: 20%
How did the client learn about the FLIC?

- Court Official or...
- Friend/Neighbour/Colleague
- Community Organization
- Visiting Court House
- Internet
- Poster/Pamphlet
- Referral
- Mediation Session
- Other (please specify)
Family Problem Demographics

Experienced family problem by Age

- 18-35: 6.60%
- 36-45: 8.40%
- 46-55: 7.00%
- 56-65: 2.90%
- 66-104: 1.00%
Experienced family problem by Ethnicity

- Canadian: 4.50%
- British/French: 4.30%
- European: 5.90%
- Other/Else: 3.40%
- Aboriginal: 12.50%
- Not Determined: 2.40%
Household Annual Income at FLIC

- Less than $20,000
- $20,000 - $29,999
- $30,000 - $39,999
- $40,000 - $49,999
- $50,000 - $59,999
- $60,000 - $69,999
- $70,000 - $79,999
- $80,000 - $89,999
- $90,000 - $99,999
- $100,000 or more
Highest Level of Education

- Some High School
- Graduated High School
- Some College or University
- Graduated College or...
- Graduate or Professional...
- Other (please specify)
Journey Costs
Family: Difficulty of problem - Applicable Factors

- Long History
- Adversarial Partner or...
- Adversarial (other) Family...
- Costly
- Complex Legal Issues
- Nested with other problems
Family: Ease to resolve the problem (with 1=easy to resolve; 10=impossible to resolve)
Housing: Difficulty of problem - Applicable Factors

- Long History
- Adversarial Landlord
- Adversarial (other) Family
- Costly
- Complex Legal Issues
- Nested with other problems
Housing: Ease to resolve the problem (with 1=easy to resolve; 10=impossible to resolve)
FAMILY: Personal Legal Capabilities of the Client - Personal Challenges (1 = minor challenge, 10 = huge challenge)
HOUSING: Personal Legal Capabilities of the Client -
Personal Challenges, 1 = minor challenge, 10 = huge
challenge

[Graph showing ratings for various personal challenges]
Journey Opportunity Costs

- Note the need for Randomized Control Trials in Legal Service Provision
- Path Dependency and Costs of Changing Paths
Resolution Costs
Has this problem been resolved or is it still ongoing? (%within family problems)

- Resolved: 40.80%
- Ongoing: 53.50%
- Other: 5.60%
Did you achieve all you hoped with the outcome of your family problem? (%within family problem)

- Achieved All: 21.10%
- Less than all (Most to none): 60.50%
- Mixed: 18.40%
FAMILY: Overall Assessment of personal legal capacity of the client - 1 LOW level, 10 HIGH level