

ACCESS TO JUSTICE SUMMIT

DIGITAL TRANSFORMATION: PUTTING PEOPLE AT THE HEART OF THE SYSTEM

Report of the Canadian Institute for the Administration of Justice and
the University of New Brunswick Legal Innovation Laboratory



THE NEW BRUNSWICK REPORT

NEW BRUNSWICK ACCESS TO JUSTICE SUMMIT

DIGITAL TRANSFORMATION: PUTTING PEOPLE AT THE HEART OF THE SYSTEM

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FOREWORD

The New Brunswick Access to Justice Summit, “Digital Transformation: Putting People at the Heart of the Justice System,” held in August 2023 at the University of New Brunswick Faculty of Law, marks a significant milestone in our ongoing journey to reshape and revitalize our legal processes. This summit, a gathering of diverse and committed stakeholders, has reenergized us all to find a path forward with renewed vigour and shared purpose.

Our province, unique in its bilingual status and marked by rural expanses, faces distinct challenges in ensuring equitable access to justice. The high costs of legal representation, a convoluted web of legal formalities, and the often-adversarial nature of litigation contribute to a justice system that can feel inaccessible and daunting to many New Brunswickers. These barriers are compounded by geographical, cultural, and socioeconomic factors that are salient in our province.

The COVID-19 pandemic, while disruptive, has been a catalyst for reimagining how justice is administered and accessed. It has laid bare the urgent need to transcend traditional methodologies and embrace a more inclusive, technologically empowered approach. A culture change is required, one that will see a radical shift from a system-centric model to a user-centric one, where technology serves as a bridge rather than a barrier, connecting people to the legal resources and support they need.

Our discussions at the Summit have underscored the necessity of collaborative, multidisciplinary efforts that engage formal justice actors, community organizations, and the public in a cohesive, evidence-based approach to reform. This report is a testament to the invaluable insights and aspirations shared during our discussions. It is a record of our collective commitment to a journey of transformation—one that we undertake knowing that the road ahead is long and the challenges many.

As we move forward, we will be indebted to the Canadian Institute for the Administration of Justice and the Legal Innovative Laboratory, located at the UNB Faculty of Law, for co-hosting the Summit. Publication of this report will coincide with a revival of an Access to Justice Committee for New Brunswick as the first of many steps in this vital journey. Working together and with renewed vigour, we will aim to make justice accessible, equitable, and efficient for all members of society.

The Honourable J.C. Marc Richard, Chief Justice of New Brunswick

EXECUTIVE SUMMARY

In 2023, there continues to be a serious access to justice problem in Canada. The COVID-19 pandemic ushered widespread use of digital tools to remotely access courts. However, those same tools have not solved the prohibitive costs of legal representation, the length and complexity of trials, the traumatizing realities of adversarial processes, and the consequential decline of public confidence in the justice system. Despite the many efforts across the country to confront these challenges and shift the justice system towards a user-centric model, progress has been inconsistent among jurisdictions. New Brunswick is the country's only officially bilingual province, and one of Canada's most rural provinces with high levels of poverty, which results in distinct geographical, cultural, technological, and historical barriers to the civil and family justice system.

The New Brunswick Access to Justice Summit, *Digital Transformation: Putting People at the Heart of the Justice System*, held in August 2023 at the University of New Brunswick (UNB) Faculty of Law, brought stakeholders from the province's justice community together to discuss changes required to the New Brunswick family law system and the role of digital technology in the justice system in the wake of the COVID-19 pandemic. This is the first conference to bring together justice stakeholders and consult them on the role of digital technology in a user-centric design of the justice system. This report summarizes discussions held at the Summit. It also reproduces participants' call for further action specifically to:

- Promote a “user-centric” understanding of access to justice as articulated by the participants of the New Brunswick Access to Justice and Digital Technologies summit.
- Identify and support leaders in the province to advance user-centric solutions to justice barriers.
- Invite other stakeholders in the province to participate in the discussion at future events.

The report does not set out an exhaustive guide and set of solutions on how to solve the access to justice issues in the province. Those solutions can only come from the collaboration and consultation of a wide and representative array of provincial justice actors and stakeholders. Formal justice actors, such as public institutions, and community organizations must develop preventative, multidisciplinary, collaborative, evidence-based and non-adversarial approaches to solve family issues with legal components centred on the needs of the public. This report records the first in a series of events that will advance user-centric solutions to access to justice issues in the province.

The report presents seven desired outcomes (“7 Changes”) that were identified at the Summit. These act as the building blocks for a strategy map that will be developed by the New Brunswick Access to Justice Committee. These 7 Changes are:

- **Change in Design:** Participants expressed support for user-centric design that prioritizes the needs of the user of legal services. Fundamental change is required in how the justice system understands issues with legal components and how those issues

are treated. The changes required are not quick fixes or partial solutions, but new and innovative ways to conceptualize and handle problems.

- **Change Driven by the Community:** Participants emphasized the importance of community-led initiatives within the province: meaningful change must be conceived, championed, and realized by actors in the province itself. Collaboration among stakeholders and across institutions is crucial to ensure a system that is responsive to the needs of the province. Interprovincial collaboration and exchange are also required so that stakeholders learn from successful initiatives of other provinces.
- **Change in Funding Priorities:** Increase funding and capacity of public legal services, including public legal education, legal aid services and legal clinics, as well as courts, specifically to support capacity building and to facilitate technological and other reforms.
- **Change in the Family Justice System:** Participants endorsed a non-adversarial, multidisciplinary, and evidence-based approach to resolving family law-related issues.
- **Technological Change:** Participants acknowledged the need for modernization and e-justice reform, embracing use of digital tools, using tools to measure outcomes of processes, applying strategic use of artificial intelligence in step with reforming the Rules of Court.
- **Change for a Rural Population (geographical accountability):** Reforms must also take into account the challenges posed by the province's geography and rural population. Public infrastructure must accommodate this reality and support the community and justice needs of the population.
- **Change that Fits an Officially Bilingual Province (language rights):** Language is critical to access to justice. The officially bilingual legal system of the province needs to be factored into any discussion about reforms.

Emerging from the Summit with a clear voice is a strong and urgent need for change in the province. There are few avenues outside courts where family issues with legal components may be formally resolved. That model is not sustainable both for members of the public who need their issues resolved and the justice actors who help them through those issues. Stakeholders in the province have demonstrated leadership and a willingness to find solutions using a sustained, coordinated and community-focused approach.

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THE CONTEXT

INTRODUCTION

“The Canadian Institute for the Administration of Justice collaborated with the New Brunswick legal community to begin a series of summits around the country focused on access to justice post-pandemic, and specifically on the modernization of our justice systems. The Legal Innovative Laboratory located at UNB Faculty of Law was honoured to co-host the NB Summit this summer and thrilled to have these conversations with stakeholders from the province. We were also keen to learn from the experiences of other provinces. From our perspective the Summit was a success: it helped us prioritize matters that need to be addressed and build alliances. Most notably, the Summit is expected to revive the province’s Access to Justice Committee under the leadership of the Honourable J.C. Marc Richard, Chief Justice of New Brunswick. The Committee will develop a strategic plan to begin tackling the issues identified during the Summit and summarized in this report. The groundwork that CIAJ began is critical and has helped us move forward with confidence in the province’s capacity to take on an ambitious reform plan, but also with a sense of community with other provinces that are working on similar issues.”

Dr. Argyri Panezi, Canada Research Chair in Digital Information Law and Policy (UNB Law)

1.1: OVERVIEW

In 2023, there continues to be a serious access to justice problem in Canada. People do not have all the tools at their disposal to help them resolve the problems they face. The COVID-19 pandemic ushered in widespread use of digital tools to remotely access courts, which provided greater access to courts to resolve disputes. However, those same tools have not resolved the prohibitive costs of legal representation, the length and complexity of trials, the traumatizing realities of adversarial processes, adverse childhood experiences resulting from family disputes. Indeed, the problem may not be simply that people cannot access courts, but rather, that problems arise due to the justice system’s focus on adversarial processes to resolving disputes between parties. Despite the many efforts made across the country to confront these challenges, leverage new digital tools, and shift the justice system towards a user-centric, people-focused model, progress has been slow and inconsistent among jurisdictions. Great change is still needed.

1.2: THE REPORT

The following report details the seven desired outcomes (“7 Changes”) from the 2023 New Brunswick Access to Justice Summit, titled *Digital Transformation: Putting People at the Heart of the Justice System*, which was held at the UNB Faculty of Law, in Fredericton, on August 28-29, 2023.

The Summit was the first of several future summits, both in New Brunswick and across Canada, to bring together a province’s justice stakeholders and consult them on user-centric and people-focused design in the justice system to address access to justice issues, as well as the use of digital tools to facilitate change. The Summit was meant to ignite collaboration among justice stakeholders in New Brunswick and advance user-centric justice reforms that will answer the needs of the public.

This report is intended to detail the “user-centric” vision of access to justice as articulated by participants in the Summit. The report also aims to make Summit discussions transparent and invite stakeholders to participate in the discussion at future summits in the province.

1.3: CIAJ’S ACCESS TO JUSTICE AND DIGITAL TOOLS PROJECT

The 2023 Summit was the first of its kind to focus on user-centric design and digital tools in the family law system. Throughout 2021-2023, CIAJ undertook a study to understand the relationship between the use of digital tools to deliver legal services in the justice system and the effect of such tools on the ability of the public to use those services. The results of the working paper showed that, in most instances, technology served to merely modify already inaccessible legal processes without making them user centric.¹ The research further demonstrated that there was little data collected on the experience of the public in their use of such technology. CIAJ launched its Access to Justice and Digital Tools project to fill the gaps in collecting useful data and begin to understand the impact of such tools upon access to justice in Canada. The first initiative in the project was the 2023 New Brunswick Summit.

1.4: CHANGES FOR A USER-CENTRIC VISION OF FAMILY JUSTICE IN NEW BRUNSWICK

From the discussions held at the Summit, we can identify seven desired outcomes (“7 Changes”) detailed below. These 7 Changes were at the heart of participants’ discussions on the development of multidisciplinary and non-adversarial user-centric problem-solving methods for the New Brunswick justice system. Digital tools play a role in enhancing the flexibility of use and adaptability of such methods. The desired change is substantial, not only procedural; participants asked for change not only in the way problems faced by the public are handled, but in how those problems are understood.

The 7 Changes are as follows:

- **Change in Design:** Participants expressed support for user-centric design that prioritizes the needs of users of legal services. Fundamental change is required in how the justice system understands issues with legal components and how those issues are treated. The changes required are not quick fixes or partial solutions, but also new and innovative ways to conceptualize and handle problems.

¹ Nathan Afilalo and Daniel Escott, “Transformation and Digitization: The Role of Digital Tools in Access to Justice” (2023) Canadian Institute for the Administration of Justice, Working Paper No 1/2023.

- **Change Driven by the Community:** Participants emphasized the importance of community-led initiatives within the province: meaningful change must be conceived, championed, and realized by actors in the province itself. Collaboration among stakeholders across institutions and organizations in the province is crucial to ensure a system that is responsive to the needs of the province. Interprovincial collaboration and exchange are also required so that stakeholders in the province learn from successful initiatives in other provinces.
- **Change in Funding Priorities:** Participants noted the need for increased funding and support for public legal services, including public legal education, legal aid services, and legal clinics, as well as courts, specifically to support capacity building and to facilitate technological and other reforms.
- **Change in the Family Justice System:** Participants endorsed a non-adversarial, multidisciplinary, and science-based approach to resolving family law issues.
- **Technological Change:** Participants acknowledged the need to bring about modernization and e-justice reform, embrace the use of digital tools, use tools to measure outcomes of processes, and make strategic use of artificial intelligence in step with reforming the Rules of Court.²
- **Change for a Rural Population (geographical accountability):** Reforms must also take account challenges posed by the province’s geography and widely rural population. Public infrastructure must accommodate this reality and support the community and justice needs of the population.
- **Change that Fits an Officially Bilingual Province (language rights accountability):** Language is critical to access to justice. The officially bilingual legal system of the province needs to be factored into any discussion about reforms.

The modernization of the civil and family justice system in New Brunswick is long overdue. Participants described the family justice system, specifically, as functioning “at its limits.” The 7 Changes are a response to a civil and family justice system that is generally understood as needing changes on multiple fronts.

Civil and family justice reforms in the provinces require, first, an examination into how civil law and family problems are dealt with by the justice system, and second, a closer evaluation of the users’ experience. It is important to note that this report does not set out an exhaustive guide or set of recommendations on how to solve the access to justice issues in the province. Participants in the Summit understood that they had only begun the discussion for change.

² *Rules of Court of New Brunswick*, NB Reg 82-73.

Recommendations tailored to the needs of New Brunswickers can only come from the collaboration and consultation of a wide and representative array of provincial justice actors and stakeholders. Formal justice actors, public institutions, and community organizations together ought to be consulted to develop a preventative, multidisciplinary, collaborative, evidence-based, and non-adversarial approaches to solve family issues with legal components centred on the needs of the public.

1.5: LEADERSHIP FROM NEW BRUNSWICK STAKEHOLDERS

The Summit was born out of a desire by members of the New Brunswick justice community to understand the impact of the COVID-19 health crisis on the justice system and to develop solutions to access to justice barriers in the province. Early in 2023, the Honourable J.C. Marc Richard, Chief Justice of New Brunswick, reached out to partners within and around the province to resume an important conversation around the digital transformation of the justice system. CIAJ, along with a research team from the UNB Faculty of Law, made a first attempt to assemble stakeholders, primarily members of the judiciary and the bar, to discuss the current state of access to justice in the province and brainstorm improvements.

Fifty-three people participated in the Summit. They represent various stakeholders in the New Brunswick justice system: judiciary, lawyers, public legal services directors and professionals, representatives of community justice organizations, and members of the academic communities of the University of New Brunswick and Université de Moncton.

Representatives from the Indigenous communities in the province – Mi'kmaq, Wolastoqiyik, and Peskotomuhkatiyuk – members of the disability, Black and LGBTQAI2S+ communities, and newcomers to New Brunswick were not heard at the Summit, nor through the survey. This is an aspect of the Summit that should be examined and worked out for future events.

One of the fruits borne from the 2023 Summit was the impetus to revive the New Brunswick Access to Justice Committee. The Honourable Chief Justice J.C. Marc Richard is now reactivating this initiative. The revised Access to Justice Committee will oversee the holding successive summits to pursue, develop and implement the ideas generated from the discussions. The purpose of the 2023 Summit was to focus on family law and technology and establish core issues as the basis of the next summit in the province. Those areas of focus would be the basis for future project development by the provincial actors.

In his foreword to *The Justice Crisis: the Cost and Value of Accessing Law*, the Honourable Thomas A. Cromwell, retired Supreme Court of Canada Justice, spoke to the need for leadership to make meaningful change on the “access to justice” front.³ In undertaking to establish the Summit and follow-up measures, actors in the province have demonstrated considerable leadership. Opening the Summit, the Honourable Justice Andromache

³ The Honourable Thomas A. Cromwell, “Foreword: Giving Civil Justice Its Due,” in Trevor C.W. Farrow and Lesley A. Jacobs, eds, *The Justice Crisis: the Cost and Value of Accessing Law* (Vancouver: UBC Press, 2020) [*The Justice Crisis*] at xviii.

Karakatsanis, of the Supreme Court of Canada, applauded the leadership of the Honourable Chief Justice J.C. Marc Richard, the Honourable Tracey K. DeWare, Chief Justice of the Court of King's Bench, the Honourable Marco R. Cloutier, Chief Judge of the Provincial Court, members of the Planning Committee, and Summit participants, who took up the charge⁴. The New Brunswick judges and legal professionals who participated in the Summit are committed to improving the quality of life and justice in the province. The discussions made clear that participants take these issues seriously and personally.

One of the objectives is to develop a stakeholder strategy for the province and establish accountability mechanisms for the delivery of the strategy. Future summits in New Brunswick will be organized by actors in the province, spearheaded by the New Brunswick Access to Justice Committee in collaboration with the research team at the UNB Legal Innovation Laboratory, directed by Professor Argyri Panezi. Dr. Panezi was recently appointed Canada Research Chair in Digital Information Law and Policy. The Legal Innovation Laboratory has already undertaken several initiatives to facilitate the work of the New Brunswick Access to Justice Committee specifically with gathering empirical data to inform policy making, with building legal technologies for New Brunswick communities, and with organizing community-building events.

This was not the first time the province demonstrated leadership in family matters. New Brunswick has a province-wide, unified family court, and it was an early adopter of this model.⁵ The Family Division of the Court of King's Bench serves the entire province and hears all family law matters in its eight judicial districts.

In criminal matters, during the pandemic, courts quickly adopted videoconferencing to hear accused persons remotely rather than having them transported to courthouses. Some of these practices have been retained since then.

Chief Justices Richard and DeWare are both actively researching and pursuing solutions to resolve some of the inefficiencies which hamper the New Brunswick justice system and especially the family courts.

1.6: NEW BRUNSWICK REALITIES

New Brunswick has a diffuse population of 830,000 people.⁶ The Mi'kmaq, Passamaquoddy, and Wolastoqiyik First Nations have made the territory their home for thousands of years and

⁴ See list of Planning Committee members in Appendix B.

⁵ See *Judicial Districts for the Court of Queen's Bench of New Brunswick*, NB Reg 83-120, s.3. See also, *Judicature Act, R.S.N.B. 1973, c. J-2*. See for further discussion, *Office of Strategic Planning and Performance Management, Unified Family Court, Summative Evaluation: Final Report*, (Ottawa: Department of Justice Canada, 2009) at 7, online: <<https://www.justice.gc.ca/eng/rp-pr/cp-pm/eval/rep-rap/09/ufc-tuf/ufc.pdf>>.

⁶ Statistics Canada, "Canada's demographic estimates for July 1, 2023: record-high population growth since 1957," in *The Daily* (Ottawa, Statistics Canada, 2023), online: <<https://www150.statcan.gc.ca/n1/daily-quotidien/230927/dq230927a-eng.htm>>.

there are approximately 17,250 First Nations people in the province.⁷ Acadians are the largest French-speaking culture in New Brunswick, and French speakers make up roughly 1/3 of the population.⁸ Acadian culture is among the oldest settler cultures in North America. Acadians speak Acadian French and have a vibrant and welcoming culture which permeates the northwestern region of the province.⁹ The English-speaking population of New Brunswick draws its history mostly from Irish and Scottish settlers who cleared and farmed the hills in southern New Brunswick, and English loyalists who fled north after the American Revolution.¹⁰ The New Brunswick population has come to include people from all over the continent and the world with a significant increase in in-migration after 2019. The population surpassed 800,000 in 2022.¹¹

New Brunswick's qualities produce distinct challenges. Literacy rates are marginally lower than those of other provinces in Canada.¹² Low-income, rural residents of New Brunswick may face challenges travelling the long distances to medical, social, and legal services, even before they are confronted with other barriers to access to justice common among low-income Canadians generally. However, for the first time in decades, the population of the province is growing, and there is an impetus for change. In the wake of the pandemic, New Brunswick is flush with energy and revenue from an influx of new New Brunswickers.¹³ There is a sense that digital transformation is necessary for the province to take advantage of the momentum and energy attendant upon such growth.

High speed internet infrastructure provides an opportunity to make judicial services available online to service remote areas. The combination of new technological solutions to connectivity in areas without high-speed internet infrastructure (like affordable or subsidized satellites), and well-designed and easy-to-use online resources, could have a powerful impact in places like rural New Brunswick where the courts and their services are remotely accessible from people's homes. Using digital tools to make justice accessible makes sense in New Brunswick. Changing the family law system to make it suitable and proportionate to the needs of the people in the province is necessary.

⁷ Indigenous Affairs, "First Nations Communities," (Fredericton: Government of New Brunswick, 2022), online: <https://www2.gnb.ca/content/gnb/en/departments/aboriginal_affairs/fnc.html>.

⁸ Statistics Canada, *Census Profile, 2021 Census of Population: Profile Table*, Catalogue no. 98-316-X2021001 (Ottawa: Statistics Canada, 2021), online: <<https://www12.statcan.gc.ca/census-recensement/2021/dp-pd/prof/details/page.cfm?Lang=E&SearchText=New%20Brunswick%20&GENDERlist=1,2,3&STATISTIClist=1&DGUIDlist=2021A000213&HEADERlist=0>>.

⁹ Statistics Canada, *Key Facts on the French Language in New Brunswick in 2021*, by Nicolas Aucliar, Catherine Frigon and Gabriel St-Amant, in *Ethnicity, Language and Immigration Thematic Series*, Catalogue no. 89-657-X2023015 (Ottawa: Statistics Canada, 2023), online: <<https://www150.statcan.gc.ca/n1/pub/89-657-x/89-657-x2023015-fra.htm>>.

¹⁰ Government of New Brunswick, "About NB: History," (Fredericton: Government of New Brunswick, 2023) online: <https://www2.gnb.ca/content/gnb/en/gateways/about_nb/history.html>.

¹¹ Officer of the Premier, "News Release: New Brunswick population reaches 800 000," (Fredericton: Government of New Brunswick, 2023) online: <https://www2.gnb.ca/content/gnb/en/news/news_release.2022.03.0164.html>.

¹² The Conference Board of Canada, "Adults with Inadequate Literary Skills," (Ottawa, The Conference Board of Canada, 2014), online: <<https://www.conferenceboard.ca/hcp/adlt-lowlit.aspx/>>.

¹³ Robert Jones, "New Brunswick smashes population growth record set last year," *CBC News* (23 September 2023), online: <<https://www.cbc.ca/news/canada/new-brunswick/population-growth-record-1.6981745#:~:text=The%20arrival%20of%20newcomers%20from,on%20July%201st%20this%20year>>.

MODERNIZING ACCESS TO JUSTICE IN NEW BRUNSWICK

2.1: THE NECESSITY FOR THE 7 CHANGES

The need for change to the justice system was the most resonant message to come out of the Summit. This section details the 7 Changes that emerged from Summit discussions, providing the context and summary for each.

The 2023 Summit's goal was to identify realistic solutions and explore digital tools for enhanced service delivery in the New Brunswick family law system. The 7 Changes proposed in the report:

- Provide guidance to the Access to Justice Committee;
- Establish principles to guide access to justice projects and reform; and
- Suggest the areas in which to begin access to justice projects.

Summit participants called for:

1. Change in design, specifically towards a more user-centric design of the justice system;
2. Change driven by the community;
3. Change in funding priorities;
4. Change in the family justice system enforcing a non-adversarial, multidisciplinary and science-based approach to resolving family-law-related issues;
5. Technological change;
6. Change suitable for a rural population; and
7. Change that fits an officially bilingual province.

The 7 Changes presented here are not final and authoritative regarding the needs of the province. Greater input from stakeholders and the public is required. This is the beginning of the discussion on the province's needs. The changes were not all endorsed unanimously or discussed without debate. However, each was a recurrent theme during the Summit and represents strong areas of agreement. The solutions need to be proposed, tested, and adopted using participatory methods inclusive of all members and users of the New Brunswick justice system.

2.2: DISCUSSION CONTEXT FOR THE 7 CHANGES

The first day of the Summit, the Honourable Justice Andromache Karakatsanis spoke on the necessity for a vision of change responsive to the needs of New Brunswickers. She said:

"I invite you to take this summit as an opportunity to use your imagination, to envisage meaningful change for New Brunswickers who turn to the justice system for help. Perhaps it will lead to a vision to how you collectively see a high-functioning system in

the province. And think of the concrete steps you may individually and collectively take towards attaining that vision.”¹⁴

Dean Michael Marin, K.C., of the UNB Faculty of Law, echoed what many have said before, that the province faces an access to justice “crisis,”¹⁵ which undermines the justice system and can lead to “the erosion of the rule of law.” Following Dean Marin, the Honourable Chief Justice J.C. Marc Richard set out the gravity of the situation. He stated that “profound questions have emerged about the capacity of the New Brunswick justice system to serve the public.” This has resulted in a decline of public confidence in justice institutions, which are a foundational aspect of our democracy.

2.2.1 Change in Design

- **Change in Design:** Participants expressed support for user-centric design that prioritizes the needs of users of legal services. Fundamental change is required in the way in which the justice system understands issues with legal components and how those issues are processed. The changes required are not quick fixes or partial solutions, but new and innovative ways to conceptualize and handle problems.

The biggest takeaway to emerge from the Summit was that the New Brunswick family justice system needs to be reoriented and designed to be “user centric.” For participants this means designing a system focused on the public’s ability to access a range of services best suited to help solve a law-related problem, inclusive of unofficial and official forums where law is made, administered, and resolved.¹⁶ It also means moving away from the current adversarial model towards a collaborative system of conflict resolution supported by a variety of social services. Change must not exclusively aim to provide access to courts and lawyers, but access tools proportionate to the problems people need solving in their everyday lives.

PROBLEMS WITH THE ADVERSARIAL SYSTEM

The plenary sessions of the first afternoon allowed participants to explore what a user-centric system would look like in New Brunswick. Participants examined the problems in the current system and envisioned the justice system they would want to see in their province. Understanding what participants wanted to move towards was important to detail the methods to achieve it.

¹⁴ The Honourable Justice Andromache Karakatsanis, Address (delivered at the New Brunswick Access to Justice Summit: Digital Transformation, Putting People at the Heart of the Justice System, 28 August 2023) [unpublished].

¹⁵ Trevor C.W. Farrow and Lesley A. Jacobs, “Introduction: Taking Meaningful Access to Justice in Canada Seriously” in Trevor C.W. Farrow and Lesley A. Jacobs, eds, *The Justice Crisis: the Cost and Value of Accessing Law* (Vancouver: UBC Press, 2020) [*The Justice Crisis*] at 3.

¹⁶ Lisa Moore and Mitchell Perlmutter, “Where Do We Go from Here” in Trevor C.W. Farrow and Lesley A. Jacobs, eds, *The Justice Crisis: the Cost and Value of Accessing Law* (Vancouver: UBC Press, 2020) [Moore and Perlmutter] at 71.

In her address, the Honourable Justice Andromache Karakatsanis noted that 2023 marked the tenth anniversary of the seminal report “*Access to Civil and Family Justice: A Roadmap for Change*,” which acknowledged the access to justice crisis.¹⁷ One of the two crucial principles from the report that she urged participants to consider was to “put the public first.” This was one of the key issues the Honourable Chief Justice J.C. Marc Richard presented in his opening remarks. He said that to confront the problems posed by the access to justice crisis, we must design a more responsive system to deliver justice; a system that focuses on the end user and the public to facilitate dispute resolution.¹⁸

Trevor C.W. Farrow, Dean of Osgoode Hall Law School and Chair of the Canadian Forum on Civil Justice, stressed that people-first justice has been one of the most important developments in the past 10 years of research on access to justice. Achieving it, however, has been difficult.¹⁹ ²⁰ This is in part due to efforts to reform and combat the crisis on behalf of the state, judges, and lawyers not being directed towards areas suggested by the research as effective in doing so: making the justice system public-centric or user-centric.²¹ ²² Many of the comments made by participants in the plenary sessions reflected this reality.

The existing system and the means of achieving access to it were schematized by participants as “the way things have always been done”: a system focusing on adversarial litigation relying on lawyers and judge-made decisions to solve people’s problems. Access to justice in this system recognizes the prohibitive costs, lengthy delays, and complex procedures of the legal system as the most important barriers inhibiting dispute resolution.²³ Access to justice efforts that exemplify this approach include legal aid programs, class-action lawsuits, represented litigation, amendments to procedural rules, and development of alternative dispute resolution methods.²⁴

Participants expressed that the use of the adversarial process as the operating paradigm in family law creates a win-lose mindset, encourages manipulation over the outcome of the process, values money over problem-solving, produces harm and trauma for children and families, and generates feelings of shame, guilt, anger, and stress. The inaccessibility of such a system generates feelings of discouragement, ostracization, fear, inequality, loss of community, and lack of trust and faith in public institutions and helplessness for both the people who use it and those who work in it. Participants said that this needs to change.

¹⁷ Action Committee on Access to Justice in Civil and Family Matters, *Access to Civil and Family Justice: A Roadmap for Change* (Ottawa: Action Committee on Access to Justice in Civil and Family Matters, 2013), [*Roadmap for Change*].

¹⁸ The Honourable J.C. Marc Richard, Chief Justice of New Brunswick, Address (delivered at the New Brunswick Access to Justice Summit: Digital Transformation, Putting People at the Heart of the Justice System, 28 August 2023) [unpublished].

¹⁹ *The Justice Crisis*, *supra* note 15 at 3.

²⁰ *Ibid* at 3.

²¹ *Ibid* at 4. See Shannon Salter and Darin Thompson, “Public-Centred Civil Justice Redesign: a case study of the British Columbia Civil Resolution Tribunal,” in *McGill Journal of Dispute Resolution*, vol. 3 (2016–2017) 113, at 116–117.

²² *Ibid* at 4.

²³ Moore and Perlmutter *supra* note 16 at 71.

²⁴ *Ibid* at 71.

PUTTING PEOPLE FIRST

In contrast to the current model, participants articulated an approach to designing a justice system concerned with a person's ability to access a range of services best suited to help solve a law-related problem, inclusive of unofficial and official forums where law is made, administered, and resolved.²⁵ Recourse to litigation is only one possible resolution.²⁶ Participants stressed that a changed family law system must be flexible, responsive, and adaptive to users' needs and the matter at hand through a consecutive and collaborative process with the aim of resolving the issue over crowning a victorious party. Access to justice is measured by the ability of a person to "obtain, understand, and act on information and services related to the law, where necessary, to achieve just outcomes."²⁷

Participants stressed the need for a proactive approach that follows the user from end to end, aiding the whole way through, and not only at the most acrimonious stages. However, the initiation of such projects requires support and follow-through. Participants were able to concretize their discussions on an "end-to-end" system following a presentation of the British Columbia's Civil Resolution Tribunal (CRT) by Lauryn Kerr, legal counsel at the CRT.²⁸ Such a process involves more than simply adding a mediation step or collaborative process to an otherwise adversarial structure oriented around judicial decision-making.²⁹ Rather, it demands creating new rules to resolve the disputes and using technology to facilitate those processes. The model at the CRT provides a process focused on facilitation and consensual agreement as the primary means of dispute resolution.³⁰ If necessary, adjudication and an enforceable decision is also provided, where the facilitators who followed the parties to that point act as neutral guides for the parties through the process.³¹

An effective system of this kind would focus on "every day legal problems." These are issues that arise out of everyday life, have some legal component, and could be resolved through a legal process.³² They are commonly channelled into the civil and family justice system and can have a profound impact to people's lives.³³ For example, annual averages indicate that

²⁵ *Ibid* at 71.

²⁶ Michael Trebilcock, "Price, Cost and Access to Justice" in Trevor C.W. Farrow and Lesley A. Jacobs, eds, *The Justice Crisis: the Cost and Value of Accessing Law* (Vancouver: UBC Press, 2020) [Trebilcock] at 35.

²⁷ Ab Currie and Trevor C.W. Farrow, *Community-Based Justice Research (CBJR) Project: Exploring Community-Based Services, Costs and Benefits for People-Centred Justice, Community Justice Help*, (Toronto: Canadian Forum on Civil Justice, 2023) [*Community Justice Help*] at 13, online: <<https://cfcj-fcjc.org/wp-content/uploads/Exploring-Community-Based-Services-Costs-and-Benefits-for-People-Centered-Justice-by-Trevor-CW-Farrow-and-Ab-Currie.pdf>>.

²⁸ Shannon Salter and Darin Thompson, *supra* note 21 at 116–117.

²⁹ *Ibid* at 116-117.

³⁰ *Ibid* at 128.

³¹ *Ibid*.

³² Trevor C.W. Farrow, Ab Currie, Nicole Aylwin, Les Jacobs, David Northrup and Lisa Moore, *Everyday Legal Problems and the Cost of Justice in Canada: Overview Report*, (Toronto: Canadian Forum on Civil Justice, 2016) [*Everyday Legal Problems*] at 5.

³³ *Ibid* at 5.

approximately 40% of marriages will end in divorce.”³⁴ Other issues include family breakdown, domestic violence, credit issues, discrimination, evictions, neighbourly disputes, and consumer complaints.³⁵ The system would provide alternate paths to resolution of these sorts of problems beyond requiring an adjudicated decision that are easy to use and proportionate to the issue.

Many participants noted that such an approach resembles the traditional civil law inquisitorial approach. Inquisitorial models can involve extensive pre-trial investigations, impartial experts, and more active judges. While civil law inquisitorial approaches doubtless have their own difficulties, inquisitorial systems provide a model that overcomes the adversarial processes that participants agreed causes much of the harm.

2.2.2 Change Driven by the Community

- Change Driven by the Community: Participants emphasized the importance of community-led initiatives within the province: meaningful change must be conceived, championed, and realized by actors in the province itself. Collaboration between stakeholders and across institutions is crucial to ensure a system responsive to the needs of the province. Interprovincial collaboration and exchange are also required so that stakeholders in the province learn from successful initiatives of other provinces.

The second principle from the *Roadmap for Change* report by the Honourable Justice Karakatsanis urged Summit participants to consider is “coordination and collaboration” among stakeholders. As she stressed, “The most effective and sustainable solutions are those developed at the grass roots level by those who work in the system, and know its dynamics, weaknesses and opportunity.”

Participants repeatedly emphasized the importance of community-led initiatives within the province. This was explored on two fronts. Firstly, actors within the province must act in concert to understand the needs of the public to inform and create processes to address those needs. Secondly, interprovincial collaboration is required to learn from the triumphs and errors of other jurisdictions and adapt those to the needs of the public.

COLLABORATION WITHIN NEW BRUNSWICK

Over the course of the plenary sessions, participants discussed that the goal of stakeholder collaboration is to make sure that actors in the province understand the needs of the public.

³⁴ Statistics Canada, *Divorce Cases in Civil Court, 2010/2011*, by Mary Bess Kelly, in *Juristat article*, catalogue no. 85-002-X *Juristat* (Ottawa: Statistics Canada, 2012) at 7-9, online: <<https://www150.statcan.gc.ca/n1/pub/85-002-x/2012001/article/11634-eng.pdf>>.

³⁵ *Everyday Legal Problems*, *supra* note 32 at 8. Alternative nomenclature such as “problems with a legal component” or “law-related problems” and “life-affecting problem” to signify that the problems are critical, related to basic needs, and not exclusively legal in nature, see Such terms reflect the reality that these issues are qualified as “legal” in the current normative paradigm but do not necessarily need to be so and may be dealt more appropriately through other means. See Salter and Thompson, *supra* note 21 at 119. See *Community Justice Help*, *supra* note 27 at 7.

Doing so allows for the creation of innovative, preventative, and proactive solutions at the front end of the justice system. There are four key recurring concepts underpinning these goals:

- (1) educate the public;
- (2) engage with the public;
- (3) resolve family legal issues using a multidisciplinary approach instead of the adjudicative process; and
- (4) use digital tools to facilitate the public's interaction with the system where appropriate.

Participants agreed that we need more collaboration between actors in general. Various discussions focused on creating partnerships with universities and community-based social services to enhance the social justice jobs in the legal sphere. For example, a recent collaboration between the UNB Faculty of Law and local organizations led to the establishment of a new legal clinic. The legal clinic improves access to justice through experiential education and is a testament to how collaborative initiatives can bridge gaps in the demand for legal services.

Efforts such as the Public Legal Education and Information Service of New Brunswick (PLEIS-NB) provide an invaluable service. However, there is not nearly enough capacity building in the province, let alone formally attached to the justice system. The New Brunswick Legal Aid Services Commission, the University of New Brunswick Legal Clinic, and the Fredericton Legal Advice Clinic are organizations dedicated to bridging the gap between preventative measures and supplementary representation for people who cannot afford representation. While these are all bright examples, the demands for legal aid or similar assistance outweigh the capacity of these organizations.

Building on collaboration with universities to build the capacity of the legal profession, participants also suggested that universities (or law schools specifically) could create a family law program/specialization to help address the shortage of family law justice actors.

Some other participants suggested having a justice education centre to increase access to family law guidance. PLEIS-NB set the example with their online legal information program that seeks to help the public identify, understand, and act on their legal rights. PLEIS-NB improves access to legal information by providing the information digitally and deleting outdated information to avoid self-represented litigants relying on it to their detriment.

Participants agreed that external consultations with the public and relevant stakeholders are necessary. Participants suggested launching an engagement campaign to consult the public and solicit feedback on legal processes via public surveys. Participants also suggested creating multidisciplinary focus groups to conduct user testing for prototypes and digital tool solutions.

COLLABORATION OUTSIDE THE PROVINCE

Interprovincial collaboration is also required for change. Participants highlighted that interprovincial communications are inefficient and disjointed. Increased communication between various ministers and legislatures could help local stakeholders express the real needs of their community, and ideally advance collaborative goals.

Participants expressed that through interprovincial collaborations, actors in New Brunswick could adapt what has worked in other provinces to fit the needs of the province. Participants acknowledged that there is “no need to reinvent the wheel” when it comes to solutions that work well in different provinces, and that could reasonably be adapted to work well in New Brunswick.

Many participants indicated there is little space to allow them to innovate procedures, especially concerning the judiciary. The Honourable Geneviève Cotnam, of the Court of Appeal of Québec, demonstrated the power such innovations could have, explaining that the Quebec’s *Code of Civil Procedure* provides the ability for judges to lead pilot projects.³⁶ Justice Cotnam explained the power of judicial advocacy in her successful efforts to establish means for the electronic filing of documents to the Court of Appeal, prior to and independent of the introduction of e-filing at the Superior Court through Lexius and the Services judiciaires numériques.³⁷ On the topic of collaboration within the province, Justice Cotnam highlighted that external consultations with the public and other stakeholders are essential to get input on proposed changes.

Participants further benefited from presentations on projects being undertaken in other jurisdictions, such as the Reforming the Family Justice System Initiative in Alberta, as well as the discussion on the British Columbia’s Civil Resolution Tribunal (CRT).

2.2.3 Change in Funding Priorities

- Change in Funding Priorities: Increase funding and capacity of public legal services, including public legal education, legal aid services and legal clinics, social services as well as courts, specifically to support capacity building and to facilitate technological and other reforms.

Among the biggest pain points brought up by Summit participants were the role, treatment, and perception of public legal services in New Brunswick. These include the New Brunswick Legal Aid Services Commission (New Brunswick Legal Aid), PLEIS-NB, and local legal clinics. Discussion groups highlighted funding constraints, recruitment difficulties, difficulties in establishing and funding legal clinics, legal treatment of non-legal issues, and a lack of infrastructure.

³⁶ See *Regulation to establish a pilot project relating to digital transformation of the administration of justice Code of Civil Procedure*, CQLR r C-25.01, r.6.2, online: <<https://www.legisquebec.gouv.qc.ca/en/document/cr/C-25.01,%20r.%206.2?&target=>>.

³⁷ See Quebec, Services judiciaires numériques, (November 20, 2023), online: <<https://lexius-gnjq.justice.gouv.qc.ca/en/Accueil>>.

LEGAL AID

Legal aid stakeholders confessed to having issues with recruiting and retaining counsel. They explained that this was due to both fiscal and government planning constraints, especially with the recruitment and retention of articling students' post-call. Three causes were ascribed to this:

- (1) uncompetitive compensation packages,
- (2) unattractive roles compared to the private sector, and
- (3) inefficient timing of recruitment cycles for law students.

Rapid increases in the cost of living and inflation have exacerbated concerns that stagnant compensation levels for legal aid counsel are not competitive in the job market. Further, legal aid roles may seem less attractive because they frequently rely on counsel living in or near their regional offices and courts, which are mostly outside urban centres.

Regarding the recruitment of summer and articling students, participants stated their recruitment cycle is typically post-budget each fiscal year, several months beyond the typical October-January recruitment cycle for law student summer and articling positions. This timing issue may lead to potential candidates accepting positions long before legal aid applications open. To address this, a theoretical project was discussed that could have legal aid partner with the UNB Faculty of Law to provide a certain amount of articling positions every year to students graduating with a focus in family law. If the nature of this project was a multi-year commitment, it could be regularly budgeted for in the prior fiscal year and recruitment could be done alongside the normal law student recruiting cycle.

LEGAL CLINICS

Participants involved in legal clinics talked about the difficulties they faced in starting and maintaining clinics. These difficulties manifest in procedural issues around licensing and funding the clinic, and the permitted scope of clinic services. Procedurally, it is an uncertain and difficult process to get a clinic licensed and an even more difficult process to find funding for a licensed clinic.³⁸ Justice Canada noted, in 2021, that New Brunswick is one of three jurisdictions in Canada where legal clinics cannot be offered through community associations.³⁹ Participants suggested there is an unwillingness among private firms in New Brunswick to support legal clinics, especially with no requirement for pro bono work among licensees in the province.⁴⁰

³⁸ *General Regulation – Legal Aid Act*, NB Reg 2017-12, section 38, online: <<https://laws.gnb.ca/en/pdf/cr/2017-12%20.pdf>>.

³⁹ Justice Canada, *Legal Clinics in Canada: Exploring Service Delivery and Legal Outcomes Among Vulnerable Populations in the Context of COVID-19* (November 2021), online: <<https://www.justice.gc.ca/eng/rp-pr/jr/clinics-cliniques/discussion.html>>.

⁴⁰ Law Society of New Brunswick, *Code of Professional Conduct*, (Fredericton: Law Society of New Brunswick, 2023), ch 4.1-1, commentary 1–3, online: <https://lawsociety-barreau.nb.ca/uploads/forms/Code_of_Professional_Conduct.pdf>.

Even if setting up and maintaining a clinic became easier, their permitted scope is extremely narrow. As it stands, clinics can only provide limited services with little flexibility. Participants agreed a properly funded and sufficiently resourced clinic could reduce the strain on legal aid only if they were permitted to assist self-represented litigants and provide pro bono legal services to those not seeking to self-represent, in a manner similar, if not identically, to the normal services of a private practitioner.

Efforts such as PLEIS-NB provide an invaluable service. However, there is not nearly enough capacity building in the province, let alone formally attached to the justice system. The UNB Legal Clinic and the Fredericton Legal Advice Clinic provide similar services, while bridging the gap between preventative measures and supplementary representation for people who cannot afford representation. More accessible services such as these are required and need funding.

SOCIAL SERVICES

A widely agreed-upon finding among participants was that many problems for which clients sought legal solutions were not legal issues at all. In many instances, especially in the family context, clients present with a breakdown in communication between the parties, problems with emotional regulation, or a lack of support services to address root causes of their legal dispute. Participants in the plenary agreed that triaging these non-legal issues could simultaneously reduce caseloads while improving both access to justice and overall system outcomes. In the same way as case management and settlement discussions have been made mandatory in some jurisdictions, participants agreed these non-legal issues should be addressed post-triage before any significant procedural steps have been taken in their file. A combination of supported social worker services, mental health services, and resources on child welfare and interpersonal relationships greatly improve outcomes. Still, these forms of wraparound support services could also reduce the number of cases if they resolve some sources of disputes. This is further discussed in the following section.

2.2.4 Change to the Family Justice System

- Change to the Family Justice System: Participants endorsed a non-adversarial, multidisciplinary, and evidence-based approach to resolving family law-related issues.

Summit participants stressed the need to make changes to the ways in which family issues are processed. In the plenary session of the second of the Summit participants were able to consider changes in the family law system that fell into three interrelated categories. Three overall themes emerged. Firstly, the standard in family matters ought to be “every child wins” underpinned by a “do no harm principle” in family matters. A recurring theme in those discussions was how an adversarial system of justice adversely affected and exacerbated family issues. Secondly, participants discussed a system that incorporates early and preventative services that help parse legal issues from health, interpersonal or social issues and direct the parties to a service that can help them address these matters. Participants discussed

shifting from an adversarial system to a collaborative or inquisitorial approach in family law, like in civil law systems. Finally, outcomes must be measured, the well-being of the parties collectively valued over the triumph of one side, and the development of the system must be evidence-based and supported by scientific research.

EVERY CHILD WINS

The standard in family matters ought to be “every child win” underpinned by a “do not harm principle” in family matters. There was wide acknowledgement by practitioners that children in the adversarial model suffer despite the “best interest of the child principle.”⁴¹ Participants discussed how the current system creates a win-lose paradigm which exacerbates or even creates conflict between parents. The Honourable Justice Rodney Jerke, of the Court of King’s Bench of Alberta, and Diana Lowe, co-lead of the Reforming the Family Justice System (RFJS) initiative, elaborated on the effects on children of Adverse Childhood Experiences (ACEs) incurred through adversarial proceedings.⁴² ACEs can cause lasting trauma that increases the risk of health conditions, mental health problems, and addiction, among other types of harm.⁴³ They elaborated that, in addition to the harmful behaviour of some parties, the design of the system can also generate harmful conditions and results. Participants suggested a positive duty to “do no harm,” as inspired by the medical context, should guide lawyers in family matters in fulfilling their regulatory obligation to advise clients in an adversarial proceeding to “take into account the best interest of the child,” with the caveat to only do so if it does not prejudice the interests of the client. Participants agreed that the model for family justice in the province must be one where “the child always wins.”

PREVENTATIVE AND MULTIDISCIPLINARY SERVICES

When participants discussed their vision of a future and just system, ideas like a problem-focused and non-adversarial structure in which actors collaborate and work to proportionately and quickly meet the needs of the public arose.⁴⁴ Actors in the field include public legal education and information organizations, “community justice help” and community-based services,⁴⁵ triage and referral services, summary advice, legal clinics, government social services, and not-for-profit organizations, staffed by community members, volunteers and

⁴¹ *Ibid* ch 5.1-1 commentary 4.

⁴² Diana Lowe, “Reimagining the Family Justice System: an introduction to Alberta’s Reforming the Family Justice System initiative” (2021), Vol: 51, 1156 at 1158. See Center for Disease Control and Prevention, “Adverse Childhood Experiences (ACEs)” online: <<https://www.cdc.gov/violenceprevention/aces/>>.

⁴³ *Ibid* at 1158.

⁴⁴ *The Justice Crisis*, *supra* note 15 at 11.

⁴⁵ *Community Justice Help*, *supra* note 27 at 11.

licensed legal service providers.⁴⁶ Imperative to this approach is a culture and ideally a political will, to experiment, measure, implement, and not let perfect be the enemy of good.⁴⁷

Articulating how such a process would work, participants in the final afternoon of the summit discussed a system in which early and preventative services help separate legal issues from health, interpersonal or social issues and direct the parties to a service that can help them address these matters. Early in the discussion, there were complaints that the provincial government no longer finances mediators. Participants agreed that this model, while limited, worked well and that its reintroduction ought to be accompanied by a measurement process to prove the program's efficacy. Participants together recommended reintroduction of the program, accompanied by mandatory mediation for parties over the voluntary model currently in place. Adequate translation services are crucial to catch the nuances of the facts of a matter and the interaction between parties. Finally, tying the discussions of improvements to the system together was the recommendation for simplified processes of uncontested divorce to offer parties an alternative to court and risks of confrontations.

Another crucial matter discussed was the availability of services and staff to guide families through the process. These ranged from paid legal aid lawyers present in court rooms, personnel at court or service points to direct people to services that will address the non-law-related components of their dispute and family law information and access centres to provide free help. Extensions to these are community and social services that use trauma-informed approaches to intervene sooner in conflicts and avoid escalation, offering paths to resolution. Here, family justice navigators, bolstered by digital tools to facilitate access, could help people understand various procedures. This space provides areas of innovation where state-sponsored or private applications can be adopted as negotiation tools.

Crucial to the discussions were multidisciplinary approaches to help parties through a problem. Such a model would leverage the expertise of those in the health and social services sectors to solve the problem as it unfolds, instead of using their expertise as testimony in a legal battle. One participant recounted an anecdote, to which many could relate, saying, "I'm dealing with a medical problem but I'm treating it with the law, but the problem is a mental health issue." In this discussion, participants revealed their sense of responsibility and care about the people with whom they interact in their roles as judges, lawyers or court staff. There were many shared stories of people willing to go well beyond their official responsibilities to help people when they can due to a deficiency in the system that demanded going beyond their expertise or role. Such experiences brought the discussion to the need for non-legal experts to intervene in family matters. Participants envisioned a multidisciplinary model that uses a consultative, trauma-

⁴⁶ *Roadmap for Change*, *supra* note 17 at 2 and 11. See also *Community Justice Help*, *supra* note 27; Ab Currie, *Ten Ideas for Community-Based Justice*, (Toronto: Canadian Forum on Civil Justice, 2018), online: <<https://digitalcommons.osgoode.yorku.ca/cfcj/20/>>.

⁴⁷ *Everyday Legal Problems*, *supra* note 32 at 8. Alternative nomenclature such as "problems with a legal component" or "law-related problems" and "life-affecting problem" to signify that the problems are critical, related to basic needs, and not exclusively legal in nature, see Such terms reflect the reality that these issues are qualified as "legal" in the current normative paradigm but do not necessarily need to be so and may be dealt more appropriately through other means. See also Salter and Thompson *supra*, note 21 at 119. See also *Community Justice Help*, *supra* note 27 at 7.

informed and healthcare paradigm in which teams of legal professionals, psychologists, social workers, financial experts, and others work in tandem to address family issues. The team would work to effectively separate social issues from legal issues, thereby guiding families without legal issues to the appropriate social resources. Participants emphasized the role of early intervention in the multidisciplinary model, whereby engagement at the onset of cases could help prevent ACEs and free up the court's time. Such a model can also serve to shift the justice system from a reactive model to a proactive model. One group cited the UNB Health Team as a practical example of a multidisciplinary team. Additionally, participants discussed equipping justice system actors with more tools to solve social problems, particularly when mental health challenges are present.

EVIDENCE-BASED APPROACH

Participants stressed the importance of measuring the outcomes of both existing and future processes. The system ought to be designed so that outcomes are measured, the well-being of the parties is valued over the triumph of one party, and development is evidence-based and supported by data-driven research.

Participants often returned to the example of "brain science" discussed by Justice Jerke and Diana Lowe. The use of "brain science" suggests an evidence-based system in which actors are trained and informed beyond their legal training. In the case of ACEs, training can help identify practices that are harmful. As Diana Lowe explains:

"Through learning about brain science, RFJS Co-Convenors and Collaborators have come to understand that the toxic stress arising from unresolved family disputes has negative consequences for parents and their children. Brain science confirms not only the impact of ACEs on future health and social outcomes, but also the ability to build resilience and buffer the effects of toxic stress through supports for families and children who have experienced ACEs."⁴⁸

Evidence-based methods based on scientific data provide policymakers with the knowledge of what causes harm and what builds resilience. Such knowledge allows for outcome-orientated design for policymakers to build policy and programs that produce healthy and non-harmful outcomes.

While possessing data does not, in itself, guarantee positive outcomes, it nevertheless provides an evidence-based ground for the creation of a system and implementation of policy and informed behaviour.

⁴⁸ Reforming the Family Justice System, *Case Study: Re-Imagining the Family Justice System: Integrating Brain Science in Alberta* (Calgary: Re-Imagining the Family Justice System, 2018) [RFJS Case-Study], at 42, online:<<https://rfjslab.files.wordpress.com/2020/05/case-study-on-rfjs-jan-2020.pdf>>.

2.2.5 Technological Change

- Technological change: Participants acknowledged the need for modernization and e-justice reform, embracing use of digital tools, using tools to measure outcomes of processes, applying strategic use of artificial intelligence in step with reforming the Rules of Court.

Participants expressed the urgent need for modernization of the justice system for both short- and long-term benefits. Tools ought to be systemically supported and employed to modernize and optimize both internal and user-facing communications and processes. The priorities articulated during the Summit include: (1) updating the Rules of Court to allow for innovative processes, (2) updating the Rules of Court to allow for systematic use of a bilingual electronic filing and case management system for all New Brunswick courts, inclusive of flexible use of videoconferencing to accommodate remote hearings when needed, and (3) measuring outcomes.

PROJECT FLEXIBILITY

Summit participants stressed the need to update civil procedure by amending the Rules of Court.⁴⁹ Participants noted that, since they were drafted in 1982, the Rules of Court have never been fully revised and are out of step with the contemporary issues facing the justice system. Participants agreed the Rules of Court ought to be “user-centric” and drafted in plain language, with simplified procedures that avoid exhaustive processes whenever necessary to strike a balance between the needs of the public and the interests of justice, though in favour of the former. Lauryn Kerr, legal counsel at the British Columbia Civil Resolution Tribunal, presented just one such model, emphasizing the need for flexible and adaptable procedures to be proportionate to the case at hand. The Rules of Court ought to de-escalate legal disputes and provide many paths for resolution to the parties well before a judgment is rendered. Many participants indicated there is little space and will to allow them to innovate procedures, especially concerning the judiciary. As mentioned above, Justice Cotnam demonstrated the power such innovations could have.

Such innovations could include asynchronous online dispute resolution away from the judicial process. As illustrated in the section above, they too can be used to facilitate de-escalatory, diversionary, and reconciliatory methods of conflict resolution.

⁴⁹ *Rules of Court of New Brunswick*, *supra* note 2.

RULES OF COURT AND DIGITAL TOOLS

In the plenary sessions following the presentations on digital tools, participants called for permitting electronic signatures and introducing electronic filing systematically and before all courts in the province. The call was persistent and near unanimous. Participants explained the logistical issues with the limited ability to submit documents electronically. Currently, the Rules of Court does not provide a robust framework for filing documents electronically, nor is there a formal and generalized process to do so.⁵⁰ A robust electronic filing system will also require regulatory amendments to the Rules of the Court, which, as they apply to the Court of Appeal, currently permit electronic filing by email of certain documents with the Registrar of the Court of Appeal.⁵¹ This permission applies only to civil appeals but was recently extended also to criminal appeals in a Court Directive.⁵²

While participants acknowledged that e-filing is not a universal remedy, its systematic adoption would help alleviate some significant issues with travel, which is timely and costly with the rural population of New Brunswick. Technology is available in courtrooms to hold remote hearings, but access to court records across judicial districts is challenging in the case of voluminous paper records. The Honourable Chief Justice J.C. Marc Richard pointed out that e-filing would allow cases to be shared more easily among judicial districts. If one district has capacity for a hearing, while another is overwhelmed, a digitized court filing system would allow the court record to be instantly transferred to a judge and court staff in the district with extra capacity. This could significantly reduce backlogs in the court system.

Implementation of such support has a precedent in the province. There is already flexibility in place as regards remote hearings.⁵³ However, these were *ad hoc* directives issued on the operations of the courts during the COVID-19 pandemic. Also, reflecting on the Court's practices during the pandemic, on September 13, 2022, Chief Justice Richard issued an updated directive, replacing all previous directives, and instructions for virtual hearings for the Court of Appeal of New Brunswick.⁵⁴ This directive has restored in-person appeal hearings as the default mode for those hearings, subject to requests for virtual appearances, yet it has retained accommodations such as virtual motion hearings and the remote commissioning of affidavits "in circumstances where it is not possible, or it is medically unsafe, for the deponent to physically attend before a lawyer or commissioner."⁵⁵

Similarly, the Court of King's Bench of New Brunswick in its Updated Directive effective September 12, 2022, replaced any previous directives on the operation of the Court during the

⁵⁰ *Ibid* at Rule 4.06.

⁵¹ *Ibid* at Rule 62.

⁵² Court of Appeal of New Brunswick, "Electronic Filing of Certain Documents" (Fredericton: Court of Appeal of New Brunswick, 8 April 2022), online: <<https://www.courtsnb-coursnb.ca/content/dam/courts/pdf/appeal-appel/pd-aa/PD-AA-16.pdf>>.

⁵³ *Supra*, note 2 at Rule 62.02.1. See *supra* note 2 at Rule 4.1.

⁵⁴ Court of Appeal of New Brunswick, "Updated Directive and Instructions for Virtual Hearings" (Fredericton: Court of Appeal of New Brunswick, 2022), online: *Court of Appeal of New Brunswick* <<https://www.courtsnb-coursnb.ca/content/cour/en/appeal.html>>.

⁵⁵ *Ibid*.

COVID-19 pandemic and retained some flexibility, mainly for the commissioning of affidavits and to exceptionally conduct teleconference hearings.⁵⁶ In this case the court emphasized the judges' discretion.⁵⁷ Also, the Provincial Court permits parties to submit teleconference appearance requests up to 48 hours prior to any scheduled appearance.⁵⁸

Despite the widespread recognition that digital tools will improve the system particularly making it more modern and efficient, participants stressed the need for government commitment to fund participatory processes for courts to design technological solutions that fit their needs and their users'. They also expressed concerns about digital literacy and connectivity. These challenges are very relevant to the success of a user-centric approach to modernization. There is no point in making electronic systems available unless users have the capacity and tools to access those systems. Resources must be committed to the user-friendly design of electronic systems which facilitate direct communication or filing with the courts. It is also important to invest in intermediaries who can help bridge access gaps for populations that struggle with access to electronically available services. Summit participants discussed the need for access points, perhaps in collaboration with legal aid institutions or community centres and libraries.

MEASURING OUTCOMES

Repeatedly brought up during the discussion was the need to use digital tools to measure outcomes. Diana Lowe stressed this point drawing from the Alberta experience: "Projects ought to have explicit goals and outcomes." Digital tools can best be used to measure user feedback to monitor if those outcomes are being achieved.

Lauryn Kerr, legal counsel at British Columbia's CRT, discussed how the CRT Solution Explorer is levied to aid the parties and process, and collect data for user feedback, allowing for responsive and iterative changes.

Overall, the digital transformation of systems that remain just, equitable, and accessible requires more than just "throwing tech at" existing infrastructure and processes.⁵⁹ This is as true for the context of the New Brunswick justice system as for any other jurisdiction seeking to modernize government and judicial processes. The Summit confirmed a widespread recognition that, while there have been systemic changes in the court system following the pandemic, these have been

⁵⁶ Court of King's Bench of New Brunswick, *Notice to Profession and Public – Updated COVID–19 Directive*, (Moncton: Court of King's Bench, 2022), online: <<https://www.courtsnb-coursnb.ca/content/dam/courts/pdf/directive-commissioning-affidavits.pdf>>.

⁵⁷ *Ibid.*

⁵⁸ Provincial Court of New Brunswick, *Teleconference Appearance Request Form for Counsel*, (Moncton: Provincial Court of New Brunswick, 2022), online <<https://www.courtsnb-coursnb.ca/content/dam/courts/pdf/teleconference-appearance-request-form-for-counsel.pdf>>.

⁵⁹ Lupo, Giampiero, "Evaluating e-Justice: The Design of an Assessment Framework for e-Justice Systems" in Karim Benyekhlef et al., eds., *eAccess to Justice* (Ottawa: University of Ottawa Press, 2016) at 53–94. See also Rosa, Joao, Cláudio Teixeira, and Joaquim Sousa Pinto, "Risk factors in e-justice information systems," in *Government information quarterly* 30.3 (2013): 241 at 256.

limited by the lack of available innovative technology such as an electronic document filing and case management system.

2.2.6 Change for a Rural Population

- Change for a Rural Population: Reforms must also take account of the challenges posed by the province's geography and heavily rural population. Public infrastructure must accommodate this reality and support the community and justice needs of the population.

New Brunswick has a dispersed population. The three challenges posed for its population are identified as follows: access difficulties, insufficient rural infrastructure, and a lack of community support services.

Participants frequently provided anecdotes from their experiences dealing with rural and remote clients. Many explained that legal issues start as non-legal issues, and only become legal in nature when the issue has long been ignored. In rural and remote communities, non-legal issues requiring access to public services, or the care of other professionals could remain unresolved much longer than issues arising in urban centres. Naturally, if left unresolved, many of these issues spill over into the legal realm after enough time. In many ways, providing rural and remote communities with access to justice cannot be decoupled from providing other essential services like healthcare or social support programs. Access to support services becomes access to justice in rural and remote communities when the support services address non-legal issues before they become legal.

PROVIDING RESOURCES

As discussed in the section "Change in Funding Priorities," participants identified specific constraints caused by the funding model for legal aid and their impact upon bringing services to a rural population. They suggested current funding levels are insufficient, causing inflexibility in legal aid's ability to plan for and meet demands outside of larger urban centres. To address these issues, participants suggested a jurisdictional scan of other legal aid funding models for best practices, with specific attention to the model of Newfoundland and Labrador's legal aid services. The wide variety of urban and remote clients in Newfoundland and Labrador, along with the success of their model through the past five years, would make it a helpful source of knowledge in addressing New Brunswick's challenges.

PUBLIC INFRASTRUCTURE

Participants agree the use of public infrastructure must be rethought at a fundamental level. Technology could alleviate issues in rural and remote communities in many ways, but technology will only be effective if access to those technologies is provided. As noted above, participants spoke of "justice access centres." To be effective these need to be both found in

rural communities as well as provide support for remote access. They can be established alongside existing community centres or similar places such as public libraries.

On a more immediate basis, participants considered the possibilities of a travelling court such as used in remote rural areas in other provinces to avoid complications and expense of parties travelling to the court themselves.

Participants suggested that underutilized public infrastructure at provincial and municipal levels can be repurposed into regular workspaces for travelling professionals like lawyers, social workers, therapists, and others to provide public services. These same spaces could be outfitted to provide the public with connected, private spaces to engage with digital services such as remote healthcare or digital court proceedings. Providing access to a computer, related technology, and the internet does not simply address access to justice issues. As highlighted in other sections, legal issues are frequently interwoven with non-legal issues like physical or mental health, childcare, unstable housing, or social security. Providing accessible infrastructure to access digital legal services and proceedings will address immediate barriers. This same infrastructure can be leveraged to remotely provide wraparound support services that would be necessary to address and potentially de-escalate issues before the point of a legal proceeding.

Participants understood that digital proceedings and tools are not a panacea for the woes of the justice system, and that sole reliance on these methods will create new (and exacerbate existing) access to justice issues in rural and remote areas. In a province with language barriers and remote populations, there is no doubt digital proceedings and tools must be part of the solution. However, they must be designed and used in ways which lessen access to justice barriers as much as possible. In rural and remote communities, providing legal services cannot be separated from making court proceedings accessible, nor can the accessibility of wraparound support services.

2.2.7 Change that Fits an Officially Bilingual Province

- Change that Fits an Officially Bilingual Public: Language is critical to access to justice. The officially bilingual legal system of the province needs to be factored into any discussion about reforms.

Participants agreed language must be a core component of access to justice. Legal information and documents, as well as justice processes, must be available in forms accessible to different language groups as well as print-disabled groups. Plain, accessible wording in both official languages is key. Any reform in the New Brunswick justice system must not only adhere to but facilitate the practicalities of workable and efficient bilingual processes; users must have access to the courts in both official languages without being placed at a disadvantage for their choice.

Indeed, participants thought about reforms to enhance access to justice as an opportunity to, first, review the reality and everyday functioning of an officially bilingual system (i.e., gather data to measure users' language needs as well as the language capacities within the justice system). Second, it is an opportunity to think about how existing or new institutional and technological

solutions might enhance access to justice. For instance, during the summit, participants endorsed the use of digital tools to facilitate remote hearings precisely to fill in language gaps and speed up proceedings when a judge fluent in the requested language is not readily available within a judicial district. Participants also expressed concerns over a shortage of interpreters and translators. Digital tools can be employed to facilitate bilingual (or even multilingual) processes when appropriate. For instance, AI-assisted translations can help in making information shared by legal institutions such as courts or public legal services available in multiple languages.

There are several points of caution which were discussed during the Summit. First, the slippery slope of using digital tools to increase existing language capabilities: this strategy might contribute to the exact opposite results. Increasing the capacity for translation and interpretation in the justice system is a high priority. Second, it was noted that digital tools, and particularly generative text tools, tend to produce less accurate results in languages other than English. Participants noted inaccuracies especially when it comes to processing and reproducing appropriate legal terminology, for example, in the context of French common law.

Participants recognized that reforms embracing the capacity of new technologies might enhance access to justice for users who speak only one or none of the official languages of the courts.

Underpinning each of the changes mentioned above is the need to facilitate bilingual legal services in the province. It is not only vital to maintaining the cultural vibrancy of the province, but a necessity for many to be able to access services to help them through a problem related to a legal issue or not.

CONCLUSION: BRINGING ABOUT CHANGE

New Brunswick Access to Justice Summit participants asked for broad systemic changes. This report presented the Summit's discussions and desired outcomes listing a call for 7 Changes. These require a **change in the attitude** of actors and organizations in the system, **change in laws, policies, procedure, and culture**. To work, they also require **cooperation**. Actors must act in concert towards the same goals.

The question remains, how we can produce conditions where such coordination occurs and produces change?

To help navigate these issues, participants were provided with a framework for change to help them orient their discussion on change.⁶⁰ They acknowledged that change requires **well-articulated goals, coordinated efforts involving stakeholders across sectors, and funding. Evidence** that the change sought will improve the status quo is also critical to cultivate and sustain such a culture open to change. Researchers must work in tandem with other stakeholders to produce the evidence needed.

Most importantly, change is not understood only as a result, but as **a process which occurs on three levels: culture, innovation, and the system**. Taken together, changing the culture, and introducing innovative practices in line with the set goals puts pressure on the system the stakeholders want to change. The change is successful when the system finally aligns with the goals that were set by the stakeholders.

⁶⁰ See *RFJS Case-Study*, *supra* note 48 at 44. See also, Access to Justice BC, *Report of the Working Group on an A2JBC Family Justice Leadership Strategy* (Vancouver: Access to Justice BC, 2020), recommendation 4, online: <<https://accesstojusticebc.ca/family-justice-leadership-strategy/recommendation-4/>>

While it is beyond the scope of this report to detail that framework fully, it merits discussion here as it punctuates and explains a vision for cooperation between the stakeholders in the province which is foundational to the 7 Changes proposed. The framework briefly discussed below was fundamental to the "Reimagine the Family Justice System" project in Alberta and detailed to this summit's participants by Justice Rodney Jerke, Court of King's Bench Alberta, and Diana Lowe, co-lead of the Reforming the Family Justice System (RFJS) initiative. The same framework was also used to build a strategy map for the cross-sector organizations in "Access to Justice BC"'s collaborative to transform the province's justice system.

Appendix A
Summit Program

NEW BRUNSWICK ACCESS TO JUSTICE SUMMIT

DIGITAL TRANSFORMATION: PUTTING PEOPLE AT THE HEART OF THE SYSTEM

CIAJ

Canadian Institute
for the Administration
of Justice

Listening. Learning. Leading.

August 28–29, 2023 | University of New Brunswick Faculty of Law

41 Dineen Dr., Fredericton, NB, Canada E3B 5A3 • Room 2

About the Summit

The idea for a New Brunswick Access to Justice Summit was born out of a desire by members of the New Brunswick justice community to understand the impacts of adjustments brought about to the justice system in response to the COVID-19 health crisis.

The Canadian Institute for the Administration of Justice (CIAJ) hopes to take a retrospective look at what we have been through as a community of justice providers; evaluate what we have learned and explore how we might envisage a more robust delivery of justice focused on the people of this province and their justice needs. CIAJ would like to conduct similar activities in other provinces. The research on access to justice and digital tools will continue beyond the Summit.

Planning Committee

- The Honourable Chief Justice J.C. Marc Richard, Court of Appeal for New Brunswick
- Nathan Afilalo, Lawyer, CIAJ
- The Honourable Chief Judge Marco Cloutier, New Brunswick Provincial Court
- M^e Marie-Claude Desrosiers, Legal Officer, New Brunswick Court of Appeal
- The Honourable Chief Justice Tracey DeWare, Court of King's Bench of New Brunswick
- Daniel Escott, Lawyer, CIAJ
- Bruno Gélinas-Faucher, Assistant Professor, Faculty of Law, Université de Moncton
- LA Henry, Fredericton Legal Advice Clinic (FLAC)
- Chantal Landry, Director - Family Law Services, New Brunswick Legal Aid Services Commission
- Dean Michael Marin, University of New Brunswick Faculty of Law
- Christine O'Doherty, Lawyer & Executive Director, CIAJ
- Argyri Panezi, Canada Research Chair in Digital Information Law and Policy, University of New Brunswick Faculty of Law
- Talia Profit, K.C., President, the Canadian Bar Association —New Brunswick Branch
- Marc L. Richard, K.C., Executive Director, Law Society of New Brunswick
- Jeannette Savoie, Supervising Lawyer, UNB Legal Clinic

AGENDA | MONDAY, AUGUST 28, 2023

The Family Justice System: Solutions to Improve the Delivery of Services to the People of New Brunswick

- 8:30 – 8:35 am **Welcome Remarks**
- Dean Michael Marin, Faculty of Law, University of New Brunswick
- 8:35 – 9:00 am **Opening Remarks**
- The Honourable Chief Justice J. C. Marc Richard, Court of Appeal for New Brunswick
- 9:00 – 9:15 am **The Next Roadmap: How We Can Work in Collaboration to Ensure Sustainable Changes in the Family Justice System (Pre-recorded presentation)**
- The Honourable Justice Andromache Karakatsanis, Supreme Court of Canada; Chair, National Action Committee on Access to Justice in Civil and Family Matters
- 9:15 – 9:45 am **The Need for a Culture Shift**
- Dean Trevor C.W. Farrow, Osgoode Hall Law School; Chair, Canadian Forum on Civil Justice
- 9:45 – 10:15 am **The Survey Results Presentation**
- Nathan Afilalo, Lawyer, CIAJ
-
- 10:15 – 10:35 am **BREAK**
-
- 10:35 – Noon **PANEL | Legal Design: Transforming the Family Justice System in Alberta**
- Chair*
- The Honourable Chief Justice Tracey DeWare, Court of King's Bench of New Brunswick
- Speakers*
- The Honourable Justice Rodney A. Jerke, Court of King's Bench of Alberta
 - Diana Lowe, K.C., Justice System Consulting, Re-imagining Justice, Alberta
-
- Noon – 1:00 pm **LUNCH**
-
- 1:00 – 2:30 pm **PLENARY | Causal Layered Analysis: Identifying Causes, problems and patterns**
- Speakers*
- Michelle Jehn, Manager of Community and Social Innovation, Strathcona County
 - Jessica Spina, Manager of Climate Adaptation, Government of Alberta
- 2:30 – 3:45 pm **PLENARY | Exploring Mental Models**
- Speakers*
- Michelle Jehn, Manager of Community and Social Innovation, Strathcona County
 - Jessica Spina, Manager of Climate Adaptation, Government of Alberta
-
- 3:45 – 4:00 pm **BREAK**
-
- 4:00 – 5:00 pm **PLENARY | Where To Now?**
- 5:00 – 7:00 pm **COCKTAIL**

AGENDA | TUESDAY, AUGUST 29, 2023

Identifying Realistic Solutions and Exploring Digital Tools

9:00 – 10:30 am **PANEL | Digitization Initiatives in the Legal System**

Chair

- Argyri Panezi, Canada Research Chair in Digital Information Law and Policy, University of New Brunswick Faculty of Law

Speakers

- The Honourable Justice Geneviève Cotnam, Court of Appeal of Quebec
- Michelle Thompson, Executive Director, Public Legal Education and Information Services of New Brunswick
- Renee Smith, Director, Legal Business Solutions, PwC Canada

10:30– 10:45 am **BREAK**

10:45 am – Noon **WORKSHOP 1 | Digital Tools & Deep Dive Into the Solutions** (breakout groups)

Noon – 12:30 pm **LUNCH**

12:30 – 1:15 pm **Presentation by the Civil Resolution Tribunal in British Columbia**

Speaker

- Lauryn Kerr, Legal Counsel, CRT

1:15 – 2:15 pm **WORKSHOP 2 | Identify the Most Promising Solutions to Implement in the New Brunswick Family Law Justice System Solutions** (breakout groups)

2:15 – 3:30 pm **PLENARY | Share Findings From Workshops; Identify Solutions**

3:30 – 3:45 pm **BREAK**

3:45 – 4:30 pm **PLENARY | Identify and Agree on Measures of Successes — Solutions & Next Steps**

4:30 – 5:00 pm **Closing Remarks**

- The Honourable Chief Justice J. C. Marc Richard, Court of Appeal for New Brunswick

5:00 – 7:00 pm **COCKTAIL**

Partner:



Contact us

Please contact us for more information about our organization, the benefits of membership and how you can contribute to our mission.

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