

Canadian Institute for the Administration of Justice
National Dialogue on Administrative Law

Self-Represented and Unrepresented Parties: Responding to the New Normal – When Nothing Seems Normal Anymore

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A New Access to Justice Landscape

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Canadians have an excellent justice
system, but ...

is it accessible?

By the numbers...

- Legal problems of everyday life: they affect us all.
- Approx. 50% of people will experience a legal problem over a given 3 year period – essentially all of us over the course of a lifetime.
- Approximately 50% of people try to solve problems on their own with no/minimal legal or authoritative non-legal assistance.
- Increasing number of SRLs in Canadian courts.
- Many people – often well over 50% (depending on the case, court and jurisdiction) – represent themselves in judicial proceedings (usually not by choice).
- The number is equally – and often more – significant in family court proceedings.
- Those who receive legal assistance are between 17% and 1,380% more likely to receive better results than those who do not.

[Various – see e.g. Action Committee, Currie, Farrow, Macfarlane, Birnbaum, Bala, Rehaag, CBA, etc.]

What is the public saying?

2012 Access to Justice Survey



- *“What is justice?”*
 - *“What is access to justice?”*
 - *“Is it fundamental to Canadians?”*

Online: CFCJ: <<http://www.cfcj-fcjc.org/what-is-access-to-justice>>

What's Happening?

Selected Reports and Initiatives

National

- Action Committee on Access to Justice in Civil and Family Matters, Final Report, *A Roadmap for Change* (2013)
- CBA, *Reaching Equal Justice Report* (2013)

SRLs

- National SRL Project (Macfarlane, 2013)
- ACCA White Paper: *Addressing the Needs of SRLs in the Canadian Court System* (Farrow et al., 2012)

Others

- Comparative research (Engler, Greacen, Zorza, etc.)
- CFCJ, “Cost of Justice Project”, “ALSMP”, “What is Access to Justice?”, etc.
- Etc.

Action Committee on Access to Justice in Civil and Family Matters

- Background
- Organizations: collaborative and stakeholder driven
- Definition of terms: access to justice
- Four working groups
 - Court processes
 - Access to legal services
 - Prevention, triage and referral
 - Family law
- Final report
- Fall road show, winter colloquium and moving forward



A Shift in Culture

Q. “How could the services for SRLs in your jurisdiction be improved?”

A. “I believe it would have to be a change in how we do business within the context of courts....”

[Canadian court worker, 2011]

(ACCA, p. 8)

Hryniak v. Mauldin

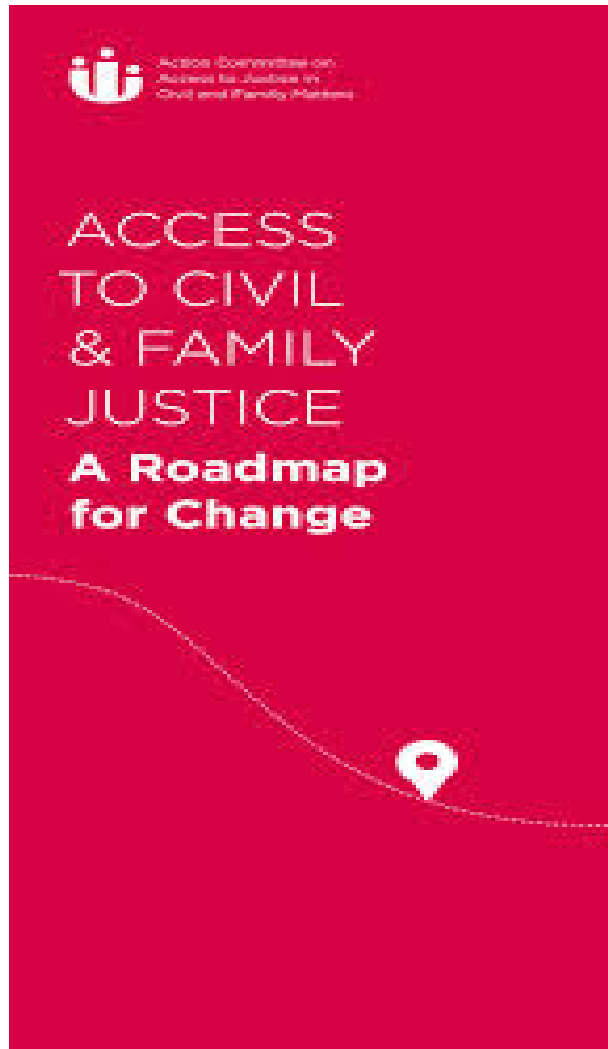
2014 SCC 7, paras. 1-2, Karakatsanis J. (emphasis added)

“Ensuring access to justice is the greatest challenge to the rule of law in Canada today. Trials have become increasingly expensive and protracted. Most Canadians cannot afford to sue when they are wronged or defend themselves when they are sued, and cannot afford to go to trial. Without an effective and accessible means of enforcing rights, the rule of law is threatened....”

“Increasingly, there is recognition that a culture shift is required in order to create an environment promoting timely and affordable access to the civil justice system. This shift entails simplifying pre-trial procedures and moving the emphasis away from the conventional trial in favour of proportional procedures tailored to the needs of the particular case. The balance between procedure and access struck by our justice system must come to reflect modern reality and recognize that new models of adjudication can be fair and just.”

Action Committee

Final Report



“We need a fresh approach and a new way of thinking. In short, we need a significant shift in culture to achieve meaningful improvement to access to justice in Canada — a new culture of reform....” (pt. 2)

Action Committee, Final Report (pt. 2)

Elements of Culture Shift:

“Guiding Principles for Change”

1. Put the Public First
2. Collaborate and Coordinate
3. Prevent and Educate
4. Simplify, Make Coherent, Proportional and Sustainable
5. Take Action
6. Focus on Outcomes

Another way of looking at it...

- Subject: provider to user
- Object: back-end to front-end
- Method: isolation to collaboration
- Content: process to outcome
- Accessible: complex to simple
- Outlook: unsustainable to sustainable

Going forward:

**public law to private justice –
is this the answer?**

Way of the future?

LAW TIMES

Arbitration another solution to overwhelmed civil justice system

James Zibarras

March 24, 2014, p. 7

“Arbitrations provide another underutilized opportunity.”

The New York Times

Renting judges for secret rulings

by Judith Resnik

February 28, 2014

“Should wealthy litigants be able to rent state judges and courthouses to decide cases in private and keep the results secret?”

[“No” per USSC]

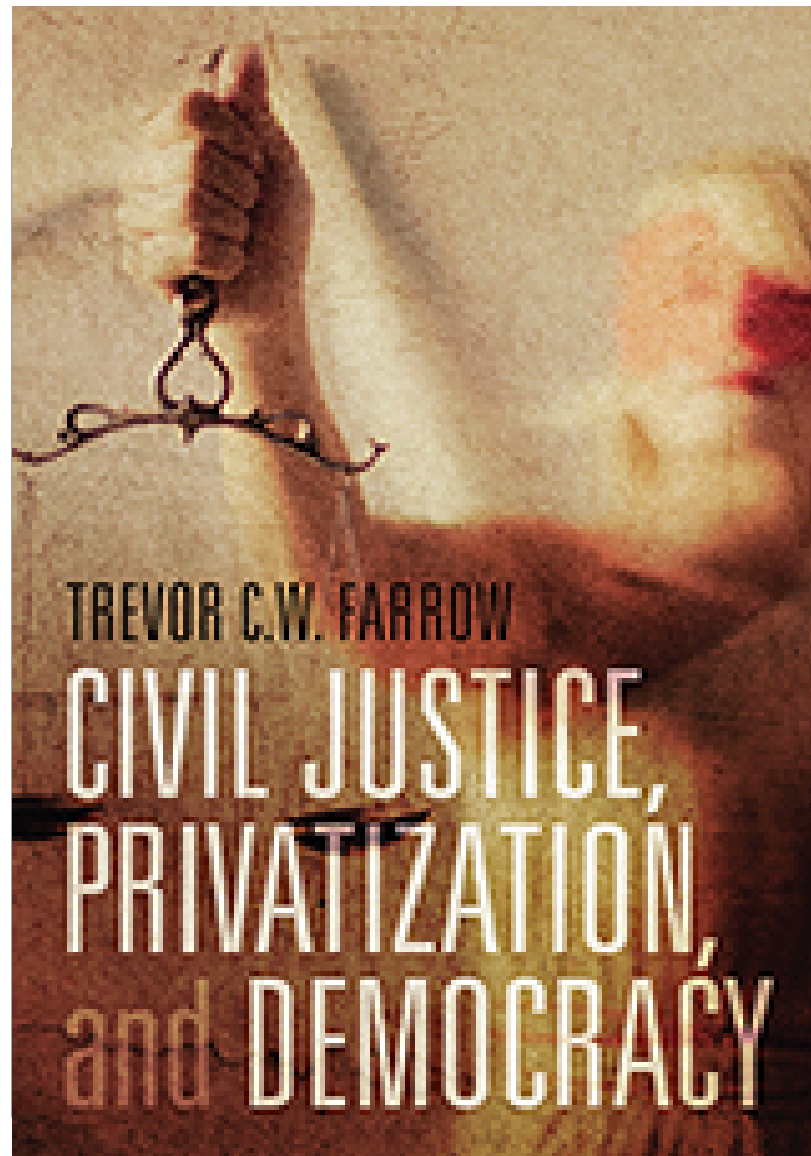
LEXPERT

The city-state's new court will compete directly with aspiring arbitration centres like Toronto

By Brian Burton, March 31, 2014 (online)

SINGAPORE IS in the process of setting up a new division of its High Court to act as an international commercial court....

Shameless
moment of
self-
promotion!



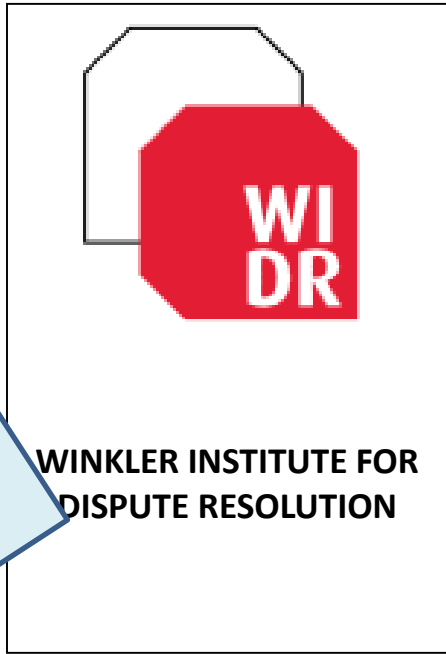
Trevor C.W. Farrow, *Civil Justice, Privatization, and Democracy*
(Toronto: University of Toronto Press, 2014)



"I'm searching for my keys."



The Canadian Forum on Civil Justice
Le forum canadien sur la justice



Conclusion / Questions?

