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Canadian Institute
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This program is eligible
for up to 12.75
Substantive Hours

41st ANNUAL CONFERENCE

Participation at this conference is approved under Section 41 (1) of the Judges Act according to Resolution # 29 of the CJC and is accredited in provinces where CLE requirements for lawyers are mandatory

CIVIL JUSTICE AND ECONOMICS: A MATTER OF VALUE

October 5-7, 2016

Fairmont Château Laurier, Ottawa

Begins on Wednesday at 1:15 pm and
concludes on Friday at noon (Drawing Room)




HONORARY CHAIR:

The Honourable Thomas Cromwell, Chair, Action Committee on Access to Civil and Family Justice

CO-CHAIRS:

Justice Georgina R. Jackson, Court of Appeal for Saskatchewan; CIAJ President
Mr. Patrick A. Molinari, Ad. E., FRSC, Legal Counsel, Lavery, Montreal



Canadian Forum on Civil Justice 
Forum canadien sur la justice civile

OVERVIEW

What is the value of justice? Does justice have a price tag? The question is intriguing. But justice certainly has a cost. It is part of the world where material resources and time are limited. Can we put dollar figures on justice? Certainly. Should we? Therein lies the dilemma. Since justice is financed from public funds, some would argue that governments should be able to measure its quality, performance and accessibility. Governments are required to report on court house costs, delays and other expenses; and to those numbers must be added expenses incurred by litigants and the costs associated with the lack of justice i.e., self-representation or people abandoning rights recognized by our laws. The absence of reliable data on judicial activity poses many problems. The development of reforms based on inaccurate data and the absence of a documented monitoring of the implemented reforms within the justice system attest that the legal culture is not transparent.

What information does justice need about its own activity? What do we know about its activity? How can we improve the practice of law, and the processes of the law, and, thereby, improve access to justice? How can we better understand and measure the activities of our legal institutions? What are the underlying notions of justice? Can justice be measured? What are the social returns from offering the resolution of civil justice disputes in the courts? Whose job is it to decide how much justice a citizen gets? Whose job is it to decide about proportionality in justice? Can society countenance a \$200,000 cost to the litigant, and the concomitant costs to the civil justice system, of a \$50,000 dispute? By asking this question and seeking a solution to it, do we risk treating justice as a commodity to be packaged, bought and sold? In the absence of data, what steps is the system taking to improve and to provide the means to fulfill the fundamentals of civil justice? What insights can an economic focus lend to an analysis of how to improve civil justice? Are we offering too much or too little access? Do the courts have the tools to curb misuse and abuse that are taking civil justice dollars without giving a perceived value? If self-represented litigants are a consequence of expensive justice costs and also a cause of delay, should we be more focussed on them, and if so, how could this be done? Do courts need to direct private justice civil processes even more than they do now?

PLANNING COMMITTEE

Mr. Mark Benton
Chief Executive Officer
Legal Services Society, British Columbia

Dean Natalie Des Rosiers
Faculty of Law – Common Law Section
University of Ottawa

Ms. Virginia A. Engel, Q.C., ICD.D
Partner, Peacock Linder Halt & Mack, Calgary

Professor Trevor Farrow
Osgoode Hall Law School
President, Canadian Forum on Civil Justice,
Toronto

Mr. Michael Gottheil
Executive Chair, Social Justice Tribunals
Ontario

Professor Ejan Mackaay
Professor Emeritus
Faculty of Law, Université de Montréal

Ms. Michèle Moreau
Executive Director, CIAJ

Justice Yves-Marie Morissette
Court of Appeal of Quebec

Professor Pierre Noreau
Faculty of Law, Université de Montréal

Ms. Tijana Potkonjak
Student, Faculty of Law, University of Ottawa

Mr. John Sims
Past Deputy Minister and Deputy Attorney
General
Department of Justice, Ottawa

Professor Martine Valois
Faculty of Law, Université de Montréal

Mr. Grant Wedge
Executive Director, Policy, Equity and Public
Affairs, LSUC, Ontario

CIVIL JUSTICE AND ECONOMICS: A MATTER OF VALUE

WEDNESDAY, OCTOBER 5 (Program subject to change)

12:45 – 1:15 pm **REGISTRATION**

1:15 – 1:30 pm **WELCOME REMARKS**

Co-Chairs • Justice Georgina R. Jackson, Court of Appeal for Saskatchewan; CIAJ President
 • Mr. Patrick A. Molinari, Legal Counsel, Lavery, Montreal

1:30 – 2:30 pm **OPENING ADDRESS: [Building the Bridge between Law and Economics and Improving the Delivery of Civil Justice](#)**

Most Canadian judges, practitioners and those involved in the administration of justice rarely have the opportunity to consider their work through the lens of law and economics. The premise of this conference is that economic concepts could help us understand the effects of what we do and could help us better assess the effectiveness, both economically and socially, of choices and decisions the actors in the administration of justice make.

Moderator • Chief Justice George R. Strathy, Court of Appeal for Ontario

Speaker • Professor Michael Trebilcock, Faculty of Law, University of Toronto

2:30 – 2:45 pm **BREAK**

2:45 – 4:15 pm **[The Cost of Justice](#)**

This session will present the findings of a major survey about Everyday Legal Problems and the Cost of Justice in Canada done by the Canadian Forum on Civil Justice (CFCJ). It is the first national survey in almost ten years to measure the frequency and ways in which members of the Canadian public experience everyday legal problems. It is also the first survey of its kind to explore what these problems cost, not only in dollars, but also to the state and to the physical and mental health of the public who use our justice system.

This session will also explore a new research project called the Access to Law and Justice Project (ADAJ - from the French acronym). The ADAJ team has 34 co-researchers and 44 partners such as institutions, professional associations, community organizations (NGOs) and academia. The project includes 20 different research projects through empirical study on the realities of access to law and justice, and the development of innovative practices with pilot projects developed with partners.

Moderator • Ms. Nicole Aylwin, Research Fellow, Canadian Forum on Civil Justice, Toronto

Speakers • Professor Trevor Farrow, Osgoode Hall Law School, President of the Canadian Forum on Civil Justice, Toronto
 • Professor Lesley Jacobs, Director of the Institute for Social Research, York University, Toronto
 • Professor Pierre Noreau, Faculty of Law, Université de Montréal

4:15 – 5 pm **PRESENTATION FROM THE CHARLES D.-GONTHIER FELLOWSHIP CO-RECIPIENTS: [Risk Analysis: A Methodological Approach to Early Case Assessment in Litigation and Settlement](#)**

The 2016 Gonthier Fellows present the results of their research project on enhancing the capacity of legal counsel to provide competent advice at an early stage of the litigation process through the use of a 'risk assessment' methodological approach that better enables lawyers and mediators to more systematically evaluate the strengths and weakness of a legal action, identify and evaluate their client's interests and calculate the anticipated financial value of the legal action.

Moderator • Judge Patrick Healy, Quebec Court, Montreal

Speakers • Professor Heather Heavin, Associate Dean, Research and Graduate Studies, College of Law, University of Saskatchewan
 • Associate Professor Michaela Keet, College of Law, University of Saskatchewan

CIVIL JUSTICE AND ECONOMICS: A MATTER OF VALUE

5 – 6:30 pm

NETWORKING COCKTAIL (Cash bar)

Guest pianist: Risa Tonita

Recent graduate of the Master of Music program, University of Ottawa

THURSDAY, OCTOBER 6 (Program subject to change)

8:15 – 8:45 am

CONTINENTAL BREAKFAST

8:45 – 9:45 am

KEYNOTE ADDRESS: Rules for a Flat World: Why Humans Invented Law and How to Reinvent It for a Complex Economy

The law and legal methods on which we currently rely to support and shape the dramatic transformation of the past decades have failed to evolve along with technology. Not only are these systems too slow, costly, and localized to support exploding economic complexity, they also fail to address looming challenges such as poverty, instability, and oppression for the four billion living in poor and developing countries, largely outside of any formal legal framework. Through a review of law and the world economy, our keynote speaker makes the case for building a legal environment that does more of what we need it to do and less of what we don't, offering a model for a more market- and globally-oriented approach to building legal infrastructure.

Moderator • Professor Emeritus Ejan Mackaay, Faculty of Law, Université de Montréal

Speaker • Professor Gillian K. Hadfield, Richard L. and Antoinette S. Kirtland Professor of Law and Professor of Economics, University of Southern California

9:45 – 10:45 am

Ways of Making Existing Systems of Civil Justice Work Better

In light of, or in spite of, the lack of data, what is being done to improve civil justice? The premise for this session is that access to civil justice is hampered by delay and cost. This panel demonstrates initiatives being taken in the Courts intended to tackle complexity and delay and thereby reduce cost.

Moderator • Justice Georgina R. Jackson, Court of Appeal for Saskatchewan

Speakers • Regional Senior Justice Geoffrey Morawetz, Ontario Superior Court, Toronto:
Commercial List and Civil Trials Innovations
• Justice Daniel Dumais, Quebec Superior Court, Quebec City:
New Quebec Code of Civil Procedure

10:45 – 11 am

BREAK

11 am – 12:30 pm

Class Actions: Do they Pass the Test of Improving the Efficiency of Justice through Scale Economies?

As the overview for this conference outlines, there is a dearth of data on judicial activity in Canada in all sectors of judicial activity and litigation, including class actions. In fact, apart from the limited and rather informal data gathered by the provinces' superior court class action judges, the class action courts and bar association registers, and informal (often more impressionistic) numbers circulating within the class action bar and among judges, there is no true, reliable portrait of class action activity in Canada. Accordingly, we do not know if our class action system is truly effective, fair and efficient, and we cannot determine how the law should move forward, evolve and be reformed. Often, the development of law reforms is based on inaccurate data and the absence of a documented monitoring system of implemented reforms makes for an imprecise, opaque system of civil justice. The class actions sector is no exception.

The following questions will be addressed: which cases serve to provide true access to justice and which ones just "are not worth it"; how may we evaluate and understand class action activity, as

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well as the accomplishment of the action's objectives? Are the objectives of class compensation and deterrence being met? Which factors serve to impact the accomplishment of these objectives positively or negatively? How should we evaluate the success of class actions and of their settlements? How useful is this information for judges and lawyers?

- Moderator* • Professor Martine Valois, Faculty of Law, Université de Montréal
- Speakers* • Professor Emeritus Ejan Mackaay, Faculty of Law, Université de Montréal:
Laying Foundational Principles
- Justice Paul Perell, Ontario Superior Court, Toronto:
Economic Lessons Learned and to be Learned from Class Actions
- Professor Catherine Piché, Faculty of Law, Université de Montréal:
Developing a Framework to Determine whether a Class Action is Economical

12:30 – 12:45 pm

CIAJ ANNUAL GENERAL MEETING

12:30 – 1:30 pm

LUNCH

1:30 – 3 pm

What Can Technology Do to Better Use Civil Justice Dollars?

We need to reorient our justice system towards public-focussed design with the leverage of technology to tear down time, cost, and other access barriers. The court-wide mega-project technology overhaul of courts is dead. So what is the alternative? This session will offer ideas for incremental change that risks failure and demonstrates successes; that engages stakeholders and promotes an environment in which transformation is welcomed. This session will also present the Civil Resolution Tribunal in British Columbia, as well as the Cyberjustice Laboratory of the Faculty of Law at the Université de Montréal, two initiatives based on the use of technology for better access to justice.

- Moderator* • Mr. Xavier Beauchamp-Tremblay, CEO, CanLii
- Speakers* • Justice Frances P. Kiteley, Ontario Superior Court, Toronto
- Professor Karim Benyekhlef, Faculty of Law, Université de Montréal; Director of the Cyberjustice Laboratory
- Ms. Shannon Salter, Chair, Civil Resolution Tribunal of British Columbia

3 – 3:30 pm

BREAK

3:30 – 5 pm

Regulatory Responses to Promote Greater Access to Justice

The increasing cost of accessing justice is being addressed by Law Societies, governments, and individual lawyers. The pressure for continuing innovation in the provision of legal services, as well as the need for greater dialogue between the regulators, governments and the judiciary, is prompting a critical look at issues long-thought to be sacrosanct. For example, with the increasing competition in the legal profession, should regulators look into broadening the scope of who can practice law, including other professionals such as paralegals and limited licence legal technicians? What are the limits to what regulators can accomplish to promote greater access to justice? Should methods of delivering legal services be expanded to facilitate better the "unbundling" of legal services or "limited scope retainers", sometimes referred to as "targeted legal services"? Can the rules regarding who has a "right of audience" continue in their present form? Is it time to rethink the business model of hourly billing? Are governments doing enough to fund essential litigation? Is the judiciary using its cost awarding powers appropriately?

- Moderator* • Mr. John Sims, past Deputy Minister and Deputy Attorney General, Department of Justice, Ottawa
- Speakers* • Mr. Mark Benton, Chief Executive Officer, Legal Services Society of British Columbia

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- Mr. Fred Headon, Assistant General Counsel, Labour and Employment Law, Air Canada; Past President of the Canadian Bar Association; Chair of the CBA Legal Futures Initiative
- Ms. Janet Whitehead, George Murray Shipley Bell, LLP, Sarnia
- Mr. Paul Schabas, Treasurer, Law Society of Upper Canada

5 – 5:15 pm UNVEILING OF THE PRESIDENT’S AWARD

5:15 – 6:30 pm NETWORKING COCKTAIL (Cash bar)
Guest pianist: Risa Tonita
Recent graduate of the Master of Music program, University of Ottawa

FRIDAY, OCTOBER 7 (Program subject to change)

8:30 – 9 am CONTINENTAL BREAKFAST

9 – 10:45 am Innovation in the Justice System: Ideas worth Spreading and Lessons to be Learned

Can the Courts learn from the alternatives sprouting up around them? Will civil justice courts for the resolution of private disputes become redundant if changes are not made? What are some of the initiatives that could inspire the system to change for the better?

- Moderator* • Chief Justice Christopher E. Hinkson, Supreme Court of British Columbia
- Speakers* • Ms Sarah McCoubrey, Strategist on Access to Justice issues, Calibrate
- Mr. Chris Bentley, former Attorney General for Ontario, Legal Innovation Zone, Ryerson University, Toronto
- Professor Marilyn Poitras, College of Law, University of Saskatchewan

10:45 – 11 am BREAK

11 – 11:45 am CLOSING ADDRESS: Do Not Undervalue Civil Justice

As the Chair of the Action Committee on Access to Civil and Family Justice, the Honourable Thomas Cromwell has spent the last three years on a “road show” across Canada to discuss the conclusions of the Action Committee’s report with a broad spectrum of stakeholders across Canada. He will share his thoughts on some of the issues raised throughout the conference.

- Moderator* • Dean Natalie Des Rosiers, Faculty of Law - Common Law Section, University of Ottawa
- Speaker* • The Honourable Thomas Cromwell, Chair, Action Committee on Access to Civil and Family Justice

11:45 am – Noon CLOSING REMARKS AND THANK YOU S

- Co-Chairs* • Justice Georgina R. Jackson Court of Appeal for Saskatchewan, CIAJ President
- Mr. Patrick A. Molinari, Legal Counsel, Lavery, Montreal

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STUDENT PROGRAM – OPEN TO THE PUBLIC (University of Ottawa*)

1:30 – 3:30 pm **Impact of Self-Represented Litigants on the Civil Justice System**

The student portion of the CIAJ 2016 Annual Conference aims to address the issue of self-represented litigants and their effects on the economics of the civil justice system. There has been an increase in the number of self-represented litigants across all Canadian provinces. Provincial court websites offer guides to help them. In a civil justice system that exists to serve the needs of the public, self-represented litigants raise challenges both to themselves and to the system – in essence, their very existence contributes to the inequity that has likely caused their growing presence.

Among these challenges posed by self-represented litigants both to the parties and to the system are: i) inability to access information about the civil justice system – including summary advice regarding whether it is worthwhile to pursue or defend a case; ii) awareness of and access to alternative dispute resolution mechanisms; iii) power inequities affecting the outcome of a trial; iv) lack of understanding about the common problems encountered by self-represented litigants so that systemic solutions may be implemented.

Panelists

- Prof. David Wiseman, Associate Professor, Faculty of Law, University of Ottawa
- Deputy Judge Ivan G. Whitehall, Superior Court of Justice, Small Claims Division — Eastern Region
- Ms. Véronic Boyer, Director, Centre de justice de proximité de l'Outaouais
- Ms. Alina Seagal, University of Ottawa Law Student, Legal Clinic Caseworker & Landlord/Tenant Duty Counsel
- Mr. Bradley Yaeger, University of Ottawa Law Student & Family Duty Counsel, Legal Aid Ontario

* Social Sciences Building (FSS), 120 University Private, Room 4007 (4th Floor)

REGISTRATION FORM

CIVIL JUSTICE AND ECONOMICS: A MATTER OF VALUE

October 5 – 7, 2016, Fairmont Château Laurier, Ottawa

(Participation at this conference is approved under Section 41 (1) of the Judges Act according to Resolution # 29 of the CJC and is accredited in provinces where CLE requirements for lawyers are mandatory.)

Surname:
First Name:
Title:
Organization:
Address:
Postal Code:
E-Mail:
Telephone:
Fax:

I am fluent in: English French both
(Simultaneous translation is provided throughout the conference)

REGISTRATION FEE

(Breakfasts, coffee breaks, luncheon, and conference material included)

- CIAJ members \$895 non members \$995
Students \$75 (enrolled full-time at Canadian universities)

I WILL ATTEND THE NETWORKING COCKTAILS (5 TO 6:30 PM):

Wednesday, Oct. 5 Yes No - Thursday, Oct. 6 Yes No

I will be accompanied by guest(s) Yes No

Name of Guest(s)

Do you, or your guest(s), have any dietary restrictions? Yes No

Which?

PAYMENT BY:

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CANCELLATION FEE: Only registrations cancelled by email at least 7 days prior to the event are reimbursed, except for 10% of the amount which is withheld to cover administrative fees.

ACCOMMODATION: A block of rooms has been reserved at The Fairmont Château Laurier Hotel (1, Rideau Street). Reservations at 1-866-540-4410: \$219 for Fairmont rooms and \$269 for Fairmont rooms with a view (taxes not included).

NEW*** Rooms are also available at the Novotel Ottawa (33, Nicholas Street) for 149\$ (taxes not included). Reservations: Tel: 1-613-230-3033 / Email: groupesreservation@novoteltottawa.com / Code: 154451 or CIAJ. Participants are required to make their own hotel reservations before September 14, 2016 to take advantage of this preferred rate.

TO REGISTER:

Please complete and return this form with your payment:

By mail:

Canadian Institute for the Administration of Justice
PO Box 6128, Station "Centre Ville"
3101 Chemin de la Tour, Room A-3421
Montreal, Quebec, H3C 3J7

By email:

ciaj@ciaj-icaj.ca

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514-343-6296

The Canadian Institute for the Administration of Justice (CIAJ) promotes excellence and leadership in the administration of justice through knowledge, learning and the exchange of ideas. The CIAJ offers education and research programs and provides a forum for everyone interested in the administration of justice.

Are you a Member of the CIAJ?

- SPECIAL PROMOTION - 2016 Membership is included in your registration fee for the 2016 Annual Conference in Ottawa!

Membership Categories and Fees

Individual (Included with registration fee) \$150

Individual members active in their profession are entitled to access all the documentation available on CIAJ's website (conference and seminar papers and video-recordings among other benefits). (This membership fee is recoverable by federally-appointed judges under S. 27(1) of the Judges Act. It may also be possible for provincially-appointed judges and others to be reimbursed through professional allowances from their organizations.)

Retired Person (Included with registration fee) \$75

Members retired from their profession have the same benefits as individual members.

Student (Included with registration fee) \$10

Members enrolled as full-time students have the same benefits as individual members.

I wish to join CIAJ:

No Yes (See category checked above)

I would like information about Institutional Membership

Contributor

As an alternative to annual membership dues, you may choose to become a contributor. You will be issued a tax receipt for a charitable donation (Registration number: 10686 1529 RR 0001).

Amount of donation: \$

I wish to subscribe to CIAJ's electronic newsletter

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