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# What is Access to Justice?

Trevor C. W. Farrow

*Osgoode Hall Law School of York University*, [tfarrow@osgoode.yorku.ca](mailto:tfarrow@osgoode.yorku.ca)

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Trevor CW Farrow

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### **What is Access to Justice?**

Farrow, T. (2014). What is access to justice? *Osgoode Hall Law Journal*, 51(3), forthcoming.

Trevor CW Farrow

#### **Abstract:**

Access to justice is the most pressing justice issue today. It has recently and very quickly become the major focus of attention of essentially all stakeholders in the legal community – governments, regulators, judges, bar associations, researchers and educators. And it needs also to become an increasing topic of attention for those who use the system – the public. But with all of this new attention, do we really know what we are talking about? What does the phrase “access to justice” mean, particularly from the perspective of the public? Primarily through a series of qualitative interviews, this study looks to better understand the concepts of justice and access to justice, particularly through the eyes of the public. This study fits within a growing wave of literature and recent reform efforts that are looking to refocus the justice system so as to put the public squarely at the centre of those efforts.

#### **Keywords:**

Justice, access to justice, professionalism, procedure, practice, reform, administration of justice

#### **Author(s):**

Trevor CW Farrow  
Professor  
Osgoode Hall Law School  
York University, Toronto  
E: [TFarrow@osgoode.yorku.ca](mailto:TFarrow@osgoode.yorku.ca)

**DRAFT**

[TCWF] 21 MAY 2014, 1:15 A.M.

## **WHAT IS ACCESS TO JUSTICE?**

Trevor C.W. Farrow\*

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### **ABSTRACT**

*Access to justice is the most pressing justice issue today. It has become the major focus of essentially all stakeholders in the legal community—governments, regulators, bar associations, researchers, and educators. It now needs to become an increasing topic of attention for those who use the system: the public. With all of this attention, what does the phrase “access to justice” really mean, particularly from the perspective of the public? In addition to reviewing the access to justice literature and policy initiatives, this article develops a public centered understanding of access to justice. It does so primarily by reporting on a recent survey of public views on justice. This study fits within a growing wave of literature and recent reform efforts designed to put the public squarely at the centre of the justice system.*

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\* Professor, Osgoode Hall Law School. Early versions of this article were first presented at “A Symposium in Honour of John McCamus: Scholarship, Teaching and Leadership” (Osgoode Hall Law School, Toronto, Ontario, 7 February 2013) and also at the Canadian Law and Society Association, “Law on the Edge” conference (University of British Columbia, Vancouver, B.C., 3 July 2013). A number of people have been involved in this project. Sabreena Delhon was a big part of the initial design, ethics approval process and execution of the study, as well as coordinating our dedicated team of student interviewers and researchers. Nicole Aylwin was directly involved in supervising the completion of the study, assisting with the methodology and research for the project, and also supervising our student team. Christian Ferraro did much of the heavy lifting, including interviewing, transcribing interviews, organizing data and consent forms, etc., as well as assisting with research for the methodology. Bart Danko contributed to the methodology, helped put together charts and data, conducted interviews and assisted with the project’s videos. Katrina Lovrick also worked on the project’s videos. \_\_\_ assisted with the interview process. Les Jacobs also provided early comments on the interview questions. Funding for this project has been provided by the *Cost of Justice: Weighing the Costs of Fair and Effective Resolution to Legal Problems* project, a Community-University Research Alliance grant awarded to the Canadian Forum on Civil Justice, for which I am the Award Holder/Principle Investigator (see online: CFCJ <<http://www.cfcj-fcjc.org/cost-of-justice>>), which is in turn funded by the Social Sciences and Humanities Research Council of Canada. For all of this assistance and research support I am extremely grateful – this project has been a full team effort.

## INTRODUCTION

Access to justice is the most pressing justice issue today. It has recently and very quickly become the major focus of attention of essentially all stakeholders in the legal community – governments, regulators, bar associations, researchers and educators. And it needs also to become an increasing topic of attention for those who use the system – the public. But with all of this new attention, do we really know what we are talking about? What does the phrase “access to justice” really mean, particularly from the perspective of the public?

Over the past number of years, I have been part of numerous research projects, policy debates, presentations and conferences looking at the issue of access to justice – primarily in the areas of civil and family law. Researchers, practitioners and policy-makers have typically been involved, looking at ways of improving what we – the insiders of the system – should do to improve it. Many important and promising reforms have been raised and experimented with over that time. However, the voices in the room have almost invariably been those of academics, lawyers, judges, government representatives and the like. When voices of the public are heard, they are typically the voices of those who have been involved in the justice system – current litigants or those who have previously used the system in some way. All of these people and groups are clearly important and will ultimately be part of an access to justice solution. However, over that period of time, I have increasingly heard myself saying: if we ask regular people on the street what they feel and understand about justice and access to it, we might get a very different view. Rather than continuing to wonder and speculate about what those

people might say, I decided to ask them. The answers to those questions, based on a survey done in the Greater Toronto Area, form the basis of this article.

This study fits within a growing wave of literature<sup>1</sup> and recent reform efforts<sup>2</sup> that are looking to refocus the justice system, and reforms to it, so as to put the public squarely at the centre of those efforts. Although increasingly becoming part of the

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<sup>1</sup> An influential call for a more public-centred view of access to justice can be found in Roderick A. Macdonald, “Access to Justice in Canada Today: Scope, Scale and Ambitions” in Julia Bass, W.A. Bogart & Frederick H. Zemans, eds., *Access to Justice for a New Century – The Way Forward* (Toronto: LSUC, 2005) at 19. See further Trevor C.W. Farrow, *Civil Justice, Privatization, and Democracy* (Toronto: University of Toronto Press, 2014) at cc. 2, 7; Trevor C.W. Farrow, “Sustainable Professionalism” (2008) 46:1 Osgoode Hall L.J. 51 at 96; Trevor C.W. Farrow, “Dispute Resolution, Access to Civil Justice and Legal Education” (2005) 42 Alta. L. Rev. 741. For further access to justice discussions, see e.g. George C. Pavlich, *Justice Fragmented: Mediating Community Disputes under Postmodern Conditions* (London & New York: Routledge, 1996), c. 2; Roderick A. Macdonald, “Access to Justice and Law Reform” (1990) 10 Windsor Y.B. Access Just. 287; Roderick A. Macdonald, “Whose Access? Which Justice?” (1992) 7 Can. J.L. & Soc. 175; Marc Galanter, “Access to Justice as a Moving Frontier” in *Access to Justice for a New Century*, supra at 147-152; Allan C. Hutchinson, ed., *Access to Civil Justice* (Toronto: Carswell, 1990); Patricia Hughes & Janet E. Mosher, guest eds., “Access to Justice,” Special Issue, (2008) 46:4 Osgoode Hall L.J.; Michael Trebilcock, Anthony Duggan & Lorne Sossin, eds., *Middle Income Access to Justice* (Toronto: University of Toronto Press, 2012). For an historic discussion of some of these issues, including systemic inequalities, see W. Bogart, *Courts and Country* (Toronto: Oxford University Press, 1994) at 107-124, cited in Janet Walker, gen. ed. et al., *The Civil Litigation Process: Cases and Materials*, 6th ed. (Toronto: Emond Montgomery, 2005) at 36-44.

<sup>2</sup> See e.g. Action Committee on Access to Justice in Civil and Family Matters (materials for the Action Committee, including its four working group reports and its final report, can be found on the website of the Canadian Forum on Civil Justice, online: CFCJ <<http://www.cfcj-fcjc.org/action-committee#NAC>>); Canadian Bar Association Access to Justice Committee, *Reaching Equal Justice: An Invitation to Envision and Act*, Summary Report (Ottawa: Canadian Bar Association, August 2013); Canadian Bar Association Access to Justice Committee, *Reaching Equal Justice: An Invitation to Envision and Act*, Final Report (Ottawa: Canadian Bar Association, November 2013); Law Commission of Ontario, *Increasing Access to Family Justice Through Comprehensive Entry Points and Inclusivity*, Final Report (Toronto: Law Commission of Ontario, February 2013); Julie Macfarlane, *The National Self-Represented Litigants Project: Identifying and Meeting the Needs of Self-Represented Litigants*, Final Report (May 2013), available online: National Self-Represented Litigants Project <<http://representing-yourself.com/PDF/reportM15.pdf>>; Trevor C.W. Farrow et al., *Addressing the Needs of Self-Represented Litigants in the Canadian Justice System*, a White Paper prepared for the Association of Canadian Court Administrators (Toronto & Edmonton: ACCA, March 2012), online: CFCJ <<http://www.cfcj-fcjc.org/sites/default/files/docs/2013/Addressing%20the%20Needs%20of%20SRLs%20ACCA%20White%20Paper%20March%202012%20Final%20Revised%20Version.pdf>>. See further earlier public-centred reform projects of the Canadian Forum on Civil Justice, including, for example, the “Alberta Legal Services Mapping Project”, online: CFCJ <<http://www.cfcj-fcjc.org/alberta-legal-services>>, and the “Civil Justice System and the Public” project, online: CFCJ <<http://www.cfcj-fcjc.org/past-projects>>. See also Ontario Civil Legal Needs Project, *Listening to Ontarians* (Toronto: Ontario Civil Legal Needs Project Steering Committee, May 2010); Jamie Baxter and Albert Yoon, *The Geography of Civil Legal Services in Ontario*, Report of the mapping phase of the Ontario Civil Legal Needs Project (Toronto: Ontario Civil Legal Needs Project Steering Committee, November 2011).

discussion over the past number of years,<sup>3</sup> we are only now starting to appreciate the importance of understanding the direct needs of those who use the system, as opposed primarily to those who provide it.<sup>4</sup> Put bluntly, it's about them, not us. As such, on the theory that the method can sometimes be the message, part of the point of asking the public what they think was simply to involve them and hear from them. It is the public, who use the system, that needs to be at the centre of how we think about, understand and reform the system. For this reason, much of this article simply provides a record of those views, which I hope will be useful for future thinking and reform.<sup>5</sup> Equally important, however, is the desire to learn more about what people actually think about these important questions. For example, lawyers and judges commit variously to upholding the rule of law, justice, access to justice and the public interest.<sup>6</sup> What do some of those important terms – specifically including justice and access to justice – mean for those

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<sup>3</sup> See e.g. Ab Currie, “A National Survey of the Civil Justice Problems of Low- and Moderate-Income Canadians: Incidence and Patterns” (2006) 13 Int’l J. Legal Prof. 217. For new research looking at the everyday legal needs of Canadians, including related economic, social and health related costs associated with those legal needs, see Ab Currie, Trevor C.W. Farrow, Leslie A. Jacobs, David Northrup & Nicole Aylwin, “Everyday Legal Problems and the Cost of Justice in Canada” (Toronto: Canadian Forum on Civil Justice, 2014) (forthcoming).

<sup>4</sup> See further Farrow *et al.*, *Addressing the Needs of Self-Represented Litigants in the Canadian Justice System*, *supra* note \_\_ at 28-30.

<sup>5</sup> The results of this study have already been referred to in two recent national initiatives: Opening Address, Canadian Bar Association “Envisioning Equal Justice Summit: Building Justice for Everyone” (Vancouver, B.C., 26 April 2013); Action Committee on Access to Justice in Civil and Family Matters, *Access to Civil & Family Justice: A Roadmap for Change* (Ottawa: Action Committee on Access to Justice in Civil and Family Matters, October 2013) at endnotes 41, 56, 60, 69, 154 and accompanying text, available online: CFCJ <[http://www.cfcj-fcjc.org/sites/default/files/docs/2013/AC\\_Report\\_English\\_Final.pdf](http://www.cfcj-fcjc.org/sites/default/files/docs/2013/AC_Report_English_Final.pdf)>.

<sup>6</sup> For Ontario lawyers, for example, legislation provides that the Law Society has a “duty” to “advance the cause of justice and the rule of law”, to “act so as to facilitate access to justice”, and to “protect the public interest.” See *Law Society Act*, R.S.O. 1990, c. L.8, s. 4.2. For Canadian judges, similar principles are established. For example, according to the Canadian Judicial Council, “Courts in Canada are established to serve the public ... by providing a place where people can come to seek justice...” Canadian Judicial Council, *Administering Justice for the Public* (November 2007) at c. 1, online: CJC <[http://www.cjc-ccm.gc.ca/cmslib/general/news\\_pub\\_other\\_AdministeringJustice\\_2007\\_en.pdf](http://www.cjc-ccm.gc.ca/cmslib/general/news_pub_other_AdministeringJustice_2007_en.pdf)>.

who use the system? It is hoped that this study will shed some further light on those questions.

Following this introduction, part I of the article briefly documents the current access to justice problem that exists in this country.<sup>7</sup> Doing so is necessary not only to set up the importance of thinking about access to justice generally, but also to look at some of the important elements and causes of access to justice challenges as they relate to the people that are directly involved in this study. Part II of the article introduces the study, and in particular, its background and methodology. Part III then provides the findings of the study. Given the thousands of answers that were provided over the course of the study, not all of them could be reasonably or usefully included in this article. Rather, what I have chosen to do is to include throughout this part of the article answers from respondents that tend fairly to represent a series of 10 opinion areas that emerge from the study. I also, in this part, provide some reflections and brief analysis about the various opinion areas and survey responses. In Part IV, I conclude by identify two significant unifying themes that run through the study. Finally, in the Appendix, I set out a table that further develops the discussion on methodology and several graphs that summarize some of the specific research findings.

### **I. THE ACCESS TO JUSTICE PROBLEM**

It is not controversial to say that there is a major access to justice problem in this country. If the voices of our judges are any guide, the justice system is clearly facing major challenges. The Chief Justice of Canada recently stated that “we do not have

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<sup>7</sup> Although much of this study applies generally to the civil, family and criminal justice systems, given my own civil justice interests and the focus of much of the current research that animates this study, I acknowledge that this article tends to focus more heavily on reform efforts relating to the civil and family justice systems.



adequate access to justice in Canada.”<sup>8</sup> Similarly, according to Justice Thomas Cromwell, by “nearly any standard, our current situation falls far short of providing access to the knowledge, resources and services that allow people to deal effectively with civil and family legal matters. There is a mountain of evidence to support this view.”<sup>9</sup> And more bluntly, the former Chief Justice of Ontario described the situation as a “crisis”.<sup>10</sup>

The access to justice evidence-based research clearly supports this troubling view. Because other recent reports have documented many of the current problems and challenges,<sup>11</sup> I will only briefly review some of the main issues here. The important point of departure for this public-centred study is to recognize that almost half of the population of Canada will experience some kind of legal-related problem over a given 3 year period.<sup>12</sup> As the CBA recently stated, that suggests that “over the course of a lifetime almost everyone will confront a justiciable problem.”<sup>13</sup> It is for this reason that,

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<sup>8</sup> Rt. Hon. Beverley McLachlin, P.C., from “Forward” in Trebilcock, Duggan & Sossin, eds., *Middle Income Access to Justice*, *supra* note \_\_ at ix.

<sup>9</sup> Hon. Thomas A. Cromwell, “Access to Justice: Towards a Collaborative and Strategic Approach”, Viscount Bennett Memorial Lecture, (2012) 63 U.N.B.L.J. 38 at 39.

<sup>10</sup> Hon. R. Roy McMurtry, CFCJ, Civil Justice Reform Conference: Phase II, “Remarks” (7 December 2006) at 3-4, online: CFCJ <<http://cfcj-fcjc.org/docs/2006/mcmurtry-en.pdf>>. More recently, Justice D.M. Brown described the civil justice system as “sinking” and having “a life of its own” that “grinds relentlessly on and downward”. *York University v. Markicevic*, 2013 ONSC 4311 at para. 8.

<sup>11</sup> For recent and useful summaries of this research, some of which I rely on for this part of this article, see e.g. *Access to Civil & Family Justice: A Roadmap for Change*, *supra* note \_\_ at \_\_; *Reaching Equal Justice: An Invitation to Envision and Act*, Summary Report, *supra* note \_\_ at 1-13.

<sup>12</sup> Ab Currie, *The Legal Problems of Everyday Life: The Nature, Extent and Consequences of Justiciable Problems Experienced by Canadians* (Ottawa: Department of Justice Canada, 2007) at 2, 10-12.

<sup>13</sup> *Reaching Equal Justice: An Invitation to Envision and Act*, Summary Report, *supra* note \_\_ at 8. The term “justiciable problem” typically includes a range of issues that raise legal concerns or could be addressed by law-related solutions. See e.g. Currie, *The Legal Problems of Everyday Life*, *ibid.* at 5-6; Hazel Genn *et al.*, *Paths to Justice: What People do and Think About Going to Law* (Oxford: Hart, 1999) at v-vi, 12, and generally c. 2.

like health care, we should all care about and understand, at least to some extent, what justice is and how to access it. Also relevant for this study is the fact that vulnerable populations are more prone to legal problems.<sup>14</sup> Further, it is documented that legal problems tend to multiply, meaning that one sort of problem is often compounded by another type of legal problem. For example, loss of employment or eviction can lead to an increased use of social assistance, etc.<sup>15</sup> These legal problems also tend to lead to other social or health-related problems.<sup>16</sup> Left unresolved, the potential cost – economic, health, social, etc. – to the individual, as well as to the state, is significant. There is no doubt that legal problems make people’s lives more difficult.<sup>17</sup> They often also lead to social exclusion and potentially a need to utilize other public services and government assistance.<sup>18</sup> Compounding all of these legal problems and legal needs is the harsh reality

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<sup>14</sup> Vulnerable communities include, for example, those who self-report as being part of a visible minority, disabled, aboriginal, or on social assistance. See e.g. Currie, *The Legal Problems of Everyday Life*, *ibid.* at 23-26; Pascoe Pleasence *et al.*, *Causes of Action: Civil Law and Social Justice* (Norwich: Legal Services Commission, 2004) at 14-31. See further *Access to Civil & Family Justice: A Roadmap for Change*, *supra* note \_\_ at \_\_.

<sup>15</sup> See e.g. Currie, *The Legal Problems of Everyday Life*, *ibid.* at 49-51; Pascoe Pleasence *et al.*, “Multiple Justiciable Problems: Common Clusters and their Social and Demographic Indicators” (2004) 1 J. Emp. Legal Stud. 301; Pleasence *et al.*, *Causes of Action*, *ibid.* at 37-44. See further *Access to Civil & Family Justice: A Roadmap for Change*, *ibid.* at \_\_.

<sup>16</sup> See e.g. Currie, *The Legal Problems of Everyday Life*, *ibid.* at 73; Nigel J. Balmer *et al.*, *Knowledge, Capability and the Experience of Rights Problems* (London: Public Legal Education Network, March 2010) at 25-26, 42-43; Mary Stratton & Travis Anderson, *Social, Economic and Health Problems Associated with a Lack of Access to the Courts* (Edmonton: Canadian Forum on Civil Justice, March 2006). See further *Access to Civil & Family Justice: A Roadmap for Change*, *ibid.* at \_\_.

<sup>17</sup> See Currie, *The Legal Problems of Everyday Life*, *ibid.* at 33. See further *Access to Civil & Family Justice: A Roadmap for Change*, *ibid.* at \_\_.

<sup>18</sup> See e.g. Currie, *The Legal Problems of Everyday Life*, *ibid.* at 88-89; Alexy Buck, Pascoe Pleasence & Nigel J. Balmer, “Social Exclusion and Civil Law: Experience of Civil Justice Problems among Vulnerable Groups” (2005) 39(3) Soc. Pol’y Admin. 302. See further *Access to Civil & Family Justice: A Roadmap for Change*, *ibid.* at \_\_.

that, for most Canadians, legal assistance is too costly and therefore out of reach.<sup>19</sup> Again as recognized by the Chief Justice of Canada,

Among the hardest hit are the middle class. They earn too much to qualify for legal aid, but frequently not enough to retain a lawyer for a matter of any complexity or length. When it comes to the justice system, the majority of Canadians do not have access to sufficient resources of their own, nor do they have access to the safety net programs established by the government.<sup>20</sup>

As a result, the research suggests that many legal problems go unresolved. In the U.S., it has been suggested that as much as 70-90% of the legal needs of citizens go unmet.<sup>21</sup> That number is reportedly significant in Canada as well, where approximately 65% of the population is uncertain about what rights are available, do not know how to handle legal problems, is afraid, thinks that nothing can be done, or thinks that it will cost too much money or take too much time.<sup>22</sup> As such, the cycle continues. Legal problems that we all will typically face are experienced by a majority of the population, which does not have adequate resources to fund legal assistance. As a result, a significant amount of legal needs goes unmet, which is compounded by the additional clustering of other legal, social and health related problems, all of which comes with significant costs to the individual and the state.

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<sup>19</sup> For a recent summary of the gap between what most people can afford and what legal services cost and are offered, see *Access to Civil & Family Justice: A Roadmap for Change*, *ibid.* at \_\_\_.

<sup>20</sup> Rt. Hon. Beverley McLachlin, P.C., from “Forward” in Trebilcock, Duggan & Sossin, eds., *Middle Income Access to Justice*, *supra* note \_\_\_ at ix.

<sup>21</sup> Russell Engler, “Connecting Self-Representation to Civil Gideon: What Existing Data Reveal about when Counsel is Most Needed” (2010) 37 *Fordham Urban L.J.* 37 at 40, citing Legal Services Corporation, *Documenting the Justice Gap in America: The Current Unmet Civil Legal Needs of Low-Income Americans*, updated report (Washington, D.C.: Legal Services Corporation, September 2009). See further *Access to Civil & Family Justice: A Roadmap for Change*, *supra* note \_\_\_ at \_\_\_.

<sup>22</sup> See e.g. Currie, *The Legal Problems of Everyday Life*, *supra* note \_\_\_ at 55-56 and generally 55-67, 88. See further *Access to Civil & Family Justice: A Roadmap for Change*, *ibid.* at \_\_\_.

In sum, that is our access to justice crisis, particularly in the context of civil and family justice. These are the problems that current reform efforts are seeking to address.<sup>23</sup> And because much of what has occurred to-date has been done without adequate attention to the needs and views of those who use the system – the public, which includes those who are experiencing these legal and related health and social problems, it is time to put the voice of the public at the centre of how we think about and address current access to justice reform efforts. That is the point of this study.

## II. THE STUDY

### 1. BACKGROUND

As a starting premise and building on the need for a public-centred approach to access to justice reform, the important – and distinguishing – point about this study is that it is designed to look at opinions about justice and access to justice not of providers of the system and not of those who are necessarily experiencing legal difficulties or who are presently in, or who are just leaving the justice system (in the form of legal problems studies<sup>24</sup> or satisfaction/exit surveys<sup>25</sup>). Although important, those are not the focus of this project. Rather, this study is designed to tap into the ideas of average Canadians, approximately 50% of whom, as we know, will likely experience some kind of meaningful legal problem over a 3 year period and all of whom, at some point in their

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<sup>23</sup> See *supra* note \_\_ and accompanying text.

<sup>24</sup> See e.g. *supra* notes \_\_-\_\_ and accompanying text.

<sup>25</sup> See e.g. Julie Macfarlane & Michaela Keet, “Civil Justice Reform and Mandatory Civil Mediation in Saskatchewan: Lessons from a Maturing Program” (2005) 42 *Alta L. Rev.* 677. See more recently Macfarlane, *The National Self-Represented Litigants Project: Identifying and Meeting the Needs of Self-Represented Litigants*, *supra* note \_\_.

lifetime, will experience legal issues.<sup>26</sup> As such, this small scale ethnographic study<sup>27</sup> is designed to shed some light on what those people think about, need and want from the justice system that we provide and for which, through their taxes, they pay.<sup>28</sup> In so doing, this study is designed to add to the growing body of public-centered access to justice literature and justice reform initiatives.<sup>29</sup>

## 2. METHODOLOGY

This study took place over an 8 month period between November 2012 and May 2013.<sup>30</sup> Subjects were approached randomly by a team of 2-3 student researchers and were invited to respond to 8-10 open ended questions about justice and access to it. The specific questions included the following:

- How do you define justice?
- What does access to justice mean?
- Should citizens have a right to justice?
- Do you think justice is of fundamental importance to Canadians?

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<sup>26</sup> See *supra* notes \_\_\_-\_\_\_ and accompanying text.

<sup>27</sup> See generally Anne Griffiths “Using Ethnography as a Tool in Legal Research: An Anthropological Perspective” in Reza Banakar & Max Travers, eds., *Theory and Method in Socio-Legal Research* (Portland: Hart Publishing, 2005) 113; Valerie Tarasuk & Heather Maclean, “The food problems of low-income single mothers: an ethnographic study” (1990) 40:2 *Can. Home Econ. J.* 76.

<sup>28</sup> Although not directly engaged with it, this study is certainly animated by the importance of legal consciousness in the public’s understanding, use and non-use of the justice system. The study’s premise is that the public’s everyday assumptions and experiences must become more important in the context of how we think about justice and justice reform in this country. See e.g. Patricia Ewick & Susan S. Silbey, *The Common Place of Law: Stories from Everyday Life* (Chicago: University of Chicago Press, 1998); Sally E. Merry, *Getting Justice and Getting Even: Legal Consciousness Among Working-Class Americans* (Chicago: University of Chicago Press, 1990); Austin Sarat & William L.F. Felstiner, “Lawyers and Legal Consciousness: Law Talk in the Divorce Lawyer’s Office” (1989) 98 *Yale L.J.* 1663; Leslie A. Jacobs, “Legal Consciousness and the Promise of Law & Society” (2003) 18 *C.J.L.S.* 61.

<sup>29</sup> See e.g. *supra* notes \_\_\_-\_\_\_ and accompanying text.

<sup>30</sup> A pilot study was conducted during this period to ensure the effectiveness of the interview questions and process.

## WHAT IS ACCESS TO JUSTICE?

- Should the government do more or less to promote justice for Canadians?
- What are some examples of restrictions on access to justice?
- Have you ever faced access to justice barriers?
- Do you think that everyone is equally vulnerable to access to justice barriers?<sup>31</sup>

The questions were purposely broad and generally open-ended, designed to get a sense of what people think about these fundamental justice concepts. In total, 99 of 494 subjects approached participated in the interview process, amounting to a 20% participation rate.<sup>32</sup> The interviews ranged in duration from approximately 2-20 minutes. Of the 99 interviews, 70 were audio recorded, 20 were videotaped,<sup>33</sup> and 9 participants completed written interviews.

In order to access relatively diverse opinions and ideas about access to justice, interviews were conducted at specific locations around the Greater Toronto Area (at 17 locations in Toronto, Brampton and Mississauga).<sup>34</sup> These locations were chosen

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<sup>31</sup> The participants were also asked: “May we video/audio record this interview?” at the start of the interview, and “Do you have any further comments about the issue of justice and access to it in Canada?” at the end of the interview.

<sup>32</sup> This is a significant response rate, although it was never the study’s purpose to claim to be representative of any given population. For a survey of this size to be representative, it would likely need closer to a 30% response rate for a “high degree” of accuracy. See e.g. W. Lawrence Neuman & Karen Robson, *Basics of Social Research: Qualitative and Quantitative Approaches*, Cdn. ed. (Toronto: Pearson Education Canada, 2009), c. 7 at 156-157. However, given the diversity of the population of the Greater Toronto Area, specifically within the study’s chosen interview locations (discussed *infra* notes \_\_\_-\_\_\_ and accompanying text), the results of this study should be of relevance to researchers and policy-makers in similarly diverse jurisdictions within Canada and abroad.

<sup>33</sup> For selected edited excerpts of the video recordings (from interviews of participants who consented to the recordings and their use), see “What is Access to Justice?”, online: CFCJ <<http://www.cfcj-fcjc.org/what-is-access-to-justice>>.

<sup>34</sup> See *infra* Appendix at Table 1.

because of their diverse socioeconomic characteristics.<sup>35</sup> Further, locations, including areas around cultural landmarks and major retail centres, were also chosen based on the most walked intersections<sup>36</sup> and visited areas in Toronto.<sup>37</sup> In the end, participants of all ages, genders, and ethnic backgrounds were approached to participate in the study.<sup>38</sup>

### III. FINDINGS

From the 99 interviews conducted using the 8 primary questions, 10 response areas – topics of opinion – emerged that will be important for future justice system thinking and reform. Those topics of opinion, which are further developed below, specifically include the following:

- justice is about fairness, equality, morality and active societal participation;
- procedural justice and substantive justice are both important;
- not everyone has equal access to justice;
- people often feel alienated by the system;
- people should have a right to justice;
- justice is a fundamental issue;

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<sup>35</sup> See David J. Hulchanski, *The Three Cities within Toronto: Income Polarization among Toronto's Neighbourhoods, 1970-2005* (Toronto: Cities Centre Press, 2010). This report was very helpful in terms of identifying relevant communities and locations for this study.

<sup>36</sup> See Patrick Cain, "Interactive maps: Toronto's worst intersections for pedestrians" *Global News* (7 June 2011), online: Global News <<http://globalnews.ca/news/118032/interactive-maps-torontos-worst-intersections-for-pedestrians/>>. This data set was also helpful in terms of the design of this study.

<sup>37</sup> Additional locations, including around several university campuses and other locations in the Greater Toronto Area, were also chosen based on the researchers' anecdotal knowledge of highly trafficked areas.

<sup>38</sup> The interviewers attempted to approach all individuals without bias toward demographic characteristics. The actual variation of the sample of participants was a result of the willingness of individuals to be interviewed. The diversity of the sample was impacted by a number of variables. In particular, language barriers sometimes appeared to discourage individuals from participating, and people closer in age to the interviewers appeared on average to be more willing to participate. For further details on the interview process and locations, see *infra* Appendix at Table 1.

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- more government support should be provided;
- justice should be made simpler, cheaper and faster;
- education, prevention and understanding are important aspects of justice; and
- the cost of not making justice accessible needs to be further considered.

Before getting into the actual findings of the survey within these 10 areas, it is instructive to see that answering these questions was not always an easy task, and in some cases was clearly a daunting task. When asked at the outset of the interview process to define justice, the reactions set out below were noted.

- “S--t!”
- “*Oh my God!*”
- “*S--t ... this is like a test!*”
- “*Oh, I didn’t think these questions would be so hard!*”
- “*I’m horrible at doing this!*”
- “*Oh my God this is terrible!*”

The point of including these somewhat humorous, and what often amounted to openly self-deprecating acknowledgments, is not to shame the participants but rather to acknowledge the challenges faced by members of the public when it comes to thinking about and understanding these fundamental questions of justice.

### **1. FAIRNESS, EQUALITY, MORALITY AND ACTIVE PARTICIPATION**

Following what was sometimes a challenging start, what emerged from the interviews in terms of the respondents’ understandings about justice and how we access it were four specific themes: fairness, equality, morality and the ability to be an active



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participant in society. Set out below are some representative responses with respect to these themes.

- *“I guess justice to me has to do with fairness and it’s more than a legal issue – it’s a moral issue and it has to do with equality and inequality....”*
- *“[Justice is] what is fair and right for people.”*
- *“Justice is basically ... an agreement between those who are given power and those who are led by it and you have to create a kind of a contract with that.”*
- *“It’s rights for everybody, it’s equality for everybody....”*
- *“Justice is equality. I mean there is no rich, no poor, just whatever – no matter what your status is, I mean what nationality, whatever – just equality.”*
- *“Justice ... should be equal.... It doesn’t matter ... your status, your race, it should be equal.”*
- *“Being able ... to be ... an active participant in society.”*
- *“Social justice.”*
- *“Peace[] and happiness.”*
- *“We blame the victim and that definitely ... needs to stop.”*
- *“Access to justice means everyone can ... join into it, enjoy it, and participate. And ... have the responsibility.”*
- *“It is a crucial question.... I think that’s part of what a democratic society is all about.”*

While this study did not try fully to unpack what all of those separate answers meant to the individual respondents,<sup>39</sup> seeing notions of fairness, equality and morality (and happiness) as what people think of as justice is important because of the overall animating force that those concepts can give to how we understand the pursuit of justice. This is important regardless of whether the respondents were able to define those terms or

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<sup>39</sup> Respondents were typically provided opportunities to elaborate and explain, and in cases where further relevant information was given, those responses have been incorporated here.

not, or whether anyone can provide a fully shared understanding of them. Put differently, from the responses it seems clear that, whatever justice architecture we put together through our various reform efforts, it will not make sense to – nor be reflective of – the public it is meant to serve if it is not driven by those fundamental (although sometimes elusive) concepts.

Equally important are the respondents’ reflections that justice contemplates an active role – as a “participant” – in a democratic society. Justice is not simply a passive concept, but rather should somehow reflect and engage, in a deliberative sense, those who it is meant to serve (including their notions of fairness, equality, morality, etc.). This is clearly part of a modern trend, not unlike modern health care initiatives, to enable citizens to take hold of their legal issues, to understand them and ultimately to prevent and resolve them.<sup>40</sup> Having said that, there is certainly a long way to go before we attain a fully enlightened and empowered society in terms of its understanding of individual and collective legal health and wellbeing. Having several respondents acknowledge the importance of active participation is important and very encouraging. However, as I argue further below, more public awareness, understanding and engagement are necessary – both for the legal wellbeing of society as well as to catalyze a major push for legal reform.<sup>41</sup>

## **2. PROCEDURAL AND SUBSTANTIVE JUSTICE**

To-date, the major focus of access to justice thinking and reform has been of a procedural nature. Access to justice has been equated largely with access to lawyers and

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<sup>40</sup> See e.g. Macdonald, “Access to Justice in Canada Today: Scope, Scale and Ambitions”, *supra* note \_\_ at 100-101. See further *infra* note \_\_ and accompanying text.

<sup>41</sup> See e.g. *infra* pt. IV.

courts. The more legal process we provide – through lower legal fees, more lawyers, faster and more accessible court hearings, etc. – the more we are improving access to justice.<sup>42</sup> These procedural reforms are often a good thing in terms of making the legal system more efficient, user-friendly and, overall, accessible. However, query whether they are ultimately improving access to justice, or simply access to the tools, or processes, of law. As such, perhaps of most interest to me in the context of this study are the reflections from respondents indicating a view that justice must be more than fair process.

As a starting point, as I acknowledge above, fair process, through procedural justice, access to lawyers, police and courts, is important. And the first set of responses, set out below, certainly reflects that importance.<sup>43</sup>

- *“Access to justice is ... access to lawyers.”*
- *“Law enforcement.”*
- *“Right to a fair trial.”*
- *“Fair penalty ... just desserts.”*
- *“Everyone’s ability to be heard.”*
- *“You do the crime, you do the time.”*

Given that these more procedural-focused reflections fit with much of the access to justice literature that has typically dominated traditional court- and lawyer-focused justice

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<sup>42</sup> For an acknowledgment of this traditional approach, see e.g. Patricia Hughes, “Law Commissions and Access to Justice: What Justice Should We Be Talking About?” (2008) 46 Osgoode Hall L.J. 773 at 777-779 (Hughes herself does not adopt this traditional, process-oriented approach). See further *Access to Civil & Family Justice: A Roadmap for Change*, *supra* note \_\_ at 2.

<sup>43</sup> A significant focus for a number of respondents about “justice” was its connection to the criminal justice system (as opposed to the civil justice system). This approach resulted in a moderate number of interviews, some of which are included in this article, which focused on justice issues related to crime, police, prison, and politics.

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reform discussions,<sup>44</sup> they were not overly surprising (although they are clearly important). What is equally if not more interesting, however, is the set of reflections, set out below, from respondents on more substantive justice issues.

- *“Justice in the moral sense is another story....”*
- *“I’d define [justice] as access to society.”*
- *“Fighting for women’s rights.”*
- *“Native rights....”*
- *“Enforcing what is right in the world ... in terms of stuff like racism or sexism or ... assault or theft....”*
- *“Just being able to be freely who [we] ... are.”*
- *“There should be agencies run that are there for constant need.”*
- *“Lawyers should be on the hook for actually getting good results.”*
- *“We’re not even talking access to justice ... we’re talking access to food, to shelter, to security, to opportunities for ourselves and our kids and until we deal with that, the other stuff doesn’t make sense.”*
- *“I think there are a lot of people who don’t ... understand what the justice system is or how to use it – struggling to earn a living, dealing with addictions.... Unless we address the living conditions that they’re dealing with there really is a fundamental issue with access.”*
- *“There are people ... working 16 hours a day ... who have to choose between food and shelter. That’s not just. And why ... we’re not ... able to take care of our own population in a way that meets anybody’s basic ... standards ... is beyond me.”*
- *“The biggest thing is taking care of the disenfranchised ... because what’s enfranchisement other than accessibility...?”*
- *“It’s just ludicrous that these bigger questions in our society are ignored....”*

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<sup>44</sup> See e.g. Hughes, “Law Commissions and Access to Justice: What Justice Should We Be Talking About?”, *supra* note \_\_ at 777-779.

Most striking to me is the notion that justice in the eyes of these respondents is about more than increasing the number of police, courts and lawyers (although those too will be important). Rather, it is really about helping people to achieve the good life – whatever that might mean, and in some cases, even the minimally acceptable life: “food”, “shelter”, “security” and “opportunities for ourselves and our kids”.<sup>45</sup> When lawyers acknowledge a collective duty to advance the cause of justice,<sup>46</sup> is it this kind of substantive justice that is being contemplated? Should it be? At least according to the respondent who suggested that lawyers should be “on the hook for actually getting good results”, it should.<sup>47</sup> And the same kinds of questions can be asked of policy-makers when it comes to efforts to address the current access to justice crisis. Should we be primarily (if not exclusively) focused on the question: “What are we trying to improve”, including a focus on an efficient and accessible legal system? Or more fundamentally, again from the public’s perspective, should we ultimately be focused on the question: “What are we trying to achieve”, including access to just outcomes – in the form of the good life? As the survey responses indicate, both process and outcome will be important as we sort through how better to address what the public thinks about these justice-oriented issues. However, only the latter is an end in itself, the former is simply a means

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<sup>45</sup> For earlier comments on this point, see Trevor C.W. Farrow in Law Society of Upper Canada, “Accessing the justice system: Exploring perceptions” (Focus article on access to justice) *Gazette* 16:1 (Winter 2012) 5 at 5. See earlier Macdonald, “Access to Justice in Canada Today: Scope, Scale and Ambitions”, *supra* note \_\_ at 19.

<sup>46</sup> See e.g. *Law Society Act*, *supra* note \_\_ at s. 4.2.

<sup>47</sup> For earlier comments, see Trevor C.W. Farrow, “The Good, the Right, and the Lawyer” (2012) 15:1 *Legal Ethics* 163 at 172; Farrow, “Sustainable Professionalism”, *supra* note \_\_ at pt. iv; Trevor C.W. Farrow, “The Promise of Professionalism” in Benoît Moore, Catherine Piché & Marie-Claude Rigaud, eds., *L’avocat dans la cité: éthique et professionnalisme* (Montréal: Les Éditions Thémis, 2012) 197 at 212.

to that end. Our research and reform efforts therefore need to broaden their gaze in order to facilitate those justice oriented ends.

### **3. INACCESSIBILITY NOT CREATED EQUALLY**

A strong and troubling opinion – although unfortunately not a completely surprising opinion – that emerged from the study, as reflected in the responses below, is that money and class are key factors when it comes to the meaningful accessibility of justice.

- *“People with money have access to more justice than people without.”*
- *“Depends on what lawyer you can afford.”*
- *“If I don’t have a good suit, the judge isn’t going to hear my case.”*
- *“I think it comes down to class. The higher class have more access to justice.”*
- *“Like big business ... the bigger they are, the more respect they have. It’s easier for them to get justice.”*

These opinions reflect a very negative and problematic class-based view of justice. Far from a system that is open to all, what these views indicate is that justice appears, at least to many, as only available to the rich. Further, in addition to money and social status, other related concerns were raised about various forms of vulnerability and inequality. According to the study, these sorts of challenges are perceived negatively to impact a person’s ability to access justice, as represented by the views set out below.

- *“Access to justice looks really different depending on who you are and where you come from ... because so much of justice and so much of anything related to justice ... intersects [with] ... class, gender, race....”*
- *“I think immigrants are much more susceptible.”*
- *“Language.”*
- *“Education.”*

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- “*Culture.*”
- “*Age.*”
- “*Sexual orientation.*”
- “*Poverty.*”
- “*Homless[ness].*”
- “*Mental illness.*”
- “*Geography.*”
- “*I think it depends on class, race, ... money, socio-economic standing, everything.*”

The notion that not all people experience justice equally, or put differently, not all inaccessibility is created equally, was a very common, forceful and troubling opinion expressed by many respondents. For justice to be effective, a citizenry needs to have confidence and trust in it. While Canadians who have engaged legal services typically have a positive view of those experiences,<sup>48</sup> overall public confidence in the justice system is “declining.”<sup>49</sup> As questioned by the Chief Justice of Canada, “Public confidence in the system of justice is essential. How can there be confidence in a system that shuts people out, that does not give them access?”<sup>50</sup> Perceptions of inequality will not improve confidence. As such, the opinions from these respondents require very careful attention in terms of the long term sustainability of a justice system that is seeking

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<sup>48</sup> See e.g. Law Society of Alberta, *Alternative Delivery of Legal Services*, Final Report (Calgary: Law Society of Alberta, February 2012) at 13.

<sup>49</sup> See *Reaching Equal Justice: An Invitation to Envision and Act*, Summary Report, *supra* note \_\_\_ at 6 (references omitted).

<sup>50</sup> Rt. Hon. Beverley McLachlin, P.C. quoted in Michael McKiernan, “Lawyers integral in making justice accessible: McLachlin” *Law Times* (20 February 2011), online: <<http://www.lawtimesnews.com/201102218262/Headline-News/Lawyers-integral-in-making-justice-accessible-McLachlin>>.

to be, and is perceived to be, accessible to all citizens, regardless of race, class, sexual orientation, etc.

#### **4. ALIENATION**

Building on the previous theme of inequality, although not as prevalent, the idea that many people feel alienated from the current system was clearly expressed by a number of respondents, as represented below.

- *“I don’t have much faith in the lawyers and the system.”*
- *“I’m more of a fringe on this. I don’t really follow justice too much or the law – I let the lawyers take care of that....”*
- *“The language of justice tends to be a bit ... foreign to most people.”*
- *“I never really know anything about justice.”*

In addition to the views expressed previously about exclusion and unequal access, alienation in this sense often related to a lack of knowledge and understanding. Certainly current public legal education initiatives, discussed further below,<sup>51</sup> are focussed on legal knowledge and capacity,<sup>52</sup> which – according to these respondents – is not just about being able to manage legal problems (which is important), but also about a larger sense of what the system is about and how individual citizens see themselves reflected in it or not. Again, according to a public-centred approach to reform, an unreflective justice system essentially amounts to an inaccessible justice system. As such, like with the issues raised

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<sup>51</sup> See *infra* pt. \_\_\_.

<sup>52</sup> For a recent look at public legal education in the context of a broader discussion about education, capacity and prevention, see Prevention, Triage and Referral Working Group, *Responding Early, Responding Well: Access to Justice through the Early Resolution Services Sector*, Final Report (Ottawa: Action Committee on Access to Justice in Civil and Family Matters, 12 February 2013), online: CFCJ <<http://www.cfcj-fcjc.org/sites/default/files/docs/2013/Report%20of%20the%20Prevention%2C%20Triage%20and%20Referral%20WG%20.pdf>>.



above about money, class, vulnerability and other equity-based concerns, tendencies of the system to alienate those for whom the system was created in the first place need to be taken very seriously and, ultimately, eliminated.

## **5. A RIGHT TO JUSTICE**

The next issue that emerged was about whether people think that justice should be a right. This issue – as with the next two issues – was raised through a specific and directed question: “Should citizens have a right to justice?” And in this case, as reflected in the responses below, the overwhelming answer was “yes”.

- *“Yes, absolutely.”*
- *“Yeah, of course – every citizen should have a right to justice.”*

Of the 76 people who answered this question, 74 respondents (97%) said yes, with the other 2 respondents (3%) providing indeterminate answers.<sup>53</sup> In essence, everyone was of the view that citizens should have a right to justice.<sup>54</sup>

## **6. FUNDAMENTAL IMPORTANCE**

Respondents were then asked for their opinion, as represented below, as to whether justice is of fundamental importance to Canadians.

- *“Yes. Extremely.”*
- *“Should be a number one right.”*
- *“It should be equally important as our health care system....”*

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<sup>53</sup> There were several occasions throughout the interview process where people did not answer all of the questions, or where their responses did not provide a clear answer to a question one way or another (indeterminate).

<sup>54</sup> See further *infra* Appendix at Graph 1.

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Although slightly more mixed, the dominant view was that yes, the justice system is of fundamental importance – and at least according to some, as important as the health care system. Of the 74 people who answered this question, 56 respondents (76%) said yes, 1 respondent (1%) said no, and 17 respondents (23%) provided indeterminate answers.<sup>55</sup> The notion that the justice system may be as important as the health care system is challenging, particularly given peoples’ self-described lack of understanding and alienation from it. However, there is further and powerful support for this view. For example, a similarly robust view supporting society’s entitlement to justice, and its importance, recently came from the Chief Justice of Canada, who expressed her view about the importance of justice as follows:

[J]ustice is a basic good in our society to which every woman, man and child should have access, regardless of how much money they have or who they know. Justice is a basic social good, like food, shelter and medical care.<sup>56</sup>

As the survey indicates,<sup>57</sup> in line with earlier research,<sup>58</sup> and perhaps also with this statement from the Chief Justice of Canada, what counts as “justice” is a matter for interpretation and debate. However, regardless of peoples’ different understandings of justice, there is little debate about its importance, which the respondents almost universally described as a “right”, and which a significant majority described as being of fundamental importance to Canadians.

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<sup>55</sup> See further *ibid.* at Graph 2.

<sup>56</sup> Action Committee on Access to Justice in Civil and Family Matters, *Colloquium Report* (Ottawa: Action Committee on Access to Justice in Civil and Family Matters, May 2014) at \_\_\_.

<sup>57</sup> See *supra* pt. III.2.

<sup>58</sup> See *ibid.* at nn. \_\_\_ - \_\_\_ and accompanying text.

If citizens are to be as engaged in their justice care as they are becoming in their health care, significant changes will need to take place. Further, equally challenging would be the current allocation of government budgets, which typically militate heavily in favour of health care spending over justice spending.<sup>59</sup> For these opinions to be taken seriously in the context of access to justice reforms, all issues – including fiscal policy – will need to be on the table.<sup>60</sup> That the Chief Justice of Canada puts justice in the same conversation as food, shelter and medical care is an important start. However, it will be the broader opinion of the citizenry – the voters – that will ultimately drive the future of public policy around justice and accessible justice care.

## **7. MORE GOVERNMENT SUPPORT**

Following on from the previous issue, opinions about government support for justice, represented below, were also looked at through a specific, direct question:

“Should the government do more or less to promote justice for Canadians?”

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<sup>59</sup> One of the difficulties of assessing justice and health spending is that the financial responsibility for these issues is shared – in various ways – between the federal and provincial governments. However, it is common knowledge that health care budgets far outbalance justice budgets. And even within the justice sector, a major portion of the justice budget is spent on the criminal justice and policing systems. See e.g. Government of Canada, Budget 2012, “Annex 1: Responsible Spending”, online: <<http://www.budget.gc.ca/2012/plan/anx1-eng.html>>. For an early, but useful comparison (which includes provincial and federal statistics), see Statistics Canada, Canadian Centre for Justice Statistics, Juristat, “Justice Spending in Canada” (1994/1995), Catalogue no. 85-002-XPE, vol. 17, no. 3, online: Government of Canada <<http://publications.gc.ca/Collection-R/Statcan/85-002-XIE/0039785-002-XIE.pdf>>. According to this report, “Police, courts, and corrections accounted for 3 cents of every dollar spent in 1994/95. This share is low, relative to that spent on education (12 cents), health (13 cents), and social services (24 cents).” Further, the report provides that “Over half of this amount paid for policing (58%), and about one-fifth (19%) for adult corrections. The remainder was spent on courts (8%), legal aid (7%), youth corrections (5%), and prosecutions (3%).” *Ibid.* at 1. See more recently Michael Trebilcock, “Report of the Legal Aid Review 2008” (2008) at 74, available online: Legal Aid Ontario <[http://www.legalaid.on.ca/en/publications/downloads/advisorygroups/transform-poverty\\_trebilcock.pdf](http://www.legalaid.on.ca/en/publications/downloads/advisorygroups/transform-poverty_trebilcock.pdf)>. Trebilcock indicates, for example, that while government spending between 1996 and 2006 increased for health (33%) and education (20%), over the same period spending on legal aid declined (9.7%). See further Canadian Bar Association Access to Justice Committee, *Reaching Equal Justice: An Invitation to Envision and Act*, Summary Report, *supra* note \_\_ at 11.

<sup>60</sup> For a recent discussion of public funds and the justice system, see Canadian Bar Association Access to Justice Committee, *Reaching Equal Justice: An Invitation to Envision and Act*, Summary Report, *ibid.* at 29-31.

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- “*Always more.*”
- “*I don’t think the government should stop at any time, and they should continue to ... promot[e] justice.*”
- “*With the amount of taxes that Canadians pay, I think it’s something that should ... be a little bit easier....*”

A clear majority of the respondents were of the view that yes, the government should do more. Of the 73 people who answered this question, 43 respondents (59%) said yes, 1 respondent (1%) said no, 8 respondents (11%) said the current level of government effort to promote justice should be maintained, and 21 respondents (29%) provided indeterminate answers.<sup>61</sup> As discussed further below, several ideas about what the government could do better to promote and support justice were provided.<sup>62</sup> However, as an overall matter, what these answers indicate is a need to reflect further on how governments spend and allocate resources;<sup>63</sup> how different kinds of services are prioritized and valued by those who potentially use the services; and overall, whether the current levels of government support for justice services are adequate in the face of what we know about current access to justice problems<sup>64</sup> and what the public is saying they would like from their justice system.<sup>65</sup> For example, is the current system, which is still primarily designed around courts and lawyers, but which is largely inaccessible to most of society, sustainable (on the current level of funding and support)? Assuming not, then what kinds of further support are needed, and what kinds of innovation are required better

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<sup>61</sup> See further *infra* Appendix at Graph 3.

<sup>62</sup> See *infra* pts. \_\_.

<sup>63</sup> See further *supra* notes \_\_ and accompanying text.

<sup>64</sup> See *supra* pt. \_\_.

<sup>65</sup> See e.g. *supra* pt. \_\_ and *infra* pt. \_\_.

to serve the everyday justice needs of Canadians?<sup>66</sup> Those are the questions, which are fuelled by the kinds of answers that were given on this survey, which governments – and everyone – are going to need to address as we move forward in the face of important justice needs and tough fiscal decisions.

## **8. SIMPLER, CHEAPER AND FASTER**

Specific opinions and ideas about what could be done to promote a more accessible justice system (particularly from a procedural perspective), as reflected in the survey responses below, often included cost, simplicity and speed.

- *“It’s very much profit driven.”*
- *“Lawyers are way too expensive.”*
- *“Finances. Finances. It’s f---ing expensive to get a lawyer, for-for-for anything”*
- *“I think time.”*
- *“The time, the energy....”*
- *“I know horrendous stories about people seeking justice and they went 18, 20 years before it was decided. And when it was finished, when all was said and done, they didn’t really get justice. They might have ... got their day in court.”*
- *“It needs to be seen, it needs to be transparent, and understandable.”*
- *“I would like a free lawyer. Um I guess maybe more affordable.”*
- *“Make the whole thing much less complex.”*
- *“Make it friendlier ... user friendlier ... ‘press here’.”*

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<sup>66</sup> For current discussions of this question, see *Access to Civil & Family Justice: A Roadmap for Change*, *supra* note \_\_ at \_\_; Canadian Bar Association Access to Justice Committee, *Reaching Equal Justice: An Invitation to Envision and Act*, Summary Report, *supra* note \_\_ at pts. II-III.

The respondents had a consistently strong view that the system is too complex, too slow, and that it costs too much.<sup>67</sup> This view, which is also supported by the access to justice literature,<sup>68</sup> must clearly be a central area of concern for current justice reform initiatives.<sup>69</sup>

## 9. EDUCATION, PREVENTION AND UNDERSTANDING

Again on the issue of what can be done to improve access to justice, some of the most important ideas that were raised by the respondents, as reflected in the answers below, include education, prevention and understanding as important elements of an accessible and effective justice system.

- “*Making sure our kids are educated....*”
- “*Perhaps a little more of an effort can be spent in education campaigns [in] ... public school ... to prevent maybe heading off to jail or heading off to court or heading off to probation.... Prevent it before it starts....*”
- “*Education on justice.*”
- “*We don’t do enough to inform the public – we do a lot to reprimand them but we don’t do enough to inform them....*”
- “*Public announcement type stuff ... a lot more being taught what is right or what is wrong.*”
- “*Justice system commercials.*”

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<sup>67</sup> These findings are consistent with other studies that have identified cost, or perceived cost, as a barrier to access to justice. See e.g. Ontario Civil Legal Needs Project, *Listening to Ontarians*, *supra* note \_\_ at 32, 39-40; Macfarlane, *The National Self-Represented Litigants Project: Identifying and Meeting the Needs of Self-Represented Litigants*, *supra* note \_\_ at 39. See further *Access to Civil & Family Justice: A Roadmap for Change*, *supra* note \_\_ at \_\_.

<sup>68</sup> See e.g. *supra* note \_\_ and accompanying text.

<sup>69</sup> See e.g. *Access to Civil & Family Justice: A Roadmap for Change*, *supra* note \_\_ at \_\_; Canadian Bar Association Access to Justice Committee, *Reaching Equal Justice: An Invitation to Envision and Act*, Summary Report, *supra* note \_\_ at pts. II-III. For a recent survey and treatment of Canadian civil justice reform efforts that look to address these efficiency-related concerns, see Farrow, *Civil Justice, Privatization, and Democracy*, *supra* note \_\_ at c. 3.

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- “Websites ... billboards, contact numbers, information, infomercials....”
- “I would say more of those social welfare programs and community programs that help individuals seek the help prior to having access to ... the justice system.”
- “This interview really highlighted for me that I actually have absolutely no idea about the justice system which I think then points out that there should be more awareness as to what we have rights to and what is available to us....”
- “Justice incorporates our life ... perhaps it can be taught in school as a life skill so that kids are more aware of what it means to make a choice and do the right thing for themselves and each other.”
- “Be proactive about it and put yourself in the community.”
- “How are you supposed to inform the actions of the community without being there? And that’s what a lot of systems do, they just kind of create all these laws from up above without ... knowing what it’s like to be in this community – what it’s like to be a single mom; what it’s like to be an immigrant....”

Of course the idea of prevention is not new. The health care system has been promoting ideas of healthy eating and exercise for decades as ways both to improve health and reduce the burden of an unhealthy population on the health care system. Prevention in the context of justice, however, is not as well developed. Comparing justice prevention to a fence at the top of a cliff as opposed to an ambulance at the bottom, recently popularized by Richard Susskind, makes the point.<sup>70</sup> However, the way we have typically delivered justice, through courts and lawyers, often looks more like emergency room justice than front end prevention.<sup>71</sup> In order to empower people to make good choices when it comes to justice-related issues and prevention, they need to be educated. And as these responses indicate, much more can and should be done.

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<sup>70</sup> Recently cited in Prevention, Triage and Referral Working Group, *Responding Early, Responding Well: Access to Justice through the Early Resolution Services Sector*, *supra* note \_\_ at 9. See further Richard Susskind, *The End of Lawyers? Rethinking the Nature of Legal Services* (Oxford: Oxford University Press, 2008) at sec. 6.7; *Access to Civil & Family Justice: A Roadmap for Change*, *supra* note \_\_ at \_\_.

<sup>71</sup> See *Access to Civil & Family Justice: A Roadmap for Change*, *ibid.* at \_\_.

In addition to focusing on the public's knowledge, what some of these responses also suggest is that more understanding is needed on the part of those who provide justice. The underlying point here, in a nutshell, is that treatment as equals does not always mean equal treatment. Put differently, understanding the lived experiences of those who use – and who are sometimes subjected to – the justice system will often require a deliberate examination of the specific needs and differences between people and their lived experiences in order to treat those people as equals.<sup>72</sup> From these responses, it is clear that an accessible justice system must be one that understands and can embrace the importance of social context for those who use it, particularly for the increasingly diverse communities that the system is designed to serve.<sup>73</sup>

#### **10.COST OF NOT MAKING JUSTICE ACCESSIBLE**

Finally, one issue that is only starting to be taken seriously by the justice community is the question of cost, and in particular, what it costs to provide accessible justice, and more importantly, what it will cost if we do not provide accessible justice. Interestingly, as reflected in the answers below, those questions were touched on by some of the respondents in the study, often in very practical ways.

- *“I have a family law situation that I can't afford to address. I have to just let it go.”*

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<sup>72</sup> See further Farrow, “The Promise of Professionalism”, *supra* note \_\_ at 202-203; Farrow *et al.*, *Addressing the Needs of Self-Represented Litigants in the Canadian Justice System*, *supra* note \_\_ at 50.

<sup>73</sup> See Trevor C.W. Farrow, “Ethical Lawyering in a Global Community” 2012 Isaac Pitblado Lecture, (2013) 36:1 Man. L.J. 141 at pt. III. For a recent report recommending increased training on the part of those who work in the criminal justice system as it relates to aboriginal communities, see Report of the Independent Review Conducted by the Honourable Frank Iacobucci, *First Nations Representation on Ontario Juries* (February 2013) at para. 227, online: Government of Ontario <[http://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/iacobucci/pdf/First\\_Nations\\_Representation\\_Ontario\\_Juries.pdf](http://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/iacobucci/pdf/First_Nations_Representation_Ontario_Juries.pdf)>.



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- *“I paid down on an apartment ... I didn’t get it ... so I wanted my money back. I couldn’t get my money back because the guy ... didn’t give me back my cash and I didn’t know how to go about it, I was new to the country.... I just checked at the tenant board.... But it just looked like it was gonna be a lot stressful for me just to take that upon myself to try to figure that out. So I was just like, whatever, leave that.”*
- *As far as I know, it’s going to cost you.... So ... when I have issues, I just leave it. Whatever.”*
- *“I work three jobs. Am I gonna take off ... my full day to go pursue this? Probably not, so I’m just gonna let this slide.”*
- *“Most people ... if it’s not criminal ... won’t pursue it. Like if it’s a racial thing ... employ[ment] ... discrimination, I don’t think they would pursue it.”*
- *“I guess we take it for granted and then we just assume that we’re not going to need it because we’re always good. But ...not only bad people need the justice system.”*
- *“Our jails are full of poor people and First Nations people and disadvantaged people....”*

Having unresolved family, racial, employment, discrimination, housing or other legal problems will tend to lead, as we know, to further legal and other social and health-related problems.<sup>74</sup> When we take into account these clustering and cumulative negative effects of not resolving legal problems, the cost to society – individually and collectively – is significant.<sup>75</sup> And of course cost in this context includes not only economic costs, but also health and other related social costs.<sup>76</sup>

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<sup>74</sup> See *supra* note \_\_\_ and accompanying text.

<sup>75</sup> From an economic perspective, according to one U.K. study for example, unresolved legal problems cost individuals and the public £13 billion over a 3.5 year period. See Nigel J. Balmer *et al.*, *Knowledge, Capability and the Experience of Rights Problems* (London: Public Legal Education Network, March 2010) at 3 [citation omitted]. See further Pleasence *et al.*, *Causes of Action*, *supra* note \_\_\_, cited in *Access to Civil & Family Justice: A Roadmap for Change*, *supra* note \_\_\_ at \_\_\_.

<sup>76</sup> For a current research initiative that is looking at this specific issue of cost, see *Cost of Justice: Weighing the Costs of Fair and Effective Resolution to Legal Problems*, *supra* note \_\_\_.

Additionally, as we can see from some of the responses above, the cost of an inaccessible, unequal and alienating justice system to more vulnerable communities is tragic. This is a point that is reinforced by the legal needs research.<sup>77</sup> For example, as one respondent indicated, one only needs to look as far as Canada's First Nations peoples and the challenges they typically face in all aspects of the justice system. According to a recent report of the Honourable Frank Iacobucci, "the justice system generally as applied to First Nations peoples ... is quite frankly in a crisis."<sup>78</sup> Although experiences clearly vary across different aboriginal communities, as a general matter, as the Honourable Frank Iacobucci points out, "First Nations people observe the Canadian justice system as devoid of any reflection of their core principles or values..."<sup>79</sup> At least partially as a result, it is reported that "First Nations people lack knowledge and awareness of the justice system..."<sup>80</sup> There is also widely reported discrimination against aboriginal people when they interact with the justice system.<sup>81</sup> Further, the system is perceived "as a mechanism by which a myriad of historical wrongs have been perpetuated upon First Nations."<sup>82</sup> By not addressing these issues, by continuing to exclude through an inaccessible and alienating justice system, the "dysfunctional relationship"<sup>83</sup> that exists

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<sup>77</sup> See e.g. *supra* note \_\_ and accompanying text, recognizing that vulnerable populations are typically more prone to legal problems.

<sup>78</sup> *First Nations Representation on Ontario Juries*, *supra* note \_\_ at paras. 4, 14.

<sup>79</sup> *Ibid.* at para. 26. See also para. 210.

<sup>80</sup> *Ibid.* at para. 28.

<sup>81</sup> See e.g. *ibid.* at paras. 27, 214-223, 355. For further comments, see Trevor C.W. Farrow, "Residential Schools Litigation and the Legal Profession" (2014) 64 UTLJ (forthcoming).

<sup>82</sup> *First Nations Representation on Ontario Juries*, *ibid.* at para. 211.

<sup>83</sup> *Ibid.* at para. 15.

between aboriginal communities, the justice system and other Canadians will be perpetuated. And while important, it is not just First Nations communities that experience this exclusion, inequality and alienation. As the earlier responses make clear, there are numerous vulnerable groups, for various reasons, that find themselves facing barriers when it comes to accessing the justice system.<sup>84</sup> The social cost of this inaccessibility to the wellbeing of individuals, communities and society is too great, not to mention the continued economic costs that also follow.

#### IV. CONCLUSION

A primary purpose of this article is not to provide policy answers from within the justice system, but rather to provide a window into the public's opinion on access to justice, which will hopefully help to animate further justice policy thinking. As such, other than various reflections and reactions included in the context of the 10 areas of opinion discussed above,<sup>85</sup> I have not set out to provide a detailed account of how all of these responses and issues should be systematically addressed and incorporated into future justice thinking. That will be the work of future research and reform.<sup>86</sup>

However, having said that, I will conclude by commenting on two underlying themes that run through the thousands of answers that were provided through the course of this study as well as through the 10 opinion areas that emerged from those responses. The first is that access to justice is for the most part understood as access to the kind of life – and the kinds of communities in which – people would like to live. It is about

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<sup>84</sup> See *supra* pt. \_\_.

<sup>85</sup> See *supra* pts. \_\_.

<sup>86</sup> See e.g. *supra* note \_\_ and accompanying text.

accessing equality, understanding, education, food, housing, security, happiness, etc. It is about the good life – that is ultimately the point. The more researchers, policy-makers and practitioners understand this, the more their access to justice reform efforts will yield fruit. Good laws, rules, judges, educators, lawyers and courtrooms are all important. However, we are not ends in ourselves, but rather steps along the path to justice and access to it. As the Honourable David Johnston commented, in the context of the legal profession, “We enjoy a monopoly to practise law. In return, we are duty bound to serve our clients competently, to improve justice and to continuously create the good. That’s the deal.”<sup>87</sup> The same can largely be said for all who work in the justice system.

The second unifying theme that flows through this study is about civic engagement. There are certainly signs that a public-centred approach to justice reform is taking hold.<sup>88</sup> However, until the voice of the public becomes an increasingly central feature of all access to justice reform efforts, alienation and exclusion will continue to follow. To make this happen, clearly those who work within the system need to be listening to that voice. More fundamentally, however, as several respondents indicated, access to justice needs to become a significant topic of general household and civic discussion.

- *“There’s just not enough civic engagement.... I’m talking civic engagement; I’m not talking political engagement.”*
- *“I just want ... more ... dialogue in schools.”*

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<sup>87</sup> Rt. Hon. David Johnston, Governor General of Canada, “Canadian Bar Association’s Canadian Legal Conference – The Legal Profession in a Smart and Caring Nation: A Vision for 2017” (14 August 2011), online: Governor General of Canada <<http://www.gg.ca/document.aspx?id=14195>>.

<sup>88</sup> See e.g. *supra* note \_\_\_ and accompanying text. For a good example of a recent public dialogue about access to justice (and its connection to health), see Canadian Institute for Health Research *et al.*, “Does Your Health Depend on Your Access to Justice”, Café Scientifique (Toronto, Ontario, 31 January 2013), online: <<http://www.justiceandhealth.ca/>>. For commentary on these various emerging initiatives, see Trevor C.W. Farrow, “A New Access to Justice Agenda in Canada” (in progress).

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When asked “does justice come up in conversation?”, another respondent laughed and said: “*not really, not really at all.*” That state of affairs should not continue. As one of the respondents stated, “*I’m glad you’re asking these questions....*” And further, as was acknowledged by another, there may even be a “*responsibility*”<sup>89</sup> for citizens more meaningfully to engage in this discussion and debate.

Access to justice must become a topic of widespread conversation and concern,<sup>90</sup> through an engaged citizenry that is aware of and that cares about its individual and collective justice wellbeing. When it does – when access to justice and the legal health and wellbeing of our citizenry become regular topics of dinner table conversation – then it will be much more difficult for elected officials, and those charged with the research and policy work of the nation, to avoid putting those voices and views at the centre of what hopefully will soon become a much more reflective, and therefore universally accessible system of justice. Encouraging a broader understanding of justice, and a widespread public engagement with justice, is really the ultimate purpose of this study. To give the voice of the public the last word, “*that’s part of what a democratic society is all about.*”<sup>91</sup>

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<sup>89</sup> See *supra* pt. \_\_.

<sup>90</sup> For further discussions on this point, see *Access to Civil & Family Justice: A Roadmap for Change*, *supra* note \_\_ at \_\_.

<sup>91</sup> See *supra* pt. \_\_.

APPENDIX<sup>92</sup>

TABLE 1

Table 1 sets out the locations, number of interviews conducted and the number of individuals approached for this study. The table also indicates the socio-economic status of each particular region.<sup>93</sup>

LOCATION	APPROACHED	RESPONDENTS	REGION INCOME
Dundas / Ossington	9	5	Middle / low
Dundas / McCaul (AGO)	12	4	Middle / low
Bathurst / St. Clair	14	6	Very high / middle
Yonge / Dundas	22	7	Middle
Bay / Dundas	40	13	High / middle
Dufferin / Bloor	25	4	Low
Spadina / Dundas (Chinatown)	24	4	Middle / low
Kingston Rd./ Markham Rd. (Scarborough Village)	45	7	Low / very low
Pape / Danforth	17	5	Middle
Lakeshore / Exhibition	5	3	Very high / middle
University / College (University of Toronto)	9	4	High / middle / low
Queen / Dufferin (Parkdale)	52	5	Low / very low
Jane / Finch	56	4	Low / very low
Shepherd / Morningside	17	4	Low / very low
York University	79	14	Area itself is low / very low but also a range because students were also interviewed
Brampton	50	7	Suburban area not within income map
Mississauga	18	3	Suburban area not within income map
	<b>Total: 494</b>	<b>Total: 99<sup>94</sup></b>	

<sup>92</sup> I am grateful to Nicole Aylwin, Bart Danko and Christian Ferraro for taking the lead on these Appendix materials.

<sup>93</sup> See Hulchanski, *The Three Cities within Toronto: Income Polarization among Toronto's Neighbourhoods, 1970-2005*, *supra* note \_\_ at 5. For the purpose of this study, "very high" includes an income average of more than 40% above the average Toronto income; "high" includes an income average of 20-40% above the average; "middle" includes an income average of 20% below to 20% above the average; "low" includes an income average of 20-40% below the average; and "very low" includes an income average of more than 40% below the average. See *ibid.* Where an intersection straddles the boundary of two or more income level communities, all of the income levels are indicated.

<sup>94</sup> As discussed earlier, this number amounted to a participation rate of 20%. See *supra* note \_\_ and accompanying text.

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