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Access to Justice for a New Century: The Way Forward

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Access to Justice

for a new Century

The Way Forward

edited by
Julia Bass, W.A. Bogart and Frederick H. Zemans
Access to Justice
for a New Century –
The Way Forward

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JULIA BASS, W.A. BOGART,
AND FREDERICK H. ZEMANS

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Frederick Zemans is a Professor Emeritus and Senior Scholar at Osgoode Hall Law School at York University in Toronto. He was the founding director of Parkdale Community Legal Services, the setting for Osgoode Hall’s Intensive Programme in Poverty Law. Professor Zemans has written extensively about legal aid plans including a two-volume study co-authored with Patrick Monahan: “A New Legal Aid Plan for Ontario: From Crisis to Reform” (1996) and recently published in Japanese by the Japan Legal Aid Association. His 1977 book, *International Perspectives on Legal Aid*, has recently been translated and published by the Chinese Justice Department. Professor Zemans is a founding faculty member of the Osgoode Hall Law School Graduate Programme in Alternative Dispute Resolution.
Introduction

W.A. Bogart, Frederick Zemans
and Julia Bass

Access to Justice for a New Century – The Way Forward, the Symposium organized by the Access to Justice Committee of the Law Society of Upper Canada and supported by the Law Foundation of Ontario, was attended by over 375 people including a wide cross section of lawyers, judges and the wider community.

The foundation paper for the Symposium, Access to Justice in Canada Today – Scope, Scale and Ambitions, prepared by Professor Roderick Macdonald, surveyed Canadian developments in Access to Justice over the last three decades.

Structured around commissioned papers, symposium sessions included:

- What is Access to Justice? Constance Backhouse and Marc Galanter
- The Lawyer as Citizen: Janice Gross Stein
- Models of Legal Service Delivery: Steve Orchard
- More Litigation/More Justice? Darlene Johnston

This volume includes edited versions of these papers, along with discussion papers by Harry Arthurs and Herbert Kritzer.

The day after the Symposium, the Law Society’s Access to Justice Committee held a consultation with invited experts and stakeholders that focused on the issues raised at the Symposium and related topics. Workshops were held on: Civil
Justice; Criminal Justice Policy; Social Justice and the Administrative State; The Justice System and the Family; Community Needs, Technology, Public Legal Education and Access; and Legal Aid.

The following is an overview of the major themes that emerged during the symposium and the consultation. References are made to the papers that are part of this collection, the commentators' remarks and the general discussions during the consultation.

A. WHAT IS ACCESS TO JUSTICE?

"Access to justice" encompasses a variety of meanings that offer points of departure for consideration for future programs and their development. In the foundation paper, Roderick Macdonald, discussing the various meanings that have been assigned to the phrase access to justice over the past 40 years, invokes the image of five "waves".

In the first wave, coinciding roughly with the 1960s, the concept essentially meant access to the courts and to lawyers. During the 1970s, the concept was widened to embrace questions of institutional design: the actual performance of courts, their procedures and their structures. In the 1980s, access to justice came to be understood as a problem of equality, particularly regarding outcomes. The fourth wave, in the 1990s, insisted that three dimensions (beyond a focus on disputes) needed to be addressed: ADR processes came to be understood as strategies for avoiding litigation; processes for involving the public in the institutions making and administering law had to be improved; and greater emphasis was placed on the regulatory capacity of non-public bodies. The fifth and current wave emphasizes the applicability of access to justice to every facet of the life of citizens. The correlation between health, social services, employment, protection from victimization by violence and real access to civil justice is understood to require proactive access to justice strategies.3

In "Access to Justice as a Moving Frontier," Marc Galanter reminds us that both "access" and "justice" are entirely open-ended terms with "shifting frontiers".4 While "access" may embody concerns about the exclusion of the poor and about lack of equity for historically excluded groups (women, Aboriginals, the disabled, children, and others), it may also embrace the needs of the middle class and their ability to obtain "everyday justice" regarding issues ranging from real estate conveyancing to claims for wrongful dismissal.5 It also includes current concerns about "access" to legal education and to the profession.6

The debates over the meanings of "justice" and models of "access" are indeed complex. A discussion of access to justice in the courts quickly turns to questioning the rights that are (and ought to be) created by judges based on various understandings of justice, the judicial role, and the effectiveness of litigation in bringing about social change. For most, justice must embrace social justice. Access to justice is understood as a vital element in achieving this goal.

The debates about "access," "justice," and "access to justice" and their multiple claims raise the inevitability of rationing in light of limited resources. An access to justice focus emphasizes the need to carefully consider the law and its impact, particularly on the disadvantaged. It requires attentiveness to the consequences produced by law with respect to various understandings of the public good.

B. THE ROLE OF LAWYERS IN ACHIEVING LARGER CIVIC GOALS

The "Lawyer as Citizen" discussion focused on the role of lawyers in achieving larger civic purposes. As health professionals are increasingly seen as responsible not just for treatment but for promoting health itself, lawyers and judges have a central role to play in ensuring the overall well-being of society. Janice Gross Stein identified three key areas of potential action for lawyers.7
Civic processes: Stein suggested that the Law Society should take the lead in developing norms of accountability that would contribute to just outcomes not only with respect to legal institutions but more broadly across society, especially with respect to issues of governance and issues of social justice. Stein recommended that the Law Society allocate resources to one such project for a minimum period of two to three years to signal its commitment to its responsibility for social justice.

Civic projects: Many lawyers and judges, as citizens, have been involved in combating homelessness, poverty and illiteracy. Stein recommended that the Law Society allocate resources to such projects for a minimum period of two to three years to signal its commitment to its responsibility for social justice.

Civic contributions: Just as "corporate social responsibility" has engaged leading members of the private sector, the Law Society needs to affirm its obligation to strengthening Canadian civil society. Stein proposed, for example, that the Law Society might encourage law faculties to require all students, prior to their call to the bar, to complete an internship that directly engages issues of social justice.

The lawyer's role in broad issues of civic responsibility and social justice emerged as a key theme throughout the symposium and the consultation. It included, among other concerns, action with respect to child poverty, the effects of increasing criminalization and incarceration on disadvantaged groups, and homelessness. Concerns about the appointment process for administrative tribunals and some current decision-making procedures were also raised. Discussion often focused on the exclusion of various groups, historically and today.

The situation of Aboriginals on reserves, in urban settings and in the legal and related professions was frequently mentioned. It was noted that the large cohort who entered the legal profession in the 1970s would soon retire or take semi-retirement. These individuals could provide substantial resources for pro bono legal services and larger civil society projects.

Macdonald's positioning of the Law Society as a potential facilitator – inviting judges, the federal and provincial governments, Legal Aid Ontario, the profession, and the public, to determine the most effective approaches to access to justice issues – was reiterated in numerous discussions. In "Speaking the Language of Justice: A New Legal Vernacular" Stein and Cook call for a "new legal vernacular" to capture the significant contribution that lawyers, individually and through the Law Society, can make to renew society, transcending partisan politics. Participants spoke of the "social investment state", the fostering of "human capital", the need for "civic renewal", and "justice and the public good", suggesting that lawyers have a special and an overarching interest in "fairness".

C. MODELS OF LEGAL SERVICES AND THE IMPACT OF NEW TECHNOLOGIES

During the Symposium, the importance of providing legal services in an even-handed manner was broadly recognized. Legal aid, legal insurance, prepaid legal services, pro bono legal services, paralegals, and the role of technology were all discussed. The conference participants recognized that state-funded legal aid services provided principally by lawyers continue to be the principal approach to access to justice in common law countries.

1) Legal Aid

Macdonald observed that, in an environment where demand for legal aid exceeds resources, rationing is inevitable. In a search for workable solutions, the discussions of legal aid focused on three jurisdictions: England and Wales, Ontario, and British Columbia. Of these, England and Wales have the best-funded legal aid system.

Orchard and O'Grady, in "Development of Legal Services Policies in England and Wales: 1989–2002", briefly describe recent history in England and Wales. In 1989, the Legal Aid Board took over the administration of legal aid from the Law Society. Ten years later, the Access to Justice Act created the Legal Services Commission which replaced the Legal Aid Board. The Legal Services Commission was given responsibility for creating and maintaining both a Community Legal Service and a
Criminal Defence Service. The focus of the Legal Aid Board and the Legal Services Commission on improving the efficiency and effectiveness of legal services has led to the introduction of several innovative schemes. These include "franchising" which involves contracting with private firms of solicitors to provide legal aid in underserved areas. Recent analysis and studies have demonstrated that contracts significantly reduce the unit cost of cases while the quality of legal services has been maintained.\(^3\)

Ontario ranks in the middle of the three jurisdictions in terms of funding.\(^4\) Legal Aid Ontario (LAO), which assumed responsibility for legal aid services from the Law Society of Upper Canada in 1999, is the largest agency in the province promoting justice (apart from the government itself). It focuses on delivering quality legal aid services to low-income clients across Ontario in the most cost-effective way possible, and improving and expanding delivery to achieve effective and efficient service and client satisfaction. LAO's priorities include criminal law, family law, refugee law, mental health, prison law, and clinic services.

Among the many challenges that LAO faces is a decline in the number of lawyers who accept legal aid cases – almost 30 percent in the last five years. In 2002, frustration with the Ontario legal aid tariff (which had not been increased since 1987) led to a withdrawal of legal services by a large number of criminal lawyers. In response, the provincial government introduced Bill 181, requiring LAO to hire more staff duty counsel and to consider a public defender scheme. Although the crisis was ultimately resolved through LAO's leadership, a small increase to the judicare tariff and amendments to Bill 181, the events of 2002 underline the need for greater coordination and consultation between the major stakeholders in Ontario's legal aid services and the need to provide services beyond the litigation-based 'one client/one lawyer' model, especially to those with multiple problems extending beyond legal issues.

Since 2000, LAO has initiated a number of pilot projects to expand delivery and develop the model of legal aid services in Ontario. In 2002, a project was set up in downtown Toronto to attempt to address some of the legal, medical and social needs of the homeless. The LAO duty counsel program has been expanded to provide 'advice lawyers' in the Family Courts to address the challenge of providing low-income citizens from diverse ethnic backgrounds with basic information regarding their legal rights and responsibilities and about alternative models of dispute resolution. Another initiative, supported by the Donner Canadian Foundation and the Attorney General of Ontario, is a pilot program to provide information to unrepresented parents confronting marital breakdown: the Parent Information Program educates parents with respect to their rights and responsibilities and attempts to respond to the needs of parents and children in the midst of matrimonial conflict.

In British Columbia, legal aid is struggling with massive cuts to its budget. Before the 2002 funding crisis, B.C. had one of the highest rates of per capita spending on legal aid in Canada. Between 2001 and 2003, the budget was cut by almost 40 percent, leading to a reduction of over 70 percent in staff positions. Clinics have disappeared. Many in British Columbia look to the independent studies of legal aid undertaken in Ontario and the rational way reform has been approached in that province.

2) Pro Bono

The Pro Bono model complements legal aid and can provide further access to justice. Pro Bono delivers a wide range of legal services to individuals and organizations, harnessing the resources of members of the bar who might never be prepared to do legal aid work. In some cases, lawyers with expertise in transactions and business deals make their skills available to low income communities on issues such as the availability of good quality low-income housing. Pro Bono lawyers can bring their advocacy and literacy skills to the assistance of groups and organizations presenting their perspectives as government policies are being developed and implemented. An important
function of Pro Bono Law Ontario (PBLO) is to recognize and coordinate these contributions. In its first year, PBLO launched a number of major projects, including assisting the South Asian Legal Clinic of Ontario with the needs of that community and the Justice for Children and Youth clinic with cases of children expelled from school. PBLO has received additional funding for a number of further initiatives, including needs assessments in several communities.

3) Legal Protection Insurance
Legal protection insurance and pre-paid legal services also have the potential to make legal services more readily available, especially to the middle class. Legal protection insurance is common in Europe; about 80 percent of German citizens have it. Quebec has initiated a program that provides contracts at a reasonable price, though these exclude family law and criminal matters. For a reasonable premium, substantial protection can be obtained for most other legal matters including, in some plans, tort and wrongful dismissal litigation. The Barreau du Québec is undertaking a major effort to encourage insurance companies to provide suitable insurance plans and to encourage citizens to obtain basic legal protection coverage. In the rest of Canada, however, legal protection insurance is not generally available, and pre-paid legal assistance is largely restricted to plans that have been negotiated by unions on behalf of their members. Services are delivered through staff offices and, to a lesser extent, through a panel of private practitioners. The union generally administers the plan with funding from the employer. A number of issues remain to be resolved, including the treatment of prepaid legal protection as a taxable benefit to employees.

4) Paralegals
The role of paralegals in the delivery of legal services represents a continuing source of controversy. The issues focus on “free standing” paralegals, who offer their services without the supervision of lawyers in minor criminal matters, small claims court, before tribunals (immigration, insurance and municipal tax assessments) and in “solicitor type” work such as the drawing of wills and real estate transactions. These issues have been studied and reported on several times during the last several decades.15

There is a growing recognition that paralegals should be recognized and regulated but agreement as to how this should be done has proved elusive. At present, the Law Society of Upper Canada regulates only its ‘members’ (lawyers), although it recognizes that it is in the public interest for paralegals to be regulated in order to protect consumers from abuse and to afford means of redress for wrongdoing and unethical conduct by paralegals. There is, as well, insufficient information available on the precise nature of the services provided by paralegals, the quality of services provided, and the actual cost of those services. Recently there have been promising developments regarding an agreement in principle between the Attorney General of Ontario and the Law Society that the Law Society should take on responsibility for regulating paralegals. The details, however, are still being worked out.

The phenomenon of the unrepresented litigant and the problems that result, particularly in family law cases, was a recurring concern at the Symposium. Bert Kritzer discussed strategies for achieving access to civil justice that may be of particular assistance to the middle class.16 Contingency fees can assist in covering the plaintiff’s costs in exchange for a lawyer receiving some premium for bearing the risk of loss. “After the event” insurance may assist the parties in paying the other side’s costs, should they lose. An expansion of the use of Alternative Dispute Resolution (ADR) and case management might also reduce the cost of litigation.

5) New Technologies
The symposium and workshop produced general agreement that members of the public require more information about their legal rights and responsibilities. To be useful, such infor-
mation must be both accessible and timely. Many legal aid organizations have recognized the need for collaboration with their diverse communities and the essential role of technology in communicating with the public.

The Internet offers obvious potential in providing access to information. However, the lack of quality assurance for such information is a significant problem. Despite high usage rates in Canada, accessibility is also a key issue. The American "Law Help" program — a 30 state online access point to an information site for laypersons and legal service providers — offers an interesting model. All participating states employ the same database but each state may make modifications for its own purposes. "Law Help" is oriented towards low and middle-income individuals, assisting those using it to "pinpoint" their search, obtaining "hits" that are relevant and that contain accurate information.17

Community Legal Education Ontario (CLEO), a legal aid clinic focused on public education, produces materials designed for the public in collaboration with organizations specializing in various areas, particularly poverty law. Though CLEO acknowledges the potential of the Internet, after a thorough review, it continues to regard print as the most efficient medium for its diverse audiences. Print can be used for public presentations, workshops, door-to-door visits and "on site" information sessions in, for example, food banks and street programs for youth.

The Ontario Justice Education Network (OJEN), supported by the Law Society of Upper Canada and a number of other partners and chaired by the Chief Justice of Ontario, is another provincial public information initiative. Its program includes well-received "Summer Institutes" and other events for high school teachers of law and civics courses.18

D. LITIGATION AND ACCESS TO JUSTICE

"More Litigation, More Justice?", the fourth panel of the Symposium, addressed the extent to which litigation can be used to achieve social justice.19 An important focus of the panel was the discussion of Aboriginal issues and the courts. In her presentation, Darlene Johnston asserted that litigation vindicating the rights of First Peoples under the Constitution has been largely disappointing. She argued that initially the Charter was perceived as offering the potential for litigation to protect these rights, pointing to the Supreme Court's decision in R. v. Sparrow as an example.20 Subsequent decisions, such as R. v. Van der Peet21 and Mitchell v. M.N.R.22 have, she believes, undercut Sparrow, placing the onus on Aboriginals to demonstrate that they have sovereignty with regard to a particular issue. This has led to a loss of idealism among many regarding the capacity of the courts to support the First Peoples in their quest for social justice and equality.

Other jurisdictions provide different accounts of litigation and social justice. Justice Albie Sachs described the South African Constitutional Court's attempt to deal with rights claims in a society with problems of staggering dimensions, including the HIV epidemic. Justice Sachs reflected on the Constitutional Court's struggle to deal with the realization of social and economic rights for poor South Africans. The court's challenge has been to respond to the South African Constitution's requirement that the state take reasonable measures to recognize each citizen's right to access to health care, to justice and to housing.

Harry Arthurs argued that litigation, alone, is unlikely to produce social justice, which must be understood as more than the sum of individual justice. Arthurs argues that litigation is ill-suited for this task for a number of reasons, including the conservative nature of most legal doctrine and the inability of litigation to grapple with a need for more equal distribution of wealth and power. Arthurs urged societies to address systemic injustices, observing that the road to more social justice involves slow, complicated political efforts that can only be brought about through social mobilization.23
Concerns about litigation, particularly with the growing numbers of unrepresented litigants in provincial and small claims court were raised in several sessions. In the symposium workshop entitled "Community Needs, Technology Public Legal Education and Access," Richard Zorza emphasized that being without a lawyer means being without power in our society. He advocated the creation of courts designed for the unrepresented and argued that these must fundamentally be about empowering the self-represented, offering information, providing a welcoming attitude and designing processes that provide for the evenhanded application of justice: "[T]he test is not symmetry or balance – it is true evenhandedness that takes account of and compensates for differences in situation and for imbalances of power."²⁴

E. THE IMPORTANCE OF RESEARCH AND INFORMATION

The importance of and the need for information on how the justice system actually functions, the needs of its users, and the research required to obtain such information was emphasized frequently in the presentations.²⁵ There have been few empirical studies conducted in Canada; and those that have been done are often ignored. Sometimes, American research is assumed to be applicable to Canada and to other societies when this may not be the case.²⁶

Constance Backhouse emphasizes that access to justice issues are multidimensional and require diverse strategies.²⁷ Reliable information is required regarding both the dimensions of the problems and the strategies that might be employed to address them. Diana Lowe discussed the Canadian Forum on Civil Justice’s ambitious review of the administration of civil justice.²⁸ Still underway, the project called "Civil Justice System and the Public" will involve a variety of stakeholders, particularly members of the Canadian public, in identifying possible changes to the administration of civil justice.²⁹

England and Scotland were cited as jurisdictions that have been proactive in attempting to determine how and why citizens use, or fail to use, the justice system. Studies have addressed such questions as: What prompts citizens to take action? What prevents them from taking action? How do people obtain advice? Why do they fail to obtain advice? These studies have directed attention to the multiple problems an individual may face and the importance of legal information and timely access to that information to allow for effective intervention.³⁰

In his foundation paper, Macdonald stressed that every study of access to justice for the past 15 years has concluded with a call for more research and information, and that the challenge has not been taken up in any comprehensive way. Macdonald argues that we do not really know the legal needs of the public although such knowledge is essential both for understanding problems and for providing solutions.

Various models for the advancement of empirical research on access to justice were discussed and the importance of timely and empirically based reports was emphasized. National indicators on the availability of criminal and civil legal aid services need to be supplemented by careful analysis of trends. Analysis is required with respect to both provincial and federal access to justice priorities. The study of access to Ontario law schools in the face of steep rises in tuition fees, which is being conducted with support from both the Law Foundation of Ontario and the Law Society of Upper Canada, fits well within an access to justice research agenda.

The legal profession should take a leadership role, bringing together concerned members of the judiciary, socio-legal scholars, public policy researchers and, most importantly, members of the public to both study and promote access to justice.³¹ Such work would have the goals of making the justice system both more efficient and more equitable by supplying government and private decision-makers with the results of objective, empirically based, analytic research. Public discussions of access to justice and potential changes to the legal system are required to
identify and evaluate policy options and to bring together stakeholders to debate alternative solutions to policy problems. Discussions during the symposium and consultation identified three broad areas for programmes and research, including policy analysis, empirical studies and pilot projects, on the various aspects of access to justice.

1) Courts, Administrative Agencies and Other Forms of Dispute Resolution

This agenda would focus on issues that are closely related to the functioning of the courts, administrative agencies, and other mechanisms for dispute resolution. It would concentrate on issues such as federal and provincial funding and the provision of quality-assured, criminal and civil legal aid; unrepresented litigants; access to lawyers and paralegals; and new models of court administration, including case management and mandatory mediation.

2) Administration of Justice

This agenda would focus on a number of more wide-ranging issues involving the administration of justice. These include legal needs and information, the role of technology, access to legal education and the legal profession, the decline in the numbers of lawyers practising law for lower income citizens, assessment of legislation from an access to justice perspective (audits), issues of diversity, and pro bono models of delivery.

A pilot project might explore the utility of using the Internet to provide legal information, and to make accessible forms and pleadings for citizens involved in proceedings before the Small Claims Courts of Ontario, the Provincial Court (Family) and tribunals such as the Ontario Rental Housing Tribunal. Assessment of the quality of appointments to the provincial courts and to the various tribunals, particularly those most affecting the lives of lower income citizens (e.g. the Social Assistance Review Board, the Ontario Human Rights Commission and the Ontario Rental Housing Tribunal) was also identified as a potential research topic.

3) Justice and Civic Society

This agenda would focus on the roles that lawyers and judges, both as individual citizens and collectively, play in the revitalization of public goods, including education, health care, protection of the environment and the social safety net. It would look at such areas as child poverty, homelessness, and the plight of our First Peoples. It would examine the role of litigation and rights assertion in achieving social justice and the ways in which lawyers can bolster accountability in public decision-making processes and build trust in representative politics.

F. CONCLUSION

The papers in this volume reflect the varied and complex issues included within the discourse of access to justice. The Macdonald paper provides a detailed mapping of the many ways in which access to justice issues have been viewed in Canada over the last decades and links these views to principal international developments. His paper concludes with "Prospects for Access to Justice" at the dawning of the new century. Backhouse analyzes the historical roots of intolerance and exclusion in Canada and how these practices have cast a shadow upon the present. She discusses the implications for access to justice of such exclusion and some strategies for redress.

Galanter explains the evolution of the concept of access to justice from its exposition in Cappelletti's Florence project in the 1970s. He demonstrates how the frontiers of access to justice shift as understandings of both access and justice evolve. Although proponents of access to justice initially sought to expand opportunities for corrective justice, the shifting frontier is now tending to collapse distinctions between corrective and distributive justice.

The Stein and Cook paper focuses on two factors that con-
tribute to citizens’ inability to speak the language of justice in everyday life: first, the conflict between normative theories of justice and efficiency and second, different understandings of the meaning of justice. The authors urge the development of a "new legal vernacular" that would buttress the reality of access to justice to promote: the reform of legal content and institutions; changes in legal culture to focus on the access of citizens as a right; and the education of citizens so that their participation in the legal system becomes rearticulated as a duty of citizenship.

The Orchard and O’Grady paper focuses on the transformation of legal services through legal aid in England and Wales over the last decade, assessing the strengths and weaknesses of the changes and the evolution of the current system. Finally, there are shorter comments by Kritzer and Arthurs. Kritzer focuses on the difficulty of providing access to justice for the middle class. Arthurs emphasizes the limits of litigation as a social justice and access to justice strategy.

The papers offer concrete examples and recommendations and strategies for the future, framing aspects of access to justice in terms of legal and political systems and the larger society. Some aspects raise intractable problems involving the assessment of competing values and trade-offs in terms of use of resources. At the same time, they demonstrate that "one cannot think about justice without thinking about access to justice."

Endnotes

1 The Symposium owed much to the energy and vision of Ron Manes, Chair of the Access to Justice Committee and the Law Foundation.

2 Session Chairs and discussants included: What is Access to Justice? Chair: Justice Stephen Goudge, Ontario Court of Appeal; Discussant: Professor Hazel Genn. The Lawyer as Citizen, Chair: Justice Juanita Westmoreland Traoré, Cour du Québec; Discussants: June Callwood and Thomas Berger. Models of Legal Service Delivery, Chair: Mark Freiman, Deputy Attorney General of Ontario; Discussants: Mark Benton, Executive Director of the Legal Services Society, British Columbia; Denis Jacques, former head of the Barreau du Québec; Esther Lardent, President of The Pro Bono Institute, Washington, D.C.; Angela Longo, President and CEO, Legal Aid Ontario. More Litigation/More Justice? Chair: Nathalie Des Rosiers, President of the Law Commission of Canada; Discussants: Professor Harry Arthurs, Osgoode Hall Law School; Professor Herbert Kritzer, University of Wisconsin; Justice Albie Sachs, Constitutional Court of South Africa was the keynote speaker at the dinner on May 28, 2003.


4 Marc Galanter, “Access to Justice as a Moving Frontier”, this collection [Galanter].

5 Constance Backhouse, “What is Access to Justice?” this collection [Backhouse].

6 Ibid.

7 In her paper for this book, Stein provides other insights regarding access to justice and citizens: Janice Gross Stein & Adam Cook, “Speaking the Language of Justice: A New Legal Vernacular”, [Stein & Cook].

8 Related points are discussed in Macdonald, supra note 3.

9 Macdonald, supra note 3.

10 Stein & Cook, supra note 7.

11 Herbert Kritzer, “Access to Justice for the Middle Class”, this collection [Kritzer] and Macdonald, supra note 3.

12 Macdonald, supra note 3.


14 Precise comparisons are difficult, but the American organization Equal Justice made an estimate of per capita spending on civil legal aid in 2000 as follows: US $700, France $4,500, New South Wales $5,12, Ontario $7,06, Quebec $7,07, England & Wales $26. Online: <www.equaljusticewin.org>.


16 Kritzer, supra note 11.

17 See online: <http://www.lawelp.org>.

18 Stein & Cook, supra note 7.

19 Macdonald, supra note 3.


25 Orchard & O’Grady, supra note 13
26 W.A. Bogart, Consequences: The Impact of Law and its Complexity (Toronto: University of Toronto Press, 2002).
27 Backhouse, supra note 5.
31 Macdonald, supra note 3, underlines the assault on the policy development sector in Canada during the last decade with branches of government departments devoted to policy and planning severely scaled back as well as independent and (quasi-independent) public policy research resources devastated by governments with Law Reform Commissions, Economic and Social Councils, advisory boards in many cases eliminated.
32 e.g. the California Commission on Access to Justice, which is supported by the State of California, the State Bar of California, the California Judges Association, the California Chamber of Commerce, and various other organizations; the Texas Access to Justice Commission, supported by a variety of state legal organizations; and the Rand Institute for Civil Justice, supported by grants from corporations, trade and professional associations, and by government grants.
33 Stein & Cook, supra note 7.