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Public Confidence and the Civil Justice System: What do we know about the issues?

Prepared for
Justice Policy Advisory Subcommittee on Public Confidence
Alberta Justice

by

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The Canadian Forum on Civil Justice has been asked to develop a discussion draft concerning issues of public confidence in the civil justice system. We are providing an overview based primarily on a report we have already published: *Public Perceptions of the Role of the Canadian Judiciary*, which is available on line at <http://www.cfcj-fcjc.org/publications-cjsp.htm> . This should not be considered a full response to all of the points and questions associated with “ Work Plan Development, Recommendation #2” of the Justice Policy Advisory Committee Public Confidence Subcommittee. A full response would require a focused research project, and perhaps should be considered as a further recommendation from this subcommittee.

The conclusions we draw are based on examination of 244 Canadian and international published information items and a special analysis of relevant data from the recently conducted *Civil Justice System and the Public* project.¹ Although that report focuses on perceptions about the judiciary, the results uncovered a lack of reliable information and the related findings are also relevant to issues of public confidence in the civil justice system.

We will address the following discussion points in this overview:

- Public opinion on justice systems: What we know, what we don't know and why.
- Is there a crisis of public confidence in the civil justice system?
- Recommendation for action

**1. Public opinion on justice systems:
What we know, what we don't know and why**

We identified three broad categories of sources that provide information about public perceptions of Canadian justice systems: large scale polls and surveys; opinion-based commentary; and smaller research studies. Each type of information source contains some items that contribute information of some value, but overall a close examination reveals more gaps in knowledge than reliable answers.

A. Large scale polls and surveys

Opinion polls and other large-scale surveys are generally relied on as the primary sources of evidence about public views of the justice system in Canada and internationally. There is a strong tendency to assume the results are accurate. However, the quality of polling results is tied to the technical and mathematical assumptions of random population representation, which are inevitably difficult to meet in practice. Polls asking about public opinion of “the justice system” sometimes do not meet any of the following reliability and validity assumptions:

¹ Some of our subsequent discussion does include non-Canadian citations as eliminating these at this point would be time consuming.

- The questions that need to be asked are known; the issues are identified and agreed upon; and there is a shared understanding of the concepts/definitions related to these.
- The range of possible answers to the questions is known;
- The questions posed are neutral and do not encourage any response over another;
- All respondents will understand and interpret the questions in the same way as the researcher;
- All respondents will answer truthfully;
- Those who do answer will be representative of all sectors of the general public.

An examination of major polls from Canada, France and the USA led us to conclude that polls and surveys about justice systems, in Canada and elsewhere, fail to meet most of the technical assumptions of polling. Consequently, the degree to which the resulting information can be considered reliable and valid is seriously undermined. We identified the following common violations of these technical assumptions in the polls that we reviewed:²

- ***There are no clearly identified concepts.*** Questions seldom offer any definition of “justice system.” The exceptions are the rare occasions when the research focuses specifically on “civil justice”, which even then may not be clearly explained. “Courts” is the term generally used as the next level of inquiry after “justice system.” It is almost never defined. Results may be interpreted to apply to specific components of the system, such as the judiciary, but the vagueness of the data does not justify such conclusions. The same points can be made regarding questions about “the legal profession.”
- ***There is no shared understanding of the questions:*** Without clear concepts at the outset it is impossible that all respondents will interpret questions in the same way. If the question posed asks merely about “the justice system” we do not know which aspect of the system the respondent is considering when providing an answer. This being the case, the range of possible answers cannot be known.
- ***Most polls/surveys use non-neutral statements*** to pose several positive and negative versions of a question about the same kind of attitude. Responses to

² The summary of problems offered here is developed by Stratton, but echoes the critique of other researchers who have also pointed out problems with the validity of this body of research (Compas Inc., 2002, Doob, 1995; Kopstein, 1985; Moore, 1981; Parker, 1998; Roberts, 2004; Wain, 1996).

such questions are frequently contradictory. Respondents may tend to agree with a non-neutral statement where there is any reasonable possibility that it is true.³

- ***All sectors of the public do not appear to be represented:*** Polls and surveys (regardless of topic) routinely report response rates of less than 50% of the original target group. In addition, a high number of respondents decline to answer certain questions even though they have agreed to take part in the survey. Individual question non-response rates of between 20-50% are common, but generally not noted in reports. Respondents' reasons for not answering questions are seldom investigated.⁴

In addition to the four areas of technical polling violations addressed above, there are also a number of other problems relating to large-scale surveys and polls focussing on justice systems.

- As Roberts (2004) notes, there is no central depository for justice system polls and surveys. They are difficult to identify and commonly even harder to obtain. Often all that is available is a report on the research rather than the original results. This raises the questions of what is reported, what is left out, and why?
- Questions tend to be posed in different ways in different polls and surveys. Variations in how questions are asked produce different results.
- Questions tend to lack specificity and often fail to break down the different components of the system. When specific components of justice are asked about, the focus is usually on the criminal system.
- As major polls tend to target the general population, most respondents will not have been personally involved with the justice system, although some will draw on personal experience when answering. Opinions likely differ between these groups, but unless carefully designed to capture such information, surveys do not allow for this.

Such consistent and serious flaws in large-scale research into public opinions on Canadian justice systems raises major questions about what we know in general. The failure to define which aspect of the system we are inquiring about means that there is almost no knowledge from large-scale research that can be said to relate specifically to the civil justice system. In light of these problems with poll and survey results, any conclusions have to be considered tentative. A review of reported results does, however, allow some relevant and probably fairly sound observations about public understanding of the justice systems in general. Although not directly informative about

³ To use one example, the majority (75%) of the public in the much cited Environics Research Group (1987) poll agree that the law treats the average Canadian fairly and 75% also agree that the law favours the rich. Compas Inc. (2002) report that respondents agreed with all of the attitude statements.

⁴ The poll conducted by Compas Inc. (2002) does draw attention to this issue.

the level of public confidence in the civil justice system, this information is potentially helpful in evaluating confounding issues that need to be unravelled:

- ***Poll respondents do not appear to make any clear distinctions between the roles, organization, and processes of the civil and criminal systems.*** Generally, major population polls do not ask them to do so (Compas Inc., 2002; Environics, 1987; Ipsos, 2004; Statistics Canada, 2004). If left to define “the justice system” for themselves the public do so in terms of criminal justice (Genn, 1999; Wain, 1996) and most specific poll questions focus on criminal issues (Roberts, 2004). Members of the public do not seem overly concerned about justice issues unless prompted to consider them (Compas Inc., 2002; Wain, 1996). In response to open-ended questions about justice concerns, they do not volunteer civil justice issues and when specifically asked, have difficulty advancing any view of the civil justice system (Wain, 1996).
- ***When specifically asked to do so, members of the public voice fairly consistent, but often inaccurate, views about the incidence and consequences of crime in society.*** Their concern with crime drives the opinions they express about components of the criminal justice system such as sentencing and the parole and prison system. The public tends to believe that crime is increasing, sentences are too lenient, prison is easy, and parole violations are very high. (Roberts, 1998; St. Amand & Zamble, 2001; Statistics Canada, 2004; Tufts, 2000).
- ***Polls infrequently ask the public specific questions about the judiciary.*** The few results that are available are mixed, but generally indicate an absence of strongly negative views. They do not support the perception advanced in opinion-based discussions that there is significant and increasing public dissatisfaction with the judiciary. Results tend to suggest that the public thinks judges are generally fair, but rather out of touch with the everyday lives of those who come before them. (Genn, 1999; Roberts, 2004; McCabe, 1999).⁵
- ***We do not know from polls and surveys whether there is public understanding of, or concerns about, issues such as judicial independence, rules of evidence, and prosecutorial discretion.*** Polls do not address these issues. We do know from the research on sentencing that the public have concerns based on misconceptions, and generally lack understanding of the criminal justice process (Roberts 1998).
- ***Large polls and surveys that analyse results by social demographics consistently report differences in opinions among various groups of***

⁵ Smaller Canadian studies offer support for the conclusion that public opinion of the judiciary is more positive than negative (Boucher, 2001; Canadian Facts, 1996), but polls in France report high and increased public dissatisfaction with the judiciary (Ipsos, 2000; SOFRES, 2004). The researcher reviewing the French Material commented that this is likely related to highly publicized scandals involving French politicians and other prominent persons.

public. Ethnicity/race, education, political affiliation, income, age, gender, and geographical location are all reported as having an effect on attitudes and opinions. Age appears to have a linear effect on views with confidence in the police increasing with age, while confidence in the courts diminishes. There is little agreement among studies about the degree or direction of other effects (Compas Inc., 2002; Fletcher & Howe, 2000; Noreau, 2003; Roberts, 1998; Statistics Canada, 2004; Tufts, 2000).⁶

B. *Opinion-based commentary*

Numerous sources of discussion about public opinion of, and confidence in, the justice system are at core, opinion-based commentary that is more concerned with “what we think the public thinks” than in actually investigating the views the public hold. Although such commentary can result in constructive action for change, much opinion-based material presents negative and sensationalized personal views.

Sensationalized coverage in the popular media is widely thought to be a main informant of public opinion (Lowe, et al, 2005).⁷ Distorted perspectives are fed by media coverage of extraordinary cases involving controversial decisions. While the media attacks the judiciary and other aspects of the justice system, those writing from a system perspective are equally likely to paint negative and unhelpful pictures of the media and the public.⁸ Commentary from a justice system perspective can be even more “unkind” than mainstream media concerning the ability of the public to hold reasoned and reasonable views on the administration of justice. For example, Laplante (1994, p. 3), having earlier complained about the nature of media reporting, harshly condemns the “public”:

Egged on by countless hotline agitators, a pretentious, punitive, and insecure public opinion now pretends to know what each crime deserves and cares very little about the offender. Thus, it dismisses in a flash an ideal criminology has taken decades to define: the possibility of a justice system which accounts both for crime and for the offender (p.3)

Commentary that berates and dismisses public opinion is not likely to be helpful in increasing public confidence. However, a substantial amount of opinion-based commentary focuses on finding solutions to a perceived crisis of public confidence in our justice systems. Many innovative and potentially useful ideas can be found within this material if we can, in fact, conclude that there is a crisis of public confidence to address.

⁶ Compas Inc., 2002 offers a detailed and well-explained analysis of differences by group.

⁷ The report *Beyond the Headlines*, by Lowe et al (2006) provides a more detailed discussion of media coverage of the civil justice system.

⁸ There are many examples, but a particularly interesting publication is “Shall We Dance: The Courts, the Community, and the News Media. *Judicature* 80 (1), 30-42. This is the transcript of a panel debate held at a meeting of the American Judicature Society, 1996. The exchanges demonstrate both the positive and negative aspects of opinion-based dialogue.

C. *Smaller research studies*

A number of smaller, diverse projects suggest a public that is considerably more discriminating than surveys and polls assume. More detailed studies consistently find that when actually asked to do so, members of the public are able to reflect on justice issues in a discerning manner. There is, however, little consistent topic focus among these studies. In contrast to the disembodied fragments of 'public opinion' produced by poll and survey questions, participants in the *Civil Justice System and the Public* research provide rich and complex thoughts about the justice. They offer critique that is generally situated within a system context and accompanied by suggestions for change. Results tie public satisfaction to being well-informed and having a sense of involvement in and an understanding of, the legal process.

2. **Is there a crisis of public confidence in the civil justice system?**

Because we have already identified that there is a lack of reliable information concerning the state of public confidence in the civil justice system, our cautious answer to the question, "Is there a crisis of public confidence in the civil justice system?" is, "Probably." Based on our findings from the *Civil Justice System and the Public* research we can say that there is a tendency for people involved in a civil case to become disillusioned about the ability of the system to effect a fair and timely resolution to a civil justice problem.

Our participants were careful to distinguish between the actions of individuals and problems they perceived as systemic. For example, they generally held quite positive views of members of the judiciary, but identified problems with case management, procedures and decisions that were counter to real life circumstances, and the failure of mechanisms to address their concerns and complaints.

We must point out that the views of people actually involved in a civil case may differ from those of members of the public who have not had this experience. In fact, many of the participants in our study told us that their opinion of the system had changed since their involvement – they had lost the confidence they once had that the system would help them resolve their dispute. Beyond this, we suggest that there is very little reliable information available about public opinions of the *civil* justice system.

3. **Recommendations for action**

Our review strongly suggests that we lack clear and reliable information about the level of public confidence in either our criminal or civil justice system. An important first action to take is to critically evaluate exactly what solid evidence we have to support the assumption that there is a crisis of public confidence in Canadian justice systems.

Although the problems with polling questions affect what we know about public opinion of both the criminal and civil *system*, we do have some more detailed Canadian research on public views about *crime* and specific related issues such as sentencing (Doob, 1995; Gibbs, 1996; Roberts, 1998; 2004). This research suggests that the public hold misconceptions about crime rates, sentence lengths, and how the system works in general. It also shows that education about these issues can change public opinion. This provides a place to start in taking action to better inform the public and raise confidence in the criminal justice system.

Unfortunately, we know very little at all about public opinion of the civil justice system. Both the *Civil Justice System and the Public* and other research (Compass Inc, 2002) Genn, 1999; Wain,1996) suggest that the public in general do not make clear distinctions between the processes of criminal and civil justice. Furthermore, unless they have become personally involved in a civil case, they know little of that system and do not have clear views about it. Results from the few international studies that have looked at views of the civil justice process (Genn,1999⁹; Lind, 1989; Matruglio, 1994; Phipps, 2004) concur with findings from the *Civil Justice System and the Public* - litigants have many criticisms of the process and frequently question its fairness. A particular concern of participants in the *Civil Justice System and the Public* research was that the procedures and rules of law do not necessarily lead to just outcomes. It is a matter of concern that public confidence in the civil justice system seems to decline with actual involvement.

So, what can be done to improve the current state of knowledge about public confidence in the civil (and criminal) justice system? Clearly, a better understanding of the limited amount of available empirical evidence would be helpful and more focussed research is much needed. We offer several suggestions for future action in both of these areas.

Learning from effective practices in place

Some of the commentary we reviewed focuses on taking action in response to a perceived crisis of public confidence in justice systems. There are recommendations within this international literature that are useful in creating a climate for the exchange and creation of reliable information (Doyle 1997; Kaye, 1999; Stanik, 1999; Schoenbaum, 2001). There are also ongoing initiatives in Canada to improve communication with the public, which it will be useful to identify and share.¹⁰

Actively informing the justice community

Our review shows that members of the justice community, like the public, rely on various media (including their own publications) for a significant portion of information

⁹ It should be noted that the research by Genn did ask the general population about problems that had potential legal solutions, especially civil issues. Hers is a well-designed study for gaining representative generalizable public input. However, participants were not asked about justice systems, but about their own problems in lay terms.

¹⁰ It is the mandate of the Canadian Forum on Civil Justice to assist in this process. Dissemination based on the data from the *Civil Justice System and the Public* project is an important part of that.

on public opinion. Articles that point out what we do and don't know and what we need to find out, would be helpful.

Actively informing the public

There is considerable debate about the role of the media in informing the public. We recommend the development of strategies both for stronger collaboration with the media as well as direct communication with the public. Interestingly, public participants in the *Civil Justice System and the Public* research, who were unaware of actual ongoing initiatives, recommended educating children in school as the way to increase future public understanding.

Designing new research

More research is clearly needed to address the many gaps that exist in current evidence about our justice systems in general. All research approaches have advantages and disadvantages and using a combination of methods is beneficial to compiling reliable information. We offer the following suggestions:

- *Improve quantitative designs:* despite inherent limitations, well-designed general population polls and surveys can provide important information. Action should be taken to encourage better design of future polls and large-scale surveys that will be conducted. Defining concepts and designing useful questions about the justice system and its components is vital.¹¹ Awareness needs to be raised within justice departments across Canada, as well as among academic and commercial researchers. There are two major challenges to achieving this goal which need to be kept in mind: there are few socio-legal researchers within the justice community who can assist in the design of research; and social researchers outside of the justice community have no greater understanding of the system than the public in general. To create good survey questions, both technical research skill and justice community knowledge must be combined. Encouraging partnerships with Statistics Canada and specifically the Canadian Centre for Justice Statistics is recommended.
- *Use qualitative approaches:* The research evidence that is currently available attests to the value of in-depth, qualitative approaches to understanding public perceptions and the reasons behind them. The conduct of this kind of research can simultaneously serve an educative role for participants. In-depth research, especially large numbers of interviews, can however, be expensive and time consuming to conduct and analyse. A series of focus group discussions can be an effective approach designed to include a representative range of opinions while remaining manageable in terms of time and cost.¹²

¹¹ The Canadian, inter-governmental Institute for Citizen-Centred Service has developed and made available the "Common Measurement Tool" intended to improve the design and consistency of and survey questions used for the purposes of evaluation. Although the items are not directly relevant to justice issues, the tool does provide a guide to research aimed at measuring citizen satisfaction.

¹² Frank Luntz (1994), president of an American polling company, provides an excellent discussion of the limitations of polling and the advantages of adding qualitative research, especially the use of focus groups.

- *Combine methods:* If ways can be found to add in-depth components to large-scale surveys, as for example with Genn (1999), the outcome is generally significantly enhanced. Similarly, survey style questions may be combined with interviews and focus groups to ensure some systematic background data. A well-designed questionnaire used as an introduction to a focus group discussion, can be a particularly effective tool.
- *Create research partnerships:* Effective research designs require more than technical skills. The community commissioning the research and the community to be researched, both hold knowledge that is vital to effective research design. Creating partnerships to develop research is, in our view, essential to creating reliable and useful empirical evidence.

Increasing the awareness of, and capacity for, critically reflective socio-legal research will encourage evaluation of existing knowledge and lead to more research of an improved quality. A reliable base of information is needed in order to understand the degree of public confidence in the civil justice system and the reasons for that. Gaining such understanding will allow us to develop effective policy for reform in problem areas that are identified.

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