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## What is Access to Justice?

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## What is Access to Justice?

### 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.

### Keywords

Justice, Administration of; Due process of law

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### Abstract

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## What is Access to Justice?

TREVOR CW FARROW\*

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.

L'accès constitue le problème le plus brûlant du jour en matière de justice. Cette question est devenue la principale préoccupation de la majorité des intervenants du monde juridique – gouvernements, organismes de réglementation, associations du barreau, chercheurs, éducateurs. Il est grand temps qu'elle attire davantage l'attention des utilisateurs eux-mêmes du système : le public. Compte tenu de toutes ces préoccupations, quel est le véritable sens de l'expression « accès à la justice », en particulier du point de vue du public? En plus de passer en revue la documentation et les politiques afférentes, cet article cherche à définir l'accès à la justice dans une perspective axée sur le public. Il y arrive principalement par l'analyse d'un sondage récent sur l'opinion du public relativement à la justice. Cette étude s'insère dans une mouvance récente de documentation et de réformes ayant pour but de placer le public carrément au centre du système judiciaire.

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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, BC, 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

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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. Several students in the Osgoode Public Interest Requirement program participated in the interview aspect of this project as well. I am grateful to Alicia Jaipersaud for research assistance. Les Jacobs also provided early comments on the interview questions. I am grateful to Professors Jamie Cameron and Stepan Wood for very helpful editorial comments on drafts of this article. 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/Principal 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 also needs 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?

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 what we—the insiders of the system—should do to improve access to justice. 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>

1. 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, WA Bogart & Frederick H Zemans, eds, *Access to Justice for a New Century – The Way Forward* (Toronto: LSUC, 2005) at 19 [Macdonald, "Access to Justice in Canada"] [Bass, Bogart & Zemans, *Access to Justice for a New Century*]. See also Trevor CW Farrow, *Civil Justice, Privatization, and Democracy* (Toronto: University of Toronto Press, 2014). ch 2, 7 [Farrow, *Civil Justice*]; Trevor CW Farrow, "Sustainable Professionalism" (2008) 46:1 Osgoode Hall LJ 51 at 96 [Farrow, "Sustainable Professionalism"]; Trevor CW Farrow, "Dispute Resolution, Access to Civil Justice and Legal Education" (2005) 42:3 Alta L Rev 741. For further access to justice discussions, see e.g. George C Pavlich, *Justice Fragmented: Mediating Community Disputes under Postmodern Conditions* (New York: Routledge, 1996) at 16-41; Roderick A Macdonald, "Access to Justice and Law Reform" (1990) 10 Windsor YB Access Just 287; Roderick A Macdonald, "Whose Access? Which Justice?" (1992) 7:1 CJLS 175; Marc Galanter, "Access to Justice as a Moving Frontier" in Bass, Bogart & Zemans, *Access to Justice for a New Century*, supra at 147-52; Allan C Hutchinson, ed, *Access to Civil Justice* (Toronto: Carswell, 1990); Michael Trebilcock, Anthony Duggan & Lorne Sossin, eds, *Middle Income Access to Justice* (Toronto: University of Toronto Press, 2012). For a historic discussion of some of these issues, including systemic inequalities, see WA Bogart, *Courts and Country: The Limits of Litigation and the Social and Political Life of Canada* (Toronto: Oxford University Press, 1994) at 107-24, cited in Janet Walker et al, ed, *The Civil Litigation Process: Cases and Materials*, 6th ed (Toronto: Emond Montgomery, 2005) at 36-44.
2. 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: <<http://www.cfcj-fcjc.org/action-committee#NAC>>); Canadian Bar Association Access to Justice Committee Final Report, *Reaching Equal Justice: An Invitation to Envision and Act* (Ottawa: Canadian Bar Association, November 2013) [CBA, *Reaching Equal Justice*]; Law Commission of Ontario Final Report, *Increasing Access to Family Justice Through Comprehensive Entry Points and Inclusivity* (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* (Windsor: National Self Represented Litigants Project, Faculty of Law, University of Windsor, 2013) [Macfarlane]; Trevor CW 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: Association of Canadian Court Administrators, March 2012) [Farrow et al, *Addressing the Needs*]. For earlier public-centred reform projects of the Canadian Forum on Civil Justice, see e.g. Mary Stratton, "Alberta Legal Services Mapping Project: An Overview of Findings from Eleven Judicial Districts" (Toronto: Canadian Forum on Civil Justice, 2011); Jim Cresswell & Mary Stratton, "The Civil Justice System and the Public Project: Family Court, Coast to Coast" (Edmonton: Canadian Forum on Civil Justice, 2008). See also Ontario Civil Legal Needs Project Steering Committee, *Listening to Ontarians* (Toronto: Ontario Civil Legal Needs Project Steering Committee, 2010) [Ontario Civil Legal Needs Project, *Listening to Ontarians*]; Jamie Baxter & Albert Yoon, *The Geography of Civil Legal Services in Ontario* (Toronto: Ontario Civil Legal Needs Project Steering Committee, 2011), online: Law Society of Upper Canada <<http://www.lsuc.on.ca/WorkArea/DownloadAsset.aspx?id=2147486236>> (report of the mapping

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 discussion over the past number of years,<sup>3</sup> the importance of understanding the direct needs of those who use the system, as opposed primarily to those who provide it, is only now starting to be appreciated.<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. The public, which uses the system, 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 uphold 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

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phase of *Listening to Ontarians*). For a recent collection of court and tribunal related reform discussions, see Trevor CW Farrow & Patrick Molinari, eds, *The Courts and Beyond: The Architecture of Justice in Transition* (Montreal: Canadian Institute for the Administration of Justice, 2013).

3. See e.g. Ab Currie, "A National Survey of the Civil Justice Problems of Low- and Moderate-Income Canadians: Incidence and Patterns" (2006) 13:3 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 et al "Everyday Legal Problems and the Cost of Justice in Canada" (Toronto: Canadian Forum on Civil Justice, 2014) [forthcoming].
4. See also Farrow et al, *Addressing the Needs*, *supra* note 2 at 28-30.
5. The results of this study have already been referred to in two recent national initiatives. See Melina Buckley (address delivered at the Canadian Bar Association Envisioning Equal Justice Summit, Vancouver, 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 30, n 41; 31, n 56, 60; 32, n 69; 37, n 154; Canadian Forum for Civil Justice, online: <[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)> [Action Committee, *A Roadmap for Change*].
6. 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*, RSO 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 ... ." See Canadian Judicial Council, *Administering Justice for the Public* (Ottawa: Canadian Judicial Council, 2007) at 1.



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

Following this introduction, Part I briefly documents the current access-to-justice problem that exists in this country.<sup>7</sup> Doing so is necessary not only to demonstrate the importance of thinking about access to justice generally, but also to identify some of the important elements and causes of challenges facing access to justice as they relate to the people directly involved in this study. Part II introduces the study, and in particular, its background and methodology. Part III then reports 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, I have chosen to include throughout this part of the article answers from respondents that tend fairly to represent a series of ten themes that emerge from the study. I also, in this part, provide some reflections and brief analysis about the various themes and survey responses. In Part IV, I conclude by identifying two overall themes that run through the study. Finally, in the Appendix I present a table setting out survey locations, number of people approached, number of respondents, and socio-economic status of the neighbourhood. I also present three figures summarizing responses to selected survey questions.

## 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. Beverley McLachlin, the Chief Justice of Canada, recently stated that “we do not have adequate access to justice in Canada.”<sup>8</sup> Similarly, according to Justice Thomas Cromwell of the Supreme Court of Canada, 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

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7. 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.

8. Rt Hon Beverley McLachlin, “Forward” in Trebilcock, Duggan & Sossin, *supra* note 1 at ix.

view.”<sup>9</sup> And more bluntly, the former Chief Justice of Ontario described the situation as a “crisis.”<sup>10</sup>

The evidence-based research on access to justice 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-centered study is to recognize that almost half of the population of Canada will experience some kind of law-related problem over a given three year period.<sup>12</sup> As the Canadian Bar Association (CBA) recently stated, this fact suggests that “over the course of a lifetime almost everyone will confront a justiciable problem.”<sup>13</sup> It is for this reason that we should all care about and understand, at least to some extent, what justice is and how to access it, as we do in the case of health care. 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; 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

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9. Hon Thomas A Cromwell, “Access to Justice: Towards a Collaborative and Strategic Approach” (2012) 63:1 UNBLJ 38 at 39.
  10. Hon R Roy McMurtry, “Remarks” (address delivered at the Civil Justice Reform Conference, 7 December 2006) at 3-4, online: Canadian Forum for Civil Justice <<http://cfj-fcjc.org/docs/2006/mcmurtry-en.pdf>>. More recently, Justice DM Brown described the civil justice system as “sinking” and having “a life of its own” that “grinds relentlessly on and downward.” See *York University v Markicevic*, 2013 ONSC 4311 at 8, 229 ACWS (3d) 888.
  11. For recent and useful summaries of this research, some of which I rely on for this part of this article, see *e.g.* Action Committee, *A Roadmap for Change*, *supra* note 5 at 1-5; CBA, *Reaching Equal Justice*, *supra* note 2 at 1-13.
  12. 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 [Currie, *Legal Problems*].
  13. CBA, *Reaching Equal Justice*, *supra* note 2 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, *Legal Problems*, *supra* note 12 at 5-6; Hazel Genn et al, *Paths to Justice: What People do and Think About Going to Law* (Oxford, UK: Hart, 1999) at v-vi, 12, 21-66.
  14. 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, *Legal Problems*, *supra* note 12 at 23-26; Pascoe Pleasence et al, *Causes of Action: Civil Law and Social Justice* (Norwich, UK: Legal Services Commission, 2004) at 14-31 [Pleasence et al, *Causes*]. See also Action Committee, *A Roadmap for Change*, *supra* note 5 at 2.

social assistance.<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, et cetera—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 that, for most Canadians, legal assistance is too costly and therefore out of reach.<sup>19</sup> Again as recognized by Chief Justice McLachlin,

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 United States, 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 people are uncertain of their rights, do not

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15. See *e.g.* Currie, *Legal Problems*, *supra* note 12 at 49-51; Pascoe Pleasence et al, “Multiple Justiciable Problems: Common Clusters and their Social and Demographic Indicators” (2004) 1:2 *J Empirical Legal Stud* 301; Pleasence et al, *Causes*, *supra* note 14 at 37-44. See also Action Committee, *A Roadmap for Change*, *supra* note 5 at 3.
  16. See *e.g.* Currie, *Legal Problems*, *supra* note 12 at 73; Nigel J Balmer et al, *Knowledge, Capability and the Experience of Rights Problems* (London: Public Legal Education Network, 2010) at 25-26, 42-43 [Balmer et al]; Mary Stratton & Travis Anderson, *Social, Economic and Health Problems Associated with a Lack of Access to the Courts* (Edmonton: Canadian Forum on Civil Justice, 2006). See also Action Committee, *A Roadmap for Change*, *supra* note 5 at 3.
  17. See Currie, *Legal Problems*, *supra* note 12 at 33. See also Action Committee, *A Roadmap for Change*, *supra* note 5 at 3.
  18. See *e.g.* Currie, *Legal Problems*, *supra* note 12 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 also Action Committee, *A Roadmap for Change*, *supra* note 5 at 3.
  19. For a recent summary of the gap between what most people can afford and what legal services cost and are offered, see Action Committee, *A Roadmap for Change*, *supra* note 5 at 3-4.
  20. McLachlin, “Forward” in Trebilcock, Duggan & Sossin, *supra* note 1 at ix.
  21. Russell Engler, “Connecting Self-Representation to Civil Gideon: What Existing Data Reveal about when Counsel is Most Needed” (2010) 37 *Fordham Urban LJ* 37:1 at 40, citing Legal Services Corporation, *Documenting the Justice Gap in America: The Current Unmet Civil Legal Needs of Low-Income Americans* (Washington, DC: Legal Services Corporation, 2009). See also Action Committee, *A Roadmap for Change*, *supra* note 5 at 4.

know how to handle legal problems, are afraid to use the legal system, think nothing can be done, or believe that seeking justice will cost too much money or take too much time.<sup>22</sup> As such, the cycle continues. Typical legal problems are experienced by a majority of Canadians, who do not have adequate resources to fund legal assistance. As a result, a significant portion of legal needs go unmet. The problem is compounded by the additional clustering of other legal, social, and health related problems, all of which come with significant costs to the individual and the state.

In sum, this is our crisis of access to justice, 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 efforts to reform access to justice. That is the point of this study.

## II. THE STUDY

### A. BACKGROUND

As a starting premise and building on the need for a public-centered approach to access-to-justice reform, the important—and distinguishing—point about this study is that it is not designed to look at opinions about justice and access to justice of providers of the system nor 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 any three year period and all of whom, at some point in their lifetime, will experience

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22. See *e.g.* Currie, *Legal Problems*, *supra* note 12 at 55-56, 55-67, 88. See also Action Committee, *A Roadmap for Change*, *supra* note 5 at 4.

23. See also Action Committee, *A Roadmap for Change*, *supra* note 5 and accompanying text.

24. See Currie, *Legal Problems*, *supra* note 12 and accompanying text.

25. See *e.g.* Julie Macfarlane & Michaela Keet, “Civil Justice Reform and Mandatory Civil Mediation in Saskatchewan: Lessons from a Maturing Program” (2005) 42:3 *Alta L Rev* 677. More recently, see Macfarlane, *supra* note 2.

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>

## B. METHODOLOGY

This study took place over an eight-month period between November 2012 and May 2013.<sup>30</sup> Subjects were approached in person, in selected public places in the Greater Toronto Area, by a team of two or three student researchers. They were invited to answer the following open-ended questions:

- 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?
- 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>

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26. See Currie, *Legal Problems*, *supra* note 12 and accompanying text.

27. 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.

28. 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 LF Felstiner, "Lawyers and Legal Consciousness: Law Talk in the Divorce Lawyer's Office" (1989) 98:8 *Yale LJ* 1663; Leslie A Jacobs, "Legal Consciousness and the Promise of Law & Society" (2003) 18:1 *CJLS* 61.

29. See *e.g.* sources cited in notes 1 and 2, above, and accompanying text.

30. A pilot study was conducted during this period to refine the interview questions and process.

31. 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.

The questions were deliberately broad and 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 20 to 20 minutes. Of the 99 interviews, 70 were audio recorded, 20 were videotaped,<sup>33</sup> and 9 were neither audio recorded nor videotaped but the interviewers took written notes.

To elicit relatively diverse opinions and ideas about access to justice, interviews were conducted at 17 public locations in Toronto, Brampton, and Mississauga.<sup>34</sup> These locations were chosen for their diverse socioeconomic characteristics<sup>35</sup> and high pedestrian traffic.<sup>36</sup> Participants of various ages, genders, and ethnic backgrounds were approached to participate in the study.<sup>37</sup> The Appendix contains further information about the study methodology.

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32. This is a good 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* (Toronto, ON: Pearson Education Canada, 2009) at 157. However, given the diversity of the population of the Greater Toronto Area, specifically within the study's chosen interview locations, the results of this study should be relevant to researchers and policy-makers in similarly diverse jurisdictions within Canada and abroad.
33. 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: Canadian Forum for Civil Justice <<http://www.cfcj-fcjc.org/what-is-access-to-justice>>.
34. See Table 1 in the Appendix to this article.
35. See David J Hulchanski, *The Three Cities within Toronto: Income Polarization among Toronto's Neighbourhoods, 1970-2005* (Toronto, ON: Cities Centre Press, 2010). This report was very helpful in terms of identifying relevant communities and locations for this study.
36. See Patrick Cain, "Interactive maps: Toronto's worst intersections for pedestrians" *Global News* (7 June 2011) online: <<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. Some locations, including around several university campuses and other locations in the Greater Toronto Area, were chosen based on the researchers' anecdotal knowledge of highly trafficked areas.
37. The interviewers attempted to approach all individuals without bias toward demographic characteristics. The demographic variation in the sample was a result of individuals' willingness 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 Table 1 of the Appendix to this article.

### III. FINDINGS

From the 99 interviews conducted, ten themes emerged that will be important for future justice-system thinking and reform. They are:

- 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;
- 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 ten 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, as some respondents indicated when asked how they define justice:

*"Shit!"*

*"Oh my God!"*

*"Shit ... 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 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.

#### A. FAIRNESS, EQUALITY, MORALITY AND ACTIVE PARTICIPATION

The first theme emerging from the responses is that justice is about fairness, equality, morality, and the ability to be an active participant in society. Set out below are some representative responses with respect to this:

*"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>38</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 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,

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



equality, morality, et cetera). 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>39</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 well-being. 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 to ensure the legal well-being of society and to catalyze a major push for legal reform.<sup>40</sup>

## B. PROCEDURAL AND SUBSTANTIVE JUSTICE

The second theme emerging from the responses is that procedural and substantive justice are both important. To date, the major focus of thought and reform related to access to justice has been procedural. Access to justice has been equated largely with access to lawyers and courts. The more legal process we provide—through lower legal fees, more lawyers, and faster and more accessible court hearings—the more we are improving access to justice.<sup>41</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 ultimately improve access to justice or simply provide 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, fair process (in the form of procedural justice and access to lawyers, police, and courts) is important, as the following responses indicate:<sup>42</sup>

*“Access to justice is ... access to lawyers.”*

*“Law enforcement.”*

*“Right to a fair trial.”*

*“Fair penalty ... just desserts.”*

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39. See *e.g.* Macdonald, “Access to Justice in Canada” *supra* note 1 at 100-101.

40. See Part IV, below.

41. 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) 46:4 Osgoode Hall LJ 773 at 777-79 (Hughes herself does not adopt this traditional, process-oriented approach). See also Action Committee, *A Roadmap for Change*, *supra* note 5 at 2.

42. A substantial number of respondents focused their responses on the criminal justice system (as opposed to the civil justice system). As a result, a moderate number of interviews focused on justice issues related to crime, police, prison, and politics.

*“Everyone’s ability to be heard.”*

*“You do the crime, you do the time.”*

Given that these procedurally focused reflections fit with much of the access to justice literature that has typically dominated traditional court- and lawyer-focused justice reform discussions,<sup>43</sup> they were not 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 sixteen 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 ... .”*

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

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43. See e.g. Hughes, *supra* note 41 at 777-79.

acceptable life: “food”, “shelter”, “security,” and “opportunities for ourselves and our kids.”<sup>44</sup> When lawyers acknowledge a collective duty to advance the cause of justice,<sup>45</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>46</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 interview 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 to that end. Our research and reform efforts therefore need to broaden their gaze in order to facilitate those justice-oriented ends.

### C. INACCESSIBILITY IS NOT CREATED EQUALLY

A strong and troubling theme—although not a very surprising one—that emerged from the study, as reflected in the responses below, is that money and class are key factors when it comes to 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.”*

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44. For earlier comments on this point, see “Facilitating access to justice,” *Law Society of Upper Canada Gazette* 16:1 (17 February 2012). See also Macdonald, “Access to Justice in Canada,” *supra* note 1.

45. See e.g. *Law Society Act*, *supra* note 6 at s 4.2.

46. For earlier comments, see Trevor CW Farrow, “The Good, the Right, and the Lawyer” (2012) 15:1 *Legal Ethics* 163 at 172; Farrow, “Sustainable Professionalism,” *supra* note 1 at 83-102; Trevor CW Farrow, “The Promise of Professionalism” in Benoit Moore, Catherine Piché & Marie-Claude Rigaud, eds, *L’avocat dans la cité: éthique et professionnalisme* (Montreal: Les Éditions Thémis, 2012) 197 at 212 [Farrow, “The Promise of Professionalism”].

These opinions reflect a very negative and problematic class-based view of justice. Far from a system that is open to all, these views indicate 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."*

*"Culture."*

*"Age."*

*"Sexual orientation."*

*"Poverty."*

*"Homeless[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, the 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>47</sup> overall public confidence in the justice system is "declining."<sup>48</sup> As questioned by the Chief Justice McLachlin, "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

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47. See *e.g.* Law Society of Alberta, *Alternative Delivery of Legal Services: Final Report* (Calgary: Law Society of Alberta, 2012) at 13.

48. See CBA, *Reaching Equal Justice*, *supra* note 2 at 6 [citations omitted].

them access?”<sup>49</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 to be, and is perceived to be, accessible to all citizens, regardless of race, class, sexual orientation, et cetera.

#### D. 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 is often related to a number of economic and social factors, including lack of knowledge and understanding. Certainly current public legal education initiatives, discussed further below,<sup>50</sup> are focused on legal knowledge and capacity,<sup>51</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 the issues raised above about money, class, vulnerability, and other equity-based concerns, the system’s tendency to alienate those for whom it was created needs to be taken very seriously and, ultimately, eliminated.

49. See 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>>.

50. See Part III.I, below.

51. 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, 2013), online: Canadian Forum for Civil Justice <<http://www.cfcj-fcjc.org/sites/default/files/docs/2013/Report%20of%20the%20Prevention%2C%20Triage%20and%20Referral%20WG%20.pdf>>.

## E. A RIGHT TO JUSTICE

The next theme emerging from the responses concerns 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?” As reflected in the responses below, the overwhelming answer was “yes”:

*“Yes, absolutely.”*

*“Yeab, of course—every citizen should have a right to justice.”*

Of the 76 people who answered this question, 74 (97%) said yes, while the other 2 respondents (3%) provided indeterminate answers.<sup>52</sup> In essence, everyone was of the view that citizens should have a right to justice.

## F. FUNDAMENTAL IMPORTANCE OF JUSTICE

Respondents were asked for their opinion as to whether justice is of fundamental importance to Canadians. Some responded vehemently in the affirmative:

*“Yes. Extremely.”*

*“Should be a number one right.”*

*“It should be equally important as our health care system ... .”*

Although slightly more mixed than opinions on whether everyone should have a right to justice, the dominant view was that yes, the justice system is of fundamental importance. Of the 74 people who answered this question, 56 (76%) said yes, 1 (1%) said no, and 17 (23%) provided indeterminate answers. The notion that the justice system may be as important as the health care system is challenging, particularly given people’s self-described ignorance of it 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 Chief Justice McLachlin, who expressed her view about the importance of justice as follows:

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52. 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).

[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>53</sup>

As the survey indicates,<sup>54</sup> in line with earlier research<sup>55</sup> and perhaps also with this statement from Chief Justice McLachlin, what counts as “justice” is a matter for interpretation and debate. However, regardless of people’s different understandings of justice, there is little debate about its importance. The respondents almost universally described justice as a “right,” and a substantial majority described it as being of fundamental importance to Canadians.

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>56</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>57</sup> That Chief

53. 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, 2014) at 5 [Action Committee, *Colloquium Report*], online: Canadian Forum for Civil Justice <[http://cfcj-fcjc.org/sites/default/files//docs/2014/ac\\_colloquium\\_web\\_FINAL.pdf](http://cfcj-fcjc.org/sites/default/files//docs/2014/ac_colloquium_web_FINAL.pdf)>.

54. See Part III.B, above.

55. See notes 41, 44, 46, above, and accompanying text.

56. 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, Juristat Canadian Centre for Justice Statistics, “Justice Spending in Canada,” 17:3, Catalogue no 85-002-XPE, online: <<http://publications.gc.ca/Collection-R/Statcan/85-002-XIE/0039785-002-XIE.pdf>> at 1. 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 [was] 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%).” See more recently Michael Trebilcock, “Report of the Legal Aid Review 2008” (Toronto: Ontario Ministry of the Attorney General, 2008) at 74. 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 also CBA, *Reaching Equal Justice*, *supra* note 2 at 11.

57. For a recent discussion of public funds and the justice system, see CBA, *Reaching Equal Justice*, *supra* note 2 at 29-31.

Justice McLachlin 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.

### G. MORE GOVERNMENT SUPPORT

Following from the previous issue, opinions about government support for justice were elicited by the question, “Should the government do more or less to promote justice for Canadians?” A clear majority of the respondents were of the view that yes, the government should do more:

*“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 ... .”*

Of the seventy-three people who answered this question, 43 (59%) said yes, 1 (1%) said no, 8 (11%) said the current level of government effort to promote justice should be maintained, and 21 (29%) provided indeterminate answers. As discussed further below, several ideas about what the government could do better to promote and support justice were provided.<sup>58</sup> However, as an overall matter, what these answers indicate is a need to reflect further on how governments spend and allocate resources;<sup>59</sup> how different kinds of services are prioritized and valued by those who may 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>60</sup> and what the public is saying they would like from their justice system.<sup>61</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 to serve the everyday justice needs of Canadians?<sup>62</sup> Those are the questions, fuelled by the kinds of answers that were

58. See Parts III.H-I, below.

59. See also notes 56-57, above, and accompanying text.

60. See Part I, above.

61. See *e.g.* Parts III.B, E-F, above, Parts III.H-I, below.

62. For current discussions of this question, see also Action Committee, *A Roadmap for Change*, *supra* note 5 at 10-20; CBA, *Reaching Equal Justice*, *supra* note 2 at 14-43.



given on this survey, that governments—and others—will need to address as we move forward in the face of important justice needs and tough fiscal decisions.

#### H. 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) often included cost, simplicity, and speed, as reflected in the following responses:

*“It’s very much profit driven.”*

*“Lawyers are way too expensive.”*

*“Finances. Finances. It’s f—ing expensive to get a lawyer, for anything.”*

*“I think time.”*

*“The time, the energy . . . .”*

*“I know horrendous stories about people seeking justice and they went eighteen, twenty 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’.”*

The respondents had a consistently strong view that the system is too complex, too slow, and too costly.<sup>63</sup> This view, which is also supported by the access to justice literature,<sup>64</sup> must clearly be a central area of concern for current justice reform initiatives.<sup>65</sup>

#### I. EDUCATION, PREVENTION AND UNDERSTANDING

Again on the issue of what can be done to improve access to justice, some of the most common ideas raised by the respondents include education, prevention,

63. 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 2 at 32, 39-40; Macfarlane, *supra* note 2 at 39. See also Action Committee, *A Roadmap for Change*, *supra* note 5 at 1.

64. See *e.g.* *supra* notes 1-2, above, and accompanying text.

65. See *e.g.* Action Committee, *A Roadmap for Change*, *supra* note 5 at 15; CBA, *Reaching Equal Justice*, *supra* note 2 at 14-43. For a recent treatment of Canadian civil justice reform efforts that looks to address these efficiency-related concerns, see Farrow, *Civil Justice*, *supra* note 1, ch 3.

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.”*

*“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>66</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>67</sup> For people to be empowered 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.

In addition to focusing on the public's knowledge, some of these responses also suggest 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>68</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>69</sup>

#### J. 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: 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.”*

*“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*

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66. Prevention, Triage and Referral Working Group, *supra* note 51 at 9. See further Richard Susskind, *The End of Lawyers? Rethinking the Nature of Legal Services* (Oxford: Oxford University Press, 2008) at 224-28; Action Committee, *A Roadmap for Change*, *supra* note 5 at 8.
67. See Action Committee, *A Roadmap for Change*, *supra* note 5 at 7-8.
68. See further Farrow, “The Promise of Professionalism,” *supra* note 46 at 202-203; Farrow et al, *Addressing the Needs*, *supra* note 2 at 50.
69. See Trevor CW Farrow, “Ethical Lawyering in a Global Community” (2013) 37:1 Man LJ 141 at 144-52. 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 the Honourable Frank Iacobucci, *First Nations Representation on Ontario Juries: Report of the Independent Review Conducted by the Honourable Frank Iacobucci* (Toronto: Ontario Ministry of the Attorney General, 2013) at para 227.

*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>70</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>71</sup> And of course cost in this context includes not only economic costs, but also health and other related social costs.

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>72</sup> For example, as one respondent indicated, one need only 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 by the Honourable Frank Iacobucci, "the justice system generally as applied to First Nations peoples ... is quite frankly in a crisis."<sup>73</sup> Although experiences clearly vary across different Aboriginal communities, Iacobucci points out that as a general matter, "First Nations people observe the Canadian justice system as devoid of any reflection of their core principles or values ..."<sup>74</sup> At least partially as a result, it is reported

70. See *supra* note 16 and accompanying text.

71. From an economic perspective, according to one UK study for example, unresolved legal problems cost individuals and the public £13 billion over a 3.5 year period. See Balmer et al, *supra* note 16 at 3 [citation omitted]. See further Pleasence et al, *Causes*, *supra* note 14, cited in Action Committee, *A Roadmap for Change*, *supra* note 5 at 3.

72. See e.g. *supra* note 14 and accompanying text, recognizing that vulnerable populations are typically more prone to legal problems.

73. Iacobucci, *supra* note 69 at para 4. See also *ibid* at para 14.

74. *Ibid* at para 26. See also *ibid* at para 210.

that “First Nations people lack knowledge and awareness of the justice system ...”<sup>75</sup> There is also widely reported discrimination against Aboriginal people when they interact with the justice system.<sup>76</sup> Further, the system is perceived “as a mechanism by which a myriad of historical wrongs have been perpetrated upon First Nations.”<sup>77</sup> If we do not address these issues, and if we continue to exclude First Nations through an inaccessible and alienating justice system, the “dysfunctional relationship”<sup>78</sup> that exists between Aboriginal communities, the justice system, and other Canadians will be perpetuated. And while these challenges facing First Nations are important, it is not just First Nations communities that experience this exclusion, inequality, and alienation. As the earlier responses make clear, numerous vulnerable groups, for various reasons, find themselves facing barriers when it comes to accessing the justice system.<sup>79</sup> The social cost of this inaccessibility to the well-being of individuals, communities, and society is 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 I hope will help to animate further justice policy thinking. As such, other than various reflections and reactions included in the context of the ten themes discussed above,<sup>80</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>81</sup>

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75. *Ibid* at para 28.

76. See e.g. *ibid* at paras 27, 214-23, 355. For further comments, see Trevor CW Farrow, “Residential Schools Litigation and the Legal Profession” (2014) 64 UTLJ [forthcoming]. Several recent initiatives have been explored to improve access to justice for aboriginal communities. See, for example, the work of the Truth and Reconciliation Commission of Canada, online: <<http://www.trc.ca/websites/trcinstitution/index.php?p=26>>. Further, for a recent collection of essays looking at the residential schools dispute resolution process, see “The Residential School Litigation and Settlement,” Special Issue, (2014) 64:4 UTLJ (forthcoming).

77. Iacobucci, *supra* note 69 at para 211.

78. *Ibid* at para 15.

79. See Parts III.C-D, above.

80. See Parts III.A-J.

81. See e.g. notes 1-2, 72, above, and accompanying text.

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 ten themes 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 accessing equality, understanding, education, food, housing, security, happiness, et cetera. It is about the good life; that is ultimately the point. The more researchers, policy-makers, and practitioners understand this, the more their efforts to reform access to justice will yield fruit. Good laws, rules, judges, educators, lawyers, and courtrooms are all important. However, these are not ends in themselves, 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>82</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>83</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, those who work within the system need to listen 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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82. Rt Hon David Johnston (address delivered at the Canadian Bar Association’s Canadian Legal Conference – The Legal Profession in a Smart and Caring Nation: A Vision for 2017, 14 August 2011) online: <<http://www.gg.ca/document.aspx?id=14195>>.

83. See *e.g.* note 1, above, 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?” Project, online: Access to Justice and the Health of Canadians, <[http://www.justiceandhealth.ca/?page\\_id=42](http://www.justiceandhealth.ca/?page_id=42)>. For commentary on these various emerging initiatives, see Trevor CW Farrow, “A New Wave of Access to Justice Reform in Canada” in Adam Dodek & Alice Woolley, eds, *Canadian Legal Ethics Stories* (Vancouver: UBC Press) [forthcoming].

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 another acknowledged, there may even be a “responsibility”<sup>84</sup> for citizens to engage more meaningfully in this discussion and debate.

Access to justice must become a topic of widespread conversation and concern,<sup>85</sup> through an engaged citizenry that is aware of and that cares about its individual and collective justice well-being. When it does—when access to justice and the legal health and well-being 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 I hope will soon become a much more reflective, and therefore universally accessible system of justice. Encouraging a broader understanding of and widespread public engagement with justice is 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>86</sup>

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84. See Part III.A, above.

85. For further discussions on this point, see Action Committee, *A Roadmap for Change*, *supra* note 5 at 24.

86. See Part III.A, above.

APPENDIX<sup>87</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>88</sup>

LOCATION	APPROACHED	RESPONDENTS	REGIONAL MEDIAN INCOME
Dundas St. / Ossington Ave., Toronto	9	5	Middle / low
Dundas St. / McCaul St., Toronto (Art Gallery of Ontario)	12	4	Middle / low
Bathurst St. / St. Clair Ave., Toronto	14	6	Very high / middle
Yonge St. / Dundas St., Toronto	22	7	Middle
Bay St. / Dundas St., Toronto	40	13	High / middle
Dufferin St. / Bloor St., Toronto	25	4	Low
Spadina Ave. / Dundas St., Toronto (Chinatown)	24	4	Middle / low

87. I am grateful to Nicole Aylwin, Bart Danko and Christian Ferraro for taking the lead on these Appendix materials.

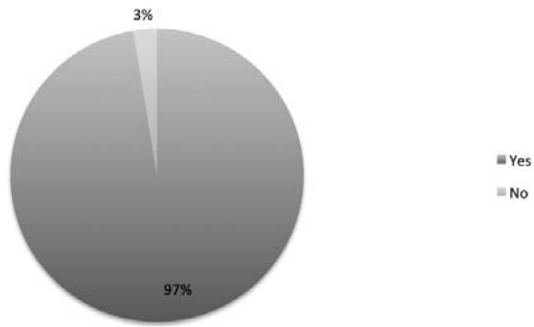
88. See Hulchanski, *supra* note 35 at 5. For the purpose of this study, “very high” includes an income average of more than 40% above the average Toronto income; “high” includes an income average of 20-40% above the average; “middle” includes an income average of 20% below to 20% above the average; “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. Where an intersection straddles the boundary of two or more income level communities, all of the income levels are indicated.



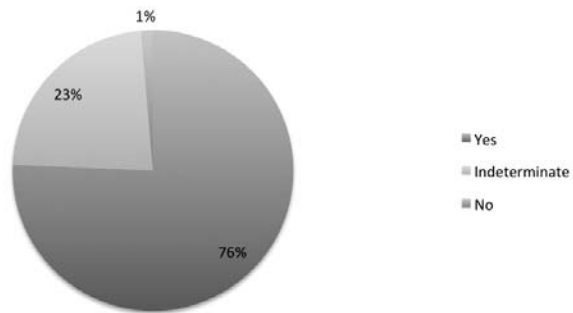
Kingston Rd. / Markham Rd., Toronto (Scarborough Village)	45	7	Low / very low
Pape Ave. / Danforth Ave., Toronto	17	5	Middle
Lakeshore Blvd. W. / Remembrance Dr., Toronto (Coronation Park)	5	3	Very high / middle
University Ave. / College St., Toronto (University of Toronto)	9	4	High / middle / low
Queen St. / Dufferin St., Toronto (Parkdale)	52	5	Low / very low
Jane St. / Finch St., Toronto	56	4	Low / very low
Sheppard Ave. / Morningside Ave. (Toronto)	17	4	Low / very low
York University, Toronto	79	14	Encompassing area is low / very low but University community members have wide range of income levels
Brampton (Gage Park, Shoppers World, Bramalea City Centre)	50	7	Suburban area not on income map
Mississauga (Sheridan College – Hazel McCallion Campus)	18	3	Suburban area not on income map
	Total: 494	<b>Total: 99*</b>	

\* As discussed earlier, this number amounted to a participation rate of 20%. See Neuman & Robson, *supra* note 32.

**Figure 1: Should citizens have a right to justice**



**Figure 2: Do you think justice is of fundamental importance to Canadians (n=74)**



**Figure 3: Should government do more or less to promote justice for Canadians? (n=73)**

