

TALKING WITH THE PUBLIC: THE PUBLIC, COMMUNICATION AND THE CIVIL JUSTICE SYSTEM*

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Origins and Aims

The civil justice system is vital to finding peaceful resolutions to disputes in Canadian society. The system deals with many civil rights and obligations that affect Canadians, such as family issues, personal injury actions, consumer claims, contract disputes, wills and estates.

In 1995, the Canadian Bar Association (CBA) formed a Task Force on the Systems of Civil Justice “to inquire into the state of the civil justice system on a national basis and to develop strategies and mechanisms to facilitate modernization of the justice system so that it is better able to meet the current and future needs of Canadians” (from the Foreword to the Task Force Report).¹ The Task Force concluded that the central issues affecting access to the civil justice system are: delay; costs associated with proceeding in the civil courts; and lack of understanding of the civil justice system. The Task Force recommended the creation of an independent organization to encourage participation from all groups involved in civil justice reform and to facilitate the exchange of information and experience in civil justice reform. The Canadian Forum on Civil Justice was established pursuant to that recommendation through a joint initiative of the Canadian Bar Association and the University of Alberta, Faculty of Law.

The Canadian Forum on Civil Justice is a non-profit, independent organization dedicated to bringing together the public, the courts, the legal profession and government in order to promote a civil justice system that is accessible, effective, fair and efficient. One initiative of the Forum is the *Civil Justice System and the Public*, a

¹ *Report of the Task Force on Systems of Civil Justice* (1996, Canadian Bar Association).

multi-disciplinary, collaborative research program that begins with the widely accepted belief that there are significant barriers which prevent access to the justice system. One significant barrier is a lack of effective communication between the system and the public. While discussion has now started about how to improve the system, the public is generally unaware of the discussion, which means that they are not involved in the reform efforts and their needs and expectations are not being voiced. We have received significant funding from the Alberta Law Foundation for an Alberta pilot of this project (\$110,000), and from the Social Sciences and Humanities Research Council for the national study which will follow (\$600,000).

The first component of the research is a study of the relationship between the civil justice system and the public,² identifying and investigating barriers and good practices in effective communication. The focus in the second component of the research will be on developing and evaluating good methods of communication between the system and the public. This will involve demonstration projects which will allow us to test communication mechanisms, with a view to providing reliable tools to measure whether new initiatives are effective at improving communication. The third component of the research will be an extensive dissemination of our findings and concrete recommendations to improve communication. Although our focus is on improving communication, the research responds to the central issues identified in the

² In Canada, what is commonly referred to as *the* civil justice system is actually a complex set of systems made up of many separate and independently governed components. Similarly, *the public* is not one homogeneous group of citizens, but comprised of many individuals and groups with different social characteristics and needs. The *Civil Justice System and the Public* research design is sensitive to these conditions.

CBA Task Force Report, and will result in improvements both to the operation of the civil justice system and meaningful public access to the system, by increasing the ability of the system to speak with, hear and respond to the public.³

This research is breaking new ground in a number of ways:

- 1) We have established a large, national partnership which includes the University of Alberta (with academic partners from a number of Faculties) and partners from the justice community including the Canadian Institute for the Administration of Justice, the Canadian Bar Association, the Canadian Judicial Council, the Canadian Association of Provincial Court Judges, the Association of Canadian Court Administrators, the Public Legal Education Association of Canada (and member organizations), Justice Canada, the Canadian Centre for Justice Statistics, the Legal Aid Society of Alberta, the Alberta Law Reform Institute and the Yellowhead Tribal Council. We have tried to ensure that we are working with representatives of all of the players involved in the civil justice system.
- 2) The extensive partnership and a collaborative approach to the research are key to our “action research” design, which involves our partners in the drafting of research questions, data collection, analysis and dissemination. By involving our partners, we

³ Our primary research questions are as follows:

- 1) What is the current state of communication between the (broadly defined) civil justice system and the public about being involved in a case in the civil justice system?
- 2) How is the communication experienced by:
 - a) people within the system?
 - (i) with each other
 - (ii) with the public
 - b) the public?
- 3) What can be done to improve communication between the civil justice system and the public?
- 4) In the process of answering the above questions, do other issues emerge that have import for other components (including agencies, systems, outcomes) of the justice system?

expect to have a high level of buy-in, and to begin promoting change just through the process of conducting the research.

3) We have chosen a qualitative research method where participants are involved in an interview that explores communication approaches and discovers effective practices as well as barriers to good communication. This approach provides rich data that will tell us much about what is working, what is not working, and how we can improve communication.

4) Finally, this is the first real evaluation of communication within the civil justice system in Canada.

The purpose of this paper is to provide information about this ongoing research and to introduce some important themes emerging from our preliminary findings in Alberta. While it is too early in the research program to draw any definitive conclusions, we consider it an important part of the collaborative process to share and reflect on these emerging issues with our partners.

The Alberta Pilot

In Alberta we began by arranging key contact meetings to explain our project and ask for support and assistance in setting up and conducting the field research. We met with chief justices, associate, and assistant chief judges in each of the court levels. We also held key contact meetings with the executive directors of the Canadian Bar Association and Legal Aid, as well as members of Aboriginal tribal councils. We received tremendous support from the Courts, the Bar, legal aid and other service providers, which have opened the doors of the civil justice system for us.

This summer we completed the data collection component of the Alberta pilot. We have conducted 80 in-depth interviews with members of the judiciary, court administration and clerks in all levels of the courts, with members of the Bar, mediators, legal aid workers, native and other court workers, public legal education providers and with members of the public who have been involved in a court case. Interviews with the public included those with experience as lay and professional plaintiffs and defendants, lay witnesses and expert witnesses. These interviews were conducted in four Alberta locations: Edmonton, Calgary, and two northern communities. The interview data is supplemented by the observation notes of the field research team.

Summary of Alberta Interviews⁴

JUSTICE COMMUNITY		THE PUBLIC	
The judiciary	15	Plaintiff	11
Court Administration	24	Defendant	4
Legal Aid	9	Plaintiff and Defendant	2
Court Support Workers	3	Witness	1
Lawyers	9	Expert Witness	1
Paralegals/agents	1	Juror	0
Librarians	0	Aboriginal Justice process	0
TOTAL INTERVIEWS	61		19

⁴ Interviews with the judiciary and court administration included all three court levels and a representation of most positions within those groups. Some court administration (especially security staff, and rural clerks) work at more than one court level. Members of the public sometimes had been involved in more than one court case, in different roles and at different court levels.

The process of analysis: Identifying themes

Our interview approach⁵ uses broad and neutral questions as a starting point for a conversation that encourages participants to reflect upon and explore their knowledge and experience of the research issues. The role of the interviewer is merely to support the participants in this process by encouraging them to expand on what they have already said. The enthusiastic level of participation in the interviews has provided a wealth of data for us to analyse. Analysing such rich data is a lengthy and complicated process. In order to develop a framework of the common threads⁶ arising in the interviews, we began with each member of the research team independently reading a sub-set of the interview transcripts and noting themes. From this we have identified a clear set of mutually recognizable themes which enable us to do a full analysis utilizing a special software package. Consulting with our partners during the analysis process will help to ensure that our conclusions properly represent the data collected. Although we still have much work to do, it is possible at this point to identify some important emerging themes from both the public and those working within the civil justice system.

To illustrate this, we will draw on three transcript examples from different participants. The transcripts are not 'tidy' like a prepared academic paper or case summary. Rather, they capture the way that people actually talk and think, illustrating how the many perspectives that contribute to the overall data allow us to see the nuances, overlaps, and contrasting views and experiences that exist about the same

⁵ Technically this method is known as a "recursive approach." It assumes that all members of any given community hold valuable knowledge about the issues that concern them, and that any initiatives for constructive change must incorporate these understandings.

⁶ We've called this a "thematic framework". The framework is attached as Appendix A.

basic issue or theme. From these transcripts we are able to discern communication barriers and misconceptions, some of the causes of these, and also, possible solutions, as you will see below.

Example One (P = participant and R = researcher)

- P: You know we do an awfully good job in our court. I can tell you without any hesitation, the people who staff the front desks of our court do an outstanding job in assisting the public with filling out forms and getting their matters heard - those people who are doing their own work, representing themselves and don't have counsel.
- R: Have they had special training for this?
- P: On the job training. [AB64(11), Judiciary]

Example Two

I think that [training] is what is lacking in a lot of things. What I get at the front desk is the comments of the people who have been at the counters of the different courts and different departments and some of them are treated very poorly....by the clerks. They are very abrupt with them. If someone comes into the court house they don't know the legal system. They come and they have a document and they forgot to dot an "i" and it's wrong and "next"....The [clerks] talk down to them....[The public] come in to the court house and they are trying to do things they are not trained for. It doesn't matter if they are well educated or not. They are all trying to do something they have never done before. So when they go up there and they get treated that way they get very hostile. We've had shouting matches. Why should anything come to that? There should be first of all, anyone working on the counter should get some type of communication skills and some don't have them at all. What happens is you have your clerks that work in the court room that also man the counters. There is a big difference between those two jobs. They are not necessarily good at both ... [b]ut I've seen it on a number of occasions. In fact, not only on a number of occasions, I can say it happens often so that the general public walking in here and dealing with the clerks are often quite badly treated. [AB75(14-15), Court security, male, urban]

Example Three

There seems to have been a steady deterioration and it is the main user, which is the public, gets ignored more and more and more....It's the result of poor training...no mission statement... no awareness that you are

serving the public...We used to have a paralegal course run through the Department of Justice...The way it was set up, the staff that worked in the court system were put into a series called the Judicial Clerk Series and there were four or five levels of that...Your basic paralegal course used to be a two week course that you attended and lived in. My understanding now is, because of the monetary cutbacks, the course is in like 2 days...Something has got to suffer. [AB40(2-4), female, court services & former court clerk, urban]

In the above set of quotes, we see first that communication between court clerks and the public is an issue that concerns not only the public, but a range of people working in the justice community. We see also that perceptions differ about the quality of these interactions (a point which we will return to later in this paper). In addition, another common and related theme emerges: that of job training. The first participant feels counter clerks are doing a good job, but is nevertheless aware that they do not receive formal training. The second and third quotes suggest that the informal training the counter clerks do receive is inadequate to meet the difficult communication demands of their job. These examples serve to demonstrate how themes exist and overlap in the interview data, allowing us to construct a multi-faceted picture of the state of communication in the everyday practice of civil justice.⁷

Communicating Civil Justice: Emerging Themes

We turn now to the emerging themes, beginning with five major concerns⁸ voiced in our interviews with the public: challenging language; the impersonal nature of court

⁷ Although here we use these quotes to illustrate the process of analysis, they also identify important emerging themes.

⁸ We have already noted three emerging themes in our illustration of the process of analysis, and could identify many more themes and issues than we can possibly address in this paper. As previously noted, our thematic coding frame is provided in Appendix A.

protocols and procedures; the need for transparency in communication; delivering public legal education when and how the public want it; and perceptions about “legal process versus justice”. We then consider the challenge of change within a hierarchical system, returning to the earlier examples of communication and front-line service personnel. We conclude with a discussion about incorporating these insights for change into the system.

Challenging the language of courts

Previous research has clearly identified that complex legal language is a barrier between the court system and the public.⁹ The courts and public legal education (PLE) groups are already engaged in efforts to simplify the language used in forms, brochures and other materials. Unfortunately, bridging the gap between the specialized concepts and language of the legal world and everyday language is no easy task. Members of the public participating in the *Civil Justice System and the Public* study repeatedly raise various aspects of the problem.

The issues of language use and comprehension extend well beyond the mere words used in forms and brochures, and are more complex than the well known issues of literacy and English as a second language. These latter two considerations certainly made a difference to public responses about communication with the civil justice

⁹ *Reading the Legal World: Literacy and Justice in Canada*, Laird Hunter (1992, Canadian Bar Association); and *Legal Literacy: Towards a Working Definition*. A report submitted to the Canadian Law Information Council, Michael E. Manley-Casimir, Wanda E.M. Cassidy and Suzanne de Castell. (Ottawa, 1986, Canadian Law Information Council)

system, especially where legal forms and other written materials were concerned, but comments about the way language is used in the court process cross the boundaries of education and first language. As one participant explained it:

So much pomp and ceremony and ritual that it is hard to sort through the issues in plain English. You have lawyers on both sides... when they communicate to the judge or anybody else about the issue, it seems to be a bunch of 52 letter words strung together. 'Your Honour', 'My Friend', 'The opposition here', 'we would like to request and I'd like to respond to this request'. It is so convoluted. You can't understand what they are saying for one thing. The average person can't seem to make heads or tails of what is going on. Even in my own divorce case when the judge handed down an interim order, I had to get my lawyer to translate what the judge said. Basically the judge said I got the kids and the house but my lawyer had to say it in English....I am educated, I've been in the business of supervising social workers for nine years now, and I can't figure out some of the words they are using. So how could someone with a low education and less functional than the average person and possibly illiterate, understand their way through court? [AB83(2)].

When the public in our study discussed legal language, they were often also speaking of it in relation to the role it plays in legal concepts, protocols and procedures. The participant above is describing a legal communication process that he perceived as deliberately and systematically designed to exclude even his passive participation as a represented litigant. This point of view relates the use of language to a perception that court proceedings are cold and unnecessarily formal. In order to forge more effective communication between the civil justice system and the public it is necessary to recognize how both the content and application of legal language is experienced by the public. We need to begin by asking questions such as: What degree of formality in courtroom interactions is essential and what could be simplified or eliminated? Can we better explain to members of the public the need for the formal court protocols that are essential? Who should do this? How and when?

In part, this involves providing clear plain language instructions and explanations of legal terms, concepts and court protocol. While these are an important first step, some groups point out that this only works if a basic understanding of the culture of the system is shared in the first place. Legal culture is not familiar to most Canadians, even those who are well educated.

The situation is exacerbated when cross cultural experience is a factor. Our aboriginal partners have pointed out that Canada has many different First Nation languages, most of which do not have words to express the legal concepts in our civil justice system. Even Aboriginal people who speak and read everyday English well, often do not have conceptual models that allow them to readily comprehend Canadian mainstream conceptions of civil justice.

The impersonal nature of court protocols and procedures

The process of justice is supposed to be impartial and members of the public understand this, although they sometimes wonder whether it is really possible for judges to be completely free of predispositions, prejudices, and vulnerabilities that come from their own life experiences. The main question members of the public raise is whether being impartial equates with being *impersonal*? Having to interact with the civil court system provokes emotional responses in litigants and witnesses, which increases their experience of the Court as impersonal. They repeatedly report feeling intimidated by the formality of the system and also feeling frustrated that they never got an opportunity to fully relate details about their case in a manner with which they felt comfortable. An Aboriginal woman who had repeatedly had to go to court over child maintenance

described, “sitting out in front of the courthouse before court just shaking [AB42(16)], while a professional man complained, “the judge only had a few minutes to review the information and what not and I just found it cold” [AB83A(9)].

The issue of not being able to fully explain their situation and concerns is a major communication issue for the public, and as will be seen later in this paper, it has an impact on public perceptions of justice (or lack thereof). Although the following quote concerns the in-court process for a self -represented litigant, represented litigants make essentially the same point about both their interactions with their lawyers and the way their case was presented in court:

There was a lot of things I wanted to say, but the judge cuts you off and says, “I don’t need to hear that.” To me, as a judge you have to listen to that person even though it takes so long. They are there to look at both sides of things...not cutting the person off like you don’t have time [AB42(5)].

From the perspective of the court, this observation may be seen as arising from a lack of public understanding of the rules of evidence, the purpose of a particular proceeding, or the legal issues in a case, and to some extent that may be so. However, some members of the public are protesting against limitations which they feel bar them from explaining their case, thereby leaving them unconvinced that the decision is based on a full understanding of the case.

The legal process versus justice

The public’s perception that the impersonal formality of the civil justice system process prevents them from fully explaining their situation, has an impact on the degree

to which they believe the system actually achieves justice. This is not a problem that can be easily overcome, but it is an important communication barrier that needs to be acknowledged. Members of the public often feel that the legal process in civil cases fails to result in a decision that brings about justice. While it is expected that people who lose a court case are likely to feel disgruntled, most of the comments we received on this matter came from litigants who had actually *won* their cases. The reasons for dissatisfaction tend to fall into three areas: the negative experience of going to court, inability to enforce a judgement, and decisions that are either incomplete or open to re-hearings. The study participants gave examples from many different areas of civil law, but the most common were matters of child custody and/or support. Single custodial parents of both sexes told of slow court processes and eventual decisions that were costly both financially and emotionally. The following interview extract contains elements common to several interviews:

So six months after separation we are going to court. And as slow as I thought it was, my lawyer tells me we are doing really good?...So I am kind of wondering what is wrong with this system? Six months after leaving an abusive situation you are still stuck living in the same house as the individual [who] was not reasonable enough to want to move out....It is very traumatic for [the children] and the court as an entity doesn't seem to have the ability to care – to have any compassion for what is going on on the home front. [And then], I ended up waiting four months to find out how much child support I am going to get against how much spousal allowance I have to pay. I've got two kids at home to take care of and to feed yet it's like I have to guess at how much money I have because the court system allowed delays that I felt were deliberate attempts at sabotage.... I'm the guy that was sitting at home watching the kids and keeping a job...[and] I've got to pay her \$550 a month spousal allowance for three years. She only has to pay \$390 a month child support. ... I have to take care of the kids but I have to pay \$160 a month knowing full well it is going to get pissed away at the bar. And why the judge can't - it was communicated that...she is entitled to the lifestyle she had before the separation. Maybe I expect too much. I was expecting the judge to be reasonable and humane. The lifestyle she had is what caused the destruction of the marriage and led to years of abuse of the spouse and the children. Maybe it's not an appropriate lifestyle to be condoning. ...[but] nobody wants to

set precedent because you are making law and historically every wife gets a certain amount of spousal allowance regardless of who the bad guy is so they just follow history. Nobody wants to be the point person on the frontier I guess. The child support guidelines are clear. There are guidelines on paper based on income and what not which is reasonable. The spousal allowance simply appears to be a lifestyle issue and there doesn't appear to be any sound, reasonable and rational humane thought put into whether something like a spousal amount should be issued or not....if ...the marriage...falls apart [and] only one person is bringing home some income, the other person having made every reasonable effort, yeah, they should be entitled to a reasonable share until they can get back on their feet and move on. It only hurts when like mine all that was gained was not because of but, in fact, despite the other partner. There is something wrong with a system that does not take that into account at all when they make a decision [AB83A]

The above discussion shows that the litigant was quite aware of the process of the law, and the *legal* reasons for the court delays and judge's decision. The concern expressed by this participant is that the legal process can have negative social costs for all parties. Other members of the public pointed out that when such decisions are appealed, legal costs mount and one or more of the parties may be forced to self-represent.¹⁰ People caught in such struggles are understandably frustrated by the failure of the court to bring about a permanent solution that is truly just.

Transparency in communication

While often acknowledging that communication problems can be due to their own lack of understanding, the public also points to a need for greater transparency of communications within the system. Comments from our participants spoke of a need for clearer information about the realities of going to court, full explanations of why court

¹⁰ Based on our interviews so far the party most often forced to self-represent is the party with current custody of the children, in whose favour the court has previously (even repeatedly) ruled. These legal power dynamics are not just a matter of who has the most money. One party may be eligible for legal aid, while the other is just above the Legal Aid cut off. Fathers with custody perceive the kind of legislative bias described in the above quote, whereas a mother may face annual (but primarily frivolous) maintenance amount challenges by a wealthy ex-spouse.

delays and adjournments occur, and better information on what is happening when lawyers negotiate agreements. The following transcript excerpts illustrate some of their thoughts and experiences:¹¹

I'm told we have a court date.. then I get phoned and told there is a delay for whatever reasons.... I don't know what the dynamics of the delays are. Did my ex fire the lawyer three or four times in the week? Are they trying to process too much information for not enough time? Is it a matter of the court so over booked that you can't get a court date? Is it just the two lawyers have too many clients or customers trying to make them rich that they don't have time to deal with all of their clients? You really don't know what is going on or why. It kind of leaves you standing out in the cold. If I was told we have a court delay for this reason or that reason. But no, we have a court delay – see you in a month. [AB83A]

And then at the very last minute deals are made in the back room ...both lawyers – and you know, the parties have a vested interest - in that one...my vested interest was to get justice done for the department [AB83A]

I always have to ask to get what I'm looking for. At times I am scared to ask. [AB42(8)]

Probably a brochure would be a good starting point. It also could make people aware that it is a nasty road. Avoid it. To try to resolve it with the other party because nobody will win at the end of the day anyway. I would try to emphasize... find another alternative and then think about, really, do you want to go down this road? And then go to mediation if you really think you can't work it out....The public needs to know how brutal the system can be. [AB09]

¹¹ When we are familiar with a technical language, and/or procedures we may forget that these are incomprehensible to outsiders. Using a different analogy, Lowe describes the frustration she recently felt at the airport to be told that her confirmed seat was not in fact, assigned. Furthermore, the flight was 'oversold' and she might not get on it! She would have felt considerably less upset had the airline explained that the scheduled plane had been withdrawn due to mechanical problems. The only available plane had fewer seats and the airline staff were doing their very best to sort out the resulting mess. In other words, a little transparent communication would have gone a long way to ease tensions, and the same can also be true in the courts.

Public Legal Education: What the public needs, and when and how they want it

Most reports concerning civil justice system reform emphasize the need for greater public knowledge about the system.¹² Members of the public who have actually been involved with the system suggest that we need to pay increased attention not only to what the public's legal information needs are, but also to when and how they want this information to be made available.

Our research so far has found that there is considerable agreement among both the public and those working within the civil justice system that information must be delivered in a variety of forms in order to be effective. Members of the public give concrete recommendations about gaining and understanding information. Legal information must be available and accessible, but an even more basic requirement is that people need to know this resource exists and how to get it. As illustrated by a property manager speaking of significant changes in the relevant legislation and procedure, new information needs to be both timely and well publicized:

When I said last April this mechanism opened up for us – we didn't find out about it until I...well after April...so the actual communication that it was available to us I felt was lacking....There could have been communication to landlords through either different associations or directly that we could now do this. It would have made sense to have a set of instructions at the same time to go with it. But in the meantime...there are other landlords out there that I'm speaking with that aren't aware, so it's relying quite a bit on word of mouth to get around the industry that we can do this. [P04(5)]

¹² In addition to the CBA Task Force Report, this point is made in the recent Report to Justice Canada entitled *Public Legal Education and Information Study* (March 2002, COMPAS Inc.)

The first step in the information process is being able to find out how to get the specific and specialized information that is required. As the same property manager noted, “I feel a little awkward because ... I didn’t know there was a website for the judicial system” P04(21). The information that is provided, by whatever means, should be current, consistent and complete. The property manager described how she had used her previous court experience to help co-workers cope with the system, pointing out that the information they received from the courthouse was not always sufficient:

I instructed my site managers – “OK you need a copy of the lease, you need a tenant ledger to show how they owe the money and a copy of the eviction notice to show you indeed have served them with an eviction notice.” Otherwise they wouldn’t have known that and actually I don’t believe the clerks advised them to bring that information to court and yet those were things the judge wanted to see.... Some of the clerks had pointed...out [the affidavit of service on the backside of the form] and one of them hadn’t. She just said “bring this form back to court”. Didn’t tell them that they had to come back and file it with the clerk before the court proceedings, which would have been a problem. But, because we had so many people doing it at one time, different experiences, we were able to bring it together so we were OK. [P04(7)].

Another participant underlined the need for information which thoroughly explains the civil justice system and available options:

I mean, right now, if I had a problem with my neighbour and I have done everything I can possibly do to work it out, what do I do next? Do I take it to court? Do I need a lawyer? Can I just walk in there and represent myself? What papers do I need? If it was damage to a fence, what would I need to come in with? Do I need to come in with a lawyer? I wouldn’t know all of that right now... I wouldn’t know what I need. You don’t want to come in there with a whole house load of papers but you don’t want to come in with nothing either. If I should have had a lawyer, you wouldn’t want to walk in...to find out that I should have had a lawyer with me...[AB047(11)]

And equally, PLE has to reach the public when and where they want it. The people we talked to drew on their experiences with gaining or providing information in other areas to make some concrete suggestions for educating the public about the civil justice system. Many supported extended hours for information services. Short, instructional videos at the courthouse were another idea for helping people understand the filing process and courtroom experience. Brochures or pamphlets that give concrete instructions about “what to do” were often mentioned, using the example of government passport application forms as a model. Others suggested a need for innovative approaches to workshops, both in general public legal education and for specific information on going to court. One suggestion was for brown-bag lunch sessions in workplaces on legal topics that often affect us. Another participant offered the following comments based on his experience as an employment counselling professional:

The people who really need [educational sessions] aren't educated or high functioning enough to get anything out of these [traditional] type sessions. You are talking about 60-75% of the people who are ending up in court in [rural town] are functioning under a grade 7 or 8 level....[It would need to be] Very tailored, very individual, and very close proximity to court time because people don't have the resources or the inclination for displacing themselves to tap into services unless it is for their immediate benefit. Do I get a dollar out of it? Do I get food? For example, you have court on June 30 and there is an information session on June 15 or 20. No one would show up because nobody cares. But if you are in court on June 30 and there is an information session just before court in the courthouse on June 30, then you will probably get an audience. [AB83A]

During our field research in Alberta we have found very little readily available public legal education (PLE) material on the civil justice process. We are not sure

whether this is due to limited funding and other resources, or because the need for these materials has not been recognized. We know that experienced PLE providers are committed to consulting with members of the public in attempts to provide better educational materials. But PLE experts also tell us that many of the suggestions the public offer about how and where to deliver educational material have been tried, often unsuccessfully. Furthermore, PLE materials originate from quite a variety of sources and some may still be driven by the perspective of the educator and/or the courts. Clearly this is a complex issue that requires considerable further attention.

Communication tensions within a hierarchical system

Many judges and administrative managers are dedicated to improving communication within the civil justice system. They are switching to a more collaborative communication style, but as one judge commented, the system is very hierarchical with strict lines of authority within each court.

Part of [change] is you come back to management and how you manage people. Government is the last of the highly structured, highly organized, pyramidal, hierarchical work places, and there are tremendous barriers to communication and a lot of it is culture. I think that it has been extraordinarily difficult for me to, for example, get people empowered when they have been used to being directed....I think the messages have to come from the top and certainly I have tried to do it by being open and by trying to empower people. But it is so difficult within the structure where you have an awful lot of people who have responsibility without authority. You are always trying to do surgery at remote control. It was described to me the other day like a surgeon who uses these robotic arms except that rather than having stainless steel instruments with articulated joints, we have pieces of wet spaghetti. [AB64(11-12)]

As seen in our sample quotes concerning the performance of counter clerks,¹³ the judiciary and senior administrators are frequently sensitive to the difficult job front-line staff face. Rightly, they emphasize the positive achievements they sometimes observe, but they are often unaware of the more negative day-to-day practices observed by the court security officer. Our research team found that front-line traditional service personnel also tended to retain a bureaucratic attitude - “this is my job and I mustn’t step outside of the box.”¹⁴ This view, coupled with constant work overload and resulting burn-out leads to fairly negative views of the public and their ability to grasp information anyway. The researchers observed a lack of pro-active responses to identified gaps in public information and other needs of the public. Front-line workers tended to resignedly accept the lack of resources without attempting to campaign for them. Little attempt was made to find innovative ways of meeting perceived needs, or to establish networks with other service workers. Most felt fear and/or apathy about putting forward ideas for change and improvement.

The judiciary and senior management were often not fully aware of the degree of powerlessness experienced by their front-line staff at the bottom of the organizational hierarchy, who as the judge put it, have lots of responsibility and no authority. Our own experiences of running the project suggest this is not an issue confined to the courthouse, but one common among those used to hierarchical relations who adopt particular ways of coping with the constraints of such a system. Although those at the

¹³ See discussion above in “The process of analysis: Identifying themes”.

¹⁴ This did not only apply to court counter clerks. It was also apparent among Legal Aid workers, especially at the reception level.

top of the structure may move to more collaborative management and communication approaches, these may a) not be recognized by those lower in the hierarchy, unless specifically explained and b) do not remove the lines of power, and therefore the potential penalties for stepping out of place.

Some Challenges in Incorporating these Insights into the System

Our research experience in Alberta demonstrates that people working in all aspects of the civil justice system and members of the public using the courts all have valuable perspectives and insights concerning communication practices. Members of the public raise issues and concerns that are challenging and potentially difficult for the civil justice system to address, but along with the problems they identify, they can and do also contribute constructive ideas for change. Our research also reveals differing opinions (among the public as well as those within the system) about the degree and manner in which the public might participate in civil justice system reform. Some people within the court system are enthusiastic about involving members of the public in all possible ways. Where court personnel have been directly involved in committees that include public participation they tend to speak highly of this kind of public contribution. Some members of the public are willing to consider that kind of formal participation, while others would be more comfortable with focus group and interview style consultations. Whatever methods are employed to bring it about, involving the public means developing a model of collaboration that works within the system itself and we turn now to the challenges of changing communication within the civil justice system.

There is a need for members of the justice community to communicate more with each other. Talking within the system about a model of collaboration for change is essential to bringing it about, and also to better communicating with the public about civil justice matters. This requires negotiating the traditionally hierarchical and adversarial structures of the system to overcome entrenched prejudices that exist between and among the varied groups involved. As the discussion in this paper illustrates, this is not an easy task. We are only at the beginning of our research and as yet can offer little in the way of concrete examples of effective communication practices.

One thing we can say based on the research findings and our own experience of running a collaborative project, is that in hierarchical relationships it falls to the most powerful to take the initiative and create safe places for open and frank dialogues to occur. No matter how honourable the motives held by those in power, while they are present, or can identify the source of any comment or suggestion, those who must answer to them are constrained from speaking out.¹⁵ Those at the top of the hierarchy must first fully explain their desire for increased collaboration and constructive change and also demonstrate this in their communication relationships with each other. They need to acknowledge the vulnerability created by the system hierarchy and it may be necessary to engage facilitators from outside of the system to conduct focus groups or organize other anonymous methods of input. The effort will be worthwhile.

¹⁵ It is often difficult for caring people in such positions to accept the degree to which their presence can be intimidating and restrictive. Stratton draws on experience working with high school teachers, who wanted to be present in classrooms while students discussed classroom issues. It was very difficult for them to accept their negative impact on open discussions when they genuinely wanted to improve the students' experiences. They were eventually persuaded and hired university students to run and record the discussions instead. These sessions were extremely successful and protected students from reprisals and teachers from potential embarrassment.

Communication between the courts and the public can only be changed if the front-line of contact is engaged in the process.

In Closing

This paper is based on our preliminary research results. Further analysis will reveal many more details and concrete suggestions about how to effect change. We need to hear from people across Canada and we are now preparing for the National phase of the project. It is very important to include a range of perspectives within the system and from the public and we cannot achieve this without input and support of the civil justice community.

Appendix A

Civil Justice System and the Public

THEMATIC FRAME (revised August 2003)

MAJOR THEME #1: MODES OF COMMUNICATION¹⁶

This theme addresses aspects of our first research question regarding the state of communication and who is communicating with whom and how. At the top level we are recording the mode of communication and what the Participants said about who communicates. Their actual comments about these modes are linked to other themes.

***Who communicates with the public about the Civil Justice System?*¹⁷**

- ◆ Judiciary
- ◆ Court managers/supervisors (includes communication officers, security managers)
- ◆ Court clerks
- ◆ Lawyers
- ◆ Paralegals/agents
- ◆ Mediators
- ◆ Legal Aid managers
- ◆ Legal Aid front line workers (LAOs, reception)
- ◆ Native court workers
- ◆ Other court workers
- ◆ Public Legal Education (PLE) groups
- ◆ Librarians
- ◆ Security officers

¹⁶ **A note on terminology:** We have used “theme” to describe a major thematic area. Under each major theme there are categories, and sometimes sub-categories. Atlas.ti will allow us to group all transcript passages referring to a major thematic area for use and or further levels of analysis if desired. It will also allow us to create cross references across categories.

¹⁷ These sub-categories are the same as the SPSS coding categories previously agreed by the Research Directors.

Ways of communicating: justice community to public; public to justice community

- ◆ In-person verbal explanations
- ◆ Personal telephone explanations
- ◆ Telephone information lines
- ◆ Brochures/pamphlets
- ◆ Web sites
- ◆ Forms
- ◆ Formal written communications (court notices, memos, letters)
- ◆ E-mail
- ◆ Written law (legislation, rules, procedures)
- ◆ Written decisions/judgements
- ◆ Court signage
- ◆ Pre-trial meetings/mediation etc.
- ◆ Court hearings/trials
- ◆ Court public events (Law Day, tours etc)
- ◆ The Media
- ◆ Videos
- ◆ Information centres
- ◆ Research involvement
- ◆ Workshops

MAJOR THEME #2: THE COMMUNICATION EXPERIENCE

This will capture various elements to address our second research question:

How is the communication experienced by:

- a) *People within the system?*
 - (i) *among each other*
 - (ii) *with the public*
- b) *The public?*

This theme also addresses the state of communication (Research Question #1), providing a description of the effectiveness of the modes of communication employed. [The "Barriers" theme captures the more specific elements of the problematic experiences].

By the Public

- ◆ Comprehensibility (easy to understand, complex, confusing, unclear, incomplete, incorrect information)
- ◆ Finding needed information (knowing where to get information, knowing what questions to ask)
- ◆ Appropriateness of information (did the information meet the need, answer the question, etc?)
- ◆ Helpfulness of front-line staff
- ◆ Formality of system (friendly, cold, impersonal, no space to be fully heard)
- ◆ Transparency of process (clarity of explanations of lawyers/judges re: delays, settlements, decisions etc.)
- ◆ Emotional experience (empowering, rewarding, satisfying, stressful, intimidating, tense, frightening)
- ◆ Organized learning opportunities
- ◆ Opportunity to convey needs/satisfaction level
- ◆ Process versus justice
- ◆ Need for improvement

System to Public

- ◆ Degree of public interest in being communicated with
- ◆ Helpfulness of front-line staff
- ◆ Communication modes vary by position and/or individual
- ◆ Emotional experience (public attitudes, challenging to handle public who are uninformed and abrasive)
- ◆ Experiential (hands-on) learning process
- ◆ Training opportunities
- ◆ Opportunity to identify and respond to public need
- ◆ Process versus justice
- ◆ Need for improvement

System to System

- ◆ Organizational structure (hierarchical lines of communication)
- ◆ Willingness to share (information, resources)
- ◆ Attitudes between different players
- ◆ Training opportunities
- ◆ Opportunity for information exchange
- ◆ Process versus justice
- ◆ Needs for improvement

MAJOR THEME #3: IDENTIFIED COMMUNICATION BARRIERS***Lack of resources to implement good communication initiatives***

- ◆ System Resources [includes funds, technology, personnel, materials]
- ◆ Public Resources [what the public identify as lacking]

Language

- ◆ Legal Language ('legalese')
- ◆ Literacy
- ◆ Non-official first language

Lack of public interest***Hierarchical, adversarial, territorial court/legal culture***

- ◆ Unequal resources between court levels
- ◆ Failure to respect various court roles
- ◆ Failure to share information and resources
- ◆ No avenues or safe spaces for critical suggestions for change
- ◆ No "space" to speak/tell story
- ◆ Non-verbal cultural messages

Avenues of communication lacking

- ◆ Absent – no resources
- ◆ Not accessible – don't know what to ask, where to go, can't get there etc.

Attitudes limiting communication

- ◆ Non-lawyers must not communicate legal advice

- ◆ Judiciary must retain independence (communication distance)
- ◆ Public not interested in general education communications about the civil justice system
- ◆ Views that change is not possible/not necessary/not a priority
- ◆ Only professionals should represent cases
- ◆ The onus is on the public to understand

Holding Others Responsible for Communication Breakdowns

Communication breakdowns are blamed on others as per examples:

- ◆ Government failure to value and fund the system sufficiently [lack of resources]
- ◆ Judges blame lawyers' poor communication, unavailability, unwillingness to do pro bono work
- ◆ Lawyers blame judges' attitudes, lack of other services, clients' inability to understand
- ◆ Clerks blame public's stupidity
- ◆ Court service providers blame others for not organizing/providing what is needed
- ◆ Public blames lawyers, system as a whole, Legal Aid, judges, sometimes (in abstract and retrospect) their own prior knowledge level

Lack of proactive response to perceived needs

This might be a bit tricky to code, but it is something all the field researchers have identified as an issue and one that particularly applies to front-line workers

Limitations on the help available to public

- ◆ Matter not covered by Legal Aid
- ◆ Legal Aid "cut off" amount
- ◆ Can't help with forms or process because its legal advice
- ◆ Other limitations

MAJOR THEME #4: IDENTIFIED ‘GOOD PRACTICES’

Practices aiding/creating good communication

Resources available to implement good communication initiatives

- ◆ System Resources [includes funds, technology, personnel, materials]
- ◆ Public Resources [what the public identify as lacking]

Ways of engaging public interest

- ◆ Avenues in which the public can be involved in understanding the civil court system
- ◆ Positive discussion of public involvement and communication [e.g. recognition of what the public is interested in]

Environment or practices promoting equality

- ◆ Steps to equalise resources between court levels
- ◆ Initiatives to promote respect for various court roles
- ◆ Actions or initiatives promoting the sharing of information and resources
- ◆ Creation of avenues or safe spaces for critical suggestions for change

Avenues of Communication

- ◆ Resources or practices creating pathways to communication
- ◆ Accessible information on what to ask, where to go, how to get there etc.

Attitudes Promoting Communication

- ◆ Ideas, behaviours, and initiatives that help communication

Described Proactive Response to Perceived Needs

- ◆ Actions taken by involved parties to promote communication

MAJOR THEME # 5: CHANGES IN COMMUNICATION CONTEXT

Societal attitudes

- ◆ More litigious
- ◆ Increased demand for involvement (judiciary, public)
- ◆ Decrease in communication
- ◆ Increased public cynicism toward government systems

System change

- ◆ Pace of change
- ◆ Expectations of the role of the court

Changing technologies

- ◆ Pace of communication change
- ◆ Modes of communication (fax, e-mail)]

Increase in self represented litigants

Increased system usage and costs

Increased demand for alternative approaches to justice

MAJOR THEME # 6: CHANGES IN COMMUNICATION PRACTICE

Electronic communication has changed methods (pluses and minuses of speed and formality)

Training Opportunities

Increased interaction with the media

MAJOR THEME #7: BARRIERS TO CHANGES IN COMMUNICATION

Barriers that hinder the process of change to better communication.

- ◆ Lack of resources, monetary and personnel
- ◆ Inflexible systemic characteristics (e.g. hierarchical, adversarial, territorial court/legal culture)

MAJOR THEME #8: FACILITATORS OF CHANGES IN COMMUNICATION

Things that facilitate the process of change to better communication.

- ◆ Allocation of resources (e.g. monetary & personnel) in ways that facilitate change
- ◆ Attempts or changes to the system that are designed to help facilitate positive communication change

MAJOR THEME #9: RECOMMENDATIONS TO IMPROVE COMMUNICATION

We have asked for the top three recommendations for public and system and this data can be directly moved into this category and then further broken down into categories. Other information will be imbedded elsewhere in the interviews.

ADDITIONAL COMMUNICATION THEMES NOT FULLY CAPTURED IN THE OTHER MAJOR THEMES

Aboriginal experiences [beyond those captured under previous themes]

Urban – rural perspectives

OTHER ISSUES

Costs of involvement [both material and social]

- ◆ plaintiff
- ◆ defendant
- ◆ witness
- ◆ juror

Justice is not served by process (Legal process versus justice?)

- ◆ Enforcement of orders
- ◆ Finality of decisions (re-visiting orders)

Delays

Political/public perception re importance of civil justice

MINOR CODING PRIORITIES

To code all of the following themes would be extremely time consuming and may not be useful. The relevant information may be captured within the other themes. Therefore these themes are noted but will not be coded initially

Who is communicating within the Justice Community

When coding consider all the inter- and intra-justice community interactions between legal services and legal groups among their own group and with other groups. Is it possible to see different communication patterns among/across groups or courts?

To create a picture of the *effectiveness* of these communication modes we can draw on data under the "Experiences" and "Barriers" themes above. We can also create a category to code any explicit statements about effectiveness.

Ways of communicating used within Justice Community

- ◆ Face-to face informal exchanges
- ◆ Formal meetings
- ◆ Telephone exchanges
- ◆ Formal written communications (letters and memos)
- ◆ Fax
- ◆ E-mail
- ◆ Written law
- ◆ Training

DEDUCTIVE STATEMENTS (as opposed to coding themes)

In the process of identifying themes the following deductive statements were also generated and preserved for future analytical consideration

Communication process is subject to breakdown (see barriers)

The communication approaches of the legal culture methods are intimidating and confusing to the public

Public communications with the court generally take place under stress, are emotional, fearful, tense

Judicial communication with public is limited, and occurs with minimal training. It occurs primarily in court, orally via a lawyer or directly to SRLs and via written and oral judgements. Some public speaking and communication with the media does occur.

Communication practices are inconsistent (across Canada, across province, across court levels, across geographic locations, dependent on individual personalities)

There is a lack of formal communication training, especially for front-line staff

There is a lack of clear communication to public about what they need to do in the court process and what the possible outcomes might be.

Formal mechanisms for establishing communication needs are lacking. What is lacking/needed is determined primarily by informal observations of justice community, especially judges.

[Cultures in conflict] The legal information and learning culture is often in conflict with the public information and learning culture. Each uses different language, social organization/hierarchies, and degrees of formality in communication interactions.

There are differing perspectives between all groups (among the public and within the justice community by role, geographic location, court level)

People need guidance through each step of the process.