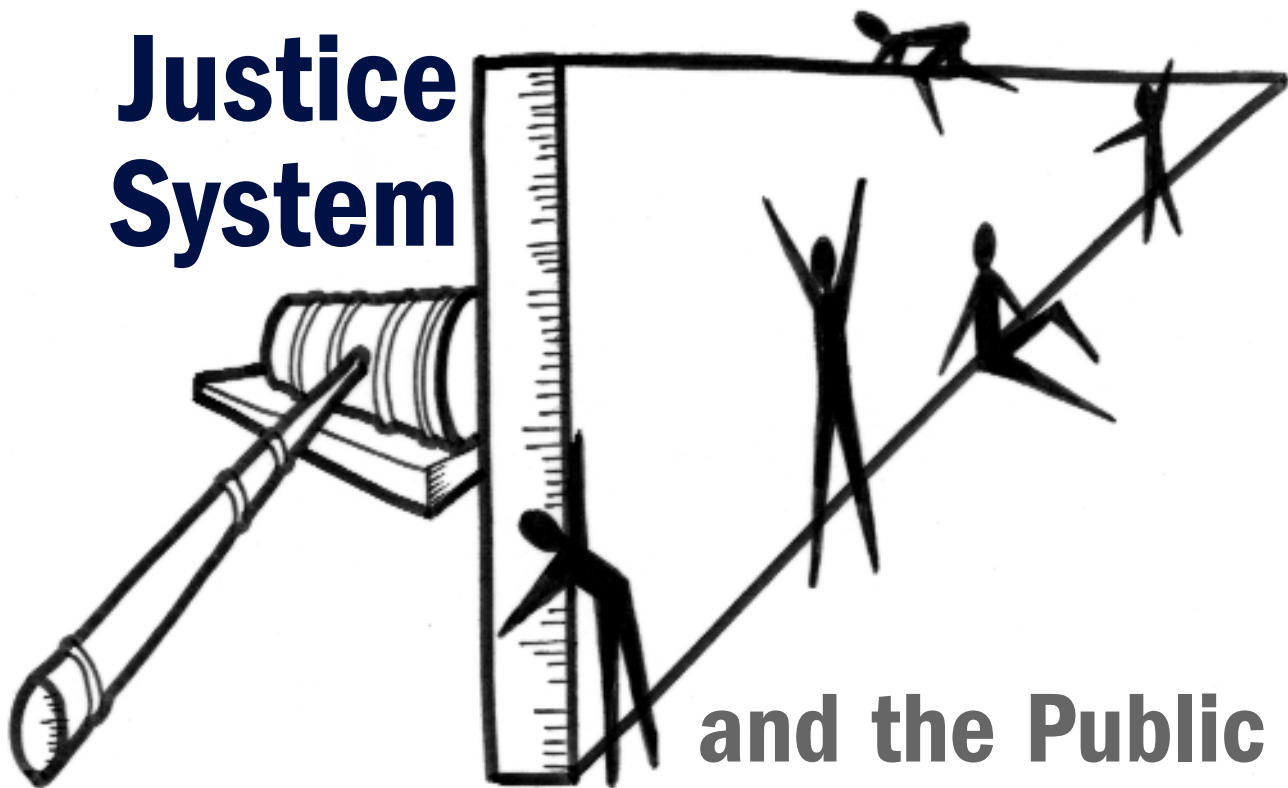


The Civil Justice System



and the Public

■ Mary STRATTON AND Diana LOWE WITH Lily TSUI

The civil justice system is that aspect of our justice system which deals with disputes between private individuals which arise in a variety of circumstances including divorce and family issues, consumer claims ranging from house purchases to car leases, professional service complaints, concerns relating to government services or public entitlements, and the enforcement of rights such as the rights to equality and to privacy, to name just a few. While courts are at the centre of the civil justice system, the system is broader than the courts themselves.

The *Civil Justice System and the Public* project is specifically designed to involve the public in identifying changes in communication practices that will improve the system (see www.cfcj-fcjc.org).

We use the term "civil justice system" to include lawyers, legal aid, departments of justice, law reform organizations, public legal educators, librarians and court-connected dispute resolution mechanisms. It is recognized that a lack of effective communication is a barrier that interferes with access to the Canadian civil justice system. The *Civil Justice System and the Public* project is specifically designed to involve the public in identifying changes in communication practices that will improve the system (see www.cfcj-fcjc.org).

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In order to bring about real change, it is important to understand the many perspectives of the public users for whom the system exists as well as of those who work within the civil justice system. The rules and processes of the legal system are technical and the administration of the Canadian civil justice system complex. It is widely rec-

ognized that input from public users of the system is essential to meaningful improvements, but members of the public, as well as people working within the system, often wonder how the lay person can best contribute.

In our research, and in this article, we draw on data from in-depth interviews in order to explore the valuable communication experiences and insights of people who have been involved in a civil court case (National field research and analysis is still ongoing, and consequently this article relies mainly on data from Alberta, our pilot province, but is supplemented by preliminary findings from Nova Scotia, Quebec, Ontario and Nunavut). These include plaintiffs, defendants, witnesses, judges, court managers, court clerks, security officers, lawyers, Legal Aid staff, and other court service workers. Both concerns about communication experiences and possibilities for solutions are identified.

In-depth interviews allow participants to reflect upon and explore their knowledge and experience of the research issues. Our approach uses broad and neutral questions as a starting point for a conversation about occurrences of communication between the civil justice system and the public. The interviewer merely supports participants in this process, encouraging them to expand on what they have already said so that the interview transcripts capture the way that people actually think and talk. As a result, the data reveal multiple perspectives on communication issues allowing us to see nuances, overlaps, and sometimes, contrasting views around the same basic issue or theme.

Our interview data remind us that being involved in a civil court case is an out of the ordinary experience for the average person. A court security officer who had spent years watching this process, described it poignantly:

Even research participants who went to court represented by a lawyer and were themselves professionals in other fields told us that they found the experience difficult and confusing.

that person who walks in the door, they're not the same as when they walk to work on Monday morning. They are coming into court to deal with a court case. It may be minor but it's not minor to them. None of them are minor to them. They are tense, they

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are nervous....and sometimes they are excited, they are irritable. They are not relaxed and just having a conversation like you and I are here. That adds to their difficulties – their nervousness, their concern. [275]

Even research participants who went to court represented by a lawyer and were themselves professionals in other

fields told us that they found the experience difficult and confusing. Complaining about the amount of “pomp, ceremony and ritual” involved in court proceedings, one man commented:

I find it a very dramatic waste of time and effort to satisfy what seems to be an archaic ritual system – from the way they phrase their comments to the robes they wear...It is what’s inside my head that counts – not what I am wearing....They should not be allowed to use words with more than 20 letters in them. I am educated...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? [283]

For some people, especially if they must represent themselves at the court hearing, the experience can be overwhelming. One woman told us how she “sat out in front of the courthouse just shaking” in fear. But she also described how she felt after finding the courage to speak up and represent herself in front of the judge:

It really made me feel strong...after I walked out of the courthouse and I won the case...and all the things I wanted to say I said in court. Not through the lawyers, because, whatever you tell the lawyers they don’t say it all. [242]

People become involved in a civil court case as part of the larger, complicated social context of their lives. Incidents such as accident and injury, divorce, bankruptcy, and even involvement in a criminal proceeding can all be related, but the law treats each as a separate and discrete event. Many participants expressed frustration that the rules of the system prevented them from being able to fully tell their story to the court. As a consequence, those involved often perceive a gap between legal outcomes and actual justice.

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Participants wanted alternative, less formal options to solve their legal problems – ones that led to fair solutions by allowing the whole situation to be heard and considered.

It is recognized that the experiences of the public must be heard and responded to if the civil justice system

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is to become more accessible, fair and efficient. The question is how to better involve the public? Some members of the justice community are enthusiastic about fully involving members of the public in every aspect of the reform process, including having lay representatives on internal committees considering changes to legislation and court proceedings.

Others think that involvement in the technical details of civil justice system change would, at the least, be uninteresting, or even too difficult for a lay person. Some fear that members of the public would only want to get involved if they had a personal axe to grind, and thus would not provide objective input. Most of the members of the public we interviewed were able to look beyond just their own experience and provide valuable reflections and suggestions for constructive change. Professionals, used to being involved in committees for other organizations, sometimes expressed a willingness to be involved as lay representatives on civil justice committees. The majority of participants, however, tended to agree with those inside the justice community that involvement in the technical details of reform was something they would rather leave to the legal experts. They did want their views heard, however. As one participant explained:

I'm quite open to talk to people. I would like to be able to find people to talk to about it. Anybody I know that is going down that road, I try and tell them my experience. Not so much as to give them advice...more you don't want to go down that road and you should do everything you can to avoid it....I'll give you lots of time. If you want my input, I think I've got the experience. I've seen it all. And I'm still going through it...I'd love to see it reformed. I have dreamt in my mind, 'how can I change the system?' ...If I could find some way of being able to give my experiences – what I feel went wrong – and be able to correct this, I'd be willing to – I bet there are other guys like that too. [209]

In terms of possible solutions, interview participants often commented that research such as the *Civil Justice System and the Public* provided an opportunity for public input and they were positive about this experience, suggesting similar, locally based, projects as a method of public involvement. Court exit polls and user surveys were also frequent suggestions, as long as feedback was acted upon. A particularly popular suggestion was focus group involvement. People viewed such groups as an opportunity to share experiences and find solutions with those working in the system as well as with other members of the public. It was suggested that members of the public (or their representatives) who had sufficient knowledge about the legal system and/or policy development could liaise between public focus groups and more technical reform committees.

Public input into this research has been constructive, and we are convinced

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of the value of public participation both in our research and in other civil justice law reform initiatives undertaken across Canada. The participants themselves often point the way to how they can best be involved and the challenge now is to introduce these new voices into the reform discussions that are already underway. We are working to advance

these ideas into good communications practices between the civil justice system and the public.

Notes

The civil justice system and the public: Involving the public in finding communication solutions

The Civil Justice System and the Public, a collaborative project.

Diana Lowe is the Executive Director of the Canadian Forum on Civil Justice, Mary Stratton is the Research Coordinator for the project, and Lily Tsui is a Research Assistant. This article is made possible because of the contributions of many individuals. We wish to thank all of the following for their contributions to the development of this project: our partners and research participants; Research Directors Lois Gander, Diana Lowe, Teresa Rose and Madam Justice June Ross, who have guided the project from its inception; and each of the Research Assistants who have contributed to the team.