



Research in Action:
Understanding Civil Justice in the Everyday World

Research Priorities and Potentials

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Developing Socio-Legal Research Capacity

The lack of capacity to conduct applied social research concerning justice systems and justice issues has been identified as a concern across Canada and internationally, most especially in the area of non-criminal justice. There are currently many opportunities for conducting socio-legal research that is of applied, substantive, methodological and theoretical value. Raising awareness of the opportunities for new and innovative research concerning Canadian systems of justice and finding ways to increase the capacity to conduct needed research is the goal of the *Research in Action* project. More information and disseminations from this project are available on the Canadian Forum on Civil Justice (the 'Forum') website at <http://cfcj-fcjc.org/research/socio-en.php>.

When we speak of “socio-legal research” we mean social research about legal systems, legal processes, paths to justice and related social and legal issues and implications. Research that is evidence-based, interdisciplinary, collaborative, and focuses on issues concerning non-criminal justice is in especially high demand. Justice community stakeholders across Canada and internationally are increasingly convinced of the value of research evidence to informed and effective policy reform and program development.

Lack of identified socio-legal capacity in Canada is of critical concern to the Forum, government and other justice community organizations seeking to develop new research. Finding researchers with applied research skills and an understanding of Canadian justice systems is currently a major challenge and is impacting our ability to advance current research priorities.

The Forum could not, and should not, directly conduct or oversee all research pertaining to the priorities identified above. Our mandate is to facilitate the sharing of the knowledges and resources required for our partners to be involved in developing and conducting the research that they need. It is their specific, localized knowledge and lived experience that is essential to producing research that is valid and useful.

In recognition of the role the Forum can play in bringing this about, the BC Law Foundation provided project funding for us to conduct a pilot socio-legal research capacity development project during 2007 and further project funding to continue and enhance knowledge sharing activities. This document has been developed as part of that project. To date activities include facilitating a series of research workshops that include: identifying researchers in British Columbia with interest and expertise in community-based research related to legal issues; facilitating a series of workshops that brought together our justice community partners with academic, government and private researchers; and beginning to document socio-legal capacity in British Columbia in the form of a web-accessible database (<http://cfcj-fcjc.org/directory/>).

Research Orientation

While there is potential for many epistemological approaches to socio-legal research, and researchers from all orientations are welcome to submit database entries, the

Forum is committed to a social constructionist approach to theory and methodology. This approach holds that all knowledge and understanding are mediated by social experiences, statuses and interactions. This orientation entails implications for conducting a research inquiry and it is our position that:

- The structure and organization of legal systems, and the relationship between the courts and the public are currently incompletely theorized; nevertheless, strands of relevant and useful theory currently exist across a number of different disciplines. A synthesis of these as they relate to justice systems will help to advance the development of appropriate new theory.
- The recognition of the richness of expertise collectively held by the diverse participants in the justice system is the key to gaining knowledge helpful in advancing both theory and practice. An approach that is grounded in the experience of justice system participants is necessary in order to tap into this pre-existing knowledge.
- The development of theory, methodology and practical application (practice/action) should not occur in isolation from one another, but be addressed as inseparable components of understanding the social world.
- A multiple method approach to data collection is required. No one method can adequately capture all aspects of the complex and fragmented organization of Canadian justice systems. Both the justice community and the public are heterogeneous groups with varied perspectives and situations. Multiple data approaches (such as in-depth interviews, observation, textual analyses, statistical information etc.) increase the richness and validity of the overall data.
- An accessible multiple media approach to dissemination of findings is needed as individuals have varied learning styles and capacities to receive, absorb, and act upon new knowledge. Different social/organizational contexts may have distinct requirements regarding style, content, and approach to accepting and introducing change. Disseminating knowledge in a variety of formats especially designed to be effective with the intended audience is, therefore, a vital component of action-oriented research.

Research Priorities for the Canadian Forum on Civil Justice

Currently, the Forum has identified the following areas and issues of research as priorities:

Accessing Justice – Economic and Social Costs

Barriers to accessing justice are a serious social concern. The expense of litigation to the justice system and to individuals was identified as one of three major concerns in

the 1996 CBA Task Force on Civil Justice. A decade later, participants in the *Into the Future: The Agenda for Civil Justice Reform* conferences (<http://cfjc-fcjc.org/publications/itf-en.php>) have underlined both economic and social costs of litigation as a priority access to justice concern. This was also a finding in the *Civil Justice System and the Public* project.¹

In response to this issue, the Forum has identified, as our top priority, research which strives to increase understanding of costs associated with accessing civil justice, including the economic costs both of litigation and alternative paths to justice. An important component in evaluating expenditure is in understanding the detrimental economic and social costs that accrue if our civil justice system is not accessible, affordable, fair and efficient. The Forum has already collaborated with the Department of Justice, Canada in developing a paper looking at the social costs associated with the failure to effectively resolve legal disputes and research about the costs of justice is of international interest.

Finding ways to effectively document and understand how and where the financial costs of litigation accrue is extremely complex and will require innovative methodology and strong collaborative commitment from the justice community on a national scale. Because of the complex nature of Canadian civil justice systems the project will require both provincial and national components. A pilot jurisdiction will be needed to allow the development of a model that can ultimately serve as a landmark national project. Diana Lowe is serving as an advisor to a Canadian Judicial Council Subcommittee on the cost of access to justice.

The Forum has obtained seed funds from the Alberta Law Foundation to:

- conduct a literature review;
- establish a collaborative partnership to undertake the research;
- develop means of defining and understanding what we mean by the cost of litigation;
- design an original methodology aimed at measuring the quantitative costs as well as the social consequences associated with both the high cost of litigation and the failure to litigate; and
- develop proposals for major project funding.

A successful methodology to investigate the economic and social costs associated with solving legal problems will require inter-disciplinary insights, particularly from the legal profession, court administration, economists, sociologists, political scientists, social workers, and lay persons with experiences as litigants or potential litigants, and witnesses. Interest in partnering in this project is welcomed.

Establishing a Justice Index

The *Into the Future* conference participants also identified as a key issue the current lack of systematically collected statistics pertaining to civil and administrative justice systems and processes. Developing a system of shared statistical information was an agreed priority emerging from these conferences. Establishing a national justice index

will be an extremely challenging project that must involve many justice community partners and researchers across Canada. A first step will be to identify and collect any statistics that already exist. A second step will be to collaboratively develop measurements that help us to compare existing data and lead to the future collection of rigorous and comparable national data essential to accessible and cost-effective justice processes for all Canadians.

Understanding Public Perceptions About Canadian Justice Systems

Governments are concerned about public confidence in Canadian justice systems. Across Canada millions of dollars per year are spent on polls that attempt to assess the state of public opinion about “the justice system” and related issues. "Public Confidence and the Civil Justice System: What Do We Know About the Issues?" is a report prepared by the Forum for the Alberta Justice Policy Advisory Subcommittee on Public Confidence. Observations are based on an examination of 244 published Canadian and international information items. It is concluded that there is a lack of reliable empirical research addressing issues of public confidence in justice systems, beginning with the failure of most research to clearly define what is meant by "justice system". The report suggests that partnerships between researchers and justice community stakeholders who understand the complex nuances of both Canadian justice systems and public views and attitudes are essential to developing valid research pertaining to public perceptions about justice issues.

Alberta Justice System Legal Services Mapping Project

The *Alberta Self-Represented Litigants Mapping Project* conducted in 2006,² generated considerable interest in Alberta and across Canada. This initiative documented services currently available to self-represented litigants (SRLs) in three Alberta regions. Gaps in current services were identified as well as ways in which present services might better meet the needs of SRLs. Three Legal Information Centres (LInCs) have been established in response to the findings of this report.

Subsequently, members of the Alberta justice community expressed interest in a major project taking a similar approach to mapping all legal and related support services available across the province of Alberta. Such a 'map' will be of value to all those who provide justice services: the courts, the legal profession, legal aid, public legal education groups, *pro bono* initiatives, librarians, and legal clinics and members of the public attempting to access legal services. It will also be a significant tool for funders such as the Alberta Law Foundation and Alberta Justice as it will ensure that there is a better understanding of both current services and service gaps.

The *Alberta Legal Services Mapping Project* is now underway funded by the Alberta Law Foundation and Alberta Justice. Details are available at <http://cfjc-fcjc.org/research/mapping-en.php> .

This collaborative venture is guided by a partnership of Research Directors, an Advisory Committee of stakeholders and local community committees of service providers. The management of the project is overseen by the Forum. The first jurisdiction to be mapped is the Calgary region and the full project is expected to span four years. Other jurisdictions in Canada have also expressed interest in research that employs a mapping process such as this.

Aboriginal Issues in Access to Justice

The *Civil Justice System and the Public* research included partners and research participants from Aboriginal communities, and the Forum continues to work with Aboriginal groups in Alberta and across Canada. *Balancing the Scales: Understanding Aboriginal Perspectives on Civil Justice*, a report drawn from that research, illustrates how First Nations, Métis, and Inuit peoples experience barriers to accessing civil and family justice. In the context of their experience the question is posed: Can the civil justice system work for Aboriginal peoples?³ There are many legal issues and processes relevant to their lives, but criminal incarceration and provincial child protection actions are the two areas of law that persistently impact Aboriginal peoples disproportionately. While any research into access to justice issues should be sure to include Aboriginal perspectives, it is particularly important to provide communities with the support they need to develop funding proposals and design and conduct their own research. Aboriginal justice issues were emphasized during the *Research in Action* workshop series and the Forum has been approached on several occasions for assistance with proposals that we have not had the capacity to provide.

Meaningful Access to Justice for People With Disabilities

Barriers to accessing justice faced by people with disabilities emerged as an important concern in both the *Civil Justice System and the Public* and the *Alberta Self-Represented Litigants Mapping Project*. In Vancouver, April 2007, a public forum, "Equal Access for People With Disabilities," was facilitated by the Law Society of British Columbia and the recent report of the Ontario "Committee on Accessibility to the Justice System of Persons with Disabilities" underlines the need for changes within the justice system to facilitate access. The Alberta Office for Disability Issues has also indicated interest in this area of research.

People with disabilities account for a small proportion of overall litigants; however, litigants with disabilities are a group that tend to experience chronic social disadvantage and often encounter problems that entwine social, civil, family and criminal justice issues. Social and support services for people with disabilities quite often lack awareness of the legal issues and needs that impact their clients. Research to better understand the special needs associated with different physical, cognitive and psychiatric disabilities is required to assist in developing ways to meet these needs within current and new justice services.

Since we first identified this priority research area, the need for research and action related to providing meaningful legal services and supports to people with mental health challenges has been repeatedly underlined.

Issues in Public Legal Education and Information (PLEI)

PLEI across Canada is one area where quite extensive bodies of research do exist. Currently, however, there is considerable fragmentation of both PLEI research and development within the justice community. This tends to promote duplication of information materials; inconsistent knowledge concerning available PLEI materials, approaches and programs; and competition rather than collaboration for available PLEI funding. Government organizations, the judiciary, non-profit groups and private law firms all routinely produce PLEI materials within the same geographical jurisdictions.

The *Civil Justice System and the Public* research identified a need for better coordinated PLEI and the project data contain extensive discussions about PLEI materials from both justice community and public perspectives. Observations from the Research Team add to the richness of this information. Most of the CJSP publications refer to issues in PLEI and processes such as the Alberta mapping projects (described above) are very beneficial in documenting current PLEI resources. Work is underway on a report that pulls together our available research on PLEI. However, further collaborative research is required with local, provincial and national involvement to find ways to share current knowledge and better integrate PLEI development in the future. Members of the PLEI community have indicated a need to develop more effective evaluation approaches.

Dispute Resolution Options

Almost all discussions about improving access to justice incorporate the promotion of dispute resolution options of all kinds. There is considerable discussion to be identified in literature from several disciplines concerning mediation and arbitration, for example. The *Civil Justice System and the Public* research revealed, however, that there is little solid evaluation research about the effectiveness of various options, and in fact little agreement concerning terminology, program content, purpose, regulation and outcome. Furthermore, this research suggests that members of the public and members of the justice community hold different views about the most desirable characteristics of effective dispute resolution options. Rigorous comparative research into these issues is much needed.

Involving the Public in Research on Justice Issues

It is now widely agreed that it is also important to include public input into all justice related research projects and policy development. Finding ways to effectively involve members of the public in research on justice issues and recommendations for change is part of the Forum mandate. Research Team observations on the challenges of doing this effectively provide data that has yet to be fully analysed and reported and more

research that specifically focuses on effective ways to accomplish public involvement is still required. American research in participatory consultation for public policy development may offer valuable theory and practice examples that can be explored and applied to the context of Canadian justice systems. Follow up focus groups and community workshops associated with the *Civil Justice System and the Public* research (still on-going) are providing action models on how to bring together members of the public and diverse members of the justice community across traditionally hierarchical research boundaries. Opportunities exist for involvement in these group consultations across Canada and critical analysis of participatory and collaborative research epistemology and practice is also needed.

Issues in Administrative Justice

The *Civil Justice System and the Public* focused on non-criminal legal matters that may potentially come before the courts. Many of the important laws that affect citizens' rights in their everyday lives (for example, employment standards and conditions, social benefits, immigration, tenancy rights, human rights) are overseen by tribunals and fall into a legal area known as administrative law. The CJSP and the mapping research we have conducted have demonstrated that civil law and administrative law issues cannot meaningfully be separated when considering access to justice for all Canadians. The pressing need for rigorous, system-oriented research concerning organization, process, equity and access to administrative justice has been underlined. The *Alberta Legal Services Mapping* will include a preliminary attempt to map access to administrative justice services.

Research Development

Participants in the *Research in Action* workshops wanted to see stronger community-university partnerships. A wide range of our justice community partners have expressed the need to learn more about the research development process and academics noted that community groups often had valuable information that they did not recognize as potential research data. Many justice community members would welcome the opportunity for workshops that partnered with social researchers to learn research skills. Others would like to contract social researchers to work with them in developing the following aspects of the research process:

- **Proposal writing.** Non-government, non-profit organizations often lack the resources and/or the training to develop strong proposals for research or program initiatives. The Forum is frequently asked for assistance and does not have the capacity to meet the demand.
- **Critical literature reviews.** Most of our justice community partners are familiar with the process of researching and summarizing existing literature. Critically analysing such literature to ascertain the state of current knowledge and identify conceptual weaknesses and gaps is, however, an art as well as a skill more often found within social science disciplines.

- **Needs assessment and Mapping.** Justice community stakeholders are embracing collaborative processes, particularly for assessing service needs in communities. ‘Mapping’ is a more collaborative approach to conducting a needs assessment that recognizes multiple, interrelated factors and relationships and encourages community participation and ownership. There are opportunities for research contracts and for opportunities for training contracts or exchanges.
- **Evaluation.** Within the justice community, applications for funding and proposals for programs routinely request evaluation components. At the same time there is growing understanding that traditional approaches to evaluation measurement are not sufficient to providing nuanced understanding of program and policy effects and outcomes. There is high interest among stakeholders to learn more about designing evaluation measures and studies, and opportunities exist for evaluation research contracts.

All of the above research areas may be particularly valuable to graduate students, especially at the doctoral level. Graduate students may have the technical skills to assist justice community stakeholders in processes that provide enumeration and career-building professional experience. Ideally these applied research opportunities can also be matched with students’ substantive academic interests.

Other Potential for Socio- Legal Research

The research issues highlighted above have been identified as priority concerns widely shared within the Canadian justice community. There are many other potential socio-legal research areas of importance which are of equally high priority to members of the justice community directly concerned with these issues. There are additional topics that perhaps hold more interest to academics, but can ultimately provide important knowledge to the justice community.

The following list is far from complete. We offer a few ideas that have emerged from our research to date and welcome further suggestions.

New Theory About Systems of Justice

As Wadsworth (2007) asks, “Is it safe to talk about systems again yet?”⁴ Wadsworth contends that sociology has moved away from theory and research about systems and systemic thinking and influence, which was once the discipline’s defining focus. She observes that there is a growing transdisciplinary interest in organizational theory and systemic thinking and that there is much potential for developing new and dynamic theory and epistemology. System level theories concerning the societal role of non-criminal systems of justice are especially sparse.

Hierarchical Relations in Legal Culture, Organization and Communication

The *Civil Justice System and the Public* revealed a range of issues related to hierarchical relations that are of theoretical interest to social scientists across disciplines and substantive areas. The over-300 qualitative interview transcripts, entered into *Atlas.ti* qualitative software, offer data with considerable potential to inform structure-agency debates.⁵ Partial, but currently incomplete data analysis also point to the following possibilities for research concerned with issues in hierarchical organization and communication:

- ***Issues in collaborative partnerships.*** The *Civil Justice System and the Public* was a ground-breaking action research collaboration. Raw data from all aspects of this collaborative project and other collaborative efforts undertaken by our partners have the potential to inform additional analysis and reflection on both the process and practicalities of large-scale research collaborations.

The justice community is interested in better understanding collaborative process for a variety of purposes (research, policy change, program development and service delivery) and our partners are interested in a practical guide for forming alliances that work.⁶ Furthermore, civil justice reform recommendations have often suggested court user committees as a way to bring together both the public and diverse representation from the justice community. There is less information on how to do this effectively within a system built around hierarchical relations. Data from the main research, combined with our experiences of conducting feedback focus groups and community workshops, has provided us with the potential to guide actual practice in establishing such committees. Materials will need to be developed and evaluation research will also be required.

- ***Use of space and architecture.*** Court rooms and courthouses are generally imposing spaces within which the communications of a formalized and hierarchical legal culture take place. Although the courts exist to serve the interests of Canadian citizens, people who are not part of this legal culture usually find both the physical space and the interaction rituals intimidating. A very preliminary data report, “The Courthouse as a Physical Building: Impacts on Communication” has already been generated. It is in very early development, but contains valuable information about the impact of physical aspects of court buildings on communication both between the public and the justice system, and also among those working within the system.
- ***Legal communication culture.*** Data from the *Civil Justice System and the Public* also have much to offer researchers interested in communication interaction research. Partners in the *Civil Justice System and the Public* project have begun to develop interactive presentations that demonstrate both negative and positive communication practices across the hierarchies of justice system relations. Material from these presentations needs to be developed into a workshop manual that can be promoted for educational use within the justice system. These materials may be of particular use to private practice lawyers.

- **Communicating with the public from the perspective of the ‘front-line’.** The day-to-day experiences of front-line court clerks, security officers, legal aid receptionists and court workers are often overlooked when developing new policies and reforms. Some of our reports to date identify these issues but there is need for a more detailed focus on the communication needs and supports for those who are often the first point of contact for members of the public experiencing stress.

Mass Media Representations of Justice Issues

Civil justice reform recommendations repeatedly refer to the negative role mass media plays in forming public perceptions of justice issues and systems, but at the same time point to the important and effective role the media could play in informing and educating the public.

The Forum conducted a small exploratory study of print news coverage of civil justice issues, *Beyond the Headlines: The Role of Print Media in Public Understanding of the Civil Justice System* (<http://cfcj-fcjc.org/publications/cjsp-en.php#14>). The first part of this report discusses perceptions about the role of print media in reporting on civil justice issues from the perspectives of the justice community, the media, and the public. The second part of the report presents snapshots of the extent and content of legal coverage in two newspapers and concludes with suggestions for future research. This report is a starting point for developing dialogue and additional research about media coverage and communication in an area repeatedly identified as key to improving public knowledge about justice in general.

Issues in Family Law

Issues of family law are highly complex and often involve interrelated matters that cross the artificial boundaries created between different areas of law. For example, family breakdown may involve criminal abuse charges (criminal court), child protection action (provincial territorial court), divorce and division of property (superior court) and social support payment disputes (administrative law). Needless to say, this complexity is extremely difficult to negotiate for people who are in emotional crisis. All court jurisdictions in Canada recognize the need to make family law processes easier for those who become involved. There are many opportunities to incorporate legal issues into both academic research and teaching concerning the family organization in society and there are on-going opportunities for applied socio-legal research and evaluation in the area of family law.

Potential Research Partnerships in Funding and Student Training

The Forum welcomes interest in research collaborations that might utilize the *Civil Justice System and the Public* data to address issues of practical and policy concern to

our partners, or develop academic theory and methodology. We also believe there are promising opportunities to develop justice community and academic partnerships in funding and student training. The report from the Research in Action Workshops documents additional ideas and the challenges to overcome in achieving them.⁷ Some possibilities that the *Research in Action* project aims to explore and facilitate are:

- *Applied research contracts.* The Directory of Socio-legal Researchers (<http://cfcj-fcjc.org/directory/>) will help facilitate applied research opportunities between justice community stakeholders and community or university-based social researchers. As well as recording the interests and contact information of researchers, it will post justice research opportunities.
- *Grants, bursaries and fellowships.* The *Research in Action* workshops were an occasion to share information about existing justice and academic community funds to support faculty and graduate student research concerning justice issues. The workshop discussions also suggest that there is room to improve the way such information is shared. As this project develops we will consider how this might be achieved.
- *Secondment and special project placement.* Personnel exchanges between and among justice community, academic and community based organizations can be highly beneficial in sharing knowledge and enhancing research skills. The Forum has already provided such opportunities and will continue to do so whenever possible. Our national network of partners may also enable us to facilitate such opportunities across Canada and we invite inquiries about such possibilities.
- *Facilitated research partnerships.* At the *Research in Action* Workshops, academics told us that achieving entrée into the justice committee was often difficult. The justice community said it was almost impossible to identify interested academics! Both groups have varying ethical considerations around data and outcomes. The Forum has experience with the needs of both communities. Including the development of contracts and project charters satisfactory to diverse partners. Capacity permitting we are available to assist in facilitating partnership agreements and sharing the resulting knowledge and processes more widely.
- *Student involvement.* In the past six years the Forum has provided approximately 40 paid research assistant positions to law and social science students, in addition to volunteer and practicum opportunities. We are increasingly able to offer fulltime contract and even permanent positions to post graduate students starting a career in applied research. Such opportunities to gain field research experience are extremely valuable to students, in terms of their on-going studies and future careers. An established research network between justice community and social researchers will increase such opportunities. Some members of the Forum staff and other justice community

members are qualified to provide input to graduate thesis committees and can offer valuable substantive insights and access facilitation.

Additional Research Ideas

This document is revised regularly. We welcome your suggestions as we continue our project to develop Canadian socio-legal research capacity and increase support for civil justice reform through research.

For more information or to provide additional research ideas, please contact:

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¹ The *Civil Justice System and the Public* research was funded by the Alberta Law Foundation and a SSHRC-CURA grant. For details of this project and related publications see <http://www.cfcj-fcjc.org/research-cjisp.htm> .

² The *Alberta Self-Represented Litigants Mapping Project Report* is available at <http://cfcj-fcjc.org/publications/srl-en.php> . The idea and approach for this project built on an earlier collaborative mapping process undertaken by the BC Supreme Court Self-Help Information Centre Committee. The details of that project can be found at: http://www.lawcourtsed.ca/self_help_information_research/ .

³ *Justice for Nunavummiut: Partnerships for Solutions*, a report focusing specifically on civil justice issues for Inuit people in Nunavut and urban centres such as Ottawa, is currently under review by the research participants and will soon be available from the publication page of our website.

⁴ Wadsworth, Y. (2008). Is it safe to talk about systems again yet?: Self organizing process for complex living systems and the dynamics of human inquiry. *System Practice Action Research* 21,153-170.

⁵ Mary Stratton's doctoral dissertation, *Getting an Education: Students' Views on Entering and Exiting High School*, engages with theories of structure, agency and resistance, arguing that current theory inadequately explains these interrelated concepts in the context of students' relations with the institution of education and their meso-site interactions with the school. She has suggested that similar issues in conceptualizing hierarchical agency relations are apparent within the *Civil Justice System and the Public* data and would welcome interest in exploring this aspect of the data.

⁶ In response to requests from justice community stakeholders, the Forum is in the process of compiling a "Living Document" *Creating Collaborative Alliances for Change*. Research Director Teresa Rose and Research Coordinator Mary Stratton also produced a working paper "How Collaborative is Collaborative?: Ideals and Challenges, Tensions and Potentials in Partnership Research," that was written while the action of was still in motion. This paper engages with participatory and collaborative research literature.

⁷ This report is available via a link to the project webpage at <http://cfcj-fcjc.org/research/socio-en.php> .