



**The Cost of Justice:
Weighing the Costs of Fair and Effective Resolution to Legal Problems**

September 2010

Proposal Description Submitted as SSHRC – CURA Application

Summary: The Cost of Justice:

Weighing the Costs of Fair and Effective Resolution to Legal Problems

There is a growing belief that our civil and family justice system¹ is in crisis. Evidence is mounting that the public cannot afford to resolve their legal problems through the formal processes of our courts, and it is unclear whether they are accessing other civil justice system services to reach resolution or whether their legal problems remain unresolved. This is a vital concern not only for the individuals who are unable to pursue their claims, but for the health, economic, and social well-being of all Canadians.

*The most advanced justice system in the world is a failure if it does not provide justice to the people it is meant to serve. Access to justice is therefore critical. Unfortunately, many Canadian men and women find themselves unable, mainly for financial reasons, to access the Canadian justice system. Some of them decide to become their own lawyers. Our courtrooms today are filled with litigants who are not represented by counsel, trying to navigate the sometimes complex demands of law and procedure. Others simply give up.*²

There is increasing evidence that unresolved disputes have a significant negative impact on individuals, their families, businesses and society as a whole.

The civil justice system is a fundamental and far-reaching component of democratic societies which touches the lives of Canadians every day. It impacts them through contracts and credit situations, family relationships and their breakdown, personal injury and various corporate arrangements. Although the civil justice system is a cornerstone of our democracy, there is a dearth of empirical research about this system in Canada and internationally. Surprisingly little is known about how well the civil justice system works: what it costs, who it serves, whether it is meeting the needs of users, or the price of failing to do so. The *Cost of Justice* CURA is designed to undertake groundbreaking and innovative research which will provide the foundation of critical information needed for evidence-based decision-making about the civil justice systems in Canada and internationally. This evidence will fill an empirical gap that has persisted in spite of repeated calls for research.

The project will integrate teaching and research, incorporating ethical responsibilities and practical tools about providing access to affordable legal services into the teaching of professional responsibility. Social scientists will improve their understanding of the civil justice system as a foundation for our democratic system and of the need for empirical research in this field. New modes of service will be developed for the justice system and for the delivery of legal services. The evidence-base created through this research will increasingly become the foundation for decision-making in the justice community, informing and assisting government and other stakeholders to make sound decisions, set accurate priorities, and ensure a civil justice system that is effective and responsive to public needs.

The collaboration extends throughout the civil justice community in Canada and internationally, who will engage with scholars from law and the social sciences in developing innovative methodologies, much needed empirical evidence, new theory and evidence-based recommendations for change. This knowledge will be welcomed by key decision-makers in government, within the judiciary, in the courts, in the Bar and amongst the public users of our justice system. In this way, the knowledge gained will play a significant role in policy, reform and new understandings in our civil justice system.

¹ In this proposal we use the term “civil justice system” broadly to include all of the institutions and processes, judicial and extrajudicial, legal and extralegal which participate in the resolution of civil and family disputes.

² The Right Honourable Beverley McLachlin, PC, Chief Justice of Canada, 2007, *Justice in our courts and the challenges we face* (Address to the Empire Club of Canada).

The Cost of Justice: Weighing the Costs of Fair and Effective Resolution to Legal Problems

1: DETAILED DESCRIPTION

2.1. The Relevance and Significance of Understanding the Cost of Justice

The Research Issue and Intent

We know civil justice has a cost; more troubling, we know there is a cost to the lack of access to civil justice. But we do not know what these costs are. This project seeks to fill the current void of evidence-based information about the legal, economic, and social costs and benefits of pursuing, or not pursuing, justice through various dispute resolution pathways. The initiative has direct implications for access to justice policy and socio-legal scholarship throughout Canada and other peer jurisdictions.³

The Social Importance of Access to Civil Justice

Equal access to a civil justice system⁴ that can uphold rights and fairly and effectively resolve disputes is a fundamental and far-reaching component of democratic societies (Farrow, 2006a, 2009, 2010a; Friedman, 2006; Marshall, 1950). It influences our lives every day via contracts and credit situations, the ownership and distribution of property, family relationships and their breakdown, personal injury, benefit entitlements, human rights, and various corporate arrangements. “At the most basic level, the civil justice system exists to provide people with access to knowledge about their rights, and if necessary to a means of enforcing them” (Civil Justice Advisory Group, 2005, p.20).

The system can then be said to have a two-fold purpose. The first plays a primary societal role as a source of information about the rights and responsibilities of individuals, businesses and government, including expectations of peaceful and fair resolution if conflict arises. This knowledge gives individuals the confidence to enter into personal and business relationships and provides a backdrop which empowers them to resolve disputes themselves. The second purpose, when necessary, is to perform a dispute resolution function which has traditionally been available in the courts and increasingly includes additional court connected pathways to address and resolve legal problems (Farrow, 2009; McHale & Lowe, 2006).

In the last decade, a body of Canadian and international research has emerged demonstrating the high, every day incidence of legal problems experienced among the general population (Coumarelos et al, 2006; Currie, 2006, 2007a, 2007b; Genn, 1999; Pleasence et al 2007, 2008a, 2008b).⁵ The Canadian research has found that between 45-48% of the population has a legal problem at any given time with just a small proportion of these addressed by the courts (commonly estimated at around 10%), or with

³ “Access to justice” is a term used to describe many aspects of the growing concern about the ability of our justice system to serve the public. Our focus will be on the cost of justice, already identified as the key barrier to the civil justice system.

⁴We use the term “civil justice system” broadly to include all of the institutions and processes, judicial and extrajudicial, legal and extralegal which participate in the resolution of civil and family disputes. We include everyone who has a role in legal proceedings and resolving legal disputes via the courts, tribunals and alternative resolution options that deal with family law, child welfare, injuries from accidents, property disputes, wills and estates, administrative regulations, rights and entitlements and other non-criminal matters.

⁵ Genn (1999, collaborator) considered the incidence of civil justice problems and how these problems are resolved. This study has been continued as a biannual English and Welsh Civil and Social Justice Survey and her colleagues, Pascoe Pleasence and Nigel Balmer (co-applicants) continue to investigate civil justice problems as interrelated aspects of broader social, economic and health problems. In Canada, Ab Currie (collaborator), Principal Researcher, Legal Aid and Access to Justice in the Federal Department of Justice, has conducted extensive parallel surveys. Currie (2007a) lists similar research in six countries. There are also numerous smaller studies concerned with the extent of unmet legal needs.

formal legal representation. The degree to which problems are resolved by other means, or left unaddressed, remains unclear, although a significant amount of inaction is reported (Currie, 2007a; Pleasence, 2006). Proactive responses to legal problems are, however, rare in the civil justice system; instead, the tendency is for problems to escalate and become harder to resolve, most especially when family matters are involved (Jacobs & Jacobs, 2010; Semple, 2010; Stratton & Anderson, 2008). Canadian and UK findings also show a tendency for legal problems to cluster often leading to additional health, economic and social problems that have significant costs for individuals, their families, businesses, and society as a whole. This occurs for people who are seeking resolution through the courts as well as those who are not.

Early, accessible and effective resolution to legal problems is key to avoiding problems clustering and escalating, but not knowing where to seek help or feeling powerless to do so are significant reasons given for inaction. Furthermore, the experience of multiple problem clustering does not affect people uniformly across the population (Pleasence, 2006, p.72). People who are economically disadvantaged or vulnerable to social exclusion for other reasons such as disabilities, homelessness or ethnicity tend to have high rates of intersection with civil legal problems. Legal issues such as domestic violence, family/relationship breakdown, injury from accident, housing, employment, and discrimination, can also directly lead to or exacerbate social exclusion (Coumarelos et al, 2009; Currie, 2007a, 2007b; Forell et al, 2005; Grunseit et al, 2008; Karras et al, 2006; Pleasence, 2006; Pleasence et al, 2008a, 2009).

This body of research argues for the recognition of everyday legal need and responding investment in affordable, community-based legal outreach, pointing to the very considerable social costs of non-resolution that are borne by social and health services, income supports, disability plans, employment insurance, and other social services. Concurrently, there is mounting evidence that the public cannot afford to resolve their legal problems through formal litigation processes because the cost of legal advice and representation required is beyond the means of low and middle-income Canadians. (Access to Justice Study Committee, 2007; Cannon, 2002; Jackson, 2010; Knutsen, 2010; Lord Woolf, 1996; Systems of Civil Justice Task Force, 1996; Stratton & Anderson, 2008;).⁶ Some evidence that legal representation is too costly comes from the steady increase in the number of people appearing in court without legal counsel. In family matters, where objective representation is considered crucial, parties without counsel are reported to be as high as 50%.⁷ As well, in recent years considerable popular and legal media attention has focused on the lack of access to justice and the high cost of legal representation, often making connections to concerns about the adequacy of available legal aid (Crosariol, 2004; Diebel, 2007; Dodek, 2009; Pigg, 2009, Powell, 2007; Tyler, 2007a, 2007b are a few of 51 mass media and 34 legal media articles on file). Media coverage both reflects and fuels a growing belief that our civil and family justice system is in crisis that spans users, legal service providers and

⁶ These are just a few of the possible references. Every province and territory in Canada has at least one report concerned with access to justice and affordability is repeatedly identified as a barrier.

⁷ Although consistent statistics on are still not collected, an increasing number of Canadian courts and the judiciary are counting the number of litigants appearing without counsel (often referred to as Unrepresented or Self-Represented Litigants (SRLs)). There is also substantial qualitative evidence from across Canada concerning SRLs. The reports of our previous CURA project, the *Civil Justice System and the Public* (<http://cfcj-fcjc.org/publications/cjsp-en.php>) have contributed to this knowledge, as has other province-based research such as Malcomson & Reid, 2004, 2006, Stratton, 2007, and the series of reports from the *Alberta Legal Services Mapping Project* (<http://cfcj-fcjc.org/publications/mapping-en.php#alsmp>). The Canadian Judicial Council undertook an extensive research project on SRLs from 2003-2006, resulting in a number of resources to assist the judiciary and the broader justice community to respond to the needs of SRLs (<http://cfcj-fcjc.org/research/srl-en.php>).

governmental policy-makers. Leaders in the justice community in Canada and internationally are expressing alarm, as illustrated in an address by Canada's Chief Justice:⁸

The most advanced justice system in the world is a failure if it does not provide justice to the people it is meant to serve. Access to justice is therefore critical. Unfortunately, many Canadian men and women find themselves unable, mainly for financial reasons, to access the Canadian justice system. Some of them decide to become their own lawyers. Our courtrooms today are filled with litigants who are not represented by counsel, trying to navigate the sometimes complex demands of law and procedure. Others simply give up (The Right Honourable Beverly McLachlin, PC 2007).

In addition to individual disputes, scholars and policy analysts increasingly point to the importance of well-functioning legal systems to deal with the complexities of the globalized world (Farrow, 2006a; Friedman, 2006).

The Current State of Cost of Justice Research and Reform Initiatives

The concerns outlined above have spawned an array of reforms and new initiatives in recent years, spanning Rule changes, court processes, and legal service delivery.⁹ Some initiatives show promise, while others are acknowledged as falling short of reform goals. As the 30 letters of support for this project confirm, the lack of an evidence-base to properly inform design, delivery and evaluation of reforms and new initiatives is a priority concern of Justice Stakeholders.

There is a growing awareness of what policy analysts term 'wicked problems,' resistant to previous solutions and characterized by critical information gaps about what actually helps and how best to direct appropriate resources (Bradford, 2003, p.6). The challenge of improving access to civil and family justice is one of those wicked problems. Despite recognition that the civil justice system is a cornerstone of our democracy, and the current widespread concern about the fairness and effectiveness of the system, there is a dearth of evidence-based research, or even basic statistical information, about this system in Canada and internationally.¹⁰ Scholars and policy makers have long recognized inevitable tensions surrounding the principles of equal access to justice and the public and private costs related to provision and use of legal processes and services (Posner, 1998; Farrow, 2006b; Hadfield, 2000). However, surprisingly little is known about how well the civil justice system works: what it costs, who bears those costs, who is well served by it, whether it is meeting the needs of users, or the price for failing to do so (Canadian Bar Association Task Force, 1996; Chappe, 2008; Civil Justice Advisory Group, 2005; Civil Justice Review Team, 1995; Hadfield, 2009; Jackson, 2009; Kakalik & Robyn, 1982). Deploring the lack of information on civil justice costs, the Ministry of the Attorney General of Ontario stated that:

⁸ The Chief Justice initiated and is the Honorary Chair of the *Action Committee on Access to Justice in Civil and Family Matters*, made up of leaders from all of the key sectors of the justice community and public representatives. The Committee was created in 2008 to bring profile and encourage action on issues of access to justice, beginning with the cost of justice. Members, who include Trevor Farrow, co-Director on this CURA, will serve as an advisory body to support this CURA (see article at: <http://cfcj-fcjc.org/docs/2009/newsviews12-en.pdf#page=7>).

⁹ The Inventory of Reforms is an online resource on reform initiatives in Canada: <http://cfcj-fcjc.org/inventory/about-en.php>.

¹⁰ The lack of attention paid to the civil justice systems by social scientists has been the subject of international research (Genn, Partington & Wheeler, 2006) and theoretical-methodological critique (Friedman, 2006). The great risk in failing to appreciate the important role that the civil justice system plays in a democratic society is starkly apparent when that system is not functioning (Farrow, 2010a, 2006a, 2006b).

On such an important issue, one would expect to find a wealth of research. Surprisingly, there is little analysis or hard data available. This is true not only for Ontario but for most jurisdictions around the world. (Civil Justice Review Team, 1995, p.3).

The need for strong integrated empirical data on civil justice costs is recognized as a priority by the Canadian and international justice communities (Canadian Forum on Civil Justice, 2007), as our CURA letters of support also underline. There are, however, only limited statistics available to capture activities in our civil and family courts¹¹ and even fewer regarding the broader system intended to serve the overall legal needs of the public.

Our initial review of literature (Taylor & Svechnikova, 2009) indicates that existing large-scale empirical research on cost is decades old and almost all has occurred in countries other than Canada, most notably the Civil Litigation Research Project (CLRP) (Kritzer, 1984; Trubek et al, 1983; Worthington & Baker, 1993). This CURA alliance intends to build on the foundation of these early studies and includes many of these internationally recognized scholars.¹² We have also identified more recent research concerned with justice costs. These small-scale studies, from academics and practitioner researchers, provide locally situated snapshots and often call for larger and ongoing research (Buck et al, 2009; Hadfield, 2009; Kritzer, 2009; Lee III & Willging, 2010; Ontario Civil Legal Needs Project, 2010;¹³ Perryman Group, 2009; Semple, 2010; State Bar of Wisconsin, 2007). Examples and experiences from early and more recent research will inform the development of methodology for this CURA. We also note that there are examples of measurement development from the social and health sector that we will draw on to inform this project (CCSD, 2000; Canadian Institute of Wellbeing, 2009)

The members of this CURA alliance are well aware that it will be extremely challenging to calculate the costs of justice. Previous research is beset with difficulties concerning definitions, scope, data access, and measurement validity. It is complex to determine what is to be defined as a cost and then derive a reliable method of measuring that cost. Furthermore, public financial investment in providing access to justice must be considered within the context of the social value of ensuring an effective accessible system. The research indicating the presence of broad every day legal need suggests that the social costs attached to lack of access to legal resolutions is a vital concern not only for the individuals who are unable to pursue their claims, but for the health, economic and social well-being of all Canadians (Currie, 2006, 2007a, 2007b; Pleasence et al 2007, 2008a, 2008b; Stratton & Anderson). Empirical data about cost is essential to designing and implementing effective systemic change. Ways must be found to confront the research challenges and evolve new approaches to measurement and estimation that will begin to create baselines and models against which new reforms can be chosen and assessed.

2.2. The Research Program: Confronting the Cost of Justice Challenge

The goal of this CURA is to gain an understanding of the cost of justice that can provide a foundation for policy, practice and programs initiatives that improve access to needed legal services and resources. The alliance brings together a group of researchers and stakeholders that collectively have the expertise

¹¹ The Canadian Centre for Justice Statistics has begun to collect data as part of a Civil Court Survey (2007/08) reported in <http://www.statcan.gc.ca/daily-quotidien/090120/dq090120d-eng.htm> (accessed October 19, 2009).

¹² The “Civil Litigation Research Project” undertaken in the US in the early 1980’s, was leading edge research and the related work (Kritzer, 1982, 1983, 1984; Trubek et al 1983) is acknowledged as some of the best existing empirical work on civil justice costs. Kritzer, Bogart & Vidmar (1991) applied elements of the CLRP to examining injury compensation factors in the Ontario civil justice system and Bogart and Vidmar (1990) also conducted research in Ontario that looked at how people come to law. Kritzer and Vidmar are both members of this CURA alliance.

¹³ Co-Applicant Lorne Sossin was Principal Researcher for this project.

solve the methodological problems posed in measuring civil justice costs and place Canada at the leading edge of socio-legal conceptualization and innovative research in this area.

Project Objectives and Outcomes

Applying the collective knowledge of this research alliance to confronting the challenges of measuring costs of justice is an essential component of this project. A foundation of evidence can only be built if methodological innovations and new measurement models are developed. The primary purpose of this CURA is to facilitate and sustain a knowledge-sharing alliance that has the expertise to develop and pilot groundbreaking research with the potential to fill the current empirical gap relating to cost-benefit analyses in the justice system. The scope and breadth of outcomes flowing from this CURA will be of high social, economic and intellectual significance, and will indeed be transformational for the justice system.

The depth and breadth of research expertise and stakeholder support will allow the research team to achieve more than would usually be possible with the resources of the CURA, and as is the case with successful action research, we are already observing spin-offs which will expand the scope and impact of this work. The Alliance nevertheless, recognizes that the outcomes of this project will in many ways be the starting point for further applied research. The following table lists specific objectives with related knowledge-sharing and product outcomes. Corresponding time lines are set out in Research Strategies, Phases and Methodologies. Project evaluation is addressed in “Partnerships and Alliances.”

| OBJECTIVES | ANTICIPATED OUTCOMES |
|---|---|
| To form facilitate and maintain a knowledge sharing alliance with expertise to develop research and understanding concerning the cost of justice. | <ul style="list-style-type: none"> • Accumulation, review, analysis, and synthesis of existing knowledge. • The facilitation of new knowledge and methodological models to measure costs. • Stakeholder involvement in applying this knowledge to civil justice policy and reform initiatives that ultimately have broad social impact for the wellbeing of all Canadians. • provide alliance members and students with a broader understanding of the civil justice system as a foundation for our democratic system and of the need for both empirical research and new theory in this field. |
| To develop reliable data about the comparative costs of alternative pathways to civil and family justice solutions to legal problems. | <ul style="list-style-type: none"> • A series of measurement models that allow empirical assessments and comparisons of different legal service options (see Research Strategies & Methodologies). |
| To build on current research concerning the social costs that accrue when unresolved legal problems multiply and cluster. | <ul style="list-style-type: none"> • Improved criteria and tools for assessing social costs. |
| Socio-legal research capacity building via knowledge exchange and exceptional mentoring opportunities for students. | <ul style="list-style-type: none"> • A contribution to future interdisciplinary socio-legal expertise. • Applied research experience for students |
| Active learning opportunities via the integration of teaching and research. | <ul style="list-style-type: none"> • Curriculum development that incorporates professional and ethical responsibilities and practical tools (details are provided in |

| | |
|---|--|
| <p>A foundation of critical information will be established to strengthen evidence-based decision-making about the civil justice systems in Canada and internationally.</p> | <p>“Training” attachment).</p> <ul style="list-style-type: none"> • A wide range of academic and practice-oriented disseminations (see “Communication” attachment). |
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Research Orientation

The Canadian Forum on Civil Justice is dedicated to working with all stakeholders to facilitate needed reform to the civil justice system in its broadest sense. In Canada, this system is actually a complex set of systems made up of many separately and independently governed components. To accommodate this complexity and the diverse perspectives involved, we consider a collaborative approach to be essential. We assert that useful research and effective policy can only be achieved with strong stakeholder engagement. We are committed to interdisciplinary research with a robust action component throughout the project. We consider the rich combination of experience and expertise collectively held by the diverse participants in the civil justice system and related academic disciplines as the key to gaining knowledge that will advance theory, give rise to effective methodology, and be adopted in practice.

The Research Questions

The following questions are designed to capture the breadth of issues in researching the cost of justice. Although this project cannot sufficiently or fully address these complex questions, we do expect outcomes of this project to contribute towards answers to each one, and we consider it important to maintain the overall context. Along with our central focus on pursuing this research, the larger goal is to encourage and leverage related work which will extend the attention and focus on these questions.

1. ***What are the costs of pursuing the resolution of legal problems?*** This question has several key aspects:
 - a) Where do costs accrue and who bears which costs (i.e., governments, courts, private lawyers, legal aid, individual litigants, corporations)?
 - b) What are the costs of resolving disputes through the traditional litigation path? This will include:
 - the private costs of pursuing resolution including legal fees: accessing courts; expert fees; time; and personal health, economic, and social well-being.
 - the public cost of the litigation system, including infrastructure, legal aid, court staff and the judiciary.
 - c) What are the costs of pursuing resolution of legal problems by alternative paths? This will include:
 - the private cost of time involved to seek out information and to negotiate a resolution; costs of retaining legal advice; and personal health, economic, and social stresses.
 - the public cost of providing visible and accessible legal services and information resources.

2. ***What are the costs of not achieving resolution?*** There are three key aspects to this question:
 - a) The tendency of unresolved legal problems to cluster.
 - b) Personal health, economic and social costs associated with unresolved disputes.
 - c) Public health, economic and social costs associated with unresolved disputes.

3. ***Is the cost of achieving resolution economically and socially warranted?*** How can we better calculate, understand and balance the social value to democratic societies of ensuring an accessible, effective civil justice system against the financial costs of doing so, or the socio-economic costs of failing to provide access? Are there methods that allow useful cost-benefit analysis?

4. ***What can be done to effectively prevent disputes, and at what costs and benefits?*** What methods are there for limiting or eliminating the need for legal services, through consumer protection, licensing, standard-setting and pro-active regulation, or other innovations identified by the research? What can be done to prevent recurring problems for low and middle income Canadians, most especially those who are the most vulnerable?
5. ***What choices and changes are recommended based on the available evidence?*** It is too early to know what action should flow from the evidence, but it is anticipated that this may include:
 - a) Reforms to the formal procedures in civil and family courts. By creating model(s) that can be applied to the ongoing monitoring and evaluation of new and existing processes and programs, we will identify areas and means in which systemic changes to legal rules and processes can improve efficiency, access and cost effectiveness.
 - b) Reforms to the larger civil justice system, including frontline entry and information points for the public. Model(s) to evaluate the effectiveness of recently established entry points into the civil justice system will allow the development of an evidence-base for decisions.
 - c) Models of legal practice. In collaboration with the practicing Bar and experts from Faculties of Law, Business and Economics, we will develop, test, and evaluate new models of legal practice designed to increase access to legal information, advice and representation at an affordable cost. Teaching will be enriched through this new knowledge and approach (see “Training” attachment).
 - d) Changes to investment in the justice system. While it is widely believed that the cost of justice is too high, the evidence gained through this research will provide the first real opportunity to consider the full cost of providing access to justice, and to assess public and private investment in the civil justice system.
 - e) Changes in legal and judicial culture. We will consider the influence of the adversarial system; the growing recognition of an ethical responsibility of proportionality; and the potential for reaching students and lawyers through the teaching of professional responsibility in law schools and via continuing legal education programs.
 - f) Involvement of other key sectors including health care, the business community and social services. These sectors are impacted by the health, economic and social costs of civil justice, and will benefit from changes which reduce cost.
 - g) Involvement of the public. Effective public involvement will ensure that reforms to the civil justice system achieve improvements which meet the needs of users.

Research Strategies, Phases, and Methodologies

Engaging with the challenges of developing viable methodology to advance research on costs of civil justice is the central purpose of this CURA. Previous research on both civil and criminal justice costs has been beset by problems related to designing measures suitable to available - or creatable - data (Barendrecht et al; Cohen, 2000; Gramatikov, 2007; Kritzer, 1984; Swaray, et al, 2005; Taylor & Svechnikova, 2009). There is a lack of previous integrated scholarly work from which to build. Collaborative interdisciplinary and international knowledge-sharing and synthesis is therefore a necessary first step. The development and application of methodological models is an outcome of this CURA, which we propose to achieve in two phases, as follows:

Phase one: Facilitated by a working conference and ongoing electronic communication, the research team and relevant stakeholders will devote the first 18-24 months of the project to collaborative examination of the following key components:

- The cumulative understanding and evidence already available through this alliance, and the methodological examples provided by previous research.

- The possibilities for research components available through and to the alliance (available data, independent but related research contributions from stakeholder partners) and the priorities among these to be undertaken within the resources of the CURA.
- The collaborative development of precise methodologies to gather data and create practical and valid models for costs measurement (quantitative and qualitative, statistics, meta analysis, estimation, interviews, observation and case studies, as appropriate).

Phase two will apply the methodology to several research components designed to create models for measuring the costs of justice. These components must also be discussed and decided collectively. Alliance members have already responded to an initial questionnaire about their interests and potential contributions.¹⁴ Based on this preliminary information, we can identify some possibilities that will be considered further during phase two:

- **Traditional Litigation.** Addressing primarily Research questions 1a) and 1b) we will develop a model that follows the traditional litigation pathway. A probable focus is personal injury insurance. The Alberta Motor Association Insurance, a Stakeholder Partner, has expressed willingness to provide data to the project and several team members have academic and practical interests and research experience in this area (Genn, 1987; Knutsen, 2010; Kritzer et al, 1991; Worthington & Delaney 1995; Wright et al, 1998). Ways will be explored to also examine costs of the insured, either through court data or case studies. A possible associated component is an examination of potential costs-benefits of legal insurance to cover advice and representation associated with the litigation pathway.
- **Legal Services Delivery.** To address research question 1a) and 1c) approximately 2-3 models will be developed to examine current alternative approaches to legal service delivery. There are many possible initiatives in which our partners are involved such as legal information and service access points, *pro bono*, unbundled services, forms of mediation, and on-line legal services. Based on initial input from the alliance we anticipate that there will be a focus on justice service access points (Justice Access Centres in BC; Law Information Centres in Alberta; Community Legal Centres in the UK)¹⁵ which keep relevant data and have conducted service evaluations. Costs related to family law are a priority for many partners. Final decisions on focus and specific research methodology will be developed in Phase One. Another associated component is the development of a new business model for the delivery of legal services undertaken with independent resources as a case study in the new “Business of Law” program of the University of Alberta School of Business, which is a partner on this CURA.
- **Costs of Unresolved Disputes.** Research question 2 calls for continued development of existing work by Canadian and international researchers who are co-applicants, collaborators and partners in this CURA, to develop measures of the cost of failing to resolve legal disputes (Currie, 2007a, 2007b; Genn, 1996; Kritzer, 1984; Pleasence & Buck, 2008; Sandefur, 2008; Stratton & Anderson, 2008). Members of this group have begun preliminary discussion of the measurement limitations and possibilities, and will further explore methods of measuring social costs, drawing on similar work in costs measurement from health and social sectors.
- **Associated Issues.** Findings from the above research models will inform research question 3 and begin to respond to elements of question 5. Specific initiatives aimed at question 4 are likely beyond

¹⁴ Stakeholder partners in this CURA have indicated willingness to open doors to accessing many data sources. Data about public costs of justice is quantified in budgets for courts, justice departments, the judiciary, legal aid programs and other publicly funded legal services. Private costs of justice existing as lawyers accounts, held in lawyers’ confidential files, law society reviews of lawyers’ accounts, court records, and from individual clients. Qualitative data may also be available or can be created to add depth of context and understanding.

¹⁵ See Stratton, 2009 for discussion of the origins of some of these Canadian initiatives.

the scope of this project, however findings may be relevant and some of the CURA partners may contribute findings from independent research that focuses on elements of the prevention question.

The need to solve the current methodological problems in costs of justice research is the core driver of this project. Collectively find solutions and developing approaches to answer the research questions is of necessity the initial focus of this CURA.

3. COMMUNICATION OF RESULTS

The *Costs of Justice* is an action research project dedicated to a process of ‘teaching and learning in motion’ (Stratton, 2008), which began prior to this application and will continue beyond the duration of the CURA. The formation of this alliance, in itself, demonstrates a far-reaching impact from the project. Responses to the first Partner Questionnaire make it clear that justice community stakeholder, academics and community-based researchers all place a primary value on an active knowledge communication process, often identifying this as the most important project outcome. Knowledge development and findings will be disseminated throughout the project and are expected to have ongoing and cumulative academic and applied impacts as described in the objectives detailed in the ‘Project description.’ Our agreed communication plan is as follows.

Strategies for Knowledge-Sharing among the CURA Alliance

- A password protected blog for project partners to deposit, access and share information and dialogue (active since August, 2010), also supported by ongoing communications by e-mail, telephone, video/scope links, and whenever possible in-person.
- A series of Questionnaires to gather Alliance Members input on their interests, needs, understandings and opinions of the project process. These questionnaires contribute to the overall project evaluation. The first in this series was completed in August 2010 as part of the collaborative application process.
- A Project Charter setting out the collaborative agreement concerning the project, goals, objectives, governance, dissemination responsibilities, including agreement concerning authorship, conflict resolution and other matters identified by Alliance Members (Stratton, 2009)
- Partner symposiums and workshops held at key points in the research process (including video links for members unable to attend in person). The first of these to be held at project start up (Spring, 2011). Another to be held after data collection is completed (year 4) to discuss findings and dissemination details. Additional funds will be sought to allow additional symposiums and/or research team workshops.
- A collaborative review process for all stages of the project development and ensuing disseminations.

Public Dissemination Strategies

The Alliance is committed to producing disseminations in multiple formats that meet the needs of academics, decision-makers in government, the judiciary, the Bar; front-line community legal services; and the general public. Dissemination will occur throughout the project, with the final year focusing specifically on publishing findings in multiple formats. Individual researchers have already made specific dissemination commitments spanning the following forms of dissemination:

- Publically available Internet information about the project and its progress (in place at <http://cfcj-fcjc.org/research/costs-en.php>).
- Presentations about the project process and outcomes at academic and justice practitioner meetings and conferences (ongoing).
- Scholarly articles in academic journals and edited books (primarily in years 4-5 and beyond).
- Articles in legal journals and practitioner magazines (information and progress articles throughout; findings in year 5 and beyond)

- Popular media articles (information and progress articles throughout; findings in year 5 and beyond)
- Media interviews throughout project (mainstream, justice community, public legal education, academic).
- Course components related to the research process and findings, and guest lecturers for students in related disciplines intended to build understanding of costs issues and the value of socio-legal research (commencing in Fall term 2011).

4: TEAM OF RESEARCHERS

This CURA has confirmed 12 Co-Applicants and 12 Collaborators, which allows only brief descriptions of these outstanding team members who combine a wealth of expertise in law, interdisciplinary socio-legal research, and collaborative projects.

Project Co-Directors will lead the research and the collaboration (Discussed further in Section 5) **Diana Lowe, QC, LLM Applicant**; brings her experience in justice community collaboration and as PI on the *Civil Justice System and the Public CURA*.

Lesley Jacobs, PhD Co-Applicant; Brings experience as Team Leader, SSHRC MCRI, *Asia Pacific Dispute Resolution Projects I & II*; PI (among other SSHRC awards) and in public policy scholarship and research.

Trevor Farrow, LLM, PhD (Cand.) Co-Applicant; links extensive academic justice community law and legal system expertise with his role as Chair of the Forum to play a vital liaising role.

Mary Stratton, PhD, Co-Applicant; CJSP Research Coordinator; brings experience in multiple methodology, collaborative action justice partnership research projects.

Other Co-applicants will collaboratively develop specific methodologies and research.

Nigel Balmer, PhD, is a leading researcher on prevalence of legal problems and associated social costs;

Barbara Billingsley, LLM, is previous co-applicant on the CJSP CURA and links academic, Forum and justice community networks; **Ian Greene, PhD** is an expert in public policy, program evaluation, policy studies graduate supervision; **Erik Knutsen, LLM** has expertise in costs of litigation; personal injury; auto insurance; **Herbert Kritzer, PhD** was a lead researcher for the *Civil Litigation Research Project* and brings exceptional expertise in interdisciplinary methodology and law and justice issues.

Geoff Mullherin, PhD has expertise in quantitative applied research; prevalence of legal need, and vulnerable groups in Australia. Has worked with UK and Canadian researchers in this area;

Pascoe Pleasence, PhD is a leading researcher on prevalence of legal problems and associated social costs; **Lorne Sossin, LLM, PhD** has expertise in Administrative Law, legal system, and the professional and ethical training of law students; **David Wiseman, PhD** links academic and practice expertise in legal system change, poverty law, and social disadvantage.

Collaborators contribute a wide range of legal and research expertise valuable to this project.

Andrew Cannon, PhD contributes justice community expertise in law, politics, governments and reforms; **Albert Currie, PhD**, is the leading Canadian researcher in the area of prevalence of legal problems and associated social costs; **Judith Fordham, PhD** contributes knowledge of forensic methods and juries and expert evidence; **David Hyman, MD, JD** contributes expertise in both the areas of health and law systems, costs interrelations, legislation, and litigation; **Dame Hazel Genn** is the foundational researcher of current, world-acclaimed prevalence of legal problem research; **Krista James, LLB** brings practice expertise and research knowledge related to justice and disadvantages people; **Douglas May, PhD** is an economist with experience in public economies and expertise in comparative costing in the areas of health and social welfare; **Rebecca Sandefur, PhD** bridges community-based and academic law and justice research with a focus on legal problems and social injustice; **Michael Trebilcock, LLM** contributes expertise in law and economics; **Rollie Thompson**

LLB has a background in economics and law and brings expertise in family law; **Neil Vidmar, PhD** brings international experience in costs of justice research spanning earlier and current work; **Albert Yoon, PhD** offers research experience related to access to justice, civil litigation, courts and the legal profession.

5: PARTNERSHIPS AND ALLIANCES

Alliance Appropriateness, Scope and Contribution

As discussed in the “Detailed Description” evidence-based research concerning the cost of civil justice is lacking and the need for strong integrated empirical data is recognized as a priority by the Canadian and international justice communities. Calculating the costs of justice is complex and challenging and previous research is beset with difficulties concerning definitions, scope, data access and measurement validity. Two dimensions of partnership are absolutely essential if the state of knowledge concerning costs of justice is to be advanced:

1. The active support of stakeholders who are willing and able to assist researchers in understanding and negotiating the complexities of the Canadian civil justice system and associated legal processes.
2. An exchange of knowledge and experience among a wide range of justice community practitioners and researchers with academic and applied interdisciplinary socio-legal research expertise.

This CURA project is only feasible because of exceptional academic and community strength of a collaborative alliance that brings together key academic scholars, justice stakeholders and policy makers from across Canada and around the world. The Research Team of 12 co-applicants and 12 collaborators¹⁶ are supported by 32 Stakeholder Partners, bringing together an unprecedented collaboration of international, interdisciplinary, socio-legal experience in research methodology, legal and social theory, systemic change, and justice community practice. Methodological expertise from sociological, economic, business, political science, applied policy, law and justice, and health backgrounds will be applied to solving the problems of measuring costs of justice.¹⁷ The collaborative nature of the project will expose academic researchers to the everyday operation of the legal system from the frontlines of legal service providers, practitioners and the Courts up to the policy-makers in government. Similarly justice stakeholders will have the opportunity to engage in rigorous research processes and to benefit from much anticipated evidence to support programs and policy. Students from an array of disciplines will gain opportunities to learn about and in some cases be involved in a major socio-legal research initiative (see “Training” attachment).

Project Governance

Administration of funds: The project funds will be administered by the Canadian Forum on Civil Justice, in compliance with and pursuant to the policies of our host institution as well as the SSHRC CURA guidelines. While we are an independent organization, our Board has adopted the University policies and all of our financial administration is governed by the University policies and procedures. In addition, we maintain records of all of our financial and payroll transactions and conduct an annual independent audit, which is in-turn reviewed and approved by the Board of the Forum.

¹⁶ Ab Currie is a confirmed collaborator (as evidenced in the Partner Letter from Justice Canada) however he was unable to complete the invitation and verification of his CV due to a personal emergency. We include him in this count.

¹⁷ We emphasize the impressive interdisciplinary backgrounds of our research team, although their involvement in socio-legal projects has led to current attachments to legal organizations or law faculties.

The Forum has been housed at the University of Alberta for the past 12 years, and the University is our academic partner in this project. The Dean of the Faculty of Law has confirmed that he will administer the funds on the project.

We are in discussions about a possible relocation of the Forum to York University by the end of this year. The University of Alberta and York University are both supportive of this transition, and York University is also a strong academic partner and fiscal contributor in this project. In the event that this relocation takes place we will be in contact with SSHRC to discuss the administration of the grant, which we would anticipate would be transferred to York University. The Dean of the University of Alberta Faculty of Law has confirmed that he will facilitate the transfer to York University, in that eventuality.

The funds will be applied to support the central coordination of the project by the Forum, which will include key staff and research activities as prioritized by the Co-Directors and the broader research alliance. As is detailed in the budget justification, many of our partners have committed in-kind assistance for the project, including extensive commitments of time and data. We also anticipate that the project will leverage additional funding and spin-off programs and projects which will expand the scope of the work even beyond that which will be possible within the available funding.

Project Direction and Coordination:

The *Cost of Justice* project will be co-directed by Diana Lowe, Les Jacobs, Trevor Farrow and Mary Stratton. Since the submission of our CURA LOI, the Forum has developed an especially strong working relationship with the York Centre for Public Policy and Law (YCPPL) and the proposed governance of this project reflects that relationship.

Applicant Diana Lowe brings to her Co-Director role twelve years of experience as the Executive Director of the Forum, during which time the Forum was established and became internationally recognized as a leader in civil and family justice research. The Forum is mandated to collaborate with the Canadian and international justice community and has a proven record of doing so, including convening and directing major research initiatives, such as the *Civil Justice System and the Public CURA*. Diana was the Principal Investigator on the groundbreaking CJSP CURA and numerous other national collaborative projects. She is the Co-Chair of the Forum Research Committee, thus continuing her role with the Forum and this project.

Co-Director Lesley Jacobs is a Professor of Law & Society and Political Science and the Director of York Centre for Public Policy and Law, and will assume an active role overseeing the Cost of Justice project direction and administration. He brings extensive experience leading and coordinating major research initiatives, including as Chair of the Canada Team for the Asia Pacific Dispute Resolution Project funded by SSHRC, which is a major collaborative research project on human rights and trade disputes in Canada, China and Japan involving Canadian, Chinese and Japanese scholars.

Co-Director Trevor Farrow is a tenured Associate Professor at Osgoode Law School and Osgoode's Director of Clinical Legal Education, is the Board Chair of the Canadian Forum on Civil Justice, and an associate of the York Centre for Public Policy and Law as well as a member of Faculty at York University, and will also assume a co-directing role. He is internationally respected by the academy, the bench, the Bar and other justice stakeholders, serving as a member of the national Action Committee on Access to Justice in Civil and Family Matters (the Honourary Chair is the Chief Justice of Canada), a member of the Chief Justice of Ontario's Advisory Committee on Professionalism, and a former

practicing litigation lawyer. Professor Farrow has consulted widely on international rule of law, judicial and legal education projects.

Co-Director Mary Stratton is the Research Director at the Forum and an Adjunct Professor in the Department of Sociology, University of Alberta. She was the Research Coordinator for the *Civil Justice System and the Public CURA*, a Co-Applicant and lead researcher on the Northern Research Development Grant project on civil justice in Nunavut, and has extensive expertise in interdisciplinary, collaborative research design and implementation. Her experience includes the design and implementation of CURA and other major collaborative justice projects involving significant numbers of partners. At the request of justice community members, Dr. Stratton developed a resource on collaboration in the justice community, which serves as a guide for practical application to collaborative initiatives (Stratton, 2009). Dr. Stratton has the training and methodological expertise to understand and coordinate the different academic and justice community perspectives included in the costs project.

Alliance Facilitation

The Co-Directors all bring strong experience in collaboration to the project and the Forum in particular, has an established network of justice community partners and a record of convening justice community initiatives. As outlined in the “Communication” attachment, the alliance for this CURA has already been established and mechanisms are in operation to facilitate partner communication, including a Blog which allows the sharing of information, commentary and resources among alliance members. This online resource is an invaluable communication vehicle, as well as a record of discussions.

All participants in the alliance have been asked to complete partner questionnaires which ask each partner and collaborator to identify what they can contribute to the project, what their needs and interests are in the cost of justice, and what their expectations are. The Objectives, Outcomes and Proposed Research Activities reflect partner responses to this first questionnaire and as well as their feedback on early drafts of this proposal.

A priority activity at the outset of the project, will be a symposium to bring together our alliance members who are based across the country as well as in the United States, United Kingdom and Australia. A detailed Project Charter will be developed at the symposium and approved by our alliance members. The Project Charter will be a framework for the alliance members, setting out the project description, anticipated outcomes, commitments, responsibilities, governance and expected benefits. Practices of intellectual collaboration and integration will be fostered throughout the project in the following ways:

- ✓ Collaboration as envisioned for this CURA requires accepting that any one intellectual approach will be necessarily incomplete.
- ✓ Open inquiry is critical to success; researchers value the approaches of other disciplines and allow these to influence their own understanding of the questions and solutions, with a goal of achieving a metamorphosis that creates new knowledge.
- ✓ The proposed program of research is broad and the interests of collaborators diverse. Project clusters and focus must reflect the composition of the research team as a whole. There will be room for theoretical and applied, provincial, national and international interests. Disseminations and authorship arrangements will accommodate these interests and needs. Overall integration of undertakings and outcomes will, however, be the driving principle in deciding project alliances, responsibilities and collectively agreed outcomes.
- ✓ Project clusters will commit to maximize the involvement of students in the research activities, providing training, mentoring, and opportunities to participate in dissemination.

- ✓ To achieve these principles, a system of central administration and coordination will be agreed and established with the responsibility to keep network communication active by a combination of electronic and in-person interactions with project clusters and periodic meetings of the entire partner group.
- ✓ Individual and collective contributions will always be acknowledged. Specific authorships may be agreed, but all knowledge created via the project will be shared with the alliance members and made as widely accessible (in terms of language and availability) as can possibly be achieved while meeting the variable needs of academic and justice partners.

In addition to this symposium, in-person meetings will be held whenever possible among alliance members and project clusters, including in the context of conferences and symposia that our research participants attend, and meetings to discuss the project will be scheduled in conjunction with these conferences whenever possible.

Project Evaluation Process

Provisionally the evaluation plan for this CURA will include the following three components and related criteria. The plan will be considered at the first Partnership Symposium:

1. The success of the collaboration in knowledge-sharing, identified by many partners as the most desired outcome, and the only required evaluation criteria.
2. The usefulness and impact of the research components (methodologies to measure costs)
3. The scope and impact of project disseminations and findings.

Component 1 will be evaluated by:

- ✓ A series of questionnaires that ask alliance members for feedback on the knowledge-sharing processes and about the degree to which the project is meeting their expectations and how it can be improved.
- ✓ A Record of Knowledge Mobilization (see as an example <http://cfcj-fcjc.org/docs/2007/cjsp-rkm-en.pdf>) that records all knowledge-sharing events and disseminations.
- ✓ Statistics will be kept related to web traffic on the public costs page and the project Blog.
- ✓ Any other criteria agreed by project partners.

Component 2 evaluation criteria will be developed concurrent to the design of the methodological models, so as to be effective and appropriate to the specific research. Criteria will be decided collaboratively among the Research Team, which includes several applied socio-legal evaluation experts. We will use a developmental evaluation approach (Gamble, 2008), which is best suited to the innovative approach that is central to this CURA. This approach allows opportunities for exploration, and ensures a continuous loop of innovation, testing and evaluation of successful practices.

Component 3 will be evaluated in the following ways:

- ✓ The completed Record of Knowledge Mobilization.
- ✓ The number and variety of disseminations reporting findings.
- ✓ Solicited and unsolicited feedback from project partners and other stakeholders.
- ✓ Citations of the project, in so far as these can be identified.
- ✓ Application of the models to new pilots, reforms, practices among our alliance members and the broader justice community.
- ✓ Incorporation of new knowledge and practices into teaching of law students, the practicing Bar, the Judiciary, Court Administration and the public.
- ✓ Any other criteria agreed by project partners.

6: TRAINING (ROLE OF STUDENTS)

Training Expertise

This CURA will provide substantial training opportunities for students via Research Assistantships and course content. The strength and interdisciplinary backgrounds of the co-applicants present extraordinary mentoring opportunities for students from several universities, in a variety of disciplines, from undergraduate to post-doctoral levels. Research Assistantships will provide salary and active involvement in a CURA collaborative research process. Specifically, to gain applied experience in critical reviews of literature, instrument design, data collection, data analysis and dissemination activities. There will also be active learning opportunities via the integration of teaching and research which will provide benefits to the legal academy, students and justice community participants via curriculum development that incorporates professional and ethical responsibilities and practical tools about providing access to affordable legal services (as recommended in Farrow, 2010b; Farrow & Henderson, 2009; Sullivan et al, 2007). Specifically, some bachelor level and Law course content will incorporate the issues surrounding costs of justice as explored in this CURA. Two graduate courses plan to incorporate some specific research task associated with the project; the Business of Law program will incorporate a case study on the cost of justice in this innovative program for legal professionals.

The Co-Directors and Co-applicants have a strong record in student involvement in applied research and the integration of teaching and learning in curriculum. Diana Lowe was the lead Director and Mary Stratton the Research Coordinator for the Canadian Forum on Civil Justice's (Forum) previous CURA, *Civil Justice System and the Public* (CJSP). During the grant period 18 student RAs were employed from three universities and six disciplines, and drawn from Bachelor, Law, Master's and Doctoral programs (Billingsley et al, 2006). The students were exposed to a wide range of research elements from literature reviews through field work and disseminations (for example Lowe & Taylor (Eds), 2004). Since the CJSP, the Forum has provided research training and experience for approximately 23 additional students, who have participated in a variety of projects employing a wide range of research methods. Five of these students have already participated in the preparatory stages of this Costs of Justice Project (primarily reviewing the literature). Les Jacobs, as the Director of the York Centre for Public Policy and Law (YCPPL), regularly supervises a wide range of students interested in law and social justice issues and will actively involve them in aspects of this project. Trevor Farrow has expertise in curriculum development that incorporates professional and ethical responsibilities and practical tools about providing access to affordable legal services (Farrow, 2010b; Farrow & Henderson, 2009; Sullivan et al, 2007). Most other co-applicants and several of the collaborators also have notable experience in student training and supervision.

Estimated Training Commitments to date

Forum: RAs (CURA funds, all study levels): Year 1 - 1; Year 2 - 1-2; Years 3 & 4 - 2-3; Year 5 - 1;
Ian Greene, York: a) (In association with the YCPPL, jointly funded by CURA & York University) 2 graduate students and 1-3 undergraduate per term; b) a costs research class project beginning September 2011; **Erik Knutsen, Queens:** a) (funded by Queens) 1 law student per term; b) consideration of class research project; **David Wiseman, Ottawa:** a) (funded by Ottawa) 1-2 RAs per year; b) a project-oriented seminar course (year to be determined); **Judith Fordham, Western Australia** (funded by UWA) 1-3 Undergraduate and Master's RAs per year; **Centre for the Legal Profession, Toronto** has committed to the development of curricula considering access to justice as an ethical and professional obligation; **Law Commission of Ontario** (LCO funded) employ 4 summer students and several term-time students, mostly undergraduates and are willing to involve them in costs research of mutual interest; **Other partners** have indicated further training opportunities dependant on final decisions about project research focus.

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