

News & Views

ON CIVIL JUSTICE REFORM

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Canadian Forum on Civil JUSTICE
forum canadien sur la JUSTICE civile

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The inspiration for this issue came from one of our Research Assistants, Cam Schwartz, who has been involved in all aspects of the research since joining the team in February 2002. Cam suggested the idea of a newsletter issue that would highlight the research and we are delighted to bring this Special Issue to you. The Civil Justice System and the Public research has been carried out in the field by our Research Coordinator, Mary Stratton, and a number of Research Assistants, many of whom have contributed articles which tell about the research from their unique perspectives.

We welcome your submission of articles (or topics of interest) for publication in *News & Views on Civil Justice Reform*. Tell us about an experience of civil justice reform in your jurisdiction. Provide us with a comparative analysis. Report on what is new in your civil justice system. Let us know what you would like to find out more about. Submissions may be made in French or English; however we ask that contributions be written in plain language. For more detailed information, please contact the editors: Kim Taylor & Diana Lowe.

This newsletter is intended to serve as an information source on civil justice reform initiatives for lawyers, judges, legal educators, court administrators and members of the public.

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The contents of this newsletter are intended as general legal information only and should not be relied upon as legal advice.

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Kim Taylor & Diana Lowe

The *Civil Justice System and the Public* is a collaborative research program founded on the belief that a lack of effective communication both within the system and between that system and the public is a significant barrier interfering with access to justice. This research is designed to involve both the public and the justice community in identifying changes in communication practice that will improve the system. The goal of the project is to make specific and clear recommendations for effective change that will ultimately improve access to the civil justice system by increasing the ability of the system to hear, involve, and respond to the public.

An Alberta pilot of the project is funded by the Alberta Law Foundation, and funding for a five year national study is provided by a Community-University Research Alliance (CURA) grant from the Social Sciences and Humanities Research Council of Canada (SSHRC). The project takes a collaborative action research approach and has established a large, national, academic and community partnership, representative of all the players involved in the civil justice system.

Components of the research include a short questionnaire, in-depth interviews, researcher observations and case studies of good communication practices. Interviews are conducted with people working in all facets of the civil justice system, as well as with members of the public who have been involved in a civil case. Data collection has been conducted in Alberta, Nova Scotia, Ontario, Quebec, Nunavut and British Columbia.

During 2004, the research team will organize focus groups to take our analysis of the research data to the participating communities for their further input. Additionally, case studies of good communication practices will be identified and evaluated, providing information about specific programs as well as a model for collaborative evaluation of new programs.

In the final stage of the project, we will work with our partners to develop and circulate research products that will ensure our findings lead to new knowledge and improved communication practices.

This special issue of *News and Views* involves our partners and members of the research team in showcasing aspects of the *Civil Justice System and the Public* project.

Information, knowledge and good communication practices:

Some preliminary findings from the *Civil Justice System and the Public* project

Diana Lowe and Mary Stratton with Canadian Forum on Civil Justice Research Assistant Lily Tsui BA (Honours), Doctoral Student, Psychology, University of Alberta

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

In 1996, the Canadian Bar Association *Task Force Report on the Systems of Civil Justice*¹ identified members of the public as the most important participants in the civil justice system.² The Task Force also underlined delay, affordability, and lack of public understanding as three major problems that create barriers to achieving a system that is accessible, effective, fair, and efficient.³ Our research begins with the belief that improved communication is key to reducing these barriers. We believe that improved communication will, in turn, open the door to involving the public directly and productively in civil justice reform. Our hope is that the system will be able to respond effectively when public needs are clearly communicated. The *Civil Justice System and the Public* is a collaborative research program designed to involve both the public and the justice community in examining the current state of communication within the Canadian civil justice

system and between the system and the public.⁴ The goal is to identify good practices, and to make specific and clear recommendations about improving communication. For the purposes of this research, we define communication as: every way in which people discuss, receive, or convey information. This may include any of the following: direct meetings and conversations; telephone,



Palais de Justice, Rivière-du-Loup

e-mail, memos and letters; brochures and other written materials; providing or interpreting judicial orders, directions and decisions; information placed on a web site; referrals to or from other services; and the posting of directions around the court house.

Multiple Methods and Perspectives

In order to arrive at communication solutions that really work, it is important to understand the various experiences and views of everyone involved in the civil justice process, whether parties, witnesses, counsel, clerks, legal and other service providers or members of the judiciary. To aid this process we have used a variety of methods of gathering information, including key contact meetings, short questionnaires, in-depth interviews and observation notes. This combination of approaches has provided us with rich and complementary data.

Key contact meetings are a first step in each jurisdiction. They serve a two-way information sharing purpose: the research team gains invaluable background information about the research community and key members of that community learn the details and purpose of the research first hand. Short questionnaires identify and provide facts and figures about important issues, but have limited ability to explain why things are the way that they are. The in-depth interviews fill this gap as they encourage participants to reflect upon and explore their knowledge and experience.⁵ Researcher observations

add to the value and richness of both questionnaires and interviews by providing an additional perspective on the way things happen.

The interviews are our primary source of data. We use broad and neutral questions as a starting point for a conversation with participants about their experiences in communication between the civil justice system and the public. The role of the interviewer is to support the participants in this process by encouraging them to expand on what they have already said. The interview transcripts capture the way that people actually talk and think, illustrating multiple perspectives on communication issues that allow us to see nuances, overlaps, and contrasting views around the same basic issue or theme.

In 2002 we completed pilot field research in Alberta, and in 2003 we continued our research nationally, visiting Halifax and Truro in Nova Scotia; Montreal, Rimouski and Rivière-du-Loup in Quebec; Toronto, Thunder Bay and Ottawa in Ontario; and Iqaluit in Nunavut. Our final sites in Vancouver and Surrey, British Columbia were just completed in May 2004. In each research location we have spoken both with members of the public who have been involved in a civil case and with people working in many roles within the justice community (including judges, lawyers, court clerks, legal aid officers, librarians, and other support workers). To date, approximately 100 members of the public and 183 people working within the justice community have participated.

What our Participants Tell Us –

As the Task Force pointed out, Canadians must have access to legal information and advice in order to understand their rights and the available legal remedies and peaceful resolutions. Most members of the justice community expressed a desire that the public, in general, have a better understanding of the civil justice system. Many of our public participants confirmed that they knew little about the system and had not recognized the need for such knowledge until after they became personally involved in a civil case. It is clear from our data that when people do find themselves in need of information about the civil justice process they are usually under stress and sometimes in serious social and/or emotional crisis. It is therefore particularly important to ensure that clear, accurate information and assistance is easy to find. We have chosen some samples, drawn

from discussions about the public need for information and how this need is met, to demonstrate the rich and informative data we are collecting.

Sample #1: Where the public looks for information

We begin here with quantitative results from our short questionnaires, which show that when members of the public



Court House, Peace River



Nunavut



Nunavut Court of Justice

become involved in a civil case, they seek information from an array of possible sources. Our participants turned most often to lawyers (91%), friends and family (82%), court clerks (64%), legal aid (59%), court information desks (49%), the Internet (46%), police services (46%), and public legal information pamphlets (45%).⁶

Unfortunately, as one of our research participants observed, many people do not feel that they know where to begin to find information about a civil case:

I think the public could have more knowledge of where to go, what to do, how to do it. I mean, right now, if I had a problem with my neighbour and I have done everything I can possibly do to work it out, what do I do next? Do I take it to the court? Do I need a lawyer? Can I just walk in there and represent myself? What papers do I need? If it was damage to a fence, what would I need to come in with? Do I need to come in with a lawyer? I wouldn't know all of that right now.... I wouldn't know what I need. You don't want to come in there with a whole house load of papers, but you don't want to come in with nothing either. If I should have had a lawyer, you wouldn't want to walk in with no lawyer to find out that I should have had a lawyer with me. [Public - 247]

After voicing a similar dilemma, another participant also described his idea for a solution:

I had no clue...I initially asked my friends...my brother... "Dial-a-Lawyer"...I called the courthouse...I went to the police station....If you don't know where to start, you don't know what questions to ask, and if no one is giving you the answers to the questions you don't ask, you're not going to learn new stuff....It would have been very nice if I could just go to court and type in somewhere or ask somebody "This is what happened to me". I might be wrong, I might be right, but give me like ten sheets of examples of this happening to someone else and I can just read through it.... Just to give me an idea of what is going on.... why it is taking so long?... Obviously broken down to not much legalese [referring to the ten sheets of examples]. [Public - 202]

Our data tells us that although the public is unsure of where to begin, they do make active inquiries to a wide variety of

potential resources. While this points to the need for basic public education about legal resources, it also points to the need to make such resources broadly known and available.

Sample #2 – Sharing Knowledge Effectively

Of course, responses to public information inquiries can only be effective if those asked both have the needed information and are able to communicate it effectively. One challenge arises daily in court registries throughout the country, because the step-by-step guidance the public seek from frontline staff often risks crossing the line between legal information and legal advice. As a member of the justice community pointed out:

The clerks are restricted and everyone goes to the clerk and says, "What do I do?" The clerks sort of say, "Really, I can't give legal advice and we can't help you." But if you had a lawyer who had broad-based knowledge, he could certainly just say, "You go in there and you'll have to file an affidavit; ask for a few days to do that, etc. etc." Then they would know what to do. [Judiciary -276]

Our researchers observed that clerks who had received training and encouragement in providing the public with specific and helpful information had generally positive communication interactions with members of the public. Members of the public often arrived visibly tense and agitated but as the clerk explained kindly and clearly what had to be done, the client relaxed and left looking relieved and thankful. Clearly, such interactions are also preferable for the court clerk.⁷

We found examples where in spite of the need to be careful not to cross the line between legal information and legal advice, experienced and empathetic clerks can make a crucial difference in the public's experience of the civil court process. One participant told us about going to small claims court, emphasizing that without the help of the court clerk she would probably have just given up. Her story illustrates the difference that the combination of available information and good communication skills can make:

So I called small claims court and she told me I would have to bring X amount of dollars and, and try to get it started. So I went over and I did that, and then I asked small claims "What do I do, step by step? I've never done this before." So the court date was set. And she said "You're going to have to have a bailiff or someone



B.C. Court of Appeal & Supreme Court, Vancouver



Palais de Justice, Rimouski

to serve papers". I could do it myself but she explained the difference if you get a bailiff or if I did it or whatever. And the cost that that would involve and she gave me this card, like she gave me two or three cards and I chose one. And uh, she said after that was done, he would register it after he served the papers, just to appear in court on this date. She told me the date of everything. Any other questions I could give her a call. And I did, this one individual girl I called and I said "Okay, what do I have to take? What do I have to do?" And they did send me papers explaining, the court date is set down for this date and make sure you have, this, this, this and this. And I of course, I didn't know the legal terms so I called her and I said "Okay, what does it mean by this and this?" She said "Okay, you have to take this and prove that he does owe you the money. You have to make this adjudicator believe that he owes you the money and that you are the right person. Because he'll go in with a defence and he'll make his case, and it's up to adjudicator to decide, okay, which is which." Anyway, so I got everything together and I went to court and the defendant didn't show up. And so it was granted, that he owed me the money.... She was very helpful, just a very helpful young lady. So, but I probably would not have gone this far if it hadn't have been for her, because I did not know what I was doing. You know if I had gone in that day and said, "I don't know what I'm doing, I've never done this before." And she had just given the forms and said, "Fill it out." ... [but] she explained every step to me. And it was just remarkable. [public -307]

Our public participants repeatedly told us that they need material that is clear and easy to understand and follow, most especially about how to fill out forms and understand legal terms. Members of the justice community recognize these needs, as their comments show:

How to commence a civil claim document and how to proceed with that type of thing is constant... Even though the booklet's on the stand – even though they have access to the Internet – even though they've come down and talked to a clerk at the counter, they're still phoning... To be honest...if you've never done it and you've never had a legal issue, there is just nowhere to access that information. [Court Clerk -213]

What I've found from reading a lot of brochures through myself is that if I was one of my clients, I likely wouldn't understand a lot of it...I talk to my husband – he's university educated – I think I'm talking normal, general language and he doesn't understand. [Lawyer -261]

There are many efforts underway across Canada by Public Legal Education and Information (PLEI) organizations, courts and other members of the justice community to develop the kinds of information the public clearly needs.⁸ A major challenge to meeting these needs successfully involves finding language that is plain enough to be understood by



most people, while still accurately describing procedures that are complex and highly technical.

Sample #3 - Building good practices

Sharing available knowledge, both within the civil justice community and between the civil justice community and the public, is a foundation on which to build good practices. This is not an easy task to accomplish but it can be surprisingly simple and inexpensive to begin. For example, we observed that although much-needed public education material exists and people working within the system know about it, often no one is charged with the responsibility of making sure that this material is made available to the public. Our researchers frequently observed that courthouse brochure racks were not well supplied although we knew that suitable material did exist.⁹ On one occasion a counter clerk approached a researcher who was staring at an information stand containing one lonely pamphlet. Assuming him to be a member of the public and obviously with a clear intent to be helpful, the clerk asked if he was looking for the booklet on how to collect a judgement. The researcher agreed that he was and then began to inquire who was responsible for identifying public information material and filling up the rack. Taken aback by questions she had apparently not previously considered, the clerk became uncomfortable as she concluded that it was probably her! The point here is that maintaining public information material had not been clearly and specifically assigned as an important task to be undertaken.

Although maintaining information racks seems an obvious and basic good communication practice that can really make a difference, it is one we found to be rare. The courthouse in Rimouski stood out as an example of good practice in terms of the provision of information material. A full information rack was located prominently in the courthouse foyer close to the security and information desk. The security officer routinely asked people looking at the rack if they could find what they needed. When he discovered a brochure was

missing he immediately went to the counter area to inform someone and within minutes a clerk appeared with needed material. We learned that a clerk was specifically in charge of ensuring information availability. Other staff reported to her when materials were running low and she immediately replenished them. In a very simple inexpensive way a good communication practice was established and shared among courthouse staff and public users.¹⁰

Sample #4 – Valuing our Knowledge

Sometimes increased awareness about information needs is all that is required to bring about effective change. As one participant commented, those who have knowledge take it so much for granted that they fail to recognize how little others, including those in other justice community roles, really know:

We know so much about it we assume everyone knows. We need to stop a minute and say, “What does the average person on the street know about what happens here in the courthouse? What would they like to know? What do they need to know? and how can we get that information to them?” [Judiciary -262]

Front line staff such as court clerks, legal aid and court support workers are vital points of contact with the public, especially for people who cannot afford, or have not yet found, legal representation. Through their day-to-day interactions with the public, these staff gain invaluable first-hand knowledge about the kind of information members of the public need. Their insights can go a long way to making

the system more responsive and appropriate to the needs of users. The Tenants’ Rights Action Coalition (TRAC - <http://www.tenants.bc.ca>) in Vancouver is one organization that makes a practice of using such front-line knowledge. Information Hotline staff answer questions about residential landlord and tenant law in British Columbia. As well as providing a valuable information service, they also record the questions/issues that are raised in the hotline calls and use this input to identify further information needs. TRAC then address these needs through public legal education, training of frontline advocates, development of legal material and law reform initiatives. This process has proved effective at gauging the public need and provides an excellent example of valuing front-line knowledge.

Hand in hand with the failure to adequately value the knowledge that is already available within the civil justice system is the inadequacy of mechanisms to share that knowledge. We recognize that this is a problem which can be difficult to address in a large, dispersed, and hierarchical system such as the justice system. As one participant commented:

...[T]hat’s the biggest single thing...How do you share information? How do you get it out there? How do you let people know what you’re doing and find out what they are doing? Because often somebody has done it before you, but you don’t know about it. So it’s like re-inventing the wheel. [Court Administrator-203]

Towards Change:

Our researchers have been conducting interviews, gathering information and making observations over the last three years. We have based this article on the preliminary impressions they have acquired and the themes we have so far identified. As we continue to code the data and pull together and review the many perspectives on each individual theme, we will write up our findings and return to our original sites to meet with participants in focus group settings and ensure that our conclusions properly reflect the experiences of those who use and work within the civil justice system. As we complete our case studies and data analysis, the *Civil Justice System and the Public* remains a dynamic project that seeks to identify pathways towards effective change. We invite the comments of those who read this article and take this opportunity to thank all of our partners and research participants for their contributions to this study. We will continue to use the power of shared knowledge as we work with our partners to develop dissemination products and education tools that meet the needs of the public and the justice community and further develop concrete models for good communication practices within the system and between the system and the public.



Court of Appeal of Quebec, Montreal



Superior Court of Justice, Thunder Bay

Photographs: Mary Stratton

Finding the Common Ground: The Process of Identifying Themes

The analysis of this extensive and rich data is an involved and complex process. In order to develop a framework of the common threads arising in the interviews, we began with each member of the research team independently reading a sub-set of the interview transcripts and noting themes about communication. From this process the research team and our partners identified a clear set of mutually recognizable themes on which to base a full analysis. Consultations with our partners during the analysis process help us to ensure that our conclusions properly represent the data collected.

We are now well into the coding of the Alberta data and have begun the preliminary analysis of the national data. As we further analyse the interviews from across the country, we will continue to look for new common threads and will deepen our understanding of the data. We have identified the following ten major themes.

1. **Modes of communication:** Who communicates with the public and with each other within the civil justice system, and how do they do it?
2. **Communication experiences:** How is communication experienced by the various people (public and justice community) interacting with the system?
3. **Communication barriers:** What practices are identified as barriers to good communication?
4. **Good Communication Practices:** What practices are identified as aiding good, effective communication?
5. **Changes in communication context:** Has the background in which communication takes place changed due to shifts in social attitudes, system approaches, new technologies, etc.?
6. **Changes in communication practices:** Do methods of communication change over time and place, because of technology, training, media exposure and so on?
7. **Barriers to change:** What factors hinder the process of change?
8. **Facilitators of change:** What enables change to take place?
9. **Taking the lead in change:** Who can, who should, and who does take the lead in bringing about change?
10. **Recommendations for improvement:** What suggestions to improve communication are made by those who have experience with the civil justice system?

During the interviews there are many discussions related to each of these themes and the themes also often relate to each other.¹¹ When people talk about their experiences it helps us to better understand what needs to be changed and how that can be accomplished.

Endnotes

- 1 Canadian Bar Association. Task Force on Systems of Civil Justice. *Report of the Canadian Bar Association Task Force on Systems of Civil Justice* (Ottawa: The Association, 1996), online: Canadian Bar Association <http://www.cba.org/CBA/cba_Reports/pdf/systemscivil_tfreport.pdf>.
- 2 *Ibid.* at 3.
- 3 *Ibid.* at 12.
- 4 An Alberta pilot of the project is funded by the Alberta Law Foundation, and funding for a five year national study is provided by a Community-University Research Alliance (CURA) grant from the Social Sciences and Humanities Research Council of Canada (SSHRC).
- 5 The Short Questionnaire and a Preview of the Interview Questions are available online: Canadian Forum on Civil Justice <<http://www.cfcj-fcjc.org/research.htm#3>>.
- 6 The figures provided are based on preliminary analysis of the national results, excluding British Columbia. The participant sample is not random but represents a set of “snapshots.” While we have found consistent trends across the country, our results cannot be statistically generalized.
- 7 Although we found some individual clerks and information/security staff with excellent communication skills in each research jurisdiction this was particularly true of the Provincial courthouse in Thunder Bay where researchers had the opportunity to observe registry interactions with the public over an entire working day. The clerks had all apparently received some specific communication training in association with the introduction of the Family Legal Information Centre (FLIC) program.
- 8 For a discussion of Public Legal Education in Canada see Lois Gander, “The Changing Face of Public Legal Education in Canada” *News & Views On Civil Justice Reform* 6 (Summer 2003) 4, online: Canadian Forum on Civil Justice <<http://www.cfcj-fcjc.org/news.htm>>.
- 9 Another point to note, particularly in large courthouses, is that material may be scattered in many locations rather than grouped in an accessible central area. Scattered material is hard for the public to find and difficult for courthouse staff to keep track of.
- 10 All the courthouses we visited in Quebec were above average in providing information pamphlets. The province also produced a commendable range of pamphlets explaining various civil justice matters in French and English (although fully understanding them probably requires, at minimum, a Grade 12 education). The Rimouski courthouse only fell short of a perfect grade by failing to display any material in English.
- 11 For other Alberta results and further details about the major themes see D. Lowe & M. Stratton, “Talking With the Public: The Public, Communication and the Civil Justice System” in P. Molinari ed. *Dialogues About Justice: The Public, Legislators, Courts and the Media*. (Ottawa: Canadian Institute for the Administration of Justice, 2002), online: Canadian Forum on Civil Justice <<http://www.cfcj-fcjc.org/new.htm#13>>.

Through The Public Lens

These are some of the questions that we asked members of the public concerning civil justice reform:

Do you think better communication between the civil justice system and the public can help shape reform?

Would you like to be part of shaping civil justice reform?

In what ways would you like to be involved?

The many perspectives of the public participants bring into focus a rich and revealing picture of the state of communication between the civil justice system and the public. Here are some examples of what they told us:

- *You know, some fair interviewing...like you're doing, of people that have been to court [would] soon find out how heartbreaking it is for most [of us].*
- *You never know what could happen in the future...so I guess I would consider myself somewhat as a partner to the reform...It's important to be part of changes.... just participating in these sorts of interviews and offering suggestions. It's difficult to really force yourself to be involved with something if you don't know what's happening. You know, if we were being communicated with then I would definitely be willing to be a part of that – maybe a part of a focus group or questionnaires or feedback to the system reforms.*
- *Things like this [research] are one way people can be involved*

in the reform. The people who are sort of making the changes asking the public for input and suggestions on what they think needs to occur. I guess, I mean, I'm not sure, I think the system is for the public so for that reason they need to be involved in the reform so they understand what is happening as well. I think that would give them more information just from having them involved and making some suggestions.

- *The only ones who are going to get involved are the people who are aware.... I just happened to be there that day and they had the table out there. If you didn't have it there that day, I would have no idea that you were looking at all of this...You are very good and accessible [because] you are willing to do it on the phone...that makes a world of a difference. A mother who is at home with her children would be able to do that.*
- *You need to have maybe a judge or two, a few lawyers. But you need to have paper people because that's where basically the key of the whole system is I think. And you need to have some public input.... I [would take part] if I could, but I don't think I'm educated enough to do so....I guess [maybe as] part of the cross section group.*
- *I'm only one person [but] perhaps even this survey that you're doing is a mechanism to...find out what's broken before you can fix it. Maybe find out nothing's broken - but once that's identified it's easier to move toward "So how can we deal with this?"*

Benefits of Atlas.ti Software Analysis

James Cresswell BA, Doctoral Student, Psychology, University of Alberta, Canadian Forum on Civil Justice Research Assistant

In the world of research there are two main approaches by which researchers gain information. These two approaches have been termed qualitative and quantitative. People are generally familiar with the quantitative approach, which uses techniques such as questionnaires or experiments. The information that researchers get from their participants is then translated into numbers and used to generate statistics. For example, the *Civil Justice System and the Public* project uses a questionnaire that asks people about the kinds of information members of the public access. Results allow us to generate a list of sources of information and rate how accessible and effective they are. Most people have at some time filled out this type of questionnaire and many have experienced frustration when pre-defined answers and choices did not allow either a completely accurate or full answer to the question.

In contrast, qualitative research approaches try to allow for the “full story”, with all its nuances, to be told by the participants. Instead of generating numbers for statistics, the researcher talks to the participants, often using only a few broad and open-ended questions. The participants can then expand their answers as much as they desire and the information gained is in-depth and very rich. The problem then faced by qualitative researchers is that interpreting, describing, and explaining such rich and in-depth information is extremely time consuming. Imagine how long philosophers have spent pondering the meaning of a single word. Now imagine trying to summarize and explain several hundred participants' descriptions of communication in the civil justice system in a way that doesn't leave out any important information! Analyzing huge amounts of qualitative data from major projects such as this is the challenge researchers face. To meet this challenge, qualitative researchers have

recently been turning to the use of software.

There are two main benefits to using software to assist with qualitative research: (1) multiple people can work collaboratively, and (2) large volumes of information can be summarized without sacrificing details. There are a number of software packages available. We have chosen Atlas.ti because it allows greater flexibility in information analysis. Through a networked computer system, several researchers can access the same files to study and mark important points in each transcript. The researchers can also leave notes and memos to each other, linked to the actual interviews being studied. Thus a “virtual discussion” is created that does not require everyone to look at the same piece of information at the same time. Instead of a room with a million sheets of paper, Atlas.ti allows for storage and recall of each page as needed.

Software allows researchers to search through large bodies of information quickly and link related components across interviews without sacrificing details. Moreover, tools like “virtual maps” can be used to explain the network of interconnected pieces of information across interviews. By using electronic searches, relevant sections of interviews can be identified quickly to answer specific questions, which we or our partners might ask. Similarly, it is possible to sort information from differing groups of people, for example, contrasting responses of judges to those of court clerks, Alberta participants to Ontario, rural areas to urban. Such intricate research with large numbers of participants was impossible to manage prior to the use of software. Software like Atlas.ti has allowed research such as the *Civil Justice System and the Public* to go beyond traditional research limitations to make better use of the rich and fertile information contained in the details of what people say.

Dark & Stormy Night: The Power of Observation

Graham Statt BA, Master's Degree Candidate, Anthropology, University of Alberta,
Canadian Forum on Civil Justice Research Assistant

“It was a dark and stormy night....” What a great way to start a novel. Isn't it interesting how this archetypal phrase continues to grab our interest? Why does it? We have no idea where the dark and stormy night is taking place, who might be impacted by it, or why it is relevant. It is merely an observation. And yet, we are drawn to it because we know that the conditions of 'dark' and 'stormy' and 'night' are going to put all additional information into context for us and help us make sense of that information.

As researchers working on the *Civil Justice System and the Public* research project, we similarly use observation to help us understand and contextualize information relating to communication between the civil justice system and the public. We observe and we ask questions about what we observe. For example, we may observe the layout of courthouses, looking at where information is located, the quality of that information and how it is organized. Is the information available in any languages other than English? Is there a 1-800 number for those who can't afford a long distance call? What is available for those without a phone? We may observe how people treat each other, the expressions on people's faces and the body language they use when they communicate. Why is that woman outside of the courtroom crying? Why is that business-suited man arguing with the court clerk but the young mother in the line next to him seems good-humoured in her interaction? Why does that older man keep looking at his watch? We may sit in on court proceedings and consider the general atmosphere of the court, observe how judges interact with lawyers and litigants or listen to the issues brought forward. Why does this self-represented litigant seem so confident and knowledgeable about her case when the one before her was so confused? How well does bringing the father of that child into the courtroom by conference call work?

Observation helps us sketch the day-to-day conditions of an active, fully operational civil justice system and how that system communicates with the public. We choose to do more than pick up a textbook, draw conclusions from our individual interviews, or consult a flow chart to see how communication is “supposed” to occur in the system. We choose also to interact with the system directly, observe it in operation and then think about it, balancing and enhancing our other investigations. We have seen the line-ups of anxious and irritated individuals that wearied court clerks have told us about. Just like some of our public participants,



Research team members discussing observations

we have searched the lonely corridors of courthouses for elusive brochure racks, public telephones and washrooms. We have witnessed the euphoria and empowerment of people who have been provided with accurate information and helpful service from a system that they previously only feared and avoided. We have watched some self-represented litigants surf through mountains of paper, trying to figure out what the judge means by “evidence”, unintentionally tying up scarce resources and eating into precious court time. Observation allows us to put into context information gathered from our interviews across the country with lawyers, court clerks, judges and justices, security guards, court administration, agencies and the public themselves. Observation informs our analysis of that information and allows us to verify its accuracy. It also helps us to compare court operations in different jurisdictions as we search for effective practices.

“It was a dark and dreary courthouse” or “it was an out of date and inaccurate pamphlet” or “she was an empowered and elated litigant” may not be the best way to start a novel, but they are excellent ways to begin analysis of large volumes of qualitative data, which would otherwise be void of context. The *Civil Justice System and the Public* research project is studying the current state of communication in that system in an effort to identify and measure both barriers to communication and effective communication practices. So far, observation is proving to be a very useful tool. It will undoubtedly be instrumental in helping to increase our understanding of the communications issues existing within the civil justice system and between the civil justice system and the public.

The Language of Communication

Natalie Salvalaggio BA LLB, Canadian Forum on Civil Justice Research Assistant (with input from the Research Team)

Although the *Civil Justice System and the Public* project is not a study of language or language use, linguistic issues have become a topic of interest within the project. Communication, at least some of it, occurs through the language we speak and, within that language, the words that we choose to express ourselves. In our cross-country visits with legal service providers and individuals, and to courthouses in various jurisdictions, we have observed that these linguistic issues encompass more than the difficulty of understanding technical legal language. As well as challenges arising from the multi-lingual and multi-cultural nature of this country, there are also problems stemming from the difficulty of navigating a ‘foreign’ legal culture without a travel guide or map.

Legal Language and Culture

To the litigant, the civil justice process presents an experience similar to that of entering a foreign culture. From the outset, the litigant is often bombarded with numerous procedural options, as well as the many possible consequences of any action that is taken. In addition, complicated legal jargon is used to describe these processes. Thus, technical legal language can pose a cold and impersonal barrier to litigants, witnesses and others attempting to comprehend what is happening in a case. Terms such as *certiorari* and *originating notice*, while part of any lawyer’s vocabulary, are completely unknown to most people. The emotional toll of having a personal matter dragged through the court system makes the lexical¹ confusion created by a legal culture that calls the opposing lawyer “my friend” even more painful than it already is.

Represented litigants seem to rely heavily on their lawyers as interpreters of “legalese” (although the effectiveness of this reliance depends on the individuals involved). For parties representing themselves, however, there is no such option. Instead, within this ‘foreign’ culture they must grasp the meanings of legal concepts, procedures and technical language by themselves. Many groups are working to address this need by providing what are called “plain language” legal services and information for the public.²

Linguistic Minorities

Linguistic difficulties can stem from seemingly minor differences in accents and dialects or, more significantly, from a complete lack of fluency in the primary language in everyday use. A difference in accent or dialect can often be overcome with time and patience on the part of those seeking and providing information. But not being able to speak the primary language is frequently a barrier to even attempting to communicate with the civil justice system.

Those who encounter the barrier of having neither French nor English as their first language can have added problems. They have greater difficulty understanding signs in the courthouse, for example, and especially in making sense of the legal language in various documents through which they have

to wade when involved with the civil justice system. For this group, communicating with people working within the justice system may require an interpreter, which can add a further layer of complexity and possible communication confusion. In recognition of the experiences of those with neither French nor English as their first language, several courthouses and other legal service providers across the country have begun to explore or offer multi-lingual services for court users.

The reality of being part of a linguistic minority was brought home to our Anglophone team members when they visited Quebec. Some members of the now linguistic minority found themselves hesitant to initiate communication, fearing that they might be misunderstood or misunderstand others, perhaps creating rather than solving problems.

Canada’s Two Official Languages and the Civil Justice System

In addition to the interpretation of spoken words within a court setting, there is also the necessity of translating legal documents. Canada’s bilingual reality results in the existence of at least two different legal languages or jurilingual systems. The integration of these different legal languages is a demanding task. Translators must first take into account the differences between French and English, both written and spoken. This is complicated, however, by the reality that each court jurisdiction and province may use a different word or phrase to describe a particular legal concept. In translating materials for this project, for example, we often encountered terminology that could be translated four or five different ways, depending on the province or jurisdiction. Moreover, French terms will not always correspond with an English concept, and vice versa.

Amongst the various bilingual legal language (jurilingual) initiatives currently taking place, the federal government has created the *National Program for the Integration of Both Official Languages in the Administration of Justice* (POLAJ).³ POLAJ is involved in the development of various bilingual legal dictionaries, lexicons, vocabularies and other publications, and of legal language proficiency courses. The Canadian Forum on Civil Justice has also been constructing a bilingual thesaurus of civil justice terminology.⁴ Hopefully, all of these initiatives will assist people involved with the civil justice system to communicate more effectively with one another.

Conclusion

Throughout the project, we were reassured to observe that linguistic differences are not insurmountable. People generally appreciated any effort to speak their language, and were often patient with those endeavors. In return, they often attempted to communicate in the other person’s language. This desire to communicate, to understand and be understood, appears to be much more powerful than any linguistic obstacle.

Our hope is that we will be able to identify tools that will help

those navigating these often murky waters. As data analysis from the *Civil Justice System and the Public* research project continues, the goals of identifying barriers and good practices, capturing needs and possible solutions and developing and circulating research products will undoubtedly lead to an ability to provide specific and clear recommendations for effective change. Ultimately, these recommendations may improve access to the civil justice system by increasing the ability of the system to hear, involve, and respond to the public, whatever language is being used.

Endnotes

1 *Editor's Note: Although we strive to use plain language, the use of the lovely word "lexical", meaning "the words of a language" according to*

The Canadian Oxford Dictionary, 1998, was so perfect in this context that we had to allow its use.

- 2 See Lois Gander, "The Changing Face of Public Legal Education in Canada" *News & Views On Civil Justice Reform* 6 (Summer 2003) 4, online: Canadian Forum on Civil Justice <<http://www.cfcj-fcjc.org/news.htm>>
- 3 Information on POLAJ is available online at <<http://www.pajlo.org/>>.
- 4 Information on the Canadian Forum's *Civil Justice Thesaurus Project* may be found online at: <http://www.cfcj-fcjc.org/thesaurus.htm>, or contact Michael Lines, Law Librarian and Information Coordinator by e-mail at mllines@law.ualberta.ca or by telephone at (780) 492-4307.

The Partner Symposium – Collaboration in Action

Cam Schwartz BGS,MRA, Law Student, Canadian Forum on Civil Justice Research Assistant

The *Civil Justice System and the Public* project focuses on ways to improve communication within the civil justice system and between the system and the public. Although we use the term "civil justice system" we know that what we are referring to is actually a complex set of systems made up of many separate and independently governed components. The research must necessarily involve representatives of all of the groups which make up the civil justice system. While that was the immediate goal of the Research Directors in establishing our partnership, our longer-term goal is to encourage our partners to interact and develop relationships that will lead to an enduring network among the significant players in our civil justice system.

Establishing a strong partnership network is essential both to creating new knowledge and to providing motivation and support that allows the resulting insights to translate into actual change in everyday practices. The *Civil Justice System and the Public* involves partners from national, provincial and local organizations¹ in research collaboration. The synergy that flows from bringing various organizations, disciplines and individuals together can create amazing new ways of looking at our world and expanding our knowledge. We have carefully considered what we intend when we refer to a "collaborative partnership" and we have developed the following definition:

Working together in a cooperative, equitable and dynamic relationship, in which knowledge and resources are shared, in order to attain goals and take action that is educational, meaningful, and beneficial to all.



It is understood by this definition that research is conducted with, and not on the community, and all collaborators have different, but equally important knowledge and resources, both to share with, and gain from each other.²

One of the processes undertaken by the Forum to support this collaborative partnership and to enhance relationships within it was a Partner

Symposium hosted in March 2003.³ Representatives of 22 of our 33 partner organizations came together from across the country to review preliminary research data, provide feedback related to the project and to learn about other initiatives in which each partner is involved. To this end, we examined the four key components of the project:

1. Project Direction & Partnership Coordination;
2. Data Collection;
3. Case Studies; and
4. Dissemination of Information.

The creation of a "History and Visioning Wall Chart" provided a visual record tracking these four components along a timeline. Photos and notes on each of the four timelines created a visual aid to chronicling the events to date. As the partner representatives collaborated in the planning process, they filled in the wall chart with future project ideas and commitments.

The Symposium provided our partners' representatives with opportunities to learn about the preliminary results from our Alberta pilot project,⁴ to ask questions regarding the collection and analysis of the data and to tell us what

additional information and analysis they thought would be useful. At the Symposium and generally, we look to our partners to provide insight into their own jurisdictions because there are often real differences in both the system and the practices from jurisdiction to jurisdiction and even from one court site to another.⁵ Without our partners' input, we could miss important information, fail to recognize situations that could impact the data we are collecting or even misinterpret what we find. Our partners also liaise with other organizations within their own jurisdictions and are able to assist us in connecting with those who we need to interview as part of the research project.

As well as forging and strengthening the lines of communication between the research team and our partners, part of the purpose of the Partner Symposium was to engage the partners in planning the future path of the Civil Justice System and the Public research. Participants provided valuable input at the Symposium and received a unique opportunity to connect and learn from each other. As we have proceeded with the data collection, analysis and development of recommendations, our partners have continued to provide insight, feedback and comments which have enriched our understanding and helped us in our goal of improving communication within the civil justice system and between the civil justice system and the public. It is our hope that, through the process of working together on these shared goals, an enduring network among these important participants in our civil justice system will grow and thrive.

Finding the Public to Talk With

Shannon Williams Stawnicky BA LLB, Canadian Forum on Civil Justice Research Assistant

With the goal of improving communication in the civil justice system in mind, the *Civil Justice System and the Public* research team seeks to learn about communication practices and experiences by interviewing both individuals who work within the civil justice system and those involved with the system as a plaintiff, defendant, witness or juror. Our extensive partnerships and contacts within the justice community greatly assist us in identifying participants from within the system. Finding members of the public to interview, however, is far more challenging!

Gathering input from members of the public is key to our research, because the people actually using the system can best describe their experiences using different types of communication – signs, pamphlets, information booths, clerks, telephone information lines, and other sources. They



can also tell us what information they believe is lacking and what could be done better. From this, the research can provide suggestions on how the public might better access relevant information on the civil justice system. The “public”, of course, includes various groups: represented and unrepresented litigants, individuals from every cultural and socio-economic background, highly educated, illiterate, those for whom English or French is a second

language or who do not speak English or French at all, returning users of the system and those who have never been to court before.

We used several techniques and a significant amount of effort to engage the public in our research. In the Alberta Pilot Project, the research team set up information tables in the courthouses and encouraged individuals who stopped to inquire to become

Endnotes

- 1 Our partners include the Canadian Judicial Council, the Canadian Association of Provincial Court Judges, the Canadian Bar Association, the Association of Canadian Court Administrators, the Public Legal Education Association of Canada, the Department of Justice Canada, the Canadian Centre for Justice Statistics, the Alberta Law Reform Institute, Alberta Legal Aid, the Yellowhead Tribal Council, academics from the University of Alberta Faculties of Law, Arts and Extension, and the research team. The knowledge and input of our extensive partnership was invaluable in helping us to negotiate the terrain of individual jurisdictions. We continue to add community partners as the research progresses.
- 2 See *Civil Justice System & the Public* “Working Document” online at: <http://www.cfcj-fcjc.org/working_doc.html >
- 3 The Symposium was made possible by funding provided by Justice Canada and the Alberta Law Foundation.
- 4 Our Alberta pilot project included observations and interviews with participants from Edmonton, Calgary, Peace River and High Level.
- 5 Research has been conducted in Alberta, Nova Scotia, Ontario, Quebec, Nunavut and British Columbia. Some examples of jurisdictional differences include: what is covered by Legal Aid, whether Landlord and Tenant matters go directly to court or are heard first by a tribunal and whether or not Family matters are heard in a unified court (in this latter case there are even variations from city to city within provinces).

a research participant. Private practice lawyers were asked to discuss our research with clients involved in civil cases, and ask whether they would be willing to be interviewed. We observed several civil cases and, when an opportunity arose, discussed the research with the individuals involved. We also requested the assistance of the Legal Aid offices in asking their civil clients if they would be willing to be interviewed.

Of these four techniques, our partnership with Alberta Legal Aid proved the most successful. While information tables in the courthouse and approaching individuals directly elicited interest in the research, most individuals contacted this way did not have time to be interviewed and some were reluctant to talk about difficult experiences. Despite these efforts, at the conclusion of the Alberta Pilot Project, we still had lower public participation than we wanted. Surprisingly, contacts with lawyers in private practice did not result in any public participants. We decided that during the national phase of the research, additional methods of encouraging public participation would be pursued.

During the national phase of the research, in addition to the methods adopted in the Alberta Pilot Project, we initiated contacts with local media and a variety of community agencies. The media coverage allowed us to provide the public with information about the research and details of our visit to the area and those interested in being interviewed were asked to contact us. At our research sites, we also identified and contacted community and social service organizations, particularly those with legal information or assistance programs.

Beyond the Headlines

Naomi Schmolch BFA, Law Student, Canadian Forum on Civil Justice Research Assistant

The “Beyond the Headlines” research is one component of the *Civil Justice System and the Public* project.¹ This component looks at and compares civil justice coverage in two prominent newspapers: one local - the Edmonton Journal, and one national - the National Post. Newspapers have long been regarded as a means of public education, representation, entertainment and discussion, but very little attention is paid to the actual legal coverage that occurs.² Therefore, we set out to obtain a snapshot of the current role that newspapers are playing in regard to education and discussion of civil justice issues.

We asked: *what is the extent and quality of media coverage given to Canadian civil justice issues in both local and national newspapers?*

Two months of the Edmonton Journal (2002) and three months of the National Post (2003) were selected as the research sample. All articles that included a legal issue or discussion were measured and categorized as criminal, international, administrative or civil in nature.³ Selected articles from each sample were also analyzed for their content. Factors such as

Use of the media has proven helpful, both in increasing the profile of the research in the community and in gaining some public participants. It continues to be difficult, however, to find the public to talk with and very few interviews have actually been obtained through these further methods. While we have achieved an adequate balance between interviews conducted with users of the system and those working within the system, the public clearly needs encouragement to become engaged in research of this nature. Confidence that researchers and policy makers will take public input seriously and apply it to bring about constructive changes must be built. As one participant remarked, “My only fear in participating in something like this is getting my hopes up that something positive will happen”.

One of the ways we will contribute to building this public confidence is to return to each jurisdiction and, through the use of focus groups, disseminate our preliminary findings and seek feedback. These focus groups will include past participants as well as others from community organizations and elsewhere who are willing to take part. To create more effective groups, advance contact with lawyers and service agencies will be conducted in each jurisdiction prior to revisiting them. Through these efforts it is our hope that members of the public will see their contributions valued and come to understand the importance of having their voices heard in reform of this nature, so that any changes that do take place address their unique and various needs.

accuracy, balance, bias, educational value, sensationalism, as well as comments on reform, critique of the civil justice system, and communication practices were evaluated. The quantitative and qualitative data from both samples were compared, with similarities and differences being noted.

Our analysis revealed some interesting observations:

- On average, 5% of each National Post issue and 2% of each Edmonton Journal issue were committed to “legal coverage”.⁴
- The Edmonton Journal contained a large amount of criminal coverage (66% of their legal coverage).
- The National Post emphasized international legal issues (34% of their legal coverage). Less national legal coverage was allocated to criminal matters (21% of their legal coverage).⁵
- The total civil coverage in the Edmonton Journal was less than that found in the National Post (27% in the Edmonton Journal as compared to 35% in the National Post).⁶

- Articles about civil litigation made up 13% of the Edmonton Journal and 16% of the National Post's legal coverage. This civil litigation coverage often focussed on sensational corporate litigation cases or particularly contentious issues of law reform, for example, the same-sex marriage debate. Much of the coverage was imbalanced and biased because only one aspect or viewpoint was presented.
- Coverage concerning the civil legal information category⁷ fared the worst in both newspapers. There was no civil legal information coverage located on the most prominent (A1) or second most prominent (B1 or FP1) newspaper pages in either newspaper. In fact, no civil legal information articles were catalogued in the Edmonton Journal, although the editorial piece referenced in note 9 below could arguably have been characterized as legal information. The civil legal information category made up 2.5% of the legal coverage in the National Post.
- Although there were only a few examples of legal information, the quality of those pieces was high and confirms the potential for the media to play a role in educating the public about our civil justice system. For example, there were government advertisements outlining amendments to legislation⁸ and articles that raised awareness concerning alternative dispute resolution practices.⁹

Although this study focused on a small sample of print newspaper coverage, the footnoted examples of clear, informative journalism demonstrate that newspapers have the potential to effectively share civil justice information with the public. However, the very small portion of educational civil justice coverage and the prevalence of journalistic sensationalism in the study's sample convey that, more often than not, newspapers fail to attain this goal.

According to the CBA *Systems of Civil Justice Task Force Report*, effective dissemination of civil justice information enhances public understanding of the civil justice system, an important factor in improving the system for its users.¹⁰ Although the media is clearly a significant source of information, our numerous interviews about communication show that the public is generally dissatisfied with the extent and quality of legal knowledge that they can glean from the newspaper. The judiciary conveys optimism about the educational role that the media can play, but this is coupled with concerns about being misunderstood. Overall, the justice community expresses a reluctance to work with the media or take steps to address the misinformation.¹¹ Journalists, although acknowledging these issues, cite commercial objectives, publication bans, work pressures and difficulty obtaining information as barriers to improving the quality and amount of civil justice coverage.¹²

How can we reconcile the idealism in the CBA Task Force report with the current reality illustrated in the results of this study? The task now must be the incorporation of both the ideals and the concerns of the media, the justice community,

and the public into an integrated plan that can effectively tackle these communication barriers. Only then will we be able to realize media coverage about the civil justice system that responds to the needs and interests of all.

Endnotes

- 1 This project is funded by the Alberta Law Foundation, the Social Sciences & Humanities Research Council (SSHRC), and Human Resources Development Canada's Summer Career Placement Program.
- 2 Canadian Bar Association. Task Force on Systems of Civil Justice. *Report of the Canadian Bar Association Task Force on Systems of Civil Justice* (Ottawa: The Association, 1996), online: Canadian Bar Association <http://www.cba.org/CBA/cba_Reports/pdf/systemscivil_tfreport.pdf>. See also J. Fife-Yeomans, "Fear and Loathing - The Courts and the Media" (1995) 5 J. Jud. Admin. 39.
- 3 The articles pertaining to civil justice were further sub-divided into 18 civil litigation categories and 9 general civil justice categories. These general civil justice categories are: legal information, legal reform, access to justice, alternative dispute resolution (ADR), courts, judiciary, legal profession, procedure, and satirical comment. The amount of civil justice coverage was measured in two ways. First, the numbers of articles in each category were counted. Next, the length and width of each article was measured in centimetres to obtain the surface area (cm²). Photographs, titles, and margin space were included in these totals. The placement of articles within the newspaper was also noted.
- 4 The term "legal coverage" denotes criminal, civil, administrative and international legal coverage. Percentage values of total legal coverage are based on surface area calculations.
- 5 It is understandable that national media would tend to report only the most high profile criminal matters. The interest in international legal coverage appears to derive from the national business focus.
- 6 See footnote 3. Although the National Post sample includes a greater percentage of total civil coverage, a large portion of this was located in the weekly "Legal Post" section focusing specifically on the inside happenings of the legal community (and therefore typically of little interest/importance to the general public).
- 7 See footnote 3.
- 8 "Adoption Laws in Newfoundland and Labrador have Changed" *National Post* (14 June 2003), A7. This is an advertisement which was included in the 2.5% of civil legal information coverage in the National Post.
- 9 "Collaborative Divorce helps take pain out of the process" *Edmonton Journal* (4 March 2002), A3. This article was catalogued under the ADR category. We did not cross-catalogue any of the pieces.
- 10 Canadian Bar Association, *Systems of Civil Justice Task Force Report* (Ottawa: The Association, 1996) at 19.
- 11 G. Samuels, "Public Relations for the Court." *Proceedings of the Supreme Court of New South Wales Annual Conference Held April 10, 1992* (Judicial Commission of New South Wales) at 14.
- 12 J. Fife-Yeomans, "Fear and Loathing - The Courts and the Media" (1995) 5 J. Jud. Admin. 39, at 40.

Evaluating Communication in Action: A Case Study in Public Participation

Mary Stratton PhD, Research Coordinator, Canadian Forum on Civil Justice

One component of our data collection involves case studies, which look at current civil justice system reform initiatives that we have identified as demonstrating good communication practices. The purpose of the case studies is twofold: first, to evaluate the effectiveness of new initiatives that break down communication barriers and replace these with effective communication. Second, to develop a model for evaluating communication impacts in future reform initiatives undertaken in the civil justice system.

Once we select a project as a case study, we work collaboratively with the court or justice organization involved in the initiative to develop relevant methods of measuring whether communication has been improved. In this way, our commitment to collaborative action research extends to our approach to evaluation. While the traditional evaluation process often excludes the experience and insight of those responsible for implementing a program, a collaborative approach to evaluation captures the voice of those most familiar with the challenges and successes of the project. Our approach incorporates both traditional quantitative measures of evaluation when they are appropriate, but also includes qualitative criteria. This facilitates the involvement of as many project stakeholders as possible in designing an inquiry that is systematic, appropriate and effective for the aims of the specific initiative being evaluated. In this process, we pose the following questions:

- What are the goals of the initiative to be evaluated?
- What is the purpose of the case study evaluation? What outcomes are sought?
- Who are the stakeholders to take part in the evaluation? (program users and front-line program delivery people should be included.)
- What power relations exist among and between the various stakeholders, both organizational and individual?
- Within this context of the stakeholder group(s) and the case study goals, what type and extent of collaboration is both desirable and possible?
- What is to be measured, in what way(s), and by whom?
- What products are required from the case study (type of information and forms of reporting, dissemination, follow-up action)?

An Alberta Example: The “Rules Project”

Given our focus on improving communication between the civil justice system and the public, we are particularly

interested in initiatives that have included consultation and collaboration with members of the public and the justice community. One of our project partners, the Alberta Law Reform Institute (ALRI), has undertaken a major review of the rules governing practice and procedure in civil actions in the Court of Queen’s Bench and the Court of Appeal (the Alberta Rules of Court Project).¹ The Rules Project Steering Committee is committed to involving both members of the justice community and members of the public in their consultation process.

The Rules Project is an ideal case study for the *Civil Justice System and the Public* research because previous attempts to actively consult with the public about the reform of something as technical as the Rules of Court, are negligible to non-existent. In fact, even the legal community has seldom been actively engaged in providing input throughout an entire reform process.² ALRI welcomed the opportunity to collaborate in a case-study that will serve as a pilot for others across Canada.

ALRI’s Consultation Process

ALRI developed several consultation strategies in order to meet the challenge of effectively involving the public and professionals in the justice community. In the case of the justice community, the existing infrastructure was used to promote the *Issue Paper for the Legal Community* via a series of key contact presentations with local bar associations, law firms, Canadian Bar Association sections and the judiciary. As draft recommendations evolved, further consultation papers were circulated to justice community professionals.

A *Public Consultation Paper and Questionnaire* was also developed and over 4,000 of these were distributed to the public via court registries, legal aid offices and community groups. Both consultation papers were also made available on the ALRI website and by link from the Alberta Law Society website.³

ALRI was satisfied with the number and quality of responses received from the justice community, but initially disappointed that only 98 public questionnaires were returned.⁴ Nevertheless, the Rules Project Steering Committee found that the public input was valuable. Since many of the respondents indicated a willingness to participate in follow-up focus groups, two focus groups with members of the public were subsequently organized in Edmonton and Calgary.⁵ The information gained from these groups has made a helpful contribution to ALRI’s considerations.

Case Study

We identified and reviewed multiple sources of information that helped us to evaluate the success of the Rules Project in improving communication between the civil justice system and the public. The following materials formed the case study data:

- A review of ALRI Rules Project documents (project proposal; meeting Minutes; research instruments and reports);
- observation of the focus group sessions;
- follow-up interviews with focus group participants concerning their views on the public consultation process;
- interviews with members of ALRI for their views on the public consultation process;
- informal discussions with ALRI members about the Rules Project; and
- comparison with relevant observational and interview data from the *Civil Justice System and the Public* research.

Based on these data and consultations with ALRI about hoped for versus actual outcomes, the following axes emerged to enable us to assess whether or not ALRI's consultation process achieved improved communication:

- The quantity of input gained (actual versus desired; representative-ness; value to the project; future value).
- The quality of the input gained (actual versus desired; richness; value to the project; future value).
- Satisfaction with the consultation process (ALRI members; larger legal community; public).
- Overall results achieved in the context of the available resources, options, and prior knowledge.
- Future possibilities (maximizing results obtained and knowledge gained).

The report on the ALRI case study is still in the drafting stage, but we are already confident in concluding that the Rules Project consultation has provided a constructive model for improved communication both within the justice community and between the civil justice system and the public. ALRI's consultation approach led to increased and continuing input from professionals in the justice community, and also provided members of the public with an opportunity to provide useful insights which have informed the process of change to the Rules.

We have learned of a number of good practices in communication from our partners, during our key contact meetings in each research site, and in our participant interviews. Our preliminary findings also tell us about the strong need for initiatives that:

- assist users to understand the civil justice process step by step (whether or not they are represented by legal counsel),
- help with completing court forms,
- increase understanding of procedural rules and
- increase knowledge about and access to, alternative dispute resolution options.

We are now identifying further potential case studies, and invite readers to let us know about any new initiatives that might also demonstrate good communication practices relating to these or other aspects of communication between the civil justice system and the public.⁶

Endnotes

- 1 From this review they will provide recommendations for a new, more effective and more user-friendly set of rules.
- 2 Typically, the legal community becomes involved only at the latter stages of the process providing a last minute (and primarily negative) response to the penultimate reform proposal.
- 3 Full reports on these consultations are available online: Alberta Law Reform Institute <http://www.law.ualberta.ca/alri/rules_table.html>. Once the case study is completed it will also be available there.
- 4 Clearly there is a message here concerning this method of consulting with the public. Mailed-out or publicly distributed surveys generally have a very low response rate. The various issues around this are addressed in detail in the Case Study report.
- 5 As the Rules Project had at this time already been identified as a potential case study, *Civil Justice System and the Public* researchers were able to observe both focus groups.
- 6 To talk further about case studies please contact Mary Stratton by e-mail at mstratto@law.ualberta.ca or by telephone at (780) 492-9426. To find out more about the Rules Project visit <<http://www.law.ualberta.ca/alri/>> or telephone (780) 492- 5291.

Cross Country Snapshots – *Civil Justice System and the Public*

Research can help us understand the varied legal landscapes that exist across Canada's many jurisdictions, but no single study can possibly include information from every unique locality. Our *Civil Justice System and the Public* project funding enabled us to visit six main jurisdictions in order to collect data; to take individual 'snapshots' across the country, identifying shared issues and potential solutions. With the help of our partners, we decided that sites should be selected within each of the six broad geographical regions of Canada: the Atlantic Coast, Quebec, Ontario, the Prairies, the Territories, and the Pacific Coast. Further consultation and discussion with partners and key contacts across the country assisted us in selecting a variety of urban, suburban, rural, and remote locations which include: Edmonton, Calgary, Peace River and High Level in Alberta;¹ Halifax and Truro in Nova Scotia; Montreal and Rimouski in Quebec; Toronto, Thunder Bay and Ottawa in Ontario; Iqaluit in Nunavut; and Vancouver and Surrey in British Columbia.

Data analysis is still in progress, but our interviewers have observed that despite jurisdictional differences, there is much agreement about the basic ingredients of good communication practice and the existing barriers to achieving it. Individual localities may require unique solutions, but we have been able to gather information on many innovative approaches that can be shared and adapted to meet local needs.

Input from our partners everywhere in Canada is an important component of this research and for this issue of the Newsletter we have asked our key contacts in the Departments of Justice in each of the provinces and territories to highlight communication issues and solutions in their jurisdictions in their own unique 'snapshot'. This is one way for us to get information to you about what is happening elsewhere in Canada. As we disseminate our results, we will continue to ask for your feedback and suggestions for enhancing communication within the civil justice system and between that system and the public.

Mary Stratton PhD, Research Coordinator, Canadian Forum on Civil Justice

Endnotes

- 1 Funding from the Alberta Law Foundation initiated this research in Alberta and facilitated our application for additional funding for the national project. It also allowed our research in Alberta to be more extensive and serve as a pilot model for our visits to the other national jurisdictions. Of course, this meant that Alberta automatically became the Prairie jurisdiction included in the project.



British Columbia

The Enhanced LawLINE Project, (http://www.ss.bc.ca/legal_info/law_line.asp) initiated in September 2003 by the Legal Services Society of British Columbia, provides brief legal services to people with low incomes. These are services that can be delivered during or shortly after a telephone conversation and range from legal advice, to help with correspondence and documents, to phone calls or letters to third parties on a client's behalf. LawLINE is staffed by lawyers and paralegals and is accessible in many different languages through an online interpreter service. (1-604-408-2172 Lower Mainland; 1-866-577-2525 toll free outside Lower Mainland)

The British Columbia Family Maintenance Enforcement Program, Justice Services Branch established new web-based client services in 2003. Both maintenance payors and recipients can obtain payment summaries, enforcement activities, report payments or provide changes of address on-line. Other program clients, including businesses and reciprocal jurisdictions, can log on to the website for information and reporting activities. More recently, clients are able to obtain a PDF version of their account statement and make e-mail inquiries. The website has had over 35,000 hits and responds to about 2000 web-mail inquiries per month. There has been a significant reduction in the number of calls to case management staff, reducing call waiting time

and improving services for those without Internet access.

As well, in cooperation with the Department of Justice, Canada, the Ministry of Attorney General has developed unique websites for children and youth. An animated site for young children was launched in March 2004 and is a new resource for parents, counsellors and others working with young children. The site explains family law in child-friendly terms, while offering information on dealing with feelings and changes in the family. A separate self-directed site for teens addresses the same issues using engaging language and graphics. Both websites were built with advice from a number of child serving experts and a consulting psychologist. They combine research findings about what kids need and want to know and what levels of information they can handle, with the technology that kids and teens use everyday. Go to <http://www.familieschange.ca> to access both sites.

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Alberta

For the last 12 months, Alberta Justice and Alberta Innovation and Science have worked on the Electronic Civil Case Management System project. One of the project's key components is electronic filing (e-filing) of court documents. The Alberta government's "SuperNet" will provide the electronic infrastructure to ensure province-wide access.

At present, most documents are filed in-person during regular business hours at one of the 11 Queen's Bench judicial centres or the 21 Provincial Court base or circuit points. As this project becomes a reality and expands to provide unlimited electronic access to court files from any place at any time, access to justice will be improved. Other potential benefits include:

- Simplified and faster internal court operations using a computerized case management system;
- Remote access to court filing;
- On-line searches of court files, unless restricted by court order, legislation or other prohibition;
- Reduced use of couriers, court runners and faxes and associated fees;

- Multiple user access to the court file, with no lost documents;
- Immediate placement of electronically filed documents on the court file;
- Easier records retrieval and disposition, requiring less storage space; and
- Decreased service costs and time.

A Business Case Analysis of the e-filing/Electronic Civil Case Management System is underway and the next steps will be determined once that analysis is complete.

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Saskatchewan

The Saskatchewan Courts Public Information Committee was formed in 2000 as an independent organization of judges representing all three levels of court in the province to take a more active role in outreach activities. It oversees the implementation of public education and media relations initiatives for the Courts.

The Courts Education Program was launched in early 2003, with over 1000 participants in the first year. This program consists of court watching/touring, judges' visits to classrooms, and activities for students in Grades 7 to 12. Educational events were also held for teachers, reporters and journalism students.

In April 2004, the Saskatchewan courts' website <http://www.sasklawcourts.ca> was launched. From this home page, the user can visit every level of court in Saskatchewan. The website features general information, information for self-represented individuals, educational material and links

to other legal sites. It includes an interactive map of all the Provincial Court circuit points and a virtual courtroom.

The position of Court Communications Officer (CO) was created to handle court communication duties and educational programming. The CO provides media liaison, information and assistance; monitors a variety of media outlets daily to enable a quick response to errors and acts as a court spokesperson. As well, a *Media Advisory Registry* gives interested media members timely notice of discretionary publication bans in civil cases, as outlined by the Supreme Court of Canada decision in *Dagenais v. CBC*.

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Manitoba

People can obtain general information about the courts from the Manitoba Courts web site <http://www.manitobacourts.mb.ca>. The site also provides information on small claims procedures, case management of family proceedings in the Court of Queen's Bench (Winnipeg Centre), frequently asked questions (FAQ's), and a link to Manitoba's statutes and regulations. Those without Internet access may obtain free

printed copies of everything on the site except the statutes and regulations.

The Manitoba Courts web site provides a link to the Community Legal Education Association (CLEA) web site <http://acjnet.org/white/clea>. CLEA offers a Law Phone-In (1-204-943-2305 Winnipeg; toll free 1-800-262-8800 outside

Winnipeg) and lawyer referral service (1-204-943-3602) for general legal information. The CLEA web site also offers information about CLEA publications and workshops on a variety of legal topics. From time-to-time, Court staff will refer the public seeking legal information or assistance to CLEA for help.

The Manitoba Justice site <http://www.gov.mb.ca/justice> provides Manitoba family law information. Produced by the Family Law Branch of Manitoba Justice and entitled *Family Law in Manitoba*, it is also available in print. *A Guide to Changing Child Support Orders in Manitoba*, which gives those persons without legal counsel information on how to seek

a variation of a child support order from the court, is also available on the site.

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Ontario

Public information materials about civil proceedings are available on the Ministry of the Attorney General's website at <http://www.attorneygeneral.jus.gov.on.ca>. Fact sheets on civil case management, mandatory mediation, simplified procedure and a booklet entitled "How to Make Small Claims Court Work For You" are provided, along with links to the corresponding procedural rules, forms and fee schedules.

The Ministry is currently developing on-line "fill-able" Small Claims Court forms. In Brampton, one of the busiest court locations in Ontario, a Small Claims Court Information Counter Pilot Project is underway. After obtaining a number for service, a client may attend the Small Claims Court Information Counter where a Client Services Representative can provide forms and self-help materials, answer questions, and review any documents the client intends to file. In the first two months of operation, 603 clients were served at the Information Counter.

As well, the Ministry, in partnership with Legal Aid Ontario, is working to expand Family Law Information Centres (FLICs) to all family courts in Ontario by the summer of

2004. FLICs, now at 50 family court locations, offer free, user-friendly information about the family court process, family mediation and related matters. A Legal Aid lawyer is available at specified times to provide general family law information and may provide case specific advice to clients who meet Legal Aid eligibility criteria. The Ministry is also developing a new FLIC website to enhance public access to FLIC information.

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Quebec

Within the scope of a pilot project, the Quebec Court of Appeal, the Quebec Department of Justice and the Société québécoise d'information juridique (SOQUIJ), are currently in the process of setting up procedures which will allow for the translation, mostly from French into English, of certain decisions rendered by the Court of Appeal that are of interest nationwide.

This will allow the Court of Appeal to benefit from the expertise gathered by SOQUIJ in processing and distributing legal education, while allowing SOQUIJ to fulfill its primary mission of "promoting research, processing and development of legal education with a view to improving its quality and

accessibility for the benefit of the community" (Section 19 of the *Loi sur la Société québécoise d'information juridique*, R.S.Q., S-20).

In order to implement this project, the Court of Appeal will select the decisions to be submitted to SOQUIJ for translation. The Court will then approve the translated version of the decisions prior to their distribution. SOQUIJ will then make the translation of these decisions available to the public on its AZIMUT Internet site <http://www.soquij.qc.ca/societe/english.html> and at <http://www.jugements.qc.ca>.

For its part, the Department of Justice will work together with the Court of Appeal and SOQUIJ, mainly for purposes of maintaining the technological infrastructure required which will allow SOQUIJ to display the decisions selected by the Court of Appeal on a daily basis.

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New Brunswick

There are several projects underway in New Brunswick that will have the effect of improving communication within the justice system and between the justice system and the public. In April 2002, New Brunswick decided to proceed with the purchase of audio/video digital recording equipment for New Brunswick courts. This new equipment has now been installed in 27 of the 48 courtrooms. Installation in the remaining 21 courtrooms will be completed as funding becomes available. This new recording equipment delivers:

- a) superior sound quality recordings;
- b) duplicating and reformatting capabilities;
- c) instantaneous delivery of the day's proceedings for judiciary and/or solicitors via CD-ROM;
- d) video-conferencing capabilities; and
- e) interface capabilities with other automated systems.

The New Brunswick Justice and Attorney General website <http://www.gnb.ca/0062/> is also undergoing rejuvenation. Attention is being focussed on the Frequently Asked Questions (FAQ) section and additions are being made to the

various Justice and Attorney General forms already available online. Progress is also being made toward the creation of a New Brunswick Courts' website. Ongoing consultation with all levels of the New Brunswick judiciary allows for creation of a website responsive both to the needs of the New Brunswick judiciary and the target audience of the Courts, the public.

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Nova Scotia

Since 2000, the Self-Represented Litigants Initiative sought to examine the perception that there were increasing numbers of self-represented litigants in the family and criminal law courts and to address concerns expressed by judges, lawyers, staff and litigants. The project team worked with a collaborative advisory committee and seven court-specific working subcommittees. In order to develop effective and understandable practices, the project team developed a needs assessment study, including standard interview guides and questionnaires for self-represented litigants.

During the fall of 2002, the project team conducted extensive interviews in a needs assessment study and in April 2004, released their resulting report (available at <http://www.gov.ns.ca/just/courts>). The report makes numerous recommendations for improvements in information and service delivery, including:

- more information at the pre-filing stage, including do-it-yourself kits;

- adoption of guidelines for staff on providing legal information versus legal advice; and
- a Self-Help Centre pilot project in the Halifax Supreme Court (Family Division) offering both written information and staff-delivered court preparation sessions.

The project has also developed self-help information guides on numerous topics identified by the seven working subcommittees. The guides provide plain language step-by-step instruction on court procedures and are available free at justice centres and on the Nova Scotia Department of Justice website <http://www.gov.ns.ca/just/selfhelp.htm>.

The project is also developing guidelines for court staff in providing information. This includes training for court staff and a one-page document that will be provided to self-represented litigants or inserted into court documents. The training guidelines will be modeled, with permission, after the guidelines provided by the Iowa Supreme Court.

The Nova Scotia Courts website, managed by the Executive Office of the Nova Scotia Judiciary at <http://www.courts.ns.ca> is a tremendous source of legal information and includes a self-directed tour of Nova Scotia's court system.

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Prince Edward Island

In 2002, the Task Force on Access to Justice completed its report outlining recommendations aimed at improving Islanders' access to the justice system. Since that time, partners have been working both independently and collaboratively to implement a number of the recommendations.

In March 2004, the Honourable C.R. McQuaid Family Law Centre was officially named in honour of a family law pioneer in the province. The Centre co-locates Victim Services, the Maintenance Enforcement Program, the Child Support Guidelines Office, the Recalculation Office, the Parent Education Program, and the Family Court Counsellors. This co-location of services is an important step in improving access to justice for families and children facing separation and divorce.

In April, the Office of the Attorney General completed a project to make all Prince Edward Island regulations available on the provincial government website <http://www.gov.pe.ca>. It includes the consolidations of 350

regulations. The Court has also implemented an initiative aimed at improving access to Small Claims Court. New Small Claims Rules were adopted to simplify the process and a reference guide was prepared for lay litigants. The new rules use plain language and, along with improved forms, create a more user-friendly process for the public.

The Task Force on Access to Justice continues to work with community, government and other justice partners to find ways to improve access to the justice system in Prince Edward Island.

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Newfoundland & Labrador

Newfoundland & Labrador's *Access to Information and Protection of Privacy Act (ATIPPA)* will repeal and replace the former *Freedom of Information Act*, which has remained virtually unchanged since its 1981 enactment. The Department of Justice has been assigned the responsibility for the overall administration and coordination of *ATIPPA*. Approximately 460 public bodies in Newfoundland & Labrador will be subject to this *Act*, including government departments and agencies, school boards, public post-secondary institutions, health boards and municipalities.

A number of important communications objectives have been identified to ensure that internal and external audiences are educated and informed about the key elements of *ATIPPA*, and to identify how it will benefit people in the province. An *ATIPPA* Office has been established to provide strategic and operational leadership in the implementation, coordination and administration of this new legislation across all public bodies in the province and to assist them in becoming compliant with the legislation.

The Department of Justice has also completed extensive training and policy development in this area, and continues to work with all public bodies to ensure that they are familiar with the legislation and able to deliver responses in a timely and appropriate manner. All departments and most public bodies have designated an official to be responsible for receiving and responding to *ATIPPA* requests. In this manner, the Newfoundland & Labrador Department of Justice is proactively working to ensure that access to information and protection of privacy, important aspects of communication between the civil justice system and the public, is protected.

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Nunuvvat

The Nunavut Legal Services Board (NLSB) is an independent, statutory organisation with a unique capacity – and responsibility - to provide legal aid services to all citizens, even where those citizens may be challenging government departments or agencies or strong private corporations. Inuit are represented at many levels in this organisation, including the Board, and as Student Clerks, Court workers and support staff.

Currently, the NLSB provides no coverage for civil law matters beyond basic family law services. The Board has undertaken a two-year Civil and Poverty Law project, hiring a lawyer to handle legal aid civil and poverty matters. The objective of this project is to improve awareness of and access to civil and poverty law services in Nunavut. This exciting initiative will allow the Board to provide for services that have been lacking to date. As well, since the demand for poverty law and other non-family civil law services will be tracked, the Board will have a better understanding of the

extent of unmet needs in these areas.

Another initiative in Nunavut is a working group that has taken a careful look at simplifying forms that must be filed for the administration of estates. Their focus has been on the use of plain language. In this context a website is also being developed to enable interested parties more ready access to the applicable legislation and forms.

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Northwest Territories

The vast expanse of the geography of the Northwest Territories provides a formidable challenge for the administration of justice. Comprised of 1.17 million square kilometers of land and water, the result is that many communities are isolated and cannot be accessed by a regular road system.

The NWT Courts, which are dedicated to providing the Northwest Territories public access to justice at the same standard as in courts in other parts of Canada, launched a new website on March 31, 2004. At the launch, Justice J. Edward Richard, Senior Judge of the Supreme Court of the Northwest Territories said, “This new site honours the spirit of Justice Sissons who believed in ‘bringing justice to every person’s door’”. You are invited to visit the Courts website at <http://www.nwtcourts.ca>.

The website provides the public with information about the court system in the Northwest Territories, including the roles of the different levels of Courts. For the legal

profession and those with business before the Courts, the web site includes directives, notices to the profession, legislation, and court-related fee regulations. It also provides a direct link to a database of Northwest Territories judgments.

Future enhancements are planned that include a guide to Small Claims, court forms and answers to frequently asked questions about court processes and procedures.

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Yukon

Counter staff in Yukon court registries can provide litigants with information on civil processes. They do not provide legal advice and cannot assist self-represented litigants to fill out documents required by the court.

Litigants can obtain information and forms from a variety of sources. Small Claims Court brochures and forms are

available in all three court registries. A recently released *Guide to Family Law in the Yukon* explains the basics of family law for Yukon residents. Supreme Court litigants can obtain a self-help divorce kit from the Whitehorse registry for a nominal fee. Litigants can also view a video that describes the court process in detail.

The Court Services web site at <http://www.justice.gov.yk.ca/prog/cs> has links to the forms required for Small Claims Court and to PDF copies of the Small Claims Court brochures. The site also has links to the Yukon Public Legal Education Association (YPLEA) web site, and the Law Society of Yukon web site, among others. Information about the Yukon Supreme Court is also available on the Internet, including Practice Directives and Notices to the Profession. Yukon Supreme Court forms can be obtained through a link to the BC Supreme Court web site.

The Yukon Public Law Library in Whitehorse and other public libraries throughout the Territory provide free Internet access to members of the public. In addition to

court information, the Law Library catalogue is also posted on the Internet. Law librarians provide training on searching for legal information, and answer inquiries in person, by phone and by email.

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Department of Justice Canada (DOJ)

There are several recent examples where the Department of Justice Canada (DOJ), has created opportunities for people to become aware of changes in the law, engage in the justice system at different levels, and support those already involved in the system to make appropriate and informed decisions.

In 1997, the Child Support Guidelines were introduced and the communications component of the Child Support Initiative involved Departmental efforts to raise awareness and understanding both of the Guidelines and of enhanced enforcement mechanisms among the public, justice system officials and service providers. To achieve these goals, the DOJ used agency contribution funding, production and distribution of training and information materials, a toll-free information line, an Internet website, media advertisements, and a public awareness campaign.

On April 1, 2003, the *Youth Criminal Justice Act (YCJA)* replaced the *Young Offenders Act*. Recognizing the importance of training to the successful implementation of the new regime, a number of resources have been developed with the assistance of justice system officials and service providers, and distributed to assist in learning about the *YCJA* and in developing training programs specific to the needs of various groups officials and

members. Resources have been made available to each province and territory's designated Public Legal Education Association, as well as other interested organizations, to develop tools and techniques to inform all Canadians about the Youth Justice Renewal Initiative and the *YCJA*. To support these activities, the Youth Justice Policy Section developed and provided standardized national information that these organizations can use in their education materials.

The development and distribution of justice related public information and education materials and programs are ongoing activities supported by the DOJ, prompted by changes in policy and procedures, revised needs assessments and experience.

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Courtroom Technology SCAN

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Andrew Sims, QC is a lawyer practicing in Edmonton and principal of the Sims Group, a consulting practice providing advice to courts and tribunals. His column will return in future Newsletters.

We want the content of our newsletter to answer your questions, respond to your concerns, or include your article or comments. Please write to us and contribute your ideas to future issues of *News and Views on Civil Justice Reform*: cjforum@law.ualberta.ca