



CANADIAN
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PUBLIC AND PRIVATE SPENDING ON JUSTICE IN CANADA

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THE COST
OF JUSTICE



Canadian Forum on Civil Justice  Forum canadien sur la justice civile

"This research...by the Canadian Forum on Civil Justice will be essential in helping us understand the true extent of the problem of cost and how it impacts on the justice system. I believe that it will prove to be of great assistance to...identify concrete solutions to the problem of access to justice."

- The Right Honourable Beverley McLachlin, P.C., Chief Justice of Canada (2011)

The Canadian Forum on Civil Justice is a national not-for-profit organization dedicated to civil justice reform and access to justice research and advocacy. Established by the Canadian Bar Association and affiliated with Osgoode Hall Law School, the CFCJ envisions an accessible, sustainable and effective justice system for all Canadians.

Overview of the Cost of Justice project. The Cost of Justice project (2011-2018) examines the social and economic costs of Canada's justice system. It is guided by two questions: What is the cost of delivering access to justice? And what is the cost of not delivering access to justice? Comprised of leading researchers investigating various dimensions of access to justice and cost across the country, the Cost of Justice project is producing empirical data that will inform the future of access to justice in Canada and abroad. The lead research team includes: Trevor C.W. Farrow (Principal Investigator), Nicole Aylwin, Les Jacobs and Ab Currie.

The Cost of Justice project is funded by a \$1 million grant from the Social Sciences and Humanities Research Council of Canada. For more details please visit Canadian Forum on Civil Justice, "Cost of Justice", online: CFCJ <www.cfcjfcjc.org/cost-of-justice>.



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I. Introduction

As a ubiquitous aspect of everyday life, it should come as little surprise that legal problems have a tremendous cumulative cost on society. Assessing the cost of civil, family and criminal justice problems in Canada is a complex and multifaceted undertaking, owing in part to the number of agencies involved in the administration of justice, the various types of justice system expenses, and the intangible and ‘knock on’ costs that often result from experiencing legal problems. Further, costs can be examined in monetary, temporal, personal, physical health, mental health and other terms. The monetary costs are of course the most straightforward and methodologically simplest to calculate. In exploring the issue of cost, this paper will focus primarily on the “monetary costs” category.

Understanding the cumulative cost of justice¹ in Canada requires an examination of the various dimensions of cost across the country. Of principal concern are the justice-related costs that individuals and governments spend on the resolution of legal problems. From the perspective of the individual, these costs include things like legal fees, searching costs, and transportation costs. From the perspective of governments, the costs are considerable and largely include public-purse expenditures on things like policing, courts, tribunal services, legal aid plans, correctional facilities, prosecutions, and public legal education and information. To the extent that these types of government expenditures are mostly indicative of spending on aspects of the criminal justice system is telling of the

* The authors are grateful to Nicole Aylwin and Dr. Ab Currie for their critical assistance and comments.

¹ The Cost of Justice Project (2011-2018) was established with support from the Social Sciences and Humanities Research Council of Canada (SSHRC) to investigate and produce empirical data surrounding the cost of justice in Canada. This data is meant to inform and positively shape the access to justice landscape in Canada. See: Canadian Forum on Civil Justice, “Cost of Justice”, online: CFCJ: <<http://www.cfcj-fcj.org/cost-of-justice>>.

type of data available on justice system spending in Canada and, consequently, the type of information that we are able to present in this paper.

While assessing the monetary costs of the justice system in a way that presents a clear picture of spending in the areas of civil, family and criminal justice would contribute to a holistic view of what it costs to administer justice in all areas (and what it might cost to make justice more accessible), less is spent on civil and family justice delivery and there is less data available on spending in these areas.

Nonetheless, research by organizations like the Canadian Forum on Civil Justice (CFCJ) is contributing to the data available on the costs of civil and family justice problems in Canada. As part of a recent assessment of the costs of justice, the CFCJ undertook the first legal problems survey in more than a decade to ask about the monetary costs of civil and family justice problems in Canada. The CFCJ's national survey is also one of the first surveys of its kind to assess the costs of experiencing a civil or family justice problem in terms of physical health, emotional health, loss of security and personal and social costs. Findings from the CFCJ survey, which are discussed in greater detail later in this paper, suggest that the cost of civil and family justice problems to individuals and to the public purse is significant.

In approaching this cost of justice research, various projects and methodologies were pursued. The two in particular which we take up in this paper include a consideration of private costs that are borne by individuals experiencing legal problems and the public costs that the government bears in the administration of justice programs. Because of the considerable attention that criminal justice receives in government justice budgets, much of the focus of public spending on justice in this paper is also on areas related to criminal justice. Notwithstanding, there is value in understanding generally what is spent on justice in Canada. As such, the goal of this paper is not to evaluate the allocation of justice sector dollars or to argue the merits of increased spending in specific areas or more cost-effective services that can improve access to justice. Rather, this paper seeks to present

an overview of some of the main areas of spending in justice and the cost of delivering justice services with the objective of contributing to a greater understanding of what justice costs in Canada.

II. What Individuals Spend on Justiciable Problems

In examining the issue of cost, it is important first to set out what its parameters are and how it is to be understood. For the CFCJ's national survey on everyday legal problems, respondents who experienced legal problems were asked if it cost them any money to deal with their legal problem(s), what types of things they paid for and how much they spent. Based on one or more types of expenditures reported, including lawyer fees, court fees, transportation, childcare expenses, advisors and mediators, printing, and other expenses, the CFCJ survey found that individuals spend roughly \$6,100 on average when dealing with their everyday legal problems.² The costs to physical health and emotional well-being, by contrast, are more difficult to ascertain, as they do not lend themselves to easily quantifiable measures. Stress, for example, is not something that can be easily calculated. Furthermore, physical ailments and emotional problems are often the result of a clustering of problems that exist in tandem with one another, of which legal problems may be one contributor amongst many.³

In their 2013 Report on access to justice in the civil and family law contexts, the national Action Committee on Access to Justice in Civil and Family Matters highlighted that legal

² Canadian Forum on Civil Justice, *Everyday Legal Problems and the Cost of Justice in Canada: Overview Report* (Toronto, Canadian Forum on Civil Justice, 2016) at 13, online: <<http://www.cfcj-fcjc.org/sites/default/files/Everyday%20Legal%20Problems%20and%20the%20Cost%20of%20Justice%20in%20Canada%20-%20Overview%20Report.pdf>>.

³ In their study on stress and health, researchers Neil Schneiderman, Gail Ironson and Scott D. Siegel found that psychological stress and disease are affected by a variety of stressors in an individual's life and his or her biological constitution, psychosocial resources, and learned patterns of coping. See: Neil Schneiderman et al, "Stress and Health: Psychological, Behavioural, and Biological Determinants," *Annu Rev Clin Psychol.* 2005; 1: 607-628. While assessing the non-monetary costs of legal problems is admittedly a difficult task, findings from studies like the CFCJ's Everyday Legal Problems and the Cost of Justice study help shed light on this issue.

problems tend to have a “multiplier effect” to the extent that they create and exacerbate other legal, social, and health related problems.⁴ The CFCJ’s 2016 *Overview Report* on everyday legal problems further supports this point. A legal problem may be a health problem (stemming from the stress of mounting legal fees, for example), an employment problem (resulting from time spent away from work to address a legal problem), a social, family or personal problem (due to a relationship breakdown or other personal issue), a social assistance problem (with benefits being denied after loss of employment), a housing problem (caused by an inability to make mortgage payments due to legal fees) and so on. In the CFCJ study, a substantial number of respondents with legal problems reported having increased stress, poor work performance, family problems, anxiety, and other health-related problems as a result of their legal problems.⁵ Ironically, these “non-monetary” “knock-on” costs are actually quite expensive, running the state an estimated \$800M annually in additional employment insurance, social assistance and healthcare costs.⁶ Though there is still much to be learned about the effects of ancillary costs, the information gleaned from the CFCJ study and others is quite revealing and will hopefully pave the path for additional research on the issue of costs related to civil and family justice problems.

In his paper entitled “The Cost of Seeking Civil Justice in Canada,”⁷ Professor Noel Semple set out a tripartite methodology for defining how private legal costs are conceived. According to Semple, private costs (i.e. costs borne by individuals) can be divided into 3 categories: “monetary costs,” “temporal costs,” and “psychological costs”. Included within the “monetary costs” category are things like legal professional fees (e.g. lawyer and

⁴ The Action Committee’s Report indicates that almost 40% of respondents with legal problems had other social or health related problems that they attributed to a justiciable problem. See: Action Committee on Access to Justice in Civil and Family Matters, *Access to Civil & Family Justice: A Roadmap for Change* (Ottawa: Action Committee on Access to Justice in Civil and Family Matters, October 2013) at 3, citing Ab Currie, *The Legal Problems of Everyday Life: The Nature, Extent and Consequences of Justiciable Problems Experienced by Canadians* (Ottawa: Department of Justice Canada, 2007) at 73, online: <http://www.justice.gc.ca/eng/rp-pr/csj-sjc/jsp-sjp/rr07_la1-rr07_aj1/rr07_la1.pdf>.

⁵ CFCJ *Overview Report*, *supra* note 2 at 16-19.

⁶ *Ibid* at 16.

⁷ See: Noel Semple, “The Cost of Seeking Civil Justice in Canada” (2016) 93:3 *Can Bar Rev* 639 [Semple, “Cost of Civil Justice”].

paralegal fees), court fees (e.g. filing and hearing fees) and miscellaneous goods and services fees (e.g. process-serving fees, photocopying fees, transportation costs and childcare costs).

When thinking about monetary costs, perhaps the first thing that comes to mind is lawyer fees. The extent to which lawyer fees have contributed to the access to justice crisis in Canada is a significant topic of conversation.⁸ In a 2007 study on justiciable problems in the civil justice context, Dr. Ab Currie found that the high cost of retaining counsel likely contributed to the reason that most respondents attempted to resolve legal problems on their own.⁹ Similar findings have been echoed and reinforced in the Ontario Civil Legal Needs Project's 2010 Report on civil legal needs and in Professor Julie Macfarlane's 2013 Report on self-represented litigants (SRL's). In the former report, close to half (i.e. 42%) of the respondents reported that the reason they did not seek legal assistance was because they could not afford a lawyer.¹⁰ Similarly, in the latter report, lawyer fees were cited as the most common reason for self-representation amongst the vast majority of respondents.¹¹

So the question then arises, what are individuals paying on average for private legal representation in Canada? Average hourly rates vary by region, years of call to the bar and practice area. The most recent data from the Canadian Lawyer Magazine's annual Legal

⁸ See recently: Michael Spratt, "Want to help Pro Bono Ontario? Lower your fees", *Canadian Lawyer* (19 November 2018) online: Canadianlawyermag.com <<https://canadianlawyermag.com/author/michael-spratt/want-to-help-pro-bono-ontario-lower-your-fees-16516/>>.

⁹ See: Ab Currie, *The Legal Problems of Everyday Life*, *supra* note 4 at 64.

¹⁰ See: Ontario Civil Legal Needs Project: *Listening to Ontarians* (Toronto: Ontario Civil Legal Needs Project Steering Committee. May 2010) at 32, online: <http://www.lsuc.on.ca/media/may3110_oclnreport_final.pdf>.

¹¹ According to Julie Macfarlane's study, more than 90% of respondents across all the provinces examined (Alberta, British Columbia and Ontario) referred to financial concerns as the reason for self-representation. Furthermore, among respondents who cited financial concerns, many were explicit about their inability to pay for legal counsel. See: Julie Macfarlane, "The National Self-Represented Litigants Project: Identifying and Meeting the Needs of Self-Represented Litigants" (2013) at 39-44, online: <http://www.lsuc.on.ca/uploadedFiles/For_the_Public/About_the_Law_Society/Convocation_Decisions/2014/Self-represented_project.pdf>.

Fees Survey reveals that the national average hourly rate for 2017 calls is \$190.51.¹² By comparison, the national average hourly rate for lawyers with 6-10 additional years of experience is \$303.94 and for lawyers with more than 20 years in practice, the average national hourly rate is \$413.83.

Regionally, Ontario leads the pack with the average hourly rate for 2017 calls in the province reported to be \$217.96. Their counterparts in the Atlantic region and Quebec earn an average hourly rate of \$165.00., while for new lawyers in Western Canada the average hourly rate is \$179.74. For lawyers in Ontario with 20 or more years of experience, the annual Legal Fees Survey reports an average hourly rate of \$445.20. In the Atlantic region and Quebec, for lawyers with 20 or more years of experience the average hourly rate is reported to be \$339.87, and the average hourly rate for lawyers with a similar number of years in practice in Western Canada is reported to be \$410.77.

In terms of practice area, for lawyers beginning a career in civil litigation, the annual average hourly rate is \$192.70. This compares with \$305.86 for lawyers with the same specialization who have 6-10 additional years of experience. Their counterparts with 20 or more years in practice are reported to earn an average hourly rate of \$433.43.

Several other reports offer fairly consistent findings on the national average hourly billing rates of lawyers in Canada. For example, Dynamic Lawyer's 2009 study put the average hourly rate for lawyers at \$338 per hour.¹³ Similarly, the Law Society of Ontario's (LSO's) remuneration fee schedule lists salary ranges for more experienced lawyers as falling

¹² See: Marg Bruineman, "The Right Price: Canadian Lawyer's 2018 Legal Fees Survey shows some bright spots for law firms despite a highly competitive market", *Canadian Lawyer Magazine* (20 April 2018) at 21-22, online:

<https://www.canadianlawyermag.com/staticcontent/AttachedDocs/CL_Apr_18_LegalFeesSurvey.pdf>. For a further discussion of lawyer billing rates, see Semple, "Cost of Civil Justice" *supra* note 7 at 647-654.

¹³ The Dynamic Lawyers' survey results were based on interviews from 500 randomly selected solo/small firm Toronto lawyers. The major findings from the study were published in the following article: Michael Carabash, "Is Time Running Out on the Billable Hour?" (2009), Dynamic Lawyers, online:

<https://www.dynamiclegalforms.com/files/Is_Time_Running_Out_on_the_Billable_Hour.pdf>.

between \$300-350 per hour.¹⁴ Finally, respondents from Julie Macfarlane's study on SRL's revealed average spending of \$358 per hour on lawyer fees.¹⁵

Increasingly, paralegal fees are figuring more prominently in the monetary expenses that litigants incur, particularly given that more provincial regulators are now authorizing paralegals to provide more legal services. Paralegals bill on average between \$19.50-34.22 per hour, depending on their level of experience and provincial location.¹⁶ Given their lower fees and the general level of public satisfaction with their services,¹⁷ paralegals may well become an increasingly important solution to at least part of the access to justice crisis.

Litigants who engage the formal justice system in order to resolve their legal problem(s) can also pay an assortment of court fees. The various costs associated with different court processes are itemized in most court and administrative board fee tables. For example, the commencement fee for filing a statement of claim in court can range from \$100.00¹⁸ to \$750.00¹⁹ depending on the province and level of court. Other common court fees

¹⁴ According to Law Society of Ontario's fee schedule, 10-11 year calls can expect to make \$300 per hour and senior counsel with more than 20 years of experience can expect to make \$350 per hour. See: Law Society of Ontario, "Careers – Working with the Law Society - Call For Expressions - Fee Schedule," online: <<https://lso.ca/getdoc/1a17fa67-7a08-4a5b-b945-a3fb6ae45e9d/fee-schedule>>.

¹⁵ The \$358 per hour figure is based on figures from the National Self-Represented Litigants Project (NSRLP) database and is reported in Noel Semple's paper on the cost of civil justice in Canada. See: Semple, "Cost of Civil Justice" *supra* note 7 at 12.

¹⁶ The paralegal wage table from the Living in Canada website uses aggregated data from Statistics Canada, the Alberta Wage Survey and the Saskatchewan Wage Survey. For complete figures see: Living in Canada, "Paralegal Salary Canada," (2018), online: <<http://www.livingin-canada.com/salaries-for-paralegal-and-related-occupations.html>>.

¹⁷ The Access to Justice Act, 2006 requires two progress reviews on the implementation of paralegal regulation, to be conducted after five years. Results from the first review in 2012 by the Law Society of Upper Canada, which as of January 1, 2018 has operated under its new name the Law Society of Ontario, reveals that 74% of clients indicated that they were satisfied or very satisfied with the services they received from paralegals. See: The Gazette, *Report to the Attorney General of Ontario* (June 2012) at 25, online: <<http://lawsocietygazette.ca/wp-content/uploads/2012/07/Paralegal-5-year-Review.pdf>>.

¹⁸ The fee for commencing action in New Brunswick's Court of Queen's Bench is \$100. See: Government of New Brunswick, "Court Fees - Court of Queen's Bench" online: <http://www2.gnb.ca/content/gnb/en/services/services_renderer.629.Court_Fees_-_Court_of_Queen__s_Bench.html#serviceFees>.

¹⁹ The fee for commencing an action in Saskatchewan's Court of Queen's Bench is generally \$750. See: Government of Saskatchewan "Tariff of Costs" at 7, online: <<http://www.qp.gov.sk.ca/documents/English/QBRules/23Tariff.pdf>>.

include fees for filing applications, commencing motions, setting trials, conducting searches, and requisitioning orders. Of the various court fees listed, perhaps the most costly are the trial fees, which can cost litigants upwards of \$500.00 per day of trial.²⁰ When tallied together, these administrative fees can pose a substantial cost burden on litigants. That being said, both the federal and provincial courts have discretion to waive court fees in circumstances where litigants cannot afford them based on measures like annual household income.²¹

Individuals may also incur “miscellaneous goods and services” fees.²² These include a variety of ancillary expenses that individual justice-seekers must pay in order to resolve their legal problems. Examples include process-serving fees, telephone, fax and long distance fees, photocopying and printing fees, transportation costs, childcare costs, expert fees and translator fees. These costs are varied and case specific and consequently it is impossible to definitively project what they may total in a given case. That being said, it is possible to provide a general sampling of some of the more common miscellaneous expenses, and what they cost the average litigant.

First, in terms of process serving, the going rate for service of documents is approximately \$70.00 per trip with some companies charging extra for mileage and repeat attempts at service.²³ Second, regarding expert witness fees, the median hourly expert witness fee for file review or preparation as reported by the SEAK Expert Witness Directory is

²⁰ In British Columbia, civil hearing fees before the B.C. Supreme Court were reinstated effective August 1, 2016. While there are still no fees for the first three days of trial, for days 4-10 the fee is \$500 per day and for each day beyond day 10 the fee is \$800 per day. See: Government of British Columbia, “B.C. reinstates civil hearing day fees,” (July 22, 2016), online: <<https://news.gov.bc.ca/releases/2016JAG0023-001343>>. Taxes applied to lawyer fees have also been argued to be onerous and a financial barrier for access to legal representation in the courts, in particular for low-income earners. See e.g. *British Columbia (Attorney General) v. Christie*, [2007] 1 S.C.R. 873, 2007 SCC 21 (CanLII).

²¹ In the federal context, courts have discretion to increase or decrease court fees under s. 20(2) of the *Federal Courts Rules*, Canada SOR/98-106. Similarly, provincial courts also have discretion under their governing legislation. See for example, ss. 4.2-4.9 of the *Administration of Justice Act*, RSO 1990 c. A.6, which sets out the process for applying for a fee waiver in Ontario.

²² See: Semple, “Cost of Civil Justice”, *supra* note 7 at 646.

²³ The \$70 figure derives from the fee schedule from Canadian Process Serving Inc., which is the largest process serving company in Canada. See: Canadian Process Serving Inc. “Service Fee Schedule” (available upon request).

approximately \$500.00 per hour.²⁴ At the trial stage, the fee then jumps to roughly \$670.00 per hour for providing expert testimony. Additionally, it is also common practice for expert witnesses to require minimum deposits as a condition for retainer, which average about \$4,600.00.²⁵ Finally, with respect to translation fees, data collated by the Living in Canada website suggests that the average translator wage falls between \$24.54-36.60 per hour, with some variance based on level of experience and provincial location.²⁶ All in all, process serving fees, expert witness fees, and translation fees are just three examples of costs that litigants commonly face when dealing with their legal problems. When tallied together, these costs can have a substantial monetary impact on litigants, especially ones who are engaged in lengthy trials.

III. What the Government Spends on Justiciable Problems

Individuals incur substantial costs when dealing with their justiciable problems. In addition, federal and provincial governments incur significant costs in the administration of justice-related programs, with spending on criminal justice accounting for the majority of justice-sector spending. While there are times when criminal, civil and family justice problems intersect (for example in a domestic violence case), research on the costs of civil and family justice is still emerging. Though the following sections focus on government spending in areas of criminal justice, an understanding of these costs provides insight into the overall cost of administering justice in Canada.

²⁴ SEAK Inc. is an expert witness training company whose directory contains contact information for thousands of expert witnesses across North America specializing in a variety of areas. The hourly fee averages and subsequent retainer deposit average are based on data from SEAK Inc.'s 2017 Survey of Expert Witness Fees. Figures from the SEAK report have been converted from U.S. dollars to Canadian dollars based on 2017 exchange rates. Conversions were made using the Bank of Canada's Currency Converter. See: James J. Mangraviti Jr. et al, "2017 SEAK, Inc. Survey of Expert Witness Fees" (2017) at 5, online: < <https://www.seak.com/wp-content/uploads/2017/09/Sample-Pages-from-2017-SEAK-Fee-Book.pdf>>.

²⁵ *Ibid.*

²⁶ The translator wage table from the Living in Canada website uses aggregated data from Statistics Canada, the Alberta Wage Survey and the Saskatchewan Wage Survey. For complete figures see: Living in Canada, "Translator/Interpreter Salary Canada," (2018), online: <<http://www.livingin-canada.com/salaries-for-translators-terminologists-and-interpreters.html>>.

The main areas of government spending on justice are policing, correctional services, courts, tribunal services, prosecutions, legal aid plans and public legal education and information. Up until 2002, Statistics Canada published a series of *Juristat* reports comparatively examining what many of these expenditures were on a year-to-year basis.²⁷ However, since then, there have only been some localized and isolated reports examining particular areas of spending. In preparing this report, we have identified reports and data on government expenditures from a variety of sources, including Statistics Canada, the Department of Justice Canada, provincial government websites, tribunal websites and provincial public legal education (PLE) websites. Much of the information on spending from these sources has come from annual reports, which provide some detailed data on operating budgets and expenditures.

i. Policing

When looking at the different justice-related public sectors, the one that continuously receives and expends the most resources from year-to-year is policing. Results from the 2017 Police Administration Survey indicated that operating expenditures for police services in Canada in 2016/17 totaled approximately \$14.7B in current dollars.²⁸ In terms of the cost breakdown, 65% of the total figure comprised salaries and wages, 16% comprised benefits, and 20% comprised other operating expenditures.²⁹ When adjusted for inflation, the \$14.7B figure represents a slight increase from the previous year's spending.³⁰ To put things in perspective, the expenditures on policing represent

²⁷ The *Juristat* reports were titled "Justice Spending in Canada" and comparatively analyzed public expenditures in 5 major sectors of the justice system: policing, courts, legal aid, criminal prosecutions and adult corrections. For the latest report see: Andrea Taylor-Butts in *Juristat, Justice Spending in Canada, 2000/01*, Cat no. 85-0002-XIE Vol. 22 no. 11, online: <<http://www.statcan.gc.ca/pub/85-002-x/85-002-x2002011-eng.pdf>>.

²⁸ Patricia Conor in *Juristat, Police resources in Canada, 2017*, Cat no. 85-002-X (March, 28, 2018) at 16, online: <<https://www150.statcan.gc.ca/n1/en/pub/85-002-x/2018001/article/54912-eng.pdf?st=yGXm6dLh>>.

²⁹ *Ibid.*

³⁰ *Ibid.*

approximately 4% of the \$333B in total government expenditures in 2017/18.³¹ Moving forward, researchers have suggested that the economics of policing will undergo major changes as a response to advances in cybercrime and other criminal developments in the future.³² It will be interesting to see how these changes affect budgetary allocations towards policing on both federal and provincial levels, and whether these changes might impact spending in areas of civil and family justice.

ii. Correctional Services

A second major area of government spending is in correctional services, which is under the shared administration of the federal and provincial governments. The federal system has jurisdiction over adults serving sentences of two years or more and offenders on conditional release. The provincial and territorial system, by contrast, has jurisdiction over adults serving sentences under two years and those awaiting trial or sentencing.³³ In addition to housing offenders, both the federal and provincial correctional services institutions are also responsible for providing programming to assist in offender rehabilitation. Between the federal, provincial and territorial governments, operating expenditures for adult correctional services in 2016/17 totaled over \$4.7B.³⁴ After adjusting for inflation, the expenditures represent a 1% increase overall from the previous year's spending.³⁵ Data on operational expenditures for youth correctional services during the same period were not published in the 2016/17 Adult and Youth Correctional Statistics in Canada report. Figures from the Department of Justice's 2008 Costs of Crime in Canada report put youth correctional costs at just under \$1B or approximately 25% of

³¹ The total federal government expenditures in 2017/18 are reported in the Department of Finance's Annual Financial Report. See: Government of Canada, *Annual Financial Report of the Government of Canada Fiscal Year 2017-2018* at 7, online: <<https://www.fin.gc.ca/afr-rfa/2018/afr-rfa18-eng.pdf>>.

³² See: Public Safety Canada, *Economic of Policing: Police Education and Learning Summit: Summary Report* (2013) at 8, online: <<https://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/plc-lrnng-smmt/plc-lrnng-smmt-eng.pdf>>.

³³ Jamil Malakieh in *Juristat, Adult and youth correctional statistics in Canada, 2016/2017* Cat no. 85-002-X (June 19, 2018, updated June 29, 2018) at 3, online: <https://www150.statcan.gc.ca/n1/en/pub/85-002-x/2018001/article/54972-eng.pdf?st=2YCAuMF_>.

³⁴ *Ibid* at 5.

³⁵ *Ibid*.

adult correctional costs.³⁶ Assuming the 25% proportion is still close to accurate, 2016/17 youth correctional services expenditures can be estimated at approximately \$1.175B in present day dollars.

iii. Court Services

After policing and correctional services, the third largest area of justice sector government spending is in court services. The federal and provincial/territorial governments share responsibility for the administration of Canada's system of courts. Under s. 96 of the *Constitution Act, 1867*, the federal government has jurisdiction over the Supreme Court of Canada, the Federal Court of Canada and the Tax Court of Canada. The provincial and territorial governments, by contrast, have jurisdiction over their own localized courts, which operate beneath the s. 96 courts. The last Department of Justice report to publish data on court service expenditures in Canada came in 2008, which projected total spending at \$1.15B for the 2002/03 fiscal year.³⁷ Included within the definition of "expenditures" were budget items such as salaries and wages, benefits, law library/publication costs, and contracted services.³⁸ The \$1.15B total expenditure figure for the Department of Justice is roughly consistent with the \$1.04B figure cited several years prior in the 2000/01 *Juristat* report on court personnel and expenditures.³⁹ According to the *Juristat* report, Ontario alone spent \$332M on court services in 2000/01, comprising approximately 32% of the total expenditures amongst the provinces and territories.⁴⁰

³⁶ See: Department of Justice, "Costs of Crime in Canada, 2008" at Table 5, online: <http://www.justice.gc.ca/eng/rp-pr/csj-sjc/crime/rr10_5/a.html>.

³⁷ *Ibid* at Table 2.

³⁸ The Department of Justice's definition of "expenditures" was adopted from Statistics Canada's Overview Survey. See: Statistics Canada: "Overview of the Courts Personnel and Expenditures Survey, 2002/03," online: <http://www23.statcan.gc.ca/imdb/p3Instr.pl?Function=getInstrumentList&Item_Id=34560&UL=1V>.

³⁹ Katie Snowball in *Juristat, Courts Personnel and Expenditures 2000/01* Cat no. 85-403-XIE (May 2002) at 7, online: <<http://publications.gc.ca/Collection-R/Statcan/85-403-XIE/0010185-403-XIE.pdf>>.

⁴⁰ *Ibid* at 12.

While the figures from the *Juristat* and Department of Justice reports are approximately 15 years dated, they do provide an informative point-in-time snapshot of expenditure trends. Furthermore, it is possible to accumulate more recent data by looking at the various provincial/territorial government budgets and justice department annual reports across the country. In most provincial/territorial annual budgets “Court Services” or “Judicial Services” are listed as an expense heading or line item under operating expenses. In Ontario, for example, the operating expense for “Judicial Services” for the fiscal year of 2016/17 is listed at \$419M.⁴¹ This figure represents a fairly stable rate of spending as compared to the 2000/01 figure of \$332M, after adjusting for inflation.⁴² Other provinces show similarly stable year-to-year expenditure trajectories after accounting for inflation. After adding the expenditures of each of the provinces/territories plus those of the Courts Administration Services (which provides administrative services to the Federal Court, the Federal Court of Appeal, the Court Martial Appeal Court of Canada, and the Tax Court of Canada), plus those of the Office of the Commissioner for Federal Judicial Affairs (which pays judicial salaries), plus those of the Supreme Court of Canada, the total expenditure figure can be conservatively estimated as falling between \$1.5-2.5B in present day dollars.⁴³

⁴¹ Ministry of the Attorney General, *Expenditure Estimates for the Ministry of Attorney General (2018-19)*, at vote 305, online: <<https://www.ontario.ca/page/expenditure-estimates-ministry-attorney-general-2018-19#section-5>>.

⁴² Using the Consumer Price Index (CPI) to account for inflation, \$332M in 2001 dollars amounts to approximately \$443M in 2017 dollars. Calculations are based on the CPI for the first year (April 2001), being 97.8 and the CPI for the second year (April 2017) being 130.4.

⁴³ It is difficult to present a precise figure of court service expenditures, because not all the provincial budgets list expenses in the same way. Some provinces like Saskatchewan, for example, group civil justice and court costs as part of one expense. Other provinces, like Manitoba list civil law expenses and court expenses as separate line items. For Saskatchewan’s 2017/18 budget estimates, see: Government of Saskatchewan, Ministry of Corrections and Policing, Ministry of Justice and Attorney, *General Annual Report for 2017-18* at 21, online: <<http://publications.gov.sk.ca/documents/15/107653-2017-18CorrectionsandPolicingandJusticeAttorneyGeneralAnnualReport.pdf>>. For Manitoba’s 2018/19 budget estimates, see: Government of Manitoba, *Estimates of Expenditure and Revenue for the Fiscal Year Ending March 31, 2019* at 93, online: <https://www.gov.mb.ca/finance/budget18/papers/r_and_e.pdf>.

iv. Prosecutions

After court services, the next largest area of justice sector government spending is in prosecutions. According to the Department of Justice's 2008 report on the Costs of Crime in Canada, total prosecution costs in 2008 amounted to approximately \$528M, with the average prosecution cost per case sitting at about \$906 after adjusting for inflation.⁴⁴ The 2008 total expenditure figure of \$528M represents a marked increase from \$335M as cited in the 2000/01 *Juristat* report on justice system spending in Canada.⁴⁵ In terms of the spending breakdown, 75% of the 2001 figure (\$253M) was spent on salaries, wages and benefits for lawyers, paralegals and clerical staff. The remaining 25% (\$82M) was spent on other operating costs, including private attorney fees, witness costs, transportation costs and training.⁴⁶

While the 2001 Department of Justice and the 2008 *Juristat* reports are a number of years dated, more recent data is available through provincial budgets, which list prosecution expenditures as line items. On the federal side, moreover, data is available through the Public Prosecution Service of Canada's (PPSC) Report on Plans and Priorities, which estimates expenditures of \$186M for the fiscal year of 2016/17.⁴⁷ When tallied together, the total expenditure figure between the provinces and federal government for the 2016/17 fiscal year amounts to approximately \$911M, with each province spending about \$72M on average.⁴⁸ Among the provinces, Ontario reported the highest

⁴⁴ See: Department of Justice, "Costs of Crime in Canada, 2008" *supra* note 36 at Table 3.

⁴⁵ See: Andrea Taylor-Butts in *Juristat, Justice Spending in Canada, 2000/01, supra* note 27 at 9.

⁴⁶ *Ibid.*

⁴⁷ The Public Prosecution Service of Canada, *Report on Plans and Priorities 2016-17* also includes planned spending figures in the amounts of \$178.2M for 2017/18 and \$177.9M for 2018/19. Public Prosecution Service of Canada, *Report on Plans and Priorities 2016-17*, online: <http://www.ppsc-sppc.gc.ca/eng/pub/rpp/2016_2017/index.html#section_1_3>.

⁴⁸ The total expenditure figure was obtained by adding the line item expenses for prosecution services from the 2016-17 budgets of the 10 provinces plus those from the PPSC's 2016-17 Report on Plans and Priorities. Prosecution expenditures from the territories are included within the PPSC's figure, as the PPSC is responsible for prosecuting on behalf of the territorial governments.

expenditure figure for prosecutions at \$264M,⁴⁹ while Prince Edward Island reported the lowest figure at \$1.3M.⁵⁰ The total expenditure estimate of \$911M for the 2016/17 fiscal year represents a substantial increase from the Department of Justice's 2008 figure of \$528M, even after adjusting for inflation. While the reasons for this marked increase in spending may not be entirely known, part of it can likely be attributed to specific events and cases, such as the 2011 Vancouver Stanley Cup riots, which were responsible for about \$5M in prosecutions over the span of five years.⁵¹

v. Administrative Tribunals

Administrative tribunals and boards operate as agencies that perform specialized adjudicative, regulatory, and licensing functions. They are also a significant source of government expenditure within the justice sector. While administrative tribunals are meant to operate independently, they also perform uniquely governmental roles and receive direct funding from the federal and provincial/territorial governments. As such, it is appropriate to include them within the calculus of government expenditures.

Inasmuch as there are scores of administrative tribunals and agencies across the country, it is beyond the scope of this paper to tabulate their collective annual expenditures. In Ontario alone, there are over 500 agencies, boards, and commissions.⁵² That being said, one can be certain that expenditures on tribunal services significantly exceed expenditures for the entire Canadian court system. On its own, the Immigration and Refugee Board (IRB), which is Canada's largest tribunal, reported approximately \$160M in operating

⁴⁹ The 2018/19 estimate for spending on prosecutions in Ontario is \$285M. The \$264M for 2016/17 represents actual spending. Ministry of the Attorney General, *Expenditure Estimates for the Ministry of Attorney General (2018-19)*, *supra* note 41 at vote 302.

⁵⁰ Government of Prince Edward Island, *Prince Edward Island Estimates 2017-2018* at 111, online: <https://www.princeedwardisland.ca/sites/default/files/publications/estimates2017_web.pdf>.

⁵¹ British Columbia Ministry of Justice and Attorney General, *B.C.'s Prosecution Service - Report on the 2011 Vancouver Stanley Cup Riot Prosecutions* (January 2016) at 10, online: <<http://www2.gov.bc.ca/assets/gov/law-crime-and-justice/criminal-justice/prosecution-service/reports-publications/stanley-cup-riot-prosecutions.pdf>>.

⁵² For a list of all the agencies in Ontario, see: Government of Ontario, "All Agencies List," online: <<https://www.ontario.ca/page/agencies-boards-and-commissions>>.

expenses in the fiscal year of 2017/18.⁵³ Similarly, the Social Justice Tribunals of Ontario, which is a group of eight adjudicative tribunals in Ontario, reported a combined \$50.9M in operating expenses in the same fiscal year.⁵⁴ Added together, these two figures alone are equivalent to approximately 10.5% of the total expenditures on court services in the same year, assuming the upper limit of court services expenditures at \$2.5B.

vi. Legal Aid

Introduced in Canada in the 1960's as a program to promote access to justice for the economically disadvantaged,⁵⁵ legal aid now comprises a substantial proportion of government spending in the justice sector, predominantly related to criminal justice matters. The legal aid program is administered through provincial legal aid plans, which are responsible for determining eligibility guidelines and parameters for service delivery. Generally speaking, legal aid services include legal representation, legal advice, referrals and information services for criminal and some civil matters. The most recent federal data on legal aid expenditures is the for the 2014/15 fiscal year, in which the Canadian government spent approximately \$850M to administer legal aid services across the provinces and territories.⁵⁶ In terms of the provincial split, Ontario had the highest spending at over \$400M or 47% of the total government expenditures.⁵⁷ These spending figures can be attributed in part to Ontario's population⁵⁸ and to the sheer volume of Legal Aid Ontario's (LAO) workload, as LAO issues more than 100,000 legal aid certificates and provides more than 1,000,000 assists annually.⁵⁹ LAO also employs 4,000

⁵³ Immigration and Refugee Board of Canada, *Financial Statement for the Year Ended March 31, 2018*, online: <<https://www.irb-cisr.gc.ca/en/reports-publications/finance/Pages/financial-statements-1718.aspx>>.

⁵⁴ Social Justice Tribunals of Ontario, *Social Justice Tribunals of Ontario 2017-2018 Annual Report*, online: <<http://www.sjto.gov.on.ca/documents/sjto/2017-18%20Annual%20Report.html#sjto7>>.

⁵⁵ Federick H. Zemans, "Legal Aid and Legal Advice in Canada: An Overview of the Last Decade in Quebec, Saskatchewan and Ontario" (1978) 16:3 Osgoode Hall LJ 663 at 663.

⁵⁶ Statistics Canada, "Legal aid statistics (Expenditures)," Table: 35-10-0092-01, online: <<https://www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=3510009201>>.

⁵⁷ *Ibid.*

⁵⁸ Ontario's population as of Q1 2017 was listed as 14,094,167. The population of Canada during the same period is listed as 36,503,097. Ontario accounts for 38.6% of Canada's population.

⁵⁹ See: Legal Aid Ontario, "About Legal Aid Ontario," online: <<http://www.legalaid.on.ca/en/about/>>.

lawyers throughout Ontario.⁶⁰ In Ontario the eligibility threshold ranges from an annual income of \$9,501 for single boarders and \$14,453 for 1-person households to an annual income of \$45,446 for households of 5 or more people.⁶¹ That being said, Québec's legal aid program issues about twice as many certificates annually as LAO,⁶² however its expenditures are lower than LAO's.⁶³ Legal Aid Québec also employs fewer lawyers (approximately 380).⁶⁴ In recent years there have been threshold increases to the eligibility for Legal Aid in Québec to coincide with percentage increases in the minimum wage in the province. The eligibility threshold in December, 2018 ranges from \$21,840 for single-person households to \$35,813 for households with spouses and 2 or more children.

vii. Public Legal Education and Information

The final major category of justice sector government expenditure is in public legal education and information (PLEI). Across Canada, there are at least 20 PLEI organizations that provide an array of programs, resources, and services to consumers.⁶⁵ The primary overarching goal of all of these organizations is to equip individuals with legal literacy skills that will enable them to effectively address their legal issues. From a costs perspective, it is difficult to provide an accurate picture of what the cumulative expenditures are, because not all PLEI organizations provide readily accessible annual reports. Among the

⁶⁰ *Ibid.*

⁶¹ See: Legal Aid Ontario, "Getting legal help," online: <<http://www.legalaid.on.ca/en/getting/eligibility.asp#amountyouearn>>. For persons experiencing domestic violence, the range to qualify for help through Legal Aid Ontario is \$22,720 to \$50,803.

⁶² For the fiscal year of 2014/15, the Québec legal aid program approved 225,541 applications whereas the Ontario program approved only 110,694. See: Statistics Canada, "Legal aid statistics (Approved legal aid applications)," Table: 35-10-0095-01, online: <<https://www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=3510009501>>.

⁶³ For the fiscal year of 2014/15, the Québec legal aid program expended \$165.6M whereas the Ontario program expended \$400.3 M. See "Legal aid statistics (Expenditures)" *supra* note 56.

⁶⁴ As of December 2018, Legal Aid Québec's website indicates that they provide legal assistance through some 380 legal aid lawyers. See <<https://www.csj.qc.ca/commission-des-services-juridiques/Accueil.aspx?lang=en>>.

⁶⁵ A list of the major PLEI organizations in Canada (on both federal and provincial/territorial levels) on LawCentral Alberta's website. See: LawCentral Alberta, "Public Legal Education - Canada," online: <<http://www.lawcentralalberta.ca/en/help/public-legal-education-canada>>.

PLEI organizations that do, expenditures range significantly on average from thousands to hundreds of thousands, to several million dollars annually per organization. The variance in spending can be attributed to the size of the organization, the number of people served and the breadth of service delivered. For example, the Public Legal Information Association of Newfoundland (PLIAN), a smaller PLEI organization in one of the smaller provinces, expended approximately \$565K for the 2017-18 fiscal year.⁶⁶ The Justice Education Society of British Columbia, by contrast, which is a larger PLEI organization in one of the larger provinces, expended approximately \$3.1M for the fiscal year ended March, 2018.⁶⁷

IV. Conclusion

Understanding what justice costs, and how money is spent, are important aspects of the overall access to justice conversation. When putting this paper together, several important conclusions emerged:

- Justice costs—financial and other—to individuals are significant, and they have significant impacts on people’s lives.
- Resulting costs to the state, of people experiencing legal problems, are also significant.
- While absolute figures are significant, the comparative spending on justice, for example, relative to spending on healthcare is very modest. For example, in 2018, total healthcare spending in Canada is estimated to be \$253.5 billion or \$6,839 per person.⁶⁸ Canada’s Department of Justice estimates that planned spending for 2017-18 will amount to \$639.7 million.⁶⁹

⁶⁶ Public Legal Information Association of Newfoundland and Labrador, *Annual Report 2017-2018* at 11.

⁶⁷ Justice Education Society of British Columbia, *Annual Report 2014/2015* at 6, online: <<http://www.justiceeducation.ca/sites/default/files/2014-2015%20Annual%20Report.pdf>>.

⁶⁸ Canadian Institute for Health Information, *National Health Expenditure Trends, 1975 to 2018* (Ottawa: Canadian Institute for Health Information, 2018) at 4, online: CIHI <<https://www.cihi.ca/sites/default/files/document/nhex-trends-narrative-report-2018-en-web.pdf>>.

⁶⁹ See Department of Justice, *2016-17 Report on Plans and Priorities*, online: <https://www.justice.gc.ca/eng/rp-pr/cp-pm/rpp/2016_2017/rep-rap/p2.html>.

- Calculating justice costs is not an easy task, and much more needs to be done—in the way justice dollars are calculated and reported— to allow for a much clearer picture of justice spending in Canada, particularly as it relates to spending on civil and family justice.

While we are starting to understand more; much more focus and understanding is needed on all of these issues.