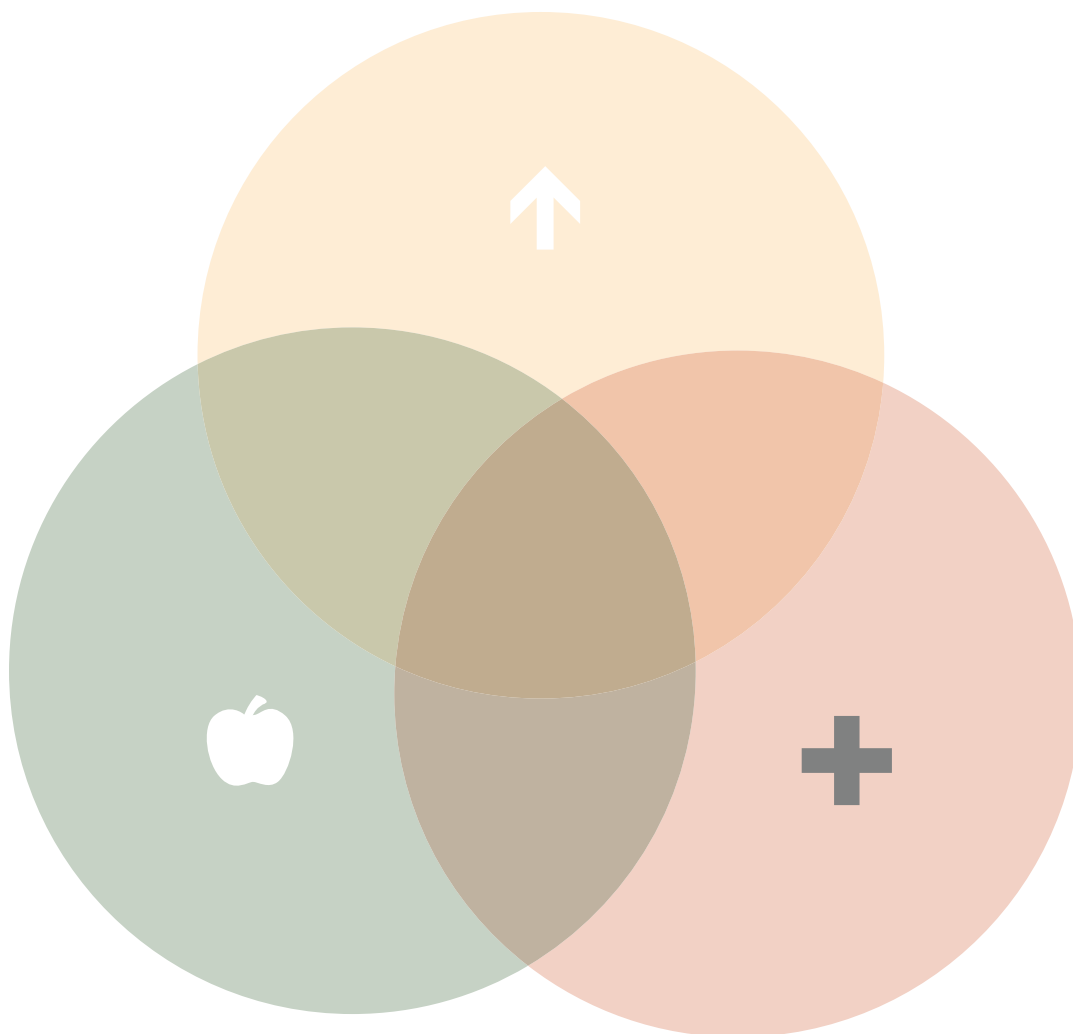


ISSUES OF COST & ACCESS

IN CANADA'S HEALTH CARE SYSTEM

LESSONS FOR THE CIVIL JUSTICE SYSTEM



BEYOND SILOS, TOWARDS STRATEGIES

2012 Roundtable Series

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INTRODUCTION

Canada is lauded for its publicly funded and effective health care and civil justice systems.

Both systems struggle, however, to balance access with high-quality, cost efficient services and to limit the impact of social and economic inequality on universality. The Canadian health care system has in recent years made important strides in improving access to services for Canadians through rethinking dominant paradigms around health costs. This sort of new thinking is evident in, for example, efforts to shift health care delivery away from hospital towards primary care, greater emphasis on prevention, multidisciplinary practices, and more sensitivity to the social determinants of health. The health care system also has a long history of engaging complex relationship between access, insurance, and co-payments. Effective health care reform in Canada has been driven in part by the idea that better access can be achieved by spending in ways that better reflect new thinking about health costs.

At the Canadian Forum on Civil Justice, we are interested in learning from experts in health care about parallels to access to civil justice. Do cost and access provide a common currency for comparative analysis between the health care and civil justice systems? What lessons from recent health care reform can inform research aimed at improving access to the civil justice system?

THREE EXAMPLES OF RETHINKING COSTS IN HEALTHCARE

There are numerous examples of rethinking costs in the Canadian health care system. Three of these provide us with a sense of why there might be useful lessons for the civil justice system.

The first example is the increasing attention to indirect health cost savings. Health costs are ordinarily expenses that are connected directly to health care provision such as medication, hospitalization & physician services. The traditional way to save money in the health care system is by targeting direct costs in the health care system by for instance capping physician fees, laying off nurses, or cutting hospital budgets. Yet, many of the demands for medical services are impacted by other factors that are not targeted by this traditional way to save money in the health care system. High-risk behaviour such as smoking or substance abuse is associated with many chronic diseases such as cancer and cardio-vascular and respiratory diseases. Similarly, poor diet and physical inactivity increase rates of obesity, which are associated with the dramatic rise in type 2 diabetes. Indirect health cost savings can occur by targeting high-risk behavior through for instance tobacco control or poor diet through public education measures.

The second example stems from linkages between health care costs and the social determinants of health. These linkages recognize that poverty and social exclusion have the greatest impact on health. Furthermore, health outcomes based on social inequality may also be transmitted across generations. More egalitarian societies are healthier societies. By reducing poverty and social exclusion, health care costs are reduced.

The third example involves seeing health care spending as an investment, not a cost. Citizens who enjoy timely, high quality accessible health services are able to be effective contributors to the Canadian economy. Public spending on health care can be seen as a human capital investment similar to spending on education, an investment that has cascading benefits not just for particular individuals but for the society as a whole.

PARALLELS: CIVIL JUSTICE SYSTEM

The civil justice system in Canada enables citizens to manage individual, non-criminal, legal disagreements. The manner in which citizens govern themselves and operate within broader society is informed by Canada's civil justice system. Examples of civil action include divorces, adoptions, wrongful dismissals, housing disputes, claims for debt and damages arising from car accidents. The dominant understanding of the court system is based on the premise that law is fair, neutral, a protector of one's rights and delivers speedy justice. The issues that hinder the effectiveness of the civil justice system include delays and costs associated with civil court proceedings as well as a general lack of understanding amongst citizens about how to navigate complex legal & administrative processes.

While the legal system can guarantee ideals such as equality and impartiality in the abstract, in practice, dispute resolution through the formal legal system remains patterned with inequality and parity that systematically favours parties with greater social, political and economic clout. Civil justice in Canada involves costly legal services, adversarial court proceedings, and limited legal aid. As the Chief Justice of Canada, The Right Honourable Beverley McLachlin, has commented:

The most advanced justice system in the world is a failure if it does not provide justice to the people it is meant to serve. Access to justice is therefore critical. Unfortunately, many Canadian men and women find themselves unable, mainly for financial reasons, to access the Canadian justice system. Some of them decide to become their own lawyers. Our courtrooms

today are filled with litigants who are not represented by counsel, trying to navigate the sometimes complex demands of law and procedure. Others simply give up.

Citizens turn to the civil justice system because they want a forum to tell their story and ultimately, achieve righteousness. This forum requires these citizens to rely, however, on legal arguments and use language that often fails to capture their own authentic voice or perspective. Lawyers and other providers of legal services are essential to navigate the existing civil justice system. Yet, the costs of these services are for most Canadians prohibitive. There is mounting evidence that the public cannot afford to resolve their legal problems through formal litigation processes because the cost of legal advice and representation required is beyond the means of low and middle-income Canadians. While the civil justice system embraces impartiality, objectivity, and universality, in actuality, it can reproduce the very inequalities it strives to neutralize and lead to the escalation of disputes.

How might reframing costs in the civil justice system help us to improve access? Are there, like in the health care system, indirect ways to reduce the high costs of civil justice in Canada? Does it make sense to talk about the social determinants of civil justice problems in way that parallels the logic of social determinants of health? Is public spending on civil justice a form of investment rather than a cost to the public purse?

QUESTIONS

By sharing common issues and initiatives relating to access, knowledge silos can be broken down and strategies to address social inequality can be advanced. The following questions about issues of access and cost in the health care system are intended to spark discussion and advance strategies that remove barriers to access within Canada's civil justice system.

What are some of the most effective programs that have been implemented in Canada's health care system to reduce cost, delays and decrease inequality?

Does the term, 'access' adequately capture the complex experience of navigating Canada's health care system? How can we move towards a more nuanced understanding at the citizen, service provider and institutional levels?

Do these questions offer insights for reform of the civil justice system?