

reaching equal justice:  
an invitation to envision and act

# equaljustice

balancing the scales



THE CANADIAN  
BAR ASSOCIATION  
L'ASSOCIATION DU  
BARREAU CANADIEN

INFLUENCE. LEADERSHIP. PROTECTION.

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# reaching equal justice: an invitation to envision and act

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# **reaching equal justice:** an invitation to envision and act

A summary report by the CBA Access to Justice Committee



THE CANADIAN  
BAR ASSOCIATION  

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# Dear Colleagues,

A moment of opportunity is at hand: a moment created by a broad consensus on the need for significant change to improve access to justice, and an evolving consensus on the central directions for reform. This report is an invitation to act, to seize that opportunity. Each of us has a responsibility to contribute to our shared vision of equal access to justice across Canada, from sea to sea to sea.

Our understanding of the prevalence of legal problems and the severe and disruptive impact of unresolved legal problems has grown exponentially over the past two decades. But we have yet to fully translate that knowledge into action. Many organizations are dedicating a tremendous amount of energy and limited resources to new approaches to improve access to justice. Still, we have been unable to knit this work together to make substantial gains.

To mobilize and take advantage of this moment, we first need to convey the abysmal state of access to justice in Canada today. We need to make visible the pain caused by inadequate access and the huge discrepancies between the promise of justice and the lived reality of barriers and impediments. Inaccessible justice costs us all, but visits its harshest consequences on the poorest people in our communities. We need to illuminate how profoundly unequal access to justice is in Canada. We cannot shy away from the dramatic level of change required: in a very fundamental sense we live in “a world thick in law but thin in legal resources”.<sup>1</sup> We need to radically redress this imbalance.

The term **we** refers to all of us, to affirm the important role and obligation of all justice system stakeholders, including the public, to contribute to equal justice. To refer to the authors, members of the CBA Access to Justice Committee, **the Committee** is employed.

This summary report and the full report that will follow this fall provide a strategic framework for action, to set a new direction for the national conversation on access to justice. They are meant to present our current state of knowledge about what is wrong, what types of changes are essential, and the steps and approaches we might take to overcome barriers to equal justice. The objective is to bring together and render the key ideas concrete, to enable and encourage action.

Both reports are designed to engage, rather than dictate or provide ‘the answer’. The goal is to enlarge and change the conversation about access to justice to invite and inspire action.

Our greatest challenge is to simultaneously focus on individual innovations and the broader context of the interdependence of all aspects of access to justice. Collaboration works best when based on a shared understanding of the problem and a shared vision of the end goals. Our central animating principle must be envisioning a truly equal justice system, one that provides meaningful and effective access to all, taking into account the diverse lives that people live.

In a riff on the idea of thinking globally, acting locally, the Committee asks you to think systemically, act locally.

We have a lot of work to do and that work needs to be shared over a broader segment of the legal profession and other justice system personnel than are currently engaged in the access project. While there are some signs of exhaustion, regeneration is in the air. At the CBA Envisioning Equal Justice Summit in April 2013,<sup>2</sup> we witnessed and participated in a radically different conversation, an energized and optimistic conversation about equal access to justice. The reports build on this important breakthrough.

We are poised to make gains at this juncture, but need to travel a little farther for the momentum already achieved to become an irresistible force and take over. As Justice Cromwell of the Supreme Court of Canada said in his Keynote Address at the Summit, this is a critical moment.

The CBA has already pledged to take action and continue to play its role in contributing to equal access to justice. Members of the Committee have taken this on as a personal challenge and we urge you to join us. The challenge is to each think of our roles in the justice system more expansively, each working to produce the best possible results for our individual clients, the individual case, in our association or institution, and simultaneously working to produce the best possible justice system. In a riff on the idea of thinking globally, acting locally, the Committee asks you to think systemically, act locally.

What can I do, either myself or working with others, to contribute to equal access to justice?

Though we are all busy, we can integrate this change in perspective, to work simultaneously on the matter at hand while contributing to broader systemic goals. At first this may appear to conflict with our professional duties to give one hundred percent to the individual client or matter. Yet we know that zero-sum thinking is almost always false: few situations are truly either/or. For lawyers, this challenge can be seen as an extension of our professional duty as officers of the court. By thinking systemically and acting locally, we can create real space for justice innovation.

Rather than simply reading this report, the Committee asks you to engage with it. Consider the targets proposed and the change-oriented ideas and ask yourself: what can I do, either myself or working with others, to contribute to equal access to justice? Every contact between an individual and the civil justice system is an opportunity for either disempowerment or empowerment, a moment to reinforce inequality and social exclusion or to create equality and inclusion.

As craftily stated in a slogan brainstormed during the Summit's closing plenary, we need to just(ice) do it!

Thank you,  
CBA Access to Justice Committee

I sense here a tremendous level of commitment to making meaningful change in access to justice. That deep commitment is necessary because this will take long term sustained effort. I was reminded recently that Martin Luther King's famous speech did not start with "I have a plan". Of course he had a plan but he first needed to persuade people that change was needed and that things could get better. I hope we leave here with a shared sense of the dream and a commitment to do what we can to make it come true... we need a shared understanding of what success would look like.

So I ask: Is there a widespread firm belief that there is an urgent need for significant change? Do we have the dream and is it widely shared? If not, I doubt we will accomplish very much.

**Justice Thomas Cromwell,  
Keynote Speech at CBA Envisioning  
Equal Justice Summit, April 2013**



# Introduction

The CBA Envisioning Equal Justice Initiative considers four systemic barriers that are blocking efforts to reach equal justice and proposes means to overcome them.

The barriers are:

- » *Lack of public profile*
- » *Inadequate strategy and coordination*
- » *No effective mechanisms for measuring change*
- » *Gaps in our knowledge about what works and how to achieve substantive change*

The initiative focuses on human justice, on ‘people law’ – legal issues, problems and disputes experienced by people (including small businesses). Of course, the justice system has an impact on corporations, organizations and institutions, and access issues can arise for these bodies as well, but they are outside of the scope of this report. This summary report sets out the Committee’s proposed strategic framework for reaching equal justice.

Based on research and consultations, the framework contains a series of ‘targets’ reflecting an emerging consensus on what must be done, in 31 key areas. The targets are framed as measurable, concrete goals to be achieved at the latest by 2030.<sup>3</sup> Inspired by other multi-sectoral change movements, including the United Nations Millennium Development Goals and approaches used by the environmental movement, the Committee decided to set long range targets for achieving equal justice across Canada. 2030 seems a reasonable time frame given the dimensions of the problem, the interconnected nature of the solutions, the resources and time required and recognizing that change will take longer in some jurisdictions than in others. One strong factor influencing this decision is that time will be required to build capacity to evaluate whether reforms work. Part of the change process is increasing our shared capacity for learning and adaptation.

Each target includes milestones (interim goals), as well as actions that can begin right now. The milestones and actions are indicative rather than comprehensive, a starting point rather than a detailed guide. They propose a way forward, recognizing that more detail is required and should be developed over time, by those working most closely on the particular target.

We have a window of opportunity that only comes along rarely – to put it simply, let's not blow it.

**Justice Thomas Cromwell,  
Keynote Speech at CBA Envisioning  
Equal Justice Summit, April 2013**

While different organizations and individuals may debate the specifics, the targets reflect what the Committee understands to be a general consensus among those working for equal justice as to the type of action required. Achieving these targets will require individual, coordinated and collaborative efforts – no target falls to a sole justice system player.

The Committee's full report will be released in fall 2013. Its objective is to gather together what the Committee has learned over the course of its initiative and share it with all individuals and organizations engaged in justice innovation. It is a resource for the implementation process, with more detailed discussion on each issue touched on in this summary report. Wherever practicable, it includes examples of emerging good practices and insights from research and evaluations, as well as links to further information.

The Committee solicits feedback to these proposals and looks forward to an active and engaged dialogue. We welcome your feedback on the targets, milestones and actions, your suggestions on specific innovations and ideas, and your commitment to become involved on the issues on which you are especially passionate.

The Committee's work complements the work of the National Action Committee on Access to Justice in Civil and Family Matters (National Action Committee). Under the stewardship of Justice Thomas Cromwell, the National Action Committee has created a strong awareness of the need for change. Its working group reports have identified a large range of initiatives that have the potential for increasing access to justice. The National Action Committee final report is expected to provide additional overall guidance, especially on implementing these suggested reforms. The CBA is a member and supporter of the National Action Committee process. Like all members, the CBA has an obligation to contribute what it can. It is anticipated that both the National Action Committee and CBA reports will assist in making the most of this critical opportunity to achieve the substantive change needed to reach equal justice across Canada.

Contemporaneous to the CBA Envisioning Equal Justice Initiative is the CBA Legal Futures Initiative, a comprehensive examination of the future of the legal profession in Canada. It examines business structures and innovations, legal education and training and ethics and regulation of the profession. Its mandate is to develop original research, consult widely with the profession and other stakeholders, and ultimately create a framework for ideas, approaches and tools to assist the legal profession in adapting to future changes. The Legal Futures Initiative identifies access to justice as a foundational value underlying its work.

# Why change is necessary

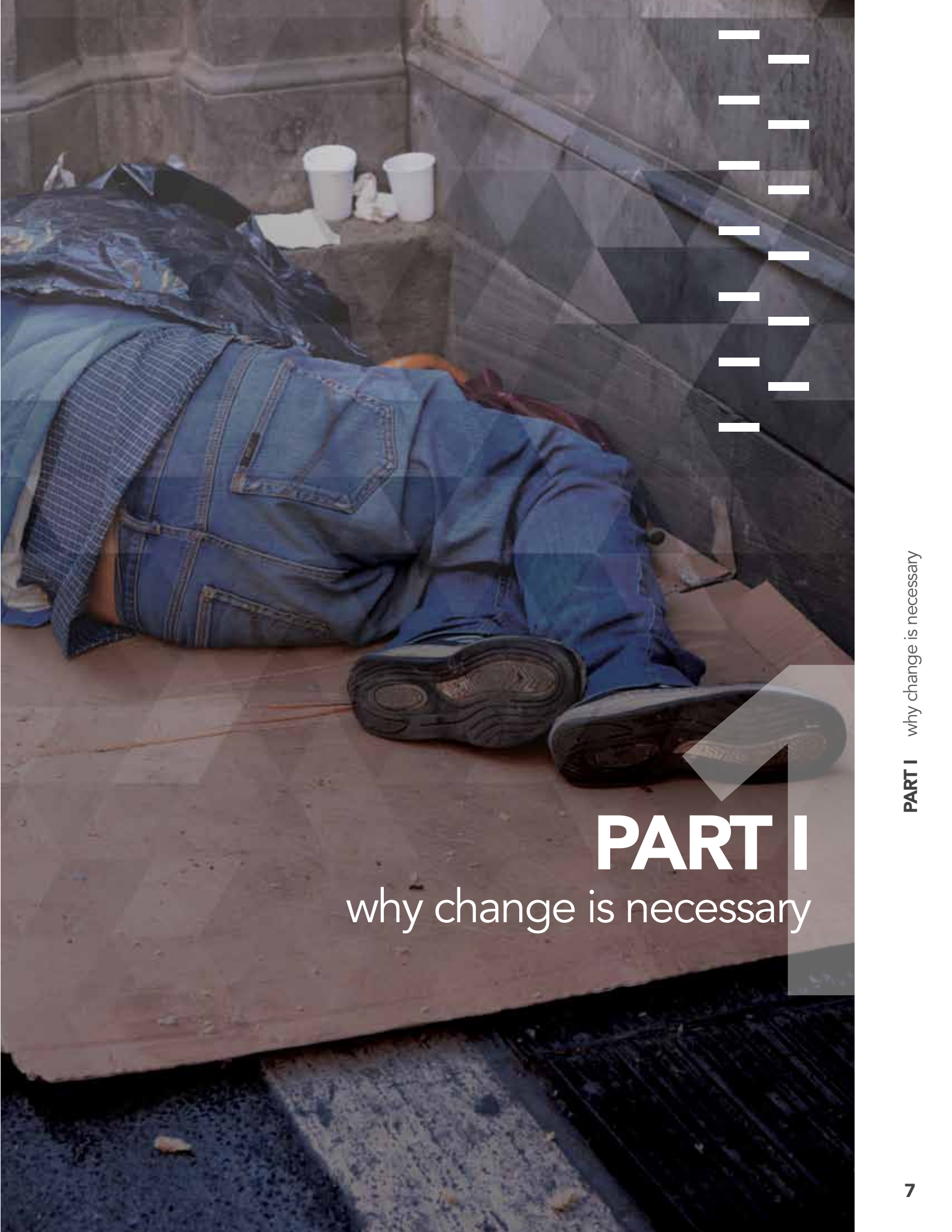
Public confidence in the justice system is declining.<sup>4</sup> This was apparent during the consultation phase of the CBA Envisioning Equal Justice Initiative.<sup>5</sup> People interviewed randomly ‘on the street’, and in meetings with marginalized communities consistently described the justice system as not to be trusted, only for people with money, arbitrary, difficult to navigate and inaccessible to ordinary people. The Committee’s findings are not unique. Two recent surveys of people who represented themselves in civil courts concluded that the experience usually led to reduced confidence in the justice system.<sup>6</sup>

While there is generally low public awareness about legal aid, opinion polls have shown that when asked more detailed questions, people express strong and consistent support for providing adequate publicly funded legal aid. Polls have shown overwhelming support for legal aid (91-96%), with 65-74% expressing the view that it should receive the same funding priority as other important social services.<sup>7</sup>

Canadians believe justice systems must be accessible to all to be, in fact, just – and publicly funded services are required to get to equal justice. The current lack of confidence in our justice system suggests instead a perception that justice is inaccessible and even unfair.

## What we know and don’t know about access to justice

We have little hard data about Canada’s justice system – especially relative to what we know about our healthcare and education systems. We also know too little about what works to increase access to justice, and how and why it does so. Much of what we do know about the system is anecdotal – descriptions rather than measurements. The justice system is not proficient at directly surveying users about satisfaction with their experiences, and then using the information obtained to make improvements, though some progress is being made on that front.



# PART I

why change is necessary

The biggest evolution in our knowledge base comes from civil legal problem surveys by Canada's Dr. Ab Currie and his international colleagues.

We've learned that civil legal problems, over time and across countries, have a "pervasive and invasive presence"<sup>8</sup> in the lives of many people.

**Over three years, about 45% of Canadians will experience a problem implicating a legal solution (a "justiciable problem"), suggesting that over the course of a lifetime almost everyone will confront a justiciable problem.**<sup>10</sup>

Civil legal needs arise frequently, touch on fundamental issues and can vary in impact from minor inconvenience to great personal hardship.

Further, unresolved problems can escalate, and are linked to problems in other areas – health, social welfare and economic well-being, social exclusion and poverty. People with one justiciable problem are likely to experience more, especially if they live in poverty or are members of disadvantaged groups. One study found that 22% of people have 85% of legal problems.<sup>11</sup> Canadian studies have also found that legal problems tend to 'cluster' and multiply.<sup>12</sup>

Most justiciable problems are resolved outside the formal justice system. Vulnerable groups are more likely not to respond because of perceived or actual barriers to getting help. Other barriers include the complexities of the legal system, qualification processes for legal aid, limited coverage for civil legal problems and lack of knowledge about the legal system and resources available to support individuals.

Dr. Patricia Hughes notes that disadvantaged or socially excluded groups fare the worst. Not only are they more vulnerable to experiencing multiple legal problems, they are less likely to take action to resolve the problems, less capable of handling problems alone and more likely to suffer a variety of adverse consequences that end up further entrenching their social exclusion.<sup>13</sup>

## PRIVATE MARKET LEGAL SERVICES

Surveys on private market legal services conducted by several Canadian law societies have come to consistent results. The main problem people identify in accessing legal assistance is perceived or actual cost. At the same time, we know that having legal assistance generally results in better outcomes for the people involved.<sup>14</sup> While complaints about lawyers' fees are often heard, the studies show that clients who have actually retained counsel are generally satisfied, both with the service received and the amount they paid.<sup>15</sup>

Concerns about private market legal services also relate to a worsening shortage of lawyers in smaller, rural and remote communities, or of lawyers working for people on personal or small business matters.<sup>16</sup>

Another important trend is that people want more active involvement in the management, strategy and decision-making about their legal matters, and more certainty in terms of cost. People seek legal information to enable them to make more informed choices, but they often get advice from friends and family, rather than legal professionals.

There is also a movement away from 'all or nothing' lawyering. Lawyers are responding through unbundled legal services, alternative billing arrangements, specialized law firms, and in other ways. The two CBA initiatives (Envisioning Equal Justice and Legal Futures) are considering these means of providing legal services, along with related concepts like preventative lawyering, use of technology in dispute resolution and non-lawyer providers of legal services, as potential innovations for increasing access to justice.

## PUBLIC LEGAL SERVICES

Publicly funded legal services are provided by legal aid plans in each province and territory, but plans cannot meet current demands for legal help. There are huge regional disparities in who can access legal aid based on financial eligibility and the types of legal matters covered. In many jurisdictions, there is no legal aid (beyond information) for many legal problems that affect areas of vital interest, such as housing.

Although there has been some increased funding for legal aid in the past five years, a longer range perspective shows a 20% overall decrease from the pre-1994 spending on civil legal aid.<sup>17</sup> One major change is that the federal government has gradually reduced its proportionate contributions to both criminal and civil legal aid, from a high of 50-50 sharing until 1995, to contributing about 20-30% of the cost currently.<sup>18</sup>

The reduction in federal spending overall, increased complexity in the substantive law and growing demands for criminal legal aid have placed pressure on legal aid providers to ration services – in a way often inconsistent with the general purpose and public policy values underlying the program. In some places, people qualify only if they are living at subsistence levels (social assistance), leaving out the working poor. Eligibility rates do not keep pace with inflation and budgetary targets are often met by offering legal aid for fewer matters, to fewer people, or through only partial assistance or repayment requirements.

## GROWTH OF PRO BONO

The Committee defines pro bono work as free legal services to people or organizations who cannot otherwise afford them and which have a direct connection to filling unmet legal needs. In the past decade, pro bono has increasingly become institutionalized through the development of pro bono organizations that act as a broker and facilitate the delivery of services from lawyers willing to volunteer time to individuals and small organizations. Formal pro bono organizations now exist in several provinces, providing an infrastructure and paid staff. Pro Bono Students Canada operates out of 21 law schools across the country.

As with so many aspects of the access to justice landscape in Canada, there are few firm statistics on the number of lawyers who provide services on a pro bono basis, the number of people helped or the value of this contribution. Unmet legal needs and the endless demand for legal services raise questions as to what can reasonably be provided on a charitable basis. The growing emphasis on pro bono services as a (or the) solution to the access to justice crisis can be problematic if it shifts focus away from inadequacies of our justice system.

## UNREPRESENTED LITIGANTS

Perhaps the most obvious consequence of the gap between the prevalence of legal problems and inadequacies in public and private legal services is the exponential growth of unrepresented litigants in Canada's courts. We tend to refer to these litigants as 'SRLs' (self-represented litigants), although when asked, most would prefer to have counsel. While there is no comprehensive Canadian data on the number of unrepresented litigants,<sup>19</sup> estimates range from 10-80%, depending on the court and the subject matter. The problem is particularly pronounced in family law matters.

An in-depth evaluation of the experience of self-represented litigants in courts in Alberta, British Columbia and Ontario<sup>21</sup> refers to the ‘arc’ of the experience: from optimism to disillusionment, and from bad to worse. While online materials offer the prospect of enhanced access to justice, many are too complex and difficult to understand. Available resources are often insufficient to meet the need for face-to-face orientation, education and other support. Respondents to the study describe the justice system as ‘broken’.

Another important finding is that court staff must constantly walk a fine line, distinguishing between legal information, which they are authorized to offer, and legal advice, which they must not provide.

There can be serious implications of the experience, including health issues, financial consequences, social isolation and declining faith in the justice system generally.<sup>22</sup> More than 200 US studies have demonstrated that unrepresented parties lose significantly more often – and in a bigger way – than represented ones.<sup>23</sup> Other recent US work is showing that unbundled legal services make little difference to outcome, although these limited services enhance procedural fairness.<sup>24</sup>

Either lawyers should charge less, or there should be more legal aid. Something’s gotta give or they can’t say it’s really justice, right? (an unrepresented litigant) <sup>20</sup>

Studies also show the increasingly prevalent self-help services are most effective for people with higher levels of literacy and comprehension, while people who face other barriers are less likely to be able to use those tools to effectively navigate the legal system.<sup>25</sup>

## COURTS AND TECHNOLOGY

We know that quite few justiciable problems are actually resolved through the formal justice system. Recent studies emphasize the importance of timely intervention and assistance as key to enhancing access, avoiding problems, achieving positive outcomes and saving money. Public legal education and information providers are leading the way, often relying on online resources as a gateway. This significant trend to provide more online information and tools is important and welcome, as it can reach many people regardless of income. However, it is less helpful to the almost 48% of Canadians<sup>26</sup> who lack the literacy skills to make effective use of this type of information. As well, many people, especially already vulnerable and disadvantaged people, need ‘human help’ in tailoring information and tools to their own problems and answering their questions.

Overall, the justice system has not been subject to the same technological transformation as other institutions. Also, the civil justice system is incoherent and has been likened to a “body without a brain”,<sup>27</sup> a system of systems, each with its own diffuse leadership and underdeveloped mechanisms for communication, cooperation and collaboration. This lack of coherence may also explain the justice system’s failure to embrace innovation.

## INTERNATIONALLY – HOW ARE WE DOING?

The Chief Justice of Canada has galvanized the national agenda for access to justice, in part by highlighting Canada's poor rating on international access to justice indicators. She has noted with dismay that the World Justice Project found that on civil justice, Canada ranked ninth out of 16 North American and Western European nations and 13th among the world's high-income countries, just ahead of Estonia.<sup>28</sup>

For civil legal aid, Canada ranks a shocking 54th in the world, well behind many countries with lower gross domestic products.<sup>29</sup> While Canada is known for its public commitment to a social safety net, we fall behind the US, ranked at 50th in the world on this indicator.

### LOW RELATIVE SPENDING ON THE JUSTICE SYSTEM: ONLY 1%

**Spending on the justice system (excluding policing and corrections but including prosecutions, courts, victim and other justice services, and legal aid) is roughly 1% of government budgets.** In his 2008 Legal Aid Review in Ontario, Professor Michael Trebilcock calculated that while per capita health and education spending had risen 33% and 20% respectively from 1996 to 2006, legal aid spending over the same period had decreased by 9.7%.<sup>30</sup> Other government spending on justice compared to overall public spending shows a similar trend: health and education funding is generally stable or increases, while spending on justice is flat or declines from year to year.<sup>31</sup> At the same time federal government spending on prisons and policing has increased significantly while Canada's crime rate is falling. At the federal level, policing services use more than half the justice budget (57.2%), followed by corrections (32.2%), courts (4.5%), prosecutions (3.5%) and legal aid (2.5%).<sup>32</sup>

## SO MUCH TO LEARN

Over the past two decades the justice system has become more adept at collecting baseline data, but the empirical basis for decision-making is still extremely limited compared to what is known about health and education. The justice system has a long way to go in terms of what information is collected, how it is collected and how available it is. Overall we have become better at counting inputs and outputs, although not all of this data is open or transparent and there is no coordination across agencies to collect information in a manner that permits comparison.

In 1996, the CBA identified this as an obstacle. This information is essential for planning and evaluating access to justice initiatives and understanding the role of legal and justice services vis-à-vis other support services.<sup>33</sup> But, that is just the tip of the iceberg. We also know little about the relative effectiveness and efficiency of different service delivery models, legal information, assistance and representation, or different dispute resolution mechanisms across different types of legal matters, and how to match processes and legal services to the nature and intensity of the legal dispute.<sup>34</sup> At this time we know that we fall far behind the health and education systems in our commitment to and capacity for evidence-based decision-making.



# The case for fundamental change

Lack of knowledge must not be used as an excuse for inaction. Nor can we only focus on what is currently measured or easy to measure and ignore what cannot be measured or what we have chosen not to measure. Action is needed to develop and maintain a stronger knowledge base.

What has gone wrong? The simple answer is that justice has been devalued. We see justice as a luxury that we can no longer afford, not an integral part of our democracy charged with realizing opportunity and ensuring rights. The justice system has been starved of resources and all but paralyzed by lack of coordinated leadership and competitive blaming between the major justice institutions. Meaningful access to justice is a scarce resource and the mechanisms used to ration this scarce resource are largely hidden. The implications of this rationing are often also invisible.

We live in a society regulated by law. Everyone's lives are shaped by the law and everyone is likely to experience a justiciable problem at some point. This is not to say that everyone will engage with the formal justice system: many problems can and should be resolved in more informal ways. Still, we should all be confident that we will have meaningful access to justice if and when we need it. **Everyone is entitled to justice. This point needs to be a common thread of public discourse and individual understanding.**

## DIRECT RELATIONSHIP BETWEEN THE COURTS AND DEMOCRACY

The courts are one branch of government (in addition to the executive and the legislature) and essential to Canadian democracy. There is a direct line between Canada's democratic principles and belief in the rule of law, and the need for services that may help an individual to resolve a legal problem. While the criminal courts ensure a fair trial and protect public safety, the civil courts contribute quietly and significantly to social and economic well-being. According to Dame Hazel Genn, "the civil justice system is a public good that serves more than private interests."<sup>35</sup>

## GROWTH IN POVERTY AND SOCIAL EXCLUSION

**The reality today is that not everyone has meaningful access to justice regardless of income. The justice system is aggregating, rather than mitigating inequality.** The growth in income disparity and social exclusion is a leading public policy concern and has specific ramifications for justice policy.

Providing suitable legal advice and assistance can play a crucial role in helping people move out of some of the worst experiences of social exclusion. Timely intervention in a life crisis can make all the difference.<sup>36</sup>

What has gone wrong?  
The simple answer is that  
justice has been devalued.

## COSTS OF INACCESSIBLE JUSTICE

There are strong practical reasons for ensuring meaningful access to justice. When people receive appropriate assistance in reading and preparing documents and making arguments, or get timely legal advice and representation, it saves public money in the long run and results in better outcomes. Plus, the overall justice system functions more smoothly and effectively, to everyone's benefit.

Justice degrades with delay. The parties' position or personal safety may be compromised and the damage may be irreparable. People whose legal issues are not resolved face ongoing difficulties. Problems spread to other areas of their lives, at significant individual and social cost.

Studies are demonstrating how unresolved legal problems and inadequate access to justice can be costly to both the individual and to society.<sup>37</sup> More empirical data is needed to make the case and several initiatives are working toward this goal.<sup>38</sup> The Canadian Forum on Civil Justice is leading a five-year study to define the economic and social costs of justice. The study will develop methods to measure what our civil justice system costs, who it serves, whether it is meeting the needs of its users and the price of failing to do so. The project has two prongs: the costs of providing an accessible system; and the costs of not providing an accessible system.<sup>39</sup>

## RETURN ON INVESTMENT FOR LEGAL AID SPENDING

In recent years, we have repeatedly heard that legal aid is not sustainable. But legal aid is our most important access to justice program. In addition to being a significant down payment on the promise of equal justice, funding for civil legal aid represents a good economic investment.

Synthesizing several studies on the economic benefits of civil legal aid, Dr. Laura Abel notes that it can actually save public money by reducing domestic violence, helping children leave foster care more quickly, reducing evictions and alleviating homelessness, protecting patients health and helping low-income people participate in federal safety-net programs.<sup>40</sup>

Other studies are building a business case by quantifying the return on investment for legal aid dollars. Studies in Australia, the UK and the US show cost-benefit ratios ranging from 1:2 to 1:18. The average demonstrated social return on investment is that every \$1 of legal aid spending results in \$6 in benefit to the public.<sup>41</sup>

## WHY TINKERING IS INSUFFICIENT

The civil justice system is too badly broken for a quick fix. People fall between the cracks at an unacceptable cost. Injustice is too deeply woven into the system's very structure for piecemeal reforms to make much of a dent. We cannot say if the myriad of ad hoc access to justice interventions are helping without an overarching strategic framework. Individual initiatives may operate at cross-purposes, and risk hindering the cause by fostering complacency and diminishing support.

We need to go beyond trying to make do. Access to justice problems are not intractable. Change will not happen quickly, but every step along the right path – with a common vision and commitment to measure how effective each innovation is in achieving that vision – will help. Missteps can be corrected when evidence shows a better way, but we should not waiver about the need to start moving, or the ultimate destination.

# Equal justice strategies

## Envisioning equal justice

The first step in reaching equal, inclusive justice is to delineate the goal: a vision that is ambitious but possible. This entails rejecting the current rationing of access on an unprincipled basis, rationing that aggregates rather than mitigates inequality.

The Committee proposes a tangible vision of equal justice to guide reform:

*An inclusive justice system requires that it be equally accessible to all, regardless of means, capacity or social situation. It requires six concrete commitments:*

- 1. People** – The system focuses on people’s needs, not those of justice system professionals and institutions.
- 2. Participation** – The system empowers people. It builds people’s capacity to participate, by managing their own matters and having a voice in the system as a whole.
- 3. Prevention** – The system focuses attention and resources on preventing legal problems, not just on resolving them after they arise.
- 4. Paths to justice** – A coherent system involves several options and a continuum of services to arrive at a just result. People get the help they need at the earliest opportunity, and find the most direct route to justice.
- 5. Personalized** – Access to justice is tailored to the individual and the situation, responding holistically to both legal and related non-legal dimensions, so that access is meaningful and effective.
- 6. Practices are evidence-based** – The system encourages equal justice by ensuring justice institutions are ‘learning organizations’, committed to evidence-based best practices and ongoing innovation.



# PART II

equal justice strategies

We need to continually ask: who needs what kind of help in accessing justice?

The Committee employs broad categories to distinguish between the legal needs of different segments within Canadian society, people who are vulnerable and living in marginalized conditions, low-income, middle class and affluent. These categories are imperfect and there are no hard and fast rules that separate the legal needs of various groups of people. They do however reflect differing means, capacities and social situations in a general way, and assist us to keep in mind important differences in legal needs, the impact of unresolved legal problems, and problem-solving and dispute resolution behavior, so we can assess who is most likely to benefit from proposed innovations.

While “100% access is the only defensible ultimate goal”,<sup>42</sup> the Committee recognizes that this will be challenging. To the extent that rationing justice must be done, and undoubtedly is done on a daily basis, how can it be done to mitigate rather than reinforce patterns of inequality? Getting to equal justice demands that we first focus on the people who are most disadvantaged by their social and economic situation.

We need to continually ask:  
who needs what kind of  
help in accessing justice?

## A STANDARD FOR MEANINGFUL ACCESS TO JUSTICE

The system must deliver just outcomes secured by meaningful access to justice. Assessing whether the system, process, service or resource provides meaningful access to justice depends on the nature of the right, interest, legal problem at issue, the capacity of the individual, the complexity of the legal process or proceeding and the seriousness and impact of potential outcomes.

Full legal representation is not required in every case: meaningful access can be assured through a range of legal services and forms of assistance, depending on the circumstances. A growing body of research can assist in translating this general standard into best practices to guide the delivery of legal services and decision-making processes (both court and non-court-based). The key is to provide a seamless continuum of legal and non-legal services, and ensure that representation is available when needed to have meaningful access to justice.

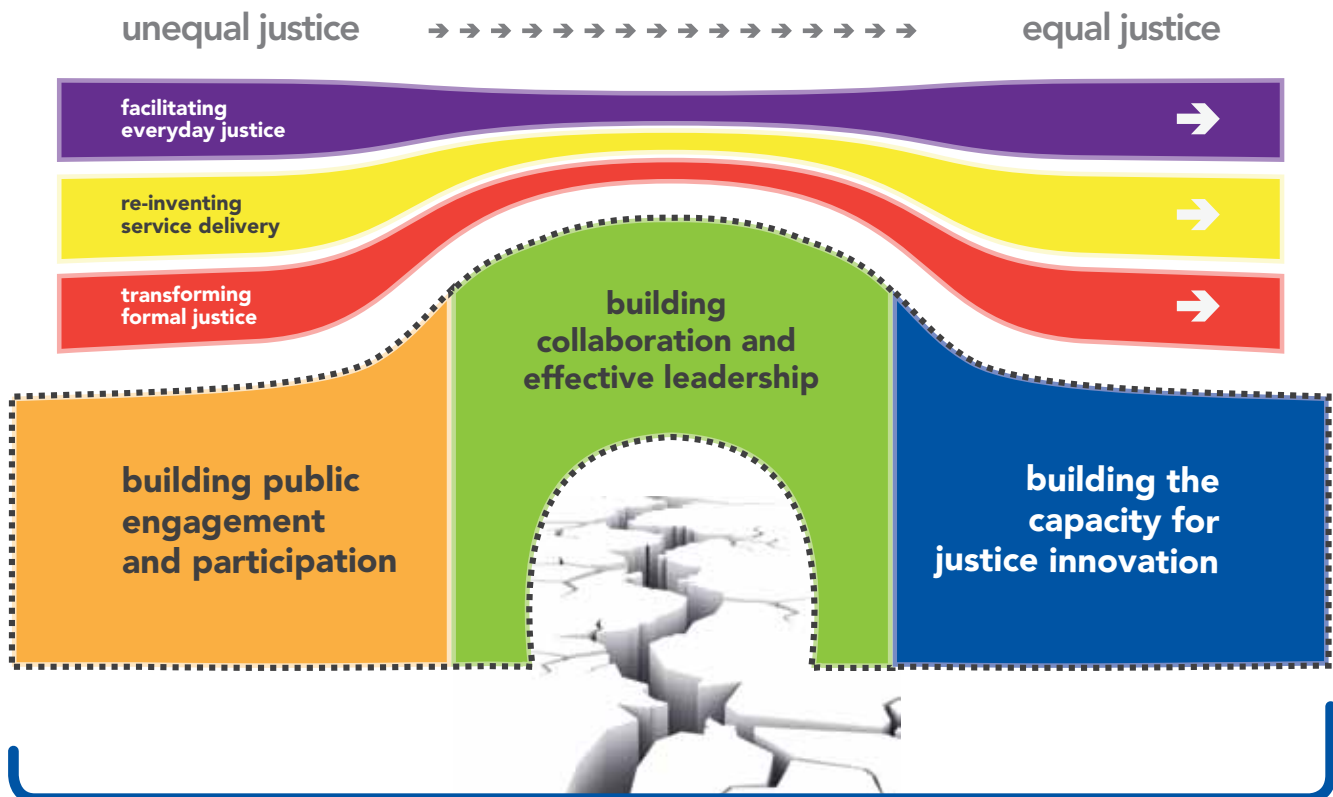
# Building a bridge to equal justice

Reaching equal justice requires us to bridge the distance from the current state of inequality to the vision articulated above. The Committee imagines this 'bridge' as having three lanes, each representing different strategies for moving to equal justice. One lane is facilitating everyday justice, the second is transforming formal justice and the third is reinventing the delivery of legal services. Those three lanes are the topic of this part of the report.

The conceptual bridge rests on three structural supports: increased public participation and engagement; improved collaboration and effective leadership; and enhanced capacity for justice innovation. Those structural supports will be discussed in part III.

The Committee has proposed targets, milestones and actions for each lane and structural support.

## bridge to **equal justice**



# Facilitating everyday justice

The idea of everyday justice is that few problems, in reality, are dealt with in the formal justice system. Knowing this, we need to take a much broader view of access to justice. Facilitating everyday justice requires three main changes. We need to:

- » *Recognize that there are many paths to justice.*
- » *Find ways to deal with more legal problems through a larger range of mechanisms.*
- » *Shift our attention 'far upstream from the courts' by investing in timely intervention and preventative services.*

Facilitating everyday justice means improving legal capability, taking legal health seriously, enhancing triage and referral systems to navigate paths to justice and taking active steps to ensure that technology is well used to enhance equal, inclusive justice.

## LAW AS A LIFE SKILL

Law should be seen as a life skill, with opportunities for all to develop and improve legal capabilities at various stages in their lives, ideally well before a legal problem arises. Law is a fact of life in the 21<sup>st</sup> century. Almost everyone will experience a legal problem at some point in their lives, but until that happens, most people don't know what to expect from the justice system, the benefits of different paths and legal services and so on. Those involved in the justice system and in legal service delivery have a shared responsibility to increase the legal capabilities of everyone in Canada.

Building legal capability involves knowledge, skills and attitudes. Teaching law as a life skill also helps to cultivate trust and confidence in the justice system. All justice system participants can find ways to help build capability in their daily contact with members of the public.

### TARGET:

■ **By 2030, 5 million Canadians have received legal capability training.**

### Milestones:

- » *Law as a life skill courses are integrated into public education curricula*
- » *Legal capabilities training modules are available to specific groups during life transitions (e.g. newcomers to Canada, older adults at retirement, young adults entering the workforce)*
- » *Legal capabilities training is embedded into workplaces and other environments where training can be sustained*
- » *Lawyers integrate legal capabilities approaches and work with public legal education and information providers (PLEI) in their delivery of legal services*

**Actions:**

- » *The CBA and PLEI organizations work with the Council of Ministers of Education, departments of education, school boards and other interested organizations to advocate for the integration of law as a life skill courses into schools across Canada*
- » *The CBA encourages lawyers to integrate PLEI materials and a legal capabilities approach in the delivery of legal services (where appropriate) and to assist PLEI organizations to develop and update materials*
- » *PLEI organizations develop stronger partnerships with public and private sector organizations to integrate legal capabilities training into their existing programs, including those organizations serving members of the public experiencing life transitions (e.g. newcomers and seniors organizations)*
- » *PLEI organizations develop, pilot and test national model legal capabilities training modules and protocols*
- » *Justice system stakeholders work with PLEI organizations to develop and train rosters of law students, and current and retired lawyers and judges to deliver legal capabilities training in a variety of settings*

**LEGAL HEALTH CHECKS**

Initiatives that focus on legal health advance our capability to prevent legal problems and build resilience to future or recurring legal problems. Just as the health system aims to both prevent and treat disease, so too the justice system should aim to prevent legal problems in addition to providing assistance when they arise.

The legal health checklist model ties together ideas of prevention, resilience and increased legal capability. A number of legal practice websites encourage people to have an ‘annual legal health checkup’ or offer checklists of situations in which legal needs or issues often arise. Legal health checklists create awareness of common legal problems and suggest how to address them. They can be self-administered or used by service providers to ascertain whether an individual seeking one form of assistance, say in a homeless shelter, has other types of problems that could be addressed through an appropriate referral. These checklists can also provide general advice on ‘how to stay legally healthy’.

Legal service providers, including legal aid plans and community-based clinics, have a particularly important role in contributing to legal health, both at the individual and systemic levels. In addition to administering or making available individual legal health checklists, with appropriate resources, these organizations could also carry out systemic health checks – providing important feedback about the incidence of legal problems in a community and potential systemic solutions.



**TARGET:**

- **By 2020, individual and systemic legal health checks are a routine feature of the justice system.**

**Milestones:**

- » *Legal aid/assistance providers have a strong capacity to undertake follow up with clients on a routine basis, including, for example, through post-resolution follow up*
- » *Legal aid/assistance providers have a strong capacity to carry out systemic health checks and routinely provide input to law and justice reform processes to enhance capability to prevent/minimize frequent legal problems*

**Actions:**

- » *The CBA partners with PLEI organizations to establish a universal Canadian legal health checklist and make it broadly available to individuals, to students as part of high school and other training curriculum, or by service providers to review with people using their services*
- » *The CBA promotes the use of legal health checklists at Law Day and other forums and encourages other justice stakeholders to do the same*
- » *Legal aid/assistance providers collaborate with each other and community groups to adapt the legal health checklist to their communities/specific contexts. The adapted checklist includes a tool kit with information on where to go for help and best practices guide for integrating checklists into service delivery*
- » *The CBA collaborates with interested organizations to prepare an options paper on the broader concept of legal health and the prevention of legal disputes, including the use of legal health system checklists*

**EFFECTIVE TRIAGE AND REFERRAL**

There are many paths to justice and more are required to ensure that people are quickly and properly directed to services and assistance, so they can effectively address legal problems. Research shows that people currently find it difficult to navigate the system.

The way people enter the system and the way they are treated on day one is the essence of a people-designed justice system. Perhaps the most pressing access innovation is to develop effective triage and referral systems in each jurisdiction. Some important steps have been made in some locations, including Family Law Information Centres in Alberta and Ontario, Justice Access Centres in British Columbia, and Centres de justice de proximité in Québec. Nevertheless, we remain far from the goal of “integrated well-designed, transparent and intellectually defensible” triage and referral systems<sup>43</sup>

## TARGET:

■ **By 2020, each provincial and territorial government has established effective triage systems guiding people along the appropriate paths to justice.**

## Milestones:

- » *Triage and referral demonstration projects, including an evaluation component, are in place in each province and territory, building on existing initiatives and experience*
- » *A national mechanism is in place to integrate evolving knowledge on the effectiveness of triage and referral services, policies and protocols, including the evaluation of demonstration projects*
- » *A best practices guide is available presenting Canadian research and knowledge*

## Actions:

- » *Provincial and territorial governments work with PLEI organizations, legal aid providers and other service providers to prepare and maintain a comprehensive list of early resolution, legal and related services in each jurisdiction or region*
- » *Provincial and territorial governments work with PLEI organizations, legal aid providers and other service providers to develop an agreed upon set of core principles to guide the design of triage and referral processes, including a common intake form. Some of this work takes place on a national basis or through the development and testing of prototypes in one jurisdiction to avoid duplication of effort*
- » *Provincial and territorial governments work with PLEI organizations, legal aid providers and other service providers, to develop and implement training in support of triage and referral policies and protocols*

## INCLUSIVE TECHNOLOGY SOLUTIONS

The Canadian justice system has lagged behind other sectors in integrating technology. Technology (including information technology) can be harnessed to improve access to justice and is an integral part of all three major changes discussed in this report: facilitating everyday justice; transforming formal justice; and reinventing the delivery of legal services. Technology can:

- » *automate current processes and make them more efficient and accessible to individuals*
- » *create new pathways to justice*
- » *provide direct access to justice services (e.g. online dispute resolution)*

Careful planning is needed to prevent technological innovations from creating or reinforcing barriers to equal justice.

## TARGET:

■ **By 2020, all justice sector organizations have plans to harness technology to increase access to justice, ensuring inclusivity by eliminating barriers to underserved populations and avoiding the creation of new barriers.**

## Milestones:

- » *Evaluation and feedback mechanisms for internet-based and other technology-assisted solutions assess user experience, as well as the reasons people do not use the technology, or try to use it and give up*
- » *Grants and other incentives foster the development of inclusive access to justice technologies*

**Actions:**

- » *Technological innovations preserve traditional access for people challenged by technology, including access to a service provider, and the use of technological solutions is not mandatory*
- » *Justice system stakeholders survey legal service and community service providers, court staff and others to identify potential benefits and barriers posed by increased use of technology for low-income persons*
- » *Justice system service providers offer ongoing education and support to people using technology to access their services*
- » *Justice system service providers provide active warnings to people about the need to secure private information and protect confidentiality. Users receive messages about the limitations of the technology-based service and value of review by a legal service provider*
- » *The National Action Committee, its successor, or another national organization:*
  - » *develops guiding principles for justice system stakeholders on how to avoid barriers to access to justice when using technology*
  - » *provides centralized support for making good technology decisions, including by developing an evaluation tool for investments in new technology, and*
  - » *offers knowledge, experience and data about using technology to advance the planning and delivery of justice services for the most disadvantaged and vulnerable populations*
- » *The Federation of Law Societies, law societies, or the CBA Ethics Committee, provides guidance on ethical and professional obligations when using technology to deliver legal services*

## Transforming formal justice

Court systems are undergoing transformation processes but the purpose and direction of the changes are far from clear. There are three main scenarios on the future role of civil courts: courts as the forum of last resort; courts as the solver of legal issues; and courts as the central service responsible for adjudicating people's problems (recognizing that many disputes may start out before an administrative board or tribunal). The first two scenarios result in a de-centring of courts in a civil justice system, with a corresponding decrease in their accessibility and role in people's lives. The last scenario, favoured by the Committee, involves a re-centring of courts as the main pathway to dispute resolution processes and referral to other services for non-legal aspects of people's problems.

Re-centred courts will provide tailored public dispute resolution services with effective internal and external triage and referral processes and will employ a wide range of quasi-judicial officers to assist litigants to achieve just and timely outcomes. Re-centred courts will be dedicated to innovation, learning and integration of evidence-based best practices. They will be open to feedback from users of court services and to developing transparent performance evaluation measures.

Judges must be ready to integrate new functions and approaches, potentially including active case management, judicial dispute resolution, specialization, court simplification and active adjudication models. Many Canadian courts have already taken steps in these directions and should be supported in these important reform efforts.

**TARGET:**

■ **By 2025, courts are re-centred within the civil justice system and resourced to provide tailored public dispute resolution services with effective internal and external triage and referral processes.**

**Milestones:**

- » *All courts have effective triage and referral systems*
- » *All courts have the capacity to provide a range of dispute resolution processes and tailored, simplified processes*
- » *Courts employ a wide range of quasi-judicial officers to assist litigants to achieve just and timely outcomes*
- » *Courts have the resources to carry out this range of functions*

**Actions:**

- » *Courts develop and employ a range of mechanisms to solicit feedback from people accessing court services and use these perspectives to inform innovations and reforms*
- » *Courts develop and test prototypes of specialized procedures for priority categories of cases. Piloting different prototypes in each jurisdiction within an overarching strategy will maximize use of resources, avoid duplication of effort and enhance evidence-based reform*
- » *The National Action Committee, its successor or another national organization develops an evidence-based best practices guide to assist courts in their access to justice innovations*
- » *Judicial appointment processes take into consideration candidates' openness to and suitability for broader judicial functions, including active case management and judicial dispute resolution methods*
- » *The CBA champions this re-centred role for the courts within a coherent civil justice system: a central role not based on the traditional, status quo role of the courts but on this people-centred vision*

# Reinventing the delivery of legal services

To 'facilitate everyday justice' and 'transform formal justice' (two lanes on our conceptual bridge to equal justice) and to most effectively deliver legal services, a spectrum of legal service providers and a broad continuum of legal services is required to meet a range of legal needs. The goal in 'reinventing the delivery of legal services', the third lane, is

seamlessness: to eliminate assistance gaps and to ensure meaningful access to justice in every case. A range of new and creative approaches to meet the access to legal services gap is required.

The Committee's diagram below proposes how the spectrum of legal service providers and the continuum of legal services could best be matched with categories of legal needs.



Some legal needs can be fully met by the private market, and the extent to which law firms and practitioners can innovate to better serve those legal needs is an issue for the CBA Legal Futures Initiative. Some legal needs can be adequately met only through publicly funded legal services. The public-private hybrids have developed mainly in response to failures of the private and public providers to meet the most pressing or essential legal needs.

Reinventing legal services for equal justice involves meeting three challenges: ensuring the most effective delivery of both private and public legal services; achieving a consensus on where legal needs fall on this spectrum from private to public; and reaching a better understanding of the structure and role of the service providers in between the public-private ends of the spectrum.

**The Committee believes that it is critical to define the concept of essential legal needs and to find ways to meet these needs.**

Essential legal needs are those that arise from legal problems or situations that put into jeopardy a person or a person's family's security – including liberty, personal safety and security, health, employment, housing or ability to meet the basic necessities of life. A main objective of equal justice efforts must be to provide essential legal services.

Most of the targets in this section are therefore aimed at improving capacity at both ends of the publicly funded/private market spectrum, to provide meaningful access to justice for people experiencing legal problems related to essential legal needs.

## LIMITED SCOPE RETAINERS

The greatest potential for achieving meaningful access to justice and fair and lasting outcomes comes from a comprehensive, holistic approach. Yet, one of the current trends to make legal services more affordable to clients or reduce cost to the providing organization is moving away from the holistic approach to limited scope retainers or unbundled legal services. This issue cuts across the service delivery spectrum, affecting lawyers in private practice, legal aid and those working pro bono, as well as those providing other forms of legal assistance, also increasingly in a limited, piecemeal fashion.

From an equal justice perspective, the question is whether limited scope services are consistent with the meaningful access to justice standard. To answer this question we need to carefully consider who may benefit from what types of limited legal services and in which situations. Meaningful access is advanced when these services are provided to capable litigants through an effective relationship between lawyer and client. For example, coaching, particularly during a hearing, can mean the difference between ineffective or effective assistance. However, limited scope services are not the solution for everyone.

This innovation requires a new model of lawyering based on a reciprocal partnership and effective communications between legal service provider and client, where the provider offers the client appropriate information resources and connections to other service providers. This underscores the importance of lawyers and other legal service providers collaborating with PLEI providers.

**TARGET:**

- **By 2020, limited scope legal services are only offered in situations where they meet the meaningful access to justice standard.**

**Milestone:**

- » *Best practice guidelines, based on empirical studies of emerging limited scope service models and their impact on meaningful access to justice are in place*

**Actions:**

- » *All law societies provide detailed guidelines to lawyers providing limited scope services, including advice and precedents for limited scope retainers*
- » *Bar associations, law societies and legal aid organizations develop resources to assist lawyers to provide limited scope services in an integrated seamless way by equipping lawyers to inform clients about other service providers and sources of information*
- » *The CBA provides professional development on coaching and other skills that support the delivery of effective limited scope services*
- » *The CBA, law societies, other bar associations and legal aid organizations work with PLEI organizations to inform the public about limited scope services*
- » *The CBA and the Federation of Law Societies ensure the integration of existing research and evaluations of limited scope service models to formulate evidence-based best practices and identify further research needs*

**SUSTAINABLE PEOPLE-CENTRED LAW PRACTICES**

Making the practice of people-centred law practices (personal services law) more attractive to lawyers is a key component of reinventing the delivery of legal services. Bar associations and law societies have an important role in fostering and supporting the development of alternative organizational models for viable and sustainable people-centred law practices.

The legal profession can foster these initiatives through 'incubator programs' helping recent law school graduates transition into sustainable practice situations that serve individuals and small businesses, as well as through virtual practice arrangements.

New initiatives are especially important outside urban centres, where barriers to accessing legal services are even more acute. Various legal organizations have worked collaboratively, particularly in Manitoba, Alberta and BC, to encourage the practice of law outside major centres.

**TARGET:**

- **By 2025, a wide range of alternative organizational models for the provision of legal services exists to meet the legal needs of low and moderate income Canadians, including those living outside major urban centres.**

**Milestones:**

- » *An evaluation of the effectiveness of sustainable people-centred law practices at filling legal services gaps and providing meaningful access to justice is carried out, and the results are broadly shared to encourage learning, further innovation and best practices*
- » *All jurisdictions have legal practice incubator programs*

**Actions:**

- » *The CBA provides professional development materials, and hosts a PD webinar and online discussion groups to foster conversation and learning about alternative organizational models for providing people-centred law services*
- » *The CBA develops a 'start up package' for alternative organizational models for sustainable people-centred law practices comprising, for example, a handbook, contracts, other documents and training materials*
- » *A consortium of bar associations, law societies, law schools, law firms and business enterprises support the development of one or more accessible legal practice incubators in at least three jurisdictions*
- » *The CBA supports the establishment and maintenance of networking among incubator programs to facilitate information exchange, develop best practices and promote continuous improvement*
- » *The CBA and law societies provide ongoing opportunities for mentoring and peer-to-peer sharing of best practices for sustainable people-centred law practices*
- » *The CBA coordinates a roster of experienced justice system participants, including law practice management consultants, to carry out awareness campaigns for law students, young lawyers and members of the profession (not just law firms) about alternative organizational models for delivering legal services*

**TEAM DELIVERY OF LEGAL SERVICES**

Recognizing the value of a continuum of legal services approach means recognizing the importance of increased diversity and specialization among legal service providers and enhanced capacity to provide comprehensive, cost-efficient services through teams of lawyers, other legal service providers (like paralegals) and providers of related services (like social workers). Teams can deliver more comprehensive and holistic services tailored to people's needs. There is a growing consensus that this is a positive way forward, providing more affordable services to clients and adequate income to lawyers.

To smooth the way for team delivery of legal and related non-legal services, licensing, insurance and professional and ethical issues, such as confidentiality and solicitor-client privilege, have to be resolved. Some Canadian law societies have examined alternative delivery of legal services, focusing on paralegals. Other countries recognize a broader range of legal service providers with regulations and protections in place. For example, in the UK there are eight categories of legal practitioners, and the State of Washington has recently begun providing limited licenses to legal technicians.<sup>44</sup>



**TARGET:**

- **By 2030, 80% of lawyers in people-centred law practices work with an integrated team of service providers; in many cases these teams will operate in a shared practice that includes non-legal services and services provided by team members who are not lawyers.**

**Milestone:**

- » *Evidence-based best practice guidelines for team delivery of legal and non-legal services in people-centred law practices are available*

**Actions:**

- » *The CBA prepares a discussion paper and models for team legal service delivery and coordination of legal and non-legal services for both private market and publicly-funded legal services*
- » *The CBA offers professional development materials and online discussion groups*
- » *Law societies develop comprehensive regulatory frameworks for alternate delivery of legal services*
- » *Law offices partner with other service providers facilitating team delivery of services*

**LEGAL EXPENSE INSURANCE**

The holder of legal expense insurance (LEI) has a commitment from an insurer to pay some or all of the legal costs arising from certain legal situations. Insurers support legal services by both lawyers and paralegals, and customers may include individuals, families and small to midsize businesses.

LEI is popular in Europe and provides basic access to legal assistance for people who can afford to buy the insurance, often in conjunction with home insurance or tenant insurance policies. In a few countries, LEI is mandatory.<sup>45</sup>

LEI is not a panacea, but evidence from jurisdictions where it is commonly used suggests that it could help many people get legal assistance when they need it. LEI has not caught on in Canada with the exception of Quebec where it has been successfully promoted by the Barreau du Quebec.

The CBA has endorsed LEI, adapted for the Canadian market, as one mechanism to increase access to justice.<sup>46</sup> The Committee is committed to encouraging LEI and would like to see LEI coverage expanded, particularly to family law matters.

Legal expense insurance is not a panacea, but evidence from jurisdictions where it is commonly used suggests that it could help many people get legal assistance when they need it.

**TARGET:**

■ **By 2030, 75% of middle income Canadians have legal expense insurance.**

**Milestones:**

- » *Insurance providers offer a range of LEI policies that assist in advancing meaningful access to justice to middle income Canadians, including on family law matters*
- » *Options for mandatory legal expense insurance are being fully considered*

**Actions:**

- » *The CBA communicates that making LEI more available contributes to access to justice and is compatible with the profession's interests*
- » *The CBA develops a strategy, building on the Barreau du Quebec initiative, to increase public awareness of the benefits and relatively low cost of LEI through speeches, articles and testimonials*
- » *The CBA continues to collaborate with insurance providers to encourage them to develop more LEI policies for Canadians, including for family law matters*
- » *The CBA works with governments to explore the feasibility of mandatory legal insurance based on existing European models*

**REGENERATING PUBLICLY FUNDED LEGAL SERVICES**

Public-funded legal services, generally referred to as legal aid programs, are an indispensable component of a fair, efficient, healthy and equal justice system. At present, Canada's legal aid system is inadequate and underfunded, and there are huge disparities between provinces and territories on who is eligible for legal aid, what types of matters are covered and the extent of the legal services provided.

Three main components are needed to regenerate legal aid:

- » *national legal aid benchmarks with a commitment to their progressive implementation, monitored through an open, transparent process;*
- » *reasonable eligibility policies that give priority to people of low and modest means but provide graduated access to all residents of Canada who are unable to retain private counsel (including through contributory schemes); and*
- » *effective legal service delivery approaches and mechanisms designed to meet community needs and the meaningful access to justice standard.*

Rather than simply setting a minimum threshold, national benchmarks should be aspirational and include targets for progressive implementation. Benchmarks will provide a principled basis for legal aid funding decisions, be focused and concrete, while still leaving scope for local priority setting and innovation.

**TARGET:**

- By 2020, national benchmarks for legal aid coverage, eligibility and quality of legal services are in place with a commitment and plan for their progressive realization across Canada.

**Milestone:**

- » Federal, provincial and territorial governments establish a national working group with representation from all stakeholders, including recipients of legal aid, to develop national benchmarks

**Actions:**

- » The CBA works with all interested justice sector, service provider and community-based organizations to increase public awareness about the importance of legal aid and the costly personal and social consequences of inadequate legal aid
- » The CBA works with all interested justice sector, service provider and community-based organizations to develop a broad alliance of individuals and groups to support and champion the regeneration of legal aid and the development of national benchmarks
- » The CBA and the Association of Legal Aid Plans, in consultation with other justice system stakeholders, prepare draft national benchmarks as a means of engaging stakeholders and fostering dialogue and action
- » The Association of Legal Aid Plans consults with the Federal-Provincial-Territorial Permanent Working Group on Legal Aid on an action plan to initiate work on national legal aid benchmarks
- » The CBA and the Association of Legal Aid Plans, in consultation with other justice system stakeholders, carry out research to develop and refine the empirical basis for understanding 'essential legal needs' and 'meaningful and effective access to justice'

**TARGETS:**

- By 2030, options for a viable national justice care system have been fully developed and considered.

- By 2025, all Canadians whose income is two times or less than the poverty line (Statistics Canada's Low Income Measure) are eligible for full coverage of essential public legal services.

- By 2020, all Canadians living at and below the poverty line (Statistics Canada's Low Income Measure) are eligible for full coverage of essential public legal services.

**Milestones:**

- » The national working group on national benchmarks (see Milestone for legal aid benchmarks) develops a proposal for a gradual expansion of eligibility for legal aid
- » A vigorous public policy dialogue about the value and feasibility of a national justice care system is underway
- » Federal, provincial and territorial governments commit to continue increasing funding for legal aid to ensure progressive implementation of the national benchmarks (see Targets under 'Reinvigorated Federal Government Role')

**Actions:**

- » The CBA works with the Association of Legal Aid Plans and other interested stakeholders to prepare draft national benchmarks on eligibility as a means of engaging stakeholders and fostering dialogue and action
- » The CBA works with interested public policy institutes and think tanks to develop an options paper for a national justice care system building on existing research and considering universal legal aid models in Canada and abroad

## TARGET:

■ **By 2025, all legal aid programs provide meaningful access to justice for essential legal needs through inclusive and holistic services that respond to individual and community needs and integrate evidence-based best practices.**

## Milestones:

- » *Legal aid providers develop an increased capacity for outcome-based evaluation and research, as well as monitoring and sharing information about developments to facilitate evidence-based best practices*
- » *Prototypes of innovative holistic legal aid service delivery models have been developed and tested. Results are integrated into practice and broadly shared to encourage learning, further innovation and best practices*

## Actions:

- » *Legal aid providers build and strengthen relationships with other social service organizations to develop more holistic service delivery*
- » *The Association of Legal Aid Plans is resourced to play a national leadership role in support of strong, innovative legal aid service delivery including through research, monitoring and sharing developments*
- » *The Association of Legal Aid Plans develops measures of inclusivity to integrate into evaluation frameworks*
- » *The Association of Legal Aid Plans completes its work on a common framework for data collection for all legal aid providers*
- » *The Association of Legal Aid Plans increases opportunities for legal aid providers to come together to share and learn (e.g. regular webinars, an annual or biennial conference)*

## BRIDGING THE PUBLIC-PRIVATE DIVIDE

Organized pro bono services are trying to bridge the widening gap between private market and publicly funded legal services.

The Committee's vision of equal justice is one in which all essential legal needs are met by public and private legal service providers (supported by legal expense insurance as appropriate). A justice system based on volunteer efforts is too ad hoc and unsustainable to provide effective access. Regardless of how extensive the legal profession's efforts, pro bono cannot possibly fill the gap between public and private market legal service providers. The same is true of public-private partnerships that provide legal services, such as private non-profit and student clinics.

Where does this leave pro bono and public-private partnerships? As these service providers are neither designed nor equipped to provide a predictable and secure response to essential legal needs, their energies are more appropriately streamed toward other important but non-essential legal needs, such as resolving disputes that have a significant impact on the individuals involved but may not put their security or ability to meet basic needs at risk. Consumer protection issues could often fall within this category, for example.

Pro bono organizations should continue to work in collaboration with legal aid organizations to provide seamless delivery, but with greater clarity on the line between their responsibilities. Pro bono programs are nimble, flexible and can marshal resources quickly, and so are particularly suited to emergent and emergency situations as a stop-gap measure.

Lawyers should continue to consider pro bono as a professional obligation and pro bono organizations should continue to play an important role in encouraging and facilitating these volunteer efforts. The focus should be on encouraging pro bono contributions by lawyers who do not provide people-centred law services on a regular basis, such as lawyers in large law firms, corporate counsel and government lawyers. The transition in pro bono priorities and participation should be tracked through a survey of members of the legal profession.

#### **TARGETS:**

- **By 2025, the justice system does not rely on volunteer legal services to meet people's essential legal needs.**
- **By 2020, all lawyers volunteer legal services at some point in their career.**

#### **Milestone:**

- » *Pro bono programs work with legal aid and other service providers to phase out dependence on volunteer legal services to meet people's essential legal needs and reprioritize their work to meet other gaps in the availability of legal assistance*

#### **Actions:**

- » *All law societies and legal employers remove barriers to participation in pro bono programs*
- » *The CBA Pro Bono Committee collaborates with pro bono organizations to develop and carry out a national survey of pro bono contributions in Canada*

## **LAW SCHOOLS, LEGAL EDUCATION AND LAW STUDENTS**

An important avenue to advancing access to justice is engaging the legal academy to a larger extent than at present. One promising development is that the Council of Canadian Law Deans has established an access to justice committee to consider the role of law schools in this area. Priorities include moving toward a requirement that law school education include an experiential component and increasing access to justice research. At the same time, education and training goals do not always coincide with access goals. Students can make an important contribution, but cannot be expected to address the vast range of unmet needs.

To the extent that they are not already doing so, law schools should take a dual focus to integrating access to justice into education, by establishing requirements for all students and supporting opportunities for those particularly interested in access to justice. All graduating law students should have a basic understanding of the issues relating to access to justice and know that fostering access to justice is an integral part of their professional responsibility.

## TARGETS:

- By 2030, three Canadian law schools will establish centres of excellence for access to justice research.
- By 2030, substantial experiential learning experience is a requirement for all law students.
- By 2020, all graduating law students:
  - » *have a basic understanding of the issues relating to access to justice in Canada*
  - » *know that fostering access to justice is an integral part of their professional responsibility*
  - » *have taken at least one course or volunteer activity that involves experiential learning providing access to justice.*
- By 2020, all law schools in Canada have at least one student legal clinic that provides representation to low income persons.

All graduating law students should have a basic understanding of the issues relating to access to justice and know that fostering access to justice is an integral part of their professional responsibility.

## Milestone:

- » *Law school curricula examined and adjusted as needed to meet the targets*

## Actions:

- » *The CBA adopts a statement on the 'Model Lawyer of Tomorrow' to encourage and foster dialogue on the role of lawyers in promoting access to justice as one important criteria*
- » *The CBA encourages law schools to offer substantial opportunities for experiential learning in the access to justice context. This ties into the Legal Futures Initiative, which is considering legal education and training of the next generation of lawyers*
- » *The Federation of Law Societies includes an access to justice component in its competency requirements*
- » *Law schools expand the access to justice content of their curricula*
- » *Law schools expand the availability of experiential learning to their law students*
- » *The Council of Canadian Law Deans supports development of access to justice curricula*
- » *Each law school appoints a staff member to serve as champion/leader for engaging discussion between the school and justice system stakeholders, including the public, about the role of law schools in supporting equal access to justice*
- » *Law students have opportunities to become involved in CBA access to justice initiatives, including discussions of this report*

# ■ *Making the equal justice vision real*

A fundamental step to reaching equal justice is laying the foundation for ambitious but possible targets for an equal, inclusive justice system by 2030. At the same time, the Committee recognizes the barriers to even modest improvements to access to justice, let alone the type of change the Committee advocates.

This part looks at how we can move from the current situation of unequal justice to the vision of truly equal justice, relying on the three structural supports to our conceptual bridge: increased public engagement, participation and ownership of the justice system; improved collaboration with effective leadership; and enhanced capacity for justice innovation.

## Building public engagement and participation

Civil justice is a low priority for the Canadian public and hence a low political priority. While public polling shows support in principle for legal aid, there is no public outrage at the current deficiencies or broadly supported movement for change. Criminal justice issues tend to dominate the media and have a high public profile. In contrast, a lack of awareness of the importance of a functioning justice system for non-criminal matters means that civil justice issues receive little attention and carry less political weight. Overall, justice concerns have a lower priority compared to concerns about other parts of our social safety net, notably education and healthcare. Political attention to equal justice is unlikely given this lack of public recognition or support. Increased public engagement is a necessary condition for reaching equal justice.

The long-term strategy for increasing public engagement with the justice system and building commitment to equal justice is linked to the commitment to improving individual legal capability, beginning with early education to build law as a life skill. In the shorter term,



# PART III

making the equal justice vision real



a comprehensive public engagement campaign is required. We need a convincing answer when people ask: “why should I care about equal justice?” While each justice stakeholder group has a role, the legal profession and the CBA have a leadership role in developing this campaign.

The justice community has to change the way we talk and how we act. Our goal is an equal, inclusive justice system everyone can take part in. To start, we need to listen to the public perspective and create inclusive forums for dialogue and accountability structures.

### TARGETS:

■ **By 2025, all provincial and territorial governments engage in dialogues with the public (e.g. community roundtables, townhall meetings) on a regular basis and demonstrate how the public perspective informs justice system policies and processes, innovations and reforms.**

■ **By 2020, Canadians have a greater sense of public ownership of the justice system.**

### Milestones:

- » *All governments hold dialogue sessions with the public (e.g. community roundtables, townhall meetings), in partnership with community groups, at least three to five times per year*
- » *A principled framework for community dialogue (e.g. inclusion, respect, reciprocity) integrating evidence-based best practices is in place*
- » *Justice reform captures the public perspective, which informs policy and process development, innovation and reform to the justice system*
- » *A suggestion from a member of the public is championed by an appropriate justice system participant and is successfully implemented*

### Actions:

- » *The CBA works with other justice system stakeholders to develop a public engagement strategy, including an interactive ‘My Justice System’ campaign to learn more about public expectations of the justice system and to seek out concrete proposals for access to justice reforms*
- » *Provincial and territorial governments build on the consultative practices of legal aid providers and legal clinics to identify justice system user groups they should include in consultation processes*
- » *All justice system governing boards and advisory committees include more than one public representative and operate according to inclusive guidelines for communication and consultation*
- » *Justice system stakeholders collaborate to increase the number and types of mechanisms to receive feedback from people accessing the justice system, including online discussion forums and surveys of people denied services; feedback is taken into account in reform strategies*

We need a convincing answer when people ask: “why should I care about equal justice?”

# Building collaboration and effective leadership

There is effectively no coherent civil justice system in Canada. Fragmentation is to some degree a necessary consequence of institutional and individual independence of the parts of our justice system – the courts and judges, the legal profession and lawyers, the legislative and executive branches of government, legislators and civil servants. Independence of the judiciary and of the bar and the separation of powers between branches of government are foundational principles of Canadian democracy that must be steadfastly preserved. At the same time, a rigid application of these principles can act as shield against justice innovation and prevent the necessary collaboration and coordination.

Certainly to reach equal justice we must develop collaborative skills, processes and structures. The National Action Committee is an important forum bringing together justice system stakeholders, including a member of the public. Collaborative forums such as this are also needed at the provincial, territorial and local levels.

However, collaboration alone will not create a coherent civil justice system. Effective leadership is also essential. If the justice system is a ‘body without a brain’ or an organization without a CEO, then genuine leadership in the access to justice field must be developed to fill this void. Champions for change are likely to emerge at a local level in connection with specific reforms, but the most effective overall leadership could come by appointing access to justice commissioners, individuals given adequate resources and the mandate of striving for equal justice.

**TARGET:**

■ By 2020, effective, ongoing collaborative structures with effective leadership are well-established at the national, provincial, territorial and local levels, including through the appointment of access to justice commissioners.

**Milestones:**

- » *Access to justice commissioners are in place in every province and territory and at the federal level*
- » *The performance of collaborative structures is reviewed every two years and lessons and improvements integrated into their operations. Evidence about collaborative best practices is widely-shared*

**Actions:**

- » *The National Action Committee, its successor or another national organization is properly resourced as a national collaborative structure with a mandate to support and coordinate provincial and territorial efforts*
- » *The National Action Committee, its successor or another national organization works with other justice system stakeholders, including provincial and territorial committees, to organize an annual or biennial national conference*
- » *Provincial and territorial governments establish collaborative structures to bring together stakeholders and establish networks between local equal justice communities and task-based collaborative initiatives*
- » *Access to justice leaders create local equal justice communities, including pathways for communication and collaboration with other communities and initiatives*

## Building capacity for justice innovation

Our greatest challenge in reaching equal justice is addressing what the National Action Committee has identified as ‘the implementation gap’. The justice system’s capacity for innovation is underdeveloped and undernourished. For the most part we know what needs to happen, but we are not as clear on how to do it.

The Hague Institute for the Internationalisation of Law (HiIL) is a justice innovation centre complete with a ‘lab’ for the development of prototypes. The HiIL publication *Innovating Justice* states the key to success: Innovation requires an extensive ecosystem nurturing the process. Justice innovation experts identify components of this ecosystem:

- » *Adopt a ‘Yes, AND’, not a ‘Yes, BUT’ mentality*
- » *Forget about the rules*
- » *Treat ‘failure’ as an entrée to adaptation and eventual success*
- » *Be clear on who benefits: an innovation is not just an idea*
- » *Nurture a champion*
- » *Ensure the time is ripe*
- » *Engage a critical mass*
- » *Provide incentives and resources*
- » *Cultivate a diversity of skills and knowledge and partnerships.*

The Canadian justice system has dedicated few resources to, and has limited capacity for justice innovation. An efficient way to fill this remaining gap is to establish a dedicated centre for justice innovation. In addition, all justice system stakeholders, including law firms, need to increase their research and development capacities to explore ongoing innovation for the practice of law. The CBA Legal Futures Initiative has initiated a conversation about prospects for innovation in legal practice, and is consulting widely to obtain a diversity of perspectives about better ways to serve the public.

#### **TARGETS:**

- **By 2025, justice system stakeholders have substantially increased their innovation capacities by committing 10% of time and budgets to research and development.**
- **By 2020, Canada has a Canadian Centre for Justice Innovation.**

Innovation requires an extensive ecosystem nurturing the process.

#### **Milestones:**

- » *Justice innovation leaders are recognized and share their best practices with others*
- » *Regular environmental scans of justice innovations in Canada and abroad are carried out*
- » *All justice system stakeholders, including law offices develop innovation plans, with definite interim targets to increase their research and development functions in line with a 10 year goal of 10%*

#### **Actions:**

- » *The CBA Legal Futures initiative uses the results of its work to facilitate enhanced networking and exchanges of information on practice innovation*
- » *The CBA works with other justice system stakeholders to develop a partnership with the HiiL*
- » *The CBA works with other justice system stakeholders to develop options for establishing a Canadian Centre for Justice Innovation to support local initiatives*
- » *Law firms adopt models of compensation for lawyers that reward innovation*
- » *Law schools establish innovation think tanks and involve a broad range of justice system stakeholders, including members of the public, consultants and experts on justice innovation*

## ACCESS TO JUSTICE METRICS

Access to justice metrics are important to support justice innovation. Currently, we have only fragmentary data and no capacity to pull it together to get a complete picture of access to justice in Canada. The absence of an evidentiary base for action, and shared views on what to measure and how to measure it, are serious obstacles to achieving equal justice.

Metrics serve a range of purposes, from informing the public about our justice system and grounding day to day decision-making of justice system participants, to supporting policy-making and change processes. Metrics enhance people's choices, enable comparison and learning, increase transparency and create incentives for improving access to justice.

### TARGET:

■ **By 2020, the first annual access to justice metrics report is released; by 2030, this report is comprehensive.**

### Milestone:

» *The federal government establishes a working group to develop a framework and action plan for the development of access to justice metrics*

### Actions:

- » *The CBA works with other justice system stakeholders to develop a proposal for assessment of the quality and coverage of existing data*
- » *Building on initiatives of the Canadian Association of Provincial Court Judges and the Association of Legal Aid Plans, justice system stakeholders develop a protocol for the collection of a common standard data set*
- » *The CBA encourages the courts and other key agencies in the justice sector to see the value of access to justice metrics and commit to work to attain these targets*

## STRATEGIC FRAMEWORK FOR ACCESS TO JUSTICE RESEARCH

Canada is plagued by a paucity of access to justice research. This gap exists in tandem with the poor state of justice data collection and evidence. The lack of high quality publicly available data detracts from scholarship and the lack of scholarship contributes to the poor state of data, since empirical research would help determine which types of data should be collected. Other barriers to research include: fragmentation of access to justice research across disciplines and under-development of interdisciplinary studies; lack of integration of recent methodological developments such as internet-based tools; and lack of connection between academics and practitioners.

A national research strategy is needed, not in the sense of a centralized 'master plan' but rather to ensure coordination, avoid duplication and enable researchers to build on each other's efforts. A national access to justice research framework to contribute to equal justice should encompass three main objectives:

- » *generate new high quality research activity;*
- » *ensure the coordination of research efforts; and*
- » *improve the communication of research results, including aggregating and synthesizing research findings and program evaluations to make this information more accessible to decision-makers and in policy-making processes and forums for public dialogue.*

**TARGETS:**

■ By 2025, Canada has a sustainable access to justice research agenda with four minimum components:

1. *available, high quality data that supports empirical study of effectiveness of measures to ensure access to justice*
2. *a central independent research organization that assumes responsibility for developing and coordinating the required data sources and research activities*
3. *effective mechanisms through which researchers and people in the field collaborate and coordinate research activities, and*
4. *ongoing commitment to and adoption of best practices in access to justice research.*

■ By 2020, the amount of access to justice research conducted in Canada has doubled.

**Milestones:**

- » *A central research organization continues to conduct – or support and coordinate – initiatives that synthesize and coordinate existing, and generate new research activity, including research that can inform policy*
- » *A central research organization establishes – or supports the establishment of – a mechanism and methods for amassing quality data to support empirical access to justice research*

**Actions:**

- » *The CBA, law foundations and other justice system stakeholders hold a workshop that provides an inventory of current and planned access to justice research initiatives, facilitates a dialogue between researchers and practitioners and considers potential mechanisms to coordinate existing and generate new research activity*
- » *The CBA, law foundations, law faculties and other justice system stakeholders identify or develop a central organization that is able and willing to coordinate efforts to develop a national research agenda on an initial basis*
- » *The central research organization establishes international collaboration networks with access to justice research institutes including the Law and Justice Foundation of New South Wales and the American Bar Foundation*

## REINVIGORATED NATIONAL/ FEDERAL GOVERNMENT ROLE

This report sets targets and actions that depend on strong national leadership on access to justice reform. While provincial and territorial governments have primary responsibility for the day to day functioning of the justice system, the federal government also has a critical role. Like healthcare, justice is a shared governmental responsibility. A reinvigorated federal role is imperative if we are to reach equal justice.

### TARGETS:

- **By 2025, the federal government is fully engaged in ensuring an equal, inclusive justice system.**
- **By 2020, the federal government reinstates legal aid funding to 1994 levels and commits to increases in line with national legal aid benchmarks.**

### Milestones:

- » *The federal government commits to steady increases in contributions to legal aid funding, including returning to 50% cost-sharing in criminal matters and establishing a dedicated civil legal aid contribution*
- » *The federal government is a leader in supporting access to justice innovation*

### Actions:

- » *The federal government commits to supporting justice innovation by taking a leadership role in building the evidence base necessary to develop access to justice metrics, appointing an access to justice commissioner, supporting the creation of a centre for justice innovation and funding access to justice research*
- » *The federal government makes funding for civil legal aid transparent and works with provincial and territorial governments and justice system stakeholders to regenerate legal aid*

## CBA AS AN ACCESS TO JUSTICE LEADER

The CBA established this Access to Justice Committee in 2011 with a view to consolidating and enlarging its work on these important issues. The CBA fills an important role in national access to justice reform efforts but a stronger organizational commitment is required for the CBA to become an access to justice leader.

The Committee is committed to take action on six fronts working in conjunction with other CBA entities, committed members and outside organizations:

- » *Encourage greater collaboration between justice system stakeholders, including the public, and coordinate initiatives in a strategic framework;*
- » *Develop and revise CBA policies to support improvements in the public and private delivery of legal services;*
- » *Partner with the CBA Legal Futures Initiative on elements of its work that relate to education, practice and regulatory innovations that could have an impact on access to justice;*
- » *Foster greater public ownership of access to justice issues;*
- » *Develop tools for advocacy geared to improving publicly funded access to justice, including legal aid; and*
- » *Support and encourage CBA members to enhance the legal profession's contributions to equal justice through the practice of law.*

**TARGET:**

- **By 2020, the CBA has increased its capacity to provide support to access to justice initiatives.**

**Milestones:**

- » *The CBA provides support to its members so they can participate actively in increasing equal access to justice*
- » *The CBA takes a leadership role in encouraging public engagement with the justice system and changing the conversation in support of achieving equal justice*
- » *The CBA continues and expands its collaboration with other justice system stakeholders, including members of the public, in support of inclusive access to justice initiatives*
- » *The CBA substantially increases resources provided to access to justice initiatives*

**Actions:**

- » *The CBA Access to Justice Committee develops a multi-year workplan to implement the actions in this report*
- » *The CBA Access to Justice Committee develops resolutions to update CBA policies consistent with this report for consideration by CBA Council*
- » *The CBA Access to Justice Committee provides many avenues for interested members and others to participate in the development of its initiatives and to share their ideas and experiences*
- » *The CBA Access to Justice Committee seeks out and cultivates access to justice champions in the legal profession*



# Acknowledgements

The CBA Access to Justice Committee began its work on the Envisioning Equal Justice Initiative in September 2011. The Committee members during this period were:

Melina Buckley, Ph.D., Chair

John Sims, QC, Vice-Chair

Sheila Cameron, QC

Amanda Dodge

Patricia Hebert

Sarah Lugtig

Gillian Marriott, QC

Gaylene Schellenberg, Project Director

Each member came to this work with different personal and professional backgrounds and perspectives. These differences have enriched our discussions, and our efforts to tackle the ‘wicked problem’ of reaching equal justice.

The Committee would like to acknowledge the help and encouragement it has received throughout the Envisioning Equal Justice Initiative. The Committee is deeply indebted to Gaylene Schellenberg for her hard work and dedication to this initiative. She had the difficult job of turning our ambitious goals into reality and her invaluable assistance did in fact make this vision possible. The Committee is also grateful for the administrative and technical assistance provided by the CBA National Office, particularly Lorraine Prezeau.

In launching the Envisioning Equal Justice Initiative, the Committee took note of the significant efforts and resources currently devoted to improving access to justice from so many different and influential factions of the legal profession and justice system. The Committee began by informing the legal profession and justice system participants about the initiative. Judges, government officials and politicians, law societies, law foundations, legal aid leaders and many more offered help and support. They provided ongoing feedback as work progressed. The Committee also consulted with justice system participants through conferences and meetings of CBA Council.

The Committee developed three main strategies to remove past barriers to progress:

1. *consultation and research, to create the knowledge foundation for the initiative.*
2. *a new conversation about equal justice – to ask the hard questions and pull people out of acting in silos toward a more common goal.*
3. *ongoing collaboration and coordination, to enable those committed to equal justice to work together more effectively and productively.*



# PART IV

project description,  
acknowledgements and conclusion

# Consultation and research

To inform thinking on how to define ‘access to justice’, and what ‘equal justice’ means for the people who need justice services, community consultations were organized. These took place with different marginalized communities in Nova Scotia, New Brunswick, Quebec, Ontario, Saskatchewan and Alberta. Local lawyers and community partners helped to organize and facilitate these consultations, and link the Committee to community members willing to share their often painful experiences. Pro Bono Students Canada, a group of committed law students and the Canadian Forum on Civil Justice helped gather video footage for perspectives from people ‘on the street’. Town hall consultations, in collaboration with CBA Branches, have been held in recent years in British Columbia, Manitoba and Ontario, and the results were used by the Committee. Legal aid lawyers, community legal workers

and paralegals were surveyed for their views on current issues, and legal aid plans were very helpful in this effort, both in commenting on the survey and ensuring its broad dissemination. The Committee is grateful to the many individuals and organizations who arranged and participated in these consultations.

Five discussion papers were prepared, with the help of several law students, social science students and young lawyers. The Committee acknowledges these important contributions. The valuable resources produced can be found on [www.CBA.org](http://www.CBA.org).

- » *Access to Justice Metrics*
- » *Toward National Standards for Publicly Funded Legal Services*
- » *Future Directions for Legal Aid Delivery*
- » *“Tension at the Border”: Pro Bono and Legal Aid*
- » *Underexplored Alternatives for the Middle Class*

## A new conversation

On April 25-27, 2013, the Envisioning Equal Justice Summit in Vancouver brought together about 250 lawyers, community advocates, judges, paralegals, law foundation and law society representatives, and members of the public. As we hoped, it marked a turning point and started a different, more productive and coordinated conversation about access to justice, with justice system participants working together to solve the challenge of achieving equal justice.

Participants were asked to leave their 'day jobs' at the door, and tackle the big challenges we face in a new, more collaborative and collegial way, and we are grateful for their involvement. At the closing plenary, they worked in small groups to offer their best advice for going forward. For more information, please see [www.cba.org/CBA/Access/main/project.aspx](http://www.cba.org/CBA/Access/main/project.aspx)

The Summit would not have been possible without the generous contributions of the speakers, international guests and Summit sponsors: Law Foundation of BC; Law Foundation of BC/Legal Services Society Research Fund; DAS Canada; CBA BC; Alberta Justice; Law Society of BC; Law Society of Upper Canada and Actus Law Droit.

## The report, our vision and the targets

Inspired, the Committee worked on developing the targets, milestones and actions in this report. The Committee then asked 10 external reviewers to read a draft and again were rewarded by the encouragement and support offered by these busy individuals representing various justice sectors. Their comments were instrumental in clarifying and more fully developing this strategic framework.

The Committee now wants to hear from you. We look forward to your thoughts and your assistance in taking the next steps to achieving equal justice in Canada.

Thank you.

# Endnotes

- 1 Gillian K. Hadfield, "Higher Demand, Lower Supply? A Comparative Assessment of the Legal Resource Landscape for Ordinary Americans" (2010) 37 *Fordham Urban Law Journal* 129 at 151.
- 2 See description in Part IV, *infra* at 47.
- 3 See: <http://www.un.org/millenniumgoals/>.
- 4 <http://www.angus-reid.com/polls/48758/british-columbians-dissatisfied-with-current-state-of-justice-system/>; see also, Julian Roberts, *Public Confidence in Criminal Justice: A Review of Recent Trends (2004-2005)* (report prepared for Public Safety and Emergency Preparedness Canada, 2004); <http://www.angus-reid.com/polls/47831/most-canadians-dissatisfied-with-the-state-of-the-justice-system/>.
- 5 To benefit from the views of marginalized communities, the Committee held regional consultations in conjunction with community organizers familiar to those communities. See discussion at 46, *infra*. A summary of this input is available at [http://www.cba.org/CBA/Access/PDF/Community\\_Voice\\_Paper.pdf](http://www.cba.org/CBA/Access/PDF/Community_Voice_Paper.pdf).
- 6 See; Rachel Birnbaum, Nick Bala, Lorne Bertrand, "The rise of self-representation in Canada's family courts: The complex picture revealed in surveys of judges, lawyers and litigants" (2013) 91 *Canadian Bar Review* 67 and Julie Macfarlane, *The National Self-Represented Litigants Project: Identifying and Meeting the Needs of Self-Represented Litigants* (May 2013).
- 7 See; <http://www.lss.bc.ca/assets/aboutUs/reports/legalAid/legalAidPollReport08.pdf>; <http://legalaid.on.ca/en/news/June-2006b.asp>; and [http://www.legalaid.ab.ca/media/Documents/2006/LegalAidAlberta\\_NewsReleaseNov2006.pdf](http://www.legalaid.ab.ca/media/Documents/2006/LegalAidAlberta_NewsReleaseNov2006.pdf).
- 8 See; R. Roy McMurtry, Chair, *Listening to Ontarians: Report of the Ontario Civil Legal Needs Project* (Toronto: The Ontario Civil Legal Needs Project Steering Committee, 2010) at 3.
- 9 Dame Hazel Genn, *Paths to Justice: What people do and think about going to law* (Oxford: Hart Publishing, 1999) at 12.

- 10** See; Ab Currie, "Legal Problems of Everyday Life", published in Rebecca Sandefur, ed., *Access to Justice, The Sociology of Crime, Law and Deviance* (Bingley, UK: Emerald Group Publishing, 2009); Ab Currie, *National Civil Legal Needs Studies 2004 and 2006* (Ottawa: Justice Canada, 2006); Ab Currie, "A National Survey of the Civil Justice Problems of Low and Moderate Income Canadians: Incidence and Patterns" (2006) 13:3 *International Journal of the Legal Profession*; Legal Services Corp, *Documenting the Justice Gap in America: The Current Unmet Civil Legal Needs of Low-Income Americans* (Washington, DC: Legal Services Corporation, 2005); Carol McEown, *Civil Legal Needs Research* (Vancouver: Law Foundation of British Columbia, 2008); Pascoe Pleasence, Nigel Balmer, Tania Tam, Alexy Buck and Marisol Smith, *Civil Justice in England and Wales: Report of the 2007 English and Welsh Legal Needs Study* (London: Legal Services Commission, 2008); Legal Services Agency, *Report on the 2006 National Survey of Unmet Legal Needs and Access to Services* (Wellington, New Zealand: Legal Services Agency, 2006); Ipsos Reid for the Legal Services Society (LSS), *Legal Problems Faced in Everyday Lives of British Columbians* (Vancouver: LSS, 2008).
- 11** C. Coumarelos, D. Macourt, J. People, H.M. MacDonald, Z. Wei, R. Iriana, & S. Ramsey, *Legal Australia-Wide Survey: Legal Need in Australia* (Sydney, Australia: Law and Justice Foundation of NSW, 2012).
- 12** Currie, *supra*, note 10.
- 13** Patricia Hughes, *Inclusivity as a Measure of Access to Justice* (Paper prepared for CBA, Envisioning Equal Justice Summit, Vancouver, April 2013).
- 14** Russell Engler, "Reflections on a Civil Right to Counsel and Drawing Lines: When Does Access to Justice Mean Full Representation by Counsel, and When Might Less Assistance Suffice?" (2010) 9 *Seattle Journal for Social Justice* 97 at 117; Rebecca Sandefur, "The Impact of Counsel: An analysis of the empirical evidence" (2010) 9 *Seattle Journal for Social Justice* 51.
- 15** Surveys of people who have recently retained a lawyer have found that they did not view the cost of legal services as a major concern – see Rebecca Sandefur, "Money Isn't Everything: Understanding Moderate Income Households' Use of Lawyers' Services" in Michael Trebilcock, Anthony Duggan and Lorne Sossin, eds, *Middle Income Access to Justice* (Toronto: University of Toronto Press, 2012) at 232. A 2010 Alberta Law Society study found that 91% of people who had recently retained a lawyer were satisfied with the "good cost value" of the experience (Presentation by Susan Billington, Policy and Program Counsel, Law Society of Alberta, to International Legal Ethics Conference, July 2012). The Ontario Civil Needs study also noted a widespread public perception that legal fees are prohibitively expensive, but also that 30% of the study's target population with a civil legal problem found free service, and another 20% had paid less than \$1000 for help. See, *Listening to Ontarians*, *supra*, note 8 at 57. See also, [http://www.lawsociety.bc.ca/newsroom/2010lawsocietycommissioned\\_poll\\_table.pdf](http://www.lawsociety.bc.ca/newsroom/2010lawsocietycommissioned_poll_table.pdf).

- 16** Debra Cassens Weiss, "'Massive Layoffs' predicted in law schools due to drop in applicants" (Jan 31 2013) ABA Journal, citing Gillian Hadfield referring to a shortage of 'ordinary folk' lawyers.
- 17** Ab Currie, *The State of Civil Legal Aid in Canada: By the Numbers in 2011-2012* (Toronto: CFCJ, 2013) <http://www.cfcj-fcjc.org/commentary/the-state-of-civil-legal-aid-in-canada-by-the-numbers-in-2011-2012>.
- 18** See; <http://www5.statcan.gc.ca/bsolc/olc-cel/olc-cel?catno=85F0015XIE&lang=eng#form atdisp> This is a difficult number to arrive at, given that the federal contribution for civil legal aid is unmarked and part of a global transfer. Provinces have disputed there is anything for civil legal aid in that transfer (Canada Social Transfer).
- 19** Macfarlane, *supra*, note 6.
- 20** Self-represented litigant quoted by Macfarlane, *ibid*.
- 21** *Ibid*.
- 22** As noted *infra* at 6, two recent surveys of people who represented themselves in civil courts concluded that the experience usually led to reduced confidence in the justice system. *Supra*, note 6.
- 23** Engler and Sandefur, *supra*, note 14.
- 24** Jessica K. Steinberg, "In Pursuit of Justice? Case Outcomes and the Delivery of Unbundled Legal Services" (2011) 18 *Georgetown Journal on Poverty Law & Policy* 453; D. James Greiner, Cassandra Wolos Pattanayak, and Jonathan Hennessy, *The Limits of Unbundled Legal Assistance: A Randomized Study in a Massachusetts District Court and Prospects for the Future* (draft March 2012).
- 25** See for example, Carol McEown, *Civil Legal Needs Research Report* (Vancouver: Law Foundation of BC, 2nd Edition, March 2009) at 30; Community Legal Education Ontario, *Tapping the Community Voice: Looking at Family law Self-Help through an Access to Justice Lens – Themes and Recommended next Steps* (Toronto: CLEO, September 2009) at 3.
- 26** See <http://www4.hrsdc.gc.ca/3ndic.1t.4r@-eng.jsp?iid=31>.
- 27** Rebecca Sandefur and Aaron Smyth, *Access Across America: first report of the Civil Justice Infrastructure Mapping Project* (Chicago: American Bar Foundation, 2011) at 21.
- 28** <http://worldjusticeproject.org/>.
- 29** 2011 World Justice Project, <http://worldjusticeproject.org/publication/annual-reports/annual-report-2011>.
- 30** Michael Trebilcock, *Report of the Legal Aid Review, 2008* (Prepared for Ontario Attorney General, Chris Bentley) (Toronto: AG ON, 2008).
- 31** Based on the *Annual Budget Estimates* from BC, NS and ON over the past decade.
- 32** See; Ting Zhang, *Costs of Crime in Canada, 2008* (Ottawa: Justice Canada, 2008) at 5.
- 33** CBA Systems of Civil Justice Task Force, The Right Hon. Brian Dickson, Hon. Chair, *Systems of Civil Justice Task Force Report* (Ottawa: CBA, 1996).

- 34** The CBA Legal Futures Initiative is canvassing the legal profession, the public, and other stakeholders for their opinions about these concepts.
- 35** Dame Hazel Genn, "What is Civil Justice For?" (2012) 24:1 *Yale Journal of Law & the Humanities* 24 Art. 18.
- 36** Dr. Ab Currie's Canadian research highlights the relationship between legal problems and health problems, demonstrating a strong policy rationale for connecting access to justice policy with other public policy concerns. His findings also show the ways in which lack of access to justice reinforces social exclusion faced by certain groups in Canada, particularly people with disabilities.
- 37** See; Macfarlane, *supra*, note 6; See also reports from the Canadian Forum on Civil Justice, <http://www.cfcj-fcjc.org/>.
- 38** Yvon Dandurand and Michael Maschek, *Assessing the Economic Impact of Legal Aid – Promising Areas for Future Research* (Prepared for the Law Foundation of British Columbia, 2012). See also, Canadian Forum on Civil Justice, <http://www.cfcj-fcjc.org/cost-of-justice>.
- 39** *Ibid.*
- 40** Laura K. Abel, *Economic Benefits of Civil Legal Aid*, National Centre for Access to Justice at Cardoza Law School (4 September 2012).
- 41** See a summary of recent studies in the Committee's *Future Directions for Legal Aid Delivery* (Ottawa: CBA, 2013) at 10-11.
- 42** Richard Zorza, "The Access to Justice "Sorting Hat": Towards a System of Triage and Intake That Maximizes Access and Outcomes" (2012) 89:4 *Denver University Law Review* 859 at 861.
- 43** *Ibid.*
- 44** The CBA's Legal Futures Initiative is likely to also consider limited scope retainers and their utility in increasing access to justice, in their research and consultation on how best to provide legal services in a changing, client-driven market. The Initiative may examine these innovations from a regulatory and a business structure lens, considering their future impact on the Canadian legal profession.
- 45** For more detail, please see the Committee's working paper on legal expense insurance at <http://www.cba.org/CBA/Access/PDF/WorkingPaper1LegalExpenseInsurance.pdf>
- 46** See Resolution 12-07-A, *Improving Access to Justice through Legal Expense Insurance*.





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# map to equal justice

- By 2020, all graduating law students have a basic understanding of access to justice
- By 2020, all Canadians living below the poverty line are eligible for full coverage of essential public legal services
- By 2020, all law schools in Canada have one student legal clinic
- By 2020, national benchmarks for legal aid coverage, eligibility and quality of legal services are in place
- By 2020, all lawyers volunteer legal services at some point in their career
- By 2020, limited scope legal services are only offered in situations where they meet the meaningful access to justice standard
- By 2025, all legal aid programs provide meaningful access to justice for essential legal needs
- By 2025, alternative service delivery models exist to provide legal services for low and middle income Canadians
- By 2025, all Canadians whose income is less than twice the poverty line are eligible for full coverage for essential public legal services
- By 2025, the justice system does not rely on volunteer services to meet essential legal needs
- By 2030, 80% of lawyers in people centered practices work with an integrated team of service providers
- By 2030, 75% of middle income Canadians have legal expense insurance
- By 2030, three centres of excellence for access to justice research have been established
- By 2030, options for a viable national justice care system have been fully developed and considered
- By 2030, substantial experiential learning experience is required of all law students

- By 2020, justice organizations have plans to harness technology to advance access and ensure inclusivity
- By 2020, PT's have established effective triage systems guiding people along pathways to justice
- By 2020, legal health checks are a routine feature of the justice system
- By 2030, 5 million Canadians have received legal capability training

- By 2020, Canadians have a greater sense of public ownership of the justice system
- By 2025, all PT's engage in regular dialogues with the public

By 2025, courts are re-centered within the civil justice and resourced to provide tailored public dispute resolution with triage and referral processes

- By 2020, the CBA has increased its capacity to provide support to access to justice initiatives
- By 2020, the federal government reinstates legal aid funding to 1994 levels and commits to increases in line with national legal aid benchmarks
- By 2020, the first annual access to justice metrics report is released – by 2030, this report is comprehensive
- By 2020, the amount of access to justice research in Canada has doubled
- By 2020, Canada has a Canadian Centre for Justice Innovation
- By 2025, justice system stakeholders have increased their innovation capacity by committing 10% of time and budgets to research and development
- By 2025, the federal government is fully engaged in ensuring an equal and inclusive justice system
- By 2025, Canada has a sustainable access to justice research agenda

By 2020, effective ongoing collaborative structures with effective leadership are well established at the FPT levels, and Access to Justice commissioners are appointed

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## LEGEND

- facilitating everyday justice
- transforming formal justice
- re-inventing service delivery
- building public engagement and participation
- building collaboration and effective leadership
- building the capacity for justice innovation

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