



**ACCESS<sup>TO</sup> JUSTICE BC**

## **Access to Justice Measurement Framework**

**Measurement Working Group<sup>1</sup>**

A2JBC is proposing a measurement framework to support a shared approach to monitoring and evaluating improvements in access to justice in British Columbia. The framework is inspired by a Triple Aim approach originally developed in the health sector.<sup>2</sup> It is a flexible framework that can be used by justice system stakeholders in BC to align their various monitoring and evaluation efforts, and to learn from each other's experience with access to justice innovation.

### **Accessible Justice**

Access to justice, as a concept, encompasses all the elements needed to enable people to identify and manage their everyday legal needs and address their legal problems, seek redress for their grievances, and demand that their rights be upheld.

The Action Committee on Access to Justice in Civil and Family Matters (2013) proposed an expansive, user-centered vision of an accessible family law and civil law justice system. It is a system that includes the necessary institutions, knowledge, resources, and services to avoid, manage, and resolve civil and family legal problems and disputes. That system, according to the Committee's vision, must be able to do so in ways that are as timely, efficient, effective, proportional, and just as possible:

- by ensuring public awareness of rights, entitlements, obligations and responsibilities

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<sup>2</sup> See, for example, Berwick, Nolan & Whittington, 2008.

- by preventing disputes and by early management of legal issues;
- through negotiation and informal dispute resolution services; and
- where necessary, through formal dispute resolution by tribunals and courts

## Access to Justice BC

Access to Justice BC (A2JBC) is a network of justice system stakeholders collectively committed to achieving access to justice in BC. It seeks to break down silos, align justice stakeholders in the pursuit of the access to justice goal, and support and encourage collaborative, innovative, user-centred and evidence-based access to justice initiatives implemented by stakeholders.

A2JBC has adopted a *Framework for Action* that sets out how it intends to contribute to system-wide changes that focus on the experience of users. The *Framework for Action* is founded on the three-pronged balanced objective to: (1) improve population access to justice outcomes; (2) improve user experience of access to justice; and, (3) improve costs.

## Access to Justice Goals

A2JBC has yet to define its vision of “access to justice”. The Action Committee, established in 2007 by Chief Justice McLachlin, developed the following justice development goals<sup>3</sup> that provide content to the concept:

- Address everyday legal problems
- Meet legal needs
- Make courts work better
- Improve family justice.

The Canadian Bar Association’s report on “Equal Justice” (CBA, 2013) identified the following major access to justice goals:

- Ensuring substantive and procedural fairness
- Satisfying disputants’ substantive interests
- Satisfying disputants with the dispute resolution process itself
- Reducing risks related to disputes
- Reducing harm to disputants and others, including society generally

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<sup>3</sup> <http://www.justicedevelopmentgoals.ca/goals>

- Providing greater choice in dispute resolution processes for disputants and ADR professionals
- Increasing disputants' capabilities to handle other disputes
- Promoting productive relationships between disputants
- Satisfying disputants with the services of dispute resolution professionals
- Improving the culture of disputing for disputants, professionals, and society
- Promoting compliance with social policies expressed in the law, such as non-discrimination

Reliable and meaningful metrics and benchmarks are needed to measure progress towards these goals.

## The Need for a Measurement Framework

The primary focus of A2JBC is to catalyze action and produce a measurable and significant improvement in access to civil and family justice in the province. This requires the collection of data and the development of agreed upon metrics to both guide action and measure its impact.

At the national level, the Action Committee on Access to Justice in Civil and Family Matters made it clear that reliable and meaningful metrics and benchmarks need to be established across all levels of the system in order to evaluate the effects of reform measures: "We need better information in the context of increasing demand, increasing costs and stretched fiscal realities" (2013:23).

Because A2JBC is a collaborative impact initiative that seeks to achieve access to justice for all British Columbians by stimulating specific access to justice initiatives among stakeholders, it requires a measurement framework (an access to justice matrix) to monitor changes in the BC population's overall access to justice, evaluate the impact of various initiatives and innovations, and learn from experience. The adoption of the measurement framework by justice system stakeholders will contribute to positive system change by encouraging a logical, focused and transparent approach to measurement that informs justice system policy, programs and innovations, and by generating data to assist in making the case for access to justice funding.

## Purpose of the Measurement Framework

The measurement framework will serve two complementary purposes:

- Provide an overall measurement framework to monitor the experience of the population (and sub-populations) managing their everyday legal needs and in accessing the justice system, and provide evidence of the value (costs and benefits) of improved access to justice.
- Provide justice system stakeholders with a shared frame of reference in order to align their efforts to monitor, evaluate and learn from the impact of their respective initiatives to improve access to justice;

The goal is not to ensure that the impacts of all access to justice initiatives are measured the same way, using standardized indicators or a single methodology. In fact, given the varied nature of these initiatives, it is neither desirable nor possible to impose a one-size-fits-all outcome measurement model.

A2JBC hopes that its partners and stakeholders will chose to use the framework when measuring the population's access to justice or the outcomes of a particular initiative. The measurement framework identifies key, logically related, dimensions of access to justice, each encompassing different elements for which a number indicators (or measures) can be adopted or developed. Focussing on a subset of these indicators is all that may be required to monitor the impact of any given initiative, depending on its nature, scope, and specific goals.

## Triple Aim Thinking

The term 'Triple Aim' refers to the simultaneous pursuit of improving the population's access to justice, improving people's experience of the justice system when attempting to resolve a legal problem, and ensuring that the costs of providing access to justice are sustainable. It is essentially, at a high level, a cost-benefit approach to thinking about access to justice, where the benefits are defined in terms of both population access to justice and the user experience of the justice system.



Implicit in the Triple Aim notion is the idea that its three elements are interdependent and that all initiatives to improve access to justice must find an

appropriate balance of the three elements in the context of various policy, financial, and other practical constraints.

Also implicit in the Triple Aim notion is the idea that action is simultaneously required at different levels and that it is therefore difficult to isolate the respective impact of various initiatives on the overall goal of improved access to justice in British Columbia.<sup>4</sup> As a result, there is a need for both a set of high-level indicators of access to justice at the population and sub-populations levels, as well as a flexible measurement framework to monitor and evaluate the impacts of innovative ideas and initiatives to improve various aspects of access to justice.

## The Main Elements of the Framework

The measurement framework is based on three elements:

- Improving population access to justice outcomes (including equity among sub-populations, between different regions, etc.)
- Improving user experience (including the development of legal capability and improving the quality of the services users receive)
- Improving costs

To measure the population's access to justice, four main dimensions are identified: (1) the prevalence of legal problems within a given population or for the whole of the province; (2) the system's response to legal needs; (3) fair and equitable access to justice; and, (4) the social and economic impact of access to justice.

Five dimensions are identified in order to measure user experience: (1) the users' experience of accessing the justice system and the obstacles encountered; (2) the quality of the users' experience of the justice system; (3) the effectiveness of access to justice in addressing user legal problems; (4) the appropriateness of the justice process; and, (5) the justice outcomes from the point of view of the users.

The third component, on costs of access to justice, includes three dimensions: (1) the per-capita costs of the justice system (or any of its components); (2) the per user costs of various services (or pathways to justice); and, (3) other costs of access to justice.

The measurement framework incorporates both high-level (e.g., province-wide) indicators of access to justice and indicators relating more directly to the impact

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<sup>4</sup> Impact attribution will remain a challenge. It will at times be impossible to isolate the respective impacts of simultaneous initiatives or to distinguish their impact from that of other changes in the justice system, the social context, or the needs and priorities of people with legal needs.

of specific projects or initiatives. Over time, there may even be efforts in some sectors, for example in the area of public legal education and information, to develop some standardized and more specific indicators.

### Main Dimensions Captured by the Measurement Framework



### Characteristics of the Measurement Framework

The Canadian Bar Association's report on "Equal Justice" (CBA, 2013) suggested the following principles to underpin a measurement framework:

- *Comprehensiveness*: The data gathered should be comprehensive, allowing assessment of performance against all objectives
- *Consistency*: Data should be gathered in a manner that is consistent, allowing comparison across different service types, service providers, and pathways to justice;
- *Economy and simplicity*: The simplest and least expensive data collection methods should be used;
- *Data capable of aggregation and disaggregation*: Data should be gathered in a way that is capable of aggregation and disaggregation;

- *Relevance*: Data gathered should be relevant to the agencies and individuals providing it as well as to government objectives;
- *Timeliness*: Data should be gathered frequently enough and released soon enough after gathering to retain relevance for decision makers.

A broad approach to access to justice in civil and family law matters does not only look at the per capita costs of offering existing services (cost-effectiveness), both also compares the costs and benefits of various approaches and initiatives (cost-benefit analysis).<sup>5</sup> It must consider who is bearing these costs (including transactions costs for people facing legal problems and costs to other sectors), as well as the social and other costs of not preventing conflict and not offering effective conflict resolution options to people with legal problems. It must also try to define what are satisfactory justice outcomes and how they can be improved. When there are inter-sectoral issues, in which justice is a part, the outcomes should focus on the overall outcomes for the members as well as the justice outcomes. Finally, it would take a broad view of the various dimensions of the “user experience” that need to be improved and measured (e.g., quality, acceptability, appropriateness, accessibility, effectiveness).

The A2JBC measurement framework is:

- Value-based and relates to the moral imperative behind the need to improved access to justice
- Multidimensional, capable of capturing the complexity of a broad collective-impact initiative
- Flexible in order to enable learning about evolving goals, objectives, and strategies
- Designed to offer sensible feedback to managers and policy makers
- Including metrics that are intuitive, non controversial and referring in clear terms to the outcomes the system is intended to deliver

## Units of Analysis

***A given population as a unit of concern:*** The frame of reference for the Triple Aim approach is the recognition of a given population as the unit of concern. This involves specifying the population of concern for each potential dimension of the measurement framework and its related indicators. Within a defined population, various sub-populations may be of interest. Sub-populations can be defined in a variety of ways, including by gender, age, income, eligibility to

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<sup>5</sup> Unfortunately, this aspect is often poorly integrated in access to justice initiatives due to the lack of data, the lack of funding for proper cost-effectiveness and cost-benefits analyses, and the lack of cost-able comparison programs and approaches.

services, race-ethnicity, or type of legal needs. In addition, there is also a keen interest in capturing data about the access to justice experience of particularly vulnerable populations that encounter specific legal problems or obstacles to access to justice.

When it comes to initiatives to improve people's ability to manage their everyday legal needs (their legal capability) or awareness of their rights and obligations, or to prevent conflict, whole populations or sub-populations are usually the target (and the reference group). Alternatively, when the focus is on unrepresented litigants in court, only a subset of that population is relevant. In principle, it is only when the target population is specified that it becomes possible to measure this group's experience of legal problems and of the justice system, the justice outcomes that were achieved for members of this group, and the per-user costs of the process. Consequently, specifying the relevant target population(s) is an important step in the development of access to justice metrics, keeping in mind also that gathering data on some of these populations is harder than for others.

**Legal problems:** It is important to measure access to justice as it relates to different types of legal problems. The assumption is usually made that people recognize problems but do not always see them as legal (or as justiciable problems).

**Paths to justice:** Another relevant unit of analysis is the "path to justice" taken by individuals with a legal need or legal (or justiciable) problem. Choosing that construct as a unit of analysis makes it possible to focus on various aspects of the justice process and on their costs, quality, and outcomes from a user perspective. One must also keep in mind that most legal needs are met outside the formal legal system. This presents challenges in terms of defining metrics that apply to both formal and informal paths to addressing legal problems.

## Structure of the Measurement Framework

Table 1, below, summarizes the main dimensions related to each element of the Triple Aim, as well as the key components of each dimension that together make up the proposed access to justice measurement framework. Following the table is a detailed description, under each elements of the Triple Aim, of the main dimensions related to that aspect and the main components that form part of each dimension. When possible, examples of measures that could be used for each of these elements are also offered.



Table 1 - Access to Justice Measurement Framework - Summary		
Elements	Dimensions	Components
<b>Improving Population Access to Justice</b>	<b>Prevalence of legal needs/problems</b>	<ul style="list-style-type: none"> <li>• Prevalence of legal problems in the population</li> <li>• Prevalence of unaddressed legal needs in the population</li> <li>• Public legal awareness</li> </ul>
	<b>Response to legal needs</b>	<ul style="list-style-type: none"> <li>• People's choice of path to justice</li> <li>• Legal information and education needs</li> <li>• Legal advice needs</li> <li>• Need for legal representation and other legal assistance</li> <li>• Need for consensual dispute resolution process</li> </ul>
	<b>Fair and equitable access to justice</b>	<ul style="list-style-type: none"> <li>• Accessibility of justice system for British Columbians               <ul style="list-style-type: none"> <li>• Including geographical access, accessibility for Indigenous people, accessibility for people with mental illness, and accessibility for immigrants and refugees</li> </ul> </li> <li>• Financial access to justice system</li> <li>• Timeliness of access to justice system</li> </ul>
	<b>Social and economic impact of access to justice</b>	<ul style="list-style-type: none"> <li>• Social policy objectives</li> <li>• Protection of people's rights</li> <li>• Public confidence in the justice system</li> <li>• Public confidence in social institutions</li> <li>• Gender equality</li> <li>• Justice for Indigenous people</li> <li>• Social &amp; economic costs and benefits of access to justice</li> </ul>
<b>Improving User Experience of Access to Justice</b>	<b>User experience of obstacles to access to justice</b>	<ul style="list-style-type: none"> <li>• Obstacles to access (distances, technology, affordability)</li> <li>• Eligibility to services</li> <li>• Affordability of services</li> <li>• Delays in accessing justice services and their impact</li> </ul>
	<b>Quality of user experience of the justice system</b>	<ul style="list-style-type: none"> <li>• Quality of legal information and education</li> <li>• Trust and confidence in legal information</li> <li>• User empowerment</li> <li>• Quality of referral services</li> <li>• Quality of legal advice</li> <li>• Quality of legal assistance and representation</li> <li>• Experience of self-represented litigants</li> <li>• Quality of consensual dispute resolution processes</li> </ul>
	<b>Effectiveness of justice system in addressing user legal problems</b>	<ul style="list-style-type: none"> <li>• Effective resolution of legal problems</li> <li>• Mitigated impact of legal problems</li> <li>• Prevention of legal problems</li> <li>• Prevention of conflicts</li> <li>• Unmet legal needs and their consequences</li> <li>• Limits to the assistance received</li> </ul>
	<b>Appropriateness of the justice process</b>	<ul style="list-style-type: none"> <li>• Fairness, equity and impartiality of the process</li> <li>• Cultural appropriateness</li> <li>• Voice and participation</li> </ul>
	<b>Justice outcomes for the users</b>	<ul style="list-style-type: none"> <li>• Outcomes of the justice process</li> <li>• User satisfaction with outcomes of justice process</li> <li>• Compliance with court orders, judgments, and mediated agreements</li> <li>• Post-resolution support</li> <li>• User enhanced legal awareness</li> <li>• Enhanced legal capability</li> </ul>
<b>Improving Costs</b>	<b>Per-capita costs of services</b>	<ul style="list-style-type: none"> <li>• Per capita costs of services</li> <li>• Impact on new initiatives on per-capita costs</li> </ul>
	<b>Per-user costs of services</b>	<ul style="list-style-type: none"> <li>• Per user costs by type of services</li> <li>• Impact of new initiatives on per-user costs</li> </ul>
	<b>Other costs</b>	<ul style="list-style-type: none"> <li>• Social and economic costs of unresolved legal problems</li> <li>• Impact of unresolved problems on costs in other sectors</li> </ul>

## Improving Population Access to Justice (Aim #1)

In order to determine whether the justice system includes the necessary institutions, knowledge, resources, and services to help British Columbians avoid, manage everyday legal issues, and avoid or resolve civil and family legal problems and disputes, access to justice is measured in relation to four key dimensions:

- 1- Prevalence of legal problems
- 2- Response to legal needs
- 3- Fair and equitable access to justice
- 4- Social and economic impact of access to justice

As mentioned before, a given population is a unit of concern when measuring access to justice. A2JBC is focussing on the situation in British Columbia, but there are instances where comparisons between the population of this province and other population will also be instructive. It will be useful when appropriate to collect disaggregated data (by age and gender) and for different segments of the population, including groups that are particularly vulnerable or may face specific obstacles to access to justice. Given that access to justice is likely to vary geographically, geographical differences within the population should also be captured whenever feasible.

### 1.1. Prevalence of Legal Needs or Problems within Population

#### 1.1.1 Prevalence of legal problems in the population

***Prevalence of legal problems:*** *The extent to which the population (or a sub-population) is experiencing legal problems, or a specific type of legal problem.* (This can also include decisions people make not to address a legal problem)

This “demand-oriented” approach to measuring access to justice focuses on the legal problems experienced by people, or their legal needs. The focus is on people with legal needs or legal problems. The focus can also be on so-called “essential legal needs”. According to a report of the Canadian Bar Association, “essential legal needs are legal problems or situations that put into jeopardy a person or a person’s family’s liberty, personal safety and security, health, equality, employment, housing or ability to meet the basic necessities of life” (Buckley, 2016: 1).

#### **Measures**

- Prevalence of legal problems and severity of legal problems (by type of legal problem)
- Percentage of people with one or more legal problems

### 1.1.2 Prevalence of unmet legal needs in the population

***Prevalence of unaddressed legal needs:*** *The extent to which the population is experiencing legal needs that remain unaddressed.*

A subset of this category can be defined as an unaddressed essential legal need, or the extent to which the population is experiencing unaddressed essential legal needs.

A significant portion of legal needs go unmet. In fact, many people, as a result of lack of knowledge or external advice, do not realise that their problem may be regulated by law and has a remedy obtainable through the legal system. These people may have as great (or perhaps greater) a legal need as those who are aware of their legal need, but their lack of legal awareness is preventing them from accessing the justice system.

For many people, this problem is compounded by the additional clustering of other legal, social, and health related problems, all of which come at significant costs to the individual and the state (Farrow, 2014).

Access to justice can be defined in terms of whether people's needs are met (Farrow, 2014), including and especially the needs of vulnerable groups (CBA, 2014). Socially excluded groups are more vulnerable and this vulnerability compounds the effects of unresolved legal problems. It also makes it more challenging for them to navigate the justice system (CBA, 2014).

Civil justice and family problems are pervasive in people's lives. Some of these legal problems are experienced by a large number of people, while other problems are experienced more frequently by some vulnerable groups (immigrants, institutionalized people, etc.). The majority of people who experience legal problems do not ask for legal help. This is particularly true of people who experience debt problems and other poverty law issues, and less so for people who face family law problems or are threatened with legal action (McEown, 2009).

The unaddressed legal needs of litigants are revealed in part by the number of unrepresented or underrepresented litigants (accused) found in these legal systems. However, as was pointed out in a Department of Justice study, "the number of unrepresented litigants in family and civil courts, while an important problem, is only the tip of a very large iceberg in civil justice" (Currie, 2007: 88).

Legal issues are often triggered by underlying problems, or lead to further problems. Disadvantaged people with complex and multiple needs are often reluctant to access services. Legal services providers must be aware of cultural, economic, health, and poverty issues (see: McDonald & Wei, 2016).

**Measures**

Proportion of people who have identified legal needs who are able to self-manage those needs

### 1.1.3 Public legal awareness

**Public legal awareness:** *The level of public awareness of rights, entitlement and obligations under the law (by type of law, type of legal problem).*

**Measures**

- Level of awareness of specific rights or entitlements within a population
- Level of understanding of certain rights and obligations

## 1.2 Extent to Which the Legal Needs of the Population are Met

### 1.2.1 People's choice of a path to justice

**Choice of a path to justice:** *The decisions people make about how to address legal problems (by type of problem).*

In addition to measuring the prevalence of various legal problems (in various population), it is also important to understand the nature of the decisions that are made by people with a legal problem in terms of their choice of a path to justice.

We can be inspired here by the national survey conducted by the Canadian Forum on Civil Justice on “Everyday Legal Problems and the Cost of Justice in Canada” (Farrow, et al., 2016). That survey looked at legal problems from the point of view of the people experiencing them and taking different paths to resolve them. Survey respondents were asked about the path to justice the used (if any) to address their legal problem, and whether they were satisfied with the path they had chosen.

The findings from surveys examining the various paths to justice have helped build a substantial evidence base around people's experience of justiciable problem (Pleasence, Balmer & Sandefur, 2013; Jacobs, Kryzaitys & McManus, 2015). There is a substantial body of evidence on the incidence of justice problems, but there is less understanding about how and why people try to resolve their problems (Pereira, Perry, Greevy & Shrimpton, 2015).

We must keep in mind that there are efforts to create new pathways to justice using simple artificial intelligence and online dispute resolution – technologically pathways into the justice system (Thompson, 2015), and the digital delivery of legal services to people on low incomes (Smith, 2016).

**Measures**

- Proportion of people experiencing a legal problem who contact a lawyer to solve their problem
- Proportion of people experiencing a legal problem who seek various forms of assistance (by type of assistance, by type of legal problem)
- Proportion of people experiencing a legal problem who go to court or a tribunal to solve the problem (by type of legal problem)

### 1.2.2 Legal information and education needs

**Improved legal information:** *The extent to which the legal information and education needs of the population are being met.*

#### Measures

- The extent to which the relevant legal information can be found and accessed by people with an everyday legal need or a legal problem (by type of legal problem, by type of legal information)
- Understandability of legal information
- Comprehensiveness and accuracy of legal information
- Public perception of relative accessibility of various types of legal information (by type of legal problem, and type of information)
- Perceived trustworthiness of legal information (by type of information and type of information delivery)
- Perceived usefulness of the information in enabling the user to manage their legal need or legal problem-solving process
- Lawyers' perception of legal information accessibility
- Changes in the amount and quality of legal information resources available
- Content analysis of legal information

### 1.2.3 Legal advice needs

**Need for legal advice:** *The extent to which people who express a need for legal advice are able to obtain legal advice (by type of legal problem).*

### 1.2.4. Need for legal representation and other legal assistance

**Need for legal representation:** *The extent to which people who express a need for legal representation (or assistance) are able to access effective legal representation and other forms of legal assistance (by type of problem, type of cases, type of proceedings).*

### 1.2.5 Need for consensual dispute resolution process

**Need for consensual dispute resolution process:** *The extent to which people who express a need to access an alternative dispute resolution mechanisms*

*have access to such a mechanism (by type of problem, type of cases, type of proceedings).*

## 1.3 Fair and Equitable Access to Justice

### 1.3.1 Accessibility of justice system for British Columbians

**Accessibility of justice system:** *The ability of British Columbians to afford, understand, use, and navigate services within the justice system to seek assistance in managing everyday legal needs or a solution to a legal problem (by gender, geographical region, age, etc.)*

#### 1.3.1.1 Accessibility for Indigenous people

**Access to justice mechanisms by Indigenous persons:** *The ability of Indigenous persons to afford, understand, access, use, and navigate services within the justice system to manage their everyday legal needs or resolve their legal problems.*

#### 1.3.1.2 Accessibility for people with mental illness

**Access to justice system by people suffering from a mental illness:** *The ability of persons suffering from a mental health related issues to receive meaningful legal assistance services in an effort to understand their legal needs and help them resolve their legal problems.*

Persons suffering from a mental illness are more likely to become entangled in legal problems. Their illness may also affect their ability to seek out and use legal assistance services, as well as their ability to understand the potential legal, social and financial consequences of these legal problems. However, as MacFarlane (2013) pointed out, without clinical and diagnostic expertise, it difficult to identify this population, or to monitor their contacts with the justice system.

#### 1.3.1.3 Accessibility for immigrants and refugees

**Access to justice system by immigrants and refugees:** *The ability of immigrants and refugees to receive meaningful legal assistance services in an effort to help them manage their everyday legal needs and resolve their legal problems.*

### 1.3.2 Financial access to justice system

**Financial access to justice system:** *The proportion of the population which cannot access a particular path to justice because of their financial situation.*

This dimension could lend itself to inter-provincial comparisons. It could also include a measure of the proportion of people reporting a legal problem who are expected to qualify for legal assistance, by type of problem.

The financial eligibility criteria limiting access to certain services (e.g., legal aid) may be set on the basis of income, family size and type, property and assets, debts, area of residence, receipt of social assistance, the merit, urgency, and complexity of the case, among other factors).

In Canada, legal aid services are provided through separate legal aid plans in each province and territory. The services provided by legal aid plans may include legal representation, advice, referrals, and information services. The extent of coverage varies among provinces and territories. Tsoukalas and Roberts (2002) noted that, “across Canada, there are a variety of criteria and provision of services based on differing ideas and definitions of what it is to be economically disadvantaged, and the appropriate or necessary legal services that should be provided” (p. 3).

When determining eligibility, it seems that all legal aid plans in Canada take into consideration the applicant’s (1) income; (2) family size and composition; (3) assets; and (4) debts. Additionally, other varying factors may include the merits of the case, case urgency and complexity, whether the applicant is receiving social assistance, the area of the applicant’s residence (i.e., an urban or rural community), and whether the interests of the applicant will be best served by legal aid.

These measures of legal aid eligibility are concerned primarily with financial access for lower income populations. It will also be important to develop measures that relate to the financial capacity of middle income earners to access the justice system.

### **Measures**

- The proportion of legal aid applicants who qualify for the service (by type of legal aid service)
- The proportion of legal aid applicants who receive the service (by type of legal aid service)
- The proportion of potential applicants for legal aid services self-selecting out
- The total number of persons in receipt of legal aid
- The proportion of people with a legal aid problem who receive legal aid and/or other legal assistance
- Public perception of the fairness of the eligibility criteria used for determining access to legal services

### 1.3.3 Timeliness of access to justice system

**Timeliness of access to justice system:** *People's experience of delays in accessing the justice system.*

#### Measures

- Delays in accessing a consensual dispute resolution
- Delays in accessing court
- Delays in accessing legal aid
- Costs and consequences of delays in accessing the justice system
- Province-wide breakdown of cases by length of time to conclude
- Median time to obtain first appearance in court
- Median time to conclude court cases by type of cases

## 1.4 Social Impact of Justice System

### 1.4.1 Social policy objectives

**Achievement of social policy objectives:** *The extent to which various changes in level of a population's access to justice are linked to achieving various social policy objectives.*

### 1.4.2 Protection of people's rights

**Protection of people's rights:** *The extent to which changes in the level of access to justice by the population are contributing to the protection of people's rights (e.g. the prevention of discrimination, the best interests of the child, etc.).*

### 1.4.3 Public confidence in the justice system

**Public confidence in the justice system:** *The extent to which changes in the level of access to justice by the population affects that population's confidence in the justice system.*

Perceptions of institutions are often based on interrelated feelings of confidence and trust in institutions. While some research on perceptions of institutions uses the terms confidence and trust interchangeably, the two are related, but distinct concepts. In this sense, confidence is related to perceptions of an institution's ability to perform its duties, while trust is related to actions, interpersonal experiences and expectations, and perceptions of integrity.

Confidence or trust in the justice system has also been defined as "the belief among members of the public that the justice system has the appropriate intentions toward them and is competent in the tasks assigned to it" (Hough, Radford, Jackson & Roberts, 2013, p. 11).



The General Social Survey (GSS) regularly conducted by Statistics Canada contains general questions on Canadians' confidence in justice and other institutions (see also: Roberts, 2004).

### Measures

- Proportion of people with and without a current legal problem who believe that the justice system is mostly fair.
- Proportion of people with and without a current legal problem who believe that the justice system is effective in helping people resolve their legal problems.
- Proportion of people who believe that the justice system is relevant to them, either in assisting in managing their everyday legal needs or their legal problems. Whether and to what extent the justice system is perceived as effective in helping people manage their everyday legal needs and solve their legal problems.
- The level of confidence in the justice system expressed by people who have had contacts with that system as compared to that of the rest of the population.
- The level of confidence in the justice system expressed by British Columbians as compared to that of the population in other parts of Canada.
- The level of confidence in the judiciary expressed by the population.
- Variations in the level of confidence in the justice system within different segments of the British Columbian population (e.g., Indigenous population, immigrants, etc.).

### 1.4.4 Public confidence in social institutions

***Public trust and confidence in social institutions:*** *The extent to which changes in the level of access to justice by the population affects that population's trust and confidence in social institutions.*

Public confidence in the justice system is known to affect public confidence in other institutions including governance and political institutions. The OECD has suggested the development of an indicator to measure public trust in institutions. The OECD noted that the level of citizen trust in public institutions has been a key policy concern in recent years. It added that "(t)rust is one of the foundations upon which the legitimacy and sustainability of political systems are built, is crucial to the implementation of a wide range of policies, and it influences behavioural responses from the public to such policies" (OECD, 2014:2). Trust in institutions captures how citizens perceive the effectiveness of public institutions in delivering good governance. The OECD is currently in the process of developing Guidelines on Measuring Trust, which are expected to be completed in 2017.

### 1.4.5. Gender equality

**Gender equality:** *The extent to which changes in the level of access to justice by the population are translating legal guarantees of gender equality into real improvements in the daily lives of women.*

### 1.4.6 Justice for Indigenous People

**Justice for Indigenous people:** *The extent to which changes in the level of access to justice by Indigenous people are translating into real improvements in the daily lives of Indigenous individuals and families.*

In its “Calls to Action”, in keeping with the United Nations Declaration on the Rights of Indigenous Peoples, the Truth and Reconciliation Commission (2015) called “upon the federal government, in collaboration with Aboriginal organizations, to fund the establishment of Indigenous law institutes for the development, use, and understanding of Indigenous laws and access to justice in accordance with the unique cultures of Aboriginal peoples in Canada” (recommendation 50).

The recent report of Special Advisor Grand Chief Ed John, “Indigenous Resilience, Connectedness and Reunification: From root causes to root solutions” (2016) explained that the justice system is not serving the best interests of Indigenous children and youth, parents, and families. The report contains several specific recommendations (recommendations 12 to 19) on how to improve access to justice for Indigenous children, youth and families.

### 1.4.7 Social and economic costs and benefits of access to justice

**Social and economic development:** *The extent to which changes in the level of access to justice by the population affects that population’s social and economic development and promote inclusive growth.*

The inability to access legal and justice services can be both a result and a cause of poverty. According to a recent OECD document, “(p)roviding people access to justice enables them to tackle these inequalities, and to participate in legal processes that promote inclusive growth” (OECD and Open Society Foundations, 2016: 6).

**Social and economic benefits of access to justice:** *The social and economic benefits related to the provision to access to justice.*

One can operationalise the concept of “public value” as a performance measure and try to develop a concrete and explicit definition of the public value that an access to justice initiative/activity is trying to create (Moore, 1995).

## Improving User Experience of Access to Justice (AIM # 2)

The second major component of the framework relates to the users' experience of access to justice. It contains five dimensions:

- User experience of obstacles to access to justice
- The quality of the user experience of the justice system
- The effectiveness of the justice system in addressing user legal needs and legal problems
- The appropriateness of the justice process
- Justice outcomes for the users

### 2.1 User Experience of Obstacles to Access to Justice

#### 2.1.1 Obstacles to access (e.g., transaction costs, language; vulnerable groups)

***Obstacles to access to justice:*** *User experience of obstacles to access to justice.*

Many different obstacles and barriers may prevent people from identifying a problem as a legal problem, understanding their legal rights and responsibilities, using legal assistance services to help solve their legal problem, and participating meaningfully in the resolution of their legal problem. These barriers may include costs or affordability of services, procedural complexities, communication challenges, and physical restrictions).

Noone (1992:1) explained that “access to justice may be restricted because of geographical factors; institutional limitations; racial, class and gender biases; cultural differences as well as economic factors. The way legal services are delivered by the legal profession, the nature of court proceedings, including procedural requirements and the language used, are also barriers limiting people’s opportunity to obtain justice”.

Research makes it clear, however, that such barriers are not experienced uniformly by persons with a legal problem. Furthermore, Beqiraj and McNamara (2014) explained that, in practice, “barriers operate simultaneously and have reciprocal effects on each other that intensify their impact” (p. 10).

Schetzer and Henderson (2003) categorized particular groups of socially and economically disadvantaged individuals that are more likely to experience multiple barriers when accessing the justice system, including people with disabilities (i.e., those suffering from an intellectual, physical, sensory, psychiatric, and acquired brain injuries); people from culturally and/or linguistically diverse backgrounds; indigenous peoples; children and young adults; elderly persons; people residing in rural and remote communities; people with low levels of education and literacy; persons who

are gay, lesbian, and transgendered; women; people living in institutions (i.e., prisoners and mentally ill persons in psychiatric facilities); people on low incomes; homeless people; and people who face multiple disadvantages.

According to Chief Justice Beverley McLachlin (2015), “procedural barriers are rules and processes that are more complicated than they should be. This leads to unnecessary delay and cost. And in some cases, it prevents people from using the justice system or availing themselves of their rights. The complicated structure of the court and administrative tribunals, the complex rules and procedures, and the sheer difficulty of finding one’s way in the law, all present formidable challenges to access to justice” (para 14).

Given the challenges associated with understanding complex rules and processes, MacDonald (2005) suggests that “for many people, it is exactly the characterisation of a problem as a legal problem that is the most important barrier to access” (p. 29).

### 2.1.2 Eligibility to services

***Eligibility to Services:*** *Consequences of the criteria established and/or applied to determine whether individuals are eligible to receive services (including, but not limited to free, subsidized, or low cost legal assistance services and benefits from such services).*

#### Measures

- Changes in the eligibility criteria for various forms of legal aid
- Perceived clarity of the application procedure
- Perceived complexity of the application procedure (and required documents)
- Perceived fairness (or its opposite, discrimination) of the eligibility determination process
- Amount of time elapsed between submission of an application for service and determination of eligibility (or notification of eligibility)
- Ease of access to legal assistance (or other services) once an applicant is found to be eligible
- Perceived complexity and accessibility of an eligibility determination appeal process
- Perceived fairness of outcomes of eligibility appeals
- Proportion of people self-selecting out of applying for legal aid or other services
- Proportion of applicants found to be eligible
- Proportion of individuals found eligible for service who actually received that service
- Applicants’ satisfaction of the eligibility determination process and/or its outcome

- Applicants' perception of the relative usefulness of information received about the service and/or about eligibility standards and eligibility determination process

### 2.1.3 Affordability of services

**Affordability of services:** *The extent to which the cost of access to justice services are within the financial means of people facing a justice need or problem*

The costs may be defined either as the direct costs of the services or as the total costs of accessing the services, including additional costs involved in using the services, such as transportation, child care, lost wages, etc.). Affordability indicators must be calculated as a ratio of costs of a particular pathway to justice as a proportion of overall income.

The affordability of particular pathway to justice is determined not only by the costs associated with that pathway, but also by the individual's ability to meet those costs.

On the path to justice, people spend money and other resources such as personal time, existing opportunities, stress and emotions. Improving access to justice therefore means lowering both the monetary costs by making the system more affordable, and also reducing the personal monetary, opportunity and intangible costs. It is important to measure the private costs of justice borne by the user in his/her pursuit to solve a legal problem. The anticipated transaction costs often determine whether an individual will do something to solve the legal problem.

For most participants in the family and civil litigation process the "perceived quality of the outcome will be tempered by the transaction costs involved: for some, justice is unaffordable, which leads to a lack of confidence in the courts. For others, justice comes at too high a price, thus also undermining confidence in the courts and the legal profession" (Victorian Law Reform Commission, 2008: 88).

Several access to justice initiatives are indirectly addressing the affordability issue by trying to improve the mechanisms for the early and inexpensive resolution of civil disputes. From the point of view of access to justice, there is also an interest in ensuring that the costs incurred by users of the system are 'proportional' to the matter in dispute.

#### Measures

- Mean financial expenditures for legal services as a proportion of mean household income (for a given population, or group)
- Perceived affordability of services offered
- Perceived affordability of services received
- Level of subsidies (or loan) offered to render services affordable

### 2.1.4 Delays in accessing justice services and their impact

**Timely referrals:** *The extent to which individuals seeking access to justice mechanisms are appropriately referred to these mechanisms in a timely manner.*

Sometimes delaying access to justice amounts to denying access to justice. The experience of delays and the personal consequences of unnecessary delays are part of the user's experience. These delays can increase the transaction and personal costs associated with various pathways to justice.

This dimension could also be related to the delays experienced in actually accessing a service after being referred to it (including cases where the service cannot be accessed at all after being referred to it).

## 2.2 Quality of User Experience of Justice System

### 2.2.1 Quality and usefulness of legal information

**Quality of Legal Information:** *Individuals seeking information or trying to improve their knowledge of the law received meaningful, credible and trustworthy information about the law (or a legal problem) that is relevant to the jurisdiction in which they find themselves, enables them to identify whether they have a legal problem, and offers direction on how that problem might be addressed or resolved.*

**Usefulness of Legal Information:** *The extent to which general information about the law or a legal problem (not specific to a user's case) is perceived to be helpful (ability to make informed choices and decisions) and to contribute to helping people identify and manage their everyday legal needs and assist in the identification and resolution of a legal problem or the prevention of a legal problem.*

Bond, Wiseman, and Bates (2016) define legal information as “general information about the law that is not tailored to an individual's specific situation, can help a person understand when a problem is a legal problem, and can discuss options and possible next steps, indicate when a person needs to get more help and advice, and how to find that help” (p. 12).

For Sandefur and Smyth (2011), legal information refers to “information about a legal problem or matter that is of a general, factual nature and not specific to any given client's case. Provision of legal information does not form an attorney-client relationship” (p. 146).

Additionally, Buckley (2013) identified four key functions served by public legal education and information:

- Helping people to understand the law, their legal rights and responsibilities, and how their justice system works.
- Helping people to learn how to identify and address their everyday legal needs.

- Helping people to gain an understanding of their legal problems and their options for next steps, including where and how to get more help.
- Helping people to address their legal problems by gaining an understanding of their legal rights and related legal process issues, and taking some or all steps in the process on their own.

Quality of legal information may include: (1) accurate, updated, and relevant based on the jurisdiction in which the clients are (or the legal problem arises); (2) findable by a range of target audiences; (3) written in plain language; (4) credible, trustworthy, and verifiable; (5) useful and useable; and, (6) ability to empower and provide direction for next steps.

#### Measures

- Experience of users in locating and accessing relevant and updated legal information
- Experience of users in using the legal information.
- Extent to which the available information is understood by users
- Whether, in the experience of the users, the legal information provided was helpful in identifying/understanding their legal needs or legal problem(s)
- Whether the legal information provided addressed the users legal needs (users' perception)
- Whether the legal information provided helped users understand what steps to could take to address their legal needs and problem(s)
- Whether, in the opinion of service users, the legal information they received contributed to an effective resolution of their legal problem (or empowered them to resolve their legal problem)

### 2.2.2 Trust and confidence in legal information

***Users' confidence in legal information received:*** *Whether the users of the legal information perceived it to be trustworthy.*

- Extent to which users perceive a legal information source as trustworthy (impartial, competent, and as having integrity)
- Extent to which users perceived the legal information received as accurate, complete, or up-to-date
- Extent to which users perceived the legal information received as reliable
- Proportion of users of a particular service relying on it more than once

### 2.2.3 User empowerment

***User empowerment:*** *Extent to which users of legal information and education are empowered to participate in the management of everyday legal needs and the resolution of legal problems and able to access appropriate services.*

## 2.2.4 Quality of legal advice received

**Quality of legal advice:** *Whether meaningful and credible legal advice about a legal problem received by people with legal problems is delivered competently, tailored to a specific case, and useful in providing direction about how to proceed in addressing that problem.*

### Measures

- Whether people with a legal problem could access free or inexpensive summary legal advice
- Amount of time elapsed between applying/requesting legal advice and receiving the advice
- Whether beneficiaries feel that they are treated with respect by the legal professional providing the legal advice
- Whether the client feel that lawyer-client confidentiality was maintained
- Whether the advice helped the user identify next steps (or path) in resolving the legal problem
- The extent to which the user trusted the legal advice received

## 2.2.5 Quality of legal representation received

**Quality of legal representation:** *The quality of the services provided by a third party acting on behalf of person with a legal problem who is seeking a solution to a legal problem before a court, tribunal, or other adjudicating authority, in terms of whether the service was helpful and aligned with the client's best interests.*

### Measures

- Trust in the service providers providing representation
- Perceived usefulness of the representation provided (whether the legal need was addressed, or the legal problem resolved)
- The extent to which the client felt respected by the service providers
- Satisfaction with the substantive outcome of the case
- Percentage of returning clients

## 2.2.6 Quality of referral services

**Quality of referral service:** *The quality, accessibility and fairness of the process through which an individual (or potential client) is referred to a service that can provide assistance (including specialized or more suitable assistance) or is otherwise helped in navigating to justice system efficiently and effectively.*

This dimension may include whether an individual in need of access to justice is referred or not to suitable services, how that information is communicated, the



timeliness of the referral, and whether the referral leads to access to appropriate service and follow-up actions after the referral.

Trusted intermediaries, who may or may not be service providers, may direct individuals to service agencies or programs. Sometimes clients are also referred to services that can provide additional and more specialized assistance.

The Canadian Bar Association suggests providing so-called ‘warm’ referrals, in which “the organization approached takes responsibility for ensuring that a referral leads to follow up and action rather than leaving that with the individual” (CBA, 2013: 73).

### Measures

- User experience of the quality of referrals for services
- The extent to which various referrals produce favourable outcomes in terms of timely access to the referred service;
- The extent to which the referrals are perceived by the clients as responsive to their needs
- The extent to which referrals are followed up by a referring service provider to ensure that the client received adequate and prompt assistance
- Delays experienced by people in accessing services upon referrals (by type of needs, characteristics of users, type of services)
- Impact on clients of delays in accessing services upon referrals ((by type of needs, characteristics of users, type of services)
- Number of referrals received by an agency (by type of needs, characteristics of users, type of services)
- Timeliness of various referrals from the perspective of the clients
- Appropriateness of referrals (as perceived by clients or by receiving agency)
- Clients’ experience/satisfaction with referral process (by type of needs, characteristics of users, type of services)

## 2.2.7 Experience of self-represented litigants

**Experience of self-represented litigant:** *The path to justice used by unrepresented litigants and their experience in trying to navigate the legal system to resolve their legal problem in the absence of legal representation.*

While financial distress is a strong predictor of self-representation, other factors include distrust and negative predispositions towards lawyers; the litigant perceives their legal problem as simple and straightforward; reliable access to legal help, often from friends or family members; high level of education and professional experience, which may enable them to navigate legal documents and court proceedings; familiarity with courts or legal processes; an amicable relationship between the two parties; desire to retain control over the case; and a litigant may hold a ‘do-it-yourself’ mentality.

## 2.2.8 Quality of consensual dispute resolution processes

**Quality of consensual dispute resolution processes:** *Whether people with a legal problem who chose the path of a consensual dispute resolution process found the process useful, impartial, or effective, and whether they are satisfied with the process.*

### Measures

- User's satisfaction with the consensual dispute resolution process they participated in
- Users' satisfaction with the fairness of the consensual dispute resolution process
- Awareness of available conflict resolution services by people facing a legal problem
- Ease of navigating access to the mechanism (including ability to navigate online dispute resolution platforms)
- Amount of time between filing a case through a consensual dispute resolution mechanism and accessing the mechanism
- Amount of time between filing a case through a consensual dispute resolution mechanism and case resolution

## 2.3 System's Effectiveness in Addressing Legal Problems

### 2.3.1 Effective resolution of legal problems

**Effective resolution of legal problem:** *The extent to which the legal problems faced by justice system users are resolved (by type of problem, type of service).*

### 2.3.2 Mitigated impact of legal problems

**Mitigation of impact of legal problem:** *The extent to which the impact of the legal problem faced by justice system users is being mitigated (by type of problem, type of service).*

### 2.3.3 Prevention of legal problems

**Prevention of legal problems:** The extent to which access to justice services helps service users prevent the emergence of legal problems (by type of problem, type of service, by sup-population).

“Our long range goal is to shift justice system resources away from finding effective ways to deal with legal problems, conflicts and disputes, toward preventing them in the first place” (CBA, 2014: 62).

### 2.3.4 Prevention of conflicts

**Prevention of conflict:** *The extent to which conflicts are prevented, resolved, or prevented from further escalating, and the extent to which the impact of the conflict is mitigated (by type of problem, type of service, by sup-population).*

### 2.3.5 Unmet legal needs and their consequences

**Unmet legal needs:** *The extent to which users' legal needs are unmet and their legal problems are unidentified or unaddressed and the personal consequences of unmet legal needs (Including personal consequences of unmet needs).*

The problem of unmet legal needs is exacerbated by the additional clustering of other legal, social, and health related problems, all of which come at significant costs and consequences for the individual or group experiencing the legal problem (Farrow, 2014: 965).

### 2.3.6 Limits to the assistance received

**Limits to assistance received:** *The extent to which the scope, coverage, and quality of the services provided (or that could be accessed by an individual or a group) prevented the legal needs to be fully met.*

## 2.4 Appropriateness of the Justice Process

### 2.4.1 Fairness, equity and impartiality of the process

**Fairness, equity and impartiality of the process:** *The extent to which users perceive the justice process as fair, equitable and impartial.*

We know that many users judge the outcome of the justice system in relation to the fairness of the process (or procedural justice). However, justice must be more than fair process (Farrow, 2014). Measuring access to justice involves addressing the question of "what is a fair and just outcome", or at the very least "what is a useful outcome" from the point of view of those accessing justice mechanisms. From the user's perspective, the result of the justice process is perceived as favourable or unfavourable; just or unjust; useful or not useful.

As HILL emphasized, "offering citizens a procedure leading to a fair outcome is the core business of courts" (HILL, 2016: 8). The requirement of procedural fairness encompasses a variety of dimensions. One of them is the perception of fairness by users of the system. At least two main things matter when people deal with the authorities: the quality of decision making by the authorities and the quality of the treatment that they receive from them" (Blader & Tyler, 2003).

**Measures**

- The extent to which users perceive the outcomes of the process as fair and impartial (by types of users or specific groups of users; by types of legal problems or legal needs, for each path to justice)
- The extent to which users' substantive interests are satisfied

**2.4.2 Cultural appropriateness**

**Cultural appropriateness of process:** *The extent to which users perceive that the justice services they accessed were delivered in a culturally appropriate and linguistically useful manner.*

**2.4.3 Voice and participation**

**Voice and participation:** *The extent to which an individual can meaningfully participate and be heard in a court of law, tribunal, or other related proceeding in order to resolve his/her legal problem.*

**Measures**

- The extent to which individuals had an adequate and meaningful opportunities for participation.
- The extent to which participants had an informed understanding of the circumstances surrounding the case

**2.5 Justice Outcomes for the Users****2.5.1 User satisfaction with outcomes of justice process****Definition**

**User satisfaction with outcomes of process:** The extent to which users perceive, based on the nature of their legal problem and the circumstances surrounding it, that their best interests were considered, fulfilled, and reflected in the outcome of the justice process.

There are issues with the measurement of client satisfaction, but these are not insurmountable. For example, Curran (2012) points to numerous international studies that have run into difficulty due to the client's level of dissatisfaction with their situation, which may or may not have any relevance to the appropriateness or quality of the legal assistance they received. Nevertheless, some useful indicators can be derived from client satisfaction studies. For example, the Legal Services Society regularly conducts client satisfaction surveys (e.g., LSS & SENTIS, 2015).

**2.5.2 Compliance with court orders, judgments, and mediated agreements**

**Compliance:** *The extent to which court orders, judgements, mediated agreements and other commitments resulting from the justice process are enforced or complied with.*

### 2.5.3 Post-resolution support

**Post resolution support:** *The extent to which people with legal problems are supported following a resolution of their legal problems.*

### 2.5.4. User enhanced legal awareness

**Users' legal awareness:** *Whether, as a result of accessing a particular path to justice service users gain a greater awareness of the law, and of their rights, entitlement and responsibilities.*

Accessibility depends in part on awareness of legal rights and of available procedural mechanisms for the enforcement of such rights. In many instances, as was noted by the Victorian Law Reform Commission, “injustice results from nothing more complicated than lack of knowledge” (Victorian Law Reform Commission, 2008: 90). Surveys have shown that there often is a substantial knowledge deficit with respect to people’s knowledge of legal rights, and many people misinterpret or misunderstand their rights (in the U.K., Wintersteiger, 2015).

### 2.5.5 Enhanced legal capability

**Legal capability:** *Whether people’s experience of access to justice services system empowered and enabled them to manage their legal needs or resolve legal problems beyond the legal problem they were initially concerned with (self-confidence in resolving legal problems or disputes).*

Knowledge, capacity, capability, and understanding are believed to be key prerequisites to access to justice. Legal capability is a key indicator for the effective use of legal services. Surveys have shown that people with low levels of legal capability are more likely not to act, and less likely to sort things out alone: “They are less able to successfully solve legal problems, and are twice as likely to experience stress-related ill-health, damage to family relationships and loss of income” (Wintersteiger, 2015: 3)(see also: Forell and McDonald, 2015).

Collard and Deeming define legal capability as the ability of individuals to recognize and deal with law-related issues that they might face. Legally capable individuals, they argue, should be empowered to deal with law-related issues. They identify four domains of legal capability:

- Recognising and framing the legal dimensions of issues and situations
- Finding out more about the legal dimensions of issues and situations
- Dealing with law-related issues and situations
- Engaging and influencing (Collard & Deeming, 2011: 3).

### 3. Improving Costs (Aim #3)

The third aspects of the Triple Aim is to improve costs or, at the very least, to ensure that access to justice costs remain sustainable. Three distinct dimensions are included in this component:

- Per-capita costs of services
- Per-user costs of services
- Other costs, including the costs of unmet legal needs on the costs of other service sectors

#### 3.1 Per-capita Costs of Services

##### Definition

*Cost of services:* Per-capita costs of delivering various forms of access to justice services (for the population as a whole, for sub-populations, by type of service).

The Canadian Forum on Civil Justice has been doing some interesting work on the costs of civil justice. It noted that: “we know there is a cost to the lack of access to civil justice — but we do not know what these costs are” (The Canadian Forum on Civil Justice, 2012: 5). It also noted that there currently are limited statistics available to capture activities in our civil and family courts and even fewer regarding the broader system intended to serve the overall legal needs of the public. The Forum is currently pursuing a project to fill the current void of evidence-based information about the legal, economic, and social costs and benefits of pursuing, or not pursuing, justice through various dispute resolution pathways.

This leads to questions such as: (1) Is the cost of achieving resolution economically and socially warranted? (2) What choices and changes are recommended based on the available evidence? (3) What can be done to effectively prevent disputes and at what costs and benefits?

#### 3.2 Per User Costs of Services

*Per user costs:* The costs of delivering various forms of access to justice services calculated in relation to the number of users of these services (by type of service or path to justice, or for each new access to justice project or initiative).

#### 3.3 Other Costs

##### 3.3.1 Social and economic costs of unresolved legal problems

*Social and economic costs:* The social and economic costs associated unresolved legal problems or with various gaps in access to justice services, including broad economic costs, and the social costs of unresolved conflicts.

Poor access to justice and the resulting unresolved legal problems have social and economic costs (Dandurand & Maschek 2014; Cookson, 2013). Unfortunately, it remains quite difficult to empirically and conclusively demonstrate the cost effectiveness of providing greater access to various forms of legal aid or the economic consequences of failing to provide sufficient legal aid services.

### 3.3.2 Impact of unmet legal needs on the costs of other service sectors

***Impact of justice system on costs of other sectors:*** *The impact of access to justice or the lack thereof on the costs related to the provision of public services in other sectors (e.g., health care, public housing, social assistance, child protection, etc.).*

The costs of not achieving resolution (considering the tendency of unresolved legal problems to cluster) are sometimes transferred to other sectors, including personal health, public health, public housing, child care, social assistance, etc. (The Canadian Forum on Civil Justice, 2012).

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### Appendix 1 – Example of Applying the Framework

Pathways	EXPERIENCE OF PEOPLE WITH A LEGAL PROBLEM (users)				
	Accessibility	Quality	Effectiveness	Appropriateness	Outcomes
Obtaining legal information	Families get access to the information and resources they need at the right time				Families get access to the information and resources they need at the right time
Obtaining legal advice/ assistance	Referral to appropriate multi-disciplinary information and services	Users experience the family justice system as responsive to the needs of family members.			
Early resolution service	Family disputes are resolved more quickly using CDR		Ongoing connections with the Court and CDR provider to resolve ongoing conflict	Families would use mediation again	Family disputes are resolved more quickly using CDR than through the traditional court process
Consensual dispute resolution	Problem-solving using a variety of CDR processes		Families are very satisfied with the effectiveness and affordability of each component of the integrated model	Court time per file reduced	Enforceable agreements or orders Future conflicts prevented
Litigation	Litigation remains available		Judicial resources are reserved for matters that require adjudication	Court cases volumes reduced. Wait-times for trials are reduced	
Obtaining legal representation					
Not addressing the problem					

**Efficiency:** optimal use of resources to yield maximum results

**Cost effectiveness:** relative costs & outcomes as compared to other approaches

**Equity:** equitable access to justice system

The above is an example of how the framework can be used to plan or evaluate the impact of a new initiative to improve access to justice for a given group, in relation to a particular type of legal problem, or with respect to a particular legal need. In this example, it is a Mandatory Assessment and Presumptive CDR project. One can map out how a project plans to improve the experience of users in one or more of the pathways to justice (left column) by improving one or more dimensions of the experience of users of the justice system (top row). The experience of users is described and eventually measured by considering five aspects of people's experience of the justice system (accessibility, quality, effectiveness, appropriateness, and outcomes) and two relating to the performance of the system in which justice services are provided and people legal needs are addressed (efficiency and equity). This is done at the same time as other measures are used to assess the cost-efficiency and cost-effectiveness of that project as compared to other approaches. By measuring the outcomes of the project for different groups (parts of the population served), one can also assess how the approach in question contributes to providing equitable access to justice to members of these groups.

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