



ACTION COMMITTEE ON ACCESS TO JUSTICE IN CIVIL AND FAMILY MATTERS

MEASURING ACCESS TO JUSTICE: A SURVEY OF APPROACHES AND INDICATORS IN A2J METRICS INITIATIVES

More than 5.1 billion people – or approximately two-thirds of the world’s population – are not getting the justice they need for both everyday problems and severe injustices, and approximately 1.4 billion people have unmet civil or administrative needs.

~ World Justice Project, “Measuring the Justice Gap: A People Centered Assessment of Unmet Justice Needs Around the World, 2019

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 justice.

~ CBA, Access to Justice Matters, 2013

EXECUTIVE SUMMARY

This paper surveys efforts to measure access to justice and examines the different approaches used by A2J metrics projects. It considers global comparative approaches undertaken by HiIL, the OECD, the Open Society Foundation, and the World Justice Project. The survey also looks at national efforts to measure A2J in Australia, Canada, the United States and the United Kingdom. It identifies the similarities in approaches and common metrics, with samples of indicators used in each approach.

The paper considers the feasibility of different measurement approaches in the Canadian context. The similarities identified across global and national approaches are synthesized into ten common indicators or areas of A2J measurement that can be considered as a starting point for A2J measurement for Canada.

1. Types of justiciable problems;
2. Help sought and others involved;
3. Resolution processes and other problem-solving behaviours;
4. Outcomes/conclusions both in fact and type;
5. Perceptions of quality, fairness, accessibility, and appropriateness of both the process(es) and outcome(s);
6. Cost and impact in terms of economic expenses, time spent, and negative effects on health, substance abuse, and relationships;
7. Personal factors including awareness of law, process, and support, and legal capability and confidence;
8. Legal needs and unmet needs;
9. Barriers and obstacles faced; and
10. Disaggregated demographic information.

1. **TYPES OF JUSTICIABLE PROBLEMS.** Justiciable problems take a wider view than what may ordinarily be considered a “legal” problem. Categories of justiciable problems being measured include: employment; family; accidental injury/illness; money and debt; consumer; community and natural resources; land and housing; and, public services and administration, education; citizenship and ID; and, law enforcement. A 2-year reference period for surveying respondents is used or recommended.



- 2. HELP SOUGHT AND OTHERS INVOLVED, INCLUDING FORMAL AND NON-FORMAL SOURCES.** The global approaches recommend evaluating a broad range of both formal and informal sources of help, such as getting information from the internet, getting help from friends and family, as well as the reasons why no help was sought. Indicators can be designed to capture both the percentage of people who were successful in attaining support, and the percentage who failed.
- 3. RESOLUTION PROCESSES AND OTHER PROBLEM-SOLVING BEHAVIOURS.** National and global A2J measurement initiatives have focused on the actions people take to solve their problems. Some evaluate or qualify indicators based the types of resolution processes used. Some recommend collecting data across resolution categories: no third party (direct or indirect negotiation); state processes (such as courts, tribunals, etc.); community practices (such as Indigenous customary legal practices); religious processes and courts; and others.
- 4. OUTCOMES/CONCLUSIONS BOTH IN FACT AND MANNER.** Some measurement initiatives recommend evaluating it a matter is completely resolved, settled by abandonment, ongoing, or unclear while others suggest evaluating the outcome based on the following seven types of justice: distributive (or equitable) justice, restorative (or reparative) justice, corrective (or compensatory) justice, retributive justice, informational (or justified) justice, transformational justice (or relationship building), and formal justice.
- 5. PERCEPTIONS OF QUALITY, FAIRNESS, ACCESSIBILITY, AND APPROPRIATENESS OF BOTH THE PROCESS AND OUTCOME.** Some A2J measurement efforts evaluated perceptions of process quality (perceived fairness, neutrality, and consistency, respect, and politeness and how effectively processes and resulting outcomes were explained) as well as perceptions of outcome quality (perceived fairness of resulting benefits and burdens; how effectively an outcome restored an imbalance or injustice; and, how well an outcome resolved the problem). Other approaches measured perceptions of fairness and satisfaction of process and outcome, as well as how slowly the matter progressed, how expensive it was, and how the problem developed post conclusion.
- 6. COST AND IMPACT IN TERMS OF ECONOMIC EXPENSES (INCLUDING RELOCATION), TIME SPENT, AND NEGATIVE EFFECTS ON HEALTH, SUBSTANCE ABUSE, AND RELATIONSHIPS.** Measurement of costs focused on out-of-pocket costs to an individual (service fees, transportation, communication, a notary, and bailiff or witness fees), costs in terms of time (searching for help, collecting documents and preparing forms, communicating with professionals, waiting in lines and attending) court), emotional impacts (stress, anger, fear, humiliation, and disappointment) and other costs (lost wages, loss of opportunity, and having to relocate).
- 7. PERSONAL FACTORS INCLUDING AWARENESS OF LAW, PROCESS, AND SUPPORT, LEGAL CAPABILITY, AND CONFIDENCE.** Measurement approaches assessed whether a respondent understood their legal rights and responsibilities, if they knew where to get information and support, and how confident they were in their ability to achieve a fair outcome. Some global measurement efforts suggest measuring legal capability via demographic proxies, such as education and income level, and access to technological resources and social capital.
- 8. LEGAL NEED AND UNMET NEEDS.** Legal need and unmet need indicators have not been widely used or developed and is an area where metric testing will be necessary. One approach asked whether a legal need was definitely met, definitely not met, was unclear, and if the respondent had difficulty getting support.
- 9. BARRIERS AND OBSTACLES FACED.** Various initiatives set out to assess specific barriers to A2J including barriers for persons with disabilities, those based on language, cost, and fear as well as the relationship between health status and access to justice. Assessing specific barriers for Indigenous Peoples must include the impact of trauma, fear, distrust of the justice system and legal professionals, as well as preference customary or traditional legal systems, and feelings of dissonance when participating in colonial legal processes.
- 10. DISAGGREGATED DEMOGRAPHIC INFORMATION.** The UN General Assembly has called for all data regarding A2J dimensions to be disaggregated across Indigeneity, Ethnicity, Race, Immigration and refugee status, Disability, Sex, Gender, Income, Mental health, and Geographic location.



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GLOBAL INITIATIVES

There are three major international civil A2J measurement initiatives led by the Hague Institute for Innovation of Law (Hiil), the Organization for Economic Cooperation and Development (OECD) and the Open Society Foundation (OSF) Justice Initiative and the World Justice Project. The culmination of the work of these initiatives and experience from more than 55 national surveys in more than 30 jurisdictions over the past 25 years comes together in the 2018 launch version of the OECD-Justice Initiative Guide on Legal Needs Surveys and Access to Justice report.¹ This approach to legal needs surveys and A2J indicators was informed by representatives² from OECD member and partner countries, civil society organizations, and academic experts, and “reflects a wide array of legal traditions and political and cultural environments, as it has benefitted from measurement initiatives in Korea, Nepal, South Africa, Ukraine and other countries.”³

COMPARING LEGAL NEEDS SURVEYS

Legal needs surveys “are a tool to give visibility to legal problems, drive policy responses and understand progress towards access to justice for all.”⁴ Many factors impact the comparability of legal needs surveys across jurisdictions.⁵ According to the OECD and Justice Initiative, comparable datasets requires “that data at different levels of detail are investigated within a consistent conceptual and taxonomic framework, and that the more detailed data can be made equivalent to the less detailed data,” meaning that the detailed data must capture all elements of the less detailed data, but not more, (a visual representation of this data structure can be found in the report).⁶ If questions about narrowly defined (more detailed) justiciable problem types assess all constituent problem types in the broader (less detailed) category, and are asked in a way that allows aggregation to the broader category without including any additional problems, full comparability can be achieved.⁷ When more detail is provided, the risk of respondent misinterpretation of the questions or neglecting relevant memories is reduced.⁸

LEGAL NEEDS SURVEY ITEMS

Based on the groundwork setting reports by the Hiil prior to the *Handbook* in 2009, Justice Needs Surveys have been conducted using a “bottom-up approach” with 110-item user surveys in :

- Yemen
- Mali
- Indonesia
- The Netherlands
- Ukraine
- Uganda
- United Arab Emirates, and
- Tunisia.

The OECD and Open Society Justice Initiative 2018 report provides a methodological and conceptual framework for conducting legal needs surveys that incorporates the following **factors**:

- A. Justiciable problems
- B. Problem seriousness
- C. Problem resolving behaviour
- D. Process



- E. Whether and how justiciable problems have concluded
- F. Perceptions of process and outcome
- G. Costs
- H. Legal capability and empowerment
- I. Legal need⁹

These factors are further elaborated below.

Units of measurement differ across the surveys studied by OECD and the Justice Initiative, with most collecting data at the individual level, and few at a household/family level.¹⁰ Individual surveys are generally preferred, because not all issues in a household are shared,¹¹ and respondents should be randomly selected.¹² Some surveys also collect data at the community level, which the authors suggest is useful for understanding the “volume of shared problems.”¹³ It is possible to assess if problems impact the larger community and if a community level response was used.¹⁴ For example, the 2017 *General Population Poll* in Nepal asks if identified problems are shared with “other people, neighbours, or other members of your community” and if they had a similar position on the collective action needed to resolve it.¹⁵

The reference period for a legal needs survey is “the time frame for which survey respondents are asked to report [...] experiences of interest.”¹⁶ Reference periods must provide a balance between a sufficient number of questions for analysis while ensuring relative contemporaneity of data.¹⁷ To ensure respondent’s maximum memory, many surveys use a reference period of three years or less, with the World Justice Project using a 2 year reference period.¹⁸

A. JUSTICIABLE PROBLEMS

The term “justiciable” is used in this context to mean, “problems that raise legal issues, whether or not this is recognised by those facing them, and whether or not lawyers or legal processes are invoked in any action taken to deal with them.”¹⁹ Framing the problems specifically as “legal” reduces problem identification by survey respondents, therefore, the authors recommend framing justice problems more openly, such as “different kinds of common, or everyday, problems or disputes.”²⁰ Avoid all reference to law, including any obviously legal sponsors for the survey, and use lay terminology, with examples for clarity.²¹

There is a broad range of justiciable problems. The research in the OECD and Justice Initiative report found the following most commonly surveyed problems were related to:

- Family
- Employment
- Housing
- Consumer issues and money
- Discrimination
- Education
- Injuries (due to negligence)
- Neighbours
- Treatment by police and government (particularly welfare)²²

The OECD and Justice Initiative report recommends avoiding the use of an “other” category, as it puts the onus on the respondent to identify justiciable problems, creates ambiguity about the survey’s scope and purpose, and increases collection of irrelevant data.²³ The authors also provide guidance on the level of detail in survey questions and the importance of excluding “trivial” problems.²⁴

Research of all justiciable problems addressed in past national legal need surveys²⁵ revealed the following eight **essential problem categories** and sub-categories:

1. Employment
 - a. Application and promotion
 - b. Disciplinary procedures



- c. Termination
- d. Rights at work
- e. Harassment
- 2. Family
 - a. Relationships and care of children
 - b. Children
 - c. Domestic violence (victim)
 - d. Wills and probate
- 3. Accidental injury/illness
 - a. Workplace
 - b. Traffic related
 - c. Other
- 4. Public services and administration
 - a. Health
 - b. Abuse by state officials
 - c. Education (respondent)
 - d. Access to public services (excluding health)
 - e. Citizenship, ID and certification
 - f. Money and government
- 5. Money and debt
 - a. Money
 - b. Debt
- 6. Consumer
 - a. Services (excluding utilities)
 - b. Goods
 - c. Utilities
- 7. Community and natural resources
 - a. Access to natural resources
 - b. Maintenance and protection
 - c. Governance and community groups
- 8. Land and housing
 - a. Land
 - b. Housing
 - c. Neighbours (anti-social)
 - d. Problems as a landlord

Some of the **other common categories** include:

- 9. Other
 - a. Care (excluding children)
 - b. Environmental (other)
 - c. Development project related
 - d. Internet related
 - e. Other
- 10. Business
 - a. Trading
 - b. Regulation, permits, etc.
 - c. Employment (of others)
 - d. Land, business premises, etc.
 - e. Money
 - f. Business structure
 - g. Tax
 - h. corruption , bribes, protection
- 11. Crime



- a. Victim of crime
- b. Accusation / offending

Note: See Table 2.1 on pages 55-59 for a full set of the OECD and Justice Initiative problem categories, and primary, secondary, tertiary, and quaternary sub-categories for legal needs surveys.

The OECD and Justice Initiative report provides the following example survey question for justiciable problem identification:

“I am going to read you a list of problems and disputes that people commonly experience in everyday life. In each case, can you tell me whether you have personally experienced such a problem in the past two years; by which I mean a problem that started since [DATE] or started before then, but continued afterwards?”

Please only include problems that you have had yourself, not problems experienced by a business you run, in the course of self-employment or by an employer, and not situations where you represented or helped somebody else with their problem. And please only mention problems once.”²⁶

Note: For a full list of example categories and how to present them in a legal needs survey, see Table 3.1 on page 98 of the OECD and Justice Initiative report. An example of how to present a problem category is as follows:

Category: Consumer

Form of presentation: Problems or disputes to do with defective or undelivered goods or services

Illustrative examples: Such as difficulties obtaining a refund, billing errors, or disputes with banks, insurance companies, utility providers (such as water, electricity, gas, telephone or Internet), or professionals (such as accountants, lawyers, mechanics, plumbers, etc.).²⁷

B. PROBLEM SERIOUSNESS

Most of the legal needs surveys detailed in the OECD & OSF report address problem **seriousness** to some degree.²⁸ Some surveys use the following measures for example:

- Perceptions of seriousness;
- Economic value; or
- The impact of a problem.²⁹

According to the OECD and Justice Initiative, a model question for gauging problem seriousness is:

“Thinking about the problem as a whole, consider a scale of 1 to 10, where 1 represents the least serious type of problem you could face and 10 represents the most serious.

To provide some examples, a score of 8 might be [ANCHOR 1] and a score of 2 might be [ANCHOR 2].

What number best represents the seriousness of your problem?”³⁰

Asking about the broader **impact** of justiciable problems is important, as this data allows policymakers to make connections between legal issues and social and economic policy development.³¹ The 2004 *English and Welsh Civil and Social Justice Survey* contained the following **nine impact categories** that have been replicated in many surveys since:

- Physical health;
- Stress;
- Relationships;
- Violence (aimed at respondent);
- Property damage;
- The need to move home;
- Loss of employment;
- Loss of income; and



- Loss of confidence.³²

A model question for determining problem impact is:

“Did you experience any of the following as part of or as a result of this problem?”

- a) ill-health or injury*
- b) high levels of stress*
- c) damage to a family relationship*
- d) being harassed, threatened or assaulted*
- e) damage to your property*
- f) loss of employment*
- g) having to move home*
- h) financial loss*
- i) fear or loss of confidence”*

Other surveys have asked about: alcohol and drug abuse; fear; problems related to documentation; stigmatization; and, denial of public or community services.³³ Also, some surveys use an “abstract problem seriousness scale”, using a simple visual analogue scale (a straight line with anchor points) where respondents are asked to indicate where on the scale the seriousness of their problem lays.³⁴

C. PROBLEM RESOLVING BEHAVIOUR

In order to comprehensively understand a survey respondent’s problem resolving behaviour, the following three categories of activity must be addressed in a legal needs survey:

- Help seeking;
- Use of processes (see part D below for more information); and
- Other activities that support problem resolution.³⁵

When it comes to “help seeking”, the standard “sources of help” categories and the primary sub-categories in legal needs surveys include:

- Family, friends and acquaintances
 - With relevant expertise
 - Without relevant expertise
- Legal and advice sector
 - Government provided legal/advice services
 - Dispute resolution authorities (formal)
 - Independent legal services provided through membership or association
 - Law centres, clinics and legal/advice
 - Agencies (excluding government)
 - Private sector lawyers
 - Other independent advice services
- Other professionals
 - Health and welfare
 - Financial
 - Other
- Other government
 - Administrative department
 - Politician
 - Other
- Other civil society/charity
 - National, regional, local, etc.
- Other community
 - Community leader



- Community organization
- Religious
- Other
 - Employment related
 - Media
 - Other³⁶

See Table 2.2 on pages 67-68 of the OECD and Justice Initiative reports for a full list of the secondary, tertiary and quaternary sub-categories in the above help-seeking categories.³⁷

Two model questions which together can be used to identify sources of help are:

1. Did you, or somebody acting on your behalf, obtain information from any of the following sources, to help you better understand, resolve or prepare to resolve [the problem]?

- a) A website or “app”*
- b) A leaflet, book or self-help guide*
- c) Newspapers or magazines*
- d) Television, video or radio*

2. (Apart from anything you have told me about already) Did you, or someone acting on your behalf, obtain information, advice or representation from any of the following people or organisations to help you better understand or resolve [the problem]?

Please exclude any help provided by the other party.”³⁸

D. PROCESS

The standard “process” categories and primary sub-categories in legal needs surveys include:

- No third party
 - Direct negotiation (personal)
 - Indirect negotiation (through representatives)
- State
 - Court / tribunal
 - Designated formal authority / agency (civil)
 - Prosecution authority
 - Other government
- Community
 - Community leader or organisation (informal)
 - Indigenous / customary practice
- Religion
 - Court (Shariah tribunals, Beth Din, etc.)
 - Other
- Other
 - Family / friends
 - Independent third party (not connected to problem)
 - Organization connected to problem
 - Organized crime
 - Other³⁹

See Table 2.3 on pages 72-73 of the OECD and Justice Initiative report for a full list of the secondary, tertiary and quaternary sub-categories in the above process categories.⁴⁰

An example question for establishing justice processes is as follows:



“1. (Apart from anything you have told me about already) Did any of the following things happen as part of [the problem] or sorting it out? When I say “you” here, I mean you or somebody acting on your behalf.

- a) You communicated with the other party*
- b) You or the other party made a claim to, or made use of, a court (or tribunal)*
- c) [If applicable] You or the other party made a claim to, or made use of, an [Indigenous/ customary] dispute resolution process (e.g. [examples])*
- d) [The problem] was reported to the police (or other prosecution authority)*
- e) You or the other party turned to, or action was taken by, a formal designated authority or agency, such as [examples, e.g. Ombudsman, regulator (e.g. [example]) or enforcement authority (e.g. consumer protection authority)]*
- f) You or the other party turned to, or action was taken by, another state authority (e.g. [examples])*
- g) You or the other party turned to, or action was taken by, a religious authority*
- h) You or the other party turned to, or action was taken by, a community leader or organisation (e.g. [example])*
- i) You participated in formal mediation, conciliation or arbitration (e.g. [examples])*
- j) You or the other party made use of a formal appeals process operated by the other party or independently*
- k) You, the other party or somebody else turned to, or action was taken by, another third party for adjudication, mediation or intervention*
- l) There was no negotiation or third party involvement*

2. [For each positive response (a to k), respondents to then be asked] Who initiated this action? [PROMPT ONLY IF NECESSARY]

- a) The respondent*
- b) The other party*
- c) The third party responsible for the process*
- d) Another third party.*

3. [If the respondent did not initiate processes b to h or j and k] Did you respond to this action?”⁴¹

E. CONCLUSIONS TO JUSTICIABLE PROBLEMS

Many surveys have used “binary coding” (concluded/ongoing) to assess whether justice problems have been concluded, but this is not adequate,⁴² and a response option that assesses uncertainty is useful.⁴³ To accurately assess whether problems have been concluded, and avoid ambiguity in terms such as “resolved” or “over”, it is necessary to ask if problems are:

- Completely resolved (as in they no longer exist and there is no active disagreement);
- Otherwise settled (as in all parties have given up actions to resolve them);
- Ongoing; or
- Too early to tell.⁴⁴

Standard categories for conclusions to justice problems can be reduced to eight principal categories (which are sometimes subdivided or merged):

- “decision by a third party (often split between courts/tribunals and other third parties);
- mediation, conciliation and arbitration (often defined as being ‘formal’ or “independent”);
- action by a third party;
- agreement between the parties (often split between agreements reached “directly”/ “personally” and agreements through lawyers or other representatives);
- unilateral action by the other party;
- unilateral action by the respondent (often split between action to resolve the problem and action to avoid the problem (e.g. move home));
- the problem sorted itself out; and,
- the problem is being put up with.”⁴⁵



An OECD and Justice Initiative model question for identifying whether a problem is concluded is as follows:

“Is [the problem] ongoing or done with? By “done with” I mean that the problem is either resolved or that it persists, but you and everybody else have permanently given up all efforts to resolve it further. [PROBE FULLY]

- a) Ongoing*
- b) Too early to say*
- c) Done with - problem persists, but all have given up trying to resolve it further*
- d) Done with - problem resolved”⁴⁶*

A model question for identifying the manner of problem conclusion is:

“Which of the following statements best reflects how the problem outcome was ultimately brought about? The problem outcome was ultimately brought about by:

- a) a court (or tribunal) judgment*
- b) a decision or intervention by another formal authority*
- c) mediation, conciliation or arbitration*
- d) action by another third party*
- e) agreement between you and the other party*
- f) the other party independently doing what you wanted*
- g) you independently doing what the other party wanted*
- h) your moving away from the problem (e.g. moving home, changing job)*
- i) the problem sorting itself out j) you and/or all other parties giving up trying to resolve the problem”⁴⁷*

F. PERCEPTIONS OF PROCESS AND OUTCOME

Legal needs surveys often focus on assessing the perceived quality of outcome over process, but both are required.⁴⁸ The most influential surveys in this regard are HiiL’s *Justice Needs and Satisfaction surveys* (influenced by their *Measuring Access to Justice in a Globalising World* project), which contained 19 questions related to quality of process and 23 to quality of outcome.⁴⁹

The core questions in assessing **quality of process** relate to:

- Procedural justice (properties associated with perceived fairness, including voice, neutrality, trustworthiness, consistency, and accuracy);
- Interpersonal justice (degree to which people are treated with politeness, dignity and respect); and
- Informational justice (explanations given as to why certain procedures were used or why outcomes were distributed in a certain way).⁵⁰

The core questions in assessing **quality of outcome** relate to:

- Distributive justice (fairness of the distribution of benefits and burdens);
- Restorative justice (the level to which the outcome restored damage or loss);
- Functionality (the degree to which the outcome resolves the problem); and,
- Transparency (how well outcomes were explained and whether they are comparable to outcomes for similar problems).⁵¹

HiiL’s *Justice Needs and Satisfaction Surveys* have dedicated up to 24 questions to outcome quality, whereas the 2017 Sierra Leonean Survey asked only one question per each of the four core areas listed above.⁵²

Framing questions of process and outcome perceptions may be done in two ways:

1. The problem resolution process as a whole; or
2. Specified process(es) and outcome(s), which is recommended as it allows higher specificity in findings, but will require asking more questions to identify all the processes involved.⁵³



G. COSTS

Almost all surveys in the OECD and Justice Initiative research included questions about the cost of resolving justiciable problems.⁵⁴ Furthermore, almost all surveys indirectly assessed cost concern by assessing resolution strategy decision-making.⁵⁵ Most surveys asked about costs incurred in resolution processes, including:

- Levels of expenditure;
- Fee arrangements and subsidies.⁵⁶

The number of cost related questions varies significantly across surveys, with seven as the median number of questions asked.⁵⁷ Typical questions asked include:

- How much was paid for legal services;
- How expensive services were considered to be; and
- Financial support from legal aid.⁵⁸

HiiL's *Measuring Access to Justice in a Globalising World* project considers a broader diversity of cost impacts, not only in terms of money, but as time or emotional costs (e.g. stress).⁵⁹ Almost half of the surveys reviewed in the OECD and OSF research asked about the total financial cost of resolving a problem; and about two-fifths inquired about cost in time and/or emotion. Only HiiL's *Needs and Satisfaction Surveys* asked about all three types of cost, and quantified the "constituent costs" of each type in the following way:

1. The **financial** expenditures (9 questions);
2. The **time** spent on various activities (9 questions, including:
 - a. estimates for specific activities such as seeking for a legal advisor;
 - b. communication with them and others involved;
 - c. document preparation;
 - d. attending hearing and waiting times in terms of "hanging around" (e.g. in lines, for hearings, etc.)
3. The **emotional** impact of resolution processes and impact on "important relationships" (5 questions, including:
 - a. how stressful processes had been;
 - b. the extent to what they felt frustrated and angry;
 - c. and the extent to which they were humiliated).⁶⁰

According to the work of OECD and the Justice Initiative, specific **financial cost** items have included:

- Lawyer/advisor fees;
- Court/other processing fees;
- Travel costs;
- Communication costs;
- Documentation/information collection costs;
- Bribes/"kick-backs";
- Witness incidental cost reimbursement;
- Domestic costs (e.g. babysitter, house cleaner); and
- Loss of income/business to enable problem resolution.⁶¹

Most surveys inquired whether respondents personally paid for their legal fees, and half inquired whether fees were contributed to from elsewhere.⁶² Ambiguity arises where payments were made from pooled resources, such as legal expense insurance or membership subscriptions (e.g. labour unions).⁶³ Further difficulty arises as respondents may lack insight into the origins of funding received from "**free**" services, which may involve:

- A marketing strategy;
- Voluntary support;
- Charitable support; or
- State subsidy.⁶⁴

Furthermore, the amount of subsidy received may be hidden from the respondent, where details around the amount of support received from legal aid or other providers are not known, or may be forgotten. Therefore, although it may be helpful



to inquire whether respondents applied for or received support from sources such as legal aid, a union, or legal expenses insurance. etc., cost related questions beyond that can only *reliably* focus on costs paid personally by the respondent.⁶⁵

Lastly, collecting information on an aggregate cost basis is not recommended.⁶⁶ Rather, asking about specific costs incurred throughout the process will lead to a more accurate final cost estimation by more thoroughly triggering and engaging with the respondent's memory.⁶⁷

OECD and the Justice Initiative's model question for estimating the cost of justiciable problem resolution is:

"Excluding indirect payments – such as insurance premiums or membership subscriptions – but including payments made by family members and friends Did you, personally, have to pay for any of the following in order to resolve the problem?"

- a) Lawyer and other advisor fees*
- b) Court, mediation or other administrative fees*
- c) Telephone calls and correspondence*
- d) Collecting information or obtaining evidence (incl. reimbursement of witnesses' costs)*
- e) Travel (e.g. bus fares or petrol to visit an advisor)*
- f) Lost business or salary, from taking time off work (e.g. to obtain advice)*
- g) Bribes / kick-backs (Remember, your answer is confidential)*
- h) Incidental domestic costs (e.g. childcare)⁶⁸*

H. LEGAL CAPABILITY AND EMPOWERMENT

According to OECD and the Justice Initiative, the concept of "legal capability" involves the "range of capabilities necessary to make and carry through informed decisions to resolve justiciable problems."⁶⁹ The majority of legal needs surveys asked questions along the following **four constituents of legal capability**:

1. Ability to recognize legal issues;
2. Awareness of law, services, and processes;
3. Ability to research law, services, and processes; and
4. Ability to deal with law related problems (e.g. confidence, communication skills, and resilience).⁷⁰

Typically, survey questions evaluated capability gained through prior experience in legal processes, and legal capability overall, without reference to specific justiciable problems.⁷¹ However, assessing specific capability related to individual legal problems is important for understanding the context surrounding legal need, as it fosters understanding into the respondent's ability to independently progress their legal case, rather than just their ability to seek relevant information and support.⁷² Whether respondents feel there is a "legal dimension" to a justiciable problem is an important factor into whether they seek legal help.⁷³

When it comes to assessing ability to deal with law related problems, many surveys have evaluated the respondent's level of confidence, the majority of which have used variants of the "**subjective legal empowerment**" (SLE) questions from Hiil's *Justice Needs and Satisfaction Surveys*.⁷⁴ SLE questions ask how likely respondent's feel they will get a solution, and how fair that solution is likely to be.⁷⁵ These questions focus on problems involving the following six types of opposing parties:

1. A debtor;
2. An employer;
3. A family member;
4. A neighbour;
5. A government authority; and
6. A retailer.⁷⁶

However, psychometric issues have been revealed with these SLE questions, and further development is needed for them to function effectively. Other approaches have involved:

- A 6-item "General Legal Confidence" scale based on scenario escalation;



- A 6-item legal self-efficacy scale; and
- A 4-item legal anxiety scale.⁷⁷

Finally, it is also possible to measure legal capability indirectly through **demographic questions**, such as:

- level of education;
- income;
- technological resources;
- social capital; and
- disability.

Therefore consider demographic survey item appropriateness for capability proxies when drafting.⁷⁸

OECD and the Justice Initiative's first model question for examining legal capability in relation to an identified problem is:

To what extent do you agree or disagree with the following statements about the problem?

- a) I understood or came to understand my legal rights and responsibilities.*
- b) I knew where to get good information and advice about resolving the problems.*
- c) I was able to get all the expert help I needed.*
- d) I was confident I could achieve a fair outcome.*⁷⁹

A second, complementary, model question is:

"Which of the following describe the problem? You can choose more than one option, or none.

- a) Bad luck / part of life*
- b) Bureaucratic*
- c) A family or private matter*
- d) Legal*
- e) Political*
- f) A social or community matter*
- g) Economic*
- h) None of these*⁸⁰

I. LEGAL NEED AND UNMET LEGAL NEED

Legal need and unmet need concepts have not been operationalized for direct measurement due to the fact that these concepts are too complex to measure directly, and are contentious and political.⁸¹ Therefore, legal needs surveys have attempted to measure **aspects of need** such as problem seriousness, legal capability, resolution strategy choices, obstacles, and regrets.⁸² Yet, proxy measures for legal need and unmet legal need continue to be developed, based on a more comprehensive understanding of the variety of responses to legal issues that do not simply involve retaining a lawyer's services.⁸³ There are different advantages and disadvantages involved in the variety of responses, and recent emphasis has been put on legal capability, options, and choice.⁸⁴

It is broadly accepted that **legal need** arises "whenever a deficit of legal capability necessitates legal support to enable a justiciable issue to be appropriately dealt with."⁸⁵ A legal need is **unmet** when "a justiciable issue is inappropriately dealt with as a consequence of the unavailability of (suitable) legal support to make good a deficit of legal capability."⁸⁶ However, there is lack of consensus related to the following elements of legal need:

- Appropriateness of support;
- What support is necessary;
- Who should be the arbiter; and
- What is legal capability.



Given the recognized limits to the effectiveness of proxy measures, people continue to try to operationalize concepts of legal need and unmet legal need as direct measures.⁸⁷ For example, in a 2006 survey in New Zealand, “a **three-way segmentation of need**” was used, where a need was categorized as:

- Definitely having been met;
- Definitely not having been met; and
- Possibly either met or unmet.⁸⁸

Further distinction was drawn where respondents had difficulty securing support.⁸⁹

A legal need was **deemed met** in simple cases if:

- An agreement was reached between the parties;
- A problem concluded in mediation;
- A problem concluded with help from someone other than a mediator, friend or family member; and
- If help was described as “useful”.⁹⁰

A legal need was **deemed unmet** where:

- No action was taken because the respondent did not know what to do;
- Resolution was abandoned;
- Specific barriers prevented seeking help (such as language, cost, and fear).⁹¹

Based on the above New Zealand based survey, and two others conducted in Columbia and Argentina, the following **proxy measures** for legal need and unmet need have included:

- Duration
 - Long
 - Short/moderate
- Seriousness
 - High/Moderate/Low
- Legal awareness/understanding
 - Yes/No
- Legal confidence
 - Yes/No
- Process fairness (note that fairness was assessed in process rather than in outcome as it can be addressed in policy, whereas outcome fairness is reliant on process and is hard to specifically address)
 - Yes/No
- Expert help
 - Yes/No
- Adequacy of support
 - Yes/No/NA⁹²

Note that trivial justiciable problems were completely omitted from calculations.⁹³ In Table 2.1 on page 82 of the OECD and Justice Initiative report, you can find the full logic tree for legal need and unmet need proxy measurement.⁹⁴

See **Appendix A** for a full list of topics addressed in past legal needs surveys reproduced from the OECD and Justice Initiative report.

LEGAL NEEDS SURVEY STRUCTURE



A legal needs survey measures a respondent's experience of justiciable problems, including strategies, help sought, and processes used.⁹⁵ This requires collecting multiple levels of data that is not evenly distributed across the population.⁹⁶ The OECD and Justice Initiative highlight two important implications:

1. Surveys must include loops and sub-loops of questions in order to systematically assess multiple individual problems, strategies, sources of help, and processes; and
2. It is not possible to ask follow-up (or more detailed) questions about each and every problem, strategy, source of help or process used.⁹⁷

The extent of questioning depends on the amount of detail requested and the length of the survey interviews.⁹⁸

Typically, legal needs survey data is hierarchically structured, with "household" data at the base, followed by "individual," "problem", and then "help/process" data (see Figure 2.3 on page 85 for a diagram).⁹⁹ A "modular questionnaire design" best suits this hierarchical organization, where data strata become distinct points of enquiry, and the questions within each stratum are considered "distinct modules."¹⁰⁰ As needed, these modules can be repeated in a survey interview, such as in cases where there are multiple justiciable problems. Modules are then further broken down, with questions on the same sub-topic forming "topic-based" sub-modules.¹⁰¹ These topic-based modules do not relate to the distinct data strata, but help with survey design and analysis.¹⁰² The OECD and Justice Initiative report recommends the following survey design process:

"Designing legal needs survey questionnaires as a combination of specific structural and topic-based modules – linking to data structure and the various topics of study – helps tie questionnaires to their defining research questions, clarify which topics are central and which peripheral, and make apparent the scale of subsampling required in order to keep interviews to a defined duration."¹⁰³

A diagram of a model legal needs survey is provided in OECD and Justice initiative report in Figure 2.4 on page 86.¹⁰⁴

Sub-sampling is required in legal needs surveys as respondents are likely to raise multiple problems, strategies, sources of help and processes.¹⁰⁵ However, sub-samples are difficult to collect and pose many challenges, such as achieving a representative sample of justiciable problems.¹⁰⁶ The sub-sampling method used in Hiil's *Paths to Justice* survey involved follow-up on single problems identified within problem categories.¹⁰⁷ When multiple problems were identified within one category, follow-up was undertaken for the second most recent problem, rather than the most recent, as it was more likely to have been resolved by the time the survey was being conducted.¹⁰⁸ However, selecting only from problems that have been concluded is not adequate, as many will be ongoing at the time of interview, and more recent problems may be dealt with differently.¹⁰⁹ Also, surveys should be careful not to have a bias toward easily concludable problems.¹¹⁰ Similarly, surveys should avoid only sub-sampling the most serious problems; "a better approach is to assess the seriousness of all problems at the time they are reported, and then randomly select from those that meet an appropriate seriousness threshold."¹¹¹ Another challenge in sub-sampling justifiable problems is adequately capturing rare problems.¹¹² Aggressive sampling can paint a skewed picture of these incidences and make analysis difficult.¹¹³ One way to address this is weighting selection probability "in favour of rarer problems" in an effort to select more of them, but this reduces sample efficiency.¹¹⁴

Similar challenges arise when sampling sources of help. The initial help source is less likely to be appropriate for the problem, and the final source is most likely to be legal services, both of which will skew the findings.¹¹⁵ Furthermore, only sampling the most effective sources of help will skew the results in a positive light, and the OECD and Justice Initiative report cautions against sub-sampling legal advisors, or doing so very carefully.¹¹⁶ Process sub-sampling has not been explored, given the limited number of available processes.¹¹⁷

THE HAGUE INSTITUTE FOR INNOVATION OF LAW (HIIL)

The Hague Institute for Innovation of Law (Hiil), sponsored by the Dutch Government and the Netherlands Organisation for Scientific Research, began operations in 2005.¹¹⁸ In 2009, they published a *Handbook for Measuring the Costs and Quality of Access to Justice*¹¹⁹ that follows a justice service user's path to justice by asking three questions:¹²⁰

1. What are the average **costs** for people who follow this procedure?



2. How do they rate the **quality** of the **procedure**?
3. How do they rate the **outcome**?

To answer these questions, the report provides three survey instruments, each with indicators and sub-indicators that aim to address the above questions:

1. **Instant scan:** a short questionnaire
2. **Quick scan:** a longer evaluation of a person's path to justice measuring all procedural parameters and creating an index of the assessment
3. **Thorough scan:** a comprehensive questionnaire and 2 data collection methods for reliability¹²¹

In addition, HiiL has also created an Access to Justice Index, aggregating data related to cost, quality and outcomes.¹²² See **Appendix B** for a list of the main indicators relating to the costs and quality of paths to justice from the HiiL *Handbook*, which can be useful in any jurisdiction. The "Paths to Justice" model captures a broad range of everyday problems, some of which may be resolved by legal means, where "most, but not all, legal problems will trigger a need for just resolution of the problem."¹²³ To address this need, the person must then bring it to an existing structured mechanism, which is considered a 'path to justice', which incorporates both formal methods such as court processes and informal methods such as coming to an agreement between the parties.¹²⁴ A 'path to justice' is abstractly defined as "a commonly applied process that people address in order to cope with their legal problems."¹²⁵

WORLD JUSTICE PROJECT (WJP)

The World Justice Project (WJP) is an independent, US based project that developed and administered a survey on legal needs and access to justice in 2017 and 2018 as part of a General Population Poll (GPP) in 101 countries and jurisdictions.¹²⁶ The survey was designed to:

*"capture data on how ordinary people deal with their legal problems, highlighting the most common legal problems, respondents' assessment of their legal capability, and sources of help. In addition, the access to justice module gathers information on the status of people's problems, the resolution process, and the impact of their justice problems on their life."*¹²⁷

The A2J module is based in the "Paths to Justice" tradition (detailed in the section above), and builds on past legal needs surveys; developed with input from experts convened by the OECD and Justice Initiative.¹²⁸ The WJP's study is the first to globally compare legal needs and A2J data, and includes responses from over 100,000 people.¹²⁹ The A2J module of the GPP is standardized, making comparison possible across jurisdictions with various levels of economic development, and can contribute to measuring A2J progress as part of SDG 16.3.¹³⁰

The WJP administers the GPP annually across the general population, and calculates scores and rankings for their annual *Rule of Law Index*. The A2J module was administered in 101 countries, using a probability sample of 1000 respondents in each.¹³¹ The A2J module is 128 questions (of 340 total questions in the GPP), and can be divided into the following **11 themes**:

1. Types of legal problems experienced in the last two years;
2. Problem seriousness;
3. Sources of help and advice, both professional and informal;
4. Residual problem resolving behavior, such as attempts to learn more about the legal issue;
5. Reasons for advice not being obtained;
6. Resolution process, through both formal institutions and informal means;
7. Fact and manner of conclusion;
8. Perceptions of the quality of the process and outcome;
9. Cost of problem resolution;
10. Legal capability, awareness, and confidence; and



11. Impact of experiencing a legal problem.¹³²

The A2J module uses the following **survey format**:

“READ: I am going to read you a list of problems and disputes that people commonly experience in everyday life. In each case, please tell me whether or not you have had any such problem during the past two years, by which I mean a problem that started since [today’s month 2016] or started before then, but continued afterwards.

In the last two years, have you had ...?

(SURVEYOR: SHOW DISPUTES SHOWCARDS ONE AT A TIME. ASK ONLY FOR THE RESPONDENT TO MARK THE ONES THEY HAVE HAD.)”¹³³

The module contains 138 survey items, and presents them in the following general format:

Figure 1: Item one from Access to Justice Module of the World Justice Project General Population Poll 2018

Problem Type code	Problem Type Description	q19	q20
A1	Problems related to poor or incomplete professional services (for example, services from a lawyer, builder, mechanic, etc.)	Yes..... 1 No..... 2	0 1 2 3 4 5 6 7 8 9 10 DK/NA

The full A2J module can be found at

https://worldjusticeproject.org/sites/default/files/documents/WJP%20General%20Population%20Poll_Access%20to%20Justice%20Module_2018.pdf.

The **key global insights** revealed from this study include:

1. “Justice problems are ubiquitous” -- approximately 50% of respondents have experienced a legal problem in the past 2 years, with the majority related to housing, consumer issues, and money and debt.¹³⁴
2. “Most people do not turn to lawyers and courts” -- less than a third of respondents sought advice for their problem, and most preferred to turn to friends and family. Only 17% raised their problem with an authority or third party for mediation or adjudication; most preferred to negotiate directly with the opposing party.¹³⁵
3. “People face a variety of obstacles to meeting their justice needs” -- only 29% understood their problem as legal in nature. Of the fewer than one third who sought advice, 16% reported difficulty accessing the funds needed to solve their problem, 17% reported giving up despite persistence of their problem, and 39% reported that their problem was ongoing.¹³⁶
4. “Justice problems impact people’s lives” -- with 43% of respondents reporting adverse affects, 29% reporting physical or stress-related ill health as a result, and 23% reporting loss of employment or necessary relocation.¹³⁷
5. “1.4 billion people have unmet civil and administrative justice needs” -- using data from 7 survey questions that assess legal capability, access to appropriate assistance, resolution process, and outcome, of the 36% of respondents who report a non-trivial legal problem in the last two years, 51% cannot meet their civil justice needs.¹³⁸



6. “More people-centered data is needed to meaningfully measure access to civil justice” -- for countries to meet the 2030 development agenda and their own development goals, more and better people-centered data from legal needs surveys is needed.¹³⁹

The WJP study revealed the following data about A2J in Canada:

Part 1 - Legal Problems: 52% of respondents experienced a legal problem in the past two years.¹⁴⁰ The problem incidence breakdown is as follows:

- Housing: 26%
- Money and debt: 25%
- Consumer: 19%
- Public Services: 17%
- Employment: 12%
- Family: 12%
- Accidental illness and injury: 9%
- Community and natural resources: 8%
- Education: 8%
- Land: 8%
- Citizenship and ID: 7%
- Law enforcement: 3%¹⁴¹

Part 2 - Legal Capability:

- 72% of respondents know where to get advice and information;
- 59% felt they could get all the expert help they wanted; and
- 68% were confident they could achieve a fair outcome.¹⁴²

Part 3 - Sources of Help: 32% of respondents were able to access help.¹⁴³ The breakdown of help accessed is as follows:

- Lawyer or professional advice service: 44%
- Friend or family: 42%
- Government legal aid office: 20%
- Court or government body or police: 20%
- Health or welfare professional: 20%
- Other organization: 15%
- Trade union or employer: 8%
- Civil society organization or charity: 6%
- Religious or community leader: 3%¹⁴⁴

Part 4 - Status:

- 43% of respondents said their problem is done and fully resolved; and
- 21% reported giving up any action to resolve the problem further.¹⁴⁵

Part 5 - Process:

- 68% of respondents felt the process was fair, regardless of the outcome;
- On average, it took respondents 10.6 months to solve the problem; and
- 11% said it was difficult or nearly impossible to find the money needed to solve the problem.¹⁴⁶

Part 6 - Hardship: 49% of respondents experienced a hardship.¹⁴⁷ The breakdown of hardships experienced is as follows:

- Health -- physical or stress-related illness: 31%
- Economic -- loss of income, employment, or the need to relocate: 27%
- Interpersonal -- relationship breakdown or damage to a family relationship: 18%
- Substance abuse -- problems with alcohol or drugs: 10%¹⁴⁸





NATIONAL INITIATIVES

There is a large variety of national A2J measurement initiatives. Many of the following national examples were used to inform the above global measures and indicator frameworks, but are also useful to consider on their own for comparison purposes in the development of a Canadian A2J measurements strategy.

AUSTRALIA

Australian initiatives to measure access to justice have recently taken place at three levels:

1. Reviews of specific justice programs;
2. Data collection at certain state level courts; and
3. Various actions taken by the federal government.¹⁴⁹

The most relevant of these initiatives were the metrics related activities at the federal level. One of those activities involved assessing the quality and coverage of existing data sets in Australia's civil justice system and working toward standardization.¹⁵⁰ Another focused on building an integrated data collection system, and referred to the *National Legal Assistance Data Standards Manual*¹⁵¹ created by the National Legal Assistance Data Standards Working Group led by the Commonwealth Attorney-General's Department in 2015.¹⁵² The working group had representatives from community legal centres, legal aid, Aboriginal and Torres Strait Islander Legal Services, family violence prevention legal services and the Australian Bureau of Statistics.¹⁵³ Inconsistency of data collection and interpretation differences were primary challenges faced by this project, which sought to facilitate consistent and comparable data collection across the legal assistance sector.¹⁵⁴

The *National Legal Assistance Data Standards Manual* sets out and defines the categories of legal services in the following way:

- A. For **individuals**:
 - a. Discrete Assistance
 - i. Information
 - ii. Referral
 - iii. Legal Advice
 - iv. Non-Legal Support
 - v. Legal Task
 - b. Facilitated Resolution Process
 - c. Duty Lawyer
 - d. Representation
 - i. Dispute resolution
 - ii. Court/Tribunal
 - iii. Other representation
- B. For the **community**:
 - a. Community legal education
 - i. Resources
 - ii. Activities
 - b. Community education
 - c. Law and legal service reform
 - d. Stakeholder engagement¹⁵⁵

The *Manual* also provides best practices regarding types of data to collect for different services across the justice sector.¹⁵⁶ The following two data points were recommended for collection for all services: service provider details, and date(s) of



service.¹⁵⁷ The report contains a list of data points for individual services and for community services, and outlines what data should be collected for each specific service provided,¹⁵⁸ see **Appendix C** and **Appendix D**.

THE UNITED STATES

Six initiatives to develop A2J performance measures, evaluation frameworks, indexes and indicators have been undertaken in the United States.¹⁵⁹ Unlike in Australia, where the bulk of this work was done at the federal government level, a variety of sources, systems and organizations lead these initiatives in the US.¹⁶⁰

MEASURES FOR JUSTICE

“Measures for Justice”¹⁶¹ is an organization that was founded in 2011 to create data-driven performance measures at the county level to evaluate the criminal justice system from arrest to post-conviction.¹⁶² The data set can be divided into three categories:

1. Fiscal Responsibility;
2. Fair Process; and
3. Public Safety.¹⁶³

Data is currently available in six states (Wisconsin, Washington, Utah, Pennsylvania, North Carolina, and Florida,) and is slated to be available in another fourteen states by 2020.¹⁶⁴ Measures for Justice collect data on the basis of the following measures, divided into 32 “core,” 26 “companion,” and 37 “contextual” measures;¹⁶⁵ see **Appendix E**.

INSTITUTE FOR THE ADVANCEMENT OF THE AMERICAN LEGAL SYSTEM (IAALS): CIVIL JUSTICE INITIATIVE

In 2013, the Conference of Chief Justices created the Civil Justice Improvements Committee to make recommendations for best practices in civil litigation.¹⁶⁶ The committee’s recommendations included the use of case management technology tools to:

- Measure case progress to reduce cost and delay;
- Collect civil case management data in an ongoing way; and
- Publish this data for enhanced transparency and accountability.¹⁶⁷

IAALS partnered with the National Centre for State Courts to implement these recommendations.

One of the publications that arose from the *Civil Justice Initiative* was the “Call to Action: Achieving Civil Justice for All - Recommendations to the Conference of Chief Justices by the Civil Justice Improvements Committee.”¹⁶⁸ Recommendation 10 is to “use technology wisely,” and includes five sub-recommendations.¹⁶⁹ Recommendation 10.3 reads: “to measure progress in reducing unnecessary cost and delay, courts must regularly collect and use standardized, real-time information about civil case management.”¹⁷⁰ Recommendation 10.3 goes on to outline two types of measures to focus on: descriptive information about a court’s cases, processes, and people; and court performance information in terms of defined goals and desired outcomes.¹⁷¹ The authors recommend “CourTools” as a standardized performance measurement tool for this purpose.¹⁷²

In another publication called “Performance Measures for Civil Justice in 2017, the *Civil Justice Initiative* uses **measures** that address the following matters:

- Clearance rates;
- Time standards;
- Time to disposition;
- Discovery disputes;
- Default judgement rates;
- Continuances / extensions;



- Trial rates; and
- Court costs.¹⁷³

Finally, *Civil Justice Initiative* recommends using **surveys** for the following matters:

- Litigation costs
- Attorney experiences and opinions
- Court staff opinions
- Litigant experience and opinions

NATIONAL CENTER FOR ACCESS TO JUSTICE: AN ACCESS TO JUSTICE INDEX AND ACCESS TO JUSTICE INDICATORS

There have been two notable initiatives undertaken by the National Center for Access to Justice. Firstly, they created a national “Access to Justice Index” in 2014 (and a comparison set in 2016) to establish and implement best practices to **improve access to justice in the following areas:**

- Self-represented litigants
- Availability of lawyers for people with low or no income
- Accessibility for persons with disabilities, and
- Language access.¹⁷⁴

The composite index can be found at: <https://justiceindex.org/2016-findings/findings/#site-navigation>.

Secondly, the National Center for Access to Justice used recommendations from a meeting in 2016 with agencies from the White house Legal Aid Interagency Roundtable and A2J experts from the academy and community related to the UN’s 2030 Sustainable Development Goal #16.¹⁷⁵ The categories of civil justice indicators identified in the 2016 report “**Recommended Access to Justice Indicators** for Implementation of Goal 16 of the UN 2030 Sustainable Development Agenda in the United States” include:

- disability;
- disaster response;
- education;
- employment/labor;
- family law and matrimonial matters;
- finance and consumer protection (including credit card debt and home foreclosure);
- gender-based violence;
- healthcare;
- housing;
- immigration;
- public benefits;
- tribes and tribal members; and
- veterans and service members.¹⁷⁶

“MEASURING ONLINE LEGAL RESOURCES: A FRAMEWORK INSPIRED BY THE DRAKE EQUATION”¹⁷⁷

The above is the title of an article written by at the Florida Justice Technology Center, sponsored in part by the Institute for the Advancement of the American Legal System, about measuring the impacts of online legal resources, with factors such as the number of page views and user satisfaction scores.¹⁷⁸ The basic framework is as follows:

- *Targeted (T): People that the resource would ideally serve in the geographic area and legal topic covered.*



- *Accessible (A): The percentage of T that are able to use the existing resources — for instance based on literacy, language or technology.*
- *Found (F): The percent that find the resources — for instance, by being aware of the site, via a Google search or through a referral from a community partner.*
- *Used (U): The percent that interact with the resources in some more substantive way—for instance, by navigating to the end, printing information or assembling a form.*
- *Enabled Action (EA): The percentage of people for whom the resource enabled some meaningful next step in the real world —for instance, filing a form, creating a referral or a decision by the constituent that it's not worth their time to act.*
- *Achieved Outcome (O): The percent that reach an outcome – which could be defined in many ways. (We've identified seven different types of outcomes).¹⁷⁹*

For a visual representation of the equation used to calculate scores, see page 8 of the report, and for a discussion about the sub-variables for each of the above variables see pages 9-11 at: <https://floridajusticetechnologycenter.org/wp-content/uploads/2018/02/Drake-Equation-for-Online-Legal-v7.pdf>.

THE UNITED KINGDOM

CIVIL JUSTICE STATISTICS QUARTERLY

The UK Ministry of Justice publishes a “Civil Justice Statistics Quarterly”¹⁸⁰ with the court-based statistics:¹⁸¹

- Money and non-money claim volumes;
- Specific versus unspecified money claim;
- The court track that money claims were allocated to;
- Number and percent of claims with legal representation;
- Which parties had legal representation;
- Trials and the time taken to reach trial;
- Judgments and default judgments;
- Enforcements and warrants;
- Judicial reviews; and
- Appeal court stats including the number of days a judge sat.

JUSTICIABLE PROBLEMS AND PATHS TO JUSTICE

Building from the work of the Hague Institute for Innovation of Law (Hiil) which is (described above) the concept of “justiciable problems” and paths to justice has been widely used in the UK since the 1990’s.¹⁸² A longitudinal study about the public’s experience of civil justice issues has been undertaken (2010-2012), using the English and Welsh Civil and Social Justice Panel Survey. The report stemming from these surveys addresses the following:

- Incidences of civil justice problems;
- Their impact;
- People’s understanding of them;
- Their problem resolution strategies;
- Outcomes;
- Attitudes about the justice system; and
- The user-experience of legal aid.¹⁸³

In the UK, 26-large scale national surveys, 24 of which follow the “paths to justice” model, have been conducted since the 1990’s.¹⁸⁴ However, according to Pleasance, Balmer and Sandefur (2013), comparability between these surveys is very difficult due to differences in methods, sample frames, response rates, modes of administration, data structure, units of analysis, reference periods, filtering, what justiciable problems are included, and the framing of the questions.¹⁸⁵ The authors include recommendations for better comparability of future surveys.¹⁸⁶



ASSISTED DIGITAL SUPPORT

In the UK, assisted digital support (ADS) is an over the phone service (sometimes in person) to help people use the Ministry of Justice digital services.¹⁸⁷ A report to examine the needs for ADS was commissioned by The Civil Justice Council, and suggests the following measures for assessing the use of these services in practice:

- **Usage** measures:
 - Call waiting times
 - Expected users versus actual users
 - Number of aborted calls
 - Number of calls unanswered
 - Repeat Contact

- **Outcome** based data:
 - Whether all user queries are resolved within the scope of the call
 - User willingness to use similar services independently in the future
 - User willingness to navigate the whole system online (when end to end digital courts are introduced in full) and the number who do so
 - Integration of the ADS journey across linked services for a seamless user experience
 - The extent to which the advisor is able to keep the user in an online state of mind – the user’s willingness to persist with digital completion
 - Measuring the change – what are the user’s next steps?
 - Assessing what clients might have done were the service not provided
 - Follow-up studies that measure digital confidence amongst service users
 - Broad categories of issues facing service users – for iterative design of the online service itself
 - Court staff experience of the model – to assess sustainability¹⁸⁸



CANADA

CANADIAN BAR ASSOCIATION (CBA)

In 2013, the CBA Access to Justice Committee wrote a report about the international use of A2J metrics, and found that Canada must develop measures for meaningful outcomes, not just outputs, of justice services.¹⁸⁹ The authors suggested developing metrics with a bottom-up approach, using consultations with marginalized peoples across Canada to ask two main questions:

1. “What happens when access to justice is **denied**?”
2. “What happens when access to justice is **afforded**?”¹⁹⁰

See **Appendix F** for a summary of the key responses to these questions and suggested metrics. Also in 2013, the CBA A2J Committee provided recommendations and insights in their “Access to Justice Metrics” discussion paper.¹⁹¹ The key insights the CBA reported from their consultations in regard to how to structure such a A2J metrics initiative is summarized in **Appendix G**.¹⁹²

Finally, and also in 2013, the CBA A2J Committee created a report called “Reaching Equal Justice Report: an invitation to envision and act.” In this report, the CBA makes many suggestions for legal reform in Canada to improve A2J, and includes a discussion about the importance of A2J metrics.¹⁹³ The committee proposed “that the federal government take the lead but work closely with all justice system stakeholders, with the goal of publishing a first report on Canadian access to justice metrics by 2020 and a comprehensive report by 2030.”¹⁹⁴

In Canada, many organizations collect some useful A2J related data, however lack of consistency in approach and methodology results in data diffusion.¹⁹⁵ The CBA references the ‘Justice Dashboards’ in BC, which report basic criminal justice statistics, with plans to extend this practice to civil justice, as a step in the right direction.¹⁹⁶ The CBA also points to a plan by the Canadian Association of Provincial Court Justices and Association of Legal Aid Plans to develop a common management information collection framework as a promising practice moving forward.¹⁹⁷ However, the CBA recognizes that “we are far from a shared framework for gathering data, much less a sound knowledge base for justice system decision making” at this time.¹⁹⁸

The CBA proposes establishing national, evidence-based, legal aid benchmarks as a principled framework for the development of a federally funded, coast-to-coast, legal aid system for both criminal and civil legal issues.¹⁹⁹ According to the “Reaching Equal Justice” report, “the central feature of **national benchmarks** would be agreement on a definition of essential public legal services, based on a shared understanding of the legal issues or problems that involve fundamental interests.”²⁰⁰ According, the CBA submits the following as **essential legal aid services**: criminal law; child protection; family law; domestic violence; landlord tenant matters where eviction is at issue; employment law where union representation is unavailable; refugee and immigration; and social benefit cases.²⁰¹ The national benchmarks should serve to address:

- the complexity and consequences of the issues;
- priority characteristics of individuals;
- the type of legal assistance from the continuum of available services required by the various factors at play;
- assistance in addressing non-legal factors with a significant impact on the legal matter;²⁰² and
- eligibility and quality of legal aid services.²⁰³

ACCESS TO JUSTICE INDICES

There are three access to justice index initiatives in Canada which can serve as useful tools and examples for measuring A2J in various justice processes.²⁰⁴

THE ACCESS TO JUSTICE INDEX FOR FEDERAL ADMINISTRATIVE BODIES



Beginning as a pilot in 2014 by the Department of Justice modelled after the index created by the National Center for Access to Justice in the US, this Index aimed to measure AJI in administrative law for federal administrative bodies.²⁰⁵ The Index has 4 categories:

- **Access** to the administrative body, including subcategories for:
 - Physical access
 - Technological access
- **Processes**, including subcategories for:
 - Procedural justice
 - Representation
 - Interpersonal aspects
 - Informational aspects
- **Costs**, including subcategories for:
 - Services charges
 - Intangible costs
- **Outcomes**, including subcategories for:
 - Distributive elements
 - Functional elements
 - Transparency elements²⁰⁶

To see the full instrument and all questions asked, as well as the weighting for scores in each category, see the report at http://publications.gc.ca/collections/collection_2018/jus/J4-61-2017-eng.pdf.

ACCESS TO JUSTICE WELL-BEING INDEX

This Index was also funded by the Department of Justice (DOJ) and modelled after the one above, using similar categories.²⁰⁷ The purpose of this index is to create a standard for DOJ-funded programs (including non-profits) and to measure the degree to which AJI is achieved by each. The self-assessment tool consists of 52 weighted questions with yes/no answers.²⁰⁸ The report by Tim Roberts and Associates Consulting, called “Access to Justice Well-being Index: Final report and Index” (2018) for the Department of Justice Canada, Evaluation Division is not yet published.²⁰⁹

SENSE OF JUSTICE INDEX

The creation of this index was part of the Quebec Civil Procedure Reforms in 2003, and the results were considered in the *Quebec 2014 Code of Civil Procedure*. The index was based on the cost and quality approaches used by HiiL in the Netherlands, and was tested in settlement conferences with Quebec trial court judges using a “facilitative integrative problem-solving approach.”²¹⁰ The three pillars of the index are:

1. The user’s feelings of **fairness** with respect to **outcome and process**;
2. The user’s feelings of usefulness with respect to **cost-effectiveness**; and
3. The user’s sense that **support** was available from the judge-mediator²¹¹

In 2013 and 2014, the index’s reliability and validity were empirically tested, and the underlying questionnaire was tested in settlement conferences with a total of 740 participants.²¹²

CANADIAN FORUM ON CIVIL JUSTICE: JUSTICIABLE PROBLEMS AND COST STUDIES

The concepts of “justiciable problems” and “paths to justice”, which originated by HiiL (described above) influenced two studies by the Department of Justice led by Ab Currie in 2004 and 2006.²¹³ In 2016, Currie, then a Senior Research Fellow with the Canadian Forum on Civil Justice (CFCJ), wrote a report about the results of a 2014 national Survey by the CFCJ on everyday legal problems and the costs of justice in Canada. “Everyday legal problems” are centered on Hazel Genn’s concept



of “justiciable events,” which understands legal problems from the perspective of those experiencing them.”²¹⁴ “Legal needs” were understood as a “legal problem about which there is some consensus that something ought to be done.”²¹⁵

- The **problem categories** include:
 - Consumer
 - Debt
 - Employment
 - Social assistance
 - Disability benefits
 - Housing
 - Immigration
 - Police action
 - Family
 - Relationship breakdown
 - Family
 - Wills and powers of attorney
 - Personal injury
 - Medical care
 - Threat of legal action
 - Neighborhood problems
 - Crime

The report found that 48.4% will experience one or more of the above everyday legal problems in a three year period²¹⁶

- The metrics related to **justiciable problems** include:
 - The percent of legal problems that are addressed in the formal justice system;²¹⁷
 - The monetary value of the problems;²¹⁸
 - The percent of people experiencing multiple problems within a 3-year period;²¹⁹
 - Factors related to experiencing multiple legal problems (including social disadvantage, marital or domestic status, and age);²²⁰
 - The effect of long-standing disadvantage (including long term debt, housing, or employment issues);²²¹
 - Patterns of “problem clusters”;²²²
 - “Trigger effects” where one problem triggers another;²²³ and
 - The additive effect of experiencing multiple legal problems.²²⁴
- Metrics related to **what people did** about their legal problems include:
 - The percent of people taking actions (including negotiating with the other party, advice from friends and relatives, internet searches, legal advice, something else, and taking no action);²²⁵
 - Why people took no action (including that it would cause more trouble, cost too much, take too much time, was too stressful, or they did not think anything could be done);²²⁶ and
 - The percentage of people who thought certain types of help would be useful (including better information, explanation of legal aspects/help with forms, someone to intervene, a lawyer, or other).²²⁷
- Metrics related to **whether or not problems were resolved** include:
 - The type of action taken (including self-help, non-legal, and legal) by status of the problem (resolved, ongoing, and abandoned);²²⁸
 - Ratings of fairness and expected outcomes;²²⁹ and
 - The extent to which actions taken were helpful (including non-legal assistance and legal advice)²³⁰
- Metrics related to the **monetary costs** include:
 - Percentage of people spending large amounts to deal with a problem;²³¹
 - The aggregate cost to the public;²³²



- Intangible costs to individuals (including justice problems that caused physical health or stress/emotional issues),²³³
- The cost to the state;²³⁴
- Additional costs to health care;²³⁵
- Loss of employment as a consequence of a legal problem;²³⁶
- Being on social assistance as a consequence of a legal problem;²³⁷
- Loss of housing as a consequence of a legal problem;²³⁸ and
- Total monetary costs related to resolving legal problems;²³⁹

- Metrics related to **legal capability**:
 - Problem types and understanding of potential seriousness;²⁴⁰
 - Problem types and awareness of legal implications;²⁴¹
 - Problem types and knowing where to go for help;²⁴²
 - Problem types and knowing what help was needed²⁴³
 - Problem type and overall knowledge;²⁴⁴
 - Dimensions of legal capability and perceived fairness of outcome;²⁴⁵
 - Dimensions of legal capability and expected outcome;²⁴⁶
 - Dimensions of legal capability and obtaining legal advice;²⁴⁷



DESIGNING A2J INDICATORS

Indicators seek to determine the level of progress on a particular objective, and A2J indicators can be created by operationalizing dimensions of A2J.²⁴⁸ Operationalization in this context is the “process of converting concepts into their empirical measurement or of quantifying variables for the purpose of measuring their occurrence, strength and frequency.”²⁴⁹ The process involves defining broad indicators of the range of justiciable problems, and assessing just outcomes for these problems by measuring key proxies, such as supports accessed or process fairness.²⁵⁰ Indicators should reflect priorities for A2J for which change is feasible.²⁵¹

The indicator design process should be inclusive and deliberative, and involve “meaningful engagement with frontline service providers, community groups and wider stakeholders in the delivery of justice.”²⁵² This fosters a deeper understanding of the process in community, which will encourage stakeholders to eventually act on the findings.²⁵³

There are several possible forms for indicators, with single data source indicators as the easiest to define, comprehend, communicate, and link to policies, while offering “transparency and logistical simplicity.”²⁵⁴ However, where the goals are complex, multiple complementary and supplementary indicators may be required.²⁵⁵ The Colombian *Index of Effective Access to Justice* combines multiple indicators in a complex single indicator, and is a model to consider.²⁵⁶ However, complex indicators are harder to communicate and link to specific policies, therefore the OECD and Justice Initiative recommend striking a balance.²⁵⁷ Using “baskets” of single variable indicators²⁵⁸ can provide a more balanced assessment, and combine supplementary and complementary indicators.²⁵⁹ In addition, multiple single indicators are useful for demonstrating stages of progress.²⁶⁰

The denominators used for indicators also must be thoroughly considered. The OECD and OSF provide a helpful example: “an indicator of the volume of appropriate advice that uses a denominator of population size may go down if problems decrease in number, while a similar indicator using problem number as a denominator might be expected to go up in the same circumstances.”²⁶¹ Evidently, the use of both indicators provides a balance.”²⁶²

THE DIMENSIONS OF A2J

The OECD and Justice Initiative definition of A2J is “centred on the ability of people to obtain just resolution of justiciable problems in compliance with human rights standards.”²⁶³ Therefore, local legal frameworks are not sufficient for assessing A2J, as they may conflict with global human rights requirements.²⁶⁴ This definition leads to at least seven distinct **dimensions/sub-dimensions of access to justice**:

- The substance of law;
- The availability of formal or informal institutions of justice;
- The quality of formal or informal institutions of justice;
- The availability of legal assistance;
- The quality of legal assistance;
- The quality of outcomes; and
- Legal capability and empowerment.²⁶⁵

Further dimensions/sub-dimensions related to concepts of **legal need and unmet legal need** include:

- Timeliness of outcomes;
- Legal knowledge;
- Awareness of dispute resolution options;
- Quality of process;
- Awareness of assistance services; and
- Adequacy of assistance services.²⁶⁶



HiiL's *Measuring Access to Justice in a Globalising World* sets out three additional dimensions related to **cost and quality** to A2J:

- Costs of procedure;
- Quality of procedure; and
- Quality of outcome.²⁶⁷

HiiL also set out the following nine **sub-dimensions** of the above dimensions:

- monetary costs;
- opportunity costs;
- stress and emotions;
- procedural justice;
- interpersonal justice;
- informational justice;
- distributive justice;
- restorative justice;
- functionality; and
- Transparency.²⁶⁸

Other dimensions relate to **specific justiciable problems**, such as Yuthayaotin's A2J framework for business and e-commerce, which included:

- Information necessary to make informed decisions;
- The nature of transactions;
- Functioning of the market; and
- Consumer rights recognition and their role in the market.²⁶⁹

Additional dimensions related to key **demographic characteristics** in the UN General Assembly's calls for Sustainable Development Goals data to be disaggregated along the lines of:

- Income;
- Sex;
- Age;
- Race;
- Ethnicity;
- Migration status;
- Disability; and
- Geographic location.²⁷⁰

Dimensions such as language and disability access used in the US *Justice Index* from 2014 and 2016 achieve these goals.²⁷¹ Finally, the OECD and Justice Initiative recommend including indicators that clarify the relationship between health and access to justice.²⁷²

LEGAL NEEDS-BASED A2J INDICATORS

A full set of A2J dimensions revealed in OECD and Justice Initiative's legal needs surveys review can be found in Table 4.1 of their report, and could serve as a basis for A2J indicators.²⁷³ According to their report, "indicators from surveys have particular value in providing the perspective of individuals, communities, businesses, etc., and potentially across the wide universe of justiciable problems."²⁷⁴ Overall, legal needs surveys can provide the basis for **simple indicators** such as:

- "the incidence of **justiciable problems** (of defined types);



- the level of **awareness** of defined support services;
- the proportion of people acting and failing to act to **resolve** problems (or failing to act for defined reasons);
- the proportion of people obtaining and failing to obtain defined **support** (or failing to obtain defined support for defined reasons);
- the proportion of people experiencing defined **obstacles** to defined support;
- the proportion of problems in respect of which defined **support was obtained**;
- the proportion of problems in which **adequate support** was obtained;
- the proportion of problems resolved in a manner (i.e. overall **process**) perceived as **fair**;
- the proportion of problem **outcomes** perceived as **fair**;
- the **cost** of problem resolution; and
- the level of perceived **accessibility** of justice.²⁷⁵

Legal needs surveys effectively complement administrative data, especially when it comes to illustrating the use of legal support and resolution processes, where administrative data can be lacking.²⁷⁶

Legal needs are increasingly informing **national** policy priorities and progress measurement; consider both the *English and Welsh Civil and Social Justice Survey* in 2001 and the *Colombian Quality of Life Survey* in 2016, which created the *Index of Effective Access to Justice*.²⁷⁷ The OECD and OSF report on the breadth of indicators in the Colombian index that were informed by legal need surveys, but state that these surveys can inform A2J indicators to a greater degree.²⁷⁸

The conversation about international A2J indicators has been spurred by the UN's Sustainable Development Goals, specifically SDG 16.3, which deals with A2J and the rule of law at the **global** level.²⁷⁹ In 2017, the Inter-agency and Expert Group on Sustainable Development Goal Indicators (IAEG-SDGs) recommended adding a global indicator related to access to civil justice to the existing SDG 16.3 criminal justice indicators, and the IAEG committed to consult on the development of such an indicator over the course of 2019.²⁸⁰ According to the OECD and Justice Initiative, legal needs surveys are critical to understanding global A2J, and can complement existing global indicators based on administrative data and data from victimization surveys.²⁸¹ Furthermore, the inclusion of civil justice A2J indicators would complement other SDGs, such as:

- **Goal 1:** End Poverty;
- **Goal 3:** Ensure healthy lives;
- **Goal 5:** Achieve gender equality;
- **Goal 8:** Decent Work;
- **Goal 10:** Reduce inequality; and
- **Goal 15:** Life on Land.²⁸²

By connecting to these other SDG's, a civil A2J indicator can underpin multidimensional policy strategies.²⁸³

Creating one, comprehensive global legal needs-based indicator is a difficult task, given the many dimensions and sub-dimensions to A2J.²⁸⁴ However, there have been many attempts to create such an indicator.²⁸⁵ The Virtual Network for the Development of Indicators on Peaceful, Just and Inclusive Societies for Goal 16 recommended the following indicator in the initial consultation process for the SDG indicator framework:

*The proportion of those who have experienced a dispute in the past 12 months who have accessed a formal, informal, alternative or traditional dispute resolution mechanism and who feel it was just*²⁸⁶

However, this indicator is restrictive and fails to account for the many barriers to justice, the diversity in pathways to justice, whether or not people are able to access assistance with their justiciable problems, and if they felt the process was fair.²⁸⁷ The OECD and Justice Initiative suggest the following reformulation:

*The proportion of disputes experienced in the past 24 months resolved through a process considered fair by the disputants.*²⁸⁸



Limitations to the above indicator include the fact that it is unlikely to reveal needed innovations to delivery of A2J in various countries, and whether or not justice institutions are advancing on policy goals.²⁸⁹ In addition, fairness of process will depend on respondent's expectations, which will vary across countries and may dampen "a transformative visions of access to justice."²⁹⁰ A more meaningful, multidimensional indicator that includes access to support, problem seriousness, and legal capability, which the OECD and Justice Initiative frame as a compound and multidimensional indicator would be:

*The proportion of non-trivial disputes experienced in the past 24 months resolved through a fair process and in respect of which the disputants received adequate support to make informed decisions and pursue a fair outcome.*²⁹¹

Note: See the OECD and Justice Initiative Table 4.2: Compound indicator dimensions & corresponding questionnaire numbers.²⁹²

Another important factor in developing global indicators is the ability to disaggregate data on the basis of income, gender, age, ethnicity, geography, and others factors related to marginalization of certain groups.²⁹³ The SDG Framework provides the following disaggregation target:

*By 2020, enhance capacity-building support to developing countries ... to increase significantly the availability of high-quality, timely and reliable data disaggregated by income, gender, age, race, ethnicity, migratory status, disability, geographic location and other characteristics relevant in national contexts.*²⁹⁴

Some of the SDG indicators specifically state the level of disaggregation in the indicator itself (see SDG indicator 1.4.2 and 2.3.2).²⁹⁵ A disaggregation-specific indicator could be created as follows:

*"The proportion of A, B or C disputes experienced by X, Y or Z population in the past 24 months resolved through a process considered fair by the disputant where the disputants received adequate support."*²⁹⁶

This format does risk failing to capture certain groups or emerging inequalities, but would contribute to holistic measurement of access to civil justice where other data sources cannot.²⁹⁷

Low legal literacy results in one of the most central challenges to legal needs surveys, which is "defining the range and establishing the incidence of justiciable problems within a survey's scope."²⁹⁸ Indicators for access to health care can provide a model, such as the following example from the *EU Income and Living Conditions Survey*, which asks:

"Was there any time during the past 12 months when you really needed medical examination or treatment (excluding dental) for yourself?"²⁹⁹ If the response is positive it is followed up by: "Did you have a medical examination or treatment each time you really needed?"³⁰⁰ The lack of specificity in this style of question would be problematic, but could be followed up with questions that help to identify the specific types of problems experienced by respondents.³⁰¹

BEYOND LEGAL NEEDS SURVEYS

Although legal needs surveys can shed light on justiciable problems, levels of legal need, and use of services and process across jurisdictions, without large enough sample sizes the information gleaned about specific populations can be limited.³⁰² Therefore, oversampling may be necessary for particular groups, which can introduce difficulties in analysis.³⁰³ Furthermore, without large samples, legal needs surveys are not adept at capturing respondent experiences of specific legal services or rarer problem types.³⁰⁴ To assess particular legal institutions, user surveys or administrative data will be more effective.³⁰⁵

Ultimately, a diverse set of data sources across A2J dimensions will be necessary, including administrative data, geospatial data, expert review, user surveys, and legal needs surveys.³⁰⁶ Where legal needs surveys will be most effective for capturing a full picture of problem incidence, legal needs, legal capability, problem resolving behaviour, adequacy of assistance and support, and process fairness, a combination of measures will provide the most useful insights.³⁰⁷ For example, the Colombian *Index of Effective Access to Justice* includes 24 indicators; 13 of which rely on survey data, 9 rely on legal needs data, 9 on administrative and geospatial data, and 1 on administrative data as the numerator and geospatial data as the



denominator.³⁰⁸ The 2016 *Justice Index* by the National Centre for Access to Justice, which relies on expert review, is another example of diverse data sourcing.³⁰⁹

Moving forward, legal needs surveys can be used to shed light on the experiences of civil justice across the world, “providing overarching, individually focussed, system-wide indicators, and exposing the reach of support services and institutions.”³¹⁰ Large scale comparative data sets such as HiIL and the WJP provide opportunities to try different indicator formulations, based on legal needs survey data and complementary data from other sources to create headline indicators and a combination of supplementary and complementary indicators.³¹¹ According to the OECD and the Justice Initiative, combining legal needs surveys with other data collection methods will bolster the SDG global indicator framework, and the derivative global headline indicator “should supplement and catalyse national level operationalism of legal needs indicators.”³¹²

FEASIBILITY IN THE CANADIAN CONTEXT

In the spring of 2019, the BC Access to Justice Metrics Colloquium held a day long focus group to discuss twelve possible dimensions of A2J, and attempted to map the availability of corresponding data in the province.³¹³ The measurement framework divided twelve A2J dimensions and corresponding sub-dimensions into three elements:

1. Improving Population A2J

- 1.1. Prevalence of legal needs/problems
 - 1.1.1. Prevalence of legal problems in the population
 - 1.1.2. Prevalence of unaddressed legal needs in the population
 - 1.1.3. Public legal awareness
- 1.2. Response to legal needs
 - 1.2.1. People’s choice of path to justice
 - 1.2.2. Legal information and education needs
 - 1.2.3. Legal advice needs
 - 1.2.4. Need for legal representation and other legal assistance
 - 1.2.5. Need for consensual dispute resolution process
- 1.3. Fair and equitable A2J
 - 1.3.1. Accessibility of justice system for British Columbians (including geographical access, accessibility for Indigenous people with mental illness, and accessibility for immigrants and refugees)
 - 1.3.2. Financial access to justice system
 - 1.3.3. Timeliness of access to justice system
- 1.4. Social and economic impact of A2J
 - 1.4.1. Social policy objectives
 - 1.4.2. Protection of people’s rights
 - 1.4.3. Public confidence in the justice system
 - 1.4.4. Public confidence in social institutions
 - 1.4.5. Gender equality
 - 1.4.6. Justice for Indigenous people
 - 1.4.7. Social & economic costs and benefits of A2J

2. Improving User Experience of A2J

- 2.1. User experience of obstacles to A2J
 - 2.1.1. Obstacles to access (distances, technology, affordability)
 - 2.1.2. Eligibility to services
 - 2.1.3. Affordability of services
 - 2.1.4. Delays in accessing justice services and their impact
- 2.2. Quality of user experience of the justice system
 - 2.2.1. Quality of legal information and education
 - 2.2.2. Trust and confidence in legal information



- 2.2.3. User empowerment
 - 2.2.4. Quality of legal advice
 - 2.2.5. Quality of legal assistance and representation
 - 2.2.6. Quality of referral services
 - 2.2.7. Experience of self-represented litigants
 - 2.2.8. Quality of consensual dispute resolution processes
 - 2.3.** Effectiveness of justice system in addressing user legal problems
 - 2.3.1. Effective resolution of legal problems
 - 2.3.2. Mitigated impact of legal problems
 - 2.3.3. Prevention of legal problems
 - 2.3.4. Prevention of conflicts
 - 2.3.5. Unmet legal needs and their consequences
 - 2.3.6. Limits to the assistance received
 - 2.4.** Appropriateness of the justice process
 - 2.4.1. Fairness, equity and impartiality of justice process
 - 2.4.2. Cultural appropriateness
 - 2.4.3. Voice and participation
 - 2.5.** Justice outcomes for the users
 - 2.5.1. User satisfaction with outcomes of justice process
 - 2.5.2. Compliance with court orders, judgments, and mediated agreements
 - 2.5.3. Post-resolution support
 - 2.5.4. User enhanced legal awareness
 - 2.5.5. Enhanced legal capability
- 3. Improving Costs**
- 3.1.** Per-capita costs of services
 - 3.1.1. Per capita costs of services
 - 3.1.2. Impact on new initiatives on per-capita costs
 - 3.2.** Per-user costs of services
 - 3.2.1. Per user costs by type of services
 - 3.2.2. Impact of new initiatives on per-user costs
 - 3.3.** Other costs
 - 3.3.1. Social and economic costs of unresolved legal problems
 - 3.3.2. Impact of unresolved problems on costs in other sectors

While the results of this forum are yet to be released, some information has been revealed about the availability of A2J data in BC. Data may be most readily available for the following dimensions: 1.1) legal needs/problems, 1.2) response to legal needs, and 1.3) fair and equitable access to justice, and data may be least available for these dimensions: 2.3) identifying legal problems, 2.5) justice outcomes, and 3) improving costs. The range of currently possible **data collection methods** identified include:

- Legal organization intake interviews;
- Legal service exit surveys/interviews;
- Applications for legal aid;
- Court/tribunal filings and applications;
- Mediation/case conference filings;
- Court case award values;
- Analytics for use of legal databases;
- Analytics for use of legal websites;
- Legal organizational reports;
- Expert/stakeholder consultation;
- Legal needs surveys by the BC Legal Services Society;
- Tracking referrals to pro bono and other services;



- Attendance at public legal education events;
- Organization budgets.

The work of the BC Access to Justice Metrics Colloquium is vital for identifying data sources that are currently available. What seems to be most lacking in the current data availability is the incidence of legal problems for which people do not bring awareness to legal organizations, lawyers, courts or tribunals. These early insights reiterate the importance of large-scale, comparative data collection strategies linked to global indicators, and that a coordinated effort to enhance data collected across agencies and government services will be needed.



TOWARDS NATIONAL A2J INDICATORS IN CANADA

Based on this survey of the national and global use of A2J metrics and indicators, the following ten components of A2J emerge as common indicators of access to justice being tracked through standardized data collection and surveying.

1. Types of justiciable problems;
2. Help sought and others involved;
3. Resolution processes and other problem-solving behaviours;
4. Outcomes/conclusions both in fact and type;
5. Perceptions of quality, fairness, accessibility, and appropriateness of both the process(es) and outcome(s);
6. Cost and impact in terms of economic expenses, time spent, and negative effects on health, substance abuse, and relationships;
7. Personal factors including awareness of law, process, and support, and legal capability and confidence;
8. Legal needs and unmet needs;
9. Barriers and obstacles faced; and
10. Disaggregated demographic information.

1. Types of justiciable problems.

Capturing the full range of legal problems Canadians experience is a central component to designing data collection methodologies and corresponding indicators. The global OECD and Justice Initiative report and the Canadian Forum on Civil Justice use the concept of “justiciable problems” based on the groundbreaking “paths to justice” work by Hiil.³¹⁴ Justiciable problems take a wider view than what may ordinarily be considered a “legal” problem.³¹⁵ Categories of justiciable problems used by the OECD and Justice Initiative include: employment; family; accidental injury/illness; money and debt; consumer; community and natural resources; land and housing; and, public services and administration.³¹⁶ The WJP recommends the following additional problem types: education; citizenship and ID; and, law enforcement, and suggests using a 2-year reference period for surveying respondents.³¹⁷

2. Help sought and others involved, including formal and non-formal sources.

Most of the surveys and indicators reviewed in this work have assessed supports used in the justice process. The WJP recommends evaluating a broad range of both formal and informal sources of help, such as getting information from the internet, getting help from friends and family, as well as the reasons why no help was sought if that was the case.³¹⁸ Indicators designed by the OECD and Justice Initiative capture both the percentage of people who were successful in attaining support, and the percentage who failed.³¹⁹ Assessing help seeking in legal needs surveys, the OECD and Justice Initiative used the following categories: family, friends and acquaintances; people and organizations within the legal and advice sector; other professionals (in areas such as health, welfare, and finance); other government bodies (such as administrative departments or politicians); non-legal civil societies or charities; community leaders or organizations; religious supports; employment related supports (such as trade unions or employers), and others.³²⁰

3. Resolution processes and other problem-solving behaviours.

A wide variety of national and global A2J measurement initiatives have focused in some way on the actions people take to solve their problems. Many initiatives have evaluated the use of legal services specifically, such as the *National Legal Assistance Data Standards Manual* in Australia which sets out metrics based on the use of individual and community based legal services.³²¹ The use of specific digital or telephone based legal services have also been evaluated in the United States³²² (by the Florida Justice Technology Center) and in the UK (by the Ministry of Justice Digital Services for their Assisted Digital Support services).³²³ Finally, rates of use for specific administrative body or court services and processes have been measured in various locations, including: the Civil Justice Initiative in the US which evaluates A2J in civil litigation;³²⁴ the US-based Measures for Justice Indicators (specifically the core measures, see **Appendix E**); the Civil Justice Stats Quarterly in the UK which provides court related statistics;³²⁵ the evaluation of settlement conference services during the 2003 Quebec



Civil Pro Reforms process,³²⁶ and, the Canadian Department of Justice's evaluation of administrative body access.³²⁷ The WJP and the OECD and Justice Initiative both evaluate and inform indicators by the types of resolution processes used. The OECD recommends collecting data across the following resolution categories: no third party (direct or indirect negotiation); state processes (such as courts, tribunals, etc.); community practices (such as Indigenous customary legal practices); religious processes and courts; and others.³²⁸

4. Outcomes/conclusions both in fact and manner.

The OECD and Justice Initiative recommend evaluating whether a matter is in fact concluded by assessing whether it is completely resolved, settled by abandonment, ongoing, or unclear.³²⁹ The WJP additionally asks if the matter is complete, but if the problem persists.³³⁰ Many initiatives evaluate the specific strategy that brought the problem to its conclusion, such as the WJP³³¹ and the OECD, which measures outcomes such as a third party decision, an agreement, a unilateral action, or whether the problem sorted itself out.³³² HiiL's "Indicators of the Costs and Quality of Paths to Justice" evaluate outcome in their level of the following seven types of justice: distributive (or equitable) justice, restorative (or reparative) justice, corrective (or compensatory) justice, retributive justice, informational (or justified) justice, transformational justice (or relationship building), and formal justice (which is consistent with the outcomes of similar problems.)³³³ HiiL also measures outcomes in terms of their level of pragmatism and deterrence.³³⁴ The Canadian Department of Justice also measures outcomes in terms of their level of transparency.³³⁵ In the WJP's A2J Module, the level to which an outcome was favourable and satisfactory are also evaluated.³³⁶

5. Perceptions of quality, fairness, accessibility, and appropriateness of both the process(es) and outcome(s).

HiiL's *Justice Needs and Satisfaction surveys* evaluate perceptions of process quality, including: perceived fairness, neutrality, and consistency, respect, and politeness and how effectively processes and resulting outcomes were explained.³³⁷ HiiL also evaluated perceptions of outcome quality, including: perceived fairness of resulting benefits and burdens; how effectively an outcome restored an imbalance or injustice; and, how well an outcome resolved the problem.³³⁸ The WJP also measures perceptions of fairness and satisfaction of process and outcome, as well as how slowly the matter progressed, how expensive it was, and how the problem developed post conclusion.³³⁹ In addition, the framework of A2J dimensions used by the BC Access to Justice Metrics Colloquium included perceptions of cultural appropriateness, which will be very important to consider in the Canadian multi-cultural and plural legal context.

6. Cost and impact in terms of economic expenses (including relocation), time spent, and negative effects on health, substance abuse, and relationships.

HiiL's *Needs and Satisfaction Surveys* evaluate costs to an individual in a broad sense. Most obviously, cost measures include financial expenditures, such as out-of-pocket expenses for service fees, transportation, communication, a notary, and bailiff or witness fees (see **Appendix B**).³⁴⁰ Secondly, cost in terms of time includes searching for help, collecting documents and preparing forms, communicating with professionals, waiting in lines and attending (and waiting in) court.³⁴¹ Thirdly, emotional impacts including the level of stress experienced in the process(es), and the extent of negative emotions such as anger, fear, humiliation, and disappointment.³⁴² Other costs include lost wages, loss of opportunity, and having to relocate. The 2004 *English and Welsh Civil and Social Justice Survey* additionally surveyed costs in terms of physical health; violence aimed at respondent; property damage; and loss of confidence.³⁴³

7. Personal factors including awareness of law, process, and support, legal capability, and confidence.

The WJP A2J Module assesses whether a respondent understood their legal rights and responsibilities, if they knew where to get information and support, and how confident they were in their ability to achieve a fair outcome.³⁴⁴ The Canadian Forum on Civil Justice measures legal capability in terms of respondent's ability to identify problems and understand their potential seriousness, legal implications, where to get appropriate help, and knowledge of the issue overall.³⁴⁵ According to the OECD and Justice Initiative, it may also be useful to measure legal capability via demographic proxies, such as education and income level, and access to technological resources and social capital.³⁴⁶

8. Legal need and unmet needs



Legal need and unmet need indicators have not been widely used or developed, therefore this is an area where metric testing will be necessary. A New Zealand attempt to directly measure legal need may be a helpful starting point, which asked whether a legal need was definitely met, definitely not met, was unclear, and if the respondent had difficulty getting support.³⁴⁷

9. Barriers and obstacles faced

Various initiatives have set out to assess specific barriers to A2J. The National Center for A2J Indicators in the US measured barriers for persons with disabilities and barriers based on language in their Access to Justice Index in 2014 and 2016.³⁴⁸ Measures related to disability include needs for interpretation, accommodation request processes, access complaint services, and rights to legal counsel and service animals.³⁴⁹ Measures related to language access include needs for trained interpretation and translation at various points in the process, subsidies for interpretation services, and a language access plan.³⁵⁰ In a 2006 New Zealand based survey, respondents were asked if legal needs were unmet due to specific barriers that prevented them from seeking help, such as language, cost, and fear.³⁵¹ The OECD and Justice Initiative also recommend including indicators that clarify the relationship between health status and access to justice.³⁵²

In Canada, specific barriers for Indigenous Peoples must be crafted, to assess the likely barriers preventing A2J, such as: trauma, fear, distrust of the justice system, distrust of legal professionals, preference and barriers for access to customary or traditional legal systems, and feelings of dissonance about participating in colonial legal processes given rights to self-determination and sovereignty.

11. Disaggregated demographic information.

Finally, according to the UN General Assembly's calls for Sustainable Development Goals, all data regarding the above A2J dimensions must be able to be disaggregated across the following categories:

- Indigeneity
- Ethnicity
- Race
- Immigration and refugee status
- Disability
- Sex
- Gender
- Income
- Mental health
- Geographic location³⁵³



APPENDICES

APPENDIX A: SUMMARY OF TOPICS ADDRESSED IN PAST LEGAL NEEDS SURVEYS

[emphasis added]

*“In relation to **problem experience**, aside from topics already discussed in this chapter, topics have included:*

- *The substance of problem (e.g. money, property, changing behaviour, apology, etc.)*
- *Who is considered to be responsible for the problem*
- *Links to other identified justiciable problems (including “problem clustering”)*
- *The nature of other party/parties (including their demographics and relative power)*
- *Relationships with other party/parties*
- *Whether problems involve discrimination*
- *The existence and extent of disagreement*
- *Whether problems are shared with other people (households and communities)*

*In relation to **obtaining help**, aside from topics already discussed in this chapter, topics have included:*

- *How respondents find out about/chose sources of information and help*
- *Factors in choice (e.g. distance, cost, reputation, ethnicity, etc.)*
- *The extent to which options are researched*
- *Nature of Internet use*
- *Obstacles/barriers to access (e.g. opening hours, distance, cost, language, etc.)*
- *Distance and mode of travel to sources of help*
- *When help is obtained*
- *The timeliness of assistance*
- *The sequence of sources of information/help*
- *Links between the use of different sources (e.g. signposting, referral, etc.) The nature of information/help sought*
- *The nature of information/help obtained*
- *Whether any information/advice suggests objectives would not be met*
- *The form of communication with sources of help*
- *Whether help is obtained through an intermediary*
- *Satisfaction with/utility of information/help obtained*
- *Reasons for satisfaction/dissatisfaction*
- *Responses to being dissatisfied (complaint, advice, etc.)*
- *The impact of obtaining help on social, health, and economic circumstances*
- *Details of unsuccessful attempts to obtain information/help*
- *Whether there was consideration of (any/further) information/help*

*In relation to **dispute resolution processes**, aside from topics already discussed in this chapter, topics have included:*

- *Whether and how many hearings/sessions*
- *Whether respondent attends hearings/sessions*
- *Tasks undertaken by respondent in hearings/sessions*
- *Whether the respondent (and other party) is represented, and by who*
- *Whether the respondent is pressed to give particular testimony*



- *Bribery/threats as part of processes*
- *Reasons for choice of process*
- *The duration of process*
- *The sequence of processes*
- *The language used in processes and availability of translation Whether processes are discriminatory*
- *The utility of processes*

*And in relation to problem **resolution in general**, aside from topics already discussed in this chapter, topics have included:*

- *Whether respondents thought problems would be resolve without action*
- *The delay until first action was taken*
- *Whether previous experience influenced strategy*
- *Whether respondents regret how they handled problems*
- *What they wish they had done/had known*
- *Whether and what help would have improved outcome³⁵⁴*



APPENDIX B: BUILDING AN INDEX: INDICATORS OF THE COSTS AND QUALITY OF PATHS TO JUSTICE

(Netherland, Tilburg University)³⁵⁵

Costs of the Procedure ³⁵⁶		
<i>Indicator</i>	<i>Description</i>	<i>Examples</i>
Out-of-pocket expenses	The monetary amount spent on transactions during and as a result of the proceedings	Lawyer fees, expert fees, filing fees, transportation fees, bailiff and witness fees, notary fees, costs for communication
Time	Time spent dealing with the procedure	Searching for a legal advisor, collecting information, contacting professionals, travelling, awaiting/attending hearings, waiting in queues
Other lost opportunities	The cost of lost opportunities due to the proceedings and their possible lengthiness	Lost income, devaluated resources, losing a job opportunity
Intangible Costs	On their paths to justice, people tend to expend emotions, suffer stress, become depressed or experience deterioration in their relationships with significant others become depressed or experience deterioration in their relationships with significant others	Stress, negative emotions such as frustration, fear, disappointment or anger, loss of relationships
Quality of the Procedure		
<i>Indicator</i>	<i>Description</i>	<i>Examples</i>
Procedural Justice	Fairness perceptions of users regarding the processes that are utilized to resolve disputes and allocate resources	Process control, decision control, consistency, bias suppression, accuracy, ability to correct, ethicality
Restorative Justice	Concerned with the harm that has been caused by the legal problem and attempts to offer reparation to the user of justice	Opportunity to ask the other party for an explanation and recognition
Interpersonal Justice	The extent to which people are treated with politeness, respect, and propriety	Politeness, respect, propriety, respect for rights
Informational	The validity of information provided by decision	Honesty, explanation of rights and options, as



Justice	makers as the foundation of the decision making process	well as whether the explanation was timely, understandable, and in need of clarification
Quality of the Outcome		
<i>Indicator</i>	<i>Description</i>	<i>Examples</i>
Distributive Justice	The allocation of resources among individuals with competing needs or claims	Equity, equality, need
Corrective (compensatory) Justice	When one person is wrongfully injured by another, the injurer must make the harmed party whole	Compensation
Restorative Justice	Looks to the future and the best means to achieve reparation of harm, including elements of apology, shame and repair of relationships	Opportunity given to the offender to show remorse and to accept responsibility, the degree of reparation of emotional and monetary harms, closure, alleviation of fear
Retributive Justice	An infliction of proportionate loss and pain to the injurer is necessary to achieve justice	Just deserts
Utilitarianism	Social harmony can be attained via the prevention of future harm	Deterrence and incapacitation
Informational Justice	The validity of information provided by decision makers as the foundation of the decision making process	Outcome justification
Transformative Justice	The future is a main concern, in addition to transformations with the self, self-in-relationships, and self-in-society	Considering parties' interests and rebuilding relationships
Legal pragmatism	Concerned with facts and consequences	Pragmatic outcome, consequences taken into account
Formal Justice	Similar cases are defined by the situation, not the person – i.e., treat similar cases alike	Similar outcomes and ability to compare outcomes with related others



APPENDIX C: DATA FOR SERVICES PROVIDED TO INDIVIDUALS

REPRODUCTION OF “DATA FOR SERVICES PROVIDED TO INDIVIDUALS” FROM THE NATIONAL LEGAL ASSISTANCE DATA STANDARDS MANUAL ³⁵⁷

Data	Information	Referral	Legal Advice, non-legal support, legal task	Facilitated resolution processes	Duty Lawyer	Dispute resolution, Court/tribunal, other representation
Service type	x	x	x	x	x	x
Service user basic data			x		x	x
Service user detailed data			x		x	x
Basic service characteristics			x	x	x	x
Detailed service characteristics			x	x	x	x
Service results			x	x		x
Activity type				x	x	
Other party type			x	x		x
Charge count						x
Criminal cases						x
Problem type			x	x	x	x
Hearing type						x
Court/tribunal type					x	x
Referral data		x				



APPENDIX D: DATA FOR SERVICES PROVIDED TO COMMUNITIES

REPRODUCTION OF “DATA FOR SERVICES PROVIDED TO COMMUNITIES” FROM THE NATIONAL LEGAL ASSISTANCE DATA STANDARDS MANUAL³⁵⁸

Data	Community legal education resources and activities	Law and legal services reform	Stakeholder engagement
Service type	x	x	x
Primary law type	x	x	x
Problem type	x	x	x
Service location	x	x	x
Target audience for service	x	x	x
Number of persons accessing CLE/CE activities	x		
Number of CLE/CE activities delivered	x		
Number of CLE/CE copies of each publication distributed	x		
Law and legal services reform activities undertaken		x	
Nature of stakeholder engagement activity			x
Collaborative arrangement	x	x	x
Interpreter/translator required	x		x
Website access (where applicable)	x		
Resources applied	x	x	x
Estimate of time spent	x	x	x



APPENDIX E: MEASURES FOR JUSTICE INDICATORS

The “core measures” include:³⁵⁹

Measure #	Measure	Description
1.	Non-Custodial Promise to Appear Instead of Custodial Arrest	% nonviolent misdemeanors in 2009-2013 for which the police issued a non-custodial promise to appear (often called citation, appearance ticket, or summons, depending on the jurisdiction) instead of making a custodial arrest
2.	Cases Not Prosecuted	% cases in 2009-2013 referred to the prosecutor's office by law enforcement or by a complainant for which prosecution was declined
3.	Resisting Arrest Cases	% of misdemeanor referrals in 2009-2013 that involved resisting arrest as the only charge
4.	Resisting Arrest Cases Not Prosecuted	% of misdemeanor referrals in 2009-2013 with resisting arrest as the only charge that were declined for prosecution
5.	Time to Initial Appearance	the median number of days between arrest and initial appearance for cases initiated in 2009-2013
6.	Nonviolent Misdemeanor Cases with Nonmonetary Release	% of 2012-2013 cases with nonmonetary release that involved only nonviolent misdemeanor charges and defendants who did not have violent convictions in that state within the prior three years
7.	Failure to Pay Low Monetary Bail	% of 2009-2013 cases involving defendants who failed to pay monetary bail amounts equivalent to \$500 or less
8.	Pretrial Diversion of Nonviolent Misdemeanors	% of 2012-2013 nonviolent misdemeanor cases that were diverted from traditional case processing where the defendant did not have any convictions in that state within the prior three years
9.	Monetary Bail Reductions	% of 2009-2013 cases with monetary bail imposed that received a reduction (either as a reduction in the monetary conditions or a reduction to release on recognizance)
10.	Pretrial Release Violations	% of 2009-2013 cases in which defendants who were released on their own recognizance or on paid monetary bail had one or more recorded instances of violating any condition of release
11.	Attorney Withdrawals	% of 2009-2013 cases that had at least one attorney withdrawal
12.	Guilty Plea without Attorney in Felony Cases	% of 2009-2013 felony cases in which defendants entered a guilty plea without retained or appointed legal counsel
13.	Guilty Plea without Attorney in Misdemeanor Cases	% of 2009-2013 misdemeanor cases in which defendants entered a guilty plea without retained or appointed legal counsel



14.	Charge Reductions	% of 2009-2013 guilty plea cases for which the severity of the most serious conviction charge was less than the severity of the most serious filing charge.
15.	Cases Dismissed	% of 2009-2013 cases filed in court that were dismissed
16.	Felony Cases Resolved at Trial	% of 2009-2013 felony cases resolved at trial
17.	Felony Cases Resolved within One Year	% of 2009-2013 felony cases that were resolved within 365 days of filing in court
18.	Misdemeanor Cases Resolved within Six Months	% of 2009-2013 misdemeanor cases that were resolved within 180 days of filing in court.
19.	Time Served Sentences for Misdemeanor Convictions	% of 2009-2013 misdemeanor convictions that resulted in a time served sentence.
20.	Nonviolent Felonies Sentenced to Prison	% of 2012-2013 nonviolent felony convictions involving a defendant with no violent convictions in that state in the prior three years that resulted in a prison sentence
21.	Length of Imposed Prison Sentence: Nonviolent Felonies	The median prison sentence length (in months) imposed for nonviolent felony cases in 2012-2013 for which the defendant did not have violent convictions in the prior three years
22.	Nonviolent Misdemeanors Sentenced to Jail -	% of 2012-2013 nonviolent misdemeanor convictions involving a defendant with no violent convictions in that state in the prior three years that resulted in a jail sentence
23.	Length of Imposed Jail Sentence: Nonviolent Misdemeanors	The median jail sentence length (in days) imposed on nonviolent misdemeanor cases in 2012-2013 for which the defendant did not have violent convictions in the prior three years
24.	Drug Possession Convictions Sentenced to Prison	% of 2012-2013 drug possession cases that received a prison sentence involving defendants who had no violent convictions in that state in the prior three years
25.	Drug Possession Convictions Sentenced to Jail	% of 2012-2013 drug possession cases that received a jail sentence involving defendants with no violent convictions in that state in the prior three years
26.	Jail Capacity Utilization	the average daily jail population per jail capacity of the county's facility with the most annual admissions that reported to the BJS Census of Jails in 2013
27.	Court Fees and Fine	the median amount of court fees and fines assessed to convicted defendants in 2009-2013
28.	Failure to Pay Court Fees and Fine	% of 2009-2013 convictions where the defendant was mandated to pay court fees and fines and failed to do so
29.	Driver's License Suspension	% of 2009-2013 cases with a driver's license revocation or suspension sentence and that did not involve DUI, drugs, or criminal traffic charges



30.	Reconviction Rate: Probation	% of cases in which individuals were sentenced to probation in 2009 and 2010 who had a new conviction in the same state within three years
31.	Probation Technical Revocations	% of 2009-2011 cases in which probationers had their probation revoked for technical reasons not related to a new offense
32.	Reconviction Rate: Prison	% of cases in which individuals were released from prison in 2009 and 2010 who had a new conviction within three years of release

The “companion measures” include:³⁶⁰

Measure #	Measure	Description
1.	Resisting Arrest Cases per 100,000 Residents	the number of cases in 2009-2013 per 100,000 residents in which misdemeanor resisting arrest was the only charge
2.	Cases with Monetary Bail Equivalent to \$500 or Less	the number of cases in 2009-2013 with monetary bail equivalent to \$500 or less
3.	Misdemeanor Cases	the number of misdemeanor cases filed in court in 2009-2013
4.	Time to Disposition for Felonies	the median number of days from case filing to case closure for felonies filed in 2009-2013
5.	Time to Disposition for Misdemeanors	the median number of days from case filing to case closure for misdemeanors filed in 2009-2013
6.	Convicted Defendants with Court Fees and Fines	% of 2009-2013 cases for which convicted defendants were ordered to pay court fees and fines
7.	Pretrial Jail Population	% of jail inmates who were awaiting disposition of their cases and housed in the county's facility with the most annual admissions that reported to the BJS Census of Jails in 2013
8.	Pre-sentence Jail Population	% of jail inmates who were convicted, awaiting sentencing, and housed in the county's facility with the most annual admissions that reported to the BJS Census of Jails in 2013
9.	Post-sentence Jail Population	% of jail inmates sentenced and housed in the county's facility with the most annual admissions that reported to the BJS Census of Jails in 2013
10.	Federal and State Inmates Held in Jail	% of jail inmates under state and federal jurisdiction that were housed in the county's facility with the most annual admissions that reported to the BJS Census of Jails in 2013
11.	Time Served Sentences for Felony Convictions	% of 2009-2013 felony convictions that resulted in a time served sentence
12.	Convictions with Unknown Disposition Method	% of 2009-2013 convictions (guilty judgments) for which the disposition method (plea vs. trial) is not known



13.	Monetary Bail Amount	the median monetary bail amount in cases filed in 2009-2013
14.	Average Commute Minutes	average number of minutes residents report commuting to work
15.	Court Fees	the median amount of court fees assessed to convicted defendants who were mandated to pay in 2009-2013
16.	Fines	the median amount of fines assessed to convicted defendants who were mandated to pay in 2009-2013
17.	Jail Name	name of the facility reporting the most annual admissions in the county
18.	Drug Courts	the number of drug and hybrid DWI/drug courts available in the state in 2012
19.	Cases Involving a Guilty Plea as Charged	% of 2009-2013 cases where the defendant pleaded guilty to all the charges filed by the prosecutor
20.	Cases Resulting in Conviction	% of 2009-2013 cases filed in court that resulted in conviction
21.	Problem-solving Courts	the number of problem-solving courts available in the state in 2012
22.	Nonviolent Felony Cases with Nonmonetary Release	% of 2012-2013 cases with nonmonetary release that involved only nonviolent felony charges and defendants who did not have violent convictions in that state within the prior three years
23.	Nonviolent Misdemeanor Cases with Monetary Bail	% of 2012-2013 cases with monetary bail that involved only nonviolent misdemeanor charges and defendants who did not have violent convictions in that state within the prior three years
24.	Nonviolent Felony Cases with Monetary Bail	% of 2012-2013 cases with monetary bail that involved only nonviolent felony charges and defendants who did not have violent convictions in that state within the prior three years
25.	Pretrial Diversion of Nonviolent Felonies	% of 2012-2013 nonviolent felony cases that were diverted from traditional case processing where the defendant did not have any convictions in that state within the prior three years
26.	Daily Cost of a Jail Bed	the average daily cost of a jail bed

The “contextual measures” include:³⁶¹

Measure #	Measure	Description
1.	Population	the total population of the jurisdiction
2.	Urban Population	% of residents living in urban areas
3.	Rural Population	% of residents living in rural areas
4.	White Population	% of residents who identify their race/ethnicity as non-Hispanic, white



5.	African American Population	% of residents who identify their race/ethnicity as non-Hispanic, African-American
6.	Hispanic or Latino Population	% of residents who identify their ethnicity as Hispanic or Latino
7.	Native American Population	% of residents who identify their race/ethnicity as American Indian or Alaskan Native
8.	Asian Population	% of residents who identify their race/ethnicity as non-Hispanic, Asian
9.	Other Race Population	% of residents who identify their race/ethnicity as other (includes those identifying as multiracial)
10.	Young Males Population	% of residents who are males aged 15 to 24
11.	Largest Municipality Population	population of the largest municipality in the jurisdiction
12.	Largest Municipality	name of the largest municipality in the jurisdiction
13.	Property Crime Rate	number of property index crimes reported to law enforcement per 100,000 residents
14.	Violent Crime Rate	the number of violent index crimes reported to law enforcement per 100,000 residents
15.	Arrest Rate for Property Offenses	the number of arrests for property offenses, per 100,000 residents
16.	Arrest Rate for Violent Offenses	number of arrests for violent offenses, per 100,000 residents
17.	Clearance Rate for Property Offenses	% of property index crime cases cleared (or closed) by law enforcement
18.	Clearance Rate for Violent Offenses	% of violent index crime cases cleared (or closed) by law enforcement
19.	Number of Criminal Court Judges	the total number of judges, magistrates or their equivalent involved in the processing of criminal cases in the jurisdiction
20.	Number of Full-Time Prosecutors	the number of full-time prosecuting attorneys for adult criminal cases in the jurisdiction
21.	Number of Part-Time Prosecutors	the number of part-time prosecuting attorneys for adult criminal cases in the jurisdiction
22.	Number of Full-Time Public Defenders	the number of full-time public defenders for adult criminal cases in the jurisdiction
23.	Number of Part-Time Public Defenders	the number of part-time public defenders for adult criminal cases in the jurisdiction
24.	Law Enforcement Agencies Reporting to UCR	% of law enforcement agencies within the jurisdiction reporting index crimes to the FBI's Uniform Crime Reporting Program



25.	Total Number of Law Enforcement Agencies	the total number of law enforcement agencies operating within the jurisdiction
26.	Number of Full-Time Sworn Law Enforcement Officers	the number of full-time sworn law enforcement officers in the jurisdiction
27.	Police Officers per 100,000 Residents	the number of full-time sworn police officers per 100,000 residents
28.	Median Household Income	the median income of households within the jurisdiction
29.	Unemployment Rate	% of residents 16 years old and older who are unemployed
30.	Below Poverty Line	% of residents living below the poverty line
31.	Single Female-Headed Households with Children	% of households headed by a woman with dependent children under 18
32.	High School Graduates	% residents 18 years old and older who have completed high school
33.	Voted Democrat in 2012	% of votes for the Democratic candidate in the 2012 presidential election
34.	Voted Republican in 2012	% of votes for the Republican candidate in the 2012 presidential election
35.	Drug Hospitalization Rate	the number of drug-related hospitalizations per 100,000 residents
36.	Non-Citizens	% of residents who are not U.S. citizens
37.	Residential Mobility	% of residents who changed their place of residence (within the same jurisdiction or from a different one) in the previous year



APPENDIX F: CBA REPORT - BUILDING INDICATORS FROM COMMUNITY VOICES³⁶²

The following indicators are based on consultations by the CBA with marginalized groups across Canada. Under each of the two main headings are four responses frequently given by respondents.

A. What Happens When Access to Justice is Denied?

Responses:

1. Legal rights are “just on paper”

How does this inform a practical definition of access to justice?

- Justice transcends barriers.
- Justice is freely and equally available regardless of socio-economic status, ability, education or race.
- Justice applies equally to everyone, regardless of their status.
- Justice requires that information about rights and how they can be enforced is readily available.
- Justice means that complaint and appeal avenues must be accessible and safe.

2. Justice Systems “Cannot Be Trusted”

How does this inform a practical definition of access to justice?

- Justice systems earn the trust of the marginalized communities who access them.
- Just processes are effective, efficient and timely.
- Just systems have reasonable and fair expectations.
- Justice ensures that parties are heard.
- Justice processes and outcomes are reflective of the social and personal realities of the parties
- Just outcomes are meaningful: they effectively redress the wrong or protect from wrong.

3. Justice is Person-Dependent

How does this inform a practical definition of access to justice?

- Just systems ensure consistency in the quality of its justice professionals.
- They are consistently effective, fair, respectful and sensitive.
- They act with integrity and do not engage in reprisal.
- The quality of their service does not depend on how much money they make.
- They take the time to listen, to inform, and to do a good job.

4. Justice Systems are Difficult to Navigate

How does this inform a practical definition of access to justice?

- Justice recognizes that information empowers.
- Justice systems are clear about their processes.
- The processes themselves are streamlined and straightforward.
- Participation is not dependent on one’s financial resources.
- Supports are in place so everyone can participate.
- Safety and privacy concerns are addressed in meaningful ways.
- The emotional health of the participants is considered and supported.

B. What Happens When Access To Justice Is Afforded?

Responses:

1. Legal Rights and Justice

How does this inform a practical definition of access to justice?

- Justice is inviolable.
- It ensures fairness and equality for all, and moreover, respect for all its participants.



- Respect from justice means being heard and providing an effective, meaningful outcome.

2. Information as a Prerequisite to Justice

How does this inform a practical definition of access to justice?

- Information about law and its processes empowers.
- It enables community members to know what their rights are and how to enforce them.
- Being informed ensures equal participation in the justice system.
- Power is shared equitably between justice professionals and the parties accessing justice systems.

3. Justice is about Respect

How does this inform a practical definition of access to justice?

- Justice systems respect its participants.
- Respect is demonstrated by treating participants kindly, seeing them as equals and ensuring they are informed.

4. Justice is a Holistic Concept with Systemic Solutions

How does this inform a practical definition of access to justice?

- Justice is more than what is happening inside the justice system.
- Justice is about what is happening at home, at schools, at workplaces and on the street.
- A just society is a foundation for an effective, fair justice system.



APPENDIX G: CBA'S REACHING EQUAL JUSTICE

SUMMARY OF INSIGHTS FROM CBA'S ACCESS TO JUSTICE METRICS DISCUSSION PAPER AND SUMMIT WORKSHOP, AS CITED IN "REACHING EQUAL JUSTICE: AN INVITATION TO ENVISION AND ACT: REPORT OF THE CBA ACCESS TO JUSTICE COMMITTEE" (2013)³⁶³ [EMPHASIS ADDED]

- **Community voices** should be integrated into framing of access to justice metrics. The Committee integrated the perspectives of members of communities living in marginalized conditions into its vision of equal justice in Part II and throughout this report.
- **Inclusivity** should be a measure of access to justice. Hughes paper for the Summit provides details for a framework for measuring inclusivity in the civil justice system.
- It is critical to "not to just go where the light is brightest", for example, by focusing on court data. Mulherin warned of the "temptation to count what we can. And the problem is that what you count becomes what's important." In particular, **court data does not tell the whole access to justice story.**
- The development of access to justice data and metrics is clearly a government responsibility, but the approach, framework and data collection methods have to be **developed collaboratively** with the commitment of key stakeholders, including the public. There is some tension between government and the judiciary about data collection that needs to be resolved.
- The framework should be developed on a **national basis**, with room for provincial and territorial adjustments as needed.
- The variety of metrics required includes **needs** measurements, **efficiency** metrics, **outcome** measurements, and **inclusivity** measures. Efforts must include a measure of low-income persons who do not proceed through the justice system. Client satisfaction measures are insufficient as measurements need to incorporate broader background and context.
- If we are going to measure access to justice, the **tools must be good** – poor measurement is worse than no measurement at all.
- Data collection can be **time-consuming** and we should avoid adding too much burden on individuals and small organizations that provide services.
- Data collection should be **forward-looking**. The development of protocols to commit to moving to common data collection over time, as systems are upgraded, is key.
- **Privacy** issues have to be taken into account; data sharing agreements must include agreements to conceal private data. The idea of "justice identifiers" like health insurance numbers that help to ensure privacy while satisfying the need for robust information base is under discussion.
- A **phased approach** is most practical, given concerns over the resources required and to overcome other barriers to moving forward.



ENDNOTES

¹ Organisation for Economic Cooperation and Development and the Open Society Foundations: Open Society Justice Initiative: “Legal Needs Surveys and Access to Justice” (Launch version; 2018) 1-210 at 3.

² Advisors for the OECD and Justice Initiative report included: Statistics South Africa (Raphael Kasonga, Solly Molayi and Isabel Schmidt); Ministerio de Justicia y Derechos Humanos, Argentina; (Gustavo Maurino); Law and Justice Foundation of New South Wales, Australia (Geoff Mulherin); Instituto Nacional de Estadística, Cabo Verde (Celso Soares); Departamento Nacional de Planeación, Colombia (Eduardo Freire Delgado, Manuel Felipe Diaz Rangel); Hague Institute for the Internationalisation of Law (HiiL) (Martin Gramatikov); Instituto Nacional de Estadística y Geografía, Mexico (Adrian Franco Barrios); United Nations Development Programme (Aparna Basnyat and Alexandra Wilde); Department of Justice, United States (Allen Beck); World Bank (Paul Prettitore and Bilal Siddiqi); and, the World Justice Project (Alejandro Ponce and Sarah Chamness Long); Cleber Alvez, Public Defender, State of Rio de Janeiro; Ab Currie, Canadian Forum on Civil Justice; Hazel Genn, University College London; Gillian Hadfield, University of Toronto; Kuo-Chang Huang, Academia Sinica; Masayuki Murayama, Meiji University; Shruthi Naik; Alan Paterson, University of Strathclyde; Rebecca L. Sandefur, University of Illinois at Urbana-Champaign; Marijke ter Voert, Ministry of Justice, The Netherlands; and Jan Winczorek, University of Warsaw. Numerous representatives from national governmental and civil society organisations also provided valuable feedback on the approach and content of this document, including colleagues from Argentina, Colombia, Indonesia, Kenya, Mongolia, Nepal, Philippines, Sierra Leone, South Africa, Ukraine and the United Kingdom. Korea piloted the legal needs methodology presented in the Guide (as cited in *ibid* OECD at 5-6).

³ OECD *supra note* _ at 3.

⁴ OECD *supra note* _ at 132.

⁵ *Ibid* (OECD) at 83.

⁶ *Ibid* (OECD) at 83-84.

⁷ *Ibid* (OECD) at 83 and 84.

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¹⁰ *Ibid* (OECD) at 62.

¹¹ *Ibid* (OECD) at 62.

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¹³ *Ibid* (OECD) at 63.

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¹⁷ *Ibid* (OECD) at 63.

¹⁸ *Ibid* (OECD) at 64.

¹⁹ *Ibid* (OECD) at 50.

²⁰ *Ibid* (OECD) at 51.

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²⁴ *Ibid* (OECD) at 53-54.

²⁵ See Table 1.2 *Illustrative standard problem categories for legal needs surveys* - *Ibid* (OECD) at 55-59.

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²⁷ *Ibid* (OECD) at 98.

²⁸ *Ibid* (OECD) at 60.

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- ³⁸ *Ibid* (OECD) at 102-103.
- ³⁹ *Ibid* (OECD) at 72-73.
- ⁴⁰ *Ibid* (OECD) at 72-73.
- ⁴¹ *Ibid* (OECD) at 104.
- ⁴² *Ibid* (OECD) at 74.
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- ⁴⁸ *Ibid* (OECD) at 75.
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- ⁵⁷ *Ibid* (OECD) at 77.
- ⁵⁸ *Ibid* (OECD) at 77.
- ⁵⁹ *Ibid* (OECD) at 77.
- ⁶⁰ *Ibid* (OECD) at 77 and 78.
- ⁶¹ *Ibid* (OECD) at 77 and 78.
- ⁶² *Ibid* (OECD) at 78.
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- ⁶⁴ *Ibid* (OECD) at 78.
- ⁶⁵ *Ibid* (OECD) at 78.
- ⁶⁶ *Ibid* (OECD) at 78.
- ⁶⁷ *Ibid* (OECD) at 78.
- ⁶⁸ *Ibid* (OECD) at 109.
- ⁶⁹ Pleasence et al. (2014) for a definition and discussion of the concept of legal capability, as cited in *ibid* (OECD) at 79.
- ⁷⁰ OECD *supra note* _ at 79.
- ⁷¹ *Ibid* (OECD) at 79.
- ⁷² *Ibid* (OECD) at 79.
- ⁷³ *Ibid* (OECD) at 79.
- ⁷⁴ *Ibid* (OECD) at 79.
- ⁷⁵ *Ibid* (OECD) at 79.
- ⁷⁶ *Ibid* (OECD) at 80.
- ⁷⁷ Based on “forthcoming” work by Pleasence & Balmer as cited in *Ibid* (OECD) at 80.
- ⁷⁸ OECD *supra note* _ at 80.
- ⁷⁹ *Ibid* (OECD) at 110.
- ⁸⁰ *Ibid* (OECD) at 110-111.
- ⁸¹ *Ibid* (OECD) at 80.
- ⁸² *Ibid* (OECD) at 80.
- ⁸³ *Ibid* (OECD) at 80.
- ⁸⁴ For example, “the 1980 Hughes Commission (1980, paras. 2.09 and 2.10) influentially argued that legal need involves two distinct, staged, needs: the need for information about law and legal services to enable properly informed choices and the need for such support from legal services as is necessary if a legal solution is chosen: “In assessing the need for legal services, we must therefore think in terms of two stages - firstly enabling the client to identify and, if he judges it appropriate, to choose a legal solution; and secondly, enabling the client to pursue a chosen legal solution When we speak of 'unmet need' we are concerned about instances where a citizen is unaware that he has a legal right, or where he would prefer to assert or defend a right but fails to do so for want of legal services of adequate quality or supply.” The Hughes Commission’s definition of legal need centres on



determining appropriate solutions by citizens in need. This reflects the Commission's preference for "felt need" (defined by those in need) over "expressed need" (felt need that is acted upon), "normative need" (defined by experts) and "comparative need" (assessed by comparison of service use by those with similar characteristics), to use Bradshaw's (1972) dominant taxonomy of social need. Aside from such a definition of legal need, there remain issues concerning the nature and extent of state responsibility to intervene to prevent individual needs going unmet, as described in the report of the 2005 Northern Irish survey (Dignan 2006, p. 4). Furthermore, given limited public resources, these issues must be considered alongside the effectiveness of services, citizens' resources and prioritisation of needs. Attention must be given to a further dimension of need - relative need - and draw on the theories of the hierarchy of needs (as done, most famously, by Maslow (1943)). In practice, the prioritisation of legal needs may depend upon whether the responsibility to meet them is considered a constitutional matter (i.e. grounded in the rule of law) or a welfare matter (i.e. grounded in general welfare service provision)." as cited in *ibid* (OECD) at 93.

⁸⁵ OECD *supra note* _ at 81.

⁸⁶ *Ibid* (OECD) at 81.

⁸⁷ *Ibid* (OECD) at 80.

⁸⁸ Legal Services Agency (2006); Ignite Research (2006); as cited in *ibid* (OECD) at 81.

⁸⁹ OECD *supra note* _ at 81.

⁹⁰ *Ibid* (OECD) at 81.

⁹¹ *Ibid* (OECD) at 81.

⁹² Provided as a logic tree at *ibid* (OECD) at 80.

⁹³ *Ibid* (OECD) at 81 and 83.

⁹⁴ *Ibid* (OECD) at 82.

⁹⁵ *Ibid* (OECD) at 84.

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¹⁰⁰ *Ibid* (OECD) at 85.

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¹¹⁹ <https://lawforlife.org.uk/wp-content/uploads/2013/05/handbook-for-measuring-the-costs-and-quality-of-access-to-justice-271.pdf>

¹²⁰ ACE *supra note* _ at 22. 2.

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¹²⁵ *Ibid*.



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131 *Ibid* (WJP) at 7.

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²⁵⁸ Virtual Network for the Development of Indicators on Peaceful, Just and Inclusive Societies for Goal 16 (2015, p. 23) as cited in *ibid* (OECD) at 135.

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- 358 Australian Government *supra note* _ at 19.
- 359 <https://measuresforjustice.org/about/measures/>
- 360 *Ibid*.
- 361 *Ibid*. Note: the list of contextual measures on this webpage duplicates 10 measures, listing 47 when there are really only 37 unique contextual factors.
- 362 This appendix is reproduced from Appendix 6 in ACE *supra note* _ at 54-55.
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