Background: In 2013, Dr. Julie Macfarlane completed a national survey of non-lawyers who had represented themselves in court – self-represented litigants (SRLs). This survey was one of the first of its kind because instead of surveying justice professionals (for example, lawyers and judges) on their estimates rates, outcomes, and costs for SRLs, it surveyed the court users themselves. One of the major findings of the survey was that the justice system is so complex that SRLs are at a significant disadvantage, and even can cause increased costs for delays for other parties involved in legal disputes.

In March 2018, the Sixth Annual Dean’s Forum on Access to Justice and Dispute Resolution at the College of Law, University of Saskatchewan, focused on the data deficit that the justice system is experiencing. This data deficit, or justice metrics problem, is largely identifiable in the lack of a system-wide strategy for collecting, storing and analysing justice system usage data to inform best practices. Other sectors are much more advanced in their ability to improve their systems by increasing the role that data can play. The Canadian health sector, for example, has established the Canadian Institute for Health Information (CIHI). CIHI is now the leading source of information about delivery and performance of health care in Canada.25 It was reported in 2017 that its budget just exceeded $100 million.26 CIHI’s vision is to have better data and therefore better decisions and healthier Canadians.27 Data is used to accelerate improvements in health care, health system performance and population health across Canada.28

Court user surveys can be an effective tool for gathering data to improve the justice system. The national SRL survey was perhaps the first of its kind in Canada to survey actual court users. However, in Australia, instead of being a one-off, surveys of this kind are much more common. Concerns with increasing the role of data in access to justice initiatives include the novel privacy issues that could arise from collecting data directly from justice system users themselves, as opposed to collecting estimates from lawyers and judges, which is more common in Canada. Since court user surveys are more common in Australia, this research compares privacy legislation and existing case law from Saskatchewan, Canada and News South Wales, Australia, in order to predict by analogy possible future outcomes of privacy law concerning court user survey data.

This research compares the Saskatchewan *Freedom of Information and Protection of Privacy Act* and the New South Wales *Government Information (Public Access) Act*. It should be noted that the relevant FIPPA provision is a protection of personal information provision, whereas the GIPA provision is a freedom of government information provision, so while they both deal with disclosure of information from the government, they are not meant to be identical. The two provisions which are compared deal with disclosure of information for either research or statistical purposes, or for the purpose of enhancing government accountability and contributing to informed debate on issues of public importance. These could be relevant in identifying possible limits on public disclosure of information gathered by court user surveys.

Citations:

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5. Macfarlane, *supra* note 1.

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11. FIPPA, *supra* note 10 s 28.

12. FIPPA, *supra* note 10 ss 29(1) and 29(2)(a).

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19. *Government Information (Public Access) Act 2009* (NSW), s 12 [GIPA].

20. *Raven v University of Sydney* (2015), [2015] NSWCATAD 104 (NCAT).

21. *Hurst v Wagga Wagga City Council* (2011), [2011] NSWADT 307 [*Hurst*].

22. *Field v CMR of Police, New South Wales Police Force* (2015), [2015] NSWCATAD 153 [*Field*].

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