

Private Costs of Accessing Civil Justice System

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INTRODUCTION

Almost half (48.4%) of Canadians over 18 will experience at least one civil justice problem over a three-year period. A better understanding of the costs of seeking civil justice is a step towards reducing such costs, and thereby making civil justice more accessible. However, many Canadians are struggling to obtain access to justice in civil cases, in accordance with the principles of fundamental justice. Legal aid for civil matters is typically only available to very low-income people, and only for a small range of matters. In addition, there are far fewer constitutional protections in the civil sphere. For example, charter sections 11(d) and 10(b) do not apply to civil cases. Canadian Bar Association's arguments in favour of a constitutional right to civil legal aid were unsuccessful in the *Canadian Bar Association v HMTQ et al.*

The high costs of seeking justice are the reasons why the civil law's promises are not being realized by many Canadians. These costs include private costs, borne by the individuals experiencing the civil legal problems, and externalized costs borne by individuals other than the justice-seeker. In addition, there is also growing frustration amongst judges, lawyers and members of the public at what is perceived to be the increasing number of prolonged or unnecessary proceedings, which results in increased public costs of the system.

Cost-based analysis can help public sector policy makers reduce these costs and can help lawyers and entrepreneurs identify new, affordable ways to reduce the costs that are most onerous to individuals with different types of civil legal need.

OBJECTIVE

The purpose of this research is to analyze empirical findings about the monetary, temporal, and psychological costs borne by the individuals who seek civil justice in Canada.

METHODS

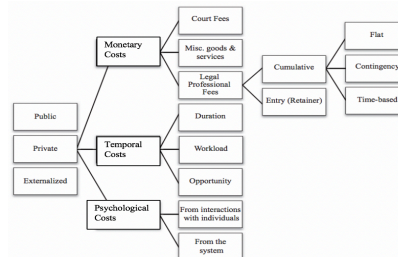
Over 3000 Canadians aged 18 years of age and older were interviewed nationally via telephone and 250 self-represented litigants in Ontario, British Columbia, and Alberta were individually interviewed for 45 to 90 minutes. The self-representative interviewees had all represented themselves in a family court (60%), in another civil court (31%), or in an administrative tribunal (9%). The demographic profile of the participants was reasonably representative of the Canadian population in terms of gender, education level, and income. Approximately 53% of the self-representative respondents had retained private practice legal services at some previous point in their cases. These methods have expected accuracy rate within a 1.8% margin of error.

RESULTS

Psychological costs are the major category of private costs faced by the individuals experiencing the civil legal problems. The psychological impacts such as stress and a sense of being overwhelmed seems to fall most heavily on the self-represented litigants. Within the data set, 80% of the respondents felt "overwhelmed, stressed, bullied, frustrated and scared". As a result of a legal problem, 81.2% of the respondents who reported experiencing a physical health problem and 40% of the respondents who reported experiencing a high level of stress or emotional problems accessed the health care system one or more time in addition to their normal usage.

While examining temporal costs, it was found that Canadians' efforts to pursue civil justice can consume many months and even years from a person's life. Especially for self-represented litigants, seeking civil justice can be time-consuming enough to undermine employment and personal relationships. For many self-represented litigants, the time cost of pursuing civil justice is often high enough to impose significant opportunity costs and many claimed that they had to forego new employment opportunities because of the time demands of their cases. Results showed that 27% of participants stated that resolution of their civil legal matters took more than one year. In addition, 8.4% of respondents indicated that they lost employment as a result of experiencing a legal problem.

Monetary costs confronting individual justice-seekers demonstrate that legal fees for civil disputes are very onerous for low and middle-income Canadians. These costs include but not limited to court and legal professional fees. In response to the survey, 44% of participants strongly agreed while 28% somewhat agree that they "probably wouldn't bother disputing most legal problems because the cost of doing so would be too high". As a direct result of experiencing a legal problem, approximately 2.1% of respondents indicated that they accessed social assistance program.



Psychological Costs	Temporal Costs	Monetary Costs
80% of the respondents felt "overwhelmed, stressed, bullied, frustrated and scared"	27% of participants stated that resolution of their civil legal matters took more than one year.	44% of participants strongly agreed "probably wouldn't bother disputing most legal problems because the cost of doing so would be too high"
81.2% of the respondents experiencing a physical health problem accessed the health care system one or more time	8.4% of respondents indicated that they lost employment as a result of experiencing a legal problem	2.1% of respondents indicated that they accessed social assistance program as a result of experiencing a legal problem
40% of the respondents experiencing a high level of stress or emotional problems accessed the health care system one or more time	Nearly one-third (30%) of the respondents reported their problems had not been resolved and were ongoing	Transportation accounted for 16% of expenditures that people incurred when they attempted to resolve their legal problems

CONCLUSION

Many Canadian experienced the monetary, temporal, and psychological costs of seeking civil justice. However, there is enormous potential for creative policy-making and innovative legal practice to decrease these costs, and thereby make civil justice more accessible to all Canadians. Steps that governments, court systems and regulators can take to reduce the private costs of seeking civil justice include but not limited to cutting court fees, reducing systemic delay, minimizing the need for litigants to make in-person appearances at court and making the civil justice system more user-friendly.



RECOMMENDATIONS

- Funding civil legal aid
- Affordable prepaid legal insurance plans
- Caseflow management
- Online dispute resolution system

REFERENCES

1. Mary Jane Mossman, "The Charter and Access to Justice in Canada", in David Schneiderman and Kate Sutherland (dir.), *Charting the Consequences: The Impact of Charter Rights on Canadian Law and Politics*, Toronto, University of Toronto Press, 1997, p. 271-302.
2. Semple, N. (2016). *The Cost of Seeking Civil Justice in Canada*.
3. *The Canadian Bar Association v HMTQ et al.*, [2006] 1 WWR 331, 2006 CanLII 1342 (BCSC)
4. Trevor C.W. Farrow et al., "Everyday Legal Problems and the Cost of Justice in Canada: Overview Report." (Toronto: CFCJ, 2016), online: <http://www.cfcj.org/sites/default/files/docs/2013/Report%20of%20the%20Court%20Processes%20Simplification%20Working%20Group.pdf>
5. W.A. Bogart and Neil Vidmar, "Problems and Experience with the Ontario Civil Justice System: An Empirical Assessment", Access to Civil Justice, Allan C. Hutchison ed., Toronto, Carswell, 1990.

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