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Civil and Family Justice Metrics: Towards a Framework for Saskatchewan

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Executive summary

For the 6th Annual Dean’s Forum on Dispute Resolution and Access to Justice, we were invited to explore what a civil and family justice metrics framework could look like in Saskatchewan. This topic was developed in response to what many have termed the ‘justice metrics problem’. The problem revolves around a lack of reliable justice data, a lack of empirical justice research, and inconsistent justice metrics. This results in an inability to measure the effectiveness of justice processes and programs. Put simply, *we don’t know what we don’t know*.¹ Jurisdictions around the world are grappling with how to handle this problem, and justice metrics frameworks are one identified way to address these needs.

This paper aims to inform the development and implementation of a justice metrics framework in Saskatchewan. As part of our research, we had the opportunity to consult a range of justice stakeholders across the province. We are grateful to our consultees for generously offering their time to our project, and their voices and insight are reflected throughout. Based on our research, we learned that i) justice stakeholders want better data to inform service delivery and innovation, and ii) addressing these information gaps is going to be a challenging process. There is clear value in pursuing a justice metrics strategy. Less clear is how Saskatchewan should move forward with a coordinated approach. We hope this paper can offer key considerations for the design and implementation of a justice metrics framework, and help guide the process as justice stakeholders in Saskatchewan take on this important work.

Existing gaps in justice data

There is growing interest in improving data collection and analysis practices within civil and family justice systems in Canada. It is well recognized that current approaches are not meeting demands, and justice stakeholders are struggling with information needs that are difficult or impossible to address.

Existing barriers to the effective measurement of justice processes include:

General lack of data

Although many agencies have existing data collection practices, this data may not be sufficiently detailed or helpful in informing policy or program changes. Weak qualitative data is a specific area of concern.

¹ Jerry McHale, “*The Justice Metrics Problem*” *Background Paper* (Victoria, March 3 2017), online: <<https://static1.squarespace.com/static/5532e526e4b097f30807e54d/t/590a60968419c273fe4dd99c/1493852311174/AC+Background+Paper+March+YVR+FINAL.pdf>> (17 February 2018) at 2 [*Background Paper*].

Lack of defined objectives

Put simply, “we can’t measure *how* we are doing until we articulate exactly *what* we are trying to do”.² Clear objectives can also assist in identifying important areas for further research.

Lack of coordinated, system-wide data collection and processes

There is currently no centralized management system for the collection, storage, and analysis of justice data. Information sharing between agencies and jurisdictions is also limited.

Given that “data and evaluation form the foundation of the evidence base for developing and reviewing policy”, making decisions without good information is inefficient and ineffective.³

Introducing the idea of a justice metrics strategy

It is clear that “we need better information in the context of increasing demand, increasing costs and stretched fiscal realities”.⁴ Both the Canadian Bar Association’s 2013 *Reaching Equal Justice Report: an invitation to envision and act* (the *Equal Justice Report*) and the Action Committee on Access to Justice in Civil and Family Matters’ 2013 report titled *Access to Civil and Family Justice: A Roadmap for Change* (the *Cromwell Report*) identify a need for better data collection and analysis. They recommend coordinated efforts nationally, and on the provincial or territorial level, to address this demand for information.⁵

In Saskatchewan, past meetings of the Dean’s Forum on Dispute Resolution and Access to Justice (the Dean’s Forum) have recognized the importance of justice metrics. For example,

² *Ibid* at 5.

³ Mark Halston, *Summary of: Data and Evaluation Summary, from Volume 2 – Inquiry Report – Access to Justice Arrangements (Australia), Chapter 25* (Victoria, 2016), online: <<https://static1.squarespace.com/static/5532e526e4b097f30807e54d/t/5730d9c445bf216301740ad4/1462819271478/3+Background+papers.pdf>> (17 February 2018).

⁴ Action Committee on Access to Justice in Civil and Family Matters, *Access to Civil & Family Justice: A Roadmap for Change* (Ottawa, Canada, 2013), online: <http://www.cfcj-fcjc.org/sites/default/files/docs/2013/AC_Report_English_Final.pdf> (27 February 2018) at 23.

⁵ The Canadian Bar Association, *Reaching equal justice report: an invitation to envision and act*, (Canada, 2013) online: <http://www.cba.org/CBAMediaLibrary/cba_na/images/Equal%20Justice%20-%20Microsite/PDFs/EqualJusticeFinalReport-eng.pdf> (17 February 2018).

participants at the 2017 Dean’s Forum recommended that proposed justice innovations should be evidence-based and informed by data to better understand and improve service delivery.⁶

In response to these calls to action, moving forward with a strategic approach is a possible next step. A coordinated justice metrics strategy in Saskatchewan has the potential to:

1. **Evaluate performance to better inform service delivery**
2. **Measure the effectiveness of justice reforms and new programs or initiatives**
3. **Increase information sharing between justice stakeholders in Saskatchewan and in other jurisdictions**
4. **Increase public confidence in the justice system by improving transparency and accountability**
5. **Support collaboration, and help mitigate the effect of potentially conflicting approaches, by better understanding the system as a whole⁷**

The need for a justice metrics strategy comes down to wanting better data collection and analysis practices; “we are unable to give definitive answers to even the most basic inquiries about barriers to access and we lack the capacity to pull together the fragmented data available to us into anything close to resembling a complete picture of access to justice”.⁸ A coordinated approach can help address the information needs of justice stakeholders, and better support justice users.

What is a ‘justice metrics framework’?

Essentially, a **justice metrics framework is a guide for data collection and empirical analysis** that serves as a foundation for an overarching justice metrics strategy. When developed with a representative group of justice stakeholders, a framework can establish shared values to guide a principle-based approach to **measuring the performance of justice processes**.

⁶ A team of researchers with CREATE Justice is currently engaged with a data inventory project in Saskatchewan. The key aim of this research project is to answer the question: ‘*how does or could data collection, analysis, or usage help organizations fulfill their role in the resolution of everyday legal problems for Saskatchewan residents?*’.

⁷ All five themes are reflected in the *Equal Justice Report*, the *Cromwell Report*, and the *Background Paper*.

⁸ The Canadian Bar Association, *Access to Justice Metrics: A Discussion Paper* (2013), online: <http://www.cba.org/CBAMediaLibrary/cba_na/images/Equal%20Justice%20-%20Microsite/PDFs/Access_to_Justice_Metrics.pdf> (17 February 2018) at 1-2.

Challenges to implementing a framework

Justice metrics frameworks can help improve data processes. However, it is important to note the potential challenges to their use. Barriers to the administration and implementation of a framework include:

Lack of resources

Adequate staffing, funding, training, and expertise are all required to engage with a justice metrics framework. The implementation of a framework should not interfere with the day-to-day work of justice stakeholders.

Difficulties in data collection

It can be challenging to locate users of justice and elicit responses.

Complicated nature of data analysis

The institution of a framework may help identify and describe information, but it does not necessarily make *explaining* this information any easier.

Challenges to implementation should not deter efforts to engage with a justice metrics framework. We note them here as a reminder that there are important factors to keep in mind moving forward.

Examples of a justice metrics framework

Although many jurisdictions have identified the need for a strategic approach to measuring civil and family justice systems, there are few examples of comprehensive frameworks.⁹ For the purposes of this discussion paper, we have identified two existing models to demonstrate the possible functions of a framework.¹⁰ First, *The Hague Model of Access to Justice* (The Hague Model) is an international framework with a step-by-step methodology. The Hague Model is highlighted because of its practical focus on implementation. It is user-centred and provides measurement tools that can easily be applied by justice stakeholders. Next, the *Access to Justice Measurement Framework* (the BC Framework) from British Columbia is a high-level

⁹ Work done in other areas of law may be worth consulting if Saskatchewan pursues a justice metrics framework. For example, outside of the civil and family law context, criminal law professionals have been working to develop consistent measurement strategies. Legal Aid currently has a national justice indicator project in development.

¹⁰ When comparing and contrasting different approaches, note that different metrics frameworks often utilize 'justice metrics' terms interchangeably. There is also inconsistency with the use of language *between* models. Considering how clearly defined terminology, or consistency in language, can support information sharing is another factor to consider when developing a framework.

document that measures user experience, access, and costs associated with addressing legal needs. It is highlighted because of its applicability to the Saskatchewan context. Utilizing appropriate measures from an existing Canadian framework could help support data comparison between provinces and territories.

The following section provides a brief summary of each framework, including a non-exhaustive list of potential benefits and limitations.

The Hague Model of Access to Justice: An Overview

The Hague Model was piloted in the Netherlands, Bulgaria and Bolivia. It assesses justice through the perspective of justice users, accounting for a broad range of perceptions and attitudes. It measures the costs and quality of 'paths to justice' through the examination of three central questions:

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 of the procedure**?¹¹

'Paths to justice' are defined broadly by the framework, and refer to common processes for resolving legal problems and needs. This could include official legal procedures, mediation programs, alternative dispute resolution, or informal processes within a community.

The Hague Model's *Handbook for Measuring the Costs and Quality of Access to Justice*:

- Guides justice stakeholders step-by-step through the process of evaluating paths to justice.
- Promotes a standard methodology for measuring the costs and quality of the most common paths to justice.
- Provides easily-accessible answers to questions related to justice measurement, including practical considerations for effective data collection and analysis.

¹¹A *Handbook for Measuring the Costs and Quality of Access to Justice* (2009), online: <<http://lawforlife.org.uk/wp-content/uploads/2013/05/handbook-for-measuring-the-costs-and-quality-of-access-to-justice-271.pdf>> (17 February 2018) at 9.

Benefits of The Hague Model:

Utilizes a user-centred approach

The framework is based on the understanding that user experiences are a valid ground for measuring justice. Users are given the opportunity to voice their perceptions on particular paths to justice.

Includes well-developed justice indicators or measures

The framework includes a diagnostic tool or 'questionnaire' called the TISCOnaire, which measures the perceptions of users on the three main indicators: costs, quality of the procedure, and quality of the outcome. Adapting the questionnaire to account for different paths to justice, and organizational needs, is also addressed.¹²

Limitations of The Hague Model:

- It measures the perceptions of citizens using three indicators (i.e. costs, quality, and outcomes), but does not identify their relative importance.
- It was designed to be applied to standardized paths to justice. Measurement of individual experiences with markedly divergent paths is possible, but will offer limited information about the experience of the average justice user.
- It is unable to measure why citizens selected a particular approach to solve their problem.
- If utilized by different jurisdictions, cross-cultural comparisons need to be carried out carefully and account for cultural, social, and legal differences.¹³

The A2JBC Access to Justice Measurement Framework: An Overview

In the Canadian context, British Columbia has developed a justice measurement framework for civil and family justice systems. The purpose of the BC Framework is twofold:

1. Provide a guide to **monitor user experience and population access to justice** across the province, and provide evidence of the value of improved access to justice through cost-benefit analysis.
2. Provide a **shared frame of reference** to help stakeholders align efforts to monitor, evaluate, and improve justice initiatives¹⁴

¹² *Ibid* at 80.

¹³ *Ibid* at 18.

¹⁴ Access to Justice BC, *Access to Justice Measurement Framework* (2016) online: <<https://accesstojusticebc.ca/wp-content/uploads/2017/08/A2JBC-Measurement-Framework.pdf>> (21 February 2018) at 4 [*The BC Framework*].

The ‘triple aim’ approach, which was adapted from the health sector, forms the basis of this framework.¹⁵ Triple aim thinking essentially involves the simultaneous pursuit of improving *access* to justice, improving people’s *experience* of the justice system, and ensuring that *costs* are sustainable. The three elements are interdependent and should not be considered in isolation when assessing the effectiveness of justice initiatives.

The three central elements are further broken down into *dimensions* and then *components*. Where appropriate, components also incorporate specific justice *measures* that can inform data collection.



*An example of how the BC Framework breaks down the overarching element “improving user experience of access to justice” into more specific measures and dimensions.

The framework also acknowledges the difficulties in measuring all aspects of the system in the exact same way. Given the variation in justice initiatives, “it is neither desirable nor possible to impose a one-size-fits-all outcome measurement model”.¹⁶ Instead, “the measurement framework identifies key, logically related, dimensions of access to justice, each encompassing different elements for which a number of indicators (or measures) can be adopted or developed”.¹⁷

Benefits of the BC Framework:

- Incorporates a comprehensive list of elements and dimensions**
- Lends itself to collaboration and data comparison between provinces**

¹⁵ Of note, ‘triple aim’ thinking is an integral part of Access to Justice British Columbia’s approach in general. Its use is not limited to the measurement framework.

¹⁶ *The BC Framework supra* note 14.

¹⁷ *Ibid.*

The BC Framework is currently the most comprehensive example of a framework for measuring civil and family justice systems in Canada. If other provinces or territories adopt similar measures, it could support data sharing between provinces.

Designed to be flexible

Given its broad scope, the framework leaves room for adjustment for individual agencies. It was designed as a ‘living document’ that can grow and adapt to changing needs.

Limitations of the BC Framework:

An identified benefit of the framework is its flexibility and status as a ‘living document’. Although advantageous in some respects, it can present challenges to implementation. For example, **several components of the framework do not include specific measures to inform data processes**. Where measures are available, it would require significant resources to translate them into surveys or other tangible data collection tools. These gaps are difficult for stakeholders to address individually, and a lack of a clear direction for implementing the model may lead to inconsistencies in data collection and analysis. In its current form, the framework is arguably not ‘implementation-ready’.

In summary, this section provided an overview of two different frameworks. Justice metrics frameworks have inherent limitations, but they also offer a helpful guide for improving data collection practices. No single framework can completely satisfy the information needs of individual agencies, but adopting a principle-based framework can help support access to information.

Our research methodology

For this project, we were asked to explore the question of how to measure access to civil and family justice in Saskatchewan. Our research had three components:

1. A literature review on the topic of measuring justice¹⁸
2. A jurisdictional scan of existing justice metrics practices, initiatives, and policies¹⁹
3. Consultations with a range of justice stakeholders

¹⁸ See APPENDIX A.

¹⁹ See APPENDIX B.

Our preliminary research oriented us to existing justice metrics theories and methodologies. During the consultation stage we sought to gain an understanding of how this existing work might be applied in a Saskatchewan-specific context.

Consultations

We conducted consultations with key justice stakeholders within Saskatchewan, as well as with a representative from Access to Justice BC (A2JBC), the organization responsible for the BC Framework we reference throughout this paper.²⁰

Consultations took the form of telephone or in-person meetings. Though we used a set of standardized questions as a starting point, these conversations were open-ended and exploratory. Consultees were also provided with a summary of the BC Framework.

Our **primary goals for these consultations** were to:

1. **Gather perspectives on organizational priorities with regard to ‘access to justice’**
2. **Gauge interest in developing a framework to coordinate Saskatchewan’s approach to measuring justice**
3. **Learn what stakeholders would want a framework to accomplish**
4. **Discuss possible opportunities and challenges associated with a justice metrics framework in Saskatchewan**
5. **Gather stakeholder feedback on the BC Framework**

Research Limitations

Though we were able to interview most of our proposed consultees, time constraints limited the scope of our consultations. The input we received during our consultations should be understood as a prologue to further engagement, **as members of the public and representatives from community-based organizations were notably absent.** Members of the public can provide invaluable knowledge and insight into the dynamics of the access to justice crisis.²¹ Service providers and interest groups not traditionally associated with the justice system can also offer broader perspectives for how a justice metrics framework can reflect the needs and concerns of communities. With this in mind, we asked consultees which other stakeholders would be important to consult as to this project. A list of those recommendations is included in Appendix D.

²⁰ A full list of consultees and consultation questions can be found in APPENDIX C.

²¹ See Dodge and Farrow, summarized in APPENDIX A.

Findings from consultations

This section summarizes key observations from stakeholders that emerged in our consultations. We have not captured the entirety of consultees' feedback but instead have worked to highlight recurring themes.

Consultees want better data to inform their work

Many agencies already collect data for internal performance evaluation and reporting but the utility of that data is limited by the narrow purposes for which it is gathered and a general lack of data availability.

Stakeholders expressed the need for data that provides deeper insight into improving access to justice. Having said this, some stakeholders cautioned against implementing a framework that only asks questions to which answers are readily available. **We should not put significant resources into confirming what we already know about the access to justice crisis.** We need information that supplements, and provides context for, what we already know.

Multiple stakeholders noted information gaps pertaining to:

Qualitative assessments of the effectiveness of programs, quality of outcomes, and user satisfaction with the justice system.

Indirect financial and human costs of participating in justice processes. This includes associated expenses such as travel or child care, or impacts on a person's family and other relationships, health, employment etc.

How people navigate paths to justice. For example:

- 1. Do people interact with multiple agencies in their search for information or assistance?*
- 2. Once a legal process is commenced, how many people reach a resolution by completing that process?*
- 3. What factors are at play when people fail to reach a resolution through justice system processes?*

A justice metrics framework should be suited to the Saskatchewan context

Consultees saw potential benefits in a coordinated, comprehensive approach to measuring justice. Saskatchewan stakeholders suggested that a framework should include the following characteristics:

Reflect the priorities of Saskatchewan’s justice stakeholders.

This includes the Ministry of Justice and other government agencies, judiciary and courts, the private bar, non-profit legal information and service providers, and citizens themselves.

Take into account our relatively small, dispersed population.

Attention should be directed to the unique geographic challenges we face in providing adequate and accessible legal services for citizens. It is also important to note that Saskatchewan’s small size presents an opportunity for collaboration among provincial justice stakeholders.

Measure access to justice in procedural *and* substantive terms.

The quality of outcomes in the justice system is dictated not only by the substantive result, but also the experience and satisfaction of justice system users.

Address the relationship between civil and family justice, criminal law, and other sectors.

In order to offer meaningful insight, a civil and family justice-oriented framework must reflect the multifaceted nature of legal needs and responses. A recurring example from consultees was the important connection between family and criminal justice matters.

A shared frame of reference would be valuable both provincially and nationally

Justice system stakeholders approach the question of access to justice from a variety of perspectives that reflect distinct institutional mandates, priorities, clientele, and challenges faced by each agency. Several consultees noted that **the absence of a “common language” through which to express these perspectives can impede effective collaboration** between stakeholders. A shared frame of reference would allow agencies to better understand each other’s work and benefit from each other’s wisdom and experience. Consultees conveyed that they want a justice metrics framework to provide a basis for common understanding and comparison provincially and, as much as possible, nationally. This would strengthen ongoing efforts across Canada to improve access to justice.

Consultees discussed challenges presented by the implementation of a framework

Consultees were cognizant of significant practical challenges to implementing a justice metrics framework in Saskatchewan. Often cited were:

- Human, financial, and physical resource limitations;
- The difficulty of coordinating key stakeholders and sustaining engagement to develop and operationalize a justice metrics strategy;
- Legal and operational issues to resolve in order to appropriately collect, store, and disclose data; and
- Concerns over the potential scarcity of data expertise within individual organizations.

Discussion: A framework for Saskatchewan

There is no right or wrong answer to the question of what a metrics framework for Saskatchewan should look like. The purpose of creating a metrics framework is to gain better information about civil and family justice processes and insight into how those processes may be improved to expand access to justice. Therefore, the structure and content of a framework should be **dictated by the interests and needs of both the public and stakeholders within the system**. The development of a framework ought to be a collaborative and consultative process.

Ideally, a metrics framework will be utilized by stakeholders across the Saskatchewan civil and family justice systems. Input from stakeholders—the future “users” of the framework—will help ensure the framework is both viable and comprehensive.²² Input from the public—particularly marginalized and vulnerable community members—will also be essential. The justice system’s failure to understand the “social and personal realities of the marginalized people progressing through it” is a significant factor in the ongoing access to justice crisis.²³

In order to be most effective, a framework should be:

Principle-based: It is important that a Saskatchewan framework represents the diverse needs and interests of stakeholders.

Implementation-ready: A framework should be a tool for stakeholders and address the practical challenges inherent in data collection and analysis.

Sustainable: Long-term viability is essential if a framework is to be useful.

The sections below elaborate on each of these concepts and presents potential next steps for the creation of a Saskatchewan framework.

Principle-based

It is impossible to comprehensively measure *every* aspect of the justice system. Therefore, “prior to any measurement exercise, a process should be in place to articulate the most relevant elements of a justice system’s performance, in relation to the system’s values, goals,

²² For more on the benefits of engaging future users at the development stage, and suggestions on how to approach the process, see *Utilization Focused Evaluation: A primer for evaluators* by Ricardo Ramírez and Dal Brodhead: https://evaluationandcommunicationinpractice.net/wp-content/uploads/2017/08/Ramirez-Brodhead_UFEPrimerEn_2013.pdf?189db0&189db0

²³ Amanda Dodge, *Access to Justice Metrics Informed by the Voices of Marginalized Community Members: Themes, Definitions and Recommendations Arising from Community Consultations* (2013), online: <http://www.cba.org/CBA/cle/PDF/JUST13_Paper_Dodge.pdf> (21 February 2018) at 7 [Dodge].

standards, structure, and activities”.²⁴ Understanding the underlying values of the system and its stakeholders is critical to the success of a metrics framework because “it is important to **measure what we value, in order that we don’t end up valuing only what we measure**”.²⁵

To determine what should be measured, a variety of perspectives must be taken into account. Like the justice system itself, the concept of ‘access to justice’ is multidimensional. While stakeholders unanimously expressed interest in having more and better data, each has a unique set of interests and priorities that must be represented in order for a framework to be successful. “[T]here is room in a good measurement system to measure different outcomes that are valued and expected by different people”, but in order to do so the framework must be grounded in a set of principles which reflect underlying, shared values.²⁶

The BC Framework and The Hague Model each provide examples of how such a set of principles might look. The BC Framework’s “triple aim” approach is built around three overarching elements: improved user experience of access to justice, improved population access to justice, and improved costs. These elements are similar to the three central questions outlined in The Hague Model, which relate to costs, quality of experience, and quality of outcome. Neither model prioritizes any one of the three elements over another, and **initiatives are evaluated on how well they strike a balance between the three**. The comprehensive nature of each approach ensures they are appropriate for a broad range of stakeholders.

There are a few options for developing this component of a Saskatchewan framework:

1. Fully adopt the approach of an existing model
2. Adopt the approach of an existing model(s) in part, incorporating Saskatchewan-specific considerations
3. Engage in an independent value-setting process.

Our research and consultations suggest **adopting or adapting an existing set of guiding principles—such as the approaches utilized in the BC Framework and The Hague Model—may be effective** for the following reasons:

Comprehensiveness: Consultees presented with the BC Framework generally viewed the ‘triple aim’ approach as comprehensive enough to reflect their organizational priorities and no significant gaps were identified.

²⁴ Yvon Dandurand, Kittipong Kittayarak, & Alison MacPhail, *Justice Indicators and Criminal Justice Reform: A Reference Tool* (2015), online: <<https://icclr.law.ubc.ca/wp-content/uploads/2017/06/Justice-Indicators-and-Criminal-Justice-Reform-April-2015.pdf>> (21 February 2018) at 9 [Dandurand].

²⁵ *Ibid.*

²⁶ *Ibid.*

Information-sharing: Many consultees expressed interest in increased information sharing across jurisdictions, which would be easier if multiple jurisdictions use similar frameworks.

Efficiency: The use of an existing framework would allow Saskatchewan to move past this initial stage, and on to more detail-oriented aspects of the project, more efficiently.

While adopting an existing approach has benefits, the decision should be made in consultation with stakeholders. It is important that stakeholders clearly understand whatever model is proposed and have the opportunity to ensure that their organizational priorities are represented. Clearly identifying stakeholder's relevant interests at this stage will ensure the principles are sufficiently comprehensive, and also help inform the development of measures to be used in determining whether these goals are being met.

Implementation-ready

Saskatchewan should also endeavour to develop a framework that is **operational from the outset**. In order to be implementation-ready, it is essential that a Saskatchewan framework not only express *what* should be measured but also inform users about *how* to do so by including a set of measures or indicators related to each element of the framework. This is a way in which a Saskatchewan metrics framework might build on the work already conducted in British Columbia.

The BC Framework was designed as a high-level document—intended to provide guidance while allowing agencies flexibility to adapt the framework to suit their own needs.²⁷ Though it includes some specific measures, it does not provide a comprehensive set of measures for every element, nor does it suggest what methods of data collection and analysis might be required for the measures provided. This approach is understandable in a large jurisdiction such as British Columbia where coordination between all relevant stakeholders presents significant challenges, but there are drawbacks. To use the BC Framework, organizations will have to work independently to adapt the Framework for their own use. This may be a barrier to implementation. Furthermore, lack of uniformity with regard to measures and use of data may limit the framework's utility in information-sharing between organizations.

Therefore, **we recommend that a Saskatchewan framework include a detailed set of measures**, developed through consultation with stakeholders and data specialists.²⁸ This process should give attention to stakeholder's interests in terms of what information will be

²⁷ *The BC Framework supra* note 14 at 4.

²⁸ Both The Hague Model and the *Dandurand* paper are useful starting points for understanding the development of measures and how to incorporate the practical realities of implementation into the development process.

most useful, as well as practical concerns such as data availability.²⁹ Smaller jurisdictions such as Saskatchewan provide **unique opportunities for collaboration between agencies**.

Collaboration at this stage will ensure the framework is comprehensive and enable a smooth transition from development to implementation: those wishing to implement the framework will already be familiar with it and barriers to implementation will have been considered and addressed in advance to the greatest extent possible.

It should also be noted that **not every measure developed will be useful to every stakeholder**. There is no need for every organization involved to implement the framework in its entirety (nor will it possible for them to do so, particularly in the early stages of implementation). The framework should aim to be **both practical and future-oriented**. It should help stakeholders to effectively use data that is already available and also guide more advanced data collection and analysis going forward.

Sustainable

Measures that reveal patterns and trends over a long period of time are more valuable than those which provide only a “snapshot” of a particular moment.³⁰ To ensure its effectiveness, the long-term sustainability of the framework should be considered from the outset. Relevant considerations include:

Administration

While the framework should be the product of collaboration, it will likely be necessary for a specific organization (or organizations) to take the lead in coordinating and administering its development and implementation.

Funding

Many consultees expressed concern that limited resources will be a significant barrier to the implementation of a framework. How can these barriers be overcome?

Ongoing collaboration

Once implementation is underway, the framework’s effectiveness should be assessed on an ongoing basis to identify potential improvements, and ensure its continued relevance to shifting stakeholder interests as well as developments in other jurisdictions.

²⁹ The data inventory project being conducted by CREATE Justice is likely to be a valuable resource in this regard. However, Dandurand et al. warn against limiting measures to existing data entirely. For more, see *Dandurand* at 27-28.

³⁰ *Dandurand supra* note 24 at 16.

Recommendations

Based on our research and consultations with stakeholders, we propose the following recommendations to guide the creation of a justice metrics framework for Saskatchewan. These recommendations are not intended to outline concrete next steps, but rather to provide a set of considerations to keep in mind as the project moves forward.

1. **Facilitate collaboration and coordination amongst stakeholders:** The development process should be collaborative and include consultations with all civil and family justice system stakeholders. There may also be value in consulting with stakeholders in other areas, such as the criminal justice system, CBOs and agencies from other sectors which are impacted by justice processes.
2. **Consult the public:** Justice system insiders often have difficulty viewing the system from the perspective of citizens. Including public consultations in the development process will reveal important factors which may otherwise go unnoticed. Particular attention should be paid to the concerns of citizens for whom barriers to access to justice are particularly high.
3. **Identify shared principles:** Understanding what we value will help to guide what we measure and how. If appropriate, this may be as simple as adopting a version of an existing model such as the BC Framework.
4. **Establish measures:** Consult with data experts and stakeholders to develop specific measures.
5. **Plan for implementation:** The framework should serve as a tool rather than a high-level document. Conduct consultations and develop the framework with implementation in mind—consider what information needs to be included in order for the framework to be functional.
6. **Think long-term:** Consider how to make the framework sustainable at both the development and implementation stages. What barriers may present themselves? How might those barriers be overcome?
7. **Stay up-to-date:** Keep up with the metrics and data practices used in other jurisdictions. Look for opportunities to share information and collaborate in establishing best practices.

Conclusion

Justice stakeholders are seeking better data to inform service delivery and system improvements. A metrics framework needs to do more than simply confirm what we already know about the access to justice problem. If implemented effectively, a framework should

provide insight into how the system is currently working, help inform new innovations, and support the evaluation of ongoing efforts to improve access to justice.

When developing a framework, careful consideration must be given to the needs of all justice system stakeholders. This includes, but is not limited to, government agencies, community organizations, and the public. While there may never be total agreement, identifying a set of shared principles will help facilitate the creation of a framework that is both meaningful and representative of a diverse range of stakeholders.

There are few examples of comprehensive justice metrics frameworks, but the work done in other jurisdictions still offers a strong foundation on which to build a model for Saskatchewan. By engaging in this work now, Saskatchewan has an opportunity to be a global leader in efforts to better understand and improve justice systems and processes.

APPENDIX A: Literature review

“Measuring Justice” by Jane H. Aiken and Stephen Wizner (2013)³¹

The authors discuss the challenges of measuring lawyers’ effectiveness in achieving justice, especially for marginalized clients such as those of non-profit legal clinics. They argue that measuring access to justice must “measure such intangibles as clients’ feelings about the services they have received, whether they were treated in a professional and respectful manner ... that contributed to their sense of having received substantive justice and procedural fairness.”

Overall, the authors argue for a contextualized definition of justice and corresponding means of measurement -- that the definition of justice events, outputs, and the analysis of related outcomes must go beyond tracking wins and losses. Several seemingly unquantifiable factors nonetheless worth measuring are discussed, including:

- empathy and respect in the lawyer-client relationship,
- types, methods, and outcomes of informal advocacy,
- the outcomes (both legal results and clients’ experiences) of legal representation compared to self-representation, and
- the extent to which legal representation assists clients in better understanding and navigating the justice system.

The article focuses on the ways that individual lawyers can improve access to justice, acknowledging that this dimension does not reflect whether the system is accessible or even provides justice - systemic effectiveness requires its own frame of analysis.

“Justice Indicators and Criminal Justice Reform: A Reference Tool” by Yvon Dandurand, Kittipong Kittayarak and Alison MacPhail (2015)³²

The authors discuss the benefits of developing and using justice indicators as a way to synthesize information about various aspects of justice system processes. Though the paper is tailored to the criminal justice context, most of the content is also applicable to other areas of the justice system. The paper provides the following definition of justice indicators:

Indicators are indirect measures of elements that taken together can measure trends over time and progress towards specific goals and objectives. Justice indicators are

³¹ Jane H. Aiken and Stephen Wizner, “Measuring Justice” (2013) 1 Wisconsin Law Review 79.

³² Dandurand *supra* note 24.

high-level measures that allow the synthesis of complex information to produce easily interpreted statements relating to change over time in any of the numerous aspects of the justice system's performance. The most useful indicators of performance are typically those that can tightly link values, goals, activities and outcomes.

The paper takes a practical approach to the use of indicators and the development process. It provides guidelines for choosing indicators, suggestions for how best to utilize different sources of data, and suggestions for maximizing the benefits of justice indicators.

“Access to Justice Metrics Informed by the Voices of Marginalized Community Members” by Amanda Dodge (2013)³³

This article was prepared for the Canadian Bar Association's Access to Justice Committee to inform a practical definition of access to justice and ultimately help to identify tangible access to justice indicators to measure progress. The author worked closely with community members who experience marginalization, and the paper includes the voices of participants throughout with the use of direct quotes. The consultations took place in urban centres across Canada and reflected the following broad themes:

What happens when access is denied?

- Legal rights are just on paper (p. 2)
- Justice systems cannot be trusted (p. 4)
- Justice is person-dependent (p. 9)
- Justice systems are difficult to navigate (p. 15)

What happens when access to justice is afforded?

- Legal rights and justice (p. 18)
- Information as a prerequisite to justice (p. 19)
- Justice is about respect (p. 21)
- Justice is a holistic concept with systemic solutions (p. 22)

Delay, inefficiency, and limits to service provision were recurring themes of many participants' experiences. The paper offers a series of recommendations based on the question: 'what should it be like?'. These recommendations include the public need for more information and comprehensive support, a triage service with a developed checklist or questionnaire to identify needs, and encouraging dialogue and information sharing between service providers. In conclusion, the author offers a reminder to justice stakeholders to partner authentically with community and listen to the voices of the people we aim to serve. Taking criticism

³³ Dodge *supra* note 23.

constructively and looking for ways to increase the quality and consistency of services is also encouraged.

“What is Access to Justice?” by Trevor Farrow (2014)³⁴

Supported by findings from a recent survey on public views on justice, Farrow argues for a public-centred understanding of access to justice. To contextualize the findings, he provides a helpful overview of the recent literature and reform efforts pertaining to access to justice. The survey itself was conducted in 17 locations within Toronto, ON chosen to represent different socioeconomic conditions. It asked broad, open-ended questions to elicit people’s thoughts about fundamental concepts. The responses revealed 10 themes:

- Justice is about fairness, equality, morality, and active societal participation;
- Procedural justice and substantive justice are both important;
- Not everyone has equal access to justice;
- People often feel alienated by the system;
- People should have a right to justice;
- Justice is a fundamental issue;
- More government support should be provided;
- Justice should be made simpler, cheaper, and faster;
- Education, prevention, and understanding are important aspects of justice; and
- The cost of not making justice accessible needs to be further considered.

The piece highlights the public’s consciousness of the distinction and relationship between procedural and substantive justice. It also reflects the view that access to money is closely tied to access to justice - a view that should give pause for those of us most responsible for stewardship of the rule of law in this country. This is related to the prevalent view that justice processes must become simpler, faster, and less expensive. The author argues that it will take increased public awareness, understanding, and engagement to catalyze a major justice reform, especially as it relates to re-examining fiscal policy.

³⁴ Trevor C. W. Farrow, "What is Access to Justice? (2014) 51 Osgoode Hall Law Journal 957.

“A Framework for Measuring Access to Justice Including Specific Challenges Facing Women” by Teresa Marchiori (2015)³⁵

Pursuant to growing international interest in improving justice systems, a variety of indicators are currently being used to assess justice system functioning. This report focuses on assessing access to justice, particularly for women, as a fundamental element of democracy, human rights, and the rule of law. Marchiori inventories and analyzes justice indicators developed and/or used by a range of government, civil society, and international organization actors. Her report could be useful as a source or comparator for:

- Holistic (relatively speaking) definitions of access to justice;
- Specific dimensions of access to justice, including legal awareness and literacy, opinions and perceptions of the law and justice systems, transparency and accountability, and alternative dispute resolution;
- How to conceptualize the implications and relationships between a) indicators developed by various stakeholders, b) data collected by particular justice actors for certain purposes (for example, by courts for administration versus by organizations conducting household surveys of justice satisfaction), and c) types of data such as those tracking inputs, outputs, and both objective and subjective outcomes (i.e. both verdicts and user satisfaction);
- Analysis of gaps in existing indicators; and
- Proposals for how to integrate essential social context into indicators and into the resulting understanding of access to justice.

“The Justice Metrics Problem” Background Paper by M. Jerry McHale, Q.C. (2017)³⁶

This document was a backgrounder for a meeting of the BC Action Committee on Access to Justice in Civil and Family Matters in March 2017. It was intended to help participants determine the level of concern over the justice metrics problem and assess interest in national collaboration in this regard. McHale defines the problem as “the lack of reliable justice data, the lack of empirical justice research, inconsistent justice metrics and the inability of justice systems to measure the performance or effectiveness of their programs and processes”. He briefly discusses these, as well as selected challenges to addressing the problem:

- institutional resistance to performance measurement,
- administrative hurdles including informational privacy and mobilizing technology, and

³⁵ Teresa Marchiori, *A Framework for Measuring Access to Justice Including Specific Challenges Facing Women* (2015), online: <<https://rm.coe.int/1680593e83>> (21 February 2018).

³⁶ *Background Paper supra* note 1.

- methodological challenges relating to the number of nuanced variables at play in “justice” and their complex interrelationships.

He then identifies questions to address in order to coordinate action on gathering justice data and developing metrics:

- What objectives – normative as well as practical – should guide data gathering and metric development?
- What type and scale of project is feasible?
- What are the top priorities for such work?
- Who should be involved (within and beyond the province), and how should they be organized/mobilized?

Certain initiatives in other jurisdictions are highlighted. Australia’s work beginning in 2008 is a good example of a comprehensive effort to first define “success” for the justice system and define metrics accordingly. The ADAJ (roughly translated from French, “Citizen Access to Law and Justice”), a research partnership among several Quebec universities and justice stakeholders, offers an international jurisdictional scan and relates it to the Canadian context. McHale ends with a broad outline of proposed frameworks for national collaboration. He explains that this is desirable to pool scarce resources and optimize resulting data and metrics through harmonized definitions and software, etc. The proposals included one-way data sharing between jurisdictions, data sharing plus discussion and collaboration, and developing a national strategy to guide work in all jurisdictions.

APPENDIX B: Jurisdictional Scan

The following offers an overview of existing justice metrics programs, innovations and policies.

The Canadian Context
<p>Access to Justice BC: Access to Justice Measurement Framework (the BC Framework) (British Columbia, Canada)</p> <p>British Columbia has developed a measurement framework, utilizing the ‘triple aim’ approach adapted from the health sector. It is based on three elements: i) improving population access to justice ii) improving user experience, and iii) improving costs.</p> <p>Web Link: https://accesstojusticebc.ca/wp-content/uploads/2017/08/A2JBC-Measurement-Framework.pdf</p>
<p>Justice Sector Data Inventory, Evaluation, and Toolkit (Saskatchewan, Canada)</p> <p>Through CREATE Justice, justice stakeholders and researchers in Saskatchewan are working towards better understanding how data collection and analysis can inform service delivery and system improvements. The key aim of the project is to answer the question: ‘<i>how does or could data collection, analysis, or usage help organizations fulfill their role in the resolution of everyday legal problems for Saskatchewan residents?</i>’. The methodology for the project is still under development.</p> <p>Web Link: unknown</p>
<p>The Accès au droit à la justice (ADAJ) (Quebec, Canada)</p> <p>This is a research partnership between academia and key justice stakeholders in Quebec. One project spearheaded by the initiative relates to research on justice metrics and data collection - <i>La statistique judiciaire</i>. The relevant report is titled <i>Performance des systèmes de justice: Qu’est-ce qui compte?</i></p> <p>More information about the project, in English, is outlined in the Action Committee on Access to Justice in Civil and Family Matters’ “<i>Justice Metrics Problem</i>” <i>Background Paper</i> from pages 12-14. https://static1.squarespace.com/static/5532e526e4b097f30807e54d/t/590a60968419c273fe4dd99c/1493852311174/AC+Background+Paper+March+YVR+FINAL.pdf</p> <p>Web Links: http://adaj.ca/accueil and http://adaj.ca/hub-7 and https://www.ciqss.org/presentation/performance-comparative-des-systemes-de-justice-qu-est-ce-qui-compte-et-qu-est-ce-qui</p>
<p>Federal/Provincial/Territorial Assistant Deputy Ministers’ Metrics Committee (Canada)</p>

The committee was instituted in 2015 and is co-chaired by Andrea Strom of the Ontario Ministry of Attorney General and an Assistant Deputy Minister from Alberta. The Working Group has representation from Ontario, Alberta, Nova Scotia and British Columbia. They are working to draft a table of justice measures based on justice objectives articulated in reports from the Action Committee on Access to Justice in Civil and Family Matters.

Web Link (*via page 7 of “The Justice Metrics Problem” Background Paper):

<https://static1.squarespace.com/static/5532e526e4b097f30807e54d/t/590a60968419c273fe4dd99c/1493852311174/AC+Background+Paper+March+YVR+FINAL.pdf>

The Western Canadian Data Analytics Task Group

(Canada)

The task group began in 2016 and includes representation from British Columbia, Alberta, Saskatchewan and Manitoba. They are working to put together an inventory of current justice performance measures that are publicly reported in their respective jurisdictions.

Web Link (*via page 7 of “The Justice Metrics Problem” Background Paper):

<https://static1.squarespace.com/static/5532e526e4b097f30807e54d/t/590a60968419c273fe4dd99c/1493852311174/AC+Background+Paper+March+YVR+FINAL.pdf>

The National Self-Represented Litigants Project (NSRLP): The Self-Represented Litigant Case Law Database

(Canada)

The National Self-Represented Litigants Project has recently launched the Self-Represented Litigant Case Law Database. The database is designed to support and inform lawyers, judges, self-represented litigants, and the public. The goal of the project is to track the developing jurisprudence across Canada in cases that relate to and affect the positions of individuals appearing unrepresented. The group plans to begin publishing detailed reports on their findings in 2018.

Web Links: <https://representingyourselfcanada.com/wp-content/uploads/2017/12/CLD-Prelim-Report.pdf>

Representing Yourself Canada and Loom Analytics Blog Post

<https://representingyourselfcanada.com/finally-canadian-data-on-case-outcomes-srl-vs-represented-parties/>

Loom Analytics

<https://www.loomanalytics.com/>

The International Context

An evidence base for the civil justice system

(Australia)

In 2008, the Australian Government, alongside other justice stakeholders, began a long-term project focused on the development and implementation of a justice metrics framework. A symposium was held in 2011, with a working group hosting its first meeting in 2012. The last public report regarding the initiative appears to have been released in 2012.

Web Links: <https://www.ag.gov.au/LegalSystem/Pages/Anevidencebasefortheciviljusticesystem.aspx>

Building an evidence-base for the civil justice system: civil justice system framework and literature review report
<https://www.ag.gov.au/LegalSystem/Documents/2012%20Report%20Civil%20Justice%20System%20Framework%20and%20Literature%20Review%20Report%20Shina%20Consulting.PDF>

An evidence base for the federal civil justice system (consultation paper)
<https://www.ag.gov.au/LegalSystem/Documents/Paper%20%27An%20evidence%20base%20for%20the%20federal%20civil%20justice%20system%27%20Feb%202011.pdf>

National Legal Assistance Data Standards Manual
<https://www.ag.gov.au/LegalSystem/Legalaidprogrammes/Documents/National-Legal-Assistance-Data-Standards-Manual.pdf>

US Legal Services Corporation (LSC) Performance Criteria

(United States of America)

This version of the performance criteria was established in 2007. It is a measurement device for internal program self-evaluation, planning, and program development, as well as external peer reviews and expert assessments by other funding sources. Performance areas for measurement include: effectiveness of governance, leadership and administration; effectiveness in identifying and targeting resources to address pressing civil legal needs; effectiveness of legal representation and other program activities; and effectiveness in engaging and serving the low-income population.

Web Link: <https://www.lsc.gov/media-center/publications/lsc-performance-criteria>

Measuring Access to Justice in a Globalising World: The Hague Model of Access to Justice

(Global)

The project involved 8 pilot studies in 3 countries - Bolivia, the Netherlands, and Bulgaria. The resulting model offers 'a methodology to measure people's perspective on the accessibility of justice' and 'is aimed at measuring the costs of legal procedures, the quality of procedures and the quality of outcomes. In other words, this methodology looks at whether a path to justice is perceived affordable and accessible'.

Web Links: http://www.hiil.org/data/sitemanagement/media/Hiil_final_report_Measuring_260410_DEF.pdf

Final deliverable of the project titled *A Handbook for Measuring the Costs and Quality of Access to Justice (2009)*: <http://lawforlife.org.uk/wp-content/uploads/2013/05/handbook-for-measuring-the-costs-and-quality-of-access-to-justice-271.pdf>

World Justice Project Rule of Law Index

(Global + Canadian results)

The *World Justice Project (WJP) Rule of Law Index* considers itself to be 'the world's leading source for original, independent data on the rule of law'. The Index includes a Civil Justice factor and 'measures whether ordinary

people can resolve their grievances peacefully and effectively through the civil justice system' based on a series of indicators. The Index does not appear to measure 'informal justice'.

Web Links: <https://worldjusticeproject.org/our-work/wjp-rule-law-index/wjp-rule-law-index-2016/factors-rule-law/civil-justice-factor-7> and <https://worldjusticeproject.org/our-work/wjp-rule-law-index>

APPENDIX C: Consultation information

List of Consultees

Chantelle Johnson – Executive Director, CLASSIC

Joel Janow – Executive Director, Public Legal Education Association

Jerry McHale, QC – University of Victoria Faculty of Law, A2JBC

Michaela Keet – Associate Professor, University of Saskatchewan

Charmaine Panko – Panko Collaborative Law & Mediation

Carly Romanow – Executive Director, Pro Bono Law Saskatchewan

Gina Alexander – Executive Director, Community Safety and Well-Being, Ministry of Justice

Barbra Bailey – Policy Counsel, Law Society of Saskatchewan

Kyla Shea – Director, Planning and Administration, Legal Aid Saskatchewan

Consultation Questions

1. What are your organizational priorities in relation to access to justice?
2. What do you see as the relationship between substantial and procedural justice?
3. From the perspective of your organization, how do you see the justice system as connected to a wider range of human service providers, Ministries, etc.?
4. What would you want a justice metrics framework to accomplish?
5. From your perspective, what are the challenges to developing and implementing a civil and family justice metrics framework in Saskatchewan?
6. If Saskatchewan was to move forward with a justice metrics framework, what other people or organizations would you suggest be consulted?

For government representatives:

1. How important is compatibility with other ministries, or other jurisdictions, in the development of a framework?

For Jerry McHale (A2JBC):

1. Which stakeholders are represented as members of A2JBC and the Access to Justice Measurement Framework working group?
2. What were your main challenges while developing the framework? Is there anything you would do differently?
3. What was the consultation process used in developing the framework?
4. What are your next steps in regards to the project?

APPENDIX D: Suggestions for further consultations

The following list was compiled from consultee’s responses to the question **“If Saskatchewan was to move forward with a justice metrics framework, what other people or organizations would you suggest be consulted?”**:

1. Elizabeth Fry Society/John Howard Society
2. Courts of Saskatchewan (all levels)
3. Legal Aid
4. Law Foundation of Saskatchewan
5. CLASSIC
6. Pro Bono Law Saskatchewan
7. Public Legal Education Association of Saskatchewan (PLEA)
8. Canadian Centre for Professional Legal Education (CPLED)
9. Law Society of Saskatchewan
10. Law Society Library
11. Ministry of Justice – Government of Saskatchewan
12. CREATE Justice
13. University of Saskatchewan College of Law
14. Data and performance measurement specialists
15. Open Door Societies and other groups that work with newcomers
16. Indigenous organizations
17. Members of the public—public consultations should reflect a variety of perspectives, including low-income populations, persons with disabilities, persons living in rural communities, Indigenous persons living on- and off-reserve, and newcomers