

FROM THE SIXTH ANNUAL DEAN'S FORUM ON
ACCESS TO JUSTICE AND DISPUTE RESOLUTION
MARCH 6, 2018

Follow-Up Report & Summary Notes

On Civil and Family Justice Metrics:
Towards a Framework for Saskatchewan

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DEAN'S FORUM



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Introduction

The afternoon of the March 6, 2018 meeting of the Dean's Forum was devoted to exploring the topic entitled *Civil and Family Justice Metrics: Towards a Framework for Saskatchewan*. We began by explaining the perspective from which we approached the topic. We identified that we are not 'data experts', and further work in this area will require involvement from those trained in data and metrics. We also recognized the importance of input from stakeholders within the justice system. To introduce the topic, we provided a brief description of our consultation process, the themes that emerged from discussions with stakeholders, and the considerations that we think will be important in developing a framework for Saskatchewan. We then provided a brief overview of the Access to Justice Measurement Framework (the BC Framework) developed by Access to Justice BC, focusing on the triple aim approach it employs.

Following the presentation, attendees divided into six breakout groups. Each group was asked to consider the three foundational elements of the BC Framework's triple aim approach and to explore the possibilities and limitations of adopting a similar model in Saskatchewan.¹ Following small group discussions, the group reconvened to report back on their conversations and to further discuss the topic. The large group discussion was facilitated by Michaela Keet, a faculty member at the University of Saskatchewan College of Law, and Janelle Anderson with the Ministry of Justice, Innovation and Legislation Division. This report outlines important insights drawn from the afternoon's discussions.

Common Themes from Group Discussion

Reactions to the BC Framework

Initial Thoughts

Overall, Dean's Forum attendees thought the BC Framework was comprehensive. There was general interest in pursuing a similar framework in Saskatchewan and the BC Framework was identified as a helpful starting point. The elements, dimensions, and components "made sense" and appeared to be quite thorough.

Although relatively few changes to the BC Framework were suggested, this does not imply that stakeholders supported a wholesale adoption of the BC Framework. Attendees came with varying levels of familiarity and expertise with empirical research and data practices. It was agreed that the BC Framework requires further review by both justice stakeholders and data

¹ The composition of each breakout group and a list of their discussion questions can be found in the Appendices.

experts in order to assess its applicability in Saskatchewan. Moving forward, stakeholders want clarity around what elements of a framework would be prioritized (if any), what a framework is meant to facilitate, and what the overall project of measuring justice is meant to accomplish.

The Triple Aim Approach

Overall, attendees found the triple aim approach to be appropriately extensive.² With regard to specific changes or additions to the framework that would account for the Saskatchewan context, there were a few initial thoughts. For example, there were some questions about how the BC Framework would relate to communities in the North, especially with regard to user experiences and the impact of geography and travel.

Key differences between legal structures in BC and Saskatchewan were also flagged as an important consideration. For example, BC has a more centralized or unified approach to administrative bodies compared to Saskatchewan. British Columbia's Legal Aid service structure is also quite distinct. Attendees affirmed that a Saskatchewan framework should be tailored to the legal agencies, services and needs that are specific to our province.

Of the three "aims" or elements in the BC Framework, attendees gave particular attention to "improving user experience" and "improving costs". One data specialist observed that the dimensions of "improving user experience" lend themselves to an approach known as *program evaluation*, which can rely on largely internal or agency-generated data. Alternatively, measuring dimensions of the other two elements would likely require gathering data from both internal (justice agency) and external (user or general public) sources.

While discussing the "improving costs" element, attendees expressed interest in measuring costs holistically. One attendee pointed out that public and private costs are both relevant to this question. For example, closing rural courthouses may save public dollars but will likely raise costs for both citizens and their lawyers. Several attendees were also interested in the costs of inadequate access to justice. This includes the direct and indirect costs of citizens' inability to access formal legal processes, as well as the impact of barriers to pursuing informal dispute resolution. This is also connected to the social, psychological, and physical costs of both participation and lack of access to various justice processes.

² 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. Please see our policy discussion paper starting at page 7 for further discussion.

A breakout group suggested that the consideration of improving costs should be applied to aspects of each of the other two elements as well. Other attendees observed that costs of providing access to justice are met from a multiplicity of sources including citizens' pockets, professional expenses, various public budgets, as well as sources such as charitable funding. Accurately assessing and improving costs would mean finding a way to take these different sources into account.

Finally, if Saskatchewan is to move forward with the adoption of the triple aim approach, it is important to note that it has been successfully utilized in the health care sector. One attendee suggested that there is an opportunity for Saskatchewan's justice sector to collaborate with experts in the health field who are already familiar with this approach.

Qualitative and Quantitative Measurement

The BC Framework requires the use of multiple methodologies to gather both qualitative and quantitative data. This presents certain challenges as well as unique opportunities, and will entail multifaceted research strategies, research instruments, and analytical processes.

Many attendees were interested in gaining more qualitative data to inform their work. Some attendees were curious about the role that something like the BC Framework could play in supporting consistent qualitative data collection and analysis for comparison between agencies and across jurisdictions.

In regard to quantitative data, it was acknowledged that many stakeholders currently have access to quantitative data sources. However, these sources are not necessarily compiled or analyzed in a consistent manner. As current data practices are far from exhaustive, there is opportunity to both expand and refine them.

Limitations

Some attendees found the BC Framework overwhelming at first glance. It was not immediately apparent how the framework would be employed. A framework for Saskatchewan may require an accompanying "map" to help clarify its role. This map could identify where in the system the framework is meant to be applied, priorities for measurement, and/or how the results of research can be interpreted in relation to each other.

Attendees also identified the relevance of areas of law outside of civil and family justice. For example, criminal law issues are often inextricable from user experiences in the family law context. Attendees thought that measuring only “civil” or “family” justice without being able to connect those metrics to other closely related areas would yield an incomplete picture. Attendees also wanted to be able to assess the relationship between justice issues and other social factors such as housing, education, employment and child welfare. It would be desirable to measure access to justice in a way that reflects these complexities.

Challenges and Opportunities in Developing a Saskatchewan Framework

Scope and Purpose of the Framework

Although the BC Framework was identified as a helpful starting point, attendees had a lot of questions about the scope and purpose of a framework.

Many attendees wondered which areas stakeholders might use a framework to measure. This concern manifested in questions such as:

- Are we seeking a snapshot of the existing system to make a few improvements or are we considering significant changes in response to the bigger picture that emerges?
- Are we studying justice agencies and processes themselves (“supply side”) or peoples’ legal problems and how they are or are not resolved (“demand side”)?
- What are the distinctions between a framework to measure civil and family justice and one that measures *access to justice* in civil and family matters?
- How will a framework gather insight from citizens who are not accessing formal justice processes?

These questions led attendees to a more fundamental issue that was identified in both the BC Framework and in our policy discussion paper: measuring “access to justice” requires stakeholders to coalesce around a common working definition of that term. Many attendees agreed that if access to justice is defined simply as “the means to access legal services and processes”, the resulting metrics would fail to capture important facets of the broader impacts of limited access to justice. Attendees reiterated pressing interest in understanding the barriers to completing formal justice processes or “alternative” dispute resolution, as well as citizens’ barriers to resolving disputes before they become *legal* problems. Attendees also noted that many people with justiciable problems do not resolve them through formal justice system processes. It is important that a framework capture how frequently this occurs and why.

Prior to operationalizing a potential framework by identifying indicators or measures, stakeholders need to collaborate to decide the broad strategic premise and priorities for a measurement endeavour. In relation to this objective, one stakeholder pointed out that a comprehensive framework is desirable regardless of the initial scope of research undertaken. Ideally, it should assist justice stakeholders to address any of a variety of critical questions in a purposeful, coordinated, and impactful way.

Public Sector vs. Private Sector vs. Non-profit Sector

Attendees expressed interest in sharing data between organizations. However, organizations in different areas of the justice sector have different interests and also face different challenges when it comes to collecting and analyzing data. It is important that agencies using the framework understand the purpose for doing so: what is the end goal of a measurement framework and what positive change can result? Agencies across the justice system, particularly non-profits, are operating with limited resources and cannot be asked to collect data just for the sake of it.

Attendees also discussed the fact that formal data collection and analysis is already customary in public and non-profit sectors but much less so in the private sector. More discussion is needed to see how a justice metrics framework might incorporate the private sector and how private practitioners might work to collect data in a more systematic manner. The variation among ethical and privacy concerns across these sectors is also an important consideration.

Operational Concerns

Many attendees identified important considerations if Saskatchewan is to move forward with a justice metrics framework:

Resources

- Any coordinated metrics approach needs to contemplate the availability of resources. Implementing a framework should not over-burden agencies. There must also be adequate funding in place for an extended period of time for any initiative to be successful.
- Several attendees noted the enormity of the task of measuring access to civil and family justice. It was suggested that a measurement project should be undertaken in several phases.

Coordination

- Increased awareness of existing data practices is needed. This includes understanding how current practices can be supplemented.
- It is important to have a plan for how to ensure regular, effective, and consistent data analysis and evaluation.
- A common language and understanding of the purpose and priorities of a framework will be necessary moving forward.

Privacy

- Particular attention must be paid to privacy, especially information privacy. Privacy policies will differ according to the nature of the organization collecting or sharing data.
- Consideration will need to be given to where data is housed. Who has ownership over collected data? What processes are in place to share data between stakeholders in Saskatchewan? Between jurisdictions?

Opportunities and Specific Areas of Interest

Although there were significant questions about a metrics framework for Saskatchewan, attendees were also interested in the opportunities it presented. Attendees were curious about how a framework could identify gaps in service or help to confirm and reinforce what we already know. Attendees saw value in a framework that supports the cross-comparison of data. There was discussion around how a framework could offer a better understanding of the big picture and identify areas for system improvements. Attendees were also interested in how a framework could help answer the following questions:

- What are justice users' experiences with wait times?
- Why do people "access" justice in the first place? What prevents some from addressing a legal problem? How can a framework capture the experiences of people with justiciable problems who haven't accessed the system at all?
- What are the different "pathways" to justice?
- What are the costs to citizens accessing justice? What are the costs to those *not* accessing justice? What are the costs to justice system agents (i.e. lawyers, judges, front-line staff and volunteers)? What does this look like in terms of social and psychological costs?
- What are peoples' experiences beyond interactions with institutions such as courts and administrative tribunals?

Conclusions

Discussing the foundational principles of a potential metrics framework presents an excellent opportunity for stakeholders to engage with the larger question of how we should define access to justice. The conversations that took place at the Sixth Annual Dean's Forum were a great starting point, but there is a clear need for further collaboration as stakeholders work to develop a "common language" with which to communicate about civil and family justice in Saskatchewan.

In light of the generally positive reactions to the BC Framework, there may be value in piloting the framework on a small scale to test its effectiveness. However, responses from Dean's Forum attendees showed that large-scale implementation of the BC Framework or something similar is not a realistic possibility without significant, ongoing efforts to build consensus and awareness about the values and purpose of a framework. The Forum confirmed the conclusion stated in our policy discussion paper: stakeholders from all areas of the justice system and related sectors will need to be engaged in coming months to move from initial discussions toward gathering data.

Appendix A: Discussion Groups

Room 254 – Via Videoconference

Facilitator: Janelle Anderson

Recorder: Clair McCashin

Group members: Kara-Dawn Jordan, Carly Romanow, Glen Gardner, Q.C., Trish Livingstone, Ron Anderson, David Rusnak, Q.C., Melanie Hodges-Neufeld

Room 228

Facilitator: Chantelle Johnson

Recorder: Alex Santos

Group members: Larry Chartrand, Craig Goebel, Joel Janow

Room 135

Facilitator: Michaela Keet

Recorder: Desirée Steele

Group members: Beth Bilson, Q.C., Stan Yu, Kylie Head, Q.C.

Room 120

Facilitator: Charmaine Panko

Recorder: Dustin Link

Group members: Jessica McCutcheon, Gerry Tegart, Q.C., Martin Phillipson, Megan Cantwell

Room 78

Facilitator: Glen Luther, Q.C.

Recorder: Tanner Schroh

Group members: Evatt Merchant, Q.C. Talon Regent, Doug Surtees

Room 76

Facilitator: Sarah Buhler

Recorder: Bonita Mwunvaneza

Group members: Leah Howie, Heather Heavin, Chief Judge Plemel

Appendix B: Small Group Discussion Questions

We are asking you to discuss the three overarching elements of the BC Framework. When thinking about each element, it may be helpful to consider them in the context of a particular program or initiative. Keep in mind that the BC Framework is intended to be flexible and adaptable to the needs of justice organizations—it does not need to be adopted or applied in its entirety to be useful.

1. In the BC Framework, “Improving user experience of access to justice” covers key points such as:

- User experience of access to the justice system
- Quality of user experience of justice system
- Effectiveness of responses to legal problems
- Appropriateness of the justice process
- Justice outcomes for users

Does the BC framework capture your understanding of “Improving user experience of access to justice”? Why or why not?

2. In the BC Framework, “improving population access to justice” covers key points such as:

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

Does the BC framework capture your understanding of “improving population access to justice”? Why or why not?

3. In the BC Framework, “Improving costs” covers key points such as:

- Per-capita costs of justice system
- Per-user costs of services
- Other costs

Does the BC framework capture your understanding of “Improving costs”? Why or why not?

4. Do you have any concerns with using something like the BC Framework in SK? What do you see as the opportunities and limitations of this approach? How do you think adopting the BC framework, or something similar, would be helpful? **(10 minutes)**

5. Conclusion and summary **(10 minutes)**

- Recorders for each group will be responsible for “reporting back” when the large group reconvenes. Before the end of your discussion, please take a few minutes to reflect and identify key themes for reporters to share with the larger group.

Appendix C: BC Framework Summary Graphic

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

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 9.

Appendix D: Presentation Slides



March 6, 2018

Civil and Family Justice Metrics: Towards a Framework for Saskatchewan

Clair McCashin, Alex Santos, Desirée Steele

Introduction



- ▶ *“Reliable and meaningful metrics and benchmarks need to be established across all levels of the system in order to evaluate the effects of reform measures. We need better information in the context of increasing demand, increasing costs and stretched fiscal realities”*
(Cromwell Report)
- ▶ *The absence of shared views on what to measure and how to measure it is a serious obstacle to achieving equal justice* (Equal Justice Report)

Sources:

1. *Access to Civil & Family Justice: A Roadmap for Change* (Ottawa, Canada, 2013) at 23.
2. *Reaching equal justice report: an invitation to envision and act* (Canada, 2013) at 144.



What we heard from Saskatchewan Stakeholders

- People want better data to measure and improve access to justice
- How we measure justice in Saskatchewan should reflect the values, interests, and circumstances of people in this province - both justice system insiders and the public
- People want to be able to share justice metrics data and best practices with other provinces
- Some significant challenges need to be addressed for Saskatchewan to implement a successful justice metrics initiative



A justice metrics framework should be...

- ▶ Principle-based
 - ▶ Grounded in shared values and priorities
- ▶ Implementation-ready
 - ▶ A functional tool
- ▶ Sustainable
 - ▶ Developed and supported for long-term relevance, adaptability, and use



Source: A2JBC's Access to Justice Measurement Framework



- ▶ “...it is important to measure what we value, in order that we don’t end up valuing only what we measure.”

Source: Yvon Dandurand, Kittipong Kittayarak, & Alison MacPhail, *Justice Indicators and Criminal Justice Reform: A Reference Tool* (2015).



Small Group Questions

- ▶ 1. Does the BC framework capture your understanding of “Improving user experience of access to justice”? Why or why not?
- ▶ 2. Does the BC framework capture your understanding of “improving population access to justice”? Why or why not?
- ▶ 3. Does the BC framework capture your understanding of “Improving costs”? Why or why not?
- ▶ 4. Do you have any concerns with using something like the BC Framework in SK? What do you see as the opportunities and limitations of this approach? How do you think adopting the BC framework, or something similar, would be helpful?



Questions?



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