



CANADA'S JUSTICE DEFICIT: The Case for a Justice System Report Card

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Executive Summary

In Sherbrooke, Quebec, in October 2015, murder and conspiracy charges against five members of that city's chapter of the Hells Angels were stayed. The men were released from custody because of a lengthy delay in the Crown's disclosure to the Defence. Thirty-one Hells Angels members and associates who were caught in the same police investigation similarly had drug charges against them stayed, also because of unreasonable delay. This is just one high-profile example that Canada's justice system risks being too slow and inefficient to fulfill its responsibilities.

The main role of the criminal justice system is to protect the safety, lives, and property of Canadians by promptly and thoroughly investigating crimes, holding trials, and dealing with offenders. It must do so while guaranteeing the constitutional rights of accused persons, supporting victims of crime, and do so cost effectively. Similarly, the role of the civil justice system is to resolve disputes by giving litigants timely access to the courts and offering fair and efficient trials. Unfortunately, in neither case is the system working as it was intended to do.

Our review has found the justice system to be largely opaque and unaccountable. Evidence suggests that it is slow, inefficient, and failing to meet many of its core objectives. Another problem is that for those without a lawyer, Canada's justice system is largely unnavigable. The costs of litigation for many are excessive – even prohibitive – which raises ongoing questions about access to justice.

Canada is suffering from what we call a “justice deficit”: a large and growing gap between the aspirations of the justice system and its actual performance. In provinces and territories that have not taken concrete steps to stem the tide, we see rising case processing times, a growing population of accused persons on remand pending trial, increasing costs across the board, and a growing number of people unable to afford a lawyer. This inefficient system is imposing economic and social costs on Canadians.

In Newfoundland and Labrador, it has been reported that as much as 40 percent of judges' available sitting time was lost due to collapsed cases and, due to unproductive appearances and adjournments, as much as 72 percent of the court's sitting time is spent on scheduling cases for hearings.

In Saskatchewan, the justice deficit is particularly prevalent for First Nations and Métis Peoples. One commission notes that they face “high incarceration rates, high crime rates, conflict with police, and a growing concern about the future of Aboriginal young people.”

In Ontario, the justice deficit is partly caused by fiscal challenges, according to the Drummond Report. A lot of resources are being funnelled into investigating and prosecuting organized crime, gangs, and cyber-crime. At the same time, the province is dealing with a substantial increase in the number of people in custody awaiting trial (about 60 percent of the provincial prison population in 2013). Despite provincial resources going into justice services, many individuals dealing with the system have too many assets to qualify for legal aid, yet have too few assets to be able to pay for expensive legal representation: they are left to become their own lawyers or simply give up on their own cases. Taken as a whole, these circumstances are leading most Ontarians to believe that the justice system works better for the rich than the poor.

Canada's territories have perhaps the country's worst justice deficit, exacerbated by the region's rugged geography and sparse population. Problems with substance abuse, mental health, and/or fetal alcohol spectrum disorder abound. The court system has become overstretched, leading to undue delays in the administration of justice.

Nationwide, despite a decrease in the average number of charges, the demand placed on court resources has increased over time because of the rise in the number of court appearances. A significant concern is that it takes almost as many court appearances to resolve a case without trial (4.9) as it does for those that go to trial (5.5). Along with the rise in number of court appearances comes the increased likelihood that an accused released on bail will either fail to appear or otherwise breach the terms of his or her release, thus triggering additional proceedings against them, creating a vicious cycle of recidivism.

Despite a decrease in the average number of charges, the demand placed on court resources has increased.

Spending on the justice system takes a major share of public resources, but based on a large number of reviews across the country, the system is not performing to a reasonable standard. To address Canada's "justice deficit," there is an urgent need for a regular and objective assessment of the performance of the justice system – a report card on Canada's justice system. Regular monitoring, analysis, and assessment of the performance of Canada's judicial system would help tremendously to enhance the transparency and accountability of this central branch of government that is responsible for the protection of the rights and freedoms of all Canadians.

Sommaire

En octobre 2015, les accusations portées contre cinq membres du chapitre des Hells Angels de Sherbrooke (Québec) pour meurtre et complot ont été suspendues. Les hommes ont été remis en liberté parce que la Couronne a trop tardé à communiquer des éléments de preuve à la partie défenderesse. Les accusations de trafic de drogue portées contre trente et un membres ou associés des Hells Angels arrêtés dans le cadre de la même enquête policière ont également été suspendues en raison de délais déraisonnables. Ce n'est qu'un des exemples très médiatisés démontrant que le système de justice du Canada risque de manifester une lenteur et une inefficacité susceptibles de l'empêcher d'assumer correctement ses responsabilités.

Le principal rôle du système de justice pénale est de protéger la sécurité, la vie et les biens des Canadiens en procédant promptement et efficacement à la conduite des enquêtes criminelles, à la tenue des procès et au traitement des contrevenants. Il doit le faire tout en garantissant les droits constitutionnels des personnes accusées et en soutenant les victimes d'actes criminels, et ce, avec un minimum de frais. De même, le rôle du système de justice civile est de régler les différends en donnant aux parties un accès rapide aux tribunaux et en assurant la tenue de procès équitables et efficaces. Malheureusement, ni l'un ni l'autre des systèmes ne fonctionne comme prévu.

Notre examen a conclu que le système de justice est essentiellement opaque et fermé à la reddition de comptes. Les faits démontrent qu'il est lent et inefficace et qu'il échoue à atteindre bon nombre de ses principaux objectifs. La quasi-impossibilité de naviguer sans avocat à travers le système de justice canadien s'ajoute aux autres difficultés. Le coût des procédures est excessif pour un grand nombre — voire prohibitif —, ce qui soulève régulièrement la question de l'accessibilité au système de justice.

Le Canada souffre de ce que nous appelons le « déficit de la justice » : un large écart allant croissant entre les aspirations du système de justice et ses performances réelles. Dans les provinces et les territoires qui n'ont pas adopté de mesures concrètes pour endiguer la marée, nous constatons un ralentissement dans le déroulement des procédures, une population toujours plus nombreuse

d'accusés placés sous garde en attente d'un procès, des coûts en hausse à la grandeur du système et un nombre croissant d'individus incapables de se payer un avocat. Ces inefficacités imposent des coûts sociaux et économiques aux Canadiens.

À Terre-Neuve-et-Labrador, selon certaines sources, jusqu'à 40 pour cent du temps d'audience des juges est perdu en raison de causes abandonnées et, à cause des comparutions et des ajournements improductifs, 72 pour cent du travail des tribunaux est consacré à la planification des audiences.

En Saskatchewan, le déficit de la justice est particulièrement présent chez Premières Nations et les Métis. Une commission a souligné les taux d'incarcération et de criminalité élevés dans ces populations et les démêlés avec la police auxquels elles font face, tandis que l'avenir des jeunes est une préoccupation croissante.

En Ontario, le déficit de la justice est en partie attribuable aux difficultés budgétaires de la province, selon le rapport de Don Drummond (Commission de réforme des services publics de l'Ontario). Énormément de ressources sont consacrées aux enquêtes et aux poursuites liées au crime organisé, aux gangs de rue et à la cybercriminalité. Parallèlement, la province fait face à une augmentation substantielle du nombre de personnes détenues en attente d'un procès (environ 60 pour cent de la population des prisons provinciales en 2013). Malgré le budget provincial dédié aux services de justice, nombreuses sont les personnes qui possèdent trop de biens pour être admissibles à l'aide juridique, mais n'en ont pourtant pas suffisamment pour assumer les frais d'une onéreuse assistance légale : elles doivent se résoudre à se défendre elles-mêmes ou à simplement abandonner leur cause. Tous ces facteurs font que, dans l'ensemble, la population ontarienne est portée à croire que le système de justice fonctionne mieux pour les riches que pour les pauvres.

Les territoires connaissent sans doute le pire déficit de la justice au pays, en raison des obstacles additionnels liés à une géographie inhospitalière et à une population très dispersée. Les problèmes de toxicomanie, de santé mentale et ceux liés au trouble du spectre de l'alcoolisme y sont abondants. Les cours sont devenues débordées, ce qui entraîne des retards injustifiés dans l'administration de la justice.

À l'échelle du pays, malgré une diminution du nombre moyen d'inculpations, la demande relative aux ressources des tribunaux a augmenté au fil du temps en raison de l'augmentation du nombre de comparutions. Une préoccupation importante concerne le grand nombre de comparutions nécessaires pour régler une cause sans procès (4,9), par rapport aux causes avec procès (5,5). Parallèlement à l'augmentation du nombre de comparutions s'accroît la probabilité qu'un accusé libéré sous caution omette de comparaître ou enfreigne autrement les conditions de sa libération, ce qui déclenche des procédures supplémentaires contre lui et l'entraîne dans le cercle vicieux de la récidive.

Les dépenses allouées au système de justice représentent une part importante des ressources publiques, mais selon un grand nombre d'avis au pays, ce dernier ne fonctionne pas à un niveau raisonnable. Pour s'attaquer au « déficit de la justice » canadien, il y a un urgent besoin de faire une évaluation périodique et objective de la performance du système de justice : un bilan du système de justice au Canada. Le suivi, l'analyse et l'évaluation sur une base périodique de la performance du système judiciaire canadien contribueraient énormément à renforcer la transparence et l'obligation redditionnelle de ce pouvoir de l'État dont le rôle est de protéger les droits et les libertés de tous les Canadiens.

1. Introduction

The justice system in Canada, both criminal and civil, is massive. It plays a fundamental role in ensuring that Canada is a free and safe society where the rule of law is respected and disputes can be resolved efficiently and fairly. So, naturally, there are vast numbers of people actively involved in it, and the cost associated with running it is high. Yet in our review, we have found the system to be largely opaque and unaccountable. A growing body of evidence suggests that our justice system is slow, costly, inefficient, and failing to meet many of its core objectives. In short, the “justice deficit” in Canada – the gap between the aspirations of the justice system and its actual performance – is large and growing.

A recent poignant example of the consequences of this failing system occurred in Sherbrooke, Quebec, in October 2015. Murder and conspiracy charges against five members of that city’s chapter of the Hells Angels were stayed and the men were released from custody because of a lengthy delay in the Crown’s disclosure to the Defence. Thirty-one Hells Angels members and associates who were caught in the same police investigation years earlier similarly had drug charges against them stayed due to unreasonable delay (Banerjee 2015, Oct. 9). The system was too slow and inefficient to fulfill its responsibilities.

This report is particularly timely given that Prime Minister Justin Trudeau has recently directed the Hon. Jody Wilson-Raybould, Minister of Justice and Attorney General of Canada, to “[u]ndertake modernization efforts to improve the efficiency and effectiveness of the criminal justice system, in cooperation with provinces and territories. This should include improved use of information technology to make the system more efficient and timely, exploration of sentencing alternatives and bail reform, and the creation of a unified family court” (Prime Minister of Canada, undated).

Our justice system is complex and, for those without a lawyer, largely unnavigable. The adoption of the *Canadian Charter of Rights and Freedoms* and associated Supreme Court of Canada decisions have led to a dramatic increase in litigation, with pre-trial *Charter* motions typically taking two to three times longer than trials themselves (McLachlin 2007). The *Criminal Code* has grown in size and become increasingly complex, disorganized, and unwieldy. Its amendment has been undertaken on an *ad hoc* basis, and its substance and procedure are both in desperate need of consolidation and streamlining.

Lengthy delays have resulted in stays of proceedings of even the most serious criminal charges. Concerns about timely access to the courts and the excessive – for many, prohibitive – costs of litigation raise ongoing questions about access to justice in this country. The economic and social costs of an inefficient justice system, while undoubtedly difficult to accurately quantify, cannot be ignored. In addition, we are concerned that a lack of confidence in the administration of justice is not only harmful to our democracy, but threatens the security of Canadians due to under-reporting of crime, and is potentially hurting our economy.

While there is a pressing need for improvements in the efficiency of our justice system, any such action is hampered by the silo-based organization of its main actors, each of whom asserts their independence from one another. Independence and accountability must not, however, be irreconcilable. A further challenge is the lack of a systematic approach to measuring and analysing the inputs and outcomes in the system. Regular monitoring, analysis,

and assessment of the performance of Canada's judicial system would help tremendously to enhance the transparency and accountability of this central branch of government that is responsible for the protection of the rights and freedoms of all Canadians.

Independence and accountability must not, however, be irreconcilable. The justice system is in need of a regular hard look.

This discussion paper makes the case for an annual justice system report card for Canada. There are regular report cards that quantitatively assess other major institutions in our country, notably health care, education, and governance. They have identified critical areas for improvement, increased transparency and accountability of the diverse actors in these systems, and spurred necessary reforms. When each of these report cards first began, they were criticized and resisted by establishments that were not accustomed to such scrutiny. Yet, in time, they became not only accepted, but a critical part of reform and ongoing improvement. The justice system is equally in need of such a regular hard look – an objective assessment to spur its enhancement.

This paper begins with a discussion of the primary objectives of the justice system in Canada, both criminal and civil, before identifying the various institutions responsible for achieving these goals. It then identifies the major challenges facing the justice system in meeting these objectives. These challenges have been revealed through recent government reports and commissions at the provincial or territorial and national levels. Problems are particularly pronounced in certain provinces and territories, though some have realized that the system is flawed and are starting to take corrective action. The paper concludes by proposing an annual justice system report card that would enhance the transparency and accountability of our justice system with a view towards its ongoing improvement.¹

2. Objectives of Canada's Justice System

The justice system is one pillar of a democratic society. In Canada, it seeks to protect the safety, lives, and property of all. It is the mechanism by which our laws are given effect and enforced. It is how criminal conduct is addressed and where civil wrongs are righted. The objectives of the justice system are myriad and may be the subject of reasonable debate. However, a number of primary objectives of our criminal and civil justice systems can be identified, as summarized on the next page.

Criminal justice system

Table 1: Objectives of Canada’s criminal justice system

<p>1. Public Safety</p>	<p>The fundamental purposes of our criminal justice system are protecting society, ensuring respect for the law, and maintaining a just, peaceful, and safe society. In short, it should protect the safety, lives, and property of Canadians.</p> <p>The criminal justice system should ensure that convicted offenders are given appropriate sanctions to hold them accountable for breaking the law. Offenders should be given support to rehabilitate and reintegrate into the community so that they can become productive members of society and be deterred from re-offending (<i>Criminal Code</i>, R.S.C. 1985, c. C-46, s. 718).</p>
<p>2. Efficiency</p>	<p>A well-functioning criminal justice system should ensure prompt and thorough investigations as well as timely prosecutions. Criminal trials should take place within a reasonable time, as guaranteed under section 11(b) of the <i>Charter</i> (<i>R. v. Askov</i>, [1990] 2 S.C.R. 1199; <i>R. v. Morin</i>, [1992] 1 S.C.R. 771; <i>R. v. Beason</i> (1983), 1983 CanLII 1873 (ON. C.A.), 36 C.R. (3d) 73 (Ont. C.A.); Canada 2015a). Lengthy and persistent delays in proceedings result in the potential erosion of the case to be tried (including its evidence), hardship for the accused and victims, increased costs, and may bring the entire administration of justice into disrepute (Newfoundland and Labrador 2008).</p> <p>A just, swift, and efficient criminal justice system should prevent crime from occurring in the first place. It should serve as a disincentive to those contemplating criminal behavior and incapacitate habitual offenders.</p>
<p>3. Fairness and Access to Justice</p>	<p>The justice system must guarantee the constitutional rights of accused persons, including providing them with fair and impartial trials, as guaranteed under section 11(d) of the <i>Charter</i>.</p> <p>Indigent accused persons whose liberty is at stake should have access to legal advice and representation to ensure their legal rights are protected throughout the criminal justice process (McLachlin, 2007; <i>R. v. J.W.</i>, 2013 O.N.C.A. 723 (CanLII), at para 14; <i>BCGEU v. British Columbia (Attorney General)</i>, [1988] 2 S.C.R. 214, 1988 CanLII 3 (S.C.C.) at para 26). An unrepresented party faces the often “insurmountable hurdle” of presenting his or her case, leading to adjournments and lengthy proceedings, all of which add to the cost of running the court (McLachlin, 2007).</p> <p>There should also be cause for concern about fairness if the justice system is consistently and grossly disproportionately applied to offenders of a certain race, ethnicity, or background.</p>
<p>4. Supporting Victims of Crime</p>	<p>Victims of crime have the right to information, protection, participation, and restitution in relation to the incidents that they suffered, under the <i>Canadian Victims Bill of Rights</i>, <i>Criminal Code</i> and numerous provincial and territorial statutes (See Bill C-32, <i>An Act to Enact the Canadian Victims Bill of Rights and to Amend Certain Acts</i>; Canada 2008, 25; United Nations 1985). They may also need access to services to help them cope with the harm caused by their criminal victimization.</p>
<p>5. Cost Effectiveness</p>	<p>As a public function funded by taxpayers, the justice system should be run in a cost-effective manner, while meeting the objectives identified above.</p>

Civil justice system

Numerous statutes in Canada call for the civil justice system² to operate fairly, quickly, and inexpensively to resolve private disputes and uphold legal rights (see, for example, BC Supreme Court Civil Rules, Rule 1-3(1); Rules of Civil Procedure, RRO 1990, Reg 194, r 1.01(1)).

Table 2: Objectives of Canada’s civil justice system

1. Dispute Resolution and Upholding Legal Rights	Ensuring that disputes are resolved and legal rights are upheld in private litigation helps people efficiently guide their legal relations, order their behaviour in such a manner as to avoid legal conflict, and make informed decisions with regard to their chances in litigation (Neuhaus 1963).
2. Access to Justice	Timely access to the courts and the ability to retain legal counsel is central to the actual realization of private legal rights, particularly in areas such as family law.
3. Fair and Efficient Civil Trials	Civil trials should take place within a reasonable time and provide just outcomes for the parties.
4. Proportionality	Civil proceedings should be proportionate to the time and resources used up by the justice system in relation to the claim amount involved, importance of the issues in dispute, and complexity of the action (see, e.g., BC Supreme Court Civil Rules, Rule 1-3(2)). The principle of proportionality “is aimed at reducing the cost of litigation and improving access to justice by ensuring that the costs of litigation are proportionate to the value of the amount in dispute” (Saskatchewan 2007a).
5. Prompt Enforcement of Civil Judgments	The prompt enforcement of civil judgments is necessary to ensure that the outcomes achieved through the civil justice process are realized in practice.

3. Responsible Actors, Institutions, and Levels of Government

A major challenge in meeting and achieving accountability for these important objectives is that responsibility for the operation of the justice system is divided among various actors, levels of government, and branches within government. This shared responsibility makes accountability and reform of the justice system even more difficult to achieve.

Federal, provincial and territorial responsibilities

The *Constitution Act, 1867* gives the federal Parliament exclusive jurisdiction over criminal law and procedure (other than the constitution of courts of criminal jurisdiction) (*Constitution Act, 1867*, s. 91(27)) and penitentiaries (*Constitution Act, 1867*, s. 91(28)) (for offenders sentenced to more than two years imprisonment). The federal government, through the Governor General, appoints and pays superior court judges (*Constitution Act, 1867*, ss. 96, 100). The federal Par-

liament also has the constitutional authority to create a general court of appeal for Canada and additional courts “for the better Administration of the Laws of Canada” (*Constitution Act, 1867*, s. 101) and has used this power to create the Supreme Court of Canada, the Federal Court, the Federal Court of Appeal, and the Tax Court (Canada 2015b).

Provincial legislatures have exclusive jurisdiction over prisons (*Constitution Act, 1867*, s. 92(6)) (for offenders sentenced to less than two years imprisonment), property and civil rights in the province (*Constitution Act, 1867*, s. 92(13)), and the administration of justice in the province (including policing and victim services, criminal and civil provincial courts, as well as civil procedures) (*Constitution Act, 1867*, s. 92(14)). Federal statutes give the three territories legislative competence in the same areas as the provinces (*Yukon Act*, S.C. 2002, c. 7, s. 18(j), (k), (l); *Northwest Territories Devolution Act*, S.C. 2014, c. 2, s. 18(j), (k), (l); *Nunavut Act*, S.C. 1993, c. 28, s. 23(e), (f), (l)). In many instances, provinces have delegated certain local policing responsibilities to municipal governments.

Responsibility for the operation of the justice system is divided among various actors.

Justice system participants

The justice system in Canada is composed of both criminal and civil matters, and includes a range of actors, including:

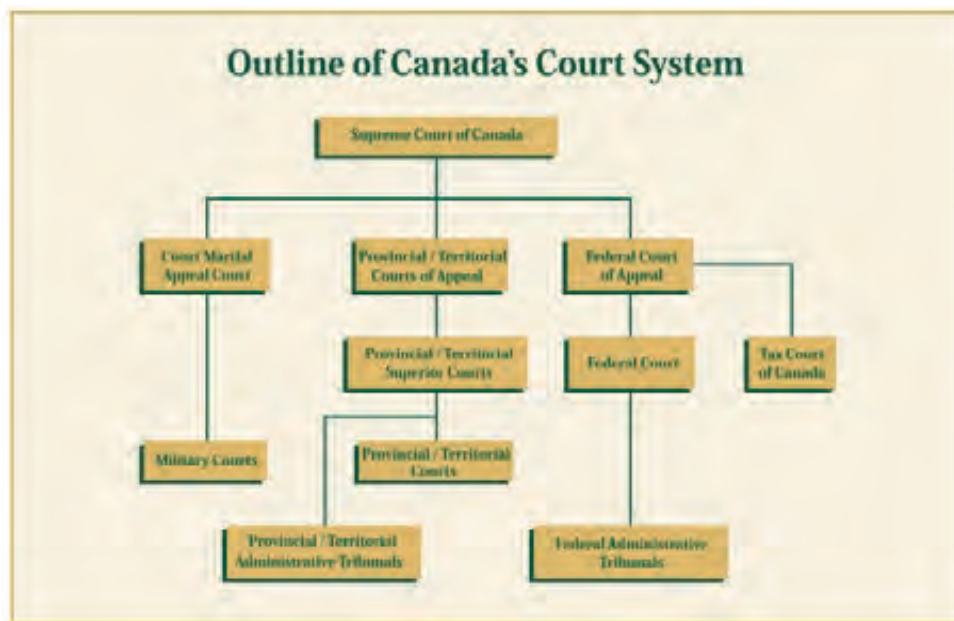
- Complainants or victims in criminal matters
- Accused or offenders in criminal matters
- Parties in civil matters
- Police (local police, provincial police in certain provinces, the RCMP, and agencies such as the Canada Border Services Agency in its immigration enforcement capacity)
- Lawyers (representing plaintiffs and defendants in civil proceedings, or Crown prosecutors and defence counsel in criminal proceedings, as well as duty counsel lawyers and law students operating through legal clinics)
- Courts (including provincial, superior, and appellate courts composed of registry staff, justices of the peace, judges and justices as discussed below)
- Corrections and conditional release officials and institutions (including federal penitentiaries, provincial jails, parole boards, and institutions for persons who may be or are found not criminally responsible on account of mental disorder or are unfit to stand trial)
- Victim services, both provincial or territorial and police-based
- Non-governmental organizations that play a variety of roles in assisting victims and offenders in the justice system
- Interveners and *amicus curiae*

Each of these justice system participants has a particular role to play and many of them have constitutional or legislative mandates. They also operate independently of one another.

Structure of the courts

Figure 1 below depicts the general structure of Canada's court system. The “keystone” of Canada's unified court system is the Supreme Court of Canada (*Reference re Supreme Court Act*, ss. 5 and 6, 2014 S.C.C. 21, [2014] 1 S.C.R. 433, para. 84), which “acts as the exclusive ultimate appellate court in the country” (*Reference re Secession of Quebec*, [1998] 2 S.C.R. 217, para. 9). Recently, the Supreme Court of Canada has stated that its “essential features” are protected under Part V of the *Constitution Act, 1982*. This means, for example, that its composition can only be changed with the unanimous consent of Parliament and all provincial legislatures (*Reference re Supreme Court Act*, ss. 5 and 6, 2014 S.C.C. 21, [2014] 1 S.C.R. 433, para. 74).

Figure 1: Outline of Canada's Court System



Source: Canada 2015b.

4. Challenges Facing the Justice System

Across Canada there is a growing and persistent concern that our justice system is not performing as well as it should. A body of reports and assessments, explored below, has raised a number of serious and consistent concerns at the provincial, territorial and national levels regarding the administration of justice, including increasing delays and costs, inefficiency, and the unavailability of legal assistance and representation for many Canadians. These challenges may have an adverse effect on trial fairness, the public's perception and confidence in the justice system, and the quality of justice rendered. There is a wide variance in the currency, scope, and depth of data and studies that have been undertaken at the provincial and territorial level on the justice system.

British Columbia

Excessive costs and delays have been flagged as challenges facing the justice system in British Columbia and have recently spurred the provincial government to make reforms. Although the province has seen a drop in the number of people sentenced to jail, accused persons are nevertheless awaiting trial significantly longer than they have in the past.

In February 2012, the provincial Minister of Justice and Attorney General released *Modernizing British Columbia's Justice System* (the “Green Paper”). It found that delays in bringing criminal cases forward to be heard by the courts are causing the prison population to grow (British Columbia 2012a, 8). While British Columbia's Provincial Court deals efficiently with the majority of cases, the number of complex cases (i.e., cases that take three or more days in court) has increased by two-thirds (British Columbia 2012a, 13). Accordingly, since 2005, expenditures within the adult criminal justice system in the province increased by 35 percent (British Columbia 2012a, 14). The Green Paper highlighted a problematic paradox in British Columbia:

Our system clearly exhibits trends which should concern observers. Costs and delays are rising, despite a declining crime rate and no increase in case load. While these patterns are easy to observe, there is at present little consensus within the system as to why these problems are occurring, much less what we should do about them. (British Columbia 2012a, 15)

The BC Justice Reform Initiative chaired by Geoffrey Cowper, QC, subsequently released its report, *A Criminal Justice System for the 21st Century*, in August 2012 (the “Cowper Report”) (British Columbia 2012b). The report reiterated the issue of increasing costs and delays notwithstanding decreasing crime rates in British Columbia. It also found that there has been a significant increase over the last decade in the volume of “administration of justice offences” (i.e., breaching terms of release into the community or as a condition of sentence) such that these matters now constitute 40 percent of all new cases in British Columbia's criminal justice system (British Columbia 2012b, 3-4).

A number of initiatives aimed at improving justice efficiency have been showing some promising results. Recently, the province has seen a drop in the volume of cases at the Provincial Court, which is largely attributable to the diversion of impaired drivers into the Immediate Roadside Prohibition program, rather than the criminal justice system (British Columbia 2012b, 3). The Provincial Court of British Columbia *2013-2014 Annual Report* noted that specific initiatives such as the Backlog Reduction Project and the Interjurisdictional Support Order Initiative have helped address timeliness concerns in the province (British Columbia 2014, 3). The Provincial Court Scheduling Project was created to improve access to justice by enhancing “the efficient, effective and equitable use of judicial resources” (Ibid, 25). The average wait times for Provincial Court have decreased and in 2013-14, “the Court met the time to trial targets with respect to criminal cases in most locations throughout the Province” (Ibid, 19). In 2013-14, the Court heard approximately 3 percent fewer cases than in the previous year, “reflecting a five-year trend of fewer new cases each year” (Ibid, 3).

Costs and delays are rising, despite a declining crime rate and no increase in case load.

Adult and youth criminal cases and *Family Law Act* cases declined by 6 percent and 12 percent, respectively (Ibid, 15). Over the past five fiscal years, the Provincial Court also noticed significant improvements in the reduction of pending criminal cases. The Court's processing standard for criminal cases is for "90 per cent of cases to be concluded within 180 days" (Ibid, 15). The number of cases pending over 180 days has dramatically decreased to 8,450 (Ibid, 16), from 11,931 in 2012-13 and 13,548 the previous year (British Columbia 2014, 17). Self-representation data were added to the *Report* in 2013-14 and they demonstrated a slight decline in self-represented litigants at the Provincial Court over the last five years, from 21 percent in criminal cases in 2009-10 to 18 percent in 2013-14 (Ibid, 3).

The Provincial Court has also noted improvements regarding time to trial in other areas of the Court's jurisdiction, such as child protection, family, and civil. In spite of these improvements, the time to trial still exceeds the standards endorsed by the Court. Additionally, where criminal cases and family law cases have seen a decrease in caseload volume, civil law and child protection cases have demonstrated an increase in the number of cases at the Provincial Court. Small claims cases have seen an increase in caseload volume of 1 percent. However, child protection cases under BC's *Children, Family and Community Services Act* increased by 19 per cent (Ibid, 3). The number of self-represented litigants is significantly higher in family and small claims cases, compared to the criminal case statistics above: "[i]n family cases, 41 per cent of cases were self-represented in 2013-14, and in small claims cases 65 per cent were self-represented" (Ibid, 3).

Alberta

In Alberta, various reports indicate that access to justice and the public's perception of the justice system are serious challenges. These reports have identified the public's low level of confidence in Alberta's justice system as a concern (Alberta Justice 2003b, 2). *The Survey of Albertans*, prepared for Alberta Justice and the Solicitor General in February 2002, showed that only 17 percent of Albertans had "a lot of confidence" in the courts and the legal system, while 18 percent had "very little confidence," and the majority (60 percent) indicated "some confidence" (Ibid, 2). The report found that this level of dissatisfaction demonstrates a general sense of public cynicism about the province's justice system and that this cynicism has negative implications for the entire democratic system of governance (Ibid, 2). A subsequent report, released in 2003, identified major barriers impeding access to justice in the province. Access to justice in Alberta is hampered by the complexity of the system, a lack of knowledge about the justice system, issues surrounding language and culture, time, cost, geography, and issues facing Aboriginal people in the province (Alberta Justice 2003b, 11). While there is general consensus that lack of access to justice is a problem in Alberta, there is no agreement about what potential improvements should be made to the system.

A 2014 report by the Joint Action Forum revealed that some Albertans argued that self-represented litigants should be prevented from using the court system; others declared that the system should be tailored to accommodate unrepresented litigants (Alberta Justice and Solicitor General 2014, 7). Another point of contention arose from the use of technology. Some argued that technology offers wider access to information and dispute resolution, while others were concerned that barriers limiting access to this technology will ultimately exclude vulnerable populations (Ibid, 8).

Alberta's Court Case Management Program is one example of technology attempting to provide greater access to justice. This program includes Remote Courtroom Scheduling, an online tool that allows both Crown prosecutors and Defence counsel to remotely book certain adult Provincial Court criminal matters. It aims to reduce the number of appearances per case (Alberta Courts Undated).

Saskatchewan

In Saskatchewan, the Commission on First Nations and Métis Peoples and Justice Reform examined issues facing First Nations and Métis people and their relationship with the justice system. The *Final Report*, published in 2004, outlined some of these issues, which included: “high incarceration rates, high crime rates, conflict with police, and a growing concern about the future of Aboriginal young people” (Commission on First Nations and Métis Peoples and Justice Reform 2004, 1).

Aboriginal people represent a larger proportion of the inmate and corrections population than their proportion in the general population.

The *Report of the Saskatchewan Indian Justice Review Committee* revealed that “aboriginal [...] admissions accounted for 68% of all sentenced admissions to provincial correctional centres in 1990-91” (Federation of Saskatchewan Indian Nations, Saskatchewan, and Canada 1992, 11). The report also found that “Aboriginal men are more apt to be incarcerated for an against person offence (e.g., assault, sexual assault) than are aboriginal women and non-aboriginal persons” (Ibid). Additionally, the “figures for 1990-91 show that 58% of the supervised probation caseload was aboriginal” (Ibid). As for Aboriginal youth in Saskatchewan, in 1991 they “constituted 45% of all young offenders receiving some form of disposition under the *Young Offenders Act*” [and] “also represented 72% of those in custody programs” (Ibid). Saskatchewan criminal justice statistics “indicate that aboriginal people represent a larger proportion of the inmate and corrections populations than their proportion of the general population” (Ibid). This is consistent with national data as well.

Another major challenge in Saskatchewan is ensuring that Aboriginal communities have meaningful access to justice. The fragmented nature of the province’s court system is confusing to the public and presents difficulties in terms of access to justice (Turpel-Lafond 2005, 295, 297). Additionally, very little attention has been paid to the role of civil and family courts in the province compared to what has been dedicated to the criminal justice system (Ibid, 301).

Few Aboriginal people in Saskatchewan use the family courts to deal with family law disputes (Ibid, 301). The underuse of family courts, despite a growing need, may be due to lack of access to legal information. The *Final Report of the Family and Youth Access to Justice Committee* found that even when information is available, many people in the province are not aware of it or unable to access it (Saskatchewan 2007b, 4). Simultaneously, the report expresses concern over the lack of availability of some services, or the difficulty of accessing services that are available but challenging to reach for those in rural communities (Ibid, 6). The lack of access to information and justice-related services adversely affects the efficiency and relevance of the system as a whole. Furthermore, it leads to public frustration with the justice system and the feeling that the system does not take into account cultural or geographic differences (Ibid).

The Unrepresented Litigants Access to Justice Committee found that there are increasing numbers of unrepresented litigants involved in the court system (Saskatchewan 2007a, 25). The impact of this increase is felt throughout the court system, from increased demands on the time of court registry staff to additional costs and delays for opposing parties (Ibid). However, this has not been precisely measured, as there is a lack of empirical data about the actual number of unrepresented litigants in the province (Ibid). In fact, a thorough review of justice institutions in Saskatchewan has not been published since 1974 (Turpel-Lafond 2005, 295, 297).

Manitoba

Access to justice is also a leading concern in Manitoba. The *Town Hall Meetings on Access to Justice Report and Summary* (Manitoba Bar Association) explained that access to justice in the province is limited by a number of challenges including cost, increases in the number of accused persons in remand, delays in criminal proceedings, complexity of the system, lack of access to necessary information, and inefficiencies in family law matters (Ibid).

A report by the Manitoba Law Reform Commission found that inaccessibility is inextricably linked to the unaffordability of the legal system, and that litigating disputes in court takes too long and costs too much (Manitoba Law Reform Commission 2012, 1). While Legal Aid Manitoba provides free legal advice to the most needy, its coverage is limited and narrow (Ibid, 1). Moreover, the income eligibility levels are outdated and very low (Ibid). The 2010 *Legal Fees Survey* indicates that nationally, the average cost of a 2-day civil action trial is \$26,444, while Legal Aid Manitoba limits the provision of free legal aid and representation to individuals making an annual income below \$14,000, or up to \$37,000 for families of six or more (Ibid, 3-4). Therefore, a large proportion of middle-income Manitobans are not eligible for legal aid, yet are not able to afford a lawyer, and thus face considerable barriers to accessing justice (Ibid, 4). This is part of what we refer to as the “justice deficit,” namely, a significant gap that exists between those able to afford justice and those who are not but who are also ineligible for legal aid, such that justice is only available for the very

A large proportion of middle-income Manitobans are not eligible for legal aid, yet are not able to afford a lawyer.

rich or the very poor. The Manitoba report concluded by noting that there is an absence of statistical data and information in the province. It says that a contemporary empirical study of the legal needs of Manitobans would be necessary to properly determine the issues related to access to justice in Manitoba today (Ibid, 8).

Additionally, an investigation into the relationship between the administration of justice and Aboriginal people in Manitoba revealed problems of inequality and injustice (Aboriginal Justice Implementation Commission 2001). The 1999 *Report of the Aboriginal Justice*

Inquiry of Manitoba (Aboriginal Justice Implementation Commission 1999a), found that Aboriginal people in Manitoba face “greater socio-economic problems than does any other segment of Canadian society” (Aboriginal Justice Implementation Commission 1999b). The report explained that the justice system, specifically, “has been insensitive and inaccessible, and has arrested and imprisoned Aboriginal people in grossly disproportionate numbers” (Ibid). Furthermore, “Aboriginal people who are arrested are more likely than non-Aboriginal people to be denied bail, spend more time in pre-trial detention and spend less time with their lawyers, and, if convicted, are more likely to be incarcerated” (Ibid). The report revealed that Aboriginal people are overrepresented in the justice system: in 1989, the percentage of Aboriginal inmates was 40 percent at Stony Mountain Penitentiary and 47 percent at Headingley Correctional Centre. In that same year, 67 percent of admissions to Portage la Prairie jail for women were Aboriginal and by October 1, 1990, 64 percent of the Manitoba Youth Centre’s population and 78 percent of the Agassiz Youth Centre’s population were Aboriginal (Aboriginal Justice Implementation Commission 2001).

The *Final Report of the Aboriginal Justice Implementation Commission*, published in 2001, indicated an overall increase in the percentage of Aboriginal people in custody and on probation over the previous decade in Manitoba: Aboriginal people made up 63.4 percent of adult males

and 73.2 percent of adult females in provincial custody on September 6, 2000. As for youth, the proportion of Aboriginal people in custody was 77.3 percent for males, and 89.2 percent for females. Similarly, the percentage of Aboriginal people on probation on September 6, 2000 was considerable: 41.5 percent of adult males and 53.5 percent of adult females on probation were Aboriginal. Young Aboriginal males made up 47.2 percent of people on probation and young Aboriginal females made up 60.9 percent (Ibid). The *Final Report* revealed that, on the basis of these statistics, “Aboriginal people form a far larger percentage of the inmate and probation population than they do of the general population of Manitoba” (Ibid).

Ontario

The *Drummond Report*, a report on the effectiveness and efficiency of the overall delivery of public services in Ontario, identified fiscal challenges facing justice services in the province (Ontario 2012). Justice-related expenditures have increased in parallel with the province’s reported increase in specific violent crimes and growing complexity of criminal investigations into organized crime, gangs, and cyber-crime. Due to their nature, these crimes require considerable resources to investigate and prosecute (Ontario 2012, 351). Ontario also faces challenges dealing with a substantial increase in remand (i.e., an increase in accused individuals who are in custody while awaiting trial) (Ibid, 350). Staggeringly, the report found that the number of people in remand in the province currently exceeds the number of sentenced offenders in Ontario correctional facilities (Ibid, 350). Paradoxically, this is despite an overall decrease in the provincial crime rate (Ibid, 351).

As a result of increasing delays in Ontario’s criminal courts, in 2008 the province developed the “Justice on Target” strategy with the hope of developing more effective procedural practices (Ontario Undated a). Yet by 2013, the number of people in remand still made up approximately 60 percent of the provincial prison population (Ontario Undated b, 2). There were small improvements: the average number of court appearances needed to bring a charge to completion decreased by 8.1%, from 9.2 appearances in 2007 to 8.5 in 2012. The average number of days needed to complete a criminal charge also decreased: in 2007 it took an average of 205 days and by 2012 that figure dropped to 192, a decline of 6.6% (Ontario Undated c).

Access to justice in civil matters is also a major concern in Ontario. Options are limited for those with few assets and yet ineligible for legal aid: “[they] use up the family assets in litigation, become their own lawyers or give up” (Ontario Civil Legal Needs Project 2010, 9). An assessment of Ontario’s civil legal needs reveals that “almost 80 per cent of Ontarians believe that the legal system works better for the rich than for the poor” (Ibid). This perception demonstrates a loss of public confidence in the civil justice system.

In order to address this growing issue, the University of Toronto Faculty of Law launched *The Middle Income Access to Civil Justice Initiative* (University of Toronto Undated). The catalyst for the program was the *2008 Report of the Legal Aid Review*, which found that “there is an acute lack of access to justice for the working poor and middle class in Ontario, evidenced most strikingly by the increasing phenomenon of unrepresented litigants” (Trebilcock 2008). Due to remarkably low financial eligibility requirements for legal aid in the province, and the rising cost of legal services, many Ontarians find themselves without meaningful access to legal assistance.

Quebec

The *Plan Stratégique 2010-2015 du ministère de la justice du Québec* identified challenges within Quebec's justice system: it found that the public does not trust in the fairness or efficiency of the justice system in the province (Québec 2011, 13). Years of successive studies reveal that problems with access to justice are pervasive in Quebec (Ibid). Lack of access to justice persists, largely as a result of significant delays in the dispute resolution process, litigants with insufficient financial resources to adjudicate their claims, and lack of knowledge about how to navigate the law as well as the justice system (Ibid). Thus, many who cannot afford meaningful legal assistance opt to represent themselves: "31% in civil cases and 42% in family cases," as reported by the Superior Court of Quebec's *2010-2014 Activity Report* (Québec 2015, 33). Another contributing factor to the lack of access to justice is the increasing complexity of cases before the court and the longer hearing times resulting therefrom (Ibid). Additionally, it is discernibly more challenging to access justice in some of Quebec's northern communities, where the justice system is overloaded and faces reoccurring hearing delays, which decrease the system's efficiency (Québec 2014). Like many provinces, legal aid services are limited by stringent eligibility guidelines. Thus, some low-income individuals (including those making as little as minimum wage) do not have access to free legal assistance (Association du Jeune Barreau de Montréal 2013). The interim report from the *Comité de réflexion sur le système d'aide juridique québécois* states that this situation goes against the object of the *Loi sur l'aide juridique et sur la prestation de certains autres services juridiques*, which is designed to ensure access to legal services for those who have insufficient means to afford them (Ibid, 4).

Nevertheless, when compared to other Canadian provinces, Quebec achieves greater efficiency and higher conviction rates in its criminal courts because of pre-charge screening (Roach 2004, 269). In Quebec, where the Crown pre-screens charges, a mere 10 percent of cases are resolved by being stayed, withdrawn, or dismissed by the Crown. Furthermore, the conviction rate was reported at 74 percent in *Statistical Snapshot of the Criminal Justice System* (Ibid). Meanwhile, in Ontario, a province that does not use pre-charge screening, 43 percent of cases are resolved by being stayed and the conviction rate is 54 percent (Ibid).

The Report of the Civil Procedure Review Committee identified major findings with respect to the adjudication of civil law matters in the province (Quebec 2001). The report found a significant decrease in the number of proceedings brought before the courts: between 1977 and 1999, the number of cases opened at the Superior Court of Quebec and the Court of Quebec decreased by 44 percent (Ibid, 10). However, the report also noted that despite this decrease, the average proceeding, which is increasingly complex, requires more resources to resolve (Ibid). Additionally, it found that the cost of justice contributes to the public's negative perception of the system and that the complexity of the law, its language, and its procedures are deterrents and even obstacles to accessing justice (Ibid, 11-4).

New Brunswick

There is a noticeable lack of provincial assessments or reports on the overall performance of New Brunswick's justice system. However, access to justice has been identified as a major challenge, particularly with respect to family court and legal aid. These issues were highlighted in Julia Hughes's 2012 *Community-based Access to Justice Report*. Consequently, two provincial bodies

were established to investigate and advise the provincial government on these issues (Hughes 2012, 2). Severe backlogs in the family court system fueled the creation of the Access to Family Justice Task Force in 2008. Subsequently, the Canadian Forum on Civil Justice (2009) published a report outlining recommendations for increasing efficiency in the resolution of family law disputes, expanding the use of alternatives to family courts, and increasing access to legal information and legal assistance in family law matters. In spite of this, only three out of the report's 50 recommendations were implemented in the years following its publication. Thus, significant delays in the adjudication and resolution of family law matters persist (CBC News, 2012, Nov. 26). In 2012, delays to see a judge for custody or support orders were up to seven months, while a reasonable wait time is considered to be four to six weeks (Ibid).

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A Legal Aid Review Panel was formed to advise on potential improvements to the provision of legal assistance through legal aid, but implementation of the panel's recommendations were "just as frustratingly lacking as in the case of the Task Force" for access to family justice (Hughes 2012, 2). In her report, Hughes concluded from the lack of implementation of the Panel's recommendations and subsequent additional cuts to the justice system, that "access to justice is simply not a governmental priority" in New Brunswick (2012, 4). The *Community-Based Access to Justice Report* states that "one would be hard-pressed to find another jurisdiction in Canada where things have deteriorated quite as far as in New Brunswick" (Ibid). Although this report is largely anecdotal, it is one of the few reports examining access to justice within the province.

Nova Scotia

In Nova Scotia, assessments of the performance of the justice system reveal challenges around timely access to justice. Specifically, service delivery and case processing times are significant concerns in the province (Nova Scotia 2014). Case processing times in adult criminal court (i.e., the average amount of time it takes to process adult criminal court cases from first appearance to final disposition) have increased by 21 percent – from 199 days in 2006 to 241 days in 2013 (Ibid, 7). This is despite a national drop in processing times from 2006 to 2011 (Ibid, 7). In youth court as well, aside from a decline in 2011, the average case processing time is increasing. In 2013, it took 111 days to process cases in youth court from first appearance to final disposition (Ibid, 8). This is a failure to meet the province's 98-day target implemented to counteract increasing delays in the youth criminal justice system (Nova Scotia 2011, 69). Although average case processing times in youth court have failed to meet the 98-day target every year since it was set in 2007, the percentage of youth criminal court cases completed within that time has increased by 5 percent over the last 6 years (Nova Scotia 2014, 8-9). Overall, data provided in the report indicate that the rate of public confidence in the justice system has remained relatively stable over the last five years: the percentage varied by only 4 percent (Nova Scotia 2014, 11). In 2010, 74 percent of Nova Scotians surveyed reported that they were very or somewhat satisfied with the province's justice system, followed by 75 percent in 2011, 74 percent in 2012, 76 percent in 2013, and 72 percent in 2014 (Ibid).

Prince Edward Island

In Prince Edward Island, assessments of the entire justice system are scarce and the available data points to mixed results. Overall, the public does not understand the justice system well; it is too complex, and legal assistance is unavailable to many (Think Tank on Access to Family Justice 2011, 4). Specific challenges arise around access to family justice in the province. Many in Prince Edward Island are unable to afford the legal representation they require, and yet are ineligible for legal aid (Ibid, 4-5). When coupled with the unique nature of family law³ (Ibid, 7-8), lack of access to justice can have profound negative consequences: “[t]he instability arising from lingering unresolved disputes over custody, access, support and division of assets is extremely stressful” and “[t]he consequences can be catastrophic for the parents and the children” (Ibid, 5). Despite reported progress in this area in 2013 and 2015 as a result of a pilot “triage system” for family law matters, access to justice for women has seen little to no progress since 2011 (Prince Edward Island Advisory Council on the Status of Women 2011, 8; 2013, 8; 2015, 8).

In Prince Edward Island, assessments of the entire justice system are scarce.

Although recommendations for a domestic violence court have been before the provincial government for over a decade, no action has been taken in this regard and the province has seen no improvements in access to legal aid lawyers specializing in family law (Prince Edward Island Advisory Council on the Status of Women 2015, 8). Furthermore, there is a severe lack of enforcement for custody orders (Ibid).

On the other hand, in criminal matters, a survey of victims of crime in Prince Edward Island revealed that victim satisfaction with each component of the justice system was predominantly positive (Equinox Consulting Inc. 2005, iii). Approximately three-quarters of survey respondents were satisfied with the way in which the police handled their case, and among victims of family violence, satisfaction with the handling of their case by the police also increased – from 64 percent in 1985 to 80 percent in 2005 (Ibid, ii). According to the survey, victims were increasingly satisfied that the police had kept them informed about the status of their case and provided them with information about victim services (Ibid). The majority of those surveyed were satisfied with the handling of their case by Crown prosecutors, but only 42 percent were satisfied with sentencing by the court (Ibid, iii). Overall, there is a paucity of assessments of the justice system in Prince Edward Island. We found no recent reports on the performance of the criminal justice system in the province in publicly accessible documents.⁴

Newfoundland & Labrador

In Newfoundland and Labrador, inefficiencies and delays in the criminal justice system pose persistent challenges. An assessment of the operation of the criminal justice system in Newfoundland and Labrador, with particular attention to the Provincial Court in St. John’s, revealed concerns with unnecessary delays (Newfoundland and Labrador 2008, 6) in processing cases in the criminal trial courts and inefficiencies throughout the judicial process. It found that delays and inefficiencies in case processing undermine the quality of justice (Ibid, 5). For example, unnecessary delays arise in the length of time between when the accused is arrested and first appears in court. Currently, this period is approximately six to eight weeks, despite findings that indicate that the delay could be reduced to two weeks with no added burden on the system (Ibid, 6). Similar delays also arise around issues of disclosure (Ibid, 7), inefficient case management (Ibid, 9), and unrepresented litigants (Ibid, 13).

Additionally, inefficiencies burden the judicial process in Newfoundland and Labrador. Valuable judicial resources are wasted as a result of “[e]mpty courtrooms and idle (underutilized) judges” (Ibid). In 2007, a mere 31 percent of the available courtroom time was engaged, and in 2006-2007, approximately 40 percent of judges’ available sitting time was lost due to collapsed cases (Ibid, 14). Furthermore, judicial resources are spent on activities that require “few judicial skills” (Ibid): due to unproductive appearances and adjournments, as much as 72 percent of the court’s sitting time is spent on scheduling cases for hearings (Ibid).

Systematic inefficiencies and unnecessary delays exacerbate the current backlog of cases waiting to be heard in Newfoundland and Labrador. As a result of these challenges, there is an adverse impact on trial fairness, on accused persons spending time in pre-trial custody, on the prosecution’s case, and on victims and key witnesses. Unnecessary delay also increases costs, places additional pressure on scarce resources, breeds cynicism, and tends to bring the administration of justice into disrepute (Ibid, 6).

Yukon

There is a lack of general assessments of the performance of the justice system as a whole in Yukon. However, there are evaluations of specific institutions within the justice system in that territory that reveal particular challenges. In response to the substantial number of offenders in Yukon with underlying substance abuse and mental health issues, the territory established the Yukon Community Wellness Court (CWC) (Hornick 2014, ix). An evaluation of the CWC’s performance from its inception in 2007 until 2013 revealed that among those who completed the program, re-offending behaviour decreased, as did underlying issues of addiction and mental health concerns (Ibid, viii).

Another assessment of the Yukon correctional system found that corrections are a major concern in the territory as crime rates are among the highest in Canada (Auditor General of Canada 2015a, 1). The corrections system faces considerable management challenges in Yukon. Among them are the high prevalence of mental health issues and fetal alcohol spectrum disorder, which is estimated to be much higher in the corrections population than in the rest of the population. An estimated 90 percent of offenders have problems with substance abuse, and programs and services for mental health, substance abuse, and fetal alcohol spectrum disorder are limited in the territory, particularly outside of Whitehorse (Ibid, 2). In an audit of the Whitehorse Correctional Centre, the Office of the Auditor General found that the territorial Department of Justice “is missing key opportunities to improve offenders’ chances for rehabilitation and successful reintegration into the community” (Ibid, 3).

The above two evaluations of specific institutions highlight some of the challenges facing Yukon’s justice system. However, as mentioned, we were not able to identify any publicly accessible reports on the overall performance of the justice system or access to justice in Yukon.

Northwest Territories

As with Yukon, we identified no overall assessments of the justice system in the Northwest Territories (NWT). The *Report of the Auditor General of Canada to the Northwest Territories Legislative Assembly* in 2015 examined whether the NWT “Department of Justice was meeting its key responsibilities for inmates within the correctional system” between April 2012 and September

2014 (Auditor General of Canada 2015b, 4, 37). The Office of the Auditor General was responsible for conducting “an independent examination of Northwest Territories’ Department of Justice (Corrections Service)” (Ibid, 36) and in its report found that there were serious deficiencies related to case management at two correctional facilities, and that those deficiencies hamper efforts to rehabilitate inmates (Ibid, 4).

Most importantly, the court process in the NWT is too time-consuming.

An external review of victim services in the NWT in 2003 found challenges with the judicial process from the victim’s perspective (Levan and Kalemi Consultants 2003). The report found that judicial protocols and processes in the territory need to be clarified and implemented in practice by those involved in the criminal justice process (Ibid, 110). Additionally, the report stated that “the police, judiciary, lawyers, government departments and agencies working with victimized people need more training” and that “nepotism [...] and other poor hiring practices are common” (Ibid, 101). Most importantly, the court pro-

cess in the NWT is too time-consuming. Victims are not provided with enough information and thus do not understand what is happening in court (Ibid, 104). Furthermore, significant language barriers prevent victims from expressing themselves in court and a lack of practicing lawyers in the territory has meant there is insufficient access to family justice in the NWT (Ibid, 112-13).

Nunavut

Since its establishment, the government of Nunavut has undertaken to consistently assess the effectiveness of its programs and services, including the justice system. A report card by North Sky Consulting Group in 2009 outlined some of the leading challenges facing the justice system in Nunavut. The system has not kept up with the rate and severity of crime and as a result, the court system in Nunavut is overstretched (Ibid, 32). The report card found delays of up to five years before cases were heard in court, which it states, “creates a gap that is too wide between the act of breaking the law and the dispensation of justice for that act” (Ibid, 32). The burden of undue delay in the administration of justice has become intolerable. The report card noted a “direct link between waiting times for court and high suicide rates” (Ibid, 32).

One of Nunavut’s greatest challenges in administering its justice system is a result of its geography. Service provision and travel between distant communities is extremely expensive and even where the government of Nunavut has attempted to deliver circuit court in a timely manner, these programs have not had a noticeable impact in the communities (Ibid, 10, 32). Nunavut struggles to keep up with the rising demand for accessible justice. This is especially important in light of increases in the territory’s crime rate.

A subsequent report examining Nunavut’s justice system was published in 2014. It found that while the crime rate in Canada overall decreased between 1999 and 2012, Nunavut’s crime rate more than doubled, and the proportion of those crimes that were considered serious and violent also rose, making it difficult for the justice system to keep up (Nunavut Tunngavik Incorporated 2014, 11). The report also found that the current justice system in Nunavut is failing children, youth, and women particularly. Branded by the report as “the most dangerous jurisdiction in Canada in which to be a woman or a child,” the gaps in service and infrastructure within the system pose particular and significant challenges for Nunavut, as does lack of access to information about the legal process for victims (Ibid, 1, 23).

Women in Nunavut are the victims of violent crime over 13 times more often than women in Canada as a whole, and the rate of family violence that children and youth in Nunavut face is more than six times the rate reported for all Canadian children and youth (Ibid, 23). Since the court visits a community a mere two to seven times per year, delays between the time a charge is laid and the offender sentenced are significant (Ibid, 25). Insufficient resources and lack of information about services, as well as substantial delays and geographic barriers between those who seek justice and the courts, make access to justice particularly challenging in the territory.

While the crime rate in Canada overall decreased between 1999 and 2012, Nunavut's crime rate more than doubled.

Canada

At the national level, a number of reports provide valuable context about the performance of Canada's justice system. Recurring themes include the need for enhanced judicial efficiency, a lack of access to justice, and disproportionate levels of Aboriginal incarceration.

CRIMINAL JUSTICE SYSTEM

Faced with cases of increasing complexity, the Canadian justice system is taking longer to resolve criminal matters. A report by the Steering Committee on Justice Efficiencies and Access to the Justice System (Canada 2015a) found that the elapsed time in the average case increased from 137 days ten years prior, to 226 days in 2003-04. Other increases include the mean processing time for the least complex cases (i.e., those with a single charge), which increased from 121 to 215 days during the same period, as well as the processing time for multiple charge cases, which increased from 157 days to 236 days (Ibid). In turn, lengthy delays in criminal cases mean that those who are detained while awaiting trial spend an increasing amount of time in custody (Ibid). Since 1986-87, the proportion of total admissions to provincial correctional facilities due to remands had steadily increased by 37 percent to almost 60 percent in 2000-01 (Ibid). Based on more recent data from some provinces, discussed above, this situation has likely deteriorated.

Moreover, the number of court appearances per charge increased to 5.9 appearances on average in 2003-04, up from 4.1 ten years prior (Ibid). Despite a decrease in the average number of charges, the demand placed on court resources has increased over time because of the rise in the number of court appearances. The average number of appearances per charge is a helpful "overall indicator of court workload increases because it relates directly to the activity consuming the most court resources" (Ibid). Along with the rise in number of court appearances comes the increased likelihood that an accused released on bail will either fail to appear or otherwise breach the terms of his or her release, thus triggering additional proceedings against them (Ibid), creating a vicious cycle of recidivism.

The biggest concern regarding case processing time is that it takes almost as many court appearances for the parties to decide whether to resolve a case as it takes the court system to conduct an entire trial: "[t]hirty-seven percent of all cases that do not go to trial (because the case is withdrawn or is otherwise resolved without a conviction) currently require, on average, 4.9 court appearances. This average is close to the average number (5.5) of court appearances required for cases that go to trial" (Ibid). The report also found that where cases are repeatedly subject to an unreasonable delay, the public's confidence in the justice system tends to diminish. Many of the

delays are as a result of the unavailability of judges, justices of the peace, prosecutors, legal aid counsel, court support workers, police officers, and court facilities (Ibid), though the report posits that a mere increase in judicial resources will not be sufficient to remedy efficiency concerns. In order to promote more efficient and effective case processing, performance measures articulating expectations for the criminal justice system are crucial (Ibid). This report aims, in part, to further this important objective.

Lengthy and undue delays may result in stays of proceedings.

Furthermore, lengthy and undue delays may result in stays of proceedings. The *Canadian Charter of Rights and Freedoms* states in section 11(b) that during proceedings in criminal and penal matters, “any person charged with an offence has the right [...] to be tried within a reasonable time” (*Canadian Charter of Rights and Freedoms*, s 11(b), Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11). The Supreme Court of Canada interpreted the significance of this provision and its repercussions in *R. v. Askov* by stating that “where the delay is extensive and beyond justification” it will result in a stay of proceedings (*R. v. Askov*, [1990] 2 S.C.R. 1199 at 1247).

There are disproportionate rates of Aboriginal incarceration not only provincially, but also nationally. Sentencing judges are required to take into account the “circumstances of aboriginal offences” and to consider “all available sanctions other than imprisonment that are reasonable in the circumstances,” according to section 718.2(e) of the *Criminal Code* (*Criminal Code*, R.S.C. 1985, c C-46 s 718.2(e)). This provision is designed “to reduce the tragic overrepresentation of aboriginal people in prisons” (*R. v. Gladue*, [1999] 1 S.C.R. 688 at para 87, 171 D.L.R. (4th) 385).

Yet, overreliance on incarceration remains of great concern in relation to the sentencing of aboriginal Canadians (Ibid at para 58). “In the mid-1980’s, aboriginal people were about 2 percent of the population of Canada, yet they made up 10 percent of the penitentiary population” (Ibid). As the Supreme Court of Canada pointed out in *Gladue*, the situation did not improve over the next decade: “[b]y 1997, aboriginal people constituted closer to 3 percent of the population of Canada and amounted to 12 percent of all federal inmates” (Ibid). In *R. v. Ipeelee*, the Supreme Court of Canada recognized that section 718.2 (e) of the *Criminal Code* “has not had a discernible impact on the overrepresentation of Aboriginal people in the criminal justice system” (*R. v. Ipeelee*, 2012 S.C.C. 13 at para 63, [2012] 1 S.C.R. 433). In fact, “statistics indicate that the overrepresentation and alienation of Aboriginal people in the criminal justice system has only worsened” (Ibid at para 62). Between 1996 and 2001, “Aboriginal admissions to custody increased by 3 percent while non-Aboriginal admissions declined by 22 percent” (Ibid). Then, from 2001 to 2006, “there was an overall decline in prison admissions of 9 percent” and yet “[d]uring that same time period, Aboriginal admissions to custody increased by 4 percent” (Ibid). The Court in *Ipeelee* stated that “the overrepresentation of Aboriginal people in the criminal justice system is worse than ever” (Ibid). In 1999, “Aboriginal persons made up 12 percent of all federal inmates” (Ibid). By 2005, that number increased and “they accounted for 17 percent of federal admissions” (Ibid).

CIVIL AND FAMILY JUSTICE SYSTEM

Access to justice has been identified as the most important issue facing the civil and family justice system. The civil and family justice system is considered too complex, too slow, and too expensive (Action Committee on Access to Justice in Civil and Family Matters 2013, 1). As it stands, legal

aid funding is not adequate as it is only available for those with extremely modest means and only covers limited areas of legal services (Ibid, 4). Coupled with an increase in legal fees, many Canadians find that they have no real access to justice as they earn too much to qualify for legal aid, but too little to afford the legal services they need (Ibid). As a result, over 20 percent of Canadians “take no meaningful action with respect to their legal problems, and over 65% think that nothing can be done, are uncertain about their rights, do not know what to do, think it will take too much time, cost too much money or are simply afraid” (Ibid). With cost as a major reason for not seeking legal assistance, over 50 percent of Canadians are representing themselves in civil and family judicial proceedings (Ibid). The rapid growth of unrepresented litigants in Canadian courts is indicative of the gap between the pervasiveness of legal problems and the insufficiency of legal services (Canadian Bar Association 2013, 9). Self-represented litigants tend to slow the judicial process down and result in a substantially less productive court system.

Although information and tools are increasingly available online, “it is less helpful to the almost 48% of Canadians who lack the literacy skills to make effective use of this type of information” (Ibid, 10). Canada’s justice system rates poorly on international access to justice indicators. “The World Justice Project found that on civil justice, Canada ranked ninth out of 16 North American and Western European nations and 13th among the world’s high-income countries, just ahead of Estonia” (Ibid, 11). Regarding civil legal aid, Canada ranks a dismal 54th in the world, well behind many poorer countries and behind the United States, which ranked 50th (Ibid, 11). In order to increase access to justice, Canada’s civil and family justice system faces a major difficulty: lack of hard data. In comparison to what we know about our health care and education systems, assessments of our justice system provide limited insight: “[m]uch of what we know about the system is anecdotal – descriptions rather than measurements” (Ibid, 6). Furthermore, “we fall behind the health and education systems in our commitment to and capacity for evidence-based decision-making” (Ibid, 11). Consequently, public confidence in the justice system is eroding and Canadians perceive it as inaccessible, arbitrary, inefficient, and unfair (Ibid, 6). This is a damning indictment of our justice system that must be addressed.

5. Conclusion

This report has identified a number of systematic problems with Canada’s justice system, many of which are only getting worse. In jurisdictions that have not taken concrete steps to stem the tide, we see rising case processing times, a growing population of accused persons on remand pending trial, increasing costs across the board, and a growing number of Canadians unable to afford a lawyer. Fed up with the time it would take to ever achieve justice, many never bother to attempt to do so.

There is also a vicious cycle where accused persons awaiting trial end up missing appearances or breaching conditions, which can include minor violations. This spurs further proceedings which may have little, if any, value for public safety. In the civil context, it is clear that a growing number of Canadians are ignoring the courts entirely because of the cost and delays involved. Together these troubling factors have created a large and growing justice deficit in Canada that is undermining public confidence as well as the ability to ensure important legal rights are upheld. This outcome is having a significant and immeasurable negative impact in the lives of Canadians, our society, and our economy.

How do we address these challenges? Simply putting more resources into the justice system is not the answer, although targeted funding is needed in certain areas. While there have been innovations in some jurisdictions, at its core, our justice system still operates on a Victorian-era model where people queue up and wait for their case to be dealt with. The acute care medical system doesn't operate on such antiquated models or people would die in growing numbers patiently waiting their turn in emergency rooms across the country. Likewise, businesses that operate this way go bankrupt. The fact that the justice system persists in this way is due to a fundamental lack of accountability and the hidden nature of the consequences of its inefficiency. Additionally, there has been strident resistance to necessary reforms in certain instances in the name of judicial independence. Indeed, judicial independence is critical in a democracy, but it must not be used as a smokescreen for reasonable and necessary efforts to improve the system that are consistent with our Constitutional guarantees.

Simply putting more resources into the justice system is not the answer.

If Canada fails to make the necessary improvements to its justice system, all indications are that it will continue to deteriorate as part of a vicious cycle, which will lead to even greater costs – both economic and in the lives of Canadians whose safety, property, and legal rights are not being fully protected by the law in practice.

Justice expenditure represents a significant proportion of public resource allocation in Canada. However, based on a large number of reviews, the system is not performing to a reasonable standard. There are significant issues with timely access to justice and concerns that the cost of using the system makes it inaccessible for the majority of Canadians. Accordingly, we believe that there is an urgent need for a regular and objective assessment of the performance of the justice system.

We believe that such an assessment will start an important conversation among Canadians about key priorities and the need for better reporting within the system. We hope that our forthcoming report card on the Canadian justice system will foster debate about the issues and challenges facing it and lead to important reforms so that our justice system can live up to its name.

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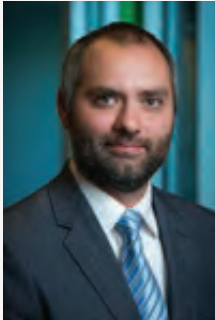
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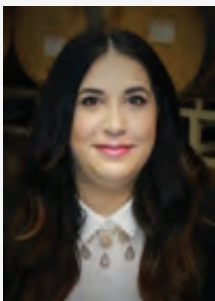
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Endnotes

- 1 The methodology for this paper included a literature review and an extensive search of open source documents and data.
- 2 It bears noting that there are numerous areas of private law dealt with through the civil justice system and they each have their own sub-objectives. For example, tort law, which is concerned with private wrongs (as opposed to public wrongs which are addressed through the criminal justice system), has many functions. The objectives of tort law are compensation, appeasement and vindication, punishment, deterrence, market deterrence, and justice. (See Solomon et al. 2011, 1, 20-22).
- 3 Family law disputes, as opposed to non-family civil law disputes, may possess added layers of complexity in their resolution, including children's interests at stake, issues of domestic abuse, power imbalances between the parties, and mental health concerns.
- 4 The most recent report found was published in 1995 by Julie Devon Dodd (PEI Health and Community Services Agency).



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