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How Ontarians Experience the Law: An Examination on Incidence Rate, Seriousness and Response to Legal Problems

Matthew Dylag

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**How Ontarians Experience the Law:
An Examination on Incidence Rate, Seriousness,
and Response to Legal Problems**

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A Thesis submitted to the Faculty of Graduate Studies in
Partial Fulfillment of the Requirements for the Degree of Master of Laws

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ABSTRACT

Access to civil justice is a conceptual framework that, at its most basic, claims all people are entitled to have their legal disputes resolved fairly. However, it is currently understood that these ideals are not reflected in the day-to-day realities of ordinary people. Though scholarship has examined ways in which to better allow for meaningful access to civil justice, there is still a need for further quantitative research – especially from the Canadian perspective. This paper provides an empirical foundation to this discussion by examining the 2014 Cost of Justice project survey. Specifically, it examines the incidence rate of civil legal problems, responses to legal problems, and costs of legal problems among Ontarians. The paper concludes by situating these findings into the legal consciousness framework so as to understand how Ontarians experience the law and how that may assist in providing meaningful access to justice reforms.

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Chapter 1

Introduction

Access to civil justice is a conceptual framework that, at its most basic, claims all people are entitled to have their legal disputes resolved fairly.¹ Inherent to the concept, and as witnessed by the phrase itself, are two sometimes competing ideas. While justice speaks to the substantive part of the equation, access references the procedural aspects. Though difficult to define, justice inevitably concerns itself with the ideal that disputes be resolved fairly.² This is understood to mean that all parties to a dispute are treated equally, that they have an opportunity to participate, and that the law is applied without prejudice.³ Concerns with access often lie in the ability of an individual to advance a claim in the appropriate forum or to defend claims made against them.⁴ Perhaps more broadly, access can also be understood to be the means by which legal rights are made effective.⁵ The access to civil justice narrative, however, accepts that currently these ideals are often not reflected in the day-to-day realities of people and that not everyone is

¹ See e.g. Roderick A Macdonald, “Access to Civil Justice” in Peter Cane & Herbert M Kritzer, eds, *Oxford Handbook of Empirical Legal Research* (Oxford: Oxford University Press, 2010) 493 at 494 [Macdonald, “Access to Civil Justice”] (Macdonald explains that there is still much scholarly uncertainty of what the expression means); Mauro Cappelletti & Bryant Garth, eds, *Access to Justice: A World Survey* (Milan: Dott. A. Giuffrè Editore, 1978) at 6; Julia Bass, WA Bogart & Frederick H Zemans, eds, *Access to Justice for a New Century: The Way Forward* (Toronto: The Law Society of Upper Canada, 2005) at 2-3; Tom Cornford, “The Meaning of Access to Justice” in Ellie Palmer, et al, eds, *Access to Justice: Beyond the Policies and Politics of Austerity* (Oxford: Hart Publishing, 2016) 27.

² Ellen Berrey, Steve G Hoffman & Laura Beth Nielsen, “Situated Justice: A Contextual Analysis of Fairness and Inequality in Employment Discrimination Litigation” (2012) 46:1 Law Soc Rev 1 at 2.

³ Trevor CW Farrow, “What is Access to Justice ?” (2015) 51:3 Osgoode Hall Law J 957 [Farrow, “What is Access to Justice?”].

⁴ Michael Trebilcock, Anthony Duggan & Lorne Sossin, eds, *Middle Income Access to Justice* (Toronto: University of Toronto Press, 2012) at 3.

⁵ Cappelletti & Garth, *supra* note 1 at 9.

equally able to bring forward a legal claim or defence such that they receive a just resolution.⁶

Access to civil justice scholarship typically focuses more on issues of providing meaningful *access* rather than defining the substantive nature of justice and as such often looks to a variety of issues that may operate as “barriers” to justice, such as the cost of using the legal system, the complexity of the legal system, rules of decision-making bodies, the ability to find representation, and/or the physical ability to attend the forum.⁷ Access literature also frequently discusses alternatives to the formal court system and suggests alternative dispute resolution bodies, administrative tribunals, or mediators as potential paths to justice.⁸ Particularly from the Canadian context, however, there is a need for further quantitative research within the field of access to justice.

This paper seeks to provide an empirical foundation for the access to civil justice narrative by examining how Ontarians experience the law. It first situates the narrative into a theoretical framework in order to provide context for the findings. To address the question of why one should be concerned with access to civil justice, this paper initially examines access to justice from a doctrinal perspective to determine whether there is such a thing as a Canadian constitutional right to access to civil justice. It briefly notes that the rights dialogue began within the context of American criminal law and was mostly limited to an individual’s right to legal representation in court. Later, with varying

⁶ Action Committee on Access to Justice in Civil and Family Matters, *Access to Civil & Family Justice: A Roadmap for Change* (Ottawa: Action Committee on Access to Justice in Civil and Family Matters, 2013) at 1 [Action Committee on Access to Justice, *Access to Civil & Family Justice*]; Ontario Civil Legal Needs Project, *Listening to Ontarians: Report of the Ontario Civil Legal Needs Project* (Toronto: Ontario Civil Legal Needs Project Steering Committee, 2010) at 8-9.

⁷ Macdonald, “Access to Civil Justice,” *supra* note 1 at 510-515; Farrow, “What is Access to Justice?” *supra* note 3 at 970.

⁸ See *e.g.* Trevor CW Farrow, *Civil Justice, Privatization, and Democracy* (Toronto: University of Toronto Press, 2014) at 123-126, 158-163 [Farrow, *Civil Justice, Privatization, and Democracy*].

success, this right to be represented by a lawyer was transposed into a civil context. Canadian jurisprudence, however, has been reluctant to acknowledge any broad right to a lawyer – let alone a right to access to civil justice – limiting such a right to very specific circumstances. This section concludes with the observation that even if there is no formal right to access to civil justice within Canada, there is still an inherent need for the state to be concerned with access to civil justice in order to give meaning to the concept of citizenship.

Moving away from the traditional doctrinal discussion, the paper then asks how people understand the law in order to better define what is meant by access to justice. It does this by engaging with a body of literature that examines what can be referred to as legal consciousness. This theory notes that one's understanding of rights and obligations often does not arise strictly out of statutes and case law, but rather out of societal interactions. It also notes that how individuals attempt to resolve their legal problems is often dependent on whether they are aware of their rights and entitlements. The importance of the legal consciousness framework is evident in the problem-centric approach to civil problems which states that one should not just examine problems that are brought before a court. Rather, one should look at all problems that have a legal element – regardless of whether the individual is aware of the legal element or not – in order to capture those problems that, for a multitude of reasons, may never be litigated. This is necessary in order to give a full understanding of how Ontarians experience the law.

With this theory in place to provide a context, the paper then engages in an empirical analysis of the everyday legal problems experienced by Ontarians. Utilizing the

survey findings of the 2014 Cost of Justice project survey conducted by the Canadian Forum on Civil Justice, the paper examines the incidence rate of legal problems, how Ontarians respond to legal problems, and the cost associated with those legal problems. The paper notes, *inter alia*, that while a majority of Ontarians will experience a legal problem at some point in their lives, very few will seek to resolve them using the formal legal system. It further notes that Ontarians incur significant costs directly due to those legal problems experienced. The paper concludes by situating these findings into the legal consciousness framework to explain why Ontarians do not seek out formal legal advice; specifically the paper reveals that (i) Ontarians perceive most issues to be non-legal or not serious; (ii) Ontarians perceive the law as being absent from their daily lives and therefore they do not consider the formal system as a viable option; (iii) Ontarians believe it is economically irrational to pursue most of their issues in a formal setting; (iv) the formal system dissuades individual litigants from using the system; and (v) the inability of individuals to mobilize their legal rights prevents them from accessing formal mechanisms. These reasons indicate that a more comprehensive, court-focused legal aid system may not be the best way to improve access to justice and that some method of providing legal guidance without engaging the formal system may better address the legal needs and wants of Ontarians.

Chapter 2

Access to Justice

A. *The Right to Access to Justice*

Traditionally access to justice scholarship focused on an individual's ability to access the courts and the main barrier to accessing justice was believed to be the inability to afford a lawyer.⁹ Individuals who appeared before a court without legal representation were understood to be at a disadvantage and often denied a fair hearing.¹⁰ This was perhaps most dramatically expressed in the American criminal case of *Gideon v Wainwright*¹¹ where in 1961 Clarence Gideon was convicted and sentenced to five years in prison for petty robbery. Despite his repeated requests that the court provide him with a lawyer, the judicial circuit court of Florida denied him the request noting that it was only required to provide a lawyer when a person is charged with a capital offence. When the case finally made it before the Supreme Court through a petition *in forma pauperis* it was evident to the Supreme Court that legal representation was necessary to ensure a just hearing. This ruling gave birth to the American notion that one has a right to counsel in all criminal trials. Since this decision, advocates have been attempting with limited success to extend the right to counsel to the civil law by employing a litigation strategy that targets specific categories of civil law cases, such as family, immigration, commitment for mental illness, or housing.¹²

⁹ Hazel Genn, *Paths to Justice: What People Do and Think About Going to Law* (Oxford: Hart Publishing, 1999) at 6-7; see also Macdonald, "Access to Civil Justice," *supra* note 1 at 504-507.

¹⁰ Marc Galanter, "Why the 'Haves' Come Out Ahead" in Herbert M Kritzer & Susan S Silbey, eds, *In Litigation: Do the "Haves" Still Come Out Ahead?* (Stanford: Stanford University Press, 2003) 13.

¹¹ 83 S Ct 792 (1963).

¹² Russell Engler, "Reflections on a Civil Right to Counsel and Drawing Lines: When Does Access to Justice Mean Full Representation by Counsel, and When Might Less Assistance Suffice?" (2012) 9:1 Seattle J Soc Justice 97 at 102-106.

In the Canadian context, the courts have consistently seen an attempt to expand the right to counsel to civil law matters as being equivalent to the courts mandating a publically funded program of legal aid and it is well established in jurisprudence that there is currently no *Charter* right to a publically funded legal aid system.¹³ While courts do retain some discretion under section 7 of the *Canadian Charter of Rights and Freedoms* – which affirms the right to life, liberty, and the security of the person – to order state-funded counsel where it is necessary to ensure a fair trial, taking into account factors such as the seriousness of the charge, the complexity of the proceeding, and the accused’s ability to represent him or herself, this discretion is primarily exercised in the criminal law context.¹⁴ However, as in the United States, litigation has been used to try and extend the right to a publically funded lawyer to areas of civil law; this has seen some success, for example, in cases that involved a children’s aid society seeking an order for custody of a child¹⁵ or a refugee and immigration board seeking to deport a refugee claimant.¹⁶

Part of the difficulty of trying to extend the *Charter* to include a universal right to publically funded counsel in civil law matters is that the *Charter* is currently understood to only apply to interactions between individuals and government agencies – not between private parties – and thus most civil law disputes would be outside the purview of the *Charter*.¹⁷ Yet, as noted by Roach, it could be argued that litigation between private

¹³ See e.g. Patricia Hughes, “A Constitutional Right to Civil Legal Aid” in Vicki Schmolka, ed, *Making the Case: The Right to Publicly-Funded Legal Representation in Canada* (Ottawa: Canadian Bar Association, 2002) 99; Christian Morey, “A Matter of Integrity: Rule of Law, The Remuneration Reference and Access to Justice” (2016) 49 Univ Br Columbia Law Rev 275 [Morey, “A Matter of Integrity”].

¹⁴ Hughes, *supra* note 13 at 101-102; Morey, *supra* note 13 at 280-281.

¹⁵ *New Brunswick (Minister of Health and Community Services) v G(J)*, [1993] 3 SCR 46, 21 NBR (2d) 25.

¹⁶ *Singh v Minister of Employment and Immigration*, [1985] SCR 177, 17 DLR (4th) 422.

¹⁷ Kent Roach, “Is there a Constitutional Right to Legal Aid?” in Schmolka, *supra* note 13, 187 at 193.

parties necessarily involves the state as it will be overseen and resolved by government-administered courts and as such is brought into the scope of the *Charter*.¹⁸ This argument, however, has yet to be accepted by the courts. Another potential argument for a universal right to counsel could be found under section 15 of the *Charter* which guarantees equality under the law and equal protection and benefit of the law. Here it could be argued that because legal aid grants higher coverage to criminal matters, individuals who experience problems in other areas of law that predominantly affect persons of a certain age, gender, ethnic origin, or other protected ground may be denied equality.¹⁹ Though this argument may have traction in civil law matters where an individual who is part of a recognized disadvantaged group is somehow denied equality under the law specifically because of this membership, the courts have consistently held that one cannot be considered to be a member of a disadvantaged group simply due to economic status.²⁰ Therefore any inequality incurred by not being able to afford to retain a lawyer will not trigger section 15 and the equality provisions.

Despite the current state of jurisprudence which does not recognize a universal *Charter* right to counsel in civil law matters and though it seems unlikely that the court will extend a *Charter* right to counsel to most civil law matters, there may be other obligations for the government to ensure some type of access to justice under other constitutional principles – namely the rule of law. As argued by Trebilcock in his *Report of the Legal Aid Review 2008*, “If the rule of law is considered to be based on laws that are knowable and consistently enforced such that individuals are able to avail themselves

¹⁸ *Ibid.*

¹⁹ Hughes, *supra* note 13 at 102-103.

²⁰ *Ibid.*; Morey, *supra* note 13 at 288.

of the law, then individuals must have the tools to access the systems that administer those laws.”²¹ Though scholars may like to give the rule of law an expansive meaning as applied to access to civil justice, the Supreme Court of Canada has used the principle sparingly in this context. In *British Columbia Government Employee’s Union v British Columbia*²² the court was willing to use the constitutional principle of rule of law to justify issuing an injunction to prevent picketers from blocking entrance to a courthouse. Here the notion was that physically preventing the public from accessing the courthouse was fundamentally opposed to the rule of law. However, when it comes to challenging legislation that arguably impedes access to justice, the courts have been reluctant to accept the argument that the constitutional principle of the rule of law justifies striking down such legislation.²³ In the case of *British Columbia (Attorney General) v Christie*,²⁴ Mr. Christie, a lawyer working with low-income individuals, challenged a law that put a 7% tax on the provision of legal services. It was argued that this infringed on a general constitutional right to access justice as it made legal services even more unaffordable to many low-income individuals. The Supreme Court rejected this argument on the basis that the provinces have the constitutional competence to administer the law and that striking out the legislation would be tantamount to endorsing a general right to counsel. The court acknowledged that there may be a right to counsel in specific cases, however, the rule of law guaranteed no general right to counsel or legal services. Yet in an apparent reversal, the more recent case of *Trial Lawyers Association of British Columbia v. British*

²¹ Michael Trebilcock, *Report of the Legal Aid Review 2008* (Toronto: Ministry of the Attorney General, 2008) at 61-62.

²² [1988] 2 SCR 214, 53 DLR (4th) 1.

²³ Morey, *supra* note 13.

²⁴ 2007 SCC 21, 1 SCR 873.

*Columbia (Attorney General)*²⁵ the Supreme Court was willing to use the rule of law principle to strike out legislation mandating hearing fees as they acted as a barrier to justice. This case involved provincial legislation that required litigants pay hearing fees in order to secure trial dates. Here, however, the Supreme Court did not frame the issue as being tantamount to providing a general right to counsel, but rather concluded that the hearing fees deprived litigants of access to the courts and therefore they were held to be unconstitutional. These three cases illustrate that the courts are only willing to use the constitutional principle of rule of law to promote a narrow definition of access to justice – namely where access to the physical court may be prevented.

Even if the courts have interpreted the Constitution and the *Charter* to only require the most narrow of guarantees to access to justice and to argue that there is no positive constitutional obligation to provide some sort of publically funded legal aid system, policy makers still need to be concerned with access to justice as it is a basic mechanism to allow citizens full participation within the political community. During the rise of the welfare state, T.H. Marshall connected access to justice with a basic right inherent in citizenship while examining social class.²⁶ He observed that a basic premise of liberal democracy was to grant an equality of opportunity which is witnessed, for example, in having public school system that sought to eliminate inherited privileges of class.²⁷ A parallel can be seen with the access to justice movement which also seeks to grant an equality of opportunity to all citizens before the law. Today there is a growing acceptance that a democratic society requires individuals to be able to understand and

²⁵ 2014 SCC 59, 3 SCR 31.

²⁶ TH Marshall, *Citizenship and Social Class* (Cambridge: Cambridge University Press, 1950).

²⁷ *Ibid* at 66-67 (Marshall does note, however, that the result of the public school system was to classify students into categories of ability thus limiting equal opportunity).

resolve their legal issues.²⁸ Without meaningful access to justice one's ability to access all rights associated with citizenship – including basic civil rights such as the right to vote or the right to be secure against unreasonable search and seizure – is limited. Law is often seen as an empowering mechanism where meaningful access to the law is fundamental to an inclusionary form of citizenship in a modern democracy.²⁹ As such, if policy makers are concerned with ensuring a democratic society where citizens are able to act upon associated rights then policy makers also need to be concerned with ensuring individuals are able to access the tools and mechanisms of the law.³⁰ Though meaningful or effective access may not be considered a basic social right by the courts, it is increasingly being viewed as a fundamental aspect of a functioning democracy by scholars.³¹

B. The Legal Consciousness Framework

Broadly speaking, *meaningful* access to civil justice is now understood to include the right to advance claims and defences in an appropriate forum, the right to be treated fairly throughout the legal process, and the right to a just resolution.³² Yet implicit in this statement is a normative concept of justice. The presumption is that disputes are to be resolved within the established formal legal system and that the judgments and decisions made inevitably bestow justice. These normative concepts can have the unfortunate effect of imposing ideas of justice and law onto a population who may disagree with these

²⁸ Farrow, "What is Access to Justice?" *supra* note 3 at 969.

²⁹ Hilary Sommerlad, "Some Reflections on the Relationship between Citizenship, Access to Justice, and the Reform of Legal Aid" (2004) 31:3 J Law Soc 345.

³⁰ Trebilcock, *supra* note 21 at 61-62.

³¹ See e.g. Cappelletti & Garth, *supra* note 1 at 8-9; Trebilcock, *supra* note 21; Action Committee on Access to Justice, *Access to Civil & Family Justice*, *supra* note 6.

³² See e.g. Trebilcock, Duggan & Sossin, *supra* note 4 at 3; Farrow, "What is Access to Justice?" *supra* note 3 at 968-972.

formulations. To better understand how and whether these normative concepts are actualized in the day-to-day realities of people, scholars have begun to examine how ordinary individuals understand the law.

This study of how ordinary individuals – as opposed to judges, lawmakers, or lawyers – understand the law is commonly referred to as legal consciousness.³³ When “law” is spoken of in this context it refers to both formal doctrines and legal institutions as well as the informal relationships or common understandings that develop within a community.³⁴ Ewick and Silbey argued that legality is a structural component of society consisting of cultural schemas and resources that shape social relations such that one’s understanding of the law – both formal and informal – is produced in what people do and what they say.³⁵ In other words, one’s understanding of rights and obligations develops outside of the formal legal system and arises from lived community relationships such as the interactions between neighbours, family members, or businesses. In *Privacy Rights in the Global Digital Economy*, Jacobs demonstrates how ordinary people may understand a right independent of doctrinal law. He asked youth about privacy rights in the context of social networking and online gaming, and the interviews revealed that while none of the youth had knowledge of the formal doctrinal law of privacy, they all had an understanding that they had a right to privacy and that it had something to do with the protection and control of personal information and identity.³⁶ It is argued that this

³³ Patricia Ewick & Susan S Silbey, *The Common Place of Law: Stories from Everyday Life* (Chicago: University of Chicago Press, 1998) at 17 [Ewick & Silbey, *The Common Place of Law*]. See also e.g. Berrey, Hoffman & Nielsen, *supra* note 2; Tom Tyler, *Why People Obey the Law* (New Jersey: Princeton University Press, 2006); Lesley A Jacobs, *Privacy Rights in the Global Digital Economy: Legal Problems and Canadian Paths to Justice* (Toronto: Irwin Law Inc., 2014).

³⁴ See e.g. Jacobs, *supra* note 33 at 44-46.

³⁵ Ewick & Silbey, *The Common Place of Law*, *supra* note 33 at 43-46.

³⁶ Jacobs, *supra* 33 at 53-54.

knowledge arises out of the real world and popular media that youth are situated in.³⁷ It is significant to recognize how people come to understand the law because it may provide insight into how individuals respond to problems that have a legal element – particularly if they do not use the formal mechanisms to do so.

In their book *The Common Place of Law*, Ewick and Silbey examined how ordinary people understood the law through a series of interviews with 430 New Jerseyans where the authors inquired about the subjects' daily lives and problems in order to find out how they reacted to those events.³⁸ Not surprisingly the authors did not find a single uniform understanding of law amongst those interviewed; however, they did find three common narratives throughout the interviews, each of which "... invokes a different set of normative claims, justification, and values to express how the law ought to function."³⁹ The first narrative they call the "before the law" narrative; it sees the law as "an objective realm of disinterested action" and generally distant from the lives of individuals.⁴⁰ The second narrative the authors call "with the law" where the legal system is seen as a game where deceit is expected and those wise to the rules will win. Third is the narrative called "up against the law" where the law is seen as arbitrary and capricious and the product of unequal power between players. While the authors identified these three overarching narratives, they further observed that individuals do not ascribe to

³⁷ *Ibid* at 55-56.

³⁸ Ewick & Silbey, *The Common Place of Law*, *supra* note 33 at 23-26.

³⁹ Patricia Ewick & Susan S Silbey, "Common Knowledge and Ideological Critique: The Significance of Knowing That the 'Haves' Come Out Ahead" in Herbert M Kritzer & Susan S Silbey, eds, *In Litigation: Do the "Haves" Still Come Out Ahead?* (Stanford: Stanford University Press, 2003) 273 at 275 [Ewick & Silbey, "Common Knowledge and Ideological Critique"].

⁴⁰ *Ibid*.

solely one narrative and often express differing, sometimes contradictory, views depending on the specific experience.⁴¹

Inevitably how the law is understood will affect whether and how individuals attempt to resolve their legal issues. Some scholars argue that in order to be able to mobilize a legal right, such that one acts upon it in a legal forum, there is a need for people to take on or accept a specific identity.⁴² The clearest example of this is the law relating to disability rights wherein individuals necessarily have to identify as being disabled prior to bringing a claim upon a right.⁴³ One may imagine, for example, that certain people, such as an elderly individual with mobility issues, may not see themselves as being disabled and therefore would not act upon a legal entitlement when faced with a physical barrier. Perhaps more clearly, an individual with an undiagnosed mental disability may not know they are entitled to certain protections in the employment sphere, for example. In their book *Rights of Inclusion: Law and Identity in the Life Stories of Americans with Disabilities*, Engel and Munger interviewed sixty individuals with disabilities to examine how rights under the *Americans with Disabilities Act* become active in the lives of the rights holders.⁴⁴ The authors note that legislators assume that new laws and the creation of new rights will correct injustices.⁴⁵ However, in the words of the authors, “Before the question of statutory violation can be raised, there must be a perception that the individual has been relegated to the wrong side of a social

⁴¹ *Ibid* at 283.

⁴² David M Engel & Frank W Munger, *Rights of Inclusion: Law and Identity in the Life Stories of Americans with Disabilities* (Chicago: University of Chicago Press, 2003) at 40-42; Jacobs, *supra* note 33 at 46-47.

⁴³ *Ibid*.

⁴⁴ Engel & Munger, *supra* note 42 at 2-4.

⁴⁵ *Ibid* at 78-79.

boundary.”⁴⁶ As such, it is only when an individual perceives that they have been wronged that a right can become active. Once this perceived wrong has been recognized, how one mobilizes their perceived legal right lies on a continuum.⁴⁷ On one end some people will do nothing, feeling that there is nothing that can be done or that it is not worth the effort. On the other end some may tenaciously engage with the formal institutions. In the middle is self-regulation, education, and utilizing more informal organizations such as a consumer advocacy group.

C. The Problem-Centric Approach

Modern access to justice literature takes as its premise that the focus of reform must be on the legal problems experienced in the day-to-day lives of the public; not just those problems that are brought before the formal court system for adjudication.⁴⁸ Legal problems in this model are thought of in a broad sense: the literature defines legal problems as any non-trivial justiciable issue.⁴⁹ Or, phrased another way, any consequential problem for which a legal remedy may exist.⁵⁰ It is unnecessary that an individual act upon the problem or even recognize that there is a legal element involved in order for the problem to be considered justiciable.⁵¹ This is an important qualification because it allows the scholarship to examine problems that may not come before the formal structures for a variety of reasons.

⁴⁶ *Ibid* at 67.

⁴⁷ *Ibid* at 56-60.

⁴⁸ See e.g. Ab Currie, *The Legal Problems of Everyday Life: The Nature, Extent and Consequences of Justiciable Problems Experienced by Canadians* (Ottawa: Department of Justice, 2009); Action Committee on Access to Justice, *Access to Civil & Family Justice*, *supra* note 6; Farrow, “What is Access to Justice?” *supra* note 3; Trebilcock, Duggan & Sossin, *supra* note 4 at 5.

⁴⁹ See e.g. Currie, *supra* note 48.

⁵⁰ Genn, *supra* note 9 at 5.

⁵¹ *Ibid* at 12.

This problem-centric approach can be contrasted with the now outdated approach that focused solely on the types of problems that people took to a lawyer.⁵² In that model reform initiatives focused narrowly on such things as the availability of legal representation and adapting the civil litigation process.⁵³ The problem with this older model for evaluating legal needs was that it excluded the day-to-day realities of ordinary individuals by ignoring problems that did not conform to how the bench and bar viewed legal problems. As noted by Ewick and Silbey, “The most serious limitation of this institutionally centred law-first perspective is that, by reckoning the boundary of law to correspond neatly to its formal institutional location, we drastically narrow our vision.”⁵⁴ Further, this older model presumed that bringing a legal problem to the formal institutions was the best way to resolve that problem, which may not be the case.⁵⁵ In essence the old model focused on the procedural aspect of the law where, to qualify as a legal problem, the individual had to somehow engage the formal legal institutions.

The problem-centric approach acknowledges that not every legal problem is brought to the courts and places the legal needs of individuals at the centre of the discussion rather than focusing on systems, doctrines, or institutions. Within legal consciousness theory there are three categories of reasons as to why an individual may not engage with the formal legal system to resolve a justiciable issue. The first explanation commonly given is that there are numerous objective and subjective “barriers” that prevent people from bringing their legal problem to the courts.⁵⁶ For

⁵² *Ibid* at 6-7; see also Macdonald, “Access to Civil Justice,” *supra* note 1 at 504-507.

⁵³ See e.g. Cappelletti & Garth, *supra* note 1; Genn, *supra* note 9 at 6-7.

⁵⁴ Ewick & Silbey, *The Common Place of Law*, *supra* note 33 at 20.

⁵⁵ Currie, *supra* note 48 at 2.

⁵⁶ Macdonald, “Access to Civil Justice,” *supra* note 1 at 510-515.

example, systemic barriers such as the cost and complexity of litigation is often cited as a barrier to justice. Other subjective barriers may include mental health issues, legal literacy, or broad socio-cultural barriers that result in underutilization of the legal system. This list is not exhaustive and scholars and practitioners continue to identify other barriers that may prevent access. The second broad category becomes evident through identity and legal mobilization theory discussed above. Here individuals may not construe a right as such and therefore they may simply not be aware that they can utilize the formal legal system to realize their rights. Finally, individuals may not see the formal system as the best way to resolve an issue. As discussed above, some may see the system as arbitrary and capricious or as a distant other that is not relevant to them. In such circumstances people may prefer to use community norms rather than formalized institutions to resolve their problem. For example, one may prefer to make a complaint directly to a service provider rather than sue them in court. Similarly, many individuals may experience problems that they recognize as having a legal element but they may choose to resolve these problems outside of the formal system for reasons of efficiency or costs.⁵⁷ The old model that focuses solely on problems brought to the formal system will inevitably ignore the many legal problems that are not brought to the courts for any one of these reasons.

In order for access to justice research and recommendations to be meaningful, we must understand the problems faced in the day-to-day lives of ordinary people – not just those problems that are presented to a lawyer, judge, or policy maker.⁵⁸ However, only

⁵⁷ Currie, *supra* note 48 at 55-59.

⁵⁸ See *e.g.* Currie, *supra* note 48; Action Committee on Access to Justice, *Access to Civil & Family Justice*, *supra* note 6; Farrow, “What is Access to Justice?” *supra* note 3; Trebilcock, Duggan & Sossin, *supra* note 4 at 5.

recently has there been an attempt to empirically determine the nature and frequency of the legal problems that people actually experience.⁵⁹ This paper attempts to provide an empirical foundation to this discussion by examining what legal problems Ontarians experience, the seriousness of those problems, and how they are resolved.

⁵⁹ Genn, *supra* note 9 at 1; See *e.g.* Cappelletti & Garth, *supra* note 1.

Chapter 3

Methodology

Many jurisdictions have conducted empirical surveys in recent years in an attempt to assess the civil law landscape.⁶⁰ While these various surveys are helpful to provide a wider context to the access to justice debate, this project is primarily interested in findings directly relevant to Ontarians and as such focuses on those surveys that have looked at civil justice from a Canadian context. In 2014 the Canadian Forum on Civil Justice completed a national survey as part of their Cost of Justice project, looking into the legal problems experienced in the everyday lives of Canadians.⁶¹ Through the project, 3,051 randomly selected adults in Canada were interviewed between September 2013 and May 2014 and were asked about the nature and frequency of legal problems in their everyday lives. The report *Design and Conduct of the Cost of Justice Survey* explains that the sample selection process involved two stages, where a random list of Canadian telephone numbers were generated from commercially available lists of telephone numbers.⁶² Households without a telephone and households that only have cell phones were thus excluded from this main sample group. The second stage involved randomly selecting a respondent from the households who had multiple eligible persons by selecting the person with the next birthday. Supplementary interviews were also conducted with 212 respondents in cellphone-only households. As cell phones are

⁶⁰ Pascoe Pleasence & Nigel J Balmer, “Caught in the Middle: Justiciable Problems and the Use of Lawyers” in Trebilcock, Duggan & Sossin, *supra* note 4, 27 at 31 (The authors provide a table of twenty-three national surveys of legal needs conducted by thirteen separate countries since 1993).

⁶¹ Trevor CW Farrow et al, *Everyday Legal Problems and the Cost of Justice in Canada: Overview Report* (Toronto: Canadian Forum on Civil Justice, 2016) [Farrow et al, *Everyday Legal Problems and the Cost of Justice in Canada*].

⁶² David Northrup et al, *Design and Conduct of the Cost of Justice Survey* (Toronto: Canadian Forum on Civil Justice, 2016).

generally used by a single person there was no random selection of the respondent. Calls were made during the day and the evening on both weekdays and weekends. Due to the large differences in regional populations, smaller provinces were intentionally slightly over-represented and larger provinces slightly under-represented to allow for regional analysis.

The questions were designed to elucidate how ordinary individuals perceive the law, what problems they have experienced over the past three years, how those problems affected them, and how they tried to resolve those problems. The interview began with four questions to probe the respondents' general attitude of the justice system. For example, respondents were asked to what extent they agreed with or disagreed with such statements as "The legal system works better for rich people than for poor people."⁶³ In the main portion of the interview, respondents were asked about eighty-five different legal problems that occur in the day-to-day lives of individuals and that have a formal legal remedy. In order to filter out trivial issues, respondents were specifically told that the interview was about serious problems that were not easy to fix and that happened in the last three years. The questions, however, were not framed as being explicitly legal in nature. For example, one question asked, "In the last three years have you be unfairly fired or dismissed from a job?"⁶⁴ In contrast, consider an explicitly legal question such as, "Have you ever sued your employer in court for wrongful dismissal?" Such deliberate phrasing allowed the survey to capture data on problems that the respondent may not recognize as having a legal element.

⁶³ Canadian Forum on Civil Justice, *Everyday Legal Problems and the Cost of Justice in Canada: Survey* (Toronto: Canadian Forum on Civil Justice, 2016) at 2.

⁶⁴ *Ibid* at 4.

The legal problem questions were organized into sixteen problem types such as consumer problems, employment problems, or family problems (see Table 1).

Table 1: Number of Questions in Each Problem Category

	Problem Category	Number of Questions
1	Consumer	6
2	Employment	7
3	Debt	7
4	Social Assistance	3
5	Disability Assistance	4
6	Housing	10
7	Immigration	8
8	Discrimination	6
9	Treatment by Police	4
10	Criminal	1
11	Family	12
12	Wills and Incapacity	4
13	Personal Injury	3
14	Medical Treatment	5
15	Threatened with Legal Action	2
16	Neighbourhood Problems & Property Damage	3
	Total	85

A screening question preceded each new problem category. For example, before commencing the employment section, the respondent was asked: “In the last three years, that is since [month of interview] 2011, have you worked for pay?”⁶⁵ If the respondent answered in the negative, the subsequent employment-related questions were not asked.

Respondents who reported anywhere between one and six problems were then asked a series of questions about how they resolved one of those problems, how they understood the problem, whether they received legal assistance, and the current status of the problem. If respondents reported more than one problem, these questions were asked about two of the problems; the problems for further inquiry were randomly selected and were not chosen based on factors such as seriousness, costs, or timing. The respondents

⁶⁵ *Ibid.*

were then asked how the legal problems impacted them in terms of such things as health, employment, or housing. Finally, demographic data of the respondents were collected by asking questions about their personal characteristics.

All of these responses were then coded into a data file and analyzed through the statistical software program SPSS. Of the 3,263 surveyed (including cell phone-only surveys) 1,191 respondents reside in Ontario. In order to focus this paper's analysis on Ontario, these respondents were isolated and copied into a new data set. It is important to isolate the Ontario respondents particularly in the context of civil legal needs for several reasons. Firstly, in Canada, most civil legal needs fall within the exclusive jurisdiction of the provinces.⁶⁶ Likewise, the administration of justice, including civil procedure, are a provincial matter. This means that most reforms and initiatives will be administered at the provincial level. Similarly, the primary public vehicles for legal support are the various provincial legal aid service providers. Any reform of these providers must necessarily be done at the provincial level. Finally, legal needs may differ by province and in order to more precisely address any gaps to access to justice the provinces need to be informed about what the civil legal needs landscape looks like specifically in their jurisdiction.

While the Cost of Justice project survey provides the foundation to this project, two other major surveys are of particular note to the Ontario context and are used as a basis of comparison. The first survey of interest was conducted in 2006 by Ab Currie for the Department of Justice Canada and was presented in a report entitled *The Legal Problems of Everyday Life: The Nature, Extent and Consequences of Justiciable Problems Experienced by Canadians*.⁶⁷ This survey sought to examine the degree to

⁶⁶ One notable exception would be bankruptcy and insolvency problems.

⁶⁷ Currie, *supra* note 48.

which Canadians experience legal problems and had a sample size of 6,665 adults from all ten provinces. Similar to the Cost of Justice project survey, interviews were conducted by telephone and respondents were asked questions about eighty specific problems that they may have experienced over the prior three years. These eighty legal problems were grouped into fifteen problem categories. Respondents were also asked questions about how they resolved their problems, how these problems impacted their lives, their general attitude towards the law, and their demographic characteristics.

A second important survey was conducted in June 2009 for the Ontario Civil Needs Project. This survey consisted of 2,000 telephone interviews with Ontarians who had a combined annual household income of less than \$75,000.⁶⁸ The respondents were asked a series of seventy-three questions relating to such issues as the types of legal problems they had experienced, their perception of the legal system, the seriousness of problems, the methods of resolution, and their personal demographics. The Ontario Civil Needs Project also conducted a series of seven focus groups with front-line legal and social service providers.⁶⁹ The survey and focus groups resulted in two reports: *Listening to Ontarians: Report of the Ontario Civil Legal Needs Project*,⁷⁰ released in 2010, and *The Geography of Civil Legal Services in Ontario*,⁷¹ released one year later.

These two surveys have been the subject of numerous and notable studies that have used the data to draw relevant observations and conclusions that have helped inform

⁶⁸ Environics Research Group, *Civil Legal Needs of Lower and Middle-Income Ontarians: Quantitative Research* (Toronto: Environics Research Group, 2009) [Environics Research Group, *Civil Legal Needs of Lower and Middle-Income Ontarians: Quantitative Research*].

⁶⁹ Environics Research Group, *Civil Legal Needs of Lower and Middle-Income Ontarians: Qualitative Research with Stakeholders* (Toronto: Environics Research Group, 2009).

⁷⁰ Ontario Civil Legal Needs Project, *supra* note 6.

⁷¹ Jamie Baxter & Albert Yoon, *The Geography of Civil Legal Service in Ontario* (Toronto: The Ontario Civil Legal Needs Project Steering Committee, 2011).

the access to justice conversation in the province.⁷² This may lead one to wonder why a third survey of Ontario civil needs is necessary. There are a few reasons why the Cost of Justice project is valuable to those who are interested in Ontario's legal needs. Though comprehensive, the report based on the 2006 Department of Justice survey examined legal needs from a national context. While the report does provide some findings at the provincial level, it is fundamentally from a national perspective and, due to the fact that civil law is the mandate of the provinces, policy makers would benefit from findings that focus on legal needs from a provincial perspective. Further, legal needs are not static – economies change, demographics change, policies change, and, therefore, legal needs change. It will be of interest to see if and how legal needs have significantly changed in the intervening eight years between the Department of Justice survey and the Cost of Justice project survey.

Though more recent, the 2009 Ontario Civil Legal Needs Project also does not provide a complete framework for civil legal needs in Ontario. To start, the survey only interviewed individuals with a household income of \$75,000 or less.⁷³ While this was a deliberate choice by the authors, who intended to focus on the needs of middle- and lower-income individuals, it sheds little light on the needs of upper middle-income and high income individuals nor does it allow for a comparison of needs between income categories. Moreover, the Civil Legal Needs Project survey engaged in a completely different methodology than that used by the Department of Justice survey and the Costs

⁷² See e.g. Jamie Baxter, Michael Trebilcock & Albert Yoon, "The Ontario Civil Needs Project: A Comparative Analysis of the 2009 Survey Data" in Trebilcock, Duggan & Sossin, *supra* note 4, 55; Carol McEown, *Civil Legal Needs Research Report* (Vancouver: The Law Foundation of British Columbia, 2009); Melina Buckley, *Moving Forward on Legal Aid: Research on Needs and Innovative Approaches* (Ottawa: Canadian Bar Association, 2010).

⁷³ Ontario Civil Legal Needs Project, *supra* note 6 at 10.

of Justice project survey. Where both those two surveys asked respondents whether they experienced specific types of legal problems (eighty and eighty-five problems respectively), the Civil Legal Needs Project survey limited itself to a single open-ended question, preferring that the respondent define legal needs him or herself. No doubt there are strengths and weaknesses to both methodologies; however, this differing methodology makes the findings of the Ontario Civil Legal Needs Project survey difficult to compare to the Department of Justice survey.

Chapter 4

Findings

A. Introduction

If it is accepted that access to justice reforms must centre on the legal needs of individuals⁷⁴ then an empirical understanding of how individuals experience the law is fundamental to the discussion. Of particular importance are the questions of who experiences legal problems, how do they resolve those problems, and what social costs are incurred by them. By examining the 2014 Cost of Justice project survey data this paper provides quantitative evidence that answers these questions within the province of Ontario. By considering these answers, reformers may better understand where gaps in access to justice exist and how to better allocate resources in order to address these gaps.

B. Incidence of Civil Legal Problems

i. Frequency, Type and Number of Problems

When speaking of incidence of civil legal problems experienced by Ontarians, this paper is looking to three important indicators: 1) the frequency of problems experienced; 2) the types of problems experienced; and 3) the number of problems experienced. In regards to frequency of problems, the first observation of note is that 52.9% of Ontarians surveyed for the Cost of Justice project experienced one or more justiciable problems during the three-year reference period. This is slightly higher than the national rate of 47%. This number does not comment on whether these individuals were able to resolve their

⁷⁴ See *e.g.* Action Committee on Access to Justice, *supra* note 6 (This is the accepted Canadian perspective).

problem or whether they were satisfied with the resolution. However, it does show that legal problems are pervasive in the day-to-day lives of Ontarians.

In terms of the types of problems experienced, the three most common were those that can be categorized as either consumer problems (22.7% of all reported incidences), debt problems (22.1%), or employment problems (15.4%). The most infrequent type of problems experienced were criminal law problems (0.3% of all reported problems), problems regarding disability assistance (1.0%), problems with obtaining social assistance (1.4%), and incidences of being threatened with a legal action or court proceedings (1.4%) (see Table 2).

Table 2: Number of Problems Reported by Category

Type of Legal Problem	Number of Problems Reported	Percentage of Problems Reported
Consumer	464	22.7%
Debt	451	22.1%
Employment	314	15.4%
Neighbours	177	8.7%
Family	122	6.0%
Discrimination	111	5.4%
Wills and Powers of Attorney	79	3.9%
Medical Treatment	63	3.1%
Police	56	2.7%
Housing	53	2.6%
Personal Injury	38	1.9%
Immigration	33	1.6%
Obtaining Social Assistance	29	1.4%
Threat of Legal Action	29	1.4%
Obtaining Disability Assistance	20	1.0%
Criminal	6	0.3%
Total	2,045	100.2%⁷⁵

With reference to the specific number of problems experienced by respondents over the three-year reference period, it is not surprising that as the number of problems experienced increases, the percentage of respondents who have experienced that number

⁷⁵ Total percentage of problems experienced exceeds 100% due to rounding.

decreases. Of those who had experienced problems, the majority (36.7%) only experienced one problem during the reference period. Fewer individuals experienced two problems (21.1%) and even fewer three problems (12.1%). The response rate plateaus at four and five problems (7.1% and 7.3% respectively) but rises for those who have experienced six or more problems (15.7%).

Table 3: Number of Problems Experienced

	1 Problem	2 Problems	3 Problems	4 problems	5 problems	6 or more problems
Percentage of Ontarians	36.7%	21.1%	12.1%	7.1%	7.3%	15.7%

ii. Comparison with Other Surveys

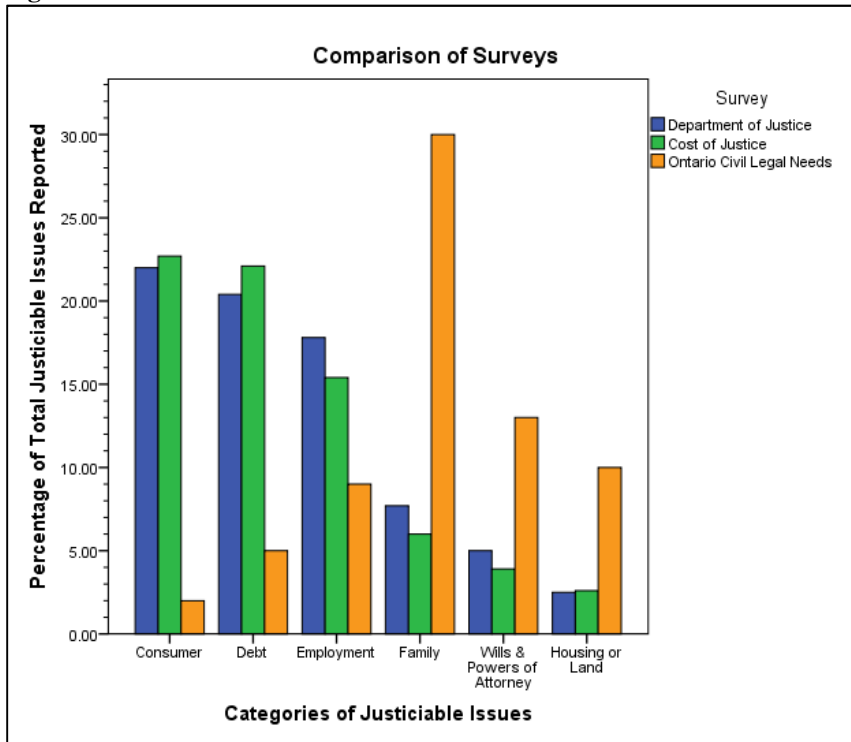
When comparing the Cost of Justice project survey with previous surveys, the first observation of note is the rate of justiciable instances. As noted above, the Cost of Justice project survey found that 52.9% of Ontarians experienced a justiciable problem during the three-year period. The Department of Justice survey conducted in 2006 found comparable numbers, noting that 44.6% of Canadians and 49.4% of Ontarians experienced one or more justiciable problem over a three-year reference period.⁷⁶ The Ontario Civil Legal Needs survey conducted in 2009, however, found a smaller number. According to that survey, only about 38% of Ontarians had a civil legal need over a three-year reference period.⁷⁷ More striking, however, is the substantial differences between the survey results regarding the *type* of justiciable issues experienced. As noted above, the Cost of Justice project survey found consumer problems, debt problems, and

⁷⁶ Currie, *Legal Problems of Everyday Life*, *supra* note 48 at 16.

⁷⁷ Ontario Civil Legal Needs Project, *supra* note 6 at 18 and 21.

employment problems to be the three most common categories of legal problems reported amongst Ontarians. Similarly, the Department of Justice survey found that the three most common types of incidences reported throughout Canada were also related to either employment problems (25.7% of all reported incidences), debt problems (23.3%), or consumer problems (19.4%).⁷⁸ Yet the three most common types of problems reported through the Ontario Civil Legal Needs Project were related either to family relationship problems (30% of all reported incidences), wills and powers of attorney problems (13%), or housing or land problems (10%).⁷⁹ All three of those categories were actually found to make up a fairly small percentage of the total problems reported in the other two surveys. (See Figure 1.) These are striking differences that warrant further exploration.

Figure 1



⁷⁸ Currie, *supra* note 48 at 14 (This report does not break the frequency of problem categories down by province).

⁷⁹ Ontario Civil Legal Needs Project, *supra* note 6 at 21.

Fundamentally these differences are the result of how the survey questions were framed. To identify incidence rates, the Ontario Civil Legal Needs survey asked a single and open-ended question:

There are many different problems or issues that might cause a person to need legal assistance. What are the most likely reasons you can think of for why you or someone in your household might need legal assistance in the near future?⁸⁰

This type of question requires the respondent to recall a problem, recognize that their problem had a legal element, and be able to express it as such. In contrast, the Department of Justice and the Cost of Justice project surveys asked questions about specific legal problems. For example, to find incidences of debt problems, the Department of Justice survey asked each respondent if they were harassed by a collection agency, were unfairly refused credit due to inaccurate information, had a dispute over a bill or invoice, or had problems collecting money.⁸¹ Likewise, the Cost of Justice project survey asked respondents eight questions relating to debt such as whether the respondent declared personal bankruptcy, were harassed by a collection agency, were unfairly refused credit due to inaccurate information, or had problems collecting money owed to them. These problems may not be viewed by the general public as having a legal element because one is not required to engage the formal legal system to deal with them. This would help explain why the Ontario Civil Legal Needs survey found that only 5% of the incidences were classified as debt problems.⁸² It would likewise help explain why the Cost of Justice project survey and the Department of Justice survey noted an overall higher incidence rate of civil legal problems since asking specific questions about issues

⁸⁰ Environics Research Group, *Civil Legal Needs of Lower and Middle-Income Ontarians: Quantitative Research*, *supra* note 68 at Appendix: Questionnaire 2.

⁸¹ Currie, *supra* note 48 at 94.

⁸² Ontario Civil Legal Needs Project, *supra* note 6 at 21.

not traditionally seen as having a formal legal element would capture a broader set of incidences.

The way in which the questions were framed provides further insight into why the Ontario Civil Legal Needs survey concluded that 30% of all civil justice problems were related to family relationship problems.⁸³ Those experiencing family breakdowns are much quicker to recognize the legal element inherent in the situation than those facing problems related to debt, consumer or employment. This is because the law is structured in such a way that the formal legal system oversees so many aspects of a family breakdown. In order to receive a divorce one *has* to apply to the court. Once this happens, issues of custody, support, and division of property are also often overseen by courts. Thus, family problems are clearly seen as a civil legal need. Other problems, such as debt, consumer, or employment, can be resolved without the use of lawyers or courts and therefore are less likely to be recognized by the ordinary person as having a legal element. Similarly, wills and powers of attorney generally require one to visit a lawyer and thus are clearly seen by the ordinary person as having a legal element. Hence the Ontario Civil Legal Needs survey found that wills and powers of attorney are the second most common legal need of Ontarians. From this we can conclude that ordinary Ontarians will more likely understand a legal need to be one that requires formal access to either courts or a lawyer. However, as people can be greatly impacted by legal issues that may not have such an apparent legal element – such as employment, debt, or consumer – it is important that these legal needs are also considered when discussing access to justice.⁸⁴

⁸³ *Ibid.*

⁸⁴ See *e.g.* Currie, *supra* note 48 at 73-82.

iii. Problems by Income

It is commonly recognized that low-income individuals are frequently unable to meaningfully access justice due to the high costs associated with the legal process.⁸⁵ As such, Ontario policy has been structured to provide public support to those in the lowest income categories through such mechanisms as legal aid certificates, legal clinics, or duty counsel.⁸⁶ Legal aid services alone, however, were found to be insufficient to address what policy makers have now recognized as a crisis in access to justice and attention has now shifted to other potential mechanisms – such as the creation of forums for alternative dispute resolution, the creation of specialized tribunals and courts, the expansion of public education initiatives, and the broadening of the scope of paralegal practice.⁸⁷ Recently, there has been greater acknowledgement that middle-income individuals also have difficulty accessing justice.⁸⁸ How this affects policy decisions remains to be seen, but consideration of who in actuality is denied meaningful access to justice must be recognized so that policies assist everyone who is unable to access justice. Therefore, it is of particular importance to the access to justice discussion to determine whether the incidence rate of justiciable issues is affected by a respondent's income level.

This paper acknowledges that categorizing income into three simple brackets – low, middle and high – is somewhat of a subjective exercise in that one's standard of living depends on numerous factors apart from simple income levels, such as household makeup and the cost of living in one's region. Whatever measures are used, there will inevitably be disagreement amongst scholars and policy makers regarding at what income

⁸⁵ See e.g. Action Committee on Access to Justice, *Access to Civil & Family Justice*, *supra* note 6 at 2-3.

⁸⁶ *Legal Aid Services Act, 1998*, SO 1998, c 26.

⁸⁷ See e.g. Action Committee on Access to Justice, *Access to Civil & Family Justice*, *supra* note 6 at 3-4, 10-23.

⁸⁸ See e.g. Trebilcock, Duggan & Sossin, *supra* note 4.

an individual moves from the low-income category into the middle-income category and then again into a high-income category.

This paper will turn to Statistics Canada for some objective measure of low, middle and high income. For 2013, it was reported that the median household income for all households in Ontario was \$76,510.⁸⁹ For households with two income earners the amount was a little higher at \$84,480. For lone-parent families the median income was \$40,150. And for single individuals not in census families the median income was \$23,900.⁹⁰ Statistics Canada has also developed a “low income cut-off” rate as a measure of low-income. This is the rate at which a household will spend about 20% more of their income on necessities than the average household.⁹¹ The amount varies depending on family size and the size of community where they reside. In 2011 (the most recent year for which this data is available at the time of writing), the before tax low income cut-off for an individual living alone in a large metropolitan area was \$17,274; a family of four living in the same area would be \$32,099.⁹² Taking these figures into account the Ontario Civil Needs Project defined low and middle-income Ontarians as those who had a household income of \$75,000 or less.⁹³

Perhaps of greater relevance to the discussion of legal needs is the relatively low financial eligibility threshold for legal aid certificates. The income cut-off for non-contribution aid in 2015 ranged from \$12,863 per annum for an individual living alone to

⁸⁹ Statistics Canada, *Median Total Income, by Family Type, by Province and Territory (All Census Families)*, online: Statistics Canada
<<http://www.statcan.gc.ca/tables-tableaux/sum-som/l01/cst01/famil108a-eng.htm>>.

⁹⁰ *Ibid.*

⁹¹ Statistics Canada, *Low Income Cut-Offs*, online: Statistics Canada
<<http://www.statcan.gc.ca/pub/75f0002m/2012002/lico-sfr-eng.htm>>.

⁹² Statistics Canada, *Table 2: Low Income Cut-Offs (1992 Base) Before Tax*, online: Statistics Canada
<<http://www.statcan.gc.ca/pub/75f0002m/2012002/tbl/tbl02-eng.htm>>.

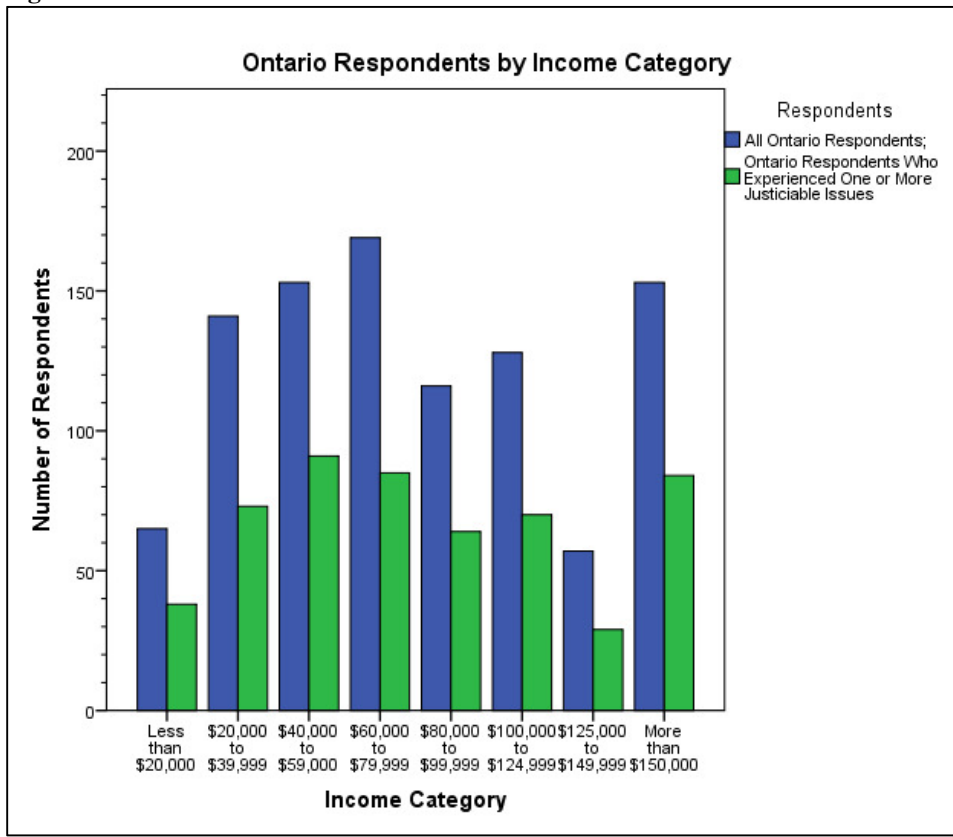
⁹³ Ontario Civil Legal Needs Project, *supra* note 6 at 10.

\$31,817 per annum for a family of five or more.⁹⁴ This means that many individuals that Statistics Canada classifies as low-income would not qualify for Legal Aid services. Furthermore, Legal Aid Ontario does not take into account an applicant's region of residence.

The Cost of Justice project survey asked respondents to classify their household income into one of eight ranges of income, as shown in Figure 2. Taking all of the above indicators into account this paper categorizes low-income as those households that earn up to \$39,999 per annum (the first two ranges of data); middle-income are those that earn \$40,000 to \$99,999 per annum (the subsequent three ranges); and high income are those earning \$100,000 or more per annum (the final three ranges). The justification for setting \$40,000 as the starting point of middle-income households is that an annual income of \$40,000 will take any household well out of the financial eligibility threshold for legal aid. It is also higher than the low-income cut off as established by Statistics Canada. The middle-income range ends with those households making up to \$99,999 so as to align the middle-income category more closely to the mean income for couple families. Though specific cases may be contextualized by such factors as size of household or cost of living, this categorization provides a rough guide for analysis and discussion.

⁹⁴ Legal Aid Ontario, *Financial Eligibility Test for Legal Aid Certificates*, online: Legal Aid Ontario <<http://www.legalaid.on.ca/en/publications/downloads/Certificate-Financial-Eligibility-Criteria.pdf>> [Legal Aid Ontario, *Financial Eligibility Test*].

Figure 2⁹⁵



Looking at all income groups within Ontario, the first observation of note is that all income categories experience justiciable problems at a fairly even rate (see Figure 2). Regardless of income category, between 50% and 59% of respondents experienced one or more justiciable issues during the three-year reference period. Another observation of note is that both the highest rate of incidence by income category (59% of respondents making a household income between \$40,000 and \$59,999 per annum) and the lowest rate of incidence (50% of respondents making a household income of between \$60,000 and \$79,999 per annum) can be classified within the broader category of middle-income.

⁹⁵ Out of the 1,191 Ontario respondents, 982 reported their income, while 209 either refused or did not know. Out of the 630 Ontario respondents who reported having experienced one or more justiciable issues during the three-year reference period, 534 reported their income category and 96 either refused or did not know.

The size of household is one factor that greatly influences whether a household would be considered low-income, middle-income, or high-income. Understandably, as the size of household – and therefore the number of dependents – increases, the household budget becomes stretched. One may expect this factor to affect the rate of justiciable issues by income. Yet, the survey data shows that the rate of justiciable problems holds mostly true even when income groups are further broken down into sizes of household (see Table 4). Generally those with a household of just two people have a smaller percentage of individuals who have experienced one or more justiciable problems, while those with a household of five persons have the highest percentage of respondents who experienced a justiciable issue. However, there is no statistical significance between size of household and rate of justiciable problems.⁹⁶

Table 4: Justiciable Problems by Income and Size of Household

	Low Income		Middle Income		High Income		All Income Categories	
	Number of Respondents	Percentage that Experienced Problems	Number of Respondents	Percentage that Experienced Problems	Number of Respondents	Percentage that Experienced Problems	Number of Respondents	Percentage that Experienced Problems
Single-Person Households	86	48.8%	77	58.4%	24	62.5%	187	54.5%
Two-Person Households	69	55.1%	186	50.0%	105	43.8%	360	49.2%
Three-Person Households	24	66.7%	73	60.3%	64	59.4%	161	60.9%
Four-Person Households	11	54.5%	65	47.7%	105	55.2%	181	52.5%
Five-Person Households	10	70.0%	24	70.8%	36	66.7%	70	68.6%
Six or More Person Households	6	33.3%	12	75.0%	4	50.0%	22	59.1%
TOTAL	206	53.9%	437	54.7%	338	54.1%	981 ⁹⁷	54.3%

⁹⁶ Where $p < 0.05$ (Unless stated otherwise, the significance level used for all tests in this paper is 5%).

⁹⁷ Of the 982 Ontarians that report their income, one refused to report the number of individuals in their household.

When examining the size of household alone the range of incidence rate spans on the low end from 49.2% for two-person households to 68.6% for households of five or more persons. For comparison, the range of incident rate for income alone was 50% to 59%. When examining justiciable problems by income and size of household, the range expands from 33.3% (for low-income households of six or more persons) to 75% (for middle-income households of six or more persons). The reason for the increased range most likely has to do with the smaller sample sizes once more variables are considered, leaving one to conclude that there is no strong relationship between income and rate of justiciable problems – even when the size of the household is taken into account. However, more data would be needed to make this conclusion with absolute confidence.

In terms of the specific number of problems experienced by respondents of a particular income group, each of the eight income categories generally follow the same pattern outlined above. The majority of individuals who have experienced problems tend to have experienced only one problem during the three-year reference period. Fewer respondents experienced two problems and the number continues to drop for as the number of problems increases. In a few categories the number of respondents who have experienced five problems actually increases and in all categories those who have experienced six or more problems also increases (see Table 5). The jump in the last category is likely due to the fact that the survey grouped all problems of six or more into one category. The only category where there was a statistically significant difference was between middle- and high-income individuals who experienced two problems. However, given that this was the only category with a significant difference, it can be concluded with caution that no single income category is more likely to have a greater propensity

for experiencing more problems. The next question would be whether specific problem types are more prevalent to certain income groups.

Table 5: Justiciable Problems by Income and Number of Problems

	Low Income		Middle Income		High Income		All Income Categories	
	Number of Respondents	Percentage that Experienced Problems	Number of Respondents	Percentage that Experienced Problems	Number of Respondents	Percentage that Experienced Problems	Number of Respondents	Percentage that Experienced Problems
No Problems	95	46.1%	198	45.2%	155	45.9%	448	45.6%
1 Problem	35	17.0%	87	19.9%	56	16.6%	178	18.1%
2 Problems	23	11.2%	40	9.1%	54	16.0%	117	11.9%
3 Problems	12	5.8%	37	8.4%	17	5.0%	66	6.7%
4 Problems	7	3.4%	22	5.0%	14	4.1%	43	4.4%
5 Problems	9	4.4%	15	3.4%	16	4.7%	40	4.1%
6 or more Problems	25	12.1%	39	8.9%	26	7.7%	90	9.2%
TOTAL	206	100.0%	438	100.0%	338	100.0%	982	100%

iv. Problems by Type

As noted above, the three most common types of problems faced by Ontarians are consumer problems, debt problems, and employment problems. Next, this paper will look at whether certain income groups are more likely to experience certain types of problems. Emphasis will be placed on the three most common problem categories; however, other categories also warrant some discussion.

a. Consumer Problems

No single income group has a monopoly on consumer problems. Those in the lowest income bracket (less than \$20,000 per year) encounter consumer problems at the same rate (5.9%) as those in one of the higher income brackets (\$125,000 to \$149,000).

Likewise there is a fairly high proportion of consumer problems (17.0%) experienced by those in the highest income group and those in two of the groups that are categorized in this paper as middle-income (17.7% for those making \$40,000 to \$59,000 and 19.2% for those making \$60,000 to \$79,000). These numbers show that income is not a strong indicator of whether an Ontarian will experience a consumer problem.

In regards to the specific number of problems experienced by those who have had at least one consumer issue during the reference period it can be seen that this problem category mirrors the general trend where fewer individuals report more problems. However, it is worth noting that for those within this category there is a fairly significant jump for those who have experienced six or more problems. In this category 24.2% have had six or more problems, compared to 15.7% of all problem types.

Table 6: Number of Problems Experienced: Consumer Problems

	1 Problem	2 Problems	3 Problems	4 Problems	5 Problems	6 or More Problems
All Problem Types	36.7%	21.1%	12.1%	7.1%	7.3%	15.7%
Those With At Least One Consumer Problem	28.3%	17.8%	11.5%	9.2%	8.9%	24.2%

b. Debt Problems

The results regarding debt problems are somewhat surprising in that one may expect those with lower income to have a greater propensity to experience a debt problem. But, like consumer problems, no single income group dominated this category. Those in the lowest income bracket accounted for 7.9% of all debt problems whereas those in the highest income bracket accounted for 16.2% of all problems. The three middle-income categories accounted for 17.4%, 16.2%, and 10.7% of debt problems respectively. Thus, like consumer problems, income is not a strong indicator of whether an Ontarian will experience a debt problem.

In regards to the specific number of problems experienced by those who have experienced at least one debt problem during the three-year reference period, this too follows the same general pattern. However, among those who experienced debt problems there is a far greater percentage of individuals who have experienced five or more problems than compared with the results for all problem types.

Table 7: Number of Problems Experienced: Debt Problems

	1 Problem	2 Problems	3 Problems	4 Problems	5 Problems	6 or More Problems
All Problem Types	36.7%	21.1%	12.1%	7.1%	7.3%	15.7%
Those With At Least One Debt Problem	21.5%	19.7%	12.1%	7.3%	11.1%	28.4%

c. Employment

Like the other two most common justiciable issues, employment problems do not cluster around a specific income group. While those in the lowest income bracket as well as those whose household incomes are between \$125,000 and \$149,999 each make up 3.7% of all employment problems, all other groups make up between 12.3% and 17.3% of all employment problems. The three middle-income categories make up 16.7%, 13.0%, and 16.7% of employment problems respectively.

In regards to the specific number of problems experienced by those who have experienced at least one employment problem during the three-year reference period it can be seen that there is a noticeably higher percentage of those who experienced three or more problems. Thus, those who experience an employment issue are more likely to experience multiple problems than those who may experience other types of legal problems.

Table 8: Number of Problems Experienced: Employment Problems

	1 Problem	2 Problems	3 Problems	4 Problems	5 Problems	6 or More Problems
All Problem Types	36.7%	21.1%	12.1%	7.1%	7.3%	15.7%
Those With At Least One Employment Problem	16.8%	16.3%	14.7%	10.3%	10.9%	31.0%

d. Other Problem Categories

Though the three most experienced problems are common to all income groups, there are some categories that are more prevalent amongst lower income groups. Discrimination problems are far more common in the three lowest income brackets: individuals in those brackets combined represent 68% of all those who reported a discrimination problem. Likewise housing issues tend to cluster in the lower income groups with 68% of respondents who experienced a housing problem coming from one of the three lowest income brackets. Though respondents from all income brackets reported problems in obtaining disability assistance, the lowest three brackets encompass a strong majority (21.4% each). Perhaps not surprisingly, no respondents making \$100,000 per annum and above reported problems with obtaining social assistance. More surprisingly, however, is that problems with obtaining social assistance are fairly constant for those in the \$60,000 to \$79,999 bracket and below.

Family law problems warrant some discussion given that, as discussed below, a rather large proportion of public assistance is directed towards family law issues. Like the other justiciable issues, family problems do not cluster around a specific income group. In the lowest income bracket, 6.7% of respondents reported family law problems. The next two income categories each account for 16.7% of respondents who experienced family law problems. Then those with a household income of \$60,000 to \$79,999 account for the highest proportion of respondents at 21.7%. After that the percentage of

respondents drop (15%, 8.5%, 5%, and 10% in the subsequent income categories). It is exceptional, however, that more than half (53.9%) of those with at least one family problem have experienced five or more problems and that 78.5% have experienced three or more problems. One probable reason for this is due to the nature of family law wherein one issue often directly leads to other related issues. For example, once divorce proceedings begin, it is likely that issues of custody, support, and division of property need to be resolved as well.

Table 9: Number of Problems Experienced: Family Problems

	1 Problem	2 Problems	3 Problems	4 Problems	5 Problems	6 or More Problems
All Problem Types	36.7%	21.1%	12.1%	7.1%	7.3%	15.7%
Those With At Least One Family Problem	9.2%	12.3%	20.0%	4.6%	10.8%	43.1%

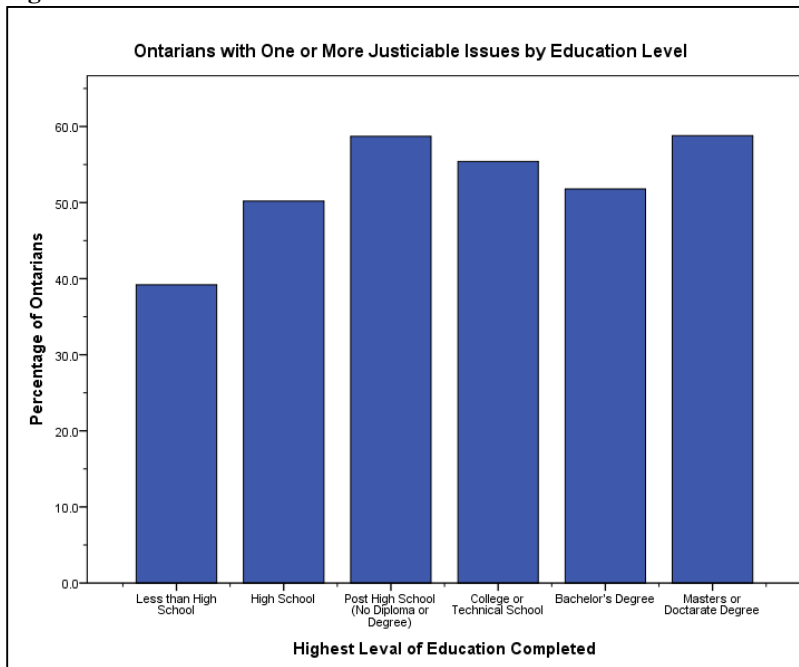
Finally, it should be noted that all other problem categories – immigration, neighbours, wills and powers of attorney, police, criminal, personal injury, medical treatment, and threat of legal action – do not cluster around any particular income category. This conclusion is made with some reservation given the small sample size of many of these problem types; however, it can be stated with confidence that that no income category is immune to any particular problem type (with the exception of the highest income earners in regards to obtaining social assistance).

Having examined the incidence rate of justiciable issues amongst Ontarians of differing income groups and having concluded that income has little effect on the rate of incidence, our next step is to determine whether any other social demographic factors greatly influence the rate of incidence amongst Ontarians.

v. Other Social Demographic Factors

In terms of education, respondents were asked for their highest level of education completed and the responses were then grouped into one of six categories; less than high school, high school, post high school (but no degree or diploma), completed college or technical school, bachelor's degree, or masters/doctorate degree. Education does have some impact on the rate of incidence where the highest education category has a statistically significant higher rate of justiciable issue than the lowest education category: 39.2% of those with less than high school education experienced one or more justiciable issues, whereas 58.8% of those who hold a masters or doctorate experienced a justiciable issue. There was no statistical significance between any other categories of education.

Figure 3



In terms of employment status, those who are classified as working experienced a higher rate of justiciable issues (58.9%) than those not working (45.2%) and those who

were working part-time, including retirees and students (48.9%). Although there is no statistical significance between those working and those working part-time there is statistical significance between those working and those not working. In terms of the number of problems, the one figure that stands out is that 15.3% of those working part-time experienced two problems, which is a significant difference compared to the 8.0% of those not working who experienced two problems.

Gender has little impact on the incidence of civil legal needs. A slighter higher percentage of women (53.4%)⁹⁸ experienced a justiciable issue than men (52.2%);⁹⁹ however, there is no statistical significance in this difference. Similarly, gender had little impact on the numbers of problems experienced. For example, 21.8% of males experienced one problem compared to 17.7% of females and 7.8% of males experienced six or more problems compared to 8.7% of females.

Finally, in terms of age the oldest respondents had the lowest percentage of individuals who experienced problems (36.5%) and was the only statistically significant age category. All other age categories experienced problems at a fairly similar rate (between 57.4% to 61.1%). In terms of number of problems, the youngest respondents had the highest percentage (13.4%) of individuals who experienced six or more problems, whereas the oldest had the least (6.1%). There was also statistical significance between these two age categories for those experiencing no problems and those experiencing five problems, but otherwise age does not have much of an effect on the number of problems experienced.

⁹⁸ n=701.

⁹⁹ n=490.

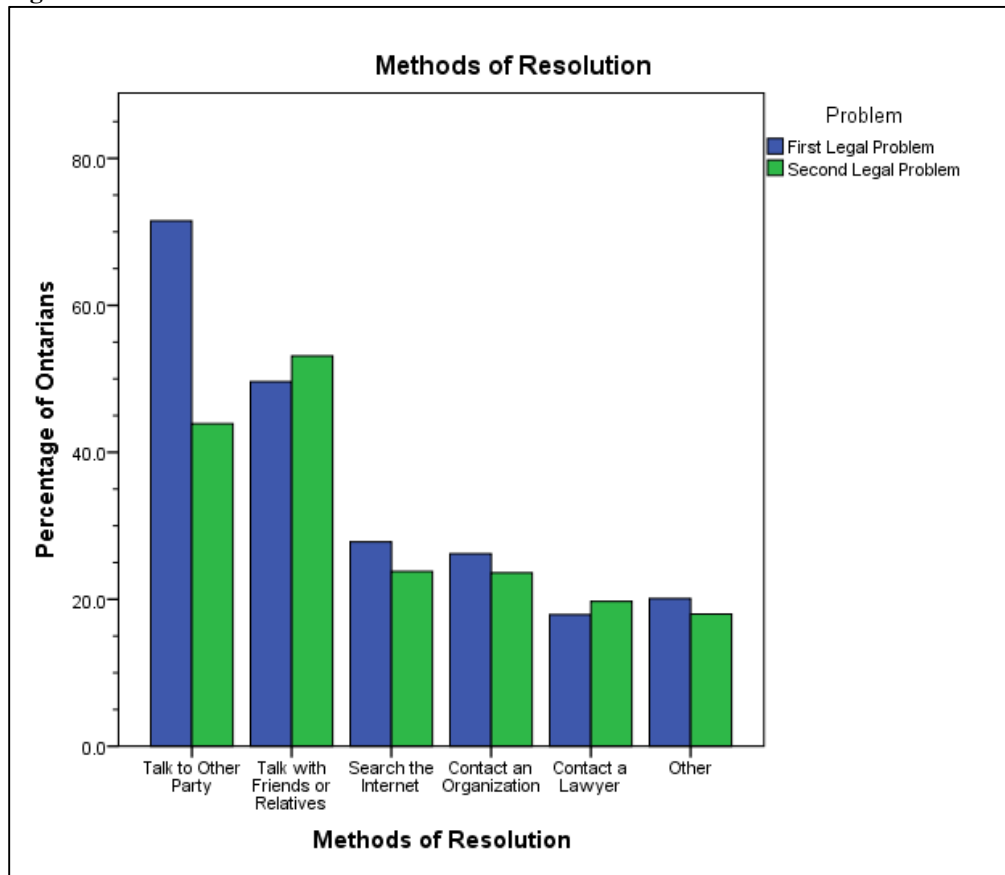
C. Response to Civil Legal Problems

i. Methods of Resolution

a. Informal Self-Help

The strong majority of Ontarians who have experienced legal problems take some type of action in an attempt to resolve their issue. The Cost of Justice project survey found that only about 4.3% of Ontarians who reported legal needs failed to take any steps to attempt to resolve their problems. Though it may not be surprising that most people would try to resolve their legal issue in some manner, what is surprising is that among those that did take action, only a small percentage actually sought formal legal advice. Instead, Ontarians tended to engage in types of resolution that could be categorized as informal self-help methods. Specifically, the strong majority of Ontarians will try to resolve their problem by talking to the other party directly (71.5%), by seeking the advice of friends or relatives (49.6%), and/or by searching for information on the internet (27.8%). In terms of looking for assistance, approximately one-quarter of Ontarians with legal needs sought non-legal assistance by contacting an organization, such as the police, a union, or a professional association, for advice or guidance (26.2%). Only 17.9% of respondents stated that they sought formal legal assistance by contacting a lawyer for advice at some point during their resolution process (see Figure 4). These numbers do not change significantly when looking how Ontarians try to resolve a second legal problem, except that fewer respondents talked to the other party directly (56.1%) and a few more contacted a lawyer (19.7%).

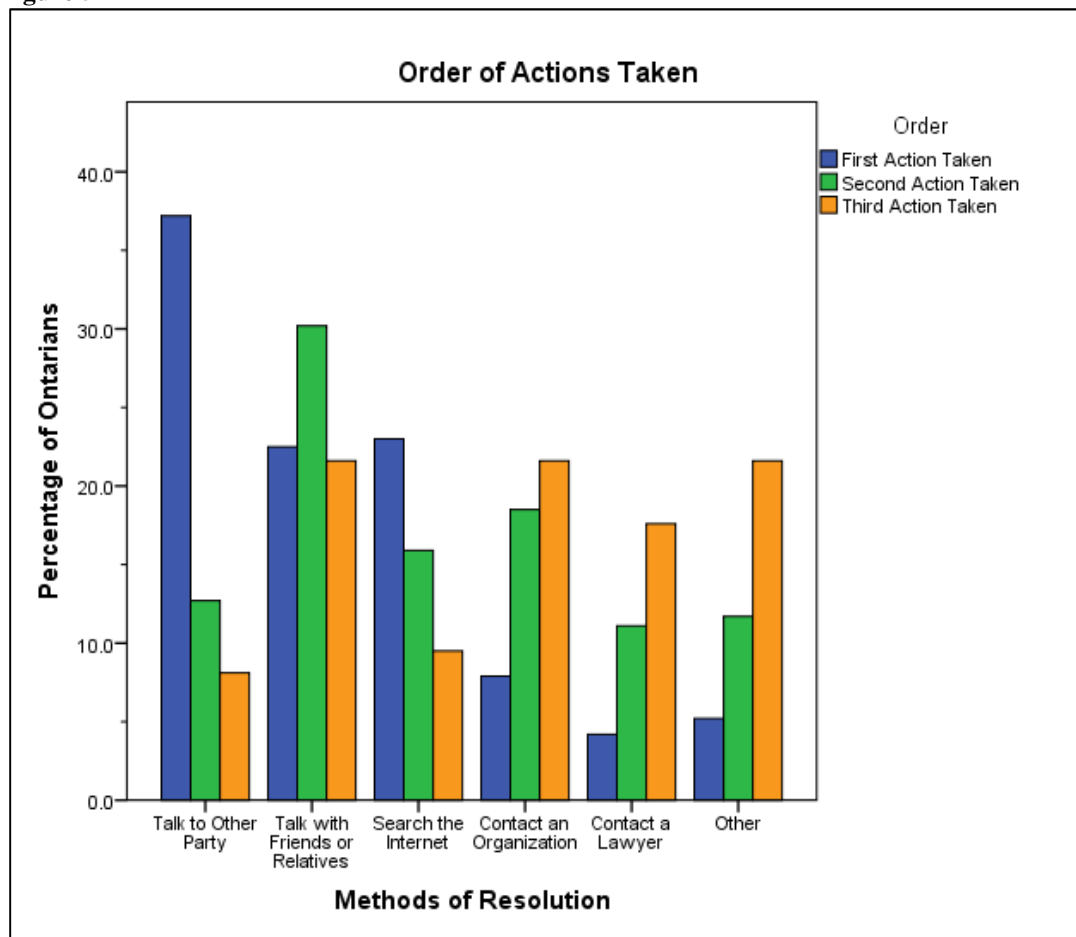
Figure 4



The specific order of actions that Ontarians take to address their problems confirm this preference towards some form of self-help. Most Ontarians will first attempt to talk to the other party directly in order to resolve their problem (37.2%). Another significant proportion will first seek out information from informal sources such as the internet (23%) or family or friends (22.5%). This means that a strong majority (82.7%) will first attempt some form of self-help to resolve their legal problem. Only a few Ontarians will first seek help from a third-party organization (7.9%), and most will not contact a lawyer as their first response to a problem (4.2%). Should their first method not resolve the issue, most people will then seek out further information from informal sources (internet, family and friends – combined at 46.1%) or contact an organization (18.5%). It is interesting that for

their second method of resolution, almost the same percentage of Ontarians will talk to the other side directly (12.7%) as talk to a lawyer (11.1%). While most Ontarians will take two actions to resolve their problem, only 39.0% of Ontarians will be required to take a third action. At that point, the percentage who then went to a lawyer (17.6%) and talked to an organization (21.6%) again increased while talking to the other side decreased further (8.1%) (see Figure 5).

Figure 5



This data creates an interesting narrative about how individuals respond to their legal problems. Generally, Ontarians will first look to resolve their problems by engaging in informal self-help methods. They will do this predominantly by trying to directly resolve

the issue with the other side and/or by gathering information from friends, family, or the internet to better equip themselves to resolve their problem. Only when these self-help methods fail do Ontarians reach for assistance from outside organizations such as the police, their union, or their professional association and it is only when all other methods have failed that people engage lawyers.

b. Legal Advice

As noted above, most people do not seek legal advice when resolving their problem. Only 17.9% of Ontarians contacted a lawyer at some point during the resolution process of their first legal issue discussed and only 19.7% of Ontarians contacted a lawyer during the resolution process of their second legal issue discussed. However, if an individual does seek legal advice the majority of those (77.0%) contacted private legal representation.¹⁰⁰ A few received help from a free legal clinic (7.0%), qualified for legal aid (4.0%), or called a telephone legal aid service (3.0%); here there was no indication of whether these services were provided by Legal Aid Ontario or some other government or non-government agency (e.g. Office of the Worker Advisor). Further there was no distinction made between whether a private lawyer was offering their services on a pro bono basis or not. This reflects that people may not recognize the differences between the myriad of publically funded or volunteer organizations that provide legal services and they simply categorize them all under the familiar title of “legal aid.” Supporting this conclusion is the fact that a fair number of Ontarians who sought legal advice (8.0%) stated they did not know where they received their legal advice from. These numbers also show that most people will obtain

¹⁰⁰ The question made no distinction between lawyer and paralegal. This figure includes the 2.0% of Ontarians who stated they obtained advice from a lawyer via a website found on the internet.

their legal advice – whether due to necessity or choice – from private legal representation rather than publically funded services.

c. Formal Adjudication

Few people with legal problems actually had their issue adjudicated by a formal court or tribunal. Only 5.9% of all Ontarians with a legal problem attended a formal court or tribunal for their first legal problem. This figure rises slightly to 6.9% for those who had a second legal problem. Of those who did go to formal adjudication, most appeared before either the superior or provincial court (48.5%). Many more attended at a tribunal or other non-court body (36.4%), and only a few attended at small claims court (6.1%). A significant remainder did not know what kind of forum they appeared before (9.1%) – perhaps again speaking to the confusion many have when confronting the law. Almost half of Ontarians who appeared before a formal adjudicative body were self-represented (48.5%), whereas only about a third of Ontarians who appeared before a formal adjudicative body were represented by a lawyer (36.4%). A few stated they were represented by a trained advocate, but not a lawyer, such as a paralegal (3.0%) or had a friend or relative represent them (3.0%). This high number of self-represented litigants may be problematic as self-represented litigants are commonly understood to be particularly vulnerable due to a lack of income, assets, and education.¹⁰¹

d. How People Want to Resolve their Problem

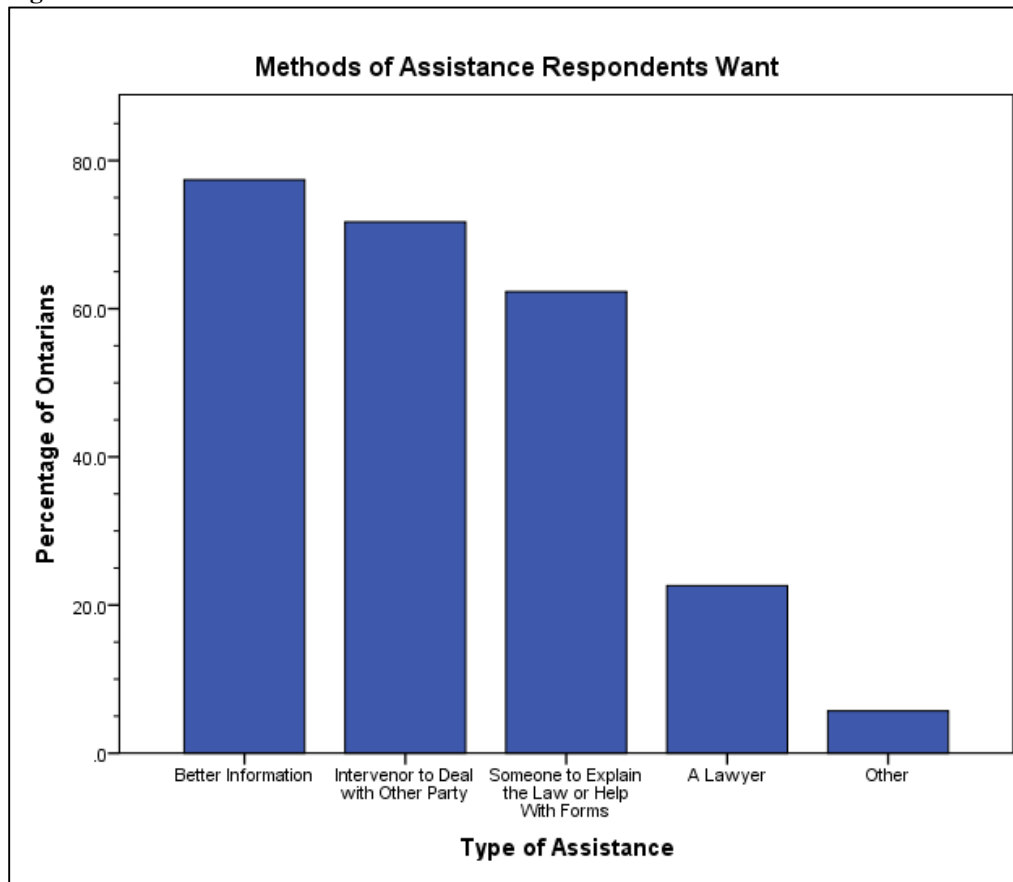
Most Ontarians do not believe assistance would have improved their situation. Of those who had problems but did not receive assistance, only 35.3% stated that they believed things would have worked out better had they received assistance compared to 59.3% who

¹⁰¹ See e.g. Trevor CW Farrow et al, *Addressing the Needs of Self-Represented Litigants in the Canadian Justice System* (Toronto and Edmonton: Association of Canadian Court Administrators, 2012) at 16.

stated it would not have turned out better and 5.3% who did not know. When this question is examined by income category, it seems that the perception that assistance would have improved the resolution declines as income goes up. Just over half (52.2%) of low-income Ontarians believed assistance would have helped, while 39.6% of middle-income Ontarians felt assistance would have helped, and only 26.0% of high-income Ontarians believed this.

For those who believe assistance would have resulted in a better outcome, most would have liked better information (77.4%), someone to intervene with and deal with the other party (71.7%), and/or someone to explain the legal aspects or help them with forms and documents (62.3%). Only 22.6% actually believed a lawyer would have improved the result (see Figure 6). Therefore it is not surprising that most people would still prefer self-help methods of resolution. The majority of Ontarians (71.7%) stated that if they had received better information or help they still would have preferred to deal with the problem on their own as much as possible. Common reasons cited for this include a feeling of personal responsibility (18.4%), privacy issues (15.8%), cost of getting legal assistance (10.5%), and low probability of getting good assistance (10.5%).

Figure 6



ii. Comparison with Other Surveys

The 2006 Department of Justice survey explored responses to legal problems in a slightly different manner than the Cost of Justice project. Where the Cost of Justice project survey presented a list of possible methods of resolution to respondents and asked them to identify all that applied, the Department of Justice survey first asked if the respondent did something to resolve the problem and, if so, followed up by asking if they attempted to resolve it on their own or if they sought assistance – whether legal or non-legal.¹⁰² The Department of Justice survey does not elaborate on what is meant by resolved the problem

¹⁰² Currie, *supra* note 48 at 102-104.

on their own, but presumably it would include the two main self-help methods identified in the Cost of Justice survey being talking to the other side and searching the internet for information. Similarly, the Department of Justice's category of receiving non-legal assistance would presumably include such methods identified in the Cost of Justice project survey as talking to family and friends as well as seeking advice from a third-party organization.

The Department of Justice survey found that the most common response to a justiciable issue was to "handle the problem on own" (44%). It also found that more people sought non-legal forms of assistance (22.1%) than legal forms of assistance (11.7%).¹⁰³ Bearing the differences in the questionnaires in mind, this finding affirms the narrative established by the Cost of Justice project survey which suggested that the majority of people try to resolve their legal problems through informal self-help methods and, though some will turn to informal advice, only a small minority will seek out formal legal advice. In terms of formal adjudication, the Department of Justice survey noted that respondents appeared in a court or a tribunal for 14.9% of all problems.¹⁰⁴ This is notably higher than the Cost of Justice project survey (5.9%) and interesting as both asked the identical question: "Did you have to appear at a court or other tribunal because of this problem?"¹⁰⁵ One possible explanation for this may be due to the fact that the Department of Justice survey asked respondents how they resolved up to three of their problems whereas the Cost of Justice survey asked respondents only about two of their problems. The Department of Justice survey therefore captured a greater problem set, specifically among those that have

¹⁰³ *Ibid* at 56.

¹⁰⁴ *Ibid* at 65.

¹⁰⁵ *Ibid* at 104.

experienced multiple legal problems. It is reasonable to posit that individuals with multiple legal problems may make use of the court system more frequently, however, more data would be required to confirm this.¹⁰⁶ Alternatively, this difference may simply speak to temporal and geographic differences in the analysis.

The Ontario Civil Legal Needs survey focused solely on those respondents who sought some form legal assistance. It included a screening question which asked “During the last three years, have you or anyone in your household had any sort of problem or issue where you sought legal assistance?” (emphasis in original).¹⁰⁷ If the answer was negative, the questioner skipped the following seventeen questions, including questions regarding methods of resolution. This differing methodology prevents comparison to the Cost of Justice project survey for most methods of resolution excepting for those incidences where an individual did seek legal advice. The Ontario Civil Legal Needs survey concluded that 30% of those with a legal problem sought some form of legal assistance.¹⁰⁸ This is a high number compared to both the Department of Justice survey (11.7%) and the Cost of Justice project survey (17.9% for first problem and 19.7% for the second problem); however, as explained above, the Ontario Civil Legal Needs survey allowed respondents to define legal issues narrowly such that those issues that more typically require a lawyer – such as divorce or wills – were far more representative in their data set. As explained below these problem types have a much higher rate of contacting a lawyer than most other problem types.

¹⁰⁶ *Ibid* at 65 (Department of Justice survey, n=637; Cost of Justice Project, n=555).

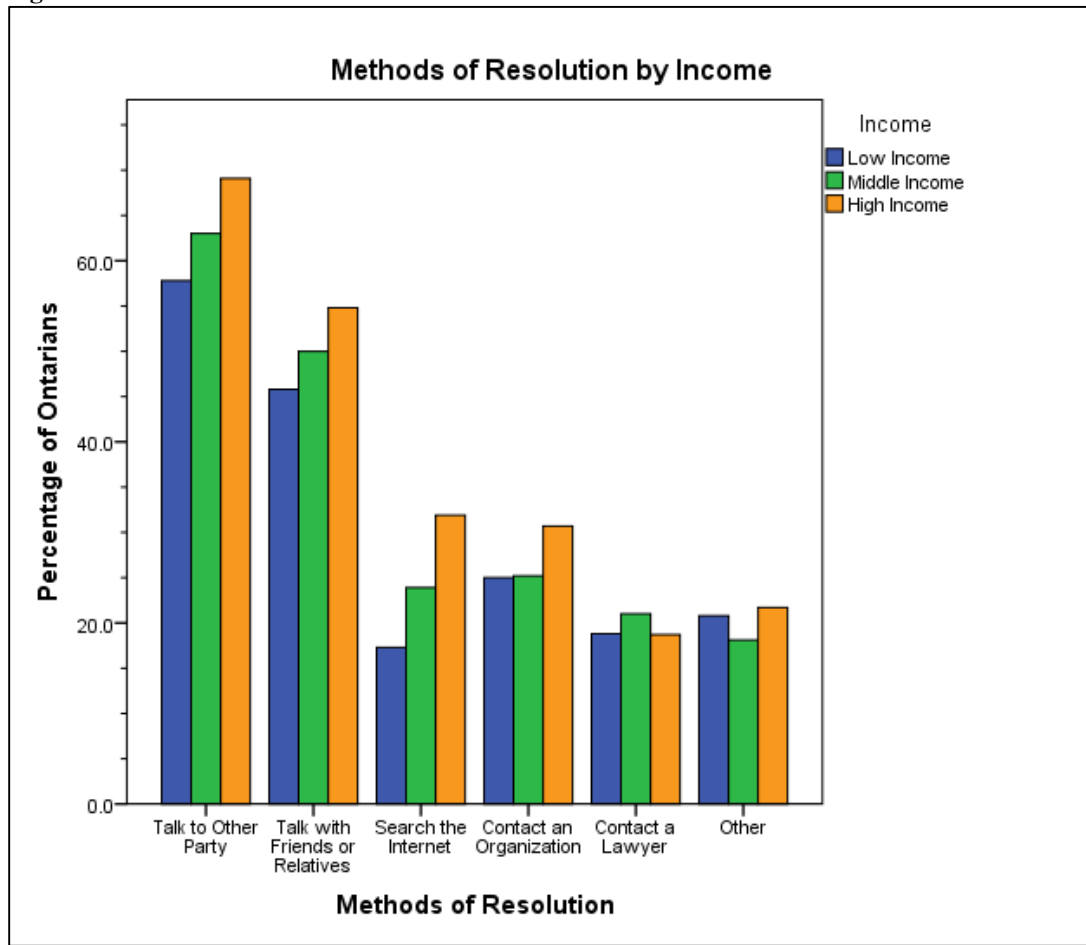
¹⁰⁷ Environics Research Group, *Civil Legal Needs of Lower and Middle-Income Ontarians: Quantitative Research*, *supra* note 68 at Appendix: Questionnaire 3.

¹⁰⁸ Ontario Civil Legal Needs Project, *supra* note 6 at 23.

iii. Methods of Resolution by Income

The narrative presented above does not vary greatly even when an individual's income category is taken into account. Regardless of income the majority of respondents still attempt to resolve their issue by talking to the other party directly. Likewise almost half of respondents in each income category will seek advice from family or friends. In terms of contacting a lawyer, just as many low-income individuals contacted a lawyer as high-income individuals (18.8% and 18.7% respectively) and only slightly more middle-income individuals contacted a lawyer (21.0%). This is a very interesting finding as it suggests that the cost of legal representation is not the main determinant of seeking legal advice. This will be discussed in greater detail below. The only method of resolution where there is a statistically significant difference among income categories was between the numbers of high-income individuals who searched for information on the internet (31.9%) versus the number of low-income individuals (17.3%) (see Figure 7).

Figure 7



iv. Methods of Resolution by other Social Demographic Factors

Other social demographic factors that one may presume affects how an individual resolves a legal issue include education level, employment status, gender, age, and ethnicity. Yet looking at the data from these perspectives generally shows little variance – especially in terms of who sought formal legal assistance. In terms of education, not a single category of education displayed a statistically significant difference in how Ontarians resolved their problems. This finding may be the result of smaller sample sizes when dividing the population into six categories. When looking at raw numbers, however, there does seem to be some difference between education categories. Only 11.1% (n=36) of those with less than a high school education searched the internet for information whereas 31.7% (n=142)

of those with a bachelor's degree and 31.6% (n=79) of those with a masters or doctorate searched the internet. Likewise only 58.3% of those with less than high school education sought to talk to the other party directly whereas 73.2% of those with a bachelor's degree and 73.4% of those with a masters or doctorate degree talked to the other side directly. What may be of most interest here, however, is that the percentage of respondents who contacted a lawyer was very similar across all education levels. Of those with less than high school education, 19.4% contacted a lawyer, where as 17.6% of those with a bachelor's degree and 25.3% of those with a master's or doctorate did so. Therefore while education level may have a small effect on *informal* methods of resolution, it does not affect whether Ontarians will seek formal legal assistance.

Similarly, the employment status of Ontarians did not greatly affect the methods of resolution. Regardless of employment – working, working part-time (including students and retired persons), or not working – the majority of respondents still attempted to resolve their issue by talking to the other party directly. The next most common method of resolution for all categories was talking to friends or relatives. More people working full-time contacted a lawyer (19.0%) than those working part-time or not working (15.8% and 16.2% respectively), however, there was no statistical significance in this difference.

In regards to gender, the only observation of note is how similar the methods of resolution are. Talking to the other party is still the most common method of resolution with 71.2% of males and 71.7% of females attempting to resolve the problem this way. Similarly, both genders search the internet for information at a comparable rate (28.1% for males and 27.6%). Seeking assistance from a lawyer is fairly uncommon for both sexes with only 18.7% of males and 17.4% of females contacting one. The only area where there

is a slight observable difference in the survey data was with respondents who sought assistance from friends or relatives (46.1% for males, 51.9% for females); however, there was no statistically significant difference between the groups.

There is some statistical difference between the oldest age category (those who are 66 years old and above) and other categories when looking at certain informal methods of resolution. For instance, younger respondents turned to the internet for information more than older respondents: 40.7% (n=54) of respondents in the youngest age category (18–35 years of age) employed this method whereas only 11.8% (n=101) of those in the oldest age category searched the internet. Indeed, the oldest cohort was found to be statistically significant than all other age groupings for searching the internet for information. Similarly, younger respondents more frequently talked to friends or relatives, such that only 38.6% of those in the oldest age category attempted this, compared to 68.5% in the youngest category. Here the only statistically significant relationship was between the oldest category and the youngest category. Interestingly enough, however, as respondents got older, fewer of them contacted a lawyer. About one-fifth (22.2%) of those in the youngest category contacted a lawyer, whereas only 14.9% in the oldest category did. Despite these variations, there was no statistical significance between them.

Conclusions regarding ethnicity are made with caution given the large variety of responses received. Respondents were asked what ethnic or cultural group they belonged to and though a large proportion stated Canadian (39.3%) as their first response, there were at least thirty-eight other ethnic or cultural groups identified. Respondents identified as being Canadian were asked if there was a second ethnic or cultural group that they identified with and again there were twenty-seven other ethnic or cultural groups named.

Most of those groups identified had a single respondent, making observations at this precise level near impossible. Therefore, for the sake of analysis, the numerous ethnic and cultural groups were categorized as follows: identified as solely Canadian (14.2%); British or French (41.4%); other European (20.2%); Aboriginal or Native (2.8%); another ethnicity/culture (10.1%); unknown or refused to answer (11.4%).

When categorized in this fashion the data shows that there is no statistical significance between groups. However, like education, the sample size of these groups are small enough that large differences in percentage still do not yield statistical significance. That being said, a few observations based on the raw numbers are warranted. One observation of note is that Aboriginal or Native respondents tend to respond differently to legal problems than other groups. For example, only 14.3% Aboriginal or Native respondents searched the internet compared with 25%–30% for other groups. Also where 85.7% of respondents who identified as Aboriginal or Native talked to the other party, other groups ranged from 68.8% to 72.7%. In terms of seeking formal legal assistance, only 7.1% of those identifying as Aboriginal and Native contacted a lawyer, compared to 24.5% of those identifying as European, 18.8% of those identifying as strictly Canadian, 16.9% of those identifying as British or French, and 12.5% as those identifying with another group. Therefore, based on raw numbers alone, it does appear that ethnicity or culture may have a small impact on the decision to seek formal advice, but, given the small sample size of the ethnic and cultural groups these comments should be treated with caution.

v. Methods of Resolution: Perception

Of those Ontarians with legal problems, 56.6% stated that they understood how serious their problem was or could become when it first happened. However, understanding the seriousness of a problem is not directly equated with understanding the legal

implications of the problem. Only 33.5% of Ontarians with legal problems stated they were aware of any legal implications related to their problem. Although we have seen that there are no statistically significant correlations between methods of resolution and certain social capital factors such as income or education, there is some correlation with the method of resolution and how problem is perceived. The first area where there is some, albeit weak, correlation is with regards to how seriously the individual viewed their problem: of those who understood how serious their problem was, 22.4% contacted a lawyer compared with 13.2% of those who did not understand how serious their problem was.¹⁰⁹ Not surprisingly, there is a much stronger correlation between those who contacted a lawyer and those who understood the legal implications of their problem.¹¹⁰ Of those who were aware of the legal implications of their problem, 31.1% contacted a lawyer whereas only 11.0% of those who were unaware of the legal implications contacted a lawyer. Though there is a correlation between the likelihood of contacting a lawyer and how a problems is perceived, the fact remains, however, that the majority of respondents – even among those who understood the seriousness or the legal implications of the problem – still did not seek formal legal advice.

vi. Problem Type

Many studies have concluded that problem type is a strong indicator of whether an individual will seek legal advice.¹¹¹ This appears to be the situation in Ontario. When comparing the rate of seeking legal assistance in specific problem categories with the average rate among all legal problems, it is evident that those facing certain problem

¹⁰⁹ $r = .118$, $n = 537$, $p = .006$.

¹¹⁰ $r = .248$, $n = 532$, $p = .000$.

¹¹¹ See *e.g.* Baxter, Trebilcock & Yoon, *supra* note 72 at 84; Genn, *Paths to Justice*, *supra* note 8 at 135; Herbert M Kritzer, “To Lawyer or Not to Lawyer: Is that the Question?” (2008) 5:82 J Empir Leg Stud 875 [Kritzer, “To Lawyer or Not to Lawyer”].

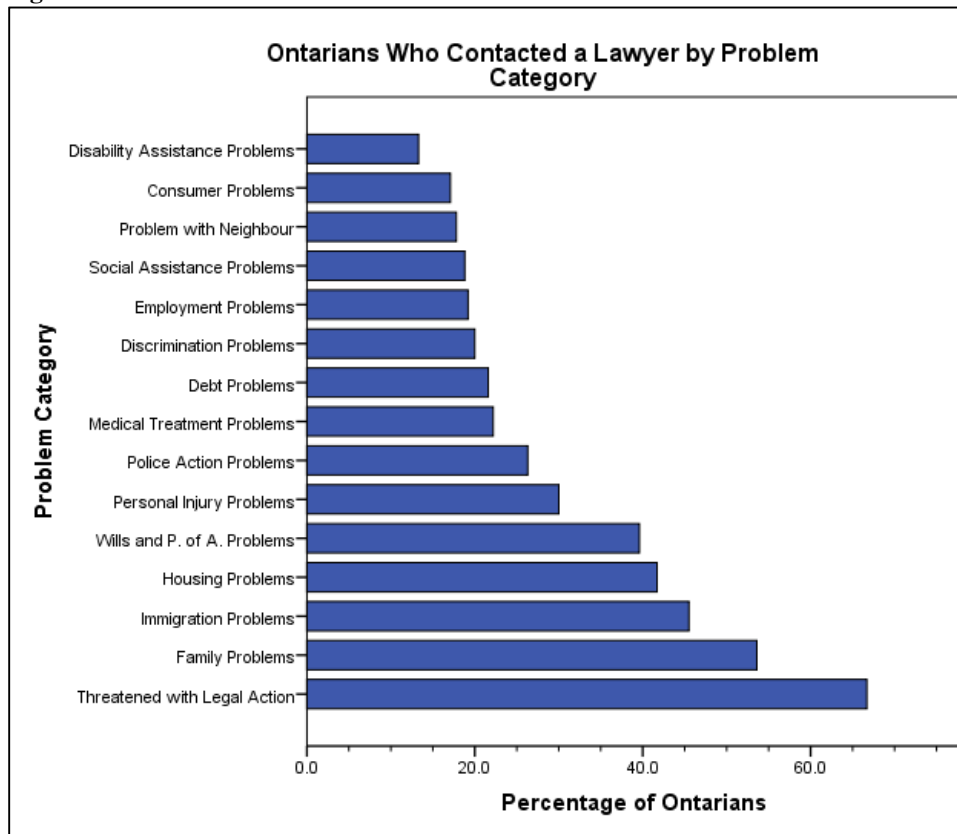
categories will more likely seek lawyer assistance. For example the three most frequently experienced problem categories of debt, employment, and consumer problems all had a fairly low rate of contacting a lawyer (21.6%, 19.2%, and 17.1% respectively) and none of these problems were found to be statistically significant on whether the respondent would seek lawyer assistance.¹¹² In comparison, family, immigration, and housing – categories that qualify for either legal aid certificates or duty counsel – had some of the highest percentages of respondents who contacted a lawyer (53.6%, 45.5%, and 41.7% respectively) and were all found to be correlated with whether the respondent would seek lawyer assistance.¹¹³ The only other problem categories that were found to be correlated with contacting a lawyer are being threatened with legal action and wills and powers of attorney (66.7% and 39.6% respectively).¹¹⁴

¹¹² Where $p < 0.05$.

¹¹³ $r = .310$, $n = 558$, $p = .000$ (family law problems); $r = .102$, $n = 558$, $p = .016$ (immigration problems); $r = .131$, $n = 558$, $p = .002$ (housing problems).

¹¹⁴ $r = .232$, $n = 558$, $p = .000$ (threatened with legal action); $r = .173$, $n = 558$, $p = .000$ (wills and powers of attorney).

Figure 8



Problem categories are also indicators of whether Ontarians will engage in specific informal methods of resolution. For example discrimination problems, problems with the police, and personal injury problems all had comparably low rates of talking to the other party directly (56.9%, 52.6%, and 46.7% respectively) and were all found to be statistically significant. On the other hand, disability problems, consumer problems, and debt problems all had high rates of talking to the other party (80.0%, 75.3%, and 70.6% respectively) and no statistical significance compared to all respondents.

The problem types for which respondents most frequently searched the internet were family law problems, wills and powers of attorney, immigration issues, and problems with social assistance (48.2%, 45.8%, 45.5%, and 43.8%, respectively). Though there was

significance found with the categories of family law and wills and powers of attorney there was no significance with immigration and social assistance. Similarly, housing problems, being threatened with legal action, problems with neighbours, and consumer problems all had low rates of searching the internet for information (20.8%, 22.2%, 27.1%, and 27.2% respectively) and none of these were found to have statistical significance.

D. Inaction

i. Reasons for Inaction

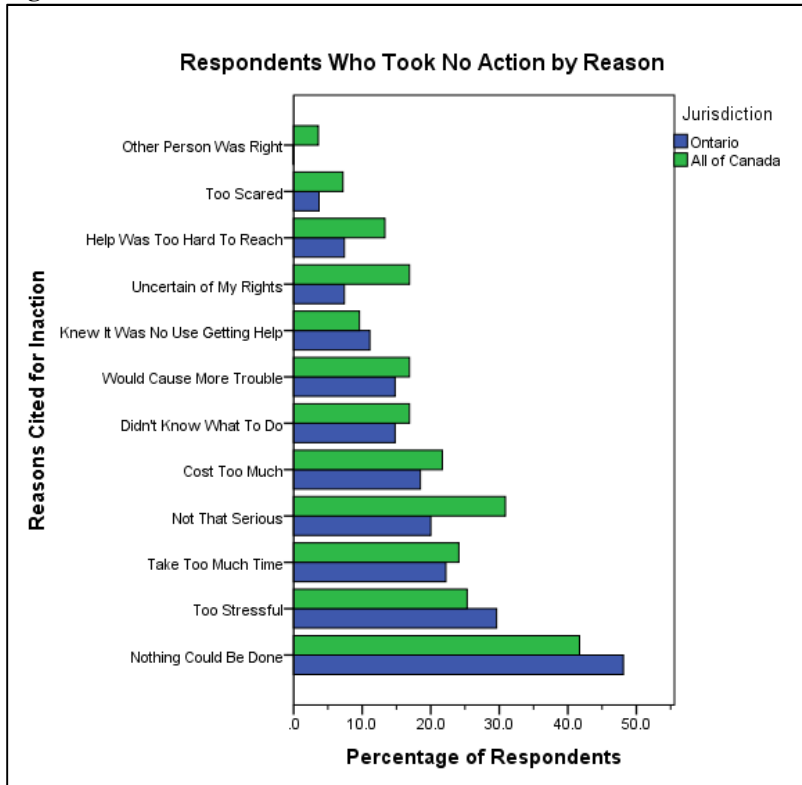
Though a strong majority of Ontarians who have experienced legal problems do take some type of action in an attempt to resolve their issue, the Cost of Justice project survey found that 4.3% of Ontarians with legal needs failed to take any steps to attempt to resolve their problems. This figure is slightly less than the national rate of inaction of approximately 5.5%. Trying to identify patterns with absolute certainty in this subset of Ontarians is difficult given the small sample size available for this group; further research in this area would be helpful. Nonetheless, this paper presents the data as collected and compares the results to the national figures in order to give some corroboration to the findings.¹¹⁵

The most common reason cited as to why Ontarians failed to take action to resolve their problem was because of a belief that nothing could be done (48.1% of respondents who took no action). Other common reasons for which respondents chose not to take action include the beliefs that resolution was too stressful (29.6%), that it would take too much time (22.2%), and it was not that serious (20.0%). The belief that resolution would cost too

¹¹⁵ Out of the 630 Ontarians who reported one or more legal problems, twenty-seven stated that they took no action to resolve their legal problem. Out the 1,532 Canadians who reported one or more legal problems, eighty-four stated that they took no action to resolve their legal problem.

much was the fifth most cited reason (18.5%) for not resolving the issue. These patterns generally hold true when compared to the national responses with the exception that “not that serious” (30.9% nationally), “uncertain of my rights” (16.9%) and “help was too hard to reach” (13.3%) were all more commonly cited than in Ontario alone.

Figure 9



ii. Comparison with other Surveys

At first glance, the Ontario Civil Legal Needs survey appears to confirm the findings of the Cost of Justice project surveys as it reports that 4.0% of respondents either gave up trying to solve their legal problem or did nothing to resolve the problem in the first place¹¹⁶ – a figure that is not that different than the 4.3% of Ontarians and 5.5% of

¹¹⁶ Environics Research Group, *Civil Legal Needs of Lower and Middle-Income Ontarians: Quantitative Research*, *supra* note 68 at 48 and Appendix: Questionnaire 8.

Canadians that reported in the Cost of Justice project survey that they took no action to try and resolve their problem. However, the design of the Ontario Civil Legal Needs survey questionnaire makes the results of the two surveys incomparable. As indicated above, the Ontario Civil Legal Needs survey included a screening question that precluded anyone who failed to seek legal advice from answering any follow-up questions regarding their method of resolution or their failure to resolve the problem. This means that the Ontario Civil Legal Needs survey actually found that 4.0% of those who sought legal advice eventually gave up trying to resolve the problem or did nothing further to resolve the problem. This is not a helpful finding if approached from a problem-centric theoretical framework as it only captures justiciable problems that are brought before a legal service providers.

The 2006 Department of Justice survey is somewhat more comparable to the Cost of Justice project survey in that it examined how all respondents resolved their justiciable issues – not just those who went to a lawyer. However, it asked all respondents who experienced one or more legal problems the following open-ended question: “Did you do something or attempt to do something to resolve this problem?” Conversely, the Cost of Justice project survey provided the respondents with a list of possible methods of resolution. It asked all respondents who experienced one or more legal problems the following question: “People do a number of things to try to resolve problems. Please tell me if you did any of the following to resolve the [problem identified] you had. Did you ...” The survey then provided a list of five possible actions and ended with the open-ended question, “Did you do anything else?” The Department of Justice survey found that 22.2% of respondents took no action to resolve their legal problems – a far greater figure than the

Cost of Justice project survey.¹¹⁷ This difference illustrates that respondents may not conceptualize certain actions, such as talking to the other side or searching for information online, as a possible method of resolution and therefore they may not have reported it, instead claiming that they did nothing. By suggesting possible methods of resolution the Cost of Justice project survey was better able to identify respondents who took informal means to resolve their problems.

The inconsistent findings of the two surveys may also be due to further differences in the design of the questionnaires. The Department of Justice survey asked respondents how they resolved up to three of their problems. If the respondent had more than three problems the survey selected three of the problems identified at random and asked about those. The Cost of Justice survey, however, only asked respondents about two of their problems. If more than two problems were identified, then two of those experienced were randomly selected for the questions regarding resolution. A further qualification, however, was that respondents who reported more than seven problems in the Cost of Justice survey skipped this part of the survey. This is of some importance given that 15.7% of Ontarians who experienced justiciable issues reported experiencing six or more problem. These extra filters – one less problem and screening out those with seven or more problems – may account for part of the reason as to why the Cost of Justice survey has a significantly lower rate of inaction than the Department of Justice survey: intuitively, one may assume that the rate of inaction would increase – due to growing frustration or fatigue – as the number of problems experienced do.

¹¹⁷ Currie, *supra* note 48 at 55.

iii. Inaction: Income

As stated above the sample size for Ontario is too small to draw any conclusions regarding the effect that variables such as income, demographic factors, perception, or problem types might have on reason for inaction. However, given that the national responses generally mirror Ontario's, it may be of use to examine the Canadian data set and draw some cautionary parallels.

From a national perspective, of those that took no action about 31.0% were low-income individuals, 42.2% were middle-income and 26.8% were high-income. Though there is some range between these groups there is no statistical significance in inaction between income levels. In terms of reasons for inaction, the only statistical difference among income categories is between low- and high-income respondents who felt that the issue was not serious enough to warrant a response. Only about 10.7% of low-income individuals cited this as a reason for inaction whereas 34.4% of middle-income and 52.6% of high-income individuals cited this. One may conclude from this that either low-income individuals are much more likely to perceive their legal problems as more serious or that high-income individuals are more likely to resolve serious legal problems. However, it should be remembered that the overall rate of inaction is very small on the national level – only about 5.5% of Canadians with legal needs failed to take action to resolve their legal problem.

iv. Social Demographic Factors

There is little statistical difference nationally between reasons for not resolving a problem amongst the various social demographic factors analyzed. In terms of education level the most commonly cited reason for respondents with the lowest education level – less than high school – not to take action was because they believed that “nothing could be done”

(46.7%). This was similar for those who completed college (47.4%) and those with a bachelor's degree (40.0%). Though it was less cited for those with a masters or doctorate degree (27.3%), there was no statistical significance. Likewise, every other reason cited showed some variance between education levels but again no statistically significant difference. When examining employment status, the reason that a problem would "take too much time" was actually found to be statistically different between those only working part-time (55.6%) and those working full-time (14.6%). Otherwise there was no statistical difference among reasons for inaction by employment status. Gender too only had two reasons that were found to be statistically different. The first was where the problem was "not that serious" with 47.6% of males citing this reason compared to 17.3% of females. The second was where "help was too far away or hard to reach" with 5.1% of males citing this reason compared to 20.5% of females. Otherwise there was no statistical difference among reasons for inaction by gender. For age, the only statistical difference was in the category of "uncertain of my rights" between the youngest category (66.7%) and the two oldest (9.5% for those 56–65 years of age and 13.8% for those 66 years of age and older). This is also true for ethnicity where the only statistically significant difference was in the category of "uncertain of my rights" for those whose ethnicity was "undetermined" (50%) compared to those who identified as British or French (10.5%). Though it appears that social demographic factors may have some significance on a few of the reasons for inaction, more research into this is needed, given that the sample sizes here are too small to form firm conclusions.

v. Perception

One might expect there to be a significantly lower rate of individuals aware of the seriousness or legal implications of a problem among respondents who failed to take action.

However, this is not the case for either Ontario or Canada. Of those who failed to take action, only slightly fewer were aware of the seriousness of the problem than those who took action. When looking at Ontario respondents, 52.9% of those who failed to take action were aware of the seriousness of the problem. Similarly, when looking at Canadian respondents as a whole, 52.1% of those who failed to take action were aware of the seriousness of the problem. These numbers are not much lower than the 56.6% of Ontarians who were aware of the seriousness of the problem and who took action.

In terms of being aware of the legal implications, the Cost of Justice project survey found a slightly greater difference between those who failed to take action and those who took action. One-fifth of Ontario respondents who failed to take action were aware of the legal implications and more than a quarter (26.9%) of Canadian respondents who failed to take action were aware of the legal implications. This is compared to 33.5% of Ontarians who took action and were aware of the legal implications. However, there was no statistical significance to whether a respondent who failed to take action was aware of the seriousness or legal implications of their problem. It is interesting, however, that regardless of whether the individual was aware of the seriousness or the legal implications of a problem, the most commonly cited reason for failing to take action was due to a belief that “nothing could be done.”

vi. Problem Type

Like other variables, examining whether specific problem types are correlated with inaction is difficult given the small sample size for many of the categories – even when examining the national dataset as a whole. Certain problem categories among those who took no action are simply too small to analyze – specifically those categories related to obtaining disability assistance (n=2), police action (n=2), and wills and powers of attorney

(n=1). Yet when looking at reasons for inaction a few problem categories did have some statistical significance compared to inaction as a whole. Problems associated with housing were significant among those who failed to take action for the reasons of “didn’t know what to do,” “uncertain of my rights,” “too scared,” “would cause too much trouble,” “other person was right,” and “help was too far away.” Discrimination was significant for the reasons of “being too scared,” and “had a previous problem and no use getting help.” Lastly, problems associated with medical treatment were significant with the reason of “costing too much.”

Certain categories of problems appeared frequently when looking at the top three problem categories within each reason for inaction. Specifically, discrimination appeared as one of the top three problem categories for eleven of the thirteen reasons for inaction. Housing appeared in the top three for nine of the thirteen reasons for inaction and employment appeared in five of the thirteen reasons for inaction. Though these observations are interesting from a preliminary perspective, further study would be required to make any definite conclusion regarding whether the type of problem experienced is correlated with inaction.

E. Cost of Civil Legal Problems

i. Cost to Individual

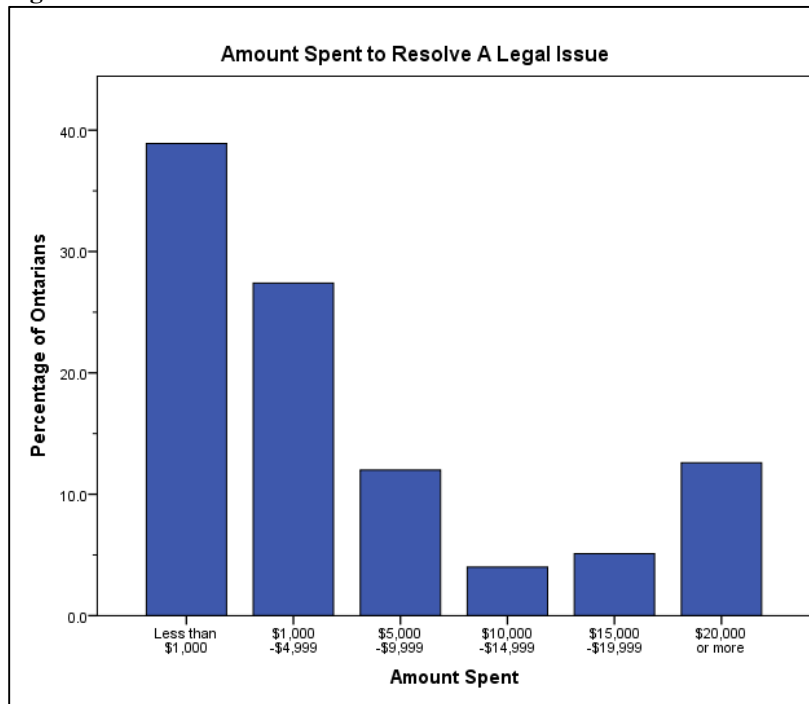
Though of significance in itself, the rate of and response to justiciable issues amongst Ontarians only paints part of the picture. What gives this narrative more depth is an understanding of the costs that are associated with legal needs. The most obvious impact that legal problems may have is on an individual’s pocket book. However, those who experience legal problems may also incur costs beyond that of a direct pecuniary nature.

An individual's employment, housing, health, and family may also be affected by legal problems. This section examines some of these costs to the individual. Likewise, the state may also incur costs when individuals are affected by legal problems, for example, when citizens are forced to utilize social programs, visit the hospital, or can no longer pay taxes due to legal problems. This chapter will also touch upon these issues.

a. Monetary

The Cost of Justice survey found that only about one-third of Ontarians (35.5%) who had legal problems spent money attempting to resolve them. This is not completely surprising given that the survey found that the most common method of resolution was some form of self-help. Among those who did spend money, the majority (about 38.9%) spent less than \$1,000 to resolve their issue. A little more than a quarter of Ontarians (27.4%) spent between \$1,000 and \$4,999, and roughly the same percentage of Ontarians spent between \$5,000 and \$9,999 as those who spent \$20,000 or more to resolve the legal problem (12.0% and 12.6% respectively).

Figure 10



The mean dollar amount spent resolving a legal problem in Ontario was \$8,362.95.¹¹⁸ The most common costs incurred by Ontarians to resolve their legal problems include lawyer fees (paid by 22.6% of those who incurred costs), purchasing materials and photocopying (14.5%), fees for advisors or mediators (13.0%), transportation costs (13.0%), and court fees (11.4%). Other less commonly cited costs include those for long-distance calls or faxes (5.2%) and child care (3.6%).

A few interesting findings come to light when the monetary cost of legal problems are analyzed by income category. Firstly, a comparable percentage of Ontarians incur costs in attempting to resolve their problems among all income categories (38.9% of low-income respondents; 36.5% of middle-income respondents; 35.2% of high-income respondents.) What may be unexpected is that low-income individuals who do incur costs to resolve their

¹¹⁸ There were two incidences where the individual reported having spent over \$1 million dollars to resolve their problem; however, both of those results were removed from analysis as being outliers.

problems spend *more* than middle-income individuals. The mean dollar amount spent by low-income individuals is \$8,011 whereas middle-income individuals spend a mean amount of \$7,083. High-income individuals spend substantially more than the other two categories at a mean amount of \$11,439. Yet when looking at the median cost amount incurred a more intuitive picture is painted: low-income individuals incur a median cost of \$650, middle-income a median cost of \$1,000, and high-income a median of \$4,000.

There was no significant difference between income categories in terms of specific costs incurred, however, there are interesting and notable differences in raw numbers. Fewer low-income Ontarians (16.2%) spent money on lawyer fees than middle-income (26.0%) and high-income (22.8%). This may be due to the fact that publically funded legal services are generally only available to low-income individuals. More low-income individuals (18.9%) incurred costs associated with transportation than middle-income (10.5%) and high-income (7.0%). Similarly, more low-income individuals (8.1%) incurred costs associated with childcare or other domestic costs than middle-income (1.3%) and high-income (1.8%).

b. Employment

It is not difficult to imagine civil legal needs affecting one's employment. If an individual who works a standard workday needs to meet with a lawyer or attend court they will likely have to take time off work. Even if the individual does not need to take time off work, legal problems that are stressful and cause worry may distract an individual from their employment duties and affect their productivity. In the most dramatic cases legal problems could cause an individual to lose their employment. In Ontario, of those who

had experienced a legal problem, 7.8% stated that that problem caused or contributed to them losing employment.¹¹⁹

This loss of employment has a direct cost to the state as a high proportion of these individuals apply for and obtain employment insurance. In Ontario, 39.5% of those who stated that they lost their employment due to a legal problem obtained employment insurance. The mean length of time for being on employment insurance was 19.9 weeks and the median length of time was fifteen weeks. However, one individual reported being on employment insurance for as long as fifty-two weeks.

As well as those who utilized employment insurance, some individuals reported that their legal problem caused them to access other social benefits or insurance plans: 1.3% of all respondents who experienced a legal problem stated that the problem caused them to go on social assistance. Another 7.5% of respondents were required to make a claim for insurance with only about half of them (57.1%) receiving an insurance pay-out to cover their loss.

c. Health and Family

In terms of non-monetary consequences of legal problems, respondents were asked the fairly broad question of whether their legal problem caused or made other health, social, or family problems in their life. Over one-third (34.1%) of respondents answered in the affirmative.¹²⁰ Among them, 66.3% stated their legal problem affected their physical health, 50.5% stated it affected their mental health or caused extreme stress, and 23.8% stated it caused or made social, family, or personal issues worse. Common social, family, and personal problems that were exacerbated by the legal problem include marital

¹¹⁹ n=550.

¹²⁰ n=558.

problems or problems with a partner (20.3%), relationship with a parent, grandparent, or child (14.8%), relationship with other family members (25.8%), child behaviour (4.7%), and problems with alcohol (2.3%). These problems, however, are not constrained to individual families and have a direct impact on society. For example, almost two-thirds of those (65.1%) who stated the legal problem affected their physical health also stated that they were required to visit their doctor and use the health care system more than before. Likewise, 40.6% of those who stated the problem affected their mental health or caused extreme stress said they visited the doctor or used counselling services more than before. It has been estimated that the additional use of the health care system by Canadians who experienced a legal problem costs the state approximately \$101 million annually.¹²¹

d. Housing

On the one hand, the loss of housing is a rarer consequence of having a civil legal need. Only 1.8% of Ontarians who experienced a civil legal problem stated that the problem caused or contributed to them losing their housing. However, even if this is not a common consequence of experience a civil legal problem, it certainly is a dramatic and traumatic one. The mean length of time for being without housing was 7.5 weeks with the median length of time being four weeks. One individual reported being without housing for thirty-two weeks.

ii. Comparison with other Surveys

Both the Department of Justice survey and the Ontario Civil Needs survey examined costs associated with legal problems to varying degrees. While the Department of Justice

¹²¹ Farrow et al, *Everyday Legal Problems and the Cost of Justice in Canada*, supra note 61 at 19.

survey concerned itself primarily with social and health costs, the Ontario Civil Legal Needs survey focused on pecuniary costs as a barrier to legal representation and therefore both surveys provide some data for comparison.

The Department of Justice survey was concerned primarily with three consequences associated with legal problems: consequences for physical and mental health, impact on alcohol or drugs use, the occurrence of violence in family and personal life, and feelings of personal safety and security.¹²² The Department of Justice survey noted that 38.1% of Canadians who had a legal issue reported having a health or social problem directly attributable to a justiciable issue¹²³ and of those who experienced a physical health problem caused by a justiciable issue, 77.9% stated that the health problem resulted in an increased number of visits to the doctor or other health facility.¹²⁴ Though these numbers are somewhat higher than those reported by Ontarians in the Cost of Justice project, the two surveys' findings are comparable.

The Ontario Civil Legal Needs survey did not examine the social costs of problems. However it did note that approximately three-quarters of those who reported a legal problem experienced some disruption in their daily lives as a result of that problem.¹²⁵ While this is a broad statement, and as such is not directly comparable to the Costs of Justice project survey, it is not a surprising result given that the Cost of Justice project survey reported that more than one-third of respondents with a problem spent money trying to resolve it, more than one-third of respondents reported that the legal issue led to health problems, almost a quarter stated the legal issue caused social or

¹²² Currie, *supra* note 48 at 73.

¹²³ *Ibid.*

¹²⁴ *Ibid* at 76.

¹²⁵ Ontario Civil Legal Needs Project, *supra* note 6 at 22.

family problems, and almost one-twelfth cited that the legal issues caused employment problems.

The Ontario Civil Legal Needs survey did find that about 42% of respondents cited cost as a barrier to affording a lawyer.¹²⁶ Examining this further, the survey found that only a third of respondents who retained a lawyer spent more than \$1,000 on legal representation.¹²⁷ This figure, however, is a rather limited representation of the cost of resolving a legal issue as it does not take into account other costs associated with resolving legal problems such as transportation, child care, time off work, and court fees. Therefore, the Cost of Justice project's figure, which found that an individual spends on average over \$8,000 resolving a legal problem, presents a more complete picture of actual pecuniary costs associated with resolving a legal problem.

The take away from these three surveys is that they all confirm that legal problems have a direct cost to the individual that goes beyond the legal dispute. A significant proportion of people with legal problems will suffer health issues, family problems, employment, and monetary problems directly due to their legal issue. If it is accepted that society must be concerned with its citizens' well-being, then policy makers need to encourage legal reforms that will help to minimize these associated costs.

¹²⁶ *Ibid* at 32.

¹²⁷ *Ibid* at 25.

Chapter 5

Conclusion

The purpose of this paper was to examine some of the findings presented by the Cost of Justice project survey and make them available to a broad public audience so as to provide empirical data to both policy makers and those interested in an accessible justice system. This chapter will place these findings within a legal consciousness and problem-centric framework to make recommendations regarding how the limited resources available to a public legal assistance should be allocated. Specifically, by connecting the ubiquity of legal problems experienced by Ontarians with how Ontarians choose to resolve their legal issues, it suggests that further investment into a court-focused legal aid system is not the most effective way to address current concerns with access to justice.

The Cost of Justice project survey provides numerous insights into the nature and frequency of legal needs among Ontarians. Of particular note is the finding that justiciable issues are ubiquitous to all Ontarians as just over half of Ontarians experienced a justiciable issue during the three-year reference period. This finding was consistent with previous surveys that define legal needs using the same problem-centric framework. It is reasonable to take this finding further and postulate that most Ontarians will experience a civil justiciable issue at some point in their life if the time frame were to be expanded from three years to a lifetime. Another finding of note is that these legal problems are not unique to a specific income group. Those of high or middle income are just as likely to experience one or more justiciable issues as those in the low-income categories. Likewise, other socio-demographic factors are not strong indicators of incidence rate. Of further interest is the fact that the problems most frequently

experienced are those that are often *not* viewed as having a legal element – namely consumer, debt, and employment problems.

Ontario should be concerned with the pervasiveness and universality of justiciable issues because of the costs incurred beyond the immediate dispute that are a direct result of the justiciable issues. As stated above, over one-third of those with a problem had to spend money to resolve it. And while most people ended up spending less than \$5,000, about a third of those who spent money to resolve a problem spent over \$5,000 – not an insignificant amount. Perhaps of greater concern, however, is the finding that about one-third of those with justiciable issues suffered from some form of physical or mental health issue as a direct result of that justiciable issue. Other less common repercussions, but no less serious, are the findings that about 7.8% of those with a justiciable issue lost their employment as a direct result of the issue and about 1.8% lost their housing. The costs of justiciable issues go beyond the individual and their immediate family as the state will also bear some of the costs, most obviously through greater use of social services such as health care or employment insurance, but also due to harder-to-measure factors such as loss of productivity. These serious implications that justiciable issues have beyond the immediate dispute coupled with the fact that most Ontarians will experience a justiciable issue at some point in their life demonstrates the need for some system of legal assistance that is broadly accessible to everyone regardless of income or problem type. This need, however, is not reflected in the funding priorities of Ontario.

Numerous institutions and legal organizations are engaged in access to justice initiatives across Ontario.¹²⁸ However, Legal Aid Ontario is the primary governmental agency for providing publically funded legal assistance to Ontarians. Their mandate is to promote access to justice throughout Ontario specifically for low-income individuals.¹²⁹ To do this, Legal Aid Ontario supports three programs: the certificate program, which allows an individual to obtain private legal services from a lawyer or service-provider; the duty counsel program, which provides representation to people who would otherwise appear at court without a lawyer; and the legal clinic program, which funds community legal clinics. Two problems are evident with the Legal Aid Ontario model when compared to the actual incidence of legal issues experienced. Firstly, the majority of legal problems categories experienced do not qualify for funding and secondly, only the most impoverished among low-income individuals meet the financial eligibility threshold for legal aid assistance.

In 2014 the Ontario government committed additional funding to Legal Aid Ontario in an attempt to increase the eligibility threshold for legal aid assistance by six percent.¹³⁰ This funding took the form of significant one-time annual investments totaling approximately \$154 million to be distributed over four years.¹³¹ The first contribution

¹²⁸ See e.g. The Action Group on Access to Justice, *Legal Organizations and Access to Justice Activities in Ontario* (Law Society of Upper Canada: Toronto, 2014) (Provides a fairly comprehensive survey of organizations that are engaged in access to justice initiatives in Ontario).

¹²⁹ *Legal Aid Services Act, 1998*, SO 1998, c 26, s 1.

¹³⁰ Ministry of the Attorney General, News Release, “Giving More Ontarians Access to Affordable Legal Services” (30 October 2014), online: Ontario.ca <<https://news.ontario.ca/mag/en/2014/10/giving-more-ontarians-access-to-affordable-legal-services.html>>

¹³¹ See Legal Aid Ontario, *Annual Report 2014/15*, at 72 online: Legal Aid Ontario <<http://www.legalaid.on.ca/en/publications/downloads/2014-15-Annual-Report-EN.pdf?t=1468168146314>> [Legal Aid Ontario, *Annual Report 2014/15*]; Legal Aid Ontario, News Release, “Unprecedented Multi-Year Expansion of Legal Eligibility for Criminal, Family, Refugee and Other Matters” (8 June 2015), online: Legal Aid Ontario <http://www.legalaid.on.ca/en/news/newsarchive/1506-08_eligibilityexpansion.asp>

took place on November 1, 2014, bringing total revenue of Legal Aid Ontario for the 2015 fiscal year to \$404,167,000.¹³² The certificate program is the largest budget item for Legal Aid Ontario, accounting for almost half of its total budget.¹³³ In the 2014/2015 annual report, the most recent annual report available at the time of writing, Legal Aid Ontario reported that \$190,309,000 was spent on the certificate program – the majority of which was directed towards criminal law and family law certificates (see Table 10). It is worth noting that, despite the prevalence of civil law problems among Ontarians, very little was directed towards civil law certificates with the exception of family, immigration, and refugee certificates.

Table 10: Legal Aid Ontario’s Certificate Program Expenses by Problem Type¹³⁴

	Criminal	Family	Immigration and Refugee	All Other Civil Matters
Certificate Program ¹³⁵	\$101,884,000	\$49,837,000	\$16,039,000	\$5,781,000
Percent of Total Certificate Expenditure	58.7%	28.7%	9.2%	3.3%
Percent of Problems Actually Experienced	0.3%	6.0%	1.6%	92.3%

The duty counsel program accounted for \$51,209,000 of the 2015 budget. Duty counsel solely assists those appearing before an adjudicator in the areas of criminal law, family law, and landlord-tenant issues.¹³⁶ Together, those three problem categories account for only about 8.9% of all justiciable issues experienced by Ontarians in the three-year reference period. This means that, like the certificate program, over 90% of justiciable issues do not qualify for duty counsel.

¹³² Legal Aid Ontario, *Annual Report 2014/15*, *supra* note 131.

¹³³ *Ibid.*

¹³⁴ Total percentage of problems experienced exceeds 100% due to rounding.

¹³⁵ Another \$16,768,000 was categorized under the certificate expenses, and directed towards law offices, articling students, settlement conferences, and the Nishnawbe-Aski Legal Services Corporation.

¹³⁶ Legal Aid Ontario, *Getting Help in the Courtroom*, online: Legal Aid Ontario <<http://www.legalaid.on.ca/en/getting/helpinthecourtroom.asp>> (Duty counsel may also assist with the first appearance in mental health court on a criminal matter without a lawyer).

Finally, in 2015 Legal Aid Ontario directed \$83,886,000 towards the clinic program. This program funds seventy-six community legal clinics that seek to provide assistance on poverty law issues. Poverty law would certainly capture a greater proportion of legal needs as it may include problems relating to social assistance, disability assistance, discrimination, family, and employment problems. However, there are three issues of note: firstly, the services that are available vary by community; secondly, the clinic program accounts for only about one-quarter of the funding available to the three main legal aid programs; and thirdly, clients are also subject to financial eligibility requirements.¹³⁷

With the announcement of additional funding in 2014 the financial eligibility thresholds of Legal Aid Ontario were adjusted for the first time since 1996.¹³⁸ As such, to qualify for legal aid certificates or duty counsel the income cut-off for non-contribution aid in 2015 ranged from \$12,863 for an individual living alone to \$31,817 for a family size of five or more.¹³⁹ Yet, 93% of the Cost of Justice survey respondents declared a household income of \$20,000 per annum or above, and 79% of respondents declared a household income of \$40,000 and above. Though a laudable initiative, even if the goal of increasing the eligibility threshold by six percent is achieved the vast majority of Ontarians would still not qualify for legal aid. This is troubling, given that in 2013, it was reported that the national average hourly rate for a lawyer was between \$195 to \$380 – making the average legal fees for a civil action, including a two-day trial, range anywhere

¹³⁷ Legal Aid Ontario, *Community and Specialty Clinics*, online: Legal Aid Ontario <http://www.legalaid.on.ca/en/getting/type_civil-clinics.asp> (Though each clinic determines its own eligibility requirements, it is not likely that clinics would be able to provide services to Ontarians who do not qualify for the certificate program as their funding is even more limited.)

¹³⁸ Legal Aid Ontario, *Annual Report 2014/15*, *supra* note 131.

¹³⁹ Legal Aid Ontario, *Financial Eligibility Test*, *supra* note 94.

from \$13,561 to \$37,229.¹⁴⁰ This is a significant cost that most Ontarians, even if they make a middle-income salary, would likely find difficult to afford.

There are other government agencies that provide services that may fill some access to justice gaps. For example, the Office of the Worker Advisor was established in 1985 to provide advice on workplace insurance matters and occupational health and safety matters to employees.¹⁴¹ The Human Rights Legal Support Centre offers services for those who have experienced a problem with discrimination.¹⁴² Further, the Ministry of Attorney General provides information guides to assist litigants with procedures in both the Small Claims Court and the Family Court.¹⁴³ Likewise, there are many non-government organizations that seek to fill gaps in access to justice. For example, Pro Bono Law Ontario coordinates and manages programs for lawyers to volunteer their services on an ad-hoc basis.¹⁴⁴ The Law Society of Upper Canada and the various bar associations support numerous access to justice programs and initiatives.¹⁴⁵ However, these organizations, along with other government agencies, do not provide comprehensive legal support to Ontarians. They tend to focus either on single issues (e.g. worker's compensation), offer self-help initiatives (e.g. education materials), or direct their attention to low-income individuals (e.g. pro bono). This absence of a comprehensive system of publically available legal assistance, coupled with a low financial eligibility cut-off, may help to explain why most Ontarians do not seek legal advice when attempting to resolve their legal issues.

¹⁴⁰ Action Committee on Access to Justice, *Access to Civil & Family Justice*, *supra* note 6 at 4.

¹⁴¹ Action Group on Access to Justice, *supra* note 128 at 14.

¹⁴² *Ibid* at 15.

¹⁴³ *Ibid* at 34.

¹⁴⁴ *Ibid* at 10.

¹⁴⁵ *Ibid* at 3 and 20.

One fact presented in the data above is that most Ontarians will not seek legal advice when attempting to resolve their justiciable issues. Rather, the majority will attempt to resolve these issues through informal self-help methods such that very few issues actually proceed to formal adjudication. This situation holds true regardless of income category and therefore would appear to support Kritzer’s observation that empirical studies have consistently shown that income has a very small influence on whether to take action and whether to retain a lawyer or not.¹⁴⁶ However, Pleasance and Balmer suggest that part of the reason that various studies point to this may be due to the fact that these studies do not take into account the availability of legal aid in some jurisdictions.¹⁴⁷ Examining a legal needs survey conducted in England and Wales in 2010, the authors found that those people who were just beyond the threshold of eligibility for legal aid were the least likely to obtain lawyer assistance in resolving those problems where legal aid was most available.¹⁴⁸ This resulted in a “J-curve” wherein those in the lower income categories who qualified for the legal assistance and those in the higher income categories sought legal assistance at a higher rate than those in the middle income categories who did not qualify for legal aid. In Ontario the financial eligibility requirements for legal aid are so stringent that only the most impoverished of citizens qualify for funding.¹⁴⁹ In such a case, where legal aid eligibility is almost a non-factor, one would expect to see fewer lower- and middle-income individuals contacting a lawyer with the rate of contacting a lawyer increasing in the high-income category as the

¹⁴⁶ Kritzer, “To Lawyer,” *supra* note 111 at 878.

¹⁴⁷ Pleasance & Balmer, *supra* note 60 at 38.

¹⁴⁸ *Ibid* at 49-50.

¹⁴⁹ Legal Aid Ontario, *Financial Eligibility Test*, *supra* note 94.

ability to afford legal services also rises. This, however, is not the case as all income categories seek legal assistance at a fairly constant rate with middle-income Ontarians – who neither qualify for funding nor have significant resources – seeking assistance at a slightly higher rate than the other two income categories. It is interesting, however, that although income alone does not appear to affect the rate of seeking lawyer assistance, problem type does have an effect and those problems that do qualify for some kind of legal aid – such as family, immigration, and housing – have a much higher rate of respondents in Ontario seeking legal assistance. As discussed below, this probably has more to do with the perceived seriousness of the problem than it does with the availability of legal aid.

Other social demographic factors such as education, gender, employment status, or ethnicity also have little influence on whether or not Ontarians seek legal assistance. This finding appears to contradict previous studies which have concluded that certain social demographic factors have an impact on advice-seeking behaviour. For example, Genn concluded from the Paths to Justice Study in the United Kingdom that lower educated, younger, lower income, and male respondents were less likely to obtain legal advice.¹⁵⁰ The contradictory results of the Cost of Justice project survey, however, may not be so striking when one considers that these two studies surveyed distinct legal jurisdictions and are separated in time by nearly twenty years. Thus this raises the question of, why do most Ontarians seek to resolve their legal problems outside of the formal institutions available?

¹⁵⁰ Genn, *supra* note 9 at 142-143.

One reason for this could be due to the fact that most Ontarians are unaware of the legal implications or seriousness of their problems. The Cost of Justice project data shows that when a justiciable issue is perceived as being serious or possessing legal implications individuals are more likely to seek legal advice. Indeed, certain problem types – such as family and immigration – see a high percentage of individuals seeking out legal advice possibly because they are immediately understood to be more serious or their legal implications are more readily apparent: an individual faced with losing custody of their children or being deported more readily understands the seriousness and the legal implications of the issue than an individual who may be denied over-time pay or who receives a call from a collection agent.

Why Ontarians perceive certain problems as being more serious than others or possessing legal implications while others do not may speak to how Ontarians understand and perceive the law itself. Ewick and Silbey noted that, when contemplating the law, some individuals view themselves as being “Before the Law.”¹⁵¹ Individuals who hold such a view see the law as an abstract disinterested “other” that is absent from their day-to-day lives.¹⁵² The law is viewed as a “place” confined by procedures and institutions rather than a system of ideas, persons, or interactions.¹⁵³ In viewing the law as synonymous with institutions, the law transcends people’s everyday lives.¹⁵⁴ The fact that the majority of Ontarians are unaware of the legal implications of their problems, despite the pervasiveness of legal issues in their day-to-day lives, suggests that many Ontarians also construct the law as an “other.” That is, Ontarians may be unaware of the legal implications because, to

¹⁵¹ Ewick & Silbey, *The Common Place of Law*, *supra* note 33 at 74-107.

¹⁵² *Ibid* at 95.

¹⁵³ *Ibid* at 96-97.

¹⁵⁴ *Ibid* at 106.

them, the law is a disinterested other confined to procedures and institutions they do not interact with on a daily basis. The law only enters their lives in limited circumstances and is not seen to govern their normal relationships. One result of this perception of the law, according to Ewick and Silbey, is that individuals believe that the law should only be used for specific needs – such as protecting an individual against local group norms – and that by acting upon their legal rights they are disrupting normal relationships, practices, and identities.¹⁵⁵ If Ontarians hold this view of the law it would explain why certain legal problems, such as family and immigration issues, have a higher rate of individuals seeking legal assistance. These types of problems are seen to be properly situated in the formal institutions and procedures and their seriousness warrants a disruption to everyday practices. For example, if a custody dispute cannot be resolved immediately, one has to have it adjudicated by a formal system. Other issues, such as consumer and debt problems, may be seen to be properly situated outside of formal institutions where it is better to resolve the problem by negotiating with the other side. This view of the law as an “other” understands the law narrowly in that the law only exists in court systems and through the actions of state agents. It is unaware of how the law may influence one’s day-to-day life.

Another reason why Ontarians primarily resolve their legal issues through informal self-help means may simply be economic. Many studies have shown that people turn to legal institutions when they expect favourable outcomes.¹⁵⁶ Yet applying formal legal rules is often a costly exercise that is only worthwhile from an economic perspective when those favourable outcomes are expected to exceed the cost.¹⁵⁷ Even speaking to a lawyer to better

¹⁵⁵ Ewick & Silbey, “Common Knowledge and Ideological Critique,” *supra* note 39 at 277-278.

¹⁵⁶ Tom R Tyler, *supra* note 33 at 71-72.

¹⁵⁷ Kritzer, “To Lawyer or Not to Lawyer,” *supra* note 111 at 900-901.

understand how the formal law applies often incurs expense that may be unnecessary. Therefore, individuals acting rationally will look to apply their own informal and inexpensive methods – for example, by talking to the other side directly – prior to turning to formal legal institutions in an attempt to resolve their legal problems.¹⁵⁸ It is only when these informal methods of resolution fail that Ontarians will seek legal advice, illustrating that Ontarians will first seek out the most cost-effective method to resolve their problem.¹⁵⁹

Analogous to the economic efficiency argument is the fact that the formal legal system operates in a manner that disadvantages those who rarely use the courts or tribunals. In his seminal article “Why the ‘Haves’ Come Out Ahead,” Galanter divided litigants into two broad categories; those who only have occasional resource to the courts (or “one-shotters”) and those who make frequent use of the courts (“repeat players”).¹⁶⁰ Repeat players benefit from, among other advantages, expertise, economies of scale, and access to specialists.¹⁶¹ Though one-shotters may be able to gain some of these advantages by hiring a lawyer, their claims are either too small to warrant the cost of pursuing or large enough that it is not possible to manage them rationally.¹⁶² Further, repeat players look to strategize their litigation over the long term to influence a more favourable system down the road by settling unfavourable cases and investing resources to adjudicate or appeal cases that would result in more favourable precedents.¹⁶³ One-shotters, however, tend to be more interested in the direct outcome of their particular case rather than systemic rule changes, thus maintaining the systematic bias against them.

¹⁵⁸ Robert C Ellickson, “Of Coase and Cattle : Dispute Resolution Among Neighbors in Shasta County” (1986) 38:3 Stanford Law Rev 623 at 686.

¹⁵⁹ Pleasence & Balmer, *supra* note 60 at 53.

¹⁶⁰ Galanter, *supra* note 10 at 14-15.

¹⁶¹ *Ibid* at 15.

¹⁶² *Ibid* at 15.

¹⁶³ *Ibid* at 16.

The majority of those surveyed for the Cost of Justice project would be classified as “one-shotters.” Though they may have had multiple legal issues, they are not professional or institutional litigants who go before the courts with enough frequency to gain the benefits of being a repeat player. As one-shotters, these Ontarians’ primary interest would be the outcome of their particular case rather than systemic rule change, suggesting a preference to resolve the problem in the most cost-effective manner, e.g. informal self-help methods. However, it must be acknowledged that some individuals are motivated by a need for vindication rather than reward and would therefore proceed to adjudication regardless of the cost or difficulty. Galanter accepted that some populations may have an intense concern with securing vindication, but he argued that this “rule mindedness” must be distinguished from a readiness to resort to the courts in the first place.¹⁶⁴ Galanter postulates that societies that have a greater distaste for litigation would create more barriers to accessing the courts which adversely affects one-shotters from pressing or defending a claim more than repeat players.¹⁶⁵ Ontario is one such society that exhibits a distaste for litigation.

One way in which Ontario has, at least over the last couple decades, sought to discourage litigation is by embracing the alternative dispute resolution (ADR) movement and by actively developing policies encouraging ADR methods.¹⁶⁶ This movement seeks to push dispute resolution into private non-court forums and is often justified by claims that it increases efficiency and access to justice.¹⁶⁷ The growth of this movement in Ontario is evidenced by both the provincial law society’s Rules of Professional Conduct, which

¹⁶⁴ *Ibid* at 17.

¹⁶⁵ *Ibid*.

¹⁶⁶ Farrow, *Civil Justice, Privatization, and Democracy*, *supra* note 8 at 158.

¹⁶⁷ *Ibid* at 189-190.

direct lawyers to avoid litigation and encourage settlement,¹⁶⁸ and the court's Rules of Civil Procedure, which provide for mandatory mediation in certain cases.¹⁶⁹ Arguably, these influences create disincentives for individuals to have their problem adjudicated before a formal forum. Granted, individuals are still free to consult a lawyer during the ADR process and therefore this movement alone might not answer why most Ontarians do not contact a lawyer. However, it is hard to believe that a systemic push by government and legal actors to move disputes from formal adjudication would have no influence at all.

Perhaps the greatest disincentive to litigation, however, is the common practice of courts to award legal costs against the party that "loses" the action and the complicated cost consequences in rejecting a formal offer to settle.¹⁷⁰ Kritzer postulated that this practice of making the loser pay for legal costs disproportionately prevents middle-income individuals from acting upon their legal rights.¹⁷¹ The reason for this is that low-income individuals are insulated from a large cost award as they simply are unable to pay and high-income individuals have sufficient resources to rationally weigh the risk. Middle-income individuals, however, cannot afford even a slight risk of a paying a heavy cost award and therefore avoid litigation – even if they are motivated predominantly by a need for vindication. These systemic disincentives to litigation not only prevent individuals from being able to rationally determine whether the formal legal system is the best method to resolve their issue but also encourages individuals to resolve their issues through informal means.

¹⁶⁸ Ontario, *The Law Society of Upper Canada, Rules of Professional Conduct* at r 3.2-4 (The commentary to this section goes further, stating that it is important to consider the use of ADR and when appropriate "... the lawyer should inform the client of ADR options ...").

¹⁶⁹ Ontario, *Rules of Civil Procedure*, RRO 1990, Reg 194, r. 24.1 and r. 75.1.

¹⁷⁰ *Ibid* at r. 49.10.

¹⁷¹ Herbert M Kritzer, "Access to Justice for the Middle Class" in Bass, Bogart & Zemans, *supra* note 1, 257 at 259.

A final reason why Ontarians may utilize informal self-help methods to resolve their legal issue may be due to their inability to act upon or mobilize their legal rights. Some scholars argue that in order to be able to mobilize a legal right, such that one brings a claim or defence to a legal forum, there is a need for people to take on or accept a specific identity.¹⁷² This legal mobilization theory may help explain why certain categories of legal problems have a high rate of Ontarians seeking legal assistance. For example, in family law people quickly identify as either a mother or a father and recognize their legal right to have custody and access to their child and act upon that right. In immigration law there would be little difficulty for one to identify as a refugee and seek the legal rights that flow from that. Conversely, an individual in dispute with a neighbour may not clearly identify with a particular right-holding group, seeing themselves as simply an individual property owner – though this may change when an individual joins a neighbourhood association, for example. Similarly, while banks and collection agencies may clearly see themselves as creditors entitled to various legal claims and therefore quite willing to sue in court, an individual being called by a collection agent may not readily see themselves as a debtor and therefore not able to plead available legal defences. Though legal mobilization theory may help explain why people who experience certain categories of law seek out legal advice more frequently, the fact remains that the majority of Ontarians – in nearly all problem categories – still choose not to contact a lawyer and will attempt to resolve their justiciable issues through informal means.

All of these possible reasons as to why Ontarians predominantly look to informal self-help methods to resolve their legal issues also helps to explain why some Ontarians

¹⁷² Jacobs, *Privacy Rights*, *supra* note 33 at 46-47.

took no action at all to resolve their problem. Three of the most common reasons cited for not pursuing resolution – it would cost too much; it would take too much time; and it was not that serious – suggest that the respondent conducted some kind cost-benefit analysis and made a decision not to pursue resolution as it was not worth the investment of time or money. Seven out of the thirteen reasons for not taking action – nothing could be done; didn't know what to do; uncertain of one's rights; help was too hard to reach; had a prior problem and knew it was no use getting help; too stressful and too scared – echo a strong feeling of vulnerability or helplessness. This theme of perceived helplessness common to those who do not take action reflect a perception of the law that Ewick and Silbey identified as “Up Against the Law.” Here the law is seen as a product of unequal power that is arbitrary and capricious rather than fair or objective.¹⁷³ People who view the law this way see that acting upon a right is futile and will find other means of achieving their ends. Some examples include small deceptions, omission, or foot-dragging – which may be directed more towards avoiding than resolving the issue.¹⁷⁴ Likewise, Ontarians who failed to take action to resolve their problem may engage in similar tactics that could be seen more as escaping the normative structures than as engaging with them; however, further research would be needed to determine if this is the case.¹⁷⁵ In either event, these most commonly cited reasons for inaction by Ontarians does reflect a perception that the individual is helpless against the law.

There does not appear to be a single strong reason for why most Ontarians engage in informal self-help methods when trying to resolve their legal issue. Rather there appears

¹⁷³ Ewick & Silbey, “Common Knowledge and Ideological Critique,” *supra* note 39 at 281-283.

¹⁷⁴ Ewick & Silbey, *Common Place of Law*, *supra* note 33 at 191-215.

¹⁷⁵ *Ibid* at 187.

to be a combination of factors at play including: (i) Ontarians perceive most issues to be non-legal or not serious; (ii) Ontarians perceive the law as being absent from their daily lives and therefore do not consider the formal system; (iii) Ontarians believe it is economically irrational to pursue most of their issues in a formal setting; (iv) the formal system dissuades individual litigants from using the system; and (v) individuals are unable to mobilize their legal rights.

Overall the ubiquity of legal problems coupled with the potential seriousness of those problems would suggest that reform should be directed to a more robust and comprehensive legal aid system. However, when examining how Ontarians view the law, it would appear that many utilize self-help methods not just because the law is inaccessible but also because they do not see the formal system as having a place in the resolution process or because they do not see their problem as legal in itself. This conclusion is reinforced with the finding that even if given the option, most Ontarians would still prefer to deal with the problem as much as possible on their own. The type of assistance wanted by Ontarians are not lawyers, *per se*, but rather they are often looking for better information, for someone to explain the legal aspects of their issues, for someone to assist with the completion forms and documents, and someone, though not necessarily a lawyer, to help intervene with the other side.

A greater focus on legal advice or support centres may be a potential way to practically improve access to justice. One model for this can be found in the United Kingdom which has an extensive network of what are called Citizens Advice Bureaus that provide free independent, confidential, and impartial advice on nearly any legal

matter.¹⁷⁶ Unlike legal aid clinics, such advice bureaus are accessible to all, regardless of income, and allow for non-lawyers to provide advice. Here, individuals would be provided with the type of assistance designed to, for example, help them to navigate complicated legal forums. It would help reduce barriers such as costs by granting the individual access to legal information without having to pay the high fees demanded by lawyers and therefore make legal problems more economically rationally to pursue. It would also mitigate social costs such as mental or health problems caused by legal issues by reducing stresses associated with engaging legal problems. Further, advice centres may help to mobilize some who would otherwise fail to act upon a legal right by providing them with an understanding of the legal dimensions to their problems and providing them with a path to justice. Finally, for respondents who felt helpless against the law, the centres may provide some much-needed support so that they could pursue some method of resolution.

This is but one of many reforms that have been promoted as a way to improve access to justice, and further empirical research is needed to determine whether such reforms have measurably increased access to justice. This paper does not intend to suggest a panacea for the crises in access to justice. Rather it seeks to provide a context to how Ontarians experience the law and situate those findings into a theoretical framework so as to inform and support future research to better engage with the access to justice discussion.

¹⁷⁶ Trebilcock, *supra* note 21 at 88-89.

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