

LEGAL SYSTEM'S FLAWS COST BILLIONS

\$7.7B spent each year to resolve issues, despite dissatisfaction with process

The expensive ancillary costs and side-effects of the nation's dysfunctional legal system are becoming clearer, emphasizing that not enough is being done to modernize and improve foggy, often-futile proceedings.



MARK VAN MANEN New data suggests nearly half of Canadian adults have a justice problem every three years and can't afford to use the legal system.

In a continuing survey of the country's legal topography, blueribbon academics tracing the worsening access-to-justice crisis have detailed how individuals and government are paying the price. The data produced by the Cost of Justice project (2011-17), funded by a \$1-million grant from the Social Sciences and Humanities Research Council, should be driving widespread law reform.

"These results support other findings that indicate that some Canadians, particularly those with fewer resources and those who see themselves more on the margins of society, do not view the justice system as fair, accessible or reflective of them or their needs," a recent 21-page overview says.

While everyone knew the legal system was too expensive, until this work was undertaken, few knew what that meant for people trying resolve a problem — how much it actually costs them, or how much time they wasted trying to engage.

What does it do to a person's physical and mental health? What were the real costs to someone's life and their livelihood? What kind of expenses ripple or cascade through the system when the courts and dispute-resolution tribunals don't work?

Nearly half of adult Canadians suffer a civil or family justice problem every three years and can't afford to use the legal system.

Their most common legal concerns involve consumer, debt and employment problems, followed closely by conflicts with neighbours and family, and discrimination issues.

Some 3,000 randomly chosen adults were surveyed by telephone in 2014 and asked detailed questions about how they resolved their legal disputes.

There was general agreement the system is too expensive and most don't generally understand or feel welcomed by it.

Those surveyed estimated they spent about \$6,100 on average trying to resolve their issue — that's \$7.7 billion a year on everyday problems in what for most was a dissatisfying process.

To put it in perspective, the researchers pointed out, that is almost as much as the average household annually spent on food in 2012: \$7,739. Or three times what the average family spent on out-of-pocket health care (\$2,285) in 2012, the year closest to the period covered by the legal survey.

The costs incurred included transportation to and from hearings or to file documents, court fees, copying costs, printing expenses and child care. Transportation was second only to legal fees.

The secondary expenses identified are probably higher than most thought, but the satisfaction levels were more disappointing — “people who spent money to resolve their problem were less likely to think the outcome was fair,” the overview says.

It seems there was no correlation between the amount of money people spent to resolve a legal problem and the outcome.

Aside from the costs to individuals, there are societal and governmental costs.

Increases in social assistance, physical and mental health problems added up to a combined cost of about \$800 million a year, the researchers say — \$450 million in additional EI payments, \$101 million in more health-care expenses, \$248 million in social assistance.

“While these reported numbers are significant, as we have indicated earlier they are also likely at the low end of what Canadians are actually experiencing in terms of their justice spending, and also in terms of the cost of legal problems on other areas of social spending,” say the overview authors — Trevor C.W. Farrow, Ab Currie and Lisa Moore of the Canadian Forum on Civil Justice; Nicole Aylwin of the Winkler Institute for Dispute Resolution; and Les Jacobs and David Northrup of York University.

The paucity of this kind of information has been decried for years. Now that we are getting it, it does not get enough attention.

The bottom line? We have the best 19th-century legal system money can buy, and failing to bring it into the 21st century is costing us more and more every year. We are beginning to understand how much more.