

## Remarks

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The Honourable Thomas A. Cromwell  
Supreme Court of Canada

I have been serving as chair of the National Action Committee on Access to Civil and Family Justice and I am very grateful for this chance to tell you more about this initiative and highlight the importance of public legal education in our efforts to improve access to civil and family justice. We have been extremely fortunate to have a high degree of involvement and support from the public legal education community – for which I sincerely thank you -- and so that some of what I will say may already be very familiar to you.

Before getting into the Action Committee's work in more detail, I would like to throw out a couple of initial thoughts.

The first has its jumping off spot a line from John Adams in 1770: "Facts are stubborn things; and whatever may be our wishes, our inclinations or the dictates of our passion they cannot alter the state of facts and evidence." Allow me to offer you what I believe to be a stubborn fact, which I suspect will be no surprise to this group because you see it every day in your work. The World Justice Index 2011 ranked Canada as 16th out of 23 high income countries in terms of access to civil justice. The ranking is explained by the lack of affordability of legal services and the lengthy duration of civil cases. We have a lot to be humble about in this area. The Index of course underlines many of the strengths of our legal system including independent and impartial judges administering justice according to law. But the inaccessibility for many citizens of the civil justice system is a major weakness compared to many other high income countries.

As my second preliminary point, I want to suggest to you that the single biggest impediment to improvement in access to civil and family justice is not lack of resources or lack of ideas or even mostly a lack of will to do it. The single biggest impediment is lack of ways and means of all who have important roles to play in the system to work together in a collaborative and cooperative manner in an atmosphere of mutual respect and trust. This applies within sectors - the courts, the bar, administration, public legal education etc, across sectors and across jurisdictions. As I see it, there is too little coordination and cooperation. While there are some very good things happening, they

tend to be largely ad hoc and often duplicative and in some cases done at cross-purposes.

Let me return to the work of National Action Committee on Access to Civil and Family Justice. The Committee was set up by Chief Justice McLachlin in cooperation with the C.B.A. and the Canadian Forum on Civil Justice. It is composed of a large group of leaders of virtually all sectors of the legal community as well as a member of the public: two deputy ministers of justice; representatives from the Canadian Judicial Council, the Council of Chief Judges; The Can. Superior Court Judges' Association, the Canadian Association of Provincial Court Judges; ACCA; CIAJ; CBA; Federation; Legal Aid; Pro Bono; PLEAC community, the Law Faculties and a member of the public. The members are generally senior people within their own sector and for the most part they are directly linked back to their own organizations at a senior level. Several of the participating organizations have their own access to justice committees and the chairs of those committees serve as the organization's representative on the Action Committee.

I acknowledge with gratitude the tremendous contribution of PLEAC community to our work. We recognize value and importance of the PLEAC perspective. You are much closer to the public and the front lines in many respects than many other participants and we are extremely grateful that you have made it possible for us to have the PLEAC perspective incorporated into each of our working groups.

The Action Committee is a large group and can only meet annually. The day to day work is directed by a small steering committee which meets monthly by conference telephone call.

So what have we done?

1. We have developed a working definition of access to justice: people will have appropriate access to justice when they have the resources, skills and services to address their civil and family legal issues. This is a broad definition. It is not limited to access to courts, judges and lawyers. As one participant put it to me recently, sometimes access to justice is more about a bus pass or a baby sitter than it is about a meeting with a judge. I'm sure you will see at once from this broad definition how central public legal education is to our conception of access to justice.

I emphasize that we do not view court based solutions as the only ones or even the most desired ones. Our approach is that we must focus on fair and just outcomes that are reasonably acceptable to the participants, not on giving everyone his or her day in court when that is neither needed nor wanted.

2. We have identified four priority areas: (1.) Court processes simplification; (2.) Access to Legal Services; (3.) Access to Family Justice; and (4.) Prevention, Triage and Referral

3. We have set up 4 Working Groups to scope out these areas, to identify what would constitute appropriate access to justice in each and to make recommendations for action. As I mentioned, there has been a PLEAC presence on each of these groups and the Prevention, Triage and Referral Working Group is chaired by Rick Craig, no stranger to this group. From what I have seen so far, that Working Group report and the consultation process that Group is undertaking will provide ground-breaking recommendations.

4. We have received reports from two of the Working Groups, Court Processes Simplification and Access to Legal Services. These reports were approved for action oriented consultation by the Action Committee at its meeting in mid June and the Steering Committee is moving forward with that as we speak. Of course, we expect the members of the Action Committee to take these reports to their respective organizations for deliberation and action. We intend the reports to be a sort of challenge to the various constituencies to formulate their own priorities and action plans.

Here are some highlights of the two reports.

(a.) The Access to Legal Services Working Group Report has 13 recommendations. They include: creation of a national internet portal ; simplification and coordination of access to justice information; better integration of publicly funded legal services and public legal education and information services; revision of professional conduct rules and civil procedure rules to promote innovative practice approaches - eg unbundling ; exploration of legal services insurance; web based legal services; better coordination of publicly funded legal services with health and social services; provision of legal services in remote areas ; promotion of evidence-based research and improved access to justice training for law students.

(b.) The Court Process Simplification Working Group Report is in two main parts. The first addresses a list of areas for possible reform efforts including things such as more use of technology ( eg interactive court forms, tele and video conferencing for uncontested and straight forward matters); court annexed pro bono services and so forth. The second main part of the report deals with broader issues such as the need for judicial leadership in collaboration with other players in the system; the possibility of creating access to justice committees in each court; the possibility of courts, in collaboration with other actors, setting some performance targets having regard to efficiency, timeliness, proportionality and of course without compromising -- in fact enhancing the fairness and justice of the process and its outcome.

5. The other two working groups (Family Justice and Prevention Triage Referral) will report by the end of the year and be considered by the Action Committee early next spring.

6. The Action Committee will be publishing a report once all the Working Group reports are in and our rounds of consultation have been completed. We are also exploring the option of partnering with other groups/organizations to have a substantial and substantive conference on this work.

So that is a brief overview of what we have been doing. Let me share with you a few reflections about what I think we have learned so far.

1. There is a need for what I have been calling “focussed engagement.” Most organizations and individuals active in civil and family justice recognize that we have a serious problem but most it seems to me are not seriously engaged with doing anything about it. I think that things are starting to move, but we have a long way to go before we have the sort of long-term, concentrated, action-oriented approach that I think we need.

2. There is a need for a collaborative approach, All of the actors need to work together but too often they seem to be working at cross-purposes or at least not collaboratively. The silos are real, they are tall and they are strong.

3. We need a systemic and coordinated approach. There are lots of good ideas and some good initiatives, but they rarely fit into any sort of overall plan and they are not sufficiently coordinated with the efforts of others. This is true within sectors, across sectors and across jurisdictions. Are PLEI organizations coordinating their efforts across jurisdictions? Are law societies, legal aid plans, courts and PLEI organizations within jurisdictions working together to avoid duplication of effort and drawing on the strengths of each? These are the sorts of questions that must not only be asked, but answered.

4. We should never underestimate the power of getting the right people in the room. The Action Committee has in some ways surprised itself. We started as a large, disparate group with no resources and no terms of reference, but having the right people in the room eventually allowed it to develop a strong sense of purpose and a lot of common ground.

5. A lot of what we have to do is about process. How do we go from good ideas to coordinated, effective action within a system where in a sense nobody is in charge? There is a lot of work to be done in setting some practical goals of what our civil and family justice system ought to look like and in making it possible to know if we are getting closer to that goal. At our most recent meeting, there was a lot of interest in having groups like the action committee at the provincial and territorial level,

and perhaps even at the court level. The Access to Justice Commissions in several US states look interesting. Whatever the mechanisms, we need to get the right people in the room on access to justice.

Let me offer you some concluding thoughts. In the past ( and I can go back on this at least to the time of Bentham!) , both the bar and the judiciary have been seen by many as standing in the way of meaningful reform. I hope that the Action Committee will lead to constructive engagement, collaboration and coordination by all of the actors in the justice system. But too often, discussions of access to justice lead to "us" and "them" exchanges: the lawyers blame the judges, the judges blame the lawyers, government says they are both right etc etc. But as Marshall McLuhan once said, there are no passengers on spaceship earth, we are all crew. There is no "them;" it is all "us." We all have our own roles to play and we must work together. We urgently need to find mechanisms that, while absolutely respecting roles, responsibilities and institutional and individual independence, permit all of the people responsible for the functioning of the civil and family justice system to work together in a coordinated and cooperative way. I am confident that broadening the traditional dialogue by incorporating the experience, expertise and perspective of the PLE community has, and will continue to be of enormous value.

Those of us in the legal profession will have to learn to think not only about each case and ensuring that it is treated justly and according to law, but also to think about how the overall system is functioning. It has been said that "Law is not what it says, but what it does." People want and deserve outcomes not just process and principles. We do not have to compromise on justice or fairness or the rule of law to start to think not only about how we dealt with a particular case, but the actual outcomes we get for people.

I spent a couple of hours with the leadership of the World Justice Project in Washington earlier this week. Among many interesting subjects of discussion was the possibility -- that receives some support in the most recent data collected from Canada - that many people, especially lower income people, think that the system is even less accessible to them than it in fact is. Lower income people are much more likely to simply give up when they have a legal problem and may be much quicker to assume that legal help is simply beyond their reach, even when this may not in fact be the case. This suggests many things, including that public legal education about how to meaningfully vindicate rights remains a key component of improving access to civil and family justice, especially for lower income Canadians.

Many thanks to you for your interest and support and I look forward to continuing to work with you and the many other key groups in the justice community to strive for meaningful change.