

Uncharted territory: researching civil justice systems in Canada.

When you hear “civil justice system,” whether you are a trained legal professional or not, likely nothing very concrete comes to mind. But when you hear “criminal justice system,” now you probably have images of courthouses, lawyers’ offices, bailiffs, and even the DA’s office as supplied by *Law and Order*.

Civil justice systems (there is one in each province) handle non-criminal disputes. Divorce, bankruptcy, breach of contract – all the disputes which are not heard by criminal or tribunal forums. As such, they handle the vast majority of disputes, and the average Canadian is much more likely to wind up in a civil court than in any other.

Civil justice systems, including the courthouses, lawyer’s offices, legal aid, departments of justice, law reform commissions, mediators, public legal educators, and others, are built around the complex and changing beast known as civil procedure. Like the health or educational systems, they are in need of constant adjustment, and occasional overhauls. But unlike the criminal justice system, Canadian civil justice systems receive very little attention from the media and Statistics Canada. Thus we learn very little in popular sources about how these systems work or do not work, and that is a problem. Our opinions of and respect for the law will be most powerfully determined by direct personal contact with the legal system, and for most of us that will be a civil system. If the system does not work, we lose confidence.

Finding out about civil justice systems is more difficult than it should be. By my estimates civil justice system-relevant materials comprise 10-15% of most large law libraries in Canada. That’s several thousand titles in each library. Plus, civil justice systems have been the object of increasing professional and scholarly interest over the past 30-40 years, so there is a large civil justice literature in periodical sources. But accessing this body of material is difficult because the subject headings employed in most libraries and periodical indexes do not use the term ‘civil justice.’ For instance, the best bets in the Library of Congress subject headings are (under “Law”): Courts; Justice, administration of; Practice of law; Procedure (Law); and Technology and law.

This deficiency in subject access exists in spite of the fact that the term ‘civil justice’ is widely used in the literature. In the breach, searching for distinctive words in the title can be effective. Some of the most influential works use the term ‘civil justice,’ such as Jack I. H. Jacob’s brief, lucid, and highly readable *The Fabric of English Civil Justice* (1987). Others use different language, such as Lord Woolf’s 1996 report recommending a major overhaul of the British civil justice system, *Access to Justice*. In Canada the term is used in some titles, such as the Ontario’s 1996 *Civil Justice Review*, or, in the same year, the *Report of the CBA’s Task Force on Systems of Civil Justice*. The term is used in French: Charles Belleau’s essay “L’Accessibilité à la justice civile et administration au Québec” (in *Access to Civil Justice*, 1990), and also out west: *The Foundations of Civil Justice Reform* (B.C., 2004). Other works use alternate or more specific terms, such as *Report of the Nova Scotia Court Structure Task Force* (1991), Robert G. Hann and Carl Baar’s *Evaluation of the Ontario Mandatory Mediation Program* (2001), or the bilingual *A Judicial Reform Based on the Needs of Citizen* [sic] (*Une réforme judiciaire axée sur le citoyen*) (2005).

Civil justice systems, like all institutions, produce documents. Documents of this sort –circulated in limited numbers, not ‘published’ by a conventional publisher– are called grey literature. Grey literature is not usually collected by libraries, but it can be extremely valuable. Here are three typical titles: *BC Supreme Court Self-Help Information Centre Initial Evaluation Report* (2005); *Dispute Resolution Officer Pilot Project: general information* (Alberta, 2003); *Rules of Court Committee: request for comments - expedited/streamlined cases* (Alberta, 1998). Some of this literature, even where it is available to the public in principle, may in fact be nearly impossible to obtain, especially by private individuals. In some cases unnecessarily conservative information practices exist, but there are also legitimate reasons not to make some of these documents widely available. For instance, the considerations and intentions of rules committees, were they generally known, might have the effect of limiting the kinds of steps initiated under a rule, and therefore the range of interpretations that will ultimately shape the rule.

The Canadian Forum on Civil Justice has a mandate to collect and share information that will foster fair, efficient, and cost-effective civil justice systems across Canada. We have been establishing key contacts and building relationships with civil justice bodies from all jurisdictions with the dual purpose of increasing awareness in the justice community of the value of this grey literature and seeking permission where appropriate to make it available.

Currently, some 20,000 works, including all those cited above, are available from the Forum’s *Civil Justice Clearinghouse*. The Clearinghouse, a database of bibliographic descriptions (and full text where available) of Canadian and foreign civil justice systems materials, is online at <http://www.cfcj-fcjc.org>. The site also offers the most complete list of civil justice links available in Canada, access to our publications, and the results of our ground-breaking research on communication issues in Canadian civil justice systems.

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