

**Access to Justice for Minority Populations:
Focus on the English-speaking Communities of Quebec
2000–2016**

Literature Review

Dr. Linda Shohet
November 28, 2016

Acknowledgments

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November 28, 2016

“If it’s not impossible, it isn’t worth doing.” Rod Macdonald

Introduction

The objectives of this project are to research access to justice issues experienced by English-speaking Quebecers from their perspective, to establish metrics for measuring access to justice that fit the needs of community members, and to make recommendations to mitigate or overcome gaps and challenges for the English-speaking community of Quebec.

The guiding question is: What is the lived experience for an English-speaking Quebecer in accessing legal and judicial information and services or in interacting with any of the social services that are now understood to be implicated in the broader concept of access to justice?

This literature review is the first deliverable from Phase 1 of the project with an expectation that the findings will inform the second deliverable — a research plan to fill gaps in knowledge about the reality of access to justice for the anglophone population of Quebec.

The literature on access to justice is vast and multi-disciplinary, but given the limited scope of this review, we have initially selected two sets of foundational documents that provide a basis for understanding the evolution of the current concept of access to justice and the context of minority language communities for francophones outside Quebec and anglophones in Quebec. These summaries are arranged in chronological order; each entry has a section for description, methodology, findings, and relevance to this project. The segment on relevance is highlighted for easier reading. Other materials have been selected on topics based on feedback from the project’s advisory group, community informants in Montreal and the regions, and input from external reviewers. Additional citations are in a list of documents of interest without summaries.

Methodology

We used a variety of methods to compile a selected bibliography from the published literature. We first explored foundational documents and studies on the concept of “access to justice” and its present state in Canada. We consulted publications by leading Canadian theorists and reports prepared by the Canadian Department of Justice, the Quebec Ministry of Justice, the Canadian and Montreal Bar Associations, the Law Society of Upper Canada, and the Canadian Forum on Civil Justice.

Subsequently, we narrowed the search to studies that explore access to justice for marginalized communities, and more specifically, for linguistic minorities in Canada and Quebec with an emphasis on the context for Anglophones in Quebec. Key studies included official documents and reports such as those by the Office of the Commissioner of Official languages and more local sources produced by the Bar of Montreal and other organizations (e.g., documents from the conference “The Language of Statutes and Judgments” held on October 21, 2015 in Montreal). We sought an international perspective that might provide insights or models to explore regarding the Quebec context. The list includes studies from Australia and the European Union, which seem to share some similarities with the Canadian context.

We searched academic publications (journal articles, books and book chapters) using combinations of the keywords “access to justice,” “Canada,” “Quebec,” “Europe,” “marginalized communit*,” “linguistic minor*,” “English-speaking,” “Anglo,” etc., we searched academic databases Academic Search Complete, Sociological Abstracts, Canadian Public Policy Collection, Canadian Research Index, Repère as well as the QUESCREN

bibliography. Later we added other search terms such as “policing” (specifically in Quebec). For international sources, we added keywords related to more specific minority languages and communities such as “Catalan” or “Welsh.” Recognizing its limitations, we nevertheless did a targeted search on the Google Books database using the combination of keywords noted above.

After a first draft, we were guided to additional sources by external reviewers. These sources have been included in the final version.

Limitations

The parameters of this review were dictated by constraints of time and purpose. The initial review was conducted in seven weeks, with the final product to be approximately 20 pages in length. The concept of access to justice currently encompasses a large number of related social issues, and we recognize that they cannot all be addressed through a single project. The research project developed from this review and consultation will focus on the issues identified as most pressing for the Quebec anglophone population and as most amenable to potential solutions. We will, however, identify related issues flagged through the process to ensure that they are recorded and open to investigation at a future time.

Foundational documents
Concept of access to justice

Macdonald, R. A. (2000, March 31). *Justice Is a Noun, but Access Isn't a Verb.* Speaking notes for the Symposium "Expanding Horizons: Rethinking Access to Justice in Canada," Department of Justice of Canada, Ottawa. Retrieved from: http://www.justice.gc.ca/eng/rp-pr/csj-sjc/jsp-sjp/op00_2-po00_2/b4.html#sec15

Description: Legal scholar Rod Macdonald proposes a reconsideration of our attitudes and expectations of the law and what it can accomplish. Everyday interactions between people do not fit neatly into official laws and we will not have a just legal system until official law reflects social interactions. "Access to courts is not the same as access to justice." He notes that the paradigmatic plaintiff in the courts is usually "white, male, non-immigrant, English or French speaking, professional, well-educated, between 35 and 55," but that official law needs to recognize and legitimate diversity.

Methodology: This is the text of a speech given at a Symposium on Rethinking Access to Justice organized by the Department of Justice of Canada in Ottawa on March 31, 2000.

Findings: "Access to justice" should be about recognition and respect for citizens. A just society is one grounded in "deep human affect." Macdonald concludes that "the most significant barriers to access can only be overcome through re-orientating the way we think about conflicts, rights, adjudication and all-or-nothing judicial remedies; disparities in social power, and not procedural glitches in the processes of civil litigation, are the root of injustice."

Relevance: *Rod Macdonald is a legal scholar who has shaped thinking on access to justice in Canada and internationally. This speech foreshadows his 2005 chapter in Bass, Bogart and Zemans' Access to Justice for a New Century (see below). He asks: "How do we create a system that actually keeps questions of identity and diversity alive in its rules, processes, and personnel?" Concerns with disparities in social power, identity and diversity can help frame an eventual inquiry into access to justice for the anglophone community in Quebec.*

Macdonald, R. A. (2005). Access to justice in Canada today: scope, scale and ambitions. In Bass, J. H., W. A. Bogart, & F. H. Zemans (Eds.), *Access to Justice for a New Century: The Way Forward*. Toronto, ON: Law Society of Upper Canada.

Description: Based on papers given at an international symposium organized by the Law Society of Upper Canada, this book discusses different aspects of the theme of access to justice, including views on the meaning of the concept, ways to improve access to justice and the role of litigation in achieving social justice. Macdonald's introduction to his chapter provides the grounds for most of the key studies and reports on access to justice published in the past decade. He characterizes the evolution of the concept over the past five decades as five "waves" of thinking: from the first when it meant simply access to lawyers and courts, through a second when it widened to propose institutional redesign, to a third when it began to look at problems of equality not only in the capacity and opportunity to litigate but in terms of outcomes. This wave led to calls for demystification of the law, ideas of restorative justice and the alternative dispute resolution movement. It also brought forth public legal information and education, the plain language movement and mandatory standard-form consumer contracts. The fourth wave focused on preventative law, ways to help citizens avoid conflicts or address them before they became legal problems. It also extended to law-making by non-public bodies. The fifth wave brings us to the current broad understanding that "access to justice implies a concern with every facet of the social life of citizens."

Findings: Macdonald highlights the problems faced by the disenfranchised and the strong correlation between health, social services, employment, safety from violence and access to justice. He proposes two main features of an access to justice strategy: That it is multi-dimensional and takes a pluralistic approach to legal institutions. He defines four dimensions of multi-dimensional. The *geographic* recognizes that access varies depending on location in an urban, small town, genuinely rural, or far northern setting. The *socio-demographic* dimension recognizes how identity—gender, age, employment status, education, intellectual and physical capacity—might correlate to access. *Social disempowerment* suggests that certain groups want their own institutions to better express the needs. Aboriginal peoples are examples. *Diversity of perception*, the fourth dimension, acknowledges that people experience the same legal problem in different ways. Macdonald suggests that a multi-dimensional strategy implies a menu that allows for individual choice by those seeking justice, rather than a formula for an easy fix. The idea of a pluralistic approach to legal institutions recognizes the many “legal” systems that operate in our daily lives—community organizations, tenants groups, condo associations, unions, and more—and the movement into private spheres of family. This understanding forces us to pay attention to the ways that access to justice intersects with these situations. Macdonald uses the concept of barriers to analyze who is excluded and why. He defines *physical barriers*, such as building design, hours of service, distance to service, lack of translation; *objective barriers* such as cost, delay, complexity of process; *subjective barriers* such as feeling socially disempowered sometimes related to issues of class and wealth; and sociological and psychological barriers that make certain citizens and social groups more vulnerable than others. Macdonald closes the introduction with a more detailed analysis of the excluded for whom an access to justice strategy is most significant. He again defines five dimensions: *economic disadvantage* that involves many forms of exclusion besides access to justice; *socio-demographic factors* for people of colour, racialized minorities, immigrants, migrants, refugees, non-native speakers, the elderly, the young; *stigmatization* that includes those with criminal records, alcoholics, addicts, carriers of disease, or those marginalized by the social mainstream; people with disabilities and health problems; and *psychological factors* such as emotional trauma caused by physical, sexual or emotional abuse, mental health problems.

Methodology: Macdonald finally explores a future agenda for access to justice under four headings: Access to Justice as an Issue of Resources: Legal Aid and Alternative Financing Mechanisms; Access to Institutions of Dispute Resolution: the Court System and Its Alternatives; Access to Institutions of Law Creation and Law Administration: Legislatures and Executive Agencies; and Prospects for Access to Justice.

Relevance: *This analysis is comprehensive and clear. More recent reports from the Canadian Bar Association clearly draw inspiration and underpinning from Macdonald. His analysis along with the discussions and metrics from Foucher and the CBA can be used to design a matrix for the research on the anglophone population in Quebec to organize the findings and develop recommendations. A recent article celebrating Rod Macdonald's contribution to legal thinking and education includes a quotation from a presentation he gave at Harvard Law School where he said, "If it's not impossible, it isn't worth doing." We have taken this as the epigraph for this project.*

Currie, A. (2007). *The Legal Problems of Everyday Life: The Nature, Extent and Consequences of Justiciable Problems Experienced by Canadians*. Ottawa: Department of Justice. Retrieved from: http://www.justice.gc.ca/eng/rp-pr/csj-sjc/jsp-sjp/rr07_la1-rr07_aj1/rr07_la1.pdf

Description: This study to determine the prevalence of justiciable problems in Canadian society takes a broad view on civil justice problems and the unmet need for assistance. In line with recent expanded thinking about access to justice, it considers justiciable problems as often the problems of everyday life. Such problems are not always resolved in the courts because people may face various barriers to the formal justice system, such as low

literacy, disabilities, limited language skills, lack of knowledge about where and how to seek help. Moreover, courts and tribunals may not always be the most appropriate or effective ways to address justiciable problems. Nevertheless, even though such problems might be resolved through other mechanisms, they remain legal problems.

Methodology: The study surveyed a national sample of 6665 adults aged 18 years or older by telephone in March 2006. 50.1% of respondents were male and 49.9%, female; 76.6% completed the interview in English, and 33.4% in French; 16.7% self-identified as members of a visible minority group; respondents under 30 years of age were significantly under-represented in the sample; the majority of respondents were from Ontario and Quebec (25.5% and 23.4%, respectively). The questionnaire asked respondents if they had experienced any of 80 specifically identified justiciable events or problems and if they wanted to identify any problems that had not been mentioned.

Findings: The research showed that civil justice problems are pervasive in Canadian society, and that “[p]eople can and do choose many paths to justice.” When justiciable problems are left unresolved, they tend to multiply; people experiencing multiple problems “are more likely to experience problems related to debt, housing, social services and disability pensions.” Moreover, because of associated stress, this situation could lead to problems related to health and other aspects of well-being. It also undermines trust in the justice system. This is especially so for people who perceive the outcomes of problems resolved in the courts as unfair, who feel that their situation has become worse because of unresolved problems or who fail to obtain assistance. The report suggests that it would be socially expedient to create mechanisms that help people solve justiciable problems, especially for more vulnerable groups. These could include phone law lines, self-help centres for assisting litigants who represent themselves in family and civil matters and for assisting people with other legal needs. This is an example of what the report terms “a continuum of service approach,” which addresses a wider range of problems through interlinked services.

Relevance: *This report, with its emphasis on a people-centred approach, has informed a number of subsequent studies on this topic, and has influenced francophone advocates on access to justice. Its premise would be useful when designing questionnaires and other research tools to measure what is considered a justiciable problem from a citizen’s perspective for English speakers in the Quebec context.*

Canadian Bar Association. (2013). *Reaching equal justice: an invitation to envision and act. Report of the CBA Access to Justice Committee.* Ottawa: Canadian Bar Association. Retrieved from: http://www.cba.org/CBAMediaLibrary/cba_na/images/Equal%20Justice%20-%20Microsite/PDFs/EqualJusticeFinalReport-eng.pdfhttp://www.cba.org/CBAMediaLibrary/cba_na/images/Equal Justice - Microsite/PDFs/EqualJusticeFinalReport-eng.pdf

Description: The report takes a people-centred view of the justice system by including the perspectives and opinions of ordinary people, especially those from marginalized communities. The report identifies four barriers to access of justice: lack of public profile, inadequate strategy and coordination, lack of effective measures of change, and gaps in popular knowledge about how the justice system works and how to bring about reform. It qualifies the state of access to justice in Canada as “abysmal” (p. 6) and “too badly broken for a quick fix” (p. 56). The 2011 World Justice Project report found that one of Canada’s greatest weaknesses is in access to civil legal aid, especially for marginalized segments of the population (p. 46).

Methodology: The report uses data from consultations, including focus groups with people from marginalized communities (see CBA *Metrics* entry below), interviews with people “on the street,” and those conducted in a

separate initiative for the Canadian Forum on Civil Justice. In total, 161 people participated.

Findings: The report warns that inadequate access to justice has high economic and social costs such as effects on health, loss of employment and income, housing issues and homelessness, child care, etc. They propose six concrete steps for reform towards an inclusive justice system based on serving the needs of *people*, empowering *participation*, *prevention* of legal problems, ensuring *paths to justice*, *personalized* access tailored to individual and situation, and evidence-based *practices*.

Relevance: *The 6 “P”s proposed as steps to a more inclusive justice system can be developed into a set of questions in an inquiry to gather data on the lived experience of Quebec Anglophones in different parts of the province.*

Canadian Bar Association. (2013). *Access to Justice Metrics: A Discussion Paper*. Ottawa: Canadian Bar Association.

Description: One of five discussion papers prepared by the Canadian Bar Association’s Access to Justice Committee as part of the Envisioning Equal Justice initiative, this paper addresses one of four identified barriers to sustained access to justice in Canada: lack of effective measures of change. It works towards a practical definition of access to justice and its objectives and what constitutes change. In the process of framing outcomes and developing metrics, the Envisioning Equal Justice initiative considered the opinions and input of all stakeholders as both users and providers of justice services. It particularly invited Canadians from marginalized communities who face substantial barriers to access to justice.

Methodology: This paper uses findings from 13 focus group consultations in Calgary, Saskatoon, Toronto, Montreal and in the Maritimes with Canadian citizens, particularly from vulnerable communities (“low-income adults and youth, racialized groups, single mothers, and people with disabilities”), on how they perceive access to justice.

Findings: Participants viewed legal rights as being “just on paper,” found that the justice system is difficult to navigate, “cannot be trusted” and is “person-dependent” (p. 23). Many view justice holistically, not only about what happens in the courts, but related to issues such as poverty, education, racism, etc. (p. 29). Access to justice also means access to health services, “education, meaningful employment, adequate housing and healthy home lives” (p. 30), which, participants believed, “would prevent involvement in the justice systems” (ibid.). The paper provides five examples of methods and approaches to measuring access to justice implemented in other countries and by international organizations: the World Justice Project Rule of Law Index; the Hague Model Measuring Access to Justice Project; the performance criteria developed by the US Legal Services Corporation; the initiative by the Australian Attorney General to build an evidence base for the civil justice system; and an Australian government study on legal aid effectiveness. The paper recommends a set of principles for the development of access to justice measures: that the data be comprehensive, consistent, relevant, timely; that the most economical and simple method of data collection is used, and that it is possible to aggregate and disaggregate data.

Relevance: *Along with the full Reaching Equal Justice (2013) report, this discussion paper offers an understanding of how Canadian citizens perceive the justice system. It also cites international initiatives that together with Canadian findings provide a foundation for elaborating the outcomes of a just system and how to measure them. Currently there is limited data available on access to justice for the anglophone population in Quebec. The principles outlined in this paper can be used in developing consistent and relevant metrics.*

Farrow, T.C.W. (2014). What is Access to Justice? *Osgoode Hall Law Journal*, 51(3), 957-988. Retrieved from: <http://digitalcommons.osgoode.yorku.ca/ohlj/vol51/iss3/10><http://digitalcommons.osgoode.yorku.ca/ohlj/vol51/iss3/10>

Description: This study is based on a 2012–2013 survey on Canadians’ views on access to justice conducted by a team of student researchers led by the author.. Participants were asked eight open-ended questions and invited to add further comments at the end of the interview: • How do you define justice? • What does access to justice mean? • Should citizens have a right to justice? • Do you think justice is of fundamental importance to Canadians? • Should the government do more or less to promote justice for Canadians? • What are some examples of restrictions on access to justice? • Have you ever faced access to justice barriers? • Do you think that everyone is equally vulnerable to access to justice barriers?

Methodology: 99 respondents (out of 494) participated. Respondents were approached in person in selected public locations in Toronto, Brampton, and Mississauga, chosen because of diverse socioeconomic character and high pedestrian traffic. Respondents were from different age groups, gender and ethnic background. The interviews were, on average, 20 minutes long. 70 interviews were audio recorded, 20 were videotaped, and interviewers took written notes on 9.

Findings: Ten themes emerged from response to the survey (p. 968): • justice is about fairness, equality, morality, and active civic participation; • fair process (procedural justice) and social justice are both important; • socio-economic factors are key in determining who has greater access to justice; • people often feel alienated by the system; • access to justice should be a right; • justice is a fundamental issue; • greater government support is needed; • the justice system should provide simpler, cheaper and faster services; • education, prevention and understanding of the lived experiences of the ordinary people who use the justice system are important aspects of justice; • we should consider the further costs that result from an inaccessible, alienating and unequal justice system, especially for vulnerable communities.

Relevance: *The article focuses on the opinions of ordinary Canadians on access to justice and argues for reform of the current justice system based on a more public-centred approach. The findings support the thinking proposed in the past decade and a half and corroborate those of earlier studies (CBA) moving towards a broad definition of access to justice as “the kind of life—and the kinds of communities in which—people would like to live” (p. 983). The themes can help shape an inquiry into access to justice for anglophones in Quebec.*

Foundational documents

Situation for francophones outside Quebec and anglophones in Quebec

Bloom, C. M. (2006). Access to Justice in English in the Judicial District of Montréal-A Unique Experience. *Supreme Court Law Review*, 32, 61–66.

Description: In Canada, linguistic rights are reinforced through the Constitution Act, 1867, the Canadian Charter of Rights and Freedoms and the Official Languages Act. The Constitution Act, in particular, grants the right to all Canadians to use either the English or French language, or both, in the Parliament of Canada, the National Assembly of Quebec as well as in federal and provincial courts. It also postulates that legislative acts of the Parliament and the National Assembly must be published in both English and French. All members of the Bar and of the Judiciary in Quebec should be bilingual, and every English-speaking individual has the right to a

judicial process in English.

Methodology: The article is written from the perspective of the author's experience as a lawyer and *Bâtonnier* of the Bar of Montreal and his involvement in initiatives to improve access to justice for the English-speaking community in Montreal.

Findings: Bloom notes that in 2006 these linguistic principles are not always upheld, which jeopardizes the accessibility of the justice system to the English-speaking community in the province. He views this as "an unfortunate flaw" (p. 63) in a system whose bilingual nature is unique, "not only in Canada but also throughout the world" (p. 63). He compares us to Belgium where the courts in Brussels are divided by language rather than allowing bilingual proceedings as in Montreal. On the other hand, signage in the Brussels courthouses is fully bilingual in French and Flemish as are all personnel of the courts and the Ministry of Justice.

Relevance: *This is one of few documents that addresses the question of access to justice for English-speaking Quebecers and provides a brief overview of the situation in the system in Montreal. Although it is a decade old, the article allows us to assess what progress has been made in this area since then and to identify problems that persist.*

Bar of Montreal. (2007). Access to Justice in English in the District of Montreal: Status Report. Retrieved from: <http://www.barreaudemontreal.qc.ca/loads/Publications/Rapport%20AccessJustice-eng.pdf>

Description: This report outlines the history, starting in 1994, of the Standing Committee of the Bar of Montreal with a mandate to describe and assess the insufficiency or lack of judicial services in English in the District of Montreal, to evaluate the impact of these problems and to propose solutions. In 1995, the Committee submitted a report with 44 recommendations; two status reports were prepared subsequently. The 2007 report was the second.

Methodology: This report is based on documents produced over the years by the several committees tasked with assessing access to justice in English in the District of Montreal. The information was gathered through personal interviews and a validation request. The report itself does not specify the methods of data collection. The co-chair of the Standing Committee (C.M. Bloom) confirmed by telephone in November 2016 that the draft report was sent to judges with a letter requesting that they validate the accuracy of the data. The final version was edited based on the responses to the letter.

Findings: This report provides an overview of the situation as of 2007. It notes improvement since the first report in bilingual (and some multi-lingual) services in the Municipal Court in Montreal because of targeted hiring. The level of bilingualism of courtroom clerks had increased, and the Court complied with its constitutional obligations to ensure qualified interpreters at all levels of the judicial process. Prosecution attorneys were sufficiently bilingual as were all forms to be filled out at the Municipal Courts in penal and criminal matters and all official communication, including the website, of the Court. The report was skeptical of the Department of Justice estimate that "approximately 65% of Quebec Superior Court judges' secretaries are bilingual" (p. 9), and suggested that since the secretaries of Superior Court's judges are sometimes required to act as trial courtroom clerks, the courts have to ensure that they are not unilingual. It noted, "At the Court of Quebec, bilingualism is considered an asset rather than an obligation. The majority of newly-appointed judges are bilingual. However, few judgments are rendered in English" (ibid.). In the Superior Court of Quebec, judges practicing in the Appeal Division of Montreal were bilingual; accessing services in English in the Commercial Division of the Court was found to be without difficulty. The court had also implemented a system whereby bilingual judges assisted colleagues in drafting judgments in the other official language. The report did not specify how many judges in the Court of Quebec were bilingual, but it suggested that the numbers were higher

in the Criminal Division where judges very often render oral judgments in English “if that is the language of the accused” (p. 14). The report also noted that while “[a] good number” of secretaries in the Court of Quebec are functionally bilingual, ...the English language is especially necessary in Small Claims files because secretaries must swear in the parties and witnesses, who often speak English” (9). The report also evaluated levels of bilingualism among judges in the different courts and the linguistic policies at the Administrative Tribunal of Quebec, the Commission des lésions professionnelles and the Quebec Board of Notaries. It concluded that there remained gaps in accessibility of access to justice in English in Montreal during trials and among court personnel and that those gaps had to be addressed.

Relevance: *This report, although 10 years old, provides an overview from the perspective of lawyers and judges of the availability of judicial services in English in Montreal and the Metropolitan Region noting gaps in the level of bilingualism among the court personnel, at that time. It can be used as a benchmark to measure how many of the recommendations have since been implemented. It might also be usable as a template to look at court services in regions of the province where the size of the anglophone population is smaller than in Greater Montreal.*

Dufresne, F., & Makropoulos, J. (2008). Reflections on Access to Justice by Ontario’s Francophone Visible Minorities. *Canadian Issues*, 55-58.

Description: In 2008, the visible minority Francophone population of Ontario was about 10% of the province’s total Francophone population; 74% of them were born outside Canada; they have a higher level of education than the general Francophone population, but lower level of employment and income, which makes them a more vulnerable group. The article highlights the role of the Supreme Court of Canada and the Ontario Court of Appeal in “taking a progressive approach to language rights” (p. 56) in the cases of *Beaulac v. R.* (1999), *Arsenault-Cameron et al. v. Government of Prince Edward Island* (1999), *Lalonde et al. v. Commission de restructuration des services de santé* (2001), which marked a “significant advancement in terms of equality of the two official languages with respect to access to justice” (p. 56).

Methodology: The authors use data from a field research study on access to justice with Francophone visible minority community leaders, conducted for the University of Ottawa Community Legal Clinic.

Findings: The authors argue that, although commendable, these advances do not entirely respond to the socio-judicial needs of the Francophone visible minority communities in Ontario. The article proposes an access to justice framework for such communities based on the following: Access to legal aid and legal representation in French; Access to rehabilitation programs sensitive to cultural diversity; Adequate presence of Francophone visible minorities within the justice system; Training of members of the judicial system in cultural diversity; and Access to a community legal educational system in French (p. 56).

Relevance: *We do not have a coherent body of data on access to justice for Quebec’s anglophone visible minorities, either in established communities or among FOLS immigrants. However, anecdotal information suggests that visible minorities have greater problems with the police and the court systems than white English-speakers. Some of the findings from this study may be applicable to anglophone visible minorities in Quebec.*

Cardinal, Linda and Anick Sauvé (2010), From Theory to Practice: Mechanisms for the Offer of French Language Services in Ontario’s Justice Sector, Volume 1, Research Chair in Canadian Francophonie and Public Policies, Ottawa

Description: The objective of this study is to examine the conditions favourable to the development of French language services (FLS) in Ontario's Justice Sector. This two-phase study is part of the strategic planning process initiated in this sector in 2006 by the Office of the Coordinator of French Language Services in Ontario. The first phase (Vol. 1) inventories how government services plan for and guarantee the delivery of FLS in the Justice Sector and presents theoretical models aimed at facilitating and improving FLS.

Methodology: The authors reviewed government documents for the different mechanisms and delivery models used in Ontario, as well as for exemplary practices and useful resources employed in this sector. The authors noted that only a few scientific studies existed on this subject.

Findings: The authors identified four dimensions of an active offer of FLS. The first, the prerequisite dimension, regroups the means that must be in place to make an active offer of FLS. Among others, this includes recruiting bilingual personnel to the public service, raising their awareness about linguistic duality and the development of relevant tools and resources. The main focus of this study is the portrait of this dimension. The second is the subjective dimension that addresses the verbal and non-verbal elements of communications between public service personnel and the users of FLS. Thirdly, the objective dimension covers all the kinds of material and visual elements - signs, posters, and websites – used by the FLS. The fourth and final dimension is integration. Here, the aim is to integrate the concerns of the Francophone population. Based on this theoretical model, the authors then developed a survey that was administered to public servants in designated bilingual positions in the Justice Sector. This aspect of the research is the subject of the second phase of the study and is described below.

Cardinal, Linda, Nathalie Plante and Anick Sauvé (2010), From Theory to Practice: Mechanisms for the Offer of French Language Services in Ontario's Justice Sector, Volume 2: Perceptions of Public Servants and Users, Research Chair in Canadian Francophonie and Public Policies, Ottawa

Methodology: This second phase of the study is based on the data collected by the authors from a survey administered to public service employees in the Justice Sector and from six focus groups of FLS users in Ontario. *Survey:* The authors sent out a 42-question survey to 1,182 public servants in designated bilingual positions. The response rate was 31% (367 people); most of them, 47.7%, worked at the Ministry of the Attorney General, 36.5% were employed at the Minister of Community Safety and Correctional Services and 16.1% worked at Legal Aid Ontario. *Focus groups:* The authors also wanted to get the perspective of users and what it was that motivated them to request or not to request services in French. Thus, previous contact with the Justice Sector was a prerequisite for participation. The six groups each had between 7 - 8 people, for a total of 42 participants. The focus group sessions were held during the winter of 2009 in Ottawa (three groups), Toronto (two) and Sudbury (one). Each session lasted an hour and was conducted in French.

Findings: The results of the survey showed that, after the strategic plan, public servants were increasingly aware of the needs and of the mechanisms of an active offer of FLS. The authors note, "On the whole, the picture it draws seems fairly encouraging" (p.38). In general, the respondents had a good understanding of the obligation to offer FLS and felt that the tools at their disposal were useful though insufficient to meet the demand. The majority stated that "their office actively promoted FLS either always or most of the time" (p.7). However, the data revealed that even though employees were in bilingual positions and understood their obligations, they waited until the user requested FLS rather than offering it proactively. A large number of respondents think, "Francophones do not sufficiently request FLS" (p.7). Thus, the study brings to light the importance of the subjective dimension in the delivery of FLS and the general ambiance in the office that either encourages or discourages Francophones from asking to be served in French. This same finding was confirmed by the focus groups. The respondents spoke of discomfort and fear of stressing or bothering the person behind the counter

as reasons for not asking to be served in French. The authors conclude that the Ontario Government must actively communicate to the Francophone community its commitment to an active offer of FLS in the Justice Sector.

Relevance: By presenting the perspectives of the both the users and those who offer FLS in the Justice Sector, the study gives a more complete picture of the current situation in this sector in Ontario. The theoretical, qualitative and quantitative results of this research can be used to design similar studies to assess the present situation on the same issue as it pertains to the Anglophone community of Québec.

Gouvernement du Canada, Ministère de la Justice. (2010). *État des lieux sur la situation de l'accès à la justice dans les deux langues officielles*. Ottawa : Ministère de la Justice. En ligne : <http://www.justice.gc.ca/fra/rp-rp/sjc-csj/franc/enviro/index.html>

Government of Canada, Department of Justice. (2010). *Environmental Scan: Access to Justice in Both Official Languages*. Ottawa: Department of Justice. Retrieved from: <http://www.justice.gc.ca/eng/rp-pr/csj-sjc/franc/enviro/index.html>

Description: This report provides the perspective of members of legal professions on access to justice information and services in both official languages throughout Canada specifically in three areas under federal jurisdiction: Criminal Law, Bankruptcy Law and Law of Divorce and Support. The report also identifies needs and solutions specific to each province and territory.

Methodology: In addition to a literature and document review, other research instruments — surveys, questionnaires, interviews, and focus groups — were used to collect data from various legal professionals. They contacted about 900 professionals practicing in French in the 12 jurisdictions outside Quebec and about 450 lawyers practicing law in English in Quebec. The response rate from outside Quebec was 24%; the response rate for Quebec was 12%. The 358 respondents included judges, lawyers, prosecutors, court officers, representatives of provincial ministries, presidents and representatives of the Association des juristes d'expression française.

Findings: There was a general dissatisfaction with judicial and legal services in French in the 12 provinces and territories where it is a minority language (rates of dissatisfaction vary across province, territory or judicial division). A number of respondents believed that French-speaking individuals are at a disadvantage in the Canadian judicial system. In contrast, lawyers in Quebec reported an overall satisfaction with the judicial and legal services in English in the province. The research revealed that time and cost are important factors in the decision of whether or not to use French in jurisdictions outside Quebec; this belief is generally lower among Quebec respondents.

Some findings from Quebec in the three areas of federal jurisdiction regarding barriers include:

- Criminal Law: 100% of the respondent lawyers in Quebec believe that in criminal cases, it is easy to obtain services in English from judges in the province. They believe that the Quebec judiciary is very open to bilingualism, but expressed reservations about the level of bilingualism in the judicial system outside Montreal. Re documentation in English (access to legislation, case law, pleadings), respondents did not report any particular difficulties.
- Bankruptcy Law: Respondents reported that it is easier to access services in English from judges than from officers of the Superior Court or court support staff. Re documentation, 36% said that it is not easy to access legal literature and case law in English, although that is not the case for pleadings.
- Law of Divorce and Support: 100% of respondents found no difficulties accessing services in English from judges, but less so from officers of the Provincial and Superior Courts and courthouse staff. The documents most difficult to obtain in English in these cases are pleadings, legal literature and case law.

The report outlines possible solutions tailored to each province or territory, as they have different levels of development of both judicial infrastructure and use of an official minority language. For provinces such as Ontario, Quebec and New Brunswick, which are more advanced in use of both official languages, the report recommends ensuring that services in both official languages are easily and widely available across the entire province, developing and implementing policies for an active offer of such services, hiring and training bilingual personnel, and making minority language use a “standard practice in order to overcome the idea that proceeding in the minority language puts an individual at a disadvantage or increases the costs and time involved.”

Relevance: *Despite its limitations in considering only three areas under federal jurisdiction and surveying only people from legal professions, the report provides a snapshot of the situation regarding access to justice for the two minority language groups across Canada, from a comparative perspective. This document was identified as very important for francophone jurists. For Anglophones in Quebec, there are some contradictions between the findings from the 2007 report of The Bar of Montreal There is reason to compare the findings of 2007 with this 2010 report to note and explain where they diverged, and to examine the same questions in 2017 to monitor progress.*

Foucher, P. (2012). Legal Status of Anglophone Communities in Quebec: Options and Some Recommendations. In R. Y. Bourhis (Ed.), *New Canadian Perspectives: Decline and Prospects of the English-Speaking Communities of Quebec* (pp. 71-98). Ottawa: Canadian Heritage and the Canadian Institute for Research on Linguistic Minorities (CIRLM). Retrieved from: http://publications.gc.ca/collections/collection_2014/pc-ch/CH3-2-16-2013-eng.pdf

Description: The chapter provides the most comprehensive overview and analysis to date of the language rights of English-speaking Quebecers in relation to the jurisdictional powers of the federal and provincial governments over language and culture. Foucher details provisions by the federal government towards minority-language communities in the Official Languages Act, as well as by the Quebec Charter of the French Language that protects the French language and regulates the use of English for access to health services and education. The author compares language rights in Canada and Quebec to the “traditional human rights” enshrined in the Canadian Constitution, noting the tensions that persist around divided responsibilities and the legality of federal intervention into provincial jurisdictions. He notes that the Anglophone community has tended to argue for its language rights based on individual rights and suggests that they must move strategically towards arguing for collective rights. He makes a series of recommendations on ways to improve the judicial status of English-speaking communities in Quebec.

Methodology: The author analyzes key legal documents in Canada and Quebec that govern language and notes that the Anglophone community in Quebec is not recognized by the Human Rights Committee of the U.N. as a minority and would only have recourse to the international tribunal if Quebec were in fact to become a separate country. He takes a thematic approach to analyze specific areas where the use of English is regulated or ignored and suggests where the Anglophone community could focus its strategy to win more acceptance of English as an official language. He looks at language of legislation, use in parliament, in the courts, in government services, in education, and health and social services, and suggests that language use in the courts is a fruitful area for action. He outlines the situation and points to the creation by the francophone minorities outside Quebec of a national federation of provincial associations of French-speaking jurists as a possible model for Anglophones in Quebec. While he sees little chance of changing official language use inside government, he suggests that there could be a clause that guarantees the right to fair representation in the public service. Foucher highlights the clause in Bill 101 that authorizes the government to designate some institutions where English can be used internally and for services when more than 50% of the population they serve is not French-speaking. He suggests

that an argument can be made against the high percentage required, compared to the federal level that requires 5%. He also suggests that other institutions could be designated if it provides services on behalf of the government.

Findings: The author makes eight final recommendations, taking an approach based on collective rights rather than individual freedom of choice of language, “since it is the collectivity, not the language, that is at risk” (p. 72), and stressing the importance of securing support for community institutions. He strongly recommends creation of an ombudsman office in Quebec to protect national minorities, including Anglophones, and enlargement of designated institutions.

Relevance: *This detailed analysis of the legal status of the Anglophone population provides grounding for the proposed project. There is a need to collect current empirical data on a number of the fronts that Foucher discusses and to assess the situation four years later. For example, an Association of English-speaking Jurists of Quebec (AEJQ) has recently been incorporated. If they take on a role analogous to their francophone counterpart, they may be well-placed to pursue some of the recommendations. The research project could gather data to support these and other strategic efforts.*

Centre des organismes communautaires / Centre for Community Organizations (COCO). (2012). In the know: Identifying multiple aspects of Quebec’s community sector. Montreal: COCo. Retrieved from: <http://coco-net.org/wp-content/uploads/2012/11/COCO-In-the-Know-Final-Report.pdf>

Description: This study carried out by the Centre for Community Organizations (COCO) between 2009 and 2012 presents a portrait of the English-speaking, bilingual and culturally diverse community groups working in Quebec. It describes where such groups are located in the province, identifies specific characteristics and describes activities and organizational structure. The study also proposes strategies to increase their opportunities to have access to more funding from the Quebec government and to support the recognition of these groups as part of the Francophone community sector. Ultimately, the study aimed to describe the conditions of marginalization or exclusion of community groups, to “foster stronger links and dialogue” between these groups and the Quebec government and to stimulate changes to the government’s Politique de reconnaissance et de soutien à l’action communautaire.

Methodology: The study used a community-based action research (CBAR) approach, which requires an active and meaningful involvement and sharing of knowledge by all participants in the research process. The research was based on a self-reporting survey with questions about groups’ location, demographic information, linguistic capacity, legal status, sources of funding, and “eligibility for Québec government global mission funding and network affiliations” (p. 3). Initially, the survey was distributed through the online-based Survey Monkey program to 14 groups from different regions across Quebec. It was then also distributed through COCo’s mailing list and other networks. A more targeted approach was adopted at a later stage and specific groups were contacted by phone. The study identified almost 800 English-speaking, bilingual and culturally diverse community groups; 290 of them completed the questionnaire.

Findings: Most of the responding groups are small, with a staff of between 0 and 5 part-time and full-time employees; 69% had been in existence for 11 years or more. A little over half work in the Montreal region; most of the rest are in Laval, Capitale Nationale, Estrie and Côte-Nord, les Îles-de-la-Madeleine and Outaouais. Most reported using English as the main language of work, 33.6% use both English and French, while 23% use French as the primary language. The majority of respondents indicated a strong capacity in English: 83% reported that they are very able to provide services in English. For French, 65.7% reported that they are very able, and 28.2% said that they are somewhat able to offer service. 33.9% can offer services in other languages, such as Spanish, Tamil, Urdu, Hindi, Arabic, and others. Most of the groups operate on small budgets: 43.5% have less than \$100,000 a year, 22.4% operate with between \$100,000 and \$250,000, while 13.9% reported not having any

budget and running mostly with volunteers. Funding sources include the federal and municipal governments, foundations, fundraising activities, sale of products and services, in-kind of support (the survey did not ask for a breakdown of budget by funding source). Regarding Quebec government funding, 80.7% of the groups that answered this question reported that they had not applied for global mission funding (recurring core funding that covers basic salaries, rent, basic activities) in the previous 3 years. 41% of the reporting groups said that project of service funding (project-based and short term), the other major type of provincial government funding, accounted for more than half their budget. The study found a general lack of knowledge among the responding groups about the existence of global mission funding, even though many of them are eligible for it. In response to this finding, COCo has continued to offer information and consultation to groups about Government of Quebec funding. Many groups reported that they are active in networks; most participate in regional and Anglophone networks (225 responses) and fewer in Quebec-wide networks (73 responses). The report identified the participation of these groups “in places of greater leadership in the Francophone community sector” (p. 9) as an area for further action research.

Relevance: This study identified over 800 English-speaking, bilingual and culturally diverse community groups working in Quebec and created an interactive map on the COCo web site that provides location and contact information. While their survey did not explicitly ask about legal services or supports, it included other categories that involve access to justice dimensions. Although the map has not been updated since 2011, a research project on access to justice can use this tool to identify potential informants, especially among marginalized groups. The tools and findings from this study should also be compared with those from the 2013 Éducaloi and 2016 CHSSN surveys to help shape relevant research tools, some of which may be adaptations or hybrids of previous ones.

Éducaloi & CROP. (2013). *Study on the English-Speaking Community in Quebec*. Montreal: CROP.
Available on request from Éducaloi

Description: This quantitative survey commissioned by Éducaloi was conducted in 2013 by CROP. Its aim was to measure general perceptions of the English-speaking community in Quebec about the justice system in the province; identify the legal needs of the anglophone community and the sources of legal information they use most often; and measure the level of awareness about resources such as Éducaloi and others that provide legal information.

Methodology: The survey questionnaire was administered by telephone and online in March 2013. 237 English-speaking Quebecers, aged 18 and over, participated. 75 were interviewed by telephone, and 162 online. 83% were from Montreal, 17% from elsewhere in Quebec. To reflect the distribution of the anglophone community in the province, the data were weighted with the parameters of age, gender, regional provenance, level of education and socio-cultural values (the latter two were used for the online sample only).

Findings: *Perception of services offered in English by the Quebec justice system:* Opinions were divided. Younger respondents, 18-34 years old, and those with a CEGEP-level education perceive the system more favourably (45% vs 48%). Of those with a poor perception, 38% said it was due to a lack of, or lack of access to, services in English. Other reasons were unavailability of printed information in English and a feeling of animosity from Francophone employees who do not speak English. More than half of respondents had no specific suggestion on how to improve the system. 21% mentioned including more English and improving the level of bilingualism.

Legal Information Needs: The study found that men consult legal information more frequently than women, as

do those aged 34-54 across both genders. The most requested topics are consumer and language rights followed closely by wills and estates, matters relating to health and the health care system, landlord and tenant issues and the sale and purchase of property. Most respondents judge the source as the main factor in determining relevance and quality.

Sources for legal information: The majority would turn to a lawyer or notary, especially outside Montreal, and to government websites, publications or services. Those 18-34 years old and outside of Montreal are less likely to contact legal clinics or community organizations. Most respondents prefer information online or in person. The respondents who indicated preference for print documents or using a telephone help line are almost evenly split among the survey categories. Social media is used very little to access legal information, but most among those 18-34 years old. Most respondents use legal information in English only because they are native English speakers and because specialized information is easier to understand in their first language. Respondents living in Montreal, male, those between the ages of 35 and 54 and with CEGEP education are more likely to seek information from government sources in English only. Many respondents self-identified as bilingual; they consult information in both English and French, with those living outside of Montreal, women, and those with high school or trade education more likely to do so. The reasons are lack of information in English, or that English information is less complete than the French versions, and the fact that the respondents are bilingual. When seeking legal information, more than 7 out of 10 respondents use government information and services, and 3 out of 4 respondents look up general information (not just legal) from both federal and provincial government sources.

Awareness of Éducaloi and other legal information sources: Less than 1 respondent out of 10 was aware of Éducaloi. When compared with other legal information resources, awareness of Éducaloi was relatively similar or lower. 16% of respondents were familiar with the legal info line 1-800-NOTAIRE, 15% with Pro Bono Quebec, and 13% with the referral services of the Quebec Bar.

Éducaloi. (2013). Survey: Éducaloi's Services in English.
Available on request from Éducaloi.

Description: This survey was conducted between March and May 2013 among visitors to the English-language version of the Éducaloi website to measure their opinion of services offered in English in the Quebec legal system, how people find and use legal information, and in what language(s). 69.6% of respondents were women, 60% live in Montreal, most were between 35 and 54 years of age and have university education. 44.9% indicated English as mother tongue, and 51.6% said they spoke another first language (such as French, Chinese, Yoruba). Not everyone answered the country of origin, but the majority of those who did indicated Canada.

Methodology: This online survey of 13 open- and close-ended questions was created by Éducaloi with the data collection website SurveyGizmo. Respondents had a choice of several answers or could write their own answer in the space provided.

Note: Because this is an online survey, the statistical breakdown is not entirely reliable. For example, because not all questions were answered by all participants it is difficult to determine how many people participated overall. Further, for the question on mother tongue, many gave the same response with different variations: Chinese appears three times as "Chinese," "Chinese (Cantonese)" and "chinese [with a lower-case 'c']." The results for each question are not broken down by gender, geographical location, age, etc. Also, the percentages of all respondents for each question do not add up to 100%, which means that the survey probably allowed for more than one answer to each question.

Findings: 84.8% of respondents said that they look for information for personal use in English and 13.2% said they do so in both English and French (this question did not specify type of information). Re legal information, 61.9% of respondents said that they consult such information on occasion. 54.3% look for legal information in English only, but 43.2% use both languages. Respondents indicated that they look up information about wills and estates, landlord and tenant issues, workplace issues, separation or divorce and powers of attorney and mandates. Others indicated additional topics such as: family law, adoption, sexual and other kinds of abuse, legal information pertaining to health. 76.7% believe the source determines whether the information is relevant and reliable.

For legal information, 72.6% of respondents first consult government websites, publications or services (the majority consult both federal and provincial); 54.8% turn to lawyers or notaries. Websites or in person or a telephone help line with a person on the line are the preferred methods to obtain legal information. Overall, 43.7% have a somewhat good perception of the services offered in English in the Quebec legal system, and 33.5% somewhat bad. The question: "In your opinion, what should be improved in the Quebec legal system?" yielded many answers. While some recommended procedural changes such as shorter waiting times before trials, tougher sentences for certain crimes, etc., the majority gave answers related to language. They would like to see more, and better access to, services in English, in both languages and even in foreign languages; better access to legal information in general and to bilingual or English-speaking lawyers. Some mentioned improving translation of legal documents, court decisions, etc. into English and working towards improving equality between the two linguistic communities through bilingualism. The survey shows that the results are almost evenly split between those who were familiar with Éducaloi and those who were not.

Relevance: *Together with the CHSSN survey (see below), these two surveys from Éducaloi i give some concrete starting points for identifying fairly recent perceptions of English-speaking Quebecers about their access to legal information and services in the province. The commonalities are important but so are the differences in response, particularly regarding the areas of greatest need. Any coordinated research in the future would have to take account of the critical work already done by Éducaloi since its inception.in a number of areas related to access to justice, including many projects in regions of Quebec outside Montreal.*

Community Health and Social Services Network. (2016). *Baseline Data Report 2015-2016 2015 CHSSN-CROP Survey on Community Vitality Findings on English-speaking Community Vitality across Key Sectors*. Retrieved from: http://centreconnexions.org/wp-content/uploads/2016/05/2015-2016-CHSSN-CROP-Community-Vitality-Survey_web-version.pdf

Description: This Report presents the findings from the most recent Quebec-wide CHSSN/CROP Survey on Community Vitality across key sectors in 2015. Only the section related to legal services is included in this review.

Methodology: The survey was conducted primarily by telephone with 3,014 English-speaking, randomly selected Quebecers aged 18 and over, between February 27 and April 15, 2015. Based on data from the 2011 census, the survey data was weighted according to region, age and gender. In addition, focus groups were conducted in September and October 2015 in four of the regions that had low response rate to the telephone interviews from English-speaking residents; the focus groups aimed to address this imbalance. The survey collected respondents' perceptions on legal aid, legal and judicial services, use of information, topic of information, satisfaction with information and availability of information in English.

Findings: In terms of use and availability of legal services in English, results varied in the different regions across Quebec, and across age, gender and income status. There was not a high level of satisfaction in any of the categories. However, a few findings stood out. Women seemed to express greater dissatisfaction. About 25% of

respondents had used legal information in the previous two years, many of them bilingual and with higher income. The most frequently requested information was family law. In the regions, satisfaction with legal information in English varied from a low of 38.6% in Laval to 83.3% in Abitibi-Témiscamingue. More than 50% of respondents thought the quality of translation was poor. 15.6% reported that legal information was not available in English. Respondents from Mauricie et Centre-du-Québec, Capitale-Nationale and Laurentides were most likely to think that.

Relevance: *This survey collects respondents' perceptions of satisfaction which does not explain why they felt that way. The findings, however, point to areas for investigation and to the need to collect more empirical evidence about the experience of English-speaking Quebecers trying to access legal information and services in different regions of the province. It is less detailed than the earlier surveys by Educaloi and would need to be compared and aligned as areas for investigation are developed.*

Legal Aid Services in Quebec

Gouvernement du Québec, Ministère de la Justice. (2005). *Pour une plus grande accessibilité à la justice. Rapport du groupe de travail sur la révision du régime d'aide juridique au Québec.* Québec : Ministère de la Justice. En ligne: <http://www.csj.qc.ca/SiteComm/W2007English/Pdf/Rapport%20Moreau.pdf>

Description: This working group was formed by the Quebec Ministry of Justice in 2003 to assess the services of the Commission des services juridiques (CSJ), the agency that administers Quebec's legal aid system, and the regional legal aid agencies. It also examined the extent of services offered by the agencies, the costs and pay scales of lawyers and notaries in private practice; to reconsider, and if necessary to propose guidelines for, the eligibility thresholds for legal aid and the contributory component; to review the delivery mechanisms of legal aid services and funding structures of the system. The legal aid system in Quebec was instituted in 1973 and is characterized by a decentralized structure with a network of regional legal aid agencies and with involvement from both the public and private sector.

Methodology: Based on review of pertinent documents, public consultations and an online survey.

Findings: The report recommends that the structure be preserved as it fully satisfies its objectives. Two main recommendations aimed to halt the state's financial withdrawal from its obligation in supporting legal aid and ensuring equal access to justice. One is the regular revision and adjustment of eligibility thresholds to make the system accessible to members of vulnerable communities. The second is to set a system that allows appearance procedures by telephone on weekends and on public holidays and a dedicated legal aid staff of lawyers for this purpose.

Relevance: *When measuring how accessible the legal system in a given jurisdiction, the state of its legal aid network is an important indicator. The 2005 report drew favourable conclusions about the state of legal aid in Quebec, although it does not mention providing legal aid in English or languages other than French (the document itself was published in French only) and does not specifically address the situation of marginalized communities in the province. Among more recent developments in the legal aid system in Quebec are Homologation Assistance Service was put in place for family law matters (October 2013) available to anyone, regardless of financial situation; the Service administratif de rajustement des pensions alimentaires pour enfants (SARPA) (in April 2014), administered by the CSJ, and also available regardless of income; and an increase in the legal aid eligibility thresholds as of May 31, 2016.*

The level of service provision in English through the legal aid system should be examined in all regions of the province in the context of an access to justice inquiry regarding the anglophone population. Informants in the regions and student interns in legal clinics suggest that the need outstrips the supply and there are gaps in the provision of English services.

Policing and Ethnic/Cultural Communities in Quebec

MacLean, R. (2014/2015). Tandem Project: Developing Cultural Intelligence in Police Technology Students Using Cultural/Ethnic Mentors. *European Police Science and Research Bulletin*, 11, 17–20.

Description: The project is part of the first year curriculum of the police technology program at John Abbott College in Montreal. The majority of students are white and have little exposure or knowledge about other cultures. To address this, the program offers a Diverse Community course to foster awareness about intercultural interaction and “various cultural issues ranging from domestic violence issues, issues of ‘saving face’, the complexity of ‘honour’ and awareness of body language” (p. 18). The mentorship-based Tandem Project allows direct interaction between the students and people from some of the 120 ethnic and cultural communities in Montreal. In the project’s first year, people from “Shia and Sunni Muslims (both Arab and black), El Salvadorian, Venezuelan, Jewish orthodox, Jewish semi-orthodox, black English Caribbean, black Haitian, Indian and South-East Asian communities” (p. 19) volunteered as mentors. During their meetings, mentors and students discussed how the community of the mentor perceives the police and the main barriers to positive engagement. The students learn about the different communities and their needs, and about approaches to culturally-specific communication and conflict de-escalation. The objective is to foster cultural awareness and respect, to seek ways to overcome negative cultural stereotypes and to provoke discussions about how to develop higher levels of trust with the police and, ultimately, to “develop a unique community policing approach which considers the needs of all of the communities” (p. 19).

Methodology: The article is descriptive. It outlines the features of the Tandem Project, an applied pedagogical approach designed to include cultural sensitivity training and de-escalating techniques in police training.

Findings: The project had been in place for only one year at the time of writing and there was not yet any published data on outcomes or impact.

Relevance: *The need for better relations between the police and cultural communities in Quebec has been flagged in interviews with community informants, several of whom have noted that being from a visible minority generally creates more barriers in dealings with the police and the justice system than speaking English. The access to justice project will need to examine the situation of FOLS immigrants from visible minority groups and explore exemplary programs to address the problem. Project Tandem is one example of several innovative programs identified in Quebec, few of which are known or shared beyond organizational boundaries.*

Access to Justice for Linguistic, Visible Minority and Rural Communities

Cohl, K., & Thomson, G. (2008, December). *Connecting Across Language and Distance: Linguistic and Rural Access to Legal Information and Services*. Toronto: The Law Foundation of Ontario.

Description: This project addressed barriers to access to legal information and services faced by people who live in rural and remote areas in Ontario and speak neither English nor French. The focus was on low-income and vulnerable groups, such as people with physical or mental disabilities, those with low literacy in their first language, unemployed or under-employed. The recommendations propose “systemic solutions” (p. 1) to these challenges, to be undertaken through a partnership between the Law Foundation of Ontario and other organizations, as the authors believe that a collaborative approach is the best strategy for finding solutions and achieving sustainable results (p. 55).

Methodology: This study undertook an extensive literature review and a series of consultations. A first round of informal interviews was conducted in February 2008 with experts from legal, community, and government organizations to better understand the situation and identify actions being taken to overcome barriers to linguistic and rural access to justice; they also sought suggestions on how to conduct this project. The researchers produced a Consultation Guide to explain the project and summarize the information and ideas gathered from the informal interviews. In formal consultations, they convened three roundtables of maximum 20 people in each, representatives of legal organizations, public legal education providers, front-line clinic lawyers, immigrant settlement workers, disability organizations, and others, in June 2008 in Owen Sound, Thunder Bay and Kingston to gather diverse regional perspectives. They held workshops “at related events where a significant number of stakeholders were present” (p. 3). Informal consultations with selected stakeholders continued, and some people submitted written formal responses to questions in the Consultation Guide. In summer 2008, the researchers drafted a set of proposals presented later that year for discussion with several key stakeholders. They organized follow-up meetings to discuss the draft with many individuals and organizations consulted previously and used feedback and comments to refine the final proposal and recommendations.

Findings: Key findings included:

- Linguistic and rural access to justice, especially for vulnerable populations, are fundamental issues as Ontario becomes increasingly diverse and fewer services are available in rural and remote communities.
- Access to legal advice and assistance by trusted intermediaries are essential for people who face barriers such as language issues, isolation, poverty, low literacy, etc. The report suggests that such access could be provided through: (1) Legal Aid Ontario, one of the most comprehensive community legal clinics systems in the country; (2) pro-bono lawyers, paralegals and law students; and (3) use of technology.
- The greatest demand for information and services are consumer protection, criminal justice, employment, family and child protection, health care and mental health, housing, human rights, immigration and refugee status, income support. These may vary across communities, but were quite consistent among the groups in this study.
- A systemic response is needed since legal problems are inextricably linked to other issues. The recommended “preferred solution is to provide multiple points of access to an integrated system” (p. 54).
- Community organizations are essential to an integrated system as first points of contact for people from linguistic communities or rural and remote areas when they experience legal problems.

The report recommends that the Law Foundation invest strategically in six areas:

1. Improve the capacity of non-legal community organizations to provide basic legal information and referral to clients;
2. Develop and test a coordinated approach to enhance linguistic and rural access to legal information and services in a designated geographic area;
3. Create a legal interpretation network to improve access to interpreters (including sign language), enhance quality assurance, and build a community of practice for interpretation in legal and community settings;
4. Test ways to increase access to persons isolated by language or distance through the use of videoconferencing technologies;
5. Create new articling fellowships to enhance the capacity of organizations that provide legal services to vulnerable groups;
6. Ensure that knowledge generated from this project and related initiatives is broadly accessible and shared.

Relevance: *Informal conversations with English-language community organizations in various regions of Quebec and findings from projects undertaken since 2000 in many of these communities in partnership with Educatois suggest that in rural and remote communities access to justice is a problem for English-speakers, many of whom face additional educational, social and economic barriers,. Data has not yet been gathered systematically, but this Ontario study offers an adaptable template for a comprehensive assessment of the problem and possible solutions, some of which have been developed in selected local settings in Quebec but not widely shared.*

Five County Connecting Region Project. (2011). *Paths to Justice: Navigating with the Wandering Lost. Providing Access to Justice in Rural and Linguistic Minority Communities in South-Eastern Ontario.* Retrieved from <http://www.communitylegalcentre.ca/connectingregions/docs/PathsToJusticeFinalReport2011.pdf>

Description: This project was undertaken by the Law Foundation of Ontario and Community Partners in five counties to lay the foundation, through research and community consultation, for an ongoing collaboration to enhance access to legal information and services for low-income residents who live in rural or remote communities or who do not speak English or French. This is the report and recommendations of the Five County Connecting Region Project.

Methodology: The project used an action research methodology, with internal and external components. Internally, the project partners informally assessed the best practices that they had implemented to address the issue of access to justice for communities disadvantaged by language or location. External research consisted of a literature review, focus groups with service providers in the defined geographical area and with specialty legal clinics funded by Legal Aid Ontario, data from a survey completed by focus group participants, interviews with key informants, and case study interviews with people facing multiple legal needs.

Findings: Using a regional planning approach, the report outlines three desired outcomes: increasing legal literacy, strengthening communities and improving the delivery of legal services. The project partners developed an Access to Justice Toolkit with information about legal resources, which they distributed to all focus group participants. To respond to service providers' need for more information, they developed a two-day series of workshops with presentations from LAO, Family Law Education for Women and Community Legal Education Ontario.

Relevance: **Although not specifically focused on linguistic minority communities, this study provides a perspective on access to justice for hard-to-reach populations in rural or remote communities.**

MacPhail, A. (2012, May). *Report of the Access to Legal Services Working Group.* Ottawa: National Action Committee on Access to Justice In Civil and Family Matters.

Description: This report proposes several recommendations and key strategies to enhance people's ability to actively participate in resolving their legal issues through broadening access to information, assistance and services, adopting a more flexible and affordable approach to the way legal services are provided and encouraging collaboration between justice service providers and other social services agencies, notably in the areas of health, housing and education. The author stresses that "[t]here is no one solution to access to justice, nor is there an end in sight to the access crisis" (p. 21) and that ensuring such access is an "ongoing process" that "involves learning what works" (ibid.).

Methodology: The report does not include a methodology section or bibliography. Footnotes indicate that the author used several reports by legal organizations as sources of information. The author notes that "this report

is intended as a first step to encourage further discussion, engagement and action” (p. 1) and that more research is needed to determine which of the proposed options for action are most promising and which organizations should undertake them.

Findings: The report makes 13 recommendations, including:

- Make access to information a priority by increasing the availability of telephone and internet-based assistance and referral on legal matters to better meet the needs of the public, in particular of people with low income; create a national justice internet portal to simplify and coordinate information;
- Make legal services more affordable through: expanding the network of legal service providers to include paralegals, law students and articling students as well as non-lawyers who can provide legal advice; unbundling of legal services; promoting legal expense insurance (it is estimated that 10% of the population in Quebec has some form of such insurance); and alternative methods to pay legal fees.
- Use technologies to reduce costs: use web-based programs to provide routine legal services cost-effectively; try out online dispute resolution options.
- Promote integrated (holistic) service delivery model coordinating publicly funded legal services with social services and health care services to better meet the needs of low-income Canadians.
- Encourage lawyers to practice in rural or remote communities: several universities and law organizations have successfully implemented summer student placement programs in rural or remote communities encouraging students from underserved communities, such as aboriginal communities, to apply to law school.

Relevance: *This report offers some innovative solutions to access to justice problems related to civil and family matters, which, the author asserts, “will require relatively little if any financial investment” (p. 21). There are some overlaps with recommendations from the Law Foundation of Ontario report on linguistic and rural access, but the actual costs of various recommendations have not been developed in either report. Some similar proposals have been implemented in Quebec, but there is no indication of whether English-speakers have full access. For example, Quebec has a network of legal service providers (not paralegals) that includes law and articling students, but they are not permitted to give actual legal advice, only guidance on process and information. There also seems to be no follow-up on the outcomes of interventions by students, and outside Greater Montreal, there is limited access to law students who can offer guidance in English. The recommendations in reports such as this one offer good starting points for inquiry into the current state of such services in English across Quebec. From recent surveys and informant feedback, it appears that family and civil law are areas of great demand for the English-speaking Quebecers.*

Bilingualism and Judicial Appointments on a Federal Level

Government of Canada, Department of Justice. (2009). *Canada-Wide Analysis of Official Language Training Needs in the Area of Justice*. Ottawa: Department of Justice. Retrieved from: <http://www.justice.gc.ca/eng/rp-pr/csj-sjc/franc/sum-som/sum-som.pdf>

Description: The report presents the findings from a national study about the need for language training for individuals working in the Canadian justice system in the area of criminal law.

Methodology: This study is based on interviews with language training professionals and those working in the justice system from every province and territory. It also includes four case studies.

Findings: The study confirms the need for regular programs of study, such as on-the-job-training, of legal

terminology and legal discourse in both official languages that go beyond basic training, but that could become the foundation for a sustained bilingualism in this profession. New pedagogical tools should also be developed that would allow professionals to continue studying and improving at their own pace.

Government of Canada, Commissioner of Official Languages. (2013). *Access to Justice in Both Official Languages: Improving the Bilingual Capacity of the Superior Court Judiciary*. Ottawa: Public Works and Government Services Canada. Retrieved from: <http://www.officiallanguages.gc.ca/sites/default/files/access-justice-bilingual-capacity.pdf>

Description: This 2012 in-depth study conducted in partnership with the Official Languages for New Brunswick and the French Language Services Commissioner of Ontario looked at the judicial appointment process in six provinces (Nova Scotia, New Brunswick, Quebec, Ontario, Manitoba and Alberta) and at the language training available to judges appointed to superior courts. The Office of the Commissioner of Official Languages formed an advisory committee. It consisted of representatives of the Canadian Judicial Council, the Fédération des associations des juristes d'expression française de common law, the Canadian Bar Association, the Conference of French Speaking Common Law Members of the Canadian Bar Association, the Centre canadien de français juridique, the Barreau du Québec and the Ontario, New Brunswick, Nova Scotia, Manitoba and Alberta associations of French-speaking jurists.

Methodology: The study undertook a literature review, an examination of the judicial appointment and training processes on a federal and provincial level. Interviews were conducted with key stakeholders involved in the appointment and training of judges or in the legal community more broadly. Lawyers were interviewed to gauge their perceptions of the level of bilingualism of superior court judges. In addition, a questionnaire with close-ended questions was distributed to members of the New Brunswick, Nova Scotia, Ontario, Manitoba, Saskatchewan, Alberta and British Columbia associations of French-speaking jurists as well as to some members of the Barreau du Québec. 373 individuals responded to the questionnaire, 202 of whom practice before a superior court and were able to answer all the questions.

Findings: The report found that the current situation in terms of number of bilingual judges in superior courts in Canada and their ability to maintain their language skills at a satisfactory level “remain a challenge in a number of provinces and territories.” The consultations revealed that the process of appointing judges does not guarantee that those judges would be sufficiently bilingual to ensure that the language rights of Canadians are met during judicial proceedings. Respondents from Quebec have a rather favourable view of the workings of the judicial system in the province—for example, they felt that the Quebec court of appeal “has a good bilingual capacity” (p. 20). The report made 10 recommendations.

Government of Canada, Office of the Prime Minister. (2016, August 2). *New process for judicial appointments to the Supreme Court of Canada*. News. Retrieved from: <http://pm.gc.ca/eng/news/2016/08/02/new-process-judicial-appointments-supreme-court-canada>

Relevance: This official announcement of the process of appointing judges to the Supreme Court of Canada specifies that the Advisory Board, tasked with considering applicants for the positions, “will only recommend candidates who are functionally bilingual.”

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APPENDIX 1

Informants on Access to Justice for Minority Populations: Anglophones in Quebec

The following individuals provided input to the literature review through telephone or face-to-face interviews or through e-mail exchanges. The lawyers, judges, and professors identified key thinkers and seminal documents on the topic and gave feedback on early drafts of the document. Members of the advisory committee, community organization leaders and elected officials answered questions about their experiences with access to justice for English speakers among their members and constituents. A number of other individuals agreed to interviews that could not be scheduled because of time constraints. They have agreed that they would be willing to participate in a follow-up research study.

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