



RESEARCH ARTICLE / ARTICLE DE RECHERCHE

## Towards People-Centered Justice: The Conflict Resolution Routes of People Facing Legal Problems

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### Abstract

This article investigates the conflict resolution strategies used by individuals facing legal problems in British Columbia through the lens of a people-centered approach to justice. Utilizing qualitative interviews, the research examines how people navigate civil, administrative, and family law issues, focusing on the pathways chosen and the factors influencing their decisions. The findings reveal significant barriers to accessing justice, including the complexity of legal information, the psychological impact of unresolved issues, and the varying levels of legal support. By capturing personal experiences, this research offers insights into the effectiveness of current legal assistance models and underscores the need for more accessible and supportive justice systems. The study contributes to the broader discourse on access to justice, highlighting the importance of understanding legal problem-solving behaviors from the perspective of those directly affected.

**Keywords:** access to justice; conflict resolution; legal problems; pathways to justice; legal assistance

### Résumé

En utilisant l'approche de la justice centrée sur les personnes, cet article s'intéresse aux stratégies de résolution des conflits mobilisées par les individus faisant face à des problèmes légaux en Colombie-Britannique. Sur la base d'entrevues qualitatives, cette étude s'intéresse à la manière dont les individus négocient les questions de droit civil,

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administratif et familial en se concentrant sur les parcours choisis et les facteurs ayant influencé leurs décisions. Les résultats révèlent d'importants obstacles à l'accès à la justice tels que la complexité de l'information juridique, l'impact psychologique des affaires non résolues et les différents niveaux de soutien juridique. En se fondant sur ces expériences individuelles, cette étude interroge l'effectivité des modèles actuels d'assistance juridique et met en lumière la nécessité de mettre en place des systèmes judiciaires plus accessibles et solidaires. Cette étude contribue ainsi aux discussions plus larges sur l'accès à la justice, en soulignant l'importance de s'intéresser au point de vue des personnes directement concernées pour comprendre leurs stratégies de résolution des problèmes juridiques.

**Mots clés:** accès à la justice; résolution de conflits; problèmes juridiques; voies d'accès à la justice; assistance légale

## Introduction

Improving access to justice continues to be a key priority for the justice sector. Access to justice is recognized not just as a fundamental right, but also as a basic human need that is crucial to our democracy and the rule of law. Recently, there has been a greater focus on ensuring that efforts to strengthen access to justice are “people-centered.” This concept implies that those impacted by justiciable issues should be placed at the core of access-to-justice work (OECD 2023).

A commitment to people-centered justice also requires acknowledging the unique situations of specific communities who may be vulnerable and underserved by traditional justice systems. For the purposes of this paper, vulnerability is defined as anyone who is facing additional barriers to access to justice due to their unique personal and intersectional characteristics. Based on existing access-to-justice literature, we conceptualize vulnerability in legal situations as specifically referring to: people with disabilities; women, children, young people, and the elderly; those experiencing poverty; Indigenous and other racialized peoples; victims of intimate partner violence; and those who are incarcerated (OECD 2021).

To achieve tangible progress in the delivery of people-centered access to justice, it is essential that people's justice needs are identified and understood (OECD 2021). Furthermore, their voices need to be considered and their experiences heard (OECD 2023), with more work needing to be done to understand the pathways they take to resolution.

Within the context of the United Nations 2030 Agenda for Sustainable Development and target 16.3, which seeks to “promote the rule of law at the national and international levels and ensure equal access to justice for all,” greater attention is now given to monitoring and measuring people's access-to-justice needs. One example of this in British Columbia (BC) is the development of Access to Justice BC's Access to Justice Measurement Framework, which recognizes that data on people's choice of problem-resolution routes, or pathways to justice, together with data on legal needs, are essential to understand the extent to which the population's legal needs are met.

While there is a substantial body of evidence on the incidence of justice problems in Canada (Aylwin and Gray, 2023), there is much less information about how people try to resolve their problems (i.e., justice problem-resolution patterns and strategies or pathways). In BC, with the exception of the useful but

limited survey data produced for Legal Aid BC (Sentis, 2020), information on the problem-resolution routes used by people experiencing civil or family law problems is not being collected.

In addition to surveys, another mechanism for capturing these dynamics is pathways-to-justice research. Pathways-to-justice research is an offshoot of the tradition of legal needs surveys. Just as it is crucial to understand people's legal needs and everyday legal problems, it is important to understand the decisions they make when experiencing these problems, how they attempt to resolve them, whether and how they attempt to access the justice system, what services they access, and what outcomes they receive. These pathways can be quite tortuous and complex, and are still poorly understood. Understanding them has been identified as a key priority for access-to-justice research. In BC specifically, stakeholders from within the justice system have identified understanding the pathways to access to justice that people choose for family and civil legal issues to be a primary area of importance (Currie 2018).

Pathways to justice are differentially accessible to individuals facing legal problems, depending on the nature of the legal problem, the private costs involved in pursuing a particular path (including uncertainty about these costs), and several other obstacles that, depending on the situation and various other factors, affect individuals differently. Knowing the problem-resolution routes that people take is essential in making sense of how people's legal needs are met (or neglected).

The preliminary, qualitative study reported in this article sought to begin to fill that knowledge gap. It aimed to improve our understanding of how people seek to resolve their legal problems, the pathways they take, and the influences that shape their decisions when faced with a civil, administrative, or family law problem. The overall goal of the study was to explore how one may begin to identify, from a people-centered perspective, the problem-resolution routes available to, and used by, people experiencing civil and family law problems in BC. The study used exploratory qualitative interviews to allow space for participants to share their stories openly and freely. Its qualitative findings can complement existing quantitative data, such as legal needs surveys, by shedding light on how people navigate the justice pathways available to them. Several major themes emerged from the study, which are presented here.

## **I. Previous Research**

### ***1. Understanding Pathways to Justice***

The way we conceptualize access to justice has evolved over the last twenty years. Along with this shift has been an increased focus on understanding access to justice through the user experience (Pleasence, Balmer, and Sandefur 2013; Pleasence, Balmer, and Denvir 2015; Jacobs, Kryszaitys, and McManus 2015). Legal needs surveys have helped to identify the justiciable issues that people are facing and the associated problem-resolution behavior.

These surveys only paint a partial picture of the problem-resolution process. For example, the OECD's Guide on Legal Needs Surveys and Access to Justice identifies the importance of going beyond help-seeking behavior to understand whether, once help is being sought and contact is made with a service provider, assistance is provided or received, and whether it is perceived as useful (OECD and Open Society Foundations 2019).

As an emerging subset of access-to-justice research, pathways-to-justice research aspires to observe the entire range of everyday legal problems (whether or not they are understood as "legal"), the paths used by individuals who experience them, the obstacles they encounter, the assistance they seek or receive, and the outcomes of their choices and actions. The term "pathways to justice" can be conceptualized as the problem-resolution route that people take when they face a need for justice (Gramatikov 2009). Some people who encounter a legal issue choose not to embark on a pathway and leave the problem unresolved (Dandurand and Jahn 2018).

When seeking to understand the pathways to justice that people venture on, it is important to recognize that legal problems often occur in "clusters" (Currie 2009). This means that someone who is experiencing one justiciable issue is at increased vulnerability to experiencing multiple such issues. This affects the pathways that people take to resolution, as disputants are further affected by the possibility of cascading legal problems, especially if that initial legal problem remains unaddressed (Pleasence et al. 2004; Coumarelos et al. 2012).

The accessibility of a pathway to justice varies due to multiple factors. These can be logistical in nature and can include: the nature of the legal problem; the private costs (or uncertainty around these costs) involved; a lack of awareness that the issue is justiciable; the length of time necessary for resolution; uncertainty about the various legal processes and what they may involve; lack of physical accessibility to a justice mechanism (in the case of geographical remoteness); the stress and emotions involved (including potential secondary victimization, social costs, and damage to relationships); language and cultural barriers; and distrust in justice institutions (see Gramatikov, Barendrecht, and Verdonschot 2011). Pathway accessibility is also affected by the eligibility criteria that are applied by service providers, existing triage models and practices, and the nature and effectiveness of referral systems.

Additionally, pathways are complexly affected by court rules and various initiatives and practices that are intended to divert people away from unnecessary litigation and provide access to mediation and other services. In some instances, these pathways are enhanced by various initiatives to offer integrated and more holistic legal assistance to resolve a client's multiple legal problems, as in service delivery models that seek to coordinate services for people with unmet support needs.

Pathway accessibility may also be impacted by people's life situations and social context. A growing body of research is demonstrating that access to justice for some population groups is extremely precarious (Research Subcommittee of the Coordinating Committee of Senior Officials 2021). Pathways are not guaranteed to be a prescriptive approach to justice, with one way, or

path, being “correct” and promising a just outcome. They are constantly evolving, such as through the introduction of new technologies, or experiences, including the COVID-19 pandemic. Although the full extent of the COVID-19 pandemic on justice pathways and access to justice has yet to be determined, it is evident that some normal pathways were narrowed or obstructed, while new pathways (such as in the case of remote hearings) opened up (Capp 2021).

## 2. Pathways to Legal Help and Laypeople’s Legal Problem-Solving Behavior

According to the 2021 Canadian Legal Problems Survey (Savage and McDonald 2022), among those who reported experiencing a serious legal problem, more than half (55%) experienced one problem, while 22 percent experienced two serious problems and an additional 23 percent experienced three or more serious problems over the three-year period. Almost nine in ten Canadians (87%) who experienced a serious problem reported taking some form of action to address it, with most seeking resolution outside of the formal justice system. In BC, 75 percent of low-income individuals experienced at least one everyday legal problem over a three-year period (Sentis 2018).

Despite these realities, few studies in BC and Canada have examined the decisions and behaviors of the people who are experiencing these problems, their choice of and differential access to various justice pathways, the relative effectiveness of these pathways, and the resulting outcomes. Fewer studies have applied longitudinal and experimental methods to explore the relationship between different resolution routes and the immediate and long-term impacts of a choice of pathway on people who are dealing with a legal problem.

Individuals with a legal problem may be categorized into three general groups: (1) those who do not understand their problem as being legal in nature; (2) those who are aware of their legal problem but leave it unaddressed or unresolved; and (3) those who are aware of their legal problem and seek to address it by choosing a pathway among those available to them (Dandurand and Jahn 2018).

As a starting point, people must understand their problem as being legal in nature, often requiring a level of legal capability, which has long been recognized as a prerequisite to legal problem-solving behaviors and access to justice (Pleasence and Balmer 2019; Pleasence and Balmer 2014; Galanter 1974). In fact, research has consistently demonstrated that deficiencies in legal capability are more likely to result in unresolved legal problems (Forell and McDonald 2015) because they create a “paralyzing effect” that leads to inaction (McDonald and People 2014). In a report for *Legal Aid BC (LABC)*, Sentis (2018) found that the main reason why people did not take action to solve their legal problem (33%) was because they “did not know what to do” (43%), pointing to a lack of legal knowledge, skills, and capability. Moreover, a UK study showed that people with lower levels of legal capability report worse experiences with justice pathways and lower satisfaction with the outcome (Legal Services Board 2020).

While many legal self-help and assistance services exist, more analysis is required to understand the role that they play or aspire to play in signposting

individuals to different pathways. There is a need to scrutinize the factors that may explain why different users decide to access different services. In addition, there is a need to consider the extent to which legal assistance services lead to early or more effective resolutions, and whether certain combinations of legal self-help and legal assistance services are possibly more effective for achieving resolutions to specific types of legal problems.

Few studies have examined the variables that affect a person's propensity to take action in solving their legal problems, including by seeking legal services. When trying to explain advice-seeking behavior, the type of problem involved is consistently a key driver in advice seeking and, specifically, whether "legal" advice is sought. Considerable variation is also observed in the extent to which different types of problems are characterized as being "legal" (Pleasence, Balmer, and Reimers 2011).

Other studies have explored the ways in which the information provided on self-help tools is used, including by people in situations of vulnerability. Eighty-nine percent of low-income British Columbians reported that they received the help they were seeking by using online legal assistance (Sentis 2018). Denvir (2014) explored how youth acquire information on the law and their rights using the Internet, finding that online legal information does not immediately translate into improved legal capability among young people. Sandefur (2019) found that merely half of the 322 identified American-based online tools had helped users to take steps to address their legal problems, owing in part to a lack of consultations with the end users in producing the platforms. Varying findings on the utility of online legal self-help platforms have highlighted the importance of designing such services in a manner that aligns with the preferences and needs of the intended users, including for those in situations of vulnerability. These and other knowledge gaps severely hinder governments' ability to allocate resources, effect reform, and mitigate the adverse consequences of inaccessible justice (Moore 2020).

Despite the reported increased prevalence of individuals who are self-representing in Canada (Birnbaum, Bala, and Bertrand 2012), there are very limited data on the experiences of such litigants. The most rigorous study remains the seminal 2013 research report by Julie Mcfarlane, which revealed that litigants' decision to self-represent was most commonly based on financial considerations or dissatisfaction with legal services. Justice system engagement by self-represented litigants was generally negative, with respondents reporting frustration in completing court forms, poor perceptions of lawyers, and incivility by judges. In terms of pathways to justice, the experiences of self-represented litigants are important to consider in part because they may reflect a culmination of various justice system failings, from inaccessibility to poor quality of existing services.

### 3. Disputants' Pathway Preferences

In many instances, disputants' ability to exercise a preference for a resolution route or to find a satisfactory pathway to address their particular needs may be limited or essentially nonexistent. Several studies have sought to identify

how individuals with a legal problem evaluate their situation and choose a suitable procedure by which to resolve their dispute. However, much of that empirical research was conducted in or before the 1990s, is generally inconclusive, and suffers from methodological constraints, including a lack of participation by actual disputants (Schuller and Hastings 1996; Shapiro and Brett 1993; Stallworth and Stroh 1996). That research tends to support the view that disputants typically favor non-adjudicative procedures (e.g., mediation) over adjudicative procedures (e.g., arbitration).

Subjective legal empowerment (SLE), or the “subjective self-belief that an individual can solve problems of a legal nature” (Gramatikov and Porter 2011: 171), can also help to explain an individual’s choice of a problem-resolution strategy. As the level of SLE increases, so too does the tendency to act to resolve legal problems (Pleasence, Balmer, and Denvir 2015).

High costs also tend to explain many of the problem-resolution decisions made by people who are facing justice problems. Using the path-to-justice paradigm, some studies have attempted to measure the relative costs and procedural quality of pathways to justice, as well as their outcomes from the perspective of the justice system user (Gramatikov, Barendrecht, and Verdonchot 2011). In the UK, Pereira and her colleagues (2014) examined the extent to which court fees influenced individuals’ decisions to seek a resolution in family and civil courts, and found that emotional motivations were the main reason why respondents sought resolutions in court, while court fees (exclusive of the cost of legal representation) did not factor significantly in decision-making. In some instances, however, emotional and financial factors coalesced, especially for civil cases in which a litigant may have been emotionally invested in recovering money. Another qualitative study by Pereira and her colleagues (2015) explored why and how people address their civil and administrative legal problem, finding that legal knowledge and skills were key factors in shaping participants’ decisions on resolution routes across all problem types. The study also showed that individuals exhibited different resolution-seeking behaviors for different types of legal problems. For instance, in cases involving family justice problems, people generally sought to understand their options and were likely to retain a lawyer when the dispute revolved around financial issues, although their approaches to identifying a lawyer were not systematic. In disputes involving child-related matters, people often sought to avoid court, showing that parental power dynamics likely influenced the type of pathway chosen. With domestic abuse cases, individuals were found to delay resolutions, partly because it was not perceived as a legal issue, with friends and family often seeking redress on behalf of the participant.

Such findings are generally consistent with past research, which has found that the nature of the legal problem in question influences whether a person is likely to take at least the initial steps towards a resolution. In particular, Balmer and colleagues (2010) noted that individuals are less likely to seek redress for situations involving discrimination, police misconduct, and clinical negligence, whereas people are more likely to seek legal assistance for divorce, mental health, and separation cases. In a different study, Sandefur (2014) found that people are least likely to take action in cases relating to employment,



government benefits, and insurance, while more likely to address relationship breakdowns and issues concerning a child's education.

Absent from most of the above literature are disaggregated data of disputants' preferences by different subgroups, including those who self-represent, are deemed ineligible for public legal aid, and have various factors that heighten their level of vulnerability. Questions also remain around whether disputants' preferences would vary if they were presented with other dispute resolution options or how technology and virtual proceedings fare in the preferential equation. Within the contemporary and shifting legal landscape, such questions are increasingly important in informing policy decisions and reform efforts.

## II. The Present Study

Historically, empirical research related to individuals' choice of pathways to justice has generally relied on different methods, sample sources, and analytical tools (see Moore 2020). Most studies relied on qualitative methods, such as interviews, online surveys, and observations. Existing quantitative studies on pathways to justice typically asked respondents to identify the main path they selected (e.g., no action, mediation, court, etc.) and sometimes also the main reason behind that decision. They paid less attention to the often circuitous and winding paths that people must often navigate, the multiple decisions they make along the way, the circumstances under which they do so, and the frustrations and successes they encounter.

In order to capture that dimension, a different qualitative study was designed, inspired by a report by Pereira and colleagues (2015), "The Varying Paths to Justice," which used qualitative in-person and telephone interviews with a sample recruited from charities, courts, and existing networks. As with the 2021 Canadian report, "Measuring What Matters," engaging in in-depth conversations with a small number of individuals meant that a granular and rich description of the respondents' lived experiences could emerge.

The overall goal of the study was to explore how one may begin to identify, from a people's perspective, the problem-resolution routes available to, and used by, people experiencing civil and family law problems in BC. The study attempted to broadly capture people's experiences in resolving justice problems by listening to their stories. This semi-structured approach allowed space for participants to share the breadth of their experiences and emotions, rather than focusing on a predefined list of topics.

The study differs from another type of justice-pathways study that is sometimes referred to as "journey mapping," which involves tracking people's journeys through the pathways that are established by various services and agencies for this purpose (OECD 2019: 95). The "journey mapping" approach focuses on people's access to existing major legal services and consists of tracking every time a survey respondent mentions a referral to major service providers. One example of access-to-justice mapping in BC involved mapping patterns in service referrals experienced by unrepresented litigants (Reid, Senniwi, and Malcolmson 2004). This type of process mapping



helps in understanding how people with legal needs intersect with and progress through a complex system that involves both justice and other sectors, and map their needs and possible points of intervention within the process from their perspective (OECD 2019). Rather than taking this approach, we intended to focus on the direct experiences, including the internal and emotional experiences of our participants. We sought to hear, in their own voices, what their unique and personal experiences of travelling along a pathway to justice were.

The objectives of this exploratory study included:

- developing a fuller understanding of how people define the civil and family law justice problems that they experience;
- identifying the main pathways used to resolve problems (including taking no action) by people who are experiencing civil and family justice problems;
- identifying the obstacles/barriers encountered by individuals in trying to access certain pathways and how these barriers may affect their decisions;
- understanding how people prioritize and manage multiple legal problems.

Initially, we were seeking to contact potential participants wherever they went to seek help for their legal problem. This method had been used successfully and recently in a UK study on access to justice (Robins and Newman 2021). In our case, within the context of the pandemic, and the resulting closures or restrictions on physical access to services and justice institutions, this proved extremely difficult. The primary challenge with the proposed methodology was identifying an appropriate sample of potential participants. To resolve this issue, we were able to collaborate with two organizations who offer online legal information and assistance—Access Pro Bono and The People’s Law School. These organizations shared our information with potential participants whom they invited to reach out to us, if they were interested, using a dedicated email address.

The information shared with potential participants included a brief description of the purpose of our study and the incentive of a \$50.00 gift certificate for participating in the interview, which would be held confidentially.

The response to the invitation to participate was almost overwhelming. With our initial target being twenty to twenty-five interviews, over a two-week period, we received over 200 responses from individuals wanting to participate. Some had heard about the study through their friends.

All potential participants were contacted via email. Some of them were eliminated from our sample, as they did not reside in BC. Often, interviews had to be rescheduled due to forgetfulness, the lack of a quiet time/space to participate, being too busy with dealing with the legal issue at hand, or a change of mind.

In total, thirty-five interviews were conducted during the months of October 2021 to March 2022. Twelve interviews were done in person, six were completed via telephone, and seventeen took place via video-call. There was no attempt to construct a particular sample and participants were basically included on a first-come, first-served basis—recognizing that attempts to conduct a scheduled

interview were often unsuccessful. All of the other volunteers were contacted by personal email and notified that the study had been completed and that they would not be requested to participate. Several of them expressed disappointment, as they felt they had a unique story to share with the researchers.

The thirty-five participants ranged from twenty-three to eighty years old, with ages only being recorded when the participant offered that information voluntarily. The sources of initial contacts for the thirty-five participants were as follows: Access Pro Bono (fifteen); supportive housing residences (seven); People's Law School (three); Access to Justice Centre (two); a drop-in center for women (one); a treatment facility (one); other/friend (three); unknown (two).

Geographically, the participants were mainly clustered in BC's Greater Vancouver, Lower Mainland, and Vancouver Island regions. Although we did not explicitly ask for demographic information, sometimes participants volunteered this as part of telling their story. Of those who volunteered the information, there was one Indigenous person, one refugee, four recent immigrants, and three individuals who were living with a physical or mental disability.

All participants were at various stages of trying to resolve their legal issue. Due to the way in which participants were recruited, all participants were aware that their issue was justiciable and were actively seeking resolution. As shown in Table 1, participants were experiencing a wide range of family and civil legal problems.

**Table 1.** Recent Legal Problems Encountered by Study Participants

- 
- Family issues (4 of which were linked with intimate partner violence)
    - Issue around a separation divorce: 7
    - A problem related to child access or custody: 5
    - Family maintenance enforcement: 1
  - Residential tenancy issue:
    - Unlawful eviction: 7
    - Peaceful enjoyment of premises: 2
  - Sales contract (land title/ownership): 3
  - Child protection/custody issues involving (Ministry of Family and child Development): 2
  - A problem with an employer or a job
    - Employment standards: 2
    - Unlawful termination of employment: 2
    - Discrimination in the workplace (human rights): 1
  - A letter threatening legal action: 2
  - Harassment: 2
  - Discrimination: 2
  - A personal injury issue/victimization: 1
  - Legal guardianship issue (adult with mental health barriers): 1
  - A problem with a house, rent, mortgage or rent owed: 1
  - Estate and inheritance: 1
  - A problem with immigration: 1
  - Contact with the police: 1
  - Civil action against municipal government: 1
  - Problem with a large purchase: 1
  - Recovering debt or money owed: 1
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While the term “recently” was not explicitly defined, participants generally understood this as being an event that had happened within the last year or two.

A few participants had experienced multiple unrelated problems and were invited to share their experiences of each of them. Many of the problems had a historical aspect to them, particularly in the case of childcare, access, and custody issues. Participants would often insist on tracing the current legal issue back to lingering or unresolved past problems, including, in some cases, a failure of one of the parties to comply with a previous agreement or court decision. In almost two-thirds of the cases, participants were the ones who had initiated the action that was necessary to resolve the problem.

Given our approach, which was resolutely exploratory and distinct from “journey mapping,” there is no suggestion that the results that were gleaned from the study can be generalized to all British Columbians’ experiences with access to justice. Rather, our goal was to begin to understand how people made decisions on pathways. Further, we intended to begin to identify frequent pathways to legal problem resolution and explore how future research could probe the complexity of the problem-solving processes that people engage in when faced with a civil or family law problem.

### III. Findings

Once the interviews were completed, the contents of the interviews were analyzed thematically by using a social constructivist approach (Braun and Clarke 2006). This approach was taken as we desired to understand the pathways to justice as constructed by our participants. Six major themes emerged, which will be discussed here. They were:

- the nature of the legal problems that people encountered and how they were affected by them;
- the needs for support and assistance that people experienced when trying to resolve family and civil legal problems;
- the problem-resolution routes that people chose and the decisions they made along the way;
- the people’s personal experiences of these different pathways;
- the outcomes that people achieved through these pathways;
- the lessons that people learned from their experience.

#### ***1. The nature of the legal problems that people encounter and how they are affected by them***

As described in Table 1, our sample included participants who were experiencing a range of civil and family legal issues, and who were at various stages of resolution. As we explored how participants were affected by their legal issues, a common theme was a negative impact on their psychological health and well-being.

Trust in the legal information they had obtained from service providers was mentioned by a few participants and, in some instances, was the source of confusion. This impacted them deeply. For example, one participant sought to understand the rights of the child as applied in a case involving the British Columbia Ministry of Children and Family Development and the care of a child with a developmental disability. This participant stated:

I thought I could trust the social worker to tell me about the rights of my grandchild and what I could do to help. She kept changing her story and telling me different interpretations of the law. I did not think that she was honest with me. I tried to find out about the law, but I could not get a straight answer from anyone.

Another discussed the gap between what online legal information was saying and what service providers were saying: “the websites give me different information. They say the law has changed. It is difficult to know what to trust.” One participant added: “I wanted to do the right thing. No one seemed to be able to tell me what was what.” In addition to causing psychological distress, this often had a temporarily paralyzing effect on the participant’s journey towards resolution. It did not, however, stop them from moving forward. Numerous participants spoke of the internal tenacity and drive that it took to not abandon their quest for a just outcome when faced with conflicting or confusing legal information.

A lack of confidence in their own knowledge of their rights was also mentioned by participants as a psychological stress. Very often, they explained that what they had needed at a crucial point in a path to a potential resolution was the confirmation of their own understanding of the law. There was fear that, by misunderstanding the law, or interpreting it wrongly, serious consequences would occur that could potentially affect their legal rights.

Fear was also expressed in relation to civil law issues, such as tenancy disputes. In situations in which the parties lived close to one another, people attempted to calculate the risks associated with contacting the other party. One participant stated: “Well, I would not do things differently (in a land title dispute following a sale). I tried to avoid conflict. I do not want any violence. The problem was that I was dealing with a dishonest person. This has a lasting ripple effect on the community. I really needed help.”

To mitigate these consequences, participants were hoping for clear information about the law and professional support in navigating the issues, particularly regarding the potential next steps that they could take along the pathway and the options that they had. While it is difficult to determine whether the availability of this support would have changed the paths that our participants took towards resolution, it, at the very least, would have significantly reduced the psychological distress and negative emotions that they endured.

## **2. The needs for support and assistance people experience in trying to resolve family and civil legal problems**

Recognizing the importance of professional guidance and support, a component of the interviews focused on the needs for support that participants experienced while trying to address their problems. For many participants, this included the need for legal information, including information about their rights and legal obligations. Comments were made about the vastness of information available, such as “there is a lot of information out there.” Participants also reported the challenges that they had in interpreting the information and understanding how it applied to their own unique situation. This has significant implications, as disputants’ levels of confidence and levels of SLE are positively correlated with their ability to take action to resolve their issues (Pleasence, Balmer, and Denvir 2015). Being overwhelmed by the volume and complexity of the information that they access can prevent people from embarking on a pathway at all.

Another recurring theme was the recognition that legal information is not enough, but, rather, that concrete and specific guidance was needed. One person involved in divorce proceedings and a dispute on the sharing of assets explained: “I knew the law, but I did not know how to proceed. I would need guidance, even though I know the law a little.” That need for credible guidance was expressed in various ways by different participants.

Some participants brought up an interesting point that could be classified as an “indirect need”—the need for ensuring that the other party understands the law and their own rights and obligations. Participants often felt that the other party’s lack of knowledge or awareness of the law hindered resolution. In the words of one participant: “I am dealing with someone who does not understand the law and who thinks he is justified acting the way he is, which is illegally. I wish he would get some help.”

While this did not impact the steps they took on their pathway, it greatly impacted their experience and caused psychological distress.

Despite the need and desire for legal assistance, as expected, several participants shared how challenging it was for them to obtain legal assistance at a reasonable cost. They also discussed the unfairness they felt when they were unrepresented but the other party had representation.

Many participants suggested that an ideal scenario for them would have been for someone, preferably a competent lawyer, to have handled the whole situation on their behalf. One of the reasons why participants expressed that wish was due to fear of the other party and fear that unmediated contacts may lead to an escalation of the situation. This was particularly the case when the legal problem was linked to situations of domestic violence or non-payment of family support. In such instances, consistently with previous research (Pereira et al. 2015), participants often expressed a fear of reprisal, including a fear of bringing their children into the conflict. Although this did not lead to abandonment of their path to justice, it amplified their emotional distress—particularly when support was not readily available to them. One participant who was going through a divorce proceeding had already experienced loud confrontations that had caught the attention of police. She shared: “There are lots of emotions. If I do

anything, it might trigger a bad reaction and then what do I do? I need someone else to approach him and discuss things calmly.”

### **3. The problem-resolution routes that people choose and the decisions they make along the way**

Participants’ experiences of finding their own path to problem resolution varied considerably. Several participants were “on their own” and had to seek resolution without legal assistance or with minimal assistance (e.g., a thirty-minute online legal consultation).

At the time of the interview, some participants were still seeking a suitable pathway. Feelings ranged from empowerment to disappointment, helplessness and injustice. While the outcome of the process impacted these feelings, it was not the only factor involved.

For a handful of participants, going through the process without any assistance was a self-affirming victory, irrespective of the outcome of the process. Other participants felt discouraged and drained of their time and energy. For the majority of participants, dealing with a legal problem without legal assistance was experienced as a burden that affected their quality of life and, in some cases, their mental health.

For all participants, and for some more than others, the experience was stressful, especially in situations of uncertainty. Not knowing what the next steps were, not knowing how long it would take to resolve the problem or whether it would be resolved at all, and not knowing what the outcome might be were persistent sources of stress and anxiety for many. This did not cause them to abandon their pathway, but created feelings of “second-guessing” and stress. Stress was heightened as various delays were encountered when proceeding with potential solutions. For example, in family cases, participants discussed feelings of being “held back” and their inability to “move on” with their life while the issue remained unresolved.

These findings are significant, as they provide more recent corroboration to Macfarlane’s (2013) work that elaborated on the negative impacts of self-representation. They provide a starting point for understanding the unique and varying experiences of self-represented litigants in BC and warrant further exploration.

Several participants also mentioned experiencing the fear of making a mistake. Some of them had experienced this and felt the consequences. One participant explained: “You feel like you have to start all over again; it’s discouraging.”

Consistent with existing literature (Welsh 2004), it was clear from some of the participants’ stories that they did not always adopt an adversarial stance and genuinely sought out resolutions that were fair and equitable to all. Highlighting this, one man discussed his spouse who suffered from a mental disorder and was not able to secure independent legal advice. He was aware of and compassionate towards her situation, yet, for the benefit of their children and for financial reasons, he needed to encourage her to participate in the divorce proceedings. He shared:

I do not have a lot of tools to resolve the situation, other than starting a legal process, but I would prefer not to. However, my wife is still living in a bubble and is refusing to face reality. Also, the legal process could be very long, and our financial situation is getting worse by the day. I want to be fair. I tried to find her some legal assistance. I shared some legal information with her. She needs help.

Participants' experiences of seeking guidance or legal assistance varied, as did the kind of assistance they were able to secure. While several of them applied to LABC, many found out that they did not qualify for assistance, mostly because of financial ineligibility. A few participants received support when applying for legal aid, including one woman who had recently escaped a domestic violence situation. In the end, three participants were able to secure legal assistance from LABC. Of those who applied, all found the staff to be helpful and kind, but deplored the delays involved.

Other participants relayed their frustration, sense of isolation, and distrust of support systems. For example, one person who had been recently unsheltered reflected on his own experience and that of other vulnerable people. He shared:

People on the street are sometimes hesitant to ask for help. Many of them suffer from mental health issues; they don't want to be negatively labelled. Some of them are in trouble with the law. Some of them act like frightened animals, but others act as animals towards them. The police are not doing much to help homeless people. There is not much point in asking them for help. When you seek help, like welfare, you walk in and they always ask "how can we help you?" and then they do nothing to help you. [...] What's the point in asking for help? It seems that many of these people have been trained to say no, no matter what.

Bearing in mind that the majority of participants did not receive much legal assistance and were not represented by a lawyer, their limited experiences of legal representation also varied, oscillating between distrust, confidence, and gratitude for the legal support received.

As anticipated, affordability and costs of legal services were always at the center of people's considerations and were stated as being the biggest barrier to access to justice, including leaving some participants to embark on a pathway alone. The only deviance from this is when they could access free legal support. In the words of one participant, "the biggest obstacle was the financial cost." Another shared: "the lawyers wanted more than \$11,000 to deal with an application for refugee status. There is no way I could afford that."

A few people complained about not getting enough attention from the lawyer who represented them. Several participants expressed satisfaction with the legal assistance that they had received: "I was fortunate to meet a lawyer who was reasonable and so helpful."

However, not all participants had had a positive experience with the kind of legal assistance they had access to and their relationship with their lawyer. One participant felt that his legal aid lawyer did not represent his interests and had



perhaps “sided up with the child protection people.” Other participants shared the following during their interview:

I have no reason not to trust lawyers, but sometimes I don’t know.

You have to understand that when you deal with a pro-bono lawyer, you have a very limited amount of time to explain your problem. Prior to my last visit, I only had a few minutes to explain the situation.

Since several participants had been referred to our study by Access Pro Bono, many of them shared their views about their own experience with that particular service. Most of the comments were positive, in particular about the half-hour consultation, which was very much appreciated and, in some cases, offered just enough guidance for the person to independently take confident action and embark or continue on their pathway to justice. Participants often referred to the fact that Access Pro Bono was able to confirm their own interpretation of the law and the process to be followed—something that was a determining factor in their approach to the legal problem with which they were dealing.

#### 4. *The people’s personal experiences of these different pathways*

Another important topic that was explored with participants was how they viewed their own experience of various access-to-justice pathways, recognizing that, since their legal situations occurred during the pandemic, this was part of their experience as well. The participants were not asked about any of these pathways in an explicit or structured way, but volunteered these thoughts as part of telling their story. The following are some observations that were captured during the interviews.

In the majority of situations, participants reported that, once they had encountered a legal problem, they had taken the proactive initiative to seek legal information. Many of them started by asking friends and relatives, with the vast majority also making extensive use of the Internet. The Internet was used to seek information about the relevant laws, their rights and legal obligations, potential recourses, resolution and redress mechanisms, and available support and assistance.

This observation, coupled with the findings of previous research (Denvir 2014), illustrates how accessing online legal information, while often a first step for disputants, does not necessarily translate into enhanced legal capability. It further highlights a missed opportunity, at a key intervention point, to clearly provide information on the pathways available to people and the supports that they may access along the way.

While most participants were familiar with the use of technology, concerns were brought up that the websites that they consulted, especially government websites, were not very user-friendly. Issues brought forward by the participants included the fact that the legal information was often repetitive—“I thought I was going in circles”—or sometimes contradictory—“It’s hard to tell which one is the right information.” Participants also expressed confusion about whether

the online information applied to BC or to other provinces, and whether it had been recently updated. In keeping with the findings of previous research (Sandefur 2019), it seems that people's experiences of online tools that were intended to increase the awareness of the law, their legal rights, and their possible recourses were not always positive and did not provide them with clear information on how to confidently embark on a pathway to justice.

Although study participants rarely mentioned problems with using the communication technology, this needs to be qualified by the fact that three-quarters of the participants had been recruited online after seeking legal information or assistance online from a service provider. As a result, our findings do not offer much information on the technological divide that still constitutes a barrier to multiple segments of the population—and particularly people in situations of vulnerability. It should also be noted that some participants were very creative in seeking information. For example, one of them who had recently been unsheltered discussed how, for himself, and for other unsheltered people who were facing various legal problems, he would use his tablet, go near to a coffee shop or store, find out the password, and surf the Internet for information and resources for himself and others.

Due to the COVID-19 pandemic, all participants had experienced various delays in accessing services and resolution mechanisms. These delays had been mostly expected, but the consequences of the delays were not the same for everyone. The impact often depended on the urgency of the situation that was created by the legal problem that they faced. For example, people who were facing eviction from their home discussed how a delayed resolution was almost as bad as no resolution at all. In family-related problems, the delays compounded the emotional and financial stress that people were already experiencing and made them question their tenacity to continue seeking justice. Notably, the strain they experienced did not cause them to abandon the pathway they were on.

Elusive resolutions and the enforcement of judgments and agreements were also particularly frustrating for participants. While, from the perspective of the justice system, a matter may be resolved once a judgment has been rendered or an agreement has been reached, participants often had a different view. Many of them found that enforcing a judgment or an arbitration decision was very difficult. A recurring theme was the feeling of “being left on your own” and a lack of available options when an agreement or court decision was breached. This sometimes led to increased mistrust of the justice system. Two areas in which noncompliance issues were frequently cited by participants were the enforcement of family maintenance orders and residential tenancy arbitration orders.

### **5. The outcomes that people achieve through these pathways**

Several participants had recent experience with courts and tribunals. By and large, the experience had been a positive one for them, although the procedures that needed to be followed were sometimes very intimidating. One participant said she wished courts could communicate more simply with her: “I am not a lawyer [...]. They need to dumb it down.”

Many participants had experienced a mediation process for family law issues or an arbitration process for residential tenancy issues. Most participants who had experienced these processes had had a positive experience of both mediation and arbitration. While they were generally satisfied with the process, *per se*, they did sometimes complain about the delays encountered before proceeding. These delays were often attributed to the case backlog created by the pandemic.

Another concern revealed by the participants was not to do with these processes, nor their outcomes. Rather, it was the absence of an effective mechanism to ensure compliance with these outcomes by both parties. One participant stated: “I wish I could go through another (family) mediation since the first agreement did not hold, but apparently that’s not an option.”

Another issue arose in some family law cases. After a mediation, the parties were advised to seek independent legal advice before signing the agreement that was reached as a result of the mediation. For several participants, this second part of the process did not go as smoothly as they had hoped. In some cases, the independent legal advisor for one of the two parties recommended against signing the mediated agreement. This was a very discouraging development for the individuals who thought that they had participated in the process in good faith and that the signing of the agreement was a mere technicality. In such cases, the individuals felt as though they had reached a dead end and were still very much puzzled about what to do next, especially if they could not afford to retain the services of private counsel.

## **6. The lessons that people learn from their experience of various problem-resolution routes**

Although some participants were still in the process of resolving their legal problem and wanted to reserve their final opinion until after the matter was concluded, many participants could speak about what they had learned as a result of their experience of trying to resolve a legal problem.

Many participants had a generally positive view of the process that they had gone, or were still going, through. That assessment often rested on a specific positive experience that they had had during the process. Generally, such an experience was tied to a specific individual—such as a helpful lawyer, a supportive librarian, or someone who offered a timely “warm” referral to another service.

While further research needs to be done to determine whether these supportive people would mitigate feelings of frustration from institutional and system design challenges, it is important to highlight the positive impact that they had on our participants. Notably, this impacted their willingness to continue along a chosen pathway that was causing them significant emotional and psychological strain.

In addition to benefiting from helpful and supportive people, participants recognized the need for tenacity and developing their own legal capacity to fully benefit from any service or mechanism that might be available to them. Many participants revealed that they had to learn that one needs to be proactive to get

results, particularly as not all of the advice that one receives is necessarily helpful or useful.

Many, if not most, participants had experienced situations in which they had applied for assistance but did not qualify to receive that support. These rejections were usually accepted by participants, especially in situations in which someone explained the decision or redirected them to a different service. On the other hand, not receiving a response until it was too late to benefit from the service that they had applied for or receiving a formal impersonal notification of a negative decision were occasionally part of the participants' experiences. These experiences tended to negatively affect their opinion of the whole access-to-justice process.

Most participants had seen their opinion of the justice system change as they attempted to resolve their legal problem. Several of them shared that the system was not at all what they had expected. This was especially true for the many participants who were experiencing a legal problem for the first time.

Many participants did not have an opinion about the justice system before they encountered a legal problem. For those who had an opinion prior to their recent contacts with the justice system, their opinion of it had either improved or deteriorated. It was difficult to determine exactly what had changed their opinion, but it was not necessarily the outcome of the process. When negative, the opinion appeared to be mostly motivated by what participants interpreted as the system's unresponsiveness to their needs or personal situation, most often by their experience of a particular service, agency, authority, or individual service provider. A few participants expressed their general dissatisfaction with the justice system as a whole, whether or not that view resulted from their most recent experience of access to justice. Further work could explore how these changed perceptions of the justice system impact people's willingness to embark on a pathway to justice in the future.

Recognizing the restrictions of the COVID-19 pandemic, participants rarely seemed to dispute the necessity for proceeding online when possible. Although online hearings had their own limitations and logistical issues, participants usually commented on how online hearings and processes had made things much easier for them. One participant explained that, at first, using Microsoft Teams was stressful, but that it had actually made things a lot easier for her: she did not have to travel to court, find parking, or deal with the other logistical challenges of getting to court.

#### IV. Conclusions

The study reported here begins to fill a gap in our understanding of the pathways to justice that people take when faced with a legal issue. As we work towards building justice systems that are people-centered, it is essential to include their voices and experiences. Through the stories that participants related during the interviews, a more complex picture has emerged of the main pathways that people use to resolve civil and family law problems, the barriers or obstacles

encountered, the assistance that they sought and sometimes received, and the decisions that they made along the way.

This research begins to fill a nascent knowledge base that is seeking to understand pathways to justice for civil and family legal issues in BC. It complements existing legal needs surveys to provide a more holistic understanding of the ways in which people seek, and access, justice. The six major themes that surfaced during the interviews all warrant further examination.

The chosen methodological approach was successful in revealing people's lived experience of access to justice. In particular, the participant recruitment method was successful and could serve as a basis for a broader study with a more representative sample of British Columbians.

There were some limitations due to the fact that participants were recruited through existing organizations, which may have skewed our results towards the experiences of people who were more connected than others. Notwithstanding that limitation, the approach allowed contacts with individuals who all had direct, personal, and recent experiences of trying to resolve a family or civil legal problem. That created a unique opportunity to observe people's legal capability and to capture their own reflections on the problem-solving routes that they had chosen. With the recognition that vulnerability can impact pathways to justice, it will be essential for future research to target people who are not yet connected to existing services.

The study was conducted at a time when the pandemic had not only deeply affected people's lives, but also nearly paralyzed the justice system itself. Impacts of the pandemic not only created delays for litigants, due to case backlogs and shortages of staff, but also impacted our methodology. For example, during a period in which many were socially isolating, participants were very eager to have space to share their stories and connect with our researchers in a conversation. One participant even remarked, after a ninety-minute interview, that he did not want it to end. Some participants commented on the fact that the professionals they worked with while dealing with their legal problem—service providers, lawyers, mediators—had limited time to actually listen to their full story. These comments were more likely the expression of an unmet need around space to share their stories rather than a criticism of the services provided. The power of storytelling is consistent with other research which has shown that space to share stressful experiences can be a healing journey in and of itself (Canadian Intergovernmental Conference Secretariat 2021). As we seek to develop justice systems that are equitable, accessible, and people-centered, including for family and civil law issues, it is essential to center on the voices of those who are travelling the pathways.

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