



## In pursuit of equitable access to justice Lack of progress can erode faith in the system

Anyone can become involved in the justice system, but do they really feel well served by it? Not always. And this can be true for offenders and victims, litigants in disputes, and witnesses and jurors alike.

The criminal and civil justice system is massive. It covers everything from contract disagreements to homicides, fraud to family law, and small claims to property crimes. People can find themselves part of the system because of what they did, what was done to them, or what they know. Whatever the legal issue and their role in it, Canadians want the same thing: a system that's efficient, effective, available, and affordable.

Justice is a principle, a goal, an outcome, and an experience, but it's also a service. It should be delivered in a way that meets the needs of all who engage with it. The gateway to justice must swing open for all.

The justice-as-a-service concept hinges on making the system widely accessible. Yet many Canadians view the current system as anything but. To them, it's overly complex, costly, slow, and fragmented.

Others feel shut out. Given a choice, they may not even bother with the system because they don't know how to engage with it or don't feel that their voices will be heard. So, matters go unresolved, and can spiral into bigger issues.

All of this has consequences. One [survey](#) showed that just two-thirds of Canadians have confidence in the judicial system and courts.<sup>1</sup> That's fewer than have confidence in our educational system, banks, and media. Faith in the system is on trial.

One thing that can enhance public confidence is equitable access. We can start by modernizing service delivery, making the system easier to navigate, looking at the concept of access more broadly, and shedding some outdated orthodoxies.

We are seeing some progress. The COVID-19 pandemic, for example, has driven or accelerated some changes in how the system and courts function out of necessity.

For instance, Ontario recently introduced regulatory changes that streamline and simplify a legal process that anyone might encounter: probate, for situations with

and without a will. The [new regulation](#) will eliminate 43 forms, introduce a clearer format and plain language, and even increase the font size.<sup>2</sup> You won't need any experience in estate administration to understand them. This follows other recent changes such as virtual witnessing and the use of digital signatures.

Some of these reforms were in the works before the pandemic. In British Columbia, a [digital strategy for the justice and public safety sector](#) aims to modernize and "virtualize" courtrooms, enhance video conferencing, increase e-filing, and more.<sup>3</sup> The strategy notes that more automated, integrated, and intelligent services improves their speed, accessibility, and value to users

We're also seeing systems of all sorts pausing and recalibrating what an intentional transformation looks like.

Action is needed more urgently than ever, at a time when we're focusing on equity, diversity, and inclusion in society and taking a critical look at systemic and structural barriers across all domains.

# Different treatment for the same outcomes

Let's take a closer look at the three key words: equitable, access, and justice.

In theory, everyone gets the same treatment and has the same rights in our justice system. But this equality doesn't necessarily mean the system is **equitable**.

Not everyone is on an equal footing in their life circumstances, their familiarity with the system, and what brought them to it. Being equitable means recognizing that some individuals and groups have different needs, and therefore require different resources and opportunities to reach the same outcomes.

**Access** isn't just about having your day in court. Does the system seem open to you in the first place?

Many Canadians face barriers to full access. For some, it's related to the cost of getting legal help. For others, they can't afford the time to deal with traditional justice infrastructures. Complexity and a lack of

information are other impediments. Some Canadians struggle with language and literacy, and many others find the lingo of the law impenetrable.

For still others, physical and social barriers can hamper access. Geographic location and transportation can be obstacles. This is especially true for smaller and more remote communities that don't have access to specialized courts or support systems, or that lack something as basic as internet access.

Other groups might perceive additional barriers related to their gender or gender identity, race, culture, age, or physical/cognitive abilities. That can leave them feeling disconnected from the system.

**Justice** is about the degree to which the system is seen as fair. It's easy for some to be cynical when looking at the treatment of victims or the degree to which there is equality of outcomes for all.



## A link between equity in access and outcomes

Historically, many members of vulnerable groups would not agree that they could always get a fair resolution on the merits of their case.

Consider one community disproportionately impacted by the system. A [Justice Canada study](#) found that Indigenous peoples make up 25% of all accused despite comprising only 5% of the population.<sup>4</sup> While many factors might contribute to that disparity, Indigenous peoples are 33% less likely than white people to be acquitted, 14% more likely to plead or be found guilty, and 30% more likely to be imprisoned once convicted. Justice Canada's researchers said these numbers "may be an indication of a greater issue surrounding the fair administration of justice."<sup>5</sup>

More broadly, a [consultation conducted by a Canadian Bar Association \(CBA\) access to justice committee](#) found that individuals living in marginalized conditions often have a sense of estrangement from the justice system.<sup>6</sup> Their feelings? That legal rights only exist on paper, the justice system can't be trusted, justice varies from person to person, and it's difficult to traverse

the justice system. The CBA report called the state of access to justice in Canada "abysmal" and said, "inaccessible justice costs us all."

It should be no surprise that another [Justice Canada study](#) found that almost 30% of Canadians disagree with the statement that "the laws and the justice system are essentially fair." Another 44% only somewhat agree.<sup>7</sup> That's for Canadians overall. And the more involvement people have with the system, the less favourably they view it.

This underscores the consequences when people don't perceive equitable access to justice. There's a symbiotic relationship between equity in access and equality of outcomes. The former is about opening up and improving services; the latter is about dismantling systemic biases and embedding consumers of the system in its redesign.

It's important to acknowledge issues with outcomes because of that interdependency, but they're distinct issues. Focusing on equity in access will help lead to the experiences that boost faith in and satisfaction with the justice system.



# Language, information, and processes should be accessible

Becoming involved with the justice system can feel like entering a foreign land—one where you don't know the language, rules, and customs. We need to look closely at how different stakeholders interact with the system, and how they receive and respond to information.

How can we achieve a smoother and more seamless “customer experience” for everyone involved? For starters, we can make major improvements by using plain language and restructuring forms based on how people actually process information. These are powerful tools to increase the understanding of, and therefore access to, justice—especially for those who lack the financial means for legal representation.

Do people understand the legal issues they face, and the options and support available to them? Are they even available to all?

Empowering people with the information they need, how and when they need it, is key. Government websites should easily direct users to the right information, but people also require more hands-on support and guidance. They should also feel that the system is connected, with any hand-offs streamlined.

Other solutions look to save time, money, and stress, like the [British Columbia Civil Resolution Tribunal](#) (CRT).<sup>8</sup> It lets participants resolve their disputes when and where it's convenient for them. That could be at home, at work, on their phone, or at the local library. The CRT includes a Solution Explorer (free legal information and tools), a confidential negotiation platform, and a case manager who can help facilitate an agreement.

Greater access to justice, however, isn't simply a matter of moving more services online. In fact, some of the measures taken in response to the pandemic have had the unintended consequence of further limiting

access for some. That includes individuals or communities who don't have access to digital tools (or to enabling infrastructures such as broadband) or the resources required to navigate the new system.

As a recent [Deloitte report](#) on digital equity reminds us, the digital world has the power to benefit people and organizations—as long as everyone is able to fully participate.<sup>9</sup> Canada ranks high in broadband connections, for instance, but access can depend on factors like where you live and your income.

Modernization means efficiencies and recognizing that improvements can't leave anyone out. The use of technology should be in service of a bigger goal: access for all, how, where, and when they need it. We may have a transition to digital first, but we can't be digital only. Every solution needs to be balanced.

For a best practice on how vulnerable groups can be supported from day one, look to Australia. There, the government has created a [custody notification service](#) pertaining to the Indigenous population.<sup>10</sup> Police must call a 24-hour support line when any Aboriginal person is brought into custody. That triggers culturally safe health and welfare checks, in addition to basic legal advice, as people come into contact with the justice system. This model could be applied more broadly.

What does progress look like? It transcends issues like victims' rights and supports for offenders, though both are important and potential by-products of a more equitable justice system. Progress is a system where people don't feel alienated, they feel included. Where justice is simpler, cheaper, and faster. And where justice processes and services address people's requirements. Equitable access to justice is about what serves society writ large.





# Start with a human-centred approach

Public officials are working to modernize access to justice. Whatever the specific solutions, they should be built on certain pillars. Here are four.

1

## Take a human-centred approach

Institutions traditionally look at their operational goals, start with a tool, and create a program around that tool. We need to flip that: begin with an understanding of the needs and values of all stakeholder groups, then look at concepts and programs, and then develop the tools and processes to meet those needs. The framing here is key. You could ask “How do we make a process end-to-end digital?” Or, “How do we make a process end-to-end digital while also making it more efficient and equitable?” These are different questions that will likely yield different outcomes.

2

## Develop a more holistic view of what equity entails

The different groups involved in the system—administrators (judges, lawyers, etc.) and consumers, including vulnerable communities, victims, and offenders—should be involved in designing new approaches. These efforts should be based on an understanding of real and perceived barriers. We need to view access and barriers from all perspectives.

3

## Involve the private sector

Private businesses have a role to play too, just as in other areas of government service. Public-private partnerships can help to drive technology and other innovations across jurisdictions, to amplify values, and to achieve desired outcomes. Every sector has a stake in improvements. Truly partnering alongside private players, and challenging historical models of partnership, may be unconventional, but it can cultivate genuinely transformative and innovative ways to achieve sustainable, equitable, and efficient outcomes.

4

## Never lose sight of the goal

Access is about entry points, but the end goal remains equitable outcomes, more equitable experiences along the way, and faith in the system. Governments need to ground the story of change and the journey to get there around the goal and to borrow from leading practices outside the sector. Looking to technology companies and [product-centric approaches](#) to delivery can help us challenge traditional ways of thinking and ensure improvements to the system are sustainable.<sup>11</sup>

These pillars are connected. We want a justice system that’s trusted and seen as legitimate. Part of what will build [trust](#) are genuine efforts to make the system equitable for all<sup>12</sup>—by blowing up the current model and placing the individual at the centre of the next.

# Progress demands an overhaul

What can get in the way of progress? If you catch yourself thinking “This is how it has always been done,” stop in your tracks. We must challenge old ways of thinking.

The justice system is slow to evolve. Change isn't easy, but it's necessary. This system is emblematic of our democracy. We can't risk it being seen as less relevant and less just. That harms the individual—and has even greater societal costs.

Where do we stand now? The Right Honourable Beverley McLachlin, former Chief Justice of the Supreme Court of Canada, has stated that “Access to justice has reached crisis proportions in Canada in recent decades.”<sup>13</sup>

Writing in an [op-ed](#), she suggested that “We are trying to do justice in the 21st century with an outdated 20th-century system. The solution isn't just Zoom courts or electronic filing, although these are steps in the right direction. We need a complete overhaul

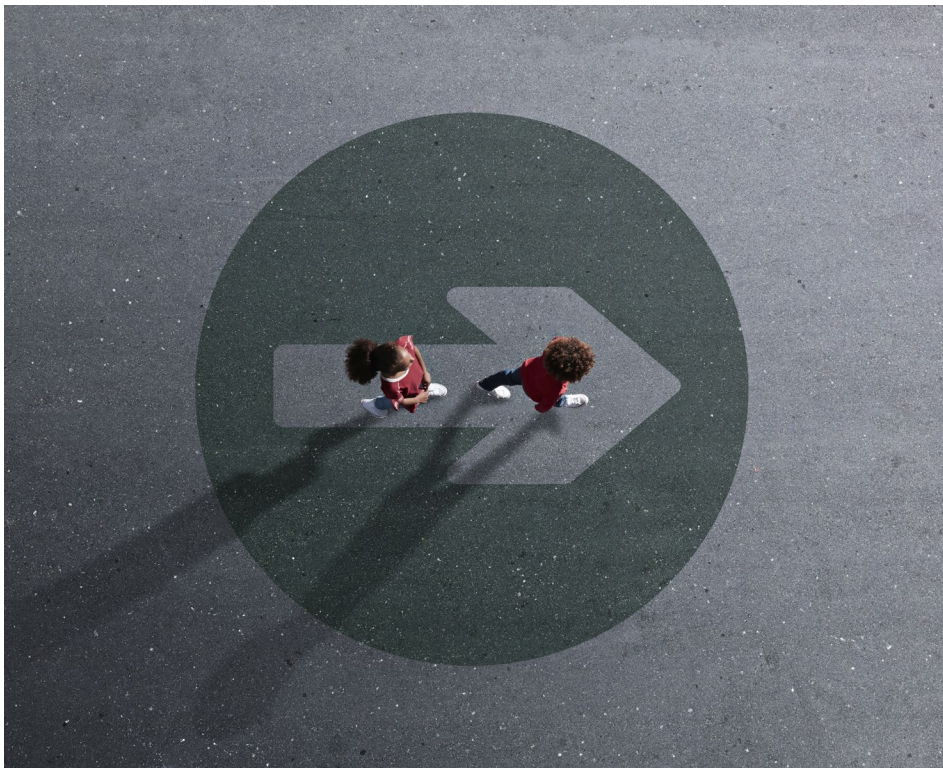
of the justice system. Let's make equitable access to justice for all the new reality.”

You could look at access to justice as a democratic, human rights, and economic issue. That's what Canada's current Chief Justice, the Right Honourable Richard Wagner, suggested in a [speech](#).<sup>14</sup>

He said that the harder it becomes for people of a certain class, education, or income level to get justice, the more we put public confidence at risk. That's a democratic issue.

Difficulties in accessing justice also deny people their dignity, implying that some are worthy of justice and some aren't. That's a human rights issue.

And when justice isn't easily accessible, businesses can't resolve disputes quickly and individuals can lose productivity or, worse, their job security. That's an economic issue.



# Justice is done and seen to be done

Justice and equity aren't partisan issues, nor are they exclusive to any one party's electoral platform and policy promises. Investments and modernization initiatives in public services, including justice, should be founded on equity for all, in practice as well as in principle. That should be aligned across jurisdictions and the political spectrum.

What's feasible? Progress needs to be balanced, informed by a strong and clear strategy, prioritized, and held accountable through robust governance. In the pursuit of equitable access to justice, people should expect more from their public officials.

A reimagined Canadian justice system goes back to the service model of justice. An [Organisation for Economic Cooperation and Development \(OECD\)](#) study stated that "Leaving no one behind in accessing

justice requires rethinking the traditional approaches to delivering legal and justice services. Services need to be personalised and responsive to the individual and the situation."<sup>15</sup>

Equitable access will mean that justice is both done and seen to be done. It will mean that citizens can resolve issues efficiently, affordably, and fairly. These notions will work in harmony and not involve trade-offs.

When you're involved in the justice system, you may not always be happy with the results. But you can still have faith in the system and how you were able to access and experience it.

That serves every participant—and helps to uphold a truly just society.

It will mean that citizens can resolve issues efficiently, affordably, and fairly. These notions will work in harmony and not involve trade-offs.



This is part one of a three-part blog series on what the future of security and justice look like for Canada, and how we can get there. Next up in the spring of 2022: "In pursuit of community safety and well-being" where we'll explore how we can reimagine the next era of policing, in a way that builds more trust and more resilient communities.

For more on our thoughts on justice transformation, see our series of global reports where Deloitte examines the [future challenges facing criminal justice systems](#)<sup>16</sup> and the [priorities for criminal justice reform](#).<sup>17</sup> We also explore opportunities around [criminal justice and the technological revolution](#).<sup>18</sup> And we look into [understanding public priorities for criminal justice](#)<sup>19</sup> and [leading a whole-system approach to criminal justice](#).<sup>20</sup>

## Endnotes

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## Authors

### Lauren Jackson

National Security & Justice Leader  
Partner, Consulting  
416-775-8638

### Hon. Peter MacKay, PC, QC

Deloitte Strategic Advisor  
902-721-5615

## Contributors

### Gert du Preez

Partner  
Consulting, Digital Consumer  
604-640-3220

### Andi Druga

Manager  
Operations Transformation  
250-978-4495

### Karen Lamola

Senior Consultant  
Consulting, Public Sector Transformation  
416-775-4711

### Emma Rose Bonanno

Senior Consultant  
Consulting, Public Sector Transformation  
416-354-1500

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