THE CANADIAN
BAR ASSOCIATION
Alberta Branch

# AGENDA FOR JUSTICE 2023

INNOVATIONS.
SOLUTIONS. RESOURCES.

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# ACCESS TO JUSTICE

The cost of legal representation is out of reach for many lower-middle and middle-income Albertans, resulting in many choosing to represent themselves. Evidence shows that self-representation is costly to the system due to fewer out-of-court settlements, and delays due to more court bookings and hearings. CBA Alberta commissioned analysis showing that investing $4-6 million/year in supports for self-represented litigants could save $11 million/year, potentially more with increased investment. We believe this would also yield more satisfactory outcomes.

CBA Alberta urges the Government of Alberta to consider innovative justice solutions as seen through the lens of Fair Access, Inclusivity, Sustainability, and Fair Outcomes - to both save money and improve results. This includes a review of Financial Eligibility Guidelines for legal aid to reduce the number of self-represented litigants.

**"THERE IS NO JUSTICE WITHOUT ACCESS TO JUSTICE."**

**Former Chief Justice Beverly McLachlin**

All parts of the legal system play a role in access to justice, including courts, Legal Aid Alberta (LAA), and local community resources such as free/pro bono clinics.

We also see that in an increasingly diverse and pluralistic society, everyday Albertans, particularly Indigenous peoples, have needs and ways to contribute to legal systems to ensure true justice that is preventative, restorative, and culturally appropriate.

# BACKGROUND

This section focuses on community resources that empower Albertans to participate effectively in essential legal processes, including youth and adult criminal justice, child welfare, divorce and family law matters, civil claims, tenancy, employment, and human rights.

Legal Aid Alberta, as an independent non-profit, provides legal representation to people at the poverty line with serious legal conflicts and in only a few areas of law.

CBA Alberta recently confirmed that many Albertans believe that the Financial Eligibility Guidelines (FEGs) for legal aid are too restrictive. Many individuals earning minimum wage would not qualify for representation. Albertans support an increase in the maximum income threshold so that more Albertans can qualify for legal aid services when needed. Those who may not even be able to afford basic necessities with current inflation could certainly not pay for legal assistance privately.[1]

Given the limited funding resources granted to Legal Aid Alberta and the present rules for eligibility, getting government supported legal help is largely out of reach for all but the poorest of Albertans.

[1] *See Nanos Public Opinion Research (quantitative) in Appendix B; page 72, slide 9; and Nanos Focus Group Reseach (qualitative) on page 84, slide 16.*

Those with a modest income, but particularly vulnerable people and families, risk more severe consequences when they cannot access appropriate help for legal issues such as evictions, criminal charges, and family conflict. Many such individuals do not qualify for assistance through LAA because of their income or the legal issue they face.

Free (pro bono) clinics, law student groups, and Indigenous paralegal organizations serve only a few communities in Alberta and in an uncoordinated fashion that requires individuals to call, email, and visit multiple organizations with no guarantee they will get the legal help their situation requires.

**The private market and public legal services available in Alberta have not achieved access to justice, and an organized, strategic framework and resources are required to bridge this divide.**

# THE ISSUES

Albertans have proven that we can adapt to sudden crises like the COVID-19 pandemic, as well as long-term challenges such as the energy market. Now is the time to address the longstanding barriers to access to justice that keep Albertans from contributing fully to our society and economy because they are held up in ineffective legal processes that can then lead to unjust outcomes.

Some individuals and families are caught up throughout their lives by legal systems that lack the design or resources to address underlying social issues including child welfare, family court, youth justice, immigration, and adult criminal systems.

The legal system is really meant to be a system of last resort. An adversarial system is not best designed to handle complex social issues or situations where the relationship of the parties involved needs to be preserved, such as families with a family law issue to resolve.

Updating and reforming legislation is important, but it is long-term work, and the people affected by the systems that apply those laws cannot be left to simply wait. They need relief now, as do their families, employers, neighbours, and communities.

Without meaningful change, Alberta may damage people who would otherwise be or develop into skilled workers, accomplished students, experienced volunteers, healthy parents, and role models, because they are mired in inefficient and unfair legal conflicts.

## KEY METRICS

**Fair Process:** Access to legal representation for all Albertans.

**Inclusivity:** Access to legal representation for all Albertans.

**Sustainability:** Recruitment of skilled and diverse support resources; culturally appropriate dispute resolution services.

**Fair Outcomes:** Public confidence, gaps between urban and rural are bridged; community empowerment for local challenges.

# Equity

Canada is at a crossroads in the work of Truth and Reconciliation and cannot move forward while 32% of all individuals in custody are Indigenous despite Indigenous peoples making up only 5% of adult Canadians.[2]

Courts and other systems contribute to this through the ways Indigenous Albertans are discriminated against in employment, education, criminal diversion, and sentencing, such that the number of white individuals in jail continues to decrease while the proportion of Indigenous and Black Canadians is increasing.[3]

Some progress is being made because leaders and the public generally are supportive, but these efforts need greater coordination and resourcing.

Adult criminal policing and prosecution could benefit from incorporating the diversion and sentencing practices that have proven effective with youth, while Indigenous youth should be able to access the healing court model available to adults in Calgary criminal court.

In addition, we must invest in civil, family, and administrative law systems that disproportionately impact racialized Albertans.

[2] *Office of the Correctional Investigator Annual Report 2021-2022 pg 96*

[3] *Office of the Correctional Investigator Annual Report 2021-2022 pg 95 and 45*

# Self-Represented Litigants

Canada ranks 22nd in the world in access to civil justice, especially for accessibility, affordability, having effective alternative dispute resolution processes, and unreasonable delay in justice process – well behind many countries with lower Gross Domestic Product (GDP).[4]

**All Albertans, but particularly those outside urban centres, need to be able to quickly and fairly mediate civil disputes, address employment or labour law rights violations, and settle consumer or debt related issues.**

The Canadian Forum on Civil Justice (CFCJ) has found that within a three-year period, 48.4% of adult Canadians will face at least one serious or complex civil or family legal issue.[5] Individuals facing criminal charges risk losing their employment or housing which can have a devastating, long-lasting effect not only on them but also on their families.

The Court of King's Bench and Alberta Court of Justice have noted that people representing themselves because they cannot afford legal representation strain the court system further through:

1. **Increasing the number of court bookings and hearings** (as matters without legal counsel are less likely to be settled out of court and then more likely to require multiple hearing types to address all issues).

2. **Decreasing the likelihood that cases will be cancelled prior to the hearing date** (again because without legal counsel, cases are less likely to be settled out of court).

3. **Cases with self-represented litigants taking more court time.** In Alberta Court of Justice matters, 40% of cases feature at least one self-represented litigant.[6]

[4] *See Access to Civil Justice Scores for Canada, World Justice Project, Rule of Law Index 2021. https://worldjusticeproject.org/sites/default/files/documents/WJP-INDEX-21.pdf*

[5] *Trevor CW Farrow et al, Everyday Legal Problems and the Cost of Justice in Canada: Overview Report (Toronto: Canadian Forum on Civil Justice, 2016) at 6, online*

[6] *Alberta Civil Liberties Research Centre (ACLRC), Access to the Civil Litigation System at https://www.aclrc.com/access-to-the-civil-litigation-system*

## Accessibility

Many court and tribunal locations - even those within larger centres - are not readily accessible to people with visual, hearing, or mobility impairments, which sends the message that those Albertans are not facilitated by our justice system.

These are people who may be parties to a legal case, jurors, counsel, witnesses, or public spectators.

As well, a number of persons who come before the courts as witnesses or parties may have developmental disabilities. Similarly, no systemic training is provided for court services staff, legal clinic volunteers and staff, duty counsel, judges, or others on how to engage with individuals with brain injuries or developmental delays who have the same rights to procedural fairness and legal information as all other Albertans.

## Cost

There are no insurance plans for Albertans to prepare for legal emergencies, and in the wake of pandemic-related economic losses, most individuals and families have, at best, limited savings. When a legal issue arises, many will risk severe loss without assistance from a lawyer.

Albertans recognize that leaving even minimum wage earners financially ineligible for legal aid services is unacceptable, and have voiced their support for increased public funding to ensure people can get legal help when they need it.[7]

The stress and financial strain—even for people who have adequate resources—results in increased government spending on social and health services.

A recent study conducted by CBA Alberta found that investing $4-6 million per year in supports for self-represented litigants could save $11 million per year.[8] Increased investments, totaling in the range of $20 to $30 million per year, would be expected to have continuing savings offsets given that the author considered his estimates to be conservative. These cash savings to government are on top of the benefits to individuals and families of having proper legal representation.

A study of the return on investment for Pro Bono Ontario's court based programs found that for every $1 invested, $10 were saved.[9]

[7] *See Nanos Public Opinion Research (quantitative) in Appendix B; pg 72, slide 9; and Nanos Focus Group Research (qualitative) on pg 84, slide 16.*

[8] *See GK Fellows, "Estimates of Alberta Court Time and Public Expenditure Savings Resulting from Reduced Rates of Self Representation", in Appendix A, pg 51*

[9] *Investing in Justice: A Literature Review in Support of the Case for Improved Access, Lisa Moore, Trevor Farrow, pg.48*

Similarly, Calgary Youth Justice Committees, local volunteers who engage with young offenders and their families to divert youth from the criminal justice system, have also been found to provide a return of $5.52 for every $1 spent.[10]

These issues impact Alberta communities greatly but have been largely left to individual judges, lawyers, law students, and community groups to address on an ***ad hoc*** basis and without stable, systemic funding.

Critical gaps in legal services and court/tribunal outcomes will continue unless this changes. The non-profit sector, local bar/judiciary, and community have much of the expertise to craft effective solutions for emerging and long-standing problems.

However, what Alberta needs is a province-wide scaffolding that communities can draw upon for support as they develop such processes and services. This would not be a new department to create or control access to justice initiatives, but an organized framework from which local stakeholders can tap into expertise, funding, and other resources to plan, implement, evaluate, and improve their own innovative solutions.

Communities are the experts on their own needs and with the right support and collaboration, can determine if a particular local issue is best addressed through providing free or specialized legal information, an Indigenous justice initiative, or a specialized court.

In areas where there is an LAA office or other established public interest organization, they may be able to fill a gap in access to justice with additional support, and in others it may be best to develop a new service. Having resources to meaningfully record and report challenges in access to justice in various communities and the impact of local initiatives would help inform efforts around the province and allow everyone to better address those issues.

This is particularly so given the challenges non-profits have faced in securing grants and fundraising in the wake of the COVID-19 pandemic. As critical public infrastructure, community legal resources cannot be expected to continually “do more with less”, and to recruit and maintain a skilled, diverse, and inclusive workforce, with wages and benefits far below that of the public sector, particularly in remote areas.

[10] *Investing in Justice pg.64*

# RECOMMENDATIONS

**A framework for innovative, holistic responses to local justice issues and community values with special priority to Indigenous peoples and communities.**

A starting point could be the Alberta Law Foundation's provincial legal needs assessment.

The Foundation's assessment from 2018 is being updated for 2023, and will include an environmental scan of legal services and legal problems using demographics, note best practices and areas for law reform. The assessment will confirm what services are being provided in various Alberta communities as well as what the needs are and if they are being met.

The CBA Alberta Economic Analysis confirms a minimum $6 million in additional funding for legal aid would provide a return on investment, while noting a higher investment would likely yield even more savings and improved outcomes.

## FAIR PROCESS AND PEOPLE-CENTERED SERVICE

1. Legal services (legal advice, court/tribunal information and forms, duty counsel, etc.) should be fully accessible/compliant with human rights at/near all locations.
2. Legal information and help on issues impacting fundamental rights including Indigenous rights, human rights, and *Charter* rights should be available:
    - at/near all communities physically and/or virtually; and
    - trauma-informed & culturally competent.
    - Level/degree of access should be based on:
        - regularly reviewed financial eligibility criteria;
        - more flexible eligibility criteria for urgent & serious legal issues;
        - the average cost of private representation; and
        - the availability and capacity of other free/low-cost legal assistance.

## INCLUSIVITY

1. Restorative Justice Initiatives pursuant to the Indigenous justice strategy of the Alberta Court of Justice are funded.[11]
2. Resources must be given to support the Alberta Court of Justice strategy to further address needs for Indigenous peoples in civil and family law.
3. A strategy must be developed for the equitable, diverse, and inclusive recruitment, training, and consultation of BIPOC people for administrative law tribunals; incorporation of technology to make tribunal processes fully accessible to people with disabilities and living in more remote areas.
4. A commitment must be made to increase the appointment of Indigenous judges and other diverse legal decision makers.

## SUSTAINABILITY

1. Pro bono, community legal organizations, and LAA must be adequately resourced to be employers of choice, recruiting and maintaining diverse, skilled staff and volunteers. LAA roster counsel must be compensated to provide competent service and sustain their businesses.
2. Organizing and investing in an access to justice framework and services must include a wide range of culturally appropriate, accessible dispute resolution services to reduce the backlog in cases and court time by self-represented litigants as well as delays stemming from the COVID-19 pandemic.

## FAIR OUTCOME

1. Community confidence in the justice system can be increased through:
    - continuous evaluation using best practices, including Indigenous methods, to allow for ongoing improvement/efficiency and the sharing of information;
    - participants (parties, offenders, victims) participating in processes that address their unique backgrounds and goals;
    - decrease in harsher outcomes for BIPOC and vulnerable individuals.
2. Gaps in services and outcomes between urban and rural communities must be bridged.
3. Data that is essential to establish greater financial contributions from the federal government for access to justice must be gathered systematically.
4. Communities should be strengthened and empowered to take ownership of local challenges in access to justice and relationships between government ministries, lawyers providing private and pro bono services, non-profit organizations, and community groups.

[11] *https://albertacourts.ca/pc/about-the-court/administration-of-the-provincial-court/indigenous-justice-strategy*

# FAMILY JUSTICE

Family law cases account for over 35% of all civil court cases. In the Alberta Court of Justice, at least 40% of all family matters have at least one unrepresented litigant. Research shows that family conflict is toxic, particularly for children. Innovations in family justice would not only save court time (and thus costs), but reduce long term impacts on families such as students doing poorly in school due to stress, and parents being less productive at work and less adept at parenting.

**CBA Alberta recommends**

1. Improved access to legal aid for lower income families to create a less combative process and to reduce court time;
2. An Alberta Family Court with specialized expertise and a focus on dispute resolution; and
3. Family support services to encourage more consensual resolutions and to offer post-conflict support.

## ALBERTANS NEED GREATER ACCESS TO FAMILY JUSTICE.

Vulnerable children and families face systemic barriers seeking legal recourse for their family disputes and are exposed to toxic levels of stress in our adversarial justice system. Neuroscience research has shown that family conflict is especially harmful to children.[1]

# BACKGROUND

Report after report over decades has documented issues with cost, delay, complexity, and other barriers to accessing legal services and exercising legal rights. Low-income and Indigenous Albertans face even greater barriers in the justice system when they experience a family law problem. Legal aid is dramatically falling short as the foundation for access to family justice. Almost every family in Alberta encounters a family law problem at some point in their lives.

**Family law cases account for over 35% of all civil court cases. In the Alberta Court of Justice, at least 40% of all family matters have at least one unrepresented litigant.[2]**

The best interests of Alberta children and families are at stake. In family disputes it is often the most vulnerable in our communities who are losing:

- Those in situations of family violence;
- Those on the losing side of power imbalances in their relationships;
- Unrepresented parties having to negotiate complex law and complicated procedures.

[1] *The Palix/Norleen Foundation is well known for its research on the effects of adverse childhood experiences on developing brains: https://www.albertafamilywellness.org/resources/results?search-term=&topic_filter=social-policy*

[2] *Alberta Civil Liberties Research Centre (ACLRC): Access to the Civil Litigation System.*

The social costs of failing to meet the family justice needs in our province are potentially more costly to the Government of Alberta than wise investment with proven returns on this investment.

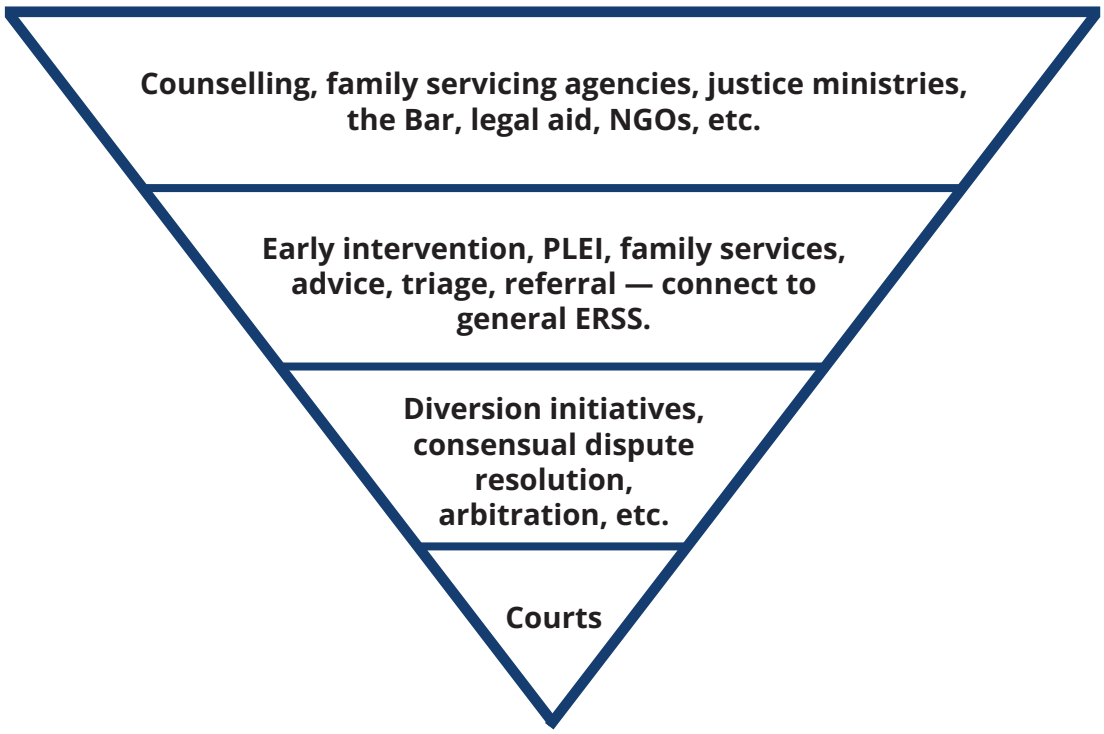
Family conflict leads to students doing worse in school and creates more stress and conflict in classrooms.

Parents who are employees are less productive at work, or if they are entrepreneurs, at running their small businesses.

Family justice must receive focused attention because the impact on families and children is frequently life-changing.

**We are fortunate to be a jurisdiction with the capacity to ensure that vulnerable Alberta children and families do not experience insurmountable barriers to family justice.**

## Family Justice Services Continuum




[3] *Bank of Canada inflation May 2015 to May 2022: 19.7%*

# THE ISSUES

## Legal Aid Funding for Family Justice

Legal Aid Alberta (LAA) is unable to fully support vulnerable children and families in Alberta.

We have a huge number of unrepresented litigants descending on an already over-burdened, inefficient and overwhelmed court system.

There has been, in recent years, gross under-funding by some $54.6 million in breach of the 5-year ***Legal Aid Governance Agreement*** negotiated in 2018. Funding was cut by 35% in the last two years. Criminal and family lawyers have expressed their concerns through direct action. Meanwhile, low-income Albertans are not getting the legal supports they need.

On October 5, 2022, the Government of Alberta announced an 8.225% increase to the Financial Eligibility Guidelines (FEGs) and a corresponding increase to the Tariff Rates paid to private roster lawyers bringing the hourly rate from $92.40 to $100. This was the first increase to the Tariff since 2015. An adjustment reflecting inflation would have been closer to 20%.[3]

Effective January 1, 2023, the Tariff Rate increased again to $125/hour. We acknowledge the government's commitment in its December 21 news release to review all aspects of legal aid funding, to be completed in 2023. We urge the review to include both the Tariff Rate and the FEGs.

The inefficiencies and deficiencies of legal aid leaving vulnerable children and families in the cold cannot be addressed without a commitment to consistent and adequate funding.

### RETURN ON INVESTMENT IN LEGAL AID SERVICES

CBA Alberta commissioned research in 2020-2021 to determine the value of increased government investment in the justice system.[4]

This economic analysis shows that even a modest increase in legal aid funding of $6 million would generate a net public savings of $11 million annually by reducing the number unrepresented litigants and by extension, alleviating the burden on an already over-burdened and dysfunctional court system.

The report goes on to show how a further $22 million is a defensible funding allocation from a costs perspective as this would produce savings from reduced burdens on the court.

[4] *See GK Fellows, "Estimates of Alberta Court Time and Public Expenditure Savings Resulting from Reduced Rates of Self Representation", in Appendix A, pg 50*

In US and UK studies, for every dollar spent on legal aid, the average social return on investment is $6.17.[5] In Ontario, Pro Bono Ontario found that $1 invested resulted in $10 of savings overall.[6] The reasons are clear:

- Unrepresented litigants use significantly more court resources than those represented by counsel;
- Reduced delays from unrepresented people have been found to be $268.28 per court hour of savings; [7]
- For every hour an unrepresented person takes time off work to attend court this represents a loss of $7.20 per hour of income tax as well as other non-cash benefits -- reduction in court delays, faster resolution of files.

## PUBLIC SUPPORT FOR LEGAL AID INVESTMENT

Public opinion research by CBA Alberta in 2020/2021 shows that 91-96% of Albertans support adequately funded Legal Aid. 94% of Albertans recognized the importance of individuals having access to Counsel to ensure fair outcomes. [8]Over half of Albertans polled agreed that the threshold to qualify for Legal Aid is too low.[9] Even with the October 8% increase, the FEGs are still below the poverty line.

With 34,857 distinct representation clients receiving services through LAA in 2021-22[10] the cost for legal aid actually generates a net tax savings of more than $100 million a year. Cost-benefit studies elsewhere show a ratio of 1:18.

Failing to meet the needs of vulnerable children and families will have social consequences and costs for the government in other areas. Unresolved legal problems cause undue personal hardship and trigger non legal problems. Already marginalized people and communities are most directly impacted.

Even if legal aid were fully funded as per the Governance Agreement, the financial and substantive guidelines mean that most Albertans will get very limited, if any, family law coverage. Gaps in family legal aid impede women's ability to leave abusive relationships. It is particularly urgent to address this risk in Indigenous families and communities given the ongoing crisis of Missing and Murdered Indigenous Women and Girls.

[5] *Ibid*

[6] *Investing in Justice: A Literature Review in Support of the Case for Improved Access by Lisa Moore and Trevor Farrow, pg. 48*

[7] *"A Win for All: Return on Investments in Alberta's Justice System" – provided to then Justice Minister Kaycee Madu*

[8] *See Nanos Public Opinion Research (quantitative) in Appendix B; pg 70, slide 5.*

[9] *See Nanos Public Opinion Research (quantitative) in Appendix B; pg 70, slide 5.*

[10] *See Nanos Public Opinion Research (quantitative) in Appendix B; pg 72, slide 9; and Nanos Focus Group Reseach (qualitative) on pg 84, slide 16.*

Risks for children are shown by neuroscience research. All the stressors result in a generation of less productive adults with greater risks of social problems.

But more than this there is a direct connection between adequate funding for legal aid, the increasing numbers of unrepresented people in the courts, and the functionality of the court system.

**The large number of unrepresented people with family disputes is an expensive burden on the justice system which then results in more delays in the criminal arena. Matters will take longer, backlogs will mount, access to justice will decline and overall system costs will increase.**

As the Government of Alberta has recently announced several affordability measures for Albertans in a time of high inflation and increasing costs for basic needs, legal aid for family justice should also be an affordability issue for low income and vulnerable Albertans.

The current legal aid income cut off for a family of four is $41,270.52; yet an average income for that household in Alberta ranges from $84,000 (Edmonton) to $87,000 (Calgary)[11]. A household operating at just the average income - or less than average - does not typically have access to resources for unexpected legal costs. Many will choose to represent themselves.
As detailed in the "Access to Justice" chapter of this document, self represented litigants cost the system materially in more court cancellations and delays, in fewer settlements, and generally excess court time.[12]

Family lawyers are unable or unwilling to take Certificates from Legal Aid because under-funding results in the expectation of working entirely for free. It's a house of cards about to collapse. The Government of Alberta, together with Legal Aid Alberta, is well-positioned to prevent this from happening.

## CHILDREN'S PARTICIPATION AND REPRESENTATION IS DEPENDENT ON FUNDING FOR LEGAL AID

Canada is a signatory to the United Nations Convention on the Rights of Children (CRC). The best interests of children is a foundational legal principle in Canadian Family Law.

The right of children to participate in family justice processes includes the right to

[11] *2020 data. Source: Statistics Canada.*

[12] *Please see Appendix A for a detailed analysis of court cost savings when legal aid is increased.*

independent legal representation to represent solely the best interests of the child(ren) when so required.

Fulfilling these obligations is wholly dependent on adequate legal aid funding.

The pandemic had a disproportionate impact on access to justice, including access to courts and court related services for children.[13] An investment of resources is needed to ensure the implementation of the procedural safeguards identified by the United Nations' CRC, including legal representation when children's best interests are being assessed by decision-makers. [14]

We also advise that amendments to the *Child Youth and Family Enhancement Act* should take into consideration not only a child's Indigenous heritage, but a family's history of exposure to the damages caused by residential schools, as well as the general disadvantages that First Nations communities experience living on reserve.

# Implementing the Alberta Family Court

A unified Alberta Family Court would save the Government of Alberta money in the long run while eliminating duplication of resources, confusion in the public, and improving access to family justice in Alberta.

The initial investment required by the Government of Alberta for the Alberta Family Court was to be matched by a federal contribution of 17 new judicial positions. Alberta would be responsible for staffing and operational costs.

For more than five decades, family law stakeholders have been calling for the creation of unified Family Courts across Canada with specialized judges, early assessment (triage) and case management, a single judge presiding over a family dispute, and all the benefits of the more accessible Alberta Court of Justice, including a continuum of dispute resolution services to meet the myriad of needs of families.

Hamilton Wentworth was first to implement such a one-stop court some 45 years ago. Saskatchewan, Manitoba, New Brunswick, Nova Scotia, Newfoundland and Labrador, and Ontario have since followed with some or all of the court systems now unified in those provinces.

As early as 1968, the Law Society of Alberta recommended the establishment of a unified Family Court. There were then recommendations to unify our Family Court from various Committees and Task Forces in 1972,1976,1978,1999, 2000, and 2003.

[13] *Action Committee on Court Operations in Response to COVID-19, Examining the Disproportionate Impact of the Covid 19 Pandemic on Access to Justice for Marginalized Individuals.*

[14] *Committee on the Rights of the Child, General Comment No 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art 3, para 1) UN Doc. CRC / C/ GC/ 14 (2013) at paras 85-99).*

In 2012 the Family Justice Working Group of the National Action Committee on Access to Justice in Civil and Family Matters (the Cromwell Report) recommended that each jurisdiction establish its own unified Family Court with "unified legal jurisdiction, specialized courts, simplified rules and procedures, a range of dispute resolution methods, integrated legal and community and social services."[15]

In Alberta, the emergence of the Reforming Family Justice Initiative (RFJI) in sync with the brain science on family conflict and the impacts on children sought to re-orient the family justice system to be wellness focused and more responsive to the needs of children and families. The principles of the RFJI were embedded in the proposal for the unified Alberta Family Court.

**The unified Alberta Family Court is not a new idea or a radical idea. It is widely regarded as the key pillar of reforming family justice to better meet the needs of families and children.**

Even with a substantial initial investment in staffing, set up and operating costs, the plans for a unified Alberta Family Court were and continue to be intended to save taxpayer money and cut red tape.

## BENEFITS

A unified Alberta Family Court would promote cost-effective, appropriate, and proportionate child-centered family justice.

The other benefits of a unified Alberta Family Court include:

- Judges with substantive and procedural expertise in family law.
- Judges with the ability to bring strong dispute resolution skills to family disputes.
- Training in psychological, social, and cultural dimensions of family law cases including family violence, trauma-informed practice, and various cultural competencies impacting on children in separation and divorce.
- Child-focused family justice meeting our international obligations and ensuring the way we practice family justice does not continue to harm children.
- One stop family justice as a "hub" of information and referrals for family justice services for families.

[15] *Committee on the Rights of the Child, General Comment No 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art 3, para 1) UN Doc. CRC / C/ GC/ 14 (2013) at paras 85-99).*

- Early and effective triage and problem-solving to prevent going down the path to protracted litigation, inappropriate or disproportionate use of courts.
- Case management and settlement facilitation early and at all stages.
- Non-judicial case managers to move matters forward and narrow issues (court workers, resolution counsel).
- Mental health professionals to assist with assessment and case management.
- Accessible remote and virtual court processes; improved and simplified electronic procedures and forms.
- More oral evidence to prevent heavy legal fees for document preparation at interim hearings.

### INVESTING IN THE ALBERTA FAMILY COURT IS SUPPORTED BY THE PUBLIC

Public opinion polling by CBA Alberta in 2020/2021 shows that just over four fifths of Albertans support or somewhat support unifying the courts to handle family matters even if it costs money.[16]

Currently, in some parts of Alberta, the average wait time for a family trial is more than three years. No other province comes close to this delay in the court system. The proposed Alberta Family Court model with the additional judges will relieve stress on Family Court and throughout the entire court system, and better serve families under stress.

## Family Resolution Support Services

For families, early intervention is key.

We know that exposing children to toxic levels of stress alters their brain development. By assisting families to get out of situations of violence, to achieve financial security, and to avoid protracted separation proceedings by offering family focused services, the government can contribute to eliminating the negative effects of toxic stress on children and families.

Building on the unified Alberta Family Court model, all reports on reforming family justice for the last several decades have called for “front-end” services to keep people with family disputes out of court.

Other jurisdictions have implemented mandatory mediation programs, or otherwise made it more difficult to access the court. As the Alberta Family Court model has built-in

[16] *See Nanos Public Opinion Research (quantitative) in Appendix B; page 73, slide 11.*

front-end assessment / triage, the expanded notion of front-end services could include:

- A reinforced mediation program through Resolution Services to include mediation/ arbitration and a higher income of $70,000 (up from $40,000) for at least one spouse.
- Sufficient funding for resolution services and/or court administration and/or the restructured Alberta Justice Department overseeing the Alberta Family Court to implement:
    - Arrangements with the collaborative lawyer associations in Alberta to refer divorce matters to sliding scale joint consultations with registered collaborative lawyers as an early referral pathway out of court;
    - Precedent Parenting Plans and Parenting Orders, Child & Spousal Support Orders, Pension Division and Family Property Orders available for all parties to family disputes;
    - Various information and referral pathways to self-help;
    - Other programs and services as may be determined to be appropriate and cost-effective for the delivery of family justice in Alberta.

## POST-RESOLUTION SUPPORT SERVICES FOR ONGOING DISPUTES

With matters involving children there is an ongoing need to address changes to Parenting Plans and Support Orders. By providing post-resolution support services, parents will be less likely to come back to court. Specific examples of these services include:

- Parenting Coordination;
- Supervised Parenting time; and
- Child Support Resolution and Recalculation Programs

# RECOMMENDATIONS

## LEGAL AID FOR FAMILY MATTERS

1. Recognize legal aid family coverage as an essential service.

2. Increase provincial commitment to adequately fund legal aid in the amount of $28 million annually for the next 4 years, to allow for meaningful access to family justicein addition to criminal justice, including:

    - Expanded financial eligibility for all family services by at least 20% in line with inflation and recognizing that those living at or below the poverty line should be able to access legal aid. AISH and Social Assistance recipients should automatically meet the eligibility requirements;
    - Expanded scope of coverage for family services on a continuum from full legal representation to public education and including family violence screening of all applicants for legal aid;
    - Establish a Tariff or compensation system that permits legal representation in court and out-of-court resolution processes, including collaborative law, mediation/arbitration and parenting coordination;
    - An increased number of Family Law Office staff lawyers to reduce the heavy reliance on private roster lawyers on family matters only;
    - Resources for trauma-informed, cultural competency training of lawyers and other staff to work effectively with Indigenous and racial minorities as well as people with disabilities, and gender/sexual minorities;
    - Permit roster lawyers on family matters to bill paralegal work at a reduced rate (given the specific nature of family matters) - specifically, a Tariff of $50 per hour;
    - Where a family matter is found to involve family violence or is otherwise determined to be “complex”, permit an enhanced Tariff or allocation of hours to adequately address the complexities;
    - Fund a study to consider service delivery models for family matters, including a network of community Legal Aid Clinics in major centres with staff lawyers capable of reducing the reliance on private roster lawyers while maintaining sufficient service capacity to meet the demands.

## ALBERTA FAMILY COURT

1. Renew the Government of Alberta's commitment to work with the Court Committee to implement the Alberta Family Court as soon as viable, with a view to medium-term-cost-savings in the family justice system.

2. Confirm and seek to secure the federal commitment for 17 new justice positions forthe Alberta Family Court with the Federal Department of Justice, so that these are not re-allocated to another jurisdiction or otherwise lost.

3. Include in the funding model for the Alberta Family Court non-judicial staffing for effective early triage and case management for family matters, including:

    - Family violence screening;
    - Mental health screening as appropriate;
    - Court Intake/Support Workers (to support unrepresented or self-represented parties, hopefully fewer due to more access to legal aid); and
    - Resolution Counsel

4. With the exception of long hearings or trials, continued remote and virtual court access and services or hybrid where necessary for family matters.

## FAMILY RESOLUTION SUPPORT SERVICES

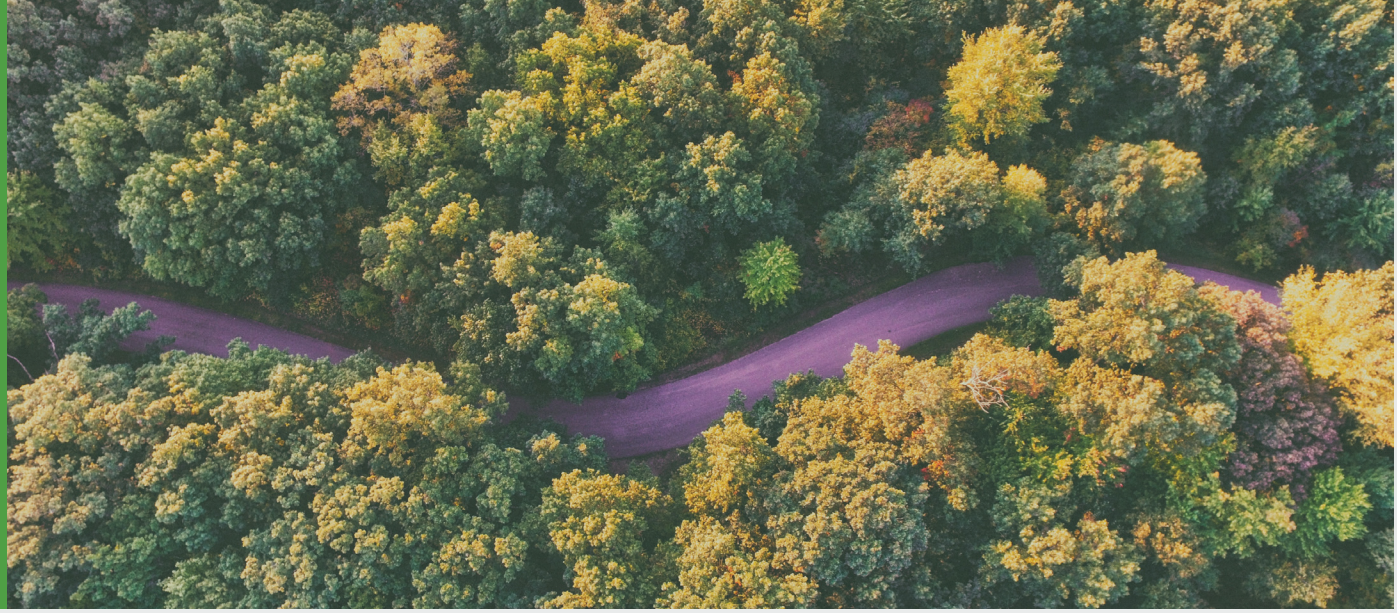
1. A pilot project with staff parenting coordinators available through Resolution Services with similar eligibility as for mediation services and set protocols to access the services.

2. Parenting coordination legislation similar to that in BC, Saskatchewan and PEI, permitting the court to direct high conflict parents to a parenting coordinator to address minor parenting disputes and the ongoing implementation and enforcement of Parenting Plans and Orders.

3. Provide funding for a supervised parenting time service on a sliding scale basis particularly in remote communities.

4. Continue to provide virtual child support resolution services to unrepresented parents with child support matters.

5. Continue to fund the Alberta Recalculation Program.



# SPECIALIZED COURTS

Specialized Courts, such as Drug Treatment Courts and Indigenous Courts, are both therapeutic and problem solving, meeting the goals of the justice system, improving outcomes, and reducing costs to taxpayers due to outcomes that move the dial rather than continue the cycle. Restorative justice is a strategy in which, rather than focussing on sentencing, offenders meet with a facilitator to acknowledge the harm to the victim and community and make a plan to repair that harm.

**The success of the Drug Treatment Courts suggests that diverting people with addictions or mental health challenges away from the criminal justice system and toward programs to support rehabilitation and reintegration into society will yield sustained positive outcomes - social, housing, financial, family stability. This in turn will reduce impact on the justice system and taxpayers by reducing recidivism of chronic, low-level offenders.**

**SPECIALIZED COURTS PROVIDE AN EXCELLENT RETURN ON INVESTMENT.**

CBA Alberta supports innovative and responsible solutions to justice, particularly where resources applied will result in reduced expense and increased effectiveness.

# BACKGROUND

Specialized Courts are both therapeutic and problem solving, addressing the goals of the justice system, improving outcomes, and reducing costs to taxpayers through effective outcomes which move the dial rather than continue the cycle.

We have seen an alternative model implemented with the Drug Treatment Courts (DTC) in Calgary, Edmonton, and other communities. These DTC programs, strengthened with support of the Government of Alberta, have reduced recidivism, and provided an excellent return on investment.

**Similarly, Indigenous Courts seek to affirm Indigenous roots, identity and connection, recognizing the historical and present harms of disconnection, and affording members of Indigenous groups an opportunity to be accountable for and improve their conduct in the context of connection with their Elders and wider community.**

It is often said that the opposite of addiction is connection, and CBA Alberta believes that this holds true for various alienating types of conduct resulting from mental health and poverty. Where connection is established, the alienating conduct is diminished.

In its **Calls to Action on Justice, the Truth and Reconciliation Commission** has called on both federal and provincial/territorial governments to provide courts with specialized resources to address the needs of offenders with Fetal Alcohol Spectrum Disorder (FASD).

## Restorative Justice

Restorative justice is a strategy whereby rather than focussing on sentencing the people involved in a dispute, they meet with a facilitator to acknowledge the harm caused to victim and community, and to make a plan to repair that harm.

This approach also leads toward the healing of perpetrator and victim, and has the potential to reduce repeat offences.

While restorative justice programs do not focus on punishment or sentencing, it should not be assumed that these programs are easier on offenders – often the hard work of facing the victim and acknowledging the harm, combined with the self-work necessary to complete such a program, are much more challenging than simply doing the time.

## Resourcing

The current mandate of Alberta Justice includes addressing the need for funding increases to strengthen Alberta's justice system and requests a strategic review of resourcing to the courts.

The objective is to ensure sufficient funding for Albertans to have a fair and accessible justice system including through specialized courts.

The CBA Alberta vision and Justice Ministry mandates are united in the desire to resolve more social disorder offences through treatment and without incarceration, knowing that the government-supported Drug Treatment Courts have proven this restorative justice model effective at both reducing anti-social criminal behaviour and reducing expense to the taxpayer. The goal is always to help people move forward while keeping society safe.

**The goal is always to help people move forward while keeping society safe.**

# The Drug Treatment Court Experience

The Alberta Government in recent years has provided stable, ongoing funding for drug treatment courts, reaping the benefits of flourishing DTC programs in Calgary (since 2005), Edmonton (since 2007) and other centres including Lethbridge, Medicine Hat, Red Deer and Grande Prairie.

The aim of these pre-sentence treatment programs is to rehabilitate non-violent offenders, diverting them away from imprisonment on condition that they complete an intensive, judicially-supervised drug addiction recovery program.

**DTC is proven to deliver a significant return on investment to society, by reducing costs associated with policing, courts, and corrections, as well as systemic marginalization, victimization, and property loss.**

As offenders may return to functional societal participation, they resume participation in parenting their children, potentially reducing ongoing harm and reducing any need for intervention or outside care for affected children.

The majority of participants who graduate from intensive, judicially supervised drug addiction recovery programs become contributing, tax-paying members of society. For example, 7 out of 10 graduates from Calgary's Drug Treatment Court have no new criminal charges or convictions post treatment in the 3-4 years following graduation.

The obvious success of the DTC provides incentive and encouragement to support other specialized courts and anticipates that other participants in the judicial system may be successfully diverted away from formal court processes in favour of court-supervised programs which may both better meet the needs of those participating, and also result in a more reliable outcome for the judicial system and for society generally.

# THE ISSUES

The provincial and federal governments should strive to divert people with addictions and mental illness away from the criminal justice system and direct them towards programs to support rehabilitation and reintegration into society. Noting the overwhelming success of DTCs, CBA Alberta members wish to see support for judicial programming around the same model, expanding it to address community issues engaged by other chronic offenders such as mental health, poverty, etc.

The DTC framework has already provided a successful model for the Community Justice Centres project, for which significant work was invested, although funding for the project was suspended with the impact of COVID-19.

Noting the overwhelming success of DTCs, CBA Alberta members wish to see support for judicial programming around the same model, expanding it to address community issues engaged by other chronic offenders such as mental health, poverty, etc.

It is time to restore the funding and resume development of the Community Justice Centres, which ideally will yield a transferable model allowing communities in Alberta to customize and adapt it to their unique needs.

Once a model is established and ready to replicate, the next step will be to develop a coordinated strategy for developing specialized courts in communities across Alberta to meet their local justice needs as desired.

This will equip communities across Alberta to develop innovative solutions to local justice issues, which is outlined in the Access to Justice section of this document. This could include specialized courts.

Ultimately, non-criminal and non-family matters such as immigration, employment, consumer and debt issues, housing/tenancy and human rights, could all be the subject of community courts.

One of CBA Alberta's goals is to promote and improve the administration of and access to justice and equality, supporting the corollary benefit of crime reduction.

It benefits members of CBA Alberta and greater society to work toward ensuring the public has a fair, effective, and efficient justice system, including use of restorative justice strategies where they are likely to be successful.

There is broad support within the legal and justice communities for the specialized court model. CBA Alberta supports innovative and responsive approaches to justice, including developing a transferable model for specialized courts which could be accessed and implemented by communities throughout Alberta.

CBA Alberta understands that, given the success of DTC, innovation around specialized courts is likely to result in:

- Improved procedural justice, where the person appearing in court feels dignity, respect, and fairness (regardless of their legal matter outcome).
- Sustainable improvements in life outcomes, including social, housing, financial, family stability.
- Reduced impact on the justice system and the corrections system by reducing recidivism of chronic low-level offenders and the disproportionate consumption of resources by those trapped in a criminality cycle which requires interruption.
- Reduced negative outcomes – domestic violence, homelessness, poverty, displacement, etc.
- Improved usability of the system.
- Improved collaboration among justice participants and stakeholder agencies, including crown prosecutors, police, Alberta Health Services, local municipalities, NGOs addressing homelessness and providing other relevant supports.
- High satisfaction with the service and legal professionals.
- Increased engagement in the community.
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- High satisfaction with the service and legal professionals.
- Increased engagement in the community.

# RECOMMENDATION

CBA Alberta strives to enhance the justice system. By developing and implementing a specialized courts model which may be adapted for different communities, Alberta will reduce cost, keep more people participating in society and therefore out of corrections, and will continue to be a national and international leader of innovation in the justice system.

# COURT MODERNIZATION

Reforms made during the COVID-19 pandemic included the capacity and use of virtual courtrooms and digital filing of court documents. While these were introduced to react to a crisis, several can continue to be used to simplify and speed up dated legal processes. For example, the KB Digital Justice Filing Service simplified and clarified many of the issues that arose from email filing and has allowed for easier filing for a vast array of documents while simultaneously reducing the cost. Additional functionality might allow for the ability to perform searches and obtain copies of filed documents, access public information faster, expand to Alberta Court of Justice filings, and potentially open the system to non-lawyers, similar to what has been done in British Columbia.

> CBA Alberta recommends continued or increased use of such innovations as Online Applications, Desk Applications, the KB Digital Justice Filing Service, and the ongoing flexibility to allow individuals to more simply represent their interests in a streamlined, cost-effective and modern manner.

**MODERNIZING MEANS INNOVATING TO BETTER MEET THE NEEDS OF THOSE SEEKING JUSTICE.**

# BACKGROUND

Alberta's justice system has not kept pace with the trends of modern society and actively resists innovation.

This is generally not a problem for large corporations and wealthy people who can afford to pay for inefficient legal services and processes. However, the reality for many Albertans is a complicated system, with struggles to access and use it in timely ways.

**A new vision is needed.**

Reforms made through the COVID-19 pandemic have included the capacity and use of virtual courtrooms and digital filing of court documents. These were introduced to react to a crisis, not to respond to other harsh realities or anticipate future needs. Though Alberta is not alone, it has notably lagged behind other provinces.

# THE ISSUES

## THE CHALLENGE: COURTS ARE WOEFULLY OUTDATED, UNDERFUNDED, AND UNCREATIVE

- The challenge is one of will, imagination, resources, inertia, bureaucracy.
- Judges are not well supported in innovation: they do not have access to cutting edge technology and often still rely on old school thinking.
- Establishment: decisions are made more from the consideration of judges' (or staff/clerks') convenience rather than litigants' ease of access (e.g. printing briefs for the court).
- Inertia: we have always done it this way.
- Funding model exacerbates the problem by making people reluctant to try new things.
- Neither government nor courts have a vision. CBA Alberta presents a vision in hopes of engendering enthusiasm.

## THE OPPORTUNITIES: RECENT INNOVATIONS

- Maintain some ability to do online applications.
- Desk applications availability.
- Online filing/search/download requests.

## An example of the application of modern technology

Andrea is owed $75,000 by Bob.

Andrea (either directly or through her lawyer Carol) initiates an online claim. The claim is not a PDF "statement of claim"; rather, the online court form requires the claimant to fill in the party names and contact information, as well as selecting from drop-down menus the information that the court will require to direct the claim to the proper resources.

Andrea receives an action number, a portal to log into the court matter and see all filed documents and correspondence.

The court system sends Bob an e-mail advising him that he has been sued, and asks whether he wants to defend or issue a counterclaim.

Upon receipt of application: The docket needs to be triaged by the court in a directional manner, and perhaps with a determination of whether a judge is even needed.

## GETTING TO GREATER COURT MODERNIZATION

Key questions that need to be asked at this time:

- What are the goals of our justice system?
- What are the costs of not having a forward vision?
- What resources will be needed?
- Why do we observe resistance to change within the legal profession and among the judiciary?

Similarly, new trends and developments that need to be understood and embraced:

- We are connected online more than ever before.
- Many of us walk around with powerful computers in our pockets.
- We are not a paper-based society anymore.
- Law and information is no longer just in lawyers' offices.
- The use and location of courthouses favours inefficiencies.

The use of some modest proposals and case studies illustrate the scope of the problem and the opportunities available now to tailor-make our justice system to achieve better and speedier outcomes, with less waste, dissatisfaction, and outright injustice.

**While the COVID-19 pandemic caused a great deal of turmoil for the judicial system in Alberta, it also shone a light on some of the innovative steps that could increase Albertans' access to justice.**

Through the adoption of these innovations, aside from the delays inherent in operating in a pandemic, more Albertans were able to access the courts with lower costs (both financial and in terms of lost hours of work) than before.

The steps taken to adapt the courts during the past few years have resulted in a modernization that now, post pandemic, should be further developed to prevent the courts from regressing to prior outdated methods of service.

# RECOMMENDATIONS

## 1. ONLINE APPLICATIONS

Certain matters should be heard in person before a trier of fact. However, with increased access to technology, the ability to proceed with virtual procedural chambers applications – in both the Alberta Court of Justice and the Court of King's Bench – will increase access to justice while lowering the costs of such access for Albertans.

Typically, to appear in chambers requires a lawyer, or a self-represented litigant, to be physically present in the courtroom from 9:45 a.m. until their matter is heard.
Through the use of virtual platforms for these applications, lawyers are not required to charge their client for the wasted time of sitting in the courtroom waiting to be called as, unlike in the courtroom, the lawyer can attend to other matters.

Similarly, for both lawyers and self-represented individuals, particularly those who live far away from a judicial centre, they will not be required to travel long distances to attend what could be a 5 – 10 minute application.

Through the use of a consistent secure virtual platform, with clear protocols for use, continuing with a dedicated online chambers option will increase the access to justice, while reducing the costs associated with same.

## 2. DESK APPLICATIONS

In 2010, the Rules of Court re-introduced the concept of desk applications. However, following the COVID-19 pandemic, the use of this rule has been suspended due to a lack of court resources. The benefit of desk applications is that, for simple matters that do not need much in terms of supporting materials, there was a streamlined and minimally invasive method for obtaining a determination of procedural issues.

Given the cost effectiveness of this process for straightforward matters, it is recommended that the desk application process be made available for certain ***ex parte*** matters, with hard limits on the length of submissions, and a dedicated Applications Judge who is responsible for attending to these matters in a timely manner.

Desk applications, coupled with the already prepared court approved templates, will increase Albertans' access to justice while reducing costs to the users of the civil judicial process.

## 3. KB DIGITAL FILING

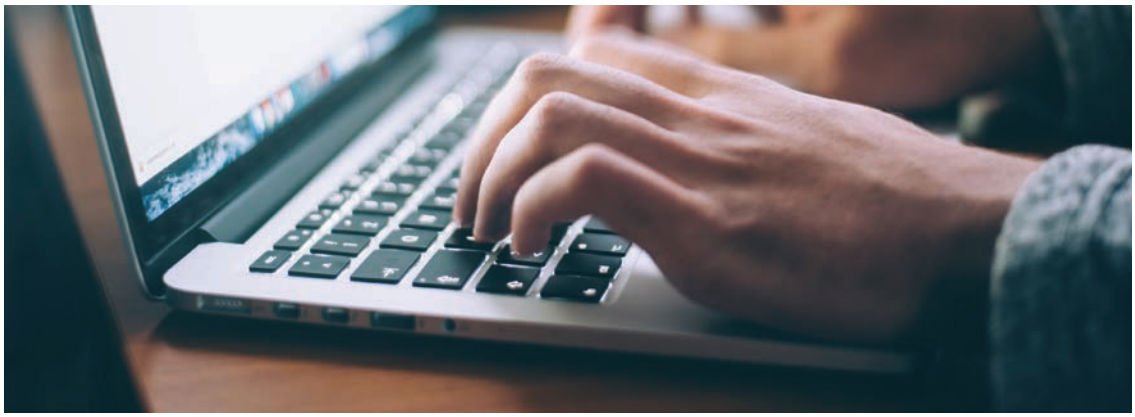
One the most significant improvements to the court process has been the launch of the KB Digital Justice Filing Service.

This has simplified and clarified many of the issues that arose from email filing and has allowed for an easier mechanism for filing a vast array of documents while simultaneously reducing the cost of same.

Additional functionality of this system, such as including the ability to perform searches and obtain copies of filed documents, would provide additional benefits in that the access to this public information would be faster and the court clerks would be freed to engage in other tasks.

Additionally, expanding this system to allow for Alberta Court of Justice filings will allow for a more comprehensive and consistent process.

Finally, opening access to the system to non-lawyers, similar to what has been done in British Columbia, will allow greater access to justice as the hurdle of needing to travel to the court to file a document will be eliminated.



## 4. FLEXIBILITY

The Alberta Court of Justice is equipped to handle these matters with sufficient flexibility that individuals may represent their own interests in a streamlined, cost effective process.

Similarly, by allocating more resources to the Alberta Court of Justice, this may alleviate some of the burdens being faced by the Court of King's Bench which in turn, will increase the access to justice for Albertans.

## 5. COURTHOUSE FACILITIES AND ACCESSIBILITY

While the Canadian Bar Association's No Turning Back Report strongly supported the continuation of remote proceedings as an option and highlighted the need for digitization of court processes, courthouses remain an important component of a well-functioning justice system.

Power outages commencing in January 2023 at the Edmonton courthouse serve as a reminder that investment in facilities is critical to access to justice for Albertans.

Investment in a modern justice system should also consider questions of accessibility and how design can better accommodate those with special needs or health limitations. As a bare minimum, participants should be able to easily access accommodations information, and the process for obtaining those accommodations should similarly be clear and easily accessible.

# JUDICIAL INDEPENDENCE

**Judicial independence is critical to ensuring that the rule of law is upheld in Alberta and Canada.**

The Supreme Court of Canada has determined that judges' compensation should be set by an independent commission. When governments reject the recommendations of the commission, it undermines the independence of the judiciary by interfering in the structure that was established to protect that independence. Judges must protect their independence, even from the government, part of which is to force the government to follow the rules for setting judges' compensation.

CBA Alberta believes that judicial compensation must be adequate and structured to make judges independent from outside influences, including from government. We ask that the Government of Alberta pass legislation requiring the government to accept the recommendations of the independent commission on judicial compensation.

**RESPECTING JUDICIAL INDEPENDENCE REINFORCES PUBLIC CONFIDENCE IN THE JUDICIAL SYSTEM.**

# BACKGROUND

The courts protect the rights and freedoms granted to every person in Canada under the *Canadian Charter of Rights and Freedoms.* The fundamental freedoms protected by the *Charter* are freedom of conscience and religion; freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication; freedom of peaceful assembly; and freedom of association.[1]

The courts protect our freedoms by striking down laws passed by the government that unreasonably limit those rights or freedoms in a way that cannot be justified. Importantly, the courts are responsible for upholding the rule of law so that we can all enjoy a civil society. For this reason, it is crucial that judges be independent, and, in particular, be independent of government influence.

# THE ISSUES

In 1997, the Supreme Court of Canada ordered that the salary and benefits of judges be set by an independent commission and not by the government.[2] This decision was made to protect the independence of the judiciary by ensuring that the government was not in a position to control judicial compensation.

Since then, the Alberta government has rejected the recommendations of the independent Judicial Compensation Commission for the compensation of Alberta Court of Justice judges and imposed their own views on compensation on several occasions. Each time that the Alberta government rejected the Commission's recommendations, the judges have taken the Alberta government to court and won, which required the Alberta government to provide the compensation recommended by the independent Commission.

[1] *Section 2 of The Constitution Act, 1982, Schedule B to the Canada Act 1982 (UK), 1982, c 11, <https://canlii.ca/t/ldsx> retrieved on 2022-12-01.*

[2] *Ref re Remuneration of Judges of the Prov. Court of P.E.I.; Ref re Independence and Impartiality of Judges of the Prov. Court of P.E.I., 1997 CanLII 317 (SCC), [1997] 3 SCR 3, <https://canlii.ca/t/1fqzp>, retrieved on 2022-12-01*

**When the government rejects the recommendations of the Commission, it undermines the independence of the judiciary by interfering in the structure that was established to protect that independence. It forces the judges to take the government to court to protect their independence and to ensure that the government follows the rules for setting judges' compensation as established by the Supreme Court of Canada.**

Canada is a constitutional democracy which, amongst other things, protects the rights granted to Albertans by the Charter by providing checks and balances. One of the most important checks that we have is the independence of judges because judges must decide whether a government law is permitted under the Charter. Therefore, it is critically important that judges be independent, especially from the government.

In addition, judges make decisions with respect to matters affecting the lives and livelihoods of Albertans. In this matter, judges must be free from influence for any litigant or party related to a litigant to ensure that those decisions are also fair and unbiased.

What does the independence of judges have to do with how much they get paid?

1. **Judges cannot have a second job.** Once a person becomes a judge, being a judge is their sole source of employment income. So, a judge's salary must ensure that the judge is compensated for the requirement of giving up all other sources of income. Since all judges must be lawyers before they can become a judge, a judge's salary must be enough to convince a lawyer to stop being a lawyer and become a judge.

2. **"Independence" means that a judge should not be in luenced by outside considerations.** It is important that judges are not susceptible to bribes or financial influence by litigants or persons on behalf of litigants. By making sure that judges are paid well, we are helping to ensure that judges are not even tempted to take a bribe.

3. **The reason that the Supreme Court of Canada determined that an independent commission would set judges' salaries is that the independence of judges is so important that judges are not even allowed to negotiate with the government for their salary, let alone go on strike.**
   Judges also cannot make any public comments about what the government does about their salary. In other words, judges are so independent that they can't even protect themselves.

(While the Alberta Provincial Judges' Association does make submissions to the Commission about what they think judges' compensation should be, the Commission can make whatever recommendation it feels is appropriate.)

4. **Judges' independence means that they are not dependent on the government, including not being dependent on the government to set their salaries.**

   The government, quite rightly, must weigh political considerations when it makes most of its decisions. However, political considerations should not apply when the government is considering whether to accept or reject the Commission's recommendation for judges' salaries.

   The Supreme Court of Canada gives the government a limited set of reasons to reject the Commission's recommendations. Political considerations is not one of those reasons.

CBA Alberta believes that the Alberta government does not fully understand the important role that the Alberta Court of Justice plays in Alberta and is unintentionally undermining public confidence in the judicial system by rejecting the Commission's recommendations for reasons that are not permitted by the Supreme Court of Canada.

# RECOMMENDATION

That the Government of Alberta pass legislation that requires the government to accept the recommendations of the independent commission to set the compensation for judges of the Alberta Court of Justice.

# CONSTITUTIONAL DIVISION OF POWERS

When unconstitutional legislation is introduced, and successfully challenged in court, the general public does not understand the jurisdictional nuances. Instead, they may see a system that is unfair and against their interests. This undermines the respect that Canadians should have for our democracy in which the levels of government maintain a necessary division and separation to ensure that the local and national interests of Canadians are properly maintained. When the judiciary's power in rejecting unconstitutional legislation comes under attack, our democratic system of government will be attacked as well.

CBA Alberta asks MLAs to create an educational backgrounder on both the division of powers and the separation of powers for their elected Members; to be advocates for our judicial system to maintain confidence and protect rule of law democracy; and to commit to the ongoing civic education of the public, emphasizing the importance of our Constitution to our democratic system.

**DEMOCRACY IS FRAGILE AND REQUIRES NURTURING AND RESPECT TO ENDURE.**

Our system is not perfect, but it is the job of elected representatives within our democratic system to respect and advance the rule of law by avoiding creating the perception that the state is the enemy of the people.

# BACKGROUND

Canada is a federation – a collective group of provinces and territories that have come together to pursue the common good of a fair and just democratic society.

## SECTION 91

Section 91 sets out the powers that fall under the exclusive jurisdiction of the federal government. They include the power to make decisions in areas and on issues that affect all Canadians in order to ensure consistency across jurisdictions.

Federal heads of power include the following:

- Bankruptcy;
- Divorce;
- Criminal law;
- Interprovincial and international transportation, including fisheries, shipping, navigation, ferries, railways, and air travel;
- Commerce and banking;
- National social programs such as Employment Insurance, Canadian Pension Plan, Canadian Economic Recovery Benefit;
- Telecommunications;
- National defense and security;
- Federal taxation;
- Copyright laws; and
- Matters related to Indigenous peoples and reserve lands.

## SECTION 92

Section 92 sets out the provincial heads of power; matters in which each province has exclusive authority and responsibility to make laws.

These include financial and operative heads of power relating solely to each province, such as raising tax revenue for provincial purposes and developing provincial offices. They also include the following:

- Management and sale of lands belonging to the province;
- Prisons in and for the province
- Licensing of various businesses to raise revenue for local purposes;
- Local works and undertakings that do not already fall under the federal heads of power
- Incorporation of companies;
- Marriage;
- Property and civil rights within the province;
- The administration of justice within the province; and
- Laws respecting natural resources, forestry, and electrical energy.

The provinces may also make laws respecting matters that are merely local or private in nature, within each respective province.

Also within the province's jurisdiction is education, which authority is set out in Section 93.

**"Canada's superior courts hold a unique role as protectors of the Constitution and act as the "primary guardians of the rule of law." They are the "centre of the judicial system" of Canada. The majority of the Supreme Court recently emphasized in the administrative law context the important role of the superior courts in safeguarding the rule of law.[1]**

[1] *Paul Daly et al, The Effect of Declarations of Unconstitutionality in Canada, [Source not specified], 2021 CanLIIDocs 2420, <https://canlii.ca/t/tctn>, retrieved on 2023-04-13*

# THE ISSUES

The Constitution is the backbone of a representative democracy. If we do not respect the valuable role it plays, or how it operates, democracy itself is threatened. Specifically, a failure to understand constitutional principles has the following negative consequences:

## Erosion of Public Trust

The majority of the Supreme Court recently emphasized in the administrative law context the important role of the superior courts in safeguarding the rule of law.[3]

When legislation runs afoul of the constitution, it will inevitably be struck down. This can sow confusion and mistrust. It is important to understand what we can and cannot legislate at each level of government, and more importantly, why the division of powers makes certain areas of legislation outside the jurisdiction.

If legislators have respect for the process and understand the rationale behind the division of power set out in the Constitution, they will be able to explain this better to their constituents.

Without respect for the rule of law and our federal system, people may feel like the system is broken, and operates against their objectives.

As seen in many countries around the world, the erosion of public trust in the system of government is often one of the first steps towards the breakdown of the social contract.

## Risk of "Second Order Elections"

In an article published by UCC Davis Law Review, Laura Bakst makes the argument that legislative activism, or knowingly passing unconstitutional legislation, can lead to a phenomenon titled "second-order elections", whereby constituents conflate the political issues of one level of government with another.

Where parties focus on the wrong issues – i.e. matters of another level of government - this can lead to the development of legislation that will inevitably fail for lack of constitutional authority.

Although this article was based on an analysis of the US political system, the same risks exist in Canada. Albertans deserve to know what is within the control of their representatives at the Alberta Legislature, and make their choice for representation based on party platforms that align with that reality.

# Wasting financial resources

Bakst also reviewed the financial consequences of unconstitutional legislation.

Where a law violates the constitution, it will almost certainly be challenged. Consequently, considerable tax revenue is expended with little chance of a satisfactory result. As the fight over unconstitutional legislation inevitably makes its way into the court system, tax dollars are spent both in retaining legal counsel to research and advocate, as well as the use of court resources.

Court challenges to unconstitutional legislation also has costs in terms of time, energy, and missed opportunities to liaise and effectively build influence with federal representatives who could bring Alberta's concerns to the table.

Influence and political capital are better spent building alliances with all those who can be champions for the issues that affect Alberta but are outside the scope of the province to legislate.

In some cases, whether or not legislation is constitutional is not clear, as the issues raised in the legislation may be novel or do not easily fall under one of the heads of power assigned to the province in the constitution.

In these instances, risking a constitutional challenge, and the outlay of financial and political capital associated with it, would be a rational choice.

However, in other cases where it is clear that the only way for the provincial law to be permissible is if the Constitution itself was amended, then other legal means of achieving the results Albertans want should be explored.

# Decline of the rule of law

Where we disregard or are unaware of the division of power, this risks undermining the rule of law.

The rule of law is fundamental to western democracies. According to the Supreme Court in the Quebec Secession Reference, "the rule of law provides that the law is supreme over the acts of both government and private persons. There is, in short, one law for all." The Court went on to state that:

> *The rule of law principle requires that all government action must comply with the law, including the Constitution. This Court has noted on several occasions that with the adoption of the Charter, the Canadian system of government was transformed to a significant extent from a system of Parliamentary supremacy to one of constitutional supremacy. The Constitution binds all governments, both federal and provincial, including the executive branch... They may not transgress its provisions: indeed, their sole claim to exercise lawful authority rests in the powers allocated to them under the Constitution, and can come from no other source.*[2]

Where we disregard or are unaware of the division of power, this risks undermining the rule of law.

When unconstitutional legislation is introduced, and then subsequent court challenges are inevitably unsuccessful, elected representatives and their legal counsel may understand the nuances as to why the law was unsuccessful or failed.

However, the general public, most of whom know more about the U.S. Constitution than Canada's Constitution, does not understand these nuances. Instead, they may see a system that is unfair and against their interests.

Most law-makers will not want to concede that they knowingly introduced legislation that was ultra vires the Constitution, and instead, the system and the laws themselves get blamed for the proposed legislation's failure.

This undermines the respect that Canadians should have for the division and separation of powers, and our democratic system in which the levels of government – provincially and federally – maintain a necessary division to ensure that the local and national interests of Canadians are properly maintained.

When the judiciary's power in rejecting legislation that is unconstitutional comes under attack, it is not long before our democratic system of government will be attacked as well.

[3] *Reference re Secession of Quebec, 1998 CanLII 793 (SCC), [1998] 2 SCR 217, para 72*

# RECOMMENDATIONS

CBA Alberta calls on all political parties to demonstrate their commitment to the principles of our constitutional democracy, and the continuance of the rule of law in the following ways:

1. **By establishing an educational backgrounder for their respective members**, to ensure that elected representatives have a foundational understanding of why division of powers and separation of powers matter, and how to operate efficiently and effectively within this system of government.

   As part of their platform, each party should identify what their plan is for providing members with this education, and how and when it will be implemented for those that are elected to power.

2. **By including in their platform a concrete and actionable plan to be advocates for our system.** The current climate is deeply concerning for the legal community; we see attacks on the judicial system and our political systems in general that threaten the future of democracy.

   We need to recognize that "democracy is fragile" (Yale historian, Timothy Snyder), and is unsustainable if our own politicians do not recognize how these attacks erode confidence in the entire system. Our political parties need to outline a clear plan for what they will do if elected to uphold these principles and help Albertans understand them better.

3. **By committing to the ongoing civic education of the public** by raising awareness and disseminating information to constituents about the division of powers provincially and federally, and emphasizing the importance of the Constitution in our society and democratic system.

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# APPENDIX A

## Cost and Saving Modeling for Legal Aid Funding

# Estimates of Alberta Court Time and Public Expenditure Savings Resulting from Reduced Rates of Self Representation

Prepared by: G.K. Fellows (Fellows Economic Consulting) *

April 14, 2021

**Executive Summary**

This report examines the relationship between legal aid funding and the overall public costs of Alberta's court systems. There is strong evidence to support the assertion that because legal aid funding reduces the rate of self-represented litigants, there is a commensurate reduction in the burden that self representation places on other court resources such that increased legal aid funding would produce a net public savings.

Empirical examination of confidential booking data for the Provincial Court of Alberta and the Alberta Court of Queen's Bench identifies three channels through which self represented litigants place an increased burden on public resources:

1. The involvement of self-represented litigants implies an increased in the number court bookings and hearing types associated with a particular case. (This is because these matters are less likely to be settled out of court and more likely to require multiple hearing types to address all issues.)
2. Bookings made for cases involving self-represented litigants are less likely to be cancelled prior to the hearing date. (This is because these matters are less likely to be settled out of court.)
3. Bookings made for cases involving self-represented litigants are likely to be longer in duration.

The combined increase in the number of hearings (from channels 1 and 2) and the increased duration (channel 3) lead to a sometimes dramatic increase in court resources resulting from self-representation. Depending on the type of case, self-represented litigants can introduce an additional burden on court time of up to 60 hours per case (see Table 4 in Appendix A).

Using a component pricing approach, a conservative estimate of **the cost for one hour of court time is $268.28 per hour for non-civil matters and $199.68 per hour for civil matters** whereas the legal aid costs per case vary with the type and length of the hearing process.

All in, the analysis presented here suggests that **a modest increase in legal aid funding of between $4 million to $6 million per year could generate a net public savings of $11 million annually** if appropriately triaged (see Figure 2). That is, the $4 to $6 million increase will not only pay for itself, but will generate an additional $11 million. Further to this, additional funding up to $22 million is defensible from a public costs perspective as this funding would produce public savings from reduced court system burden that would more than offset the increased funding costs.

Also note that in addition to these projected direct public savings, there are several indirect benefits associated with legal aid that are not quantified in this report.

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# 1 Introduction

The Reaching Equal Justice Report (Canadian Bar Association, 2013) notes that "a majority of self-represented litigants (67%) reported that navigating the court system was difficult or very difficult. 49% believed the lack of a lawyer made the process slower or much slower." This more difficult navigation is also associated with costly and frustrating delays from the perspective of litigants who may have to attend court for repeated adjournments, and to face month long delays to be heard in court. Repeated and protracted court interactions represent a significant cost for litigants in terms of lost time. For working litigants this cost can be tangible in terms of lost wages.

This time cost for litigants also implies a cost for the court system itself, in terms of additional resource use in dealing with self-represented litigants compared to those who have counsel (through legal aid or other means).

As noted by Canadian Bar Association (2013) :

> *"The reasons for not having counsel are complex. The main reason is financial, including ineligibility for legal aid. Among middle income earners were those able to afford legal fees, but who chose not to because they did not believe they would receive good value relative to other financial priorities. Other reasons for not retaining counsel include that litigants believe they have sufficient knowledge about family law to represent themselves, that lawyers increase the adversarial nature of the proceedings and that lawyers increase the time and cost involved. While the study identified these various reasons for not retaining counsel, it also found that litigants who had lawyers were almost all satisfied with their decision to have representation."*

The report then goes on to say:

> *"The current inadequacy of civil legal aid is largely attributable to underfunding."*

Taken together, this suggests that a significant amount of self-representation in Alberta's legal system could be eliminated by expansions of legal-aid funding in this province.

A legal-aid expansion implies a non-trivial public expenditure, however; as the analysis below shows, this expenditure is likely to be more than offset by reduced court system expenses. If we also consider the private benefit to litigants, a reasonable expansion of legal aid funding in Alberta is almost certainly efficient and beneficial for the productivity and welfare of the province.[1]

# 2 Methodology

The core of this analysis is a study of the use of court-resources, as measured by changes in expected court time (hours of court-room operation) per file and hearing type. From this court-time metric we project public savings (reductions in public expenditure on the court system). The reduction in court-time is likely not the only benefit from reducing the rate of self-representation. But it is an observable metric for counter-factual analysis and is at the core of court-room resource usage. This makes court-time a useful metric for analysis.

## 2.1 Data Set Description

We have available a dataset of all hearings sheduled in the province (the "CASES" database). For each scheduled hearing in Alberta the "CASES" dataset has variables including (but not limited to) the hearing's:

[1] There are also obvious moral and ethical arguments for improved legal aid. However we do not discuss these in this report.

- District,
- Jurisdiction,
- Hearing Type,
- Hearing Time (Duration),
- an associated Action Number and
- an indicator of whether one more more litigants involved is self represented.

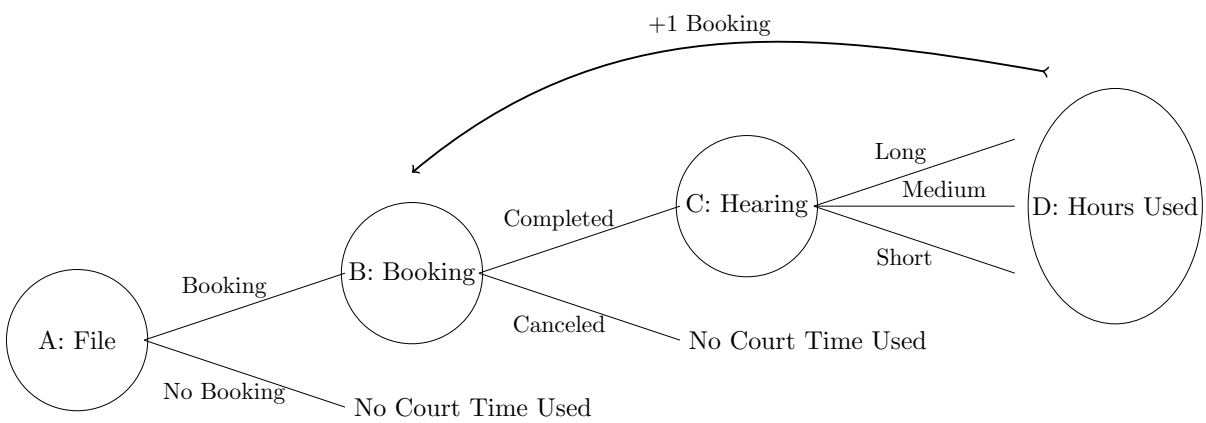
## 2.2 Intensive and Extensive Margins for Time Savings

Figure 1 shows the relevant path or "probability tree" for an Action Number/ hearing-purpose pair as appearing in the dataset.[2] At each circle or "node", we calculate the probability of each outcome. That is, at node B (where a file first appears in the data-set) we can calculate the probability that a booking is "completed" (resulting in a hearing) or "canceled" (due to a settlement of an issue prior to the scheduled hearing date).[3] These probabilities can be calculated contingent on whether or not there is an associated self-represented litigant.

The only exception is node A. A file-number / hearing-purpose pair only appears in our data-set if there is at least one booking associated with it.

Our goal is to compare expected outcomes with and without a self-represented litigant. So, we calculate probabilities for each arm coming off a node (or in the case of node C, the average expected duration) contingent on the presence of a self-represented litigant. Due to lack of data, we assume no difference in the probability of each outcome at Node A.

Figure 1: General Path for a Specific File and Hearing Purpose Through the Court Booking Data




As implied by Figure 1, there are three potential channels through which legal aid (or more specifically a reduction in self-representation) can reduce the burden on court-time resources. Considered for a specific Action Number, these are:

1. An increase in the rate at which cases are settled out of court (after a hearing booking is made but prior to the date of the hearing) relative to the outcome if one or more litigants were self-represented. (Node B)
2. A reduction in the duration of realized (completed) hearings that would otherwise be longer if one or more litigants were self-represented. (Node C)

[2]The figure takes the same form as a probability tree, however the probabilities are omitted.
[3]We ignore bookings resulting from clerical errors.

3. A reduction in the number of bookings for a specific hearing type relative to the number of bookings if one or more litigants were self-represented. (+1 Booking coming off of Node D)

## 2.3 Identifying Time Savings per File / Hearing-Type Pair

Considered more formally, the total time savings (per file-number hearing-purpose pair) can be defined as:

$$\begin{aligned}\text{Total Time Savings} = &\text{Reduced Bookings Savings}\\ &+ \text{Fewer Hearings per Booking Savings}\\ &+ \text{Shorter Hearings}\end{aligned} \tag{1}$$

Breaking this down further

$$\begin{aligned}\text{Reduced Bookings Savings} &= T_{\text{Self}} \times P\left(\text{Completed}|\text{Self}\right) \times \left(N_{\text{Self}} - N_{\text{counsel}}\right)\\ \text{Fewer Hearings per Booking Savings} &= T_{\text{Self}} \times \left[P\left(\text{Completed}|\text{Self}\right) - P\left(\text{Completed}|\text{counsel}\right)\right] \times N_{\text{counsel}}\\ \text{Shorter Hearings} &= \left[T_{\text{Self}} - T_{\text{Council}}\right] \times P\left(\text{Completed}|\text{Council}\right) \times N_{\text{counsel}}\end{aligned}$$

Where for an Action Number and hearing-purpose pair:

- $T_{\text{Self}}$ and $T_{\text{Counsel}}$ are the average hearing duration for hearings with at least one self-represented litigant and no self-represented litigant respectively.
- $P\left(\text{Completed}|\text{Self}\right)$ and $P\left(\text{Completed}|\text{counsel}\right)$ are the probability that a booking results in a hearing conditional on at least one self-represented litigant or no self-represented litigant respectively.
- $N_{\text{Self}}$ and $N_{\text{Counsel}}$ are the average number of bookings for file-number, hearing-purpose pairs with at least one self-represented litigant and no self-represented litigant respectively.

We use Equation (1) to calculate an expected time saving per Action Number / Hearing Type pair in each division and for regional and non-regional hearings separately. These calculations are presented using an "hours saved per Action Number" metric in the right most column of the "Savings by Hearing Type" tables in Appendix A.

## 2.4 Converting Time Savings to a Measure of Public Expenditure Savings

To convert the time savings metric into a financial measure of public savings, we assume that a standard court-room complement consists of a judge, a court clerk and in most cases a security officer. We assign hourly average costs to each of these as follows:

For the judge, we assume an average annual compensation rate of $328,000 plus a 33% escalation for the cost of benefits (pensions, health insurance, etc.). This gives a measure of the total annual cost per judge. We further assume a 60 hour average work week for judges (this includes both in court and out of court hours) for 48 working weeks per year.[4] It then follows that the average hourly cost of a Judge is: $\frac{1.33 \times 328{,}000}{60 * 50} = \$145.41$

While marginal reductions in court hours directly imply fewer hours of judge time in court, judge compensation is not tied to specific hours of work (i.e.- Judge compensation is a salary not an hourly wage). However, cumulative reductions in court hours will free up judge

[4] The assumptions on compensation and working hours per week are informed by conversations with members of the Canadian Bar Association Executive. The 50 working week assumes cumulative 2 weeks per year of vacation, inclusive of statutory holidays. This likely is likely an over-estimate, however; the over-estimate biases the hourly cost downward leading to more conservative estimates of the average hourly cost per judge.

time for other tasks (in which case court hours are an opportunity cost) and/or will reduce the overall required judges. As such, an hourly average cost per judge is a useful metric in determining average avoidable costs consistent with a reduction in court hours. This estimate is conservative as it assumes that a reduction in court room hours is not associated with any reduction in out of court hours (preparation) per case. We only account for the reduction in Judge's time in court.

For the court clerk, we assume an average hourly wage of $29.53. This is informed by the "Alberta Learning Information Service".[5] As before, we assume an additional 33% escalation for the cost of benefits, implying a total hourly cost for a court clerk of 39.27.

For the security officer, we assume an average hourly wage of $51.58. This is based on an assumption that these positions are filled via the provincial sheriffs and/or that they would be compensated at the average rate for provincial sheriffs. As before, we assume an additional 33% escalation for the cost of benefits, implying a total hourly cost for a security officer of 68.60.

We have not found detailed statistics on when security officers are present. But consultations suggest that security officers are not required for civil court matters but are generally present in other court matters. As such, we assume no sheriffs for Civil jurisdiction while including them as costs in other jurisdictions.

There are also additional miscellaneous avoidable costs including; licensing for dictation software (which has replaced court stenographers in record keeping), depreciation on court room furnishings and cleaning and maintenance related to use. A quick survey of available dictation software implies that the cost of high quality software dictation is in the range of $10 per hour of dictation time. Given this, and the other costs being considered, we make a conservative assumption of $15 per hour in avoidable miscellaneous court room costs.

In considering the impact on public spending and revenue, we should also acknowledge the costs associated with lost income tax revenue. As indicated by the Reaching Equal Justice Report (Canadian Bar Association, 2013), litigants (whether self represented or not) do face a burden in attending hearings since they are generally required to take time off work. This directly implies lost hourly earnings and by extension reduced income tax payments. We assume conservatively that there are an average of 2 litigants that attend each hearing. Using the average wage rate in Alberta of $30 /hr, this implies that for every hour of hearing time the province loses out on $7.20 in personal income tax revenue.[6]

Taken together, this implies a rough conservative (lower bound) estimate for average avoidable costs of $275.48 per hour for non-civil matters and $206.88 per hour for civil matters. In the tables below, we use these estimates along with the above projections of hourly savings per case and per month to produce conservative (lower bound) estimates of the public cost savings (provincial and federal) associated with reducing court-hours by reducing self-representation through enhanced legal aid.

## 2.5 Calculating Potential Net Savings per Action Number

Data on specific costs for legal aid support at the hearing level is unavailable, however, we can examine a close proxy. The Legal Aid Alberta annual report (Legal Aid Alberta, 2020) includes metrics on the average cost of issued "Roster Certificates"' for different areas of law including:

- Criminal Adult
- Criminal Youth
- Family and Civil, and Child Welfare

[5] https://alis.alberta.ca/occinfo/occupations-in-alberta/occupation-profiles/judicial-clerk/

[6] To maintain a conservative assumption, we ignore time taken off work to travel to and from hearings, and only acknowledge hours in hearing.

While not a direct match, consultation with Legal Aid Alberta representatives and Legal Aid Lawyers suggests that there is a reasonable correspondence between the issuing of a "Roster Certificate" and the "Action Number" used as a unique identifier in the "CASES" database (on which our hourly measures of cost savings are based).

Consultation with legal aid lawyers suggests that a standard legal aid tariff billing for a civil matter roster certificate would have included 30 billable hours at an approximate fixed rate of \$92.40/hr, or \$2,772 in total in the period under study (2016-2019).[7] This is of the same basic magnitude as the indicated averages in Legal Aid Alberta (2020).

For criminal matters, the significant variations in case complexity mean that is is unreasonable to assume a single unit cost and attribute it across all cases. However, consultation with legal aid lawyers and an examination of the average Roster Certificate costs in Legal Aid Alberta (2020) suggests that an appropriate estimate can be based on hours spent in court. Specifically, we assume a cost of legal aid per "Action Number" based on the following formula:[8]

$$Cost = \$500 + \$1000 \times (\text{Days in Court})$$

Given these cost estimates, for every "Action Number" associated with a self represented litigant in the "CASES" dataset we do the following:

1. Calculate a projected public cost-savings associated with providing legal aid funding for that "Action Number". We do this by identifying all of the hearing bookings associated with that action number and then applying the hearing specific calculations for Total Direct Public Savings (see Appendix B) for each. Specifically:

$$\text{Gross Public Savings} = \sum_i (\text{Direct Public Savings for Hearing Type } i)$$

   where $i$ indexes the set of hearing bookings made under the specified Action Number as identified in the CASES dataset.

2. Calculate the expected cost, in terms of increased legal aid funding, that would be required to provide the self-represented litigant with access to legal aid counsel.
3. Calculate the net cost-savings for each action item by subtracting the cost identified in 2 from the benefit identified in 1.

This gives us a measure of the net public benefit that would arise from providing legal aid to each Action Number associated with a self represented litigant in the "CASES" dataset. With the calculations of net public benefit per action number, we can investigate the potential return on increased legal aid funding. To do this, we first create a "merit order" of action numbers. That is, we arrange the action numbers in terms of the highest potential net benefit that would arise from legal aid (i.e.- the net public savings associated with providing legal aid to move it from a self-represented litigant to a counsel represented litigant). We then scale this merit order so that it represents an average year.[9]

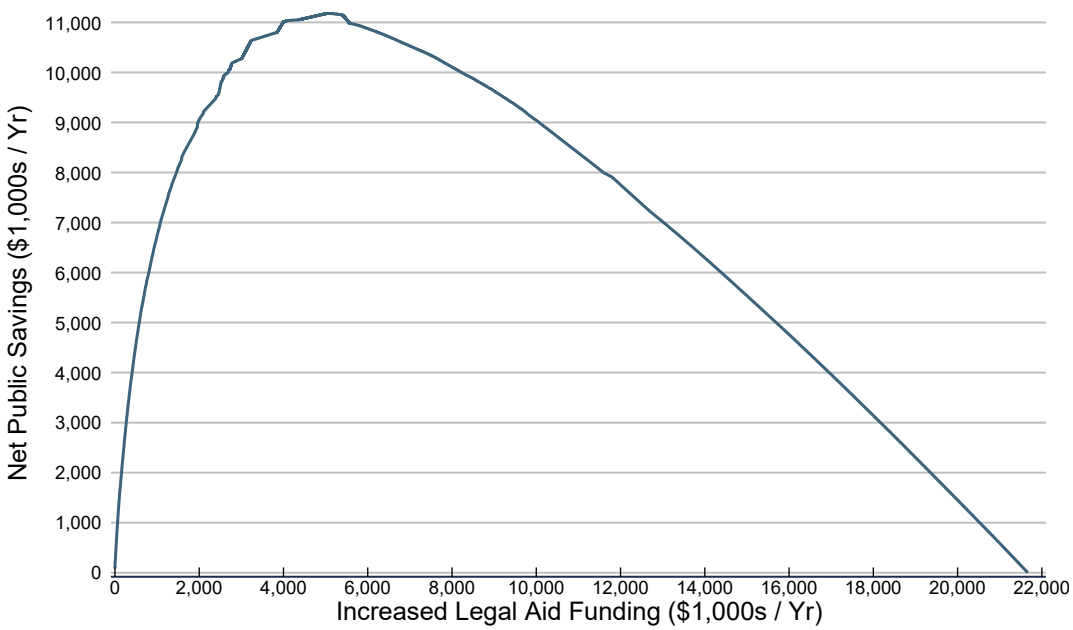
Following this scaling, we plot the merit order as in Figure 2, with net public savings on the Y-axis and total cost (which is, in effect, a measure of the increased legal aid funding necessary to produce the total public savings) on the X-axis. Once plotted, this figure shows the relationship between any potential level of increased legal aid funding (up to \$22 million per year) and the projected value of total Public Savings (Gross savings net the implied increase in legal aid funding). We discuss the figure in more detail in the following section.

[7] More recently, the standard offer seems to have dropped to 15 hours. But for the purposes of producing a conservative estimate, we will use the 30 hour figure in producing our main results.

[8] We cannot clearly identify Criminal matters separately from Civil matters, but as an approximation we use this equation to assign projected legal aid costs to all Court of Queen's bench Action Numbers while using the flat rate assumed above for all other jurisdictions.

[9] This is necessary to make comparisons to an annual budget, since the "CASES" dataset we are working with covers three years of data.

Figure 2: Projected Net Public Savings as a function of increased Legal Aid Funding




# 3 Discussion of Results

Assuming effective triage (so that increased legal aid funding goes towards Action Numbers with the highest potential net savings), increased legal aid funding has the potential to generate significant benefits in terms of public savings.

As figure 2 shows, the return on spending peaks in the $4 million to $6 million range. The implication is that an increase in annual spending on legal aid in this range will result in net savings of $11 million. (That is, the $4 to $6 million increase will not only pay for itself, but will generate an additional $11 million.)

In fact, additional expenditures on legal aid will continue to pay for themselves through direct public savings all the way up to a $22 million annual increase.

It is worth noting that these estimates are intentionally conservative, reflecting in part a lack of more detailed data. It is therefore very likely that an increase in legal aid funding would generate higher net public cost savings than those indicated here. Although such projections would require better access to data on legal aid costs.

# 4 Additional Considerations

The results presented above only acknowledge savings in the form of court time and a conservative estimate of hourly public expenditure to support in court hours. It is also worth considering that reductions in court time will also reduce the associated time commitments of consul for any party that is not self-represented but dealing with a self-represented litigant. In a full costing, we should also assess the reduced burden on litigants. Litigants time, and the costs of their counsel do not constitute public costs, but they do carry an associated economic efficiency burden. Consider a litigant that must take a half day off work for a hearing. During that half day, that litigant is not contributing to GDP and not earning wages. Furthermore, a litigant with counsel who faces additional court hours or other delays

ends up with an additional unnecessary financial burden.

There is also an additional implied cost saving that is associated with reducing the number of bookings since any and all individuals associated with a particular hearing may have to commute to a court-room for multiple hearing bookings. Reducing the number of bookings reduces this burden.

The immense aggregate costs in terms of time and other resources strongly suggest that the province could significantly benefit from expanding legal aid, both in overall economic efficiency and in terms of more efficient allocation of public expenditure. The above estimates suggest some areas of priority here particularly in the Family, Bankruptcy and Divorce jurisdictions. A substantial outlier is the per-case savings for Provincial Court -Family Case Management, which is extremely high at $16,401.56 per file. With potential savings in this range it is likely that any reasonable legal aid costs would easily pass a cost-benefit test from a public expenditure perspective.

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# A Results - Time Savings Metric

Table 1: Time Savings by Hearing Type: Bankruptcy

| Hearing_Type | Bookings_Saved_per_File | Hearings_Saved_per_Booking | Hours_Saved_per_Hearing | Hours_Saved_per_File |
|---|---|---|---|---|
| BANKRUPTCY REGISTRAR LIST | 0.00 | 0.00 | 0.00 | 0.00 |
| BANKRUPTCY REGISTRAR CONTESTED | 0.00 | 0.00 | 0.13 | 0.31 |
| LETHBRIDGE REGISTRAR LIST | 0.05 | 0.00 | 0.00 | 0.58 |
| RED DEER REGISTRAR LIST | 0.34 | 0.00 | 0.00 | 3.36 |

Table 2: Time Savings by Hearing Type: Divorce

| Hearing_Type | Bookings_Saved_per_File | Hearings_Saved_per_Booking | Hours_Saved_per_Hearing | Hours_Saved_per_File |
|---|---|---|---|---|
| CONFERENCE CALL LIST | 0.00 | 0.00 | 0.00 | 0.35 |
| CASE CONFERENCE | 0.00 | 0.00 | 0.20 | 0.49 |
| CASE MANAGEMENT COUNSEL | 1.34 | 0.00 | 0.00 | 9.23 |
| CASE MANAGEMENT HEARINGS | 0.00 | 0.01 | 0.00 | 0.50 |
| CHILD SUPPORT LIST | 0.00 | 0.04 | 0.00 | 1.62 |
| CHILD SUPPORT RESOLUTION LIST | 0.00 | 0.00 | 0.00 | 0.00 |
| DOCKET AM | 0.24 | 0.00 | 0.00 | 2.31 |
| DOCKET PM | 0.64 | 0.00 | 0.00 | 1.27 |
| DISPUTE RESOLUTION OFFICER | 0.29 | 0.00 | 0.00 | 1.69 |
| EARLY INTERVENTION CONFERENCE | 0.00 | 0.00 | 0.25 | 0.54 |
| EMERGENCY HEARINGS | 0.00 | 0.00 | 0.00 | 0.00 |
| FAMILY CONFERENCE CALLS | 0.00 | 0.22 | 0.10 | 4.34 |
| FAMILY LAW CHAMBERS MORNING | 0.00 | 0.00 | 0.07 | 0.20 |
| FAMILY LAW CHAMBERS AFTERNOON | 0.00 | 0.00 | 0.00 | 0.00 |
| FAMILY LAW APPLICATION LIST | 0.00 | 0.00 | 0.34 | 0.55 |
| FAMILY LAW CHAMBERS (AM) | 0.00 | 0.00 | 0.04 | 0.22 |
| FAMILY LAW SPECIALS (PM) | 0.14 | 0.16 | 0.00 | 2.18 |
| JUSTICE CONFERENCE CALL | 0.00 | 0.00 | 0.15 | 0.58 |
| JUDICIAL DISPUTE RESOLUTION | 0.12 | 0.00 | 0.00 | 0.97 |
| JUSTICE SEIZED/SPECIAL LIST | 0.00 | 0.00 | 0.00 | 0.00 |
| JUSTICE SPECIAL (DUTY) | 0.16 | 0.10 | 0.15 | 1.47 |
| JUSTICE SPECIAL ON TRIAL LIST | 1.33 | 0.01 | 0.19 | 12.33 |
| TRIAL LIST | 0.14 | 0.00 | 0.00 | 1.28 |

Table 3: Time Savings by Hearing Type: Family

| Hearing_Type | Bookings_Saved_per_File | Hearings_Saved_per_Booking | Hours_Saved_per_Hearing | Hours_Saved_per_File |
|---|---|---|---|---|
| CONFERENCE CALL LIST | 0.00 | 0.01 | 0.24 | 1.62 |
| CASE CONFERENCE | 0.31 | 0.01 | 0.00 | 1.81 |
| CASE MANAGEMENT COUNSEL | 0.66 | 0.04 | 0.00 | 4.75 |
| CASE MANAGEMENT HEARINGS | 1.09 | 0.00 | 0.00 | 6.56 |
| CASE FLOW FAMILY | 0.00 | 0.00 | 0.39 | 1.42 |
| CHILD SUPPORT LIST | 0.00 | 0.00 | 0.42 | 0.74 |
| CHILD SUPPORT RESOLUTION LIST | 0.00 | 0.00 | 0.00 | 0.00 |
| DOCKET AM | 0.00 | 0.00 | 0.00 | 0.00 |
| DOCKET PM | 0.00 | 0.00 | 0.07 | 0.44 |
| DISPUTE RESOLUTION OFFICER | 0.10 | 0.00 | 0.00 | 0.52 |
| DOMESTIC VIOLENCE COURT | 0.00 | 0.00 | 0.09 | 0.31 |
| EARLY INTERVENTION CONFERENCE | 0.00 | 0.01 | 0.00 | 0.19 |
| EMERGENCY HEARINGS | 0.00 | 0.00 | 1.15 | 2.39 |
| EPO REVIEWS | 0.08 | 0.06 | 0.07 | 1.09 |
| EPO VIVA VOCE HEARINGS | 0.00 | 0.00 | 0.55 | 0.27 |
| FAMILY CONFERENCE CALLS | 0.17 | 0.00 | 0.03 | 0.70 |
| FAMILY LAW CHAMBERS MORNING | 0.00 | 0.07 | 0.17 | 3.37 |
| FAMILY LAW CHAMBERS AFTERNOON | 0.00 | 0.00 | 0.00 | 0.00 |
| FAMILY LAW CHAMBERS (AM) | 0.00 | 0.00 | 0.01 | 0.07 |
| FAMILY LAW SPECIALS (PM) | 0.00 | 0.12 | 0.00 | 1.41 |
| INTER-JURISDICTIONAL SUPPORT | 0.00 | 0.00 | 0.00 | 0.00 |
| JUSTICE CHAMBERS LIST | 0.00 | 0.12 | 0.00 | 2.21 |
| JUSTICE SEIZED/SPECIAL LIST | 0.00 | 0.00 | 0.28 | 0.86 |
| JUSTICE SPECIAL (DUTY) | 0.00 | 0.08 | 1.02 | 2.64 |
| JUSTICE SPECIAL ON TRIAL LIST | 0.00 | 0.00 | 0.96 | 1.44 |
| SPEAK TO FAMILY COURT APPEALS | 0.00 | 0.00 | 0.50 | 0.93 |
| TRIAL LIST | 0.75 | 0.06 | 0.31 | 8.90 |

Table 4: Time Savings by Hearing Type: Provincial Court – Family

| Hearing_Type | Bookings_Saved_per_File | Hearings_Saved_per_Booking | Hours_Saved_per_Hearing | Hours_Saved_per_File |
|---|---|---|---|---|
| ATHABASCA PCF LIST | 0.18 | 0.02 | 0.00 | 2.96 |
| PCF ADD-ONS | 0.00 | 0.00 | 0.01 | 0.03 |
| BARHEAD PCF LIST | 0.00 | 0.02 | 0.02 | 1.18 |
| BROOKS PCF LIST | 0.00 | 0.00 | 0.00 | 0.38 |
| BONNYVILLE PCF LIST | 0.00 | 0.00 | 0.00 | 0.00 |
| CARDSTON PCF LIST | 0.85 | 0.00 | 0.06 | 1.18 |
| CHAMBERS LIST (A.M.) | 0.10 | 0.00 | 0.00 | 0.62 |
| COLD LAKE PCF LIST | 0.00 | 0.00 | 0.00 | 0.00 |
| CASE MANAGEMENT HEARINGS | 6.15 | 0.00 | 2.60 | 58.87 |
| CASE FLOW FAMILY | 0.00 | 0.00 | 0.00 | 0.00 |
| DECISION | 0.00 | 0.00 | 0.58 | 1.34 |
| DOCKET AM | 0.00 | 0.00 | 0.06 | 0.45 |
| DOCKET PM | 0.00 | 0.00 | 0.08 | 0.56 |
| DRAYTON VALLEY PCF LIST | 0.00 | 0.00 | 0.00 | 0.00 |
| EDSON PROVINCIAL FAMILY | 0.00 | 0.00 | 0.00 | 0.00 |
| EMERGENCY HEARINGS | 0.00 | 0.00 | 0.80 | 0.99 |
| FAMILY RESOLUTION | 0.00 | 0.00 | 0.00 | 0.00 |
| FORT MCLEOD PCF LIST | 0.00 | 0.00 | 0.00 | 0.00 |
| GRANDE CACHE PROVINCIAL FAMILY | 0.00 | 0.04 | 0.00 | 1.89 |
| GLENEVIS PROV FAMILY LIST | 0.00 | 0.05 | 0.00 | 2.81 |
| INTERIM HEARINGS | 0.00 | 0.00 | 0.32 | 0.83 |
| INTERJURISDICTIONAL SUPPORT | 0.00 | 0.00 | 0.74 | 3.65 |
| JUDICIAL DISPUTE RESOLUTION | 0.06 | 0.00 | 0.00 | 0.39 |
| LAC LA BICHE PCF LIST | 0.00 | 0.00 | 0.00 | 0.02 |
| LLOYDMINSTER PCF LIST | 0.00 | 0.00 | 0.00 | 0.02 |
| MAYERTHORPE PROV FAMILY LIST | 0.00 | 0.00 | 0.00 | 0.00 |
| MORINVILLE PCF LIST | 0.00 | 0.00 | 0.00 | 0.22 |
| PINCHER CREEK PCF LIST | 0.00 | 0.00 | 0.00 | 0.00 |
| PRE TRIALS CONFERENCE | 0.00 | 0.00 | 0.26 | 0.57 |
| RED EARTH CREEK PCF LIST | 0.00 | 0.01 | 0.00 | 0.95 |
| ROCKY MOUNTAIN HOUSE PCF LIST | 0.00 | 0.00 | 0.00 | 0.00 |
| STRATHMORE PCF LIST | 0.00 | 0.00 | 0.00 | 0.00 |
| SLAVE LAKE PCF LIST | 0.00 | 0.07 | 0.00 | 6.64 |
| SIKSIKA NATION PCF LIST | 0.00 | 0.00 | 0.02 | 0.24 |
| STETTLER PCF LIST | 0.00 | 0.00 | 0.00 | 0.00 |
| TABER PCF LIST | 0.23 | 0.00 | 0.00 | 2.14 |
| TRIAL LIST | 0.00 | 0.00 | 0.00 | 0.02 |
| TRIAL CONTINUATION | 0.03 | 0.00 | 0.24 | 0.98 |
| VEGREVILLE PCF LIST | 0.00 | 0.01 | 0.00 | 0.97 |
| WABASCA-DEMARIS PCF LIST | 0.00 | 0.07 | 0.00 | 4.41 |
| WHITECOURT PROV FAMILY LIST | 0.00 | 0.00 | 0.00 | 0.00 |
| WESTLOCK PCF LIST | 0.00 | 0.00 | 0.00 | 0.00 |
| WAINWRIGHT PCF LIST | 0.00 | 0.00 | 0.00 | 0.02 |

Table 5: Time Savings by Hearing Type: Temporary Transfer – Family

| Hearing_Type | Bookings_Saved_per_File | Hearings_Saved_per_Booking | Hours_Saved_per_Hearing | Hours_Saved_per_File |
|---|---|---|---|---|
| JUDICIAL DISPUTE RESOLUTION | 0.00 | 0.00 | 0.00 | 0.00 |

Table 6: Time Savings by Hearing Type: Surrogate – Dependant Adult

| Hearing_Type | Bookings_Saved_per_File | Hearings_Saved_per_Booking | Hours_Saved_per_Hearing | Hours_Saved_per_File |
|---|---|---|---|---|
| JUSTICE CHAMBERS LIST | 0.00 | 0.00 | 0.00 | 0.00 |
| REPRESENTED ADULT LIST | 0.00 | 0.03 | 1.26 | 2.49 |
| JUSTICE SEIZED/SPECIAL LIST | 0.00 | 0.00 | 0.00 | 0.00 |

Table 7: Expected Monthly Time Savings by Hearing Type: Surrogate – Dependant Adult

| Hearing_Type | Days_Saved_Per_File | Average_Files_Per_Month | Days_Saved_per_Month |
|---|---|---|---|
| JUSTICE CHAMBERS LIST | 0.00 | 2.86 | 0.00 |
| REPRESENTED ADULT LIST | 0.50 | 8.52 | 4.24 |
| JUSTICE SEIZED/SPECIAL LIST | 0.00 | 0.52 | 0.00 |

Table 8: Time Savings by Hearing Type: Provincial Court Civil

| Hearing_Type | Bookings_Saved_per_File | Hearings_Saved_per_Booking | Hours_Saved_per_Hearing | Hours_Saved_per_File |
|---|---|---|---|---|
| CHAMBERS LIST (A.M.) | 0.00 | 0.01 | 0.00 | 0.28 |
| CHAMBERS LIST (P.M.) | 0.00 | 0.00 | 0.06 | 0.12 |
| COLD LAKE PCC | 0.30 | 0.00 | 0.03 | 3.09 |
| DRAYTON VALLEY HEARING LIST | 1.69 | 0.00 | 0.03 | 16.98 |
| MASTER CHAMBERS LIST | 0.00 | 0.00 | 0.00 | 0.00 |
| PCC MEDIATION HEARINGS | 0.01 | 0.00 | 0.00 | 0.03 |
| PCC PRE TRIALS AM | 0.00 | 0.00 | 0.07 | 0.10 |
| PRE TRIALS CONFERENCE | 0.00 | 0.00 | 0.28 | 0.42 |
| PCC PRE TRIALS PM | 0.00 | 0.00 | 0.00 | 0.01 |
| RESIDENTIAL TENANCY APPLICATIO | 0.00 | 0.00 | 0.17 | 0.28 |
| STRATHMORE HEARING LIST | 0.00 | 0.00 | 0.00 | 0.00 |
| TRIAL LIST (A.M.) | 0.00 | 0.00 | 0.00 | 0.00 |
| TRIAL LIST (P.M.) | 0.00 | 0.02 | 0.04 | 0.09 |
| TRIAL SIMPLIFIED AM | 0.00 | 0.00 | 0.00 | 0.00 |
| TRIAL SIMPLIFIED PM | 0.02 | 0.00 | 0.00 | 0.03 |
| VEGREVILLE HEARING LIST | 0.00 | 0.00 | 0.00 | 0.00 |

Table 9: Time Savings by Hearing Type: Queen's Bench

| Hearing_Type | Bookings_Saved_per_File | Hearings_Saved_per_Booking | Hours_Saved_per_Hearing | Hours_Saved_per_File |
|---|---|---|---|---|
| CONFERENCE CALL LIST | 0.00 | 0.00 | 0.00 | 0.00 |
| CASE CONFERENCE | 0.00 | 0.00 | 0.00 | 0.00 |
| CHAMBERS LIST (A.M.) | 0.75 | 0.04 | 0.00 | 7.10 |
| CASE MANAGEMENT HEARINGS | 0.00 | 0.04 | 1.09 | 13.64 |
| COMMERCIAL COURT | 0.00 | 0.00 | 0.00 | 0.00 |
| EPO REVIEWS | 0.45 | 0.06 | 0.00 | 5.38 |
| EPO VIVA VOCE HEARINGS | 0.19 | 0.11 | 0.44 | 2.18 |
| FAMILY LAW CHAMBERS (AM) | 0.05 | 0.00 | 0.03 | 0.01 |
| HABEAS CORPUS HEARING | 2.67 | 0.08 | 0.00 | 8.30 |
| JUSTICE CHAMBERS LIST | 0.00 | 0.12 | 0.00 | 4.57 |
| JUSTICE SEIZED/SPECIAL LIST | 0.00 | 0.00 | 0.00 | 0.00 |
| JUSTICE SPECIAL (DUTY) | 0.00 | 0.10 | 1.84 | 3.51 |
| JUSTICE SPECIAL ON TRIAL LIST | 0.00 | 0.06 | 0.00 | 1.04 |
| MASTER CHAMBERS LIST | 0.00 | 0.08 | 0.03 | 2.08 |
| MASTER CONFERENCE CALLS LIST | 0.00 | 0.00 | 0.00 | 0.00 |
| MASTER SPECIAL CHAMBERS LIST | 0.00 | 0.22 | 2.64 | 9.50 |
| PROVINCIAL COURT CIVIL APPEALS | 0.00 | 0.03 | 0.65 | 1.08 |
| PRE TRIALS CONFERENCE | 0.46 | 0.00 | 0.49 | 3.85 |
| REVIEW/ASSESSMENT APPOINTMENTS | 0.00 | 0.00 | 0.00 | 0.00 |
| TRIAL LIST | 0.80 | 0.02 | 0.00 | 7.61 |
| TRIAL LIST (A.M.) | 1.31 | 0.03 | 0.00 | 12.37 |

Table 10: Time Savings by Hearing Type: Surrogate – Probate

| Hearing_Type | Bookings_Saved_per_File | Hearings_Saved_per_Booking | Hours_Saved_per_Hearing | Hours_Saved_per_File |
|---|---|---|---|---|
| JUSTICE CHAMBERS LIST | 0.00 | 0.05 | 0.00 | 2.21 |

Table 11: Time Savings by Hearing Type: Adoptions

| Hearing_Type | Bookings_Saved_per_File | Hearings_Saved_per_Booking | Hours_Saved_per_Hearing | Hours_Saved_per_File |
|---|---|---|---|---|
| ADOPTION HEARING LIST | 0.21 | 0.01 | 0.50 | 1.27 |

# B Results - Public Savings Metric

Table 12: Public Savings by Hearing Type: Bankruptcy

| Hearing_Type | Hours_Saved_per_File | Judge_Cost_Savings | Clerk_Cost_Savings | Security_Cost_Savings | Misc_Operating_Cost_Savings | Lost_Income_Tax_Revenue | Total_Direct_Public_Savings |
|---|---|---|---|---|---|---|---|
| BANKRUPTCY REGISTRAR LIST | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| BANKRUPTCY REGISTRAR CONTESTED | 0.31 | 45.31 | 12.24 | 23.03 | 6.23 | 2.24 | 89.06 |
| LETHBRIDGE REGISTRAR LIST | 0.58 | 84.44 | 22.81 | 42.92 | 11.61 | 4.18 | 165.96 |
| RED DEER REGISTRAR LIST | 3.36 | 487.95 | 131.79 | 248.05 | 67.11 | 24.16 | 959.06 |

Table 13: Public Savings by Hearing Type: Divorce

| Hearing_Type | Hours_Saved_per_File | Judge_Cost_Savings | Clerk_Cost_Savings | Security_Cost_Savings | Misc_Operating_Cost_Savings | Lost_Income_Tax_Revenue | Total_Direct_Public_Savings |
|---|---|---|---|---|---|---|---|
| CONFERENCE CALL LIST | 0.35 | 50.78 | 13.71 | 25.81 | 6.98 | 2.51 | 99.80 |
| CASE CONFERENCE | 0.49 | 71.56 | 19.33 | 36.38 | 9.84 | 3.54 | 140.66 |
| CASE MANAGEMENT COUNSEL | 9.23 | 1,341.49 | 362.33 | 681.95 | 184.51 | 66.42 | 2,636.70 |
| CASE MANAGEMENT HEARINGS | 0.50 | 72.83 | 19.67 | 37.02 | 10.02 | 3.61 | 143.15 |
| CHILD SUPPORT LIST | 1.62 | 235.18 | 63.52 | 119.56 | 32.35 | 11.64 | 462.25 |
| CHILD SUPPORT RESOLUTION LIST | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| DOCKET AM | 2.31 | 335.24 | 90.55 | 170.42 | 46.11 | 16.60 | 658.92 |
| DOCKET PM | 1.27 | 185.00 | 49.97 | 94.04 | 25.44 | 9.16 | 363.62 |
| DISPUTE RESOLUTION OFFICER | 1.69 | 245.53 | 66.32 | 124.82 | 33.77 | 12.16 | 482.59 |
| EARLY INTERVENTION CONFERENCE | 0.54 | 78.78 | 21.28 | 40.05 | 10.84 | 3.90 | 154.84 |
| EMERGENCY HEARINGS | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| FAMILY CONFERENCE CALLS | 4.34 | 631.39 | 170.53 | 320.97 | 86.84 | 31.26 | 1,240.99 |
| FAMILY LAW CHAMBERS MORNING | 0.20 | 28.36 | 7.66 | 14.42 | 3.90 | 1.40 | 55.75 |
| FAMILY LAW CHAMBERS AFTERNOON | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| FAMILY LAW APPLICATION LIST | 0.55 | 80.51 | 21.74 | 40.93 | 11.07 | 3.99 | 158.24 |
| FAMILY LAW CHAMBERS (AM) | 0.22 | 31.92 | 8.62 | 16.22 | 4.39 | 1.58 | 62.73 |
| FAMILY LAW SPECIALS (PM) | 2.18 | 316.30 | 85.43 | 160.79 | 43.50 | 15.66 | 621.68 |
| JUSTICE CONFERENCE CALL | 0.58 | 84.52 | 22.83 | 42.97 | 11.63 | 4.19 | 166.13 |
| JUDICIAL DISPUTE RESOLUTION | 0.97 | 141.18 | 38.13 | 71.77 | 19.42 | 6.99 | 277.49 |
| JUSTICE SEIZED/SPECIAL LIST | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| JUSTICE SPECIAL (DUTY) | 1.47 | 213.53 | 57.67 | 108.55 | 29.37 | 10.57 | 419.69 |
| JUSTICE SPECIAL ON TRIAL LIST | 12.33 | 1,793.64 | 484.45 | 911.80 | 246.69 | 88.81 | 3,525.39 |
| TRIAL LIST | 1.28 | 186.22 | 50.30 | 94.66 | 25.61 | 9.22 | 366.01 |

Table 14: Public Savings by Hearing Type: Family

| Hearing_Type | Hours_Saved_per_File | Judge_Cost_Savings | Clerk_Cost_Savings | Security_Cost_Savings | Misc_Operating_Cost_Savings | Lost_Income_Tax_Revenue | Total_Direct_Public_Savings |
|---|---|---|---|---|---|---|---|
| CONFERENCE CALL LIST | 1.62 | 235.28 | 63.55 | 119.60 | 32.36 | 11.65 | 462.44 |
| CASE CONFERENCE | 1.81 | 263.37 | 71.13 | 133.88 | 36.22 | 13.04 | 517.65 |
| CASE MANAGEMENT COUNSEL | 4.75 | 690.96 | 186.62 | 351.25 | 95.03 | 34.21 | 1,358.07 |
| CASE MANAGEMENT HEARINGS | 6.56 | 953.84 | 257.62 | 484.89 | 131.19 | 47.23 | 1,874.78 |
| CASE FLOW FAMILY | 1.42 | 207.21 | 55.97 | 105.33 | 28.50 | 10.26 | 407.27 |
| CHILD SUPPORT LIST | 0.74 | 108.25 | 29.24 | 55.03 | 14.89 | 5.36 | 212.76 |
| CHILD SUPPORT RESOLUTION LIST | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| DOCKET AM | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| DOCKET PM | 0.44 | 64.26 | 17.36 | 32.67 | 8.84 | 3.18 | 126.30 |
| DISPUTE RESOLUTION OFFICER | 0.52 | 74.93 | 20.24 | 38.09 | 10.31 | 3.71 | 147.27 |
| DOMESTIC VIOLENCE COURT | 0.31 | 45.01 | 12.16 | 22.88 | 6.19 | 2.23 | 88.46 |
| EARLY INTERVENTION CONFERENCE | 0.19 | 28.05 | 7.58 | 14.26 | 3.86 | 1.39 | 55.13 |
| EMERGENCY HEARINGS | 2.39 | 347.86 | 93.96 | 176.84 | 47.84 | 17.22 | 683.73 |
| EPO REVIEWS | 1.09 | 157.95 | 42.66 | 80.30 | 21.72 | 7.82 | 310.45 |
| EPO VIVA VOCE HEARINGS | 0.27 | 39.20 | 10.59 | 19.93 | 5.39 | 1.94 | 77.04 |
| FAMILY CONFERENCE CALLS | 0.70 | 101.82 | 27.50 | 51.76 | 14.00 | 5.04 | 200.13 |
| FAMILY LAW CHAMBERS MORNING | 3.37 | 490.64 | 132.52 | 249.42 | 67.48 | 24.29 | 964.36 |
| FAMILY LAW CHAMBERS AFTERNOON | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| FAMILY LAW CHAMBERS (AM) | 0.07 | 9.70 | 2.62 | 4.93 | 1.33 | 0.48 | 19.07 |
| FAMILY LAW SPECIALS (PM) | 1.41 | 205.69 | 55.56 | 104.57 | 28.29 | 10.18 | 404.29 |
| INTER-JURISDICTIONAL SUPPORT | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| JUSTICE CHAMBERS LIST | 2.21 | 321.63 | 86.87 | 163.50 | 44.24 | 15.93 | 632.16 |
| JUSTICE SEIZED/SPECIAL LIST | 0.86 | 124.77 | 33.70 | 63.43 | 17.16 | 6.18 | 245.23 |
| JUSTICE SPECIAL (DUTY) | 2.64 | 383.30 | 103.53 | 194.85 | 52.72 | 18.98 | 753.38 |
| JUSTICE SPECIAL ON TRIAL LIST | 1.44 | 208.86 | 56.41 | 106.17 | 28.73 | 10.34 | 410.51 |
| SPEAK TO FAMILY COURT APPEALS | 0.93 | 135.36 | 36.56 | 68.81 | 18.62 | 6.70 | 266.05 |
| TRIAL LIST | 8.90 | 1,293.71 | 349.42 | 657.66 | 177.94 | 64.06 | 2,542.79 |

## Table 15: Public Savings by Hearing Type: Provincial Court – Family

| Hearing_Type | Hours_Saved_per_File | Judge_Cost_Savings | Clerk_Cost_Savings | Security_Cost_Savings | Misc_Operating_Cost_Savings | Lost_Income_Tax_Revenue | Total_Direct_Public_Savings |
|---|---|---|---|---|---|---|---|
| ATHABASCA PCF LIST | 2.96 | 430.74 | 116.34 | 218.97 | 59.24 | 21.33 | 846.61 |
| PCF ADD-ONS | 0.03 | 3.86 | 1.04 | 1.96 | 0.53 | 0.19 | 7.59 |
| BARHEAD PCF LIST | 1.18 | 170.97 | 46.18 | 86.91 | 23.51 | 8.47 | 336.04 |
| BROOKS PCF LIST | 0.38 | 54.54 | 14.73 | 27.73 | 7.50 | 2.70 | 107.20 |
| BONNYVILLE PCF LIST | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| CARDSTON PCF LIST | 1.18 | 171.06 | 46.20 | 86.96 | 23.53 | 8.47 | 336.22 |
| CHAMBERS LIST (A.M.) | 0.62 | 90.42 | 24.42 | 45.96 | 12.44 | 4.48 | 177.71 |
| COLD LAKE PCF LIST | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| CASE MANAGEMENT HEARINGS | 58.87 | 8,560.39 | 2,312.09 | 4,351.70 | 1,177.39 | 423.86 | 16,825.42 |
| CASE FLOW FAMILY | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| DECISION | 1.34 | 195.48 | 52.80 | 99.37 | 26.89 | 9.68 | 384.21 |
| DOCKET AM | 0.45 | 65.29 | 17.63 | 33.19 | 8.98 | 3.23 | 128.33 |
| DOCKET PM | 0.56 | 81.47 | 22.00 | 41.42 | 11.21 | 4.03 | 160.13 |
| DRAYTON VALLEY PCF LIST | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| EDSON PROVINCIAL FAMILY | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| EMERGENCY HEARINGS | 0.99 | 143.51 | 38.76 | 72.95 | 19.74 | 7.11 | 282.06 |
| FAMILY RESOLUTION | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| FORT MCLEOD PCF LIST | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| GRANDE CACHE PROVINCIAL FAMILY | 1.89 | 275.46 | 74.40 | 140.03 | 37.89 | 13.64 | 541.42 |
| GLENEVIS PROV FAMILY LIST | 2.81 | 408.18 | 110.25 | 207.50 | 56.14 | 20.21 | 802.27 |
| INTERIM HEARINGS | 0.83 | 121.16 | 32.73 | 61.59 | 16.66 | 6.00 | 238.15 |
| INTERJURISDICTIONAL SUPPORT | 3.65 | 530.73 | 143.34 | 269.80 | 73.00 | 26.28 | 1,043.14 |
| JUDICIAL DISPUTE RESOLUTION | 0.39 | 56.70 | 15.31 | 28.82 | 7.80 | 2.81 | 111.45 |
| LAC LA BICHE PCF LIST | 0.02 | 3.03 | 0.82 | 1.54 | 0.42 | 0.15 | 5.95 |
| LLOYDMINSTER PCF LIST | 0.02 | 3.30 | 0.89 | 1.68 | 0.45 | 0.16 | 6.49 |
| MAYERTHORPE PROV FAMILY LIST | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| MORINVILLE PCF LIST | 0.22 | 32.26 | 8.71 | 16.40 | 4.44 | 1.60 | 63.40 |
| PINCHER CREEK PCF LIST | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| PRE TRIALS CONFERENCE | 0.57 | 83.43 | 22.53 | 42.41 | 11.47 | 4.13 | 163.97 |
| RED EARTH CREEK PCF LIST | 0.95 | 138.38 | 37.38 | 70.35 | 19.03 | 6.85 | 271.99 |
| ROCKY MOUNTAIN HOUSE PCF LIST | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| STRATHMORE PCF LIST | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| SLAVE LAKE PCF LIST | 6.64 | 966.01 | 260.91 | 491.07 | 132.86 | 47.83 | 1,898.69 |
| SIKSIKA NATION PCF LIST | 0.24 | 34.70 | 9.37 | 17.64 | 4.77 | 1.72 | 68.20 |
| STETTLER PCF LIST | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| TABER PCF LIST | 2.14 | 311.72 | 84.19 | 158.46 | 42.87 | 15.43 | 612.68 |
| TRIAL LIST | 0.02 | 2.32 | 0.63 | 1.18 | 0.32 | 0.12 | 4.57 |
| TRIAL CONTINUATION | 0.98 | 142.53 | 38.50 | 72.46 | 19.60 | 7.06 | 280.14 |
| VEGREVILLE PCF LIST | 0.97 | 140.87 | 38.05 | 71.61 | 19.38 | 6.98 | 276.88 |
| WABASCA-DEMARIS PCF LIST | 4.41 | 640.86 | 173.09 | 325.78 | 88.14 | 31.73 | 1,259.60 |
| WHITECOURT PROV FAMILY LIST | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| WESTLOCK PCF LIST | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| WAINWRIGHT PCF LIST | 0.02 | 2.93 | 0.79 | 1.49 | 0.40 | 0.15 | 5.76 |

## Table 16: Public Savings by Hearing Type: Temporary Transfer – Family

| Hearing_Type | Hours_Saved_per_File | Judge_Cost_Savings | Clerk_Cost_Savings | Security_Cost_Savings | Misc_Operating_Cost_Savings | Lost_Income_Tax_Revenue | Total_Direct_Public_Savings |
|---|---|---|---|---|---|---|---|
| JUDICIAL DISPUTE RESOLUTION | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |

## Table 17: Public Savings by Hearing Type: Surrogate – Dependant Adult

| Hearing_Type | Hours_Saved_per_File | Judge_Cost_Savings | Clerk_Cost_Savings | Security_Cost_Savings | Misc_Operating_Cost_Savings | Lost_Income_Tax_Revenue | Total_Direct_Public_Savings |
|---|---|---|---|---|---|---|---|
| JUSTICE CHAMBERS LIST | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| REPRESENTED ADULT LIST | 2.49 | 361.80 | 97.72 | 183.92 | 49.76 | 17.91 | 711.11 |
| JUSTICE SEIZED/SPECIAL LIST | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |

## Table 18: Public Savings by Hearing Type: Provincial Court Civil

| Hearing_Type | Hours_Saved_per_File | Judge_Cost_Savings | Clerk_Cost_Savings | Security_Cost_Savings | Misc_Operating_Cost_Savings | Lost_Income_Tax_Revenue | Total_Direct_Public_Savings |
|---|---|---|---|---|---|---|---|
| CHAMBERS LIST (A.M.) | 0.28 | 40.64 | 10.98 | 0.00 | 5.59 | 2.01 | 59.22 |
| CHAMBERS LIST (P.M.) | 0.12 | 17.53 | 4.74 | 0.00 | 2.41 | 0.87 | 25.55 |
| COLD LAKE PCC | 3.09 | 448.82 | 121.22 | 0.00 | 61.73 | 22.22 | 654.00 |
| DRAYTON VALLEY HEARING LIST | 16.98 | 2,469.18 | 666.90 | 0.00 | 339.61 | 122.26 | 3,597.95 |
| MASTER CHAMBERS LIST | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| PCC MEDIATION HEARINGS | 0.03 | 4.21 | 1.14 | 0.00 | 0.58 | 0.21 | 6.13 |
| PCC PRE TRIALS AM | 0.10 | 14.37 | 3.88 | 0.00 | 1.98 | 0.71 | 20.93 |
| PRE TRIALS CONFERENCE | 0.42 | 60.57 | 16.36 | 0.00 | 8.33 | 3.00 | 88.26 |
| PCC PRE TRIALS PM | 0.01 | 0.91 | 0.25 | 0.00 | 0.13 | 0.05 | 1.33 |
| RESIDENTIAL TENANCY APPLICATIO | 0.28 | 41.34 | 11.17 | 0.00 | 5.69 | 2.05 | 60.24 |
| STRATHMORE HEARING LIST | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| TRIAL LIST (A.M.) | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| TRIAL LIST (P.M.) | 0.09 | 12.79 | 3.45 | 0.00 | 1.76 | 0.63 | 18.63 |
| TRIAL SIMPLIFIED AM | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| TRIAL SIMPLIFIED PM | 0.03 | 4.56 | 1.23 | 0.00 | 0.63 | 0.23 | 6.65 |
| VEGREVILLE HEARING LIST | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |

Table 19: Public Savings by Hearing Type: Queen's Bench

| Hearing_Type | Hours_Saved_per_File | Judge_Cost_Savings | Clerk_Cost_Savings | Security_Cost_Savings | Misc_Operating_Cost_Savings | Lost_Income_Tax_Revenue | Total_Direct_Public_Savings |
|---|---|---|---|---|---|---|---|
| CONFERENCE CALL LIST | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| CASE CONFERENCE | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| CHAMBERS LIST (A.M.) | 7.10 | 1,033.12 | 279.04 | 525.19 | 142.09 | 51.15 | 2,030.59 |
| CASE MANAGEMENT HEARINGS | 13.64 | 1,983.78 | 535.80 | 1,008.46 | 272.85 | 98.22 | 3,899.11 |
| COMMERCIAL COURT | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| EPO REVIEWS | 5.38 | 782.89 | 211.45 | 397.99 | 107.68 | 38.76 | 1,538.77 |
| EPO VIVA VOCE HEARINGS | 2.18 | 316.91 | 85.60 | 161.10 | 43.59 | 15.69 | 622.89 |
| FAMILY LAW CHAMBERS (AM) | 0.01 | 2.13 | 0.57 | 1.08 | 0.29 | 0.11 | 4.18 |
| HABEAS CORPUS HEARING | 8.30 | 1,206.91 | 325.98 | 613.54 | 166.00 | 59.76 | 2,372.18 |
| JUSTICE CHAMBERS LIST | 4.57 | 664.62 | 179.51 | 337.86 | 91.41 | 32.91 | 1,306.30 |
| JUSTICE SEIZED/SPECIAL LIST | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| JUSTICE SPECIAL (DUTY) | 3.51 | 510.11 | 137.78 | 259.31 | 70.16 | 25.26 | 1,002.61 |
| JUSTICE SPECIAL ON TRIAL LIST | 1.04 | 151.05 | 40.80 | 76.79 | 20.78 | 7.48 | 296.89 |
| MASTER CHAMBERS LIST | 2.08 | 303.07 | 81.86 | 154.07 | 41.68 | 15.01 | 595.69 |
| MASTER CONFERENCE CALLS LIST | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| MASTER SPECIAL CHAMBERS LIST | 9.50 | 1,380.82 | 372.95 | 701.95 | 189.92 | 68.37 | 2,714.01 |
| PROVINCIAL COURT CIVIL APPEALS | 1.08 | 156.87 | 42.37 | 79.75 | 21.58 | 7.77 | 308.33 |
| PRE TRIALS CONFERENCE | 3.85 | 560.16 | 151.29 | 284.76 | 77.04 | 27.74 | 1,100.99 |
| REVIEW/ASSESSMENT APPOINTMENTS | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| TRIAL LIST | 7.61 | 1,106.38 | 298.82 | 562.43 | 152.17 | 54.78 | 2,174.58 |
| TRIAL LIST (A.M.) | 12.37 | 1,799.10 | 485.92 | 914.58 | 247.45 | 89.08 | 3,536.12 |

Table 20: Public Savings by Hearing Type: Surrogate – Probate

| Hearing_Type | Hours_Saved_per_File | Judge_Cost_Savings | Clerk_Cost_Savings | Security_Cost_Savings | Misc_Operating_Cost_Savings | Lost_Income_Tax_Revenue | Total_Direct_Public_Savings |
|---|---|---|---|---|---|---|---|
| JUSTICE CHAMBERS LIST | 2.21 | 321.38 | 86.80 | 163.38 | 44.20 | 15.91 | 631.68 |

Table 21: Public Savings by Hearing Type: Adoptions

| Hearing_Type | Hours_Saved_per_File | Judge_Cost_Savings | Clerk_Cost_Savings | Security_Cost_Savings | Misc_Operating_Cost_Savings | Lost_Income_Tax_Revenue | Total_Direct_Public_Savings |
|---|---|---|---|---|---|---|---|
| ADOPTION HEARING LIST | 1.27 | 185.20 | 50.02 | 94.15 | 25.47 | 9.17 | 364.02 |

# APPENDIX B

## Public Opinion Research

# Albertans support improving access to legal aid and modernization investment in family courts

**CBA Alberta Quantitative| Summary | Confidential | Draft**

Conducted by Nanos for the Canadian Bar Association Alberta Branch, April 2020
Submission 2020-1610

## SUMMARY

A majority of Albertans say that ensuring access to lawyers, investing more and modernizing technology is important or somewhat important to a well running justice system.

A majority of Albertans think that investing, ensuring access to lawyers and being open to new technology are all important or somewhat important to a well running justice system. Albertans believe that the income requirement for accessing legal aid should be increased, while also saying that the waiting times for appearing before a judge for a family matter is unreasonable or somewhat unreasonable. Seven tenths of Albertans support online arbitration without a judge for some civil claims.

- **More than four in five Albertans say that investing in the justice system is important or somewhat important** – Asked the importance of a number of actions for a well running justice systems, more than eight in ten Albertans say it is important (46%) or somewhat important (41%) to invest in the justice system, while seven per cent say this is somewhat not important and two per cent say not important. Four per cent say unsure. Older Alberta residents (61% important among those 55 plus) give a higher intensity of importance to investing in the justice system to minimize delays than younger Albertans (40% important among those 18 to 34 and 35 to 54 years old, respectively).
- **More than nine in ten Albertans say ensuring access to lawyers is important or somewhat important** – Over nine in ten Albertans say that ensuring that Albertans have access to a lawyer to ensure fair outcomes is important (68%) or somewhat important (26%) for a well running justice system. Three per cent say this is somewhat not important and less than one per cent say it is not important. Two per cent are unsure.
- **Close to nine in ten Albertans say that being open to new technology to modernize the justice system is important or somewhat important** – Almost nine in ten Albertans say that being open to new technology to modernize the justice system is important (45%) or somewhat important (44%) to a well running justice system. Five per cent say this is somewhat not important and two per cent say it is not important. Four per cent are unsure.
- **More than half of Albertans think the income requirement for legal aid should be increased** – Asked whether the current $20,021 household income for one person to qualify for legal aid if they face legal problems such as a criminal charge or a family matter related to custody, child support or domestic violence should be increased or decreased, 56 per cent of Albertans say it should be increased, 21 per cent say it should be kept the same and 10 per cent say it should be lowered. Thirteen per cent of Albertans are unsure.

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## SUMMARY

THE CANADIAN BAR ASSOCIATION Alberta Branch NANOS

Most Albertans think waiting one to three year waiting times to appear before a Judge for a family matter is not reasonable

- **A majority of Albertans think current waiting times to appear before a Judge for a family matter is not reasonable** – Asked whether the current one to three year wait for people to appear before a Judge in Alberta for a matter of family law is reasonable or unreasonable, nearly three quarters of Albertans say not reasonable (58%) or somewhat not reasonable (15%), while 15 per cent say somewhat reasonable and five per cent say reasonable. Six per cent are unsure. Older Albertans (77% of those 55 plus) are more likely to say the current wait time is unreasonable.
- **Just over four fifths of Albertans support or somewhat support unifying the Courts to handle family matters even if it costs money** – Just over eight in ten Albertans say they support (44%) or somewhat support (37%) unifying the Courts to handle family matters even if it costs money to have a single point of contact and avoid conflicting orders. Five per cent somewhat oppose and three per cent oppose unifying the courts. Eleven per cent are not sure. Older Alberta residents (60% of those 55 plus) are more likely to support unifying the Courts to handle family matters even if it costs money than younger Albertans (35% of those 18 to 34 years old).
- **Albertans divided over the path forward when it comes to investing more in the court system** – Asked which path forward they consider the most important priority for the Government of Alberta when it comes to investing more resources in the court system 31 per cent of Albertans say the government should balance future investments to hire both more Crown Prosecutors and invest in support for the court system, while 30 per cent say focus on investing in aspects of the court system like paralegals, legal assistants, clerks and courtroom staff to improve the speed and efficiency of the court system and 30 per cent say focus on hiring more Crown Prosecutors if it shortens the backlog in the courts. Nine per cent are unsure.
- **Seven in ten Albertans support or somewhat support online arbitration without a judge for some civil claims** – Seven tenths of Albertans support (26%) or somewhat support (44%) having some civil claims addressed through an online arbitration decision process without a judge that are usually resolved in Provincial Court Civil. Ten per cent somewhat oppose and six per cent oppose this. Fourteen per cent are unsure.

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## SUMMARY

THE CANADIAN BAR ASSOCIATION Alberta Branch NANOS

Seven in ten Albertans support online arbitration without a judge for some civil claims

- **Those who support an online arbitration process for some civil claims, most frequently, say the maximum amount of the claim should be $10,000 or less** – Asked what should be the maximum civil or small claim that should be arbitrated using an online process without a judge, those who support such online arbitration most frequently say $10,000 or less (26%), followed by $5,000 or less (25%), $25,000 or less (13%), $50,000 or less (11%), and $2,500 or less (10%). Eight per cent say there should be no maximum or that they are not sure, respectively.

These observations are based a representative online survey of 1,009 residents of Alberta, 18 years of age or older, weighted to the true population profile and conducted between March 27th and 31st, 2020.

The research was commissioned by the Canadian Bar Association, Alberta Branch and was conducted by Nanos Research.

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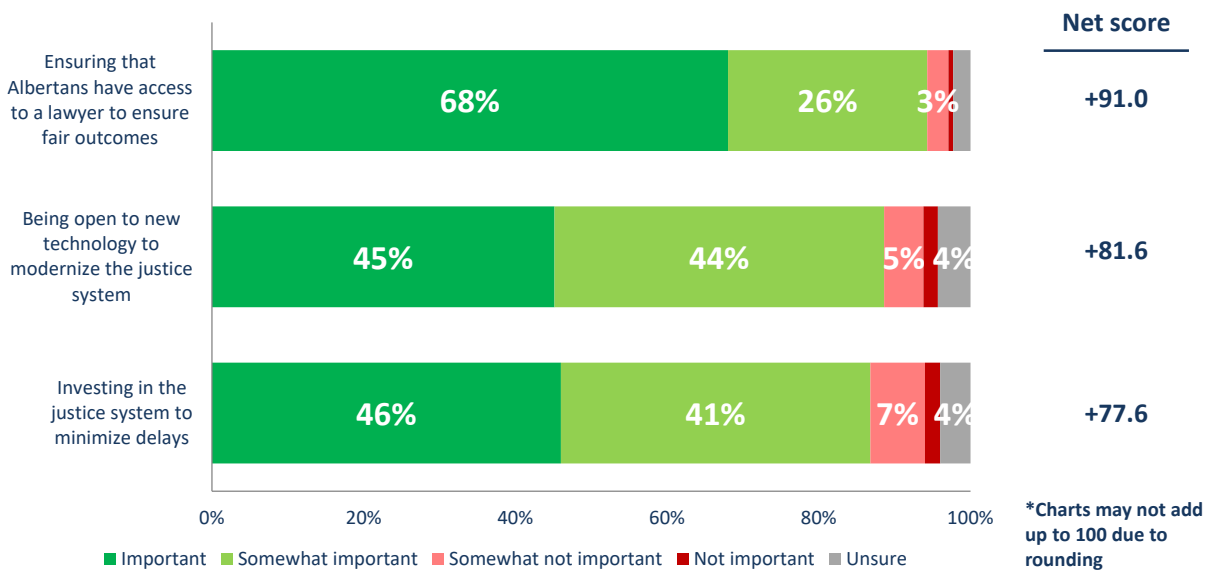
# Importance of actions for a well running justice system




*Charts may not add up to 100 due to rounding

**QUESTION –** Are the following important, somewhat important, somewhat not important or not important for a well running justice system? [ROTATE]

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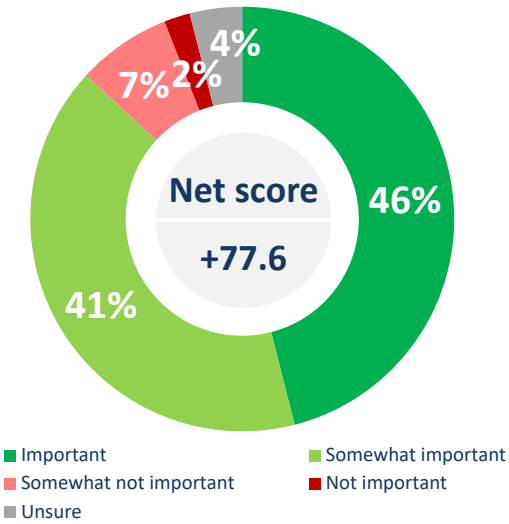
Source: Nanos Research, representative online survey, March 27th to 31st, 2020, n=1009 Albertans, no margin of error applies to this survey.



# Importance of investing in justice system




| | Important/ somewhat important |
|---|---|
| Calgary (n=383) | 85.5% |
| Edmonton (n=306) | 89.9% |
| North (n=166) | 87.7% |
| South (n=154) | 84.5% |
| Male (n=431) | 88.0% |
| Female (n=578) | 85.6% |
| 18 to 34 (n=408) | 86.6% |
| 35 to 54 (n=319) | 84.5% |
| 55 plus (n=282) | 90.1% |

*Weighted to the true population proportion.
*Charts may not add up to 100 due to rounding.

**QUESTION –** Are the following important, somewhat important, somewhat not important or not important for a well running justice system? [ROTATE]

**Investing in the justice system to minimize delays**

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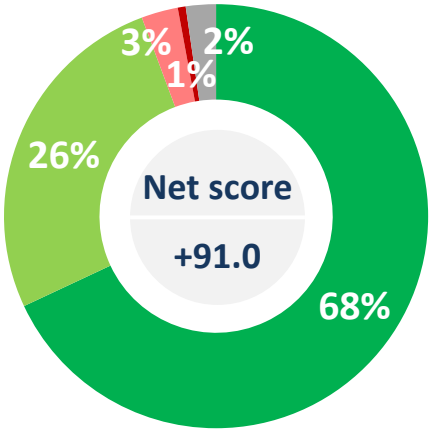
Source: Nanos Research, representative online survey, March 27th to 31st, 2020, n=1009 Albertans, no margin of error applies to this survey.

# Importance of ensuring access to a lawyer




Important
Somewhat important
Somewhat not important
Not important
Unsure

| | Important/ somewhat important |
|---|---|
| Calgary (n=383) | 94.7% |
| Edmonton (n=306) | 95.4% |
| North (n=166) | 94.6% |
| South (n=154) | 92.6% |
| Male (n=431) | 95.3% |
| Female (n=578) | 93.4% |
| 18 to 34 (n=408) | 92.6% |
| 35 to 54 (n=319) | 95.9% |
| 55 plus (n=282) | 94.4% |

*Weighted to the true population proportion.
*Charts may not add up to 100 due to rounding.

**QUESTION –** Are the following important, somewhat important, somewhat not important or not important for a well running justice system? [ROTATE]

**Ensuring that Albertans have access to a lawyer to ensure fair outcomes**

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Source: Nanos Research, representative online survey, March 27th to 31st, 2020, n=1009 Albertans, no margin of error applies to this survey.

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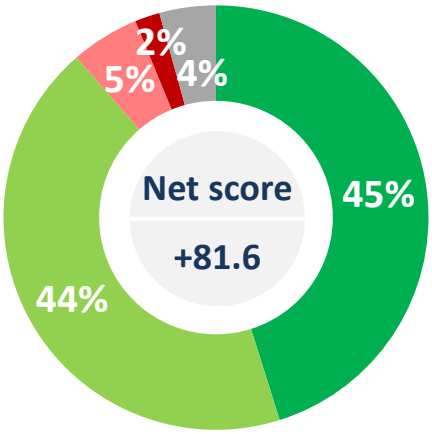
# Importance of openness to technology in justice system




Important
Somewhat important
Somewhat not important
Not important
Unsure

| | Important/ somewhat important |
|---|---|
| Calgary (n=383) | 87.7% |
| Edmonton (n=306) | 92.0% |
| North (n=166) | 90.2% |
| South (n=154) | 85.0% |
| Male (n=431) | 89.1% |
| Female (n=578) | 88.2% |
| 18 to 34 (n=408) | 89.7% |
| 35 to 54 (n=319) | 87.1% |
| 55 plus (n=282) | 89.4% |

*Weighted to the true population proportion.
*Charts may not add up to 100 due to rounding.

**QUESTION –** Are the following important, somewhat important, somewhat not important or not important for a well running justice system? [ROTATE]

**Being open to new technology to modernize the justice system**

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Source: Nanos Research, representative online survey, March 27th to 31st, 2020, n=1009 Albertans, no margin of error applies to this survey.

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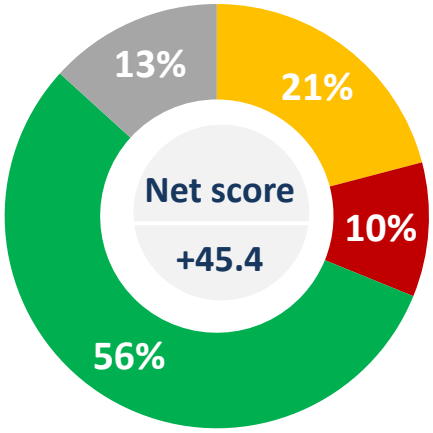
# Support for different paths regarding access to legal aid




- Keep things the same, no change in maximum income to qualify for legal aid
- Lower the income level so fewer Albertans qualify for legal aid
- Increase the income requirement so more Albertans qualify for legal aid
- Not sure

| | Increase the income requirement |
|---|---|
| Calgary (n=383) | 54.6% |
| Edmonton (n=306) | 57.3% |
| North (n=166) | 61.7% |
| South (n=154) | 49.0% |
| Male (n=431) | 54.9% |
| Female (n=578) | 56.3% |
| 18 to 34 (n=408) | 51.8% |
| 35 to 54 (n=319) | 59.0% |
| 55 plus (n=282) | 55.6% |

*Weighted to the true population proportion.
*Charts may not add up to 100 due to rounding.

**QUESTION –** As you may know, Albertans may apply for a lawyer (with fees deferred) if they face legal problems such as a criminal charge, or a family matter such as custody, child support or domestic violence. Eligibility is based on income. The cut-off income for a household of one person to qualify for legal aid for an individual is $20,021. Which of the following paths forward would you support for Albertans to access legal aid? [RANDOMIZE]

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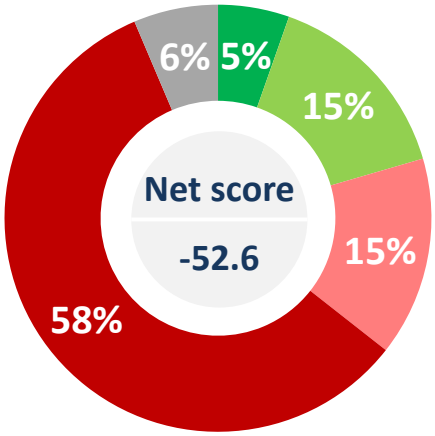
Source: Nanos Research, representative online survey, March 27th to 31st, 2020, n=1009 Albertans, no margin of error applies to this survey.



# Reasonability of waiting times for resolving family disputes




- Reasonable
- Somewhat reasonable
- Somewhat not reasonable
- Not reasonable
- Unsure

| | Somewhat not reasonable / not reasonable |
|---|---|
| Calgary (n=383) | 69.7% |
| Edmonton (n=306) | 68.8% |
| North (n=166) | 77.3% |
| South (n=154) | 78.3% |
| Male (n=431) | 69.4% |
| Female (n=578) | 76.8% |
| 18 to 34 (n=408) | 59.6% |
| 35 to 54 (n=319) | 74.4% |
| 55 plus (n=282) | 87.3% |

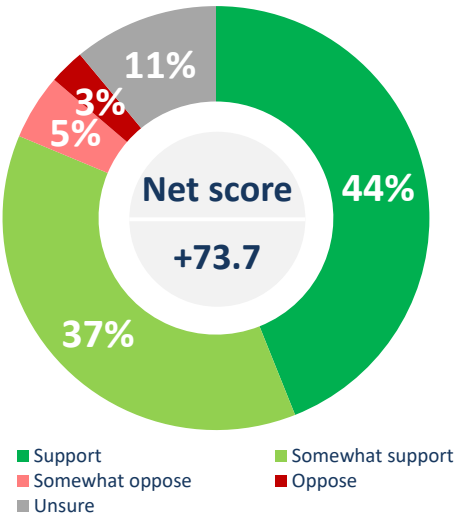
*Weighted to the true population proportion.
*Charts may not add up to 100 due to rounding.

**QUESTION –** Judges hear family law applications with respect to child support, spousal support, parenting arrangements, child protection, and guardianship of and contact with a child. There is currently a waiting time to appear before a Judge in Alberta for a family law matter of at least one year and sometimes over three years. Do you think that one to three years to resolve a family dispute is reasonable, somewhat reasonable, somewhat not reasonable, or not reasonable?

© NANOS RESEARCH

Source: Nanos Research, representative online survey, March 27th to 31st, 2020, n=1009 Albertans, no margin of error applies to this survey.

# Support for a unified family court in Alberta




| | Support/ somewhat support |
|---|---|
| Calgary (n=383) | 80.1% |
| Edmonton (n=306) | 83.8% |
| North (n=166) | 81.5% |
| South (n=154) | 80.3% |
| Male (n=431) | 82.1% |
| Female (n=578) | 80.6% |
| 18 to 34 (n=408) | 78.1% |
| 35 to 54 (n=319) | 78.3% |
| 55 plus (n=282) | 89.2% |

*Weighted to the true population proportion.
*Charts may not add up to 100 due to rounding.

**QUESTION –** Because family matters can be complicated, both provincial and federal courts are often involved. In fact, Albertans sometimes have to appear in front of as many as four different Courts and these courts can sometimes issue conflicting orders. Although it would cost money to do so, would you support, somewhat support, somewhat oppose or oppose unifying those Courts so that Albertans have a single point of contact and a single court system to handle these issues?

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Source: Nanos Research, representative online survey, March 27th to 31st, 2020, n=1009 Albertans, no margin of error applies to this survey.



# Path forward for investment in Alberta's court system

| | Rank 1 (n=1009) | Rank 2 (n=898) | Rank 3 (n=843) |
|---|---|---|---|
| Balance future investments to hire both more Crown Prosecutors and invest in support for the court system | 31.2% | 34.2% | 31.9% |
| Focus on investing in aspects of the court system like paralegals, legal assistants, clerks and courtroom staff to improve the speed and efficiency of the court system | 30.2% | 33.1% | 33.2% |
| Focus on hiring more Crown Prosecutors if it shortens the backlog in the courts | 29.8% | 32.2% | 34.6% |
| Unsure | 8.8% | 0.5% | 0.3% |

**QUESTION –** Thinking of possible paths forward for the Government of Alberta when it comes to investing more resources in the court system, please rank the following paths forward where 1 is the most important priority, 2 the second most important priority and so on. [ROTATE]

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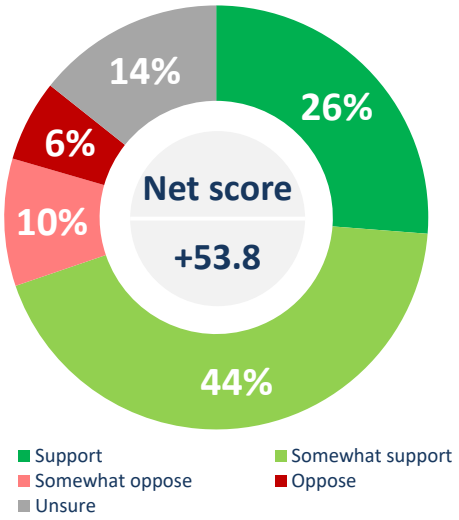
Source: Nanos Research, representative online survey, March 27th to 31st, 2020, n=1009 Albertans, no margin of error applies to this survey.

# Support of online arbitration without a judge for small claims




| | Support/ somewhat support |
|---|---|
| Calgary (n=383) | 69.1% |
| Edmonton (n=306) | 71.3% |
| North (n=166) | 69.1% |
| South (n=154) | 69.5% |
| Male (n=431) | 70.4% |
| Female (n=578) | 69.0% |
| 18 to 34 (n=408) | 65.0% |
| 35 to 54 (n=319) | 74.1% |
| 55 plus (n=282) | 69.5% |

*Weighted to the true population proportion.
*Charts may not add up to 100 due to rounding.

**QUESTION –** Currently Provincial Court Civil, often referred to as "small claims court" provides Albertans with a way to resolve disputes for matters less than $50,000. Would you be open, somewhat open, somewhat not open or not open to having some civil claims addressed through an online arbitration decision process without a judge?

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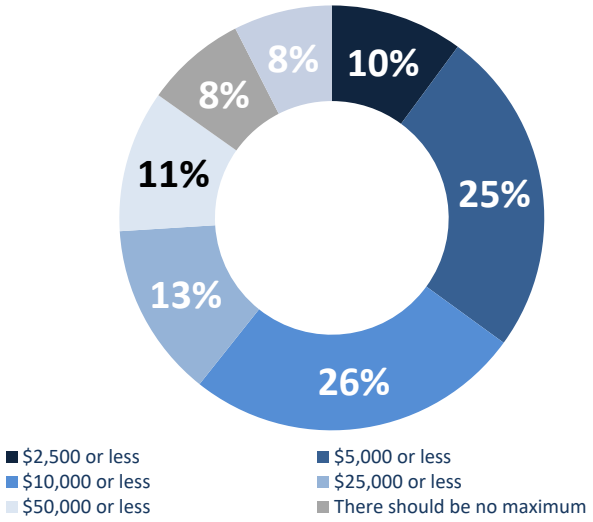
Source: Nanos Research, representative online survey, March 27th to 31st, 2020, n=1009 Albertans, no margin of error applies to this survey.



# Opinions on maximum claim amount to be arbitrated online




| | $10,000 or less | $5,000 or less |
|---|---|---|
| Calgary (n=265) | 27.0% | 20.0% |
| Edmonton (n=217) | 24.6% | 23.4% |
| North (n=116) | 25.4% | 25.8% |
| South (n=107) | 25.3% | 32.8% |
| Male (n=305) | 29.7% | 24.4% |
| Female (n=400) | 21.4% | 25.4% |
| 18 to 34 (n=277) | 26.7% | 28.9% |
| 35 to 54 (n=231) | 24.3% | 24.2% |
| 55 plus (n=197) | 26.5% | 21.6% |

*Weighted to the true population proportion.
*Charts may not add up to 100 due to rounding.

**QUESTION** – [IF SUPPORT OR SOMEWHAT SUPPORT HAVING SOME CIVIL CLAIMS ADDRESSED THROUGH AN ONLINE ARBITRATION DECISION PROCESS WITHOUT A JUDGE] What is the maximum civil or small claim that should be arbitrated using an online process without a judge?

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Source: Nanos Research, representative online survey, March 27th to 31st, 2020, n=705 Albertans who support or somewhat support having some civil claims addressed through online arbitration, no margin of error applies to this survey.

# METHODOLOGY

# METHODOLOGY

Nanos conducted a representative online survey of 1,009 Alberta residents, 18 years of age or older, between March 27th and 31st, 2020. Participants were administered a survey online. The results were statistically checked and weighted by age and gender using the latest Census information and the sample is geographically stratified to be representative of Alberta.

No margin of error applies to this survey.

The research was commissioned by the Canadian Bar Association, Alberta Branch and was conducted by Nanos Research.

Note: Charts may not add up to 100 due to rounding.

| | Population | Population % | Unweighted n-value | Weighted n-value | Weighted % |
|---|---|---|---|---|---|
| Calgary | 1,011,632 | 30% | 383 | 320 | 32% |
| Edmonton | 741,947 | 22% | 306 | 235 | 24% |
| North | 771,687 | 23% | 166 | 223 | 22% |
| South | 817,284 | 24% | 154 | 222 | 22% |
| Total | 3,342,550 | | | 1000 | |

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# TECHNICAL NOTE

| Element | Description |
|---|---|
| Research sponsor | Canadian Bar Association, Alberta Branch |
| Population and Final Sample Size | 1,009 Alberta residents drawn from a panel. |
| Source of Sample | Prodege and Quest Mindshare |
| Type of Sample | Representative non-probability |
| Margin of Error | No margin of error applies to this research. |
| Mode of Survey | Online survey |
| Sampling Method Base | Non-probability. |
| Demographics (Captured) | Men and Women; 18 years or older.<br>Six digit postal code was used to validate geography. |
| Demographics (Other) | Age, gender, education, income |
| Field Dates | March 27th to 31st, 2020 |
| Language of Survey | The survey was conducted in both English and French. |
| Standards | Nanos Research is a member of the Canadian Research Insights Council (CRIC) and confirms that this research fully complies with all CRIC Standards including the CRIC Public Opinion Research Standards and Disclosure Requirements.<br>https://canadianresearchinsightscouncil.ca/standards/ |

| Element | Description |
|---|---|
| Weighting of Data | The results were weighted by age and gender using the latest Census information (2016) and the sample is geographically stratified to ensure a distribution across all regions of Alberta. See tables for full weighting disclosure. |
| Screening | Screening ensured potential respondents did not work in the market research industry, in the advertising industry, in the media or a political party prior to administering the survey to ensure the integrity of the data. |
| Excluded Demographics | Individuals younger than 18 years old; individuals without internet access could not participate. |
| Stratification | By age and gender using the latest Census information (2016) and the sample is geographically stratified to be representative of Alberta. |
| Estimated Response Rate | Not applicable. |
| Question Order | Question order in the preceding report reflects the order in which they appeared in the original questionnaire. |
| Question Content | All questions asked are contained in the report. |
| Question Wording | The questions in the preceding report are written exactly as they were asked to individuals. |
| Research/Data Collection Supplier | Nanos Research |
| Contact | Contact Nanos Research for more information or with any concerns or questions.<br>http://www.nanos.co<br>Telephone:(613) 234-4666 ext. 237<br>Email: info@nanosresearch.com. |

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# Impressions of the justice system in Alberta

**CBA Alberta | Summary | Confidential | Draft**

Conducted by Nanos for CBA Alberta, May 2020
Submission 2020-1617

ALBERTA

NANOS

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# KEY FINDINGS

There is strong support among participants for spending to improve the Alberta justice system

Nanos conducted four focus groups on behalf of the Canadian Bar Association, Alberta Branch, with two groups held with Albertans from rural regions, one with Albertans from Calgary and another with Albertans from Edmonton. The focus groups were conducted online. Participants were asked about their impressions of the justice system, as well as their support for further investment in the justice system in Alberta and modernizing it with new technology.

- **Participants think the justice system is slow and inefficient** – Slow, inefficient and complicated were among the most frequent word that came to mind when participants were asked what they thought of the justice system in Alberta.
- **Participants expect efficiency could be improved with better staffing and new technology** – Asked for suggestions to improve the justice system in Alberta, participants thought that hiring more prosecutors, judges and support staff, as well as adopting modern technologies could improve the efficiency of the system.
- **Support is strong for spending money on the Alberta justice system** – Although a few participants noted that due to COVID-19 and the current economic downturn in the oil sector, the government of Alberta may be strained, the majority of participants thought that the justice system is an important spending priority.
- **Participants consider access to a lawyer as a basic right** – All participants agreed that having access to a lawyer is very important, saying that the justice system is too complicated for someone to navigate on their own.
- **Current one to three year delays in resolving family disputes are considered unreasonable** – Many of the participants said they consider the current delays in resolving family disputes unreasonable and shocking, especially since such cases may involve children in precarious situations.
- **Mediation and triage were most frequently suggested to reduce waiting times in family court** – Participants recommended that more family court cases should be sent to mediation, as well as triaged by priority, with those involving violence or abuse taking precedence, in order to reduce the backlog in family court. Participants also said they would be more likely to support spending on the justice system given the delays.

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# KEY FINDINGS

Participants think the legal aid limit should be increased

- **Participants think money should be spent on both Crown prosecutors and support staff** – Asked whether money should be spent on more Crown prosecutors or support staff, many participants said both are probably needed in order to make the system more efficient and push cases through. However, many think there is a shortage of judges and prosecutors, while many think support staff is more important.
- **Participants are divided with regards to unifying family courts** – Although a number of participants thought that it would be more efficient and less stressful for those involved to unify all family courts into one point of contact, many also expressed concerns about potential constitutional issues related to unifying the courts or about breaking up a system that was set up this particular way for a reason.
- **Most participants think the legal aid limit should be increased** – Many of the participants said that the current legal aid limit is too low given the poverty line and individual's earnings in Alberta, thus precluding some from having representation or access to the courts. Participants were in favour of raising the limit, especially if it was pro-rated to people's income.
- **Participants are in favour of adopting new technology to modernize the justice system, but raise security concerns** – Many say that they are in favour of adopting technology to modernize the justice system, noting that this is the way of the future and that in the long run it would improve access and reduce costs. A few raised objections related to security concerns.
- **Participants are open to online arbitration** – Asked if they were open to online arbitration without a judge for small claims, most participants thought this was a good idea and a majority also said they would be comfortable participating in such an arbitration themselves.

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## Policy Priorities

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## Thoughts on the justice system in Alberta

### JUSTICE SYSTEM IS SEEN AS SLOW AND INEFFICIENT

Asked what words come to mind when thinking of the justice system in Alberta, participants say most frequently that the justice system in Alberta is slow and inefficient. Several participants also said that they thought the system is complicated, frustrating and unfair.

### PARTICIPANTS SAY THE JUSTICE SYSTEM NEEDS TO BE BETTER STAFFED AND MORE EFFICIENT

Asked what could be done to improve the justice system in Alberta, participants had a range of suggestions, starting with hiring more Crown prosecutors, judges and support staff. A number of the participants expressed the view that the Alberta justice system is understaffed. Many also thought that the system could be made better by improving efficiency, and particularly through modernizing and adopting new technology to keep up with the times. Several added that more mediation options should be offered and favoured. Other participant suggestions also included funding preventive and restorative solutions in order to prevent matters from reaching the justice system. Some participants also proposed that a legal review should be undertaken in order to simplify the language, make it understandable and streamline the judicial process. A few recommended that the hours be extended and that harsher penalties be imposed.

*Slow, distant in a lot of cases if you are not in major urban centres.*

*They could extend their hours and be open on a Saturday. The court times are 9 to 2 or 3, it's very short days. For family matters, like custody or guardianship, there could be a different system to fast-track. It should be faster than the criminal route.*

*There should be more mediation, particularly in family court. The language is out of reach for a lot of people. Make it more user-friendly. Hire a lot more judges and lawyers to get stuff moving.*

*I agree that the language needs to be simplified, especially for things such as processes and terms. You could have a flow chart for the processes, with steps and forms. You try to navigate through old websites and documents, and you don't know if you are missing something.*

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**QUESTION –** What words come to mind when you think of the justice system in Alberta? Any others? [OPEN]

**QUESTION –** When you think of how the justice system in Alberta could be improved in terms of how it works what comes to mind? Do you have any other ideas? [OPEN]

## Spending money on the justice system

### PARTICIPANTS THINK SPENDING MONEY ON THE JUSTICE SYSTEM IN ALBERTA IS IMPORTANT

Most participants said that it is important to spend money to minimize delays in the justice system, although many added the caveat that the money should not be thrown at the justice system indiscriminately. These participants thought that there should be an assessment of the justice system in order to determine the most efficient way to spend the money to improve it. While not entirely against investing money in the justice system, a few participants raised concerns about the state of the government's finances, especially given the current economic situation in Alberta and the ongoing COVID-19 crisis.

Participants thought that spending money on the justice system is important because there may be cases that are thrown out of court due to process delays that exceed the statute of limitations, while on the flipside innocent people may be stuck in jail for prolonged periods of time because their cases are dragging out.

A few participants added that the money should be spent on technological updates or on preventive measures.

*I don't know, I tend to think we would do better to go upstream and look at what is happening, we should look upstream to find the root of the problem, the immediate issue, spend the money on that. We don't want to always throw money into a black hole.*

*Spending money to make things more efficient is beneficial. Delays get cases thrown out of court because of time limitations. That's a flaw in the justice system.*

*Spend more money to get up to date with technology. It shouldn't take a whole day to fight a traffic ticket. The justice system is going more through the route of you are guilty and then you have to prove your innocence. People shouldn't have to go through long line ups, there should be more technology.*

*Very important. It's just what we hear on the news, if a case is sitting for too long and they toss it out. It doesn't seem right to me.*

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**QUESTION –** Do you think spending money on the justice system aimed at minimizing delays is important or not important?
Why do you have that opinion? [OPEN]



## Money spending priorities in the justice system

### PARTICIPANTS THINK MONEY SHOULD BE SPENT ON JUDGES, PROSECUTORS AND SUPPORT STAFF

Many of the participants expressed the view that the Alberta justice system is underfunded and lacks capacity. They recommended that the Alberta government invest in both more judges and more prosecutors, as well as staffers to do the legwork and get the cases to trial. A few participants also said that it would be good to invest more money in legal aid in order to ensure that people have better access to legal representations.

Several participants also noted that it would be important to invest in technology, including electronic filing systems, as well as online hearings for minor issues such as traffic tickets.

A number of participants thought that investment should go to mediation and social justice programs, because they thought that these save money in the long run.

*Spend more money in actual courtrooms, but maybe there would be an alternative way to mitigate that like a mediation system. Before it gets to the higher court level you would be required to go to mediation, if not successful, then you go to court.*

*There is an infrastructure in place, it won't work if you don't have resources. Eliminate the problem before it becomes a problem. Have guaranteed minimum wage. More money in education results in money saved in the justice system. Social justice programs actually save money in the long term. Attach funds to social justice programs.*

*More judges so that we can get things through quicker. Delays make it difficult to come to a conclusion. By the time it gets to trial, too much is lost. Have more judges.*

*We are concentrating a lot on judges, but we are lacking people working for the crown to do the leg work. Also more attention for legal aid for those that can't afford a lawyer.*

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**QUESTION –** What should money spent on the justice system focus on in order to ensure that it is running smoothly for all Albertans?
Why do you think this a priority? [OPEN]

## Importance of access to a lawyer for Albertans

**PARTICIPANTS THINK ACCESS TO A LAWYER IS A RIGHT**

Participants unanimously agreed that it is important to have access to a lawyer, and many considered it a basic human right.

A number of participants said that the legal system is too complicated to navigate alone and being faced with a legal matter is stressful and intimidating, which is why it is very important to have legal representation.

Participants also noted that legal aid should be well funded, in order to attract better lawyers, as well as give legal aid lawyers a fighting chance against expensive law firms.

*It's really important, as a citizen you have a right to be defended, if you don't understand you need someone to help you through that.*

*They are professionals to help you through the process.*

*Everybody is innocent until proven guilty. It's a process, the court experience is a process, you need someone to help you through it. Lawyers are critical.*

*Because of how difficult it is to understand, everybody needs a lawyer, that's what they are there for. I wouldn't know how it works or who to talk to. I think everybody needs one.*

*I think it's important. There is a good reason why there is a shortage of lawyers for legal aid. Go back to a place where you start from the bottom and rethink the system. They don't have a system in place to keep prices at a reasonable range.*

*Definitely have access, the average person would not know what to do.*

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**QUESTION –** Do you think ensuring that Albertans have access to a lawyer is important or not important?
Why do you have that opinion? [OPEN]



## Messages

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## Reasonability of time to resolve family disputes

**PARTICIPANTS AGREE THAT CURRENT DELAYS IN RESOLVING FAMILY DISPUTES ARE UNREASONALBE**

Participants thought that the delays to resolve family disputes are unreasonable, with several saying that they are shocking and unconscionable. Many participants expressed concern for the wellbeing of children who are in dangerous or abusive situations, saying that their cases should be expedited.

However, participants also thought that delays in cases involving children are generally unreasonable and can have a negative impact on the children, especially since, according to participants, three years can represent a significant proportion of their lives and children need to know where to belong. Participants also thought that these cases should be resolved quicker so that people can move on with their lives following a separation.

Some participants added that these delays are also unreasonable because they can have an impact on a multitude of people, not just the individuals directly involved in the case, but also all their children and their extended family.

A few participants noted that delays may also be due to the long appeals process, and noted that the right to appeal should be maintained.

*It must be really hard on the children. To be honest, I'm shocked, I didn't know, it's insane. Especially with kids.*

*If one year is the fastest, that's absurd. For more than three years, I'd be curious to see how many of the over three years are delayed due to appeals. You should have the right to the appeal, so I'm not sure how you would change that. Having access to mediation and legal aid might help speed that up.*

*en. Children have got to know where they belong, unless we want little terrors. It will be the start on the road to become a juvenile delinquent. One year is too long, three years is ridiculous. We've got to spend more money to get more lawyers.*

*That's completely unacceptable, one year is a long time, 3 years is an entire period of schooling. They will end up in the system as well.*

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**QUESTION –** There is currently a waiting time to appear before a Judge in Alberta for a family law matter of at least one year and sometimes over three years. Do you think that one to three years to resolve a family dispute is reasonable, or not reasonable? Why do you have that opinion? [OPEN]

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## Recommendations to reduce waiting time

**PARTICIPANTS SUGGEST MEDIATION AND TRIAGE AS OPTIONS FOR REDUCING WAITING TIMES IN FAMILY COURT**

Asked if they had any recommendations for reducing waiting times in family court, a number of participants said that mediation should be favoured over court time. Many participants also noted that there should be a triage system that sorted the priority of cases based on the particular circumstances, allowing cases that involve violence or abuse to go through first.

Several participants also thought that the family justice system needs more workers, from judges to lawyers and support staff. Other suggestions from participants included having a legal review to make the law clearer in these matters and easier to interpret, as well as limiting the number of appeals to prevent the cases from dragging out indefinitely.

*Having a separate division such as a special court or team that is not tying up court time. It could be resolved in a better way. If it's two parties, they might not be telling the whole truth, but it could be decided before it goes up to the next level.*

*More family court judges, more family court lawyers.*

*I wonder if some cases could be handled by a mediator or some other trained professional.*

*We have a shortage of workers, we are always waiting for somebody, there's not enough people. Diversion is one technique they use in my area, and have proper training for diversion workers.*

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**QUESTION –** Do you have a recommendation that the government should do to reduce waiting times? [OPEN]

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## Support of spending on the Alberta justice system

**KNOWING THAT THERE ARE DELAYS IN FAMILY COURT, PARTICIPANTS SAY THEY ARE MORE LIKELY TO SUPPORT SPENDING ON THE ALBERTA JUSTICE SYSTEM**

Similar to views on spending on the justice system in general, spending in order to improve access to family court garners support from many of the participants, with some noting that as tax payers they would not object to their tax dollars going to fix a broken system, and making sure that communities are safe, especially for children.

Several participants also added that a review is necessary so that any money spent improves efficiency, as well as to ensure that it is clear where the money is spent.

Finally, a few participants raised concerns about additional spending, given the circumstances (the COVID-19 crisis and economic downturn in Alberta were happening at the time of the focus groups) and said that perhaps the status quo should be maintained.

*We've talked about the reasons why, we agree that more money needs to be spent, we are concerned about people mainly in family court. Some people spend time in lockup waiting for a trial. We have a shortage of judges so maybe that's where the money needs to go. We need to have a review of where fixes are needed.*

*If it hasn't already happened, a review is called for. The system is already broken. Put money into it to make it a better system. I'm in favour. Only if the government doesn't decide to make the decisions on their own. Have an independent study on how other countries are doing it. Look at plausible plans on how this money can be spent.*

*I would think that when it comes to diversion, mediation, getting more resources into it is important to get people into those things quickly. I think we need to probably put more money in it.*

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**QUESTION –** Knowing this, are you more or less likely to support more spending on the Alberta justice system?
Why do you have that opinion? [OPEN]



## Investment priorities of the Alberta government in regards to the court system

**PARTICIPANTS ARE DIVIDED WHEN IT COMES TO SPEDING MONEY ON MORE CROWN PROSECUTORS OR SUPPORT STAFF**

Asked whether it is a more important priority to hire Crown Prosecutors or to spend money on other aspects of the court system like paralegals, legal assistants, clerks and courtroom staff, participants are divided. Many say that both should be priorities, since likely all these resources are needed to ensure that cases move through the legal system quicker. However, some participants, especially in the rural groups, did mention that they have heard of shortages of Judges and Prosecutors in the province. Others say there is no point in hiring more prosecutors if they do not have the support staff necessary to push their cases through the system.

A few participants noted that they did not feel qualified to comment on this question and thought that an expert review should decide where the resources should be spent.

*I think that with every problem, we say to just throw more money at it. But it has to be thought out, if I was to direct the funding, I would suggest the latter as adding more Crown prosecutors is too late, and the most expensive. Administrative work funding might be more cost effective and resolve issues earlier and not end up at the Crown prosecutor's desk.*

*More prosecutors and judges. In my area, we have judges from Edmonton coming up to hear our cases. We don't want them coming up to charge fees. More prosecutors and judges are needed.*

*Without knowing a lot, there needs to be a balance, everyone has a role to play in this process. I would like to see these decisions made with an audit of the whole system to see where the money could be best used.*

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**QUESTION –** Do you think it is a more important priority for the Alberta government to focus on hiring more Crown Prosecutors to ensure more charges are laid against people who may have broken the law or to focus on spending money on aspects of the court system like paralegals, legal assistants, clerks and courtroom staff to improve the speed and efficiency of the court system?
Why do you have that opinion? [OPEN]

## Support for unification of Courts to a single point of contact

### PARTICIPANTS ARE DIVIDED WHEN IT COMES TO UNITING ALL FAMILY COURTS INTO ONE POINT OF CONTACT

Participants were also divided on whether or not the family court system should be unified into one point of contact and a single system to handle family matters. Some thought that having up to four Courts issuing conflicting orders means there are inexcusable inefficiencies in the system and gave their full support to unifying the system.

Other participants said that the system may have been set up this way so that different types of cases would be dealt with by different courts. These participants said that they were not sure that unifying the system would improve it. In addition, some thought that the system may be set up as it is because of the division of powers between the federal and provincial governments. These participants were concerned that unifying the system would require constitutional change would be difficult to achieve or would not be desirable.

A few participants assumed that a unified system would operate at the federal level and said that this may not be suitable to meet the different needs in provinces that have different cultures and priorities. A few participants were more likely to support a unified provincial system.

*I feel both ways, I value efficiency, and I value fairness. My assumption is that some cases are going to need more than one hearing for fairness, including maintaining the right to appeal. There needs to be a point to be as efficient as possible. Especially considering the financial state our entire country is going to be in.*

*I do wonder, my thought would be that there would be a cost, but in the end it would be a reduced cost but I need evidence that the cost would be reduced. Save money in the long run, spend money only if it will be better and faster. Have fairness and access to both systems.*

*Not as big a fan of unifying things, cases should go where they belong. It might be opening a can of worms, if there is to be a federal system across the country - things are different across the country.*

*My concern would be why was the court system split in the first place. Usually it is dictated by the constitution. I'm concerned about opening a can of worms. I don't see why we don't streamline to two courts. If no can of worms, then yes, unify it. You can save time in investigating and charges. If you can speed it up, then yes.*

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**QUESTION –** Because family matters can be complicated, both provincial and federal courts are often involved. In fact, Albertans sometimes have to appear in front of as many as four different Courts and these courts can sometimes issue conflicting orders. Although it would cost money to do so, would you support, or oppose unifying those Courts so that Albertans have a single point of contact and a single court system to handle these issues?
Why do you have that opinion? [OPEN]

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## Change in limit for eligibility of fee deferment to apply for a lawyer

### PARTICIPANTS THINK LEGAL AID LIMIT SHOULD BE INCREASED

Participants thought that the $20,021 limit for an individual in a single person household to be eligible to be represented by a legal aid defender is too low. Several participants noted that this is below the poverty level and that one would make more earning minimum wage in Alberta, meaning that they would be unable to get legal representation, especially given how expensive lawyers are. Thus most participants said that the limit should be increased to allow more people to access legal aid, with several participants saying that it should be prorated based on people's income.

One person said it would be better to keep it the same because if the limit were increased, then individuals living on social assistance would have to compete with those who earned a salary greater than $20,021 to get a legal aid lawyer and this may prevent them from getting one.

Participants were also asked if they would support more spending on the justice system in order to ensure more people had access to legal aid, the majority said that they would since the limit seemed very low to them.

*The deeper question is how is the number arrived at. That sounds really low, my teenage kid could make that working at McDonald's. A family with $30,000 is that enough? How much of an income should pay for a lawyer, and for an innocent person, because we assume innocence until proven guilty. $20,000 doesn't seem high enough. Make it a more equitable metric.*

*Short answer is that it should be increased. Unless it's prorated. I would prefer to see prorated and at a reasonable amount.*

*$20,000 is $10 an hour wage, there's no way you can afford a lawyer for anything with that wage.*

*Limit should be increased, I don't know of a single income person that could live off of that, even $30,000. Increase it.*

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**QUESTION –** As you may know, Albertans may apply for a lawyer (with fees deferred) if they face legal problems such as a criminal charge, or a family matter such as custody, child support or domestic violence. Eligibility is based on income. The cut-off income for a household of one person to qualify for legal aid for an individual is $20,021. Do you think that the limit should be lowered, kept the same or increased? Why do you have that opinion? [OPEN]

**QUESTION –** Knowing that the cut off limit for access to legal aid is $20,021, are you more or less likely to support the Government of Alberta spending more money so that more people can have legal representation when they access the legal system?
Why do you have that opinion? [OPEN]

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# Technology and the justice system

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## Importance of adoption of new technology and modernizing the justice system

**PARTICIPANTS ARE IN FAVOUR OF ADOPTING NEW TECHNOLOGY TO MODERNIZE THE JUSTICE SYSTEM BUT WORRY ABOUT SECURITY**

Most participants agreed that the court system should be modernized by adopting new technology. Participants thought that technology might be particularly useful for electronic filing of documents, as well as videoconferencing hearings in remote locations or for minor cases such as traffic tickets.

A few participants thought that the COVID-19 crisis might assist in the transition, since many law firms have had to get set up to allow employees to work from home.

Several participants also thought that transitioning to a more modern technology-based justice system may incur some initial costs, but would improve overall efficiency in the long run.

Those who were not fully in support of adopting new technologies in the justice system, frequently raised security concerns. They especially pointed out the sensitive nature of the information that the justice system deals with. A few also said they thought that face to face encounters are still important, and that everyone deserves their day in court and there is nothing that can replace that.

*It's very important. We spent a lot of money in a building in downtown Calgary. A bit of an investment initially, but long term, we need technology. We cannot continue with paper base.*

*I'm going to take a slightly different opinion; I would be concerned about security. Nobody should be able to hack into it. I'm also concerned about issues of access, if you need a laptop or high-speed internet, you are locking out low-income people. Newer technologies are good but be very careful.*

*Technology is a solution to a problem, but you need to identify the problem. And then see if there is a technology that would support it. There is more concern with the insufficient number of prosecutors and judges. I don't think the bottle neck is with the process, but if it is then maybe the technology could help.*

*I would agree, bringing in new technology, not all in one go, go with easier stuff first. More administrative type cases, big criminal ones a bit later. Let's get efficient.*

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**QUESTION –** Do you think that adopting new technology and modernizing the justice system is important or not important?
Why do you have that opinion? [OPEN]

## Support for an online arbitration process for some civil claims

**PARTICIPANTS ARE OPEN TO ONLINE ARBITRATION WITHOUT A JUDGE FOR SMALL CLAIMS**

Participants thought it was a good idea to use an online arbitration without a judge for small claims because they thought it would improve efficiency and free up judges' time. They added that this could be run as a pilot to see how it works and noted that the $50,000 limit is small enough that no major issues would be decided this way.

Some said they would be more comfortable with this if they knew that they had the possibility to appeal to a judge if they were not satisfied with the outcome.

*I'd be in support of that, that's not a lot of money, using technology to speed up the process, save money, that would be a great place to start.*

*I would support it, no great legal problems decided in a case with $50,000. It's more administrative.*

*I agree, it's a good place to try a pilot, rather than doing it for serious cases.*

*If it can be done online for efficiency purposes, yes, if it makes it better. But if it doesn't work, then don't.*

*Using technology and a mediator to start and then go to court. That's one area of the law where a judge could hear both sides and come to a decision. Have small stuff in small claims court. Judges end up resolving a dispute between two people which is different than a legal problem.*

*It's a waste of the time for judges. Use Zoom and have both parties. Don't waste judges' time.*

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**QUESTION –** Currently Provincial Court Civil, often referred to as "small claims court" provides Albertans with a way to resolve disputes for matters less than $50,000. Would you be open or not open to having some civil claims addressed through an online arbitration decision process without a judge?
Why do you have that opinion? [OPEN]

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## Participation in an arbitration process for small claims

**PARTICIPANTS SAID THEY ARE OPEN TO TRYING ONLINE ARBITRATION WITHOUT A JUDGE THEMSELVES**

When asked if they would use the small claims online arbitration process without a judge themselves, many participants said that they would, noting that they expect the process would be less stressful, less costly, less time consuming and less intimidating for themselves. Participants also said they would participate in such a process because they would expect the matter to be resolved much sooner than when going through the regular justice system.

Others said that they would be open to trying such arbitration only with the caveat that they needed to be confident in the process or the qualifications of the arbitrator, or have the option of an appeal.

A few said they would decide on whether or not to participate in the arbitration process based on the particular situation and how much of a stake they had in the matter to be decided.

*It depends on the quality of the mediators and if they can bring people to an agreement because people will just appeal if they are not satisfied with the results.*

*I would use it I think. You look at the cost of going to court, and the cost of the lawyers. Half your claim can be caught up in costs so you don't get the $50,000 at the end.*

*I feel the same way, sounds like it would make it more streamlined and easy access in less time.*

*I sort of agree. I would for only a certain amount. If it's a $50,000 claim, I would be hesitant. It also depends on how much time it would take to go to court. If it saved me time even if I only got half of the amount, I would do it.*

*I would be cautious about the qualifications if it's not a judge. Who will make the decision? Would it be two judges, or is there a third person saying who is right and wrong? Maybe that's okay for a very low dollar amount but I would be cautious.*

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**QUESTION –** If you had a small claim, would you participate or not participate in such an arbitration process yourself?
Why or why not? [OPEN]

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## Maximum civil or small claim amount arbitrated online

**PARTICIPANTS ARE DIVIDED WITH REGARDS TO THE MAXIMUM AMOUNT FOR A CIVIL CLAIM TO BE DECIDED THROUGH ONLINE ARBITRATION WITHOUT A JUDGE**

Several participants said that the maximum limit should be $100,000 for civil claims to be decided through the online arbitration process without a judge. They thought that $50,000 was too low given the value of money today. Some added that if there was a skilled mediator deciding the matter, then the risk would be low.

A number of participants thought that the limit for the online arbitration should be set lower at $25,000 to reduce the risk to those involved.

Still others said there was no need to change the rules, and that if the limit to for small claims court is $50,000 then that should be kept the same. A few noted that $25,000 may be too low to cover the value of most civil claims filed.

*$20,000. It goes back to previous comments. $50,000 is usually a significant amount. I would need to know the qualification of the arbitrator but without knowing, I would be cautious.*

*$100,000 because it seems reasonable for small claims court. Reasonable and round figure.*

*$50,000. The same rules apply, same laws, same cases, I don't see a reason to change.*

*I'm thinking of scenarios such as a tree fell on your house, or flooding, a lot of ordinary scenarios, it's often more than $25,000. So I would keep it at $50,000.*

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**QUESTION –** What do you think should be the maximum civil or small claim amount that should be arbitrated using an online process without a judge? [OPEN]
Why do you think this should be the limit? [OPEN]

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## METHODOLOGY

# METHODOLOGY

On behalf of the Canadian Bar Association Alberta Branch, Nanos conducted online focus groups with 36 Albertans (11 of which reside in Edmonton, seven in Calgary and 18 in rural Alberta) between April 29th to 30th, 2020. Participants were recruited randomly. The focus groups were conducted in English.

Each focus group was a maximum of 90 minutes in length. Participants were given $100 for their time.

Note: Charts may not add up to 100 due to rounding.

Readers should note that focus group research is qualitative in nature and should not be projected to the target populations.

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# TECHNICAL NOTE

| Element | Description |
|---|---|
| Research sponsor | CBA Alberta |
| Research/Data Collection Supplier | Nanos Research |
| Population and Final Sample Size | 36 Albertans |
| Source of Sample | Randomly recruited from Nanos panel. |
| Mode | Online focus groups |
| Field Dates | April 29th and 30th, 2019. |
| Language of Survey | The focus groups were conducted in English. |
| Standards | Nanos Research is a member of the Canadian Research Insights Council (CRIC) and confirms that this research fully complies with all CRIC Standards including the CRIC Public Opinion Research Standards and Disclosure Requirements. https://canadianresearchinsightscouncil.ca/standards/ |

| Element | Description |
|---|---|
| Statement of non-projectability | The results of the research are not statistically projectable but rather are directional in nature, as they are based on the responses of a small selection of respondents recruited to specific criteria using qualitative recruiting practices. |
| Question Order | Question order in the preceding report reflects the order in which they appeared in the original questionnaire. |
| Question Content | All questions asked are contained in the report. |
| Question Wording | The questions in the preceding report are written exactly as they were asked to individuals. |
| Research/Data Collection Supplier | Nanos Research |
| Contact | Contact Nanos Research for more information or with any concerns or questions.<br>http://www.nanos.co<br>Telephone:(613) 234-4666 ext. 237<br>Email: info@nanosresearch.com. |

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***To review the complete data set and cross tabs, please contact the CBA at mail@cba-alberta.org to receive a copy.***

THE CANADIAN BAR ASSOCIATION
Alberta Branch

## OUR MISSION

- To improve the law
- To improve the administration of justice
- To improve and promote access to justice
- To promote equality in the legal profession and in the justice system
- To improve and promote the knowledge, skills, ethical standards and well-being of members of the legal profession
- To represent the legal profession nationally and internationally
- To promote the interests of the members of The Canadian Bar Association

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We are the essential ally and advocate of the legal profession and guardian of the rule of law in Canada. Our members are passionate about their Association: the good it brings to their lives and to the world. Staff and volunteers are inspired to exceed members' expectations every day.

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