

**The Fourth Meeting of the Dean's Forum on  
Access to Justice and Dispute Resolution  
Summary Notes from February 29, 2016**

**University of Saskatchewan, College of Law**

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## I. POLICY DISCUSSION PAPERS PRESENTED BY STUDENT WORKING GROUPS:

The February 29, 2016 meeting of the Dean's Forum pertained to two topics: (1) "Putting the Public First"; and (2) "'Action' to Justice: Addressing Access to Justice in the Saskatchewan Court of Queen's Bench." The two student groups researched and developed policy discussion papers on their respective topics that were provided to participants in advance, and presented their findings to the Forum at large. The day began with a welcome from **Kevin Fenwick, Q.C.**, Deputy Minister of Justice for Saskatchewan. Participants introduced themselves, and **Brea Lowenberger**, the Access to Justice Coordinator at the College of Law, provided background on the history of the Dean's Forum. Each group's presentation was preceded by introductory remarks from Professors **Sarah Buhler** and **Michaela Keet**. The two student groups presented their policy discussion papers and facilitated a large group discussion. In the afternoon, the participants were split into break-out groups to engage in more in-depth discussions of the topics, before the group convened once more for a session dedicated to action and implementation of the day's recommendations and ideas for future participation. **Interim Dean, Beth Bilson**, concluded the day with reflections on the extraordinary nature of an event that brings together leaders in the legal profession to discuss access to justice and what the future can bring.

The projects of both student groups were grounded in the Cromwell Report on *Access to Justice in Civil and Family Matters* and the Canadian Bar Association's *Reaching Equal Justice Report*. The Court Reform Group also relied on the Report of the Court Processes Simplification Working Group. In addition, the students conducted consultations with various justice system stakeholders, which heavily informed the direction of each project.

Supplementary to formal consultations, the Public First Group conducted a community round table with various community based organizations. The group aimed to investigate how justice initiatives are putting the public first by examining how to identify "the public", by building on previous Dean's Forum work to further identify what access barriers are faced by the public and by considering methods that can meaningfully engage the public. Seven methods of engagement were identified including: (1) services mapping; (2) social media; (3) community round tables; (4) academic research and access to justice centres of excellence; (5) infographics; (6) community clinics and triage centres; (7) and user design thinking.

For the Court Reform Group, consultations were conducted with judges, lawyers and faculty members from the College of Law. Several ideas for reform in the Court of Queen's Bench emerged from these consultations, including the options of: (1) implementing a triage process; (2) reforms to the mandatory mediation scheme; (3) further refinements to the revised Court of Queen's Bench rules; (4) enhancing the use of case-management; (5) making greater use of non-judicial court workers; (6) expanding the scope of judicial dispute resolution; and (7) implementing ways of measuring the success of any reforms that are implemented.

## II. COMMON THEMES THAT EMERGED FROM THE DAY'S DISCUSSIONS:

### a) "Putting the Public First"

At the end of the Forum, a number of common themes emerged that identified the need for further professional orientation. These themes included an emphasis on services and programming that are accessible and consider the needs of the public, reciprocal learning, increased data collection, and the need for reconciliation between the justice system and Aboriginal communities.

- **There was consensus that services and programming must be accessible:** Discussions centred around available services across the country and in Saskatoon, with the idea that services should be easy to access, while reducing the spatial gap. Participants considered different programming that not only provided ideas on how to better serve the public, but allowed participants to consider ways that they can better network in order to enhance their own quality of service.
- **Participants recognized and acknowledged the need for increased data collection:** There are a wide variety of service providers and groups that may have information that will allow us to better serve the needs and interests of the public. Participants recognized the challenges of data collection and acknowledged the need for further informal and formal collection in order to assist with future work that will affect both users and providers of access to justice services.
- **There was consensus that effective public engagement must draw on reciprocal learning practices:** The focus of this discussion was around the importance of two-way learning to ensure that individuals engaged in the legal profession are empowered through information about the justice system itself. Although the profession often sees service seekers as lacking, when time is spent cultivating a relationship and learning with community members, meaningful lessons and resources may be uncovered. This model involves information flowing two ways, between the individual delivering legal services/information and the individual accessing services or providing feedback.

- **There was consensus that there is a need for further reconciliation between the justice system and Aboriginal groups/communities:** Discussions identified the need to address many existing problems pertaining to Aboriginal communities and the justice system. Some concerns included a lack of access to legal services in remote communities, the need for better mutual understandings of relationships between Aboriginal and non-Aboriginal groups, and reducing the disproportionate numbers of Aboriginal people affected by the legal system.

## b) “Action” to Justice: Addressing Access to Justice in the Saskatchewan Court of Queen’s Bench

The themes that emerged included earlier and more active judicial involvement, streamlining matters early in the court process through triage or otherwise, the appropriate role of the judge, and ways of gathering statistical data about matters in the Court of Queen’s Bench.

- **There was some consensus that earlier and more active judicial involvement is desirable, but that flexibility is required:** Most discussion centred around the desirability of having early judicial involvement in appropriate cases, with the realization that different cases have needs, some cases do not call for judicial involvement, and some cases may require more time for disclosure or for other reasons. Participants recognized that judges need flexibility in determining what is appropriate depending on the circumstances.
- **There was acknowledgment that the judge may be best positioned to determine the needs of a case and to set it on the appropriate procedural track:** Participants were of the view that judges possess the knowledge and skills that may mean they are in the best position to determine the appropriate needs and course of action for a particular case. There were concerns expressed by some participants that expanding the role of judges may strain limited resources and that non-judicial court staff such as a Master could be utilized.
- **Judges should be afforded flexibility in determining their appropriate role depending on the circumstances of a particular case:** Participants recognized that individual files have their own particular style in facilitating dispute resolution, and that flexibility is desirable so that judges can continue to facilitate according to the needs of the particular case at hand.
- **There is a great need for mechanisms to gather and analyze data about the court process, as well as the efficacy of any initiatives that are pursued:** All participants recognized that there is a gap in the available data about the nature of issues relating to existing court processes, the needs of the public, and the outcome of matters that go to the Court of Queen’s Bench. Some participants

supported the notion that the proposed Access to Justice Centre of Excellence at the College of Law could play in useful role in gathering and analyzing data that could help in better understanding the issues.

### **III. NEXT STEPS:**

Many Dean's Forum participants eagerly embraced the idea of 'Putting the Public First' through innovative and creative practices. One important theme was the need to recognize what we are already doing, and that we can be doing more. An interest in ongoing research on the topic was evident from various comments from attendees, who were interested in learning more about best practices in other jurisdictions. Continued research in this area can focus on developing options for a provincial strategy for public engagement with justice system stakeholders based on existing best practices and catering of such practices to the provincial climate and local communities. Moreover, an effective engagement model must look at ownership of the information cultivated and proactively seek ways of increasing public ownership of justice systems, conflict resolution and legal information within each community, including incorporating other ways of knowing. In developing such a strategy, we must explore possibilities to embrace discussions already happening at the grassroots level, and beyond the major centres of Saskatoon and Regina, to investigate ways to incorporate access to justice within these conversations if appropriate, or how appropriate. Existing structures mentioned at the Forum include: Saskatchewan 211 and Regional Inter-Sectorial Committees. The ability of justice system stakeholders to balance between delivering services, and meaningfully engaging the public is important. Ultimately, the provincial strategy must embrace multiple vehicles and approaches to engagement to ensure that different communities within the public, each who face diverse access to justice barriers are both engaged and meaningfully heard.

The Forum discussed particular access to justice issues and opportunities in the Court of Queen's Bench, potential solutions, and further steps that can be taken toward improving access to justice in the courts. However, it was recognized that most reforms in Court of Queen's Bench have and will continue to come from the Bench itself, and may include more effective use of the new rules, continued development of the rules, continuing evolution of judges' roles, and other means. Many Forum participants wish to continue to support those changes through engaging in further discussions, conducting research, and providing support to the Court, if requested, going forward. Many Forum participants expressed support for continued consideration of "case-responsive" processes, with earlier

action where appropriate, as well more strategic use of judicial mediation. Many Forum participants acknowledged that innovation in the Court of Queen’s Bench may necessitate further evolution of the role of lawyers in resolving their client’s conflicts through court procedures or otherwise. Participants recognise that technology may have a part to play in increasing both efficiency and access of dispute resolution process design (with a particular emphasis on using court equipment to reach Northern and rural regions – i.e. beyond the Court of Queen’s Bench, to also increase access to justice to the Provincial Court). There was overwhelming support for initiatives aimed at collecting and analyzing data about current practices, as well as measuring the success of future initiatives.

#### **IV. BREAK-OUT GROUP SUMMARY NOTES:**

*The following is a list of discussion questions that were considered throughout the day, as well as a more detailed summary of the themes that emerged on the topic of court reform.*

##### **a) “Putting the Public First”**

###### **Questions Posed for Putting the Public First Breakout Discussions**

- 1. Who is “the public” that your organization engages with? Is there a definition of “the public” that resonates with you?**
- 2. When considering future directions for your organization, do you factor in public engagement and public feedback? If so, in what ways does your/could your organization look to increase public feedback/engagement?**
- 3. How is your organization actively working to put the public first? Is community mapping in your organization’s general interest? Why or why not?**
- 4. What do we need to learn from the public about accessing justice and can we design an impactful initiative together? How could we shift our thinking from what we think is meaningful to the public to actually including the public?**
- 5. How does your organization engage with and participate within the Aboriginal community?**
- 6. Moving forward, how do you see reconciliation as being incorporated into your organization’s mandate?**
- 7. What are the potential benefits or drawbacks you have identified in more actively incorporating feedback/perspectives provided by community-based organizations in addressing what the public wants/needs?**
- 8. If possible, how do you feel your work could be better integrated with other organizations to provide a more increased range of services to the public?**

## PUTTING THE PUBLIC FIRST BREAK-OUT GROUP DISCUSSIONS:

### Group One (Room 74)

#### **Key Points**

- Evident willingness among attendees to see and initiate change.
- Important for all members of the profession to expand existing relationship and to build new relationships with the intent of meeting the needs of the public.
- We should make it a priority to engage with the public as appropriate. This requires recognizing that there are different publics and that they are impacted differently by different systems.
- Recognition that goals can be both internal – i.e. what we are doing within our own work, and external – i.e. as part of larger community initiatives and broader publics. *Collective and individual action.*
- Resisting duplication when thinking about access to justice by sharing information and working together.
- Consider the best practices that are emerging from other jurisdictions and considering their outcomes (data and broader impact) in developing local engagement initiatives.
- Not assuming that what we are doing is working; we need to listen to the public and evaluations in determining whether initiatives are working.
- Importance of legal system stakeholders engaging with initiatives, such as the 211 Saskatchewan website, that works collaboratively to develop information and resources accessible to the public.
- The importance of formal and informal conversation to identify the needs of the community.
- To engage the public we must meet the public where they are. Referral, triage or justice access workers must be in the community. These roles could be located out of different offices on different days, such as the library, food bank or mall.
- Acknowledge what we are doing, and that we can do more.

#### **Opening thoughts of participants**

- Are we the appropriate body to be heading this initiative?
  - Other options include Mental Health, or social work. Who else might be having this conversation? Can we facilitate one holistic approach?
  - Justice is uniquely positioned as it touches everyone's lives. Therefore we are a suitable option, but maybe not the only option. There is possibility for partnership.
- Is there a role for Saskatchewan Regional Intersectoral Committees (RICs)?
  - Already have regularly established meetings in regions across the province with the purpose of finding a way to work together to deliver integrated services.
  - Will this model work for justice?
- What about prevention? How do we use justice to prevent issues?
  - We need to focus on what we can change, as well as overarching issues that we may not be able to change but can influence (larger community prevention strategy, decrease in criminalization).

#### **Who is the public?**

- General public - focus on usability, and catered information where possible.
- Collaborative approach for accurate information.
- Low income, marginalized Saskatchewan residents (largely inner-city Saskatoon), significant focus on aboriginal peoples.

- People who are engaging the services of a lawyer (segment of the public).
- Growing awareness of public engagement – embracing emerging perspectives.
- Information and education to people in Saskatoon (or the community the library is located within). Public access through physical location, email and telephone.
- General public targeted through information that is able to touch the lives of the broad public (people engaged with the justice system, people outside the legal system but interested in learning).
- The “public” includes accused persons, victims, witnesses, lawyers, broader public, mental health professionals, court workers, social services. Also the media.
- Must consider different publics at different times (fluid concept); larger than just the client.

### ***Designing Public Engagement Together***

- Use of existing systems and relationships.
- Cultivating new partnerships. Being open-minded and willing to take action and risks.
- Strength in knowledge of what is out there as opportunities to better serve our public.
- Enhancing provincial mapping with 211 Saskatchewan service. Working with 211 to develop a justice mini-site and facilitating personal relationships to work together. Importance of reaching rural communities and ensuring that we do not duplicate initiatives/resources. Concern about loss of more personal contacts that occurs with high turn-over rates in some organizations.
- Strong partnerships could be created with libraries in many Saskatchewan communities; the Saskatoon Public Library receives over 400 legal information related requests per year, and likely higher if we take in to consideration circulation rates of justice materials.
- Appetite for training, for example “Justice Access Centre workers” and public librarians in legal information resources such as 211.
- Follow through with connecting with organizations and developing relationships; resilience in continuing to move forward.
- A triage person necessary who can effectively refer the public to appropriate legal supports.
- Changing our perceptions; we need to recognize this it is part of our job to provide appropriate referrals.

### ***Action from the Truth and Reconciliation Report***

- All lawyers should have cultural competency – the Law Society is currently developing programming to meet this target.
- Law Society also considering broader calls to action to see what other actions the legal profession might undertake.
- At CLASSIC, decolonization of work already being done and existing goals.
- A focus on being client centered; working **with** people.
- Increase of newcomers in Canada is leading to strong connections through recognition of “difficult lifestyles.” Many newcomers are also learning racism.
- University and College of Law working on increasing inclusion of indigenous perspectives.
- The Saskatoon Public Library is hiring staff to engage with aboriginal communities.
- Members of the Provincial Court in Saskatchewan attended the Canadian Institute for the Administration of Justice (CIAJ) conference; acknowledge that there is diversity within Aboriginal cultures, and are seeking more opportunities to learn from and engage with aboriginal communities.

## Group Two (Room 78)

### **Key Points:**

- Definition of who the public is varies depending on what lens is being used by the definer.
- Public engagement can have a domino effect where it can start with small interactions and ripple out to the broader public.
- Often we conceive of clients/communities as “lacking” – but once we begin building relationships we can realize the resources they do have (e.g. culture, knowledge).
- Necessary to utilize strategic partnerships between organizations and with the public to influence project/system design.
- Greater ownership of the justice system may be facilitated through increasing options for resolution and recognizing that there is an opportunity for increased empowerment in the individual’s right to choose how their legal issues are handled.
- Limited resources can greatly affect the ability of programs to include public input or the ability to serve the public and often it is most beneficial to allocate resources and efforts where there will be the most results.
- Where resources are lacking there may be an opportunity for more innovative approaches (could consider launching smaller scale/pilot projects to gauge effectiveness of a project while utilizing limited resources).
- Essential to include traditional aboriginal perspectives in system design and acknowledge the legitimacy of these systems.

### **Putting the Public First: Preliminary Discussion about Access to Justice**

- Different lenses of how to view the public, which often depends on the background of the person defining public.
  - E.g. the individual experience of a person engaged with public.
  - E.g. big picture issues and regulatory side is one lens to look at access to justice.
- Access to justice may be a difficult phrase for people to understand.
  - Consider individual interactions of people with the justice system.
  - Justice as the court system (narrow conception).
  - Justice as relationships or relationship-building between community/legal system offers more positive direction.
  - Thinking about the justice system as “one step removed” – justice affects not just the direct person involved.
  - The process of justice may be as (or more) important than the end results.
- Reform in the legal culture – participants expressed interest in a more people-centered practice.
- Reciprocal learning - interacting with people can reveal what we do not know.
  - Partnerships and collaboration.

### **Who is the Public?**

- Difficult to define public/community.
- Why do we need to define the public?
  - Helps us see what issues are facing different types of publics.
  - May be beneficial when considering what resources to allot where.
- Discussion of what factors may define “your public” – e.g. income, geography.
  - Geography is one defining factor – may not work for more broad organizations with multiple

locations.

- Different communities and different groups may face different issues.

### ***Public Engagement***

- Hearing from people in a meaningful way.
- Engagement as a domino/ripple effect – have the opportunity to influence those you have direct access to (e.g. law students) and those people engaging with a broader public.
- Public interest – how is the public interest being served?
  - E.g. the Law Society serves the public interest by regulating competency amongst lawyers.
- Consider the paternalistic view – deciding what the public wants.
  - Is there any room for this perspective moving forward?
- Use of strategic partnerships in designing programs.
  - Informal relationships developing into more formalized relationships.
- Mistake of stakeholders (repeated over and over again) – going to ourselves as stakeholders to decide what the answers are instead of going to the users of the justice system.
- How do you access opinions to inform justice reform – or the relevant opinions?
  - Issue of accessing people not integrated into communities that have voices in the justice/legal system.
  - Consultations perhaps not capturing the right voices – how do we know if we are capturing all the voices we should be and how do we know who we are missing?
- Importance of early prevention/resolution of conflict.
- Shift the focus from only helping people dealing with immediate problems.
  - Focus on future consumers of legal services.
  - If people have the right tools early on, may avoid some of the issues.
- Empowerment through choices – taking ownership through options (justice system can feel too constrictive).

### ***Resources and Opportunities for Collaboration***

- Importance of resource allocation and putting your effort where you may get the most results.
- Demand always outweighs the supply – particularly in non-profit organizations.
- Option to invest more resources up front to conduct proper research, instead of playing catch up after.
  - E.g. engaging academics to assist with community research (pooling resources or utilizing new resource relationships).
- Underestimation of the effect of the little things we help with – sharing resources and expertise (e.g. librarian/research assistance).
- Opportunities for innovation: not all projects have to start with major funding.
  - E.g. small start-ups can lead to big things (funding may come after a program has been launched).
- There is a benefit to small-steps and prototypes, having the ability to try things and see if it works.
- Failure can mean having the opportunity to re-evaluate, learn, tweak and come up with something better.
- Move from working in silos and work towards more collaboration between organizations (reduce redundancy).

### ***Relationship Building and Reciprocal Learning***

- Value in ad hoc conversations removed from sterile environments.
- Action can even be small actions – grab a coffee, start building relationships and integrating services.
- The current focus is on helping/educating people to work with the system – however, we should have people helping to inform/design the system.
- There is an inherent value in face-to-face relationship building – benefits of physical presence in a community.
- Often we conceive of members of the community/clients as “lacking” – but once we begin building relationships we can realize the resources they do have (e.g. culture, knowledge).
- There may be a benefit to having divergent systems.
  - E.g. including traditional aboriginal perspectives in system design and acknowledging the legitimacy of these systems.

### ***Concerns***

- Organizations may fear opening floodgates and not being able to meet everyone’s needs once organizations start providing a specific service.
- Justice system workers often operate under the assumption that people want to access the justice system – however, some may want the system to actually give them more space.
- Experiences of violence within the justice system (mistrust).
- Budget is an issue – limited resources may limit the scope of the public we are able to assist.
- Once you start providing a service, it is difficult to discontinue this (baby steps).
- Risk of getting so spread out that may lose impact – think about how our resources (including people) are being utilized.

## **b) “Action” to Justice: Addressing Access to Justice in the Saskatchewan Court of Queen’s Bench**

### **Questions Posed for Court Processes Reform**

1. **What should the expanded role of the SKQB judge look like? Should the judge assume the role of facilitator or interventionist, or should the role of the judge depend on the skills of the judge or the situation?**
2. **How do we encourage judges to facilitate the resolution of disputes without going so far as to allow judges to impose solutions on parties without their active participation in the process?**
3. **In your opinion, what is involved with “case management” and what should be involved with “triage”? How does the definition of each process impact the accessibility of courts?**
4. **Is there an access to justice issue that prevents many from attempting to resolve their legal issues through the SKQB? How should encouragement of enforcing legal rights through the SKQB be balanced with merely increasing litigiousness?**
5. **Do any initiatives under consideration risk decreasing substantive fairness as a result of increasing procedural efficiency? Instead of improving access to justice, are we creating a situation of access to “injustice”?**

## COURT PROCESSES REFORM BREAK-OUT GROUP DISCUSSIONS:

### Group Three (Room 254)

#### **Role of the Judge:**

- Facilitator vs Interventionist:
  - There may be situations that require the bench to be more authoritative. It is a balancing act.
  - Different judges are different. Judges should try to be facilitative but may have to be more direct due to time constraints. As well, many times lawyers bring clients to conferences so their clients can hear from a judge something that they are not willing to accept from their lawyer.
  - If judges are taking an evaluative approach, there is a need for the information to be available to “make a call” and be more directive. If judges take a facilitative approach, the judge would not need all the information as long as the parties have the information.
- Specialized judges:
  - Question was raised of whether there is a need for more specialized judges. For instance, whether there should be a panel of judges that does settlements.
  - Judges have generally been generalists, but is there a need or desire to have specialized groups in the court? How specialized can we become in a province with a limited number of judges?

#### **Case Management and Triage Initiatives**

- Case Management:
  - There are differing views of case management – acts that keep the case moving through the system, versus a more interventionist concept.
    - There is the idea that every time a judge crosses paths with parties, there is something that can be done to resolve or mediate some of the issues. So case management is not what we do just to move a case through the process, but also to resolve issues to move a case towards resolution.
    - If you have all the info needed to resolve one issue – can you resolve that issue now and take it off the table? Those issues that can be easily agreed on and get them off the table, then can deal with those issues that are really in dispute that may not be resolvable now.
  - Role of judge in case management:
    - Would a case management judge also be a trial judge? Most likely not. It would be more likely that the judge would participate in everything right up to trial, or would it be more a triage type of function.
    - Judge could be able to bring costs to help ensure cooperation (i.e. if one party is not cooperating or providing the necessary documents).
- Triage:
  - We always view the system as linear. Could we get to the place where things could bounce forward and backward in the system?
  - The early thought conceptualization of access to justice was that it was removing impediments to courts/getting in front of a judge. However, do we instead need to determine if people *need* access to the services?
    - You need some way to stop claims that have no merit.

- Analogy to the health system – i.e. you are not able to access a liver transplant if you do not need the liver transplant.
- A lot of the triage process should be to determine whether the services available are needed. The flip side is that you need to have other services available.
- Part is moving judicial intervention earlier:
  - Judges take good care of people that get to them. It is the people that do not get to them that is the worry.
  - Longer cases cost more money. You should not have to choose between \$40,000 and access to your children.
- Concerns: Looking at number of judges and number of cases, is it possible logistically to implement some of these innovations?

***Is there an access to justice issue that prevents many from attempting to resolve their legal issues through the SKQB?***

- Lack of information in this area makes it difficult to determine why people abandon claims or choose not to resolve claims through the SKQB and what types of legal issues these concern.
- General thought that in Saskatchewan the Court is good at managing what is before them. There may be higher conflict situations that will have a prolonged legal process, but you can go to trial quickly if issues are clear.
  - In this sense if you get to the judge, you can get a remedy. Is the issue instead *what percentage of the people that have legal issues get to the judge?*

***Do any initiatives under consideration risk decreasing substantive fairness as a result of increasing procedural efficiency?***

- One idea that needs to change in the legal community is the idea that process equals justice.
  - Practically, most people want some sort of result and view justice as an outcome and not a process.
- The longer the trial, the higher the risk that parties are no longer represented due to cost. Anything we can do to expedite resolution probably works for people at the end of the day.
- One of the things that will continue to be a factor in the system is people will continue to have an idea of what is “fair”. Is the danger instead that we allow the idea of “fairness” to prevent coming up with solutions to the kind of complexity and protraction of proceedings. This creates a different kind of unfairness when things go on for years and imposes a burden on people that does not have to be there. You can have a fair process that does not yield to everybody’s demands.
  - If you want lawyers to have certainty on everything it will take time and money and that leads to another type of justice. Are we talking about dispute resolution, which is perhaps different than justice?
- Instead of risking justice, is decreasing time to resolution resulting in resolutions that are reasonable and quick? People are looking for an answer and they want an answer that is relatively quick. It may not be what they want, but it may not be injustice.
- Is lawyer’s thoroughness an access to justice issue? Are people punished for taking risks to try to resolve a matter? Is there something wrong with our rules that push people towards perfectionism?
- This discussion re-enforces the need for data. Do we even have different options? We need to identify options so we can build them.

### **Are there different challenges to improving access to SKQB in Aboriginal, northern or rural communities?**

- Do we have information regarding: what people are accessing the system for, who is accessing the system, where the system is being accessed and what people's legal needs are across different demographics.
  - Mapping: Mapping would be interesting to see if people are accessing civil process in an isolated northern community where there may not be certain legal services, etc. Is there any publically available information regarding what people think they are missing?
  - People access lawyers/courts when they have exhausted their own problem solving capacity. Are there things happening in rural/northern communities where people are solving their problems in other ways? Are people creating their own systems that are resolving issues the other way around? Is it more successful to solve problems another way before QB?

### **Need for information:**

- There are gaps in statistics we currently have– we don't know whether the number of the 5,500 civil cases brought to the SKQB are medical malpractice, wrongful dismissal, etc. Similar with family statistics.
- Difficult to determine if judges need special training without information of where the need is.
- Could a triage system respond like that in some way – i.e. identifying types of cases and following them through to get statistical information?
- Putting together a pilot project will require data collection to determine whether or not there is success.
- Should we be looking at what the types of problems are in which people are accessing the system – i.e. family law. People will let certain problems slide, but are there other “crisis sectors” where people are perhaps not *voluntarily* entering the system but are *brought into* the system?

### **Group Four (Room 120):**

#### **Dispute Resolution**

- Mandatory mediation is not universally supported as some see lack of sincere participation as rendering the process to be a mere rubber stamp and added and unnecessary delay.
- Appropriately trained mediators may be capable of upholding the rule of law – i.e. a form of evaluative mediation which attempts to ensure that participants are aware of their legal rights.
- There are concerns with power imbalances in mediation, particularly in family law.
- Lawyers are often in the best position to control files and get them on the appropriate track, by conferring with opposing counsel.
- Duty counsel can help ensure that legal rights are not disregarded.

#### **Judge's Role**

- There has been experimentation with pairing judges and mediators.
- Power, respect, and ability to persuade flows from the judicial office. Many parties want to get in front of a judge.
- Judges can rectify power imbalances.
- Why not a highly skilled mediator? Parties may desire a judge because they hope for a

substantively just solution.

- Pre-trial conferencing is supported by lawyers that desire settlement, and seek the legitimacy that comes with judicial involvement and approval.
- Judicial mediator role and case management role may be incompatible for one file.
- If triage is a legitimate option, should that person be a judge? Judges may be concerned with it being some other professional. Prothonotaries or masters are used in some jurisdictions – that may be worth exploring.

### ***Early intervention***

- Desire for more judicial input at an earlier stage. Pre-trial conferencing is highly successful and desired by parties, so we should try to access the benefits of such a process at an earlier stage where appropriate.
- The new Queen’s Bench Rules are flexible, and *do* allow for judges to shape processes case-by-case.
- Case management is growing in popularity and applications for the process are usually granted.
- Case conferencing is rare, but is flexible, can be helpful, could be expanded and is available prior to disclosure. Pre-trials can and are sometimes ordered before disclosure.
- The extent to which judges participate early depends on the information available and the nature of the case and the parties. Doing the “expedient thing” can be a denial of substantive justice. Judges wish to be adequately informed about the facts and law when they mediate or decide a matter.
- Early mediation of family law disputes can be difficult because participants can be too emotional, and subject to the effect of power imbalances.
- Interim orders often allow parties to work things out, but more frequent use of pre-trial conferencing could be helpful. Interim orders often effectively become permanent, as files do not proceed, which could create access to injustice.
- What about a process catching parties before affidavits (that can entrench them in positions)?

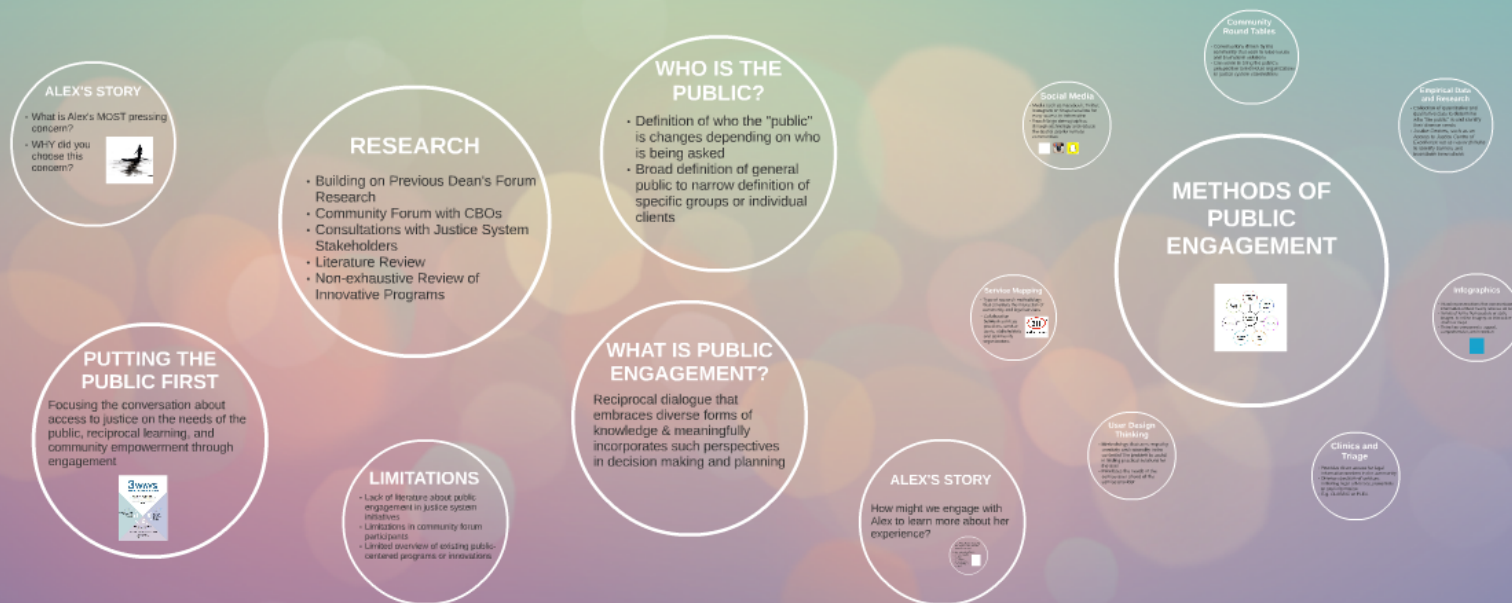
### ***Triage***

- Hypothetical person with a “birds-eye view” looking at every file at the beginning of the process and providing guidance as to what track is best for that file to follow.
- Many files need to follow a particular path, and the typical process is not best or required for all files.
- There are Masters processes in some jurisdictions. They are like judges with a narrower scope.
- In some jurisdictions judges may be “seized” of a file, allowing one judge who knows the file to hear all matters.
- Further to the questions surrounding judicial roles, a dynamic triage process may require three separate judges (triage, case management, trial).
- To what extent do we want to take away power from the legal profession to run the system?

## **V. APPENDICES**

- 1. "Putting the Public First" Prezi presentation (page 17).**
- 2. "Action" to Justice: Addressing Access to Justice in the Saskatchewan Court of Queen's Bench Prezi presentation (page 40).**
- 3. List of Breakout Group members (page 54).**

# PUTTING THE PUBLIC FIRST



# PUTTING THE PUBLIC FIRST

**ALEX'S STORY**

- What is Alex's MOST pressing concern?
- WHY did you choose this concern?



**RESEARCH**

- Building on Previous Dean's Forum Research
- Community Forum with CBOs
- Consultations with Justice System Stakeholders
- Literature Review
- Non-exhaustive Review of Innovative Programs

**WHO IS THE PUBLIC?**

- Definition of who the "public" is changes depending on who is being asked
- Broad definition of general public to narrow definition of specific groups or individual clients

**METHODS OF PUBLIC ENGAGEMENT**



**PUTTING THE PUBLIC FIRST**

Focusing the conversation about access to justice on the needs of the public, reciprocal learning, and community empowerment through engagement



**WHAT IS PUBLIC ENGAGEMENT?**

Reciprocal dialogue that embraces diverse forms of knowledge & meaningfully incorporates such perspectives in decision making and planning

**LIMITATIONS**

- Lack of literature about public engagement in justice system initiatives
- Limitations in community forum participants
- Limited overview of existing public-centered programs or innovations

**ALEX'S STORY**

How might we engage with Alex to learn more about her experience?



**Social Media**

How might we use social media to engage the public? How might we use social media to engage the public? How might we use social media to engage the public?



**Community Round Tables**

Community Round Tables: How might we use community round tables to engage the public? How might we use community round tables to engage the public? How might we use community round tables to engage the public?

**Qualitative Data and Research**

Qualitative Data and Research: How might we use qualitative data and research to engage the public? How might we use qualitative data and research to engage the public? How might we use qualitative data and research to engage the public?

**Service Mapping**

Service Mapping: How might we use service mapping to engage the public? How might we use service mapping to engage the public? How might we use service mapping to engage the public?



**Infographics**

Infographics: How might we use infographics to engage the public? How might we use infographics to engage the public? How might we use infographics to engage the public?



**User Design Thinking**

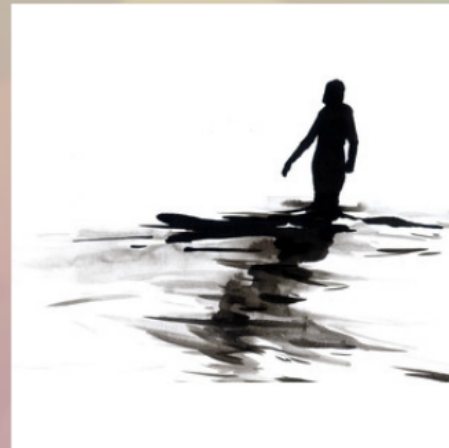
User Design Thinking: How might we use user design thinking to engage the public? How might we use user design thinking to engage the public? How might we use user design thinking to engage the public?

**Clinic and Triage**

Clinic and Triage: How might we use clinic and triage to engage the public? How might we use clinic and triage to engage the public? How might we use clinic and triage to engage the public?

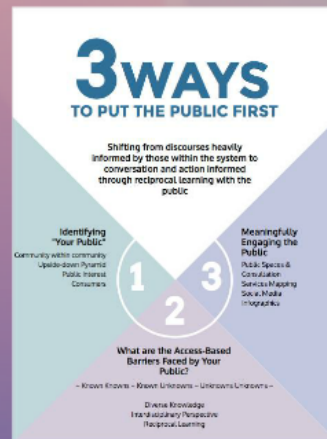
# ALEX'S STORY

- What is Alex's MOST pressing concern?
- WHY did you choose this concern?



# PUTTING THE PUBLIC FIRST

Focusing the conversation about access to justice on the needs of the public, reciprocal learning, and community empowerment through engagement



# 3 WAYS

## TO PUT THE PUBLIC FIRST

Shifting from discourses heavily informed by those within the system to conversation and action informed through reciprocal learning with the public

### Identifying "Your Public"

Community within community  
Upside-down Pyramid  
Public Interest  
Consumers

1

3

2

### Meaningfully Engaging the Public

Public Spaces & Consultation  
Services Mapping  
Social Media  
Infographics

### What are the Access-Based Barriers Faced by Your Public?

~ Known Knowns ~ Known Unknowns ~ Unknowns Unknowns ~

Diverse Knowledge  
Interdisciplinary Perspective  
Reciprocal Learning

# RESEARCH

- Building on Previous Dean's Forum Research
- Community Forum with CBOs
- Consultations with Justice System Stakeholders
- Literature Review
- Non-exhaustive Review of Innovative Programs

# LIMITATIONS

- Lack of literature about public engagement in justice system initiatives
- Limitations in community forum participants
- Limited overview of existing public-centered programs or innovations

# WHO IS THE PUBLIC?

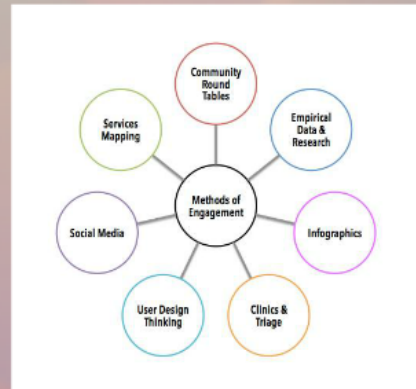
- Definition of who the "public" is changes depending on who is being asked
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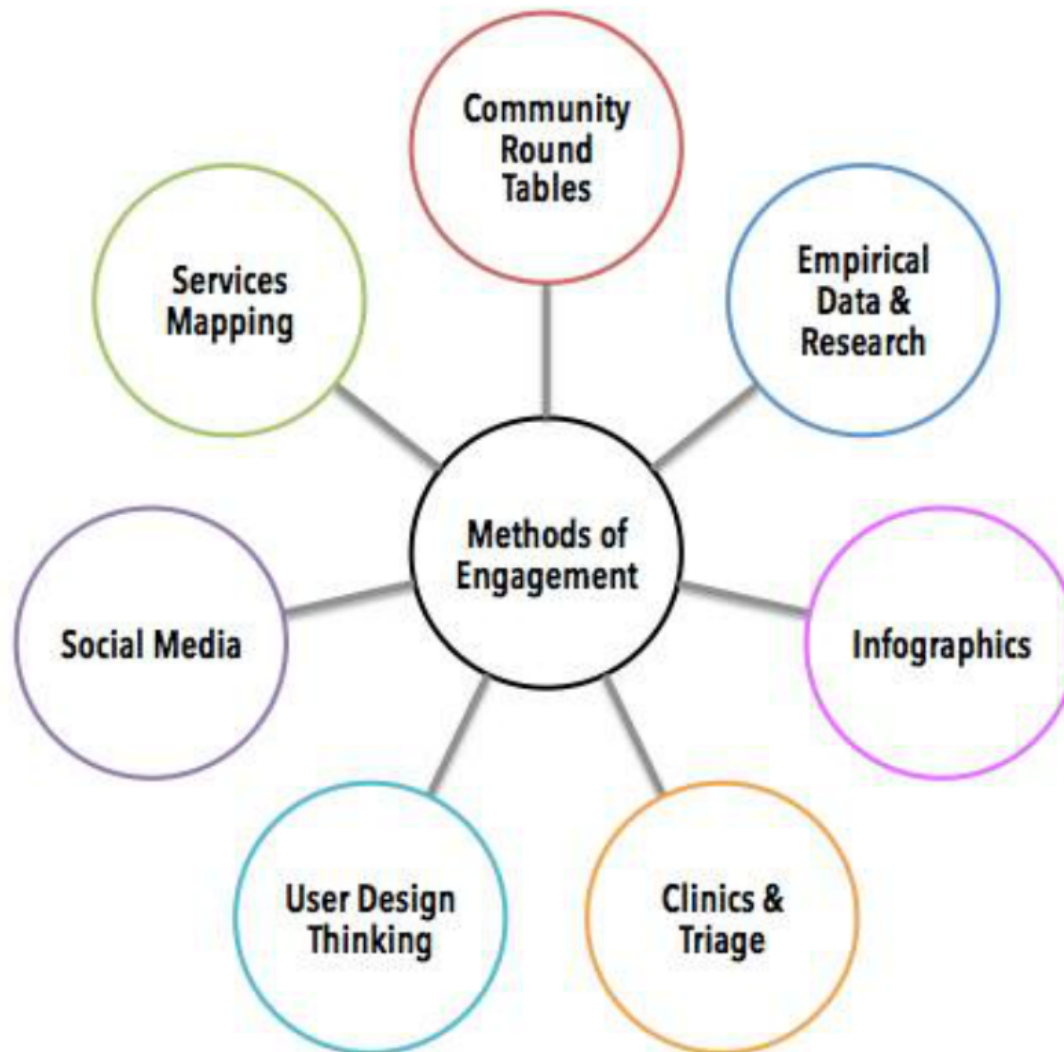
# WHAT IS PUBLIC ENGAGEMENT?

Reciprocal dialogue that embraces diverse forms of knowledge & meaningfully incorporates such perspectives in decision making and planning



# METHODS OF PUBLIC ENGAGEMENT





# Service Mapping

- Type of research methodology that considers the interaction of community and legal services
- Collaboration between services providers, service users, stakeholders and community organizations



# Social Media

- Media such as Facebook, Twitter, Instagram or Snapchat allow for easy access to information
- Reach large demographics through technology and reduce the spatial gap for remote communities



# Community Round Tables

- Conversations driven by the community that seek to raise issues and brainstorm solutions
- Can serve to bring the public's perspective to individual organizations or justice system stakeholders

# Empirical Data and Research

- Collection of quantitative and qualitative data to determine who "the public" is and identify their diverse needs
- Justice Centres, such as an *Access to Justice Centre of Excellence* act as research hubs to identify barriers and brainstorm innovations

# Infographics

- Visual representations that communicate information without heavy reliance on text
- Variety of forms from posters or static images, to online imagery, or interactive charts or maps
- Three key components: appeal, comprehension, and retention



# WHY INFOGRAPHICS WORK

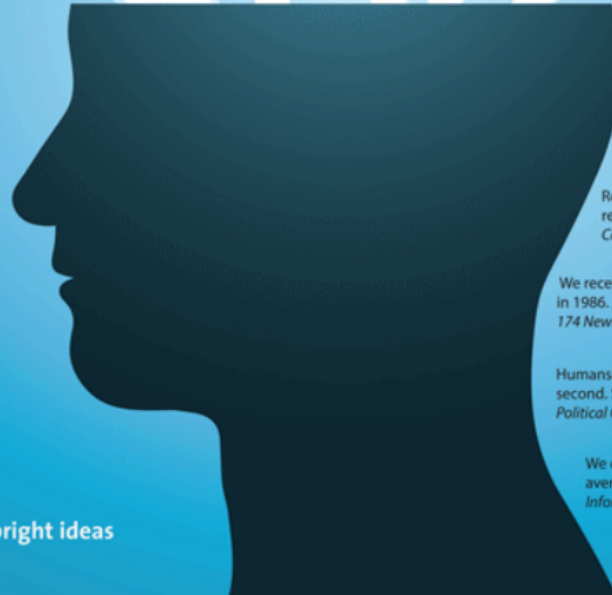
**COLOR**  
**80%**  
MORE LIKELY TO BE  
**READ**

**1/10**  
OF A SECOND  
TO GET THE SENSE OF A  
**VISUAL**

**5** TIMES  
MORE  
**INFO**  
THAN IN 1986

**28%**  
WORDS READ  
PER VISIT

**34** GIGABYTES  
DAILY  
**100,500**  
WORDS



On average, users only read 28 percent of words per visit.  
Nielsen, J. (2008). *How Little Do Users Read?*  
[www.nngroup.com](http://www.nngroup.com)

Researchers found that color visuals increase the willingness to read by 80 percent. Green, R. (1989). *The Persuasive Properties of Color*. Marketing Communications. [www.office.xerox.com](http://www.office.xerox.com)

We receive five times the amount of information every day as we did in 1986. Alleyne, R. (11 Feb 2011). *Welcome to the Information Age — 174 Newspapers a Day*. *The Telegraph*. [www.telegraph.co.uk/science](http://www.telegraph.co.uk/science)

Humans can get a sense of a visual scene in less than 1/10 of a second. Semetko, H. & Scammell, M. (2012). *The SAGE Handbook of Political Communication*. SAGE Publications. [www.uksagepub.com](http://www.uksagepub.com)

We consume 34 gigabytes (100,500 words) outside of work on an average day. Bohn, R. & Short, J. (2012). *Measuring Consumer Information*. *International Journal of Communication*, Vol 6. [ijoc.org](http://ijoc.org)

**WICK**  
MARKETING

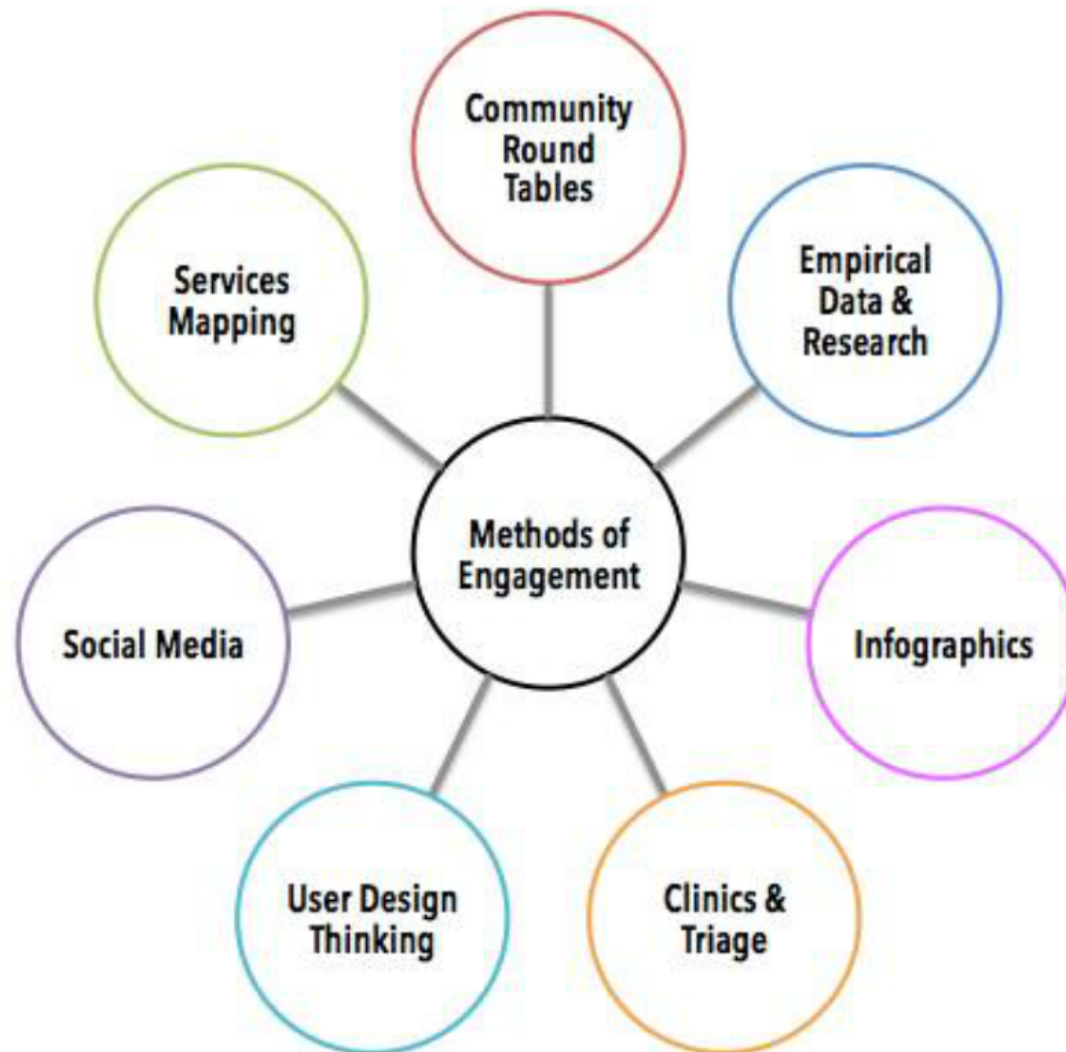
igniting brands with bright ideas

# Clinics and Triage

- Provides direct access for legal information seekers in the community
- Diverse spectrum of services including legal advocacy, pamphlets or oral information
- E.g. CLASSIC or PLEA

# User Design Thinking

- Methodology that uses empathy, creativity and rationality in the context of the problem to assist in finding practical solutions for the user
- Prioritizes the needs of the service user ahead of the service provider



# ALEX'S STORY

How might we engage with Alex to learn more about her experience?

Are you already engaging the public in some of the ways discussed?

Do you have questions...

- About a specific method?
- About how someone in the room is using a method?



Are you already engaging the public in some of the ways discussed?

Do you have questions...

- About a specific method?
- About how someone in the room is using a method?



# PUTTING THE PUBLIC FIRST



# Appendix 2: "Action" to Justice: Addressing Access to Justice in the Saskatchewan Court of Queen's Bench Prezi presentation



### Current Initiatives

<b>Queen's Bench Initiatives</b> <ul style="list-style-type: none"> <li>• Modified Court Rules</li> <li>• Mandatory Mediation</li> <li>• Pre-Trial Conferences</li> <li>• Waiver of Administrative Fees</li> </ul>	<b>Other Initiatives</b> <ul style="list-style-type: none"> <li>• Family Law Forms Assistance</li> <li>• Saskatchewan Family Matters Program</li> <li>• Family Law Information Centre</li> <li>• Family Law Clinics</li> <li>• Family Law Advice Clinic</li> <li>• Pro Bono Law Saskatchewan</li> <li>• Public Legal Education Assistance</li> <li>• Legal Advice Clinic (CLASSIC)</li> </ul>
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### Mediation

**Options for Reform**

- Voluntary
- Alternative timing
- Improving active participation

**Considerations**

- Success of existing model
- Attendance vs. Participation
- Ensuring disclosure of information

### Judicial Dispute Resolution and Pre-Trial Conferences

**Options for Reform**

- Early and active involvement

**Considerations**

- Appropriate training
- Judge's role
- Timing
- Proportionality

### Expanding Role of Non-Judicial Court Workers

**Options for Reform**

- Additional training for workers
- Triage roles

**Considerations**

- Cost-effectiveness
- Increasing efficiency
- Appropriate skills and experience
- Tension with judicial role

### Measuring Success

<ul style="list-style-type: none"> <li>• Need for outcomes</li> <li>• Measurements of interest</li> </ul>	<ul style="list-style-type: none"> <li>• Pilot Projects</li> <li>• Access to Justice Centre of Excellence</li> </ul>
---	--

### Revised Court of Queen's Bench Rules

**Options for Reform**

- Mandatory system with opt-out
- Education for legal professionals
- Consultation with stakeholders

**Considerations**

- Past success of mandatory regime
- Potential for increased complexity
- Fairness vs. Expediency

### Triage

**Options for Reform**

- Judicial Triage
- Non-Judicial Triage

**Considerations**

- Starting from scratch
- Judge's roles
- Problems with availability of information
- Party self-determination

### Judicial Case Management

**Options for Reform**

- Triage directed
- Default mandatory regime
- Increasing party awareness

**Considerations**

- Timing
- Judge's role
- Mandatory vs. Voluntary

# Addressing Access to Justice in the Saskatchewan Court of Queen's Bench

**Action to Justice:  
Addressing Access to  
Justice in the Saskatchewan  
Court of Queen's Bench**

**Julia Quigley**

**Graham Sharp**

**Janelle Souter**

## Current Initiatives

### Queen's Bench Initiatives

- Modified Court Rules
- Mandatory Mediation
- Pre-Trial Conferences
- Waiver of Administrative Fees

### Other Initiatives

- Family Law Forms Assistance
- Saskatchewan Family Matters Program
- Family Law Information Centre
- Family Law Clinics
- Family Law Advice Clinic
- Pre Bench Law Saskatchewan
- Public Legal Education Assistance
- Legal Advice Clinic (CLASSIC)

## Mediation

### Options for Reform

- Voluntary
- Alternative timing
- Improving active participation

### Considerations

- Success of existing model
- Attendance vs. Participation
- Ensuring disclosure of information

## Judicial Dispute Resolution and Pre-Trial Conferences

### Options for Reform

- Early and active involvement

### Considerations

- Appropriate training
- Judge's role
- Timing
- Proportionality

## Expanding Role of Non-Judicial Court Workers

### Options for Reform

- Additional training for workers
- Triage roles

### Considerations

- Cost-effectiveness
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- Appropriate skills and experience
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# Action to Justice

## Measuring Success

- Need for outcomes
- Pilot Projects
- Measurements of interest
- Access to Justice Centre of Excellence

## Revised Court of Queen's Bench Rules

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- Party self-determination

## Judicial Case Management

### Options for Reform

- Triage-director
- Default mandatory regime
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### Considerations

- Timing
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- Mandatory vs. Voluntary

# Addressing Access to Justice in the Saskatchewan Court of Queen's Bench

# Current Initiatives

## Queen's Bench Initiatives

- Modified Court Rules
- Mandatory Mediation
- Pre-Trial Conferences
- Waiver of Administrative Fees

## Other Initiatives

- Family Law Forms Assistance
- Saskatchewan Family Matters Program
- Family Law Information Centre
- Family Law Clinics
- Family Law Advice Clinic
- Pro Bono Law Saskatchewan
- Public Legal Education Assistance
- Legal Advice Clinic (CLASSIC)

## Current Initiatives

### Queen's Bench Initiatives

- Modified Court Rules
- Mandatory Mediation
- Pre-Trial Conferences
- Waiver of Administrative Fees

### Other Initiatives

- Family Law Forms Assistance
- Saskatchewan Family Matter
- Family Law Information Cent
- Family Law Clinics
- Family Law Advice Clinic
- Pro Bono Law Saskatchewan
- Public Legal Education Assis
- Legal Advice Clinic (CLASS)

### Revised Court of Queen's Bench Rules

#### Options for Reform

- Mandatory system with opt-out
- Education for legal professionals
- Consultation with stakeholders

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### Judicial Case Management

#### Options for Reform

- Triage-directed
- Default mandatory regime
- Increasing party awareness

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# Action to Justice

## Measuring Success

- Need for outcomes
- Measurements of interest
- Pilot Projects
- Access to Justice Centre Excellence

# Addressing Access to Justice in the Saskatchewan

# Revised Court of Queen's Bench Rules

## Options for Reform

- Mandatory system with opt-out
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# Triage

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- Non-Judicial Triage

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- Judge's roles
- Problems with availability of information
- Party self-determination

# Judicial Case Management

## Options for Reform

- Triage-directed
- Default mandatory regime
- Increasing party awareness

## Considerations

- Timing
- Judge's role
- Mandatory vs. Voluntary

## Current Initiatives

### Queen's Bench Initiatives

Revised Court Rules

Restorative Mediation

Pre-Trial Conferences

Reduction of Administrative Fees

### Other Initiatives

- Family Law Forms Assistance
- Saskatchewan Family Matters Program
- Family Law Information Centre
- Family Law Clinics
- Family Law Advice Clinic
- Pro Bono Law Saskatchewan
- Public Legal Education Assistance
- Legal Advice Clinic (CLASSIC)



# Access to Justice

## Measuring Success

Key outcomes

Measurements of interest

- Pilot Projects
- Access to Justice Centre of Excellence

### Mediation

#### Options for Reform

- Voluntary
- Alternative timing
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- Success of existing model
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- Cost-effectiveness
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# in the Saskatchewan Court of Queen's Bench

# Mediation

## Options for Reform

- Voluntary
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- Success of existing model
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## Measuring Success

- Need for outcomes
- Measurements of interest
- Pilot Projects
- Access to Justice Centre of Excellence

ce in the Saskatchewan



# Action to Justice

## Appendix 3: List of Breakout Group members

### BREAKOUT GROUPS

1:00 – 2:30 p.m.

**\* Please note that you have been assigned to a breakout group based on your perceived area of interest. If you wish to join a different group or participate in a different area for discussion, please feel free to do so.**

TOPIC: PUTTING THE PUBLIC FIRST

#### Room 74

Brea Lowenberger (Access to Justice Coordinator)  
Chief Judge Plemel (Saskatchewan Provincial Court)  
Barbra Bailey (Law Society, Policy Counsel)  
Joel Janow (PLEA, Executive Director)  
Sakej Henderson (Native Law Centre of Canada) (**regrets sent**)  
Rachel Sarjeant-Jenkins (UofS Library, Assoc. Dean) (**regrets sent**)  
Alison Jestadt (United Way, 211 Sask. Program Coordinator)  
Christine Varnam (Saskatoon Public Library, Legal Librarian)  
Chantelle Johnson (CLASSIC, Executive Director)  
Sarah Nordin (College of Law Dean's Forum Student)

#### Room 78

Sarah Buhler (College of Law Faculty)  
Chris Lafleur (Native Law Centre of Canada)  
Kara-Dawn Jordan (Pro Bono Law Sask., Executive Director)  
Janet Clarke (Essential Voices Program)  
Melanie Hodges-Neufeld (Law Society, Director of Legal Resources)  
Stacey Muller (Ministry of Justice Innovation Division)  
Sarah Britto (University of Regina Justice Studies Program)  
Greg Wurzer (College of Law, Associate Librarian) (**regrets sent**)  
Kelsey Corrigan (College of Law Dean's Forum Student)  
Lorne Fagnan (College of Law Dean's Forum Student)

TOPIC: ACCESSIBILITY OF SUPERIOR COURTS

#### Room 254

Glen Gardner (Assistant Deputy Minister of Justice)  
Justice Konkin (Saskatchewan Court of Queen's Bench)  
Beth Bilson, Q.C. (College of Law, Interim Dean)  
Tom Schonhoffer, Q.C. (Law Society, Executive Director)  
Evert van Olst, Q.C. (Law Foundation of Sask.) (**regrets sent**)  
Heather Heavin (College of Law Faculty)  
Brenda Hildebrandt, Q.C. (Law Society, Access to Legal Services Committee)  
Janelle Souter (College of Law Dean's Forum Student)

#### Room 120

Michaela Keet (College of Law Faculty)  
Justice. Barrington-Foote (Saskatchewan Court of Queen's Bench)  
Gerald Tegart, Q.C. (Law Society, Access to Legal Services Committee)  
Kylie Head, Q.C. (Canadian Bar Association)  
Wanda Wieggers (College of Law Faculty)  
Kyla Shea (Legal Aid Saskatchewan)  
Charmaine Panko (Dispute Resolution Sector) (**regrets sent**)  
Graham Sharp (College of Law Dean's Forum Student)  
Julia Quigley (College of Law Dean's Forum Student)