The Great Debate 2007

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HOW DO WE ENSURE ACCESS TO JUSTICE FOR ALL?

Summary
Access to justice remains a barrier to rights protection for many Canadians. Funding levels and program cuts continue to threaten existing mechanisms of access to justice.

On April 18, 2007 legal scholars debated the success of these mechanisms and the future direction for ensuring that Canadians can take advantage of their rights under Canadian Law.

The DVD includes 10-minute clips of each speaker followed by question and answer session with the audience.

Classroom Activities

The Importance of Justice

Using the *Placemat* technique outlined below, have students discuss their conceptions of justice with each other and then as a class.

a) Divide students into groups of 3-4 and give each group one piece of chart paper and enough markers for each group member. Ask students to write the word JUSTICE in a circle in the middle of the paper and write any words, phrases, pictures, symbols, etc. that they associate with the word JUSTICE around it. Give students about five minutes to complete this exercise.

b) Once finished, ask students to walk around the room and look at other groups' papers. Ask them to write down the names of people or organizations that they associate with any of the words or images they see around the room. (e.g. A student may write Beverly McLaughlin beside the word 'judge' or Nelson Mandela beside the phrase 'civil rights').

c) Create a class mind map using students' conceptions of justice.

d) Discuss the following questions with students:

- What does justice mean to you?
- What does a just society look like?
- What is access to justice? Why is it important?
- How do we create an accessible justice system?

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Have students complete the Viewing Questions on pages 10-11 while watching The Great Debate 2007 DVD. Students can refer to the Viewing Notes on pages 7-9.

Discussion Questions

1. What common themes emerged from the speakers' presentations with regard to access to justice?
2. Professor St. Lewis discusses the importance of perspective and location in society with regard to access to justice. What does she mean by this? Give an example of how two people may face an access to justice issue differently.
3. What does Prof. Hutchinson say about the role of democratic institutions in access to justice issues? What do you think the role is for governments in making the justice system more accessible? The courts? Citizens?
4. How is access to courts different from access to justice?
5. Do you think the *Charter* should guarantee socioeconomic rights? What would be protected by socioeconomic rights? What kinds of legal challenges might be brought to the courts on socioeconomic issues?
6. Do you think people in Canada have equal access to the justice system? Why or why not?
7. How do you think access to the justice system compares to access to the education or healthcare systems in Canada?
8. What mechanisms (programs, funds, tribunals, etc.) are currently in place to make the justice system accessible? What developments do you think will occur in the future?
9. How are access to justice issues in Canada different from other countries? Give some examples.

Accessing the Justice System

Have students read the following scenarios and research the steps that each person could take to access the justice system. Have students complete *Worksheet 1: Accessing the Justice System* on page 12.

Scenario One: Tala has been working as a caregiver in Canada for 9 months as part of the Live-In Caregiver Program. She lives with the Bernard family and cares for their two small children. When Tala first began working for the family, she received every Tuesday off. However, for the past 3 months Mrs. Bernard has asked Tala to help with the children on her days off. On several occasions she has worked seven days in a row and has never been paid for the extra hours. In addition, Mr. Bernard has a group of male friends that he invites over to the house once a week. They often ask Tala to get them food and drinks and she has heard them make inappropriate racial comments about her before. A few days ago Tala returned to the house and noticed that she had forgotten to lock her bedroom door. When she went inside her room, she could tell that her clothing and personal belongings had been moved around. When Tala confronted the Bernard's about the incidents they threatened to fire her and have her deported back to the Philippines.

Scenario Two: Nineteen-year-old Martin works full time at a video store where he earns $14000/year. One night, while he was driving home from a house party, he stopped at a gas station and pulled up next to a police car. When Martin got out of his car to pump his gas, a small bag of marijuana fell out onto the ground in front of the police officer. Martin was charged with possession of marijuana under s. 4(1) of the Controlled Drugs and Substances Act. Martin spent the night at the police station where he was fingerprinted and he has a bail hearing in two days. He has no prior convictions and a friend of Martin's suggested he look into a diversion program.

Scenario Three: Maria is a 34-year-old mother of two children, seven and nine. She has been divorced for two years and shares custody of her children with her ex-husband. Maria works part time at a bank and part time at a local department store. She attends night school two days a week where she is completing her bachelor's degree. Maria's ex-husband claims that she isn't at home enough and that she is neglecting the children. He is applying to the court for sole custody of the children. Maria's annual salary, including both jobs and child/spousal support, and after daycare costs have been deducted, is $25000/year.

Advancing Access to Justice

a) Ask students to select a program that currently makes the justice system more accessible in Canada. Students may choose a community legal clinic, legal aid service, advocacy group, tribunal, fund, public legal education organization, or another of their choosing. Students can refer to the Online Resources on page 5 for more ideas. Have students research the program and record their findings in *Worksheet 2: Advancing Access to Justice* on page 13.

b) Have students create a proposal for a new strategy to improve access to the justice system. Students may model their strategy after an existing one or create something new. A strategy might be a new program, organization, reform to the justice system, source of funds, education campaign, etc. Ask students to use the headings in the chart on page 13 to organize their proposal. Have students present their ideas to the class.

A Universally Accessible Justice System

Ask students to write a 1-2 page opinion paper answering the following question. Students should give supporting reasons for their view.

Should the justice system be universally accessible to Canadians, like the education or healthcare systems, funded completely or partly by taxpayers?

Online Resources

Access to Justice Network
www.acjnet.org

Canadian Legal Aid Services

- Alberta - http://www.legalaid.ab.ca/
- British Columbia - http://www.lss.bc.ca/default/Default.asp
- Manitoba - http://www.legalaid.mb.ca/
- Newfoundland and Labrador - http://www.justice.gov.nl.ca/just/Other/otherx/legalaid.htm
- New Brunswick - http://www.gnb.ca/cour/index-e.asp
- Northwest Territories - http://www.justice.gov.nt.ca/legalaid/LegalAid.htm
- Nova Scotia - http://www.gov.ns.ca/just/divisions/related_agencies/legal_aid.asp
- Nunavut Legal Aid - http://www.nulas.ca/
- Ontario - www.legalaid.on.ca
- Prince Edward Island - http://www.gov.pe.ca/infopei/index.php3?number=46064
- Quebec - http://www.justice.gouv.qc.ca/english/sujets/glossaire/aide-jur-a.htm
- Saskatchewan - http://www.legalaid.sk.ca/
- Yukon Territory - http://www.legalaid.yk.ca/

CLEONet
http://www.cleonet.ca/

Community Legal Education Ontario (CLEO)
http://www.cleo.on.ca/

Court Challenges Program of Canada
http://www.ccppcj.ca/

Justice for Children and Youth
http://www.jfcy.org/

The Law Society of Upper Canada – Access to Justice Fact Sheet
http://www.lsuc.on.ca/latest-news/b/fact/access-to-justice/

Links to Ontario Community Legal Clinics
http://www.legalaid.on.ca/en/links/Community.asp

Ontario Justice Education Network
www.ojen.ca

Pro Bono Law Ontario
http://www.pblo.org/

Public Legal Education Association of Canada
www.pleac.ca

Speaker Resources

Joanne St. Lewis – University of Ottawa, Faculty of Law
http://www.commonlaw.uottawa.ca/index.php?option=com_contact&task=view&contact_id=55&lang=en

Allan Hutchinson – Osgoode Hall Law School, York University
http://www.osgoode.yorku.ca/faculty/Hutchinson_Allan_C.html

Carissima Mathen – University of New Brunswick, Faculty of Law
http://law.unb.ca/faculty/cmathen.html

Moderator Janet Leiper – As of March 2008, Janet Leiper is the Director of the Osgoode Public Interest Requirement and Visiting Professor, Public Interest Law at Osgoode Hall Law School. She was called to the Bar in 1987. She is a certified specialist in criminal law, and has practised as a criminal defence counsel and as an administrative lawyer in matters of professional regulation. She was the Chair of Legal Aid Ontario from 2004-2007 and prior to that, counsel to the Ontario Review Board. She is an Alternate Chair of the Nunavut Review Board and for eight years, she was legal member and Alternate Chair of the Ontario Review Board.

Viewing Notes

Joanne St. Lewis – University of Ottawa, Faculty of Law
(5:30-14:20)

Moderator's Question: *Are we all served by our existing roots to justice?*

1. The importance of the meaning of justice and of the perspective of the individual

2. Limitations of legal mechanisms, including the *Charter*
   - Legal instruments need to focus on those doing the discriminating rather than on those experiencing discrimination

3. How do we measure the success of the justice system?
   - Testing the boundaries of our tolerance, openness to diversity, and understanding of faith
   - A politics of fear have shaped the law and the legal system (e.g. Patriot Act, anti-terrorism legislation) and there is a struggle to recognize the seriousness of such issues while also protecting human rights

4. Do we live in a just society?
   - Access to justice depends on your position in society and what perspective you're coming from
   - The justice system has difficulty protecting people's rights if they are not in a position to assert them
   - Our society becomes less just when mechanisms for accessing the justice system disappear
   - The further away one is from having the capacity and knowledge to access the justice system, the less likely they are to think that we live in a just society
   - The rights of Canadians should be seen as the floor of our entitlements (the minimum), not the ceiling (the maximum)

5. Is the justice system relevant to those who need it most?
   - The ability to articulate and advance our rights is essential for an effective justice system
   - Often the people who need the system most do not affect how the law should work
   - People are increasingly being excluded from the justice system through reductions in legal aid, the loss of the Court Challenges Program, etc.
   - There is a collective responsibility in society to make the justice system more inclusive

Allan Hutchinson – Osgoode Hall Law School, York University
(14:21 –24:45)

Moderator's Question: *What does access to justice mean?*

1. Access to justice is a broad notion that involves more than just access to courts

2. Justice in the context of the democratic system
   - When thinking about justice, people tend to focus on courts and ignore the executive and legislative branches of government
   - People need to focus on ways of making parliament and the provincial legislature more responsive to people's needs
   - These bodies need to be open and representative of the population in order to be accessible to people
   - Citizens need to be able to access democratic institutions in order to advance access to justice
   - People tend to turn to the court system rather than bringing pressure to bear on political systems

3. Practical ways to advance access to justice
   - Educate people about legal traditions, how the justice system works, and the rights and responsibilities of citizens
   - Put more pressure on the justice system to enact laws that are more readable and understandable, and thereby more accessible
   - Ensure that the legal profession is representative of society
   - Require lawyers to assume a greater collective responsibility for including people who are presently excluded from the justice system

4. The role of courts
   - Courts are part of the solution to increasing access to justice, but have also historically been part of the problem
   - The courts need to be more open and accessible, and judges need to be representative of society
   - If law and justice is valued in the same way as education and healthcare, then lawyers should be available to everyone, and not distributed on the basis of people's ability to pay
   - There are many barriers in place in access to justice, including whether the justice system sufficiently incorporates people's languages, traditions, and cultures, and whether courts are sufficiently accessible to those with physical disabilities

Carissima Mathen – University of New Brunswick, Faculty of Law
(24:47-39:32)

Moderator's Questions: *What potential or limitations do our existing mechanisms for accessing the justice system pose for social and economic rights expansion? How do access to justice issues limit or promote certain kinds of rights protections?*

1. What is meant by socioeconomic rights?
   - Obligations on the state involving concrete steps, usually involving economic assistance and sometimes involving procedural assistance, to ensure that everyone has the resources to lead fully functional and participatory lives and reach their full potential

2. Limitations on access to justice with respect to socioeconomic rights
   - People tend to have a narrow sense of justice in that most rights analyses are focused around criminal law
     - Makes it challenging to think of other contexts in which rights also play an important role and which have similarly important impacts on people's lives – for example, access to healthcare, employment, and employment insurance
   - Tendency to focus on litigation when talking about rights action
     - The courts as institutions face barriers, both functional and institutional, which prevent them from leading the march to social change
     - Lawyers have power within the litigation context to shape rights-based arguments

3. The impact of the courts on rights consciousness
   - The court system has much greater ability to attract the attention of political elites than do disadvantaged individuals
   - The courts are influential in shaping the law provincially and federally; they have had an impact on rights in criminal law, and in relation to women's equality and discrimination
   - The courts have not exerted this same influence with relation to socioeconomic rights
   - Thinking of socioeconomic interests as rights is a new way of thinking about rights
   - The *Charter* and the discourse around rights uses a 19th century model which prioritizes liberty, freedom, autonomy as the most important values that need protection in society
   - This model suggests that rights are there to protect people from the state thereby creating a conception of the state as something to be feared and resisted rather than something that creates positive difference in people's lives
   - Courts are cautious in taking actions that will require the state to make policy changes costing large sums of money
   - There is complacency in Canada with regards to socioeconomic rights
   - Courts haven't ruled out the possibility that socioeconomic rights will be guaranteed by the *Charter* but these rights are not recognized explicitly either

4. The cancelling of the Court Challenges Program symbolizes a breakdown in the openness of the relationship between citizens and the government

5. The current limitations on access to justice could be motivators for positive change

Viewing Questions

1. According to Prof. St. Lewis, why is it important to think about an individual's position in society when considering access to justice issues?

2. What does Prof. St. Lewis mean when she says "you get what you're able to demand from the system?"

3. In Prof. St. Lewis' view, what factors affect whether someone is likely to think that we live in a just society?

4. What does Prof. St. Lewis suggest people need to do to make the justice system more inclusive and accessible?

5. According to Prof. Hutchinson, how do people tend to think about justice?

6. How can parliament and the provincial legislature be more responsive to citizens' needs?

7. What are four practical ways Prof. Hutchinson suggests for advancing access to justice?

8. What analogy does Prof. Hutchinson make between the justice system and the healthcare and education systems? What conclusions does he make about access to justice from this?

9. How does Prof. Mathen define socioeconomic rights?

10. Prof. Mathen identifies two limitations on access to justice with regard to socioeconomic rights. What are they?

11. How do the courts impact the way we think about rights, according to Prof. Mathen, and why? How do the courts view socioeconomic rights in particular?

12. What does the cancellation of the Court Challenges Program suggest about how the government regards socioeconomic rights initiatives?

Worksheet 1: Accessing the Justice System

	Scenario One	Scenario Two	Scenario Three
What part(s) of the justice system are involved? (i.e. criminal law, labour law, etc.)			
How would this person access the justice system?			
Is this person eligible for legal aid? How do you know?			
What barriers does this person face in accessing the justice system?			
What websites would provide this person with information and assistance?			

Worksheet 2: Advancing Access to Justice

Name of Program, Organization, etc.	
Mandate (i.e. what is the goal or mission of the organization/program?)	
Description of Services	
Population Served (i.e. eligibility requirements, location, etc.)	
How the Services Can be Accessed (i.e. internet, application procedure, etc.)	
How it Makes the Justice System More Accessible	