

**DELIBERATE “DESIGN”:
WHY CANADA’S LEGAL SYSTEM NEEDS IT**

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A DISSERTATION SUBMITTED TO THE
FACULTY OF GRADUATE STUDIES
IN PARTIAL FULFILLMENT OF THE REQUIREMENTS
FOR THE DEGREE OF
DOCTOR OF PHILOSOPHY

GRADUATE PROGRAM OF LAW
YORK UNIVERSITY
TORONTO, ONTARIO

MARCH 2026

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Abstract

This dissertation argues that Canada’s legal system was never deliberately “designed” with evidence, users, user experience, or continuous improvement in mind. Instead, it evolved from an amalgam of colonialism, rebellion, precedent, tradition, feelings, misguided intentions, and inertia. The lack of deliberate design and the traditions filling the gap may partly contribute to Canada’s “justice crisis” and Canada’s legal data deficit. Most people can’t access basic justice, and basic facts about Canada’s legal system remain mysteries.

This dissertation focuses on how the lack of deliberate design and legal data deficit interact with Canada’s justice crisis, judicial decision-making, and judicial decision-writing. Relying on human-centered design and other methodologies, it seeks to identify ways to enhance the user experience of individuals who use and interact with judicial decisions and courts. Over five chapters, it relies on two original surveys, legal doctrine, interdisciplinary perspectives, and comparative research:

- Chapter 1 explains why the legal system lacks a deliberate design and why the lack might undermine judicial independence, impartiality, and basic fairness. It advocates for more systems and design thinking in judicial decision-making and decision-writing instead of generally treating judges and courts as superhuman and super-elite.
- Chapter 2 discusses eight concerns that courts may have about calls to innovate, including standardization and the transparent collection, release, and analysis of data.
- Chapter 3 presents the results of the 2023 Survey, which builds on the 2019 Survey from prior research in “Life of a Reserve”, and discusses survey themes about judicial decisions and Canada’s courts from over 800 respondents.
- Chapter 4 examines the state of Canadian empirical legal research and the legal data deficit and prescribes improvements for governments, courts, law schools, and journals.
- Chapter 5 provides eight specific recommendations derived from the preceding chapters, including deliberately designed reforms such as standardized data gathering and transparency, ongoing data analysis, and standardization efforts.

This analysis tries to offer a straightforward thesis. At least part of Canada’s justice crisis might have a simple explanation. While actual laws and practices change, how we reform our legal system mostly doesn’t, including the continued lack of data gathering and transparency. Instead of continuing with historical approaches, this dissertation argues that justice system reformers must adopt more deliberate designs and greater epistemic humility. In other words, reformers must be more deliberate in reform efforts but less confident that efforts will necessarily “work.”

Acknowledgements

The many people that say writing a dissertation takes a village or community of people are right. But every once and awhile, a Ph.D. student gets lucky and convinces an exceptional person to supervise their work who exceeds every expectation and is a village in one person: that person is Dr. Sean Rehaag. Many other doctoral students have experienced what I have. As a colleague, Dr. Simon Wallace, recently said, those students become “Rehaagists”. Before I started this dissertation, Sean agreed to meet in a coffee shop to discuss my LL.M. project (“Life of Reserve”) even though he was on sabbatical and I wasn’t associated with Osgoode. He quickly shifted my thinking about judicial decision-writing and judicial decision-making, and he readily offered a technical solution to a problem I had gathering research data. Many students complain about supervisors who are either too deep in the weeds or inaccessible. Sean is neither. He offers timely and actionable help. He pushes you to think harder and more critically about your ideas; he truly wants to ensure you get it as right as possible. I couldn’t have a better supervisor. My only regret is that I didn’t finish this dissertation sooner or collaborate more with Sean. His mind, work ethic, and insight are unparalleled. I’ve never worked with a better, hardworking, more caring academic. He’s the real deal.

Sometimes luck strikes twice, and in my case, that reality was true. During my first-year, likely because of Sean’s credibility and stature as an academic, he convinced two of Canada’s leading academics to join my committee: now Dean Trevor Farrow and now Justice Lorne Sossin.

Many Ph.D. students never have one great person repeatedly opine on their work: I had three. Dean Farrow was essential for shaping my thinking on access to justice and what I was trying to say about it, and Justice Lorne Sossin pushed me to think deeply about judicial independence, impartiality, and equality before the law. I don’t know how they made time for me with their myriad demands and commitments, but they did, and their contributions to my work and thinking were invaluable. Many people call for action, but Dean Farrow and Justice Sossin have embodied action throughout their careers. They exemplify what it means to truly care about access to justice, the rule of law, the people the justice system affects, and so much more. They’re role models for walking the walk to ensure that more people access the justice and rule of law that our *Constitution* promises.

Many other people were essential in this work and offered me their time and support:

- Geoff Cowper KC: He read most of this dissertation and shared thoughts over email, meals, and coffee. His curiosity and desire to see a timely justice system are infectious;
- Jacob Danovitch: He helped me work on multiple parsing models for judicial decisions. While I never actioned a model (as the barriers were too large), he taught me a great amount about building models for data science and machine learning;
- Prof. Amy Salyzyn: She read every chapter I asked her to read and provided invaluable insights. Her comments on legal error fundamentally shifted the way I see that datapoint. In many ways, she was a shadow member of my Ph.D. committee;
- Hon. Martin Taylor KC: He read repeated parts of my work and wrote me long, insightful and priceless emails. His thinking on “judging” helped refine so much of my thinking. I challenge anyone to find a 90+ year old human whose mind remains so razor sharp;
- Hon. Peter Michalshyn: He provided the chance to interact with dozens of judges to present this work, and he also shared his thinking, including on this research;
- Hon. Jan Brongers: He taught me much of what I know about litigation and was willing to read my work and share views about perspectives of litigating and judging. He embodied what it meant to litigate for all Canadians, and his approach taught me a lot about the user experience of justice system participants and constitutional promises;
- Caroline Mandel: She challenged me to think more completely about many issues in this research and offered many suggestions along the way, including being instrumental in helping me develop parts of the 2023 Survey;
- Hon. John I. Laskin: He candidly shared his thinking and materials on issue-driven thinking and writing and helped me understand the possible promise of both;
- Dr. Margeret Boittin: She was fundamental in helping me develop the 2023 Survey. She also gave me the chance to develop an empirical methods class and generally explore the challenges of teaching empirical methods to J.D. and graduate students. In many ways, she was also a shadow member of my Ph.D. committee for Chapters 3 and 4;
- Drs. Gillian Hadfield and Dan Ryan: They taught me so much about human-centered design and trying to improve user experience, including during COVID-19 when we tried to design a new way of accessing health care data. Working and learning with them has been some of the most rewarding experiences of my academic and professional careers;
- Dr. Andrew Green: While he didn’t read this Ph.D. dissertation, his guidance during “Life of a Reserve” pervades my thinking about the legal system, judges, and judging. Our conversations about judges and the labour market model caused me to truly think about judges as users, and I’m so grateful to have launched this project with him;
- Nicole Gilewicz: She cheered this project on from the outset and caused me to question many assumptions and ideas. She concurrently pushed me to think bigger and smaller. Her skepticism largely motivated Chapter 4. I wouldn’t have this project with her curiosity and support. I can’t thank her enough;

- Fazil Khan: He called me almost every Sunday and asked me what was new and exciting and when I was going to finish this dissertation. While he can't make those calls anymore, his curiosity continuously motivates mine;
- various judges who I can't name: Multiple judges chatted with me and gave me feedback. I'll never be able to thank them, but their thinking really inspired me to try to improve judges' user experience. This dissertation is partially dedicated to all judges, including these ones and one of the original judges who asked me "where the data was for my assertions about the legal system";
- survey participants: I can't express anything my extreme gratitude to all the individuals who pre-tested my surveys; the people and organizations who completed the surveys; and the organizations who supported its deployment. I hope the justice system continues to engage with you, and thank you for engaging with me; and
- members of my dissertation defence committee (Dr. Suzanne Chiodo, Dr. Teresa Scassa, and Dr. Palma Paciocco): Luck struck a third time when you agreed to participate in my defence. You continue to try to have the legal system be fairer and more just, and your scholarship and pursuit is what I aspire to. Thank you for taking the time to consider this work and offer full and frank feedback.

I've been very fortunate to have created an extended family of people who love and care for me. I'll never know how I got so fortunate to have such close friends and "best friends". You welcomed me into your families. You and your families let me write and sleep in your homes. You've chatted with me about this work; made and bought me countless meals and drinks; went on many long and short walks; been a fan of me and my curiosity and skepticism; and cheered me along to the finish line. The list is long, so I won't name everyone, but I'd be remiss not to thank some extra special people, many of whom are now family: Katie Russell, Andrea Gatti, Grant Hollingworth, Michal Urbanski, Ivan Van Spronsen, Shari Allen, Christine Laviolette Jono Plashkes, Dr. Kristen Thomasen, Reba Robb, Tom Posyniak, Kaleigh Milinazzo, Dr. Katie Szilagyi, Jonathan Kroening, Ed Burnett, Lars Brusven, Sarah Brusven, Phil Williams, Nate Claus, Mel Kneis, Stephen Kent, Justice Gary Weatherill, Elaine Weatherill, Dr. Julia Brassolotto, Anthony Daimsis, Dr. Pouria Fewzee, and Michael Currie.

Above all, thank you Laura "Peach" Earle. I feel like you've been in my life forever. I'm so glad you walked through my door. We continue to ask if each other if "you're even real". I'm sure you are. Nothing is more real than how I feel about you, the love I have for you, and the love you have for me. Your curiosity excites me every day—but your desire to help people and the world excites me most hours of most days. Thanks for loving and liking me and for all the support in getting this project "done".

Dedication

I wrote this work for all individuals who're under Canadian state control; who're subjected to litigation in Canada's courts; or who must or choose to enter a Canadian court.

I also wrote this work for the judges with whom you interact and the many other individuals in the justice system process.

Many of you have difficult personal and professional experiences. Throughout this work, I tried to understand some of what you might experience as a “user” of Canada's legal system.

I hope this work somehow helps the justice system become better for all of you.

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Statement on Generative “AI”

When I first started writing this dissertation, generative “AI” wasn’t yet a thing. York didn’t have a policy on its use within academic research, and it still doesn’t. As Chapter 4 suggests, law schools must think critically about how to embrace these tools within their institutions and ensure that graduates know how to use them and their limits. The tools can help us think and learn better as lawyers, students, and legal academics.

I didn’t extensively rely on generative AI in this dissertation. But I did rely on it in five ways:

1. I frequently used it to help me understand the 2023 Survey data. While Qualtrics—the survey platform on which I rely has machine learning and “AI” capabilities—I found Chat GPT and Co-Pilot to be more useful in understanding themes, especially with open-text data and understanding my own analysis and thematic analysis.
2. I used it to help me shore up things I’d written. I found Grammarly, which relies on Chat GPT, to be very useful in punching up writing clarity.
3. I used it to critique each dissertation chapter. I tried to use it as I want courts and judges to use it, including identifying flaws in reasoning or running deep research mode to ensure I didn’t miss out key concepts. I found Chat GPT to be helpful in identifying gaps and flaws in my reasoning. As I suggest later, courts could be using Chat GPT as a synthetic court. To that end, *Appendix 7* is a deep research mode critique of this entire dissertation of an earlier draft where footnotes were incomplete, ideas weren’t fully refined, and the concluding chapter was incomplete. I’ve tried to respond to its critiques. Some critiques were more valid than others, but generally, the lucidity blew me away, including the noting of ideas and authors that I hadn’t yet included or discussed. I think such tools hold great promise for courts and judges and the legal system generally.
4. I used it to help me summarize and identify key conclusions of the dissertation to ensure I was as point first as possible. I found Grammarly and Co-Pilot to be very useful in helping me identify the key ideas. Chat GPT deep research was also very good at summation.
5. I used it to help me write the abstract and conclusion. I found Grammarly to be very helpful in summarizing a large work into digestible themes.

I also experimented generally with Chat GPT, Claude, Gemini, and Co-Pilot for parsing data from decisions, summarization, and legal research. I wanted to see their promise before suggesting that courts could use them within their processes and before judges could use them to help write better decisions.

As you'll see within the dissertation, I recommend that courts and law schools mostly embrace these tools. While I haven't studied them like other scholars, I have used them, and I generally find the technologies to be useful despite shortcomings. They're all very different tools and experiences, and in some ways, they resemble early generations of internet search engines where different engines excelled at different tasks.

Introduction

1. Why I researched what I did

When I graduated from a Canadian law school in 2013, I thought I was one step closer to my dream of contributing Canada's¹ rule of law and its essential promises of providing a predictable, accessible, and fair legal system.² I had secured “dream jobs” as a law clerk for six British Columbia Supreme Court judges and a federal government lawyer.

Then, while I worked as a law clerk for multiple judges, another kind of legal education began. The experience of helping hardworking, diligent judges reach just results grounded in the appropriate law, clear communication, and sound reasoning was gratifying. Yet I consistently saw the difficulties that litigants, judges, and justice system participants faced because of scarce resources and a poorly “designed” legal system. The longer I worked in that court, the more I thought Canadians would be shocked to know just how their legal system worked and how it didn't. Unfortunately, after years of practicing as a lawyer, my shock remains.

I'm far from the first person to ring alarm bells about Canada's legal system. For example, the COVID-19 pandemic brought considerable media attention to Canada's legal system when courts struggled.³ But crisis occupied Canada's legal system long before COVID-19.

As I've noted,⁴ academics, courts, and judges had already labelled Canada's legal system as “complacent,” slow, inconsistent, and overwhelmingly expensive.⁵ They'd identified serious

¹ When I refer to Canada, I mean an overall entity of governments, executives, and judiciaries. When I speak specifically about a court, government, or executive, I'll refer to them by proper name—e.g., courts, Supreme Court of Canada, or Federal government.

² I also believe other promises are not being met, and Chapter 1 will explain why.

³ Jon Khan, “Our justice system needs to be more than ‘Zoom court’” (1 July 2020) *The Globe and Mail*, online: <<https://www.theglobeandmail.com/opinion/article-our-justice-system-needs-to-be-more-than-a-zoom-court/>> [Khan, “Zoom Court”].

⁴ Jon Khan, “‘The Life of a Reserve’: How Might We Improve the Structure, Content, Accessibility, Length, and Timeliness of Judicial Decisions” (LLM Thesis, University of Toronto, 2019) at 2 [Khan, “Life of a Reserve”].

⁵ *Hryniak v Mauldin*, 2014 SCC 7 at para 2; Trevor Farrow *et al*, “Everyday Legal Problems and the Cost of Justice” in Canada: Overview Report” (2016) Canadian Forum on Civil Justice at 3.

concerns with chronic judge shortages, chronic delay, frequently cancelled hearings, and the abandoning of entire criminal prosecutions to name but a few specific issues.⁶

Despite the magnitude of these issues, Canada still lacks the data and transparency needed to “design” solutions for what many call an access to justice crisis or more simply the “justice crisis”.⁷ Canada has a massive legal data deficit and a parallel transparency deficit for the little data that exists: “we know more about sports teams than we do about Canada’s legal system and the individuals in it”.⁸ As Chapter 1 discusses, basic facts remain mysteries, like how many individuals plead guilty to criminal offences each year in Canada.⁹

Even though many justice system participants have issued countless calls to action, little is being done to address the data deficit, and courts and governments often don’t seem concerned (in Ontario’s very recent reform of its civil litigation process, reformers openly said they weren’t basing reforms on reliable data).¹⁰

As Chapter 1 discusses, this ignorance hampers everyone’s ability to understand and humanize the users of the legal system and to test and implement user-focused, data-driven reforms: to track what works and what doesn’t for litigants, judges, or anyone the legal system affects.¹¹

Despite the data deficit, two things are apparent:

1. Canada’s legal system is not based on consultation or deliberate, responsive design.
2. The little existing data suggests that litigants—especially those subject to state power and marginalized peoples—don’t experience uniform, impartial justice in Canada’s legal system.

⁶ Beverley McLachlin, “As courts reopen, let’s focus on creating equitable access to justice for all” (10 July 2020) *Globe and Mail*, online: <<https://www.theglobeandmail.com/opinion/article-as-courts-reopen-lets-focus-on-creating-equitable-access-to-justice/>> [McLachlin, “Creating equitable access to justice”]; Khan, “Zoom Court”, *supra* note 3.

⁷ See, e.g., Trevor CW Farrow & Leslie A Jacobs, eds, *The Justice Crisis: The Cost and Value of Accessing Law* (UBC Press: Vancouver, 2020).

⁸ Khan, “Zoom Court”, *supra* note 3, McLachlin, “Creating equitable access to justice”, *supra* note 6.

⁹ Angela Bressan & Kyle Coady, “Guilty pleas among Indigenous people in Canada” (2017) Department of Justice Canada, online: <<https://www.justice.gc.ca/eng/rp-pr/jr/gp-pc/gp-pc.pdf>>.

¹⁰ See, Federation of Ontario Law Associations, “FOLA Calls for Urgent Meeting and Extension on Civil Rules Reform Consultation Amid Deep Concerns” (29 April 2025), online: <<https://www.fola.ca/fola-calls-for-urgent-meeting-and-extension-on-civil-rules-reform-consultation-amid-deep-concerns/>>.

¹¹ Khan, “Zoom Court”, *supra* note 3, McLachlin, “Creating equitable access to justice”, *supra* note 6.

I want to be clear. I don't write this dissertation to disparage any justice system participant, even when I suggest that Canada's legal system is not consistently accessible, fair, uniform, or of sufficient quality. Many justice system participants try very hard to get it right, including extremely diligent judges, countless academics, and many reformers who've come before me.

But, if you are a litigant in the legal system, these points matter: who you are, where you come from, what you did, or how much money you make—as well as many other systemic factors that shouldn't matter—will likely affect your experiences in Canada's legal system and the justice you receive, points that Chapter 1 discusses. Perhaps this point isn't surprising to some: Canada appears to be failing to achieve its constitutional “rule of law” obligation to provide a properly functioning legal system,¹² (which Chapter 1 says includes an impartial, independent, efficient, uniform, quality, reliable, accessible, intelligible, clear, predictable, and timely judiciary).

That reality motivated me to pursue this research.

2. What my research addresses, research objectives, and research questions

My research addresses the three problems I just discussed—the Canadian justice crisis, the Canadian legal data deficit, and the absence of deliberate design for Canada's legal system. Because these problems are expansive, I mostly focus on a case study of how judicial decision-making and written judicial decisions interact with the justice crisis, the data deficit, and the absence of deliberate design.

The case study required me to look more broadly at many other aspects of Canada's legal system, including other areas that are impacted by the justice crisis, the legal data deficit, and the absence of deliberate design. Accordingly, in this dissertation, I do address more than just judicial decision-making and written decisions, including the overall thesis, four main ideas, and overarching recommendation that I discuss in the next section. In other words, while my case study is about reforming judicial-decision-making and written judicial decisions, I do make broader claims and recommendations about reforming Canada's legal system based on things I learned during my case study.

¹² CBA, “1. Rule of Law”, online: <<https://cba.org/resources/practice-tools/speaking-up-for-justice-a-messaging-toolkit-for-legal-principles/rule-of-law/>>.

To be very clear, with my case study, I’m not suggesting that judicial decisions are (or should be) a primary point for reforming the many problems in Canada’s legal system or for “solving” the justice crisis. Instead, my focus on judicial decisions and judicial decision-making is solely as a legal reform case study where I sought to identify ways to enhance the user experience of individuals in Canada’s legal system, including the people and organizations that use and interact with judicial decisions and courts.

The case study’s two-fold research objective was an attempt to identify things that could:

1. improve judicial decision-making by attempting to find ways that could make it more accessible, consistent, predictable, timely, and less prone to error—including improper reliance on heuristics and cognitive bias; and
2. improve judicial decisions’ structure, accessibility, content, timeliness, length, and data-richness.

Distilled down, I sought to answer one main question in the case study: “How might we improve Canadian judicial decision-making and Canadian judicial decisions?” The hope with this case study was that I could provide some answers to that question as well as related commentary on the justice crisis; the legal data deficit, and the absence of deliberate design.

As the Prologue discusses, that main research question employs the phrase “how might we” from human-centered design (*aka* user- or people-centered design) and its open-ended, iterative approach to understanding user experience (*i.e.*, “how a user interacts with and experiences a product, system, or service”)¹³ and possible ways to improve user experience.¹⁴

¹³ See, e.g., Wikipedia, “User Experience” (last edited on 19 October 2025), online: <https://en.wikipedia.org/wiki/User_experience>).

¹⁴ On the background of human-centered design generally, see IDEO, “What is Human-Centered Design”, online: <<http://www.designkit.org/human-centered-design/>>; Dave Thomsen, “Why Human-Centered Design Matters” (2013) *Wired*, online: <<https://www.wired.com/insights/2013/12/human-centered-design-matters/>>; Joseph Giacomini, “What is Human Centred Design?” (2012) Human Centred Design Institute, Brunel University, online: <<http://hcdi.brunel.ac.uk/files/What%20is%20Human%20Centred%20Design.pdf>>; Tim Brown, *Change By Design: How Design Thinking Transforms Organizations and Inspires Innovation* (Harper Business: New York, 2009) at 32, 184; IDEO, “The Field Guide to Human-Centered Design: Design Kit” (2015) IDEO. For human-centered design in the legal system specifically, Margaret D Hagan, *Law by Design* (2017) online: <<http://www.lawbydesign.co/en/home/>> [Hagan, *Law By Design*]; Victor D Quintanilla, “Human-centered Civil Justice Design” (2017) 121:3 Penn St L Rev 745; Open Law Lab, “Design Process,” online: <<http://www.openlawlab.com/approach-process/design-process/>>; W David Ball, “Redesigning Sentencing” (2014) 46 McGeorge L Rev 817; Margaret D Hagan, “A Human-Centered Design Approach to Access to Justice: Generating New Prototypes and Hypotheses for Intervention to Make Courts User Friendly” (2018) 6:2: Indiana

The Prologue and Chapter 1 further explain why I relied on human-centered design as my primary methodology and how it influenced my thinking. My hope is also that this project might provide guidance to others in the legal system who seek to rely on human-centered design as a primary methodology for legal reform.

My two-fold research objective and overall research question invited four secondary questions that I interact with throughout this dissertation, including Chapter 5’s recommendations. For clarity, I didn’t try to directly answer the questions but used them to motivate research and thinking:

1. Does the current process for making and writing decisions contribute to delay and inconsistency?
2. How can judicial decision-writing be redesigned to advance access to justice and social justice; to address the data deficit; and to improve outcomes—e.g., should judges use standardized material to reduce the influence of heuristics and cognitive bias in their decision-making?
3. What judicial contexts are more amenable to reforms—e.g., trial vs. appellate; civil vs. criminal—and how can reforms be effectively implemented?
4. What are the benefits and drawbacks of attempting to design new judicial decisions—e.g., how might potential reforms interact with constitutional principles, like judicial independence?

I didn’t start this research project in a vacuum. Rather, I relied and built on my 2018 LL.M. project on Canadian judicial decisions, Canadian judicial decision-making, and human-centered design entitled the “Life of a Reserve: How Might We Improve the Structure, Content, Accessibility, Length & Timeliness of Judicial Decisions?” [**“Life of a Reserve”**].¹⁵

In “Life of a Reserve”, I generated original qualitative and quantitative empirical research on Canadian judicial decisions, judges, and courts, including a project called the 2019 Survey and a machine learning study that examined what factors might predict long and slow judicial decisions.

Journal of Law and Social Equality 199 [“Hagan, “A Human-Centered Design Approach”]; Victor D Quintanilla & Michael A Yontz, “Human-Centered Civil Justice Design: Procedural Justice and Process Value Pluralism (2018) 54 Tulsa L Rev 113.

¹⁵ Khan, “Life of a Reserve”, *supra* note 4.

Overall, “Life of a Reserve” concluded that “the current process for writing and issuing Canadian judicial decisions likely does not further the goals of access to justice—it may even hinder them.”¹⁶ Based on the 2019 Survey, I also hypothesized that Canadian courts appear to have expansive views about judicial independence and deliberative secrecy that could also hinder much needed innovative reforms.¹⁷

“Life of a Reserve” prescribed how a team of human-centered designers could seek to re-design the judicial decision (or “design” it for the first time). In making those prescriptions, I didn’t thoroughly respond to courts’ views and practices or offer fulsome recommendations, so I wanted to explore both in this dissertation. In Chapters 1 and 2, I try to respond to what I perceive to be courts’ views and practices, and in Chapter 5, I offer fulsome recommendations to respond to views and practices.

As Chapter 5 discusses, I originally intended to conduct an empirical analysis of judicial decisions, like the quantitative study I conducted in “Life of Reserve” to better understand predictors of slow, lengthy, complex, and appealed decisions across Canada. But I chose to forgo that project because of the incredible barriers to accessing adequate and reliable legal data. *Appendix 5* outlines how individuals or organizations could conduct such a study. Courts, the Canadian Judicial Council (CJC), or the Canadian Superior Court Judges Association (CSCJA) would likely be best placed to conduct the study as they’d be able to generate the data needed to conduct a proper, thorough study. As Chapter 5 discusses, courts or national judicial organizations should be conducting such studies on an ongoing basis and transparently releasing results.

Finally, this approach of building on previous research also explains why I didn’t grapple with some of the doctrinal aspects of decision-writing and decision-making in this project. While I do discuss them further in Chapter 1, I thoroughly discussed them in “Life of a Reserve”.

¹⁶ *Ibid* at 3.

¹⁷ *Ibid*.

3. My overall thesis, four main ideas, and overarching recommendation

After many years of thinking about and researching these issues, here's the surprisingly simple thesis I try to prove in this dissertation. At least part of Canada's justice crisis might have a simple explanation: while actual laws and practices change, how we reform our legal system mostly doesn't—e.g., the continued lack of data gathering and transparency.

In formulating that thesis, I relied on four main ideas that I discuss throughout this dissertation.

First, academic research, theory, and innovation often don't scale,¹⁸ and Canada's legal system is no different: Canadian government and court leaders have never figured out how to effectively scale access to justice. Access to civil and criminal justice appears to be getting worse, and Canadian law and legal disputes appear to be getting more “complex” and less predictable.¹⁹ Despite best efforts of many justice system participants, this simple question remains: how should leaders scale access to justice where everyone gets their fair day in court, where everyone receives equality before the law, and where improvements are continuously pursued. A fundamental barrier to scaling justice appears to be the lack of data gathering and transparency in Canada's legal system as well as actual measurable standards for courts and judges—points that Chapters 1, 4, and 5 discuss. Instead of data and evidence informing reform, confidence in tradition and superhuman judges getting it right persist and stymie reform(s). Those absences and beliefs appear to partly perpetuate the legal system's lack of deliberate design and unscaled access to justice.

Second, many individuals currently don't access basic fairness in many Canadian courts and face a lottery they didn't sign up for.²⁰ When I say they don't access basic fairness, I mean that some likely get better results simply because of where they live; who they can or can't hire; who their decision-maker is; or many irrelevant factors.²¹ Analyzing sparse existing data suggests a

¹⁸ For a very recent summary of this problem, see John List, *The Voltage Effect: How to Make Good Ideas Great and Great Ideas Scale* (Currency: New York, 2022).

¹⁹ See, e.g., Farrow & Jacobs, *The Justice Crisis*, *supra* note 7.

²⁰ Hidden Brain, “Our Noisy Minds” (17 May 2021), online: <<https://hiddenbrain.org/podcast/our-noisy-minds/>>.

²¹ For some possible examples, see, e.g., Michael Trebilcock & Albert H Yoon, “Equality before the Law? Evaluating Criminal Case Outcomes in Canada” (2016) 53 Osgoode Hall LJ 587; Jeffrey J Rachlinski, Andrew J Wistrich & Chris Guthrie, “Can Judges Make Reliable Numeric Judgments? Distorted Damages and Skewed Sentences” (2015) 90:2 Ind LJ 695; Sean Rehaag, “‘I Simply do not Believe...’: A Case Study of Credibility

concerning reality that's inconsistent with fundamental constitutional rule of law promises—a point Chapter 1 discusses. A possible partial reason for the lack of basic fairness is the lack of systemic uniform approaches to judicial decision-making and judicial decision-writing. That absence coupled with courts' expansive views on judicial independence and impartiality, deliberative secrecy, and judicial confidentiality appear to at least partly perpetuate that lack of basic fairness. Instead of courts working to find ways to improve basic fairness, courts appear to rely on judicial independence and impartiality, deliberative secrecy, and judicial confidentiality to preclude basic, innovative reform efforts—e.g., ways to increasing uniformity and standardization.

Third, the “justice crisis” is a rule of law and judicial independence and impartiality crisis. Neither judges nor courts are truly meeting their duties of judicial independence and impartiality or basic constitutional rule of law promises. Chapter 1 discusses the user experience of judges and stresses how difficult their job is and how the persistence of the idea of judges as superhuman is partly frustrating the legal system's improvement. It stresses that justice system participants must embrace more systems and design thinking²² that considers user experience and strives for continuous improvement, including courts who have a constitutional obligation to gather and share data. Chapter 3 suggests that most surveyed users in the 2023 Survey aren't getting a great user experience that meets basic constitutional and judicial independence and impartiality promises (the 2023 Survey builds on the 2019 Survey and seeks to provide user experience data from hundreds of diverse respondents). For example, for most 2023 Survey respondents, judicial decisions were frequently too complex, too slow, and not timely. Finally, Chapter 4 suggests that little data is being gathered or analyzed throughout the legal system, and the effect of this omission is an inability to truly reform and deliberately design possible solutions to the “justice crisis”.

Determinations in Canadian Refugee Adjudication” (2017) 38 Windsor Rev Leg Soc Issues 37 [Rehaag, “I simply do not believe”]; Sean Rehaag, “Judicial Review of Refugee Determinations: The Luck of the Draw” (2012) 38:1 Queens LJ 1 [Rehaag, “Judicial Review”]; Sean Rehaag, Judicial Review of Refugee Determinations (II): Revisiting the Luck of the Draw” (2019) 45:1 Queen's Law Journal 1; Sean Rehaag, Luck of the draw III: Using AI to extract data about decision-making in Federal Court stays of removal” (2024) 49:2 Queens LJ 73. Mike Madden, “Marshalling the Data: An Empirical Analysis of Canada's s. 24(2) Case Law in the Wake of R. v. Grant” (2011) 15:2 Can Crim Law Rev 229.

²² IDEO, “Systems Thinking vs Design Thinking, What's the Difference?”, online:

<<https://www.ideo.com/blogs/inspiration/differences-between-systems-thinking-and-design-thinking>>.

Fourth, legal system reformers may eschew deliberate design; data gathering and transparency; and humility about what might work (and what won't) for at least three reasons:

1. The data needed for deliberate reforms is often complex, not available, or very difficult to access or generate.²³
2. Once you start evaluating efficacy and auditing problematic behaviour in the legal system (e.g., systemic bias), finality is being questioned, especially in the criminal law matters.²⁴
3. Measuring outcomes and setting measurable goals require grappling with incredibly difficult, normative questions—e.g., what is “consistency”, “equality”, or “fairness”, and such measurement is prone to error as Chapters 1 and 4 discuss in detail.²⁵

In this dissertation, I've attempted to offer a very modest response to these four main ideas. In addition to Chapter 5's more granular recommendations and the recommendations within each chapter, I have one overarching recommendation. Justice system participants must adopt more deliberate design and exhibit greater epistemic humility in their reform efforts. They must be more deliberate in their proposals but less confident that those proposals will “work”—e.g., all proposals and efforts must rely on data, but reformers shouldn't rely on that data as “truth” to be certain that their proposals will work.²⁶

²³ See, e.g., Wolfgang Alschner, “AI and Legal Analytics” in Florian Martin-Bariteau & Teresa Scassa, eds, *Artificial Intelligence and the Law in Canada* (Toronto: LexisNexis Canada, 2021); Addison Cameron-Huff, “Why Google Can't Build A Case Law Search Engine in Canada” (11 February 2014), online: <<https://www.cameronhuff.com/blog/ontario-case-law-private/>>.

²⁴ See, e.g., Amar Khoday, “Beyond Finality: *R. v. Hart* and the Ghosts of Convictions past” (2017) 40:3 *Manitoba Law Journal* 111 [discussing “the principle of finality, and examine when cases that are no longer before the courts should be re-examined for a retrospective application of a new law”].

²⁵ Autonomous vehicles present a great example here. For example, the alleged trolley problem is not really a unique problem for artificial intelligence, machine learning, or really innovation. Drivers face the alleged moral dilemma—“if I encounter an unavoidable collision, do I protect myself/passengers and injure someone else or the opposite?”—every time they drive (for a thorough discussion of some of these issues, see, e.g., Jean-Francois Bonnefon, Azmin Shariff & Iyad Rahwan “The social dilemma of autonomous vehicles” (24 June 2016) 353:6293 *Science* 1573 [their article has been cited over 400 times]; see also Peter Nowak, “The ethical dilemmas of self-driving cars” (2 Feb 2018) *The Globe and Mail*, online: <<https://www.theglobeandmail.com/globe-drive/culture/technology/the-ethical-dilemmas-of-self-drivingcars/article37803470/>>). Autonomous vehicles only narrowly impact the dilemma: instead of relying on reflexive fast brains to make instantaneous choices, technology allows us to rely on our deliberate slow brain to make future choice (see Daniel Kahneman, “Thinking, Fast and Slow” (Farrar, Straus and Giroux: New York, 2011). The same will likely apply in the law, especially with legal innovation and setting objectives, key results, key performance indicators, etc.

²⁶ Far too often are reformers, scientists, and politicians sure about their approach to reform. The COVID-19 pandemic repeatedly showed how dangerous it is when reforms do not admit their errors or fail to approach complex problems with humanity. For a great summary about how reformers, scientists, and politicians should speak—especially to audiences that have been known to ignore leading science or criticize conclusions—see JRE, “Dr. Michael Osterholm: Episode #1779” (18 February 2022), online: <<https://open.spotify.com/episode/5VSukFrMYGae1ILd0e4HuR>> [“One of the things that I think that's been

4. Summary and roadmap of what's to come

Prologue is essentially the brief “methods” chapter: it discusses the methods I relied on, which include human-centered design; empirical legal studies; data science; machine learning; law & economics; cognitive psychology; and legal doctrine. I include it as a stand-alone chapter to provide readers a chance to understand how I approached the general project and why I chose the approaches I did.

Chapter 1 serves as the introductory, foundational chapter:

1. It explains what I mean by “design”; the legal system’s current heavy reliance on traditional design instead of deliberate design; why it matters; and why it might be compromising judges and courts’ ability to be independent and impartial and the legal system’s ability to provide basic fairness.
2. It explores why some courts’ views and current practices—at least as I perceived them to be reflected in the 2019 Survey and 2023 Survey—appear to be inconsistent with the goals of judicial independence and impartiality.
3. It thoroughly compares Canada to comparator jurisdictions to demonstrate that Canada has fallen behind comparator jurisdictions in fundamental ways regarding data gathering, data transparency and innovation.

It concludes that judicial independence and deliberative secrecy shouldn’t be used to halt deliberately designed, user-centred, innovative reforms. Instead of these doctrines being barriers to innovation, Chapter 1 suggests that judicial independence likely requires innovative reforms and that deliberative secrecy and judicial confidentiality shouldn’t hinder reform efforts.

Chapter 2 tries to tackle eight possible concerns that courts might have with calls to innovate, including calls for more standardization and transparently gathering, releasing, and analyzing more data. It concludes that courts may have many reasons for not facilitating data gathering, data transparency, or standardization. Overall, however, no concerns appear to justify sticking with current traditional approaches.

Chapter 3 presents the results of 2023 Survey, a project that built on my 2019 Survey (the survey from “Life of a Reserve”). I had broad goals with 2023 Survey. I sought to survey the judges who write decisions and 11 other groups of people who read and are affected by decisions.

missing from a lot of the responses we’ve had so far is an incredible sense of humility ... we’ve had far too many answers before we’ve had the answers.”].

The 2023 Survey suggests five main themes:

1. Generating the kind of user experience insights needed to embark on more deliberately designed reforms in Canada's legal system is very difficult and time consuming (at least for an external participant like me). So I sympathize with the many justice system participants that keep relying on more intuition-based reforms.
2. Courts haven't shifted from the expansive views from the 2019 Survey. If anything, courts may have demonstrated more expansive views about judicial independence, deliberative secrecy, and judicial confidentiality.
3. Generating data about judges is, in at least some ways, perhaps harder now than historically. That said, the 2023 Survey reverberates conclusions from previous surveys: if asked, judges are willing to share their experience and views.
4. Universal design for decisions might be impossible or a naïve goal—e.g., some lawyers, individuals, and organizations prefer the historic traditional approach to decision-writing while other users prefer the more modern issue-driven approach.
5. Surveyed users—across multiple groups and jurisdictions—are likely not getting a useful user experience in Canada's courts, including decisions that are frequently too long, slow, and complex as well as opaque court systems.

Chapter 4 addresses the state of Canadian empirical legal research, resource allocation, and Canada's data deficit:

1. It discusses how actors in Canada's legal system should work with researchers to avoid the replication crisis as empirical legal research develops.
2. It discusses the many problems with existing Canadian empirical legal research.
3. It calls for end-to-end legal data about the experience of individuals in the legal system.
4. It beckons the continued recognizing of the limits of big data, technology, and overhyped academic and journalistic claims. At best, we should be using data and testing as tools to learn more about our rough guesses and help us create new and better guesses about things to reform.
5. It provides suggestions on how Canadian courts, governments, journalists, and researchers could achieve better empirical conclusions as well as better data gathering and transparency.

Chapter 5 presents eight overarching recommendations based on Chapters 1-4:

1. Governments must give courts more administrative and financial autonomy.
2. The federal government or SCC should eradicate Crown copyright, and governments and courts must democratize access to all judicial decisions.
3. The CJC, courts, and federal and provincial governments should provide easy to access standardized information about current judges.

4. The CJC and courts must increase data gathering and data transparency through a unified national legal data program.
5. The CJC and courts must comprehensively address privacy impacts to ensure standardized protections for privacy.
6. The CJC and courts should consider how transparent, standardization could improve judicial independence, impartiality, access to justice generally, and everyone's user experience.
7. The CJC and courts should develop more comprehensive standardized data metrics and encourage judges to audit and evaluate their decision-making.
8. The CJC and the SCC should be clear: brief reasoned oral or written decisions are required in all cases, applications, or motions, and all decisions must be publicly available.

While the Prologue and Chapters 1-5 are intertwined and rely on each other, they also can stand alone. So proceed to the chapter that's most applicable to the issue you're interested in or the issue you're researching or understanding.

With that introduction, I invite you to turn to the chapter or chapters that interest you, and I thank you for your interest in deliberately designing a better legal system for Canada. I hope you agree that's it's required, possible, and necessary.

Prologue – Why I chose my research methods

My primary methodology is human-centered design.²⁷ It has origins in engineering, ergonomics, computer science, and product design. As a method, it prescribes extensive reliance on empirical data, interdisciplinary research, ideation, iteration, prototypes before solutions, and ongoing iterative experiments and user-consultation throughout the design process.²⁸ User views are paramount: designers believe the best way to evaluate systems is by evaluating and empathizing with existing users. So designers deep dive into users' experiences and seek to understand their needs, values, and aspirations. User views then guide their entire design process.²⁹

Research, product sales, and user-satisfaction have demonstrated one thing about human-centered design's benefits. When designers faithfully execute its process, the designed solutions resonate with users, and solutions are more likely to meet user needs and solve user problems.³⁰ The multi-phase process (and its paramount focus on data, users, testing, and evidence) contrasts traditional, legal reform methods: typically, politicians' ideological and intuition-based views are paramount; the legal system's actual users are often overlooked and even ignored.³¹ Similarly, in contrast to ideologically driven reforms, designers are typically not ideally tied to outcomes or ideologies; they're also not afraid of failure. They welcome it, including by testing the new insights failure uncovers and modifying or abandoning existing solutions as needed.³² It's not a panacea, but it offers more benefits for users than intuition-based reforms, which Chapter 1 suggests fuel many current traditional approaches to legal reform.

²⁷ For a thorough list, see *supra* note 14.

²⁸ *Ibid.*

²⁹ Hagan, "A Human-Centered Design Approach", *supra* note 14 at 202.

³⁰ "Field Guide", *supra* note 14 at 21.

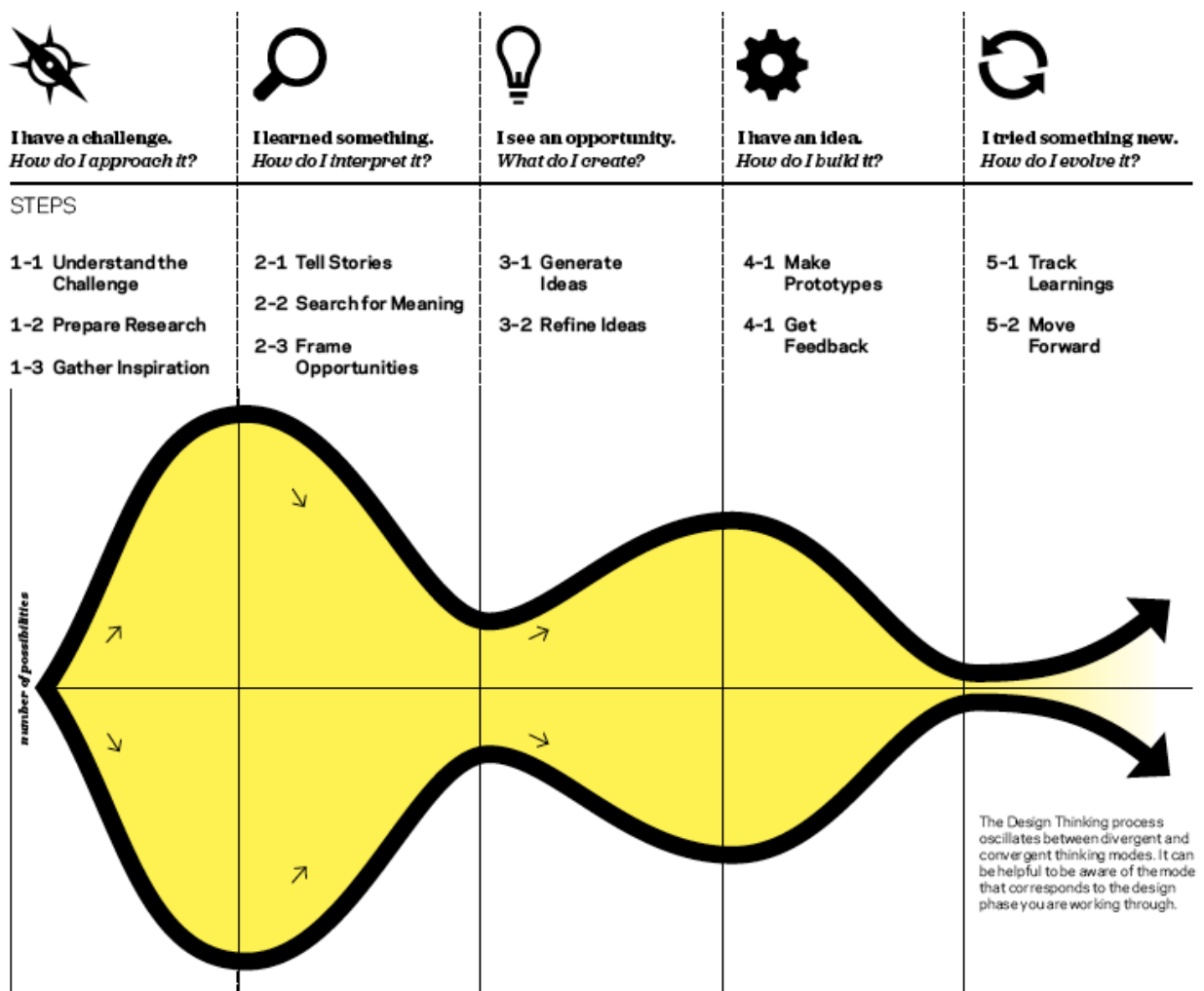
³¹ *Ibid.*

³² Brown, *supra* note 14 at 32; "Field Guide", *supra* note 14 at 21.

Figure 1 captures the five phases of the traditional human-centered design process,³³ and for this dissertation, I parse out the five phases as follows:

1. Pick a group of users, empathize with them, and try to discover their problems.
2. Identify some possible problems you will address, and continue to learn more about users.
3. Brainstorm and design solutions for identified problems.
4. Test and retest solutions.
5. Deploy user-focused solutions and continue consultation.³⁴

Figure 1: The Design Process (IDEO)



³³ This image is no longer publicly available from IDEO, but it's hosted many places online.

³⁴ Khan, "Life of a Reserve", *supra* note 4 at 70.

I chose to rely on human-centered design as my primary methodology for five reasons, with point one perhaps being the most important:

1. Canada is likely only in phase 1 of the design process. As the next point discusses and as Chapter 1 discusses in detail, justice system participants know very little about the Canadian legal system. They haven't ever truly empathized with users and discovered their problems.
2. Canada's legal system suffers from an absence of deliberate design. One struggles to find any evidence or research that demonstrates any deliberate design for most Canada's federal legal system.³⁵ This dissertation argues that this absence of deliberate design appears to be a problem. This absence of deliberate design and traditions that occupy the gap may facilitate (and may partially cause) Canada's justice crisis and legal data deficit.
3. Human-centered design's focus on users could further the goals of the *Constitution* and judicial independence and impartiality. User experience is paramount for the principle of judicial independence: indeed, judicial independence exists to ensure that the legal systems' users maintain confidence in their legal system by having impartial adjudicators who will preserve constitutional order,³⁶ so the goals of the method align with the goals of the principle. Notably, the limited available data suggests that Canadian's public confidence (and perhaps satisfaction) in courts is perhaps quite low.³⁷ The precise reason for this low confidence is unknown. But judicial independence—most specifically what's necessary to protect and foster it—also suffers from a lack of deliberate design. Judges and courts do not truly know what their users want or need or what's truly necessary to be independent and impartial. Additionally, judges and courts do not have deliberately designed and empirically tested mechanisms—either in their court administration or judicial processes—to promote and protect their judicial independence and impartiality. The same is true for the constitutional rule of law promises that Chapter 1 discusses such as timely justice.
4. Human-centered design requires deep understanding of users and empathy for their experiences before generating reforms to test.³⁸ Considering how little we know about judicial decisions' users—the judges who write them and anyone who consumes or is affected by them—the human-centered design approach seems appropriate. With such knowledge, designers can then rapidly create ideas (ideation) that they test or mock-up with iterative prototypes (iteration). For example, in 2019, after user experience research,

³⁵ See Ivan C Rand, "The Role of an Independent Judiciary in Preserving Freedom" (1951) 9:1 UTLJ 1 at 12, 13; Rt Hon Lord Justice Denning, "The Independence of Judges" (16 June 1950) Presidential Address of the Holdsworth Club at 2; John Sopinka, "What Can We Do to Make the Current System of Dispute Resolution Work Better" (1991) 17:2 Can-USLJ 519 at 519; John A Ferejohn & Larry D Kramer, "Independent Judges, Dependent Judiciary: Institutionalizing Judicial Restraint" (2002) 77 NYU L Rev 962 at 975.

³⁶ *Ell v Alberta*, 2003 SCC 35 at para 29 [*Ell*].

³⁷ See Leonid Sirota, "Public confidence in the courts cannot be the foundation of judicial independence" (7 September 2016), online: <<https://doubleaspect.blog/2016/09/07/the-public-confidence-fairy/>>.

³⁸ I concede that other methodologies require similar empathy—e.g., ethnography. The difference between human-centered design and ethnography is that designers really on this knowledge to design solutions to test.

my design team (a computer programmer, legal researchers, and a user experience designer) designed and rapidly prototyped a notetaking and writing software for judges.³⁹

5. Human-centered design requires interdisciplinary research. Varied methodologies are necessary to address my research questions and to truly attempt to resolve the multivariate problems in the legal system, including how to improve decisions and decision-making. Human decision-making is likely not akin to computerized decision-making or imbued with rationalism. Indeed, cognitive scientists and experimental psychologists have demonstrated that rational choice theory doesn't explain how the mind works.⁴⁰ So one method or a limited method will likely fall short, and a more interdisciplinary approach seems necessary.

As point five just noted, the human-centered design approach benefits from and requires other methods, like empirical legal studies or law & society research or a panoply of others.

Accordingly, I've also embraced other methods that I discuss below.

But human-centered design is different from empirical legal studies or law & society research. Empirical legal researchers focus on rigorously testing interventions' outcomes or other perceived statistical relationships in legal systems (and law & society scholars rely on similar methods without the same statistical emphasis). In contrast, designers who rely on human-centered design focus on developing better interventions to test: their goal is creating better, more vetted, promising interventions that they can then test using empirical methods instead of observing the status quo and making intuitive, political, or hopeful recommendations.⁴¹

My secondary methodologies are empirical legal studies, data science, and machine learning; law & economics; cognitive psychology; and legal doctrine. These methodologies facilitate furthering my knowledge about judicial decisions' users (writers, readers, and anyone they effect); predictions about decisions and decision-making; and designing user-focussed solutions:

³⁹ This project occurred in the Legal Design Lab at the University of Toronto Law School in 2019.

⁴⁰ John N Drobak & Douglass C North, "Understanding Judicial Decision-Making: The Importance of Constraints on Non-Rational Deliberations" (2008) 26 Wash UJL & Pol'y 131 at 140-141; Robert Epstein, "The empty brain" (18 May 2016) *Aeon*, online: <<https://aeon.co/essays/your-brain-does-not-process-information-and-it-is-not-a-computer>>; Russell Korobkin, "Daniel Kahneman's Influence on Legal Theory" (2013) 44:4 Loy U Chi LJ 1349 at 1350; see also Cass R Sunstein, Christine Jolls & Richard H Thaler, "A Behavioral Approach to Law and Economics" (1998) 50 Stanford Law Rev 1471.

⁴¹ Hagan, "A Human-Centered Design Approach", note 14 at 206.

- empirical legal studies, data science, and machine learning: they facilitate exploring the data I gather (e.g., describing some status quos in Canada’s legal system and making predictions that may indicate which reforms are most worth pursuing);⁴²
- law and economics⁴³ and the “judicial labour market model”: it presents one of the best theoretical perspectives for understanding what judges intentionally or unintentionally do when they issue written decisions.⁴⁴ As I argue elsewhere, this model’s great utility is that it “humanizes judges and decision-making: it reminds us that donning judicial robes does not make judges superhuman. It does not bring about Dworkin’s *Herculean* judge—one with infinite competence, intelligence, and resourcefulness. Instead, judges are like any other person: fallible workers”;⁴⁵
- cognitive psychology:⁴⁶ it’s closely related to many facets of law and economics. Research confirms that all humans, including judges, make mistakes, rely on heuristics, and make unconsciously biased decisions. Researchers offer suggestions to improve decision-making—e.g., decision-making protocols and checklists;⁴⁷ and
- legal doctrine:⁴⁸ it provides a framework in which my research must operate. It already prescribes why judges should issue decisions; what decisions are supposed to address;

⁴² Daniel Martin Katz, Michael J Bommarito II & Josh Blackman, “A General Approach for Predicting the Behaviour of the Supreme Court of the United States” (2017) 12:4 PLoS ONE 1; Leo Breiman *et al*, *Classification and Regression Trees* (Chapman & Hall: New York, 1993); see also Dan Steinberg, “CART: Classification and Regression Trees” in Xidong Wu & Vipin Kumar, eds, *The Top Ten Algorithms in Data Mining* (CRC Press: Boca Raton, 2009) 179. For an analysis and detailed explanation of random forest models, see Leo Breiman, “Random Forests” (2001), online: <<https://www.stat.berkeley.edu/~breiman/randomforest2001.pdf>>; see also Andy Liaw & Matthew Wiener, “Classification and Regression by randomForest” (2002) 2/3 R News 18.

⁴³ Richard A Posner, *How Judges Think* (Harvard University Press: Cambridge, 2008); Lee Epstein, William M Landes & Richard A Posner, *The Behaviour of Federal Judges: A Theoretical & Empirical Study of Rational Choice* (Harvard University Press: Cambridge, 2013); Cass R Sunstein, Christine Jolls & Richard H Thaler, “A Behavioral Approach to Law and Economics” (1998) 50 Stanford Law Rev 1471; Lee Epstein & Jack Knight, “The Economic Analysis of Judicial Behaviour” in Lee Epstein & Stefanie A Lindquist, eds, *The Oxford Handbook of U.S. Judicial Behaviour* (Oxford University Press: Oxford, 2017) 320; Richard A Posner, “Rational Choice, Behavioral Economics, and the Law” (1997) 50 Stan Law Rev 1551.

⁴⁴ Posner, *How Judges Think*, *supra* note 43 at 57.

⁴⁵ Khan, ““Life of a Reserve”, *supra* note 4 at 17.

⁴⁶ See, e.g., Kahneman, *Thinking, Fast and Slow*, *supra* note 25; Chris Guthrie, Jeffrey L Rachlinski & Andrew Wistrich, “Blinking on the Bench: How Judges Decide Cases (2007) 93 Cornell LR 1; Chris Guthrie, Jeffrey L Rachlinski & Andrew Wistrich, “Inside the Judicial Mind (2001) 88 Cornell L Rev 777; Jonathan Haidt, “Moral Psychology and the Law: How Intuitions Drive Reasoning, Judgment, and the Search for Evidence” (2013) 64 Alabama L Rev 867; see also Dan Simon, “A Psychological Model of Judicial Decision Making” (1998) 30 Rutgers LJ 1 [Simon, “A Psychological Model”]; Gregory C Sisk, Michael Heise & Andrew P Morriss, “Charting the Influences on the Judicial Mind: An Empirical Study of Judicial Reasoning” (1998) 73:5 NYU L Rev 1377; Eyal Peer & Eyal Gamliel, “Heuristics and Bias in Judicial Decisions” (2013) 49 Court Review, online: <<http://aja.ncsc.dni.us/publications/courtrv/cr49-2/CR49-2Peer.pdf>>.

⁴⁷ See, e.g., Andrew J Wistrich, Jeffrey J Rachlinski & Chris Guthrie, “Heart versus Head: Do Judges Follow the Law of Follow Their Feelings” (2015) 93 Texas Law Review 855 at 898; see also Pamela M Casey *et al* “Addressing Implicit Bias in the Courts” (2012) 29 Court Review at 67, online: <<http://aja.ncsc.dni.us/publications/courtrv/cr49-1/CR49-1Casey.pdf>>.

⁴⁸ *Macdonald v the Queen*, [1977] 2 SCR 665 [a historical SCC decision on reasons where the SCC first recognized the process justification for issuing reasons] [*Macdonald*]; *R v Burns*, [1994] 1 SCR 656 [a somewhat historical SCC decision where the SCC held that judges do not error for failing to provide reasons]; *R v Sheppard*, 2002 SCC 26

how appellate courts review decisions; and how judges must be independent and impartial. Much of my work centres around the doctrine and concept of judicial independence and impartiality and how some of the proposed reforms I discuss interact with them (as well as what the doctrine and concepts should or may require in 2026).

For the most part, this dissertation doesn't engage in broader theoretical debates, including about nature and structure of law/legal systems or broader critical theory discussions. As the Introduction noted, what I perceive to be amazing disparities in the quality of people's user experiences once they're in the legal system motivated this project. At its core, my project really is about equity and equality before the law and finding ways to ensure that people's experiences better align with constitutional promises.

So instead of engaging further with broader theoretical issues and discussions, I chose to try to directly research ways to better understand justice challenges and the experiences of people within the legal system. That said, while I hardly discuss broader theoretical debates about the nature and structure of law/legal systems in this work, I'm aware of the debates. And while I don't mention them explicitly, they're still very much so a part of this project.⁴⁹

Finally, as I noted in the Introduction, this dissertation builds on previous work from "Life of a Reserve" where I thoroughly grappled with the doctrine and theory on decision-writing and decision-making and the relationship between them.

With that brief note on methods, I now turn to the substance of this dissertation.

[one of the most cited SCC decisions on reasons in the criminal context] [*Sheppard*]; *R v REM*, 2008 SCC 51 [one of the most cited SCC decisions on reasons in the criminal context] [*REM*]; *Hill v Hamilton-Wentworth Regional Police Services Board*, 2007 SCC 41 [one of the SCC's seminal decisions on reasons in the civil context]; *FH v McDougall*, 2008 SCC 53 [one of the SCC's seminal decisions on reasons in the civil context]; *R v Vuradin*, 2013 SCC 38 [never cited by the SCC after its release]; *Cojocar v British Columbia Women's Hospital and Health Centre*, 2013 SCC 30 [one of the SCC's most recent decisions on copying parties' submissions in their decisions]; *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [the SCC's most recent decisions on reasons in the administrative context]; *R v KGK*, 2020 SCC 7 [the SCC's most recent decision on judicial deliberation delay] [*KGK*]; *R v Chung*, 2020 SCC 8 [the SCC's most recent decisions on sufficiency of reasons].

⁴⁹ As part of graduate program requirements, I participated in three reading groups where many seminal critical legal theory works were presented and discussed. Before entering law school, I also double majored in history and philosophy with a focus on social and political rights & social and political theory.

Chapter 1 – “I’m all for transparency”: What surveys in 2019 and 2023 might suggest about some courts’ views on judicial independence and transparency—and some responses to those views

[T]he public also has the right to know how our courts work. The Supreme Court of Canada has long prided itself on being an open and transparent institution. ... But what we mean by open courts is different in 2018 than it was even 15 years ago....

...

I’m all for transparency. I think that we should be transparent in everything we say, we do. I think that the world has changed. And the judiciary should follow.⁵⁰ ~ Chief Justice Richard Wagner (2018)

Public knowledge about the institutional views of Canadian courts is limited.

In 2019, I tried to improve public knowledge by conducting a novel survey of most Canadian superior, appellate, and federal courts.⁵¹

The 2019 Survey goal was attempting to generate some data about the user experience of courts and judges, including how their current user experiences might interact with much needed user-centered, innovative reforms. The 2019 Survey explored how courts approach written decisions’ timeliness, style, and structure; statistical data on and reserve policies for decisions; initiatives to improve decisions; and, how judges use allocated decision-writing time.

✚ Thank you to the many people who offered input on this chapter and its ideas. My committee offered frank and full feedback and continually helped me improve my thinking about this subject and how I explain my views. I’m especially grateful to Martin Taylor, KC Amy Salyzyn, Geoff Cowper KC, and Mike Madden for comprehensive feedback. I also was privileged to present aspects of this work to the CBA, judges of the Alberta Court of King’s Bench, attendees of the 2022 Law and Society Conference, and students of Schulich Law School. I also thank the many people who were willing to discuss these ideas with me and who were very generous with their time, including Justice Peter Michalyshyn, John I Laskin, Martin Taylor KC, Caroline Mandell, and other judges who requested not to be named.

⁵⁰ “Supreme Court chief justice discusses Trinity Western University and legal marijuana” (22 June 2018) *CBC News*, online: <<https://www.youtube.com/watch?v=pIpoPiM6jgw>>.

⁵¹ Before sending, I sought to contact courts’ legal officers or registrars. In contrast to the approach of Ian Greene *et al* in their appeal courts survey, I sought to coordinate all responses to question 7 through the same person who coordinated responses to question 6. Greene *et al* availed a different approach: they directly wrote to each court’s chief justice and sought advice about contacting judges to request interviews. Each chief justice agreed to be interviewed, provided guidance in arranging interviews with other judges, forwarded interview requests to other judges, and even scheduled interviews for them. This approach is instructive: it may provide a greater likelihood of individual judges responding *versus* relying on legal officers or chief justices—who’re both extremely busy—to canvas participation. In designing further studies, such an approach is worth emulating (see Ian Greene *et al*, *Final Appeal: Decision Making in Canadian Courts of Appeal* (Lorimer: Toronto, 1998) at 213-214). I didn’t have any direct communication with the Québec Superior Court despite attempts by phone and email. I did follow-up with all courts by phone and email. In 2023, I didn’t follow up by phone as I had already communicated with almost all the same legal officers or court staff in the 2019 Survey.

To maintain judicial independence, judicial confidentiality, and deliberative secrecy,⁵² the survey intentionally didn't include questions that could be used to determine how or why judges made previous decisions.⁵³ Response rates were positive: 54% of courts responded to my survey participation request (13 courts were non-responsive); 34% participated and answered most survey questions.⁵⁴

The 2019 Survey data suggested that Canadian courts have what I would call “expansive” views about deliberative secrecy, judicial confidentiality, and judicial independence, and the data could be interpreted as suggesting that practices that rely on those views could negatively impact much needed, user-centered, innovative reforms:

1. Some courts believe that deliberative secrecy insulates or precludes them from disclosing general information about decision-writing or participating in a general survey about it.⁵⁵
2. Most courts believe that judicial independence precludes imposing structural or stylistic requirements on judges or even tracking the use of suggested styles and structures.⁵⁶
3. Courts' views on the inappropriateness of judges anonymously tracking how they use allocated decision-writing time appear homogenous. No court was willing to facilitate research that conducts such tracking perhaps because of deliberative secrecy concerns.⁵⁷
4. Canadian courts maintain sparse data on judicial decisions. Some courts do maintain internal data. But the data isn't public, and researchers must apply to access it. The basis for this practice may be judicial independence.⁵⁸

In 2023, as Chapter 3 discusses, I sought to build upon these findings and explore them in greater detail in the 2023 Survey. Unfortunately, however, only one Canadian court was willing to

⁵² I will thoroughly discuss deliberative secrecy in Chapter 1. But for now, here's another short definition. Deliberative secrecy is a narrow doctrine. It precludes executives or legislatures from compelling administrative or judicial decision-makers to explain or account for their decisions in addition to their issued written or oral decisions.

⁵³ Khan, “Life of a Reserve”, *supra* note 4 at 58-59.

⁵⁴ 53.8% of courts responded (14/26 surveyed courts) and 34% provided answers to six out of seven questions. Nine courts participated, five courts said they wouldn't, and 13 courts were non-responsive. While I did have some email and phone correspondence with 13 non-responsive courts, they never responded to the survey and didn't indicate they would not be participating: Court of Appeal for the Northwest Territories; Nunavut Court of Justice; Nunavut Court of Appeal; Court of Appeal of Alberta; Manitoba Court of Queen's Bench; Manitoba Court of Appeal; Court of Appeal for Ontario; Court of Appeal of Quebec; Supreme Court of Prince Edward Island; Court of Queen's Bench of New Brunswick; Court of Appeal of New Brunswick; and Nova Scotia Superior Court.

⁵⁵ Khan, *supra* note 53 at 60-61.

⁵⁶ *Ibid* at 63-64.

⁵⁷ *Ibid* at 60.

⁵⁸ *Ibid* at 64.

participate as an institution, and no Canadian court was willing to forward requests to their judges or legal officers to participate in the 2023 Survey.

Chapters 1 and 2 discuss and respond to some of these views, including Canadian courts' potential hesitance to explore much needed reforms because of concerns about deliberative secrecy, judicial confidentiality, and judicial independence.⁵⁹ Chapter 3 then discusses how I sought to explore Chapters 1 and 2's conclusions with the 2023 Survey.

My goal in Chapter 1 is to persuade readers that judicial independence and deliberative secrecy shouldn't be used to halt deliberately designed, user-centred, innovative reforms. Instead of these doctrines being barriers to innovation, Chapter 1 suggests that judicial independence likely requires innovative reforms and that deliberative secrecy and judicial confidentiality shouldn't hinder efforts. For example, court and judges must also start gathering and democratically releasing useful, granular data about the civil and criminal litigation process to fuel innovation, increase accountability, and ensure continuous reform. And courts and judges should test whether deliberately designed standardized checks and balances for judicial decision-making and decision-writing could improve the user experience of judges and litigants.

Chapter 1 explains its argument in three parts:

- **Part I** explains my claim that Canada's legal system has no deliberate design and why this reality is problematic for everyone's user experience in Canada's legal system, including judges' independence and impartiality. Deliberately designed reforms are needed to protect and promote judicial independence, access to justice, and the administration of justice. Part I suggests that Canada's courts, judges, and governments must deliberately design reforms to improve independence and impartiality and everyone's user experience in Canada's legal system.
- **Part II** explores the four points I just outlined from the 2019 Survey. It explains why some courts' views and current practices appear inconsistent with the goals of judicial independence and impartiality and Canada's constitutional rule of law promises. Part II suggests that judicial independence and impartiality and everyone's user experience could benefit from more data gathering, data transparency, and standardization.
- **Part III** thoroughly compares Canada to comparator jurisdictions to suggest that Canada has fallen behind comparator jurisdictions in crucial ways. Part III suggests that Canada could emulate what's succeeding in those jurisdictions to improve the user experience of all justice system participants

⁵⁹ Individual judges and governments might have the same hesitancy.

Part I: “Deliberate design” —What I mean and why Canada’s legal system needs it

Lawyers and scholars often say the legal system was designed by lawyers for lawyers or by dominant legal actors for dominant legal actors.⁶⁰ But I don’t agree with this common idea. No one would ever intentionally “design” a legal system to operate like Canada’s currently does.⁶¹

Part I explains:

- why I don’t agree with the common idea, including the impact that the lack of design could be having on judges’ decision-making, their independence, and Canadian litigants;
- what I mean by “design”;
- why Canada’s legal system largely lacks a “design”; and
- why the *Judges Act* and the *Constitution* appear to require more deliberately designed reforms to improve everyone’s user experience.

This analysis suggests that Canada’s courts and judges must “design” reforms to better protect and promote their independence and impartiality; general and equitable access to justice; and basic constitutional promises.

i. “[D]esigning a whole new way to deliver justice”

Before turning to my views on why I think the common idea is wrong and what it matters, I first want to be very clear. I don’t write Chapter 1 (or this dissertation generally) to disparage previous legal system reformers; Canadian judges; Canadian courts; Canadian lawmakers or to lay blame. They’ve created one of the world’s finest legal systems. Few countries have achieved what Canada has.⁶² That said, Canada’s legal system doesn’t offer Canadians what they’re entitled to or what they need.

⁶⁰ Even without a grand plan, some individuals or academics might say that system was incrementally designed or designed with intention. See, e.g., e.g., Lorne Sossin, “Designing Administrative Justice” (2017) 34:1 Windsor YB Access Jus 87 at 88 [Sossin, “Designing Administrative Justice”]; Shannon Salter & Darin Thompson, “Public-Centered Civil Justice Redesign: a case study of the British Columbia Civil Resolution Tribunal” (2017) 3 McGill Journal of Dispute Resolution 113 at 117 [“The common law legal system was designed by legal actors, for legal actors”].

⁶¹ Prof Lisa Dufrainmont stated this idea an Osgoode Hall Law School Graduate Seminar in Winter 2020.

⁶² See World Justice Project, “WJP Rule of Law Index”, online: < <https://worldjusticeproject.org/rule-of-law-index/global>>. Canada consistently ranks in the top ten in most measures.

Former SCC judge Justice Abella put it this way in an extrajudicial statement before her retirement in 2020. Instead of continuing to tinker with reforms, Abella argued that Canada must “design” whole new ways to deliver justice:

We can’t keep telling the public that this increasingly incomprehensible complicated process is in their interests and for their benefit, because they’re not buying it any more. When we say, “It can’t be done,” and the public asks, “Why not?” they want a better reason than, “Because we’ve always done it this way.”

So let’s be bold and acknowledge that the public has judged our relationship with incremental change to have been largely Sisyphean. The tinkering at the edges, with reforms like mediation and arbitration, may have been a necessary rehearsal, but it hasn’t exactly been the hit with the public we thought it would be.

It’s time to think about designing a whole new way to deliver justice to ordinary people with ordinary disputes and ordinary bank accounts. That’s what real access to justice needs and that’s what the public is entitled to get. Justice must be seen to be believed. And getting people to believe in justice is what the legal system exists for. It’s time they got what they’re entitled to.⁶³

In writing this dissertation, I clearly agree. The rest of this part explains why courts, judges, governments, and justice system participants could and should “design” new ways to deliver justice.

ii. *Defining terminology: what “design” means*

To be fair to the people with whom I disagree, I must be clear about how I think they’re using the word “design” versus how I’m using the word and why it matters.

(a) *How others appear to use the word “design”*

Lawyers and scholars who say that the legal system was designed by lawyers for lawyers or by dominant legal actors for dominant legal actors seem to observe current realities in the legal system as evidence of “design”.⁶⁴ For example, they might argue that lawyers and large

⁶³ Rosalie Silberman Abella, “Our civil justice system needs to be brought into the 21st century” (25 April 2020) *The Globe and Mail*, online: <<https://www.theglobeandmail.com/opinion/article-our-civil-justice-system-needs-to-be-brought-into-the-21st-century/>>.

⁶⁴ In many ways, they seem to rely on a “watchmaker” teleological argument (see, e.g., D Rat, “Teleological Argument for Gods Existence” (10 June 2005) Stanford Encyclopedia of Philosophy, online: <<https://plato.stanford.edu/entries/teleological-arguments/>>. This point isn’t just semantics. What these people are likely trying to say—at least as I understand their work—is that the legal system was built by lawyers for lawyers or by legal actors for actors. A system was clearly built. But many things are built without a true design, and this difference is my central point (on the point of emergent or spontaneous order, see David Schmidtz & Peter Boettke, “Friedrich Hayek”, online: <<https://plato.stanford.edu/entries/friedrich-hayek/>>.

corporations clearly benefit more than other legal system stakeholders. They'd likely say those lawyers, large corporations, and other dominant legal actors were also involved in building and "designing" the legal system.⁶⁵ They might even say that those lawyers, large corporations, and other dominant legal actors likely even had one main goal, methodology, or intention: organize and build the system around principles that promote tradition and favourable outcomes for certain groups and unfavourable outcomes to other groups (often on the basis of race, gender, or other marginalizing grounds).⁶⁶ I don't disagree with these ideas.

They'd likely also say that when opportunities to "innovate" arose, innovations were pursued if they reconciled with traditional (and often opaque) central values or principles like "the rule of law";⁶⁷ "judicial independence";⁶⁸ lawyers' monopoly on legal service;⁶⁹ or the party-presentation principle.⁷⁰ They might even say that many innovations even demonstrate some "deliberateness." For example, most court administration and Canadian civil procedure rules clearly respect the party-driven nature of litigation. And somewhat standardized regimes and processes are used in attempts to control what goes on in the legal system—e.g., law societies,⁷¹

⁶⁵ For fascinating discussion on the U.S. context, see Gillian K Hadfield, *Rules for Flat World: Why Humans Invented Law and How to Reinvent it for A Complex Global Economy* (Oxford University Press: Oxford, 2017) at 115-122.

⁶⁶ See, e.g., Katharina Pistor, *The Code of Capital: How the Law Creates Wealthier and Inequality* (Princeton University Press: Princeton 2019).

⁶⁷ See, e.g., *Re Manitoba Language Rights*, [1985] 1 SCR 721; *Reference re Secession of Quebec*, [1998] 2 SCR 217.

⁶⁸ See, e.g., *Valente v The Queen*, [1985] 2 SCR 673.

⁶⁹ See, e.g., Lisa Trabucco, "Lawyers Monopoly? Think Again: The Reality of Non-Lawyer Legal Service Provision in Canada" (2018) 96:3 CBA Bar Rev 689.

⁷⁰ See, e.g., *Crowder v British Columbia (Attorney General)*, 2019 BCSC 1824 at paras 174-176; Jeffrey M Anderson, "The Principle of Party Presentation" (2022) 70 Buff L Rev 1029.

⁷¹ See, e.g., Christopher Moore, *The Law Society of Upper Canada and Ontario's Lawyers, 1797-1997* (University of Toronto Press: Toronto, 1997).

rules of evidence,⁷² oral hearings,⁷³ rights of appeal,⁷⁴ litigation cost regimes,⁷⁵ bar exams,⁷⁶ legal training,⁷⁷ intensive reviews of wrongful convictions,⁷⁸ and myriad others.⁷⁹ I also don't disagree with these ideas.

In short, the people with whom I disagree may say my view is very narrow and ignores all those points. But I'm using the word design in a different way as I note below. While previous efforts might have had deliberate intentions (e.g., to privilege certain interests), they still didn't have the kinds of deliberate designs I'm about to discuss and certainly not designs that sought to comply with constitutional rule of law promises.

(b) How I'm using the words "design"

I think I'm using the word "design" differently than the people who see things differently than I do. I'm trying to use the word like software designers and hardware engineers do: "to create, fashion, execute, or construct according to plan".⁸⁰

Designers and engineers couldn't build the software or hardware I used to write these words without a deliberate, comprehensive, design process that relied on extensive data, user-

⁷² Provinces, territories, and the federal government alike have sought to codify and "standardized" common law approaches to evidentiary rules. And even where approaches haven't been codified, a somewhat uniform evidentiary code still exists throughout Canada (see, e.g., Michelle Fuerst, Sidney N Lederman, Alan W Bryant, *The Law of Evidence*, 5th ed (LexisNexis: Toronto, 2018).

⁷³ The Advocates Society, "The Right to be Heard: The Future of Advocacy in Canada—Final Report of the Modern Advocacy Task Force (June 2021) *The Advocates Society* at 10-16, online: <https://www.advocates.ca/Upload/Files/PDF/Advocacy/ModernAdvocacy/The_Right_to_be_Heard_The_Future_of_Advocacy_in_Canada_PRINT.PDF>.

⁷⁴ See, e.g., Hamer Foster & John McLaren, "For the Better Administration of Justice: The Court of Appeal for British Columbia, 1910-2010" (2009) 162 BC Studies 5; Benjamin Berger, "Criminal Appeals as Jury Control: An Anglo-Canadian Historical Perspective on the Rise of Criminal Appeals" (2005) 10:1 Canadian Criminal Law Review 1.

⁷⁵ See, e.g., H Patrick Glen, "Cost and Fees in Common Law Canada and Quebec", online: <http://www-personal.umich.edu/~purzel/national_reports/Canada.pdf>; Manitoba Law Reform Commission, "Costs Awards in Civil Litigation" (2005) Manitoba Law Reform Commission, online: <<https://canlii.ca/t/2fh6>>.

⁷⁶ See, e.g., Richard Devlin *et al*, "Response to the Consultation Paper of the Task Force on the Canadian Common Law Degree of the Federation of Law Societies of Canada, Canadian Association of Law Teachers/Canadian Law and Society Association" (2001) 151 Canadian Legal Education Annual Review 151.

⁷⁷ *Ibid*.

⁷⁸ James M Doyle, "Learning from Error in American Criminal Justice" (2010) 100:1 The Journal of Criminal Law and Criminology 109 at 127.

⁷⁹ Despite these efforts, many of these reforms were scattered and not uniform. To borrow James M Doyle's words about legal reform: "was all of this anything more than patching holes in the blacktop" (*Ibid* at 118).

⁸⁰ See, e.g., Merriam Webster, "Design" online: <<https://www.merriam-webster.com/dictionary/design>>. See also, Brown, *Change By Design*, *supra* note 14.

consultation, user experience, interdisciplinary methods, ideation, prototypes, and iteration.⁸¹ And that process produced designs and outcomes that mostly satisfy users like you and me.⁸² For example, in designing the products I used to write Chapter 1, designers and engineers likely had two goals: truly understand users like you and me and provide us the best possible user experience that meets our needs and solves our problems.⁸³ And many people would likely agree, their designs are mostly astonishing. Computer users continually mostly experience increased product quality, improved user experience, decreased cost, and more efficiency.⁸⁴

Canada's legal system should be no different. It's a public product and service with many users. That public service, in the words of Canada's current Chief Justice, is more than "just a simple service; it's a fundamental human need."⁸⁵ Yet no one—not Canada's judges, courts, governments, or scholars—can truly say they understand the user experience of most individuals in Canada's legal system.

For example, no one can truly say they understand the people who write and read judicial decisions; the people that decisions affect; or the people in the justice system generally.⁸⁶ Little is publicly known about how most judges write decisions, and almost nothing is known about the user experience of judges or other users of judicial decisions, like lawmakers, lawyers, and litigants.⁸⁷

⁸¹ *Ibid.*

⁸² See, e.g., Ken Kocienda, *Creative Selection* (St. Martin's Press: New York, 2018); IBM Design, "Enterprise Design Thinking", online: <<https://www.ibm.com/design/approach/design-thinking/>>.

⁸³ *Ibid.*

⁸⁴ Max Roser & Hannah Ritchie, "Technological Progress" (2013), online: <<https://ourworldindata.org/technological-progress>>.

⁸⁵ Sean Fine & Eric Andrew-Gee, "Supreme Court justices take audience questions at packed public hearing in Quebec" (15 September 2022) *The Globe and Mail*, online: <<https://www.theglobeandmail.com/canada/article-supreme-court-justices-hold-hearing/>>.

⁸⁶ Of course, some notable exceptions exist (see, e.g., Justice Yves Marie Morissette, "A Personal Perspective on Judgment Writing" (2021) 26 CCLR 131; Justice Jamie WS Saunders, "Reflections on the Art and Science of Decision-Making and Decision-Writing" (9-10 November 2017), online: <https://courts.ns.ca/From_The_Bench/documents/From_The_Bench-DECISION-MAKING.pdf>).

⁸⁷ Khan, "Life of a Reserve" *supra* note 4 at 71-75. We need to systematically understand how judges do their jobs and peoples' experiences with decisions—much like how other high-risk fields like medicine and aviation try to consistently improve outcomes.

Comprehensive and cohesive data about most aspects of Canada’s legal system, including insights about courts, judges, and judicial decision-making is either non-existent or not public.⁸⁸ Canada’s political and judicial leaders remain oblivious to daily “routine injustices” in Canada’s criminal justice system.⁸⁹ Basic facts remain mysteries—like, how many accused plead guilty each year;⁹⁰ how long an accused must wait to hear a verdict about whether they’re going home or to jail;⁹¹ or how many accused address their guilt or innocence without adequate help.⁹² The civil justice system is no better: the national Canadian divorce rate isn’t even tracked.⁹³

This deficit and its impacts run deep. In contrast to successful enterprises that strive to understand users and make data-driven decisions, Canada’s courts, judges, and governments can’t. This ignorance hampers the ability to understand and humanize the legal systems’ users and to test and implement people-centered, user-focused, data-driven reforms. Dr. Gillian Hadfield offers this plain summary about the data deficit’s impact: “lousy data is lousy knowledge.”⁹⁴ With such lousy data, no one can track what works and what doesn’t, and no one can promise to fix what’s not measured.

Frankly, no one can truly say that individuals are getting the best user experience in Canada’s legal system—one that meets their needs and solves their problems. Instead, individuals continue

⁸⁸ In comparison to the U.S.—which has an incredible amount of accessible legal data—Canada has a legal data deficit. And, in contrast to the U.K., Canada is doing little to remedy it (see Khan, “Life of a Reserve” *supra* note 4, 1, n5; 2, nn13,14). While an international push to gather more justice data exists (e.g., Hiil, “Country Comparison Page”, online: <<https://dashboard.hiil.org/country-comparison-page/>>), the calls to action have mostly been ignored or not vigorously pursued. Of course, some limited exceptions exist in Canada in terms of efforts being made—e.g., Le Laboratoire de Cyberjustice, “The Laboratory”, online:

<<https://www.cyberjustice.ca/en/laboratoire/presentation/>>; Refugee Law Lab, “Projects”, online: <<https://refugeelab.ca/projects/>>; Access to Algorithmic Justice, ““A2J in an era of computational law online” : <<https://a2aj.ca/>>; Conflict Analytics, “Conflict Analytics”, online: <<https://conflictanalytics.queenslaw.ca/>>; Legal Technology Lab, “Legal Technology Lab”, online: <<https://techlaw.uottawa.ca/initiatives/legaltechlab/>>.

⁸⁹ For a quick summary of this concept in the American legal system, see Steve Mills, ““Ordinary Injustice: How American Hold Court’ by Amy Bach” (12 March 2014) *Chicago Tribune*, online: <<https://www.chicagotribune.com/chi-books-review-ordinary-injustice-bach-story.html>>.

⁹⁰ Bressan & Coady, *supra* note 9.

⁹¹ *KGK*, *supra* note 48.

⁹² Dr Julie Macfarlane, “The National Self-Represented Litigants Project: Identifying and Meeting the Needs of Self-Represented Litigants” (May 2013), online: <<https://representingyourselfcanada.com/wp-content/uploads/2016/09/srreportfinal.pdf>>.

⁹³ Canada stopped tracking it in 2011. See, e.g., Tavia Grant, “Statistics Canada to stop tracking marriage and divorce rates” (20 July 2011) *The Globe and Mail*, online: <<https://www.theglobeandmail.com/news/national/statistics-canada-to-stop-tracking-marriage-and-divorce-rates/article4192704/>>.

⁹⁴ Hadfield, *Rules for a Flat World*, *supra* note 65 at 218.

to experience an increasing lack of quality, poor user experience, high cost, and overwhelming complication.⁹⁵

Part of the why may be apparent. No research or evidence demonstrates that Canada's legal system relies on any comprehensive design process or deliberate, tested designs.⁹⁶ I easily concede that the system includes many "designs" and "standardizations", like the examples I just mentioned on pp. 24-25 with law societies, rules of evidence, *etc.* But those examples don't rely on deliberate, tested designs aimed at providing an excellent user experience. And those examples aren't truly user-focussed, data-driven, or rigorously tested and evaluated.

In reality, most current processes and principles in Canada's legal system unintentionally and organically evolved—including the open court principle;⁹⁷ how judges write and issue judicial decisions;⁹⁸ or the protections that judges are given for their independence and impartiality.⁹⁹ A

⁹⁵ Of course, some exceptions exist. British Columbia has also led the world in online dispute resolution, including garnering worldwide attention, but many of the CRTs alleged satisfaction rates rely on very sparse data (see, e.g., Civil Resolution Tribunal, "2023-2024 Annual Report" (2024), online: <<https://civilresolutionbc.ca/wp-content/uploads/CRT-Annual-Report-2023-2024.pdf>>) [CRT, "2023-2024 Annual Report"].

⁹⁶ For a historic example of reform that shows a lack of deliberate design in reform recommendations, see Carl Baar, "The Zuber Report: The Decline and Fall of Court Reform in Ontario" (1988) 8 Windsor YB Access Just 105.

⁹⁷ When the open court principle was developing, the only way to discover what was going on was to physically go to court or talk to someone who did (see Khan, "Life of a Reserve" *supra* note 4, Part I).

⁹⁸ For most of the common law, most judges didn't issue reasoned oral or written decisions. Now, however, most do. Aspects of judicial decisions have more "design" than others—e.g., neutral citations and some of the organizing information and this standardization is laudable (see Canadian Citation Committee, "Canadian Guide to the Uniform Preparation of Judgments" (2002) CJC, online:

<https://www.cjccm.gc.ca/cmslib/general/news_pub_techissues_GuidelinesCM_20020930_en.pdf>.

⁹⁹ For thorough discussions of the concept, see Martin L Friedland, *A place apart: judicial independence and accountability in Canada* (CJC: Ottawa, 1995) at 3-4 [Friedland, *A place apart*]; Peter McCormick, "New Questions about an Old Concept: The Supreme Court of Canada's Judicial Independence Decisions" (2004) 37:4 Canadian Journal of Political Science 839 at 841-842 839 [McCormick, "New Questions about an Old Concept"]; Patricia Hughes, Judicial Independence: Contemporary Pressures and Appropriate Responses" (2001) 80:1-2 Can Bar Rev 181 at 192, 196 [Hughes, "Judicial Independence"]; WR Lederman, "The Independence of the Judiciary" (1976) Conference on the Canadian Judiciary (Toronto, 1976) at 3; Adam Dodek & Lorne Sossin, "Judicial Independence in Context" at 3-5 in Adam Dodek & Lorne Sossin, eds, *Judicial Independence in Context*, (Irwin Law: Toronto, 2010); Justice David T Marshall, *Judicial Conduct and Accountability* (Carswell: Toronto, 1995) at 8-15. When the Supreme Court of Canada ("SCC") was developing the Canadian version of judicial independence, many judges didn't issue lengthy comprehensive, written reasoned decisions or perhaps they issued nothing more than an order or very terse decisions. For example, in British Columbia in 1979 & 1981, Quicklaw reported 1,138 & 1,103 cases, respectively; in 1999 & 2001, Quicklaw reported 2,181 cases & 1,855 cases, respectively; and in 2016 and 2017, Quicklaw reported 2,073 & 1,974 cases, respectively. The length of all British Columbia decisions has also markedly increased since 1980: In 1980, the median word count was 1,483 words; from 1980 to 2000, the median word count increased almost a thousand words to 2,434; from 2000 to 2018, the median word count increased almost 2,300 words to 4,740 words. The means show even greater increases (see Khan, "Life of a Reserve" *supra* note 4 at 33, n201 & 40). Until 2004, judges had no general duty to even provide written, reasoned decisions in most criminal cases (*Burns*, *supra* note 48 at 664; *R v Barrett*, [1995] 1 SCR 752 at para 1; *Sheppard*, *supra* note 48 at

clear example of this organic evolution is this trite point: many seminal ideas and principles aren't even written down (unwritten constitutional principles) or truly defined (e.g., what does the "rule of law" or "access to justice" mean?).

Put simply, the Canadian legal system was never designed. It didn't emerge from and doesn't rely on a deliberate design or comprehensive design process. It emerged from a combination of colonialism, rebellion, precedent, incrementalism, tradition, war, intuition, and inertia.¹⁰⁰ And this history may even partly explain Canada's justice crisis.

If I'm wrong and the legal system has a design, its designers and their methodology have failed. A new, user-focussed approach is needed that seeks to ensure that user experience in Canada's legal system is consistent with what the *Constitution* promises. In the words of former SCC Chief Justice McLachlin, "rather than defending the status quo because it's always been there, people-centred justice asks what people need and whether they are able to get it. ... [Embracing a new approach ensures] we build ways for ordinary people to get into — to access — the justice system."¹⁰¹

iii. *Both the Canadian Judges Act and Constitution likely require more "design"*

Canadian judges and courts make Herculean efforts to offer impartial, access to justice.¹⁰² But the combined lack of design in Canada's legal system and the legal data deficit may directly or

para 4). The SCC couldn't have foreseen or contemplated the current reality or its incredible implications. Judges now issue more lengthier, reasoned, written decisions than ever before. Such writing places incredible demands on their cognition, impartiality, decision-making skills, and time. Judges may even spend more time writing decisions than hearing cases (see *Western Larch Limited v Di Poce Management Limited*, 2012 ONSC 7014 at paras 269-277 [*"Western Larch"*]). As Part II further explains, courts' views and practices have not caught up with this new reality; cognitive science; transparency trends; or the likely expectation and view of most litigants, lawyers, and judges that reasoned decisions are required in all civil and criminal law disputes (Khan, "Life of a Reserve" *supra* note 4 at 6; *Shannon v Shannon*, 2011 BCCA 397 at para 4 [*Shannon*]; *Sahota v Sahota*, 2015 ONCA 2640 at paras 6-7 [*Sahota*]).

¹⁰⁰ See *supra* note 35.

¹⁰¹ Beverley McLachlin, "Access to Justice: When life gives you lemons" (19 May 2021) *The Lawyers Daily*, online: <<https://www.thelawyersdaily.ca/articles/26825/access-to-justice-when-life-gives-you-lemons-beverley-mclachlin>>.

¹⁰² Lorne Sossin & Gregoire Webber, "Judges transcend political labels" (19 December 2014) *The Globe and Mail*, online: <<https://www.theglobeandmail.com/opinion/judges-transcend-political-labels/article22152069/>> ("Canadian judges may be known for particular views in particular areas but have not historically pursued ideological agendas, whether aligned with a political party or a political philosophy. The governing party that appointed these judges was rarely known and it hardly ever mattered.").

indirectly compromise access to justice; the administration of justice; and courts and judges' independence and impartiality.

Modelling and analysis of Canada's limited legal data already suggest that Canadian litigants don't experience uniform, impartial justice, especially litigants under state control. Many litigants likely face a lottery they didn't sign up for.¹⁰³ Some likely get better results simply because of where they live; who they can or can't hire; who their decision-maker is; or many factors that shouldn't matter.¹⁰⁴ If this data, analysis, and modelling are even partly accurate, these outcomes offend Canada's rule of law.¹⁰⁵ Canada's rule of law promise is clear: litigants should never face a lottery they didn't sign up for.¹⁰⁶ Instead, statutory requirements under the *Judges Act* and constitutional requirements promise litigants an impartial, independent, efficient, uniform, quality, reliable, accessible, intelligible, clear, predictable, and timely judiciary.

The *Judges Act* governs most Canadian courts and does three main things:

1. It prescribes eligibility requirements to become a judge, the retirement age, salaries, mandatory education requirements, *etc.*
2. It establishes the Commissioner for Federal Judicial Affairs.
3. It establishes the CJC and requires it to ensure "greater efficiency and uniformity in judicial service and to improve their quality".¹⁰⁷

¹⁰³ On a fascinating discussion of this concept in the U.S. legal system, see, e.g., Hidden Brain, "Our Noisy Minds", *supra* note 20.

¹⁰⁴ *Supra* note 21.

¹⁰⁵ At bottom, the CJC and courts might not be achieving their goals simply because governments consistently underfund them. Courts may lack funds and resources to gather data and design improvements: "governments of all stripes have not prioritized funding for the courts," and courts repeated funding requests often go unanswered (see Khan, "Zoom Court", *supra* note 3).

¹⁰⁶ Antonio Lamer, "The Rule of Law and Judicial Independence: Protecting Core Values in Times of Change" (1996) 45 UNBLJ 3 at 8 [arguing that judicial independence exists to maintain the rule of law and that the law can't be varied according to particular cases—the law should be the same for everyone].

¹⁰⁷ See Friedland, *A place apart*, *supra* note 99 at 87-90. Notably, at that time, delay was already one of the judiciary's biggest problems (*Ibid* at 89); *Judges Act*, RSC, 1985, c J-1, s 60(1).

The main takeaway about the *Act* for Chapter 1's argument is this: the *Act* requires the CJC to “promote efficiency and uniformity” and to improve judicial services' quality.¹⁰⁸ The CJC has never quarrelled with these duties.¹⁰⁹ It even broadcasts them on its website.¹¹⁰

Canada's *Constitution* imposes similar and more duties on Canada's courts and judges. It appears to promise litigants impartial, independent, uniform, reliable, accessible, intelligible, clear, timely, affordable, and predictable courts and judiciary.¹¹¹ The SCC's 2008 decision in *R. v. Ferguson* is unequivocal: the values of “certainty, accessibility, intelligibility, clarity and predictability” are fundamental to the Canadian rule of law.¹¹² So too are other SCC decisions where the SCC held that the *Constitution* promises a “unitary judicial system...”¹¹³; that individuals must be able to access;¹¹⁴ in an efficient, timely way;¹¹⁵ where judges are independent and impartial;¹¹⁶ in a process that is affordable.¹¹⁷ The *Constitution* (e.g., ss. 96, 99, 100) and *Charter* (ss. 7, 11(b)(d), 15)¹¹⁸ clearly enshrine other similar protections and rights for litigants, including what the kind of treatment that judges and courts must offer litigants.¹¹⁹

¹⁰⁸ The CJC has historically been more concerned with these issues. In 1995, the CJC asked Prof. Friedland to undertake a study, and that study led to this work (see Friedland, *A place apart*, *supra* note 99 at xiii-xvi).

¹⁰⁹ CJC, “The Way Forward: Final Report of the Special Committee on the Future Directions To the Canadian Judicial Council” (2002), online: <<https://cjc-ccm.ca/sites/default/files/documents/2019/The%20Way%20Forward.pdf>> [CJC, “The Way Forward”].

¹¹⁰ CJC, “What is expected of us”, online: <<https://cjc-ccm.ca/en/about/our-mandate>>.

¹¹¹ This said, the SCC has already recognized—at least historically—that Canadian judges don't have uniform protection for their independence (*Re Remuneration of Judges of the Prov Court of PEI; Re Independence and Impartiality of Judges of the Prov Court of PEI*, [1997] 3 SCR 3 at para 85). If judges don't have uniform protection, litigants can't get uniform access.

¹¹² *R v Ferguson*, 2008 SCC 6 at para 69; see also *Trial Lawyers Association of British Columbia v British Columbia (Attorney General)*, 2014 SCC 59 at paras 38-40 [*Trial Lawyers*]. Nothing in *Ferguson* suggests that its holding is limited to ensuring and promoting *stare decisis*. On this point see *Smith v Smith*, 2011 NBCA 66 at para 474 where the Court applied *Ferguson*'s reasoning to the *Spousal Support Advisory Guidelines* to find that they promote consistency.

¹¹³ *MacMillan Bloedel Ltd v Simpson*, [1995] 4 SCR 725 at paras 11, 54.

¹¹⁴ *Trial Lawyers*, *supra* note 112 at paras 38-43, 48.

¹¹⁵ *Ibid.*

¹¹⁶ For a thorough summary, see CJC, “Why is Judicial Independence Important to you” (2016), online: <<https://cjc-ccm.ca/sites/default/files/documents/2019/Why%20is%20Judicial%20Independence%20Important%20to%20You.pdf>>.

¹¹⁷ *Hryniak*, *supra* note 5 at paras 1, 23, 28; *Trial Lawyers*, *supra* note 114 at para 48.

¹¹⁸ *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11; *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11, s 91(24).

¹¹⁹ See CJC, “Why is Judicial Independence Important to you”, *supra* note 116 at 10, online: <<https://cjc-ccm.ca/sites/default/files/documents/2019/Why%20is%20Judicial%20Independence%20Important%20to%20You.pdf>>.

Some individuals could disagree with my interpretation of seminal jurisprudence, the *Charter*, or the *Constitution* and classify my interpretation as overreaching idealism.¹²⁰ But my interpretation relies on simple, established concepts, logic, and ideals that no one should seriously disagree with: (i.) equality before and under the law as well the equity that s. 15 of the *Charter* clearly codifies;¹²¹ and (ii.) the idea that every litigant is owed the same access to justice in any Canadian court regardless of who they are, where they come from, what they did, or how much money they make.¹²² Just because Canada’s legal system has failed to scale these promises doesn’t mean existing law doesn’t require them or that Canada can’t do it. As Part II discusses, if other systems (like the aviation and medical systems) can focus on continuous, quality improvement, why can’t Canada’s legal system?

Chapter 1 suggests that these statutory and constitutional requirements impose a constitutional obligation on Canadian courts, judges, and governments to explore all tools and processes that could increase the likelihood of impartial, independent, efficient, uniform, quality, reliable, accessible, intelligible, clear, predictable, timely outcomes. As Part II discusses, standardization could be such a tool, especially in areas of federal jurisdiction like criminal or aspects of family law. Other tools and processes likely would also improve the user experience in Canada’s legal system such as more data gathering, data transparency, and generally more “designed” reforms.

Part II: Why standardization and increased data gathering and data transparency could improve judicial independence, judicial impartiality, and everyone’s “user experience”

The 2019 Survey suggests that Canadian courts may have views and practices that could negatively impact reform efforts aimed at standardization, data gathering, and data transparency. And these views and their practices could also be compromising the user experience of all individuals in Canada’s legal system, including courts, judges, lawyers, and litigants.

¹²⁰ I think Dr. Mike Madden for a great conversation—all be it in track changes bubbles—on this topic as well as many other colleagues who’ve suggested comments about my view.

¹²¹ See, e.g., *New Brunswick (Minister of Health and Community Services) v G (J)* [1999] 3 SCR 46 at para 112.

¹²² No one can seriously disagree with this idea. The *Constitution* also promises a “unitary judicial system...” (*MacMillan Bloedel Ltd v Simpson*, *supra* note 113 at paras 11, 54) that individuals must be able to access (*Trial Lawyers*, *supra* note 112 at paras 38-43, 48. So this idea rooted in both the *Charter* (ss. 7, 11(d), 15) and s. 96 of the *Constitution*.

Part II explores those views and practices, with a particular focus on judicial independence, deliberative secrecy, standardization, and data gathering and transparency:

- It examines why standardizing written judicial decisions appears consistent with judicial independence; why standardizing could improve decision-making, access to justice, and user experience; and why courts shouldn't rely on deliberative secrecy to avoid answering general questions about judicial decision-writing.
- It then examines how Canadian courts' current approaches to reform, data gathering, data transparency, and overall transparency appear to lag comparator jurisdictions.

This analysis suggests that judicial independence and everyone's user experience would benefit from and likely even require new checks and balances for decision-making, including data gathering and transparency and standardization.

i. Why standardizing written judicial decisions is consistent with judicial independence

Decision-writing is supposed to promote judicial impartiality.¹²³ Yet the very exercise writing decisions is inherently partial. In many Canadian disputes and jurisdictions, judges have the “independence” to decide if they want to produce reasoned decisions in certain disputes;¹²⁴ only orally;¹²⁵ in writing; or finally, unreported or published in a reporter or reporting service.¹²⁶ As I'll go on to suggest, I don't think judges or courts have independence over all these choices.

Of course, judges relying on their “personal” or “subjective” judgment to make judicial decisions is inevitable and proper. Judges certainly must decide how to apply relevant law to material and relevant facts and evolve the common law as necessary. But judges' individual, idiosyncratic approaches to judicial decision-writing often inject unnecessary subjectivity into their decision-

¹²³ See, e.g., *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at para 39; *Sheppard*, *supra* note 48 at para 23; *Macdonald*, *supra* note 48 at 672; Anthony Hooper, “Comment” (1970) XLVIII Can Bar Rev 584 at 584.

¹²⁴ I'll thoroughly discuss the jurisprudence on this point, including the lack of true clarity about the duty to issue reasons. For example, while the somewhat recent decision *R v GF*, 2021 SCC 2020 [*R v GF*] stresses the importance of giving reasons generally (e.g., see para 68), much of the decision centered on appellate review of criminal decisions (as the joint concurring reasons stressed more clearly (e.g., see para 109).

¹²⁵ Chapter 3 attempted to offer further data on this issue. As Chapter 3 discusses, however, this issue remains opaque.

¹²⁶ This issue is complex as no court is truly transparent about their publication process—e.g., who gets to decide when decisions are unreported (see, e.g., Susannah Tredwell, “Unreported Decisions: A New Challenge” (14 January 2014) *Slaw*, online: <<http://www.slaw.ca/2014/01/14/unreported-decisions-a-new-challenge/>>; Ted Tjaden, “Proliferation of the Citation of Unreported Judgments in Judicial Decisions (24 January 2009) *Slaw*, online: <<http://www.slaw.ca/2009/06/24/proliferation-of-the-citation-of-unreported-judgments-in-judicial-decisions/>>; Sean Rehaag & Pierre-André Thériault, “Judgments v Reasons in Federal Court Refugee Claim Judicial Reviews: A Bad Precedent?” (2022) 44:2 Dalhousie LJ 185 [Rehaag & Thériault, “Judgements v Reasons”].

making, including their choices about publishing, structure, content, and timing.¹²⁷ Judges even appear to employ multiple structures and styles to address the same or similar legal and factual issues.¹²⁸ But varying structures and writing styles can cause varying deliberation and decision delivery times. And varying deliberation and decision delivery times can affect judicial reasoning and outcomes while varying publication practices can promote unfairness and limit accountability.¹²⁹

Put plainly, current practices appear prone to partiality and a lack of equality in the decision-writing and decision-making process. Some litigants get short, clear, fast, accessible, legally correct, more accountable decisions. Some don't. This reality flies in the face of what is legally promised and owed to Canadian litigants. And it certainly doesn't offer Canadian litigants a fair or good user experience.

Canadian judges have best practices for decision-writing that seek to avoid some of these problems and to provide a better user experience. For example, judges are trained and strongly encouraged to employ issue-driven structures in their decisions to improve everyone's user experience.¹³⁰ Instead of comprehensively summarizing facts, arguments, and applicable law—which can slow them down and compromise their reasoning—judges are trained to use the applicable issues to drive structure, content, and analysis. *Figure 2* lays out the comparison between the issue-driven structure and the fact driven structure.¹³¹

¹²⁷ For one view, see, e.g., Elaine Craig, “Judicial Audiences: A Case Study of Justice David Watt's Literary Judgments” (2019) 64 McGill LJ 309; Nina Varsava, “Professional Irresponsibility and Judicial Opinions” (2021) 59 Hous L Rev 103; for another view, see, e.g., Richard A Posner, “Judges' Writing Styles (And Do They Matter?)” (1995) 62 University of Chicago Law Review 1420; see also Morissette, *supra* note 86. Either way, many leading judges agree: judges' styles should be in the background. In other words, they're participants in the justice process—not the process itself [see CIAJ, “New Judges on the Block” (17 December 2020) *In All Fairness*, online: <<https://podcasts.apple.com/ca/podcast/ciaj-in-all-fairness-icaj-en-toute-justice/id1543273287?i=1000501254604>> [Both Justices Wooley and Jamal made this point in this interview] [CIAJ, “New Judges on the Block”].

¹²⁸ Such examples seem bountiful: see, e.g., *Ho v Ip*, 2019 BCSC 2220 & *Healey v Chung*, 2019 BCSC 1429.

¹²⁹ See Khan, ““Life of a Reserve”, *supra* note 4 at 82-82; 90-91; *infra* note 189; Jon Khan & Sean Rehaag, “Promoting Privacy, Fairness and the Open Court Principle in Immigration and Refugee Proceedings”, (2023) 54:2 OLR 357.

¹³⁰ See, e.g., Madison Robins, “Issue-Driven Legal Writing: Not Just for Judges” (29 May 2020) at 2, online: <<https://litigate.com/issue-driven-legal-writing-not-just-for-judges/pdf>>.

¹³¹ See, e.g., Edward Berry, *Writing Reasons: Handbook for Judges* (LexisNexis, Toronto, 2015); see also Hon John I Laskin, “Structure and Sufficiency”, online: <<https://soar.on.ca/sites/soar.ca/files/documents/Justice%20Laskin%20-%20Structure%20and%20Sufficiency%20of%20Reasons%20NOV%202015.ppt>>.

Figure 2: Issue driven structure vs. fact driven structure

Issue-driven structure	Fact-driven structure
1. Overview or Introduction	1. Overview or Introduction
2. Summary of issues	2. Summary of facts
3. Issue 1: What's the standard of review?	3. Summary of arguments
4. Issue 2: Was the decision reasonable?	4. Summary of issues
5. Issue 3: Was the decision fair?	5. Summary of legal principles
6. Conclusion	6. Analysis
7. Order and costs	7. Summary or Conclusion

The next section will thoroughly address why this structural difference matters for everyone's user experience and better decision-making. But here's the main point now. Issue-driven structures aren't mere window dressing; their promise and effect are more significant. They promote issue-driven thinking, reasoning, and writing—and, in turn—a potential increase in accountable, accurate, just, timely, and fair decision-making. Yet, despite these benefits and training to use this model in their courtrooms and decisions, many judges appear to still employ the traditional fact-driven model.¹³² As Chapter 3 discusses in more detail with the 2023 Survey, some legal system users nonetheless prefer the fact-driven structure for a variety of reasons—including wanting to know the “story” of what happened before the legal analysis begins. That said, almost every user group in the 2023 Survey agreed that the analysis was the most important part of decisions: in other words, despite some user groups desiring the fact-driven structure, almost every user group agreed with the primacy of analysis in decisions—which is what the issue-driven structure seeks to promote.

The CJC, courts, judges, and governments could do more to promote issue-driven reasoning and writing in Canadian judicial decisions (and generally in the litigation process). One way might involve finding appropriate ways to standardize aspects of decision-making and decision-writing and testing if this approach offers a better user experience for judges, litigants, and lawyers.

¹³² A quick review of any courts' decisions will review this trend (see, e.g., *Corness v Ng*, 2022 BCSC 334). The traditional model for decision-writing—which relies largely on former Chief Justice Brian Dickson's approach to decision-writing—is no longer encouraged (see, e.g., Robert J Sharpe & Kent Roach, “Brian Dickson: A Judge's Journey” (2005) 36:2 OLR 362 at 365. This outcome showcases an intriguing point about judicial education: just because judges are trained a certain way does not mean they will follow their training. While the National Judicial Institute didn't provide me their training materials, I was pointed to Prof Berry's work on this issue. He is one of their chief educators (see Berry, “*Writing Reasons*”, *supra* note 131; Hon John I Laskin, “Structure and Sufficiency”, *supra* note 131).

But the 2019 Survey suggests that courts likely believe that imposing standardizations; strongly suggesting using standardizations; or even tracking the use of suggested styles or standardizations would infringe judicial independence. So standardization seems like a “no-go” in 2026 despite its potential to facilitate more independent, impartial decision-making and more uniform outcomes for litigants.

Before addressing courts’ views—at least as represented in the 2019 Survey and possibly in the 2023 Survey—I’ll first explain two related points to my argument about standardization: how I’m using the word “standardizing” and why judicial independence appears to always require judges to issue reasoned decisions and why this point is related to my call to explore more standardization of decision-making and decision-writing.

(a) More terminology: How I’m using the word “standardizing”

Many standardizations are possible. In my research, I’ve focused on two possible standardizations for written and oral decisions that evidence what I mean when I use the word “standardization”. But these standardizations are a case study, and many other standardizations are likely possible. These ones, however, seem consistent with the goals of the *Constitution* and judicial independence and impartiality:

- standardized structures: a standard order for judges to address issues and standardized headings for various sections—e.g., sections for introduction/overview; issues; followed by issue-driven analysis of each issue, including applicable law, applicable facts, and parties’ arguments; followed by the conclusion; followed by the order and costs. Suggestions for what should be in those sections would also be provided. A somewhat recent British Columbia Supreme Court decision provides a useful starting point on standardized structures.¹³³ Many others likely exist; and
- standardized content: standard applicable law written in plain, accessible language for judges to insert in their applicable law sections akin to standardized jury instructions—e.g., in a negligence case, the law on duty of care, standard of care, causation or in a family law case, the law on child support, custody and access, *etc.* Sections could also provide judges and parties guidance on what evidence parties must provide for judges to properly apply the law (e.g., based on previous cases and analysis).¹³⁴

¹³³ *Mayer v The Superintendent Of Motor Vehicles*, 2020 BCSC 474.

¹³⁴ As we’ll discuss later, much of the evidence that judges receive often is irrelevant. Perhaps they should get a heads-up on what they need vs. what they don’t to help them better control the trial process.

Uniformity of structure and style wouldn't preclude diverse analysis or personalized reasons for litigants. If judges got to their analysis faster, they could potentially "turn their surplus attention to providing *good* reasons that are responsive to the facts presented."¹³⁵ Uniform decision-making and uniform decision-writing also doesn't mean uniform or boilerplate outcomes. Uniform decision-making and uniform decision-writing could just mean more uniform, quality, efficient, accessible justice and equality's basic promises.

Standardization has many possible benefits, including easier analysis and understanding of judges' decisions and clearer statements of law for all parties. If both standardizations were open access and predictably used, everyone could start on the same page, and potential increases to efficiency, uniformity, decision-writing and decision-making could occur.

Standardized content could rely on a GitHub like system where changes are pushed on a constant basis (depending on judges' edits) that other judges could then pull from. For context, GitHub is an open-source platform that computer programmers commonly use to create, store, manage, and share their code during programming projects. It allows for real time collaboration where users work together to build and edit content and where all versions and changes are easily observable.¹³⁶

But, as mentioned, these examples are just working ideas. The technology in this area is moving incredibly quickly with innovations such as generative AI and large language models such as Chat GPT.¹³⁷ So the possibility of judges and courts using generative AI and large language models (LLMs) to create standardized accessible statements of law or consistent structures and contents seems inevitable. Judges and courts could also use such AI and machine learning tools to act as a "synthetic" court of appeal or law clerk to reduce error, highlight reasoning flaws,

¹³⁵ Paul Daly, "The Reasons for Reasons: External and Internal Pressures for a General Duty to Give Reasons" (17 March 2017), online: <administrativelawmatters.com/blog/2017/03/17/the-reasons-for-reasons-external-and-internal-pressures/>; see also Simon Stern, "Copyright Originality and Judicial Originality" (2013) 63 UTLJ 385 at 388.

¹³⁶ Wikipedia, "Github" (last edited 8 September 2025), online: <<https://en.wikipedia.org/wiki/GitHub>> (for such a historical product in the states, see Code for Baltimore, "Jury Instructions", online: <<https://github.com/CodeForBaltimore/JuryInstructions>>).

¹³⁷ To be clear, I don't think that generative AI is anywhere close to replacing judges or automating what they do. For views on these subjects and possible perils (see, e.g., Katie Szilagyi, "Artificial Intelligence & the Machine-ation of the Rule of Law" (2022) (PhD Thesis, University of Ottawa), online: <<https://ruor.uottawa.ca/handle/10393/44188>>; John Morison & Adam Harkens, "Re-engineering justice? Robot judges, computerised courts and (semi) automated legal decision-making" (2019) 39:4 Legal Studies 618.

improve communication, *etc.* like I tried to do with this dissertation (*Appendix 7* offers an example of a Chat GPT's in depth critique of an earlier version of this dissertation: I truly relished the feedback it provided).¹³⁸ Many exciting possibilities exist and should be explored.¹³⁹ Chapter 5 also discusses more of these ideas and offer recommendations considering this dissertation's cautionary tales.

Regardless of the technology or solution that courts and judges may eventually pursue, user consultation, ideation, prototypes, iteration, testing, and granular data must drive the actual "design" of any reforms to judicial decisions. At this point, perhaps even basic standardized checklists are enough,¹⁴⁰ like some have called for in certain contexts like credibility assessments.¹⁴¹

As I've discussed, some standardization isn't a novel concept in Canada's legal system, including decision-making. Canada's jury system—where litigation stakes are often the highest—already heavily relies on it. The impetus for standardizing jury instructions was saving time; reducing impartiality and increasing uniformity; reducing appeals; and finally, producing accurate and comprehensible statements of law.¹⁴² Standardized jury instructions aren't perfect,

¹³⁸ See, e.g., Kristen Bell *et al*, "The Recon Approach: A New Direction for Machine Learning in Criminal Law" (2021) 36:2 Berkeley Tech LJ 821; AD (Dory) Reiling, "Courts and Artificial Intelligence" (2020) 11:2 International Journal for Court Administration 8; Alexis Morin-Martel, "Machine learning in bail decisions and judges' trustworthiness" (2023) 21: 2 AI Soc 1; Jens Ludwig & Sendhil Mullainathan, "Fragile Algorithms and Fallible Decision-Makers: Lessons from the Justice System" (2021) 35:4 Journal of Economic Perspectives 71.

¹³⁹ For a thorough discussion on these points, see Abdi Aidid & Benjamin Alarie, *The Legal Singularity* (Toronto: University of Toronto Press, 2023).

¹⁴⁰ See, e.g., Atul Gawande, *The Checklist Manifesto* (Picador: New York, 2011) [Gawande, *Checklist Manifesto*]. Standardized structures and content are likely worthwhile pursuits: structure and content are the only things one can change about decisions; judges have no evidence-based, practical guidance on structure or content; and some international and Canadian practice supports availing standardization (see Khan, "Life of a Reserve" *supra* note 4 at 84-83). For a somewhat contrary view on checklist efficacy, see Daniel E Ho, Sam Sherman, and Phil Wyman, "Do Checklists Make a Difference? A Natural Experiment from Food Safety Enforcement" (2018) 15:2 J Empirical Legal Studies 1.

¹⁴¹ See, e.g., David M Paciocco, "Doubt about Doubt: Coping with R. v. W. (D.) and Credibility Assessment" (2017) 22:1 CCLR Toronto 31.

¹⁴² See Marie Comiskey, "Initiating Dialogue about Jury Comprehension of Legal Concepts: Can the Stagnant Pool be Revitalized" (2010) 35:2 Queen's LJ 625; National Judicial Institute, "Model Jury Instructions", online: <<https://www.njiinm.ca/index.cfm/publications/model-jury-instructions/>>; CJC – National Committee on Instructions, "Preface", online: <<https://www.nji-inm.ca/index.cfm/publications/model-jury-instructions/preface/>>; Robert G Nieland, *Pattern Jury Instruction: A Critical Look at a Modern Movement to Improve the Jury System* (American Judicature Society: Chicago, 1979) at 13-22.

and lots of work remains to be done to improve them,¹⁴³ including the likely increasing length of many jury charges in Canada.¹⁴⁴ But Canada's legal system also lacks good data on the jury system, so most critics of the jury system rely on anecdote (because of Canada's jury secrecy laws, empirical analysis of Canadian standardizations is largely absent).¹⁴⁵ Nonetheless, other jurisdictions, like the U.S. and New Zealand, have studied comprehension in the jury context,¹⁴⁶ and their work offers a blueprint and starting point for understanding comprehension and efficacy in standardization.¹⁴⁷

(b) Judicial independence appears to require judges to always issue accessible reasoned decisions

Canadian judges now issue longer, more complex, more reasoned decisions than ever before. As I've noted elsewhere, judges historically didn't issue reasoned decisions, either in the common law or Canada. And, when they rarely did, their decisions were mostly not reported or reported inaccurately.¹⁴⁸ In short, *decision-writing* has never been inherent or intrinsic to *decision-making* in the common law or Canada. And neither was the reporting of the reasoned decisions that judges did rarely issue.¹⁴⁹

¹⁴³ Several innovations have been made, but improvement is still very much so needed (see Comiskey, *supra* note 142 at 636). Additionally, many of the edits and changes to jury instructions are left on the cutting room floor. As far as I'm aware, no one has pursued a way to aggregate all the Canadian edits that occur during the trial process (e.g., aggregating them and pushing them to a repository like GitHub (see *supra* note 136)).

¹⁴⁴ See, e.g., Department of Justice "Steering Committee on Justice Efficiencies and Access to the Justice System", online: <<https://www.justice.gc.ca/eng/rp-pr/csj-sjc/esc-cde/scje-cdej/p7.html>>; *R v Rodgeron*, 2015 SCC 38.

¹⁴⁵ Comiskey, *supra* note 142 at 660; see also Michelle I Bertrand and Richard Jochelson, "Mock-Jurors' Self-Reported Understanding of Canadian Judicial Instructions" (2018) 66 CLQ 137.

¹⁴⁶ See Comiskey, *supra* note 142 at 637-643; see also Robert P Charrow & Veda R Charrow, "Making Legal Language Understandable: A Psycholinguistic Study of Jury Instructions" (1979) 79 Colum L Rev 1306.

¹⁴⁷ See, e.g., Doreen M Koenig, Norbert L Kerr & Dawn Van Hoek, "Michigan Standard Criminal Jury Instructions: Judges' Perspectives after Ten Years' Use" (1987) 4:2 TM Cooley L Rev 347; Bethany K Dumas, "Jury Trials: Lay Jurors, Pattern Jury Instructions, and Comprehension Issues" (2000) 67:3 Tenn L Rev 701; Benjamin Spivaka, James RP Ogloff & Jonathan Clough, "Asking the Right Questions: Examining the Efficacy of Question Trails as a Method of Improving Lay Comprehension and Application of Legal Concepts" (2019) 26:3 Psychiatry, Psychology and Law 441 at 452 ["comprehension and application can be improved through the use of revisions to directions such as plain language revision, written copies of directions and decision-making aides like checklists and question trails"]; Sara Gordon, "What Jurors Want to Know: Motivating Juror Cognition to Increase Legal Knowledge & Improve Decision making" (2014) 81 Tennessee Law Review 75; Ryan Essex & Jane Goodman-Delahunty, "Judicial directions and the criminal standard of proof: Improving juror comprehension" (2014) JJA 65; Tasmin Ede & Jane Goodman-Delahunty, "Question trails in trials: Structured versus unstructured juror decision-making" (2013) 37 Crim LJ 114; Carolyn Semmler & Neil Brewer, "Using a Flow-chart to Improve Comprehension of Jury Instructions" 9 Psychiatry, Psychology and Law" (2002) 9 Psychiatry, Psychology and Law 262.

¹⁴⁸ See Khan, "Life of a Reserve", *supra* note 4 at 10-11.

¹⁴⁹ *Ibid.*

Over the last 30 years, however, Canadian trial judges, appeal courts, and parliament have increasingly said that reasoned decisions are intrinsic to good, fair decision-making. But the SCC still hasn't endorsed this view—at least not as fully or explicitly as other courts. SCC jurisprudence tacitly still suggests that the technical requirement to issue reasoned decisions is still narrow. Canadian judges must issue reasoned decisions in only three circumstances: (1) when an accused's innocence is at stake; (2) when statutes require reasoned decisions; or (3) in some “some adjudicative contexts.”¹⁵⁰

Scholars and judges may soundly argue that my technical interpretation of SCC jurisprudence is wrong or that “some adjudicative contexts” includes most judicial contexts. Indeed, superior, appellate, and federal court Canadian judges provide sufficient, reasoned oral or written decisions in most disputes even if many of the decisions are only oral and unreported.¹⁵¹ Trial

¹⁵⁰ *REM*, *supra* note 48 at para 10.

¹⁵¹ That said, many reasoned decisions then go unpublished or unreported. And one has no easy way of knowing how many disputes involved unreported, unpublished, or published decisions. For example, the British Columbia Supreme Court indicates how many oral and written published decisions its judges output each year, and it indicates the amount of unreported oral and written decisions, but it's one of the only courts to do so, and it issues hundreds of oral decisions a year (Supreme Court of British Columbia, “2024 Annual Report” (2024) British Columbia Supreme Court at 54, online:

<https://www.bccourts.ca/supreme_court/about_the_supreme_court/annual_reports/2024_SC_Annual_Report.pdf> [BCSC, “Annual Report: 2024”]. This problem leads to radical issues of inequity and opacity. During the amendments to the *Judges Act* and *Criminal Code*, Senator Kim Pate noted some of these points. Yet the federal government continues to pay little attention to the issue, *Debates of the Senate Hansard*, 2nd Sess, 43rd Parl, Vol 152, Issue 37 (4 May 2021) at 1600, online:

<https://sencanada.ca/en/content/sen/chamber/432/debates/037db_2021-05-04-e?language=e#40>.

[“The Senate Legal Committee, in its report on Bill C-3, has called on **the government to remedy this gap in accountability by working with provincial and territorial counterparts to ensure that all decisions in sexual assault law cases are readily available to the public, ideally through a free online database.** Both Senator Dalphond, the sponsor of the bill, and the Honourable Rona Ambrose, author of the original legislation on which Bill C-3 is based, have been instrumental in advocating this measure as a necessary complement to Bill C-3. ... The original version of the legislation, Bill C-337, would have ensured accessibility by requiring that judges not only provide their reasons but do so in writing in all sexual assault cases. By contrast, Bill C-3 requires written reasons only where proceedings are not “recorded.” In practice, this requirement adds nothing in terms of transparency or accountability because all criminal proceedings are already recorded. Bill C-3's requirement for written reasons would therefore never apply or lead to any improvement on the status quo. **Bill C-3 treats written decisions and oral decisions with recordings as interchangeable. They are not. While decisions with written reasons appear, and are routinely accessible and searchable, on court websites or through the public CanLII database, oral decisions with recordings do not. This creates significant barriers to access.** The Federal Ombudsman for Victims of Crime has noted that many complainants cannot absorb reasons delivered orally. Some are understandably overwhelmed or may choose to leave the courtroom if hearing the decision in the presence of the accused is experienced as unbearable. Those without legal backgrounds may require technical jargon to be distilled into plain language. Unless the Crown decides to appeal a case or a journalist decides to report on it, there are almost no opportunities for researchers, legislators or the public, let alone complainants, to scrutinize sexual assault cases where decisions are given orally instead of in writing. **Gaining access to recordings of oral decisions usually means ordering a transcript. This process varies from jurisdiction to jurisdiction. A person may be aware**

and appeal courts have already held that Canadian judges must always provide brief oral or written reasoned decisions¹⁵² (as far as I'm aware, no court has discussed whether this obligation includes the responsibility to actually publish those decisions versus not publishing them and leaving them in an unreported format).¹⁵³ And CJSCA has said the same: "trial judges have a duty to provide sufficient reasons for their decisions to enable meaningful appellate review."¹⁵⁴

But the SCC was unequivocal in its seminal decision on reason giving in *R. v. R.E.M.*: "there is no absolute rule that adjudicators must in all circumstances give reasons. In some adjudicative contexts, however, reasons are desirable, and **in a few, mandatory**...."¹⁵⁵ As far as I'm aware, however, the SCC has never replaced or resiled from this clear rule, and I'm not the only one to take such a legalistic reading. As Chapter 2 discusses, the federal government somewhat recently instituted a requirement that judges must always issue reasoned oral or written decisions when they acquit an accused in cases involving sexual assault allegations.¹⁵⁶ Put another way, the federal government seemed concerned that judges didn't have to issue reasons when they acquit an accused because the accused's innocence is no longer at stake when judges issue acquittals. I have no real idea about how the federal government interpreted *R.E.M.* When the legislation was introduced, however, the Parliamentary Secretary to the Minister of Justice and Attorney General explained that the Bill "promotes rigour and transparency by requiring that judges provide reasons for their decisions in sexual assault proceedings and that these reasons be set out in writing or in the record of the proceedings. ... Under this bill, the obligation to state reasons will be added to the other Criminal Code provisions relating to sexual assault."¹⁵⁷ And this section of

that the decision exists but have no idea, much less the technical know-how, to navigate the complex, costly and time-consuming process for requesting transcripts". Her comments were also captured in the Senate's report to the House, but no further changes were made (The Standing Senate Committee on Legal and Constitutional Affairs, "Fifth Report" (20 April 2021), online: <<https://sencanada.ca/en/committees/LCJC/Report/93087/43-2>>

¹⁵² See, e.g., *Shannon*, *supra* note 99; *Sahota*, *supra* note 99.

¹⁵³ See, e.g., Rehaag & Thériault, "Judgements v Reasons", *supra* note 126.

¹⁵⁴ CSCJA, "Letter from President Madame Justice Himel to Marie-Helime Sauve" (18 April 2017), online: <<https://www.ourcommons.ca/Content/Committee/421/FEWO/Brief/BR8899196/br-external/CanadianSuperiorCourtsJudgesAssociation-e.pdf?>>.

¹⁵⁵ *REM*, *supra* note 48 at para 10 [emphasis added].

¹⁵⁶ Bill C-5, 19 February 2020, *supra* note 536 ["Finally, the bill would amend the Criminal Code to require judges to provide reasons for decisions under sexual assault provisions of the Criminal Code. This amendment is intended to enhance the transparency of judicial decisions ... by rendering them accessible, either in writing or on the record of the proceedings, so oral reasons would be sufficient as well."].

¹⁵⁷ House of Commons Debates, 43rd Parl, 1st Sess, 19 February 2020, at 1555, online: <<http://www.ourcommons.ca/DocumentViewer/en/43-1/house/sitting-19/hansard#T1550>>. The Member went on to

the *Criminal Code*—“Sexual Offences, Public Morals and Disorderly Conduct” is the only section with such a requirement for convictions or acquittals.¹⁵⁸

R.E.M. appears to often be cited and relied on for more than it says, and it has grown well beyond its initial contours. For example, in a somewhat recent Saskatchewan Court of Appeal Decision, the Court relied on *R.E.M.* to find that “All judges have a duty to provide sufficient reasons for the verdicts they reach.”¹⁵⁹ But that holding goes well beyond *R.E.M.*’s plain words. That holding and Canadian judges’ overwhelming general practice invite two intriguing questions: why do Canadian judges believe and feel obliged to frequently provide reasoned decisions when the SCC’s jurisprudence seems somewhat ambiguous,¹⁶⁰ and why do courts rely on *R.E.M.* for more than its plain and clear prescription? Regardless of the answer to these questions or how one reads *R.E.M.*, Canadian judges and appeal courts increasingly seem to believe that their duty to be independent and impartial requires them to **always** give reasoned decisions despite the SCC never saying so. And I think those courts and judges are likely right: judges being this transparent is a good thing and likely consistent with a proper reading of the applicable jurisprudence.

note the existing requirements, including from *Sheppard* at 1604-1605, online:

<<http://www.ourcommons.ca/DocumentViewer/en/43-1/house/sitting-19/hansard#T1610>> [“This amendment is intended to enhance the transparency of judicial decisions made in sexual assault proceedings by rendering them accessible, either in writing or on the record of the proceedings, so oral reasons would be sufficient as well. I want to mention that this proposed amendment to require judges to provide reasons in the determination of sexual assault matters specifically is complementary to three currently existing requirements:

First, the members in the chamber should understand that section 726.2 of the Criminal Code requires judges to provide reasons when they are sentencing decisions.

Second, there is jurisprudence from the Supreme Court in a 2002 decision called *Sheppard*, which requires judges to provide reasons for their decisions more generally.

Third, subsections 278.8(2) and 278.94(5) of the Criminal Code require judges to provide reasons when determining whether certain types of evidence should be admitted in sexual assault cases.

Under this bill, the obligation to state reasons will be added to the other Criminal Code provisions relating to sexual assault. As a result, all provisions relating to sexual offences will be clear and accessible to the people applying them, thereby reducing the risk of an erroneous application of law by countering the potential influence of myths and stereotypes about victims of sexual assault and their behaviour.”]. Some argued that the amendment was redundant because trial judges already had this duty, but as I’ve noted, I think the law was opaquer (see Michael Plaxton, “Bill C-337: Judicial Accountability Through Sexual Assault Training Act” (17 April 2017), online: <<https://www.ourcommons.ca/Content/Committee/421/FEWO/Brief/BR8899410/br-external/PlaxtonMichael-e.pdf>>).

¹⁵⁸ *Criminal Code*, RSC, 1985, c C-46, Part IV; Wayne Gorman, “Ours Is to Reason Why: The Law of Rendering Judgment” (2015) 62 Crim LQ 301.

¹⁵⁹ *R v KBW*, 2022 SKCA 8 at para 17.

¹⁶⁰ I previously identified other possible answers. See Khan, “Life of a Reserve”, *supra* note 4 at 24-27.

Despite *R.E.M.*'s clarity, *R.E.M.* could and should be read a second, more contextual way, especially because of *R. v. Sheppard*. And this contextual reading might be the way that many judges and courts read or interpret the intent of *R.E.M.* This reading suggests that judicial independence always requires judges to provide sufficient, reasoned decisions. The why is obvious: reasons motivate impartiality and public accountability; they're the work product that parties, appellate courts, and the public can review. Surprisingly, however, neither *R.E.M.* nor *Sheppard*—two of the most seminal Canadian decisions on reason-giving—mention “independence” or “impartiality.” But independence and impartiality are the lifeblood of decision-writing and reason-giving.¹⁶¹ Carefully reading *R.E.M.* and *Sheppard* showcases why:

Sheppard

- Reasoned decisions are inherent in the judges' role (at least in the criminal context); the duty to give them is owed to the public;¹⁶²
- they “[are] the primary mechanism by which judges account to the parties and to the public for the decisions they render”;¹⁶³
- they “[are] central to the legitimacy of judicial institutions in the eyes of the public...if unexpressed, the judges are prevented from judging the judges”;¹⁶⁴
- they help concentrate the judicial mind;¹⁶⁵
- they justify and explain the result to the loser and the public;¹⁶⁶
- they show the public that justice is done;¹⁶⁷ and
- they permit appellate review.¹⁶⁸

R.E.M.

- Reasoned decisions tell the parties why the decision was made;¹⁶⁹
- they prove that judges acted impartially;¹⁷⁰
- they “help ensure fair and accurate decision making; the task of articulating reasons directs the judge's attention to the salient issues and lessens the possibility of overlooking or under-emphasizing important points of fact or law....”;¹⁷¹

¹⁶¹ See, e.g., Right Honourable Beverley McLachlin, “Judicial Accountability” (2006), online: <<https://www.scc-csc.ca/judges-juges/spe-dis/bm-2006-11-02-eng.aspx>>; *Cojocaru*, *supra* note 48 at para 29.

¹⁶² *Sheppard*, *supra* note 48 at paras 22, 55.

¹⁶³ *Ibid* at para 15.

¹⁶⁴ *Ibid* at para 5.

¹⁶⁵ *Ibid* at para 23, 51.

¹⁶⁶ *Ibid* at para 24.

¹⁶⁷ *Ibid* at para 24.

¹⁶⁸ *Ibid* at 55.

¹⁶⁹ *REM*, *supra* note 48 at paras 11, 17.

¹⁷⁰ *Ibid* at para 11 [judges' reasons are “proof that he has heard and considered the evidence and arguments that have been adduced before him on each side: and also that he has not taken extraneous considerations into account”].

¹⁷¹ *Ibid* at para 12.

- they’re “a fundamental means of developing the law uniformly”,¹⁷²
- they “instantiate the rule of law and support the legitimacy of the judicial system”,¹⁷³
- they provide public accountability;¹⁷⁴ and
- they permit appellate review.¹⁷⁵

This contextual reading suggests a Canadian judge’s duty to be independent and impartial always requires judges to demonstrate their impartiality by always issuing brief, accessible oral or written reasoned decisions despite *R.E.M.*’s narrow prescription.¹⁷⁶

Standardization is entirely consistent with achieving this fundamental obligation and might even help. This intuition must obviously be tested. But some data already suggests that some judges are struggling with the laborious obligation (I tried to test this assumption in the 2023 Survey, but as Chapter 3 discusses, courts weren’t willing to facilitate my research and only retired judges participated). Based on limited data and anecdotal observations, judges are taking longer to issue longer, more complex reasoned decisions, and parties are left waiting longer for clear answers.¹⁷⁷ The 2023 Survey data affirms that limited data and other anecdotal observations: no user group reported frequently experiencing decisions that were clear, the right length, or timely. Instead, most surveyed user groups said that decisions that were clear, the right length, and timely were mostly the exception—not the rule.

¹⁷² *Ibid.*

¹⁷³ *Ibid.*

¹⁷⁴ *Ibid* at paras 11, 13, 25.

¹⁷⁵ *Ibid.*

¹⁷⁶ I concede that *Sheppard* and *REM* are directed to the criminal context (Khan, ““Life of a Reserve”, *supra* note 4 at 11-15.) So one could argue my contextual reading is wrong: judicial independence shields judges from any requirement to issue decisions outside *REM*’s prescription (see *Cojocar*, *supra* note 48 at paras 24-25). But the idea that judges must be *more* independent and impartial in criminal vs. civil cases connotes a troubling hierarchy. Even if one doesn’t accept this contextual reading (i.e., that a reasoned decision is a legal requirement), many would likely agree—on either a normative or moral basis—that such decisions are nonetheless required for litigants’ dignity and the public legitimacy of the judicial process. John I Laskin has opined that giving reasoning is the only way judges can be held accountable—they must explain why they decided as they did. (CIAJ, “Welcome to Judgment Writing School!” (19 November 2020) *In All Fairness*, online: <<https://ciaj-icaj.ca/en/podcasts/in-all-fairness/?ci=19>>.

¹⁷⁷ See Khan, “Life of a Reserve”, *supra* note 4, Part III; Kevin LaRoche, M Laurentius Marais & David Salter, “The Length of Civil Trials and Time to Judgment in Canada: A Case for Time-Limited Trials” (2021) 99:2 *Canadian Bar Review* 286; Mat Good, “Justice Delayed? A Quantitative Assessment of Trends in Lengthy of Hearing, Length of Written Judgment and Time to Judgment (2021) 70:6 *The Advocate* 831, online: <https://the-advocate.ca/emag/issues/2021/Nov/page_32.html>.

Leading educators of Canada’s judges have already agreed that decision-writing needs to change,¹⁷⁸ so I’m far from the first person to make these points. Despite being invaluable, decision-writing simply isn’t always achieving its full promise of ensuring justice, independence, or impartiality through better reasoning.

Regardless of how one reads *R.E.M.* and *Sheppard*, two things appear clear:

1. The legal process has never caught up to the modern obligation and its impact on Canadian judges, including the incredible tax it places on judges’ time, cognition, energy, and physical and mental health. Writing sufficient, timely, accessible reasoned judicial decisions is very difficult, and reasonable people continue to disagree about what’s sufficient and accessible.¹⁷⁹
2. The common law has never caught up to the new reality. It now includes the thousands of decisions that courts release each year vs. only a couple hundred before this obligation crystalized.¹⁸⁰ Put simply, Canada’s common law now includes more long “law” than ever. And many could easily argue that the judicial and trial process is also more complex than ever. Former SCC Justice Moldaver reiterated that point in 2022 and offered this pessimistic view: “I think things are worse ... Trials are prolix, and they are filled with complexity, and frankly, I don’t see it getting better at all. I see that the complexities continue, and the length of trials, as a result are continuing....”¹⁸¹ Instead of being brave in how Canada runs its criminal justice system, Moldaver noted the system, “to a large extent, functions on fear.”¹⁸²

As the rest of this section will explain, the current Canadian approach to litigation, decision-making, and decision-writing doesn’t do enough to acknowledge this modern obligation and new reality. A key takeaway from Chapter 1 is that judges also have a user experience that we must carefully consider and understand when trying to improve Canada’s legal system.

No qualitative or quantitative data confirms this point.¹⁸³ But limited judicial commentary; the increasing length, delay, and complexity of judicial proceedings and judicial decisions; and an

¹⁷⁸ CIAJ, “Welcome to Judgment Writing School!”, *supra* note 176 [John I Laskin made this point during this interview].

¹⁷⁹ See, e.g., *R v GF*, *supra* note 124.

¹⁸⁰ For example, Westlaw only includes 500 decisions from the Alberta Court of Queen’s Bench in 1980 and 1600 in 2020, and most of the 2020 decisions are likely far longer than the 1980 decisions.

¹⁸¹ Cristin Schmidt, “Cull of ‘huge mass’ of less-serious criminal cases could unclog Canada’s justice system: Moldaver” (19 September 2022) *The Lawyer’s Daily*, online: <<https://www.thelawyersdaily.ca/ip/articles/39774/cull-of-huge-mass-of-less-serious-criminal-cases-could-unclog-canada-s-justice-system-moldaver->>.

¹⁸² *Ibid.*

¹⁸³ As Chapter 3 addresses further, I attempted to gather this data. But I couldn’t access the judges I needed to verify my hypothesis.

ever-increasing complex and messy common law suggest this possible hypothesis. Perhaps all judges—but especially trial and provincial/territorial judges—need more help meeting the obligation to provide sufficient, timely, accessible reasoned decisions, including determining the law they need to rely on and what facts they must find. Much like all other users, judges also need a better user experience: one that meets their needs and solves their problems, including the demanding obligation to provide reasoned decisions and uniform, impartial justice. And if they don't get that good user experience, lawyers and litigants likely also won't.

ii. *Why standardization could improve judicial independence and impartiality*

Canada's lead educators on decision-writing for judges have been advocating for and teaching issue-driven writing and reasoning for over 20 years.¹⁸⁴ They argue that the traditional fact-driven structure for decision-writing is flawed because it discourages conciseness, inhibits clear contexts, and forces readers to wait for facts to be linked with law.¹⁸⁵ In technical terms, the traditional fact-driven structure compromises the proximity principle of communication and thought; it separates related ideas and information instead of keeping them together: "evidence only becomes truly meaningful, and memorable, when it is close to the issues to which it belongs."¹⁸⁶ But if judges use issue-driven structures, they keep related ideas and information together. And they likely can issue shorter, clearer, more understandable, and more accessible decisions.¹⁸⁷

Using such structures can also improve judicial thinking, reasoning, and deciding—the very goals of Canadian decision-writing.¹⁸⁸ This argument isn't based on intuition, experience, or personal views; it's rooted in established, well-replicated cognitive science.¹⁸⁹ Yet, as discussed, an overwhelming number of judges still employ the traditional fact-driven model or something

¹⁸⁴ I thank Prof Berry, John I Laskin, and Caroline Mandell for discussing these concepts with me.

¹⁸⁵ Berry, *supra* note 130 at 37; see also Laskin, *supra* note 130.

¹⁸⁶ *Ibid.*

¹⁸⁷ As this part goes on to discuss, relying more heavily on it could also help improve the overall trial and appeal process. Either way, these are hypotheses based on early evidence. The only way to determine if this point is true is to subject it to rigorous testing.

¹⁸⁸ See Khan, "Life of a Reserve", *supra* note 4 at 10-12, 22-23; Macdonald, *supra* note 48 at 672; Hooper, "Comment" *supra* note 123; REM, *supra* note 48 at para 12; Sheppard, *supra* note 48 at paras 23, 51.

¹⁸⁹ Chip Heath, Richard L Larrick & Joshua Klayman, "Cognitive Repairs: How Organizational Practices Can Compensate for Individual Shortcomings" (1998) 20 Res Org Behav 1 at 15; see also John D Bransford & Marcia K Johnson, "Contextual Prerequisites for Understanding: Some Investigations of Comprehension and Recall" (1972) 11 Journal of Verbal Learning and Verbal Behaviour 717; Steven V Armstrong & Timothy P Terrell, *Thinking like a Writer* (Practicing Law Institute: New York, 2008).

like it.¹⁹⁰ Similarly, despite lawyers being trained to write issue-driven arguments, few appear to consistently do and often use the traditional fact-driven model for their advocacy.¹⁹¹ So judges are often left without the organizing frameworks that issue-driven advocacy provides, and this lack could've negative impacts on Canada's judiciary, including on their independence and impartiality.

Distilled down, judicial independence is a basic doctrine. Judges must remain independent and impartial¹⁹² from two individual or institutional pressures:¹⁹³

1. any attempt to exert actual or perceived pressure on their individual or institutional decision-making;¹⁹⁴ and
2. any actual, objective, or perceived state of mind, attitude, or bias that can exert pressure on their individual or institutional decision-making.¹⁹⁵

The current process for Canadian judicial decision-making and decision-writing mainly seems to engage the second pressure on judges and courts. Judges appear to lack adequate time and tested reliable tools to help them remain independent and impartial from at least three things, and courts seem unable or unwilling to understand these effects and how to reduce their negative impacts:

¹⁹⁰ A quick review of any courts' decisions will review this trend (see, e.g., *Corness v Ng*, 2022 BCSC 334). The traditional model for decision-writing—which relies largely on former Chief Justice Brian Dickson's approach to decision-writing—is no longer encouraged (see, e.g., Sharpe & Roach, *supra* note 132 at 365. This outcome showcases an intriguing point about judicial education: just because judges are trained a certain way does not mean they will follow their training. While the National Judicial Institute didn't provide me their training materials, I was pointed to Prof Berry's work on this issue. He is one of their chief educators (see Berry, "Writing Reasons", *supra* note 131; Hon John I Laskin, "Structure and Sufficiency", *supra* note 131).

¹⁹¹ *Supra* note 210 [Caroline Mandell made this point during this interview]. I've also anecdotally observed this as a lawyer and heard judges complain about the lack of issue-driven advocacy.

¹⁹² Bifurcating the principles of impartiality and independence creates a false dichotomy. If judges lack impartiality, they lack independence; if they lack independence, they lack impartiality. For a brief, excellent discussion on why the refined distinction appears unnecessary or unreasonable, see Friedland, *A place apart*, *supra* note 99 at 9. These concepts likely aren't separable (see also *R v Lippe*, [1991] 2 SCR 114 at 134-135, 139 [*Lippe*]; Adam Dodek, "Judicial Independence as a Public Policy Instrument" (2009) Comparative Research in Law & Political Economy. Research Paper No. 10/2009 at 24 [Dodek, "Public Policy Instrument"] at 6 ["Judicial independence is derivative of impartiality and a protective shield to ensure it."]; CJC, *Ethical Principles for Judges* (Ottawa: CJC, 2021) at 14 online: <https://cjc-ccm.ca/sites/default/files/documents/2021/CJC_20-301_Ethical-Principles_Bilingual%20FINAL.pdf> ["Judicial independence is ... the foundation of judicial impartiality and a constitutional right of all."].

¹⁹³ See Friedland, *A place apart*, *supra* note 99 at 15.

¹⁹⁴ *R v Valente*, [1985] 2 SCR 673 at 689 [*Valente*]; *Lippe*, *supra* note 192 at 153.

¹⁹⁵ *Ibid* at 140; *Valente*, *supra* note 194 at 685; *R v Généreux*, [1992] 1 SCR 259 at 287 [*Généreux*].

- cognitive biases (“cases in which human cognition reliably produces representations that are systematically distorted compared to some aspect of objective reality”);¹⁹⁶
- heuristics (“shortcuts or rules of thumb that are prone to breakdown in systematic ways”),¹⁹⁷ and
- common cognition errors (slips or mistakes).¹⁹⁸

Relying on cognitive biases, heuristics, or common cognition errors won’t always lead judges astray. But the current trial and appeal process appears to promote, or at the very least, require reliance on the first two and the third seems inevitable.¹⁹⁹ The trial and appeal process is incredibly demanding on judges’ cognitive loads and their scarce time.

(a) Determining what’s important during hearings is hard and sometimes impossible

Again, no qualitative or quantitative data confirms this point.²⁰⁰ But limited judicial commentary; the increasing length, delay, and complexity of judicial proceedings and judicial decisions; and an ever increasing complex and messy common law suggest this possible hypothesis. Judges may struggle to decipher what’s truly important during hearings, especially new judges who may not have practiced in the area they’re now adjudicating.²⁰¹ Either intentionally or unintentionally, lawyers and litigants also constantly stretch judges’ cognitive loads and their general cognition.²⁰² The party-presentation principle allows lawyers and litigants to mostly present their cases as they want within the confines of the rules, which are often only partially or notionally followed.²⁰³ So litigants often present their cases in the traditional, fact-driven style where evidence is often divorced from the context and applicable legal issues.²⁰⁴ Caroline Mandell, a

¹⁹⁶ Martie Haselton, Daniel Nettle & Damian R Murray, “The Evolution of Cognitive Bias” at 968 in David M Buss, ed, *The Handbook of Evolutionary Psychology, Volume 2: Integrations*, 2nd ed (John Wiley & Sons: Hoboken, 2016) 968.

¹⁹⁷ *Ibid* at 970.

¹⁹⁸ See Lucian L Leape, “Error in Medicine” (1994) 272 JAMA 1851 at 1853-1854 [Leape, “Error in Medicine”].

¹⁹⁹ See, e.g., Mathilde Cohen, “When Judges Have Reasons Not to Give Reasons” (2015) 72 Wash & Lee L Rev 483 at 518; Simon, “A Psychological Model”, *supra* note 41 at 36-37.

²⁰⁰ As Chapter 3 will address further, I attempted to gather this data. And I couldn’t access the judges I needed to verify my hypothesis.

²⁰¹ One suggestion to mitigate this effect is more specialization. But the judicial or court specialization discussion mostly relies on anecdote and anecdote (see, e.g., Chad Oldfather, “Judging, Expertise, and the Rule of Law” (2012) 89 Washington University Law Review 847; Lawrence Baum, “Probing the Effects of Judicial Specialization” (2009) 58:7 Duke Law Journal 1667.

²⁰² See, e.g., Craig E Jones, “The Troubling New Science of Legal Persuasion: Heuristics and Biases in Judicial Decision-Making” (2013) 41 Advoc Q 49.

²⁰³ See *supra* note 70.

²⁰⁴ This point also applies to appeals but perhaps less so than trials or motions because appellate judges get more preparation time.

former legal officer for the Court of Appeal for Ontario and now educator of judges and decision-makers, puts it this way: a disconnect likely exists between how parties present arguments and how judges are trained to write and think. Lawyers tend not to write issue-driven factums;²⁰⁵ the same might be true about issue-driven trials.

Writing extrajudicially, former Court of Appeal for Ontario Justice Sharpe explains the effect of this reality on judges: “A judge hearing a case is confronted with a mountain of information about the parties and their dispute. That information does not always come neatly packaged in the appropriate legal categories.”²⁰⁶ Ed Berry, one of Canada’s chief educators of judges and decision-makers, makes a similar point about the mountains of information: they often float “free of the [legal] issues to which ... [they] should be tied.”²⁰⁷

Justice Sharpe’s suggested answer to this problem is what Chapter 1 advocates for. Judges should develop initial, organizing frameworks to “integrate evidence and arguments into orderly and manageable categories or packages.”²⁰⁸ Sharpe’s suggestion is entirely consistent with best practices from cognitive science. Factual and legal context before evidentiary detail is vital for accuracy, consistency, robust reasoning, and clear writing because humans “attend to and process information more comprehensively when they have a mental *schema* that tells them what information is needed in a given situation and where to find it.”²⁰⁹ Justice Peter Lauwers of the Court of Appeal for Ontario plainly captured the ramifications of Justice Sharpe’s point in an extrajudicial interview: the facts don’t matter when you don’t know the context; the deep issue—the very thing you’re supposed to be addressing—isn’t always obvious, even for experienced judges.²¹⁰ Some judges don’t even know the deep factual or legal issue until the hearing is over, even though they’re extensively prepared.²¹¹

²⁰⁵ *Infra* note 210 [Caroline Mandell made this point during this interview].

²⁰⁶ Robert J Sharpe, *Good Judgment: Making Judicial Decisions* (University of Toronto Press: Toronto, 2018) at 141.

²⁰⁷ Berry, *supra* note 130 at 37.

²⁰⁸ *Ibid*, see also John Morden, “The ‘Good’ Judge” (2005) *Advocates Soc J* 13 at 20.

²⁰⁹ Heath *et al*, *supra* note 189 at 15.

²¹⁰ CIAJ, “Easy Reading is Damn Hard Writing” (3 December 2020) *In All Fairness*, online: <<https://podcasts.apple.com/ca/podcast/ciaj-in-all-fairness-icaj-en-toute-justice/id1543273287?i=1000501254606>> [Both Justice Lauwers and Caroline Mandell discussed this point during this interview].

²¹¹ *Ibid* [Justice Lauwers discussed this point during this interview].

Summed up, judges often lack a structured framework for their decision-making as well as the time or resources to create them. Similarly, lawyers may not provide such frameworks because they also lack the time to create them.²¹² Put another way, the problem appears to be an input-output one where judges might have to (or simply do) mirror what's given to them.

(b) Judges have a difficult user experience: their job is demanding, and they appear to lack adequate support systems

Perhaps this point doesn't need to be mentioned, but it's one that some seem to forget. The things that affect all humans affect judges. Like many professionals, judges have incredible cognitive demands.²¹³ No surprise here. But judges also get tired, emotional, sick, hungry, overworked, or burnt out on tasks. They even struggle to pay attention.²¹⁴ They have sick kids, aging parents, and physical and mental health challenges.²¹⁵ On top of it all, they have incredible time scarcity:²¹⁶ time management is one of the hardest parts for a modern judge.²¹⁷

Merely “donning judicial robes does not make judges superhuman. It does not bring about the *Herculean* judge that Dworkin envisioned—one with infinite competence, intelligence, and resourcefulness.”²¹⁸ As eminent Canadian jurists have recognized, judges are also “bound by their own mental and emotional organisms.”²¹⁹ While Canadian judges are “excellent decision

²¹² For a fascinating discussion of the importance of reducing cognitive load in legal writing, see Terri L Enns & Monte Smith, “Take a Cognitive Load off: Creating Space to Allow First-Year Legal Writing Students to Focus on Analytical and Writing Processes” (2015) 20 *The Journal of Legal Writing Institute* 109.

²¹³ See, e.g., Daniel Kahneman, *Attention and Effort* (Prentice Hall International: Englewood Cliffs, 1973); John Sweller, Paul Ayres & Slava Kalyuga, *Cognitive Load Theory* (Spring: New York, 2011).

²¹⁴ See, e.g., Bill Kaufmann, “New court hearing in the cards after case disrupted by judge playing solitaire” (18 November 2021) *Calgary Herald*, online: <<https://calgaryherald.com/news/local-news/new-court-hearing-in-the-cards-after-case-disrupted-by-judge-playing-solitaire>>.

²¹⁵ See, e.g., Jeffrey J Rachlinski & Andrew J Wistrich, “Judging the Judiciary by the Numbers: Empirical Research on Judges” (2017) 13 *Annual Review of Law and Social Science* 203; Anjum Gupta, “Dead Silent: Heuristics, Silent Motives, and Asylum” (2018) 48.1:1 *Columbia Human Rights Review* 1; Sharyn Roach Anleu, Jennifer K Elek & Kathy Mack, “Researching judicial emotion and emotion management” in Susan A Bandes et al, eds, *Research Handbook on Law and Emotion* (Elgar: Cheltenham, 2021) 180.

²¹⁶ *Supra* note 127 [Both Justices Martin and Jamal stressed the incredible demands on their time as judges—especially at different levels of courts with different workflows and assistance—e.g., dedicated clerks or colleagues who'd be reviewing your work at appellate and apex courts].

²¹⁷ *Ibid.*

²¹⁸ Khan, “Life of Reserve”, *supra* note 4 at 17. See Ronald Dworkin, “Hard Cases” (1975) 88 *Harv L Rev* 1057 at 1083. Aside from briefly examining this point, this research doesn't engage further with the deeper notions of the legal theory debates on these points.

²¹⁹ Rand, *supra* note 35 at 6; see also at 2 [“All bodies of thought lie within assumptions which surround them like invisible boundaries. We are largely unconscious of them, but, imperceptibly, they form barriers whose effectiveness may be virtually absolute. In the refinements of thinking and the more conscious areas, we easily

makers, and sometimes resist common errors of judgment that influence ordinary adults. ... judges are [likely] vulnerable to systematic deviations from the ideal of judicial impartiality.”²²⁰

For example, judicial impartiality requires judges to keep an open mind to all facts regardless of how they’re presented or how overworked or tired they are. While experience may help, how do busy judges on day one of a long trial, complex motion, or complex appeal really know what facts matter and what facts don’t, especially when much of the evidence is often likely irrelevant?²²¹ Even if judges are lucky enough to know the deep issue, grappling with these mountains of evidence burdens their cognitive load, especially with myriad commitments in and out of their courtroom.²²² One Ontario judge somewhat recently put it this way, including reminding counsel that judges simply lack time to read the material that parties place before them:

Very simply put, the Bar needs to reflect on why they are filing materials that are hundreds, if not thousands of pages long. This applies to Motion Records, Caselaw and Pre Trial memos. In the world we now live in, the Bar needs to appreciate that apart from the requirements imposed by the Notice and the Rules of Civil Procedure judges are human beings. We simply do not have the time to read the volume of material we are often confronted with.²²³

To keep up with such a volume of work, judges likely rely on a sophisticated blend of hard work, dedication, confidence, intuition, experience, cognitive bias, emotion, and heuristics until they have the context for what’s being thrown at them and the time to reflect on it—if they ever have

confound ourselves by passing, unawares, from one to another of their subtle envelopments.”]. Writing extrajudicially in 2018, Justice Sharpe candidly recognized the power of cognitive bias and heuristics on judges and their potential impact on Canadian judges (Sharpe, *supra* note 206 at 139-145; for a fascinating book that inspired much of Sharpe’s thinking, see Albie Sachs, *The Strange Alchemy of Life and Law* (Oxford University Press: Oxford, 2009), in particular, chapter 2). Justices McLachlin and Martin have made similar points (see Beverly McLachlin, *Truth Be Told* (Simon & Schuster Canada: Toronto, 2019) at 205. Current Justice Martin trained Canadian judges on this topic before her appointment (See Office of the Commissioner for Federal Judicial Affairs Canada, “The Honourable Sheilah Martin’s Questionnaire”, online: <<https://www.fja-cmf.gc.ca/scc-csc/2017-SheilahMartin/nominee-candidat-eng.html>>).

²²⁰ Rachlinski & Wistrich, “Judging”, *supra* note 215 at 203.

²²¹ *Supra* note 210 [Justice Lauwers noted the amount of irrelevant evidence in this interview]. As I’ve noted elsewhere with Sean Rehaag, lawyers likely practice “defensive litigation” (see Khan & Rehaag, *supra* note 129 at 388. [“Lawyers often practice “defensive litigation”—partly because lawyers seem to not know what evidence is truly required or meaningful in many proceedings and partly because of the limitations of the adversarial system. The practice results in a kind of information overload. Like doctors who order too many unnecessary medical tests, lawyers often include far more evidence than necessary].

²²² Judges have a reserve list of other decisions that parties are waiting for; jurisprudence and commentary to read; and a host of professional and personal obligations that occupy their time and energy.

²²³ See also, *Lepp v The Regional Municipality of York*, 2022 ONSC 6978 at para 17.

that luxury.²²⁴ Some reliance on this sophisticated blend won't cause errors. But some will, and even if errors don't occur, the blend can cause unnecessary delay and complexity.

As I've noted, data and modelling already suggest that Canadian judges already likely err in unfair, biased, problematic, and perhaps even unconstitutional ways.²²⁵ Again, I don't raise this data to suggest that Canadian judges don't strive to do their job impartially. Their job is daunting, especially the fact-finding process: different people perceive the same event in different ways, and the system relies on judges to navigate and wrestle through an information morass.²²⁶ That burden places huge demands on judges and their cognition.

Figure 3 on the following page outlines identified cognitive biases.²²⁷ A judge's job clearly involves all four quadrants. The organizing framework that former Justice Sharpe suggests and the standardization that Chapter 1 calls for could alleviate pressure from all quadrants. More standardized organization frameworks could help judges to "think again" about what they heard; what they thought about it; what it means from a legal or evidentiary perspective; how it makes them feel; how it might be wrong or misleading; or how a counterfactual might challenge the evidence or their understanding of it; *etc.*²²⁸ It could also help them be more prepared for hearings and trials before they begin. Such frameworks could do more than just help with judicial workload; they could potentially improve decision-making and everyone's user experience in Canada's courts.

²²⁴ See, e.g., Peer & Gamlie, *supra* note 46.

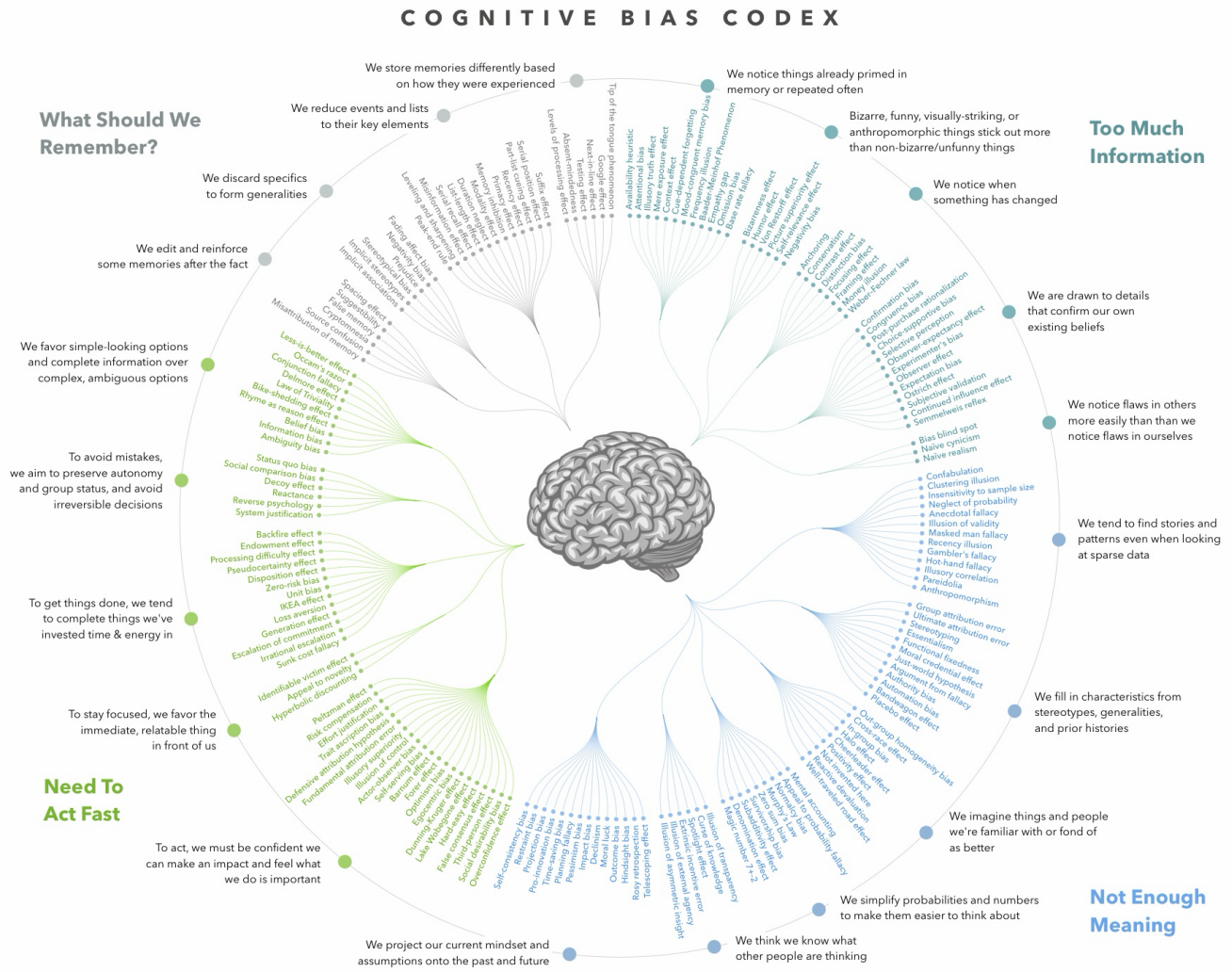
²²⁵ Without tools to robustly guard against this possibility, the prime goal of judicial independence—protecting judicial impartiality—is compromised. As Chief Justice Lamer famously held: "judicial independence is but 'a means' to" ensuring impartiality (see *Lippe*, *supra* note 192 at 139; see also *Généreux*, *supra* note 195 at 287); see Ian Greene, "The Doctrine of Judicial Independence Developed by the Supreme Court of Canada" (1988) 26:1 *Osgoode Hall LJ* 177 at 192-193 [Green, "The Doctrine"]..

²²⁶ *Supra* note 127 [Justice Woolley noted a very particular workflow to try to ensure she that doesn't err.]

²²⁷ Buster Benson, "Cognitive Bias Cheat Sheet" (1 September 2016), online: <<https://medium.com/better-humans/cognitive-bias-cheat-sheet-55a472476b18>>.

²²⁸ See, e.g., Adam Grant, *Think Again* (Penguin: New York, 2021) at 29, 32, 33, 40, 88; Justin Kruger & Derick Wirtz, "Counterfactual Thinking and the First Instinct Fallacy" (2005) *Journal of Personality and Social Psychology* 725 at 732 ["people overestimate the effectiveness of sticking with their first instinct"]; Dan M Kahan *et al*, "Motivated numeracy and enlighten self-government" (2017) 1:1 *Behaviour Public Policy* 54 at 54 ["more numerate subjects would use their quantitative-reasoning capacity selectively to conform their interpretation of the data to the result].

Figure 3: 175 Cognitive Biases



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Organizing frameworks could be as basic as standardized note-taking structures for judges that were shared with litigants and counsel before a proceeding commences so that everyone is on the same page about deep issues.²²⁹ Or judges could rely on more open-access standardized structures and content for decisions. Or courts could rely on more standardized checks and

²²⁹ Canadian judges used to have standardized templates for notetaking (see National Judicial Institute, “NJI Note-Taking Template for Trial Judges” (2009) National Judicial Institute, online: <<https://ncsc.contentdm.oclc.org/digital/collection/judicial/id/300/>>). To be clear, I don’t mean that judges would share their notes—just particular templates for note taking based on the applicable legal issues and guiding law.

balances in the trial and appeal process.²³⁰ So courts and judges don't have to rely on some sophisticated technology. But as noted, technology offers promise,²³¹ and its use will likely become irresistible.

As noted, standardized organizing frameworks could also improve the general user experience of all individuals in court by increasing decisions' accessibility and timeliness. As Caroline Mandell notes, litigants come to the court system when something isn't going right in their lives.²³² Yet many likely don't get the user experience they desperately need and deserve. Even when judges don't err, they still likely overestimate how much goodwill their readers have and their readers' ability to understand their decisions.²³³ But the blame that some litigants, politicians, academics, or journalists may want to ascribe judges for litigation outcomes or issues with the litigation process is likely unjustified: judges likely often lack the time and support to provide that experience because "easy reading is damn hard writing."²³⁴

As the rest of the next section will discuss, the Canadian legal system seems to frequently ignore that judges also have actual user experiences. Instead, of this recognition, the system perpetuates and imposed flawed, antiquated views about decision-making and "legal error" on judges that impose too much individual responsibility on judges for subpar user experiences and flawed outcomes.

²³⁰ More judges could avail Scott and Redfern schedules from the arbitration context. See Honourable Neill Wittmann, QC, "Using a 'Scott Schedule' in Arbitration", online: <<http://adric.ca/adr-perspectives/using-a-scott-schedule-in-arbitration/>>. I thank the judges who discussed this concept with me.

²³¹ As we start to use more technology in the legal system, we should seek to avoid the problems in other industries and professions of when more technology is too much (see, e.g., Pamela Karr-Wisniewski & Ying Lu, "When more is too much: Operationalizing technology overload and exploring its impact on knowledge worker productivity" (2010) *Computers in Human Behaviour* 1). But technologies do offer promise here, like identifying the applicable law and summarizing it for lawyers and judges. Such technology could address the current information asymmetry about the applicable law and issues between parties and judges (Elizabeth C Tippet, "Does Lawyering Matter: Predicting Judicial Decisions from Legal Briefs and What that Means for Access to Justice" (2022) 100:6 *Texas Law Review* 1157 ["good lawyering may boil down to good legal research. However, good legal research is expensive, and the primacy of citations in our models raises concerns about access to justice. Here, our citation- based models also suggest promising solutions. We propose a freely available, computationally-enabled citation identification and brief bank tool, which would extend to all litigants the benefits of good lawyering and open up access to justice"]).

²³² *Supra* note 210 [Jennifer Khurana made this point during this interview].

²³³ *Ibid.*

²³⁴ *Ibid.*

- iii. *Why some standardization could improve the constitutional requirements of an impartial, independent, efficient, uniform, quality, reliable, accessible, intelligible, clear, predictable, and timely judiciary*

I've suggested that judges' decisions must promote reliability, accessibility, intelligibility, clarity, uniformity, and predictability for all Canadians and litigants. Yet, as just discussed, judges don't appear to be receiving enough help to achieve this constitutional imperative. Again, I don't raise these data to criticize. But Canadian judicial decisions are increasingly long;²³⁵ slow;²³⁶ noisy (*i.e.*, containing lots of unnecessary information and unwanted variability for things that should be similar or identical);²³⁷ inconsistent;²³⁸ and successfully appealed.²³⁹

Of course, all those datapoints involve myriad challenging questions—a point Chapter 4 addresses in some detail.²⁴⁰ But for now, I'll focus on the “successful appeal” datapoint and how the legal system's legalistic view of error might be compromising what litigants in Canadian courts are constitutionally owed and the bettering of everyone's user experience, including judges. The “successful appeal” datapoint clearly invites many questions about what “error” means. For example, what does it mean when an appeal court says the trial judge made an “error” and an appeal is successful?²⁴¹ Sometimes, an error means that lower court judges made clear factual or legal errors. Other times, error means that appellate judges understood different things about facts and law because reasonable people came to different conclusions based on

²³⁵ See Khan, “Life of a Reserve” *supra* note 4 at 41-42; Xavier Beauchamp-Tremblay & Antoine Dusséaux, “Not Your Grandparents' Civil Law: Decisions Are Getting Longer. Why and What Does It Mean in France and Québec?” (20 June 2019) *Slaw*, online: <<http://www.slaw.ca/2019/06/20/not-your-grandparents-civil-law-decisions-are-getting-longer-why-and-what-does-it-mean-in-france-and-quebec/>> [“From 2003 to 2017, the length of lower court decisions (CQ and CS) has increased by about 40% and the length of the CA decisions has increased by 20%.”]; Donald Songer, *The Transformation of the Supreme Court of Canada: An Empirical Examination* (Toronto: University of Toronto Press, 2008) at 153 [Songer notes an marked increased in SCC decisions].

²³⁶ See Khan, “Life of a Reserve”, *supra* note 4 at 41-42.

²³⁷ Lots of decisions contain meaningless information that forms no part of the analysis (on the point of noisy data, see Nate Silver, *The Signal and the Noise: Why So Many Predictions Fail—but some don't* (Penguin Books: New York, 2012), and the amount of inconsistency in decisions that should be similar or identical is also apparent (on noise and noise-audits, see Daniel Kahneman, Olivier Sibony & Cass R Sunstein, *Noise: A Law in Human Judgment* (Little Brown Spark: New York, 2021)).

²³⁸ See Khan, “Life of a Reserve”, *supra* note 4 at 2.

²³⁹ Court of Appeal for British Columbia, “Annual Report: 2024” (2024) at pp 59-60, online: <https://www.bccourts.ca/Court_of_Appeal/about_the_court_of_appeal/annual_report/2024_CA_Annual_Report.pdf> [BCCA, “Annual Report: 2024”].

²⁴⁰ I have many concerns about modern empirical legal research (e.g., scholars make conclusion that disregard challenging questions about datapoints and overall methodological weakness).

²⁴¹ Again, I'm indebted to Geoff Cowper, K.C. for his critique here. And I'm especially grateful for Prof. Amy Salyzn who helped me flesh out the thinking I hoped was inside my head on this issue.

their subjective judgment. So the “successful appeal” rate may often indicate nothing about a court or a trial judge’s performance—like how often they err vs. how often their colleagues disagree with them. Indeed, sometimes error is just a label that’s applied to difficult borderline decisions. In contrast to the 2017 Global News article in *Figure 4*, the “successful appeal” datapoint isn’t a great indication of how good or bad a judge is at their job or how well a court might be performing.

Figure 4: 2017 Global News Article

CANADA

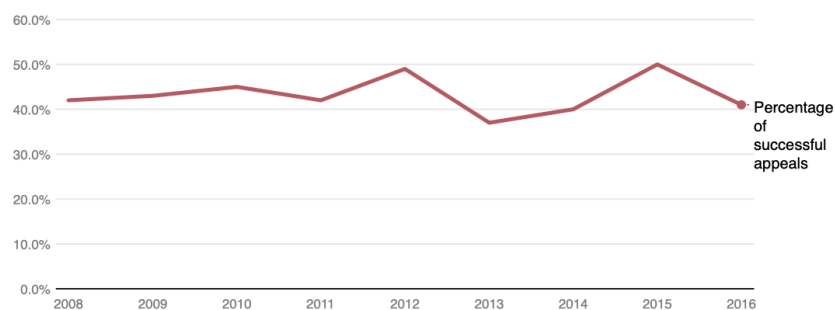
The B.C. judge who ‘ignored evidence,’ ‘erred in law’ and put a ministry under fire



By chardes980 & Simon Little • Global News

Posted November 27, 2017 6:00 am · Updated December 4, 2017 4:02 pm

Percentage of B.C. cases reversed on appeal 2008-2016



Source: [B.C. Court of Appeal](#) • Created with [Datawrapper](#)

CKNW reviewed the B.C. Court of Appeal’s 100 most recent decisions, finding just five that disputed the trial judge’s findings — one of them was J.P. and B.G.’s case.

Justice Walker’s track record in appellate court also stands out compared to his colleagues.

In 2016, 41 per cent of the 286 civil cases heard by the higher court were successful in their appeals.

The average since 2008, when Justice Walker joined the bench, is 43.2 per cent.

In 68 per cent of Justice Walker’s civil cases that have reached the higher court, the decisions were either reversed or new trials were ordered.

The rest of this section will discuss why views like the one in *Figure 4* are mostly incorrect and why the Canadian law applicable to legal “error” could be facilitating such incorrect views. But here’s the main point now. The applicable law surrounding legal error largely ignores evidence and best practice in modern error research and system improvement. It places far too much emphasis on the judge vs. recognizing the systemic complexity that may have led to the “error” or unjust outcome. Perhaps the continued emphasis on the “judge” versus the “system” is why the absence of deliberate design persists instead of more deliberately designed reforms to ensure independence, impartiality, and Canada’s constitutional rule of law promises.

The applicable law surrounding legal error is a good example of the point I’m trying to stress.

British Columbia’s successful appeal rate suggests that empirical analysis is urgently needed for all trial and appeal outcomes.²⁴² From 2014 to 2024, the British Columbia Court of Appeal (BCCA) granted appeals in over 1/3 of all perfected appeals: (*mean*: 42% (civil) & 35% (criminal) // *median*: 41% (civil) & 34% (criminal)).²⁴³ Whether this rate is high or low is unknown because comparative data is missing: British Columbia is the only Canadian province and territory that releases successful appeal rates.²⁴⁴ Perhaps this appeal rate is too high, too low, or just fine. Or maybe it differs radically from other provinces and territories. Either way, as Chapters 4 and 5 discuss, Canada’s legal system should examine target objectives and key results for outcomes, including appeals.

Yet even without targeted objectives and key results, these rates showcase British Columbia’s robust appeal system and a fundamental systemic check and balance. For individuals capable of launching appeals, the BCCA offers essential, independent oversight. But the rates could also showcase another reality. A high number of successful appeals could mean that British Columbia’s trial judges are making unnecessary mistakes that clearly impact litigants’ user experience. It could also mean that appeal judges too frequently disagree with their lower court

²⁴² For some previous work, see Michael H Lubetsky & Joshua A Krane, “Appealing Outcomes: A Study for the Overturn Rate of Canada’s Appellate Courts” (2009) 47:1 Osgoode Hall Law Journal 131.

²⁴³ BCCA, “Annual Report: 2024”, *supra* note 239 at pp 59-60. One may argue that this statistic is blunt, including me. But most appeal court work is error correction. I assume that most of these successful appeals rested on error correction. Better data would help explore this point in greater detail. These statistics also don’t account for all the individuals who couldn’t bring appeals for financial or personal reasons. So the number of successful appeals could be higher or lower.

²⁴⁴ The Court of Appeal for Ontario used to provide this data. But it hasn’t since 2013.

colleagues and negatively impact the user experience of the party who won at trial as well as the predictability, uniformity, and accessibility of the trial process.

On a purely legalistic basis (*i.e.*, the jurisdictional basis on which appeal courts can intervene), Canadian law really doesn't offer appeal courts much discretion. The law only permits appeal courts to overturn trial judges when they decide that trial judges made clearly incorrect legal findings;²⁴⁵ clearly wrong factual findings that affected their decision (in legal terms, "no reasonable court could've reached such conclusions"); or both.²⁴⁶

Regardless of what one thinks about the "successful appeals" datapoint, the reason for the error (factual, legal, or some combination) is likely irrelevant for many litigants. Having to redo even part of a trial is serious. Appeals and do-over trials are expensive. Worse still, redoing trials is likely traumatic, especially for criminal accused who largely have no cost recourse and who're once again having the state's weight dropped on them.²⁴⁷ The underlying complainants and other witnesses also must testify again and relive their potential past trauma and potentially experience new trauma.²⁴⁸ The same is true in the civil justice system—especially for individuals who desperately need a final decision. The earlier discussed standardized content and structures could be one way of reducing such errors, but again, this idea is only a hypothesis worth testing.

High successful appeal rates may also affront the rule of law's promise for uniform, certain, accessible, intelligible, clear, predictable justice. That said, in isolation, I must stress that what British Columbia's rates mean is unknown. So much work must be done before anyone says anything meaningful about this datapoint. Yet little has been done, and little is being done—likely because data is either not gathered, not shared, or not publicly accessible. Why other courts don't publish their appeal rates is unknown. But I assume that courts may not release this data because of concerns about increased attacks on judicial independence, the administration of

²⁴⁵ *Housen v Nikolaisen*, 2002 SCC 33 paras 8-9.

²⁴⁶ *HL v Canada (Attorney General)*, 2005 SCC 25 at paras 55-57, 69.

²⁴⁷ See, e.g., Michael McKiernan, "The Going Rate" (6 June 2016) *Canadian Lawyer*, online: <https://www.canadianlawyermag.com/staticcontent/AttachedDocs/CL_June_16-Going%20Rate.pdf>; *R v Singh*, 2016 ONCA 108. On the longstanding need for reform in this area, see Law Reform Commission of British Columbia, "Costs of Accused on Acquittal, Law Reform Commission of British Columbia, 1974 CanLIIDocs 5, online: <<https://canlii.ca/t/sg7k>>.

²⁴⁸ See, e.g., Dr Lori Haskell & Dr Melanie Randall, "The Impact of Trauma on Adult Sexual Assault Victims" (2019) Department of Justice Report, online: <https://www.justice.gc.ca/eng/rp-pr/jr/trauma/trauma_eng.pdf>.

justice, or public confidence—e.g., pejorative news articles like one in *Figure 4*.²⁴⁹ Chapter 2 addresses other possible concerns of more data gathering and transparency to the administration of justice and public confidence in courts.

Either way, equivalent error rates in other professions would likely be noteworthy, especially if they persisted for over 10 years (British Columbia’s rates are mostly constant since 2000).²⁵⁰ For example, I would assume that society would likely be disturbed if medical, engineering, and aviation review boards consistently found that 41% of reviewed surgeons, engineers, and pilots consistently made one or more mistakes that markedly affected the surgical procedure, flight, or technical design. Put in the just-mentioned legalistic terms, no reasonable doctor, pilot, or engineer could’ve made such a decision.²⁵¹

Such comparison, however, is mistaken. But it’s not mistaken because the law is special or because it involves humans and idiosyncratic human problems. The same is true in many medical, aviation, and engineering contexts.²⁵² The comparison is mistaken for two other reasons that I’ll now address: (a) the Canadian legal system relies on a flawed, antiquated understanding of error that medicine, aviation, and engineering have been shirking for decades;²⁵³ and (b) the Canadian legal system places far too much responsibility on judges for their “errors” when they have far less systemic support than surgeons, pilots, and engineers (or other professionals).

²⁴⁹ Many reasons could explain why courts don’t publish more data. As Chapter 2 suggests, courts have many likely concerns about how more data could be weaponized against it or its judges.

²⁵⁰ British Columbia Court of Appeal, “2008: Annual Report”, at 40-41, online:

<<https://www.bccourts.ca/Court_of_Appeal/about_the_court_of_appeal/annual_report/2008%20Annual%20Report%20Final.pdf>; British Columbia Court of Appeal, “2004: Annual Report”, at 31-32, online:

<https://www.bccourts.ca/Court_of_Appeal/about_the_court_of_appeal/annual_report/2004%20ANNUAL%20REPORT.pdf>

²⁵¹ In Canada, surgical complication rates are not public. So perhaps this opacity culture is endemic to Canada (see David Kitai, “The case for published surgical complication rates” (2 March 2020) *Canadian Lawyer Magazine*, online: < <https://www.canadianlawyermag.com/practice-areas/medical-malpractice/the-case-for-published-surgical-complication-rates/326913>>). This opacity contrasts the United States complication rates are posted for certain elective procedures (see Stephen Engelberg, “Why We Are Publishing Surgeon’s Complication Rates” (14 July 2015) *ProPublica*, online: <<https://www.propublica.org/article/surgeon-level-risk-editors-note>>).

²⁵² 80% of aviation error involves human error. See, e.g., Boeing, “MEDA Investigation Process”, online: <https://www.boeing.com/commercial/aeromagazine/articles/qtr_2_07/article_03_2.html>.

²⁵³ For a thorough history of the theory’s development, see Justin Larouzeé, “Human Error and Defense in Depth: From the ‘Clambake’ to the ‘Swiss Cheese’ in Joonhong Ahn, Franck Guarnieri, Kazuo Furuta, eds, *Resilience: A New Paradigm of Nuclear Safety* (Springer Open: Gewerbestrasse, 2017) 257 [Larouzeé, “Human Error and Defense”].

The point of the next two sections is to truly stress a key point I've been reiterating: the Canadian legal system and justice system participants must rethink the user experience of judges within the broader legal context and offer them far more support while also studying what they do at a granular level. Without this refocusing, I fear that many of the issues in the judicial decision-making and decision-writing process will persist. Here's why.

(a) The classic model of error is a flawed, antiquated understanding of error

Dr. Mark Shrime, an expert in public health and global surgery, succinctly summarizes why the classic model of error is flawed and antiquated; why it's no longer used; and why other models—like James Reason's "Swiss Cheese Model" of accident causation (*aka* "the cumulative act effect")—are superior and increasingly used in medicine, aviation, and engineering.²⁵⁴ Of course, like any model, the "Swiss Cheese Model" has shortcomings, but it generally persists as a leading model in understanding and preventing error, including leading to overconfidence about conclusions and solutions.²⁵⁵

Unfortunately, the legal system hasn't yet embraced similar understandings or safeguards to capture blameless errors—either practically or within applicable legal tests:

Before Reason, medicine viewed errors as a single person's fault. An adverse outcome for a patient had to be attributed to a responsible party—the surgeon whose knife slipped, the nurse who misdiagnosed a patient, the pharmacist who didn't catch it. ... Reason suggested that, instead, medical errors were failures of a system, not a person. 'Although some unsafe acts in any sphere are egregious,' he wrote, 'the vast majority are not. In aviation maintenance... some 90 percent of quality lapses were judged as blameless.' If 90 percent of errors are blameless, he reasoned, then looking for a scapegoat wouldn't make patients any safer. In the Swiss cheese model, not every slipped knife or incorrect dosage leads to adverse outcomes, because the system protects its patients. Machines alarm. Beds have railings. Dangerous medications have to be countersigned by two people. Electronic medical records flag allergies. And most of the time, these defenses work. 'However,' he wrote, the defenses 'are more like slices of Swiss cheese, having many holes—though unlike in the cheese, these holes are continually opening, shutting, and shifting their location.'²⁵⁶

²⁵⁴ Arguably, this model isn't just "his" as he clearly collaborated and relied heavily on John Wreathall (Larouzee, "Human Error and Defense", *supra* note 253 at 257, 263).

²⁵⁵ Reason himself noted this possibility (See James Reason, *Managing the Risks of Organisational Accidents* (Ashgate Publishing Limited: Aldershot, 1997) at 234).

²⁵⁶ Dr Mark G Shrime, *Solving for Why* (Grand Central Publishing: Boston, 2022) at 151; see also James Reason, "Human Error: Models and Management" (2000) 320:7237 BMJ 768 [Reason, "Human Error"]; Nathan L Liang *et al*, "Outcomes of Interventions for Carotid Blowout Syndrome in Patients with Head and Neck Cancer" (2016) 63:6

This model can easily be applied to law and the concept of legal error. Put another way, alleged “good” judges don’t guarantee good results much like alleged “bad” judges don’t guarantee bad results.²⁵⁷ Instead, judges and their reasoned decisions are but one slice of the legal system’s “Swiss Cheese” who must rely on many systemic layers with many holes of their own—such as policing; scheduling; underfunding; witnesses; lawyers; a developing and messy common law; a lack of guidance on what facts matter; myriad other layers; and, of course, a non-deliberately designed legal system.²⁵⁸ Because of this reality, judges aren’t like baseball players easily amendable to “Moneyball” style analysis—e.g., to attribute blame for alleged error or to question motives and decisions,²⁵⁹ like some media and scholars often attempt to do.²⁶⁰ Chapter 4 discusses just how easy it is to mess up empirical legal research and provides some prominent examples.

Instead of analyzing judges like Global News tried to do above in *Figure 4* (i.e., “The stunning reversal of a shocking B.C. Supreme Court decision is raising questions about a judge’s ability to do his job”),²⁶¹ Chapter 1 suggests that we must evaluate judges in a new, more realistic way and design solutions to address that reality. That new way must recognize that judges are like other frontline operators, e.g., surgeons, engineers, and pilots. Instead of frontline operators being error generators, modern error theory recognizes that frontline operators often don’t play a

Journal of Vascular Surgery 1525. For a summary of the critiques of this thinking model and response them, see, e.g., Justin Larouzeé, & Jean-Christophe Le Coze, “Good and bad reasons: The Swiss cheese model and its critics” (2020) 126 Safety Science.

²⁵⁷ We have no way of measuring whether a judge is truly good or bad. Practicing lawyers, however, including myself likely often hear or engaged in such informal discussions. Some academics did attempt to qualitatively analyze lawyers’ views of judges—perhaps to identifying more “bad” judges—but they were quickly shut down (see *infra* note 326). Doyle, *supra* note 79 at 119 [“The endemic assumption in the criminal justice system, as in medicine, has always been ‘good man, good result’]. Of course, some errors will arise because of “bad” judges, and “good” judges may very well make less errors or be better decision-makers. But the bad apple idea of judging leaves much to be desired.

²⁵⁸ For a fascinating discussion of the complexities of identifying failure and problems in the legal system, see Crystal S Yang, “Have Interjudge Sentencing Disparities Increase in An Advisory Guidelines Regime? Evidence from *Booker*” (2021) 89 NYU Law Rev 1268.

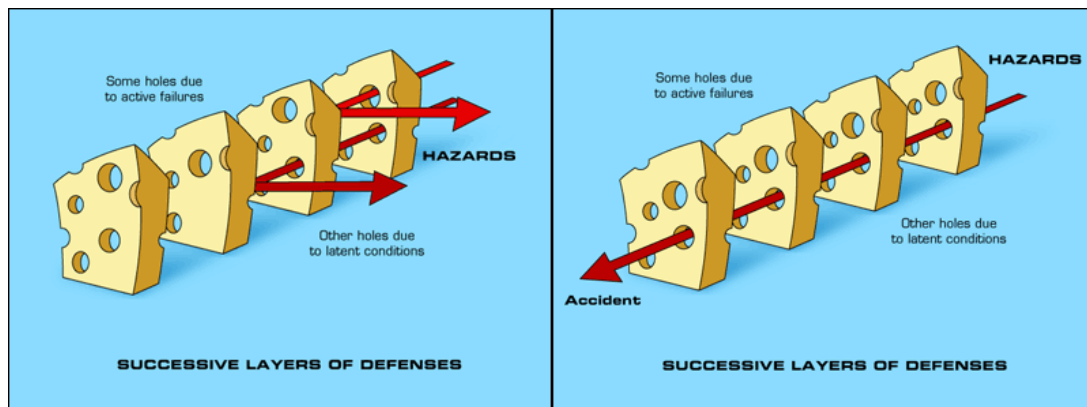
²⁵⁹ See, e.g., Cass Sunstein, “Moneyball for judges” (9 April 2013) *The New Republic*, online: <<https://newrepublic.com/article/112683/moneyball-judges>> [“For judges, money-ball has important limitations, at least in its current form. The good news is that statistical analysis and quantitative measures are enabling us to go far beyond the intuitions and anecdotes that have long dominated academic and public discussions of government’s third branch.”].

²⁶⁰ See, e.g., Charmaine De Silva & Simon Little, “The B.C. judge who ‘ignored evidence,’ ‘erred in law’ and put a ministry under fire” (27 November 2017) *Global News*, online: <<https://globalnews.ca/news/3859571/the-b-c-judge-who-ignored-evidence-erred-in-law-and-put-a-ministry-under-fire/>>.

²⁶¹ *Ibid.*

determinative role. They often only “provide just those local triggering conditions necessary to manifest systemic weaknesses created by fallible decisions made earlier in the organizational and managerial spheres.”²⁶² Figure 5 lays out the “Swiss Cheese Model” and the concept of latent conditions, hazards, and active errors/failures.

Figure 5: Swiss Cheese Model²⁶³



Put another way, judges don’t play the role that current and popular views of legal error and judicial independence promote. Instead, their “errors” may often occur because of latent systemic conditions instead of personal active errors. With this approach, I’m not trying to diminish the judges’ role in Canada’s legal system. Instead, I’m suggesting that the errors identified in “successful appeals” (or errors generally) are more complex than “it was the judge’s fault.” Rather, judicial errors are a likely combination of potential error and latent conditions (or perhaps no error at all). And those conditions may arise for many reasons. Instead of blaming one individual for errors, modern error theory suggests that reformers seeking to reduce errors and improve systems must “find ways of identifying and neutralizing these latent ... [conditions] before they combine with local triggering events to breach the system’s defences.”²⁶⁴

If Canadian courts, judges, and governments sought to identify and neutralize problematic latent conditions, they could radically improve the Canadian legal system. But Canadian law must first

²⁶² James Reason, “The contribution of latent human failures to the breakdown of complex systems” (1990) 327:1241 *Philosophical Transactions of the Royal Society of London* 475 at 475 [Reason, “The contribution”].

²⁶³ James Reason, *Human Error* (Cambridge: Cambridge University Press, 1990) as hosted on “Swiss Cheese Model”, online: <https://josieking.org/patientsafety/module_e/swiss_cheese.html>.

²⁶⁴ *Ibid.*

abandon the current “person approach” to legal error and replace it with a systems approach that better reflects the “Swiss Cheese Model”:

- *person approach*: focus on individual error and blame humans for forgetfulness, inattention, moral weakness, *etc.*; and
- *systems approach*: focus on the conditions under which individuals work and try to build defences to avert errors or mitigate their effects.²⁶⁵

(b) The legal system places too much responsibility on judges for their “errors”

The Canadian legal system continues to perpetuate and impose the antiquated “person approach” on judges. It places too much responsibility on them for “errors” and fails to provide them the necessary support. Perhaps even worse, the current Canadian view of legal error and practices based on it might even promote ideas about judicial independence and deliberative secrecy that create opaque, complex environments that effectively isolate “unsafe acts from their system context.”²⁶⁶

Here’s one example. Systemic transparency and reduced complexity are vital to identifying active errors and latent conditions. But the 2019 Survey, other data, and 2023 Survey suggest that the Canadian legal system is extremely, and perhaps even increasingly, opaque and complex. Access to legal data also remains far from democratic or open.²⁶⁷ The 2019 Survey suggests that this reality exists, at least partially, because of views about judicial independence and deliberative secrecy as well as practices based on them. The 2023 Survey suggests that those practices might even be expanding. Unfortunately, such opacity and complexity will likely cause active errors and latent conditions to persist in Canada’s legal system. As James Reason notes, “like cancers and cardiovascular disorders, accidents in complex, defended systems do not arise from single causes ... The more complex, interactive, tightly coupled and opaque the system, the greater ... the number of resident pathogens.”²⁶⁸

An obvious key difference between law, medicine, engineering, and aviation is the lack of standardized tools or systems that judges can rely on to improve the user experience of litigants. Another key difference is that identifying what clearly went wrong in such disciplines is

²⁶⁵ Reason, “Human Error”, *supra* note 256 at 768.

²⁶⁶ *Ibid* at 769.

²⁶⁷ See, e.g., Khan & Rehaag, *supra* note 132

²⁶⁸ Reason, “The contribution”, *supra* note 262 at 477.

sometimes actually possible whereas that reality is not always possible in law, especially on difficult policy or political decisions—many of which are simply not amendable to mathematical precision.²⁶⁹ Regardless of those differences, courts, judges, and governments could do what medicine, engineering, and aviation have done to reduce complexity and increase transparency: test to see if deliberately designed, standardized, transparent tools and systems could offer judges, lawyers, litigants, and other justice system participants the same benefits it has offered medical, engineering, and aviation.²⁷⁰

For example, because of standardizing steps in the anesthesia process, anesthesia deaths from frequent complications dropped to one in more than 200,000 cases.²⁷¹ And many other areas of medicine have also sought to lower medical professionals' cognitive loads by standardizing steps where individuals often make mistakes with things as simple as checklists.²⁷² These practices have saved thousands of lives.²⁷³ Similarly, aviation sought to reduce pilots' cognitive loads in situations where they often make mistakes like take-off and landing, and this reliance has also led to incredibly low accident rates and very few serious accidents.²⁷⁴

Of course, medicine, aviation, and engineering aren't perfect.²⁷⁵ The medical system provides many recent examples of preventable error as the COVID-19 pandemic clearly showcases. But

²⁶⁹ As the introduction noted, and as I'll discuss further in the conclusion, humility is paramount here. As Joshua Rozenberg writes in his recent review of David Goddard, *Making Laws that Work: How Laws Fail and How We Can do Better* (Hart: Oxford, 2022), "Law-making is remarkably difficult" (Joshua Rozenberg, "Making laws that work" 28 December 2022), online: <<https://rozenberg.substack.com/p/making-laws-that-work>>.

²⁷⁰ See also Robert L Helmreich, "On error management: lessons from aviation" (2000) 320 *BMJ* 781; and for some contrary perspectives, see Noa Nissinboim & Eitan Naveh, "Process standardization and error reduction: A revisit from a choice approach" (2018) 103 *Safety Science* 43.

²⁷¹ Gawande, *Checklist Manifesto*, *supra* note 140 at 66-68.

²⁷² See, e.g., Peter Pronovost *et al*, "An Intervention to Decrease Catheter-Related Bloodstream Infections in the ICU" (2006) 355 *New Eng J Med* 2725.

²⁷³ See e.g., Paul R Dexter *et al*, "A Computerized Reminder System to Increase the Use of Prevention Care of Hospitalized Patients" (2001) 345 *New Eng J Med* 965 at 965 [computerized reminder systems that remind physicians to deliver preventive care lead to more positive results]; Padmanabham Ramnarayan *et al*, "Diagnostic Omission Errors in Acute Pediatric Practice: Impact of a Reminder System on Decision-Making" (2006) 6 *Bmc Med Informatics & Decision Making* 37 at 37-28 [physicians using diagnostic reminder systems have better diagnostic workups and fewer omission errors]; see also Marco Turchini, Carlo Del Naja & Antonio Tancredi, "Enhanced Recovery After Surgery: a Patient Centered Process" (2018) 4:40 *J Vis Surg*; Olle Ljungqvist, Michael Scott & Kenneth C Fearon, "Enhanced Recovery After Surgery: A Review" (2017) 152:3 *JAMA Surgery* 292.

²⁷⁴ Gawande, *Checklist Manifesto*, *supra* note 140 at 34.

²⁷⁵ Medical errors still occur—far more than engineering or aviation. But the idea that medical error is a leading cause of death is likely a fiction (see, e.g., Jonathan Jarry, "Medical Error is Not the Third Leading Cause of Death" (27 August 2021), online: <<https://www.mcgill.ca/oss/article/critical-thinking-health/medical-error-not-third-leading-cause-death>>); Benjamin A Rodwin *et al*, "Rate of Preventable Mortality in Hospitalized Patients: a Systematic Review and Meta-analysis" (2020) 35:7 *J Gen Intern Med* 2099.

the medical system no longer does what the legal system still promotes. Senior surgeons no longer just point out errors to less experienced surgeons like appeal courts do to trial judges. Historically, in morbidity and mortality (*aka* M&M) conferences, surgeons used to just “determine responsibility and figure out what to do differently next time”.²⁷⁶ Despite being a somewhat celebrated tradition, M&M conferences invited criticism about the same things that Chapter 1 suggests the current view of legal error may also perpetuate: cycles of perfectionism, fear, and micromanagement;²⁷⁷ and worse still, false ideals about human perfection vs. capable people operating in systems that failed to recognize their imperfection.²⁷⁸ Julien Leape, an early pioneer in medical error offers this concise view on that latter idea: “All humans err frequently. Systems that rely on error-free performance are doomed to fail.”²⁷⁹ So instead of assuming that humans can be made more perfect—e.g., the nurse gave the wrong medication, so we should double-check the drug before administering it—Leape argued that serious attention should also be placed on nurses’ overall work assignments and large caseloads.²⁸⁰

The key to reducing error and generating better user experiences is focusing more on the systems vs. the person. Relying on that idea, the medical system is doing what Chapter 1 advocates that courts, judges, and governments should do: embrace ideas and insights from theories like the “Swiss Cheese Model” of causation; aviation and engineering error investigations; and design

²⁷⁶ Atul Gawande, *Complications: A Surgeon’s Notes on an Imperfect Science* (Picador: New York, 2002) at 58.

²⁷⁷ Shrimel, *supra* note 169 at 151 [“When I was a medical student, morbidity and mortality conferences felt like a medieval inquisition. Students presented the week’s mortalities to a panel of wise surgeons arrayed in the front row of a dark auditorium. Every week, their leader, a loud, Napoleonic character, warranted that, if only he’d done the case, the patient would still be alive. Wasn’t it such a shame, the residents’ silent assent declared, that the medical student had been so clumsy?”]; Atul Gawande, “When Doctors Make Mistakes” (24 January 1999) *The New Yorker*, online: <<https://www.newyorker.com/magazine/1999/02/01/when-doctors-make-mistakes>> [“The M. & M. sees avoiding error as a matter of will--of anticipating the myriad ways that things can go wrong and then trying to head off potential problems before they happen. But some critics complain that other industries--like aviation--wouldn't countenance error rates like those in hospitals. ... Error experts believe that it's the process, not the individuals in it, which requires correction”]; Doyle, *supra* note 79 at 120 [“The in-house tradition of morbidity and mortality (M & M) reviews of surgical accidents might as well have been designed to reinforce a determination to treat every error as an operator error and every operator error as evidence of moral or professional failing in the operator.”⁵² In theory, M & M presentations were an opportunity to learn from mistakes; in fact, they were experienced as a dreaded ceremonial warning that perfection was the requirement and that individual responsibility for perfection was indivisible and indispensable”].

²⁷⁸ Doyle, *supra* note 79 at 121.

²⁷⁹ Leape, *supra* note 198 at 1852.

²⁸⁰ *Ibid.*

theory.²⁸¹ Instead of seeing error as a “mistake”, medicine has mostly decided that “to err is human.”²⁸² And the medical system has “hammered on the themes that the study of errors was useful and that the cultural and institutional barriers to studying errors should be attacked.”²⁸³ Medical system reformers have also “advocated continuous quality improvement rather than end-of-process inspection as an organizing principle.”²⁸⁴

Unfortunately, Canada’s legal system isn’t yet centered around these organizing principles. Judges are still seen as herculean individuals capable of getting it right on their own. And judicial independence and deliberative secrecy are still being used to shield and obstruct attempts to help them (or to even study to how to help them). Medicine, aviation, and engineering are continually trying to move on from such unrealistic paradigms. They stopped just trusting the surgeon, engineer, or pilot because they’re independent, highly trained professionals.²⁸⁵ Instead, these disciplines recognize that all humans are imperfect at their jobs. In turn, they continue to build deliberately designed systems and standardized best practices—to put it in James Reason’s words, many layers of “Swiss Cheese.” Shouldn’t courts, judges, governments, and the CJC pursue the same to reduce errors and to increase the possibility of more uniform justice? To do so, however, courts would have to radically shift their approach to data gathering and transparency.

iv. *Why data gathering and transparency is consistent with deliberative secrecy and judicial confidentiality and why judicial independence and impartiality require it*

Some Canadian courts also appear to have concerns about how basic data gathering and transparency could impact their deliberative secrecy, and such concerns could frustrate the gathering of needed data. Deliberative secrecy, however, is a narrow doctrine and evidentiary

²⁸¹ Shrime, *supra* note 169 at 151 [“Now, instead of kowtowing to short, strident surgeons, we talk about Swiss cheese. We diagnose system breakdowns. We discuss physical infrastructure, organizational ethos, communication, and supply chains. It’s definitely made patients safer.”].

²⁸² Doyle, *supra* note 79 at 121; see also Linda T Kohn, Janet M Corrigan & Molla D Donaldson, eds, *To Err is Human: Building a Safer Health System* (The National Academies: Washington, 2000).

²⁸³ Doyle, *supra* note 79 at 121.

²⁸⁴ *Ibid* at 138.

²⁸⁵ These systems seem to have far less tolerance for autonomy. Imagine your next airline pilot telling you they’re going to fly using only their independent judgement and ignore standardized best practices and they’re instruments. I’d wager you’d immediately leave that plane. Of course, judges have far more independence, but that independence, as discussed isn’t for them—it’s for the litigants.

rule.²⁸⁶ It precludes executives or legislatures from compelling administrative or judicial decision-makers to explain or account for specific decisions outside their issued written or oral decisions.²⁸⁷ It exists to protect the judicial reasoning process, e.g., questions about how judges arrived at actual conclusions. But it doesn't preclude courts from answering general questions about judicial decision-writing or court practices, including anonymous information about the time it takes to write decisions.²⁸⁸

The 2019 Survey questions didn't relate to specific judicial decisions. So I can't determine why some courts declined to participate in the 2019 Survey, especially when many courts did participate. What legal principles and the 2019 Survey itself suggests, however, is that deliberative secrecy and judicial confidentiality don't preclude or insulate courts from answering questions aimed at generating the kind of user experience data that the 2019 Survey sought to gather or what similar surveys might try to gather.

Multiple courts that didn't participate also didn't explain why—e.g., because of concerns about judicial independence, deliberative secrecy, or judicial confidentiality. But four Canadian courts' responses indicated a shared belief that all or some of the 2019 Survey questions tacitly or explicitly engaged deliberative secrecy:²⁸⁹

- The SCC declined to participate in the entire survey: “some of the issues you propose to canvass touch on matters relating to the Court's deliberative process, it would be inappropriate for the Court to participate in your survey.”
- The Court of Appeal for Saskatchewan declined to participate in the entire survey: “The Court of Appeal for Saskatchewan has determined that it would not be appropriate for it to participate in your study of the Court's decision-making process.”

²⁸⁶ Stephen GA Pitel & Liam Ledgerwood, “Judicial Confidentiality in Canada” (2017) 43:1 Queen's LJ 123 at 127-129.

²⁸⁷ *MacKeigan v Hickman*, [1989] 2 SCR 796 at 830 [“The judge's right to refuse to answer to the executive or legislative branches of government or their appointees as to how and why the judge arrived at a particular judicial conclusion is essential to the personal independence of the judge ... The judge must not fear that after issuance of his or her decision, he or she may be called upon to justify it to another branch of government. ... judicial immunity is central to the concept of judicial independence. ... a judge cannot be required by the executive or legislative branches of government to explain and account for his or her judgment. To entertain the demand that a judge testify before a civil body, an emanation of the legislature or executive, on how and why he or she made his or her decision would be to strike at the most sacrosanct core of judicial independence.”] [*MacKeigan*].

²⁸⁸ *Commission scolaire de Laval v Syndicat de l'enseignement de la région de Laval*, 2016 SCC 8 at paras 57, 64; see also Pitel & Legerwood, *supra* note 286 at 128-129.

²⁸⁹ *MacKeigan*, *supra* note 287 at 830.

- The Federal Court of Appeal declined to participate in the entire survey: “the Federal Court of Appeal is unable to participate as the information that you seek pertains to the internal deliberative process of the Court.”
- The BCCA participated in the survey, but it declined to participate in the time-tracking question: “The Court of Appeal is not in a position to respond to question 7, given the extent to which the question engages the deliberative process of the judiciary.”²⁹⁰

Chapter 3 suggests these views are perhaps even more widespread in 2026 than they were in 2019 when only 1/28 courts participated in the 2023 Survey.

Either way, as you’ll see, no 2019 Survey question compelled courts or judges to explain or account for their decisions such that courts or judges could invoke deliberative secrecy (the same was true in the 2023 Survey). But the 2019 Survey did ask general questions about the practice of writing decisions, including anonymous information about the time it takes to write decisions:

1. Does the [surveyed court] have a suggested time for issuing written judgments (if so, what is it)?
2. Does the [surveyed court] have mandatory style guides for written judgments (if so, how does the Court track if judges follow it)?
3. Does the [surveyed court] have a mandatory structure for written judgments (if so, how does the Court track if judges follow it)?
4. Does the [surveyed court] have any statistical data on judgments aside from what it releases in the Court’s annual reports (if so, is it available for research purposes)?
5. Does the [surveyed court] track how long written judgments are under reserve (if so, how does the Court address reserves that are three months old, six months old, and over six months old)?
6. Is the [surveyed court] examining any initiatives about improving or changing written judgments?
7. Would some [surveyed court] judges track their time for drafting written judgments like Brown J. (as he then was) did in the judgment attached to this email—*Western Larch Limited v. Di Poce Management Limited*, 2012 ONSC 7014 at paras. 269-277?
Specifically, I request that judges track the (a) case’s subject matter, number of parties, and days of court time; and (b) out of court time spent on the judgment process, including the time they spend (i) reviewing evidence, applicable case law, statutes, and any related research memoranda; (ii) discussions with clerks or other judges; and (iii) the actual drafting of judgments. This data would be anonymized.

I recognize that many courts and judges may be uncomfortable with question seven. But courts and judges have provided similar data in Australia. And the most important point appears to be

²⁹⁰ All correspondence on file with author.

this one: neither question seven nor any question engage deliberative secrecy or judicial confidentiality.²⁹¹

In short, the doctrine of deliberative secrecy doesn't apply to insulate generalized data and questions about judges and courts, and courts shouldn't invoke it in situations. As now Justice Lorne Sossin noted before his judicial appointment in response to the shutting down of previous research about the SCC, "Things that don't pertain to individual cases - such as the life of the court - are a legitimate area for academic inquiry and for greater public awareness...."²⁹² As I attempted to stress above, I have no idea what reasons justified the non-participation of courts who didn't provide reasons for not participating. For example, the lack of participation could simply be a lack of time. But when courts don't provide reasons, researchers and the public have no way of knowing.

As Chapter 2 discusses, instead of such inquiry compromising the court, such inquiry could improve court processes and increase public confidence in courts. Accordingly, instead of courts vaguely invoking deliberative secrecy or judicial confidentiality, courts could work with researchers to find ways to ensure confidentiality while also increasing transparency.

Finally, as Chapter 1 suggests, the law seems unequivocal that judicial independence and impartiality require judges to demonstrate their impartiality to Canadians in their decisions. A holistic reading of *R.E.M.* and *Sheppard* suggests this requirement extends to courts: they must also demonstrate their independence and impartiality to Canadians with transparent data gathering and transparency to ensure public confidence and accountability and to protect the administration of justice.²⁹³

²⁹¹ For a brief discussion on judicial confidentiality, see Adam Dodek, "Judicial Confidentiality" (13 June 2016) *Slaw*, online: <<http://www.slaw.ca/2016/06/13/judicial-confidentiality/>>.

²⁹² Cristin Schmitz, "Supremely secret: top court wants law clerks muzzled" (2009) *Lawyers Weekly*, online: <https://stephanebeaulac.openum.ca/files/sites/84/2009/06/Supremely_secret_top_court_wants_law_clerks.pdf>.

²⁹³ See Anne A Ko, "A Legal Analysis of the Access to Court Record Policies of the Provincial and Territorial Courts of the Common Law Jurisdiction of Canada and Public Accessibility" (LLM Thesis, University of Toronto, 2016); Justice David Brown, "Judicial Independence is not a One-Way Street: The Duty of Canadian Courts to Publish Operational Data" (23 May 2025) *The Advocates' Society*, Spring Symposium 2025: The Rule of Law and Advocacy at 7 [Brown, "One-Way Street"].

In the words of now retired Ontario Court of Appeal for Ontario Justice David Brown, “Judicial independence is not a one-way street”:

the protections the principle affords to judges and courts are accompanied by the duty of the judiciary to account for their acts. In other words, the protections afforded by the principle of judicial independence are accompanied by a corresponding judicial duty of accountability.²⁹⁴

Unfortunately, some judges on some courts might not yet agree. The only time this issue was litigated in 2023 (at the application level) and 2024 (appellate) resulted in conclusions that are inconsistent with what this dissertation prescribes, and frankly, established precedent.

In brief, an Ontario lawyer sought statistical data about number of civil proceedings that were disposed of by trial in 2015 and onward in six Ontario court locations, broken down by jury and non-jury trials, and the underlying court file numbers for those civil proceedings.²⁹⁵ Ontario’s Attorney General opposed the request and said the lawyer had no right to the information and that the order was outside the Court’s jurisdiction.²⁹⁶ How the lawyer sought his relief and argued the case could explain part of the outcome (at least in written materials, the Applicant didn’t mentioned judicial independence and impartiality until the Applicant sought leave to the SCC),²⁹⁷ so too could the judges who heard the case. In rejecting the application, the Application Judge held that the open court principle doesn’t extend to aggregating, sorting, and categorizing bulk data for the public or the press and that he was aware of no legal precedent that could affect that conclusion.²⁹⁸ The Court of Appeal for Ontario denied the appeal and didn’t quarrel with the conclusions,²⁹⁹ and the SCC denied leave.³⁰⁰

Contrary to what the Application Judge held, existing legal precedent about judicial independence and impartiality should’ve affected the conclusion. The Application Decision and

²⁹⁴ Brown, *supra* note 293 at 7.

²⁹⁵ *Lesage v The Attorney General of Canada*, 2023 ONSC 6444 at para 1.

²⁹⁶ *Ibid* at para 2.

²⁹⁷ *Ibid* at para 27; see e.g., “Factum of the Appellant, *Michael Lesage v The Attorney General of Canada and the Attorney General of Ontario*” (6 February 2024), online: <<https://www.michaelsfirm.ca/wp-content/uploads/2024/02/7-FAP.COA-23-CV-1326.pdf>>; “Application for leave to appeal (*Michael Lesage*), *Michael Lesage v the Attorney General of Ontario*” (16 September 2024), online: <<https://www.michaelsfirm.ca/wp-content/uploads/2024/10/Leave-to-Appeal.pdf>>.

²⁹⁸ *Lesage v The Attorney General of Canada*, 2023 ONSC 6444

²⁹⁹ *Lesage v Ontario (Attorney General)*, 2024 ONCA 500.

³⁰⁰ *Michael Lesage v Attorney General of Ontario*, 2025 CanLII 17291.

the Court of Appeal decision seem to have ignored clear legal principles and the logic surrounding the principle of judicial independence and impartiality that Chapter 1 discusses. If judges have a duty to explain themselves to the public in the cases they decide, the only logical extension is that courts also have such a duty.

Former Justice David Brown put it this way:

The principle of judicial independence cannot be used as a shield to deny the public information about the operational performance of their courts. On the contrary, the principle imposes on a court and its judicial members the duty to account to the public, consistently and intelligibly, for how they are exercising their case administration and case-determination powers in the disputes the public brings to it. In a democracy, judicial power without judicial accountability is anathema to the principle of judicial independence.³⁰¹

Brown's argument relies on the same authorities that Chapter 1 discusses, namely *R.E.M.* and *Sheppard* (amongst others). He argues that judicial work obviously includes more than just deciding cases; it also includes the judicial administration of a court's caseload.³⁰² As Chapter 1 stresses, judicial independence and impartiality requires more than guessing about how a court is working or how to improve the court. It requires actual data gathering and data transparency, a point that Justice Brown expressly notes in analyzing the issue. Chapter 2 tackles courts' possible objections to this idea, and Chapter 3 discusses how I specifically sought to understand what concerns courts might have with data gathering and transparency (but courts declined to share their views with me or the public, so we're left guessing about actual concerns).

Part 3: How Canadian courts' approaches to legal data, judicial transparency, and innovation could change

Canadian courts' current views and practices appear to lag views, practices, and initiatives in New Zealand, the U.S., the U.K., and Australia—including transparency initiatives and open-source data; reliance on human-centered design to ensure courts meet user needs; data gathering and data-driven reforms; and collaborations between the judiciary, governments, and stakeholders to design reforms. For clarity, I'm not suggesting these comparator jurisdictions have it all figured out or that Canada's courts and judiciary are inferior to them. In many ways,

³⁰¹ Brown, *supra* note 293 at 7.

³⁰² *Ibid.*

Canada has many things to teach these jurisdictions. This section just seeks to capture some best practices that Canada should seek to explore and emulate.

i. New Zealand: It codified its commitment to human-centered design in courts

New Zealand's legal system is far from perfect, with numerous gaps in its historical data collection and court reform efforts.³⁰³ But New Zealand has codified reliance on human-centered design in legislation aimed at modernizing New Zealand's courts.³⁰⁴ A key goal was making courts more people-centered, transparent, accessible, flexible, modern, relevant, and efficient.³⁰⁵ One aspect of New Zealand's approach that's especially relevant to Chapter 1 is New Zealand's practice of providing decision delivery statistics for its High Court³⁰⁶ (equivalent to Canada's s. 96 superior level courts) and Court of Appeal; faster delivery time requirements; and publishing reserved decision lists:³⁰⁷

- Both courts publish all delivery time statistics on a publicly accessible webpage.³⁰⁸
- The High Court expects judges to deliver 90% of decisions within three months of the last hearing day or receipt of last submission.³⁰⁹
- The Court of Appeal expects judges to deliver 80% of civil and 90% of criminal decisions within three months of the last hearing day or last submission.³¹⁰
- The High Court, Court of Appeal, and Chief Justice must periodically publish information about reserved decisions, including decisions “outstanding beyond a reasonable time for delivery.”³¹¹

³⁰³ See, e.g., William Steel, “Judicial Specialization in Generalist Jurisdiction: Is Commercial Specialization Within the High Court Justified” (2015) 46 VUWLR 307.

³⁰⁴ New Zealand Ministry of Justice, “Judicature Modernisation Legislation” (2017), online: <<https://www.justice.govt.nz/justice-sector-policy/key-initiatives/modernising-courts/judicature-modernisation-legislation/>>.

³⁰⁵ Justice and Electoral Committee, “Judicial Modernisation Bill” (2014), online: <https://www.parliament.nz/resource/en-NZ/50DBSCH_SCR56352_1/b1e79f29dff4abb005e9b4c09904a1865cbf78bd>.

³⁰⁶ Courts of New Zealand, “High Court Judgment Delivery Expectations”, online: <<https://www.courtsofnz.govt.nz/the-courts/high-court/high-court-judgment-delivery-expectations-inquiry-process-and-recent-judgment-timeliness/>> [“High Court”].

³⁰⁷ Courts of New Zealand, “Court of Appeal Judgment Delivery Expectations”, online: <<https://www.courtsofnz.govt.nz/the-courts/court-of-appeal/court-of-appeal-judgment-delivery-expectations-inquiry-process-and-recent-judgment-timeliness>> [“Court of Appeal”].

³⁰⁸ *Ibid.*

³⁰⁹ High Court, *supra* note 306.

³¹⁰ Court of Appeal, *supra* note 307.

³¹¹ *Senior Courts Act 2016*, 2016 No 48, s 170.

Most Canadian courts don't require this efficiency or transparency:

- The CJC expects courts to issue decisions within six months.³¹² Few courts have internal expectations³¹³ or statutory deadlines below six months.³¹⁴
- The SCC is the only Canadian court that provides delivery time statistics on a publicly accessible webpage.³¹⁵ Only one other Canadian court—the BCCA—releases information about decisions' delivery time.³¹⁶
- No Canadian court publishes its reserve list. Rather, court reserve tracking systems are internal, and many aren't even internally shared (at least not historically). Neither the public nor other judges see decisions under reserve for unreasonable times, e.g., over six months.³¹⁷

New Zealand's Ministry of Justice also employs a human-centered and data-driven approach to reforming and improving the judicial system.³¹⁸ It rolled out a business intelligence tool across courts to understand court data and system effectiveness. And it sought to improve services to better meet public needs and to use performance metrics to aid courts with learning and organizational support—e.g., such metrics allow courts to quickly identify overdue cases.³¹⁹

Of course, New Zealand is substantially smaller than Canada, so aggregating data and innovating processes may be easier. Even so, neither Canada nor any Canadian province or territory have

³¹² CJC, Resolution, September 1985.

³¹³ The BCSC expects that application/motion decisions are issued in three months (letter on file with author).

³¹⁴ *Courts of Justice Act*, RSO 1990, c C43, s 123(5) [application decisions in three months and others in six.].

³¹⁵ Supreme Court of Canada, "Year in Review: 2018:", online: <<https://www.scc-csc.ca/review-revue/2018/trends-tend-eng.aspx#wb-cont>>.

³¹⁶ See BCCA, "Annual Report: 2024", *supra* note 239.

³¹⁷ See Khan, "Life of a Reserve", *supra* note 4 at 63, 176-177.

³¹⁸ See, e.g., New Zealand Ministry of Justice, "Annual Report: 1 July 2017 to 30 June 2018" at 2, 3, 10, 12, online: <<https://www.justice.govt.nz/assets/Documents/Publications/moj-2017-18-annual-report.pdf>> [NZ MOJ, "Annual Report: 2018"]; at 10 ["Data provides us with the opportunity to better understand and improve the justice system. It helps us effectively evaluate programmes for our customers. It helps us decide when and where to intervene and who to help with our work.... We shouldn't be relying on anecdotes and assumptions that can easily be influenced by prejudices. ... The premise that our justice system should be centred on the people who use our services remains fundamental."]; Bridgette Toy-Cronin, "Who Are the People in 'People-Centred Justice'? An Examination through a New Zealand Lens" (2024) 39:3 Canadian Journal of Law and Society 599.

³¹⁹ NZ MOJ, "Annual Report: 2018", *supra* note 318. NZ MJO, "Annual Report: 1 July 2018 to 30 June 2019" at 27, 54, 57, online: <<https://www.justice.govt.nz/assets/Documents/Publications/Ministry-of-Justice-annual-report-2018-19.pdf>>; Ministry of Justice, "Annual Report: 1 July 2019 to 30 June 2022" at 42, online: <<https://www.justice.govt.nz/assets/Documents/Publications/MOJ-2019-2020-Annual-Report.pdf>>; see also Asha Barbaschow, "A focus on culture allowed NS's Ministry of Justice to reap rewards from data" (27 February 2018) *ZD Net*, online: <<https://www.zdnet.com/article/a-focus-on-culture-allowed-nzs-ministry-of-justice-to-reap-rewards-from-data/>>; Rob O'Neill, "Five-year courts modernisation now targeting caseload management" (25 July 2019) *Reseller News*, online: <<https://www.reseller.co.nz/article/664533/five-year-courts-modernisation-now-targeting-caseload-management/>> Information on what happened with this tool post 2020 isn't easily available, but New Zealand appears to continue to pursue its data-driven initiatives (see, e.g., "About Us", online: <<https://www.justice.govt.nz/about/about-us/our-strategy/modernising-courts-and-tribunals/>>).

codified reliance on human- or user-centered design for the legal system, offered such transparency about judicial timeliness, or used innovative business intelligence tools to improve court services (at least not tools that are publicly discussed).

ii. *U.S.: Its courts are more transparent, open, and innovative*

The U.S. legal system is also far from perfect (and many aspects shouldn't be emulated, but the points below mostly persist despite the current reality in 2026). Despite the U.S. legal system being far more polarized, political, and acrimonious than Canada's legal system,³²⁰ its state and federal courts are more transparent, open, and innovative than most Canadian courts.

U.S. state courts are far from homogenous because of U.S. federalism. Yet they still offer a large amount of data gathering and data transparency. State courts fully participate with a third party, the National Centre for State Courts, that collects and publishes state court caseload data from all state courts for public and academic consumption.³²¹ State court collaboration with the Centre has fostered rich scholarship on state courts and what goes on in them.³²² Canada has no similar centre for any of its courts.

Examining individual state initiatives is beyond Chapter 1's scope. But Utah, Florida, and New Jersey's reliance on partnerships, transparency, and data are worth mentioning.

Utah's Supreme Court took a novel approach to understanding and addressing its justice crisis. Key goals included systematizing court forms and making them available online; piloting online dispute resolution; narrowing access-to-justice gaps; and collaboration.³²³ It even created a working group of court members, the bar, academics, and experts to increase access to and affordability of legal services, and a prime focus of their reforms is data.³²⁴ Utah also had a court

³²⁰ Adam Goldenberg, "Why Canada's Supreme Court appointments are nothing like America's circus" (16 July 2018) *Macleans*, online: <<https://macleans.ca/opinion/why-canadas-supreme-court-appointments-are-nothing-like-americas-circus/>>.

³²¹ NCSC, "Explore court caseload data", online: <<https://www.ncsc.org/explore-court-caseload-data>>; Conference of Chief Justices & Conference of State Court Administrators, "Resolution 5: In Support of the Court Statistic Project", (2012) online: <<https://ccj.ncsc.org/sites/default/files/media/document/07252012-in-support-of-the-court-statistics-project.pdf>>.

³²² See, e.g., ICPSR, "State Court Statistics Series: Data-related publications", online: <<https://www.icpsr.umich.edu/icpsrweb/ICPSR/series/80/publications>>.

³²³ Supreme Court of Utah, "A Move toward Equal Access to Justice" (4 March 2019), online: <<https://iaals.du.edu/sites/default/files/documents/publications/ut-a-move-toward-equal-access.pdf>>.

³²⁴ *Ibid.*

observation program: four lay observers observe judges; write detailed narratives on the behaviour they observe and their reaction to it; and provide their feedback to judges.³²⁵ Notably, similar performance evaluation programs in Canada received strong opposition,³²⁶ and attempts to study Canadian courts are sometimes quickly shut down or never got off the ground.³²⁷ And, while Ontario, British Columbia, and Alberta are starting to follow Utah's novel approaches to innovating legal service regulation,³²⁸ no Canadian province or territory has taken such a comprehensive approach to addressing and improving access to justice.³²⁹

Florida and its State court are also pursuing a data-driven mission to improve its judiciary and access to justice. Florida passed incredible legislation that facilitates collecting 140 data points across the criminal justice experience—from arrest to release, including new court data—that it standardizes and releases online.³³⁰ Florida's legislation created unprecedented transparency (unfortunately, delays occurred during COVID-19, but the program is now operational):³³¹

It's the first state to require this level of transparency at the case-by-case level, unlocking a wealth of nuanced information that could help lawmakers more easily detect the kind of problematic patterns and biases that plague courts and law enforcement agencies across the country.... 'without hesitation, now the leader in data transparency, reporting, and measurement across the country, and they don't pay me to say that.'³³²

³²⁵ Nicholas H Woolf & Jennifer MJ Yim, "The Courtroom-Observation Program of the Utah Judicial Performance Evaluation Commission" (2011) 47 Ct Rev 84 at 85-87.

³²⁶ See Troy Riddell, Lori Hausegger & Matthew Hennigar, "Evaluating Federally Appointed Judges in Canada: Analyzing the Controversy" (2012) 50:2 Osgoode Hall LJ 403.

³²⁷ Philip Slayton, "A supreme misstep" (31 August 2019) *Canadian Lawyer*, online: <<https://www.canadianlawyermag.com/news/opinion/a-supreme-misstep/267657>>.

³²⁸ See Brooke Mackenzie, "Regulatory Innovation with a Legal Tech Sandbox" (3 May 2021) *Slaw*, online: <<http://www.slaw.ca/2021/05/03/regulatory-innovation-with-a-legal-tech-sandbox/>>; Law Society of British Columbia, "Innovation Sandbox", online: <<https://www.lawsociety.bc.ca/our-initiatives/innovation-sandbox/>>; Law Society of Alberta, "Innovation Sandbox", online: <<https://www.lawsociety.ab.ca/about-us/key-initiatives/innovationsandbox/>>.

³²⁹ British Columbia has also led the world in online dispute resolution, including garnering worldwide attention (see, e.g., CRT, "2023-2024 Annual Report", *supra* note 95). As previously mentioned, however, it relies on very sparse data to back up many of its claims about satisfaction.

³³⁰ Jason Tashea, "Liberating criminal justice data: How a Florida law provides a blueprint for the nation" (18 June 2019) *ABA Journal*, online: <<https://www.abajournal.com/web/article/liberating-criminal-justice-data-how-a-florida-law-offers-a-blueprint-for-the-nation>>.

³³¹ Andrew Pantazi, "A new effort was supposed to make Florida's criminal justice data radically transparent. So far, it's failed" (2 July 2020) *The Florida Times-Union*, online: <<https://www.jacksonville.com/story/news/local/2020/07/02/new-effort-was-supposed-to-make-floridas-criminal-justice-data-radically-transparent-so-far-it-s-failed/41716651/>>.

³³² Issie Lapowsky, "Florida Could Start a Criminal-Justice Data Revolution" (13 March 2018) *Wired*, online: <<https://www.wired.com/story/florida-criminal-justice-data-sharing/>>.

Notably absent from the bill's passing is the judiciary alleging that data collection would infringe their independence or compromise public confidence in courts or the administration of justice. Rather, Florida's judiciary began participating before the bill's passing.³³³ The State court is also developing its own system "to optimize the ability of judges and case managers to electronically process and manage cases."³³⁴ This system enables the Florida state court to rely on data to improve adjudicatory outcomes, increase efficiency, and enhance its ability to assist policymakers in evaluating policy and budget options.³³⁵ No Canadian province or territory has pursued any similar effort. Canada's legal system doesn't even capture the current Canadian national divorce or guilty plea rates.³³⁶ Chapters 4-5 address these points, including the need for a comprehensive national legal data strategy.

New Jersey showcases what's possible with data driven reforms. It has been home to North America's most dangerous city, Camden.³³⁷ But after partnering with stakeholders, it started relying on extensive data and study to generate new insights about efficiency, fairness, and criminal justice.³³⁸ As least for a brief period, it transformed its policing and criminal justice system's pre-trial process.³³⁹ A lot of work remains to be done in New Jersey, and leaders have made mistakes. But at least for a period, accountability increased.³⁴⁰ Crime rates fell.³⁴¹ Trials

³³³ Ellen S Podgor, "The 2018 Florida Bar Criminal Justice Summit: A First Step in Improving Florida's Criminal Justice System" 93:1 Florida Bar Journal 8, online: <<https://www.floridabar.org/the-florida-bar-journal/the-2018-florida-bar-criminal-justice-summit-a-first-step-in-improving-floridas-criminal-justice-system/>>.

³³⁴ Florida Courts, "Judicial Data Management (JDMS)", online: <<https://www.flcourts.org/Resources-Services/Court-Services/Judicial-Data-Management-Services-JDMS>>.

³³⁵ *Ibid.*

³³⁶ Tavia Grant & Eric Andrew Gee, "In the information age, Canada is falling behind" (25 January 2019) *The Globe and Mail*, online: <<https://www.theglobeandmail.com/canada/article-in-the-information-age-canada-is-falling-behind/>>; Eric Andrew Gee & Tavia Grant, "In the dark: The cost of Canada's data deficit" (26 January 2019) *The Globe and Mail*, online: <<https://www.theglobeandmail.com/canada/article-in-the-dark-the-cost-of-canadas-data-deficit/>>; Tavia Grant & Eric Andrew Gee, "Experts urge Ottawa to fix Canada's data deficit" (27 January 2019) *The Globe and Mail*, online: <<https://www.theglobeandmail.com/canada/article-experts-make-recommendations-about-how-canada-can-fix-its-data-deficit/>>; Bressan & Coady, *supra* note 9.

³³⁷ Anne Milgram, "How a new kind of policing saved America most dangerous city" (12 June 2020) *CNN*, online: <<https://www.cnn.com/2020/06/13/opinions/police-camden-minneapolis-george-floyd-milgram/index.html>>. For the contrary review on the policing policy but no comment on the new pre-trial process, see, e.g., Stephen Danley, "Camden police reboot is being misused in the debate over police reform" (16 June 2020) *The Washington Post*, online: <<https://www.washingtonpost.com/outlook/2020/06/16/camden-nj-police-reboot-is-being-misused-debate-over-police-reform/>>

³³⁸ ACLU: New Jersey, "Pretrial justice reform", online: <<https://www.aclu-nj.org/theissues/criminaljustice/pretrial-justice-reform>>.

³³⁹ *Ibid.*

³⁴⁰ *Ibid.*

³⁴¹ P Kenneth Burns, "Camden sees lowest crime level in more than 50 years" (9 January 2021), online: <<https://www.aclu-nj.org/theissues/criminaljustice/pretrial-justice-reform/>>

sped up.³⁴² Its jail population shrunk by 44%.³⁴³ Despite some failures and shortcomings, New Jersey is achieving success that wasn't just a one off.³⁴⁴ Of course, data was only part of the solution in New Jersey, they also need creativity, humility, luck, and political will. But some success is clearly observable.

Again, like in Florida, New Jersey's judiciary didn't oppose reforms. It led the charge on collaborating with the public defender, executive, attorney general, legislature, and non-government participants like the ACLU to achieve these outcomes:³⁴⁵ "all three branches were willing to work together and consult on this thorny problem."³⁴⁶

Turning to U.S. federal courts (the closer equivalent of Canada's s. 96, provincial appeal, and federal courts), they too present far more transparency than Canadian counterparts:

- Public Access to Court Electronic Records ("PACER") provides broad access to electronic records and docket information: it's run by the Administrative Office of U.S. Courts, PACER is an electronic public access system for electronic Federal Court records and docket information.³⁴⁷ While PACER is far from perfect,³⁴⁸ PACER "changed the face of empirical legal research."³⁴⁹ Empirical scholars have used it for over 20 years to conduct fascinating empirical research on U.S. federal courts.³⁵⁰ No similar service exists

³⁴² Mark F Bernstein, "How New Jersey Made a Bail Breakthrough: Was perfect the enemy of the good? (November 2020) *Princeton Alumni Weekly*, online: <<https://paw.princeton.edu/article/how-new-jersey-made-bail-breakthrough>>.

³⁴³ *Ibid.*

³⁴⁴ Elie Hong, "Criminal Justice Reform: New Jersey Got it Right, Why Can't Other things" (14 October 2024) *TedX*, online: <<https://www.youtube.com/watch?v=kZyUowqkWWk>>.

³⁴⁵ Bernstein, *supra* note 342. Stuart Rabner, "Hobbs Lecture: Criminal Justice Reform in New Jersey" (2020) 50:3 *Seton Hall L Rev* 619.

³⁴⁶ *Ibid* at 641

³⁴⁷ United States Courts, "PACER", online: <<https://www.pacer.gov/>>.

³⁴⁸ See, e.g., Brian Carver, "What is the Pacer Problem?" (20 March 2015) *Free Law Project*, online: <<https://free.law/2015/03/20/what-is-the-pacer-problem/>>; Theodore Eisengberg & Margo Schlanger, "The Reliability of Administrative Office of the U.S. Courts Database: An Initial Empirical Analysis" 78:5 *Notre Dame Law Rev* 101; Jean O'Grady, "What Do Law Firms Need to Know About Purchasing Litigation Analytics Products?" (26 July 2019) *Above the Law*, online: <<https://abovethelaw.com/2019/07/what-do-law-firms-need-to-know-about-purchasing-litigation-analytics-products/>>; Peter M Martin, "District Court Opinions That Remain Hidden Despite a Long-standing Congressional Mandate of Transparency— The Result of Judicial Autonomy and Systemic Indifference" (2018) 110:3 *Law Library Journal* 306. PACER should also dramatically improve in coming years.

³⁴⁹ Robert M Lawless and Elizabeth Warren, "Bankruptcy and Insolvency" at 198 in Peter Cane & Elizabeth Kritzer, *The Oxford Handbook of Empirical Legal Research* (Oxford University Press: Oxford 2012) 212.

³⁵⁰ See, e.g., Gillian K Hadfield, "Where Have All the Trials Gone? Settlements, Nontrial Adjudications, and Statistical Artifacts in the Changing Disposition of Federal Civil Cases" (2004) 1:3 *Journal of Empirical Legal Studies* 705.

in Canada.³⁵¹ Most Canadian courts don't provide electronic access to their records or docket information, and if they do it's often not amenable to large scale or automated research.³⁵² But a few courts have achieved some success despite limited funding. The Federal Court, Federal Court of Appeal, and SCC do have electronic dockets amenable to scraping and automated research. That access has fostered fundamental research on the Canadian immigration system and has exposed some of its profound unfairness.³⁵³ And the Federal Court recently introduced a platform to provide online electronic access to court records (pleadings and court generated documents).³⁵⁴ The CJC was examining electronic access to records in the early and mid 2000s.³⁵⁵ But the CJC didn't revisit the issue of electronic access to court documents until 2021 when it released new guidelines for Canadian courts on managing court requests for bulk access to court information.³⁵⁶ But current access under that policy is far from democratic as Chapter 5 discusses further: the relationship between the data-facilitator and courts appears to further undemocratic access to data and much needed transparency while increasing the commercial monopoly over public data.³⁵⁷ In contrast, the U.S. federal government has voted to democratize free access to PACER, and it gave courts a deadline to comply with access (but courts didn't meet the deadline and the issue is now at a standstill, likely because of the change in the executive and legislative branches).³⁵⁸

³⁵¹ The closest thing Canada has to an aggregated centred for access to legal data are CanLII's metadata API (see CanLII, "CanLII REST API Documentation", online: <https://github.com/canlii/API_documentation/blob/master/EN.md>).

³⁵² British Columbia, "BC Registries and Online Service", online: <<https://www.bcregistry.gov.bc.ca>>.

³⁵³ See Rehaag, "Judicial Review", *supra* note 104.

³⁵⁴ Federal Court, "Pilot Project: Online Access to Court Records" (7 September 2022), online: <<https://www.fct-cf.gc.ca/Content/assets/pdf/base/2022-09-07-ENG-NOTICE-Pilot-Project-Online-Access.pdf>>.

³⁵⁵ Judges Technology Advisory Committee, "Discussion Paper on Open Courts, Electronic Access to Court Records, and Privacy (2003)", online: <https://cjc-ccm.ca/sites/default/files/documents/2019/news_pub_techissues_OpenCourts_20030904_en.pdf>; Judges Technology Advisory Committee, "Model Policy for Access to Court Records in Canada" (2005), online: <https://cjc-ccm.ca/sites/default/files/documents/2019/news_pub_techissues_AccessPolicy_2005_en.pdf>; CJC, "Court Information Management: Policy Framework to Accommodate the Digital Environment" (2013), online: <<https://cjc-ccm.ca/sites/default/files/documents/2019/Policy%20Framework%20to%20Accommodate%20the%20Digital%20Environment%202013-03.pdf>>.

³⁵⁶ CJC, "Guidelines For Canadian Courts Management of Requests for Bulk Access to Court Information by Commercial Entities" (2021), online: <https://cjc-ccm.ca/sites/default/files/documents/2021/Bulk%20Access%20to%20Court%20Info%20-%20Guidelines%202020-12_EN%20Final%20-%20One%20PDF.pdf>.

³⁵⁷ CanLII, "Call for Participants" (8 July 2022), online: <<https://blog.canlii.org/2022/07/08/call-for-participants/>>. In Chapter 5, I discuss this point further when I discuss Crown copyright over judicial decisions and the current monopolies that exist in Canada over legal data).

³⁵⁸ The U.S. House voted to make PACER free for the public despite opposition from the judiciary (it opposed removing costs because of lost revenue). The judiciary had to update and modernize its current electronic case management and case filing system in four or five years (see Jacqueline Thomsen, "Rejecting Opposition from Judiciary, House Passes Bill to Make PACER free" (8 December 2020) *Law.Com*, online: <<https://www.law.com/nationallawjournal/2020/12/08/rejecting-opposition-from-judiciary-house-passes-bill-to-make-pacer-free/>>. But delays continue to occur (see, e.g., Nate Raymond, "No free PACER as U.S. lawmakers exclude proposal from spending bill" (20 December 2022) *Reuters*, online: <<https://www.reuters.com/legal/government/no-free-pacer-us-lawmakers-exclude-proposal-spending-bill-2022-12-20/>>.

- The Federal courts provide extensive analysis, annual reports, and statistics about the Federal judiciary:³⁵⁹ again, this material has fostered rich scholarship on Federal courts.³⁶⁰ Neither the CJC nor any Canadian court are this transparent. Very few of Canada's s. 96 and appeal courts produce annual reports,³⁶¹ but most don't, likely because of budgetary and staffing constraints.³⁶² While StatsCan has dramatically improved its coverage of Canadian courts, its coverage is incomplete, its data doesn't yet facilitate robust empirical analysis and of criminal courts³⁶³ and or civil courts.³⁶⁴
- The Civil Justice Reform Act's "six-month list" provides radical transparency: this semi-annual report shows which federal district and magistrate judges' have matters pending

³⁵⁹ United States Courts, "Statistics and Reports", online: <<https://www.uscourts.gov/statistics-reports>>.

³⁶⁰ ICPSR, "Federal Courts Cases: Integrated Database Series—Data Related Publications", online: <<https://www.icpsr.umich.edu/icpsrweb/ICPSR/series/00072/publications>>.

³⁶¹ These courts either historically or currently release annual reports:

- BCSC, "Annual Report: 2024", *supra* note 151.
- BCCA, "Annual Report: 2024", *supra* note 239.
- Court of Kings Bench of Alberta historically released annual reports, but I can't find a current one online for the 2024 cycle. The last one was from 2017: Court of Queen's Bench of Alberta, "Annual Report – 2016 to 2017" (2017), online: <https://albertacourts.ca/docs/default-source/qb/2016-2017-annual-report-with-appendix-jan-19-2018.pdf?sfvrsn=593aac80_0> ["ABQB Annual Report: 2017"].
- Ontario Superior Court of Justice currently releases bi or tri-annual reports, Ontario Superior Court of Justice, "The Ontario Superior Court of Justice: Modernizing the Justice System" online: <<https://www.ontariocourts.ca/scj/wp-content/uploads/annualreport/2019-2023-EN.pdf>>.
- Court of Appeal for Ontario historically released them but hasn't done so since 2013: "Court of Appeal for Ontario, "Court of Appeal for Ontario: Annual Report 2013" at 30, online: <<http://www.ontariocourts.ca/coa/en/ps/annualreport/2013.pdf>>.
- Superior Court of Quebec historically has released them, but it hasn't done so since 2014: Superior Court of Quebec, "Superior Court of Quebec: 2010-2014, Activity Report", online: <http://www.tribunaux.qc.ca/mjq_en/c-superieure/ActivityReport_July%202015.pdf>.
- Nunavut Court of Justice has historically released them but hasn't done so since 2017: Nunavut Court of Justice, "The Nunavut Court of Justice: A Statistical and Comparative Review of Court Operations in Nunavut: 2017", online: <<https://www.nunavutcourts.ca/index.php/annualreports?download=442:2017-annual-reports-en>> ["Nunavut Court of Justice Annual Report: 2017"].
- Federal Courts Administration Service currently releases them and the most up to date is 2023, Courts Administration Service, "Annual Report 2022-2023", online: <<https://www.cas-satj.gc.ca/en/pages/publications/ar/annual-report-2022-2023>>.
- SCC currently release them and the most up to date is 2024: SCC, "2024 Year in Review", online: <<https://www.scc-csc.ca/about-apropos/work-travail/review-retro/2024/>> ["SCC, "2024 Year in Review"]).

³⁶² The following courts don't appear to publish annual reports: the Court of Appeal for Alberta; the Saskatchewan Court of Queen's Bench & the Saskatchewan Court of Appeal; the Manitoba Court of Queen's Bench & Manitoba Court of Appeal of Manitoba; the Court of Appeal of Quebec (although it does publish some statistics—see Court of Appeal of Quebec, "Statistics", online: <<https://coudappelduquebec.ca/en/general-information/about/statistics>>); the Supreme Court of Newfoundland and Labrador & the Court of Appeal of Newfoundland and Labrador; the Supreme Court of Prince Edward Island & the Prince Edward Island Court of Appeal; the Nova Scotia Supreme Court & the Nova Scotia Court of Appeal; the Nunavut Court of Appeal; the Northwest Territories & the Court of Appeal for the Northwest Territories; and the Supreme Court of Yukon & the Court of Appeal of Yukon. Notably, however, many provincial courts publish annual reports. So provincial courts seem to have the capability to do so (see, e.g., the Provincial Court of Newfoundland and Labrador, "Publications: Annual Reports", online: <<https://court.nl.ca/provincial/publications/index.html>>).

³⁶³ Statistics Canada, "Integrated Criminal Court Survey: Interactive Dashboard on Annual Key Indicators", online: <<https://www150.statcan.gc.ca/n1/pub/71-607-x/71-607-x2021026-eng.htm>>.

³⁶⁴ Statistic Canada, "Civil and Family Law Statistics: Interactive dashboard", online: <<https://www150.statcan.gc.ca/n1/pub/71-607-x/71-607-x2022001-eng.htm>>.

outside statutory timelines—*i.e.*, six months for motions, bench trials, bankruptcy and Social Security appeals, and all civil cases pending more than three years.³⁶⁵ This list provides astonishing transparency. Coupled with other data sources like PACER, it provides a mechanism for insightful empirical legal research on incentivizing and studying speedy adjudication.³⁶⁶ Notably, the list hardly engages a discussion on judicial independence because judges have life tenure, fixed salaries, and most importantly, judges aren't penalized for being on the list (of course, they might suffer reputational damage).³⁶⁷ No such transparency exists in Canada. Canadian courts don't publish their reserve lists, and only two courts publish delivery times (the BCCA and the SCC).³⁶⁸

- The Federal Judicial Centre provides a biographical directory of all federal judges: this public directory includes information on demographics, federal judicial service, education, professional career, other nominations, educational institutions, *etc.* Anyone can download this information in formats easily amendable to empirical research.³⁶⁹ Coupled with other sources, this material again fosters rich research. For context, the Federal Judicial Centre bears similarities to Canada's CJC and National Judicial Institute. The U.S. Chief Justice chairs it.³⁷⁰ Again, Canada has no equivalent biographical directory. The Canadian federal government has published some questionnaires for judges it appointed (*aka* their application). But it doesn't publish most; doesn't explain why or how it chooses to publish the ones it does; only publishes application excerpts; doesn't maintain any repository that researchers could avail for automated/tabular research; still hasn't published questionnaires it promised to; and is no longer committing to publishing questionnaires. But it does appear to again be publishing some after a long lull of publishing none.³⁷¹ Similarly, while some courts publish limited biographical information

³⁶⁵ United States Courts, "Civil Justice Reform Act Report", online: <<https://www.uscourts.gov/statistics-reports/analysis-reports/civil-justice-reform-act-report>>.

³⁶⁶ See Jonathan B Petkun, "Can (and Should) Judges be Shamed? Evidence from the 'Six-Month List'" (2019) Draft Paper, online: <<https://ssrn.com/abstract=3205398>> ["the six-month list has effectively accomplished its ostensible goal of promoting speedy adjudications...[and] improved speed does not appear to have been achieved at a significant cost with respect to the quality of civil adjudications."] [Petkun, "Can (and Should) Judges be Shamed?"] and see also Jonathan B Petkun, "Nudges for Judges: An Empirical Analysis of the 'Six-Month List'", (2021), online: <https://jbpetkun.github.io/pages/working_papers/Petkun_JMP_20210806.pdf>.

For the contrary view, which is based on a far smaller dataset, see Miguel FP de Figueiredo, Alexandra D Lahav, & Peter Siegelman, "The Six-Month List and the Unintended Consequences of Judicial Accountability" (2020) 105 Cornell L Rev 363 [Figueiredo, Lahav & Siegelman are, however, critical of the list. They argue judges may be making more errors to comply with the list and that it's likely a mistake].

³⁶⁷ *Ibid* at 1, 5; see also Petkun, "Can (and Should) Judges be Shamed?", *supra* note 366 at 46 [concedes that including additional metrics in the six month list "may be interpreted by some as an unacceptable intrusion into judicial independence."]; Marc D Falkoff, "The Hidden Costs of Delay" (2012) 82:2 University of Colorado L Rev 339; Kimberly Bosse, "Playing by the Rules (Or Not): How the Court's Misuse of Rule 59 Threatens to Undermine Qualified Immunity and the Civil Jury Trial" (2018) 50:4 Conn L Rev 1047 at 1067.

³⁶⁸ See *supra* note 361

³⁶⁹ Federal Judicial Centre, "Biographical Directory of Article III Federal Judges: Export", online: <<https://www.fjc.gov/history/judges/biographical-directory-article-iii-federal-judges-export>>.

³⁷⁰ Federal Judicial Centre, "About the FJC", online: <<https://www.fjc.gov/about>> [A notable difference is that it has no policymaking or enforcement authority].

³⁷¹ See, e.g., Office of the Commissioner for Federal Judicial Affairs Canada, "The Honourable Maria V. Carroccia's Questionnaire", online: <<https://www.canada.ca/en/departement-justice/news/2025/07/the-honourable-carroccia-s-questionnaire>>.

about judges, many don't, and coverage is incomplete and inconsistent across courts. Neither the CJC, Superior Court Judges Association, nor Federal Commissioner for Judicial Affairs maintain any internal or public database of judges' biographical or demographic information.³⁷² Chapter 5 discusses a prototype solution for Canada.

- The Federal Judicial Centre publishes many of its federal judges' training materials: it has released 169 manuals, monographs, and guides and 344 reports and studies on the Federal Courts.³⁷³ This transparency starkly contrasts the Canadian approach of confidential training materials.³⁷⁴ All the CJC, National Judicial Institute, and Canadian Institute for the Administration of Justice provide are fact sheets on judicial education for federal judges;³⁷⁵ principles of judicial education;³⁷⁶ a vague list of training programs;³⁷⁷ one training manual;³⁷⁸ some historic papers from training conferences;³⁷⁹ and brief summaries of the over 500 training programs and number of attendees.³⁸⁰
- Court webpages for individual federal court judges are available: many judges have individual webpages that include helpful information on individual practices—e.g., judges' answers to forum surveys on civil case management, civil discovery, *etc.*;³⁸¹ or individual procedural practices and procedures.³⁸² Again, Canada has no equivalent.

maria-v-carroccias-questionnaire.html >; Agathon Fric, "Popping the Question: What the Questionnaire for Federal Judicial Appointments Reveals about the Pursuit of Justice, Diversity, and the Commitment to Transparency" (2020) 43:1 Dal LJ 159.

³⁷² Correspondence on file with author.

³⁷³ Federal Judicial Centre, "Manuals, Monographs & Guides", online: <<https://www.fjc.gov/education/manuals-monographs-guides>>; Federal Judicial Centre, "Reports and Studies", online: <<https://www.fjc.gov/research/reports-and-studies>>.

³⁷⁴ Correspondence on file with author; see Cristin Schmitz, "Women's advocates, defence counsel call for transparency from judiciary on sexual assault law training for judges" (11 October 2017) *The Lawyer's Daily*, online: <<https://www.thelawyersdaily-ca.ezproxy.library.yorku.ca/articles/4852/print?section=criminal>> [Schmitz, "Women's Advocates"].

³⁷⁵ Canadian Judicial Coun, "Fact Sheet" on Judicial Education on Federally-Appointed Judges – February 2020", online: <<https://cjc-ccm.ca/sites/default/files/documents/2020/2020-02%20Fact%20Sheet%20on%20Judicial%20Education%20v2.pdf>> [CJC, "Fact Sheet"].

³⁷⁶ See CJC, "Training that keeps moving forward", online: <<https://cjc-ccm.ca/en/what-we-do/professional-development>>; CJC, "Canadian Judicial Council Professional Development Policies and Guidelines", online: <<https://cjc-ccm.ca/sites/default/files/documents/2019/CJC%20Professional%20Development%20Policies%20and%20Guidelines%202018-09-26.pdf>>. National Judicial Institute, "Annual Review: 2023-2024" <<https://www.nji-inm.ca/index.cfm/judicial-education/in-review-2023-2024/?langswitch=en>> at 10-11.

³⁷⁷ *Ibid* at 14-18.

³⁷⁸ National Judicial Institute, "Science Manual for Canadian Judges" (2018) online, <<https://www.nji-inm.ca/index.cfm/publications/science-manual-for-canadian-judges/?langSwitch=en>>.

³⁷⁹ CIAJ, "Documentation", online: <<https://ciaj-icaj.ca/en/library/papers-and-articles/judicial/>>.

³⁸⁰ CJC, "Training that never stops", online: <[>.](https://cjc-ccm.ca/en/what-we-do/professional-development/programs?date_sort=&page=1)

³⁸¹ See, e.g., United States District Court – District of Massachusetts, "Young, William G", online: <<http://www.mad.uscourts.gov/boston/young.htm>>.

³⁸² See, e.g., United States District Court – Southern District of California, "Hon Gonzalo P Curiel", online: <<https://www.casd.uscourts.gov/Judges/Judge-Info.aspx>>.

- iii. *U.K.: It committed £1 billion to radically change its legal system, including far more open, accessible legal data (but it has had some failures)*

Depending on who you ask,³⁸³ the U.K.’s common law system has led the world for 1000 years, garners world envy, and has a well-regarded independent judiciary.³⁸⁴ Yet the UK’s legal system is also far from perfect, and it has been subjected to serious underfunding and significant critique.³⁸⁵ But the U.K. has recognized these issues and decided that its system “needs radical change”.³⁸⁶ So the U.K. undertook an incredible, concerted effort to reform its court system. Like New Zealand and some U.S. courts, it also relied on human-centered design and data to fuel its ongoing £1 billion reform program—what some say is unprecedented in scope, pace, and ambition.³⁸⁷ As Chapter 4 discusses, the last political party that committed any money to modernizing Canada’s courts (\$50 million) was in the 2021 election, and when that party was elected in 2021, it actually committed no money to modernizing courts (it did, however, commit money to hiring more judges and legal aid funding).³⁸⁸

Before commencing reforms, Her Majesty’s Courts and Tribunals Service (“**HMCTS**”)—which has a similar mission statement to the CJC but it is a Ministry of Justice agency³⁸⁹—appointed an

³⁸³ Fewer than 30% of the world lives in a common law system.

³⁸⁴ While the system might be world leading, the UK’s legal system also perpetuated vast amounts of inequity and colonialism.

³⁸⁵ Ruth Green, “Access denied: Britain’s broken justice system” (13 February 2020) *IBA*, online: <<https://www.ibanet.org/article/0AE14E9C-A4D7-49D1-B482-0808A4B6AF6A>>.

³⁸⁶ The Lord Chancellor, the Lord Chief Justice & the Senior President of Tribunals, “Transforming Our Justice System” (2016) at 3, online:

<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/553261/joint-vision-statement.pdf> [The Lord Chancellor, “Transforming Our Justice System”].

³⁸⁷ Dr Natalie Byrom, “Digital Justice: HMCTS data strategy and delivering access to justice: Report and Recommendations” (October 2019) The Legal Education Foundation at 2, online:

<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/835778/DigitalJusticeFINAL.PDF> [Byrom, “Digital Justice”]; see also, HMCTS, Chief Executive, Susan Acland-Hood

“Modernising the Courts and Tribunals Service: Future of Justice Conference” (2018), online: <https://www.ucl.ac.uk/laws/sites/laws/files/ucl_foj_01_03_acland-hood.pdf>. For a fascinating summary of the report, see Dr

Natalie Byrom, “Legal Education Forum – on Digital Justice” (16 October 2019), online: <<https://www.youtube.com/watch?v=WhJTicxT5es>>; The Lord Chancellor, “Transforming Our Justice System”, *supra* note 386 at 4.

³⁸⁸ Liberal Party of Canada, “Fiscal and Costing Plan” (2021), online: <<https://budget.gc.ca/2022/home-accueil-en.html>>; Government of Canada, “Budget 2022: A Plan to Grow out Economy and Make Life More Affordable”, online: <<https://budget.gc.ca/2022/home-accueil-en.html>>.

³⁸⁹ HMCTS, “HM Courts & Tribunals Service: Framework Document” (July 2014), online:

<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/384922/hmcts-framework-document-2014.pdf>. For a background on how HMCTS operates, see Gov UK, “HM Courts and Tribunals Service: Framework Document” (9 July 2014), online:

<<https://www.gov.uk/government/publications/hm-courts-and-tribunals-service-framework-document>>; see also

external “Expert Advisor on Open Data and Academic Engagement” to provide recommendations.³⁹⁰ Dr. Byrom’s recommendations rested on one central tenet: empiricism.³⁹¹ Consulted stakeholders also stressed the need for empirical standards when iterating reforms and evaluating impacts.³⁹² In late 2020, HMCTS signaled its agreement when it noted that it’s been working with the judiciary and Ministry of Justice to implement many of Dr. Byrom’s recommendations.³⁹³ Even with all the research effort and financial commitment, the U.K. still has much to do before it can achieve the “radical change” to which the U.K. committed. U.K. data is still “complex and messy, with a hybrid of policies and laws governing its collection, storage and dissemination”.³⁹⁴ And various justice system participants have failed to deliver on expected results in a timely way: progress has been “disappointingly slow”.³⁹⁵ Regardless of the delays in the U.K., neither the CJC; provincial, territorial, or federal governments; nor courts have ever undertaken such an effort.

HMCTS, “Reform Update” (2018) HMCTS at 5, online:

<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/711535/HMCTS_Reform_Update_May_2018.pdf> [“it goes without saying that providing effective support to an independent judiciary is at the heart of what we do. Judges are part of the governance of HMCTS as a whole, reflecting the partnership between these two branches of state, and this is reflected in the governance of the reform programme. As well as forming part of the decision-making structure, we have the privilege and benefit of having judges embedded in many of our individual projects and programmes.”].

³⁹⁰ Byrom, “Digital Justice”, *supra* note 387 at 10.

³⁹¹ *Ibid* at 2 [“Whether access to justice is ‘maintained or improved’ through reform is both an empirical and a legal question. In order to test, review and, where necessary, improve systems to meet this commitment, a robust strategy for data collection, analysis and sharing must be in place. Data must be collected to confirm that existing legal duties relating to access to and the fairness of the justice system ... The collection and publication of this data is critical to building trust in reformed processes and encouraging adoption of new services.”].

³⁹² *Ibid* at 4-5; see also Natalie Byrom, “Developing the Detail: Evaluating the Impact of Court Reform in England and Wales on Access to Justice” (2019) The Legal Education Foundation, online:

<<https://research.thelegaleducationfoundation.org/wp-content/uploads/2019/02/Developing-the-Detail-Evaluating-the-Impact-of-Court-Reform-in-England-and-Wales-on-Access-to-Justice-FINAL.pdf>>.

³⁹³ Gov UK, “HMCTS response and progress update on Dr Natalie Byrom report”, online:

<<https://www.gov.uk/government/news/hmcts-response-and-progress-update-on-dr-natalie-byrom-report>>.

³⁹⁴ Dr Judith Townend & Dr Cassandra Wiener, “Justice system data’: a comparative study—Report and recommendations” (July 2021) The Legal Education Foundation at 3, online: <<https://justicelab.org.uk/wp-content/uploads/2022/09/JS-Data-Report-Jul21-V5-FAW.pdf>>.

³⁹⁵ Ellie Williams-Brown, “Government running out of time to embed data strategy at heart of £1bn digital court reforms” (13 October 2020), online: <<https://www.thejusticegap.com/government-running-out-of-time-to-embed-data-strategy-at-heart-of-1bn-digital-court-reforms/>>; Judith Townend, “The Government has responded to @commonsjustice report on Open Justice. Pleased to see plans for a ‘call for evidence’ (first initiative of its kind, afaik) and a public charter on access to court - though still much emphasis on media and ‘accredited’ journalist services” (17 January 2023), online:

<<https://twitter.com/JTownend/status/1615310351230287873?s=20&t=UmDwrcNcSal-2t-2oZ78jw>>. But the U.K. nonetheless models many initiatives that Canada could and should pursue—e.g., Justice Lab, “Justice Lab set to tackle the most pressing issues facing the justice system (21 February 2023), online: <<https://justicelab.org.uk/justice-lab-set-to-tackle-the-most-pressing-issues-facing-the-justice-system/>>.

HMCTS started building its own national data gathering system,³⁹⁶ and it has set up an access panel for third party access to HMCTS data.³⁹⁷ The original intention was making the data-open access with suitable anonymizations for researchers and academics.”³⁹⁸ The Ministry of Justice also partnered with HMCTS to collect data and make it accessible.³⁹⁹ Efforts have included launching a major survey on judicial decisions for tech companies;⁴⁰⁰ urgently reviewing data and prioritising an external facing-data catalogue; working with the judiciary to commission an independent report on disseminating decisions and mapping information flow; and developing a public solution for free, comprehensive machine-readable decisions.⁴⁰¹ Like in the U.S, the U.K.’s judiciary adopted a crucial leadership role in these efforts and hasn’t used judicial independence to hinder reform efforts.⁴⁰² Again, neither the CJC; provincial, territorial or federal governments; nor courts have ever sought to collaborate (at least not publicly) to create such data-driven legal system.

Finally, in 2021, the Ministry of Justice committed to setting up its own comprehensive and free online repository for all U.K. court decisions by 2022. While the collection is still incomplete, the repository is now operational and increasing its collection of decisions and functionality.⁴⁰³

³⁹⁶ Susan Acland-Hood, “Susan Acland-Hood sets out our priorities for the next phase of courts and tribunals reform” (26 October 2019) *Inside HMCTS Blog*, online: <<https://insidehmcts.blog.gov.uk/2017/10/26/susan-acland-hood-sets-out-our-priorities-for-the-next-phase-of-courts-and-tribunals-reform/>>. [“We will build excellent data systems into all our new systems—so that we can keep track of how well they and we are working; learn and improve; and measure the right things (for example, finding ways of measuring and then reducing other people’s wasted effort, not just our own use of buildings or speed of resolution).”].

³⁹⁷ GOV UK, “Guidance: HM Courts and Tribunals Service Data Access Panel”, online: <<https://www.gov.uk/guidance/hm-courts-and-tribunals-service-data-access-panel>>; Gov UK, “Guidance: Get access to HMCTS data”, online: <<https://www.gov.uk/guidance/access-hmcts-data-for-research>>.

³⁹⁸ HMCTS, “Reform Update”, *supra* note 389 at 20; see also Gov U.K., “Letter on Commitment to Open Justice in the Open Government National Action Plan 2018 – 20”, online:

<<https://www.opengovernment.org.uk/resource/letter-on-commitment-to-open-justice-in-the-open-government-national-action-plan-2018-20/>> [“The concept of Open government is more important now than ever. ... transparency and accountability helps to build and maintain citizens’ trust.”].

³⁹⁹ Byrom, “Digital Justice”, *supra* note 387 at 12; see also HMCTS, “Putting People at the Heart of Reform: Response to PAC recommendation” (2019), online:

<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/775594/Public_Accounts_Committee_Recommendation_2_31_Jan_2019.pdf>.

⁴⁰⁰ Artificial Lawyer, “Major Survey of Tech Company Court Data Needs Seeks Your Feedback” (24 October 2019) *Artificial Lawyer*, online: <<https://www.artificiallawyer.com/2019/10/24/major-survey-of-tech-company-court-data-needs-seeks-your-feedback/>>. Survey on file with author.

⁴⁰¹ Byrom, “Digital Justice”, *supra* note 387 at 29.

⁴⁰² *Ibid* at 13 [“In summary, senior figures in HMCTS, the MoJ and the judiciary have all made significant public commitments to facilitate the collection and publication of data through the reform programme. The collection and publication of justice system data has been positioned as a key dependency for a range of government initiatives, and as critical to the delivery of the vision for both the reform programme and the wider legal services sector.”].

⁴⁰³ The National Archives, “Find case law”, online: <<https://caselaw.nationalarchives.gov.uk>>.

Decisions are in a machine-readable format (*i.e.*, decisions are written in a form that computers can easily process); are converted to a legal document mark-up language;⁴⁰⁴ and are available for bulk computational access.⁴⁰⁵ Canada has no equivalent database, and most Canadian courts appear forced to rely on third parties, such as CanLII and Lexum, to publish their decisions.⁴⁰⁶ CanLII is certainly a fantastic pan-Canadian resource for accessing judicial and tribunal decisions.⁴⁰⁷ But it pales comparison to the U.K.’s new one stop-shop in many ways. Currently, no Canadian service provides access to machine readable judicial decisions. And both CanLII and commercial entities preclude bulk access to most judicial decisions in Canada.⁴⁰⁸ Important changes don’t appear to be on the horizon for improving bulk access in Canada.⁴⁰⁹ And the commercial and informational monopoly in Canada over decisions and access to them likely won’t disappear anytime soon without a significant financial boost (Chapter 5 discusses this

⁴⁰⁴ Michael Cross, “MoJ unveils one-stop shop for court judgments” (16 June 2021) *The Law Society Gazette*, online: <<https://www.lawgazette.co.uk/news/moj-unveils-one-stop-shop-for-court-judgments/5108861.article>>

⁴⁰⁵ The National Archives, “License application process”, online: <<https://caselaw.nationalarchives.gov.uk/re-use-find-case-law-records/licence-application-process>>.

⁴⁰⁶ None of these courts publish or host their own decisions on their court websites. Nunavut Court of Justice, Nunavut Court of Appeal, Saskatchewan Court of Queen’s Bench, Saskatchewan Court of Appeal, Manitoba Court of Queen’s Bench, Manitoba Court of Appeal of Manitoba, Alberta Court of King’s Bench, Court of Appeal of Alberta, Ontario Superior Court of Justice, Supreme Court of Newfoundland and Labrador, Supreme Court of Prince Edward Island, Prince Edward Island Court of Appeal, Court of Queen’s Bench of New Brunswick. And many courts that do self-publish still rely on Lexum to publish their decisions—e.g., the Federal Court, the Federal Court of Canada, the Tax Court of Canada, and the Supreme Court of Canada.

⁴⁰⁷ For a history of the development of the free access to law movement in Canada, see Daniel Poulin, “Free Access to Law in Canada – How and Why?” (2012) 12:3 *Legal Information Management* 165.

⁴⁰⁸ See *supra* note 23.

⁴⁰⁹ CJC, “Guidelines For Canadian Courts” (April 2021), online: <https://cjc-ccm.ca/sites/default/files/documents/2021/Bulk%20Access%20to%20Court%20Info%20-%20Guidelines%202020-12_EN%20Final%20-%20One%20PDF.pdf>.

point in more detail).⁴¹⁰ But some promising academic interventions are occurring in Canada, including the Access to Algorithmic Justice project as an open-source alternative to CanLII.⁴¹¹

I don't want to paint too rosy of a picture about the U.K.. As noted, the U.K.'s approach hasn't been without challenges. As of February 2023, "the UK National Audit Office reported that even though HMCTS had only £120 million left of its total £1.3 billion budget, only twenty-four out of forty-four reform projects had been completed."⁴¹² Because of those shortcomings, the Lord Chancellor and senior judiciary announced a new vision for further reform that will embrace more public/private partnerships instead of the previous public approach (market actors will delivered digital legal information, advice, and dispute resolution services according to data standards set by the newly formed Online Procedure Rule Committee)⁴¹³ The results of those partnerships remain to be seen and invite myriad questions that are well beyond the scope of this dissertation. While the U.K.'s failures and shortcomings are unfortunate, they also provide Canada a blueprint of what not to do if sums of money were ever allocated for reform to our civil, criminal, and family justice systems.

iv. *Australia: Its courts and judges have continually participated in numerous academic research projects, including anonymously tracking how judges use their time*

For 21 years, Australia's courts and judiciary participated in national, multi-year empirical projects with academic researchers—the Judicial Research Project (“**Project**”). Project goals

⁴¹⁰ See, Xavier Beauchamp-Tremblay *et al*, “Comments on the new CJC Guidelines on Bulk Access to Court Information” (28 May 2021) *Slaw*, online: <<http://www.slaw.ca/2021/05/28/comments-on-the-new-cjc-guidelines-on-bulk-access-to-court-information/>>; Colin Lachance, “The CJC policy is advisory to federally appointed courts (so not provincial courts or any tribunal). Even a final version will not require mandatory implementation by any single court. The public discussion is in its infancy and CanLII’s opening comment only benefits CanLII/Lexum” (30 May 2021 at 11:37am), online: <<https://twitter.com/colinlachance/status/1399027251501486082>>; Colin Lachance, “I was briefly a lobbyist (it’s true). An old mentor said you have two buckets at your desk. One filled with sand, the other with grease. If you want make it harder for a policy to be enacted, throw the bucket of sand in the gears. Folks, @CanLII is throwing a bucket of sand” (29 May 2021 at 4:23pm), online: <<https://twitter.com/colinlachance/status/1398736687723917314>> [Lachance, a former CanLII CEO, argues that CanLII is setting itself up to benefit commercially through its relationship with its commercial entity, Lexum, which it purchased in 2018).

⁴¹¹ Simon Wallace & Sean Rehaag, “Introducing the A2AJ’s Canadian Legal Data: An open-source alternative to CanLII for the era of computational law”, online: <<https://arxiv.org/abs/2509.13032>>.

⁴¹² Dr. Natalie Byrom, “Necessary But Insufficient? Reforms to Legal Services Regulation, Technology and the Role of the Courts in Increasing Access to Justice in England and Wales” (2025) at p 2, online: <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5358975>.

⁴¹³ *Ibid* at 14.

were expansive: investigating and understanding judicial performance and emotion;⁴¹⁴ gender and judging;⁴¹⁵ courts and social change;⁴¹⁶ judicial workload allocation;⁴¹⁷ judicial practice in court;⁴¹⁸ the background judges bring to their practice and decision-making;⁴¹⁹ and judges' attitudes and experiences about their work.⁴²⁰ To gather this information, the Project relied on three national surveys;⁴²¹ a National Court Observation Study;⁴²² and a Workload Allocation Study.⁴²³

Like Canada, Australia has robust, constitutionally entrenched conceptions of judicial independence. Scholars even allege that Australia's judiciary has "remained remarkably resistant to substantive reform."⁴²⁴ Yet court and judicial participation weren't an obstacle to the Project. Instead, like in the U.S. and U.K., Australia's courts and judiciary initiated and welcomed

⁴¹⁴ Flinders University, "Judicial Performance and Emotion", online:

<<https://sites.flinders.edu.au/judicialresearchproject/judicial-performance-and-emotion/>> ["This phase of Project research considers the formal rules and informal norms governing emotion in the performance of the judicial role, examines the kinds of emotions and emotion-related behaviour observed in court and investigates how judicial officers themselves experience and understand the role of emotions in their work."].

⁴¹⁵ Flinders University, "Gender and Judging", online: <<https://sites.flinders.edu.au/judicialresearchproject/gender-and-judging/>> ["This research confronts questions about whether, and under which conditions, men and women approach their work as judges differently, addressing meanings of impartiality and claims of reduced or increased legitimacy and bias raised by the entry of women into a previously all-male judiciary."].

⁴¹⁶ Flinders University, "Courts and Social Change", online:

<<https://sites.flinders.edu.au/judicialresearchproject/courts-and-social-change/>> ["This ongoing project investigates ways in which social change impacts on the work of courts and the role(s) of judicial officers as well as the ... limits or constraints on courts as a site of social change, with a particular focus on gender."].

⁴¹⁷ Flinders University, "Workload Allocation Study", online:

<<https://sites.flinders.edu.au/judicialresearchproject/judicial-workload-allocation/>> ["The aim of this research is to understand the institutional requirements and practical tasks involved in allocating cases to courts and judicial officers. ... extensive consultations were undertaken with individual judicial officers and court staff. ... Building on these consultations, the study used semi-structured, face-to-face interviews with court staff and judicial officers involved in workload allocation."] [Flinders University, "Workload Allocation Study"].

⁴¹⁸ Flinders University, "National Court Observation Study", online:

<<https://sites.flinders.edu.au/judicialresearchproject/national-court-observation-study/>> ["The study involved observing 27 different magistrates conducting a general criminal list in 30 different court sessions in 20 different locations...."] [Flinders University, "Observation Study"].

⁴¹⁹ Flinders University, "Magistrates Research Project", online: <<https://cfapps.flinders.edu.au/judicial-research-project/magistrates-research-project/>> [Flinders University, "Magistrates Research Project"].

⁴²⁰ *Ibid.*

⁴²¹ Flinders University, "National Surveys of Australian Judiciary", online:

<<https://sites.flinders.edu.au/judicialresearchproject/national-surveys/>> ["the researchers consulted widely with relevant organisations and individuals including magistrates and judges from courts at all levels and in all states and territories...."] [Flinders University, "National Surveys"].

⁴²² Flinders University, "Observation Study", *supra* note 418.

⁴²³ Flinders University, "Workload Allocation Study", *supra* note 417.

⁴²⁴ See, e.g., Gabrielle Appeby & Suzanne Le Mire, "The Australian judiciary: resistant to reform?" at 35 in Richard Devlin & Adam Dodek, eds, *Regulating Judges: Beyond Independence and Accountability* (Elgar: Massachusetts, 2016) 35.

collaboration. Researchers noted they “were unaware of any national court system anywhere in the world that has initiated and continued to support comprehensive independent research of this nature.”⁴²⁵ Judicial stakeholders helped design the anonymous and confidential surveys;⁴²⁶ interviews and internal statistical court data were provided;⁴²⁷ and all three surveys had excellent participation rates: 48% in 2002,⁴²⁸ 52.9% in 2007,⁴²⁹ and 54.5% in 2007.⁴³⁰ On the whole, the Project facilitated incredible insight about the Australian judiciary.⁴³¹ Canada’s courts and judiciary have never initiated and participated in such a broad-sweeping public review or project.

One aspect of the Project especially pertinent to Chapter 1 is the Project’s tracking of Australian magistrates and judges’ workflow.⁴³² 52.9% of magistrates & 54.5% of judges who participated in Project surveys responded to detailed questions about their workflow. The only qualification is that “not every magistrate or judge described three days as suggested in the question.”⁴³³ The Australian survey question is in *Figure 6* on the following page, and that question is very similar to question 7 in the 2019 Survey and a similar question in the 2023 Survey.

⁴²⁵ Flinders University, “Magistrates Research Project”, *supra* note 419.

⁴²⁶ Flinders University, “National Surveys of Australian Judiciary”, *supra* note 421.

⁴²⁷ See, e.g., Flinders University, “Workload Allocation”, *supra* note 417.

⁴²⁸ Flinders University, “National Survey of Australian Magistrates 2002”, online: <<https://sites.flinders.edu.au/judicialresearchproject/national-surveys/national-survey-of-australian-magistrates-2002/>>.

⁴²⁹ Flinders University, “National Survey of Australian Magistrates 2007”, online: <<https://sites.flinders.edu.au/judicialresearchproject/national-surveys/national-survey-of-australian-magistrates-2007/>>.

⁴³⁰ Flinders University, “National Survey of Australian Judges 2007”, online: <<https://sites.flinders.edu.au/judicialresearchproject/national-surveys/national-survey-of-australian-judges-2007/>>.

⁴³¹ For a thorough list of book chapters, articles, research reports, conference presentations, and seminars, see Flinders University, “Research”, online: <<https://sites.flinders.edu.au/judicialresearchproject/research/>>.

⁴³² Kathy Mack & Sharyn Roach Anleau, “Time for Judgment Writing: Final Report” (17 May 2010) Judicial Research Project – Flinders University, online: <https://www.ajoa.asn.au/wp-content/uploads/2013/11/P41_02_08-Final-report-14-May-2010.pdf>.

⁴³³ *Ibid* at 9.

Figure 6: National Survey of Australian Judges and Magistrates

APPENDIX 1: NATIONAL SURVEY OF AUSTRALIAN MAGISTRATES 2007

Q16. While there may be no single typical work day, it is important to get a sense of the pattern of magistrates' work. Please indicate below the time spent (if any) on the following activities for three typical work days (days A, B and C). If all your work days are substantially similar, please only fill in column A.

Please read the list of potential activities before filling in time spent on any particular activity



**Using fractions
estimate to nearest ¼ hour**

	Work day A	Work day B	Work day C
General keeping up with the law (reading cases, statutes, court rules, journals, books, etc.)	_____ hrs	_____ hrs	_____ hrs
Writing/preparing decisions, judgements, orders	_____ hrs	_____ hrs	_____ hrs
Preparing for a case/the next day	_____ hrs	_____ hrs	_____ hrs
General administrative work and correspondence	_____ hrs	_____ hrs	_____ hrs
Conferring with other magistrates and/or court staff/meetings	_____ hrs	_____ hrs	_____ hrs
Waiting time (for legal representatives, court personnel, parties, witnesses, case assignment, etc.)	_____ hrs	_____ hrs	_____ hrs
Lunch, morning/afternoon tea	_____ hrs	_____ hrs	_____ hrs
Presiding at trial	_____ hrs	_____ hrs	_____ hrs
Civil non-trial proceedings (directions hearings, pre-trial conferences, interlocutory matters, etc.)	_____ hrs	_____ hrs	_____ hrs
Criminal non-trial proceedings (bail, guilty pleas, sentencing, etc.)	_____ hrs	_____ hrs	_____ hrs
Travelling	_____ hrs	_____ hrs	_____ hrs
Other (Please specify)	_____ hrs	_____ hrs	_____ hrs
.....	_____ hrs	_____ hrs	_____ hrs

In contrast to the high participation rates to this question in Australia, the 2019 Survey responses suggest that Canadian courts believe that anonymously tracking judicial writing time is inappropriate. As I discussed, no court was willing to even facilitate asking judges if they wanted to participate.

For context, here's the question again that courts didn't facilitate:

Would some [surveyed court] judges track their time for drafting written judgments like Brown J. (as he then was) did in the judgment attached to this email—*Western Larch Limited v. Di Poce Management Limited*, 2012 ONSC 7014 at paras. 269-277? Specifically, I request that judges track the (a) case's subject matter, number of parties, and days of court time; and (b) out of court time spent on the judgment process, including the time they spend (i) reviewing evidence, applicable case law, statutes, and any related research memoranda; (ii) discussions with clerks or other judges; and (iii) the actual drafting of judgments. This data would be anonymized.⁴³⁴

In contrast to one Canadian court's assertion in the 2019 Survey that "nothing would be advanced by tracking such data",⁴³⁵ the Australian data did advance things. It yielded robust, fruitful public data and analysis about the Australian judicial writing process. Canadian judges' answers to this survey question could've provided incredible insights for courts, judges, and reformers. Perhaps it would have revealed that judges need more hours to write (as Justice Brown noted in *Western Larch*); that court staffing doesn't mirror demand; that parts of the decision-writing and trial process are chokepoints; that judges need more tools for decision-writing; or that current scheduling conventions are outdated and inefficient.⁴³⁶ Like in other jurisdictions, Australian researchers experienced challenges and have thoroughly explained what work and what didn't. Overall, they stress the importance of collaborating with courts and the judiciary and research independence. So courts shouldn't just independently research on their own (although that outcome is better than no research):

Collaboration provides extensive access, supporting a long term, multi-method research design, and providing findings that are original, robust and valuable to the judiciary. It is equally important to maintain researcher independence: to ensure that courts and government commit to researcher control of data, its analysis and application, recognising that the courts cannot censor findings, presentations or publications. Collaboration and independence require generating and maintaining long term relationships, so that research leads to robust original scholarship that benefits judicial officers, courts, and the publics they serve.⁴³⁷

⁴³⁴ *Ibid* at 59.

⁴³⁵ Khan, "Life of a Reserve", *supra* note 4 at 61.

⁴³⁶ See Jon Khan, "If I Had More Time, Would I Have Written a Shorter and Faster Decision? An Empirical Examination of the Evolution of Trial Court Decisions" (2022) 45:2 Dal LJ 427 [Khan, "If I had More Time"].

⁴³⁷ Sharyn Roach Anleau & Kathy Mack, "Empirical research with judicial officers: The Biography of a research project" (2023) 13:S1 Oñati Socio-Legal Series, online: <<https://opo.iisj.net/index.php/osls/article/view/1726/2081>>

Conclusion – I agree with Canada’s Chief Justice: “[T]he world has changed. And the judiciary should follow.”

As Chapter 5 concedes and discusses, Canada’s executive model of court administration may partly explain Canada’s lagging behind New Zealand, the U.S., the U.K., and Australia. That said, some courts’ current views and practices likely also partially explain the lag. Whatever the reason, Canadian governments must ensure that Canadian courts can catch up and keep up (and courts should want to). More standardization as well as data gathering and transparency could help Canadians maintain their confidence in our justice system; could increase the legal system’s functionality; could improve everyone’s user experience; could aid courts in delivering constitutional promises to Canadians; and could stimulate myriad innovations.

As former Chief Justice McLachlin noted upon her retirement— “All power must be accountable. ... Canadians are entitled to know who their judges are and how they go about their work.”⁴³⁸ This view animated one of McLachlin’s missions as Chief Justice: “make the court, its work, and decisions more accessible ... more open and transparent.”⁴³⁹ Current Chief Justice Wagner adopted McLachlin’s mission when he decided the SCC would sit outside Ottawa in Winnipeg for the first time in its 144-year history in 2019, and the SCC just did so again when it sat Quebec city in 2022,⁴⁴⁰ and but it hasn’t done so since. Upon arriving in Winnipeg in 2019, Chief Justice Wagner explained why the SCC was conducting its hearings there: “It is hard to have faith in something if you don’t understand it. It is hard to trust a decision maker if you don’t know who they are. ... We want you to see and understand what we do.”⁴⁴¹ Chief Justice Wagner has reiterated this sentiment in other press conferences, like in 2018:

the public also has the right to know how our courts work. The Supreme Court of Canada has long prided itself on being an open and transparent institution. ... But what we mean by open courts is different in 2018 than it was even 15 years ago: new technologies create new ways of being open. New circumstances require new approaches. ...

⁴³⁸ McLachlin, *Truth Be Told*, *supra* note 219 at 297.

⁴³⁹ *Ibid.*

⁴⁴⁰ Cristin Schmitz, “SCC to sit in Quebec City next year in new ‘tradition’ for expanding public’s access, understanding” (2 September 2021) *The Lawyer’s Daily*, online: <<https://www.thelawyersdaily.ca/articles/29444/scc-to-sit-in-quebec-city-next-year-in-new-tradition-for-expanding-public-s-access-understanding?category=news>>.

⁴⁴¹ SCC, “Remarks by the Right Honourable Richard Wagner, P.C.” (25 September 2019), online: <<https://www.scc-csc.ca/judges-juges/spe-dis/rw-2019-09-25-2-eng.aspx>>.

[People should] understand who we are, what we do, how we do it, and why we do it—because ignorance is the cause of many bias. And the more people will know about the judicial system, the more they will keep faith in the system. And that’s very important.

...

I’m all for transparency. I think that we should be transparent in everything we say, we do. I think that the world has changed. And the judiciary should follow.⁴⁴²

The current Chief Justice made similar comments when speaking to reporters in 2022 in Quebec City.⁴⁴³ His comments, as the leader of the CJC and Canada’s court system, suggest he’s very committed to the openness, accessibility, and transparency in Canada’s courts.

Yet one wonders what the words “open”, “accessible”, and “transparent” really mean? Aside from open courts, the meaning is less clear, especially considering what the 2019 Survey, 2023 Survey, courts’, and the CJC’s general practices reveal. For the SCC, the meaning of these words is hard to define. For example, the SCC completely rejected my request to participate in the entire 2019 Survey because “some of the issues you propose to canvass touch on matters relating to the Court’s deliberative process, it would be inappropriate for the Court to participate in your survey.”⁴⁴⁴ In the 2023 Survey, the SCC entirely ignored my request to participate.

Accordingly, these words seem limited to the laudable initiatives that Justice Wagner has pursued since his appointment: releasing plain language summaries of decisions that the SCC even sought feedback on;⁴⁴⁵ embracing social media;⁴⁴⁶ releasing novel, accessible annual reports;⁴⁴⁷ press conferences;⁴⁴⁸ encouraging more dissents in decisions;⁴⁴⁹ live and archived

⁴⁴² “Supreme Court chief justice discusses Trinity Western University and legal marijuana” (22 June 2018) *CBC*, online: <<https://www.youtube.com/watch?v=pIpoPiM6jgw>>.

⁴⁴³ Allison Hanes, “Bringing Canada’s Supreme Court closer to the people” (9 September 2022) *Montreal Gazette*, online: <<https://www.theglobeandmail.com/canada/article-supreme-court-justices-hold-hearing/>>.

⁴⁴⁴ Correspondence on file with author.

⁴⁴⁵ SCC, “Cases in Brief”, online: <scc-csc.ca/case-dossier/cb/index-eng.aspx>; SCC, “Supreme Court of Canada | Cases in Brief: Two-Year Feedback Survey”, online: <<https://www.surveymonkey.com/r/C5TY8TZ>>.

⁴⁴⁶ SCC, “Supreme Court of Canada”, online:

<https://twitter.com/SCC_eng?ref_src=twsrc%5Egoogle%7Ctwcamp%5Eserp%7Ctwgr%5Eauthor>.

⁴⁴⁷ SCC, “Year in Review” (12 April 2019), online: <<https://www.scc-csc.ca/review-revue/2018/index-eng.aspx>>.

⁴⁴⁸ See, e.g., *supra* note 443.

⁴⁴⁹ Chief Justice Wagner seems to think dissent is good for debate, transparency, and openness. See, e.g., Cristin Schmitz, “Halfway through 2019, SCC more divided than ever as nine judges fracture in 82 per cent of cases” (9 July 2019) *The Lawyer’s Daily*, online: <<https://www.thelawyersdaily.ca/articles/13592/halfway-through-2019-scc-more-divided-than-ever-as-nine-judges-fracture-in-82-per-cent-of-cases>>.

webcasts;⁴⁵⁰ and bringing the SCC to cities outside Ottawa.⁴⁵¹ For other courts and the CJC, these words seem to mean the recent laudable initiatives of more courts having Twitter accounts;⁴⁵² releasing YouTube videos about how Canadian courts operate;⁴⁵³ live and archived webcasts,⁴⁵⁴ having websites,⁴⁵⁵ and releasing reports or primers to the Canadian public.⁴⁵⁶

These efforts must be applauded. But Chapter 1 suggests that judicial independence requires governments to ensure that courts and the CJC can do far more in 2026 to meet their constitutional obligations, and courts and the CJC should be doing everything in their capacity. Chapter 1 also suggests that courts should re-examine some views and responses to requests for information. For example, most responding courts didn't explain why they wouldn't facilitate the 2019 Survey's time tracking question. One court seemed to rely on deliberative secrecy; another relied on judicial independence; and another asserted the information wasn't useful.⁴⁵⁷ But their answers—as well the courts who provided no explanation—don't really explain the basis for their position.⁴⁵⁸ Courts also didn't provide a path forward for how such data could be gathered or even engage such a discussion when I attempted to gather the data through an ethics approved,

⁴⁵⁰ SCC “Archived Webcasts”, online: <<https://www.scc-csc.ca/case-dossier/info/webcasts-webdiffusions-eng.aspx>>.

⁴⁵¹ See, e.g., *supra* note 443.

⁴⁵² Some Canadian courts now have Twitter accounts (most appear to be official accounts). See, e.g., “BC Provincial Court”, online: <<https://twitter.com/bcprovcourt?lang=en>>.

⁴⁵³ The CSCJA has released videos about how courts operate (see “Judges in Canada”, online: <<https://www.youtube.com/judgesincanadalesjugesauCanada>>; CSCJA, “The Judiciary”, online: <<http://www.cscja.ca/judges/>>).

⁴⁵⁴ In the last year, courts of appeal in the Federal and provincial systems have webcasted proceedings.

⁴⁵⁵ “The Court of British Columbia”, online: <<https://www.bccourts.ca/#>>.

⁴⁵⁶ CJC, “Judicial Independence”, online: <<https://cjc-ccm.ca/en/what-we-do/judicial-independence>>.

⁴⁵⁷ Only three courts explained why they would not participate in this question (see Khan, “Life of a Reserve” *supra* note 4 at 61):

- British Columbia Court of Appeal: “The Court of Appeal is not in a position to respond to question 7, given the extent to which the question engages the deliberative process of the judiciary.”
- Tax Court of Canada: “In the interest of judicial independence, judges of the TCC will not participate in Question 7.”
- Ontario Superior Court of Justice: “nothing would be advanced by tracking such data.”

⁴⁵⁸ Two possible explanations come from the Project's researchers and eminent jurist and scholar Richard Posner. The Project researchers argue that “Unwarranted delay in producing judgments can be perceived as a reflection on individual judicial officers and on the efficiency of the court as a whole. Court delay raises concerns about access to justice, while methods to improve efficiency may be perceived as infringing judicial independence.” (see Mack & Anleau, *supra* note 432 at 1 [emphasis added]). And Posner argues that “Judges want to deny the role of subjectivity in judicial decision making lest they undermine their claim to be a deservedly independent branch of government.... (see Richard A Posner, Posner, *How Judges Think*, *supra* note 43 at 72).

anonymous survey process in 2019 or 2023. As Chapter 3 discusses, without that path forward, researchers like me are left wondering how to engage courts when best practices fail.

Such opacity can compromise public confidence. Courts may have many reasons for not participating. But one could also say that courts are effectively suggesting they're concerned with what this anonymous data might reveal or that the public has no right to know. Saying that judicial independence precludes an action is likely insufficient: courts should explain what harm they're trying to prevent, what interest they're trying to protect, and why their approach prevents or protects it.⁴⁵⁹ As Chapter 2 discusses, further transparency could likely improve—not hinder—judicial independence, the administration of justice, and access to justice.⁴⁶⁰

⁴⁵⁹ Ferejohn & Kramer, *supra* note 35 at 965.

⁴⁶⁰ I'd be remiss if I neglected to note that other decision-makers already track time in non-anonymous ways. Like judges, both domestic and international arbitrators have strict duties of impartiality and independence (see, e.g., J Brian Casey, *Arbitration Law of Canada: Practice and Procedure* (Juris Publishing: New York, 2005) at 122-129; *Szilard v Szasz*, [1955] SCR 3.) But arbitrators do not say their duty to be impartial and independent precludes itemizing how they spend their time. Rather, to promote accountability and impartiality, arbitrators are encouraged to diligently and transparently track the hours they work unless parties agree otherwise or the arbitration arises in an emergency (see, e.g., Dmytro Galagan, "The Challenge of the Yukos Award: an Award Written by Someone Else – a Violation of the Tribunal's Mandate?" (27 February 2015) *Kluwer Arbitration Blog*, online: <<http://arbitrationblog.kluwerarbitration.com/2015/02/27/the-challenge-of-the-yukos-award-an-award-written-by-someone-else-a-violation-of-the-tribunals-mandate/>>; John T Blankenship *et al* "Arbitrator Fees and Expenses" in James M Gaitis, Carl F Ingwalson Jr, Vivien B Shelanski, eds, *College of Commercial Arbitrators Guide to Best Practices in Commercial Arbitration*, 3d (JurisNet: New York, 2014) 47 at 53 ["Arbitrators should record their time promptly and accurately...Descriptions of work performed should demonstrate that the arbitrators are devoting their time to appropriate tasks but should not reveal confidential information...On a daily basis, arbitrators should record the amount of time that was devoted to the case and how that time was spent.]; American Arbitration Association, *AAA Handbook on Arbitration Practice* (Juris: New York, 2010) at 313 ["One unethical arbitration can taint the process. This is why it is so important for arbitral organizations to closely monitor arbitrators' billing practices and be outspoken about eliminating abuses."]; ICDR, "Billing Guidelines for ICDR Arbitrators", online: <https://www.icdr.org/sites/default/files/document_repository/ICDRCanada_Arbitrator_Billing_Guidelines_1.pdf> ["The language used in describing fees and expenses should be clear and detailed, not summarized, as for example, 'for services rendered.' It should include the amount of time spent and a description of the work performed."].

Chapter 2 – Tackling courts’ possible concerns about innovation: some are significant, but no concern appears to justify maintaining current approaches to data gathering, data transparency, and standardization

Judges want to deny the role of subjectivity in judicial decision making lest they undermine their claim to be a deservedly independent branch of government in which reason rules, obviating a need for political or other external constraints on their exercise of discretion.⁴⁶¹ ~ Richard Posner (2018)

Courts may have many reasons for not facilitating data gathering, data transparency, or standardization. Chapter 2 is a brief chapter that tackles eight possible concerns that courts may have about such reforms (more likely exist): for context, these possible concerns are based on my research, the 2019 Survey, and the 2023 Survey. As Chapter 3 discusses, some of these concerns are ones that legal system users raise in responses to transparency and standardization. For example, multiple justice system participants—including courts—may be concerned that standardization or more data transparency about court and judicial behaviour will compromise the administration of justice or judicial independence or reduce flexibility and diversity.

Chapter 2’s conclusion is brief: some concerns are more significant than others. But examining eight possible concerns demonstrates that no concern justifies the current lack of data gathering, data transparency, or standardization.

For all clarity, I don’t treat attacks on public confidence in courts or the administration of justice lightly, especially as they relate to judicial and court independence. The adage “first they came for the journalists” may be less true than it once was in the world (and it may never have been true in Canada). Instead, the new adage might be “first, they come for the judges”. Indeed, the idea has appeared in both the U.S. and Canada in the last year (it also has been a constant

✚ Thank you to the many people who offered input on this chapter and its ideas. My committee offered frank and full feedback and continually helped me improve my thinking about this subject and how I explain my views. I’m especially grateful to Martin Taylor KC, Amy Salczyn, Geoff Cowper KC, and Mike Madden for comprehensive feedback. I also was privileged to present aspects of this work to the CBA, judges of the Alberta Court of King’s Bench, attendees of the 2022 Law and Society Conference, and students of Schulich Law School. I also thank the many people who were willing to discuss these ideas with me and who were very generous with their time, including John I Laskin, Martin Taylor KC, Caroline Mandell, and other judges who requested not to be named.

⁴⁶¹ Posner, *How Judges Think*, *supra* note 43 at 72.

historical threat in many places in the world where judges lack the judicial independence that Canadian judges maintain).

Most of what this dissertation seeks to do is promote and protect the administration of justice. So I don't easily dismiss courts' views or think their entirely unfounded. Finally, I also recognize that what I propose could easily lead to increased attacks of criticism on individuals or decision-makers (if data is more easily available). That said, as discussed below, this possibility and reality is endemic to the job, and it shouldn't be a basis for opacity.

1. Transparency likely wouldn't weaken public confidence (it could increase it)

Judicial independence exists for the public—not judges. It's the means “to maintain public confidence in the administration of justice.”⁴⁶² Assuming that funding was available to increase justice system data gathering and transparency, perhaps the CJC and Canadian courts are worried that such data could be used to weaken public confidence in Canadian courts and judges.⁴⁶³ As *Figure 4* showcased earlier, that possibility exists as do many other examples of such attacks on judges in the media (*Figures 7-8* below offer further examples). So I readily concede that this concern is significant and likely will remain regardless of what courts do (or don't do). Before I address that concern further in the next section, I'll first address why more transparency might be necessary to increase public confidence and to prevent unconstitutional outcomes.

First, perhaps more transparency could increase public confidence. Public confidence in Canadian courts is measurable. Yet the CJC and Canadian courts have “surprisingly little reliable empirical evidence about public perceptions of the justice system—we know less than we thought we did and there is a lot we do not know.”⁴⁶⁴ Unfortunately, the minimal existing data doesn't support the notion that Canadians have high confidence in Canada's court system.⁴⁶⁵ So

⁴⁶² *Ell*, *supra* note 36 at para 29.

⁴⁶³ On the subject of protecting public confidence, see Hon Beverley McLachlin, “Preserving Public Confidence in the Courts and the Legal Profession” (2003) 29:3 *Manitoba LJ* 277 [while McLachlin argues that evidence supports her claim that the “Canadian justice system enjoys the confidence of Canadian men and women”, the evidence doesn't come from Canadians; it comes from the Institute for Management Development and the UN (see 279)].

⁴⁶⁴ Mary Stratton & Diana Lowe, “Public Confidence and the Civil Justice System: what do we know about the issues?” (2006) at 3, online: <<http://cfcj-fcjc.org/sites/default/files/docs/2006/cjsp-confidence-en.pdf>>.

⁴⁶⁵ Sirota, “Public confidence in the courts”, *supra* note 37 [“What data there exist do not obviously support the argument. Statistics Canada's recent study of Public Confidence in Canadian Institutions found that Canadians trust the “justice system and courts” less than they trust the banks — only 20% of the respondents had “a great deal” of

before making assumptions about what Canadians need from and believe about our legal system, their views could (and should) be explored.⁴⁶⁶ The 2023 Survey data also supports a relationship between transparency and confidence in courts.

The somewhat recent “scandal” around the retirement of former SCC judge, Justice Russell Brown, in summer 2023 seems to showcase these points. The SCC and CJC were criticized for failing to inform Canadians of the alleged initial misconduct;⁴⁶⁷ an overall lack of transparency;⁴⁶⁸ the slow process;⁴⁶⁹ or the lack of disclosure of the possible reasons for a full hearing.⁴⁷⁰ As the *Globe and Mail*’s editorial board noted: “Secrecy clouds a Supreme Court justice’s resignation.”⁴⁷¹

Second, perhaps more transparency is necessary to ensure constitutional outcomes (or to demonstrate constitutional compliance). Current opaque, “data-less” practices might be fostering questionable outcomes, perhaps even unconstitutional ones. The 2020 SCC decision *R. v. K.G.K.* showcases that possibility. *K.G.K.* argued his case took longer than *R. v. Jordan*’s 30 month-maximum—largely because the judge took too long (nine months) to issue the decision.⁴⁷² The

confidence in the courts, while 37% had “some”]; see also Stratton & Lowe, *supra* note 464; Adam Cotter, “Spotlight on Canadians: Results from the General Social Survey – Public Confidence in Canadian’s institutions” (7 December 2015) Statistics Canada, online: <<https://www150.statcan.gc.ca/n1/pub/89-652-x/89-652-x2015007-eng.htm>>; Angus Reid Institute, “Confidence in the justice system: Visible minorities have less faith in courts than other Canadians” (20 February 2018), online: <<http://angusreid.org/justice-system-confidence/>>; Anthony N Doob, “Research on Public Confidence in the Criminal Justice System: A Compendium of Research Findings from *Criminological Highlights*” (2014) 6th Annual Reinventing Criminal Justice Symposium, online: <<https://www.publicsafety.gc.ca/lbr/archives/cnmcs-plcng/cn34753-eng.pdf>>.

⁴⁶⁶ Sirota, “Public confidence in the courts”, *supra* note 37

⁴⁶⁷ Sean Fine, “Judicial Council pressed to release Russell Brown report that ordered into alleged harassment” (19 June 2021) *The Globe and Mail*, online: <<https://www.theglobeandmail.com/canada/article-russell-brown-supreme-court-justice/>>; Ian Mulgrew, “Judicial complaint smacks of secrecy all too common among Canada’s elite” (16 March 2023) *Vancouver Sun*, online: <<https://vancouversun.com/opinion/columnists/ian-mulgrew-judicial-complaint-smacks-of-secrecy-all-too-common-among-canadas-elite>>.

⁴⁶⁸ Zena Olijnyk, “Canadian Judicial Council reveals it’s reviewing conduct complaint against SCC Justice Russell Brown” (7 March 2023) *Canadian Lawyer*, online: <<https://www.canadianlawyermag.com/resources/professional-regulation/canadian-judicial-council-reveals-its-reviewing-conduct-complaint-against-scc-justice-russell-brown/374211>>.

⁴⁶⁹ John Paul Tasker, “Russell Brown steps down from Supreme Court, halting probe into misconduct claim” (12 June 2023) *CBC News*, online: <https://www.cbc.ca/news/politics/russell-brown-supreme-court-justice-resigns-1.6873402>>.

⁴⁷⁰ Emmet MacFarlane, “The shocking resignation of Russell Brown” (13 June 2023), online: <<https://emmetmacfarlane.substack.com/p/the-shocking-resignation-of-russell>>.

⁴⁷¹ The Editorial Board, “Secrecy clouds a Supreme Court justice’s resignation. Transparency is the remedy” (19 June 2023) *The Globe and Mail*, online: <<https://www.theglobeandmail.com/opinion/editorials/article-secrecy-clouds-a-supreme-court-justices-resignation-transparency-is/>>.

⁴⁷² *K.G.K.*, *supra* note 48 at para 5.

motions judge, most of the Manitoba Court of Appeal, and the SCC disagreed: they held that judicial deliberation time doesn't count under *Jordan*.⁴⁷³ But the SCC held that deliberation time was relevant to s. 11(b) *Charter* arguments.⁴⁷⁴ And it created a new test: is the judge's deliberation time "markedly" longer than reasonably necessary to make a decision in light of circumstances and objective evidence?⁴⁷⁵ Anything on the record is relevant,⁴⁷⁶ including similar cases' deliberation times.⁴⁷⁷ Unfortunately, as Chapter 1 discusses, this evidence isn't easily available, and K.G.K. didn't provide it.⁴⁷⁸ Perhaps it could've mattered. The SCC did hold the trial judge was perilously close to taking too long.⁴⁷⁹

The limited data that's available to someone who knows how to find it suggests two concerning points: either Manitoba courts have very different deliberation times than British Columbia or K.G.K. was perhaps subjected to a potentially unreasonable, unconstitutional outcome (to be very clear, any conclusions must be approached with caution since many criminal law decisions are unpublished). For published decisions, in 2018, Quicklaw includes 353 reported criminal law decisions from British Columbia: the mean deliberation time was 28.3 days; the median was 7 days.⁴⁸⁰ These averages are far shorter than the nine months that K.G.K. waited. In Quicklaw's 2018 dataset of reported British Columbia decisions, only 3/353 had to wait as long or longer than the 280 days K.G.K. waited.⁴⁸¹ Of course, unreported decisions in British Columbia could affect that average, and I didn't check unreported decisions.⁴⁸² I also didn't check Manitoba's reported or unreported decisions because Manitoba doesn't publish hearing information with decisions—a practice that continues to today notwithstanding the *K.G.K.* decision. That practice differs from many Canadian superior courts, like British Columbia, and it creates opacity over

⁴⁷³ *Ibid* at paras 17-21.

⁴⁷⁴ *Ibid* at para 51.

⁴⁷⁵ *Ibid* at para 54; see also para 55.

⁴⁷⁶ *Ibid*: courts should examine proximity to the *Jordan* ceiling (at para 69); case complexity (at para 70); anything on the record about the judges' workloads (at para 81) and similar cases' deliberation times (at para. 73)

⁴⁷⁷ *Ibid* at para 73.

⁴⁷⁸ *Ibid* at para 80 ["Beyond his statement that he had "a few matters under reserve" at the time he reserved judgment in this case, there is no information on the record regarding the trial judge's workload."]

⁴⁷⁹ *Ibid* at para 77.

⁴⁸⁰ Khan, "Life of a Reserve", *supra* note 4, Part II.

⁴⁸¹ *R v Wells*, 2018 BCSC 738 (370 days); *Her Majesty the Queen c Caillé*, 2018 BCSC 767 (363 days); *R v Creighton*, 2018 BCSC 1387 (299 days).

⁴⁸² And I largely couldn't have unless I went to multiple registries across BC in person.

how long parties must wait for judicial decisions. So I couldn't easily replicate the British Columbia analysis,⁴⁸³ and the dataset and conclusions remain preliminary and inferential.

Either way, as Justice Abella noted in her separate opinion, an accused shouldn't bear this evidentiary onus in a Canadian court.⁴⁸⁴ As Chapter 1 suggests, the *Constitution* promised K.G.K. more than inferential timeliness. Indeed, no Canadian court should rely on anecdote or inference about its litigation process or timeliness. As Chapter 1 explains, tracking this data is easy, and other jurisdictions like the U.S. and New Zealand readily do it. If the issue is funding, governments must help Canadian courts follow the lead of comparator jurisdictions. Either way, all courts should track delivery time and include it within their decisions' metadata, directly on their websites, and in annual reports. But most courts don't. As Chapter 1 stresses, this omission likely isn't consistent with the principle of judicial independence and impartiality.

2. Transparency likely wouldn't compromise the administration of justice (it could promote it)

The law and discourse surrounding contempt of court—particularly when individuals seek to “scandalize the court”—provides a somewhat useful metric for analyzing this concern.⁴⁸⁵ The gravamen of the offence of scandalizing the court seeks to ensure that court authority and the administration of justice aren't compromised.⁴⁸⁶ And the seminal 1987 Ontario Court of Appeal decision *R. v. Kopyto* provides useful guidance on the offence.⁴⁸⁷ Notwithstanding the Court's multiple opinions, one theme was clear: scandalizing a court requires more than a supposition or perception of compromise (or consequence) to the administration of justice. Rather, the evidence must demonstrate a “clear and present”; “significant and imminent or present danger”; or “serious risk” to the “fair and effective administration of justice.”⁴⁸⁸ Put another way, courts and

⁴⁸³ According to Manitoba's superior court, this information is available through its online docket. Letter on file.

⁴⁸⁴ *KGK*, *supra* note 48 at para 94.

⁴⁸⁵ For why this fear seems tenable, see Marshall, *Judicial Conduct and Accountability*, *supra* note 99 at xvii [In Greene's preface to the book, he argues—based on previous empirical research—that one of the only fears judges have about their independence is “inaccurate or biased reporting of judicial decisions by the media...”]. For a fascinating discussion on the topic of badmouthing the judiciary, see Jack Watson, “Badmouthing the Bench: Is There a Clear and Present Danger - To What” (1992) 56:1 Sask L Rev 113. Of course, the standard here is very high because this doctrine arose in the criminal law context where standards are extremely high because of potential impacts on the accused's liberty. I thank Prof. Amy Salczyn for reminding me of this point.

⁴⁸⁶ *R v Kopyto*, 1987 CanLII 176 (ON CA) [*Kopyto*]; see also *Morasse v Nadeau-Dubois*, 2016 SCC 44 at paras 27-28.

⁴⁸⁷ *Kopyto*, *supra* note 486.

⁴⁸⁸ *Ibid*; see also Jeffrey Miller, *The Law of Contempt in Canada* (Carswell: Scarborough, 1997) at 113.

judges are capable of withstanding criticism.⁴⁸⁹ Neither courts nor judges are “fragile flowers that will wither in the hot heat of controversy.... They need not fear criticism nor need they seek to sustain unnecessary barriers to complaints about their operations or decisions.”⁴⁹⁰

The CJC has historically offered similar guidance on courts’ contempt powers: it says that scandalizing the court will rarely be an offence and that judges must be prepared to endure “almost any form of out of court criticism.”⁴⁹¹ Criticism only crosses the line when “intended to undermine respect for the judicial system and the rule of law” because such comments give “succour to the executive or legislative effects to impair judicial independence.”⁴⁹²

These principles suggest that courts should welcome and facilitate the examination and critique and greater data gathering and data transparency would provide. Instead of rich, complete data compromising the administration of justice, it could promote critique that could further the administration of justice. As Canada’s Chief Justice has said: “the more people will know about us, the more credibility we’ll have. The more information we give, people will realize that we have a good judiciary, probably one of the best in the world, and well trained.”⁴⁹³ As Chapter 1 notes with the six-month list in U.S., more transparency about Canadian judges can’t truly affect or harm them. Judges have security of tenure until age 75;⁴⁹⁴ financial security and a generous pension;⁴⁹⁵ one of the most robust conceptions of judicial independence;⁴⁹⁶ immunity from civil and criminal process;⁴⁹⁷ and low and fair complaint, discipline, and removal rates.⁴⁹⁸

⁴⁸⁹ *Kopyto*, *supra* note 486 [“our courts are strong enough to withstand criticism after a case has been decided no matter how outrageous or scurrilous that criticism may be. ... the Canadian citizenry are not so gullible that they will lose faith and confidence in our judicial system because of such criticism. If the way in which judges and courts conduct their business commands respect, then they will receive respect, regardless of any abusive criticism.”].

⁴⁹⁰ *Ibid.*

⁴⁹¹ CJC, “Some Guidelines on the Use of the Contempt Powers” (May 2001), online: <http://www.cjc.gc.ca/cmslib/general/Contempt_Powers_2001_with_Header.pdf>.

⁴⁹² Patricia Hughes, “The Significance of Public Pressure on Judicial Independence” in Dodek & Sossin, *supra* note 99 at 267; see also 296.

⁴⁹³ Faguy, *supra* note 496.

⁴⁹⁴ Friedland, *A place apart*, *supra* note 99 at 6-7.

⁴⁹⁵ *Ibid* at 7-8; Friedland, *A place apart*, *supra* note 99 at 53-75.

⁴⁹⁶ See, e.g., Yves Faguy, “Interview with the Chief Justice” (25 February 2020) *The National*, online: <<https://www.nationalmagazine.ca/en-ca/articles/people/q-a/2020/interview-with-the-chief-justice>>; see also Graeme G Mitchell, “Be Careful What You Wish For” in Dodek & Sossin, *supra* note 99 at 115; Adam Dodek, “Judicial Independence as a Public Policy Instrument” in Dodek & Sossin, *ibid* at 305.

⁴⁹⁷ See Friedland, *A place apart*, *supra* note 99 at 33-37.

⁴⁹⁸ *Ibid* at 77-110.

I do recognize that increased transparency, data, and knowledge could cause potential harm to administration of justice or public confidence in Canada’s legal system.⁴⁹⁹ For example, as Jena McGill and Dr. Amy Salyzn note, increased data about judges could be weaponized against judges from racialized or marginalized groups.⁵⁰⁰ Greater surveillance of such judge could lead to more inequity and disparate outcomes. It could even impact who applies to the bench.⁵⁰¹ COVID-19 as well as political and ideological polarization on issues such as policing and racism in 2020-2023 showcased three other potential harms: the weaponizing, misuse, and misunderstanding of data; basic misunderstanding of statistics; and deep mistrust of physical and data science. Unfortunately, individuals often think that data are ground truth or certainty. But they’re not. As Judea Pearl notes, “data are profoundly dumb.”⁵⁰² Brilliant, and qualified people often profoundly misunderstand what data can indicate or measure, and even those people misconstrue data to confirm biases.⁵⁰³ The models that data go into are often a “work in progress”, and they’re far from ground truth or certainty.⁵⁰⁴ Put simply, data, modelling, and analysis are frequently misunderstood, including in the legal context.⁵⁰⁵ As Chapters 4-5 discuss, the antidote to these issues isn’t less data—it’s more far more complete and comprehensive data.

As Chapter 1 discusses, the U.K., U.S, and New Zealand’s current approaches to data gathering, transparency, and empirically driven reforms suggest that they recognize and accept these risks and that they recognize the importance of complete and comprehensive data. Their reform choices suggest that data gathering, democratic access to data, general transparency, and data use are fundamental for the administration of justice, public confidence, access to justice, and better user experiences.

⁴⁹⁹ See Beverley McLachlin, “The Relationship Between the Courts and the Media.” SCC - Speech by Beverley McLachlin, (31 January 2012), online: <<https://www.scc-csc.ca/judges-judges/spe-dis/bm-2012-01-31-eng.aspx>>; for a somewhat contrary view, Hon TS Ellis, “Sealing, Judicial Transparency, and Judicial Independence” (2008) 53 Vill L Rev 939.

⁵⁰⁰ See Jena McGill & Amy Salyzyn, “Judging by the Numbers: Judicial Analytics, the Justice System and its Stakeholders” (2021) 44:1 Dal LJ 249 at 267, 273-274.

⁵⁰¹ I again thank Prof. Amy Salyzyn for discussions on this point.

⁵⁰² Judea Pearl & Dana Mackenzie, *The Book of Why* (Basic Books: New York, 2018), Kindle Edition, at 6

⁵⁰³ See, e.g., Jorden Ellenberg, *How Not to Be Wrong: The Power of Mathematical Thinking* (Penguin Books: New York, 2014); Tim Hartford, *The Data Detective* (Riverhead Books: London, 2020).

⁵⁰⁴ I don’t recall a specific reference for this point, but I think Andrew Gelman said it long before me.

⁵⁰⁵ On the future risk of this, see, e.g., McGill & Salyzyn, *supra* note 500 at 269-270.

Access to justice and judicial independence and impartiality may not have required such transparency when it was harder to facilitate. But the technological revolution has transformed what's possible and necessary for transparency, independence, and impartiality.⁵⁰⁶

Even if transformation occurs and Canada's courts and judiciary become far more transparent, I'd predict that attacks on the administration of justice will persist. In other words, I'm not naïve to why some cultures have developed, which I might classify as opaque. For example, despite far more transparency in aspects of the U.S. legal system (as Chapter 1 discusses), the U.S. administration of justice certainly hasn't been immune from attacks and, in many ways, is in a constitutional crisis in 2026.

3. Transparency likely wouldn't cause courts and judges to lose independence or compromise their impartiality (it could increase both)

The link between greater transparency and a loss of judicial independence is hard to see,⁵⁰⁷ especially when judicial independence exists for citizens' benefit, not judges.⁵⁰⁸ American judge, Hon. T.S. Ellis, writing extrajudicially, agrees. He argues that more transparency is imperative for robust judicial independence: when courts and judges fail to provide it, they threaten their independence.⁵⁰⁹ Some research suggests he's right: transparency can increase trust in judges.⁵¹⁰ Chapter 1 also suggests that the Canadian doctrine of judicial independence also supports his view: courts also have a constitutional obligation to be transparent.

In contrast to courts, Canadian governments have no constitutional obligation to be transparent in many circumstances and broad latitude to shield material from public consumption. Yet one would expect backlash if governments started reducing existing transparency (they certainly attract negative attention when they don't meet obligations).⁵¹¹ I do recognize the many

⁵⁰⁶ Ellis, *supra* note 499 at 941.

⁵⁰⁷ Transparency could lead to attacks on independence (see Hughes, "Judicial Independence", *supra* note 99 at 202).

⁵⁰⁸ CJC, "Why is Judicial Independence Important to you", *supra* note 116 at 10.

⁵⁰⁹ Ellis, *supra* note 499 at 940.

⁵¹⁰ See Stephan Grimmelikhuijsen & Albert Klijn, "The Effects of Judicial Transparency on Public Trust: Evidence from a Field Experiment (2015) 93:4 Public Administration 995.

⁵¹¹ Marie Woolf, "Ottawa abusing access to information law to avoid releasing documents, watchdog says" (28 September 2025) *The Globe and Mail*, online: <<https://www.theglobeandmail.com/politics/article-ottawa-abusing-access-to-information-law-watchdog-says/>>.

significant problems that exist with accessing information from Canada's federal government: the situation is far from perfect either historically or currently.⁵¹²

Despite significant shortcomings, however, the current democratic, the political trend and commentary appeared to be four-fold in the last decade—increasing transparency (or promising to); focussing on users (or promising to); open-access data (or promising it); and relying on some data-driven decision-making (or promising to):

- federal: The federal government continues to pursue open government principles.⁵¹³ It amended the *Department of Justice Act* to require the Minister of Justice to table a *Charter* statement for every Government bill as “a transparency measure”.⁵¹⁴ And, as Chapter 1 mentions, StatsCan is also pursuing gathering and publishing open data, but the quality and quantity of the publicly accessible data is insufficient in many areas;⁵¹⁵
- provincial and territorial: Because of a strong market for open data,⁵¹⁶ most provinces and territories now provide data through open portals.⁵¹⁷ Unfortunately, this data contains little to no information about courts or judges that would be amendable to

⁵¹² Tom Cardoso & Robyn Doolittle, “Ottawa spent \$90-million in 2021 on strained access-to-information program” (6 October 2021) *The Globe and Mail*, online: <<https://www.theglobeandmail.com/canada/article-federal-hearings-begin-canada-access-to-information-system-secret/>>; Tom Cardoso & Robyn Doolittle, “Advocates call for major reforms to federal access-to-information legislation” (26 October 2022) *The Globe and Mail*, online: <<https://www.theglobeandmail.com/canada/article-advocates-call-for-major-reforms-to-federal-access-to-information/>>; Tom Cardoso, “Ottawa cites translation, accessibility costs as reason for keeping documents from public” (10 November 2022), online: <<https://www.theglobeandmail.com/canada/article-atip-documents-translation-cost/>>; Justin Ling, “Canada: Good at Bureaucracy, Bad at Transparency” (3 October 2019) *The Walrus*, online: <<https://thewalrus.ca/canada-good-at-bureaucracy-bad-at-transparency/>>.).

⁵¹³ See, e.g., Government of Canada, “Open Government at Justice”, online: <<https://www.justice.gc.ca/eng/trans/open-ouvert.html>>.

⁵¹⁴ Government of Canada, “Charter Statements”, online: <<https://www.justice.gc.ca/eng/cs/sj/pl/charter-charte/index.html>>.

⁵¹⁵ *Supra* note 363.

⁵¹⁶ See Government of Canada, “Open Government Portal” online: <<https://search.open.canada.ca/data/>>.

⁵¹⁷ British Columbia, “Data Catalogue”, online: <<https://catalogue.data.gov.bc.ca/datasets>> [minimal court data and no judicial data]; Alberta, “Open Government Program”, online: <<https://www.alberta.ca/open-government-program.aspx>> [no court or judicial data]; Yukon, “Government of Yukon open data”, online: <<https://open.yukon.ca/data/>> [no court or judicial data]; Government of Northwest Territories, “Open Data”, online: <<https://opendata.gov.nt.ca>> [no court or judicial data]; Saskatchewan no longer has a full open data collection, Saskatchewan, “Statistics and Government Data” online: <<https://www.saskatchewan.ca/government/government-data>> [no court or judicial data]; Manitoba, “Data MB”, online: <<https://geoportal.gov.mb.ca/>> [no court or judicial data]; Ontario, “Data Catalogue”, online: <<https://data.ontario.ca/>> [some court data but it’s not open; no judicial data]; New Brunswick, “Open Data New Brunswick”, online: <<https://gnb.socrata.com/>> [no court or judicial data]; Prince Edward Island Government, “Open Data Portal”, online: <<https://data-princeedwardisland-peigov.hub.arcgis.com/search?groupIds=3f3e0df042854ea59560465cde7987cc>> [no court or judicial data]; Newfoundland & Labrador, “Open Data”, online: <<https://opendata.gov.nl.ca>> [one data dataset on provincial courts but no judicial data]; Quebec, “Quebec Data”, online: <<https://www.donneesquebec.ca/fr/>> [no court or judicial data].

empirical analysis.⁵¹⁸ The reason for this deficit isn't entirely clear. Whether courts even have data gathering policies is unclear: most courts don't publish them online or who is responsible for gathering the data, e.g., the court or the provincial/territorial attorney general. Only Ontario, Alberta, and BC publish their memorandum of understanding between their s. 96 courts and their Attorney Generals online. I assume that other courts may have similar, non-public arrangements. The Ontario Memorandum doesn't discuss who has the responsibility to gather data and it doesn't even mention data.⁵¹⁹ In contrast, Alberta's Memorandum establishes that the Attorney General and Chief Justice will jointly agree on statistics collection policies and the use of Business Intelligence (*i.e.*, "data to study or influence the productivity or effectiveness of a process and includes strategic planning, analytics, performance measurement, and performance planning").⁵²⁰ And the memorandum empowers the Chief Justice to design, implement, and report the public of "Business Intelligence" relating to Judicial Administration and the same responsibility to the Attorney General but for Court Administrative.⁵²¹ BC's memorandum creates a similar arrangement for BC's courts and attorney general.⁵²² Chapters 4-5 discuss the need for more clarity over such issues, including more administrative autonomy for courts and promises to gather and release more data; and

- municipal: 26 Canadian municipalities are now part of the ISO World Council on City Data.⁵²³ The World Council relies on human-centered design's approach of pilots and user consultation. This open source, standardized data enables managing, benchmarking, planning, and evaluating the issues cities face with 1.2 million data combinations.⁵²⁴ Courts, as Chapter 5 discuss, should also create and rely on a set of standardized data points for each decision.

The CJC, Canadian courts, and judges should catch up with this trend, and if they don't—or if they don't set their own trend toward more openness and transparency—attacks on their independence could increase.⁵²⁵ Without change, Canadians may find that judges and courts'

⁵¹⁸ British Columbia's courts do have confidential internal data that individuals can apply to use, and Ontario's confidential court data is tracked externally, but individuals can also apply to use it (see Khan, "Life of a Reserve", *supra* note 4).

⁵¹⁹ Ontario Superior Court of Justice, "Memorandum of Understanding" (5 May 2008), online: <<https://www.ontariocourts.ca/scj/about-the-court-2/jurisdiction/structure-and-governance-of-the-court/mou/>>.

⁵²⁰ Alberta Court of King's Bench, "Memorandum of Understanding Between the Attorney General of Alberta and the Chief Justice of the Court of Queen's Bench of Alberta" (2017) <https://albertacourts.ca/docs/default-source/qb/memorandum-of-understanding.pdf?sfvrsn=4473df80_0>.

⁵²¹ *Ibid.*

⁵²² BC Courts, Memorandum of Understanding Between the Minister of Justice and Attorney General of British Columbia and the Chief Justice of British Columbia and the Chief Justice of the Supreme Court of British Columbia and the Chief Judge of the Provincial Court of British Columbia" (2013), online: <[https://www.bccourts.ca/documents/Memorandum%20of%20Understanding%20\(April%203%202013\).pdf](https://www.bccourts.ca/documents/Memorandum%20of%20Understanding%20(April%203%202013).pdf)>.

⁵²³ World Council on City Data, "Created by Cities, for Cities", online: <<https://www.dataforcities.org/about-wccd>> [World Council, "Created By Cities"]; World Council on City Data, "Global Cities Registry for ISO 31720", online: <<https://www.dataforcities.org/wccd-iso-31720-series-on-city-data>> [World Council, "Global Cities"].

⁵²⁴ *Ibid.*

⁵²⁵ For a recent example of public criticism about alleged judicial secrecy during the appointment of Canada's first Indigenous Supreme Court Justice, see William Watson, "Let's see the judge's thesis" (25 August 2022) *Financial Post*, online: <<https://financialpost.com/opinion/william-watson-lets-see-the-judges-thesis>>.

approaches are unjustifiably paternalistic. The adage “laws, like sausages, cease to inspire respect in proportion as we know how they are made” may never have been true. It seems less true in 2026.⁵²⁶ Perhaps Canadians want to know how their courts and judges are operating; maybe they even want to see data.⁵²⁷ Academics, journalists, activists, and concerned citizens certainly do (Chapter 3 unpacks this theme further). Perhaps Canadians also believe they have the right to access data and information about courts and judges because judicial independence exists for their benefit. And they might also believe that courts and judges have a constitutional obligation to be transparent to them.⁵²⁸ Politicians certainly seem to endorse this view.

The somewhat recent debate over mandatory judicial education showcases these points and the need for courts and the CJC to reconsider some views. In 2017, the CJC said it would consider a broader discussion about public accessibility of training materials. But little progress was made aside from the current summaries that the CJC provides,⁵²⁹ and the federal government and all Canadian parties were clearly unsatisfied with the slow progress. In fact, multiple political parties attempted to institute mandatory judicial education to ensure that specific education was occurring (unsuccessfully in 2017, with Bill C-337, and successfully in 2020, with Bill C-3).⁵³⁰ In 2019, the Liberal party even campaigned on mandatory education during Election 43. It committed to requiring judges to undertake sexual assault training and to implementing

⁵²⁶ The origins of this quote are debated. See Fred R Shapiro, “Quote...Misquote” (21 July 2008) *New York Times*, online: <<https://www.nytimes.com/2008/07/21/magazine/27wwwl-guestsafire-t.html>>.

⁵²⁷ The 20,000 people that watched the Ontario Superior Court livestreamed verdict of Justice Joe Di Luca’s verdict on charges against police officer Michael Theriault and his brother, Christian Theriault suggest that at least Canadians are clearly interested in what courts are saying and doing (see Khan, “Zoom Court”, *supra* note 3).

⁵²⁸ CJC, “Why is Judicial Independence Important to you”, *supra* note 116 at 10, see also Hughes, “Judicial Independence”, *supra* note 99 at 182-183, 207.

⁵²⁹ “Schmitz, “Women’s Advocates”, *supra* note 374 [“the CJC will be providing more information about the NJI’s sexual assault law and social context training, likely next May. ... ‘I think we need a broader discussion on the accessibility of the information and what makes sense.’]; CJC, “The Canadian Judicial Council reiterates its commitment to increased transparency on judicial education” (5 October 2018), online: <https://www.cjc-ccm.gc.ca/english/news_en.asp?selMenu=news_2018_0705_en.asp>.

⁵³⁰ See Rosemary Cairns-Way & Donna Martinson, “Judging Sexual Assault: The Shifting Landscape of Judicial Education in Canada” (2019) 97:2 *The Canadian Bar Review* 367; Government of Canada, “Government of Canada introduces legislation to ensure judges participate in training on sexual assault law and social context” (4 February 2020), online: <[https://parl.ca/DocumentViewer/en/43-2/bill/C-3/royal-assent](https://www.canada.ca/en/departement-justice/news/2020/02/government-of-canada-introduces-legislation-to-ensure-judges-participate-in-training-on-sexual-assault-law-and-social-context.html?; An Act to amend the Judges Act and the Criminal Code, Bill C-3, assented to May 6, 2021, online: <.>.

mandatory unconscious bias and cultural competency training.⁵³¹ So the resurgence and passing of Bill C-3 was unsurprising. The CJC's transparency about existing sexual assault training is equivalent to a redacted document. Even with its opacity, the material does reveal a concerning point: not many judges attend many optional training sessions, but some sessions do have broad attendance.⁵³²

At its core, Bill C-3 was really a mechanism to improve transparency about Canada's judiciary: (1) some transparency about curriculum design;⁵³³ (2) some transparency about training attendance;⁵³⁴ and (3) full transparency about decision-making by requiring oral or written decisions in all sexual assault cases.⁵³⁵ But, as two criminal defence counsel noted before its passing, the Bill really could be classified as an attack on judicial independence.⁵³⁶ It appears to directly indict the judiciary's handling of sexual assault cases. Effectively, Bill C-3, which all major Canadian political parties supported,⁵³⁷ was a signal to the judiciary to "tighten up the ship."⁵³⁸

Aside from potentially compromising public confidence in Canada's legal system as well as judicial independence and impartiality, the skirmishes over Bill C-337 and Bill C-3 demonstrated that most discussions about judicial training lack evidence—e.g., does training affect reasoning

⁵³¹ Maclean's, "Here are all of Justin Trudeau's promises in federal election 2019" (31 October 2019) *Maclean's*, online: <<https://www.macleans.ca/politics/ottawa/here-are-all-of-justin-trudeaus-promises-in-federal-election-2019/#justice>>.

⁵³² CJC, "Training", *supra* note 380.

⁵³³ Bill C-5, *An act to amend the Judges Act and the Criminal Code*, s 60(3) [*Bill C-5*].

⁵³⁴ *Ibid* s 62.1(1)(2).

⁵³⁵ *Ibid* s 278.98(1); see also Bill C-5, 19 February 2020, *supra* note 536 ["Finally, the bill would amend the Criminal Code to require judges to provide reasons for decisions under sexual assault provisions of the Criminal Code. This amendment is intended to enhance the transparency of judicial decisions ... by rendering them accessible, either in writing or on the record of the proceedings, so oral reasons would be sufficient as well."].

⁵³⁶ Of Counsel, "Edward Prutschi 'We are the defenders of the wall'" (6 February 2020) *Of Counsel*, online: <<https://robichaudlaw.ca/podcast/edward-prutschi-we-are-the-defenders-of-the-wall/>>; for another view opposing the legislation, see Gib Van Ert, "Bill C-5: Should the Canadian government train its judges?" (6 February 2020) *Maclean's*, online: <<https://www.macleans.ca/opinion/bill-c-5-should-the-canadian-government-train-its-judges/>>. A brief review of the initial debate to Bill C-5 suggest van Ert might be right: once you start requiring training on one issue, what else might you require training for (see Bill C- 5, "An Act to amend the Judges Act and the Criminal Code" (19 February 2020), online: <<https://openparliament.ca/bills/43-1/C-5/>> ["Bill C-5, 19 February 2020"].

⁵³⁷ *Ibid*. On the topic of court curbing and for a fascinating study on the relationship of diffuse public support, judicial independence and the limits of judicial independence, see Tom S Clark, *The Limits of Judicial Independence* (Cambridge University Press: 2011) at 17, 62, 67, 82 and more generally.

⁵³⁸ Of Counsel, *supra* note 536.

and does judge led training strengthen confidence in the judiciary.⁵³⁹ Regardless of the evidence that could be generated or that may confidentially exist, transparency from the CJC, courts, and judges could've ended this skirmish.⁵⁴⁰ If the CJC wants to avoid public skirmishes that could compromise public confidence and courts and judges independence, it could offer more than vague assertions like protecting judicial independence to preclude transparency about how judges are trained.⁵⁴¹ It could, like U.S. courts, just provide far more transparency how judges are being trained and which judges are being trained.

The current opaque Canadian approach invites an important question: why is the public, the Crown, or an accused precluded from knowing how and which judges are trained on sexual assault law⁵⁴² or how judges are generally trained to write decisions?⁵⁴³ As Chapter 1 notes, decision-writing appeared to be another area where the federal government was either unhappy or unsatisfied with some judges. Bill C-3 now requires judges to issue reasoned decisions in all sexual assault trials.⁵⁴⁴ This requirement is likely to ensure that judges provide reasoned decisions when they acquit accused. Perhaps the federal government interpreted *R.E.M.* in the legalistic way that Chapter 1 discusses. It may have thought that reasoned oral or written decisions aren't currently required when judges acquit because an accused's innocence is no

⁵³⁹ CJC, "Judge-Led Training Strengthens Confidence in the Canadian Judicial System" (5 February 2020), online: <<https://cjc-ccm.ca/en/news/judge-led-training-strengthens-confidence-canadian-justice-system>>; see also CJC, "Fact Sheet", *supra* note 375 [CJC, "Fact Sheet"]; See Amanda Jerome, "Sexual assault training for judges needed, say lawyers, politicians" (12 February 2020) *The Lawyer's Daily*, online: <<https://www.thelawyersdaily.ca.ezproxy.library.yorku.ca/articles/17805/print?section=criminal>>; Cristin Schmitz, "Women's advocates", *supra* note 374.

⁵⁴⁰ *Ibid* ["Pate indicated she can't just accept the bald assertion of CJC and NJI representatives before the Commons committee studying Bill C-337 earlier this year that the federal judiciary has been delivering high quality and fully adequate training on sexual assault law and social context. "I don't see that at this stage," she said. "In fact there seems to be people raising concerns about it," she noted, pointing, for example, to recent high profile sexual assault cases which have provoked protests."].

⁵⁴¹ Cristin Schmitz, "Judicial training bill passes Senate committee with changes easing judicial independence concerns of bench, bar" (7 June 2019) *The Lawyer's Daily*, online: <<https://www.thelawyersdaily.ca.ezproxy.library.yorku.ca/articles/4852/print?section=criminal>> ["In its submissions to Parliament, the CJC argued that requiring the council to track and report to the executive, the names of the courts, and number of judges from those courts, who participate in specific education programs — and who hear or do not hear specific types of cases — 'would infringe on the judiciary's independence to maintain control over judicial education and judicial discipline matters.'"].

⁵⁴² A concern could be that that litigants could bring recusal motions for judges who have or have not been trained. This concern should be addressed head on. The implications are concerning for procedural fairness.

⁵⁴³ See *supra* note 374.

⁵⁴⁴ *Bill C-5*, *supra* note 533, s. 278.98(1).

longer at stake.⁵⁴⁵ But Bill C-3 remedied this asymmetry—even if it didn’t technically exist (as Chapter 1 discusses). The federal government seemed to agree that the requirement to provide reasoned decisions can’t depend on outcome; otherwise, a judge who didn’t want to issue a reasoned decision could perhaps just acquit with no reasons (this point is debated depending on how one reads *R. v. Sheppard*: I read it in the more narrow way that would have permitted acquittal with no reasons).⁵⁴⁶ One could easily envision that this new requirement is but the first step if courts and the CJC don’t increase their transparency or respond to critiques. The federal government could even institute more standardized content requirements (e.g., judges must address the twin myths) and the order in which judges must address them. Such an approach may be constitutional, but it would be a mistake: courts and judges should be in control of any new designs for judicial decisions.⁵⁴⁷

In 2022, the Chief Justice of Canada and Canada’s Minister of Justice & Attorney General attempted to resolve the skirmish that led to Bill C-3 and the related issues. They signed a memorandum of understanding on continuing education for Superior Court Judges (*aka* most federally appointed judges). The Memorandum noted that “Judicial Education is critical to public confidence in the administration of justice....”⁵⁴⁸ And the CJC reiterated “its commitment to increased transparency on judicial education.”⁵⁴⁹ Yet little has changed in the last four years, and Canada remains very far behind jurisdictions like the U.S. where extensive amounts of judicial training materials are available for anyone to download.

As Chapter 1 discusses, in contrast, Canadian training materials are almost exclusively opaque. The CJC, National Judicial Institute, and the Canadian Institute for the Administration of Justice

⁵⁴⁵ As discussed, judicial independence should require reasoned decisions in all cases. *R.E.M.*’s reliance on innocence at stake is internally inconsistent: see Para 11: “Reasons tell the parties affected by the decision why the decision was made. ... they attend to the dignity interest of the accused...No less important is the function of explaining to the Crown and to the victims of crime why a conviction was or was not entered.”]

⁵⁴⁶ I thank Nicole Gilewicz for a great conversation on this topic and many other similar topics related to empirical study of the legal system and general empirical conclusions. I also thank Dr. Palma Paciocco for pointing out that some, or many, people do not read this point as narrowly as I do (I may be wrong in my reading, but I stand by it for now).

⁵⁴⁷ Khan, “Life of Reserve” *supra* note 4 at 97-101; Van Ert, *supra* note 536.

⁵⁴⁸ CJC, “Memorandum of Understanding on the Continuing Education of Superior Court Justice Between The Canadian Judicial Council On Behalf of All Chief Justices and Associate Chief Justices of Each Superior Court of Canada (the CJC) and The Minister of Justice And Attorney General of Canada (the Minister of Justice” (28 April 2022), online: <<https://cjc-ccm.ca/sites/default/files/documents/2022/Signed%20MOU%20judicial%20education%20EN%202022-04-28.pdf>>.

⁵⁴⁹ *Ibid.*

(“CIAJ”) treat them as confidential, except for limited noted exceptions that Chapter 1 discusses. Available information is largely high level and not transparent. Transparency would be more than naming the two training programs that judges must complete within their first five years of being appointed—e.g., “*Seminar for New Federally-Appointed Judges*. Components of that seminar contain education on sexual assault trials and related concepts. ... [and] *Judging in your First Five Years*.”⁵⁵⁰ Adequate transparency would be disclosing the actual training programs for the public to see just how good the education programs are and what kinds of things judges are learning, e.g., their actual written training materials. Instead, Canadians just get this high-level summary that hardly explains what judges learn:

Judging in Your First Five Years: Criminal Law

This intensive six-day program enables new judges to build their competence in managing criminal trials, from judicial pre-trials to sentencing. As sexual assault trials pose some of the greatest challenges in judging, the seminar uses a sexual assault fact scenario to anchor the issues and allow participants to practice relevant skills.⁵⁵¹

In 2021, the BCCA released a decision that seemed to tacitly agree with some of my arguments about the need for transparency. In ruling against an application to seal a court record that contained parts of a provincial training manual for justices of the peace, the Court held that “the salutary effects of denying public access to the excerpt from the training manual do not outweigh the deleterious effects of public scrutiny of judicial processes and the enhanced public confidence that flows from that.”⁵⁵² The outcome may have been different if the court record contained the entire training manual. Perhaps the Court might have been more willing to accept the argument from the Office of the Chief Judge of the BC Provincial Court that disclosure would be harmful:

public access to this material may have the adverse effect of parties “tailoring their submissions” to the manual when applying for court-ordered process, rather than having regard to relevant case law or the applicable statutory requirements. It may also foster a tendency among justices of the peace to restrict themselves to the manual in rendering their judicial decisions, believing that to stray from it would heighten the risk of error and unnecessarily open them to review.

...

⁵⁵⁰ *Ibid.*

⁵⁵¹ CJC, “Training for new federally appointed judges”, online: <<https://cjc-ccm.ca/en/training-new-judges>>.

⁵⁵² *R v Orr*, 2021 BCCA 42 at para 137.

rendering the manual to public view could have a chilling effect on the development of administrative procedures and judicial training materials specific to the Provincial Court. The potential for the public's reliance on those items requires a consideration of factors, relevant to content, the manner of development, and the means of communication, not otherwise accounted for in their production.⁵⁵³

Perhaps the decision suggests that Canadian thinking on this issue isn't homogenous—even among judges. This issue has received limited judicial attention, so that claim is speculative. As far as I can tell, at least as recorded in the media and reported decisions, only two decisions address the public right to access judicial training materials—the just mentioned BCCA decision and a 2017 unreported Alberta Court of King's Bench case. In the 2017 case, the “NJI took the position that virtually all of the NJI's training material, in a wide range of topics from Aboriginal Law to Managing Settlement Conferences — is treated as confidential.” The Court didn't rule on their assertion because the sought material wasn't likely relevant to a triable issue.⁵⁵⁴ So whether Canadian judges agree with the CJC, CIAJ, and NJI's position is unknown.⁵⁵⁵

4. Transparency could politicize and personalize the process (but standardization is an antidote)

Knowing more about how individual judges approach their decisions could personalize and politicize the judicial process.⁵⁵⁶ Instead of the process being about independent and impartial justice, the process could become more about individual judges, e.g., the U.S. Supreme Court

⁵⁵³ *Ibid* at paras 125-126.

⁵⁵⁴ Schmitz, “Women's Advocates”, *supra* note 374.

⁵⁵⁵ *Ibid*.

⁵⁵⁶ For a very recent example in the U.S. where researchers alleged they identified racist judges (and named them) and the fall-out/back and forth/critique that occurred in the scholarly and online community, see Christian Michael Smith *et al*, “Racial Disparities in Criminal Sentencing Vary Considerably Across Federal Judges” (29 July 2021), SocArXiv, online: < https://osf.io/preprints/socarxiv/j2gbn_v1>. Chad M Topaz, “That time everyone got mad about social justice” (17 August 2021), online: <<https://chadtopaz.medium.com/that-time-everyone-got-mad-about-social-justice-f7855cae94d5>>; Jonah Gelbach, “A thread on the study below, which purports to identify “The Most Discriminatory Federal Judges”. The two judges at the top of the study's list are both (senior status) judges in the Eastern District of Pennsylvania (EDPA), where I live. I have some concerns about the study.” (7 August 2021), online: <<https://twitter.com/gelbach/status/1424147108739776514>>; Christian Michael Smith, “A thread about updates to the white paper on criminal sentencing and racial inequality:” (17 August 2021), online: <<https://twitter.com/SmithChristianM/status/1427784600869171207>>. And for a comprehensive analysis of judicial transparency as well as personalization of the judicial process in the United States, see Katrina Judicial Transparency: Communication, Democracy, and the United States Federal Judiciary (2009) (PhD Thesis, University of California, San Diego).

appointment process.⁵⁵⁷ Increased transparency and data could lead to judges and courts feeling like the public is surveilling⁵⁵⁸ or policing⁵⁵⁹ them, including their judicial style and ideologies.

A recent example of this phenomenon occurred when data was released about the number of judges who had donated to the Liberal party. While the headline in *Figure 7* seems salacious,⁵⁶⁰ the reality isn't. As one lawyer noted in response to the article, "looks like the way to increase your chances of appointment is NOT to donate"⁵⁶¹ or as another lawyer noted "One of the most interesting bits of data in here for me is the table that totals more than 100% because people donated to more than one party."⁵⁶² So the "correlation" between donation and appointment wasn't worth the analysis or buzz it generated.

Figure 7: 2023 National Post Article



⁵⁵⁷ See, e.g., Micheal Cross, "Has Bargain BAILII had its day" (24 November 2020) *The Law Society Gazette*, online: <<https://www.lawgazette.co.uk/commentary-and-opinion/has-bargain-bailii-had-its-day/5106519.article>> ["Another spectre is ... data being turned in to league tables - and presented to the public under headlines like: 'Enemies of the victims: ... 100 softest-touch judges'"].

⁵⁵⁸ These issues are well discussed in other circumstances (see Allison Snyder, "How surveillance changes behaviour" (7 September 2019) *Axios*, online: <<https://www.axios.com/surveillance-changes-behavior-36cc1c06-bd2b-4994-8d30-c1b7c274b961.html>>).

⁵⁵⁹ This research has partially occurred (see, e.g., Sujith Xavier, "Biased Impartiality: A Survey of Post-RDS Caselaw on Bias, Race, and Indigeneity" (2021) 99:1 *Canadian Bar Review* 354).

⁵⁶⁰ Kate Schneider & Christopher Nardi, "Trudeau's law society: Exclusive data analysis reveals Liberals appoint judges who are party donors" (9 August 2023) *National Post*, online: <<https://nationalpost.com/feature/exclusive-data-analysis-reveals-liberals-appoint-judges-who-are-party-donors>>.

⁵⁶¹ Robin Parker, "They buried the lede: only 18.3% of judges & tribunal members appointed since 2016 donated to *any* political party. 21.4% of judges donated to the Liberals, 6.8% to PC. Looks like the way to increase your chances of appointment is NOT to donate." (9 August 2023), online: <https://twitter.com/robinparker_law/status/1689411707615981569>.

⁵⁶² Sarah Rankin, "One of the most interesting bits of data in here for me is the table that totals more than 100% because people donated to more than one party." (9 August 2023), online: <<https://twitter.com/rankinovitch/status/1689437790411612160>>.

Another recent example occurred when Canada appointed its first Indigenous SCC justice, and *Figure 8* showcases an academic relying on Justice O’Bonaswin’s judicial application to argue that she wasn’t fit to be a judge.⁵⁶³

Figure 8: 2022 National Post Article

 **NP Comment**

Leonid Sirota: Michelle O’Bonaswin’s very limited qualifications for the Supreme Court

Her appointment is transparently political

Leonid Sirota, Special to National Post

Aug 30, 2022 • August 30, 2022 • 8 minute read •  434 Comments

I repeat my verdict: Justice O’Bonaswin is not well equipped to address the big-picture questions that a Supreme Court judge is forced — by no means in every case, but with some regularity — to turn his or her mind to.

I’m sure she is a good and well-meaning person. She may, for all I know, have been a competent trial judge. But neither her career nor her thinking come close to qualifying her for the Supreme Court of Canada. Her appointment is transparently political. It does a disservice to the court that will have to welcome her, and to the rule of law in Canada.

With this kind of surveillance, policing, or critique, judges and courts could negatively or positively change their behaviour because of the increased attention on them and their decision-making, *i.e.*, something akin to the Hawthorne effect.⁵⁶⁴ Such an impact could look like the very

⁵⁶³ Leonid Sirota, “Michelle O’Bonaswin’s very limited qualifications for the Supreme Court” (30 August 2022) *National Post*, online: <<https://nationalpost.com/opinion/leonid-sirota-michelle-obonaswins-very-limited-qualifications-for-the-supreme-court>>.

⁵⁶⁴ No single “Hawthorne effect” exists. But many researchers have postulated that individuals modify their behaviour in research environments when they’re being observed—e.g., work harder (See, e.g., Jim McCambridge,

kind of pressure that judicial independence seeks to protect against.⁵⁶⁵ Litigants and lawyers could increase “judge shopping”,⁵⁶⁶ perhaps with recusal motions for bias based on statistical evidence.⁵⁶⁷ And personal attacks against judges and their decision-making could increase.⁵⁶⁸

These fears are valid (indeed, as Chapter 3 discusses, 2023 Survey participants raised similar concerns). As noted, more transparency, data, and data analytics could foster these outcomes. Some criticism might be sound. But some, if not most, will rely on biased or incomplete data or poor modelling.⁵⁶⁹ Either way, judges can withstand criticism and mustn’t shy away from it.⁵⁷⁰ And regardless of what transparency is provided, the potential for such criticism already exists. The Canadian judicial process has never tried to hide the reality that judges’ personal attributes affect their work and how they decide. As Chief Justice Dickson is recalled having said: “Judges are human beings. They bring their life experiences to the cases they decide. That is good....”⁵⁷¹ Standardization could address some of these personalization fears by helping reduce some unnecessary personalization while simultaneously promoting more independence and impartiality.

John Witton, Diana R Elbourne, “Systematic review of the Hawthorne Effect: New concepts are needed to study research participation effects” (2014) 67 *Journal of Clinical Epidemiology* 267).

⁵⁶⁵ For a general discussion on this issue, see McGill & Salyzyn, *supra* note 500 at 264-269.

⁵⁶⁶ Judge shopping is alive and well as the ABCA noted in *R v Arcand*, 2010 ABCA 363 at para 8 [*Arcand*]; Dan Bindman, “Fears about using judicial data to predict judges’ actions ‘exaggerated” (26 July 2021) *Legal Futures*, online: <<https://www.legalfutures.co.uk/latest-news/fears-about-using-judicial-data-to-predict-judges-actions-exaggerated>> [“judges in Canada were concerned that open access to judicial data could become a “performance-based metric” and also encourage lawyers to engage in ‘forum shopping’ to increase chances of victory in court”].

⁵⁶⁷ On this point, see Rehaag, “Judicial Review” *supra* note 123 at n125.

⁵⁶⁸ Charmaine De Silva & Simon Little, “The B.C. Judge who ‘ignored evidence,’ ‘erred in law’ and put a ministry under fire” (27 November 2017) *Global News*, online: <<https://globalnews.ca/news/3859571/the-b-c-judge-who-ignored-evidence-erred-in-law-and-put-a-ministry-under-fire/>>. For a recent personal analysis on one trial judge’s decision-making in a single case, see Emma Cunliffe and Gary Edmond, “Justice without Science? Judging the Reliability of Forensic Science in Canada” (2021) 99-1 *Canadian Bar Review* 66.

⁵⁶⁹ For a great example of the havoc that can occur with poor research, see Doyle, *supra* note 78 at 141-143.

⁵⁷⁰ Kopyto, *supra* note 486 [“our courts are strong enough to withstand criticism after a case has been decided no matter how outrageous or scurrilous that criticism may be. ... the Canadian citizenry are not so gullible that they will lose faith and confidence in our judicial system because of such criticism. If the way in which judges and courts conduct their business commands respect, then they will receive respect, regardless of any abusive criticism.”].

⁵⁷¹ McLachlin, *Truth Be Told*, *supra* note 219 at 242 [here, McLachlin recounts a discussion with Chief Justice Dickson about whether McLachlin should’ve sat on a particular case because of previous personal experience. This quote is ascribed to Dickson.]; see also *R v S (RD)*, [1997] 3 SCR 484.

5. Transparency or standardization could lead to increased complaints (but this argument is speculative)

U.S. Federal courts receive more complaints than Canadian courts: for example, from 2017 to 2018, U.S. Federal courts received 1,278 complaints for 870 judges;⁵⁷² the CJC received 359 for 892 judges.⁵⁷³ Perhaps Canadian courts and judges are concerned that more openness, transparency, or standardization could lead to increased complaints that would increase judges' workload and could compound Canada's access to justice problems.

As Chapter 1 notes, U.S. courts are more open, transparent, and innovative than many Canadian courts. So this argument seems to make sense. But one limited exception about U.S. Courts transparency impacts that argument. U.S. judges issue far less written reasons than Canadian courts. And most U.S. complaints (1,120 out of the 1,278) were complaints for alleged erroneous decisions. So the complaints may have no relationship to transparency or data, and they certainly don't relate to standardization.⁵⁷⁴ Of the 1,120 complaints, 498 complainants were prison inmates who were likely self-represented.⁵⁷⁵ 51% percent of those 1,120 complaints (571) were made against district judges (trial judges).⁵⁷⁶ But those judges' decision-making and decision-writing style differs from Canadian trial judges: as noted, U.S. trial judges frequently don't issue written, reasoned decisions or much more than an order.⁵⁷⁷ And when they do write, they rely extensively on clerks.⁵⁷⁸ So the complaints may be more about a lack of written, reasoned decisions and judicial transparency vs. some claim based on democratic access to data, transparency, or standardization.

⁵⁷² See CJC, "2017-2018 Annual Report", online: <<http://www.cjc.gc.ca/cmslib/ar17-18/fr.html>>; United States Courts, "Complaints Against Judges — Judicial Business 2018", online: <<https://www.uscourts.gov/statistics-reports/complaints-against-judges-judicial-business-2018>> [United States Courts, "Complaints"]. For a historical analysis, see also Friedland, *A place apart*, *supra* note 99 at 119.

⁵⁷³ See CJC, "2017-2018 Annual Report", online: <<http://www.cjc.gc.ca/cmslib/ar17-18/fr.html>>; Officer of the Commissioner for Federal Judicial Affairs Canada, "Number of Federally Appointed Judges as of March 5, 2020", online: <<https://www.cmf.gc.ca/appointments-nominations/judges-juges-eng.aspx?pedisable=false>>.

⁵⁷⁴ United States Courts, "Complaints", *supra* note 572.

⁵⁷⁵ *Ibid.*

⁵⁷⁶ *Ibid.*

⁵⁷⁷ Christina Boyd, "Opinion Writing in Federal District Courts" (2015) 36:3 Justice System Journal 254 at 255.

⁵⁷⁸ Artemus Ward, "Law Clerks" in Lee Epstein & Stefanie A Lindquist, eds, *The Oxford Handbook of U.S. Judicial Behavior* (Oxford University Press: Oxford, 2017) 100 at 111.

6. Standardization could perpetuate heuristics or cognitive bias (but such effects would be observable and amendable to re-design)

Two related arguments arise here:

1. Standardized material could perpetuate or reinforce cognitive bias or heuristics or existing actual and implicit bias.
2. Standardized material could become the very heuristic that Chapters 1 and 2 suggest that judges must try to avoid.⁵⁷⁹ Instead of judges grappling with complicated law and understanding it—assuming judges have time to do this task—standardized material or tools would themselves become a heuristic.⁵⁸⁰ The material and tools would oversimplify complicated points of law that require nuance.⁵⁸¹

But these arguments appear tenuous. As Ian Greene argues, “attempts to make the law as explicit as possible could be regarded as promoting judicial impartiality....”⁵⁸² As Chapter 1 stresses (and Chapter 5 reiterates), all these assumptions about benefits and harms can be tested. And any attempt to standardize material would require ideation and iteration to achieve the full aim of reducing heuristics, cognitive bias, and error—much like any deliberately designed product. But the idea that standardized material would somehow be worse than the status quo seems unfounded, especially because tweaking standardized material through iteration is likely easier than tweaking human behaviour.

7. Standardization likely wouldn’t stagnate the common law’s development (it could lead to more progressive and transparent development)

If the legislature is demonstrating inertia in a particular legal area, courts can act and develop the common law.⁵⁸³ But such developments happen too infrequently in some areas, including contract law and negligence (perhaps because courts and judges don’t see their main job isn’t synthesizing the common law and effecting uniformity).⁵⁸⁴ For example, the law on offer,

⁵⁷⁹ See *R v Lee*, 2012 ABCA 17 at paras 44-54 for a discussion about precedent’s influence on decision-making.

⁵⁸⁰ Judges could also become overly deferential to such tools. See, e.g., Keith Pocaro, “Detain/Release: simulating algorithmic risk assessments at pretrial” (8 January 2019), online: <<https://medium.com/berkman-klein-center/detain-release-simulating-algorithmic-risk-assessments-at-pretrial-375270657819>> [“Software has framing power: the mere presence of a risk assessment tool can reframe a judge’s decision-making process and induce new biases, regardless of the tool’s quality”].

⁵⁸¹ I thank Anthony Daimsis for entertaining yet another conversation from me on this point.

⁵⁸² Green, “The Doctrine”, *supra* note 225 at 193 [Explicit laws limit judicial discretion and the possibility of bias. I think what he means is clear laws limit discretion in interpreting the law, but judges still have discretion in how they apply it.].

⁵⁸³ Kent Roach, “A Dialogue about Principle and a Principled Dialogue: Justice Iacobucci’s Substantive Approach to Dialogue” (2007) 57:2 UTLJ 449 at 456; Sharpe, *supra* note 206 at 94.

⁵⁸⁴ *R v Salituro*, [1991] 3 SCR 654 at 666.

acceptance and consideration hardly changed in 100 years despite apparent issues,⁵⁸⁵ and the same is true about the law of negligence. Other areas of law, while codified, are increasingly complex as Chapter 1 discusses. Complexities are accumulating and persistent, and many overhauls are needed—especially in criminal law.

Standardized structures and content wouldn't preclude such overhauls or changes in situations where more flexibility is necessary if standardization or more uniformity was occurring. Instead, all standardization would do is require judges to be clear and transparent when they depart from standardized material to evolve law.⁵⁸⁶

8. Standardization likely wouldn't compromise judicial discretion (it could improve it)

The 2019 Survey suggests that courts believe that even standardizing grammar, citations, or whether the order goes at the end of a decision may affect judicial discretion and reasoning. Courts seem to believe that style and structure affect judicial decision-making and discretion, and that judicial independence protects personal styles and structures:

- All surveyed courts that have style guides or that rely on external guides explicitly or tacitly indicated that judicial independence precludes imposing stylistic requirements on judges. Accordingly, no court tracks use of optional or suggested style guides.
- Courts with templates—which appear to be directed at formatting and which don't appear to prescribe suggested headings—indicate that judicial independence precludes imposing structural requirements on judges. One court explicitly noted this point and that judges will structure their decisions to their writing style and decisions' requirements. Accordingly, no court tracks use of such templates.⁵⁸⁷

⁵⁸⁵ Contract law's doctrines have developed, e.g., fundamental breach. But the main principles remain.

⁵⁸⁶ For an example of such a departure, see e.g., *Rosas v Toca*, 2018 BCCA 191 at para 4 [“The time has come to reform the doctrine of consideration as it applies in this context, and modify the pre-existing duty rule....”]. For a fascinating discussion on standardized material and the ability of decision-makers to explicitly depart from it with reasons, see *Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship)*, 2020 FCA 196 at paras 51, 68, 73, 78, leave to SCC denied, 2021 CanLII 69969 [“CARL”].

⁵⁸⁷ Khan, “Life of a Reserve” *supra* note 4 at 63.

But judicial decisions already include some standardizations—e.g., paragraphs and neutral citations.⁵⁸⁸ And the SCC appears to largely rely on a standardized structure in its decisions.⁵⁸⁹ As far as I’m aware, no court or judge has relied on judicial independence to reject such standardizations. The idea that judicial independence precludes courts or the CJC from providing judges’ stylistic and structural suggestions; suggesting they follow them (even strongly); and tracking if and how judges follow them seems misplaced. This idea suggests that such practices would impugn judges’ independence and impartiality vs. trying to promote and protect it. But this idea and practices based on it seem more about judges’ personal preferences—not their independence,⁵⁹⁰ a point that the 2023 Survey data also seems to support (at least for some users).

Chapter 1 readily concedes that standardized structures and content could affect how judges’ *reason*—my research aim is improving reasoning and impartiality. But standardization doesn’t affect how judges *decide*. Like juries, judges retain discretion about how they apply law to facts.⁵⁹¹ But most cases simply don’t require judges to restate or reinterpret the law.⁵⁹² That approach can promote inefficiency and inconsistency. More importantly, this approach lacks considerable transparency and fairness. For example, in contrast to a jury charge in a criminal matter, individuals appearing before judges don’t know the framework that judges will be using

⁵⁸⁸ The guide, to its credit, does an excellent job of standardizing the elements of a decision’s style of cause page. See Canadian Citation Committee, “The Preparation, Citation, and Distribution of Canadian Decisions” (2009), online: <<https://www.cjc-ccm.gc.ca/cmslib/Committee/JTAC/JTAC-Consolidation-of-Standards-2009-04-02-E.pdf>>; see also Frédéric Pelletier, Ruth Rintoul & Daniel Poulin, “The Preparation, Citation and Distribution of Canadian Decisions” (13 April 2009), online: <<https://lexum.com/en/blog/the-preparation-citation-and-distribution-of-canadian-decisions/>>.

⁵⁸⁹ See Peter McCormick, “Structures of Judgment: How the Modern Supreme Court of Canada Organizes Its Reasons” (2009) 32 Dalhousie LJ 35 at 37-41; see also Evan Rosevear & Andrew McDougall, “Cut to the Case Counsellor: Patterns of Judicial Writing at the Supreme Court of Canada 1970 to 2015” (2018) Canadian Political Science Association Annual Conference at 6, online: <<https://www.cpsa-acsp.ca/documents/conference/2018/856.McDougall.Rosevear.pdf>>.

⁵⁹⁰ Marshall, *supra* note 485 at xvii [In the book’s introduction, Ian Greene argues that “The current debate about judicial independence has been clouded by judges who confuse their personal desire for professional autonomy with the need to protect their independence.”].

⁵⁹¹ See, e.g., *CARL*, *supra* note 586 at paras 73-78.

⁵⁹² Justice R Kerans, “The Art of Judging in the Common Law Tradition” (23 April 1986), online: <<https://ciaj-icaj.ca/wp-content/uploads/documents/import/SEMINARS/169.pdf?id=901&1757887426>> at 2 [“In most cases, some rule of law will govern and should be applied. The first art of judging is to acknowledge that in 90 per cent of the cases all that is asked of the judge is that he or she finds the facts, find the governing rule, and apply it. The first art, then is not to make a sow’s ear from a silk purse. Most cases do not require a pedantic analysis of the previous 100 cases. They require only that the judge find and state the governing rule, and state which precedent, binding or persuasive, is relied upon.”] [emphasis added].

or applying before they decide whether to send someone to jail or home, and this reality seems fundamentally procedurally unfair.

The judiciary's primary responsibility once a matter concludes is to issue reasoned oral or written decisions. But this responsibility simply doesn't include the obligation to personally restate the law or to recite copious amounts of facts in each case.⁵⁹³ Instead, the Canadian judiciary's primary obligation to issue reasoned decisions obliges them to do seven things:

1. Identify the controlling, deep issues.
2. Use those controlling deep issues to identify the applicable law and legal principles.
3. Use those legal principles to drive what facts must be found.
4. Find those facts.
5. Apply applicable legal principles to found facts and create/develop law—if necessary—in rare cases.
6. Analyze that application.
7. Issue a decision that's sufficient and accessible to the public.

As Chapter 3 discusses, most surveyed users seem to agree about the paramount importance of the analysis section. The earlier discussed standardized structures and content could focus judges on their primary obligation, especially with accessibility. And judges could then have more time and cognitive power to consider issues neutrally and impartially, analyze them, and ultimately decide.⁵⁹⁴ A decision's analysis section is what judicial independence protects—not the legal recitation or a judge's personal stylistic or publishing preferences. The analysis is where judges truly demonstrate their impartiality and where decision-making's true goals operate; it's where the thinking and deciding happens. Standardization could get judges to their analysis quicker and with more consistency, predictability, and impartiality. It could also help judges be more personal in their reasons and truly responsive to the diversity of people who appear before them.

Conclusion: Many issues *still* appear to receive little attention

In 2002, the CJC questioned whether it was fulfilling its role. After deliberating, the answer was a qualified yes. But the CJC said it “must become a more dynamic and productive body if it is to

⁵⁹³ See, e.g., *Welton v United Lands Corporation Limited*, 2020 ONCA 322 at paras 55-63; *KK v MM*, 2022 ONCA 72 at para 22-23.

⁵⁹⁴ *Supra* note 135.

continue to fulfil its mandate.”⁵⁹⁵ With further resources, the CJC said it could do a great deal more, including using technology to improve court efficiency and develop measures to ensure decisions’ timely delivery.⁵⁹⁶ What the CJC said in 2002 rings true in 2026: a great deal more can and must be done. But another 2002 CJC statement no longer rings true:

Many of these issues are receiving little, if any, attention from governments, in some instances properly so, since they fall within the exclusive domain of the courts. And they do not appear to be of much if any interest to the law schools and other bodies conducting research into legal matters. If these issues are going to be dealt with, it will have to be the judiciary that deals with them.⁵⁹⁷

Many governments, academics, and law schools are likely now interested in collaborating and partner with courts to use technology and human-centered design to deliberately design improvements for judicial decision-making and decisions,⁵⁹⁸ including myself. Many problems in Canada’s legal system likely require the collaboration that Chapter 1 discusses, for example, what’s occurring in the U.S., U.K., and Australia.

Judicial independence doesn’t need to evolve to respond to this dissertation’s conclusions. It’s “a highly contextual concept that has changed over time and varies with circumstance and other developments.”⁵⁹⁹ It’s “a dynamic rather than static idea”.⁶⁰⁰ Its “conditions themselves may vary and evolve....”⁶⁰¹ As Chapter 1 stresses, the principle of judicial independence, the *Judges Act*, and the *Constitution* already appear to require designed legal reforms aimed at transparency; standardization; and data gathering and democratic access to that data.

These changes could promote judicial impartiality and independence, not reduce them. Of course, standardization, data gathering, and data access aren’t access to justice panaceas, but they appear to be prime movers.⁶⁰² Former Chief Justice McLachlin stressed this point after retiring:

We need data to tell us where the problems are in our justice system. A user-based justice system, which is what we need, presupposes that we know what users need. Data is a two-way street. Technology can help us get data, and data can drive technologies that will help us schedule and plan judicial proceedings more effectively. Algorithms are

⁵⁹⁵ CJC, “The Way Forward”, *supra* note 109.

⁵⁹⁶ *Ibid* at 12.

⁵⁹⁷ *Ibid*.

⁵⁹⁸ See FN 88.

⁵⁹⁹ Dodek & Sossin, *supra* note 99 at 1.

⁶⁰⁰ *Ibid* at 11.

⁶⁰¹ *Reference re Remuneration of Judges of the Provincial Court (PEI)*, [1997] 3 SCR 3 at para 125.

⁶⁰² Townend & Wiener, *supra* note 205 at 9.

essentially complex predictive models based on data – that data foundation must be reliable, transparent and consistent.⁶⁰³

In sum, judicial independence and deliberative secrecy shouldn't obstruct designing improvements;⁶⁰⁴ it should catalyze them.

I hope that the CJC, courts, judges, and governments one day agree. As Chapter 3 discusses, however, that agreement doesn't appear to be forthcoming, and the points that Chapters 1-2 stress seem to be ones that chief justices and courts aren't yet ready to hear.

⁶⁰³ Beverley McLachlin, "Access to Justice: A Plea for Technology in the Justice System" (17 July 2020) *The Lawyer's Daily*, <<https://www.thelawyersdaily.ca/articles/20104/access-to-justice-a-plea-for-technology-in-the-justice-system-beverley-mclachlin>>.

⁶⁰⁴ Dodek, "Public Policy Instrument", *supra* note 192 at 24.

Chapter 3 – The 2023 Survey: Revisiting the 2019 Survey

Deep empathy is the centerpiece of human-centered design. For designers, empathy is not the typical noun version: “I am sorry you had a bad day at work.” Empathy is far more deliberate for designers. It is a verb: understand the status quo and your users’ point of view; try to see and experience their problem(s) like they do.⁶⁰⁵ ~ Jon Khan (2019)

From 2023-2024, I tried to learn more about the individuals and organizations who interact with Canadian judicial decisions and Canadian courts.⁶⁰⁶ To gain insight about their “user experience”—a concept that the Prologue and Chapter 1 discuss—I surveyed 12 sets of individuals and organizations (split into two groups) and provided each of the 12 sets tailored questionnaires:

- Group (A) (the judges who write judicial decisions); and
- Group (B) (the people and groups who read, use, and interact with judicial decisions): Canadian common law s. 96 and appeal courts; lawyers; academics; lawyers that courts employ, *aka* staff lawyers or legal officers; journalists; law students; federal and provincial parliamentarians; Assistant and Associate Deputy Ministers; litigants; legal research, legal publishing, and legal tech organizations; and legal information professionals.

The 2023 Survey relied on quantitative and qualitative questions about judicial independence; decisions; decision-making; decision-writing; decision-reading; court and judicial transparency; and access to justice. Questions sought to provide insight on issues like “what do people need from judicial decisions”; “what do people like or dislike about judicial decisions”; “how do Canadian judges write judicial decisions”; and “is information about courts and judges accessible”; “are decisions long, complex, and not timely”; “would judges be willing to anonymously track their time”; and other related questions. The questions were mostly aimed at

✚ Thank you to the many people who offered input on this chapter and its ideas. My committee offered frank and full feedback and continually helped me improve my thinking about this subject and how I explain my views (Dr. Amy Salyzyn also graciously reviewed an early draft). I’m especially grateful to Dr. Margaret Boittin who helped me develop my method and questions. I also thank the many individuals from Groups A and B who pre-tested the survey for me and offered full and frank feedback: without their help, this project wouldn’t have been possible. Finally, I thank York’s Institute for Social Research who assisted in the initially developing of my methodology and York’s Institutional Research Ethics Board who provided ethics approval for this project.

⁶⁰⁵ Khan, “Life of a Reserve”, *supra* note 4, p 70.

⁶⁰⁶ I embarked on pursuing this prescription far sooner. Since starting my Ph.D. research in 2019, I’ve sought to find ways to follow this prescription. In early 2019, I decided that a large-scale survey would be the least bad way of doing the deep dive. I say least bad because—as I’ll discuss—surveys are notoriously challenging, including generating participation.

my goal of learning more about the issues this dissertation addresses, including understanding more about the user experience of Group (A) and (B).

I want to be candid at the outset and consistent with what Chapter 4 implores about epistemic humility. Despite best efforts in the 2023 Survey, I somewhat failed to learn what I set out to learn about the user experience of Group (A) and (B), especially the user experience of courts, judges, and courts' lawyers. Despite that significant shortcoming, the 2023 Survey data does appear to suggest five meaningful themes about Group (A) and (B) that require exploration:

1. Generating necessary user experience insights for more deliberately designed reforms in Canada's legal system is very difficult and time consuming: despite my attempt to rely on many best practices, many justice system participants were unwilling or unable to facilitate the 2023 Survey.⁶⁰⁷
2. Courts haven't shifted from the expansive views that Chapter 1 outlines: instead, courts may have demonstrated even more expansive views about judicial independence, deliberative secrecy, and judicial confidentiality. In the 2019 Survey, 51% responded to my survey request, and 34% largely participated. In the 2023 Survey, only one court participated despite 51% responding to my request.⁶⁰⁸
3. Generating data about judges is perhaps harder now than historically:⁶⁰⁹ the 2023 Survey nonetheless reverberates conclusions from previous surveys. If asked, judges are willing to share their experience and views.⁶¹⁰
4. Despite some agreement on universal components, universal design for decisions might be an impossible or naïve goal: some lawyers, journalists, individuals, and organizations might prefer the historic traditional fact driven approach to decision-writing while other users prefer the more modern issue-drive approach. The same is likely true for other possible decision structures and their contents.
5. Surveyed respondents—across multiple groups and jurisdictions—may not be getting a good user experience in with judicial decisions or in courts: judicial decisions appear to be consistently long, slow, and complex, and courts don't seem to gather or release

⁶⁰⁷ For example, some organizations weren't willing or able to deploy the survey while other organizations simply ignored my request—which I'm sure greatly reduce participation of lawyers based on the experience of proliferating the invitation through other law societies and organizations (e.g., the Supreme Court Advocacy newsletter or certain law societies).

⁶⁰⁸ Almost no court provided a reason, and many courts altogether ignored me. Some courts immediately said no. Other courts asked to see print or preview versions of the surveys, and those other courts went on to also say no or not communicate further (emails on file with author).

⁶⁰⁹ I do know, at least based on one anecdotal example, that some Canadian judges seem willing to do surveys to provide their input when presented with such a survey (e.g., a judicial contact achieved participation rates well above 50% when conducting a survey in their home court).

⁶¹⁰ Martine Valois *et al*, eds, *The Federal Court of Appeal and the Federal Court: 50 Years of History* (Irwin Law: Toronto, 2021) [Seventy-eight current and retired judges and prothonotaries on the two courts were interviewed and are referred to throughout the book].

enough data. As Chapter 1 suggests, neither judges nor courts appear to truly be meeting their duties of judicial independence and impartiality or basic constitutional rule of law promises. Generally, justice system participants want more plain language and summary style documents as well as more information about Canada’s judges and court processes.

Chapter 3 explains those themes in three parts:

- **Part I** describes the methods on which the 2023 Survey relied. It and *Appendix 1* outline how the 2023 Survey attempted to follow best practices in qualitative and quantitative research.
- **Part II** outlines what the limited data from the 2023 Survey might suggest about the justice system participants in Group (A) and (B). For example, almost no user groups were “against” standardization of content or structure, and most seemed receptive. While some users had hesitations about standardized content, user groups were generally receptive to that idea and the idea of judges anonymously tracking their time. Part II suggests that courts and judges need to re-examine judicial decision-writing (almost every surveyed user group said decisions are infrequently clear and easy to understand, the right length, or timely) and their approach to information sharing (many user groups said they want more information about courts and judges, including how judges are trained). For readers who want a full deep dive into the 2023 Survey data, *Appendix 2* reviews the data by user group.
- **Part III** briefly offers some concluding comments about surveying justice system participants. It discusses challenges and offers thoughts for future research—e.g., how researchers might better access judges or other users. Part III suggests that maybe it’s time to break convention when trying to research what goes on in courts and that that all justice system participants need to think more about embracing a culture of continuous feedback, including far more data gathering and transparency.

Part I: Outlining the 2023 Survey method

Part I briefly describes the method. *Appendix 1* provides more granular information on the method, and it details my efforts to generate a comprehensive dataset of decisions’ users, including the best practices on which the 2023 Survey relied.

i. Describing the dataset and its methodological limits

Almost all the following analysis is limited to 2023 Survey dataset and its respondents (just over 800 individuals and organizations participated (in some fashion) in the 2023 Survey while around over 600 meaningfully participated—*i.e.*, participated in many or most of the questions).

Except for the conclusion that almost all courts were unwilling to participate, conclusions aren't generalizable to either Group (A) or Group (B) for six reasons:

1. The sample size is too small. The low number of respondents precludes anyone's ability to say they truly know much about the user experience of Group (A) and (B), especially Group (A). I can only guess why participation was so low for some individuals in both groups or why some justice system participants weren't willing to support my research, especially because justice system participants had varying responses to my requests.⁶¹¹ Many reasons could explain the lack of non-participation, and I'll discuss possible reasons in Part III. For now, I appreciate that individuals and organizations suffer from survey fatigue and that some individuals and organizations get repeated survey requests. But some institutions don't even respond to requests for surveys, including some courts, the CJC, some law schools, legal tech companies, ADMs, many newspapers, and many parliamentarians. Some organizations were also not even willing to send out survey invitations to their membership while other kinds of the same organizations—including multiple law societies, law schools, provincial legal aid, and news organizations—were willing. Getting past the gate to access survey respondents is quite difficult. That said, many justice system participants demonstrated a willingness to contribute to this research, including retired judges, one court, and hundreds of other individuals.
2. The 2023 Survey doesn't provide representative predictions about a particular unit of observations (e.g., judges or lawyers). The participant rates are insufficient and unrepresentative. For example, I don't provide confidence levels or intervals—e.g., about what unit of observations thinks about judicial decisions. As the units of observation section notes, the survey goal is more modest: explore and understand some parts of the user experience of decisions' users.
3. The 2023 Survey is fully anonymous and confidential. As such, some useful demographic information is suppressed in compliance with the survey's methodology to rely on minimal data suppression. So drawing conclusions by region or age or experience has been made impossible in many cases, and in any event, the sample size is too small for such generalizations.
4. The 2023 Survey doesn't rely on any randomization or random sample. That said, self-selection biases all surveys, including randomized ones.⁶¹² Neither randomization nor statistical methods can ever truly resolve the material difference between people who

⁶¹¹ For example, many law societies were willing to distribute my survey, and that distribution appeared fundamental in generating participation. Other law societies, however, including the jurisdiction in which I went to law and graduate school completely ignored my request despite multiple follow-up requests (Ontario).

⁶¹² People sometimes place considerable (too much) weight on randomized polling data when it's nothing like randomized observational epidemiology data and even that can be flawed (see Peter Atia, "Studying Studies: Part IV – randomization and confounding" (29 January 2018), online: <<https://peterattiamd.com/ns004/>>. Put another way, people keep getting shocked when polling data "fails them" (see Lauren Effron, "Were 2020 election polls wrong? FiveThirtyEight's Nate Silver explains how to interpret polling" (5 November 2020) *ABC News*, online: <<https://abcnews.go.com/Politics/2020-election-polls-wrong-fivethirtyeight-nate-silver-explains/story?id=74038650>>; Ed Gilgore, "What did we learn about political polling in 2020" (26 March 2021) *New York Magazine*, online: <<https://nymag.com/intelligencer/2021/03/how-wrong-were-political-polls-in-2020.html>>).

self-select into a survey and people who don't.⁶¹³ Researchers can only truly resolve self-selection bias through mandatory surveys to an entire unit of observation, e.g., a census or institutional requirement. But even if surveys are mandatory, some participants would still not want to do them (and their answers would carry that bias). Put simply, exogenous and endogenous factors bias most survey data: "Polling data is rarely perfect and often inconclusive or misleading,"⁶¹⁴ and the same is about this survey data.

5. All surveys, including this one, suffer from volunteer and convenience bias: I used a self-selected process with an electronic, web-based survey.
6. Most of the 2023 Survey sample sizes are unequal between provinces despite seeking a pan-Canadian sample: making comparisons—such as this province looks like another province in terms of the data or percentages—with this data would be improper—e.g., it looks like people are more satisfied in one province versus another.

I attempted to account for those seven limitations in six ways (but many limitations still exist):

1. I noted the clear limitations right here and as well as in my analysis.
2. I avoided an extremely "convenienced" sample—e.g., a pool of lawyers or judges I know or a jurisdiction I'm more familiar with than another (e.g., British Columbia over Newfoundland).
3. I ran a pan-Canadian survey of each unit of observation in each common law province.
4. I relied on purposive sampling of the units of observation that are closely affected by and familiar with judicial decisions,
5. I relied on previous and new networks before and during survey deployment to increase potential participation rates.
6. I used an online survey provider and analytical tools that avail machine learning methods, including for open-text analysis.

ii. *How I deployed the survey*

I deployed the survey to Groups (A) and (B) using these methods:

- judges: I relied on four methods: (1) I emailed survey information to the Canadian Superior Court Judges Association ("CJSA") and the CIAJ asking them to deploy to their membership.⁶¹⁵ This CJSA is separate from the CJC, and it represents judges' interests, including their remuneration, and the CIAJ is also separate from the CJC and CJSA; (2) I

⁶¹³ Statistical tools can be used to identify and weight statistical bias (see, e.g., Elias Bareinboim, Jin Tian, & Judea Pearl, "Recovering from Selection Bias in Causal and Statistical Inference" (2014) Proceedings of the Twenty-Eighth AAAI Conference on Artificial Intelligence – Technical Report R-425, online: <http://ftp.cs.ucla.edu/pub/stat_ser/r425.pdf>; Sara Geneletti, Sylvia Richardson & Nicky Best, "Adjusting for selection bias in retrospective, case-control studies" (2009) 10:1 Biostatistics 17.) But they're not reliable across all disciplines or surveys (e.g., some surveys are more prone to selection bias than others—like complaint surveys). And like many statistical tools, they can lead to erroneous conclusions.

⁶¹⁴ Meghana Ranganathan, "Where are the Real Errors in Political Polls? (4 November 2014) *Scientific America*, online: <<https://blogs.scientificamerican.com/guest-blog/where-are-the-real-errors-in-political-polls/>>.

⁶¹⁵ Correspondence on file with author. CSCJA, "Contact Us", online: <<https://cscja.ca/contact-us/>>.

emailed survey information to the CJC;⁶¹⁶ (3) I emailed Chief Justices individually through their legal officers;⁶¹⁷ and (4) I emailed 51 retired judges who had public profiles—either as academics, arbitrators, mediators, *etc.*;⁶¹⁸

- courts: I relied on two methods: (1) I emailed Chief Justices through their legal officers;⁶¹⁹ and (2) I also requested that the CJSA and CJC—if appropriate—encourage courts to have their court, judges, and legal officers participate in the survey;⁶²⁰
- lawyers: I relied on four methods: (1) I tweeted about it on Twitter and posted about it on LinkedIn;⁶²¹ (2) I emailed the Canadian Bar Association asking them to send out survey information to their membership;⁶²² (3) I emailed legal associations asking them to send out survey information to their membership;⁶²³ and (4) I emailed provincial law societies asking them to send out survey information to their membership;⁶²⁴
- academics: I relied on four methods: (1) I emailed law school deans asking them to distribute survey information to their faculty; (2) I emailed the Canadian Association of Law Teachers asking them to distribute survey information to their membership;⁶²⁵ (3) I tweeted about it on Twitter and posted about it on LinkedIn;⁶²⁶ and (4) I directly emailed legal academics with survey information;⁶²⁷
- court legal counsel: I relied on one method: I emailed Chief Justices through their legal officers asking Chief Justices to distribute the surveys to their legal officers;⁶²⁸
- journalists: I relied on three methods: (1) directly emailed journalists who report on legal issues;⁶²⁹ (2) emailed editors of individual news organizations asking them to distribute survey information to their journalists;⁶³⁰ and (3) emailed the Canadian Association of Journalists asking them to distribute survey information to their membership;⁶³¹
- law students: I relied on two methods: (1) emailed law school deans asking them to distribute it law students; (2) tweeted about it on Twitter and posted about it on LinkedIn;⁶³²

⁶¹⁶ Correspondence on file with author. CJC, “Contact Us”, online: <<https://cjc-ccm.ca/en/contact-us>>.

⁶¹⁷ Correspondence on file with author. I had most of these contacts on file from my “Life of a Reserve” project.

⁶¹⁸ Correspondence on file with author.

⁶¹⁹ *Ibid.*

⁶²⁰ Correspondence on file with author.

⁶²¹ Tweet and LinkedIn post on file with author.

⁶²² Correspondence on file with Canadian Bar Association, “Contact the CBA National Office”, online: <<http://www.cba.org/Contact-Us>>.

⁶²³ Correspondence on file with author.

⁶²⁴ Correspondence on file with author.

⁶²⁵ CALT, “The Executive”, online: <<https://www.acpd-calt.org/exe>>.

⁶²⁶ Tweet and LinkedIn post on file with author.

⁶²⁷ Correspondence on file with author.

⁶²⁸ *Ibid.*

⁶²⁹ To identify the key journalists who cover the justice issues, I searched for “judges”, “courts”, and “justice”. “Justice” seemed to generate the most articles. I’d then review the various individuals who appeared to consistently report on legal system issues.

⁶³⁰ Correspondence on file with author.

⁶³¹ CAJ, “Contact us”, online: <<https://caj.ca/index.php>>

⁶³² Tweet and LinkedIn post on file with author.

- MP and MPP: I relied on two methods: (1) directly emailed MPs and MPPs; and (2) emailed survey information to all major parties asking them to distribute survey information to their membership;⁶³³
- litigants: I deployed the survey in two ways: (1) tweeted about it on Twitter;⁶³⁴ and (2) emailed the NSRLP (National Self-Represented Litigants Project) asking them to broadcast the survey on its website;⁶³⁵
- legal research, publishing, and analytics organizations: I relied on two methods: (1) directly emailed survey information to the organizations; (2) filled out contact forms on websites for entities that didn't have a general contact email; and
- legal information professionals: I relied on two methods: (1) directly emailed legal information professionals by examining the Canadian Association of Law Librarians membership list and law schools' library web pages;⁶³⁶ (2) tweeted about it on Twitter.⁶³⁷

iii. *The goals of the cross-sectional 2023 Survey*

Information about how Canadian judges write decisions⁶³⁸ and how individuals and organizations read and interact with Canadian decisions is scant.⁶³⁹ In comparison to the U.S. (where data suggests that length and complexity is a long-standing problem for individuals and organizations) and Australia where judges have participated in numerous qualitative and quantitative surveys,⁶⁴⁰ Canadian courts, judges, and scholars have no or very limited data on Canadians' general or specific views about judicial decisions or their user experience with courts and judges.

⁶³³ Correspondence on file with author.

⁶³⁴ Tweet on file with author.

⁶³⁵ NSRLP, "Contact Us", online: <<https://representingyourselfcanada.com/contact/>>.

⁶³⁶ Correspondence on file with author.

⁶³⁷ CALL, "Home", online: <<https://www.callacbd.ca/>>.

⁶³⁸ While we have guides on writing decisions and anecdote, we lack empirical evidence on this subject. See, e.g., Berry, *supra* note 130; Ross Guberman, *Point Taken: How to Write Like the World's Best Judges* (Oxford University Press: Oxford, 2015); Louise Mailhot & James D Carnwath, *Decisions, Decisions ... A Handbook for Judicial Writing* (Les Éditions Yvon Blais Inc: Cowansville, 1998); Hon JO Wilson, *A Book for Judges* (Minister of Supply and Services Canada: 1980).

⁶³⁹ For some of the U.S. experience and view, see Nicolas Scurich, "Styles of Argumentation in Judicial Opinions (Legitimizing Judicial Decisions)" (2018) 14 Annu Rev Law Soc Sci 205 at 210; see also Dan Simon & Nicholas Scurich, "Lay Judgments of Judicial Decision Making" (2011) 8:4 J Empirical Leg Stud 709; Dan Simon & Nicholas Scurich, "Judicial Overstating" (2013) 88:2 Chicago-Kent L Rev 411; Dion Farganis, "Do Reasons Matter? The Impact of Opinion Content on Supreme Court Legitimacy" (2012) 65 Political Res Q 206 (for a criticism of that analysis, see Chris W Bonneau *et al*, "Evaluating the Effects of Multiple Opinion Rationales on Supreme Court Legitimacy" (2017) 45 Am Political Res 335).

⁶⁴⁰ Gerald Lebovits, "Short Judicial Opinions: The Weight of Authority" (2004) 76:7 New York State Bar Association 64 at 64. For one of the only Canadian perspectives, see Brian Manarin, "216 – Of Tardy Judges and Timely Justice" (2011) 57 CLQ 216; Francis A Leach, "The Length of Judicial Opinions" (1911) 21:2 Yale LJ 141; see also Robert Kingsley, "The Length of Judicial Opinions" (1932) Nebraska L Bull 398.

As Chapters 1-2 discuss, these information gaps are curious and problematic:

- Canadian judges must provide reasoned decisions—at least in most contexts—that Canadians can access (although access is limited by whether a judge chooses to publish or whether individuals pay to get a transcript of unpublished decisions, and Canadians also can't bulk access most courts' decisions).⁶⁴¹ At least some Canadian judges say they write for the “loser”,⁶⁴² and theoretically, all judge should be writing for the “public”.⁶⁴³ Yet most of what we know about how judges write and most of what judges know about the individuals who read decisions is based on intuition and anecdote.
- Canadian courts must be accountable and transparent to the public. Yet most of what we know about user experiences with courts and views about courts are based on anecdote and very sparse data. The same is true about court performance.

The 2023 Survey is a cross-sectional survey (*i.e.*, a descriptive study that doesn't try to make predictions) that sought to fill a very small part of these information gaps. The study goal was to record some information about how some judges write decisions or about how some individuals and organizations interact with decisions as well as information on court data, court transparency, access to justice, and innovation. The goal wasn't to manipulate variables to draw overarching conclusions or make any overarching predictions based on the 2023 Survey data.⁶⁴⁴ Aside from the conclusion about courts and their hesitance to participate, I **don't** support any other generalizable conclusion.

iv. *The overall survey design*

Participants completed the survey online in Qualtrics, an online survey platform,⁶⁴⁵ and I relied on Qualtrics for five reasons:

1. It's one of the most used online survey tools for Canadian academic institutions.⁶⁴⁶
2. It facilitates survey data being kept secure and backed up in Canada.⁶⁴⁷

⁶⁴¹ Sheppard, *supra* note 48 at paras 22, 25, 55.

⁶⁴² I have heard similar comments from judges to whom I have posed this question. For the Canadian, Australian, and U.S. judiciary's perspectives, see, e.g., Hon John I Laskin, “Structure and Sufficiency”, *supra* note 131).; Hon Justice Beazley, “Judgement Writing in Final and Indeterminate Courts of Appeal: ‘A Dalliance on a Curiosity’” (2015), online: <<http://www.judicialcollege.vic.edu.au/sites/default/files/Justice%20Beazley%20AO25082015.pdf>>; Robert A Leflar, “Some Observations Concerning Judicial Opinions” (1961) 61 Colum L Rev 810 at 813-814.

⁶⁴³ Sheppard, *supra* note 48.

⁶⁴⁴ See, e.g., Wikipedia, “Cross-sectional study” (last edited on 25 May 2025) online: <https://en.wikipedia.org/wiki/Cross-sectional_study>.

⁶⁴⁵ Qualtrics XM, online: <<https://www.qualtrics.com/>>.

⁶⁴⁶ See, e.g., UBC Office of Research Ethics, “Using Online Surveys”, online: <https://ethics.research.ubc.ca/sites/ore.ubc.ca/files/documents/Online_Survey-GN.pdf>.

⁶⁴⁷ *Ibid.*

3. It provides anonymous links for surveys and facilitates sending reminder emails.⁶⁴⁸
4. It facilitates sophisticated analysis without having to rely on any other software.⁶⁴⁹
5. It guarantees confidentiality. It will not record any personal information or browser metadata, and it will remove any contact association.⁶⁵⁰

Each survey had a similar structure:

- introduction: each unit of observation landed on a unique, personalized landing page that provided a consent form and that introduced my research, the survey, and links to my research website⁶⁵¹ in paragraphs before unique paragraphs on their survey topics;
- survey sections: each questionnaire section had separate sections;
- question type: most questions were closed-ended. But I included some open-ended questions with “other” open-text option to ensure richness to survey results that closed-ended questions would not provide.⁶⁵² Participants encountered six kinds of questions throughout the survey, and 11 out of 12 surveys include conditional display logic as follow-up questions to them: 1. Drag options into desired order; 2. Pick all applicable options; 3. Pick one option; 4. Open-text; 5. Pick one option from a dropdown menu; and 6. Drag applicable options into box and into desired order; and
- demographic information: 11 out of 12 surveys asked for optional demographic information in ways that sought to reduce re-identification risks.⁶⁵³ The court survey wasn’t anonymous as it sought official institutional responses from courts.

Part II: What I learned about judicial decisions’ users

I was only minimally successful in learning more about decisions’ two user groups:

- For Group (A), I mostly only accessed the experiences of retired judges. So I mostly failed at my goal to learn more about judges’ experiences. But as I note below, the participation rate of retired judges was moderate (27%), and sitting judges also participated in the lawyer survey from Group (B). Accordingly, at least some judges do appear to support this kind of research, including sitting judges who were willing to pre-test the judges’ survey.
- For Group (B), participation was mixed. Some participant groups simply didn’t participate—e.g., only 1/28 courts participated and no lawyers that courts employed participated. Other participant groups had low response rates. So my goal to learn more

⁶⁴⁸ *Ibid.*

⁶⁴⁹ Qualtrics XM, “Online Survey Software”, online: <<https://www.qualtrics.com/core-xm/survey-software/>>.

⁶⁵⁰ Settings selected in my surveys.

⁶⁵¹ Jon Khan, “Jon Khan: Phd Researcher & Lawyer”, online: <jon-khan.com>) and a research project website that outlines previous graduate research; datasets I generate; and a FAQ section on my research and implications (“Deliberate Legal Design”, online: <deliberatelegaldesign.com>.)

⁶⁵² Krosnick & Presser, *supra* note 1232 at 9.

⁶⁵³ For example, the court legal counsel survey asks minimal demographic questions to limit associating them with a particular court or province. And the MP and MPPs doesn’t ask what province they serve in.

about the people who interact with judicial decisions was only partially successful. Nonetheless, the gathered data does offer some useful insights about some individuals' and organizations' user experiences in Canadian courts.

Part II explains what I did learn from Group (A) and (B):

- It first provides granular information on Group (A).
- It then discusses themes that appear to have emerged from Group (B).
- It concludes by providing granular information about the court survey from Group (B).

For granular details about each of the users in Group (B), see *Appendix 2*: as noted, it walks through the Group (B) survey details in granular detail, and it also includes all the questions asked and the specific data supporting each response. If you're curious about the level of detail in *Appendix 2*, the judge and court survey analysis below mirrors the detail in the appendix.

i. Group (A): the judges who write judicial decisions

I designed the survey so that retired judges could answer, and the survey introduction provided a note for retired judges about how to answer questions.⁶⁵⁴ I emailed 51 retired judges who had public profiles as academics, counsel, mediators, arbitrators, *etc.* 27% (14 judges) responded and participated: 13 judges answered most questions and one judge answered some questions.⁶⁵⁵

While retired judges might have more free time than sitting judges, the individuals I contacted were in demanding careers. The 27% participation rate of retired judges isn't predictive of sitting judges or future surveys (but it seems promising). So if courts proliferated academic surveys or interview requests within their court—or did their own surveys—judges seem to want to participate and share their experiences.⁶⁵⁶ Some judges also decided to take the lawyer survey and answer most questions, and that reality indicated the same possibility about judges' willingness to participate. In short, the 2023 Survey shows that some judges are willing to participate and that answers can illuminate their experience and areas for reform and innovation

⁶⁵⁴ It provided these prompts: Questions about your general practice or experience: provide answers about what your general practice or experience would have been when you were an active judge. Questions about your views: provide answer that reflect your view as of today.

⁶⁵⁵ Judge Survey, Q1.2.

⁶⁵⁶ In speaking with a judge who conducted survey research in his own jurisdiction, participation rates were very high. But much of that internal research remains internal and dark to the public or researchers. At the very least, it should become available after a suitable retention period.

that could improve their user experience, and by consequence, everyone who appears before them or whom their decisions affect.

Had more judges participated, the results could've been very illuminating based on the answers of the retired judges who took the surveys. Researchers, courts, and organizations must continue to explore judges' user experience, including through further qualitative and quantitative methods.

The judge survey asked judges four blocks of questions on judicial role and workload; hearing preparation; making legal and factual findings; decision-writing; and finally optional demographic questions.

Demographics: retired judges from seven courts were willing to participate

11 judges provided some demographic information. Judges from seven courts of varying ages and experiences participated, including trial, appellate, and SCC judges:⁶⁵⁷

- At least in the 51 judges I emailed, most retired judges that are currently working in public roles are male (80%). But other judges—including female ones—could be working in other roles without public profiles. While I don't heavily subscribe to data on gender differences in judging, previous research has suggested that a difference exists based on either gender, sex, or both.
- Surveyed judges sat on multiple different courts. Perhaps judges from multiple courts share the view that this kind of research is appropriate;
- As discussed below in the lawyer survey, one retired judge took the lawyer survey and four sitting judges took the lawyer survey (so even sitting judges are willing to make time).

Because I couldn't disclose identifying data, I didn't discuss judges' views based on their former court or judicial role (trial versus appellate lawyer).

Judicial role and workload: at least some judges likely do lack time to write and edit

The judge survey included five questions in this block, and survey answers suggest these themes:⁶⁵⁸

⁶⁵⁷ Judge Survey Q7.2.

⁶⁵⁸ Here are the five questions:

- Judges may need more out of court time for tasks related to writing: most surveyed judges said they lacked adequate writing time at some point in their careers.⁶⁵⁹ Half the surveyed judges said they lacked time to edit; some said they lacked time to read caselaw and to think; and a few said they lacked time to review evidence and rest and reflect.⁶⁶⁰ The reality of judging might also have changed since the surveyed judges were trial judges, including more mega trials and evidentiary records (so the task of judicial decision-writing might be more onerous). Some trends likely exist in certain courts, provinces, and jurisdictions where some judges might have more time than others, but for now, courts are left guessing about where their judges might lack time.⁶⁶¹
- Some judges may be anonymously willing to track their time from time to time: 25% of surveyed judges said yes, and 16% said maybe.⁶⁶² Of the surveyed judges who said no, only one judge said one judge raised judicial independence as a reason, and no judge raised deliberative secrecy. Instead, most surveyed judges said didn't they think the data would be useful; some judges said they didn't have a good perspective as they were retired; and one judge said too time consuming.⁶⁶³ Notably, a retired judge who took the lawyer survey said yes, two sitting judges said maybe; and two said no.⁶⁶⁴ If courts or judicial organizations presented the chance to track such data to judges, some judges might participate, especially if the data gathering was presented as useful—e.g., more remuneration, more writing and reading time, more support for the court, more individual judges, finding more ways to assist self-litigants, innovation generally, *etc.* I raise this point because one judge noted that “I gave up time tracking when appointed”,⁶⁶⁵ and

-
1. Q3.2. How often do you feel you lack adequate time to write oral and written judicial decisions (Pick one option) – *Shown to all judges*
 2. Q3.3. In your writing process, what do you feel you lack the time to do? (Pick all applicable options) – *Shown to judges who didn't indicate “never” in the previous response*
 3. Q3.4. Periodically, Canadian judges could anonymously track two things for research, reform, or remuneration purposes:
 - a) their working hours for 3-5 days, including tracking time spent hearing cases, writing decisions, reviewing evidence, reading submissions, reading cases, etc.;
 - b) and the time it takes to write one criminal or civil decision, including tracking time spent drafting, editing, research, etc.
 Would you anonymously track these two things? (Pick one option) – *Shown to all judges*
 4. Q3.5. (Pick all applicable options) – *Shown to judges who said no to the previous question*
 5. Q3.6. Download this fillable PDF, track your time, and follow the PDF instructions. – *Shown to judges who said “yes” or “maybe”*

⁶⁵⁹ Judge Survey Q3.2: Frequently (35.71% or 5 judges); Seldom (28.57% or 4 judges); Never (21.43% or 3 judges); Sometimes (14.29% or 2 judges).

⁶⁶⁰ Judge Survey Q3.3: Lack time to edit (54.55% or 6 judges); Lack time to read jurisprudence (36.36% or 4 judges); Lack time to think (36.36%) or 4 judges); Lack time to review evidence (27.27% or 3 judges); Lack time to rest and reflect (27.27 or 3 judges); Lack time to read submissions (18.18% or 2 judges); Lack time to outline (9.09% or 1 judge); lack time to get to it. It seldom happened” (9.09% or 1 judge).

⁶⁶¹ See Khan, “If I Had More Time”, *supra* note 436.

⁶⁶² Judge Survey Q3.4: No (58% or 7 judges); yes (25% or 3 judges); (17% or 2 judges).

⁶⁶³ Judge Survey Q3.4: Do not think the data would be useful (42.86% or 3 judges); I am retired (28.56% or 2 judges); Too time consuming (14.29% or 1 judge); Would compromise judicial independence (14.29% or 1 judge); Not relevant. I gave up time tracking when appointed (14.29% or 1 judge).

⁶⁶⁴ Lawyer Survey Q3.7.

⁶⁶⁵ Judge Survey Q3.4: Do not think the data would be useful (42.86% or 3 judges); I am retired (28.56% or 2 judges); Too time consuming (14.29% or 1 judge); Would compromise judicial independence (14.29% or 1 judge); Not relevant. I gave up time tracking when appointed (14.29% or 1 judge).

other judges may feel the same way. So judges likely need to understand a meaningful basis for the tracking.

Figure 9 on the following page showcases the kind of time tracking evidence that courts could attempt to occasionally gather to ensure adequate remuneration or more support for the court, individual judges, litigants, innovation, *etc.* Tools likely also exist to capture this data internally without judges having to track it.⁶⁶⁶

⁶⁶⁶ In speaking with a system insider, I was told that some courts could track judges' keystroke data—e.g., how long they're in Word—but that courts don't turn the feature on.

Figure 9: Time Tracking Sheet

Anonymous time tracking survey of Canadian superior, appellate, and federal court judges—2023

Aside from one [Ontario](#) example where one judge tracked how long it took him to write one judicial decision, Canada has no good data on judicial workload. To fill some of this data gap, this document asks you to track two aspects of your time.

1. Track any time (including non-business hours) spent on the following activities for three typical workdays. Please estimate to the nearest ¼ hour.

Task	Workday 1	Workday 2	Workday 3
General keeping up with the law (reading cases, statutes, journals, books, legal podcasts, <i>etc.</i>)	hours	hours	hours
Writing/preparing written decisions	hours	hours	hours
Writing/preparing oral decisions	hours	hours	hours
Preparing for next day	hours	hours	hours
General administrative work and correspondence	hours	hours	hours
Conferring with other judges, court staff, or clerks—including meetings	hours	hours	hours
Wait time (for lawyers, parties, witnesses, court staff, <i>etc.</i>)	hours	hours	hours
Civil trial	hours	hours	hours
Criminal trial	hours	hours	hours
Civil motions (pre-trial conferences, interlocutory matters, <i>etc.</i>)	hours	hours	hours
Criminal non-trial proceedings (bail, guilty pleas, sentencing, <i>etc.</i>)	hours	hours	hours
Travelling for work	hours	hours	hours
Anything else related to your work:	hours	hours	hours

2. Track any time (including non-business hours) spent writing one criminal or civil trial decision from beginning to end. Please estimate to the nearest ¼ hour.

Background information & task	Background information and time
Please list subject matter—e.g., family, criminal, personal injury, corporate commercial, <i>etc.</i>	
Please list total number of litigants (plaintiffs, defendants, third parties)—e.g., two, three, <i>etc.</i>	parties
Please list total number of trial days—e.g., one day, two days, <i>etc.</i>	days
Please list hours spent on out of court research and review time—e.g., reviewing evidence, applicable law, statutes, written arguments, transcripts, research memorandum, <i>etc.</i>	hours
Please list hours spent on discussions with law clerks, articling students, legal counsel the Court employees, or judicial colleagues	hours
Please list hours spent on decision drafting and editing	hours

Once complete, please upload the saved PDF (to go to the upload page, either click [here](#) or copy and paste this link https://singuser0e79fa1b.ca1.qualtrics.com/jfe/form/SV_9HLg66JH74bzZwG).

Hearing, trial, and appeal preparation: unsurprisingly, applicable case law appears very important to preparation for some judges

The judge survey included five questions in this block, and survey answers suggest these themes:⁶⁶⁷

- Reviewing applicable case law may be a large part of how some judges prepare for hearings, trials, or appeals: surveyed judges prepped in a variety of ways, but half of the surveyed judges said reviewing case law.⁶⁶⁸ This possibility is likely unsurprising to many. Considering, however, just how many applicable authorities now exist for each proposition, judges may not be reviewing the “best” authority or one with the most similar facts to the dispute before them. What Chapter 1 suggests—e.g., the possibility of more standardized content—could reduce the need for judges to have to read multiple authorities to prepare for matter. While some academics remain skeptical, LLMs or similar technology also hold promise here for readily updating content. The same could be true if content were fully accessible, like what Chapter 1-2 discuss about a “Judicial Git-Hub” where restatements of law could be easily standardized and updated (and data could exist about use and edits).
- Some judges might want help being versed in the applicable law and material facts before hearings, trials, and appeals: few surveyed judges said never, and some surveyed judges indicated they sometimes would’ve wanted the help.⁶⁶⁹

⁶⁶⁷ Here are the five questions:

1. Q4.2. How do you usually prepare for hearings—e.g., applications, petitions, motions, etc.? (Pick all applicable options) – *Shown to all judges*
2. Q4.3. How do you usually prepare for trials? (Pick all applicable options) – *Shown to all judges*
3. Q4.4. How do you usually prepare for appeals? (Pick all applicable options) – *Shown to all judges*
4. Q4.5. Do you wish you were more versed in the applicable law before hearings, trials, or appeals—e.g., knowing the legal framework, leading cases, etc.? (Pick one option) – *Shown to all judges*
5. Q4.6. Do you wish you were more versed in the material facts before hearings, trials, or appeals—e.g., what facts you will need to find to make a decision? (Pick one option) – *Shown to all judges*

⁶⁶⁸ Judge Survey Q4.2: Review applicable case law (22% or 6 judges); Completely read the record in paper format (18.5% or 5 judges); Skim the record in paper format (15% or 4 judges); Completely read the record in electronic format (15% or 4 judges); Have memo prepared (15% or 4 judges); Frequently don’t get materials in time to review them (4% or 1 judge); Look at previous outlines or templates from similar matters (4% or 1 judge); see also Judge’s Survey Q4.4: Review applicable case law (58.33% or 7 judges); Completely read the record in paper format (50.00% or 6 judges); Have my law clerk, articling student, or the Court’s legal counsel (aka staff lawyer or legal officer) write me a memo (50.00% or 6 judges); Completely read the record in electronic format (41.67% or 5 judges); Skim read the record in paper format (25.00% or 3 judges); Skim the record in electronic format (8.33% or 1 judge); Look at previous outlines or templates from similar matters to help orient myself (8.33% or 1 judge); Review factums and relevant portions of the record (8.33% or 1 judge).

⁶⁶⁹ Judge Survey Q4.5: Sometimes (33.33% or four judges); Seldom (33.33% or four judges); Frequently (16.67% or 2 judges); Never (16.67% or 2 judges); Judge’s Survey Q4.6: Seldom (41.67% or 5 judges); Sometimes (33.33% or four judges); Never 8.33% or 1 judge).

- Some judges may have enough time to prepare, and others may not: that some surveyed judges said they frequently had enough time to prepare was surprising.⁶⁷⁰ I'd hypothesize that preparation time is likely correlated with the level of court in which a judge sits, which seems like common sense idea. Some trial judges, however, likely can find prep-time once a trial starts if they're not sitting on other matters concurrently (e.g., a day here and there in the trial or weeks of on and off trials).

Making factual and legal findings: some judges face significant amounts of irrelevant evidence and few very "novel" issues

The judge survey included 12 questions in this block, and survey answers suggest these themes:⁶⁷¹

⁶⁷⁰ Judge Survey Q4.3: Completely read the record in electronic format (41.67% or 5 judges); Review applicable case law (41.67% or 5 judges); Completely read the record in paper format (33.33% or 4 judges); Skim the record in paper format (25.00% or 3 judges); I frequently do not get applicable materials in time to review them (16.67% or 2 judges); Have my law clerk, articling student, or the Court's legal counsel (aka staff lawyer or legal officer) write me a memo (16.67% or 2 judges); I do not hear trials (16.67% or 2 judges); I frequently do not have time to prepare (8.33% or 1 judge); Look at previous outlines or templates from similar matters to help orient myself (8.33% or 1 judge); Judge's Survey Q4.4: Review applicable case law (58.33% or 7 judges); Completely read the record in paper format (50.00% or 6 judges); Have my law clerk, articling student, or the Court's legal counsel (aka staff lawyer or legal officer) write me a memo (50.00% or 6 judges); Completely read the record in electronic format (41.67% or 5 judges); Skim read the record in paper format (25.00% or 3 judges); Skim the record in electronic format (8.33% or 1 judge); Look at previous outlines or templates from similar matters to help orient myself (8.33% or 1 judge); Review factums and relevant portions of the record (8.33% or 1 judge).

⁶⁷¹ Here are the 12 questions:

1. Q5.2. Do you have time—either before, during, or after a hearing, trial, or appeal—to read the judicial decisions that lawyers or self-represented litigants give you? (Pick one option) – *Shown to all judges*
2. Q5.3. Would you read applicable judicial decisions before hearings, trials, or appeals if you had adequate time? (Pick one option)– *Shown to all judges who did not say always in the previous answer*
3. Q5.4. Do lawyers or self-represented litigants rely on too many or unhelpful judicial decisions in hearings, trials, or appeals? (Pick one option) – *Shown to all judges*
4. Q5.5. How do you determine which judicial decisions are most applicable to the decision you are writing? (Pick all applicable options)
5. Q5.6. (Pick all applicable options) – *Shown to all judges*
6. Q5.7. (Pick one option) – *Shown to all judges who selected reviewing decisions from their jurisdiction in the previous question*
7. Q5.8. How frequently do you review judicial decisions from other jurisdictions? (Pick one option) – *Shown to all judges who selected reviewing decisions from other jurisdictions in question five*
8. Q5.9. How often do hearings, trials, or appeals involve significant amounts of immaterial or irrelevant evidence? (Pick one option) – *Shown to all judges*
9. Q5.10. How often do unique factual issues arise in hearings, trials, or appeals—e.g., neither myself nor my colleagues have ever heard a case with facts like this one? (Pick one option) – *Shown to all judges*
10. Q5.11. Would you like tools that indicate what facts are relevant and material in hearings, trials, and appeals—e.g., based on subject matter, a list of the facts that judges typically must find or resolve and the kinds of evidence for such facts? (Pick one option) – *Shown to all judges*
11. Q5.12. How often do novel legal issues arise in hearings, trials, and appeals—e.g., neither myself nor my colleagues have ever heard a case with legal issues like this one? (Pick one option) – *Shown to all judges*
12. Q5.13. Would you like tools that indicate what legal decisions, legislation, and principles are most applicable in hearings, trials, and appeals—e.g., based on subject matter, a list of five key cases and a set of legal principles? (Pick one option)– *Shown to all judges*

- Some judges may have enough reading time, and others may not: again, that surveyed judges said they frequently had time after to read all they needed to read was surprising.⁶⁷² It could explain the increasing time that parties tend to wait for decisions, which multiple studies have now suggested is a pan-Canadian issue, including at the SCC.⁶⁷³ The point is also reassuring as it suggests the sheer diligence of Canada's judiciary.
- The party presentation principle appears to be a driving force in how judges prepare: half the surveyed judges appear to rely on counsel to let them know the applicable authorities.⁶⁷⁴ This point bears significant attention: if judges are truly receiving a lot of irrelevant facts⁶⁷⁵ and law,⁶⁷⁶ like most surveyed judges said, courts must find ways to hone judges' attention.
- Novel factual and legal issues appear rare: surveyed judges said that novelty wasn't a huge part of their job either factually⁶⁷⁷ or legally.⁶⁷⁸ Some of the judges who took the lawyer survey had slightly different views with two saying they regularly experienced novel and unique factual⁶⁷⁹ and legal issues.⁶⁸⁰
- Some judges may want help with determining the applicable law and applicable facts: While surveyed judges thought they mostly knew what facts they needed to find,⁶⁸¹ they said they would have been interested in tools to experiment with for highlighting the most applicable law and legal principles⁶⁸² (something that LLMs will be able to do with more accuracy in coming years or other summation tools). The same findings were mostly true

⁶⁷² Judge Survey Q5.2: always (50% or 6 judges); frequently (33.33% or 4 judges); and sometimes (16.67% or 1).

⁶⁷³ See, e.g., Khan, "If I Had More Time", *supra* note 436.

⁶⁷⁴ Judge Survey Q5.5: Read some of the cases the parties gave me to determine which ones are applicable (58.33% or 7 judges); Rely on counsel (50.00% or 6 judges); Have my law clerk, articling student, or Court's legal counsel conduct research on the applicable law (41.67% or 5 judges); Read all the cases the parties gave me to determine which ones are most applicable (41.67% or 5 judges); Discuss it with my law clerk, articling student, or the Court's legal counsel (aka staff lawyer or legal officer) (33.33% or 4 judges); Rely on previous, similar decisions that I wrote (25.00% or 3 judges); Skim some of the cases the parties gave me to determine which ones are applicable (25.00% or 3 judges); Discuss or ask my colleagues—e.g., do they know a leading case that provides a summary of applicable principles (16.67% or 2 judges); Skim all the cases the parties gave me to determine which ones are applicable (16.67% or 2 judges); Have my law clerk, articling student, or Court's legal counsel tell me which cases counsel gave me are applicable (8.33% or 1 judge).

⁶⁷⁵ Judge Survey Q5.9: Frequently (66.67% or 8 judges); Sometimes (25% or 3 judges); and Seldom (8.33% or 1 judge).

⁶⁷⁶ Judge Survey Q5.4: Frequently (75% or 9 judges); Sometimes (16.67% or 2 judges); and Always (8.33% or 1 judge).

⁶⁷⁷ Judge Survey Q5.10: Seldom (58.33% or 7 judges); Sometimes (33.33% or 4 judges); Frequently (8.33% or 1 judge).

⁶⁷⁸ Judge Survey Q5.12: Sometimes (50% or 6 judges); Seldom (41.67% or five judges); Never (8.33 or 1 judge).

⁶⁷⁹ Lawyer Survey Q4.6: Sometimes (53.29% or 170 lawyers); Seldom (22.88% or 73 lawyers); Frequently 21.32% or 68 lawyers); Always (1.88% or 6 lawyers); Never (0.63% or 2 lawyers).

⁶⁸⁰ Lawyer Survey Q4.8: Sometimes (50.16% or 160 lawyers); Seldom (32.92% or 105 lawyers); Frequently 14.73% or 47 lawyers); Always (1.88% or 6 lawyers); or Never (1.88% or 6 lawyers).

⁶⁸¹ Judge Survey Q5.11: I had all the tools I needed (75% or 9 judges); Maybe. Such tools might be nice to have or to experiment with (25% or 3 judges).

⁶⁸² Judge Survey Q5.13: Maybe. Such tools might have been nice to have or to experiment with (50% or 6 judges); I had all the tools I needed (41.67% or 5 judges); Yes (8.33% or 1 judge).

of the judges who took the lawyer survey.⁶⁸³ This point seems unsurprising considering the numerous, superfluous authorities that parties give judges. Finally, while surveyed judges try to keep up with caselaw,⁶⁸⁴ surveyed judges often didn't review decisions in a way that would "sync" them up with other jurisdictions (while consistency may occur, judges are likely playing a bit of catch up as they may lack time to review new decisions on a prompt basis).⁶⁸⁵ While some provincial variation in legal principles is to be expected, a larger amount may exist in areas of federal jurisdiction, including criminal and family law (at least the aspects that are subject to federal jurisdiction), and where you live really shouldn't dictate a criminal law outcome with a carceral sentence.

Decision-writing: some judges do say they mostly write for all parties and the loser

The judge survey included 33 questions in this block, and survey answers suggest these themes:⁶⁸⁶

⁶⁸³ Lawyer Survey Q.4.9: Maybe. Such tools might be nice to have or experiment with (57.99% or 185 lawyers); Yes. (27.59% or 88 lawyers); No. I have the tools I need (14.42% or 46 lawyers).

⁶⁸⁴ Judge Survey Q5.6: Review decisions from my jurisdiction (83.33% or 10 judges); Review decisions from other jurisdictions, including the SCC (58.33% or 7 judges); Attend judges training in my province (41.67% or 5 judges); Attend judges training outside my province (33.33% or 4 judges); I selectively try to focus on the subject matters I hear case in more—e.g., family law (33.33% or 4 judges); External electronic mailing list (16.67% or 2 judges); I do not have much time to keep up (8.33% or 1 judges); Internal electronic mailing list (8.33% or 1 judges).

⁶⁸⁵ Judge Survey Q5.7: Weekly (71.43% or 5 judges); Monthly (28.57% or 2 judges).

⁶⁸⁶ Here are the 33 questions:

1. Q6.2. As a judge, do you think of yourself as a professional writer? (Pick one option)— *Shown to all judges*
2. Q6.3. Rank the group(s) you try to write for in order of importance. (Drag applicable options into box and into desired order)— *Shown to all judges*
3. Q6.4. What are your goals in decision-writing for your oral and written decisions? (Pick all applicable options)— *Shown to all judges*
4. Q6.5. Does the decision-writing process for your oral or written decisions cause you to change your mind—e.g., I planned to convict, but I changed my mind and acquitted? (Pick one option) – *Shown to all judges*
5. Q6.6. How do you ensure you respond to parties' arguments, evidence, or legal authorities? (Pick all applicable options) – *Shown to all judges*
6. Q6.7. How do you ensure you understand parties' arguments, evidence, or legal authorities? (Pick all applicable options) – *Shown to all judges*
7. Q6.8. How do you generally begin writing your oral or written decisions? (Pick one option)— *Shown to all judges*
8. Q6.9. What do use to create your outline? (Pick all applicable options)— *Shown to all judges who said outline in the previous question*
9. Q6.10. Why do you not use an outline? (Pick one option)— *Shown to all judges who said just start writing in question seven*
10. Q6.11. Why do you have your law clerk, articling student, or the Court's legal counsel (aka staff lawyer or legal officer) start your first draft? (Pick all applicable options)— *Shown to all judges who said they rely on these individuals in question seven*
11. Q6.12. Do you use templates when writing your oral or written decisions—e.g., an outline of the structure that you typically rely on in your decisions? (Pick one option)— *Shown to all judges who said they rely on templates in the previous question*

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12. Q6.13. Did you make those templates? (Pick one option) – *Shown to all judges who said they rely on templates in Q6.12*
 13. Q6.14. Who provided the templates? (Pick all applicable options) – *Shown to all judges who said they said the templates were provided to them in the previous question*
 14. Q6.15. Would you share those templates? (Pick all applicable options) – *Shown to all judges who said they rely on templates in Q6.12*
 15. Q6.16. Do you use any checklists in your decision-making and decision-writing process—e.g., a checklist that lays out the steps in bail, custody, etc.? (Pick one option) – *Shown to all judges*
 16. Q6.17. Did you make the checklists? (Pick applicable option) – *Shown to all judges who said they rely on checklists the previous question*
 17. Q6.18. Who provided the checklists? (Pick all applicable options) – *Shown to all judges who said templates were provided to them in Q6.16*
 18. Q6.19. Would you share those checklists? (Pick all applicable options) – *Shown to all judges who said templates were provided to them in Q6.16*
 19. Q6.20. In your oral and written decisions, do you mostly prefer to use the issue-driven structure where applicable facts, arguments and law stay together; the fact-driven structure; or similar versions of these structures? (Pick one option) – *Shown to all judges*
 20. Q6.21. Why do you prefer the issue-driven structure? (Pick all applicable options) – *Shown to all judges who said they prefer the issue-driven structure in Q6.20*
 21. Q6.22. Why do you prefer the fact-driven structure? (Pick all applicable options) – *Shown to all judges who said they prefer the fact-driven structure in Q6.20*
 22. Q6.23. Why do you not consistently use the issue-driven structure? (Pick all applicable options) – *Shown to all judges who said they prefer the fact-driven structure in Q6.20*
 23. Q6.24. Do you wish counsel gave you frameworks—an agreed upon set of legal principles similar to a jury charge—for your decision-writing? (Pick one option) – *Shown to all judges*
 24. Q6.25. Canadian judicial decisions could rely on more standardized structures with headings and sections like these ones:
 - a) introduction/overview: describes what the decision is about;
 - b) issues: describes the legal issues the decision addresses;
 - c) analysis: describes the judge's decision about each legal issue and their analysis of the parties' arguments, applicable facts, and law;
 - d) conclusion: summarizes conclusions;
 - e) order and costs: includes the order and who is responsible for costs.Would you consider using standardized structures in your oral or written decisions? (Pick one option) – *Shown to all judges*
 25. Q6.26. Canadian judicial decisions could rely on more standardized content such as plain language, standardized legal tests that would be similar to standardized jury instructions. Would you consider using standardized content in your oral or written decisions? (Pick one option) – *Shown to all judges*
 26. Q6.27. Do you think judicial independence precludes your Court from encouraging you to rely on standardized content and structures in your oral or written decisions? (Pick one option) – *Shown to all judges*
 27. Q6.28. Do you think judicial independence precludes governments from encouraging you to rely on standardized content and structures in your oral or written decisions? (Pick one option) – *Shown to all judges*
 28. Q6.29. Why might standardizing content or structure infringe judicial independence? – *Shown to all judges who didn't say no in the previous question*
 29. Q6.30. Rank the most important parts of your oral and written decisions. (Drag applicable options into box and into desired order) – *Shown to all judges*
 30. Q6.31. Rank the hardest parts of your oral and written decisions to write. (Drag applicable options into box and into desired order) – *Shown to all judges*
 31. Q6.32. What helps you to issue some oral or written decisions faster than others? (Drag applicable options into box and into desired order) – *Shown to all judges*

- Some judges do (or somewhat do) see themselves as professional writers: half the surveyed judges said they saw themselves as professional writers because writing reasons is intrinsic to and necessary to their job as a decision maker.⁶⁸⁷ While I didn't ask the journalists or academics if they considered themselves professional writers in their surveys, one would assume that most journalists would say yes and that some academics might. When I first discussed this idea and added it to the survey,⁶⁸⁸ I was skeptical that many judges would say yes as I'd previously concluded that "decision-writing is still not inherent or intrinsic to decision-making."⁶⁸⁹ I still agree with that point, but as Chapter 1 discusses, judicial independence and impartiality likely require the exercise of decision-writing for decision-making. Put another way, it's now inherent and intrinsic to judicial independence and impartiality, and as Chapter 1 stresses, judges seem to need help meeting this obligation because many of them are likely not "professional" writers in the same way journalists are. Think about it this way: if a journalist's final product was consistently "bad" writing, they wouldn't be delivering a good user experience for their reader, and they'd like get fired. Yet some judges are often producing "bad" writing that doesn't meet user experience goals as Chapter 3 generally suggests: writing is infrequently clear, the right length, or timely. And if this is true, some judges are frequently not meeting the duty to issue accessible decisions.
- Some judges may primarily try to write for all parties and the loser: at least for surveyed judges, and the public was the next target audience followed by the court of appeal.⁶⁹⁰
- Some judges' main goal in writing decisions is explaining the result to the parties: every surveyed judge said explaining the result for the parties followed by ensuring that people understand the result for their decision.⁶⁹¹
- Decision-writing does cause some judges to change their minds: no judge said it didn't happen,⁶⁹² and this point should be unsurprising considering Chapter 1.
- Note-taking seems central to the decision-writing process for some judges: it's what surveyed judges relied on to make sure they understand and respond to parties'

32. Q6.33. What helps you to issue shorter oral or written decisions? (Drag applicable options into box and into desired order)– *Shown to all judges*

33. Q6.34. What prevents you from issuing more oral decisions? (Pick all applicable options) – *Shown to all judges*

⁶⁸⁷ Judge Survey Q6.2: Yes. I am a professional writer. Writing reasons was intrinsic to and necessary for my job as a decision-maker (50% or 6 judges); Somewhat. My main job is decided factual and legal issues. Writing oral and written decisions is important to my main job, but I do not think of myself as a professional write (33.33% or 4 judges); No (8.33% or 1 judge); (No. 8.33 or 1 judge); Anything else: "I don't know what you mean by professional writing. I am a very good writer (8.33% or 1 judge).

⁶⁸⁸ Caroline Mandell was the first person to raise this idea with me. And I thank her for discussions on this issue.

⁶⁸⁹ Khan, "Life of a Reserve", *supra* note 4, p 15.

⁶⁹⁰ Judge Survey Q6.3: All parties (90.91% or 10 judges); The loser (90.91% or 10 judges); The public (72.73% or 8 judges); The court of appeal (54.55% or 6 judges); Other judges (45.45% or 5 judges).

⁶⁹¹ Judge Survey Q6.4: Explain the result to the parties (100.00% or 12 judges); Ensure that people can understand the reasons for my decision (91.67% or 11 judges) Explain the result to the public (66.67% or 8 judges); Explain the law to lawyers (50.00% or 6 judges); Educate the public (33.33% or 4 judges); Explain the law to other judges (25.00% or 3 judges); Help me make a decision (16.67% or 2 judges); Demonstrate my independence and impartiality (8.33% or 1 judge).

⁶⁹² Judge Survey Q6.5: Sometimes (58.33% or 7 judges); Seldom (41.67% or 5 judges).

arguments—even before the parties’ written arguments or pleadings.⁶⁹³ Considering how fundamental note taking is to decision-writing, courts could examine ways to innovate the writing process with deliberately designed reforms, and perhaps once such reform is more standardization.

- Some judges just start writing without an outline: surveyed judges were basically split on whether they create an outline or just start writing,⁶⁹⁴ and notes were again central to outlining as well as the parties’ submissions.⁶⁹⁵ For the surveyed judges that preferred to just start writing, their explanations varied aside from preferring to just write or that outlines don’t work for them. Or as one surveyed judge noted, “I write different sections, which may be out of order, and put them together later,”⁶⁹⁶ what some judges and writers call the “reverse outline”.⁶⁹⁷
- Some judges already use templates⁶⁹⁸ and checklists:⁶⁹⁹ surveyed judges, however, seemed less willing to share checklists⁷⁰⁰ than templates.⁷⁰¹ Surveyed judges personally

⁶⁹³ Judge Survey Q6.6: Asking questions during the hearing or trial (100.00% or 12 judges); Take notes (91.67% or 11 judges); Review notes (91.67% or 11 judges); Review written arguments in paper format (66.67% or 8 judges); Review hearing transcript(s) (50.00% or 6 judges); Review evidence in electronic format (50.00% or 6 judges); Review written arguments in electronic format (41.67% or 5 judges); Review pleadings in paper format (41.67% or 5 judges); Review audio recording(s) (41.67% or 5 judges); Review evidence in paper format (41.67% or 5 judges); Review pleadings in electronic format (33.33% or 4 judges); Review video recording(s) (8.33% or 1 judge); Contact counsel or the self-represented litigants to ask question or to request further submissions (8.33% or 1 judge); see also Judge Survey Q6.7 where surveyed judges’ answers were again somewhat concentrated: Ask questions during the trial or hearing (100% or 12 judges); Review notes (91.67% or 11 judges); Take notes (75% or 9 judges); Review written arguments in paper format (66.67% or 8 judges); Review hearing transcript(s) (50% or 6 judges); Review audio recording(s) (41.67% or 5 judges); Review evidence in paper format (41.67% or 5 judges); Review written arguments in electronic format (33.33% or 4 judges); Review pleadings in paper format (33.33% or 4 judges); Review evidence in electronic format (25% or 3 judges); Contact counsel or the self-represented litigants to ask question or to request further submissions (25% or 3 judges); Review pleadings in electronic format (16.67% or 2 judges); Review video recording(s) (8% or 1 judge).

⁶⁹⁴ Judge Survey Q6.8: Create an outline (50.00% or 6 judges); Just start writing (41.67% or 5 judges).

⁶⁹⁵ Judge Survey Q6.9: My notes (80.00% or 4 judges); Parties’ submissions (60.00% or 3 judges); Pleadings (20.00% or 1 judge); Anything else: (20.00% or 1 judge) *this judge didn’t provide an open-text clarification*;
Previous decision on same or similar subject matter (20.00% or 1 judge).

⁶⁹⁶ Judge Survey Q10: Prefer to just start writing (60.00% or 3 judges); Do not work for me (20.00% or 1 judge).
“I write different sections, which may be out of order, and put them together later” (20.00% or 1 judge).

⁶⁹⁷ Purdue University, “Reverse Outlining: An Exercise for Taking Notes and Revising York Work”, online:
<https://owl.purdue.edu/owl/general_writing/the_writing_process/reverse_outlining.html>.

⁶⁹⁸ Judge Survey Q6.12: Never (41.67% or 5 judges); Frequently (16.67% or 2 judges); Sometimes (16.67% or 2 judge); Seldom 8.33% or 1 judge); Always (8.33% or 1 judge).

⁶⁹⁹ Judge Survey Q6.19: No. They are confidential (40.00% or 4 judges); Yes, with other judges in my province (40.00% or 4 judges); Yes, with other judges outside my province (10.00% or 1 judge); Yes, with anyone, including the public (10.00% or 1 judge).

⁷⁰⁰ Judge Survey Q6.15: Yes, with other judges in my province (28.57% or 2 judges); Yes, with other judges outside my province (28.57% or 2 judges); Yes, with anyone, including the public (14.29% or 1 judge); No. They are confidential (4.29% or 1 judge); Anything else: “They are too rough to be of value to others” (14.29% or 1 judge).

⁷⁰¹ Judge Survey Q6.19: No. They are confidential (40.00% or 4 judges); Yes, with other judges in my province (40.00% or 4 judges); Yes, with other judges outside my province (10.00% or 1 judge); Yes, with anyone, including the public (10.00% or 1 judge).

made the templates they used,⁷⁰² and they used checklists they prepared⁷⁰³ and that others prepared for them.⁷⁰⁴

- Some judges prefer issue-drive formats: Surveyed judges mostly preferred issue-driven formats; a substantial minority still opts for fact-driven.⁷⁰⁵ And views about the preferred structures are somewhat similar: pro issue-driven found it shorter⁷⁰⁶ and pro fact-driven found it easier to understand.⁷⁰⁷
- Some judges are open to standardized structures⁷⁰⁸ or content⁷⁰⁹ as well as general frameworks for decisions: at least some surveyed judges said that adoption must be voluntary and court-led, not government-imposed.⁷¹⁰ Surveyed judges also didn't universally think judicial independence precludes standardized content or structure: 33% said no one could pressure them when asked about courts⁷¹¹ and 50% when asked about governments.⁷¹² Open-text answers included "it would not" and "I really do not understand the question. What form I used to write a decision has nothing to do with judicial independence."⁷¹³ Some surveyed judges were skeptical about general frameworks for decisions that counsel would have to provide, but most surveyed judges said they wanted them at some point.⁷¹⁴ So the idea that judges would outright refuse efforts to standardized structure or content (or wouldn't even invite either if they helped yield better decisions) is likely wrong. Equally so, judges appear to be heterogenous with some just thinking that judicial independence and impartiality have nothing to do with standardization.

⁷⁰² Judge Survey Q6.13: Yes. I made them (100% or 5 judges).

⁷⁰³ Judge Survey Q6.17: Yes. I made them (60.00% or 6 judges); No. They were provided to me (40.00% or 4 judges).

⁷⁰⁴ Judge Survey Q6.18: Legal officer or lawyer the court employs (40.00% or 2 judges); Another judge (20.00% or 1 judge) Anything else: "blank" (20.00% or 1 judge); Court staff (20.00% or 1 judge).

⁷⁰⁵ Judge Survey Q6.20: Issue-driven structure or similar (66.67% or 8 judges); Fact-driven structure or similar 33.33% or 4 judges).

⁷⁰⁶ Judge Survey Q6.21: Shorter (33.33% or 4 judges); Easier to understand (33.33% or 4 judges); (Easy to see if judge grasped issues, evidence, and arguments (25.00% or 3 judges); Anything else: "blank" (8.33% or 1).

⁷⁰⁷ Judge Survey Q6.23: Makes decisions too long (75% or 3 judges); Do not like it (50% or 2 judges); (Time-consuming 25% or 1 judge); Anything else: "I do not think this way" (25% or 1 judge).

⁷⁰⁸ Judge Survey Q6.25: Yes. Unless I did not like the content, I could use it (50.00% or 6 judges); Possibly. I would have to see and try them out (41.67% or 5 judges); Anything else: "Reality is that judges are taught a decision writing structure today (8.33% or 1 judge).

⁷⁰⁹ Judge Survey Q6.26: Possibly. I would have to see and try them out (50.00% or 6 judges); Yes. Unless I did not like the content, I could use it (33.33% or 4 judges); No. Content could not be standardized (16.67% or 2 judges).

⁷¹⁰ Judge Survey Q6.29.

⁷¹¹ Judge Survey Q6.27: No. Structure and content could be standardized. It could improve the rule of law (33.33% or 4 judge); I am not sure. Standardizing structure, content, or both could be explored (33.33% or 4 judges); Yes. While I can choose to standardize, no one could pressure me to do it (33.33% or 4 judges); Yes. Standardizing decisions' structure and content could d affect my judicial independence or impartiality (0.00% or 0 judges).

⁷¹² Judge Survey Q6.28: Yes. While I can choose to standardize, no one could pressure me to do it (50.00% or 6 judges); No. Structure and content could be standardized. It could improve the rule of law 25.00% or 3 judges); I am not sure. Standardizing structure, content, or both could be explored (16.67% or 2 judges); Anything else: "Apart from laws, governments cannot tell judges what to do." (8.33% or 1 judge).

⁷¹³ Judge Survey Q6.29.

⁷¹⁴ Judge Survey Q6.24: Never (33.33% or 4 judges); Frequently (33.33% or 4 judges); Sometimes (16.67% or 2 judges); Seldom (8.33% or 1 judge); Always (8.33% or 1 judge).

- Analysis is the most important part of the decision for some judges, and it's the hardest part to write followed by the factual summary for some judges: all surveyed judges agreed that analysis was the most important followed by conclusion; factual summary; summary of parties' legal arguments; overview; introduction; order.⁷¹⁵ And most surveyed judges said that that analysis was the hardest to write followed by factual summary; summary of parties' legal arguments, conclusion, overview, "making findings of fact", and introduction.⁷¹⁶ As Chapter 1 stresses, judges likely need help with this process, even something as basic as Grammarly for Judges or some kind of reverse outline algorithm. Many options likely exist that could be standardized as well as more systemic reform that embraces the concepts of the "Swiss Cheese" model, systems thinking, and human-centered design.
- Quality of advocacy could be pivotal to quicker and shorter decisions for some judges: at least for some judges, better submissions and organized evidence help with faster⁷¹⁷ and shorter decisions.⁷¹⁸ This point is consistent with what Chapter 1 implores about the "Swiss-Cheese" model and the basic idea of the input-output problem. Most Canadians can't afford the best lawyer, and justice by implication—as well as the decision leading to it—seems to have a price.

ii. *Group (B): the people who read, use, and interact with judicial decisions*

I was more successful in generating participation with Group (B)—except for courts (only two courts entered information on the survey, and only one participated), the lawyers that courts employ (none), and Assistant and Associate Deputy Ministers (only one participated).

After discussing the key themes from Group (B), I'll then turn to a granular analysis of the court survey.

Overall, the participation rate was low when one considers the number of possible respondents for each group. And the low participation rate of these users is probably somewhat predictive for

⁷¹⁵ Judge Survey Q6.30: Analysis (100% or 10 judges); Conclusion (90% or 9 judges); Factual summary (70% or 7 judges); Summary of parties' legal arguments (12.20% or 5); Overview 12.20% or 5 judges); Introduction (7.32% or 3 judges); Order (4.88% or 2 judges).

⁷¹⁶ Judge Survey Q6.31: Analysis (90.91% or 10 judges); Factual summary (63.64% or 7 judges); Summary of parties; legal arguments (36.36% or 4 judges); Conclusion (27.27% or 3 judges); Overview (18.18% or 2 judges); Anything else: "Making findings of fact" (9.09% or 1 judge); and Introduction (9.09% or 1 judge).

⁷¹⁷ Judge Survey Q6.32: Quality of counsels' submissions (81.82% or 9 judges); Familiarity with subject matter (72.73% or 8 judges); More time to write (45.45% or 5 judges); Low complexity (45.45% or 5 judges); How parties presented their case—e.g., minimal evidence or highly organized (27.27% or 3 judges); Workload and other demands (27.27% or 3 judges); Hearing or trial length (18.18% or 2 judges); Anything else "I am a faster learner and writer (9.09% or 1 judge).

⁷¹⁸ Judge Survey Q6.33: Quality of counsels' submissions (81.82% or 9 judges); Familiarity with subject matter (54.55% or 6 judges); Low complexity (54.55% or 6 judges); How parties presented their case—e.g., minimal evidence or highly organized (45.45% or 5 judges); More time to write (36.36% or 4 judges); Hearing or trial length (27.27% or 3 judges); Subject matter (27.27% or 3 judges); More time to think (9.09% or 1 judge).

academics like me as I tried to access users in multiple ways as discussed earlier. But some users did have higher participation rates out of the total possible number of them (e.g., legal information professionals). And I'm extremely grateful for all the just over 800 people that did participate in some fashion (your contribution was vital to helping me understand a more about Group (B)):

- lawyers (432);
- academics (121);
- law students (86);
- legal information professionals (49);
- journalists (49);
- federal and provincial parliamentarians (30);
- litigants (38);
- legal publishing and legal tech organizations (3); and
- Assistant and Associate Deputy Ministers (1).

Had more users participated, the results could've been very illuminating based on the answers of the users that took the 2023 Survey. Researchers, courts, and organizations must continue to explore user experience, including through further qualitative and quantitative methods. For example, as Chapter 4 discusses, law schools fail to truly explore their students' user experience, ways to audit it, and ways to improve it. Such a systemic shortcoming likely has effects on the courts that those students one day appear in. This idea is precisely what Chapter 1 implores justice system participants to embrace with the "Swiss Cheese" model. Either way, the 2023 Survey shows some user groups are willing to participate and that answers can illuminate their experience and areas for reform and innovation.

(a) Themes from Group (B) respondents

A quick review of the detailed summary in *Appendix 2* will reveal convergence around some key themes this dissertation sought to explore.

The user experience of reading and interacting with judicial decisions is likely lacking

Many users identified the same concerns, and shared similar views about judicial decisions:

- Many surveyed users perceive decisions as too long, too complex, and too slow: all users asked about this point raised concerns, including lawyers, academics, journalists, students, and litigants. In other words, the current “design” of decisions might not be providing any user a good user experience. Both lawyers and academics are legally trained experts who routinely engage with judicial decisions. If clarity (because of both length and complexity) is a problem for them, accessibility challenges for litigants and the public are a likely problem. Indeed, academics and students reported difficulty in teaching and learning judicial decision-reading. Even after undergraduate education, judicial decision’s architecture remains cognitively demanding. Length and organization were identified as primary barriers (although many users did have complaints about content and jargon).
- Many surveyed users overwhelmingly think judges should write for all parties and the public, not just the loser: The “loser-focused” anecdote would be included with all parties and the public, but many surveyed users had the choice to specifically rank the loser first and didn’t. In some situations, writing for the loser will slow the process down, especially depending on how many arguments or causes of action the loser chose to lead. Judges also might be afraid of appeal and then seek to write a decision for the appellate court. But many survey users also chose not to rank that option first.
- Some surveyed users favour comprehensiveness over speed: litigants (and lawyers on behalf of clients) prefer comprehensive, appeal-capable decisions over merely speedy ones. While timeliness was a complaint for almost every user, comprehensive justice might be preferred over summary justice.
- People might not actually read judicial decisions: many surveyed users skim judicial decisions versus actual reading. Lawyers, journalists, and law students commonly report mixing skimming and reading rather than fully reading most decisions. If the system’s primary professional users routinely skim rather than read, then navigability becomes a core design feature rather than an aesthetic preference. Structure, headings, summaries, and metadata are not luxuries; they might be functional necessities.
- The analysis section in judicial decisions matters most for many surveyed users, but the facts and order are still more important to others: lawyers, academics, and especially law students emphasize the analysis; litigants rate factual summary, order, and analysis as jointly critical; journalists focus on the conclusion and facts. Somewhat unsurprisingly, almost as many surveyed lawyers said that the factual summary was almost as important as the analysis. So some lawyers are very interested in how the judge dealt with the facts, even if the facts are untethered from the analysis.

Despite quite a bit of convergence, divergence appeared around some themes:

- Not all surveyed users prefer the issue-driven structure: journalists mostly prefer fact-driven decisions; lawyers and academics express mixed preferences and often tie

format to court level (fact-driven for trial; issue-driven for appeals); students overwhelmingly prioritize analysis regardless of structure. Open-text responses suggest that preferences may vary by institutional context. Trial courts may lend themselves to fact-driven narration whereas appellate courts may benefit from issue segmentation. Surveyed users consistently emphasized that structural predictability and navigability were more important than rigid format uniformity. As the Introduction noted, the idea of universal design for decisions might be a myth. But courts could do far more testing on what users want from decisions or clarity testing to ensure that decisions are accessible to the public and useful to lawyers and litigants.

- What content matters most in a decision depends on the surveyed user: students, lawyers, and academics emphasize analysis; journalists emphasize the conclusion and facts; litigants see the factual summary, order, and analysis as equally important and place less emphasis on overview/introduction
- Many people in the legal system don't engage with judicial decisions: parliamentarians (and ADMs, depending on topic) interact more with statutes and regulations than with judicial decisions and request plain-language summaries across all legal materials.

At least some users don't see the clearest relationship between judicial independence and writing decisions

- Many surveyed users didn't say that demonstrating independence and impartiality should be a main goal of decision-writing: instead, they said that explaining the result was the highest goal. In other words, decisions could be more about the practical effect of explaining what happened versus showing independence. Indeed, many users ranked ensuring readers understand the result as the most important goal for judges.

At least some users seem to agree that novel issues are rare

- Many lawyers admit that truly novel issues are rare: and many do want tools to help them identify relevant facts and law. As noted earlier, defensive litigation may abound, and judges may be struggling to keep up or know what's relevant during a trial because lawyer may also not know.

The user experience of accessing information about what occurs in Canadian courts and about Canadian judges is likely also lacking for some users

- Many surveyed users had broad appetites for better access and transparency about courts and judges: many groups want plainer language (including summaries), better access to court files (including electronic non-party/media access), more and better data on court processes/performance, and more information about judges (training, biographies/demographics, writing/decision-making processes). These findings generally bolster the dissertation's broader claim regarding Canada's legal data deficit. Transparency appears somewhat related to legitimacy and institutional confidence. Users want more data about court performance; more insight about judicial training and processes; more access to information about judges; more access to case files; and better access to judicial decisions.

- Most surveyed users had a general interest in time-tracking pilots among users: a notable share of lawyers, academics, law students, and ADMs do not outright reject anonymous, periodic judicial time tracking. In other words, a majority of every surveyed user group was either open to or actively supportive of exploring time-tracking. So latent cross-stakeholder support for time-tracking may exist if it's done safely, anonymously, and periodically. Given that timeliness is a universal pain point—with most groups saying decisions are frequently too slow—time-tracking appears may be seem as a logical, data-driven reform. Parliamentarians, ADMs, journalists, lawyers, academics, and litigants all asked for more data about courts, and time-tracking is an obvious gap that many feel prevents meaningful evaluation.
- More metadata would be welcomed by most members of some surveyed groups: legal information professionals and legal research/publishing/tech organizations emphasize richer decision metadata, standardized fields, and API access; bulk access is currently constrained by agreements and norm. Legal information professionals and organizations are explicit about metadata fields and API needs; end-users (litigants, journalists, students, lawyers) focus more on plain language, access to files, and high-level court/judicial information than on technical schemas.

Many users may welcome more standardization in judicial decisions

- Many surveyed users demonstrated a conditional openness to standardization, especially of structure: across lawyers, academics, legal information professionals, litigants, journalists, and some organizations, many see potential in standardized structure (and to a lesser degree content) for predictability, research, and usability—provided it is judiciary-led, optional, and deviation-friendly. Many user groups support standardized structure and some content, but users flag judicial independence and the need for flexibility. In other words, the legal ecosystem doesn't appear broadly resistant to structural experimentation. Independence concerns exist, but they're minority positions rather than dominant opposition. Many users want decisions with clearer headings and more predictable organization. So standardized structures may be easily welcomed.
- Surveyed users had nuanced views on judicial independence: they seemed to distinguish between analysis and architecture, and judicial independence seems widely understood to protect reasoning autonomy, not necessarily formatting. Responses differentiated between court-encouraged standardization and government-imposed standardization, with significantly greater comfort toward the former. This boundary seems doctrinally important. It suggests that structural experimentation—particularly when judiciary-owned—may be compatible with independence values. Independence might be in the analytical freedom but not in the narrative form.

Based on this convergence and divergence, the 2023 Survey suggests that many of the discussed initiatives in this dissertation are likely worthwhile of further pursuit, including piloting standardized structures; generating more plain language materials about decisions and court processes; expanding access to court files; generating a shared meta-data standard and APIs for

judicial decisions; and exploring anonymous, periodic time tracking pilots for judges to inform continuous timeliness improvements.

(b) Canadian common law s. 96 and appeal court survey

The court survey asked courts six blocks of questions relating to court resources and autonomy; publishing decisions; court data; innovation; annual court reports; and mandatory demographic information.

Only two courts formally made entries into the survey platform: the BCCA and the Federal Court of Appeal, and only the BCCA completed the survey. I did receive responses from several other courts outside of the survey. Despite attempting to address their concerns and make myself available to discuss via email or other methods, however, only the BCCA participated. Many courts altogether ignored me or never explained why they wouldn't participate.

Chapter 2 identifies multiple reasons why courts might be unwilling to engage in this kind of research, including comprising the public's view of them (or a sheer lack of time and resources). But as many situations have showcased, people seem to want to know how courts work.⁷¹⁹ While some judicial organizations and courts do try to reach the public and explain their processes or decisions,⁷²⁰ the "reaching" pales in comparison to other countries as Chapters 1-2 discusses. It's often restricted to short surveys or email feedback. Had more courts participated, like the BCCA did, the public could've learned far more about how courts operate and how courts view themselves. The BCCA's participation certainly allowed me to learn things about that court that aren't otherwise public knowledge and that, as Chapter 1-2 suggest, the public has a right to know and courts have an obligation to it known.

Despite all the excellent reasons that should've motivated courts to participate, I'm still sympathetic to why most courts remain hesitant. As Chapter 2 discusses, the past several years has included troubling growth in attacks on "elite" institutions—including the judiciary. Nonetheless, I'd have relished the opportunity to engage concerns. But most conversations ended

⁷¹⁹ Many kinds of legal proceedings generate media, buzz and attention on courts and judges and how they're trained as well as myriad other topics (see e.g., CBC News, "Hockey Canada Trial", online: <<https://www.cbc.ca/news/world/topic/Tag/Hockey%20Canada%20trial>>).

⁷²⁰ See *supra* note 453.

when I tried to engage the specific concern that courts might have. Again, as Chapters 1-2 discuss, such opacity likely doesn't foster the administration of justice.

In general, most court responses were mostly the same (except for the Ontario Court of Justice and the Nova Scotia Supreme Court) and didn't differentiate between the judge survey, the court survey, or the court legal counsel survey or offer any real explanation. So I had no way of knowing the reasoning for each survey or generally:

- British Columbia Supreme Court: "My instructions are that the Court declines to answer any of the surveys."⁷²¹ Notably, it participated in the 2019 Survey;
- Northwest Territories Supreme Court: no response after acknowledging receipt.⁷²² Notably, it participated in the 2019 Survey;
- Court of Appeal for the Northwest Territories: no response.⁷²³ It also didn't reply to participate in the 2019 Survey;
- Yukon Supreme Court: no response.⁷²⁴ It also didn't participate in the 2019 Survey;
- Yukon Court of Appeal: no response.⁷²⁵ It also didn't participate in the 2019 Survey;
- Nunavut Court of Justice: no response after acknowledging receipt.⁷²⁶ It also didn't reply to participate in the 2019 Survey;
- Nunavut Court of Appeal: no response after acknowledging receipt.⁷²⁷ It also didn't reply to participate in the 2019 Survey;
- Alberta Court of King's Bench: we "politely decline your invitation to our court to take the survey."⁷²⁸ Notably, it participated in the 2019 Survey;
- Alberta Court of Appeal: no response.⁷²⁹ It also didn't reply to participate in the 2019 Survey.
- Court of King's Bench for Saskatchewan: "the Court of King's Bench for Saskatchewan politely declines the request."⁷³⁰ It also didn't participate in the 2019 Survey;
- Court of Appeal for Saskatchewan: "the Court of Appeal for Saskatchewan respectfully declines your invitation to participate in this research."⁷³¹ It also didn't participate in the 2019 Survey;

⁷²¹ Correspondence on file with author.

⁷²² Correspondence on file with author.

⁷²³ Correspondence on file with author.

⁷²⁴ Correspondence on file with author.

⁷²⁵ Correspondence on file with author.

⁷²⁶ Correspondence on file with author.

⁷²⁷ Correspondence on file with author.

⁷²⁸ Correspondence on file with author.

⁷²⁹ Correspondence on file with author.

⁷³⁰ Correspondence on file with author.

⁷³¹ Correspondence on file with author.

- Manitoba Court of King's Bench: no response.⁷³² It also didn't reply to participate in the 2019 Survey;
- Manitoba Court of Appeal: "After careful consideration of your research proposal, the Court is declining the invitation to participate."⁷³³ It also didn't reply to participate in the 2019 Survey;
- Ontario Superior Court: "Your letter to Chief Justice Morawetz has been referred to me for a response. Judges are very limited in the types of public statements they may make. Generally speaking, the only statement a judge will make about their decision-making will be in the reasons for the decision. Judges are deemed to speak only through their decisions. The judges of our Court do not generally participate in surveys for research purposes."⁷³⁴ Notably, it participated in the 2019 Survey;
- Court of Appeal for Ontario: after asking to see the surveys, I heard nothing further.⁷³⁵ It also didn't reply to participate in the 2019 Survey;
- Nova Scotia Supreme Court: "Our court does not complete surveys for outside organizations or individuals. As a preliminary matter, judges are restricted in what they can say outside their decisions. Further, information that is gathered through a survey and/or misunderstood and judges are not in a position to correct any misinformation."⁷³⁶ It also didn't reply to participate in the 2019 Survey;
- Nova Scotia Court of Appeal: after asking to see the surveys, I heard nothing further.⁷³⁷ Notably, it participated in the 2019 Survey;
- Supreme Court of Prince Edward Island: no response after acknowledging receipt.⁷³⁸ Notably, it didn't reply to participated in the 2019 Survey;
- Prince Edward Island Court of Appeal: we "decline your invitation to participate...."⁷³⁹ Notably, it participated in the 2019 Survey;
- Supreme Court of Newfoundland and Labrador: "While we appreciate your effort to include the Court in your research, I regret to inform you that we will be unable to participate."⁷⁴⁰ Notably, it participated in the 2019 Survey;
- Court of Appeal of Newfoundland and Labrador: "Judges and staff of the Court of Appeal of Newfoundland and Labrador will not be participating at this time."⁷⁴¹ It didn't participate in the 2019 Survey;

⁷³² Correspondence on file with author.

⁷³³ Correspondence on file with author.

⁷³⁴ Correspondence on file with author.

⁷³⁵ Correspondence on file with author.

⁷³⁶ Correspondence on file with author.

⁷³⁷ Correspondence on file with author.

⁷³⁸ Correspondence on file with author.

⁷³⁹ Correspondence on file with author.

⁷⁴⁰ Correspondence on file with author.

⁷⁴¹ Correspondence on file with author.

- New Brunswick Court of King’s Bench: no response.⁷⁴² It also didn’t reply to participate in the 2019 Survey;
- New Brunswick Court of Appeal: “The Court declines this invitation....”⁷⁴³ It also didn’t reply to participate in the 2019 Survey;
- Federal Court of Canada: “Upon consideration, the Federal Court has decided to decline to participate in the provided surveys.”⁷⁴⁴ It also didn’t participate in the 2019 Survey;
- Federal Court of Appeal: “The Federal Court of Appeal will not participate in the research project.”⁷⁴⁵ It also didn’t participate in the 2019 Survey on the grounds of deliberative privilege;⁷⁴⁶
- Tax Court of Canada: no response.⁷⁴⁷ Notably, it participated in the 2019 Survey; and
- SCC: no response.⁷⁴⁸ It also didn’t participate in the 2019 Survey on the grounds of deliberative privilege.⁷⁴⁹

Court resources and autonomy: courts aren’t willing to put this position on the record

The court survey included nine questions in this block,⁷⁵⁰ and survey answers suggest these themes:

⁷⁴² Correspondence on file with author.

⁷⁴³ Correspondence on file with author.

⁷⁴⁴ Correspondence on file with author.

⁷⁴⁵ Correspondence on file with author.

⁷⁴⁶ Correspondence on file with author.

⁷⁴⁷ Correspondence on file with author.

⁷⁴⁸ Correspondence on file with author.

⁷⁴⁹ Correspondence on file with author. For previous participation in the 2019 Survey, See Khan, “Life of a Reserve”, *supra* note 4, pp 59-62.

⁷⁵⁰ Here are the nine questions:

1. Q3.2. Does the Court have enough resources—e.g., staff or technology? (Pick one option) – *Shown to all courts*
2. Q3.3. What resources does the Court need? (Pick all applicable options) – *Shown to courts who did not select always in the previous question*
3. Q3.4. If the Court had more resources, would it explore new initiatives—e.g. more pilot projects? (Pick one option) – *Shown to courts who did not select always in Q3.2*
4. Q3.5. Does the Court have enough autonomy—e.g., administrative or financial? (Pick one option) – *Shown to all courts*
5. Q3.6. What other autonomy does the Court need? (Pick all applicable options) – *Shown to all courts*
6. Q3.7. If the Court had more autonomy, would it explore new initiatives—e.g., more pilot projects? (Pick one option) – *Shown to courts who did not select always in the previous question*
7. Q3.8. How does the Court allocate sitting and writing time to judges—e.g., the Callaghan Scheduling Convention? – *Shown to all courts*
8. Q3.9. How does the Court assign hearings, appeals, or trials? (Pick all applicable options) – *Shown to all courts*
9. Q3.10. What is relied on when hearings and trials are assigned to a particular judge or panel? (Pick all applicable options) – *Shown to all courts*

- The BCCA wasn't willing to record its position about whether it has enough resources or autonomy: the BCCA didn't answer basic questions about whether the court has enough resources⁷⁵¹ or autonomy⁷⁵² and to explain what's missing. I clearly don't want to criticize the one court that did participate in this project, but this omission is confusing. For example, the former Chief Justice of British Columbia (Christopher Hinkson) had publicly said the Court was under-resourced, and this point is common in the literature.⁷⁵³ Yet here, the current Chief Justice was unwilling to answer such a basic question about whether the Court was "independent enough". The possible implication is that the Court doesn't have enough resources or autonomy and isn't "independent enough" from government. The public has a basic right to this information, and the BCCA's omission is perhaps why the 2023 Survey troubled other courts—e.g., maybe many courts feel like they truly do lack the adequate amount of autonomy and resources to be considered independent, a point that many CJC reports have tacitly identified as Chapter 5 discusses further.
- The BCCA has a structured rota: unlike many first-instance courts, the BCCA runs a predictable two-week cycle for full-time judges.⁷⁵⁴ This process seems to account for many of the challenges that Chapter 1 identifies on judges' cognitive processes as it gives judges more time to prepare, think, and reflect on what they've going to hear and what they do hear. This practice is worth contrasting with trial court practices if provinces want to benchmark workloads. The only other Canadian court who lets the public know what their scheduling method is the Ontario Superior Court, who historically has relied on the Callaghan convention where judges sit for far more than two weeks in a row.⁷⁵⁵
- The BCCA mostly relies on random paneling but doesn't rely on random assignment for decision-writing: the Court relies on randomness for sittings, with discretionary override by the Chief Justice, and the most senior judge on the division assigns the decision's author.⁷⁵⁶ While randomness ensures full impartiality, the discretionary override and the assigning of writing could influence perceptions of neutrality or expertise matching. This override and assignment power suggest that some judges are more suited for certain matters or writing, and that point seems to suggest partiality in the decision-making process. I recognize that some new judges may likely not have the expertise for some matters. But if the judicial process is truly meeting the rule of law promises, the judge shouldn't matter. As Chapter 1 notes, the rule of law promise is equality before the law, so if new judges shouldn't sit on some matters, the Court should be clear about it uses to override power and how the division picks "lead writers". Regardless of these points, the BCCA's transparency here is laudable, and other courts should follow the BCCA's transparency and explain how they assign judges and writers and whether they too rely on override and assignment powers and how those powers practically work.

⁷⁵¹ Court Survey Q3.2.

⁷⁵² Court Survey Q3.5.

⁷⁵³ Eric Rankin, "Top judge takes rare shot at B.C. government over COVID-19 court closures" (30 April 2025) *CBC News*, online: <<https://www.cbc.ca/news/canada/british-columbia/top-judge-takes-rare-shot-at-b-c-government-over-covid-19-court-closures-1.5551487>>.

⁷⁵⁴ Court Survey Q3.8.

⁷⁵⁵ See e.g. "Callaghan Scheduling Convention" (October 1992), online: <<https://perma.cc/DC5D-D28H>>.

⁷⁵⁶ Court Survey Q3.9.

Publishing decisions: most BCCA decisions are published, and some aren't

The court survey included 20 questions in this block,⁷⁵⁷ and survey answers suggest these themes:

- The BCCA publishes most of its written decisions:⁷⁵⁸ that the BCCA does so is important for transparency. That chambers decisions are left to the judge,⁷⁵⁹ however, seems antithetical to transparency and a “complete” set of law for anyone trying to innovate—including the advent of modern tools and technologies based on the “written” law. While those unwritten chambers judgments are left in the court file, they’re often not in a format that’s easily accessible and people have to apply to access court files in British Columbia (an arguably unconstitutional practice).⁷⁶⁰ As Chapter 1 notes, if the duty to issue reasons

⁷⁵⁷ Here are the twenty questions:

1. Q4.2. Who decides which written decisions get published? (Pick all applicable options) – *Shown to all courts*
2. Q4.3. Who decides which oral decisions get published? (Pick all applicable options) – *Shown to all courts*
3. Q4.4. What does the Court do with the oral decisions it does not publish? (Pick all applicable options) – *Shown to all courts*
4. Q4.5. Does the Court issue plain language summaries with decisions—e.g., like the SCC Cases in Brief? – *Shown to all courts*
5. Q4.6. Why does the Court not issue plain language summaries with decisions? (Pick all applicable options) – *Shown to courts who said no to the previous question*
6. Q4.7. Why does the Court issue plain language summaries with decisions? (Pick all applicable options) – *Shown to courts who said yes to question Q4.5*
7. Q4.8. Does the Court its decisions itself? (Pick one option) – *Shown to all courts*
8. Q4.9. Why does the Court not publish its own decisions? (Pick all applicable options) – *Shown to courts who said no to the previous question*
9. Q4.10. What is the Court's publication process? (Pick one option) – *Shown to all courts*
10. Q4.11. What decision publication software does the Court use? (Pick all applicable options) – *Shown to courts who said they used a decision publication software in the previous question*
11. Q4.12. Why does the Court use decision publication software? (Pick all applicable options) – *Shown to courts who said they use a decision publication software in the previous question*
12. Q4.13. Why does the Court not use decision publication software? (Pick all applicable options) – *Shown to courts who said they do not use a decision publication software in question Q4.11*
13. Q4.14. How does the Court transmit written or published oral decisions to publishers? (Pick all applicable options) – *Shown to all courts*
14. Q4.15. Who does the Court send its decisions to when the decision is made to publish them? (Pick all applicable options) – *Shown to all courts*
15. Q4.16. How do parties get on the Court's distribution list for published decisions? (Pick all applicable options) – *Shown to all courts*
16. Q4.17. Are any of those agreements available for public review? (Pick one option) – *Shown to courts who said they rely on agreements in the previous question*
17. Q4.18. What conduct would cause a publisher, organization, or company to lose their ability to receive the Court's decisions? (Pick all applicable options) – *Shown to all courts*
18. Q4.19. How does the Court transmit decisions to parties? (Pick all applicable options) – *Shown to all courts*
19. Q4.20. Why does the Court release decisions like it does—e.g., HTML only/no HTML; PDF/no PDFs; word/no word, etc.? (Pick all applicable options) – *Shown to all courts*
20. Q4.21. Would the Court consider including more metadata—e.g., data about the proceeding such as how long it took—with published decisions? (Pick all applicable options) – *Shown to all courts*

⁷⁵⁸ Court Survey Q4.2

⁷⁵⁹ Court Survey Q4.3.

⁷⁶⁰ Khan & Rehaag, *supra* note 129 at 380.

is owed to the public, merely reading them in court and leaving them in a court file doesn't seem to be the completing the duty. But the BCCA's publishing of all other oral reasons is a laudable practice that other courts should follow.

- The BCCA doesn't issue comprehensive plain language summaries: while the BCCA doesn't issue comprehensive plain language summaries, it does issue brief summaries at the top of each decision. But those summaries aren't plain language and the Court doesn't view plain language summaries as a priority given the feedback it sought and received on the summaries.⁷⁶¹ Notably, the BCCA here noted that it “has no specific resources to pursue a stricter application of plain language guidelines”⁷⁶² —a point it could've noted when directly asked if it was lacking resources. Either way, if the public was more interested in such summaries like some data in the 2023 Survey suggests, the BCCA is perhaps lacking specific resources to meet that demand.
- The BCCA shares its decisions with multiple entities:⁷⁶³ the BCCA relies on information sharing agreements to share its decisions with organizations,⁷⁶⁴ but that information sharing agreement isn't public and what would cause an organization to lose access is determined on a case-by-case basis versus a published set of guidelines.⁷⁶⁵
- The BCCA publishes its own decisions:⁷⁶⁶ so the BCCA could change how it publishes decisions, if it wanted too, including issuing more metadata (a point I'll shortly discuss).
- The BCCA doesn't use any decision publication software: The BCCA relies on an “in-house” application for publishing decisions, and it hasn't viewed adopting a different process as a priority.⁷⁶⁷ Technological choices could limit the ability of the BCCA (and other courts) to innovate—e.g., to publish in different formats or with more structured data. Currently, the BCCA only publishes in HTML on the web and by PDF to the parties.⁷⁶⁸
- The BCCA didn't indicate a willingness to include more metadata:⁷⁶⁹ but it's only one of a few Canadian courts that issues annual reports. While the BCCA said it relies “a lot of data” in its annual reports,⁷⁷⁰ so much meaningful basic data is missing—e.g., the average decision length or the average decision's delivery time or individual data by judge. The data is also not easily available without proceeding through the Access Policy Working Committee.⁷⁷¹ In other words, the Court gatekeeps its data and requires individual to justify access.⁷⁷²

⁷⁶¹ Court Survey Q4.5.

⁷⁶² Court Survey Q4.5.

⁷⁶³ Court Survey Q4.16

⁷⁶⁴ *Ibid.*

⁷⁶⁵ Court Survey Q4.18.

⁷⁶⁶ Court Survey Q4.8.

⁷⁶⁷ Court Survey Q4.10.

⁷⁶⁸ Court Survey Q4.20.

⁷⁶⁹ Court Survey Q4.21.

⁷⁷⁰ *Ibid.*

⁷⁷¹ *Ibid.*

⁷⁷² Khan & Rehaag, *supra* note 129

Court data: courts' ability to generate data could be limited by its technology

The court survey included 13 questions in this block,⁷⁷³ and survey answers suggest these themes:

- The BCCA does have a data management system:⁷⁷⁴ but the system is very dated,⁷⁷⁵ and it needs to be replaced; the Court is examining existing and bespoke solutions.⁷⁷⁶ While many organizations rely on dated technology, courts should've enough resources to avail modern technical solutions to data gathering and data transparency, including to access existing dark data in pleadings, factums, *etc.*
- The BCCA doesn't have a particular reason why it doesn't offer more open-access data: the BCCA publishes "much of its data and shares data on request," including with all levels of government, academics, other entities, and the CJC.⁷⁷⁷ While sharing data is laudable, not having a published or standard approach to how the BCCA shares data is problematic as requestors don't know what is permissible and what's not—e.g., does as requestor have to share analysis before publishing, *etc.* Indeed, the BCCA has "no

⁷⁷³ Here are the 13 questions:

1. Q5.2. Does the Court rely on any data management/CRM software? (Pick all applicable options) – *Shown to all courts*
2. Q5.3. What did the Court not rely on an existing solution? (Pick all applicable options) – *Shown to courts who said "designed its own system" in previous question*
3. Q5.4. When did the Court start using its current data management/CRM software system? (Pick one option) – *Shown to all courts who are said they're relying on a data management system in Q5.2*
4. Q5.5. How often is this system updated? (Pick one option) – *Shown to all courts who are said they're relying on a data management system in Q5.2*
5. Q5.6. Who does the Court share its data with? (Pick all applicable options) – *Shown to all courts*
6. Q5.7. Does the Court believe that more data transparency about the Court and its judges—e.g., more data about the judicial process and judicial decisions—could harm the Court? (Pick one option) – *Shown to all courts*
7. Q5.8. Why is more of the Court's data not tracked and made publicly available in open-access format? (Pick all applicable options) – *Show to all courts*
8. Q5.9. Why does the Court not track more data? (Pick all applicable options) – *Show to courts who said "we do not track much data" in the previous question*
9. Q5.10. Why might publishing open-access data compromise judicial independence? (Pick all applicable options) – *Show to courts who said "open-access data could compromise judicial independence" in Q5.8*
10. Q5.11. Why might publishing open-access data compromise public confidence in the Court? (Pick all applicable options) – *Show to courts who said "open-access data could compromise public confidence in the Court" in Q5.8*
11. Q5.12. Why might publishing open-access data compromise the administrative of justice? (Pick all applicable options) – *Show to courts who said "open-access data could compromise the administration of justice" in Q5.8*
12. Q5.13. Why might publishing open-access data compromise deliberative secrecy? – *Show to courts who said "open-access data could compromise deliberative secrecy" in Q5.8*
13. Q5.14. Why might publishing open-access data compromise privacy interests? (Pick all applicable options) – *Show to courts who said "open-access data could compromise privacy interests" in Q5.8*

⁷⁷⁴ Court Survey Q5.2.

⁷⁷⁵ Court Survey Q5.4. But the Court does try to update it 8-10 times a year as needed.

⁷⁷⁶ Court Survey Q5.3.

⁷⁷⁷ Court Survey Q5.6.

blanket answer for not providing data; each request is considered on a case by case basis.”⁷⁷⁸ So I’m left guessing on what basis it chooses to share or not, and all I know is that it periodically releases data when requests are made.

- The BCCA believes that some data transparency could compromise the court and its judges in certain circumstances:⁷⁷⁹ precisely what circumstances could lead to such outcomes is unknown.

Innovation: some courts are interested in innovation

The court survey included three questions in this block,⁷⁸⁰ and survey answers suggest these themes:

- The BCCA isn’t opposed to developing decision-writing software:⁷⁸¹ as discussed below, the BCCA does collaborate to innovate with various justice system participants, and more information is needed on such collaborations and innovations.
- The BCCA is always looking for ways to improve its judgment production process: the BCCA’s intention is related to access to justice and this intention is laudable.⁷⁸² But as noted above, part of the way that the judgment production process could generally be improved would be to learn far more about the people who write decisions. While the BCCA likely knows more than I do, it doesn’t have the data that the judge survey could’ve generated, including about how judges spend their time. Accordingly, it should pursue such studies on its own (or find ways to collaborate).
- The BCCA doesn’t think an institutional note-taking approach would be feasible: as Chapter 1 discusses, many aspects of law and the decision-making and decision-writing process could be open to standardization. Some of the judge survey data indicated that notetaking is an important part of the decision-writing process for judges. More work could be done to integrate the process of notetaking to decision-writing, including exploring judges’ individual preferences (something the BCCA indicated would preclude an institutional-wide approach). As the judge survey data suggests, surveyed judges had similar practices, and while some judges might be truly idiosyncratic, some concentration likely exists.

⁷⁷⁸ Court Survey Q5.8.

⁷⁷⁹ Court Survey Q5.7.

⁷⁸⁰ Here the three questions:

1. Q6.2. Would the Court consider developing decision-writing software—something more specialized than Microsoft Word that judges could use—if it could improve decision-making or access to justice? (Pick one option) – *Shown to all courts*
2. Q6.3. Would the Court consider developing note taking software—something more specialized than Microsoft Word that judges could use—if it could improve decision-making or access to justice? (Pick one option) – *Shown to all courts*
3. Q6.4. Would the Court consider partnerships to design new tools for judges—e.g., decision-writing or note-taking tools? (Pick one option) – *Shown to all courts*

⁷⁸¹ Court Survey Q6.2.

⁷⁸² Court Survey Q6.2.

- The BCCA isn't willing to partner with entities in an entrepreneurial manner: but the BCCA does collaborate with government and "other entities" on an ongoing basis on "tools to support the Court's work."⁷⁸³ I'm very curious what "other entities" the BCCA collaborates with if those entities aren't governments, but the Court didn't explain further or the tools on which they're collaborating.

Annual court reports: some courts think they increase transparency, accountability, and maintain public confidence

The court survey included four questions in this block,⁷⁸⁴ and survey answers suggest these themes:

- The BCCA does create and publish annual reports:⁷⁸⁵ as Chapter 1 notes, the BCCA is one of the only Canadian courts to consistently issue annual reports. More courts should follow suit to ensure transparency, accountability, and public confidence.
- The BCCA believes that publishing annual reports leads to transparency, accountability, and public confidence:⁷⁸⁶ the same would likely be true if the Court's judges or legal counsel participated in surveys about their user experience.

Part III: Some thoughts on surveying judicial decisions' users

This part offers some thoughts and guidance to future empirical research of justice system participants.

Each section heading below offers the suggestion for future research, including research that the CJC, CSCJA, CIAJ, individual courts, law societies, bar organizations, law schools, and professional associations could and should do, including on topics that the 2023 Survey tried to address—e.g., law schools should know more about teaching people to read decisions and the experience of learning to read them.

⁷⁸³ Court Survey Q6.4.

⁷⁸⁴ Here are the four questions.

1. Q7.2. Does the Court create and publish annual reports? (Pick one option) – *Shown to all courts*
2. Q7.3. Why does the Court create and publish them? (Pick all applicable options) – *Shown to courts who said they create and publish annual reports in the previous question*
3. Q7.4. Why does the Court not create and publish them? (Pick all applicable options) – *Shown to courts who said they do not create and publish annual reports in question three*
4. Q7.5. Would the Court create and publish annual reports if it had the necessary budget and resources? (Pick one option) – *Shown to courts who said they do not create and publish annual reports in question three*

⁷⁸⁵ Court Survey Q7.2.

⁷⁸⁶ Court Survey Q7.3.

- i. *Judges: Maybe it's time to break convention, and either way, courts and judicial organizations must gather and release more survey style data*

As the methods section noted, I attempted to follow conventions—*i.e.*, to seek permission to access judges—instead of directly emailing judges (I also asked national judicial organizations to proliferate the survey). But researchers don't technically need to follow those paths and could easily figure out Canadian judges' emails. I also could easily have emailed judges directly, ignored the convention and possibly had more judges participate. But I was interested in longer-term relationships with courts and their chief justices and having a survey that courts would be interested in proliferating—*e.g.*, to learn more about what their judges do. That approach, however, clearly has some shortcomings. As I note below, I do recommend that researchers approach courts before even commencing research to try to see what kinds of projects they might support.

Even if courts aren't willing to promote or proliferate external research of judges in their courts (or if future researchers aren't willing to break convention), courts should do far more internal research and make data public (either collectively or generally). As Chapters 1-2 discuss, such evidence is necessary to improve the legal system, including general transparency, service, and the administration of justice. The CJC, CSCJA, and CIAJ could also do this work and make results public.

- ii. *Canadian common law s. 96 and appeal courts: the CJC or some other judicial organization could do this work if courts remain unwilling to work with researchers*

Many reasons could explain the lack of non-participation for each group that I attempted to survey out of Canadian courts. But courts didn't really provide one—either for the survey of courts, lawyers that courts employ, or judges. Some courts immediately said no. Other courts asked to see print or preview versions of the surveys and went on to also say no or not engage further. Other courts entirely ignored my request.

Accessing courts remains very difficult, especially if you want to do repeat research like this project sought out to do. A key goal of this dissertation is persuading courts that they ought to participate and build on surveys like the 2023 Survey. As the recent “Hockey Canada” trial revealed in 2025, the public is very interested in what goes on in Canadian courts and the lack of

information and can yield polarization or distrust in courts, their processes, or their judges as Chapter 2 discusses.

I don't have any magical prescription for researchers—aside from don't ask too many questions of courts or consider ignoring conventions. Despite having relationships with multiple courts and attempting to follow many best practices in survey research, only one court was willing to trust me as a researcher, thought it was appropriate, and thought that participation is a good thing. Perhaps the scale of my surveys was the issue. Either way, the 2019 Survey showed that many courts are willing to answer some information. And for that, I thank all the courts that participated. But I was surprised to see previously participating courts reject my request to participate again. Perhaps they didn't think the previous reporting of my data was responsible, but no court offered that reason. The rejections—as you previously saw—were mostly terse and without reason.

A future research project could be simply writing courts and ask them if they're willing to participate in survey research: if “yes”, researchers could say what kind, report on that, and then seek to work with courts who said yes (that approach is somewhat similar to the Australia project that Chapter 1 discusses); if “no”, the research could say they're reporting on “no” answers and ask for a brief answer and point to research like mine where answers mostly don't include any rationale and ask for more clear answers.

- iii. *Lawyers: courts and law societies should seek to more frequently survey them and release data, and researchers should continue to rely on law societies and national organizations*

Like many legal system users, lawyers have incredible time scarcity. But limited data in the 2023 Survey shows that some lawyers are willing to participate in surveys, even lawyers with scarce time like the largest participant group in the lawyer survey (criminal lawyers).

Courts should do more surveying of lawyers—so too could law societies on the topics that Chapter 3 seeks to address (or this dissertation generally). Currently, courts mostly seem to just ask for emails from lawyers about topics or reforms, and they don't seek to design a survey instrument that generates aggregable data or possibly generalizable data. *Figure 10* on p. 161 provides such an example.

This dissertation suggests that courts should rely on more robust user experience data and seek to generate it on periodic basis in more standardized instruments that also include opportunities for open-text data. The CJC, CIAJ, and the CSCJA could also do this kind of work if courts or law societies don't or in conjunction with them. Either way, such surveys and interviews should be ongoing, and the data and analysis should be public and transparent.

Law societies and organizations were mostly helpful in passing on my requests—some on the first ask and others with repeated asks. But some other major organizations and law societies, like the CBA and Law Society of Ontario weren't (it ignored repeated emails). Had I got support from both organizations, I'd predict a couple hundred more respondents—e.g., law society emails forwarding my request or a Supreme Court Advocacy email led to hundreds of respondents. Future researchers should continue to form relationships with law societies and national organizations, and both should seek to support credible research efforts.

Figure 10: Court attempt at learning more about users



FEEDBACK INVITED: CIVIL AND FAMILY CHAMBERS PRACTICE REVIEW

The Court is alive to the ongoing challenges in managing chambers practice and in particular, difficulties in obtaining hearing dates and having matters heard in a timely way once scheduled. In response, the Court has struck a Civil and Family Chambers Practice Working Group to review the current practices and procedures for both regular (short) and long chambers, and to consider potential changes with a view to providing a more timely and efficient chambers process.

The Court invites interested members of the bar, litigants, organizations, and the public to comment on the issues they see arising in chambers practice and provide suggestions for improvement. Without limiting the scope of the feedback sought, areas of particular interest include:

- Limiting regular (short) chambers to matters with time estimates of one hour or less;
- Establishing set time slots (e.g. 15, 30, 45 and 60 minutes) rather than having parties provide estimates;
- For regular (short) chambers – limiting the size of application records, limiting the number of authorities the parties may rely on and implementing province-wide virtual hearings for uncontested applications and consent orders;
- For long chambers – offering half-day bookings, increasing the availability of judges for long chambers matters, scheduling on an assize in Vancouver, earlier filing of application records, and judicial application management in advance of hearing for lengthy/complex matters;
- For all chambers matters, stricter enforcement of existing rules, e.g. page limits for notices of application and application responses, requiring properly formed legal bases, eliminating serial affidavits and strict enforcement of time estimates.

The Court is aware of the significant interest in implementing an online booking system for long chambers matters, similar to what has been in place since November 2024 for trials. The Court supports moving to an online system and is awaiting the necessary funding to upgrade the current booking system.

Comments can be provided by email to Chambersfeedback@bcccourts.ca until September 5, 2025.

Chief Justice Ron A. Skolrood
Supreme Court of British Columbia

iv. *Academics: institutions and CALT should do more research and release it*

I personally invited academics and relied on law schools to distribute (The Canadian Association of Law Teachers (CALT) was also willing to distribute). Personal invitations, for certain groups, like journalists, yielded higher and lower participation rates than some might expect (14% for

journalists in comparison to 7% for academics, and the same was mostly true for the retired judges). But in other groups, like ADMs, federal parliamentarians, and academics, personal invitations didn't matter.

I also appreciate that academics have many pressures on their time, but universities should be canvassing these types of topics, especially the difficulties in teaching law students and transparently sharing that data. As Chapter 4 discusses, law schools should identify gaps within their own data and ways that survey (or quantitative and qualitative) research could fill gaps. Incentives could also be offered to academics within institutions to participate in such efforts or proper rationales could likely persuade some—e.g., improving teaching quality. CALT could also support such efforts.

- v. *Lawyers that courts employ: maybe it's time to break convention here too, or the CJC, CIAJ, or CSCJA could continue this work*

As I noted with approaching judges, Chief Justices precluded my research of lawyers that courts employ. While I communicated directly with many legal officers in attempting to deploy my survey, I never directly asked them. I presume that many would have said no because they don't maintain the same employment independence as judges. That said, nothing precludes lawyers in courts from participating in anonymous surveys unless they've specifically agreed to confidentiality about their own views. Here, the views would have been fully anonymous and not attached to any court. In other words, it would be anonymous data about what generally occurs in courts that wouldn't single out any court or jurisdiction.

As a former law clerk, I do recall my orientation being very specific about confidentiality and the need to ensure the administration of justice, including by not discussing the more confidential parts of the job (e.g., things that deliberative secrecy protects). That said, courts have shut down surveys of judicial law clerks despite having no real basis to do so if clerks don't violate their "oath of confidentiality," which was the reason given by the SCC for telling clerks not to participate in previous survey research.⁷⁸⁷ That reason was why I didn't attempt to survey law clerks here (many of whom likely would have been accessible via social media or general internet searches). But as a former law clerk, I'd participate in an anonymous survey about

⁷⁸⁷ Kirk Makin, "Top court orders clerks to keep quiet" (19 June 2009) *The Globe and Mail*.

whether I thought courts were adequately resourced or if I thought decisions were generally accessible to the public. I didn't agree to giving up my general opinion on such issues and to keeping it confidential, especially if it wasn't information that could compromise the court in any way or breach deliberative secrecy. Lawyers that courts employ should be given the same latitude here. If courts had concerns with questions or content, they could've told me so.

Aside from breaking convention, another avenue would be the CJC, CIAJ, or CSCJA seeking to tap into the knowledge of courts' legal counsel and publish the data.

vi. *Journalists: courts should interact more with news organizations and journalists through direct invitation*

Generally, directly emailing journalists was successful. Court should better understand how to best serve the information surrogates of the public. So courts should interact more with news organizations and directly with journalists. For example, courts could do surveys like I'm doing—and indeed some courts have done so on things like plain language summaries (e.g., the BCCA and the SCC), and that data needs to be made public. No part of it should be shielded behind any kind of “privilege”. The same is true about most other kinds of court survey data of evidence that supports any reform (like from *Figure 10* above).

vii. *Law students: law schools should generate far more data through more direct interactions with students and incentivize participation*

The support of law schools seems crucial, and law schools should want the kind of data the 2023 Survey sought to generate. Canadian law schools, at least as far as I'm aware, don't keep great data on the student user experience, including their ability to read and understand judicial decisions: Chapter 4 discusses this point more. As I have discussed repeatedly with my own advisor, the paucity of law school data is disappointing. Law schools aren't truly seeking to understand how to improve their students' user experience and in turn the public for which it largely gatekeeps lawyers. Law schools also don't appear to track data generally on legal education—although some limited exceptions exist. For classes and graded material, law schools could easily generate the data (and already generate some via a curve and grading input system). Incentives would also be applied to students within institutions for user experience data—e.g., modest reductions on tuition or fees or a free textbook(s).

viii. *Federal and provincial parliamentarians: political parties, courts, the CJC, the CJSA, and the CIAJ could conduct and release this research*

Accessing these individuals seems very difficult, especially federal parliamentarians—even with direct emails to them. Perhaps the response would be different if courts in the parliamentarians’ jurisdiction or national court organizations directly contacted them or political parties. Either way, the results from provincial parliamentarians suggest that courts and judges need to better understand their experience, including the need for more plain language summaries. Further research could seek to address how to improve information sharing.

ix. *Assistant and Associate Deputy Ministers: courts, the CJC, the CJSA, and the CIAJ could conduct and release this research*

Accessing these individuals seems very difficult—even with direct emails to them. I appreciate that some of these individuals might have concerns about speaking about policy choices such as funding. But the same comments that I made about lawyers that courts employ also apply here. They likely interact more with courts than many parliamentarians and their views are exceptionally important, especially on funding, administration, and data gathering and transparency to name only a few areas. Again, perhaps the response would be different if courts in the ADMs’ jurisdiction or national court organizations directly reached out to them. At least one ADM seemed to think my research was entirely appropriate, and my committee also recommended this respondent group. So while I may not have the legitimacy as a Ph.D. candidate to get their participation, other organizations might.

x. *Litigants: courts, law societies, and other organizations need to find ways to consistently interact with both self-represented and represented litigants*

I mainly surveyed self-represented litigants because of the difficulties I anticipated if I had tried to survey represented litigants. But accessing a broader group of litigants seems paramount to understanding their user experience. Even with the support of the National Self-Represented Litigants Project, I still didn’t get many participants. So the reach likely needs to be quite broad and involve a national stakeholder and represented and unrepresented litigants. Law societies, courts, the CJC, the CSCJA, the CIAJ could’ve more institutional clout and perhaps could get the support of law firms and other legal associations in generating more wide-scale feedback.

But as discussed earlier, the BC CRT does survey its users. Unfortunately, the response rates are poor, and the data has some large swings from month-to-month. So even if courts sought to interact more with litigants, many litigants might not choose to participate, and the ones that do could be far from representative about those that don't participate.

- xi. Legal research, legal publishing, and legal tech organizations: CanLII and courts should be transparent about the relationships between these companies and courts and CanLII and Lexum*

Courts should easily do this research and publish it on their websites. But as discussed, most courts don't even publish annual reports. Either way, justice system participants need to better understand the relationship between courts and entities that want and use legal data, including judicial decisions.

The public also has a right to know about these relationships. Courts, CanLII, and Lexum could publish more of their arrangements, especially when almost all the arrangements between these three entities appear to largely rely on CanLII's not-for-profit status. Chapter 5 addresses this point in more detail, but most courts rely on CanLII and Lexum to publish or host. As Chapter 5 discusses, if the concern about bulk access to decisions is truly privacy, individuals in courts have a right to know who courts are sharing their decisions with. Even without that concern, as Chapters 1 and 5 discuss, these decisions belong to the public, so they have a right to know who courts are sharing them with on a bulk basis. If courts and publishers aren't willing to participate in surveys, courts should publish this information in annual reports (but as noted, most courts don't publish them) or directly on their websites.

- xii. Legal information professionals: generally, they seem willing to participate, and they're a wealth of information.*

Again, courts could likely do this research, and so too could the CJC and CSCJA. As Chapter 1 discusses, the CJC has an obligation to ensure uniformity, and that duty extends to judicial decisions and court data—as well as information about courts. Librarians remain one of the best information systems experts within the justice system.

I don't have any main recommendation here as participation rates were better than expected and sufficient for purposes. Relying on CALL's membership list was very helpful.

Conclusion: I know more, but I still know very little about the user experience of most users of judicial decisions

Despite hypothesizing that Canada's legal system needs far more user-centred and deliberate design, the 2023 Survey causes me wonder if the legal system and its culture are ready for either. Many justice system participants talk about transparency, a desire to improve, or innovative legal reform. But generating the kind of insights that a designer would need to generate deliberately design these kinds of reforms is very difficult.

Here, I'm not just speaking about insights about courts. I'm also speaking about all the other participants that I tried to access. Getting past the gate is difficult. But as I've tried to stress, many user groups already suffer from survey fatigue and time deficits, so even if researchers get past the gate, many users still won't want to participate.

Of course, I appreciate that justice system participants have survey fatigue and that institutions get many requests for surveys. But some institutions don't even respond to requests for surveys, including some courts, the CJC, some law schools, legal tech companies, ADMs, and many news organizations. Other organizations weren't willing to send out survey invitations to their membership while other similar organizations were—including multiple law societies, law schools, provincial legal aid.

But once the gate is opened or I opened it on my own through direct invites, some users do answer survey questions, including completing the entire survey instrument.

The data gleaned here is the beginning, and I truly hope that more courts and institutions gather far more data. As Chapter 4 discusses, a national data strategy is needed to continuously learn more about the "users" of the legal system and to try to continuously meet rule of law promises.

As I noted earlier, all survey instruments and survey data available online for download from the Open Science Framework and are licensed as Creative Commons CC0. So anyone who wants to understand or identify further possible themes, you're free to do so, and the link is at the end of the dissertation in the conclusion. The open-text data provide interesting themes for unpacking possible themes and sentiments.

Chapter 4 – Messing up empirical analysis is easy, even when you’re an expert: improving data gaps and data literacy in Canada’s legal system

... the difference between significant and not significant is not itself statistically significant. ...
As teachers of statistics, we might think that “everybody knows” that comparing significance levels is inappropriate, but we have seen this mistake all the time in practice.⁷⁸⁸ ~ Andrew Gelman and Hal Stern (2006)

Messing up empirical analysis is easy, even when you’re an expert:

- In 2021, American scholars issued a shocking preprint empirical paper. It alleged that certain discriminatory federal judges give Black and Hispanic defendants double the sentences of White defendants and personally identified those judges.⁷⁸⁹ Almost immediately, defense and prosecution justice system participants criticized the study and said the scholars’ conclusions were “belied by our experience appearing before these judges.”⁷⁹⁰ Others scholars also expressed immediate concerns about data completeness, missing data, and methodological flaws.⁷⁹¹ For example, instead of individual judges being discriminatory, caseload assignment could explain the conclusions.⁷⁹² Before publishing their paper, the scholars softened their conclusions, including no longer identifying individual judges because of concerns about sufficient credence.⁷⁹³
- In 2011, Israeli scholars published an equally shocking and persistently famous empirical paper that’s still cited today. It alleged that hungry judges hand out harsher sentences

⁷⁸⁸ Andrew Gelman & Hal Stern, “The Difference Between “Significant” and “Not Significant” is not Itself Statistically Significant” (2006) 60:4 *The American Statistician* 328 at 328.

⁷⁸⁹ Sentencing Law and Policy, “Provocative new empirical paper claims to identify the ‘most discriminatory’ federal sentencing judges (30 July 2021), online: <https://sentencing.typepad.com/sentencing_law_and_policy/2021/07/provocative-new-empirical-paper-claims-to-identify-the-most-discriminatory-federal-sentencing-judges.html>.

⁷⁹⁰ See, e.g., Federal Community Defender Office, “Statement on Behalf of the Federal Community Defender Office for the Eastern District of Pennsylvania”, online: <<https://pae.fd.org/sites/pae/files/press-document/race%20study%20rebuttal.pdf>>; United States Department of Justice, the United States Attorney’s Office – Eastern District of Pennsylvania, “Statement of the U.S. Attorney’s Office for the Eastern District of Pennsylvania Regarding Recent Publication by Institute for Quantitative Study of Inclusion, Diversity, and Equity, Inc.” (6 August 2021), online: <<https://www.justice.gov/usao-edpa/pr/statement-us-attorney-s-office-eastern-district-pennsylvania-regarding-recent>>; Montgomery Bar Association, “MBA Executive Committee Issues Statement regarding the recent study alleging racial disparities in federal sentencing that published by the Institute for the Quantitative Study of Inclusion, Diversity and Equity - News Releases” (23 August 2021), online: <<https://www.montgomerybar.org/?pg=NewsReleases&blAction=showEntry&blogEntry=65734>>.

⁷⁹¹ See this Twitter thread for a great, accessible analysis, Jonah Gelbach, “A thread on the study below, which purports to identify “The Most Discriminatory Federal Judges”. The two judges at the top of the study’s list are both (senior status) judges in the Eastern District of Pennsylvania (EDPA), where I live. I have some concerns about the study” (7 August 2021), online: <<https://twitter.com/gelbach/status/1424147108739776514>>.

⁷⁹² Sentencing Law and Policy, “Provocative new empirical paper claims to identify the ‘most discriminatory’ federal sentencing judges (30 July 2021), online: <https://sentencing.typepad.com/sentencing_law_and_policy/2021/07/provocative-new-empirical-paper-claims-to-identify-the-most-discriminatory-federal-sentencing-judges.html>.

⁷⁹³ Nicholas Goldsen *et al*, “Cover: Racial Disparities in Criminal Sentencing Vary Considerably Across Federal Judges (2023) 179:1 *Journal of Institutional and Theoretical Economics* 92.

than satiated ones, *aka* the “Hungry Judges” study.⁷⁹⁴ Over the years, multiple scholars have said the findings were unsupported by the data,⁷⁹⁵ failed to consider other available rational possibilities,⁷⁹⁶ or simply “impossible”.⁷⁹⁷ For example, instead of judges treating people differently solely because of hunger, non-random assignment of cases could also explain the outcome.⁷⁹⁸ The scholars issued a reply to their critique but never altered their underlying strident conclusion.⁷⁹⁹

Empirical legal literature likely includes many other sensational claims. As Chapters 1 and 2 discuss, sensational claims about courts, judges, and legal systems generate media or pop culture buzz.⁸⁰⁰ But technical corrections of errors or overconfidence don’t generate the same buzz,⁸⁰¹ likely because sensational claims are more engaging than technical criticism about data quality or methodology. The “Hungry Judges” study showcases that reality. Individuals still uncritically cite the study,⁸⁰² and many individuals seem to have no idea about its flaws or choose to ignore them.⁸⁰³

⁷⁹⁴ Shai Danziger, Jonathan Levav & Liora Avnaim-Pesso, “Extraneous factors in judicial decisions” (2011) 108:17 PNAS, online: <https://www.pnas.org/content/108/17/6889?ijkey=684f77db5d770239dced2aa9dfdf5db4eaf61ec9&keytype=tf_ipsecsha>.

⁷⁹⁵ See Keren Weinshall-Margel & John Shapard, “Overlooked factors in the analysis of parole decisions” (10 October 2011) PNAS, online: <<https://www.pnas.org/doi/full/10.1073/pnas.1110910108>>.

⁷⁹⁶ Andreas Glöckner, “The irrational hungry judge effect revisited: Simulations reveal that the magnitude of the effect is overestimated” (2016) 11:6 Judgement and Decision-Making 601, online: <<https://www.cambridge.org/core/journals/judgment-and-decision-making/article/irrational-hungry-judge-effect-revisited-simulations-reveal-that-the-magnitude-of-the-effect-is-overestimated/61CE825D4DC137675BB9CAD04571AE58>>; Tom Stafford, “rational judges, not extraneous factors in decisions” (8 December 2016) *Mind Hacks*, online: <<https://mindhacks.com/2016/12/08/rational-judges-not-extraneous-factors-in-decisions/>>.

⁷⁹⁷ Daniel Lakens, “Impossibly hungry judges” (3 July 2017), online: <<http://daniellakens.blogspot.com/2017/07/impossibly-hungry-judges.html>>.

⁷⁹⁸ Weinshall-Margel & Shapard, *supra* note 795.

⁷⁹⁹ Shai Danziger *et al.*, “Reply to Weinshall-Margel and Shapard: Extraneous factors in judicial decisions persist” (10 October 2011) PNAS, online: <<https://www.pnas.org/doi/full/10.1073/pnas.1112190108>>.

⁸⁰⁰ Many studies with striking claims end up in the media. See, e.g., Emily Deruy, “Judges Football Team Loses, Juvenile Sentences Go Up” (7 September 2016) *The Atlantic*, online: <<https://www.theatlantic.com/education/archive/2016/09/judges-issue-longer-sentences-when-their-college-football-team-loses/498980/>>; Nicholas Keung, “Getting refugee decisions appealed in court ‘the luck of the draw’, study shows” (21 September 2018) *Toronto Star*, online: <<https://www.thestar.com/news/immigration/2018/09/21/getting-refugee-decisions-appealed-in-court-the-luck-of-the-draw-study-shows.html>>.

⁸⁰¹ To see the fall-out/back and forth/critique that occurred in the scholarly and online community, *supra* note 556.

⁸⁰² For a discussion on this point, see, e.g., Jason Chin, “Law and psychology must think critically about effect sizes” (2023) 3:3 *Discovery Psychology*.

⁸⁰³ See, e.g., Sultan Mehmood, Avner Seror & Daniel L Chen, “Ramadan fasting increases leniency in judges from Pakistan and India” (2023) *Nature: Human Behaviour*, online: <<https://www.nature.com/articles/s41562-023-01547-3>>; Radiolab, “Revising the Fault Line” (27 June 2017) *Radiolab*, online: <<https://www.radiolab.org/podcast/revising-fault-line>>.

In making sensational claims about courts, judges, and legal systems, individuals seem to rely on faulty assumptions; flawed methods; and incomplete, flawed, or unadjudicated data. So empirical studies and claims about legal systems are often wrong or overstated, including claims about Canada's legal system. Chapter 4 addresses why this undesirable reality may persist and possible ways to address it.

Canada's legal data future mostly doesn't yet look bright. The continued inadequate attention to Canadian legal data, legal education, and empirical legal research fuel my concern (along with emergent technologies⁸⁰⁴ and their rapid deployment⁸⁰⁵):

1. Despite numerous calls for better Canadian legal data, data is mostly still incomplete as Chapters 1-4 explain. The data needed for robust study, analysis, and reform is either not gathered; poorly gathered; not shared; not accessible; or housed in commercial and information monopolies.⁸⁰⁶ Instead of calling for more data gathering and transparency, many justice system participants frequently say they're relying on data or initiatives that require data (such as people- or user-centered reforms). Yet many such initiatives don't gather or rely on sufficient data, apply rigorous methodologies, or both.⁸⁰⁷ So the data deficit problem frequently doesn't receive the attention it demands.

⁸⁰⁴ For a thorough discussion of such technologies both generally and specifically, see, e.g., Ethan Mollick, *Co-Intelligence: Living and Working with AI* (Penguin House: New York, 2024) & Aidid & Alarie, *supra* note 139.

⁸⁰⁵ For previous analysis of the ways that early adoption of tech, including tech that relies on incomplete data or improper methods, can impact marginalized people, see, e.g., Petra Molnar & Lex Gill, "Bots at the Gate: A Human Rights Analysis of Automated Decision-Making in Canada's Immigration and Refugee System" (2018) *The Citizen Lab*, online: <<https://citizenlab.ca/wp-content/uploads/2018/09/IHRP-Automated-Systems-Report-Web-V2.pdf>>.

⁸⁰⁶ Khan, "Life of a Reserve", *supra* note 4, n5; 2, nn13,14.

⁸⁰⁷ For some examples of justice system participants discussing improving user experience or relying on people-centered design as well as examples of the kinds of gaps or lacks I just noted, see, e.g., Canada, "#Accesstojustice", online: <<https://www.justice.gc.ca/eng/csj-sjc/access-acces/index.html>>; Brad Regehr & Vivene Salmon, "What Does a Human-Centric Justice System Look Like?" (5 February 2021) *Slaw*, online: <<https://www.slaw.ca/2021/02/05/what-does-a-human-centric-justice-system-look-like/>>; Ontario, "Putting Justice Within Reach: A Plan for User-Focused Justice in Ontario" (29 November 2017), online: <<https://www.ontario.ca/page/putting-justice-within-reach-plan-user-focused-justice-ontario>>; British Columbia, "Service and content design", online: <<https://www2.gov.bc.ca/gov/content/governments/services-for-government/service-experience-digital-delivery/service-content-design>>; BC – Minister of the Attorney General, "Court Digital Transformation Strategy 2019-23", online: <<https://www2.gov.bc.ca/assets/gov/law-crime-and-justice/about-bc-justice-system/justice-reform-initiatives/digital-transformation-strategy-bc-courts.pdf>>; Department of Justice Canada, "Digital Transformation Strategy: 2021-24", online: <https://www.justice.gc.ca/eng/trans/jcdts-stnjc/pdf/Digital_Transformation_Strategy_Report_EN.pdf>; Ontario, "Ontario Delivering Digital Access to Courts" (5 November 2021), online: <<https://news.ontario.ca/en/release/1001109/ontario-delivering-digital-access-to-courts>>; Statistics Canada, "Experiences of serious problems or disputes in the Canadian provinces, 2021", (18 January 2022), online: <<https://www150.statcan.gc.ca/n1/pub/85-002-x/2022001/article/00001-eng.htm#n4-refa>>; Government of Canada, "What we heard – Transforming Canada's criminal justice system" (2023), online: <<https://www.justice.gc.ca/eng/rp-pr/other-autre/tcjs-tsjp/pl.html>>; Access to Justice BC, "Shift to a User Centered Perspective", online: <<https://accesstojusticebc.ca/user-centred/>>; Office of the Commissioner for Federal Judicial Affairs Canada, "Action Committee on Court Operations", online: <<https://www.fja.gc.ca/COVID-19/archives-eng.html>>.

2. Despite calls for more Canadian legal education on basic empirical methods, Canadian legal education on empirical methods, data literacy, data science, and basic stats remains inadequate.⁸⁰⁸ Canadian law school students often graduate without basic data or statistical literacy.⁸⁰⁹ Despite what seems like a clear problem, few Canadian law school J.D. and graduate programs are paying attention to this issue. Instead, Canadian empirical legal training and research continues to pale in comparison to U.S. empirical legal training and research.⁸¹⁰ Only a few Canadian law schools offer classes to empower J.D. and graduate students to grapple with data despite the ever-increasing use of data in everyday life.⁸¹¹ While beyond my dissertation's scope, Canadian law schools' general approach to technological competence is equally concerning and has cascading effects (although more law schools are focusing on technology). Finally, law schools' approach to data gathering and transparency is also troubling—e.g., most law schools have little to no aggregated data on many aspects of what occurs in law schools.
3. Despite calls for more rigorous methodological approaches to empirical legal scholarship,⁸¹² a quick review of Canadian law journals showcases both a lack of empirical research on Canada's legal system and a general lack of empirical rigor.

Because of these three gaps, Canadian empirical legal research, Canadian legal data science, and Canadian legal reform itself are still in their infancy despite consistent calls for evidence-based/data-driven analysis and reform of Canada's legal system.⁸¹³ Similarly, tech innovations and emergent technologies that seek to rely on Canadian legal data and previous empirical legal research are also flawed and risk creating and entrenching further inequities.⁸¹⁴ So despite technology offering great promise for Canada's legal system, most emergent technologies lack the data needed to properly operate.

As should be evident by this point, I'm not anti-data, anti-tech innovation, or some empirical nihilist when it comes to empirically driven research or reforms.

⁸⁰⁸ For a background on what I think the educated lawyer needs to know about data science, see Alan M Garber, "Data Science: What the Educated Citizen Needs to Know" (1 July 2019) 1:1 Harvard Data Science Review, online: <<https://doi.org/10.1162/99608f92.88ba42cb>>

⁸⁰⁹ This point is also historically true. So judges also never received any formal training in these areas in law school.

⁸¹⁰ Janice Dickin McGinnis, "Reflections on the Law and Learning" (1985) 65:1 Dalhousie Review 13 at 19.

⁸¹¹ See Thaddeus Hwong, "A Review of the Quantitative Studies of Decision Making in the Supreme Court of Canada (2003) 30 Man LF 353 at 375-382 for some similar views on the lacking Canadian approach to data and the law.

⁸¹² See, e.g., Lee Epstein & Gary King, "The Rules of Inference" (2002) 69:1 U Chicago L Rev 1 [King & Epstein, "The Rules"]; Lee Epstein & Gary King, "A Reply" (2002) 69:1 U Chicago L Rev 191.

⁸¹³ See, e.g., CBA, "No Turning Back: CBA Task Force Report on Justice Issues Arising from COVID-19" (2021), online: <https://www.cba.org/CBAMediaLibrary/cba_na/PDFs/Publications%20And%20Resources/2021/CBATaskForce.pdf?>.

⁸¹⁴ For previous analysis of the ways that early adoption of tech, including tech that relies on incomplete data or improper methods, can impact marginalized people, see, e.g., Molnar & Gill, *supra* note 804.

Instead, Chapter 4 calls for recognizing empiricism's issues and clear limits.⁸¹⁵ Despite these issues and limits, justice system participants must use big data; data science; tech innovation; and empirical research to transform Canada's legal system.⁸¹⁶ As Chapters 1 and 2 stress, data gathering, data transparency, and data use are fundamental to increasing judicial independence and impartiality; fairness; innovation; access to justice; and equality in Canada's legal system.

If more deliberately designed reforms are going to occur, justice system participants must address the three gaps I just mentioned:

1. Canadian courts, governments, and justice system participants must collaborate to implement a national, open-access, privacy-by-design, data strategy that includes end-to-end legal data about the experience of all individuals in Canada's legal system.⁸¹⁷
2. Canadian law schools must prioritize data, empirical, and statistical literacy in their curriculum and projects. The same is true about tech literacy for emergent technologies that rely on "big data".⁸¹⁸ They also must radically shift their approach to their own data gathering and transparency.

⁸¹⁵ Megan T Stevenson, "Cause, Effect, and the Structure of the Social World" (2023) 103:7 Boston Law Review 2001 at 2023 ["at least when it comes to the type of reforms and interventions evaluated by gold standard causal inference methods, change is hard to engineer. To the extent that an intervention temporarily alters some aspect of a person's life, stabilizing forces usually steer them back onto the path they would have been on absent the intervention. Cascades—small interventions that lead to large and lasting impacts—are rare. And causal processes are complex and context-dependent, meaning that an intervention that happens to succeed in one place may not succeed in another. That's not to say that the social world is static; to the contrary, it's changing all the time. This is a claim about the ability to *engineer* such change using a particular type of intervention. And it pertains most directly to the type of intervention that gets evaluated using randomized controlled trials."].

⁸¹⁶ Binary positions on this point aren't helpful or necessary. See, e.g., Sean Rehaag, "Borders and AI: Human rights-enhancing legal technologies" (28 May 2023) *OpenGlobalRights*, online: <<https://www.openglobalrights.org/borders-ai-human-rights-enhancing-legal-tech/>>; Ludwig & Sendhil Mullainathan, *supra* note 138 at 92 ["Algorithms can be, and too often in practice are, deeply problematic. But they need not be. Designed correctly, they offer a potential remedy for human fallibility. The challenge to overcome is that algorithms themselves are fragile, extremely sensitive to design choices. Those choices are made and the resulting algorithms are built, deployed, and procured by a social system riddled with the very problems we seek to address, a system that has been designed and implemented by fallible humans. These problems are complex but not hopeless. Economists and other social scientists have an important role to play in ensuring that algorithms do no harm and even do social good."].

⁸¹⁷ See, e.g., *Criminal Procedure and Corrections, Chapter 900, 900.05 Criminal Justice Data Collection*, online: <http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0900-0999/0900/Sections/0900.05.html> ["*Criminal justice data collection*"].

⁸¹⁸ See, e.g., University of Toronto's Data Science Institute Launch" (17 September 2021) [in discussing Berkeley's approach to interdisciplinary research of law and data science, Jennifer Chayes made this point]; MV Drake, J Chayes & XL Meng, "A Conversation with Michael V. Drake and Jennifer Chayes" (2021) *Harvard Data Science Review*, online: <<https://doi.org/10.1162/99608f92.11cb886e>>; see also J Chayes, "Data Science and Computing at UC Berkeley" (2021) *Harvard Data Science Review*, online: <<https://doi.org/10.1162/99608f92.12c8533a>>. For similar calls to action see, e.g., Yair Listokin, "Why Statistics should be Mandatory for Law Students" (22 May 2007), online: <https://prawfsblawg.blogs.com/prawfsblawg/2006/05/why_statistics__1.html>; Janice Arellano, "Statistics and Law Practice" (23 December 2015), online:

3. Canadian law journals should develop national standards for empirical research and reconsider both the substance and form of their journals. And scholars should welcome such standards for empirical legal research.

Chapter 4 relies on three parts to explain those recommendations:

- **Part I** charts a path forward for governments and courts in creating a national data strategy, including examining blueprints from other jurisdictions and discussing privacy standards and accessing legal data. It discusses the limits of big data, technology, and overhyped empirical claims. It suggests that justice system participants should remain humble about the promise of data and empirical legal reform: they're tools to learn more about our guesses and help us create new guesses about the things in need of reform.⁸¹⁹
- **Part II** examines the options available to Canadian law students to improve their literacy on data, data science, and basic stats, including contrasting the Canadian law school experience to the American law school experience. It suggests that Canadian law schools should emulate American law schools: they should include more curriculum options to improve data and statistical literacy; empirical legal research; and evidence-based reform, and they should prioritize and reward scholars who conduct empirical research and evidence-based reform. It also suggests that Canadian law schools need to think far more critically about the data they appear to not gather and radically shift their approach to data gathering and transparency.
- **Part III** examines the state of empirical legal research in Canada, including the reality that published empirical conclusions may or do fall below accepted best practices. It prescribes a pan-Canadian approach for national empirical legal research standards and provides suggestions for what that approach could include.

Part I: Canadian governments, legal organizations, and courts must create a national standard for legal data gathering and access

This dissertation has reiterated that Canada has a massive legal data deficit. The most basic facts about Canada's legal system are missing or "dark".⁸²⁰ A radical culture shift is needed: the entire legal community doesn't think in terms of data, and that absence affects all Canadian justice

<<https://www.americanbar.org/groups/litigation/committees/minority-trial-lawyer/practice/2015/statistics-and-law-practice/>>; Daniel W Linna Jr, "Why Law Students Should Take Quantitative Analysis: Big Data, Algorithms, Courtrooms, Code, and Robot Lawyers" (2016), online: <<https://www.legaltechlever.com/2016/10/law-students-take-quantitative-analysis-big-data-algorithms-courtrooms-code-robot-lawyers/>>; Nick Thieme, "Statistics in Court" (2018) 15:5 Significance, online: <<https://www.legaltechlever.com/2016/10/law-students-take-quantitative-analysis-big-data-algorithms-courtrooms-code-robot-lawyers/>>; for an analysis of problems that can occur when numbers are misunderstood>, see, e.g., Vaclav Smil, *Numbers Don't Lie* (Penguin: London, 2020); Chip Heath & Karla Starr, *Making Numbers Count: The Art and Science of Communicating Numbers* (Avid Reader Press: New York, 2022).

⁸¹⁹ For research on the complexities and issues in statistical analysis, e.g., Ellenberg, *supra* note 503; Tim Hartford, *supra* note 503; Silver, *supra* note 237; Pearl & Mackenzie, *supra* note 502; Stuart Ritchie, *Science Fictions: How Fraud, Bias, Negligence, and Hype Undermine the Search for Truth* (Metropolitan Books: New York, 2022); Kenneth Cukier, Viktor Mayer-Schönberger & Francis de Véricourt, *Framers: Human Advantage in an Age of Technology and Turmoil* (Dutton: New York, 2021).

⁸²⁰ Khan, "Life of a Reserve", *supra* note 4, n5; 2, nn13,14.

system participants. As Chapter 1 stresses, the implication of such “lousy data is lousy knowledge,”⁸²¹ including for the Canadians who participate in our democracy by voting for and against leaders who can rely on empirically driven change (or not).

Part I prescribes solutions. It examines:

- what national standards could look like;
- the promises and perils of “big” data and the need to stay humble as legal data is gathered and analyzed;
- the need to re-think federal decision-makers’, courts, and judges’ privacy under the *Privacy Act* and *Access to Information Act*;
- the need to reconsider privacy and privilege generally for other legal organizations; and
- the need to consider trusted research models to bulk access data from sources like CanLII if open access isn’t provided.

This analysis suggests that governments and courts must develop a national legal data strategy; that justice system participants must remain humble about what big data can achieve; and that access to legal data could easily be improved.

i. Reducing federal and provincial data gaps and increasing interoperability

As Chapter 1 notes, blueprints for data gathering and data transparency already exist. For example, Florida’s legislation prescribes 140 data points that must be gathered.⁸²² *Appendix 3* includes the full list of data points to stress the level of granularity that’s possible and that Canadian governments could agree to require. The list exemplifies the necessary detail for a more complete dataset that chronicles an individual’s experience with the criminal justice system. As Chapter 1 argues, such data is necessary to improve and preserve judicial impartiality and independence as well as basic fairness and equality in Canada’s criminal justice system.⁸²³

To avoid interoperability and opacity issues, Florida’s Department of Justice (akin to a provincial attorney general) is responsible for ensuring that state and local criminal justice agencies report 140 data elements on a weekly basis. Once Florida’s data points are gathered and aggregated, datasets must be published in a modern, open-access, machine-readable format that the public

⁸²¹ Hadfield, *Rules for a Flat World*, *supra* note 65 at 218.

⁸²² *Criminal Procedure and Corrections*, *supra* note 817.

⁸²³ For a thorough analysis of this relationship, see Khan & Rehaag, *supra* note 129.

can readily access via a public website. Published data must be searchable by data elements, county, circuit, and unique identifier.⁸²⁴

Canadian provincial, superior, appellate, and federal courts and federal, provincial, and territorial attorneys general should gather equivalent standard data points. Such a standardized approach would avoid the current problems that StatsCan and other justice system participants face with incomplete data; myriad data gaps; and interoperability challenges.⁸²⁵ Currently, so much data remains siloed and unused because of interoperability—*i.e.*, the inability to communicate between jurisdictions, disciplines, and levels of government who use a variety of different systems.

Other U.S. and U.K initiatives also offer blueprints for governments and courts. So research on data gathering, data transparency, data access, data standardization, data visualization work has been done. A small to medium size team could rely on this work to design, tailor, implement a ready-made system and process for Canada’s legal system.

The main barrier seems to be political will and cost. The main issues have been studied. So quick action and results are possible on legal data standards, data methodologies, and data visualization if Canadian reformers examined existing work on the subject:

- Standards Advancement for the Legal Industry (aka SALI Alliance): SALI created 10,000+ tags for the legal industry’s common language. SALI Alliance Standards are open access; industry-drive; and practical. Their standards seek to apply to many layers of the legal system, and they’ve already created standards for Canadian content;⁸²⁶
- Measures for Justice: It’s been researching and implementing data standardization and collection projects for the U.S. legal system,⁸²⁷ including Florida’s innovative criminal

⁸²⁴ *Criminal justice data collection*, *supra* note 822 at 4.

⁸²⁵ Statistics Canada, “Courts Statistics: Interactive”, online: <<https://www150.statcan.gc.ca/n1/pub/71-607-x/71-607-x2019020-eng.htm>>; Alison Brooks, “Law Enforcement Information Management Study” (2014) IDC at 3, online: <https://cacp.ca/index.html?asst_id=977> [“A key impediment to system interoperability, and a mammoth waste of law enforcement resources, is the lack of system integration with the provincial Crowns and the judiciary. Although electronic disclosure is operational in some jurisdictions, system interoperability across the justice system does not currently exist and as a result there is a disincentive to adopt newer technologies. As noted above, law enforcement organizations need to integrate an increasingly diverse set of evidentiary formats (paper, video, photo, audio, etc.), attaching each piece to one investigative file number. However, more often than not, crown prosecutors’ offices are ill-equipped to receive digital evidence.”]

⁸²⁶ SALI Alliance, “Modern Legal Industry Standards”, online: <<https://sali.org>>.

⁸²⁷ Measures for Justice, “Who We Are”, online: <<https://measuresforjustice.org>>.

justice legislation. It offers clear recommendations on data gathering for justice system participants⁸²⁸ and a well-established, current methodology;⁸²⁹

- National Centre for State Courts: It developed comprehensive legal data standards for open access court data from U.S. state courts,⁸³⁰ and it collects and publishes U.S. state court caseload data;⁸³¹
- CJARS: It collects, harmonizes, and integrates U.S. state court records for a large-scale data repository⁸³² and has created comprehensive data documentation;⁸³³
- The Court Statistics Project: It aggregates and analyzes U.S. state court data from the National Centre for State Courts and offers readily accessible dashboard style analysis;⁸³⁴ and
- The UK's Legal Education Foundation: It prepared multiple reports for the U.K.'s massive reform of its legal system, including a comprehensive data strategy.⁸³⁵

The 2023 Survey also identified metadata that could be embedded within civil and criminal decisions. The amount of research that such datapoints could facilitate is far more expansive than what's currently possible:

- civil: 1. Citation; 2. Decision date; 3. Registry; 4. Jurisdiction; 5. Delivery time—i.e., how long the parties had to wait for the decision; 6. Jury vs. no jury; 7. Jury demographic information; 8. Represented vs. self-represented; 9. Information on why individual is self-represented—e.g., not enough money; 10. Information on whether self-represented individual previously contacted a lawyer; 11. Counsel names; 12. Judge name(s); 13. Judge gender; 14. Counsel gender; 15. Plaintiff gender; 16. Defendant gender; 17. Third-party gender; 18. Plaintiff age; 19. Defendant age; 20. Third-party age; 21. Plaintiff ethnicity; 22. Defendant ethnicity; 23. Third-party ethnicity; 24. Plaintiff type—e.g., government, business, person; 25. Defendant type—e.g., government, business, person; 26. Third-party type—e.g., government, business, person; 27. Plaintiff's law firm; 28. Defendant's law firm; 29. Third-party's law firm; 30. Expert name; 31. Expert gender; 32. What expert opined on; 33. How many witnesses; 34. Witness breakdown—e.g., police officers, lay witness, eye witness; 35. Hearing information—e.g., in person, by phone, by video; 36. How many court days; 37. Breakdown of court time by party—e.g., plaintiff's case vs. defendant's case; 38. Word count of entire decision; 39. Headings used in the decision; 40. Word count for what appears under each heading—e.g., 500 words for

⁸²⁸ Measures for Justice, “Data Transparency”, online: <<https://measuresforjustice.org/data-transparency/>>.

⁸²⁹ Measures for Justice, “Methodology for Court and Prosecutor Data Overview”, online: <<https://measuresforjustice.org/what-we-do/how-we-measure/methodology/>>.

⁸³⁰ National Centre for State Courts, “National Open Court Data Standards”, online: <<https://www.ncsc.org/consulting-and-research/areas-of-expertise/data/national-open-court-data-standards-nods>>.

⁸³¹ National Centre for State Court, “What is the CSP”, online: <<http://www.courtstatistics.org/>>.

⁸³² CJARS, “Criminal Justice Administrative Records System”, online: <<https://cjars.org>>.

⁸³³ Keith Finlay and Michael Mueller-Smith, “Criminal Justice Administrative Records System” (2022), online: <<https://cjars.org/data-documentation-download/>>.

⁸³⁴ CSP, “CSP Stat”, online: <<https://www.courtstatistics.org/court-statistics/interactive-caseload-data-displays/csp-stat>>.

⁸³⁵ Byrom, “Digital Justice”, *supra* note 384 at 2; Townend & Wiener, *supra* note 205 at 3.

analysis; 41. Subject matter—e.g., personal injury, criminal, family; 42. Relief sought; 43. Interlocutory vs. final relief; 44. Procedural vs. substantive; 45. List of defences that defendant and third party raised; 46. List of live issues; 47. Paragraphs that address live issues; 48. Secondary sources decision cites (including citing paragraph); 49. Statutes decision cites (including citing paragraph); 50. Cases decision cites (including citing paragraph); 51. Treatment of cited case in decision—e.g., positive, neutral, negative; 52. Cases cited in written argument; 53. Cases cited in oral argument; 54. Statutes cited in written argument; 55. Statutes cited in oral argument; 56. Secondary sources cited in written argument; 57. Secondary sources cited in oral argument; 58. Costs sought; 59. Costs awarded; 60. Damages sought; 61. Damages awarded in itemized format; 62. Start and end paragraphs for concurring, separate, or dissenting opinions; 63. List of related proceedings—e.g., motions; 64. Link to originating proceeding—e.g., pleading; 65. Link to all filed materials—e.g., written arguments; 66. Originating or appeal proceeding; 67. Appeal justification—e.g., error of law (if applicable); 68. Appeal information, including any appeal outcome; 69. How many online participants; 70. Location of online participants; 71. Connectivity issues with online hearings.

- criminal: 1. Citation; 2. Decision date; 3. Registry; 4. Jurisdiction; 5. Delivery time—i.e., how long the parties had to wait for the decision; 6. Jury vs. no jury; 7. Jury demographic information; 8. Represented vs. self-represented; 9. Information on why individual is self-represented—e.g., not enough money; 10. Information on whether self-represented individual previously contacted a lawyer; 11. Counsel names; 12. Judge name; 13. Judge gender; 14. Accused gender; 15. Accused age; 16. Accused ethnicity; 17. Expert names; 18. Expert gender; 19. What expert opined on; 20. How many witnesses; 21. Witness breakdown—e.g., police officers, lay witness, eye witness; 22. Hearing information—e.g., in person, by phone, by video; 23. How many court days; 24. Breakdown of court time by party—e.g., accused case vs. crown case; 25. Word count of entire decision; 26. Headings used in the decision; 27. Word count for what appears under each heading—e.g., 500 words for analysis; 28. Subject matter—e.g., murder, assault, etc.; 29. Interlocutory vs. final relief; 30. Procedural vs. substantive; 31. List of defences that accused raised; 32. List of live issues; 33. Paragraphs that address live issues; 34. Statutes decision cites (including citing paragraph); 35. Secondary sources decision cites (including citing paragraph); 36. Cases decision cites (including citing paragraph); 37. Treatment of cited case in decision—e.g., positive, neutral, negative; 38. Cases cited in written argument; 39. Cases cited in oral argument; 40. Statutes cited in oral argument; 41. Statutes cited in written argument; 42. Secondary sources cited in written argument; 43. Secondary sources cited in oral argument; 44. Start and end paragraphs for concurring, separate, or dissenting opinions; 45. List of related proceedings—e.g., motions; 46. Link to originating proceeding—e.g., criminal charge; 47. Link to all filed materials—e.g., written arguments; 48. Originating or appeal proceeding; 49. Appeal justification—e.g., error of law (if applicable); 50. Appeal information, including appeal outcome; 51. How many online participants; 52. Location of online participants; 53. Connectivity issues with online hearings.

Any national data gathering, data transparency, and data access project for court and judicial data would clearly require funding and direction from the federal attorney general in coordination

with provincial and territorial attorneys general. These governments would likely have to create a national memorandum of understanding over the data project with conditional transfer payments or some legislative solution. I recognize that provincial and territorial attorney generals are responsible for court administration and court funding. But the current approach—where the federal government often provides no funding during budget cycles to fill the court administration funding gaps that provinces don’t fill—is clearly failing. As Chapter 1 suggests, it’s arguably constitutionally inadequate or even unconstitutional. Considering the federal government’s constitutional responsibility over criminal law and the appointing of all s. 96, appellate, and federal court judges, the federal government likely has a quasi-constitutional or constitutional responsibility to ensure that the courts in which federal judges operate can gather, analyze, and release data. Without such data, judges and courts can’t truly achieve the goals of judicial independence and impartiality or other constitutional promises in 2026.⁸³⁶

As Chapters 1 and 2 note, modernizing courts and the need for a national data strategy doesn’t even seem to be on the federal governments’ radar despite promises for modernizing courts, especially for marginalized people who bear the worst effects of Canada’s justice crisis.⁸³⁷ Since promises in 2021, modernizing Canada’s legal system garnered almost no attention during Canada’s last two elections or budget cycles:

- In 2021, the Liberal government was the only party to commit any money to modernizing courts in Canada’s 2021 election.⁸³⁸ And that government didn’t even make good on this promise in its first two budgets in 2022 or 2023 or its final budget in 2024.
- In 2022, the Trudeau Liberals only allocated money to hire more judges and for legal aid.⁸³⁹
- In 2023, the Trudeau Liberals didn’t even mention courts, judges, or the legal system.⁸⁴⁰

⁸³⁶ Daniel Leblanc, “Chief justice warns Trudeau that judicial vacancies are putting criminal trials at risk” (9 May 2023) *CBC News*, online: <<https://www.cbc.ca/news/politics/supreme-court-wagner-trudeau-judicial-vacancies-1.6836145>>

⁸³⁷ See, e.g., Jacques Gallant, “Too many Indigenous and Black people are in Canada’s prisons. Here’s how the parties will — or won’t — fix that” (2021) *Toronto Star*, online: <<https://www.thestar.com/politics/federal-election/2021/09/04/too-many-indigenous-and-black-people-are-in-canadas-prisons-heres-how-the-parties-will-or-wont-fix-that.html?rf>>; Government of Canada, “Government of Canada announces measures to keep communities safe, fight systemic racism and make our criminal justice system more effective for all” (2021), online: <<https://www.canada.ca/en/departement-justice/news/2021/02/government-of-canada-announces-measures-to-keep-communities-safe-fight-systemic-racism-and-make-our-criminal-justice-system-more-effective-for-all.html>>.

⁸³⁸ Liberal Party of Canada, “Fiscal and Costing Plan”, *supra* note 388.

⁸³⁹ Government of Canada, “Budget 2022”, *supra* note 388.

⁸⁴⁰ Government of Canada, “Budget 2023”, online: <<https://www.budget.canada.ca/2023/home-accueil-en.html>>.

- In 2024, the Trudeau Liberals only allocated money to hire more judges and for legal aid.⁸⁴¹
- In 2025, the Carney Liberal government didn't even provide a budget (so its approach to the legal system is unknown).

In sum, aside from the issues of court and judicial opacity that Chapters 1-3 discuss, large aspects of modernizing Canada's legal system and Canada's legal data deficit appear simple: a lack of financial resources drives the deficit, a point Chapter 5 discusses further.

This issue is also broader than courts and governments. It also applies to tribunals and other justice system participants, including law schools, law societies, the federal Department of Justice, and provincial attorneys general. Like courts and governments, they also suffer from radical data flaws, including a lack of data gathering, data transparency, and data analysis:

- federal tribunals: federally, the Administrative Tribunals Support Service of Canada (ATSSC) is responsible for supporting some federal administrative tribunals. Other federal tribunals don't fall within this bundle and reasonable for their own support services—e.g., the Immigration and Refugee Board.⁸⁴² While some data is public, most isn't and must be obtained via Access to Information Requests or data sharing agreements.⁸⁴³
- provincial tribunals: some provinces fair better than others, but overall, the data isn't easily accessible, not properly gathered, or some combination of both. For example, Ontario publishes some data (either as open, under review, or restricted). But Ontario has 14 tribunals and only a limited number are listed in the open data inventory. And the data in the inventory is simply not amendable to the kinds of research and accountability that ought to be possible.⁸⁴⁴ Other provinces suffer from similar opacity or a lack of democratic access to granular data;⁸⁴⁵

⁸⁴¹ Government of Canada, "Budget 2024", at pp 243-244, online: <<https://budget.canada.ca/2024/report-rapport/budget-2024.pdf>>.

⁸⁴² For a full list of Federal tribunals, see CanLII, "Canada (Federal)", online: <<https://www.canlii.org/en/ca/>>.

⁸⁴³ Refugee Law Lab, "Refugee Law Data", online: <<https://refugeelab.ca/projects/refugee-law-data/>>.

⁸⁴⁴ Tribunals Ontario, "Tribunals Ontario Data Inventory", online: <<https://tribunalsontario.ca/en/open/>>.

⁸⁴⁵ Here's a breakdown of the tribunals in the provinces and what's available (mostly nothing):

- British Columbia: For a full list, see CanLII, "British Columbia", online: <<https://www.canlii.org/en/bc/>>. No tribunal data appears to be in its public data catalogue (see *supra* note 517).
- Northwest Territories: For a full list, see CanLII, "Northwest Territories", online: <<https://www.canlii.org/en/nt/>>; No tribunal data appears to be in its public data catalogue (Northwest Territories, "Open Government", online: <<https://www.eia.gov.nt.ca/en/priorities/open-government/open-data>>).
- Nunavut: For a full list, see CanLII, "Nunavut", online: <<https://www.canlii.org/en/nu/>>. Nunavut doesn't have an open data catalogue.
- Yukon: For a full list, see CanLII, "Yukon", online: <<https://www.canlii.org/yk/>>. No tribunal data appears to be in its public data catalogue (see *supra* note 517).

- Canadian law schools: they're the lifeblood of Canada's legal system as they're the input for most new lawyers. But the same data gaps discussed elsewhere also exist there:
 - Law schools still aren't adequately tracking demographic data. As Chapter 3 discusses, accessing demographic data—at least public data—about the composition of students at law schools is difficult. While some schools, for example, the University of Toronto, maintain such data and make it publicly available,⁸⁴⁶ many historically haven't but more are starting to gather it.⁸⁴⁷ If law schools do have this demographic data, it's often incomplete (e.g., missing key data about students like their education background); not amenable to aggregate analysis; or both.⁸⁴⁸ Rich data about the composition of law students at law

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- Alberta: For a full list of Alberta tribunals, see CanLII, “Alberta”, online: <<https://www.canlii.org/en/ab/>>. Aside from some information about the tribunals (e.g., some guidelines, fact sheets, training materials, procedural rules, and some decisions), no actual “data” appears to be in the public data catalogue (see *supra* note 517).
 - Saskatchewan: For a full list, see CanLII, “Saskatchewan”, online: <<https://www.canlii.org/en/sk/>>. Saskatchewan's open data portal no longer appears to be operational.
 - Manitoba: For a full list, see CanLII, “Manitoba”, online: <<https://www.canlii.org/en/mb/>>. No tribunal data appears to be in its public data catalogue (see *supra* note 517).
 - Ontario: For a full list, see CanLII, “Ontario”, online: <<https://www.canlii.org/en/on/>>. Aside from some information about the tribunals that's not even available (e.g., number of requests to Agency Tribunal Relations), no actual “data” appears to be in the public data catalogue (see *supra* note 517).
 - Prince Edward Island: For a full list, see CanLII, “Prince Edward Island”, online: <<https://www.canlii.org/en/pe/>>. No tribunal data appears to be in its public data catalogue (see *supra* note 517).
 - Newfoundland & Labrador: For a full list, see CanLII, “Newfoundland and Labrador”, online: <<https://www.canlii.org/en/nl/>>. No tribunal data appears to be in its public data catalogue (see *supra* note 517).
 - Nova Scotia: For a full list, see CanLII, “Nova Scotia”, online: <<https://www.canlii.org/en/ns/>>. No tribunal data appears to be in its public data catalogue (see *supra* note 517).
 - New Brunswick: For a full list, see CanLII, “New Brunswick”, online: <<https://www.canlii.org/nb/>>. No tribunal data appears to be in its public data catalogue (see *supra* note 517).

⁸⁴⁶ Henry NR Jackman Faculty of Law, University of Toronto, “JD First Year Class Profile 2019-2023”, online: <<https://www.law.utoronto.ca/about/jd-first-year-class-profile>>.

⁸⁴⁷ The following schools appear to maintain no public data:

- Thompson Rivers University, “Faculty of Law”, online: <<https://www.tru.ca/law.html>>.
- University of Manitoba, “Faculty of Law”, online: <<https://umanitoba.ca/law/programs-of-study/admissions/admissions-statistics>>.
- University of Saskatchewan, “College of Law”, online: <<https://law.usask.ca>>.
- Lakehead University, “Bora Laskin Faculty of Law”, online: <<https://www.lakeheadu.ca/programs/departments/law>>.
- University of Ottawa, Faculty of Law, “Common Law”, online: <<https://www.uottawa.ca/faculty-law/common-law>>.
- Université de Montréal, “Faculty of Law”, <<https://droit.umontreal.ca/en/home/>>.
- University of New Brunswick, Faculty of Law, “UNB Law”, online: <<https://www.unb.ca/fredericton/law/index.html>>.
- Toronto Metropolitan University, “Lincoln Alexander School of Law”, online: <<https://www.torontomu.ca/law/>>.

⁸⁴⁸ The following schools maintain public summaries of some data:

- Peter A Allard School of Law, “1L JD Class Profile”, online: <<https://allard.ubc.ca/programs/juris-doctor-jd-program/admissions/1l-jd-class-profile>>

schools is basic and should be readily accessible. While law school's increased focused on decolonizing, equity, diversity and inclusion data is important,⁸⁴⁹ it often properly relies on self-reporting. In contrast, a law student's age, educational background, grade point average, and other important factors likely shouldn't be optional: they should be collected and distributed as a matter of course. The University of Toronto Faculty of Law's approach seems instructive: separate admissions data by entry year **and** self-declared person profiles by entry year.⁸⁵⁰ Law schools should likely resolve what data points to track at a national level, and the Canadian Council of Law Deans initiative could easily spearhead and follow the lead of organizations like the Federation of Law Societies who has provincial law societies report such data to it.⁸⁵¹ This demographic information is also necessary for tracking the relationship of demographics to performance—e.g., are some groups doing better/worse based on the professor or other possible factors. If law schools are truly interested in making a more equitable legal system, they should start on their home turf and ensure they're doing everything possible to understand their students' user experience and improve it.

- Law schools also aren't tracking data that should be publicly available on classes, budgets, staff, and faculty. For example, law schools could gather data on publications; grants (all grant applications and decisions should be open by default); on teaching levels; on class size; about exams, assignments, *etc.* As publicly funded institutions, such data should be available. But it's not.
- Law schools seem to do almost nothing with the incredible data they house—at least not in any publicly recorded way—in exams, teaching materials, and written assignments. At least not publicly, law schools maintain almost no data about how

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- University of Calgary Faculty of Law, “Assessment of Applications”, online: <<https://law.ucalgary.ca/future-students/admissions-jd-programs/assessment-of-applications#jd-admission-statistics>>.
 - University of Alberta Faculty of Law, “Admissions”, online: <<https://www.ualberta.ca/en/law/programs/jd/admissions/index.html>>.
 - University of Victoria, “JD admission FAQs”, online: <<https://www.uvic.ca/law/admissions/jd/admissionfaqs/index.php>>.
 - University of Windsor, Faculty of Law, “Student Diversity”, online: <<https://www.uwindsor.ca/law/1089/diversity>>.
 - Osgoode Hall Law School, YorkU, “Incoming Class Survey”, online: <<https://www.osgoode.yorku.ca/programs/juris-doctor/juris-doctor-admissions/incoming-class-survey/>>.
 - Western University, “Class Profiles: Diversity Survey”, online: <https://law.uwo.ca/future_students/jd_admissions/class_profiles.html>.
 - McGill University, Faculty of Law, “Class and Alumni Profiles”, online: <<https://www.mcgill.ca/law/bcl-jd/program-description/student-body-and-alumni-data>>.
 - Dalhousie University, Schulich School of Law, “Your Community”, online: <<https://www.schulichlaw.com/by-the-numbers>>.
 - Université de Moncton Faculty of Law, “Welcome”, online: <<https://www.umoncton.ca/umcm-droit/>>.
 - Queen's University, Queen's Law, “Class Profile”, online: <<https://law.queensu.ca/programs/jd/class-stats>>.
- ⁸⁴⁹ York University, “Decolonizing, Equity, Diversity, and Inclusion Strategy: 2023-2028”, online: <<https://www.yorku.ca/dedi-strategy/>>.

⁸⁵⁰ Henry NR Jackman Faculty of Law, University of Toronto, “JD First Year Class Profile”, *supra* note 846.

⁸⁵¹ Canadian Council of Law Deans, “CCLD” online: <<https://cclcd-cdfdc.ca>>.

students perform in law school and no analysis of that performance.⁸⁵² Most law schools appear to leave much of that data dark, including all the material that law students generate to receive grades. While this point is well beyond Chapter 4's scope, law schools are an incredible knowledge generator of legal analysis. That information could be used in ways that could improve both legal education (e.g., why do students consistently make the same mistake or struggle with the same issue) and legal services within law schools (e.g., generated information could be used as training data to improve approaches to legal advice and service at the various legal clinics in law schools).⁸⁵³

- law societies: in contrast to the Canadian Council of Law Deans and law student data, the Federation of Law Societies of Canada does track some aggregated data about lawyers in a three-year cycle.⁸⁵⁴ Individual law societies, however, mostly appear like law schools: they're inconsistently tracking and releasing adequate demographic data, and they don't generally release other aggregated data. Like some law schools, some law societies also track some data about the composition of lawyers in each province. But the data doesn't seem to include summer or articling students. And, like some law schools, the focus is mainly on decolonizing, equity, diversity, and inclusion data, which also properly relies on self-reporting in this context, but the data is otherwise sparse.⁸⁵⁵ Most law societies do

⁸⁵² For a notable exception, see Craig Forcece, "Active use of passive learning" (5 January 2026) *YouTube*, online: <<https://www.youtube.com/watch?v=oMASwymu0XE>>.

⁸⁵³ I thank Brendan Cassidy for many discussions about atomic units of data and the possibilities within law schools. A rich discussion is occurring about the place of "AI" in legal education and testing (see, e.g., Jonathan Choi *et al*, "Chat GPT goes to law school" (2022) 71:3 *Journal of Legal Education* (as of August 2024, this paper has already been cited 515 times); see also Loyola University Chicago, School of Law Library, "AI in the Legal Field: Chat GPT and Law School", online: <https://lawlibguides.luc.edu/c.php?g=1301896&p=9566326>).

⁸⁵⁴ *Supra* note 1214.

⁸⁵⁵ Some law societies maintain current demographic data:

- Law Society of British Columbia, "Demographics of the Legal Profession", online: <<https://www.lawsociety.bc.ca/about-us/priorities/equity-and-diversity-centre/demographics-of-the-legal-profession/>>.
- Law Society of Ontario, "Equity Supports & Resources", online: <<https://lso.ca/lawyers/equity-supports-resources>>.

Some law societies maintain dated demographic data:

- Law Society of Saskatchewan, "Collecting Demographic Data To Better Understand Our Membership And Address Barriers In The Legal Profession", online: <<https://www.lawsociety.sk.ca/lawyers-and-students/collecting-demographic-data-to-better-understand-our-membership-and-address-barriers-in-the-legal-profession-2/>>.
- Nova Scotia Barristers Society, "2023 Annual Report: Statistical Snapshot", online: <<https://www.nsbsannualreport.org/statistical-snapshot-2023>>.
- Barreau du Québec, "Statistics and Annual Reports", online: <<https://www.barreau.qc.ca/media/rc5emydr/barreau-metre-2022-section-6.pdf>>

Many law societies don't appear to publish demographic data:

- Law Society of Alberta, "Home Page", online: <<https://www.lawsociety.ab.ca>>.
- Law Society of Manitoba, "Home", online: <<https://lawsociety.mb.ca>>.
- Law Society of Yukon, "Law Society of Yukon", online: <<https://lawsocietyyukon.com>>.
- Law Society of the Northwest Territories, "Home – The Law Society of the Northwest Territories (QA)", online: <<https://lawsociety.nt.ca>>.
- Law Society of Nunavut, "Home | Law Society of Nunavut", online: <https://www.lawsociety.nu.ca/en/home?language_content_entity=en>.

release annual reports with data points within them,⁸⁵⁶ but the actual datasets aren't available for access or downloading (perhaps some are released on request or after signing an information sharing agreement). As discussed below with the federal Department of Justice, provincial attorneys general, and the federal access to information regime, law societies can also rely on various exemptions in their provincial regimes to avoid disclosing data. For example, in Ontario the *Freedom of Information and Protection of Privacy Act* simply doesn't apply to the law society.⁸⁵⁷ While some exemptions relating to personal information are likely needed (and properly relied on by law societies), other exemptions are likely being used to shield law societies from much-needed oversight, including lengthy retention periods;⁸⁵⁸

- The federal Attorney General and the Department of Justice: The Department of Justice is Canada's largest law firm with an incredible amount of data.⁸⁵⁹ Yet that data remains siloed and not open to public access—even after litigation ceases. While some solicitor-client privilege concerns may exist for some recent data, this data is a public asset that

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- Law Society of New Brunswick, "Law Society of New Brunswick", online: <<https://lawsociety-barreau.nb.ca/en/>>.
 - Law Society of Newfoundland and Labrador, "Equity and Diversity Committee – Survey", online: <<https://lsnl.ca/equity-and-diversity-committee-survey/>> [But this data is now being gathered].
 - The Law Society of Prince Edward Island, "Law Society of PEI", online: <<https://lawsocietypei.ca/>>.
 - Barreau du Québec, "Barreau du Québec", online: <<https://www.barreau.qc.ca/en/>>.

⁸⁵⁶ Most law societies issue annual reports:

- Law Society of British Columbia, "Strategic Planning and Annual Reports", online: <<https://www.lawsociety.bc.ca/about-us/strategic-planning-and-annual-reports/>>.
- Law Society of Alberta, "Annual and Financial Report", online: <<https://www.lawsociety.ab.ca/about-us/annual-accountability-and-financial-reports/>>.
- Law Society of Saskatchewan, "Annual and Financial Reports", online: <<https://www.lawsociety.sk.ca/news-media-and-publications/annual-and-financial-reports/>>.
- Law Society of Manitoba, "Annual Report", online: <<https://lawsociety.mb.ca/about/news-publications/annual-report/>>.
- Law Society of Yukon, "Annual Report: December 31, 2022", online: <<https://lawsocietyyukon.com/wp-content/uploads/2023/05/2022-Annual-Report-Final-May-16-2023.pdf>>.
- Law Society of the Northwest Territories, "Forty-Fifth Annual General Meeting: Agenda & Materials", online: <<https://lawsociety.nt.ca/wp-content/uploads/2022/12/AGM-Package-2022-paginated-2.pdf>>.
- Law Society of Ontario, "Annual Report", online: <<https://lso.ca/about-lso/governance/annual-report/>>.
- Law Society of New Brunswick, "Annuals Reports", online: <<https://lawsociety-barreau.nb.ca/en/publications/annual-reports>>.
- Law Society of Newfoundland and Labrador, "Annual Reports", online <<https://lsnl.ca/publications-and-forms/publications/annual-reports/>>.
- Nova Scotia Barristers Society, "Annual Reports & Financial Statements", online: <<https://www.nsbsannualreport.org>>.

Few don't:

- Law Society of Nunavut, "Home",
- The Law Society of Prince Edward Island, "Law Society of PEI", *supra* note 855.

⁸⁵⁷ See, e.g., *Freedom of Information and Protection of Privacy Act*, RSBC 1996, C 165, ss. 12-22,

⁸⁵⁸ Globe and Mail, "Secret Canada: It's your right to know", *The Globe and Mail*, online: <<https://www.secretcanada.com>>.

⁸⁵⁹ On this topic generally, see, e.g., Khan & Rehaag, *supra* note 129.

should be released in redacted or full formats after reasonable retention periods.⁸⁶⁰ The Department of Justice likely also houses a large amount of data that's likely not subject to any privilege, including unpublished decisions or various other documents. This vast source of data is a public good that shouldn't be sheltered from review, especially when the Department of Justice is the "protector of the public interest": it has clear statutory and constitutional role to ensure the administration of justice and to "defend the rule of law".⁸⁶¹ Shielding data from use—even on grounds of privilege after a suitable retention privilege—is inconsistent with that clear role; and

- provincial Attorneys General: While provincial Attorneys General don't possess the same volume of data as the federal Department of Justice, they also collectively hold a significant amount of data, including information on behalf of courts in certain jurisdictions. The same arguments and concerns that apply to federal Department of Justice data are relevant here, including defending the rule of law and ensuring the administration of justice. As archival expert Jean Dryden notes, this transparency issue shouldn't persist, especially if justice system participants truly want to learn more about their legal system:

Governments have a mission to act in the public interest and, to that end, must be transparent and accountable for their actions, which are documented in government records. Consequently, privilege should not inappropriately impede access to a government's legal records. Nonetheless, privilege has long stood in the way of citizens' access to government records. Writing in 1984, archivist James Whalen stated, 'The principle of solicitor-client privilege, and its application to records of the Department of Justice, has been most effective in closing off a large portion of these records to historical research.'⁸⁶²

As almost every chapter in this dissertation has suggested that a fundamental shift is needed in Canada's legal culture: data matters, and gaps are everywhere. If Canada's legal culture is serious about access to justice and basic constitutional promises, every justice system participant needs to get serious about user experience, data gathering, data transparency, data analysis, metrics, and empirical standards.

Before moving on, I recognize that some solicitor-client issues might arise with some kinds of legal data—e.g., legal aid data or legal service data—and some issues might not be as surmountable as other kinds of solicitor-client privilege issues with suitable data retention

⁸⁶⁰ This topic doesn't appear to be frequently discussed in Canadian literature. But two articles thoroughly discuss the issue. Unfortunately, little has changed in 41 years. See James M Whalen, "The Application of Solicitor-Client Privilege to Government Records" (1984) 18 *Archivaria* 135; Jean Dryden, "Life Everlasting: The Absurdity of Perpetual Privilege" (2025) 99 *Archivaria* 35.

⁸⁶¹ See, e.g., *Canadian Security Intelligence Services Act (Re)*, 2020 FC 616; *United States v Norbu*, 2019 ONSC 7123; *Cosgrove v Canadian Judicial Council*, 2007 FCA 103; *Douglas v Canada (Attorney General)*, 2013 FC 451; *R v Trang*, 2002 ABQB 286; *Department of Justice Act*, RSC, 1985, c J-2.

⁸⁶² Dryden, *supra* note 860 at 57.

periods. But most of the data I'm discussing within Chapter 4 doesn't even interact with issues of privilege, privacy, or confidentiality.

ii. *Maintaining "the humility of uncertainty"*

If resources are ever allocated to addressing Canada's massive data deficit, Canada's empirical challenges won't stop; they may even intensify. As I suggested at the outset, justice system participants don't remain epistemically humble.⁸⁶³ Whether its dogmatism, ideology, fame, political gain, or pure earnestness, justice system participants are often too confident about what they think is or isn't causing a problem or what will or won't work to remedy that problem.

As more data is gathered and analyzed, I fear that overconfidence might grow. More data might not solve problems; it could even further polarize justice system participants, especially if empirical conclusions become more "certain". For example, some empirical legal researchers suggest more reliance on randomized control trials (*aka* RCTs) as the gold standard for evidence-based legal reform.⁸⁶⁴ Such calls seem to suggest that justice system participants should use data and experiments to confidently engineer outcomes in legal systems.⁸⁶⁵

Despite Chapter 1's call for deliberately designed reforms, I don't believe that confidently engineering outcomes in legal systems is possible. Empiricist and economist Megan Stevenson recently offered this sobering yet still optimistic view. Stevenson stresses the necessity of humility and uncertainty when using empirical research in legal reform. Justice system participants certainly should pursue empirical research and empirically driven reforms. But participants shouldn't rely on empirical research—especially RCTs—for "certainty": most evidence-based reforms have failed and many more likely will. Instead of believing that more data and study will offer more "certainty", Stevenson argues that we must proceed with the

⁸⁶³ For great perspectives on staying epistemically humble and a primer on communicating with data, see, e.g., Rohan Alexander, *Telling Stories with Data* (2023), online: <<https://tellingstorieswithdata.com>>

⁸⁶⁴ D James Greiner & Cassandra Wolos Pattanayak, "Randomized Evaluation in Legal Assistance: What Difference Does Representation (Offer and Actual Use) Make?" 121:8 Yale Law Journal 2032 at 2196 but see also 2198 where they discuss some limits of randomized controlled trials; Action Committee on Access to Justice in Civil and Family Matters, "We've got the Data – Now What? (27 October 2022), online: <<https://www.youtube.com/watch?v=TZnB5JgDAvQ>> at 44:06 [we should implement randomized control trials].

⁸⁶⁵ For a great breakdown of this view, see Stevenson, *supra* note 815 at 1.

“humility of uncertainty”—a point that’s a fundamental conclusion of this dissertation, and I quote it in full here because her comments are worth it:

I am not opposed to evidence. This is an evidence-based Essay, in that I build my entire argument around evidence derived from RCTs. Nor am I opposed to the evidence-based reform movement, which encompasses much more than a fondness for RCTs. But I do question the vision of social change embodied by the evidence-based movement. This vision of social change derives in part from the methodologies it embraces.

Epidemiologist Sharon Schwartz argues that a focus on RCTs means a focus on a type of reform that is inherently conservative. Not conservative as in Republican-leaning, but conservative as in favoring the conservation of an existing structure or system. RCTs require holding all else constant except the treatment. This “limits the focus to interventions that leave systems intact and change some element that is manipulable without doing ‘damage’ to the system.” A focus on RCTs means prioritizing a certain set of policies, policymakers, and experts.

RCTs and other causal inference methods may be associated with a conservative approach to reform. But they do not necessarily support a conservative approach to reform. Rather, they are a test of the conservative approach. And the test shows that system-conserving changes rarely have much lasting effect.⁸⁶⁶

...

... that outside forces—interventions—are largely unsuccessful at engineering change in people’s lives does not necessarily mean that humans are powerless beings in the throes of social forces. Rather, it suggests that people have already fought to create the best lives they could for themselves given the circumstances. Any barriers to success that were readily moveable had already been moved: by people themselves and their communities. In econ-speak, people had maximized their utility subject to constraints.

That being said, the constraints remaining appear to be deep, structural, and hard to shift. That doesn’t mean they are immovable, but just that they usually aren’t moveable with the type of intervention evaluable via RCT. As for how to move them—I don’t know. Moreover, I don’t think we *can* know, or at least not with the high levels of confidence promised ... We will proceed, but must do so with the humility of uncertainty.⁸⁶⁷

We need the same cautious optimism in Canada. Chapters 1-4 stress the need for a multi-layered approach in understanding error, inequality, and injustice. Making allegations about the legal system and its participants is incredibly complex—e.g., what does it mean when individuals frequently successfully appeal lower courts’ decisions, a point Chapter 1 thoroughly discusses. The problem of measurement is wicked, especially in a system that relies on concepts like

⁸⁶⁶ Stevenson, *supra* note 815 at 32.

⁸⁶⁷ *Ibid* at 37.

justice, fairness, equality, and predictability. As Rohan Alexander put it: “there is no clear measure of many fundamental concepts.”⁸⁶⁸ How you measure “it”; what you measure when measuring “it”; and if you can measure “it” are some of the biggest problems of empirical research and statistical analysis.⁸⁶⁹

If “adequate” Canadian legal data is ever gathered, so too should skepticism about data gathering, measurement, interpretation, and methodology. Arguments to prefer RCTs because of their alleged precision or because they’re inevitably superior to observational, qualitative, or quantitative methods must be revisited. Of course, some methods are more predictive and rigorous than others. But the idea that justice system participants can use RCTs to suggest how something will truly and practically operate in the legal system is wrong: it flies in the face of the required amount of humility for a legal reformer and RCTs’ methodology and history. I’m not saying that RCTs have no use or that justice system participants should never use them (although I struggle to see their full utility or possibility in many if not most circumstances). What I’m saying is that the methodological problems that plague all empirical research also plague RCTs. They’re far from a “gold standard” and have many blemishes:

- RCTs have methodological problems: RCTs are touted as superior to other empirical methods, but RCTs are imperfect, very expensive, slow, and often not replicable. Most importantly, RCTs were designed to measure the impacts of interventional drugs—not the impacts of what people experience in the legal system.⁸⁷⁰
- RCTs are still very fallible: even with properly designed RCTs, the “confounding question is a nightmare. This is the challenge of observational research in general. And there’s no simple solution to it, other than, in my opinion trying to triangulate on the answer with multiple studies. ... what we really want is the pure randomized experiment in humans in large samples with perfect compliance for many years....”⁸⁷¹ Such experiments are clearly never going to happen, and solutions are needed in Canada’s legal system far sooner than longitudinal, properly powered RCTs would allow.

⁸⁶⁸ Alexander, *supra* note 863, Chapter 6, online: <<https://tellingstorieswithdata.com/06-farm.html#measurement>>.

⁸⁶⁹ See *Ibid* and, e.g., Jessica Kay Flake & Eiko I Fried, “Measurement Schmeasurement: Questionable Measurement Practices and How to Avoid Them” (2020) 3:4 *Advances in Method and Practices in Physiological Science* 456 [“QMPs [questionable measurement practices] are common, hide a stunning source of researcher degrees of freedom, and pose a serious threat to cumulative psychological science, but are largely ignored.”].

⁸⁷⁰ For a background on the RCT, see Stevenson, *supra* note 815 at 4-6, and for a comprehensive overview of RCTs in the legal system, see Greiner & Cassandra Wolos Pattanayak, *supra* note 864.

⁸⁷¹ The Peter Attia Drive Podcast, “197 - The science of obesity & how to improve nutritional epidemiology | David Allison, Ph.D.” (28 February 2022) at 43:56, online: <<https://www.youtube.com/watch?v=49-CvqNQ7qU>>.

- RCTs don't resolve uncertainty: “even the best empirical research can be inadvertently affected by hundreds of confounding factors”,⁸⁷² *i.e.*, a variable that creates a spurious association between dependent and independent variables. RCTs can even create confounds; by attempting to control for confounding factors, you can create them.⁸⁷³ So controlling for confounds creates simultaneous certainty and uncertainty. Rigorous “perfection” is almost impossible.

But rigorous conclusions are possible without RCTs.⁸⁷⁴ Evidence-based reform doesn't require RCTs, and arguably, RCTs may even hinder some evidence-based reforms.⁸⁷⁵ What many justice system participants may want isn't really RCTs but more rapid A/B testing—e.g., comparing two versions of a legal service to see which one appears useful.⁸⁷⁶ But calling A/B testing RCTs isn't accurate.⁸⁷⁷ And calls to prefer RCT's over more simple and rapid A/B testing or other qualitative and quantitative study (including observational research) are mistaken. Indeed, fully “controlled experiments are impossible in many areas....”⁸⁷⁸ What's not impossible, however, is lots of testing, iteration, and flexibility—something that RCTs don't allow.⁸⁷⁹

iii. Rethinking requests for alleged “private” data

One reason that more legal data either doesn't exist or isn't gathered in Canada is because of concerns over the privacy of courts, litigants, judges, and other decision-makers.⁸⁸⁰

Chapters 1-3 already address some of the issues about accessing court and legal data, but its focus wasn't privacy implications. Those chapters also didn't address requests about federal justice system participants through access to information mechanisms. In that regime, secrecy continues to be the norm, and the federal process for reviewing privacy and access concerns is

⁸⁷² King & Epstein, “The Rules”, *supra* note 812 at 44.

⁸⁷³ Pearl, *The Book of Why*, *supra* note 819 at 138.

⁸⁷⁴ *Ibid* at 139, 149.

⁸⁷⁵ Stevenson, *supra* note 815.

⁸⁷⁶ For a great accessible breakdown of the two methods, see Roy Bendor Cohen, “RCT vs A/B Testing: A Quest to Answer ‘Why’” (25 May 2021), online: <<https://www.linkedin.com/pulse/rct-vs-ab-testing-quest-answer-why-roy-bendor-cohen#:~:text=RCTs%20test%20a%20hypothesis%2C%20whereas,do%20with%20%20rough%20assumptions%20>>.

⁸⁷⁷ Ron Kohavi *et al*, “Online randomized controlled experiments at scale: lessons and extensions to medicine” (2020) 21:150 *Trials* 1.

⁸⁷⁸ Jeffrey J Rachlinski, “Does Empirical Evidence on the Civil Justice System Produce Or Resolve Conflict” (2016) 65:2 *DePaul L Rev* 635 at 636; Jeffrey Rachlinski, “Does Empirical Legal Studies Shed more Heat than Light? The Case of Civil Damage Awards” (2015) 29:4 *Ratio Juris* 556 at 565.

⁸⁷⁹ Put another way, the morality or ethics of proceeding with an RCT must also be considered, including possible trade-offs by those who chose to commission such “trials”. I thank Jason Chin for raising this point with me.

⁸⁸⁰ On this topic generally, see Khan & Rehaag, *supra* note 129.

very slow, poorly functioning, and woefully inadequate.⁸⁸¹ The same appears to be true in many of the provincial regimes. Journalists Robyn Doolittle and Tom Cardoso offered this glib summary in their project “Secret Canada”: “after decades of neglect by successive provincial and federal governments, Canada’s freedom-of-information regime is broken.”⁸⁸²

As Dr. Sean Rehaag and I have argued elsewhere, open access to legal data while concurrently increasing the amount of privacy that individuals are offered when they’re in Canada’s legal system is possible. No zero-sum solutions are necessary.⁸⁸³ That said, the level of privacy protection that government actors offer the legal system’s decision-makers is likely too high. Some zero-sum change is required. As Chapters 2-3 suggest, while the data on this point isn’t yet clear (and may never be), limited data suggests that individuals want more—not less—transparency in at least some legal domains (even domains where more privacy is often assumed).⁸⁸⁴

As Chapters 1-3 note, Canadian courts seem to frequently assert that judicial independence and deliberative secrecy shield them from disclosure or participation in data gathering. And in doing so, courts offer a high level of privacy to Canada’s courts and judges. But the federal government and the Office of the Information Commissioner of Canada may also be offering courts and decision-makers a similar level of privacy in two ways.

First, individuals can’t rely on Canada’s access to information regime to access information from the Federal Commissioner for Federal Judicial Affairs⁸⁸⁵ or the other bodies that provide support to courts, including the Registrar of the SCC, the Courts Administration Service, and the CJC.⁸⁸⁶

⁸⁸¹ Cardoso & Doolittle, “Ottawa spent \$90-million”, *supra* note 512; Robyn Doolittle, “Canada’s journalism community urges fix to federal freedom-of information-system” (7 December 2022) *The Globe and Mail*, online: <<https://www.theglobeandmail.com/canada/article-canadas-journalism-community-urges-fix-to-federal-freedom-of/>>.

⁸⁸² Robyn Doolittle & Tom Cardoso, “How Canada’s FOI system broke under its own weight” (9 June 2023) *The Globe and Mail*, online: <<https://www.theglobeandmail.com/canada/article-canada-freedom-of-information-laws/>>.

⁸⁸³ Khan & Rehaag, *supra* note 129.

⁸⁸⁴ See, e.g., Rebecca Campbell *et al*, “Understanding Sexual Assault Survivors’ Perspectives on Archiving Qualitative Data: Implications for Feminist Approaches to Open Science” (2022) 47:1 *Psychology of Women Quarterly* 51.

⁸⁸⁵ See *Access to Information Act*, RSC 1985, c A-1, s 3, “government institution,” (a) and Schedule I; *Canada (Information Commissioner) v Canada (Minister of National Defence)*, 2011 SCC 25 at para 43. And for a thorough discussion on this subject, see Fric, *supra* note 371 (albeit, as I note later, aspects of this study are problematic).

⁸⁸⁶ Report of the Standing Committee on Access to Information, Privacy and Ethics, “Review of the *Access to Information Act*” (2016) 42 Parliament, 1st Session, online: <<https://www.ourcommons.ca/Content/Committee/421/ETHI/Reports/RP8360717/ETHIrp02/ETHIrp02-e.pdf>>.

Repeated recommendations have been made to extend the *Access to Information Act* to those justice system participants. But the federal government has continued to largely shield them from the federal access to information regime (except for limited financial disclosure from the Federal Commissioner for Federal Judicial Affairs, the Courts Administration Service Registrar, or the SCC).⁸⁸⁷ Unfortunately, as I'll discuss, the most recent review of the federal access to information regime didn't call for any increased disclosure.⁸⁸⁸

Second, even if researchers could rely on Canada's federal access to information regime to access more information about judges or courts, they very well could experience significant barriers. These barriers seem to exist because of extremely deferential privacy standards or the broad conceptions of judicial independence and deliberative secrecy that Chapter 1 discusses.⁸⁸⁹

I offer one case study here to show how Canada's access to information regime to system practically worked. It showcases the level of privacy the system provides certain justice system participants. To be clear, I'm not saying this case study of the federal access to information regime is representative.⁸⁹⁰ But my experience and the 16-month process to which I was subjected isn't abnormal. A somewhat recent Federal Information Commissioner of Canada put it this way: "Nobody's doing great ... We need more resources, we need more innovation, and we need more leaders that believe in access."⁸⁹¹ Despite these clear problems, the long-awaited review of Canada's access to information regime—released in January 2023—contained zero

⁸⁸⁷ *Ibid* at 15. In 2019, Parliament did amend the *Access to Information Act* to proactively require certain institutions who support courts (Registrar of the SCC, Courts Administration Service and Office of the Commissioner for Federal Judicial Affairs) to proactively disclose very limited information mostly related to expenses and allowances. But the amendments also provided them the power to decline to publish information if they determined it could interfere with judicial independence. For a summary of the changes, see Government of Canada, "The Access to Information Act", online: <<https://www.canada.ca/en/treasury-board-secretariat/services/access-information-privacy/access-information-act.html>>.

⁸⁸⁸ Canada, "Access to Information Review Report to Parliament" (2022), online: <<https://www.canada.ca/en/treasury-board-secretariat/services/access-information-privacy/reviewing-access-information/the-review-process/access-information-review-report-parliament.html>>.

⁸⁸⁹ For a summary of attempting to access data directly from courts using provincial freedom of information requests, see Michael Lesage, "The Ontario Superior Court is attempting to hide poor performance behind a privacy excuse" (17 March 2023) *The Canadian Lawyer*, online: <<https://www.canadianlawyermag.com/news/opinion/the-ontario-superior-court-is-attempting-to-hide-poor-performance-behind-a-privacy-excuse/374494>>; Michael's Law Firm, "Superior Court of Justice Civil Procedures Manual", online: <<https://www.michaelsfirm.ca/superior-court-of-justice-civil-procedures-manual/>>; Michael's Law Firm, "Are Civil Case Numbers Confidential", online: <<https://www.michaelsfirm.ca/lesage-v-ag/>>.

⁸⁹⁰ For a thorough analysis of this issue, see Doolittle and Tom Cardoso, "How Canada's FOI system broke under its own weight", *supra* note 882.

⁸⁹¹ Cardoso & Doolittle, "Ottawa spent \$90-million", *supra* note 512.

recommendations. Instead, the Treasury Board Report just offered conclusions despite 2.5 years of consultation. In the words of the former Clerk of the Privy Council, it didn't include "any ambition for fundamental reform".⁸⁹² The report didn't contemplate any further changes to increase more information about judges or courts or the legal system, so the reality reflected in my case study about the federal access to information seems unlikely to change.

Here's the case study. In October 2021, I requested bios for Refugee Appeal Division members who served between 15 December 2012 and 19 October 2021 from the Immigration and Refugee Board of Canada ("IRB"). On 17 December 2021, the IRB substantively responded to my request.⁸⁹³ The timing was reasonable, but the response wasn't. The IRB sent me a 281-page PDF package that included hundreds of bios. But most of the bios were heavily redacted.

Unfortunately, most redactions were inconsistent with the *Privacy Act*, the *Access to Information Act*, and applicable jurisprudence. The IRB's approach frustrated basic transparency, and it should've disclosed much of the information it redacted for three reasons.

First, the redacted information that the IRB alleged to be "personal information" wasn't protected by s. 3 of the *Privacy Act* or s. 19(1) of the *Access to Information Act*. The oft-cited 2003 SCC decision *Canada (Information Commissioner) v. Canada (Commissioner of the Royal Canadian Mounted Police)* is clear about the relationship between these statutes, and the tri-fold way they must operate:

1. Exceptions to access should be limited and specific.⁸⁹⁴
2. Results under s. 3 of the *Privacy Act* must be consistent.⁸⁹⁵
3. Section 3 of the *Privacy Act* doesn't shield information relevant to understanding the functions that government employees perform.⁸⁹⁶

⁸⁹² Tom Cardoso, "Federal review of access-to-information law delivers no recommendations" (16 December 2022) *The Globe and Mail*, online: <<https://www.theglobeandmail.com/canada/article-federal-review-of-access-to-information-law-delivers-no/>>.

⁸⁹³ On file with author. I made this request as part of my research with the Refugee Law Lab (<https://refugeelab.ca>) and its developing of the Refugee Law Lab Portal (Refugee Law Lab, "Refugee Law Lab Portal", online: <<https://rlp.ca>>).

⁸⁹⁴ 2003 SCC 8 at para 17 [*"Canada (Information Commissioner) v Canada"*].

⁸⁹⁵ *Ibid* at para 33

⁸⁹⁶ *Ibid* at para 39.

The IRB's response to me was none of these things. It was neither limited nor specific; neither internally nor externally consistent with the information it deemed "personal"; and it shielded key information relevant to understanding its members' functions:

- Its exceptions to access weren't limited and specific: it fully redacted some members' entire bios.
- Its approach was externally inconsistent: it previously provided full bios without redaction when requested, including of the same members it redacted in my request.⁸⁹⁷
- Its approach was internally inconsistent: it included and excluded the same information in the provided disclosure—e.g., it provided lawyers' year of call for some bios but it redacted lawyers' year of call in other bios. Additionally, it inconsistently excluded and included information for the same people in duplicate entries. But it shouldn't be entitled to release one kind of information in one bio and then call it confidential in another bio. Once the IRB releases certain information (e.g., the year someone is called to the bar) in some bios, the information can't be considered confidential for other bios.
- It shielded alleged private information that the *Privacy Act* doesn't protect: the previous example of internal inconsistency offers a plain example of over-redaction. The year someone is called to the bar is relevant to understanding the functions they provide as a public official in a decision-making role. Indeed, recent IRB job postings around the time I sought the information required some of the very information from applicants that was redacted.⁸⁹⁸

Second, much of the redacted information likely didn't "reveal anything intimately connected to ... [the IRB member's] private life and which they might reasonably have expected to keep for themselves".⁸⁹⁹ Rather, members appeared to draft and provide these bios to the IRB when they were appointed or were asked for them.⁹⁰⁰ So the information that decision-makers provided the IRB is information they thought relevant to their role and appointment—*i.e.*, not evidence "intimately connected to their private life and which they might reasonably have expected to keep for themselves".⁹⁰¹ Those same decision-makers often had posted or published extensive information (often far more than the information the IRB redacted) on their publicly available LinkedIn, work, or historic academic profiles. While I can't be certain, individuals often

⁸⁹⁷ See, e.g., ATIP A-2008-00058 (on file with dissertation supervisor).

⁸⁹⁸ See, e.g., these this job posing that clearly indicates that some of the exempted information is considered a requirement of the positions: Government of Canada, "Decision-Maker (Member)", online: <<https://emploisfp-psjobs.cfp-psc.gc.ca/psrs-srfp/applicant/page1800?poster=1258227>>.

⁸⁹⁹ *Husky Oil Operations Limited v Canada-Newfoundland and Labrador Offshore Petroleum Board*, 2018 FCA 10 at para 45 ["*Husky Oil Operations*"].

⁹⁰⁰ I base this assertion on seeing email chains where these bios were provided for this purpose.

⁹⁰¹ *Ibid.*

appeared to include the very information that the IRB redacted. And, in many cases, members' public profiles include far more information than what the IRB provided. Yet the IRB asserted it was entitled to classify information in a bio as confidential even though it's publicly available. By definition and practice, however, if individuals publicly list information on their Linked-in profiles or if the information exists in other public documents on the internet, the information isn't confidential.

I still can't even determine how the IRB chose which information to redact. Either way, the result is the same: the redactions were inconsistent with applicable law. While the evidence from the materials I received was scant, the evidence doesn't indicate the IRB consulted with individuals about redactions. It does, however, suggest the IRB (at least for some files) does two things:

1. It independently chooses what to redact sometimes—the PDF includes evidence of two members passing away before I made my request to the IRB, so the IRB could not have sought their direction.
2. It may not seek input at all (the PDF includes no evidence of IRB members providing input about redactions). It only included evidence of the decision-makers providing the biographical information from their swear in ceremonies in response to the request for their bios.⁹⁰² So members might not even assert privacy rights over their data.⁹⁰³

Third and finally, disclosing the sought information without redactions would have been consistent with applicable legislation and jurisprudence. The following information is relevant to understanding the functions that IRB members perform (and likely many other decision-makers).⁹⁰⁴ And it likely would have even formed part of the application materials for individuals applying to the IRB as I noted earlier. Again, it's not the eight kinds of information that's intimately connected to their private life and that they might reasonably have expected to keep for themselves.⁹⁰⁵

1. year of bar call for members who are lawyers: the specific year and province of call. This information is often publicly available through provincial law societies;

⁹⁰² On file with author.

⁹⁰³ This point might also be true for judicial questionnaires. Some individuals have tried to access questionnaires from individuals who were appointed to become judges but were told the *Privacy Act* shielded the information they were trying to access (see, Fric, *supra* note 371).

⁹⁰⁴ *Canada (Information Commissioner) v Canada*, *supra* note 894 at para 39.

⁹⁰⁵ *Husky Oil Operations*, *supra* note 899 at para 45.

2. educational information: where members went to school; what degrees and designations they have; and what year they received them. This information is often publicly available on alumni or academic sites and upon request;
3. previous employment: where members worked, what roles they held, what tasks they did, and how long they held their roles. This information is often listed in appointment notices or public Linked-in profiles;
4. what kinds of cases and files they worked on as litigators or decision-makers: what kinds of cases, who they acted for, *etc.* This information is often publicly available through case law search engines;
5. what members did right before they were appointed: what professional, academic, or administrative role they held—e.g., working as a decision-maker on another panel. This information is often publicly available through federal or provincial websites or appointment notices;
6. role and year of appointment to the IRB: what year they were appointed to the IRB; prior IRB roles; current IRB roles (e.g., coordinating member); and current regional placement. This information is often publicly available through federal websites and appointment notices;
7. what academic roles members held: where they held these roles, what their research interests were, and what research outputs were. This information is often publicly available on Google or alumni or academic sites and upon request; and
8. what current bar or professional associations for members who are lawyers: the organization name, initial membership year, years of membership, *etc.* Some of this information is often publicly available on organizations' websites or upon request.

Instead of such disclosures, the IRB consistently relied on s. 19(1) of the *Privacy Act* to assert that redacted information was personal information given in confidence. But individually reviewing each redaction demonstrates that most of the information was likely not given in confidence; was likely (or already was) publicly available; and was relevant to their job. Even a cursory review of the documents reveals no discernable pattern or legal reason to justify the inconsistent over-redactions.⁹⁰⁶

On 15 February 2022, I complained to the Information Commissioner of Canada and provided submissions about the preceding three points. The Commissioner didn't start examining the complaint until 14 June 2022. In November 2022, the Commissioner informed me that it reached a preliminary decision based on my and the IRB's submissions: "We are satisfied that the exempted information meets the criteria of the exemption as set out in the Act."⁹⁰⁷ I provided a

⁹⁰⁶ On file with author.

⁹⁰⁷ On file with author.

further response to the Commissioner, including a request to see the IRB's submissions. But my request was denied.⁹⁰⁸

On 6 January 2023, I received the final "reasons" from the Commissioner that comprised two and a half pages. The reasons didn't grapple with my detailed submissions. They fell well below the sufficiency standard that the SCC prescribed in *Canada (Minister of Citizenship and Immigration) v. Vavilov*.⁹⁰⁹ My only remaining option was to proceed to judicial review, so I abandoned my request to focus on my research (and other life commitments). If I had sought to judicially review the disclosure, the review would have been *de novo*, so no deference is owed to previous redactions or to a lack of disclosure.⁹¹⁰ In their somewhat recent review of Canadian access to information regimes, Robyn Doolittle and Tom Cardoso have noted that individuals do often succeed during the rare occasions when they do challenge redactions or improper disclosure in the federal and provincial access to information regimes.⁹¹¹ But I simply can't predict what a Federal Court judge might have done. Even if a Federal Court judge had granted the sought relief, the result would be accessing data that was now out of date because of the slow process to access it.

The current federal access regime seems to operate under a presumption of privacy and secrecy when it comes to decision-makers, courts, and judges. And the same could be true in many provinces and territories.⁹¹² Along with Chapter 5's recommendations, Chapter 4 suggests that justice system participants should reconsider the level of privacy that decision-makers have, especially when these decision-makers hold incredible amounts of power over the individuals who appear before them. The Information Commissioner should similarly reconsider how it interprets the *Privacy Act* and *Access to Information Act*. Access to information advocates and civil liberties associations should consider ways in which information is being unreasonably restrained and take necessary steps to access that information, including through strategic litigation. Finally, as Chapter 5 discusses in detail, researchers shouldn't have to pry this information out of decision-makers at tribunals or courts. Governments should readily publish

⁹⁰⁸ On file with author.

⁹⁰⁹ *Vavilov*, *supra* note 48.

⁹¹⁰ For a somewhat recent review of the standard of review in this context, see *Cain v Canada (Health)*, 2023 FC 55 at paras 31-42.

⁹¹¹ Doolittle and Cardoso, "How Canada's FOI system broke", *supra* note 882.

⁹¹² *Ibid.*

such information in open access formats: they should be proud of the rich experiences and skillsets that their decision-makers bring, and decision-makers should equally want governments to publish those details. Such a project is not difficult to undertake, and Chapter 5 presents a cost-effective open access prototype.

Open access to legal data should become the norm, including properly anonymized or de-identified court level data.⁹¹³ But if governments, courts, and other justice system participants continue to disagree, other paths to providing more robust access still exists. For example, medical system participants faced similar problems in gathering and accessing healthcare data despite rich datasets. As I've noted elsewhere,

researchers still do not have ready access to healthcare data, despite the incredible promise that big data, machine learning, and artificial intelligence offer Canadian healthcare. The data is still siloed in a 'complex maze of policy, privacy and security issues involving multiple stakeholders with differing interests and objectives.' These current long access processes are costly: they delay research, engender increased costs, and amount to de facto denials of access. Put another way, they cause lives to be lost. A likely reason for these lost lives—as well as possible overhyped fears and benefits of big data and medicine—is again a fear of technological determinism. For example, despite breaches rarely, if ever, occurring in many health data regimes, many seem to fear researchers or individuals will inevitably exploit information in health data.⁹¹⁴

To address these issues, some medical system participants are reforming how they provide access to healthcare data, including mechanisms to accredit researchers to provide them access when further concerns exist about privacy or sensitive data—e.g., trusted research models.⁹¹⁵ Courts, governments, tribunals, and entities like CanLII could seek to also examine ways to accredit researchers if they're unwilling to follow the suggestions for open access to legal data, including judicial and tribunal decisions. For example, the current situation for accessing legal decisions is entirely untenable: graduate or academic researchers can't even get bulk access to anonymized data or case law from CanLII.⁹¹⁶ But companies can apply to bulk access CanLII's

⁹¹³ Khan & Rehaag, *supra* note 129.

⁹¹⁴ Jon Khan, "CRISPR, Like any Other Technology: Shedding Determinism & Reviving Athens" (2023) 19:1 CJLT 173.

⁹¹⁵ ICPSR, "Researcher Passport, Linkage Library, & More Coming Up" (5 October 2018) *YouTube*, online: <<https://www.youtube.com/watch?v=ILdFJyFKeJY>>; ICPSR, "The Researcher Passport: Improving Data Access and Confidentiality Protection" (4 June 2018) *YouTube*, online: <<https://www.youtube.com/watch?v=MWVQ52iU6pE>>; ICPSR, "The Researcher Passport: Improving data access and confidentiality protection", online: <<https://www.icpsr.umich.edu/web/pages/about/researcher-credentialing.html>>; Australian Data Archive, "Accessing Data", online: <<https://ada.edu.au/accessing-data/>>.

⁹¹⁶ On file with author.

data.⁹¹⁷ CanLII could and should easily find ways to provide academic researchers the same access that it's providing corporate interests.

Part II: Law schools must finally emphasize empirical research and legal analytics

As legal data gathering increases and reliance on data correspondingly increases (including with things like Chat GPT), law school graduates and lawyers must become more data and technologically savvy.⁹¹⁸ Law schools should also play a leading role in the empirical study of Canada's legal system as well as leading calls for more robust data gathering and transparency.⁹¹⁹ Yet Canadian law school's J.D and graduate curricula showcase a lack of emphasis on empirical legal research or legal analytics despite calls to action.⁹²⁰

Part II examines:

- the options for Canadian law students to increase data and statistical literacy;
- the options that American law students have, including collaborative justice big data projects aimed at radically improving equality and fairness; and
- why my call to action isn't yet another "Arthurs" debate on law school's proper role.

This analysis suggests that Canadian law schools could chart a far better path forward, including more curriculum options to ensure better data, data science, and basic statistical literacy. Such a focus would also inherently provide better "tech" literacy about how to use and interact with emergent technologies.

⁹¹⁷ CanLII, "Call for Participants", *supra* note 357.

⁹¹⁸ See, e.g., Amy Salyzyn & Florian Martin-Bartieau, "Legal Ethics in a Digital Context" (2021) CBA, online: <<https://cba.org/getmedia/d68b09a5-d4e6-4393-be6b-7d87e9cd8381/LegalEthicsInaDigitalContext.pdf>>; Teresa Scassa *et al*, "Developing Privacy Best Practices for Direct-to-Public Legal Apps: Observations and Lessons Learned" (2020) 18:1 CJLT 1; Amy Salyzyn, "The ChatGPT Lawyer: Promises, Perils, and Practicalities" (23 February 2023) *Slaw*, online: <<https://www.slaw.ca/2023/02/23/the-chatgpt-lawyer-promises-perils-and-practicalities/>>. Aside from the increasing use of such technologies, general competence is also increasingly necessary generally from an evidentiary perspective (see, e.g., Brandon L Garrett *et al*, "Forensic Science in Legal Education" (2022) 51 *Journal of Law and Education* 1.

⁹¹⁹ For some of the promises and possible perils of more legal analytics, see McGill & Salyzyn, *supra* note 500.

⁹²⁰ See, e.g., Craig Allen Nard, "Empirical Legal Scholarship: Reestablishing a Dialogue Between the Academy and Profession" (1995) *Faculty Publications* 341, online: <https://scholarlycommons.law.case.edu/faculty_publications/341>.

i. *Canadian law students often lack options in 2026 to increase data and statistical literacy in Canadian law schools*

Most Canadian law schools don't seem overly concerned about the incredible importance of generating or analyzing better data and data literacy as a necessary skill for lawyers, law students, or legal academics.⁹²¹ Accordingly, most law schools are missing an invaluable opportunity to effect a much-needed shift in the legal system that this dissertation implores to ensure greater transparency, fairness, equality, and access to justice.

Throughout my graduate research, I examined what was options law schools provided their law students to increase data and statistical literacy in 2019, 2021, 2023, and 2025. While some bright spots remain, the inertia is evident (but notable developments have occurred). Many of the links to previous syllabi are broken, and the Wayback Machine Archive doesn't have copies. So I haven't included links to them here except for recently syllabi from 2025 (in hindsight, I should've harvested these webpages). But law schools school also archive their course calendars and syllabi on their websites (presumably I could email and ask for them, but they should, as this dissertation has advocated, be already in an open access format on their websites).

As mentioned, I first examined the issue that law schools were paying to this issue in 2019 in "Life of a Reserve" and made this conclusion:

most Canadian law schools had no classes on basic statistics; data science techniques like machine learning; legal analytics; law and statistics; or basic computer science concepts such as coding and use cases for those skills in law—all of which were offered in the U.S. context as I'll discuss in a moment. Only two law schools offered classes on coding and the law; only one school offered instruction on qualitative and quantitative survey design (but it wasn't open to all law students); only one school offered a specific class on

⁹²¹ See Patricia Hughes, "Whither English-Canada Law Schools" (7 May 2019) *SLaw*, online: <<http://www.slaw.ca/2019/05/07/whither-english-canada-law-schools/>>. For a discussion of the necessity of such research, including the limited scope of socio-legal research in Canada, see Michael Lines, "Empirical Study of Civil Justice Systems: A Look at the Literature" (2005) 42:3 *Alta Law Rev* 887 at 903 ["The limited scope of socio-legal research in Canada has not gone unnoticed abroad, either. Recently, as part of a survey of the health of the field in the United Kingdom, input on the Canadian scene was solicited. The responses from several Canadian scholars are unequivocal: there is a lack of empirical research in Canada because, in sharp contrast to other social sciences, legal academics are not trained in methodological issues and perverse academic publishing expectations discourage long-term research. Further, almost all the research that is conducted focusses on criminal topics to the detriment of civil justice research."], 904 ["the neglect of this work by practicing academics and the failure of law schools to adapt their core curricula to include empirical approaches and methodologies is barrier to future research."], 905 ["Unless a renewed and sustained effort is made to support the empirical study of civil justice systems in Canada, our conceptions of our own legal system will remain distorted by ignorance, and we will continue to struggle with counter seemingly intractable problems such as delay."] [emphasis added].

legal data analytics; and only one school had a legal analytics lab. Some law schools were encouraging more innovation, including legal design, “app” building, access to justice studies, legal reform, and legal IT (including some analytics). Such courses are excellent and perhaps some should even be mandatory. Some schools also offered traditional classes in law and economics where students presumably were exposed to some data-driven analysis. Overall, however, Canadian law schools do not appear to be adequately ensuring their graduates will be able to develop empirical studies or understand how empirical tools work. Many graduates simply will not be able to converse with technologists about these concepts or tools based on such concepts. This lack of training is a mistake. Such training is fundamental for access to justice and ethical, responsible lawyering in the future.⁹²²

Since 2019, the pace of change has been slow. But some bright spots are emerging and some law professors in some law schools are heading the call to action for more data driven classes and far more law and technology classes. So the status quo for course options has improved, especially with law and technology style classes. Some schools continued to have access to justice,⁹²³ law and economics,⁹²⁴ innovation and design,⁹²⁵ and law and technology classes (many of these now exist).⁹²⁶ Most of those classes, however aren’t specialized enough to offer the practical skillset

⁹²² Khan, “Life of a Reserve”, *supra* note 4, *Epilogue*, 105-106.

⁹²³ University of Victoria, “Undergraduate calendar – September 2025: Law 325”, online: <<https://www.uvic.ca/calendar/future/undergrad/#/courses/Hkx7Iiua7V?q=LAW&&limit=20&skip=60&bc=true&bcCurrent=&bcCurrent=Access%20to%20Justice%20and%20Dispute%20Resolution%20Systems&bcItemType=courses>>; Thompson Rivers University, Faculty of Law, “Faculty of Law 2025-2026 Course Book” at 34, online: <https://www.tru.ca/_shared/assets/Course_Book_25-26_May_2262461.pdf>; University of Manitoba, “Juris Doctor, J.D.”, Law 3346, online: <<https://catalog.umanitoba.ca/undergraduate-studies/law/juris-doctor-jd/index.html>>; Toronto Metropolitan University, Lincoln Alexander School of Law, “Juris Doctor Program”, JUR 312, online: <<https://www.torontomu.ca/law/programs/juris-doctor/#!accordion-1706849670976-jur-300s>>.

⁹²⁴ University of Victoria, “Undergraduate calendar – September 2025: ECON308”, online: <<https://www.uvic.ca/calendar/future/undergrad/#/courses/B1wiWFTQV?q=LAW&&limit=20&skip=120&bc=true&bcCurrent=&bcCurrent=Economics%20and%20the%20Law&bcItemType=courses>>; Henry NR Jackman Faculty of Law, University of Toronto, “Law, Economics, and Justice”, online: <<https://www.law.utoronto.ca/course/2025-2026/law-economics-and-justice>>; Peter A Allard, School of Law, “Peter A Allard School of Law 2025-2026 Course Descriptions”, p 7 (Law 310.001 Economic Analysis of Law), online: <https://allard.ubc.ca/sites/default/files/2025-06/Course%20Descriptions_2025W_1.pdf>

⁹²⁵ *Ibid*, p 24 (LAW 344D.001); Osgoode Hall Law School, YorkU, “Legal Engineering: Tech and Innovation in Legal Service Delivery”, online: <<https://www.osgoode.yorku.ca/courses-and-seminars/legal-engineering-tech-innovation-in-legal-service-delivery/>>; Toronto Metropolitan University, Lincoln Alexander School of Law, “Juris Doctor Program”, *supra* note 924, JUR 207, JUR 313.

⁹²⁶ *Ibid*; “Peter A Allard School of Law 2025-2026 Course Descriptions”, *supra* note 924, p 69 (Topics in Law and Technology); University of Alberta, Faculty of Law, “599 Law, Technology, & Society (Lee)”, online: <<https://sites.google.com/uAlberta.ca/2025-26coursedescriptions/599-specialized-legal-topics/599-lee?authuser=0>>; University of Windsor, Faculty of Law, “Winter 2025 Course Offerings”, p 3 (Litigation Technology), online: <https://www.uwindsor.ca/registrar/sites/uwindsor.ca/registrar/files/winter_2025_law_timetable.pdf>; Osgoode Hall Law School, YorkU, “Legal Values: (Neuro)technology and Human Rights”, online: <<https://www.osgoode.yorku.ca/courses-and-seminars/legal-values-neurotechnology-and-human-rights/>>;

necessary to truly increase data literacy or to address data related conclusions or issues (although this point differs between classes and instructors). That said, five schools now have actual empirical content in their classes that focus on some of training that Chapter 4 advocates for, including using AI tools to assist in research (UBC, Osgoode, uOttawa, Queen's, and Lincoln Alexander).⁹²⁷ Osgoode and Lincoln Alexander both have open access datasets and tools that rely on innovation, and they continue to scale efforts.⁹²⁸

In sum, despite some significant improvements over the last six years, many Canadian law school students graduate without basic data or statistical literacy. And, in many cases, they also lack tech literacy or skills to understand the proper relationship between lawyers and technology.⁹²⁹ This lack of training could easily compromise access to justice and ethical, responsible lawyering in the future.⁹³⁰ Unless students go to a select law school and encounter a select law professor, they may not be able to converse with technologists about data and

Osgoode Hall Law School, YorkU, "A.I. and Technology in Legal Practice", online: <<https://www.osgoode.yorku.ca/courses-and-seminars/a-i-and-technology-in-legal-practice/>>; Osgoode Hall Law School, YorkU, "Legal Values: Artificial Intelligence (Discrimination & Surveillance)", online: <<https://www.osgoode.yorku.ca/courses-and-seminars/legal-values-artificial-intelligence-discrimination-surveillance/>>; Henry NR Jackman Faculty of Law, University of Toronto, "Artificial Intelligence and the Rule of Law", online: <<https://www.law.utoronto.ca/course/2025-2026/artificial-intelligence-and-rule-law>>; Henry NR Jackman Faculty of Law, University of Toronto, "The Law and Ethics of Artificial Intelligence", online: <<https://jackmanlaw.utoronto.ca/jd-program/course/2025-2026/law-and-ethics-artificial-intelligence>>. Henry NR Jackman Faculty of Law, University of Toronto, "Law and Policy of Biotechnology", online: <<https://www.law.utoronto.ca/course/2025-2026/law-and-policy-biotechnology>>; University of Ottawa, Faculty of Law, "CML4104I Studies in Public Law: Regulating Artificial Intelligence", "CML4114m Selected Topics – Intensive Study of a Selected Legal Issue", online: <<https://www.uottawa.ca/faculty-law/common-law/student-centre/courses/course-search-engine>>; University of New Brunswick, Faculty of Law, "Section B: Courses" b.19 (Law 4353 Technology Law and Policy), online: <https://www.unb.ca/fredericton/law/_assets/documents/admissions-course-descriptions.pdf>; Toronto Metropolitan University, Lincoln Alexander School of Law, "Juris Doctor Program", *supra* note 924, JUR 209; Dalhousie University, Schulich School of Law, "LAWS 2019 - Law and Technology", online: <<https://www.dal.ca/faculty/law/current-students/jd-students/courses/laws-2019-law-and-technology.html>>.

⁹²⁷ Peter A Allard School of Law 2025-2026 Course Descriptions", *supra* note 924, p 114 (LAW 482D.001 Topics in Procedure & Evidence: Use of Empirical Evidence in Law); Osgoode Hall Law School, York University, "Legal Information Technology: Data Analysis & Coding for Access to Justice", online:

<<https://www.osgoode.yorku.ca/courses-and-seminars/legal-information-technology-data-analysis-coding-for-access-to-justice/>>; Lincoln Alexander School of Law, "Juris Doctor Program", *supra* note 924, JUR 204; Queen's University, Queen's Law, "LAW 399 Contemporary Topics in Law", online: <<https://www.queensu.ca/academic-calendar/law/courses-instruction/law/>>.

⁹²⁸ See FN 88.

⁹²⁹ Abdi Aidid, "Toward an Ethical Human-Computer Division of Labor in Law Practice" (2024) 92 Fordham L Rev 1797.

⁹³⁰ See David Lehr & Paul Ohm, "Playing with Data: What Legal Scholars Should Learn about Machine Learning" (2017) 51 UC Davis L Rev 652.

statistically driven concepts; responsibly rely on data driven tools; or perhaps even be curious about data and the importance of it for almost every constitutional rule of law promise.⁹³¹

Overall, large schools are falling well short of the cohesive radical shift that Chapter 4 calls for, including in their curriculum. I'm not saying that lawyers need to be data scientists. But they need to know how the tools on which they rely work at a basic level:

all law schools should wrestle with how to educate today's students for a future practice. However transformative, in the end, legal analytics is a tool. Tomorrow's lawyers should be prepared to exploit its advantages, while also understanding where those advantages end and human judgment begins.⁹³²

I clearly recognize that law schools can't educate students on all the knowledge areas that will impact their legal careers—including because of the difficulty of teaching substantive concepts in a mere term or semester. But because of the lack of attention to the issues I'm discussing, many Canadian lawyers and academics don't have the necessary skills to review and quickly recognize flaws in empirical studies of legal issues or improper uses of data or technology (many examples already exist with the use of LLM tools in litigation).

The refrain is common: "I went to law school because I'm not good at math."⁹³³ One might even say that Canada's legal system and culture are "allergic" to math.⁹³⁴ But this allergy is a mistake. Basic and complex statistical problems already touch most areas of law.⁹³⁵ A deeper understanding of data, data science, and basic statistical concepts would lead to better lawyers, judges, politicians, academics, and a more effective legal system—especially as "AI" and "tech"

⁹³¹ Benjamin Weiser, "Here's What Happens When your Lawyer Uses Chat GPT" (28 May 2023) *The New York Times*, online: <<https://www.nytimes.com/2023/05/27/nyregion/avianca-airline-lawsuit-chatgpt.html>>.

⁹³² Anne Tucker & Charlotte Alexander, "Why we're training the next generation of lawyers in big data" (2 October 2018) *The Conversation*, online: <<https://theconversation.com/why-were-training-the-next-generation-of-lawyers-in-big-data-103196>>.

⁹³³ Erin Fuchs, "The 8 Worst Reasons To Go To Law School" (21 October 2012) *Business Insider*, online: <<https://www.businessinsider.com/bad-reasons-to-go-to-law-school-2012-10>>.

⁹³⁴ For similar arguments in the U.S. context, see, e.g., Oliver Roeder, "The Supreme Court is Allergic to Math" (17 October 2017) *Five Thirty Eight*, online: <<https://fivethirtyeight.com/features/the-supreme-court-is-allergic-to-math/>>.

⁹³⁵ For similar calls to action see, e.g., David H Kaye, "Thinking Like a Statistician: The Report of the American Statistical Association Committee on Training in Statistics in Selected Professions" (1984) 34 *J Legal Educ* 97; Listokin, *supra* note 818; Arellano, *supra* note 818; Daniel W Linna Jr, "Why Law Students Should Take Quantitative Analysis: Big Data, Algorithms, Courtrooms, Code, and Robot Lawyers" (2016), online: <<https://www.legaltechlever.com/2016/10/law-students-take-quantitative-analysis-big-data-algorithms-courtrooms-code-robot-lawyers/>>; Nick Thieme, "Statistics in Court" (2018) 15:5 *Significance*, online: <<https://www.legaltechlever.com/2016/10/law-students-take-quantitative-analysis-big-data-algorithms-courtrooms-code-robot-lawyers/>>.

are increasingly integrated into the legal system. It would provide lawyers the ability to better understand and critique the literature, journalism, expert reports, and emergent technologies that rely on data, data science, and statistical concepts.

As I noted earlier, current approaches have cascading effects. For example, law societies also don't truly require lawyers to maintain any data, statistical, or technological capacity. Canadian lawyers do have a duty "to develop an understanding of, and ability to use, technology relevant to the nature and area of the lawyer's practice and responsibilities."⁹³⁶ Yet what this duty practically looks like is unknown, and it doesn't seem to require the basic understanding that Chapter 4 implores. Law societies should work to implement more mandatory CPDs relating to data, data literacy, and general tech competence. Much like Canadian law schools could look to American law schools—a point we're about to discuss—Canadian law societies could look to those same schools and approaches to increasing data literacy (or to the Canadian law schools that are achieving more success in these areas).

ii. *American law students have many options to increase data literacy within their law schools*

The U.S. has leading empirical scholars; rich datasets; abundant empirical scholarship; and a rich history of law schools providing options for law students to improve their empirical and data literacy. Yet leading empirical American legal scholars Lee Epstein and Gary King have noted the same point as Chapter 4's introduction. Empirical legal research is often deeply flawed by "overly confident conclusions":

the current state of empirical legal scholarship is deeply flawed. ... many proceeding with research agendas, however diverse their goals might be, with little awareness of, much less compliance with, the rules of inference that guide empirical research in the social and natural sciences. ... readers learn considerably less accurate information about the empirical world than the studies stridently stated, but overly confident, conclusions suggest.⁹³⁷

⁹³⁶ For a discussion of the amendment, see Amy Salyzn, "It's Finally (Sort Of) Here!: A Duty of Technological Competence for Canadian Lawyers", 26 November 2023) *Slaw*, online: <<https://www.slaw.ca/2019/11/26/its-finally-sort-of-here-a-duty-of-technological-competence-for-canadian-lawyers/>>.

⁹³⁷ King & Epstein, "The Rules", *supra* note 812 at 6-7.

Unfortunately, what King and Epstein said over 20 years ago has persisted, even with abundant scholarship, training, and exposure.⁹³⁸ So Canadian law schools have blueprints of things to avoid and embrace should they heed Chapter 4's call to action. But the U.S. reality also suggests that even education doesn't provide the required humility or trepidation.

Many leading American law schools have robust empirical methods classes that cover a broad range of empirical issues, and some schools even have more than one empirical methods class. Canadian law schools and professors⁹³⁹ could easily emulate these classes from the University of California, Irvine School of Law;⁹⁴⁰ the University of Illinois;⁹⁴¹ UCLA;⁹⁴² Georgetown Law;⁹⁴³ NYU Law;⁹⁴⁴ Berkeley Law;⁹⁴⁵ Vanderbilt Law;⁹⁴⁶ Stanford Law;⁹⁴⁷ Emory University;⁹⁴⁸ Cornell University;⁹⁴⁹ UConn;⁹⁵⁰ University of Minnesota Law School;⁹⁵¹ Chicago Kent School of Law.⁹⁵² While this list includes leading empirical programs, other U.S. law schools likely also

⁹³⁸ See, e.g., Kathryn Zeiler, "The Future of Empirical Legal Scholarship: Where Might We Go From Here" (2016) 66 *Journal of Legal Education* 78; Harry T Edwards & Michael A Livermore, "Pitfalls of Empirical Legal Studies that Attempt to Understand the Factors Affecting Appellate Decisionmaking" (2009) 58 *Duke LJ* 1895; Lee Epstein & Andrew D Martin, "Qualitative Approaches to Empirical Legal Research" in Peter Cane & Herber M Kritzer, eds, *The Oxford Handbook of Empirical Legal Research* (Oxford University Press: Oxford, 2010) 901; Jason Rantanen, "The Future of Empirical Legal Studies: Observations on Holte & Sicheleman's *Cycles of Obviousness*" (2020) 105:15 *Iowa Law Review* 15. See also, e.g., Jason M Chin et al, "Improving the Credibility of Empirical Legal Research: Practical Suggestions for Researchers, Journals and Law Schools" (2021) 3:2 *Law, Technology, and Humans* 1; Zachary J Bass *et al*, "Editorial: The Need for Collective Standards: Validating Raw Data in Empirical Legal Analysis" (2020) 10:1 *NYU J Intell Prop & Ent L* 40; Jason M Chin & Alex O Holcombe, "Rethinking replication in Empirical Legal Research" (2022) 49:2 *UW Austl L Rev* 76.

⁹³⁹ I worked with Prof Margaret Boittin to design such a course at Osgoode Hall Law School for the 2019-2020 Academic session. After one year, however, the class was discontinued.

⁹⁴⁰ Syllabus on file with author: Prof Emily Poppe, "Statistics for Lawyers (Who Think They Hate Statistics)" *Law* 5105 (Spring 2020).

⁹⁴¹ Syllabus on file with author: Prof Robert M Lawless & Jennifer K Robbennolt, "Empirical Methods in Law" *Law* 792 (Fall 2019).

⁹⁴² Syllabi on file with author: Prof Sander, "Quantitative Methods in the Courtroom" *Law* 594 (Spring 2019) & Prof. Ben Nyblade, "Empirical Legal Studies: Research and Composition" (Spring 2020).

⁹⁴³ Syllabus on file with author: Prof Juliet Aiken, "Analyzing Empirical Research for Lawyers" (Fall 2014).

⁹⁴⁴ Syllabus on file with author: Profs Katherine Forrest & Daniel Rubinfeld, "Quantitative Methods Seminar" *LAW-LW.10794.001* (Fall 2019).

⁹⁴⁵ Syllabus on file with author: Prof Kevin Quinn, "Introductory Statistics" 209.3 (Fall 2016).

⁹⁴⁶ Syllabus on file with author: Prof Ed Cheng, "Statistical Concepts for Lawyers" (Spring 2016).

⁹⁴⁷ Syllabus on file with author: Prof John J Donohue, "Statistical Inference in Law" (Spring 2020) & Profs Jacob Golden and Julian Nyarko, "Empirical Legal Studies Workshop" *Law* 7519 (Spring 2020).

⁹⁴⁸ Syllabus on file with author: Prof Joanna Sheperd, "Analytical Methods for Lawyers" (Spring 2020)

⁹⁴⁹ Syllabus on file with author: Prof Valerie Hans, "Social Science and the Law" *Law* 6822 (Spring 2020).

⁹⁵⁰ Syllabus on file with author: Prof Miguel de Figueiredo, "Quantitative Methods for Lawyers" Course 7782-01 (Spring 2020).

⁹⁵¹ Syllabus on file with author: Prof Herbert Kritzer, "Statistics for Lawyers" (Fall 2009).

⁹⁵² Syllabus on file with author: Prof Daniel Katz, "Quantitative Methods for Lawyers" (Fall 2014)

have empirical courses, specific courses on law and data science, *etc.* They also show a continued development to the understanding of law and “other”, including data.

U.S. law schools also showcase how Canadian law schools could partner with other disciplines, such as data science, to try to achieve more social justice. As Jennifer Chayes (Dean of the Berkeley School of Information) said, the beginning is now:⁹⁵³ law schools can’t remain siloed; they have the chance to get in on collaborations to improve outcomes.⁹⁵⁴ Berkeley’s School’s of Law and Data Science showcase what’s possible. Law professors united with computer science professors to examine fairness in death row cases; to create platforms for the average public defender to challenge unfair software biases; and to use big data and statistical methods to find exonerating evidence in Innocence Project cases.⁹⁵⁵ With limited exception,⁹⁵⁶ Canadian law schools haven’t embarked on any similar projects.

iii. I’m not trying to have another “Arthurs” debate

Chapter 4 isn’t seeking to opine on whether law schools should be “trade schools” or more (e.g., institutions to increase critical thinking about social institutions through law & other classes)⁹⁵⁷ or whether legal education should become more streamlined (e.g., practice vs. academic vs. some other stream).⁹⁵⁸ I’m somewhat agnostic on these issues: whether you believe law schools are

⁹⁵³ She also noted that data science is the fastest growing undergraduate major at Berkeley. The discipline is exploding, and increasingly more issues will involve data science. The law will be no exception (University of Toronto’s Data Science Institute Launch” (17 September 2021).

⁹⁵⁴ *Ibid* [in discussing Berkeley’s approach to interdisciplinary research of law and data science, Jennifer Chayes also made this point and explained this approach].

⁹⁵⁵ Drake, Chayes & XL Meng, *supra* note 818; see also J Chayes, “Data Science and Computing at UC Berkeley” (2021) Harvard Data Science Review, online: <<https://doi.org/10.1162/99608f92.12c8533a>>

⁹⁵⁶ The Refugee Law Lab—of which I was a member—has embarked on one of the only interdisciplinary big data projects that I’m familiar with in Canada (see “Refugee Law Lab Portal”, *supra* note 893).

⁹⁵⁷ See, e.g., Susan B Boyd, “Corporatism and Legal Education in Canada” (2005) 14(2) Social and Legal Studies 287 at 287; Jamie Cassels & Maureen Maloney, “Critical Legal Education: Paralysis with a Purpose” (1989) 4 Can JL & Soc 99 at 118; Innis Christie, “Is Academic Law in Bad Shape? Comments on Law and Learning” (1985) 65:1 Dalhousie Review 5 at 8; Vincent Kazmierski, “How Much Law in Legal Studies - Approaches to Teaching Legal Research and Doctrinal Analysis in a Legal Studies Program” (2014) 29:3 Can JL & Soc 297 at 300, 304; Ernest J Weinrib, “Can Law Survive Legal Education?” (2007) 60:2 Vanderbilt Law Review 401; Finn Makela, “Is Law an Academic Discipline” (2016) 50:2 RJTUM 433.

⁹⁵⁸ See, e.g., Jordan Furlong, “Three New Law School Concepts” (19 February 2020) *Slaw*, online: <<http://www.slaw.ca/2020/02/19/three-new-law-school-concepts/>>.

“trade schools” or institutions to teach people about the role of law in society is irrelevant to my arguments. Data gathering and empirical legal research could benefit either goal.⁹⁵⁹

Either way, the debate does require quicker answers—especially with the increasing astronomical cost of Canadian legal services⁹⁶⁰ and the innovating of legal service regulation.⁹⁶¹ Regardless of what law schools decide,⁹⁶² more data literacy is paramount for increased access to justice, better critical thinking, increased competency, increased fairness, more equality, and an overall better functioning legal system. Data gathering, data literacy and basic statistical knowledge are becoming universal skills, especially for professionals.⁹⁶³ And lawyers that lack basic data and statistical literacy are missing fundamental critical skills.⁹⁶⁴

I don’t make these comments to disparage law professors or law schools. Canada’s legal academy is still in its infancy,⁹⁶⁵ and many positive changes have occurred in the last forty years.⁹⁶⁶ But much of what Chapters 1-3 says about courts applies to law schools. The dark data

⁹⁵⁹ See, e.g., Felicity Bell, “Empirical research in law” (2016) 25:2 Griffin Law Review 262 [“Many areas of law, its operation and effects, can be usefully informed by empirical research. This article suggests that the benefits of empiricism are both pragmatic or policy-driven, and theoretical.”].

⁹⁶⁰ Trevor Farrow *et al*, “Everyday Legal Problems and the Cost of Justice in Canada: Overview Report” (2016) Canadian Forum on Civil Justice at 3.

⁹⁶¹ Jordon Furlong, “It’s a red-letter day for legal innovation in North America! Alberta becomes the third Canadian province to approve a Regulatory Sandbox” (1 October 2021), online: <https://twitter.com/jordan_law21/status/1444067105754726400>.

⁹⁶² For example, some have called for combining the articling year and last year of law school. See, e.g., Jamie Maclaren, “How about 2 years of law school instead of 3 to become a lawyer? At tomorrow’s @LawSocietyofBC Benchers meeting, I’ll make a motion to study accepting BC bar applicants who’ve completed 2 years of a JD program + 1 year of a clinical program (in lieu of articling) + PLTC.” (23 September 2021), online: <<https://twitter.com/A2JamieMac/status/1441108721208217603>>.

⁹⁶³ Maureen F Fitzgerald, “Stirring the Pot of Legal Education” (1992) 10:2 J Prof Legal Educ 151 at 171. As professionals, lawyers play a fundamental purpose in society. Society increasingly (and maybe one day exclusively) relies on data in most aspects of society. While the legal system has largely been an exception, litigation hasn’t and already includes many issues related to data, data science, and basic and complex statistics. On the point of what the public expects (and should be entitled to expect from lawyers), see Mark R MacGuigan, “The Public Dimension in Legal Education” (1989) 12:1 Dalhousie LJ 85 at 85-88, 101-102.

⁹⁶⁴ Law schools have continually been behind the curve on keeping up with real-world changes and realities. They should also be seeking to “future-proof” their graduates. Put another way, they should graduate lawyers who have the skills to continually developing necessary competencies. Often law schools are teaching students what the clients and society of yesterday need and want rather than what future clients and society need. See, e.g., Fitzgerald, *supra* note 963 at 153 – 154.

⁹⁶⁵ Constance Backhouse, “Revisiting the Arthurs Report Twenty Years Later” (2003) 18:1 Can JL & Soc 33 at 34.

⁹⁶⁶ Of course, Of course, I recognize the many positive changes that have occurred over the last 40 years. Canadian law has become far more scholarly since the now famous 1983 Arthurs Committee on Legal Education, Law, and Learning (See, e.g., Social Sciences and Humanities Research Council of Canada, *Law and Learning: Report of the Consultative Group on Research and Education in Law* (Ottawa: The Council, 1983); Task Force on the Canadian Common Law Degree, *Final Report* (Ottawa: Federation of Law Societies, 2009). One example is the proliferation

and opacity similarities are striking, and perhaps part of the reason that courts remain so resistant to change is because law school also do.

My claim that Canadian legal education has fallen far behind where it needs to be isn't bold or innovative.⁹⁶⁷ Canadian legal education has often struggled to innovate.⁹⁶⁸ Canadian law professors have long heard that "law in Canada is made, administered, and evaluated in what often amounts to a scientific vacuum."⁹⁶⁹ Yet law schools and legal academics still haven't attempted to more rigorously study legal education, including with empirical analysis.⁹⁷⁰

Many reasons explain the historical approach and the current lack of innovation in law schools.⁹⁷¹ Much like Canadian courts, Canadian law schools have largely operated "free from evaluation or scrutiny"⁹⁷² despite abundant calls for change.⁹⁷³ Yet like courts, little has changed because American law schools have a "culture of resistance" to innovation.⁹⁷⁴ Maureen Fitzgerald put it this way: "legal education has grown like a wild tree."⁹⁷⁵

Put another way, law schools also suffer from a lack of deliberate design. Economic, technological, demographic, and social changes move at dizzying speeds, and law schools aren't doing enough to keep up.⁹⁷⁶ And the time has come to put a new branch on the wild tree.

of Canadian law professors with Ph.D. degrees since the report was issued, including some with interdisciplinary training (Dia Dabby, Bethany Hastie & Jocelyn Stacey, "Doctoral Studies in law: From the Inside Out" (2016) 39:1 Dalhousie LJ 221 at 223). Having a Ph.D. is now the expected standard for entering the legal academy (Craig Forcece, "Want to be a Law Prof? Data on Whether You Should Do a Doctorate" (9 July 2014) online: <<http://craigforcece.squarespace.com/bleaching-law/2014/7/9/want-to-be-a-law-prof-data-on-whether-you-should-do-a-doctor.html>>) and law has become a far more legitimate Canadian academic discipline in the last 40 years. Another crucial positive change is the incredible increases in diversity of faculty and students (Backhouse, "Revisiting the Arthurs Report", *supra* note 965 at 39-4. As discussed earlier, many law schools don't post demographic data, but the schools that do demonstrate similar claims

⁹⁶⁷ Kim Brooks, "The World Needs More Rod Macdonald: The Potential of Big Ideas" (2014) 51:4 Alta L Rev 871.

⁹⁶⁸ Lorne Sossin, "Experience the Future of Legal Education" (2014) 51 Alberta L Rev 849 at 850; Peter Sankoff, "Taking the Instruction of Law Outside the Lecture Hall: How the Flipped Classroom can make Learning More Productive and Enjoyable (for Professors and Students)" (2014) 51 Alberta L Rev 891 at 894.

⁹⁶⁹ See, *Law and Learning*, *supra* note 966 at 63.

⁹⁷⁰ Some excerpts do exist. See, e.g., Peter Sankoff & Craig Forcece, "The Flipped Classroom: Retooling the Classroom to Support Active Teaching" (2014) Canadian Legal Education Review, online: <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2402379>.

⁹⁷¹ Constance Backhouse, "The Changing Landscape of Canadian Legal Education" (2001) 20 Windsor YB Access Just 25 at 26-31.

⁹⁷² Backhouse, "The Changing Landscape", *supra* note 971 at 32.

⁹⁷³ *Ibid* at 34.

⁹⁷⁴ Chapman, *supra* note 978 at 8.

⁹⁷⁵ Fitzgerald, *supra* note 963 at 173.

⁹⁷⁶ See, e.g., Annie Rochette & W Wesley Pue, "'Back to Basics'? University Legal Education and 21st Century Professionalism" (2001) 20 Windsor YB Access Just 167 at 167-68.

Canadian law schools and legal academics should move away from their historical slow approach to change;⁹⁷⁷ their fear of losing autonomy;⁹⁷⁸ and what, at times, seems like inherent skepticism of data, transparency, basic technology, and technological innovations.⁹⁷⁹

As noted, I recognize that law schools can't and shouldn't do everything to ensure that lawyers are practice ready or ready to "think critically".⁹⁸⁰ Notably, even law schools with a large number of data literate faculty—e.g., the University of Toronto⁹⁸¹—don't even offer the kinds of courses Chapter 4 calls for or some of the incredible innovations at other law schools, like Osgoode and Lincoln Alexander.

But law professors don't even have to teach data literacy or statistical methods classes or create innovative clinics or centres. Law schools could even encourage their faculty "to develop links between other faculties and other universities or polytechnics. Academics must overcome their tendency to be protectionist and suspicious...."⁹⁸² Other departments' faculty could teach these courses in conjunction with legal academics, work in data-driven clinics, or on data gathering and analysis projects. And if law schools aren't willing to independently develop this kind of education within their graduate or undergraduate programs, other sections of Canada's undergraduate and graduate education systems could increase their focus on justice system data—e.g., public administration or public policy programs—and house classes or centres. As Craig Allen Nard notes, legal academics shouldn't be any different than other academics who collaborate on research efforts:

Physicians, scientists, economists, sociologists, psychologists, and other academics frequently publish collaborative research efforts. Why are legal academics different? Collaborative research provides law professors with the opportunity to entertain

⁹⁷⁷ Frances E Chapman, "A Conversation about Canadian Legal Education: Lakehead University and Dialogue Pedagogy" (2020) 21:1 W Mich U Cooley J Prac & Clinical L 1 at 8.

⁹⁷⁸ *Ibid.*

⁹⁷⁹ Strong calls for changes in how law is taught are often met with strong responses or suggestions that reforms are "idiocy" or "poppycock" (see Backhouse, "Revisiting the Arthurs Report", *supra* note 965 at 34).

⁹⁸⁰ Alice Woolley, "Legal Education Reform and the Good Lawyer" (2014) 51 Alberta L Rev 801 at 817.

⁹⁸¹ The Henry NR Jackman Faculty of Law, University of Toronto has been the Canadian leader in law and economics training. Yet most years, it only offers one law and economics class and no specific courses related to data literacy in the law (although it's now offering multiple course and AI and the law). On the history of the law and economics program, see Michael J Trebilcock, "The Makings of a Good Law School (1990) 2:1 Legal Educ Rev 119 at 124.

⁹⁸² Fitzgerald, *supra* note 963 at 171.

disciplines other than the law, to step outside the confines of the law and partake of the rich personal and professional offerings of the university community.⁹⁸³

Finally, I'd be remiss not to note that the classic "publish or perish" problem plays a likely role here, especially in the legal academy. Doing empirical work is time consuming and expensive. Put another way, while writing publishable quality material is always time consuming, doctrinal research—e.g., providing commentary on legal issues—simply dwarfs in comparison to original research or other primary research.⁹⁸⁴ As publication remains the gold standard for promotion (not data generation), Canadian legal academics aren't incentivized to do the kind of research I'm calling for if they want to advance in their careers.⁹⁸⁵ But producing and maintaining open-source datasets are an extremely valuable scholarly output: they allow everyone to publish on the data, so they clearly develop the academy in the same ways as other publications from a knowledge generation dimension. The very goal of this dissertation was generating such a dataset with the 2023 Survey. Yet academic institutions often don't treat such data and knowledge gathering as a publication in merit reviews (or even in page or word counts of dissertations), and such an approach is a negative incentive on most academics and students. As I'll discuss more in a moment, Canadian law journals also have a role to play here.

iv. Canadian law schools must chart a better path forward

Harry Arthurs perhaps said it best: "We no longer live in a simple legal system ... judges, lawyers, and law teachers fail to exhibit the collective intellectual capacity to comprehend, evaluate, or change today's complex legal system."⁹⁸⁶ Unfortunately, unless law schools start paying attention to this issue and collaborating to find solutions,⁹⁸⁷ the current lack of attention to data, statistical, and technological literacy could persist. So too would the lack of data-driven research and reform.

Canadian law schools with Ph.D. graduate programs largely mirror the reality of the training that law schools offer J.D. students. When I started my research, options were limited:

⁹⁸³ Nard, *supra* note 920 at 367.

⁹⁸⁴ Seema Rawat & Sanjay Meena, "Publish or perish: Where are we heading?" (2014) 19:2 J Res Med Sci 87.

⁹⁸⁵ I've had this conversation with other empirical scholars.

⁹⁸⁶ *Law and Learning*, *supra* note 969 at 71.

⁹⁸⁷ Chapman, *supra* note 977 at 61.

- Only Osgoode provided an explicit course on qualitative and quantitative methods, but the course hasn't historically been required (it is now). While the course was very useful, it barely scratched the surface on empirical methods.⁹⁸⁸ I was fortunate to access other professors and professionals to learn when I needed, including caution about what I didn't know;
- Only uOttawa had a required class that explicitly discussed qualitative and quantitative methods.⁹⁸⁹
- Other law schools offered methods classes where qualitative, quantitative, or other empirical mixed methods might be discussed.⁹⁹⁰ But these classes are largely theoretical or alternative frameworks class where students are merely acquainted with a variety of various methods or critical takes on the law.⁹⁹¹ The problem with such overview courses is that they end up teaching material that's generally covered in greater detail in unrealistically short time frames and often with dated scholarship.⁹⁹² So people think they've learned more than they have.⁹⁹³

So the deficit at the Canadian graduate level could easily be perpetuating the deficit at the J.D. level as well as the dearth of and low level of rigorous empirical research that Part III is about to discuss. Lee Epstein and Gary King plainly capture the possible effects that the lack of graduate

⁹⁸⁸ Osgoode Hall Law School, York University, "Phd in Law", online:

<<https://www.osgoode.yorku.ca/programs/graduate-program/phd-in-law/>>.

⁹⁸⁹ University of Ottawa, Faculty of Law, "PhD in Law: Program Guidelines and Requirements 2020-2022", online: <https://www.uottawa.ca/faculty-law/sites/g/files/bhrs406/files/2022-06/eng-guide_2020_1.pdf>; University of Ottawa, Faculty of Law, "DCL 8330 A00- Legal Research Methodology and Theory", online:

<https://llmphd.uottawa.ca/sites/llmphd.uottawa.ca/files/dcl_8330a00.pdf>.

⁹⁹⁰ See these requirements:

- Henry NR Jackman Faculty of Law, University of Toronto, "Degree requirements: SJD Students", online: <<https://www.law.utoronto.ca/academic-programs/graduate/sjd/degree-requirements-sjd-students>>. For an example of the style of overview class, which while useful, is incomplete: Henry NR Jackman Faculty of Law, University of Toronto, Faculty of Law, "Alternative Approaches to Legal Scholarship", online: <<https://jackmanlaw.utoronto.ca/jd-program/course/2025-2026/alternative-approaches-legal-scholarship-sjd>>.
- Osgoode Hall Law School, "Phd in Law", *supra* note 988.
- McGill Law, "Doctoral Program", online: <<https://www.mcgill.ca/law/grad-studies/doctoral-program>>.
- Queen's Law, "Phd Program", online: <<https://law.queensu.ca/programs/graduate/phd-program>>.
- Université de Montréal, Faculty of Law, "Phd in Law", online: <<https://admission.umontreal.ca/en/programs/phd-in-law/>>.
- University of Alberta, Faculty of Law, "Curriculum: Doctor of Philosophy", online: <<https://www.ualberta.ca/law/programs/phd/curriculum.html>>.
- Queen's Law, "PhD", online: <<https://law.queensu.ca/programs/graduate/phd-program>>.

⁹⁹¹ What's perhaps even more startling is that most law school graduate plans offer zero training on even pedagogical methods or models, so that this gap continues to persist and that legal education continues to be a confusing endeavour is rather unsurprising. Of course, graduate students could choose to pursue their own training in by using elective credits to take classes on qualitative, quantitative, or empirical research, but that training would be outside the law school.

⁹⁹² Zeiler, *supra* note 938 at 87. For example, I was often assigned material that was extremely dated or treated as seminal despite more modern literature or ideas.

⁹⁹³ This idea is commonly referred to as the Dunning-Kruger effect (see, e.g., Wikipedia, "Dunning-Kruger Effect" last edited on 19 October 2025, online: <https://en.wikipedia.org/wiki/Dunning-Kruger_effect>).

training has on the legal academy, including for both empirical research and general critical thinking:

One source of the problem almost certainly lies in the training law professors receive, and the general approach to scholarship that results. While a Ph.D. is taught to subject his or her favored hypothesis to every conceivable test and data source, seeking out all possible evidence against this or her theory, an attorney is taught to amass all the evidence for his or her hypothesis and distract attention from anything that might be seen as contradictory information. An attorney who treats a client like a hypothesis would be disbarred; a Ph.D. who advocates a hypothesis like a client would be ignored. But when attorneys—as law professors—move from the courtroom to the faculty commons (where the truth, and not just a particular version of it, matters), it is highly problematic for them to defend theories and hypotheses as if they were clients in need of the best possible representation, dismissing competitors out of hand or ignoring them entirely. That is because in empirical research, challenging a theory with the best possible opposing arguments is what makes the strongest case for a theory.⁹⁹⁴

In sum, Canadian schools should seek to implement more mandatory data literacy into their core curriculum; increase their own data gathering and transparency; and properly incentivize data driven research. They should also seek to form interdisciplinary relationships with data science, computing, and statistics departments. Law schools could even seek to partner with governments and courts to conduct research and reform projects. Chapter 1 showcases some of what’s possible when courts and governments partner with data-literate lawyers and leaders. Shouldn’t Canadian law schools ensure their graduates and academics can work on and implement similar reforms?

Part III: Canadian law journals should develop national empirical research standards

Canada has a dearth of empirical study of its legal system, and the little that does exist often lacks rigour. Before moving on, I acknowledge that some individuals hold a restrictive view of “empirical research”: they might say empirical research requires statistical analysis of qualitative and quantitative data. This part applies to that “strict” kind of statistical research as well as “empirical light” research—*i.e.*, sampling a set of cases or incidents to do descriptive research such as describing a certain group of individuals’ experience in the legal system.⁹⁹⁵ As Lee Epstein and Gary King have noted, “law professions in fact have been conducting research that is empirical—that is, learning about the world using qualitative data or qualitative information—for

⁹⁹⁴ King & Epstein, “The Rules”, *supra* note 812 at 10.

⁹⁹⁵ For a general background of empirical legal research, see Bell, *supra* note 959 at 263-268.

almost as long as they have been conducting research.⁹⁹⁶ Put another way, many law review articles are somewhat empirical regardless of whether they rely on statistical techniques.⁹⁹⁷

Part III examines the general dearth of strict empirical legal research and how Canadian empirical research often lacks rigour. The analysis suggests that national standards for Canadian empirical legal research are needed, and it prescribes suggestions for how Canadian law journals could improve Canadian empirical legal research.

i. The dearth of strict empirical legal research

In comparison to the U.S. where training is much richer, Canadian scholars and justice system participants hardly conduct “strict” empirical research on the Canadian legal system.⁹⁹⁸ While most Canadian journals don’t appear to track what is or isn’t empirical legal research (either in the strict or light forms) searches will reveal a limited amount of both in Canada but especially strict empirical legal research.⁹⁹⁹ Many subjects appear to have never been rigorously empirically studied.¹⁰⁰⁰ As Chapter 1 suggests, this lack is problematic, and so many basic questions remain mysteries.¹⁰⁰¹

As Parts I and II of Chapter 4 suggest, a likely reason for the dearth of empirical research is the lack of training that’s available to J.D. and graduate students; the lack of legal data and access to it; and the lack of proper incentives. For the most part, as legal historian Lawrence Friedman has noted, empirical research, is often a “stepchild in the law school world”.¹⁰⁰² As discussed, a likely reason for the estrangement is the sheer hard work of empirical research and the glorification of other theoretical or abstract research over empirical research. While Friedman

⁹⁹⁶ King & Epstein, “The Rules”, *supra* note 812 at 1, 3.

⁹⁹⁷ For an example of precisely this point, see, e.g., Constance Backhouse, “Turning the Tables on RDS: Racially Revealing Questions Asked by White Judges” (2021) 44:1 Dal LJ 181 [“examines their informal interjections and comments at the Supreme Court oral hearing. Making use of the appellate transcript and video-recording of the oral argument, it concludes that the informal comments of the top court judges exemplified many of the patterns that anti-racist educators describe as indicative of a lack of understanding of racism.”].

⁹⁹⁸ For a running list of Canadian empirical legal research, see Deliberate Legal Design, “Academic datasets”, online: <<https://www.deliberatelegaldesign.com/academic-datasets>>.

⁹⁹⁹ Correspondence on file with author.

¹⁰⁰⁰ *Ibid.*

¹⁰⁰¹ Nard, *supra* note 920 at 350.

¹⁰⁰² Lawrence M Friedman, “Context and Convergence: Some Remarks on the Law and Society Movement” (2019) 36:1 Law & Society and Law & Technology 1.

made his comments in the U.S. context almost 40 years ago, they could equally apply to the current Canadian context:

To begin with, empirical research is hard work, and lots of it; it is also nonlibrary research, and many law teachers are afraid of it; it calls for skills that most law teachers do not have; if it is at all elaborate, it is team research, and law teachers are not used to this kind of effort; often it requires hustling grant money from foundations or government agencies, and law teachers simply do not know how to do that. Prestige is a factor too. Law schools . . . tend to exalt ‘theory’ over applied research. Empirical research has an applied air to it, compared to ‘legal theory.’¹⁰⁰³

ii. *The lack of rigour in Canadian empirical legal research*

Unfortunately, Canadian empirical research and empirically informed claims mostly fall short of the standards that Part III calls for.¹⁰⁰⁴ My goal isn’t to single out any participant in what I’d call research follies. Rather, it’s contributing suggestions to mitigate existing issues.¹⁰⁰⁵

The issues I’m speaking about aren’t limited to academics or law journals: they also occur in courts, tribunals, government-funded studies, investigative journalism, and opinion reporting. So, when I say studies, I’m not just speaking about law journal articles. The following discussion relies on a broad range of Canadian empirical research from law journals; government reports; and news organizations. But the discussion isn’t comprehensive because empirical legal research

¹⁰⁰³ *Ibid* at 19 [“research has to be grounded in data, in facts of the real world. It has to be rigorous. Only the law and society movement, only the study of law in context can do the job. Or even try to do the job. can the movement succeed at this very difficult job? As we said, thousands of scholars gather every year for annual meetings of law and society organizations. Thousands of papers are presented at these studies. The meetings are awash with data, arguments, findings, conclusions. It is fair to ask, what it all adds up to. What has the field accomplished? In all honesty, we can make few sweeping generalizations. We can report few major breakthroughs and discoveries.”].

¹⁰⁰⁴ I’m not suggesting misconduct, bad faith, or that these studies are worthless. Rather, I’m suggesting that Canadian empirical legal research often falls below rigorous methodological standards—e.g., discussing conclusions with far more uncertainty and clearly outlining methodological and data limitations. For some examples of recent work (many other likely exist historically), see, e.g., Steven Penney & Moin Yaha, “Section 24(2) in the Trial Courts: An Empirical Analysis of the Legal and Non-legal Determinants of Excluding Unconstitutionally Obtained Evidence in Canada” (2021) 58:3 Osgoode Hall LJ 509, online:

<<https://digitalcommons.osgoode.yorku.ca/cgi/viewcontent.cgi?article=3711&context=ohlj>>; Xavier, *supra* note 559. Journalistic coverage is also sometimes overselling conclusions (see, e.g., Tom Cardoso, “Racialized Prisoners in Canada get fewer chances at parole than white prisoners. A Globe analysis investigates the disparity” (23 February 2022) *The Globe and Mail*, online: <<https://www.theglobeandmail.com/canada/article-racialized-prisoners-in-canada-get-fewer-chances-at-parole-than-white/>>; De Silva & Little, *supra* note 568; Sean Fine, “Canada’s Supreme Court is off balance as ‘large and liberal’ consensus on the Charter falls apart” (15 January 2022) *The Globe and Mail*, online: <<https://www.theglobeandmail.com/canada/article-canadas-supreme-court-is-off-balance-as-large-and-liberal-consensus-on/>>. While some might argue that this problem is not significant, I do. Governments are often responsive to such attention, and if studies fall short, reforms likely will too. Instead of anecdote driving reform, anecdote will.

¹⁰⁰⁵ King & Epstein, “The Rules”, *supra* note 812 at 10.

appears in many kinds of journals and venues.¹⁰⁰⁶ That said, this brief discussion suggests that some empirical claims likely shouldn't have been made or made with less confidence.

As others have noted,¹⁰⁰⁷ the research issues that I'm about to discuss plague all research areas. They're not endemic to empirical legal research or evidence-based legal reform. Economist and empirical legal scholar Kathryn Zeiler offers this blunt view:

The troubling news is that empirical scholarship in most fields is under fire. Several studies published during the past decade have revealed the tenuous nature of a shockingly high percentage of some of the most widely cited empirical results. Empiricists are scrambling to find effective ways to restore confidence in published empirical studies. The situation in the field of law is doubly worse. First, the average quality of empirical studies published in student-edited law reviews is undoubtedly lower than those published in peer-reviewed journals. This is partly because law review editorial boards, usually comprising solely law students, do not systematically require expert review of submitted work. Student editors are eager to publish empirical work, but too often lack the expertise to ensure that they publish only high-quality, replicable studies. This system encourages submissions by authors who are interested in testing theory but lack sufficient expertise in empirical methods. As a result, empirical studies published in law reviews are often plagued by basic problems such as incorrect definitions of technical terms, application of incorrect tests, and misinterpretations of results. Second, although many experts have identified problems with studies published by law reviews, little is being done to remedy them.¹⁰⁰⁸

Zeiler was mainly speaking about the U.S. context. But Canadian empirical researchers and law journals should've no reason to doubt that her comments don't apply here for the following eight reasons. These reasons likely lead to or facilitate false positives, false negatives, lack of representativeness, other replication errors, or a general lack of credibility and reliability in Canadian empirical legal research.¹⁰⁰⁹ They also have a role to play in the justice crisis as justice system participants, including courts, rely on empirical claims about Canada's legal system.

¹⁰⁰⁶ For the past seven years, I've been compiling a list of empirical legal research. It's still incomplete and a work in progress. But it suggests that many areas have never been subject to empirical research.

¹⁰⁰⁷ See, e.g., King & Epstein, "The Rules", *supra* note 812; Zeiler, *supra* note 938; J Bavli, "Credibility in Empirical Legal Analysis" (2022) 87:2 Brook L Rev 501; Chin & Holcombe, *supra* note 938; Tal Yarkoni, "The generalizability crisis" (2022) 45 Behavioural And Brain Sciences 1, online: <https://mzettersten.github.io/assets/pdf/ManyBabies_BBS_commentary.pdf?>.

¹⁰⁰⁸ Zeiler, *supra* note 938 at 78-79.

¹⁰⁰⁹ See Chin & Holcombe, *supra* note 938.

First, Canadian studies often rely on very small sample sizes.¹⁰¹⁰ This approach can lead to some studies being grossly underpowered to detect the hypothetical effect size of interest for the researcher,¹⁰¹¹ e.g., do former prosecutors who become judges more frequently agree with the prosecution or defence.¹⁰¹² In other words, the study design may not facilitate the kind of analysis or prediction the researcher wants to make. This approach can lead to studies that fail to represent reality, including results that suggest outcomes that may be simply false.¹⁰¹³ I'm not saying that large sample sizes are a panacea because they're not. Even larger sample sizes suffer from problems. What I'm saying is that the relationship of sample size to study design seems like a passing consideration for many Canadian empirical studies and claims. The goal—as Andrew Gelman and Jennifer Hill note isn't to “to attain statistical significance with some high probability, but rather to have a sense—before and after data have been collected—about what can realistically be learned from statistical analysis of an empirical study.”¹⁰¹⁴ One area causes

¹⁰¹⁰ For some examples see, e.g., Forrest Finn, “Hardship and Hard Drives: Artificial Intelligence, Judicial Decision-Making, and the Discharge of Student Loan Debt” (2019) 17:1 CJLT 59 (the article examines whether judges predictably apply standards from the Bankruptcy and Insolvency Act, and the supporting dataset is only 30 observations”); Department of Justice, “Serious Legal Problems faced by Lesbian, Gay, Bisexual, and Other Sexual-Minority People in Western Canada: A Qualitative Study” (2021), online: <https://www.justice.gc.ca/eng/rp-pr/jr/lgbtq/docs/rsd_rr2021_lgb-people-in-western-canada-eng.pdf> (this study examines the experiences of sexual-minority people who had recently experienced a serious legal problem, and the supporting dataset is only 21 observations); Laverne Jacobs and Sule Tomkinson, “Examining the Social Security Tribunal’s Navigator Service: Access to Administrative Justice for Marginalized Communities”, online: <<https://uwindsor.scholaris.ca/server/api/core/bitstreams/31c157aa-89c3-47d0-b63b-e499821a9e79/content>> [this analysis relies on 21 users of the service]; David Austin, “Urban African Canadians: A Qualitative Study of Serious Legal Problems in Quebec” (2021), online: <https://www.justice.gc.ca/eng/rp-pr/jr/uac-amu/docs/RSD_RR2021_Urban_African_Canadians_EN.pdf> (this study examines the experience of urban African Canadians and serious legal problems in Quebec, and the supporting dataset is 14 observations); Fric, *supra* note 371 [this study relies on 16 questionnaires from judges to make conclusions about the pursuit of justice, diversity, and transparency]; David Lundgren, “A qualitative and quantitative analysis into the Demographics, Socioeconomics, and Experiences of Self- Represented Litigants” (2023), online: <<https://representingyourselfcanada.com/wp-content/uploads/2023/05/Inaccessible-Justice-David-Lundgren.pdf>> [this analysis relies on 768 responses from 2016 to 2022, and it certainly is quite informative about the experience of the people who filled out the form. While the number is higher than the other studies I’ve mentioned, the analysis relies on responses from a seven-year period (110 average responses per year). I don’t, however, know the breakdown of responses per year because the study doesn’t mention it].

¹⁰¹¹ Richard D Morey, “Why you shouldn’t say ‘this study is underpowered’” (28 January 2019), online: <<https://towardsdatascience.com/why-you-shouldnt-say-this-study-is-underpowered-627f002ddf35>>.

¹⁰¹² For example, the earlier discussed Hungry Judges study relied on a moderate sample size.

¹⁰¹³ Katherine S Button *et al*, “Power failure: why small sample size undermines the reliability of neuroscience” (10 April 2013) 14 *Nature Reviews Neuroscience* 365, online: <<https://www.nature.com/articles/nrn3475>>. For discussions about this issue in data science, see, Ryan L Melvin, “Sample Size in Machine Learning and Artificial Intelligence” (28 June 2021), The University of Alabama at Birmingham, online: <<https://sites.uab.edu/periop-datascience/2021/06/28/sample-size-in-machine-learning-and-artificial-intelligence/>>.

¹⁰¹⁴ Andrew Gelman, Jennifer Hill & Aki Vehtari, *Regression and Other Stories* (Cambridge University Press: Cambridge, 2020) at 291.

me particular concern. Frequently, in studies of marginalized people, the sample sizes are terrifyingly small for getting insight about marginalized groups.¹⁰¹⁵ After such studies are published, justice system participants seem to act like they know more than they do. Frankly, however, some studies seem more like a box-ticking exercise for governments or institutions vs. the full and repeated deep dives that're needed to properly understand marginalized people's experience in Canada's legal system.¹⁰¹⁶ Again, I'm not saying that small sample sized studies are irrelevant or unhelpful, including ones addressing the experience of marginalized individuals. Instead, I'm saying the gathered data and conclusions aren't truly informative, and at times, could even be misleading because the gathered data is too small or convenient.¹⁰¹⁷

Second, Canadian studies often rely on unequal sample sizes without considering the effect of the unequal sample size in their analysis.¹⁰¹⁸ Unequal samples sizes can be a non-issue or they can lead to misleading conclusions.¹⁰¹⁹ Either way, sufficient attention must be paid to unequal sample sizes, especially when comparing unequal samples between years.¹⁰²⁰

Third, Canadian studies often fail basic replication standards because studies aren't transparent about their methods or data. They fail to provide the information that another researcher would need to replicate the study or to understand how the original researchers gathered and analyzed

¹⁰¹⁵ For a somewhat related discussion in developmental meta research, see this comprehensive discussion, Patrick S Forscher and Mario Schmidt, eds, *A Better How* (Kenya: Busara, 2024).

¹⁰¹⁶ See, e.g., Government of Canada, "Overrepresentation of Black People in the Canadian Criminal Justice System", online: <<https://www.justice.gc.ca/eng/tp-pr/jr/obpccjs-spnsjpc/index.html>> [the study's author's note that "National disaggregated data on the racialized identity of those who come in contact with the criminal justice system remain fairly limited and underreported. However, some information is available and presented in the current fact sheet." Yet they proceed to present rather blockbuster and generalized conclusions about a marginalized population without even explaining the data they rely on or its myriad limitations; Department of Justice, "Serious Legal Problems faced by Lesbian, Gay, Bisexual, and Other Sexual-Minority People in Western Canada", *supra* note 1010.

¹⁰¹⁷ Action Committee, *supra* note 864 [the organizers alleged that "a pool of good data is being collected and shared"]. Yet this statement is—as one individual raised during the presentation—not actually true and quite misleading because it suggests that adequate work is being done when very little is being done to increase the quality and quantity of Canadian legal data. The Civil Resolution frequently is praised for its good user experience and high satisfaction rates. Yet a close look at the data reveals wild swings and poor response rates. So the actual user experience of most individuals in the CRT is unknown. Perhaps the limited data they have is representative, but no one should assume it is (see, e.g., Civil Resolution Tribunal, "2021/2022 Annual Report" (2022), online: <https://civilresolutionbc.ca/wp-content/uploads/CRT-Annual-Report-2021-2022.pdf>).

¹⁰¹⁸ See, e.g., Mike Madden, "Judging Readability: A Study of Opinions Written by Apex Court Judges from Australia, Canada, South Africa, the United Kingdom, and the United States" (12 July 2022), online: <[dx.doi.org/10.2139/ssrn.4160956](https://doi.org/10.2139/ssrn.4160956)>.

¹⁰¹⁹ Daniel Lakens, "Always use Welch's t-test instead of Student's t-test" (26 January 2015), online: <<http://daniellakens.blogspot.com/2015/01/always-use-welchs-t-test-instead-of.html>>.

¹⁰²⁰ *Ibid.*

the data.¹⁰²¹ Instead of opacity, studies must provide access to and direction about data, methods, and analysis. Such transparency ensures review, critique, extension, and reproduction by others.¹⁰²²

Fourth, Canadian studies make oversized claims without the necessary epistemic humility, lack of caveats, or even proper titles. Lee Epstein and Gary King offer this blunt assessment: “too much legal scholarship ignores the rules of inferences and applies instead the ‘rules’ of persuasion and advocacy. These rules have an important place in legal studies, but not where the goal is to learn about the empirical world.”¹⁰²³ This issue applies to both strict empirical research and “empirical light” research. The problem seems especially prevalent, however, in “empirical light” research where individuals seem willing to indict the Canadian legal system using inappropriate methods, biased data, minimal data, or no data. At best, scholars and researchers could say something like “my data, interviews, analysis, and methods highlight problems and overarching narratives, but I have no way of knowing if they’re representative or replicable.” But justice system participants often go further and make sweeping indictments.¹⁰²⁴ I’m not saying that myriad problems don’t exist in Canada’s legal system or that such research doesn’t uncover important “truths”. Instead, I’m saying that researchers must employ the epistemic humility that Part I discussed, especially when they rely on convenience, biased, or limited data. But as I’ve been stressing, epistemic humility is always necessary and should be front and centre, including by clearly highlighting limitations.

¹⁰²¹ See, e.g., Penney & Yahya, *supra* note 10031004 (this paper includes links to both the data and codebook, but the actual codebook doesn’t offer the kind of detailed prescription that one would need to replicate their study—e.g., what happened when a judge worked as both a crown and a defence lawyer in the immediate preceding 10 year period).

¹⁰²² NASEM, *Open Science by Design: Realizing a Vision for 21st Century Research* (NASM: New York, 2018) at 107.

¹⁰²³ King & Epstein, “The Rules”, *supra* note 812 at 9.

¹⁰²⁴ See, e.g., Elaine Craig, *Putting Trials on Trial Sexual Assault and the Failure of the Legal Profession* (Montreal, Toronto: McGill-Queen’s University Press, 2018); Elaine Brooks-Craig, “The Discriminatory Use of the “KGB Procedure” by Police Against Women in Canada” (2025) 70:2 McGill LJ 241 — (s); Xavier, *supra* note 559; Penney & Yahya, *supra* note 10031004. Other examples exist within the footnotes for the eight issues. In short, the confidence in these conclusions is beyond empiricism’s limits. I don’t mean to suggest that these authors (or other authors) have any malintent. But I do find this kind of research to be problematic.

Fifth, Canadian studies often rely on very biased or a convenience sample.¹⁰²⁵ The problem with this approach is that scholars, journalists, and governments often don't even recognize that they're relying on a convenience sample,¹⁰²⁶ and the various ways in which such a convenience sample can be misleading. For example, many criminal law empirical studies rely on reported decisions accessed via CanLII, Quicklaw, or Westlaw.¹⁰²⁷ Yet many criminal law decisions that address *Charter* or substantive issues—if not the vast majority in some jurisdictions—go unreported as discussed earlier. The potential for confounding outcomes when you're missing data or when you're relying on a biased sample should be obvious to empirical researchers. But this point is often far less obvious to average readers or less informed researchers. As the Chapter 4's introduction suggests, blockbuster or salacious headlines appear more compelling than discussing all the limitations of a convenience sample. I do recognize that sometimes a convenience sample is all that can be relied on—e.g., because courts don't publish many oral decisions or provide ready access to them. But when researchers, scholars, journalists, or governments face such realities, they must identify limits rather than make bold conclusions, especially when lots of data is likely missing.

Sixth, randomization is very difficult in many kinds of Canadian empirical research about judicial decisions or outcomes. For example, if someone seeks to research judicial decisions and their average delivery time and length, I concede that they could create a randomized set of cases

¹⁰²⁵ Sunil Gurmukh, "Police Violations of Charter rights highlight the need for accountability and transparency" *The Conversation*, online: <<https://theconversation.com/police-violations-of-charter-rights-highlight-the-need-for-accountability-and-transparency-203389>> (this study relied on all reported decisions of *Charter* breaches from 2011 to 2021 from CanLII and LexisNexis and found 600 serious *Charter* breaches. The problem, however, is that many (who knows how many) decisions addressing *Charter* breaches are likely unreported. Yet neither the academic involved with the study nor Toronto Star reporters made readers alive to this fact. Instead, they relied on a convenience sample of reported decisions—which may have been reported because of the breach. This approach, however, could cause one to believe that *Charter* violations are occurring more than they in fact are. As the authors note, gathering full access to information would provide better accountability. But to release a study without acknowledging that part of it relies on a very convinced sample can be misleading. More attention must be to noting limitation, including the possibility that *Charter* breaches are rarer than the authors point out). For further detail on this project, see Rachel Mendleson & Steve Buist, "How Torstar found 600 cases of police violating fundamental rights when no one is tracking this national problem" (13 June 2022) *Toronto Star*, online: <<https://www.thestar.com/news/investigations/2022/06/09/how-torstar-found-600-cases-of-police-violating-fundamental-rights-when-no-one-is-tracking-this-national-problem.html>>.

¹⁰²⁶ For a thorough background on convenience and purposive sampling—including limits of both, see Chittaranjan Andrade, "The Inconvenient Truth About Convenience and Purposive Samples" (2021) 43:1 *Indian Journal of Psychological Medicine* 86, online: <<https://journals.sagepub.com/doi/10.1177/0253717620977000>>.

¹⁰²⁷ For a thorough discussion of this problem (and a possible method to alleviate it), see Edward K Cheng, "Detection and Correction of Case-Publication Bias" (2018) 47:1 *The Journal of Legal Studies* 151.

based on number of reported cases in each jurisdiction where they seek to control for case type distribution; registry location; month of year, *etc.* and by relying on stratification and weighting methods. But such a randomized set might miss the nuance they're trying to understand from a descriptive perspective, and an incomplete set would lead to more biased predictive conclusions. In many contexts, more vs. less data is crucial for data science and other data science techniques (e.g., machine learning), especially because of the amount of variety in judicial decisions. For example, some judges occasionally (vs. normally) write very long, slow, or complex decisions or *vice versa*, and a random set could easily miss this nuance. Accordingly, if the random sample only got the judge's long decisions, the descriptive and predictive conclusions would be flawed. As Part I discussed, Canada's lack of status quo data compounds this problem. Even the demographics of judicial decisions in Canada are hard to access. So controlling for some variables is difficult if not impossible (until we have a better descriptive baseline). Accordingly, identifying sampling error could be very difficult when studying judges because many parameters around judicial decisions are unknown.¹⁰²⁸ Some Canadian legal data is so deficient that researchers couldn't even guess what might be representative of some of the issues they're trying to understand—e.g., what is the average delivery time or length of a judicial decision. So they wouldn't know if the randomized sample's statistic would be even close to the parameter they're trying to measure.

Seventh, classic survey data is still seen as more informative than it really is. I make this argument as a researcher who relies on classic survey data, including in this dissertation. So I'm not suggesting that survey data is irrelevant or not useful. Rather, I'm suggesting that survey data is a particularly biased kind of data.¹⁰²⁹ Even if researchers try to create a representative sample and succeed, self-selection biases all surveys, including randomized ones.¹⁰³⁰ Neither randomization nor statistical methods can ever truly resolve the material difference between

¹⁰²⁸ For a primer on sampling error, see, e.g., Michael McDonough, "sampling error: statistics" Britannica, online: <<https://www.britannica.com/science/sampling-error>>.

¹⁰²⁹ Andrew Gelman, "Decades of polling have drained the aquifer of survey participation" (15 May 2023), online: <<https://statmodeling.stat.columbia.edu/2023/05/15/decades-of-polling-have-drained-the-aquifer-of-survey-participation/>>.

¹⁰³⁰ People sometimes place considerable (too much) weight on randomized polling data when it's nothing like randomized observational epidemiology data and even that can be flawed (see Atia, "Studying Studies," *supra* note 612. Put another way, people keep getting shocked when polling data "fails them" (see Effron, *supra* note 612; *supra* note 612).

people who self-select into a survey and people who don't.¹⁰³¹ Researchers can only truly resolve self-selection bias through mandatory surveys to an entire unit of observation, e.g., a census or institutional requirement. But even if surveys were mandatory, some participants still wouldn't want to take the survey, and their answers would carry that bias. Put simply, survey data is "rarely perfect and often inconclusive or misleading."¹⁰³²

Eighth and finally, statistical tests and statistical checks and balances aren't properly relied on—e.g., incorrectly defining statistical terms such as p-value or significance; incorrectly applying statistical tests; failing to account for and verifying statistical assumptions necessary for valid results; *etc.*¹⁰³³ Without proper reliance on statistical tests and statistical checks and balances, statistical errors are more likely to occur.¹⁰³⁴

The kinds of errors that flow from these eight issues have real effects. Of course, "strict" and "light" empirical research is often shelved with other "good ideas". But justice system participants also rely on the research, and sometimes, also fund it. In other words, empirical research can be used to significantly affect or bolster reforms. So the current quantity and quality of empirical legal research isn't a benign issue. In other words, real harm can occur when individuals rely on faulty data or modelling to make reform decisions. Real harm can also occur when such studies are put before courts. Canadian courts face statistical issues in many trials,¹⁰³⁵ and social science evidence that includes "data" is increasingly put before Canada's courts.¹⁰³⁶

¹⁰³¹ Statistical tools can be used to identify and weight statistical bias (see, e.g., Elias Bareinboim, Jin Tian, Judea Pearl, "Recovering from Selection Bias in Causal and Statistical Inference" (2014) Proceedings of the Twenty-Eighth AAAI Conference on Artificial Intelligence – Technical Report R-425, online:

<http://ftp.cs.ucla.edu/pub/stat_ser/r425.pdf>; Geneletti, Richardson & Best, *supra* note 613. But they are not reliable across all disciplines or surveys (e.g., some surveys are more prone to selection bias than others—like complaint surveys). And like many statistical tools, they can lead to erroneous conclusions

¹⁰³² Ranganathan, *supra* note 614.

¹⁰³³ Zeiler, *supra* note 938 at 85.

¹⁰³⁴ Chin & Holcombe, *supra* note 938 at 89; see also, Blakeley B McShane *et al*, "Abandon Statistical Significance, The American Statistician" (2019) 73: 1 The American Statistician 235.

¹⁰³⁵ See, e.g., this example search on CanLII for "EXACT(regression) /p model", online: <[https://www.canlii.org/en/#search/text=EXACT\(regression\)%20%2Fp%20model](https://www.canlii.org/en/#search/text=EXACT(regression)%20%2Fp%20model)>.

¹⁰³⁶ For a through discussion of this topic, see Benjamin Perryman, "Adducing Social Science Evidence in Constitutional Cases" (2018) 44:1 Queen's LJ 122. One should question this practice where an expert doesn't appear with the social science evidence. Indeed, courts cite social science evidence and data in ways that seems to offend rules against admissibility for expert evidence. Put another way, courts allow parties to smuggle in expert evidence via some scholarly literature. If the expert writing the paper was subjected to cross-examination—like in the ordinary course of a trial—some or many of the flaws that I'm about to point out could be addressed. But because such cross-examination or admissibility challenges are rarely—if ever—put to social science evidence, courts effectively condone the smuggling. I thank Nicole Gilewicz for discussing this issue with me.

Yet many judges likely have no formal background in data science; statistics; or quantitative and qualitative reasoning—unless they had it before they entered the profession.¹⁰³⁷ That lack of training has already impacted Canada’s legal system—e.g., SCC judges gathering data on their own initiative; making empirical conclusions data didn’t support; and radically altering Canadian law because of faulty analysis and data.¹⁰³⁸

iii. *Creating a much-needed national standard for Canadian empirical legal research*

Canada has far fewer law journals than the U.S. And most Canadian law journals, in contrast to the U.S., already require peer review.¹⁰³⁹ So achieving a national rigorous Canadian standard is possible.

Chapter 4 suggests that national standards are necessary to ensure that both researchers and law journals have aligned incentives.¹⁰⁴⁰ For example, if one or many law journals have rigorous replication standards, but others don’t, researchers might be inclined to submit to less rigorous journals. Similarly, those journals might get more novel or sensational claims. While existing peer review is certainly helpful and laudable, peer review also doesn’t guarantee high quality research,¹⁰⁴¹ so it’s only part of the solution.

Chapter 4 also advocates for 23 best practices for both strict and “light” empirical research. Multiple best practices are available and achievable. Individuals attempting to conduct empirical legal research in Canada should follow them, and Canadian journals should seek to standardize such best practices into their editorial process. Similarly, courts seeking to cite empirical conclusions on subjects relevant or material to their matters should examine compliance with these recommended best practices. When studies and conclusions fail to comply with them, law

¹⁰³⁷ See National Judicial Institute, “Science Manual”, *supra* note 378.

¹⁰³⁸ Emmett Macfarlane, *The Supreme Court of Canada and the Judicial Role: An Historical Institution Account*, (2009) (PhD Thesis, Queen’s University), online: <https://qspace.library.queensu.ca/bitstream/handle/1974/5313/Macfarlane_Emmett_200911_PhD.pdf?sequence=1>.

¹⁰³⁹ Only 2/29 Canadian law journals don’t peer review (see Hannah Steeves, “Canadian Law Journals”, online: <<https://docs.google.com/spreadsheets/d/1KfIJHn3ICxy6PehXm7A5d3ZlGN1x8M48IaO2WXam2QE/edit#gid=0>>).

¹⁰⁴⁰ For a good discussion on aligning incentives, see Zeiler, *supra* note 938 at 79-90. See also Andrew Gelman, “The Failure of Null Hypothesis Significance Testing When Studying Incremental Changes, and What to Do About It” (2018) 44(1) *Personality and Social Psychology Bulletin* 16.

¹⁰⁴¹ Zeiler, *supra* note 938 at 98.

journals, legal publishers, and media organizations shouldn't publish their work; governments shouldn't rely on them; and courts shouldn't cite them:¹⁰⁴²

1. Journals should categorize articles as strict empirical or empirical light: most journals don't track whether articles are empirical or not,¹⁰⁴³ so even trying to gather previous empirical research is difficult. As mentioned earlier, my comments apply to both strict and "light" empirical legal research. But journals should and could be more rigorous in classifying whether articles are empirical or empirical "light".¹⁰⁴⁴
2. Journals should require pre-registration of any qualitative and quantitative research: pre-registering research requires researchers to specify research plans before they start their studies and to submit detailed methodological plans to an independent registry such as the Open Science Framework.¹⁰⁴⁵ Defining research questions, hypotheses, and analysis plans before observing the research outcomes helps distinguish between outcomes that result from predictions vs. outcomes that result from postdictions (*i.e.*, using existing observations of nature to generate ideas about how the world works).¹⁰⁴⁶ Effectively, this approach requires researchers to do all the "contemplating, collecting, organizing, and analyzing of data that takes place prior to seeing any outcome data."¹⁰⁴⁷ In some jurisdictions and disciplines, this practice is now legally required because of bias concerns.¹⁰⁴⁸ Canadian journals could easily work together to create pre-registration templates to ensure that all necessary datapoints were on the template.¹⁰⁴⁹ Pre-registration certainly isn't a panacea, but it can, along with other reforms, drastically improve empirical research quality.
3. Journals should require peer review by individuals with statistical experience: journals could seek out meta-researchers from other faculties or schools who are specifically interested in methodology.¹⁰⁵⁰

¹⁰⁴² Of course, I recognize that outside law journals, the standards may be more relaxed. But they don't have to be.

¹⁰⁴³ Correspondence on file with author.

¹⁰⁴⁴ See, e.g., Xavier, *supra* note 559 [This author makes this statement about the article: "Based on an empirical review of post-RDS caselaw, I argue that there is a demonstrable colour blindness within the existing jurisprudence on judicial impartiality." A cursory review of the paper, however, will reveal no empirical methodology. This paper is really a doctrinal review that could be classified as "empirical light". But even then, the author offers very little description about how classification occurred or even how the cases were gathered despite noting that individuals compiled and parsed a dataset. The author goes on to suggest that a robust qualitative argument is possible based on 86 cases.

¹⁰⁴⁵ For commentary on the upsides and some downsides of pre-registration, e.g., Anna Elisabeth van 't Veer & Roger Giner-Sorolla, "Pre-registration in social psychology—A discussion and suggested template" (2016) 67 *Journal of Experimental Social Psychology* 2, online: <<https://www.sciencedirect.com/science/article/abs/pii/S0022103116301925>>; Yuki Yamada, "How to Crack Pre-registration: Toward Transparent and Open Science" (2018) 9:1831 *Frontiers in Psychology*, online: <<https://www.frontiersin.org/articles/10.3389/fpsyg.2018.01831/full>>.

¹⁰⁴⁶ Brian A Nosek *et al.*, "The preregistration revolution" (2017) 11:115 *PNAS* 2600, online: <<https://www.pnas.org/doi/10.1073/pnas.1708274114>>.

¹⁰⁴⁷ Bavli, *supra* note 1007 at 531.

¹⁰⁴⁸ Chin *et al.*, *supra* note 938 at 4.

¹⁰⁴⁹ *Ibid* at 10-11

¹⁰⁵⁰ See Chin & Holcombe, *supra* note 938 at 112.

4. Journals could diversify their editorial board: many journals don't have the students or academics with the background needed to evaluate empirical methods and claims, and many academics conducting the research may lack the specialized, methodological knowledge to ensure their own work is credible and reliable. Accordingly, law journals could open their board to graduate students or undergrads from other disciplines as well as academics from other disciplines with the requisite methodological knowledge.¹⁰⁵¹
5. Journals could require journal editors to take an empirical methods class or classes that focus on empirical research design: student editors could take methods courses (e.g., short summer training programs) or courses in other faculties to ensure they have the necessary training to evaluate and improve empirical legal research.¹⁰⁵²
6. Researchers must identify clear research questions: researchers should clearly set out the actual questions they're seeking to test, including any theorizing that led to questions.
7. Researchers must identify clear hypotheses: researchers should clearly set out the actual hypothesis before conducting tests, including any theorizing that led to hypotheses.
8. Researchers must justify their methods and should consider using more than one method: instead of relying on the method that a researcher knows best or one they've used before, researchers must justify why their method is appropriate to the question(s) they're seeking to answer. And if helpful, they should consider using more than one method—e.g., classical statistical techniques and data science techniques.¹⁰⁵³
9. Researchers must acknowledge all methodological limits: all data and analysis are limited—e.g., this study only examines reported decisions; accordingly, its conclusions may very well not represent reality.¹⁰⁵⁴
10. Researchers must consider competing theories and methods: Epstein and King put it this way: “when you publish your paper, out there somewhere will be a graduate student holding a yellow-lined pad of paper with your name scrawled at the top. Expect

¹⁰⁵¹ See, e.g., Jason Chin *et al.*, “The transparency of quantitative empirical legal research published in highly ranked law journals (2018–2020): an observational study” (2024) 7:12 F1000Research 144. On the more general replication problem in empirical research, see, e.g., Marta Serra-Garcia & Uri Gneezy, “Nonreplicable publications are cited more than replicable ones” (2021) 7 Science Advances 1 [“We use publicly available data to show that published papers in top psychology, economics, and general interest journals that fail to replicate are cited more than those that replicate. This difference in citation does not change after the publication of the failure to replicate. Only 12% of postreplication citations of nonreplicable findings acknowledge the replication failure.”]; see also, The Decision Lab, “Why do scientists keep looking for statistically significant result after failing to find one initially”, online: <<https://thedecisionlab.com/biases/look-elsewhere-effect/>>; Brian Resnick, “More social science studies just failed to replicate. Here’s why this is good” (27 August 2008) *Vox*, online: <<https://www.vox.com/science-and-health/2018/8/27/17761466/psychology-replication-crisis-nature-social-science?>>.

¹⁰⁵² Zeiler, *supra* note 938 at 93.

¹⁰⁵³ For a great examples of using multiple methods in empirical research, see Megan T Stevenson & Jennifer Doleac, “Algorithmic Risk Assessment in the Hands of Humans” (8 November 2022) *SSRN*, online: <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3489440>.

¹⁰⁵⁴ Daniel J Simons, Yuichi Shoda & D Stephen Lindsay, “Constraints on Generality (COG): A Proposed Addition to All Empirical Papers” (2017) 12:6 Perspectives on Psychological Science 1123 [“Psychological scientists draw inferences about populations based on samples—of people, situations, and stimuli—from those populations. Yet, few papers identify their target populations, and even fewer justify how or why the tested samples are representative of broader populations. A cumulative science depends on accurately characterizing the generality of findings, but current publishing standards do not require authors to constrain their inferences, leaving readers to assume the broadest possible generalizations”].

everything you do to be scrutinized, any rival explanation you have not explored to be tested, and every possible way you could be proven wrong to be dissected. Anticipate. Get to each of these areas before the graduate student. When you do empirical research, follow the rules of inference.”¹⁰⁵⁵ Researchers should clearly address rival explanations, including questions they can’t yet answer.¹⁰⁵⁶ If “scholars ignore competing explanations, their work will suffer from what is known as ‘omitted variable bias,’ making suspect any causal inferences they reach.”¹⁰⁵⁷ Instead of ignoring competing theories, researchers could “report everything that you think might make it invalid—not only what you think is right about it: other causes that could possibly explain your results; and things you thought of that you’ve eliminated by some other experiment, and how they worked-to make sure the other fellow can tell they have been eliminated.”¹⁰⁵⁸

11. Researchers must use appropriate language: researchers often make bold claims based on their research and analysis instead of the tempered conclusions that should be offered. Accordingly, readers likely “learn considerably less accurate information about the empirical world than the studies’ stridently stated, but overly confident conclusions suggest.”¹⁰⁵⁹ Epstein and King argue—and I agree—that “too much legal scholarship falls into this category. Too much legal scholarship ignores the rules of inference and applies instead the ‘rules’ of persuasion and advocacy. These ‘rules’ have an important place in legal studies, but not where the goal is to learn about the empirical world.”¹⁰⁶⁰ In short, researchers should avoid making an inference about the full state of things by focussing on a few exemplary or key cases.¹⁰⁶¹
12. Researchers must collect as much data as possible—depending on the circumstances (e.g., is the sample size calibrated to the inferential goals)—and justify the total number of observations: generally, more data is better than less data, including from diverse sources (of course, exceptions exist). Generally, researchers should justify why number of observations is sufficient to power the study’s conclusions.¹⁰⁶²
13. Researchers must fully explain how they gathered their data: researchers should never make their readers guess—they should describe with enough detail to allow someone else to independently gather the data.¹⁰⁶³ If the method is purposive or convenience, researchers should say so.¹⁰⁶⁴
14. Researchers must properly summarize their data: without adequate numerate support, summarization can be quite misleading and misrepresentative of the data that’s being summarized. Accordingly, researchers should provide numerate support for all data driven conclusions—e.g., if you say most respondents, then indicate what most means

¹⁰⁵⁵ King & Epstein, “The Rules”, *supra* note 812 at 38.

¹⁰⁵⁶ *Ibid* at 77.

¹⁰⁵⁷ King & Epstein, “The Rules”, *supra* note 812 at 77.

¹⁰⁵⁸ Richard P Feynman, *Surely You’re Joking, Mr Feynman: Adventures of a Curious Character* (NYC: WW Norton & Co, 1985) at 385-386.

¹⁰⁵⁹ King & Epstein, “The Rules”, *supra* note 812 at 6-7.

¹⁰⁶⁰ *Ibid* at 9.

¹⁰⁶¹ Of course, this point applies to all justice system participants that make empirical claims, including governments.

¹⁰⁶² Chin, “Effect sizes”, *supra* note 802.

¹⁰⁶³ King & Epstein, “The Rules”, *supra* note 812 at 24, 103.

¹⁰⁶⁴ *Ibid* at 105.

(such as 10/100) and provide useful context or limitations about that number.¹⁰⁶⁵

Researchers also shouldn't observe a certain number of sample respondents as a reification—e.g., “if we observe nine of twelve jurors voting to convict a defendant, we would not summarize this information by saying that the average juror was three-quarters in favor of a conviction.”¹⁰⁶⁶

15. Researchers should offer appropriate visualizations: many best practices for data visualization already exist, including using appropriate visualizations for the point being conveyed.¹⁰⁶⁷
16. Researchers must disclose their scrutinizing measures: instead of just saying believe me, researchers could explain the steps they took to design the study before analyzing the outcome data; analyze the outcome data pursuant to the study's pre-registered design (and explain any deviations); and scrutinize the study to ensure it's not misleading.
17. Researchers must disclose the process they used to audit their work: researchers should clearly explain how they sought to “detect coding mistakes, computational and clerical errors, statistical problems related to insufficient power, and other such issues that might call into question the conclusions drawn from the original results”.¹⁰⁶⁸
18. Researchers should do random sampling if the dataset is large enough and conduct appropriate testing: as noted, randomization is often very difficult in empirical legal research. Researchers could use methods like equal probability sampling or stratified random sampling to attempt to rest for selection bias and to reduce selection bias.¹⁰⁶⁹
19. Researchers should provide reliability samples for projects that rely on hand or machine coding: a random sample (perhaps 10% of the total number of observations) could be drawn, and another researcher could code or check them to ensure reliability and accuracy.¹⁰⁷⁰
20. Researchers must be transparent in survey studies: at minimum, details should include collection modes; sampling frames; exact questions; entire survey instruments; response rates; and selection methods.¹⁰⁷¹
21. Researchers must be transparent in qualitative research: interviews, ethnographies, focus groups, and case studies can be subject to the similar rigorous checks and balances as quantitative research—e.g., pre-registration; clear methodology; open-access data; sampling plans; data collection procedures; auditing and validation plans; *etc.*¹⁰⁷²

¹⁰⁶⁵ *Ibid* at 28.

¹⁰⁶⁶ *Ibid.*

¹⁰⁶⁷ See, e.g., Andrew Gelman, “Did this study really identify “the most discriminatory federal judges”? (19 December 2021), online: <<https://statmodeling.stat.columbia.edu/2021/12/19/did-this-study-really-identify-the-most-discriminatory-federal-judges/>>.

¹⁰⁶⁸ Jason M Chin & Kathryn Zeiler, “Replicability in Empirical Legal Research” (2021) 17 Annual Review of Law and Social Science 239

¹⁰⁶⁹ E King & Epstein, “The Rules”, *supra* note 812 at 110-111.

¹⁰⁷⁰ *Ibid* at 87. For a through write up on this issue as well as the general need for collective standards, see Bass et al, *supra* note 938.

¹⁰⁷¹ Chin et al, *supra* note 938 at 17.

¹⁰⁷² *Ibid* at 18-19

22. Researchers must ensure their submission meets standard replication requirements: details about the data, methods, and analysis should be sufficient for other researchers to verify conclusions, reproduce them, and correct them if needed—without having to talk to the initial researchers for further clarification or direction. If researchers fail to provide this amount of detail, journals shouldn’t publish their research.¹⁰⁷³ This approach increases efficiency and transparency: it allows latter researchers to build on previous research; it increases the possibility of replication; and it can inspire more trust.¹⁰⁷⁴
23. Researchers must release any underlying code, dataset, interview protocols, survey questionnaires, code books, etc. in an open access format: open access to materials enhances credibility and reliability. Many more journals are now requiring open access to underlying materials such as code and data. Like the previous point, if researchers aren’t willing to provide these materials in some kind of open-access registry, the journal shouldn’t publish the research.¹⁰⁷⁵ In reviewing previous codebooks, some are sufficient, and some aren’t. A key measure of whether a codebook or protocol is sufficient is whether a later researcher can replicate the initial research and measurement without having to make judgment calls.¹⁰⁷⁶ Such transparency will invariably improve the initial measurement and the process of gathering data.

Further guidance is likely available from projects such as the Many Labs Replication Project (which was formed in response to Economist Danny Kahneman’s call to action to collectively improve the quality of empirical research in psychology),¹⁰⁷⁷ the Data Access & Research Transparency (DA-RT) organization;¹⁰⁷⁸ the Political Science Replication Initiative;¹⁰⁷⁹ or the Replication Network.¹⁰⁸⁰

I’d be remiss to note that following these standards—in part or full—could place yet another barrier in the way of empirical researchers. But high-quality research is fundamental to achieving rule of law promises. To be clear, many of my comments also could and should apply to doctrinal and theoretical scholars. Just as we should be doing more to improve empirical legal

¹⁰⁷³ Epstein & King provide further detail on the possible level of questions that a person should think about as they’re explaining concepts and designing their method (see King & Epstein, “The Rules”, *supra* note 812 at 40, 41).

¹⁰⁷⁴ Chin et al, *supra* note 938 at 3.

¹⁰⁷⁵ *Ibid* at 6.

¹⁰⁷⁶ King & Epstein, “The Rules”, *supra* note 812 at 85.

¹⁰⁷⁷ Open Letter from Daniel Kahneman (26 September 2021) Nature, online: <http://www.nature.com/polopoly_fs/7.6716.1349271308!/suppinfoFile/Kahneman%20Letter.pdf> (suggesting that social psychologists who run experiments set up a “daisy chain” of replications); Charles R Ebersole, Richard A Klein & Olivia E Atherton, “The Many Lab” (2014), online: <<https://osf.io/89VQH/>>.

¹⁰⁷⁸ DA-RT, “Data Access and Research Transparency”, online: <<https://www.dartstatement.org/#!about/>>.

¹⁰⁷⁹ Political Science Replication Initiative, “Political Science Replication Initiative”, online: <<https://projects.iq.harvard.edu/psreplication/home#:~:text=The%20Political%20Science%20Replication%20Initiative,Stephanie%20Wykstra%20and%20Seth%20Werfel>>.

¹⁰⁸⁰ The Replication Network, “The Replication Network”, online: <<https://replicationnetwork.com>>.

research, journals should develop a similar set of questions about theoretical/doctrinal publications: they too should show more of their work to ensure they're not engaged in disguised advocacy that doesn't consider counter-theories or uncertainty.

Finally, Canada's legal landscape likely needs an empirically oriented open access law journal in Canada that publishes brief articles like what we see in other disciplines or in other jurisdictions such as the U.S. Even without such a journal, Canadian law journals should reconsider how they approach substance and form:

- substance: in my research, Canadian journals have told me some of my research isn't publishable because it just "reports" data versus offering legal analysis of the data (I've heard the same from other empirical researchers). Put another way, journals seem less likely to publish empirical research that doesn't add to doctrinal or theoretical debates. So I seek to do both in all the empirical work that I publish, and I assume other legal academics try to do the same. But the idea that reporting data isn't valuable unless it adds to doctrinal or theoretical debates is a problem. Indeed, as I've already said, merely generally datasets is sometimes worthy of publication and certainly meritorious; and
- form: law journals typically publish articles that are 10,000 to 20,000 words. Similar to the previous point about substance, law journals mostly seem to be designed for longer article whereas many STEM journals—e.g., JAMA, Lancet, or NEJM—publish articles with only five to ten page articles in a standardized IMRaD format (Introduction, Methods, Results, Discussion).¹⁰⁸¹ If Canadian law journals were more willing to publish shorter articles formats—which are typically only reserved for case comments or book reviews—part of the earlier "publish or perish" issue could also be addressed.

Conclusion: "[A]ccess to justice depends on data; good data."

Even if justice system participants gathered sufficient data; even if law schools provided better education and leadership on data gathering, use, and analysis; and even if law journals implemented much needed national standards for empirical research, errors would likely still occur. As the Chapter 4's introduction made clear, even with good data and statistical literacy, problems and errors still occur because messing up empirical analysis is easy. Good empirical research is very hard, and researchers often don't admit it. In the social science or social "engineering" context, it's likely even harder, and in perhaps even impossible.

¹⁰⁸¹ See, e.g., Peng-hui Lyu & Dietmar Wolfram, "Do longer articles gather more citations? Article length and scholarly impact among top biomedical journals" (2018) 55:1 *Assis&t* 319; Wikipedia, "IMRAD" (last edited on 29 September 2025), online: <<https://en.wikipedia.org/wiki/IMRAD>>.

Canadian empirical legal research can join movements that are occurring elsewhere in social sciences. The replication crisis isn't overhyped. Canadian empirical legal research needs to both improve and increase to ensure more deliberately designed improvements and to improve all Canadian's user experience in Canada's legal system and overall access to justice.

Justice Karakatsanis of the SCC somewhat recently identified a central point (and it's similar to the points I've noted from former Justices Abella and McLachlin in this dissertation). People-centered justice can't exist if barriers impede the pathway to it, including barriers to data that law schools, law journals, courts, and governments either put up, unnecessarily maintain, or both. For people-centered justice to finally arrive in Canada, those barriers must come down, and we must start finally focusing on data gathering, data transparency, and robust analysis:

But people-centred access to justice cannot meet the needs of the people the justice system is meant to serve without identifying what those needs actually are and the barriers that impede them. For that reason, access to justice depends on data; good data. Given the necessarily broad perspective needed to achieve people-centred access to justice, information concerning the legal issues and barriers faced by individuals is crucial.

Unfortunately, building that evidentiary foundation has been a slow, fractured process. In Canada and elsewhere, different actors collect different data at different points in the justice process based on their differing needs, skills and rules. Compiling that data into one cohesive whole, even in its imperfect form, is frustrated by further barriers such as privacy and institutional independence. People-centred access to justice requires more. Its broad, inclusive mandate can be accomplished only through equally broad and inclusive data.¹⁰⁸²

¹⁰⁸² Justice Andromache Karakatsanis, "Access to Justice: People-centered justice requires good data" (15 November 2022) *Law360 Canada*, online: <<https://www.law360.ca/articles/41313>>.

Chapter 5: Recommendations—Eight kinds of reforms that courts and governments should implement and deliberately “design”

Let me start by saying that the problem of access to justice is not a new one. As long as justice has existed, there have been those who struggled to access it. But as Canadians celebrated the new millennium, it became clear that we were increasingly failing in our responsibility to provide a justice system that was accessible, responsive and citizen-focused. Reports told us that cost, delays, long trials, complex procedures and other barriers were making it impossible for more and more Canadians to exercise their legal rights.¹⁰⁸³ ~ Hon. Beverly McLachlin (2013)

This dissertation offers specific recommendations in individual chapters. Chapter 5 will now offer eight more global recommendations to respond to overarching conclusions. These recommendations are examples of the kinds of reforms that courts and governments should deliberately design and ones that I think require urgent attention.

1. Governments must give courts more administrative and financial autonomy

How courts operate likely doesn't reflect demand, and current court administration models likely won't foster the transparency, impartiality, and innovation that judicial independence requires in 2026. Chapter 1's thesis about the lack of design applies equally to court administration:

For most of our history, court administration was a relatively undeveloped, even simple, task that called upon relatively inexperienced officials to provide clerical and courtroom support for judges There were exceptions that seem ill-conceived by any standard today, however practical they proved to be at the time.¹⁰⁸⁴

Despite thorough study of Canadian court administration, however, court administration issues remain largely unresolved.¹⁰⁸⁵ Recommendations to improve court administration were presented to the CJC in 2006,¹⁰⁸⁶ 2007,¹⁰⁸⁷ 2011,¹⁰⁸⁸ and 2013.¹⁰⁸⁹ But most of those recommendations remained shelved as “good ideas” instead of being actioned, likely because it would cost

¹⁰⁸³ Action Committee on Access to Justice in Civil and Family Matters, “Access to Civil & Family Justice: A Roadmap for Change” (2013) Canadian Forum on Civil Justice at foreword, online: <<https://digitalcommons.osgoode.yorku.ca/cfcj/58>>.

¹⁰⁸⁴ *Ibid* at 24.

¹⁰⁸⁵ British Columbia has taken some notable steps, but fruit remains to be seen (see Adam Dodek & Richard Devlin, “Fighting Words: Regulating Judges in Canada” In Devlin & Adam, *supra* note 424 at 94-95.

¹⁰⁸⁶ CJC, “Alternative Models of Court Administration” (2006), online: <https://cjc-ccm.ca/cmslib/general/news_pub_other_Alternative_en.pdf> [“CJC, “Alternative Models”].

¹⁰⁸⁷ CJC, “Administering Justice for the Public”, online: <https://cjc-ccm.ca/cmslib/general/news_pub_other_AdministeringJustice_2007_en.pdf>.

¹⁰⁸⁸ CJC, “Comparative Analysis of Key Characteristics of Court Administrative Systems” (2011), online: <<https://cjc-ccm.ca/cmslib/general/AJC/Comparative%20Analysis%20of%20Administration%20Systems%202013-03.pdf>>

¹⁰⁸⁹ CJC, “Court Information Management”, *supra* note 355.

governments more money, and by extension, taxpayers. But the lack of current administrative and financial independence is problematic. Even the Federal Courts, which historically were maintained more administrative and financial autonomy than s. 96 courts, have sounded alarm bells.¹⁰⁹⁰

The issues this dissertation has highlighted further illustrate why governments and courts should action the CJC reports' recommendations from 2006, 2007, 2011, and 2013.¹⁰⁹¹ The current administration regimes, where courts lack considerable financial and administrative autonomy, could explain some of the current transparency and innovation deficits. The current regimes could even partially explain why Canada has fallen behind New Zealand, the U.S., the U.K., and Australia in some concerning ways.¹⁰⁹² As the 2006 Report authors note, the more administrative autonomy courts possess, the more innovation you will see.¹⁰⁹³ Other models, like those in certain U.S. states, are said to support cultures of continuous innovation and improvement,¹⁰⁹⁴ and Chapter 1 discussed examples of such innovation.

Chapter 3 discusses my efforts to learn more about what courts might lack in terms of autonomy and resources, and the only court that participated declined to answer any questions about their independence despite having previously made representations in the media about funding calls being ignored. So we're left guessing about the experience about the rest of Canadian courts and why they failed to participate in the survey.

¹⁰⁹⁰ Shaina Luck, "Extraordinary surge in immigration cases in Federal Court challenges access to justice, top judge says" (2 October 2025) *CBC News*, online: <<https://www.cbc.ca/news/canada/nova-scotia/federal-court-immigration-filings-1.7647984>>; Christopher Nardi, "Federal Court chief says hearings may be cancelled, amid soaring immigration cases, from funding shortfall" (5 December 2024) *The National Post*, online: <<https://nationalpost.com/news/politics/federal-court-funding-crisis>>.

¹⁰⁹¹ Governments and courts should agree should abandon the deficient executive model and adopt the recommended cohesive limited autonomy and commission model (CJC, "Alternative Models", *supra* note 1089 at 93-94). They could adopt any model that works better than the executive model—e.g., the limited autonomy model (*Ibid* at 107, 109). This model garnered the most widespread support from judicial respondents in 2006. Notably, U.S. Federal and State courts rely on the limited autonomy model, and it may explain why their courts are more progressive than Canadian courts on the data, innovation, and transparency fronts (*Ibid* at 105-106). They could also adopt the judicial responsibility model (CJC, "Administering Justice for the Public", *supra* note 1087). For whatever is eventually adopted, I want to be clear: because judicial independence requires transparency, this paper advocates for court control of data monitoring and collection, including whether this task is outsourced to governments (see J Bailey & J Burkell, "Implementing technology in the justice sector: A Canadian perspective" (2013) 11(2) *Canadian Journal of Law and Technology* 253-282).

¹⁰⁹² In this model, governments have responsibility for financing courts through ministries of justice.

¹⁰⁹³ *Ibid* at 73.

¹⁰⁹⁴ *Ibid* at 109.

Of course, for governments to give more money and autonomy to courts, courts will likely have to offer more accountability to governments and the public. In other words, the current opacity should cease. As Chapter 2 discusses, courts should welcome such transparency and accountability considering the principles and logic of judicial independence and impartiality—even without more administrative independence. As Chapter 1 notes, much like judicial independence and impartiality require judges to account for their decisions, administrative independence and impartiality also likely require courts to account for their processes, including with data gathering and transparency.

2. The federal government or SCC should eradicate Crown copyright, and governments and courts must democratize access to all judicial decisions

In 2019, the Standing Committee on Industry, Science, and Technology issued its Statutory Review of the *Copyright Act*.¹⁰⁹⁵ Notably absent from Committee’s Observations and Recommendations was any engagement with arguments to abolish s. 12, which allegedly provides Crown copyright over the materials the judicial, legislative, and executive branches produce (including judicial decisions).¹⁰⁹⁶

Section 12 of the *Copyright Act* remains the current vehicle for alleged copyright protections over judicial decisions. But a close reading and analysis suggests it doesn’t provide a proper legislative vehicle for copyright over judicial decisions:

Where copyright belongs to Her Majesty

12 Without prejudice to any rights or privileges of the Crown, where any work is, or has been, prepared or published by or under the direction or control of Her Majesty or any government department, the copyright in the work shall, subject to any agreement with the author, belong to Her Majesty and in that case shall continue for the remainder of the calendar year of the first publication of the work and for a period of fifty years following the end of that calendar year.¹⁰⁹⁷

¹⁰⁹⁵ Standing Committee on Industry, Science, Technology, “Statutory Review of the Copyright Act: Report of the Standing Committee on Industry, Science, and Technology” (June 2019) 42nd Parliament, 1st Session.

¹⁰⁹⁶ Brief of CanLII (2018), online:

<<https://www.ourcommons.ca/Content/Committee/421/INDU/Brief/BR10020436/br-external/CanadianLegalInformationInstitute-e.pdf>>. A similar public petition effort had also been underway (see Amanda Wakaruk, “e-petition 1116”, online: <<https://amandawakaruk.ca/crown-copyright-in-canada/e-petition-1116/>>)

¹⁰⁹⁷ *Copyright Act*, RSC, 1985, c C-42, s 12.

Canada almost wholly adopted s. 12 from the U.K. *Copyright Act*, and it's remained unchanged for over 100 years.¹⁰⁹⁸

According to Canada's federal government, s. 12 exists to ensure that "documents relating to the government of the country should be published and preserved in a proper and correct state."¹⁰⁹⁹ According to the SCC, s. 12 applies when governments either publish or prepare the "work", and the inquiry will always examine "the extent of the government's direction or control over the preparation or publication of the work are sufficiently extensive to vest copyright in the Crown".¹¹⁰⁰ Section 12 should only apply when the "Crown has exercised a sufficiently extensive degree of direction or control in the creation or dissemination of the work."¹¹⁰¹ This holding should invite a key question about the *Copyright Act* applying to judicial decisions: when has the federal Crown ever exercised a "sufficiently extensive degree of direction or control in the creation or dissemination" of judicial decisions?

According to CanLII—the leading open-access provider of Canadian legal information despite all its flaws—Crown copyright compromises predictability and transparency; creates barriers to legal innovation; and stymies access to legal information.¹¹⁰² Notably, almost every political party tacitly agreed with CanLII's arguments when CanLII presented them to the Liberal government's Standing Committee in 2019.¹¹⁰³

The SCC has also made multiple holdings that impugn applying s. 12 to judicial decisions:

- It unanimously held that plagiarism's traditional conventions don't apply to judicial decisions.¹¹⁰⁴
- It invited the federal government to reconsider Crown copyright.¹¹⁰⁵

¹⁰⁹⁸ "Factum of the Intervener, The Attorney General of Canada", *Keatley Surveying Ltd v Teranet Inc*, 2019 SCC 43, at paras 9-10, online: https://www.scc-csc.ca/WebDocuments-DocumentsWeb/37863/FM040_Intervener_Attorney-General-of-Canada.pdf [Keatley, "Factum of the Intervener: Attorney General of Canada"].

¹⁰⁹⁹ *Ibid* at para 17.

¹¹⁰⁰ *Keatley Surveying Ltd v Teranet Inc*, 2019 SCC 43 at para 72 [Keatley].

¹¹⁰¹ *Ibid* at para 1.

¹¹⁰² *Supra* note 1096 at 2-4. CanLII is a tour de force for legal research and access to justice. As CanLII noted, roughly 9/10 legal professionals use CanLII.

¹¹⁰³ *Supra* note 460 at 154-156 (the Conservative Party sought the complete abolishing of Crown copyright and the NDP sought a near complete abolishing).

¹¹⁰⁴ *Cojocar*, *supra* note 48 at para 32.

¹¹⁰⁵ *Keatley*, *supra* note 1100 para 90.

- It held that judicial “reasons in and of themselves, without the headnotes, are not original works in which the publishers could claim copyright. ... the reported reasons ... are not covered by copyright. It would not be copyright infringement for someone to reproduce only the judicial reasons.”¹¹⁰⁶

Notwithstanding these clear holdings and agreement between important justice system participants, courts still declare copyright over their decisions;¹¹⁰⁷ the federal government refuses to make changes; and publishers like CanLII also assert that copyright attaches to judicial decisions under the *Copyright Act* to preclude bulk access to decisions or programmatic API access to decisions’ content.¹¹⁰⁸

Despite those assertions and inertia, however, a plain and contextual reading of s. 12 suggests that it doesn’t apply to judicial decisions. Unfortunately, no court or legislature has adequately addressed this issue. And when a Standing Committee had the chance to grapple with these issues, it didn’t. Instead, it only recommended new policies and an amendment that didn’t abolish Crown copyright.¹¹⁰⁹

To date, at least as far as I’m aware, no court has thoroughly examined why Crown copyright even attaches to the decisions of s. 96, appellate, and federal courts. As mentioned, the SCC was clear in its 2005 decision, *CCH Canadian Ltd. v. Law Society of Upper Canada*, that: “reported reasons ... are not covered by copyright”.¹¹¹⁰ If publishers can’t claim copyright—because the materials aren’t copyrightable—why then can governments or courts? The SCC didn’t carve out any exception for them in its holding, and it also didn’t rely on the *Copyright Act* to make that holding. But it also didn’t limit the possibility of governments or courts somehow still claiming copyright.

¹¹⁰⁶ *CCH Canadian Ltd v Law Society of Upper Canada*, 2004 SCC 13 at para 5.

¹¹⁰⁷ This practice stands in stark contrast to the U.S. where copyright neither exists over judicial decisions or legislation (see *Georgia v Public.Resource.Org, Inc*, No 18-1150, 590 US).

¹¹⁰⁸ Email on file.

¹¹⁰⁹ Canada isn’t totally exceptional here. Some U.S. states claim copyright over documents in the legal system such as jury instructions (see, e.g., Carl Malamud, “Response from the Minnesota Courts in which they claim copyright in jury instructions. <https://law.resource.org/pub/us/cfr/regulations.gov.foia/mncourts.gov.20210518.pdf>... Here is the original letter by @webster

<https://law.resource.org/pub/us/cfr/regulations.gov.foia/mncourts.gov.20210407.pdf>... We’re definitely not done with this issue!” (13 August 2021), online: <<https://twitter.com/carlmalamud/status/1426231481639211014>>;

Australia also has similar copy right laws (see Townend & Wiener, *supra* note 205 at 26).

¹¹¹⁰ *CCH Canadian Ltd*, *supra* note 1106 at para 5. See also *Wilson & Lafleur c SOQUIJ*, 2000 CanLII 8006 at para 27 (QCCA).

One should also ask what the current federal government is trying to achieve by maintaining Crown copyright (or if it's purely inertia).¹¹¹¹ If the concern is that Crown copyright allows the Crown to maintain control over judicial decisions to ensure that judicial decisions aren't indexed on Google or to ensure accuracy, other solutions exist—e.g., Parliament could pass a law that requires Google to remove any indexed decisions from Google (such a law is likely already within the bounds of existing Canadian law)¹¹¹² or some other kind of technological solution to ensure accuracy (e.g., modern DRM or NFT protections).¹¹¹³

This dissertation has argued that courts aren't doing enough to be transparent. It's also argued that governments should better support courts to ensure they publish more court documents, court data, and judicial decisions, including providing more democratic access to all three. But Chapter 5 doesn't argue that governments should "direct or control" how courts create or disseminate their work outside permissible statutory rights, e.g., requiring reasons in certain context like Chapter 1 discusses. Chapter 5 also doesn't argue that such support would somehow make s. 12 a vehicle for governments to use to have copyright over judicial decisions. That argument would be consistent with both history and current reality:

- historically: neither the U.K. nor Canadian government have ever been responsible for publishing judicial decisions or even offering courts directions on **how** to publish decisions. As I've discussed elsewhere, the U.K. bar—not the Crown—was the first entity to bring about the regular publishing of accurate copies of judicial decisions.¹¹¹⁴ So the idea that the royal prerogative somehow includes copyright over judicial decisions, which some do assert,¹¹¹⁵ when the U.K. government never sought to publish judicial

¹¹¹¹ For a thorough analysis of access to law in Canada, including issues surrounding Crown copyright, see Tom McMahon, "Improving Access to the Law in Canada with Digital Media" (March 1999) 16 Government Information in Canada/Information gouvernementale au Canada, online: <<https://library.usask.ca/gic/16/mcmahon.html>>. For a shorter summary, see Tom McMahon, "Public Policy Issues in Electronic Access to the Law in Canada" (2000) 2 University of Technology Sidney Law Review 153, online: <<http://classic.austlii.edu.au/au/journals/UTSLawRw/2000/11.html>>

¹¹¹² *Google v Equustek Solutions*, 2017 SCC 34.

¹¹¹³ Such technological solutions are outside the scope of this research.

¹¹¹⁴ Khan, "Life of a Reserve", *supra* note 4 at 9-10.

¹¹¹⁵ Individuals who state otherwise appear to ignore the rich but often overlooked history of judicial decisions—including their publication (or lack thereof) and the Crown's role in this arena. See, e.g., Elizabeth Judge, "Crown Copyright and Copyright Reform in Canada", in Michael Geist, ed., *In the Public Interest: The Future of Canadian Copyright Law* (Irwin Law: 2005, Toronto) 558. Judge relies on another scholar for the proposition that "Crown copyright in legal materials in Canada, including reasons for judgment by courts and tribunals, have been claimed to derive from the traditional prerogative power to publish certain materials" (at 558). At least one of those scholars, however, notes that the copyright claim over judicial decisions was called "perfectly ridiculous" in 1828 and "seems little better now" (see David Vaver, "Copyright and the state in Canada and the United States" (1996) 10 IPJ 187 at 189-90).

decisions seems curious and ahistorical, especially because the historical reality was that U.K. common law judges hardly ever offered reasons for decisions.¹¹¹⁶ As David Vaver notes, “How a claim of prerogative squares with the untrammelled growth of private law reporting in England from well before the 18th century is inexplicable”,¹¹¹⁷ and

- current reality: my hypothesis is that most courts would likely say that no government has copyright over their decision if they’d answer directly (and governments not having copyright over decisions makes sense). Such control could immediately impugn courts and judges’ independence. A BCCA judge, in a concurring opinion, made the same tacit point in 1985.¹¹¹⁸ Many courts already take the position that they exclusively control how they create and disseminate their decisions. The BCCA and the Supreme Court of British Columbia assert they “are copyright owners of the information [*i.e.*, materials on this website] unless otherwise stated.”¹¹¹⁹ Ontario, Newfoundland, Prince Edward Island, and Nova Scotia courts take same position.¹¹²⁰ While Nova Scotia’s courts concede that “This website and some of its contents are protected by the *Copyright Act*”, their Courts go on to note that “the Nova Scotia Courts own the copyright to all information found on this website [and] Copyright does not apply to publicly released court decisions, the Civil Procedure Rules and related court forms, Practice Memorandums, and other public documents.”¹¹²¹ Of courts, courts could say they’re relying on s. 12 of the *Copyright Act*, but such a reliance and interpretation would fly in the face of judicial independence and common sense.¹¹²² So the basis for the copyright in British Columbia, for example, is unknown. Notably, two of Canada’s federal courts (The Federal Court of Canada and the Tax Court of Canada)¹¹²³ take a different view and state that “materials at this site are covered by the provisions of the *Copyright Act*” without the limitation that Nova Scotia includes.¹¹²⁴

The Canadian Association of Law Librarians pointed out similar points in their intervention before the SCC in the 2019 decision. *Keatley Surveying Ltd. v. Teranet Inc.* That case involved

¹¹¹⁶ *Keatley*, *supra* note 1100 at paras 48-52. For a helpful discussion of the Royal Prerogative, see *Keatley Surveying Ltd v Teranet Inc*, 2019 SCC 43, “Factum of the Intervener, Canadian Association of Law Libraries” at paras 1, online: <https://www.scc-csc.ca/WebDocuments-DocumentsWeb/37863/FM060_Intervener_Canadian-Association-of-Law-Libraries.pdf>.

¹¹¹⁷ Vaver, *supra* note 1115, N4.

¹¹¹⁸ *BC Jockey Club v Standen (Winbar Publications)*, 1985 CanLII 591 (BCCA) at para 13.

¹¹¹⁹ The Courts of British Columbia, “Website Policies”, online:

<<https://www.bccourts.ca/Privacy%20Statement.html>>.

¹¹²⁰ Ontario Courts, “Website Policies”, online: <<https://www.ontariocourts.ca/en/policy.htm>>; Supreme Court of Newfoundland and Labrador, “Disclaimer”, online: <<https://www.court.nl.ca/supreme/disclaimer/>>; Courts of PEI, “Copyright”, online: <<https://www.courts.pe.ca/copyright>>; NS Courts, “Copyright Policy”, online: <https://courts.ns.ca/General_Content/copyright_pop_up.htm>.

¹¹²¹ *Ibid.*

¹¹²² The provision simply doesn’t appear to capture this situation, and arguably, the original drafters never intended that it would (see, e.g., George Stuart Robertson, *The Law of Copyright* (Clarendon Press: Oxford, 1912) at 66.

¹¹²³ Neither the Federal Court of Appeal nor the SCC take such a view. Notably, the SCC notes that other portions of its materials are covered by the *Copyright Act*, but the SCC specifically excludes decisions (see SCC, “Terms and Conditions”, online: <<https://www.scc-csc.ca/terms-avis/notice-enonce-eng.aspx>>; Federal Court of Appeal, “Important Notice”, online: <<https://www.fca-cf.ca/en/pages/important-notice>>.

¹¹²⁴ Tax Court of Canada, “Important Notices”, online: <<https://www.tcc-cci.gc.ca/en/pages/important-notice>>; Federal Court, “Important Notice”, online: <<https://www.fct-cf.gc.ca/en/pages/important-notice>>.

an electronic provincial land registry, and it's the SCC's only examination of s. 12. Non-government intervenors such as Canadian Association of Law Librarians argued that no one should've copyright over public legal documents, including courts.¹¹²⁵ Other intervenors argued that other countries have examined this issue and clearly recognized that copyright shouldn't attach to government documents, including judicial decisions.¹¹²⁶ The logic of those arguments is appealing. On its face, applying s. 12 to courts creates an apparent absurdity. A federal statute would give the federal, provincial, and territorial governments control over the work product of a separate head of government notwithstanding that courts routinely review provincial, territorial, and federal government actions (s. 12 is read to apply to both the federal and provincial crown).

The *Reproduction of Federal Law Order* is sometimes pointed to as a partial solution to some of these issues with this permission:¹¹²⁷

Anyone may, without charge or request for permission, reproduce enactments and consolidations of enactments of the Government of Canada, and decisions and reasons for decisions of federally-constituted courts and administrative tribunals, provided due diligence is exercised in ensuring the accuracy of the materials reproduced and the reproduction is not represented as an official version.¹¹²⁸

But the order is far from a complete solution, and all it seems to do is create even further confusion.¹¹²⁹

¹¹²⁵ See generally *Keatley Surveying Ltd v Teranet Inc*, 2019 SCC 43, "Factum of the Intervener, Canadian Association of Law Libraries" at para 1, online: <https://www.scc-csc.ca/WebDocuments-DocumentsWeb/37863/FM060_Intervener_Canadian-Association-of-Law-Libraries.pdf>; *Keatley Surveying Ltd v Teranet Inc*, 2019 SCC 43, "Factum of the Intervener, Canadian Association for Legal Information & The Federation of Law Societies of Canada" at para 22, online: <https://www.scc-csc.ca/WebDocuments-DocumentsWeb/37863/FM070_Intervenors_Canadian-Legal-Information-Institute-et-al.pdf> [*Keatley*, "Factum of the Intervener: CanLII"].

¹¹²⁶ See generally, *Keatley Surveying Ltd v Teranet Inc*, 2019 SCC 43, "Factum of the Intervener, Canadian Association of Law Libraries", online: <https://www.scc-csc.ca/WebDocuments-DocumentsWeb/37863/FM060_Intervener_Canadian-Association-of-Law-Libraries.pdf>. For a further comparative law perspective, see Heiko Richter, "Copyright Protection of Government-Related Material Before the Courts of the United States and Canada: Considerations for Future Reforms" (2020) 52 International Review of Intellectual Property and Competition Law 6, online: <<https://link.springer.com/article/10.1007/s40319-020-00995-y>>.

¹¹²⁷ For a summary of one view, see Simon Fodden, "Permission No Longer Required Re Government of Canada Copyright" (14 December 2010) *Slaw*, online: <<http://www.slaw.ca/2010/12/14/permission-no-longer-required-re-government-of-canada-copyright/>>.

¹¹²⁸ *Reproduction of Federal Law Order*, SI/97-5.

¹¹²⁹ See Jean Dryden, "Rethinking Crown copyright Law" (22 September 2017) *Policy Options*, online: <<https://policyoptions.irpp.org/fr/magazines/septembre-2017/rethinking-crown-copyright-law/>>; Amanda Wakaruk, "Crown copyright reform in Canada" (12 December 2017), online: <<https://era.library.ualberta.ca/items/7adbe05d-e08e-4afc-bc63-f4f6871d7b1d/view/1485007f-5a7f-4e32-8e57-863fb3eaf142/Open-20Ideas-20Crown-20Copyright->

Even if Crown copyright was abolished, the current information and commercial monopoly over judicial decisions must still be broken up. And courts likely require funding to achieve that aim. Judges don't issue their decisions for the corporate or information monopolies that currently house them who then largely preclude bulk access to decisions and associated documents while generating profits and monopolies.¹¹³⁰ As Chapter 1 notes, judges issue these decisions for all Canadians, including taxpayers and litigants. They're the work product that any Canadian has the legal right to review to "satisfy themselves that justice has been done, or not, as the case may be."¹¹³¹

Appendix 4 captures the current approach of s. 96, appeal, and federal courts to whether they self-publish, have search functions on their websites, what formats they publish in, whether they permit downloads, whether they have XML/HTML annotations to the decisions on their website, whether they have a robots.txt file, and what their terms of services allow or preclude:

- self-publish: six self-publish and include their decisions on their webpage; nine courts rely on Norma by Lexum (formerly Decisa); 13 courts rely exclusively on CanLII. If users want decisions from courts that don't self-publish, they must go to CanLII or some other paid service. As noted, many courts rely on Lexum for their publishing, (a for profit company that the non-profit CanLII owns.) As I'll discuss below, CanLII then precludes individuals like me from bulk access to the content of those decisions and has created a massive information monopoly (indeed, Norma has capabilities to easily enrich decisions and their content, including metadata).¹¹³² And as discussed earlier, all unreported or most oral decisions exist in dark unreported data that's likely thousands of collective decisions a year that just sit in court files (multiple courts note that their reported collections don't include the many oral decisions they issue each year);
- search functions: 16 courts don't have search functions on their websites. If a user wants to search, they must go to CanLII or some other paid service;
- view: most courts only provide one or two views of decisions—e.g., only HTML or downloadable word and PDF documents. For the many courts that rely on Lexum, the actual HTML is embedded in an iframe (an HTML element that embeds another HTML document within the current web page);

20Dec-202017-20Wakaruk.pdf>; CALL, "Crown Copyright Session", online: <<https://www.callacbd.ca/resources/Documents/Crown%20copyright%20session%20at%20CALL.pdf>>. Notably, the SCC has never engaged this order in any of its decisions dealing with Crown Copyright, but it does accept that it applies to its decisions (see SCC, "Terms and Conditions", *supra* note 1123).

¹¹³⁰ Addison Cameron-Huff, *supra* note 23.

¹¹³¹ *Sheppard*, *supra* note 48 at para 24.

¹¹³² Lexum, "Norma", online: <<https://lexum.com/en/norma>>.

- downloadable formats: as just noted, only a few courts provided downloadable access for their decisions. Most access are to PDFs and some courts also permit scraping of the HTML content (either that's personally hosted or that's hosted with the iframe);
- XML/HTML annotations: the data appears largely unstructured, but the Lexum decisions have some formatting and tagging. But in many ways, courts seem to just cut and paste word documents without really availing Lexum's functions;
- robots.txt file: courts' approaches to robots.txt files vary. Essentially, a robots.txt file precludes automated scraping and instructs scraping tools about what they're precluded from doing. Most courts that don't have robots.txt files also don't have anything that's useful to scrape. The courts that don't have restrictive robots.txt files have meaningful context to scrape are beneficial and have fostered rich datasets (e.g., the Refugee Law Lab and the Access to Algorithmic Justice Lab have generated considerable datasets about the Federal Courts, and other s. 96 and appellate courts without restrictive files), and more courts should follow suit; and
- terms of service/use: many courts don't preclude scraping and offer explicit permission to reproduce decisions and reasons for non-commercial purposes. But as mentioned, many courts don't have any content worth scraping.¹¹³³

Canadians can access many decisions for free via CanLII if courts don't provide them. But true democratic, open access to all decisions is severely limited. Commercial and informational monopolies largely control who gets bulk access to decisions and the data in them.¹¹³⁴ These commercial entities (Westlaw, LexisNexis, vLex, Lexum) and quasi-commercial entity (CanLII) have become the main holders of the reported data about the issues that drove Canadians to litigation and how those issues were resolved.¹¹³⁵ And they're developing vast, for profit insights about the legal system that aren't freely shared with the public, courts, judges, or individuals who want to access the data (albeit incomplete insights because of the amount of missing and dark data that Chapters 1-4 discuss). *Figure 11* on the next page outlines the access.

¹¹³³ See *Appendix 4*.

¹¹³⁴ Huff, *supra* note

¹¹³⁵ For a recent thorough discussion of this point, see Wallace & Rehaag, *supra* note 411.

Figure 11: How individuals can access judicial decisions

Database	CanLII	VLex	Westlaw	Quicklaw	Individual Courts (see <i>Appendix 4</i>)
Bulk downloading	No.	No.	No.	No.	Allowed in some courts
Continuous coverage	Mostly.	No.	Mostly.	Mostly.	No.
API	Yes. Metadata only.	Yes. What it includes is unclear.	No.	No.	No.
Downloadable content	Yes. PDF and Word.	Yes.	Yes.	Yes.	Some.
Web-scraping	No.	Unclear.	No.	No.	Some.
Open access	Yes. Somewhat.	No.	No.	No.	Yes, but the use is constrained for non-commercial purposes with most.

As this dissertation has reiterated, the legal system has a vast data deficit, and this current commercial and information monopoly over judicial decisions reverberates the deficit (aside from already discussed issues of court opacity and lack of a national data strategy). Democratic, open access to decisions could help resolve part of the legal data deficit. Data in decisions would facilitate observing, auditing, and resolving clear, unwanted inequalities and injustices.

Separate and apart from the data in decisions, Canadian courts and governments shouldn't be relying on corporate and information monopolies to publish and hold their decisions. Every province and the federal government publish their own legislation and don't rely on corporate or information monopolies to do so. It should be no different with judicial decisions that are written for the public and that the public has the right to freely access. Courts shouldn't have to rely on a third party to ensure they're meeting their duty to the public, and the CJC and governments should be concerned with the current reality (but they don't appear to publicly care).

Notwithstanding the CJC's responsibility to "promote greater efficiency and uniformity in judicial service", the CJC has only briefly paid attention to this issue in 2021. But its initial draft approach¹¹³⁶ and the initial response from the entity who'd likely facilitate access—Lexum and CanLII—suggest the commercial and information monopoly status quo will remain. Somewhat

¹¹³⁶ See *supra* note 356.

recently, CanLII proposed facilitating bulk access on a request-by-request paid basis to other commercial entities through its for-profit arm, Lexum.¹¹³⁷ Neither CanLII nor Lexum has said anything public since then. And their arguably protectionist approach garnered little attention, but the former CanLII CEO was very critical of it. He suggested it seems directed at protecting CanLII's information monopoly and increasing Lexum's business:

Shameful. For all CanLII's success in opening the law for individual access, it's one thing not to use your standing as instrument of the law societies and technology supplier to courts to advocate for bulk access, but quite another to use that standing to make its potential realization harder by emphasizing the barriers and positioning yourselves to profit court by court if and when the day of bulk access arrives. Having collected over \$60 million dollars from law societies and others since your launch, and having over \$8M in annual revenue at your disposal, you are capable of so much more. It's shameful that you now choose to direct your privileged position towards self interest.¹¹³⁸

Democratizing free, open access to all judicial decisions—and the anonymized court records accompanying them—is essential to unlocking the data and analysis that the system desperately needs to improve.¹¹³⁹ As discussed, both the U.K. and U.S. have recognized this truth and begun acting on it. The U.K. government committed to provide democratic, open access to all judicial decisions—free of monopoly—by 2022, and, as discussed, it already launched its new service.¹¹⁴⁰ The U.S. government committed the same for anonymized court records (but with a slower timeline), and the judiciary greenlit the proposal,¹¹⁴¹ but as of 2026, it still hasn't come to fruition.

Of course, these commitments also came with price tags, and funding may explain some of the Canadian delay. Since Dr. Teresa Scassa examined the issue of access to judicial decisions in 2000, some things have improved—e.g., CanLII works better and has more decisions in its

¹¹³⁷ Beauchamp-Tremblay *et al*, *supra* note 410.

¹¹³⁸ Colin Lachance, CanLII's Future as a Canadian Primary Law Cooperative (10 December 2018) *Slaw*, online: <<https://www.slaw.ca/2018/12/10/canliis-future-as-a-canadian-primary-law-cooperative/>>. I also would be remiss to not thank Colin for multiple conversations on this issue and his willingness to support my research.

¹¹³⁹ Regarding access to court records and privacy implications, see Ko, *supra* note 293. For a thorough analysis of fairness considerations, see Khan & Rehaag, *supra* note 129.

¹¹⁴⁰ Michael Cross, "Government considers plans to create national hub for court judgments" (10 May 2021) *The Law Society Gazette*, online: <<https://www.lawgazette.co.uk/news/government-considers-plans-to-create-national-hub-for-court-judgments/5108426.article>>.

¹¹⁴¹ Nate Raymond, "Fed judiciary says yes to free PACER searches. Here are the details so far" (31 May 2022) *Reuters*, online: <<https://www.reuters.com/legal/government/fed-judiciary-says-yes-free-pacer-searches-here-are-details-so-far-2022-05-31/>>.

collection.¹¹⁴² But many of the issues that Dr. Scassa highlighted persist, and the need for change urgently remains.

3. The CJC, courts, and federal and provincial governments should provide easy to access standardized information about current judges

Most courts don't provide much demographic or biographical information about judges in their courts. Only the Federal Courts and SCC provide biographical information for its judges. The remaining Canadian courts only publish a list of current and retired judges with dates of their appointment or dates of their years of service.

As Chapter 1 discusses, such information is much more accessible in the U.S. and downloadable in formats that are easily amendable to empirical analysis when paired with other data. Even if individuals aren't interested in empirical analysis, individuals still have a right to know more about the judges who serve in their courts—including both demographic and biographical information. As Chapter 4 discusses earlier, this information isn't part of the current federal access to information regime, and even if it was, courts could shield it on “privacy” grounds like other tribunals do as Chapter 4's case study illustrated. Yet much of this information is relevant to understanding the functions that public servants perform (which at the end of the day is what judges are). And it's certainly not information intimately connected to their private life that they might have reasonably expected to keep for themselves. Indeed, judicial applications include a “story” about the applicant's life. While many of those applications remain confidential, some don't, and—as far as I'm aware—judges have no say about whether the federal government publishes this information or not (a point Chapter 1 discusses). Much of this information is already available for judges appointed in the last ten years, and if it wasn't, it could easily be generated by judges themselves.

During this dissertation project, I developed a prototype Canadian judge database based on publicly available information. Courts, the CJC, or the CJSCA could easily emulate it. My

¹¹⁴² Teresa Scassa, “The Best Things in Law are Free?: Towards Quality Free Public Access to Primary Legal Materials in Canada” (2000) 23:2 Dal LJ 301, online: <<https://digitalcommons.schulichlaw.dal.ca/cgi/viewcontent.cgi?article=1802&context=dlj>>.

prototype sought to provide biographical and demographic information for all s. 96, appeal, and federal court judges by jurisdiction. It included 13 datapoints:

1. their name;
2. appointment year to the court;
3. appointment year to the bench;
4. gender;
5. law school;
6. other graduate education;
7. year called to the bar;
8. whether they clerked;
9. age;
10. pre-appointment speciality;
11. appointment political party;
12. whether their judicial questionnaire was publicly available; and,
13. whether they were full-time, supernumerary, or retired.

The prototype worked in a Wikipedia like way where individuals could edit records; changes would then be pushed to me as the administrator; and I could then approve them.

Based on the inputted data, an auto script would then be created that described the judge for any person who visited their baseball card style page. All inputted data was when stored in a JSON database that could be downloaded for empirical analysis.

Figure 12 on the following page walks through the landing page to the individual baseball card style profile. The cost of creating the prototype was very modest, and my current code is open-source and could easily be emulated or built on.

Figure 12: Prototype – Canadian Judges' Database

Canadian judges database

a project by [Deliberate Legal Design](#)



Canadian judges database

Province

AlbertaBritish ColumbiaManitobaNew BrunswickNewfoundland & LabradorNorthwest TerritoriesNova Scotia

NunavutOntarioPrince Edward IslandSaskatchewanYukon

Federal Courts

Court

Federal Court of AppealFederal Court of CanadaSupreme Court of CanadaTax Court of Canada

People

Add judge profile

Type

☒ Judge ☐ Prothonotary ☐ Master ☐ Retired

Search by name

9 results

Sort bylast name

#	Name
1	Rosalie Abella
2	Russell Brown
3	Suzanne Côté
4	Andromache Karakatsanis
5	Nicolas Kasirer
6	Sheilah Martin
7	Michael Moldaver
8	Malcom Rowe

Judge profile		
Rosalie Abella Federal Courts Supreme Court of Canada <i>"Rosalie Abella was appointed to the Supreme Court of Canada in 2004. Justice Abella received her law degree from UFT. Justice Abella was called to the bar in 1972. Before being appointed, Justice Abella practiced Civil litigation & criminal litigation."</i>		
Last name	First name	Appointed to court
Abella	Rosalie	2004
Appointed to bench	Gender	Law School
1976	Female	UFT
Other education	Year called to bar	Clerkship
No entry	1972	No entry
Age	Pre-appointment specialty	Appointing political party
76	Civil litigation & criminal litigation	Liberal
Judicial application questionnaire	Status	
No	No entry	

As Chapter 2 discusses, I recognize that some people may have concerns about sharing this kind of information about judges. For example, some 2023 Survey respondents raised concerns about the Canadian judiciary becoming politicized like the American judiciary. But as Chapter 2 discusses, such concerns aren't sufficient to warrant the current status quo. And as Chapter 3 suggests, many individuals want more access to information about Canadian judges, including their biographical and demographic data. They also want far more information about their judges are trained. This information could then be paired with other court information, including decisions, to do the kind of judicial analytics that I discuss and recommended below, including in *Appendix 5*.

4. The CJC and courts must increase data gathering and data transparency through a unified national data program

All Canadian courts should partner to design a comprehensive, unified data program for Canadian legal data, and the CJC should lead this effort. As Chapters 1 and 4 made plain, comparator jurisdictions offer blueprints. If funding is required, governments should provide it. And as Chapter 3 illustrates, many individuals want more information about what occurs in their courts, including data.

This dissertation has readily conceded that the CJC, courts, and judges face obstacles to being more transparent, likely not enough autonomy or financial resources. Nonetheless, some

Canadian courts have already indicated an interest in legal data analytics,¹¹⁴³ and more might be interested if they had capacity. But some issues are already within courts' control, even without further funding. For example, courts could readily participate in projects with academics; issue annual reports; or be more transparent about the data currently in their control and the things they're capable of tracking—like Chapter 1 discusses about other jurisdictions.

If courts don't pay more attention to judicial data and legal analytics, they may lose control over the narrative.¹¹⁴⁴ Academics, lawyers, software companies, and journalists may start to notice or discover trends before they do. As discussed, empirical claims about judges often generate publicity and media attention—e.g., the Louisiana criminal justice study that suggested juvenile sentences go up when judges' football teams lose¹¹⁴⁵ or Canadian studies that suggest refugee determinations largely depend on the luck of the judicial draw.¹¹⁴⁶

These claims appear robust. As Chapter 4 discusses, however, many studies and claims about legal systems and criminal justice rely on faulty assumptions and incomplete, flawed, or unadjudicated data¹¹⁴⁷ or suffer from replication issues (unfortunately, “nonreplicable publications are cited more than replicable ones”, likely because of the buzz they create).¹¹⁴⁸

Empirical studies of Canadian judicial and court behavior will face similar issues as data gathering and transparency increase. But some replication issues and errors can be alleviated with complete, comprehensive, and reliable data and better access to it. Complete data and democratic access are also crucial for ethical, accurate data science. Incomplete and missing data drive erroneous and unethical data science. If good data and appropriate modelling techniques

¹¹⁴³ See, e.g., Court of Queen's Bench of Alberta, “The Court of Queen's Bench of Alberta: Annual Report – 2016 to 2017”, *supra* note 361; British Columbia Court of Appeal, “Annual Report: Court of Appeal for British Columbia, 2018” at 5, 10, online:

<https://www.courts.gov.bc.ca/Court_of_Appeal/about_the_court_of_appeal/annual_report/2018_CA_Annual_Report.pdf>; Nunavut Court of Justice, “The Nunavut Court of Justice: A Statistical and Comparative Review of Court Operations in Nunavut: 2017”, *supra* note 361 at 4.

¹¹⁴⁴ See Townend & Wiener, *supra* note 205 at 57.

¹¹⁴⁵ Emily Deruy, “Judges Football Team Loses, Juvenile Sentences Go Up” (7 September 2016) *The Atlantic*, online: <<https://www.theatlantic.com/education/archive/2016/09/judges-issue-longer-sentences-when-their-college-football-team-loses/498980/>>.

¹¹⁴⁶ Keung, *supra* note 800.

¹¹⁴⁷ Many people may report something or an effect without anyone adjudicating whether the reporting is accurate—e.g., the VAERS database during COVID has no monitoring system resting reporting veracity (See Sam Harris, “#256 – A Contagion of Bad Ideas, A Conversation with Eric Topol” *Making Sense*, online: <<https://samharris.org/podcasts/256-contagion-bad-ideas/>>).

¹¹⁴⁸ See *supra* note 1051.

are correctly used—and subject to replication—better justice can be achieved.¹¹⁴⁹ But if they’re used improperly, current inequities could be amplified. As noted, data is often misleading and inferences are often wrong, especially if you’ve built a bad model or experiments.¹¹⁵⁰

To try to avoid some poor outcomes, unethical, or improper data science, the CJC and Canadian courts must seek to gather comprehensive data so they can accurately and transparently discover problems and trends; expose these conclusions to replication; and rectify problems and trends.

5. The CJC and courts must comprehensively address privacy impacts to ensure standardized protections for privacy

What Chapter 5 proposes invites more technology, data analytics, and empirical analysis. Any increased use of technology and analytics raise privacy concerns for both judges and litigants.¹¹⁵¹ Previous concerns about technology, judicial independence, and privacy have arisen in the U.S. and Canada. Discussions and protocols centred on monitoring software that tracks how employees browse the internet (including judges);¹¹⁵² security software and protocols for courts and judges;¹¹⁵³ how electronic access to court records impacts privacy interests;¹¹⁵⁴ or how judges and courts use personal information in judicial decisions.¹¹⁵⁵

What this dissertation implores engages previous concerns. For example, if more data is gathered or more democratic access is provided to existing data or judicial decisions, then privacy issues would likely increase. But individuals shouldn’t have to compromise their privacy interests when

¹¹⁴⁹ Ludwig & Sendhil Mullainathan, *supra* note 138.

¹¹⁵⁰ “University of Toronto’s Data Science Institute Launch”, *supra* note 953 [in discussing Berkeley’s approach to interdisciplinary research of law and data science, Jennifer Chayes made this point].

¹¹⁵¹ Karen Eltis, “The Impact of Technology on Courts and Judicial Ethics” in Dodek & Sossin, *supra* note 99 at 337.

¹¹⁵² See, e.g., H Josan & S Shah, “Internet Monitoring of Federal Judges: Striking a Balance Between Independence and Accountability” (2002) 20 Hofstra Lab & Emp LJ 153; CJC, “Computer Monitoring Guidelines (2002), online: <http://www.cjc.gc.ca/cmslib/general/news_pub_techissues_GuidelinesCM_2002_en.pdf>.

¹¹⁵³ CJC, “Blueprint for the Security of Judicial Information (2018), online: <<https://cjc-ccm.ca/sites/default/files/documents/2019/Canadian%20Judicial%20Council%20Blueprint%20for%20the%20Security%20of%20Judicial%20Information%20-%20Fifth%20edition%2C%202018.pdf>>.

¹¹⁵⁴ CJC, “Model Policy for Access to Court Records in Canada”, *supra* note 355.

¹¹⁵⁵ CJC, “Use of Personal Information in Judgments and Recommended Protocols” (2005), online: <<https://lexum.com/wp-content/uploads/2016/10/2005-personal-information-judgments-recommended-protocol.pdf>>.

they're in Canadian litigation.¹¹⁵⁶ That said, previous concerns and solutions misunderstand or overlook modern technologies' abilities to promote data suppression and privacy protection. Instead of embracing technology and pursuing fairness and privacy, individuals attempting to solve privacy problems still rely on doctrines and concepts like practical obscurity that obstruct democratic access and restrict potential fairness improvements.¹¹⁵⁷

And as I've argued elsewhere with Dr. Sean Rehaag, such dated doctrines and concepts are inferior to more modern methods of ensuring privacy, openness, and fairness.¹¹⁵⁸ Indeed, courts and third parties could use AI and LLM modelling to remove identifying information from judicial decisions and court records;¹¹⁵⁹ blockchain or DRM protections on government documents to prevent misuse and google-indexing (or various other technological solutions);¹¹⁶⁰ k-anonymity to reduce identification risks;¹¹⁶¹ *etc.*

Either way, more transparency and standardization would provide more data for analysis and easier analysis of that data,¹¹⁶² including innovations around privacy protections and increases to individual and systemic fairness. Of course, completely de-identifying data to offer full privacy protection is a myth,¹¹⁶³ and some privacy challenges will always persist. But the privacy

¹¹⁵⁶ *MediaQMI inc v Kamel*, 2021 SCC 23 at para 103 ["when parties decide to have recourse to the civil justice system, which is a public service, they do so knowing that members of the public may exercise their fundamental right to information about court proceedings. It is true that public scrutiny may encourage parties to prevent or resolve a dispute..."]. On this topic more broadly, see Khan and Rehaag, *supra* note 132.

¹¹⁵⁷ See Townend & Wiener, *supra* note 205 at 86-87; see also Ko, *supra* note 1147 at 149 ["There are several proponents who caution against electronic access to digital court records, citing fears of data mining, fraud and the loss of privacy. However, these authors published their critiques of a digital advancement in court records a number of years ago. There have been many technological advances and possibilities that can work to safeguard and address general fears and concerns with respect to maintaining the integrity and structure of public accessibility to digital court records."].

¹¹⁵⁸ See Khan & Rehaag, *supra* note 129.

¹¹⁵⁹ Xi Ya *et al*, "A study of deep learning methods for de-identification of clinical notes in cross-institute settings" (2019) 19:5 BMC Medical Informatics and Decision-Making 232, online: <<https://bmcmmedinformdecismak.biomedcentral.com/track/pdf/10.1186/s12911-019-0935-4.pdf>>.

¹¹⁶⁰ Michèle Finck & Valentina Moscon, "Copyright Law on Blockchains: Between New Forms of Rights Administration and Digital Rights Management 2.0" (2019) IIC – International Review of Intellectual Property and Competition Law 77 ["With the emergence of blockchains, many are now predicting a new era regarding the administration and enforcement of copyright through computer code."].

¹¹⁶¹ See, e.g., Latanya Sweeney, "k-Anonymity: A Model For Protecting Privacy" (2002) 10:5 International Journal of Uncertainty, Fuzziness, and Knowledge-Based Systems 557.

¹¹⁶² Eltis, *supra* note 1151 at 376 ["great care must be taken to ensure that the availability of a deluge of data unscreened, and often unreliable, does not ultimately serve to undermine the very confidence on which the judicial system rests"].

¹¹⁶³ See, e.g., Nate Anderson, "Anonymized" data really isn't—and here's why not" (9 August 2009) *Ars Technica*, online: <<https://arstechnica.com/tech-policy/2009/09/your-secrets-live-online-in-databases-of-ruin/>>.

challenges don't justify continuing to rely on dated methods like practical obscurity or no bulk/electronic access to protect privacy.

Instead, progress can occur in two key areas to address some underlying privacy issues:

1. Litigants need more “Privacy by Design”: in an open court proceeding, judges and litigants' privacy expectations about what occurs are somewhat aligned: everyone gets to see the same thing. But once judges reserve their decisions, the open court principle only applies to litigants.¹¹⁶⁴ Unless the court file is sealed, anyone can apply to physically examine it in person and extract litigants' information.¹¹⁶⁵ In contrast, because of judicial independence, no one can access any further information about how judges are approaching their decision-making—e.g., how many other decisions the judges have under reserve or what law they will apply in their final decision. This idea is curious: judicial independence exists for litigants—not judges. Yet judges have near exclusive control over their privacy while litigants have little.¹¹⁶⁶
2. Decisions contain unnecessary personal information about many litigants: despite 2023 Survey respondents mostly not having concerns about decisions containing too much personal information, I echo many scholars' concerns.¹¹⁶⁷ Courts and publishers' current approach to privacy concerns (*i.e.*, limited access to bulk judicial decisions, precluding the indexing of decisions on Google, or precluding mass downloading of decisions, even for research purposes) is insufficient.¹¹⁶⁸ Courts and publishers could instead remove more personal information—especially since much of the current personal information offers no utility and doesn't improve the administration of justice. Indeed, the growing international trend is towards anonymizing all decisions.¹¹⁶⁹ Dr. Sean Rehaag and I have discussed these points and possible innovative approaches elsewhere in detail, including “Privacy by Design”.¹¹⁷⁰

¹¹⁶⁴ Put another way, for judges, the open court principle appears to only apply to the proceeding itself. Such an approach seems inconsistent with the underlying purposes of the open-court principle as the “principal component of the legitimacy of the judicial process...” (see *Vancouver Sun (Re)*, 2004 SCC 43 at para 25). On this topic see, Kate Puddister & Tamara A Small, “Navigating the principle of open court in the digital age: The more things change, the more they stay the same” (2019) 62:2 Canadian Public Administration 202.

¹¹⁶⁵ For a thorough analysis of access considerations, see Khan & Rehaag, *supra* note 129.

¹¹⁶⁶ For further discussion of these points, see *ibid*.

¹¹⁶⁷ See, e.g., JW Sheehan, “Confidences Worth Keeping: Rebalancing Legitimate Interests in Litigants' Privacy Information in an Era of Open-Access Courts” (2019) 21:4 Van D Ent & Tech L 905; Jane Bailey & Jacquelyn Burkell, “Revisiting the Open Court Principle in an Era of Online Publication: Questioning Presumptive Public Access to Parties' and Witnesses' Personal Information” (2016) 48:1 Ottawa L Rev 143.

¹¹⁶⁸ See *AT v Globe24h.com*, 2017 FC 114 at para 11 [the actual reality goes further than this point; no Canadian decisions are indexed on Google]; *Complaints against Globe24h.com*, 2015 CanLII 33260 at paras 44-48.

¹¹⁶⁹ Townend & Wiener, *supra* note 205 at 13.

¹¹⁷⁰ See Khan & Rehaag, *supra* note 129.

6. The CJC and courts should consider how transparent standardization could improve judicial independence, impartiality, access to justice generally, and everyone's user experience

When judges don't issue written decisions or issue reasoned oral decisions without having to consider certain factors, outcomes can be disastrous.¹¹⁷¹ Dr. Sean Rehaag showcased this point in an extensive study of applications for leave to judicially review refugee determinations: outcomes "often come down to the luck of the [judicial] draw."¹¹⁷² While not relying on data or analytics, the Alberta Court of Appeal made a similar *obiter* comment in its oft-cited 2010 decision on sentencing in *R. v. Arcand* ["**Arcand**"] and suggested that convicted accused also face the luck of the judicial draw during sentencing. Pretending otherwise obscures the need for attention on this issue. The quote is long, but it so aptly captures what appear to be important truths about our legal system that this dissertation has sought to highlight:

We must face up to five sentencing truths. First, it is notorious amongst judges, of whom there are now approximately 2,100 in this country at three court levels, that one of the most controversial subjects, both in theory and practical application, is sentencing. That takes us to the second truth. The proposition that if judges knew the facts of a given case, they would all agree, or substantially agree on the result, is simply not so. The third truth. Judges are not the only ones who know truths one and two, and thus judge shopping is alive and well in Canada – and fighting hard to stay that way. All lead inescapably to the fourth truth. Without reasonable uniformity of approach to sentencing amongst trial and appellate judges in Canada, many of the sentencing objectives and principles prescribed in the Code are not attainable. This makes the search for just sanctions at best a lottery, and at worst a myth. Pretending otherwise obscures the need for Canadian courts to do what Parliament has asked: minimize unjustified disparity in sentencing while maintaining flexibility. The final truth. If the courts do not act to vindicate the promises of the law, and public confidence diminishes, then Parliament will.¹¹⁷³

Put simply, courts and judges can't just wish or swear away unconscious cognitive biases, heuristics, and arbitrary decision-making.¹¹⁷⁴ They can't just hope for more consistent and rational results without more standardized checks and balances that improve judges' decision

¹¹⁷¹ Rehaag, "Judicial Review" *supra* note 566 at 31.

¹¹⁷² *Ibid* at 3.

¹¹⁷³ *Arcand*, *supra* note 566 at para 8 [emphasis added].

¹¹⁷⁴ *Cojocaru*, *supra* note 161 at paras 14-17; Wistrich, Rachlinski & Guthrie, "Heart versus Head", *supra* note 47 at 910 [Wistrich, Rachlinski & Guthrie, "Head vs. Heart"]; Judge Andrew J Wistrich & Jeffrey J Rachlinski, "Implicit Bias in Judicial Decision Making: How it Affects Judgment and What Judges Can do about It" in Sarah E Redfield, *Enhancing Justice: Reducing Bias* (ABA: Chicago, 2017) 87 [Wistrich & Rachlinski, "Implicit Bias"].

hygiene or auditing the ways in which judges and the system fall short.¹¹⁷⁵ Awareness of such effects is likely insufficient to keep them in check.¹¹⁷⁶

Some studies suggest that judges must directly engage with their cognitive biases, heuristics, and flaws in their decision-making to properly address them—e.g., by using designed and tested standardized, designed decision-protocols.¹¹⁷⁷ But scholars have only tested these ideas on a limited amount of judges (1,800 American and Canadian judges) in simulated environments.¹¹⁷⁸ And to state the obvious, such simulated environments might be divorced from real life.¹¹⁷⁹ But their clear prescription supports this dissertation's calls to design more standardizations to test:

Scripts and checklists can free judges from reliance on their memories and encourage them to proceed methodologically, thereby ensuring they touch on all the deliberative base relevant to a decision. A judge who reviews a script or checklist at each step in the decision making process is less likely to rely on intuition when doing so is advisable.¹¹⁸⁰

Far more testing of this idea should occur. Even if testing revealed no reduction in reliance on problematic heuristics and biases, standardization presents three possible additional benefits that are worth examining and testing:

1. It could promote more efficient, predictable, concise decision-making: more efficiency could alleviate cognitive load and time demands (which are both catalysts of cognitive bias and heuristics)¹¹⁸¹ while also promoting the Canadian constitutional imperatives that Chapter 1 identifies.
2. It could promote short, clear decisions and more speedy delivery times: no comprehensive data on this subject exists. But one could assume that other jurisdictions are experiencing the same increases that British Columbia has over the last 40 years in reported decisions—3x increase in decisions' length and delivery time; 10x increase in decisions over 180 days.¹¹⁸² Many litigants wait a long time for decisions that are then often long and hard to understand. If access to justice means anything, the person affected

¹¹⁷⁵ See Kahneman, Sibony & Sunstein, *supra* note 237, Part V. For judicial commentary on this issue, see, e.g., *R v KSH*, 2015 ABCA 370 at paras 39-48; *R v Ryan*, 2015 ABCA 286 at paras 65, 78.

¹¹⁷⁶ Wistrich, Rachlinski & Guthrie, "Head vs. Heart", *supra* note 47 at 910; see also Pamela M Casey *et al*, "Addressing Implicit Bias in the Courts" (2012) 29 Court Review 64 at 67, online: <<https://digitalcommons.unl.edu/cgi/viewcontent.cgi?article=1413&context=ajacourtreview>>

¹¹⁷⁷ Wistrich, Rachlinski & Guthrie, "Head vs. Heart", *supra* note 1174 at 910.

¹¹⁷⁸ *Ibid* at 898.

¹¹⁷⁹ See, e.g., Baum, *supra* note 201.

¹¹⁸⁰ Wistrich & Rachlinski, "Implicit Bias", *supra* note 1174 at 119; see also Rehaag, *supra* note 566 at 39-42:

Rehaag recommended multiple reforms that were directed to leave applications, but four are more general and apply to this dissertation's thesis: (1) judges ought to always issue decisions when denying leave; (2) precedent ought to be comprehensive and coherent; (3) decisions must meaningfully engage with parties' arguments; (4) legal tests must be clear to avoid arbitrary results.

¹¹⁸¹ Wistrich & Rachlinski, "Implicit Bias", *supra* note 1174 at 117.

¹¹⁸² See Khan, "Life of a Reserve", *supra* note 4, Part II.

by the decision should be able to read and understand why the judge decided as they did.¹¹⁸³

3. It could promote easier empirical analysis:¹¹⁸⁴ no one can easily analyze *Arcand*'s earlier noted points. Such data doesn't appear to exist—at least not publicly.¹¹⁸⁵ If such data were easier to parse from judicial decisions or if the decisions contained the data points, then courts, counsel, academics, and interdisciplinary researchers could use it to improve court practices, like sentencing.¹¹⁸⁶ While new technologies are getting better at parsing unstructured text, they still suffer from the unwieldy length of judicial decisions and varying structures (although this challenge is evaporating quickly). Additionally, the computing power required to parse unstructured versus structured data can have radical environmental effects.¹¹⁸⁷ Canada is supposed to currently have nationally uniform or mostly standard approach to basic publication information.¹¹⁸⁸ Yet *Appendix 6* shows the incredible amount of variation in five basic datapoints of judgements within each jurisdiction and across Canada. The amount of variation within decisions in the same jurisdiction—at least anecdotally—appears very similar with judges approaching the same kinds of issues in very different ways.

Judges wouldn't violate any convention by relying on standardized structures or content. The 2023 Survey suggested that some users of decisions also wouldn't have issues with standardized structures, but some were more hesitant about standardized content (although few users outright said no). Generally, the sentiment was that any standardization should be judiciary-owned, optional, and deviation-friendly. The SCC has also already blessed the notion of judicial copying: judges commit no mischief when they copy precedent or parties' arguments. In the 2013 decision *Cojocar v. British Columbia Women's Hospital and Health Centre*, the SCC grappled with this issue for the first time and held that unless copying precludes judges from putting their "mind to the issues and ... [deciding] them impartially and independently....", then copying is just fine.¹¹⁸⁹ The 2023 Survey suggested that factual and legal novelty are perhaps not that common. So many scenarios might be ripe for standardization.

¹¹⁸³ Caroline Mandell has made this point in various podcast comments. See, e.g., *supra* note 210.

¹¹⁸⁴ See Benjamin Alarie, Anthony Niblett & Albert Yoon, "How Artificial Intelligence Will Affect the Practice of Law" (7 November 2017) TSPACE at 10, online <<http://dx.doi.org/10.2139/ssrn.3066816>>. I have also discussed this issue with engineers at the former ROSS Intelligence. See also *supra* note 98, p 1.

¹¹⁸⁵ The only tool that provides some empirical guidance on sentencing is a private, propriety fee-based service Rangefindr (see *supra* note 1226).

¹¹⁸⁶ Ellis, *supra*, at 941.

¹¹⁸⁷ Shaolei Ren "Reconciling the contrasting narratives on the environmental impact of large language models" (2024) 14:36310 Scientific Reports, online: <<https://www.nature.com/articles/s41598-024-76682-6>>

¹¹⁸⁸ CJC, "Canadian Guide", *supra* note 98.

¹¹⁸⁹ *Cojocar*, *supra* note 161 at para 51.

Regardless of standardized content or standardized structures, the 2023 Survey suggested that courts and judges need to seriously consider how they approach complexity and clarity; length; and timeliness. Almost every user group said they infrequently experience decisions that are clear and easy to understand; the right length; and timely.

I've suggested that standardization is a possible way to address these issues. As Chapter 3 discusses, however, universal design for decisions might be a mythical pursuit, including some standardizations. Some users are likely always going to want decisions that look more like fact-driven decisions versus issue-driven reasons, and trying to satisfy all the various readers of decisions could contribute to long, slow, and complex decisions. So adding more to try to satisfy more users might make things worse, and one design might never satisfy all users.¹¹⁹⁰ That said, almost every surveyed user group wanted plain language summaries of judicial decisions and their content. So some users might not be as interested in the decision structure or content as they would be in a plain language summary.

7. The CJC and courts should develop more comprehensive standardized data metrics and encourage judges to audit and evaluate their decision-making

Detailed analytics of judicial and court behaviour are increasingly arriving in Canada. As Jena McGill and Dr. Amy Salyzyn have noted, “such tools are likely to become more powerful, more accurate and more accessible in the near-to-medium future, resulting in unprecedented public insight into judges and the work of judging.”¹¹⁹¹ Analyzing such technology's effects and potential regulation are outside Chapter 5's scope.¹¹⁹² But, as Chapter 2 suggests, fearing analytics isn't a reason to stymie them—especially since judicial independence and impartiality likely now require such detailed analysis.¹¹⁹³

Either way, Canadian courts and judges need comprehensive metrics for their decisions and decision-making—e.g., objectives, key results, and key performance indicators. Canada's justice crisis, the administration of justice, and the *Constitution* appear to require more than hortatory views based on feeling or intuition about decision-making and decision-writing. As Chapters 1

¹¹⁹⁰ See, e.g., Leidy Klotz, *Subtract: The Untapped Science of Less* (Flatiron Books: New York, 2022).

¹¹⁹¹ McGill & Salyzyn, *supra* note 500 at 252.

¹¹⁹² See *Ibid.*

¹¹⁹³ For a case study of the potential for such access and the importance of it for ensuring individual and systemic fairness, see Khan & Rehaag, *supra* note 129.

and 2 stress, courts and the CJC appear to have a constitutional obligation to ensure that litigation is predictable, consistent, and uniform. And two metrics are important to this aim (many others likely exist and have been identified):¹¹⁹⁴

1. Justice system participants need metrics about how judges and courts are deciding: I'm not suggesting metrics to police behaviors. Rather, metrics are necessary to understand and audit behaviors—at times, that will involve recognizing and resolving problems.¹¹⁹⁵ The aim isn't predicting what judges might do, but to "provide the public with data-driven opportunities to improve the fairness and consistency of human discretionary judgment."¹¹⁹⁶ As Chapter 1 suggests, we already analyze many human endeavors, including medicine, aviation, and sport.¹¹⁹⁷ The "human exercise" of judging is amenable to such analysis. Governments should ensure that courts have the tools to promote predictably and consistency, and courts should design mechanisms to understand and remedy deficiencies and to improve experiences generally.
2. Courts and judges need metrics for acceptable lengths and delivery times for decisions: as Chapter 2 argues, the current lack of metrics seemed to impact the *K.G.K.* decision and likely impacts other individuals in the criminal, civil, and family justice systems. One can easily challenge the assumption that decisions should always be fast or short. But we don't even know what's too short or too fast. All we can say with certainty is that written decisions are continually getting longer and slower (at least in some jurisdictions).¹¹⁹⁸

The CJC and courts could even encourage judges to audit their own behaviour. If standardizations were implemented and coupled with more data gathering and transparency, judges could evaluate how best how to improve their decision-making and decision hygiene. For example, they could explore the ways in which they do things differently than their colleagues (what Daniel Kahneman, Oliver Sibony & Cass Sunstein call a "noise audit").¹¹⁹⁹ As I have noted elsewhere, the potential benefits seem promising in many areas, but especially areas where individuals are subject to state control:

Standardized structures would also improve trend analytics: judges themselves could empirically explore their decision-making patterns, e.g., why they decide certain ways. Put plainly, judges could audit and evaluate their decision-making. Such auditing would allow

¹¹⁹⁴ For a comprehensive summary, see Jerry McHale, "The Justice Metrics Problem" (2017), online: <<https://static1.squarespace.com/static/5532e526e4b097f30807e54d/t/590a60968419c273fe4dd99c/14938523>>.

¹¹⁹⁵ Wistrich & Rachlinski, "Reducing Bias", *supra* note 1174 at 108-110.

¹¹⁹⁶ Kristen Bell *et al*, "The Recon Approach: A New Direction for Machine Learning in Criminal Law" (2021) 37 Berkeley Technology Law Journal 101.

¹¹⁹⁷ For example, sprinters now use technology to break down their stride to understand how to perform better in a 100m race. See, e.g., Stuart McMillan, "The ALTIS Kinogram Method", online: <<https://simplifaster.com/articles/altis-kinogram-method/>>.

¹¹⁹⁸ Khan, "Life of a Reserve" *supra* note 4 at 40.

¹¹⁹⁹ See Kahneman, Sibony & Sunstein, *supra* note 237 at 29 ["A noise audit—like the one conducted on federal judges with respect to sentencing—is a way to reveal noise. In such an audit, the same case is evaluated by many individuals, and the variability of their responses is made visible."].

judges to ensure they are consistently approaching similar facts and legal principles. With such improved understanding, judges could improve their decision-making. Such improvements could also reduce the likelihood of appeal: decisions could be made more “appeal-proof” [in the sense that judges can cure simple *per incuriam* or legal errors but not in the sense of obviating rigorous appellate review].¹²⁰⁰

This dissertation recognizes that the comprehensive study of judges and their decision-making isn’t easy. So collaboration is needed: courts, the CJC, or the CSCJA should undertake studies and work with academics to conduct empirical analysis on an ongoing basis, including the empirical study that *Appendix 5* proposes for complexity, length, and delivery times. Such studies don’t need to be analytical or predictive and could merely be descriptive (although individuals could quickly produce analytical or predictive studies with the descriptive data).

These concepts aren’t foreign to the federal government who appoint the judges I tried to study in this dissertation. As Chapter 1 suggests, the court system is a public service, and other government services are subjected to key performance indicators through measurement.¹²⁰¹ Courts shouldn’t be any different, including on things as basic as “do judges have adequate time to write decisions.” Almost every user group—including some judges—saw utility and no issue with tracking such time. As Chapter 1 stresses, judges have a very difficult user experience, and courts and Chief Justices shouldn’t just be guessing or surmising about how judges spend their time. Far more granular data and study of that data is needed to ensure that basic constitutional promises are being achieved, and if not, trying to identify possible ways to ensure they are.

8. The CJC and the SCC should be clear: brief reasoned oral or written decisions are required in all cases, applications, or motions, and all decisions must be publicly available in open access formats, including in bulk

Canadian judges and courts are ahead of many jurisdictions. Canada has a remarkably independent, hardworking judiciary. Most Canadian judges issue reasoned oral or written

¹²⁰⁰ Khan, “Life of a Reserve” *supra* note 4 at 90 [footnotes omitted]; see also See Kahneman, Sibony & Sunstein, *supra* note 237 at 159 [“Systematic errors of judgment have been demonstrated in many fields, and the term bias is now used in many domains, including business, politics, policymaking, and law. As the word is commonly used, its meaning is broad. In addition to the cognitive definition we use here (referring to a psychological mechanism and to the error that this mechanism typically produces), the word is frequently used to suggest that someone is biased against a certain group (e.g., gender biases or racial biases). It can also mean that someone favors a particular conclusion, as when we read that someone is biased by a conflict of interest or by a political opinion.”].

¹²⁰¹ Government of Canada, “Policy on Results” (2017), online: <<https://www.tbs-sct.canada.ca/pol/doc-eng.aspx?id=31300>>.

decisions in many, if not most disputes. But as Chapter 1 notes, the law on when reasoned decisions is required is circular and fragmented—so too is the law or requirement to publish oral and written decisions.

The Canadian history on the requirement to provide reasoned decisions is clear: the judiciary's duty to be independent and impartial didn't always require them to explain their decisions. Rather, they could just find for the winning party.¹²⁰² But over time, the SCC has consistently imposed more requirements. This analysis, however, has unfortunately focused on criminal law judges and administrative decision-makers.¹²⁰³

As Chapter 1 notes, seminal cases suggest the principle of judicial independence requires judges to *always* provide sufficient, reasoned oral or written decisions. As I have argued elsewhere, however, *Sheppard* and *R.E.M.* were restricted to the criminal context.¹²⁰⁴ But considering reasoned decisions' relationship to independence and impartiality, this reasoning is curious. It suggests that judges must be more independent and impartial in criminal cases vs. others. It connotes a hierarchy of judicial independence and impartiality that should be resolved.¹²⁰⁵

Finally, so many oral decisions go unpublished in Canada.¹²⁰⁶ While the proliferation of all unpublished decisions would make the common law even more complex or “messy”, the current status quo is untenable. Many judges' decisions never see the light of day and only exist within the courtroom in which they're issued. Considering decisions like *Sheppard* and *R.E.M.*, this status quo is an affront to judicial independence and impartiality and the duty to issue decisions that the public can access, which in 2026 means online from your phone (including in private mode if you want).

¹²⁰² See Khan, “Life of a Reserve” *supra* note 4, Part I.

¹²⁰³ *Baker*, *supra* note 123; *Sheppard*, *supra* note 99; *Vavilov*, *supra* note 48.

¹²⁰⁴ Khan, “Life of a Reserve” *supra* note 4 at 11-15.

¹²⁰⁵ On this point, see *Cojocaru*, *supra* note 161 at paras 24-25.

¹²⁰⁶ Rehaag & Thériault, “Judgements v Reasons”, *supra* note 126.

Conclusion – We’ve come such a long way in a short time, yet many justice system participants keep waiting

My broader goal is to champion the idea of legal design as a distinct discipline – the study of how the design of laws contributes to their success or failure, and how we can do better in this important field. ... We need to know more about how laws fail, and why ... We need to look at ways to design laws and legal institutions to reduce barriers to access to justice: the issue of how to transform rights on paper into real-world rights is a pressing issue for anyone concern with the rule of law and social inclusion.¹²⁰⁷ ~ David Goddard (2022)

When I started this dissertation project, the ability to access the legal data from published judicial decisions was very difficult. You had to do one of three things:

1. manually parse information from cases and enter it in spreadsheet;
2. use a computer parsing method relying on regular expressed phrases or text (*aka* REGEX) and have the data entered into a spreadsheet or database; and
3. manually train a computer model to do the parsing for you and have the data entered into a spreadsheet or database.

I’ve relied on the first method in previous research and tried out the other two in this dissertation. They’re all laborious and suffer from efficiency and technical challenges: they’re time intensive and costly, which made much of the work prohibitive.

Now, however, such parsing and data generating tasks are far easier to accomplish with LLMs like Chat GPT and their easy ability to parse text and data, including unstandardized text, unstructured text, or even imaged text. A huge barrier no longer exists.

But serious barriers remain. Individuals still can’t easily generate data from many judicial decisions (or other sources of legal data in courts or other justice system data) at least partly because of things that have been thoroughly discussed in this dissertation, including commercial and informational monopoly, unpublished judicial decisions, and the legal system’s lack of data gathering and transparency.¹²⁰⁸ LLMs’ actual and environmental costs are also not insignificant and serious questions exist about their ethical use.

¹²⁰⁷ Goddard, *supra* note 269 at 5-6.

¹²⁰⁸ Some notable exceptions exist that I’ve mentioned throughout this dissertation.

Regardless of remaining barriers and much needed culture change, we've come such a long way in a short time. Yet so justice system participants keep waiting.

This dissertation implores a different path. The overarching point uniting all chapters is that meaningful, sustainable “designed” reforms of Canada’s legal system are possible and necessary (and in some instances, likely required).

Resistance to this overarching point seems come from more than courts, governments, and judges; resistance appears endemic to all aspects of Canada’s general legal culture, including law schools and law societies:

1. Chapter 1 stresses that the process of Canadian judicial decision-making hasn’t adapted in ways that reflect user needs and experiences—whether judges, litigants, or the public. Present practices seem rooted in tradition rather than innovation or responsiveness, and doctrines intended to protect fairness and independence end up stifling reform.
2. Chapter 2 stresses that possible objections that courts have toward more transparency, standardization, and data collection mostly don’t withstand scrutiny. Rather than undermining public confidence or judicial independence, such reforms could enhance fairness, consistency, and trust in Canada’s legal system.
3. Chapter 3 stresses that the 2023 Survey suggested that some individuals are having poor user experiences and that resistance to change within Canada’s court system is perhaps common. Current practices may leave many users dissatisfied with judicial decisions that aren’t clear, are too long, and aren’t timely.
4. Chapter 4 stresses that overcoming Canada’s legal data deficit gaps requires national standards, improved empirical research practices, and a commitment to data literacy at all levels of legal education and the legal system. Systematic, standardized data is necessary for deliberately-designed reforms and a better functioning legal system.
5. Chapter 5 stresses that at least some of the path forward appears clear: reforms must focus on transparency, open access to judicial decisions, robust data practices, ongoing empirical evaluation, and a willingness to reimagine entrenched systems and values. The recommendations spanned from increasing court autonomy and democratizing access to setting empirical research standards and making outcome data public.

Everyone needs to stop waiting and think more about legal data, user experience, systems thinking, innovation, and “deliberate” design. A radical culture shift is needed.

To come full circle and end this dissertation like it began: after years of studying these issues, I wish I was less shocked about Canada’s justice crisis, the legal data deficit, or the continued lack of deliberate design. I might even be even more shocked today than when I started this work.

Yet I'm not dismayed. Instead, I'm continually impressed and energized by the many justice system participants who continuously try to improve Canada's legal system despite all the challenges and who keep trying.

I hope I can continue to be one of those people. And I also hope that my work assists their efforts, including the data I've generated during my graduate research—all of which is open access and posted on the Open Science Framework for further analysis.¹²⁰⁹

¹²⁰⁹ Open Science Framework, "Deliberate Legal Design: Why Canada's Legal System Needs It (Survey)", online: <<https://osf.io/gyx5r/overview>>, and for the initial preregistration, see Open Science Framework, "Deliberate Legal Design: Why Canada's Legal System Needs It (Mixed-Methods Survey)", online: <<https://osf.io/fd96t/overview>>.

Appendixes

Appendix 1: 2023 Survey methodological details

Units of analysis & observation; sampling; and weighting

First, regarding units of analysis and observation, the 2023 Survey parsed the two users of decisions into two units of analysis:

1. Group (A): the judges who write decisions; and
2. Group (B): the people and organizations who read and use decisions and who decisions affect.

Better information about both groups' experience with judicial decisions is fundamental to answering the dissertation's overarching research question:

1. Group (A)'s unit of observation is the same as the unit of analysis: judges.
2. Group (B)'s units of observation are select, purposive justice system participants: Canadian common law s. 96 and appeal courts; lawyers; academics; lawyers that courts employ, *aka* staff lawyers or legal officers; journalists; law students; federal and provincial parliamentarians; Assistant and Associate Deputy Ministers; litigants; legal research, legal publishing, and legal tech organizations; and legal information professionals.

The 2023 Survey attempted to engage the total population of the observation units in both Group (A) and (B) by availing a comprehensive invitation strategy. My broad approach assumed that participation rates would be low in both groups, but I hoped for higher participation rates levels from some groups as I noted in my pre-registration of the 2023 Survey.

Second, regarding sampling and weighting, the 2023 Survey relied on neither because the survey was only seeking to generate user experience data and not make any predictions about user or the group they belong too. As mentioned, I also committed to these points in my pre-registration of the study to prevent after the fact conclusions (e.g., if thousands of people had participated, that prospect would have been tempting).

Group (A): Judges

Group (A) included approximately 1,300 sitting and retired judges from common law superior, appellate, and federal courts (the Tax Court of Canada, Federal Court, Federal Court of Appeal,

and the SCC).¹²¹⁰ Data on the demographics is somewhat limited—especially for retired judges.¹²¹¹ Of the 1,202 judges who were sitting when I designed the study in 2020, 310 were supernumerary and 892 were full-time.¹²¹²

Group (A) was selected because judges are subject matter experts on writing decisions and how decisions affect what they do. They're one of the primary users my research seeks to address. Their experience allows them to offer insight on topics central to my overarching research question—including judicial decision-writing and judicial decision-making.

Group (B): People who read and use decisions and who decisions affect

Group (B) included at least 155,000 individuals and organizations. I clearly didn't think I would access that many users, and I accordingly didn't rely on any inclusion criteria, exclusion criteria, or target response rates for these units of observation:

- judges (1,300): Judges overlap Group (A) and (B). While judges clearly write decisions, they also consume them. The same demographic information identified in Group (A) also applies. I used Group (A) survey data for any conclusions about this unit of observation;
- common law s. 96, appellate, and federal courts (28): Canada has 28 common law superior, appellate, and federal courts (the Tax Court of Canada, Federal Court, Federal Court of Appeal, and the SCC).¹²¹³ These courts are one of the primary users my research seeks to address. Their institutional experience allows them to offer unique insight on topics on central to my research questions—including court resources and autonomy; annual court reports; how the court publishes decisions; how courts manage; court data and transparency; and how courts innovate;
- lawyers (127,707): Demographic information on gender, age, practice type, and province is available.¹²¹⁴ Lawyers spend considerable time using judicial decisions. They are one of the primary users my research seeks to address. Their experience allows them to

¹²¹⁰ The CSCJA, “About CSCJA”, online: <<http://www.cscja.ca/about-us/>>.

¹²¹¹ *Ibid*; Office of the Commissioner for Federal Judicial Affairs Canada, “Statistics regarding Judicial Applicants and Appointees: October 28, 2017 – October 27, 2018”, online: <<https://www.fja.gc.ca/appointments-nominations/StatisticsCandidate-StatistiquesCandidat-eng.html>>. For example, data on the gender of this group of sitting judges was more readily available when I started the survey: 511 were women; 691 were men (Office of the Commissioner for Federal Judicial Affairs Canada, “Number of Federally Appointed Judges as of March 5, 2020”, online: <<https://www.fja-cmf.gc.ca/appointments-nominations/judges-juges-eng.aspx>>)

¹²¹² *Ibid*.

¹²¹³ I have omitted the court martial proceedings here—*i.e.*, Court Martial Court of Canada and the Court Martial Appeal court of Canada since its jurisdiction and subject matter are limited to military matters. I also didn't survey provincial courts because they mostly don't issue written decisions. This kind of research, however, should also be done on provincial courts and provincial judges.

¹²¹⁴ Federation of Law Societies, “Federation Statistic Report: 2019”, online: <<https://flsc-s3-storage-pub.s3.ca-central-1.amazonaws.com/2019%20Federation%20Statistics%20Report.pdf>>; see also Federation of Law Societies, “Federation Statistic Report: 2024”, online: <<https://flsc.ca/wp-content/uploads/2025/09/FederationStatisticsReport2024.pdf>>.

unique offer insight about topics central to my research questions—including judicial decisions; judicial decision-making; judicial independence; court and judicial transparency; litigation in 2023; keeping up with jurisprudence; and preparing for litigation;

- legal academics (1,658): Canada has approximately 1,600 full-time, part-time, and adjunct-law professors.¹²¹⁵ Demographic information is not easily available. Legal academics have considerable experience analyzing, using, and teaching people to read judicial decisions. Their experience allows to offer unique insight about topics central to my research—including teaching people to read judicial decisions; court and judicial transparency; judicial decisions; judicial decision-making; and judicial independence;
- court legal counsel (aka legal officers or registrars) (26+): Most Canadian common law superior, appellate, and federal courts have legal officers who provide legal counsel to the court. The demographic information of courts' legal officers isn't public. Smaller courts typically appear to have one or no legal officers;¹²¹⁶ more busy courts appear to have three to five legal officers.¹²¹⁷ Courts' legal counsel have intimate knowledge about judges, courts, and judicial decisions, and judges and courts rely heavily on their expertise and opinion. Their experience allows them to offer unique insight about topics

¹²¹⁵ The breakdown was based on these LSAC numbers (see LSAC, "Canadian Law Schools", online: <<https://www.lsac.org/choosing-law-school/find-law-school/canadian-law-schools>>) as well as by directly visiting Canadian law schools' websites when designing the survey. These numbers have likely fluctuated since then. So readers should treat them as approximations:

- University of Alberta (132): Full-time: 38; Part-Time/Adjunct: 94.
- University of British Columbia (152): Full-time: 54; Part-Time/Adjunct: 98 (11 % ethnic minority).
- Bora Laskin Faculty of Law (10): Full-time: 10.
- University of Calgary (95): Full-time: 35; Part-Time/Adjunct: 60.
- Dalhousie Law School (98): Full-time: 40; Part-Time/Adjunct: 58 (18 full-time females/2 full-time minorities).
- University of Manitoba (67): Full-time: 27; Part-Time/Adjunct: 40 (13 full-time females).
- McGill University (109): Full-time: 44; Part-Time/Adjunct: 65 (20 full-time females).
- University of New Brunswick (36): Full-time: 16; Part-Time/Adjunct: 20.
- Osgoode Hall Law School (210): Full-time: 60; Part-Time/Adjunct: 150 (52% of the full-time faculty are women).
- University of Ottawa (English common law) (76): Full-time: 76; Part-Time/Adjunct: not tracked at time of survey (38 full-time tenured or tenure female professors).
- Queen's University (92): Full-time: 38; Part-Time/Adjunct: 54 (42% of full-time faculty are female).
- Ryerson's 2020 is currently not publicized.
- University of Saskatchewan (28): Full-time: 29; Part-Time/Adjunct: 50 (14 full-time female faculty).
- Thompson Rivers University: Full-time: 29; Part-Time/Adjunct: 17.
- University of Toronto (219): Full-time: 65; Part-Time/Adjunct: 146; Distinguished visitors: 8.
- University of Victoria (55): Full-time: 30; Part-time/Adjunct: 25 (14 full-time female faculty and 10 part-time/adjunct faculty).
- University of Western (97): Full-time: 35; Part-time/Adjunct: 62.
- University of Windsor (115): Full-time: 34; Part-time/Adjunct: 81 (19 full-time female faculty; five full-time minorities).

¹²¹⁶ For example, the Nunavut Court of Justice appears to have none.

¹²¹⁷ For example, the British Columbia Supreme Court appears to have three or more in many years from examining annual reports.

central to my research—including judicial decisions; judicial decision-making; court resources, data, and autonomy; and access to justice;

- journalists who report on legal issues (350): Canada has at least 12,000 journalists, but only 350 appear to consistently report on the legal system.¹²¹⁸ Journalists are the information surrogates for most Canadians who will never read a judicial decision or enter a courtroom.¹²¹⁹ Their experience allows them to offer unique insight about topics central to my research—including judicial decisions; judicial decision-making; and court and judicial transparency;
- law students (8,700): Canada has 18 common law schools. No document aggregates the entire class profile or demographics of all Canadian law students.¹²²⁰ Based on separate documents from Canadian law schools and secondary documents, Canada appears to have approximately 8,700 students.¹²²¹ Demographic information is limited. Law students, perhaps more than any other unit of observation (except for academics), spend extensive time reading and studying judicial decisions. Their experience allows them to

¹²¹⁸ Chad Skelton, “There are fewer journalists in Canada than 15 years ago – but not as few as you might think” (4 May 2018) *Jsource*, online: <<https://j-source.ca/canadian-journalists-statistics/>>. I located journalists on news organizations with websites by searching for “justice”; “courts”; “crime”, *etc.* until I started seeing a paper. I mainly relied on the “justice” term. I then collected names and directly emailed individual who appeared to cover courts and the legal system.

¹²¹⁹ *Endean v British Columbia*, 2016 SCC 42.

¹²²⁰ Oxford Seminars provides the only somewhat aggregated but incomplete document: Oxford Seminars, “Canadian Law School Profiles”, online: <http://www.oxfordseminars.ca/LSAT/lstat_profiles.php>.

¹²²¹ The breakdown is based on these LSAC numbers (see LSAC, “Canadian Law Schools”, online: <<https://www.lsac.org/choosing-law-school/find-law-school/canadian-law-schools>> as well as these sources (see Ontario Universities Application Centre, “Apply to Ontario Law Schools”, online: <<https://www.ouac.on.ca/guide/olsas-program-requirements/>>; University of Saskatchewan, College of Law, “Admissions statistics and prerequisite requirements for non-direct entry colleges”, online: <https://admissions.usask.ca/documents/brochures/adv_law.pdf>; McGill, Faculty of Law, “Class and Alumni Profiles”, online: <<https://www.mcgill.ca/law/bcl-jd/program-description/student-body-and-alumni-data>>). If total numbers of students weren’t provided, I multiplied 1L class size (and indicated so) for an approximate number of total students:

- University of Alberta: 160 1L students (525 total students).
- University of British Columbia: 191 1L students (573 total students).
- Bora Laskin Faculty of Law: 65 1L students (x 3 = 195 total students).
- University of Calgary: 129 1L students (378 total students).
- Dalhousie Law School: 170 1L students (x 3 = 510 total students).
- University of Manitoba: 107 1L students (x 3 = 321 total students).
- McGill University: 183 1L students (x 3 = 549 students).
- University of New Brunswick: 92 1L students (265 total students).
- Osgoode Hall Law School: 290 1L students (x 3 = 870).
- University of Ottawa (English common law): 309 1L students (x 3 = 927).
- Queen’s University: 200 1L students (x 3 = 600).
- Ryerson’s 2020 is currently not publicized.
- University of Saskatchewan: 126 1L students (x 3 = 378 students).
- Thompson Rivers University: 115 1L students (x 3 = 345 students).
- University of Toronto: 213 1L students (x 3 = 639 students).
- University of Victoria: 113 1L students (405 total students).
- University of Western: 178 1L students (x 3 = 534 students).
- University of Windsor: 242 1L students (x 3 = 726 students).

offer insight about topics central to my research—including judicial decisions; judicial decision-making; judicial independence; and court and judicial transparency;

- **MP and MPPs (899):** Canada’s 12 provincial or territorial governments have 639 members of provincial parliament,¹²²² and Canada’s federal government has 260 members of parliament in its common law provinces.¹²²³ Limited demographic information is available.¹²²⁴ MP and MPPs constituents can be greatly affected by judicial decisions, yet many government officials likely never even read decisions. Their experience allows them to offer insight about topics central to my research—including keeping up with judicial decisions and changes in Canada’s common law; court and judicial transparency; judicial decisions, judicial decision-making, and judicial independence;

¹²²² Broken down as follows:

- British Columbia: 87 members (demographic information is observable). See Legislative Assembly of British Columbia, “Members of the Legislative Assembly”, online: <<https://www.leg.bc.ca/learn-about-us/members>>.
- Alberta: 87 Members (demographic information is observable). See Legislative Assembly of Alberta, “Elected Members of the Assembly”, online: <https://www.assembly.ab.ca/net/index.aspx?p=mla_home>.
- Saskatchewan: 61 members (demographic information is observable). See Legislative Assembly of Saskatchewan, “Members of the Legislative Assembly of Saskatchewan”, online: <<https://www.legassembly.sk.ca/mlas/>>.
- Nunavut: 20 Members (demographic information is observable). See Legislative Assembly of Nunavut, “Members of the Legislative Assembly”, online: <<https://www.assembly.nu.ca/members/mla>>.
- Northwest Territories: 19 members (demographic information is observable). See Legislative Assembly of the Northwest Territories, “Members of the Northwest Territories Legislative Assembly”, online: <<https://www.ntassembly.ca/members>>.
- Yukon: 19 members (demographic information is observable). See Yukon Legislative Assembly, “Members of the Legislative Assembly”, online: <<https://yukonassembly.ca/mlas>>.
- Manitoba: 57 members (demographic information is partially observable). See the Legislative Assembly of Manitoba, “Alphabetical List by Constituency”, online: <https://www.gov.mb.ca/legislature/members/mla_list_constituency.html>.
- Ontario: 124 members (demographic information is partially observable). See Legislative Assembly of Ontario, “All members serving in the 42 Parliament: July 11, 2018 – May 3, 2022”, online: <<https://www.ola.org/en/members/parliament-42>>.
- Newfoundland & Labrador: 40 members (demographic information is observable). See House of Assembly: Newfoundland and Labrador, “Members”, online: <<https://www.assembly.nl.ca/Members/members.aspx>>.
- Prince Edward Island: 27 members (demographic information is observable). See Legislative Assembly of Prince Edward Island, “Members”, online: <<https://www.assembly.pe.ca/members>>.
- New Brunswick: 47 Members (demographic information is observable). See Legislative Assembly of New Brunswick, “Members of the 59th Legislative Assembly of New Brunswick”, online: <<https://www.legnb.ca/en/members/current>>.
- Nova Scotia: 51 members (demographic information is observable). See Nova Scotia Legislature, “MLAs”, online: <<https://nslegislature.ca/members/profiles>>.

¹²²³ Elections Canada, “House of Commons Seat Allocation by Province” online: <<https://www.elections.ca/content.aspx?section=res&dir=cir/red/allo&document=index&lang=e>>. Demographic information is observable.

¹²²⁴ Canadian Association of Journalists, “2020 Canadian Newsroom Diversity Survey”, online: <https://caj.ca/wp-content/uploads/public_2020_canadian_newsroom_diversity_survey_canadian_association_of_journalists__june_4_update.pdf>.

- **litigants (unknown):** Canada has thousands of litigants—both represented and unrepresented. Seeking to survey litigants would likely raise scrutiny by lawyers. Litigants, perhaps more than any other unit of observation, are immediately affected by judicial decisions. Their experience allows them to offer unique insight about topics central to my research—including court and judicial transparency; judicial decisions; judicial decision-making; and judicial independence;
- **legal research, publishing, and analytics companies (14):** Canada has five legal research and publishing companies¹²²⁵ and multiple analytics companies.¹²²⁶ These companies have the primary responsibility for legal publishing, legal research, and legal technologies that rely on judicial decisions. Their experience allows them to offer unique insight about topics central to my research—including judicial decisions and court data; judicial decisions’ structure, content, and metadata; and user needs;
- **legal information professionals (350):** The Canadian Association of Law Librarians has approximately 350 members.¹²²⁷ These librarians work in law firm, corporate, academic, government, law society, courthouse, and other legal environments.¹²²⁸ Some demographic information is available.¹²²⁹ Legal librarians are primarily responsible for developing how judicial decisions are stored, published, and used. Their experience allows them to offer unique insight about topics central to my research—including judicial decisions’ publication, accessibility, structure, content, and metadata; and
- **ADMs (12-15):** Canada has approximately 12-15 Associate or Assistant Deputy Ministers. These Associate or Assistant Deputy Ministers are primarily responsible for

¹²²⁵ LexisNexis, “Lexis Advance Quicklaw” online: <<https://www.lexisnexis.ca/en-ca/products/lexis-advance-quicklaw-overview.page>>; Thomson Reuters, “Westlaw Canada,” online: <<https://www.thomsonreuters.ca/en/products/westlaw-canada.html>>; CanLII, “What is CanLII”, online: <<https://www.canlii.org/info/about.html>>; vLex, “vLex”, online: <<https://ca.vlex.com/coverage/canada>>; Lexum, “Lexum”, online: <<https://lexum.com/en/>>.

¹²²⁶ BlueJ, “Blue J”, online: <<https://www.bluej.com/ca>> & Loom Analytics, “Loom Analytics”, online: <<https://www.loomanalytics.com>> [Loom appears to no longer do legal analytics]. By the time I started the survey, Canada also had multiple other legal tech companies who I sought to engage: Borderpass, “Borderpass | Home”, online: <<https://www.borderpass.ai>>; CiteRight, “CiteRight by Jurisage”, online: <<https://www.citeright.net>>; Lienfluent, “Lienfluent”, online: <<https://www.lienfluent.com>>; NLPatent, “NLPatent”, online: <<https://www.nlpatent.com>>; Aleri, “Aleri”, online: <<https://www.aleri.ca>>; Alexsi, “About Alexsi”, online: <<https://www.alexsi.com/about>>; Rangefindr, “Rangefindr | Canadian sentencing research”, online: <<https://www.rangefindr.ca>>.

¹²²⁷ Correspondence on file with author.

¹²²⁸ CALL/ACBD, “Joint CALL/ACBD and TALL 2018 Salary Survey Report”, at 3, online: <[¹²²⁹ *Ibid* at 39-40.](https://cdn.wildapricot.com/179147/resources/Documents/2018%20CALLACBD-TALL%20Salary%20Survey%20Final%20Results2.pdf?version=1567806078000&Policy=eyJTdGF0ZW1lbnQiOiBbeyJSZXNvdXJjZSI6Imh0dHBzOi8vY2RuLndpbGRhcHJpY290LmNvbS8xNzkyNDVcmVzb3VyY2VzL0RvY3VtZW50cy8yMDE4JTlWQ0FMTEFDQkQtVEFMTCUyMFNhbGFyeSUyMFN1cnZleSUyMEZpbmFsJTlWUmVzdWx0czlucGRmP3ZlcnNpb249MTU2NzgwNjA3ODAwMCI6IkNvbmlkZWQWRkcmVzcyI6eyJBV1M6U291cmNlSXAiOiIwLjAuM4wLzAifX19XX0_&Signature=jsJPyU8GggzFND8X1dkTd2XE6iczZHD-Mv9sEO5lyQ4xF3DNM3A2W4HitwCKiDW0PjDBee4wamusOl4b6aCwAvK4bpu9gS9zFvyRvS0sumzZO7mxuTEkYAmxPdwtzDsDyKBBCMHj6th80eEX5b3tniGp7ovodF0wJalYL27wX4PYEwcKdOif-t9Nfn9C-u4MwX1E~sFHf73uUuqPHrwv8n2Ewn-KTyleILYjy24H83E303HUjjF~Mmlx8V27sHH0LMCwcuBDEB~aqNpogbei~AF6sfenr~ZjWpjlRfrwKgoJfi3O3pzMxf7oW24AZy7R9XQUgGUT1p0dMNlSkhSKg__&Key-Pair-Id=K27MGQSHTHAGGF>.</p>
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liaising between provincial, territorial, and federal attorneys general and common law superior, appellate, and federal courts—including court administration, judicial support services, transcript services, sheriff services, innovation, data gathering, *etc.* Their experience allows them to offer unique insight about topics central to my research—including judicial decisions and court data; judicial decisions; and court funding.

Pretesting, consultation, and deploying the surveys

I tested each survey questionnaires using Qualtrics ExpertReviewer for time estimates, methodology, survey errors, and WCAG.¹²³⁰ I also pre-tested each survey by consulting York’s Institute for Social Research,¹²³¹ having subject matter experts review the questions; and finally, having two to five individuals from each group complete the survey and seek feedback (e.g., judges, lawyers, students, legal information professionals, former legal officers, former ADMs, and former attorneys general, *etc.*).¹²³² York’s institutional Research Ethics Board reviewed the 12 questionnaires and the underlying methods before granting ethics approval.¹²³³ Based on feedback and ethics requirements, I edited and refined the 2023 Survey’s 12 questionnaires.

Finally, before deploying the surveys, I pre-registered them with the Open Science Framework, a best practice that Chapter 4 discusses more generally, including the need for more pre-registration in Canadian empirical legal research. In brief, pre-registration is the practice of documenting your research plan, questions, any hypothesis, *etc.* at the beginning of your study and storing that plan in a read-only public repository.¹²³⁴

Survey content

The 12 questionnaires in the 2023 Survey had unique and overlapping content:

- Group (A)’s questionnaire had unique questions for judges and overlapping questions with Group (B); and

¹²³⁰ Qualtrics, “ExpertReview Functionality”, online: <<https://www.qualtrics.com/support/survey-platform/survey-module/survey-checker/quality-iq-functionality/>>.

¹²³¹ York University, “Institute for Social Research”, online: <<https://www.yorku.ca/research/isr/>>.

¹²³² For a discussion of such steps and their merit, see, e.g., Jon A Krosnick & Stanley Presser, “Question and Questionnaire Design” in James D Wright & Peter V Marsden, ed, *Handbook of Survey Research* (Elsevier: San Diego, 2009) at 53-56, online: <https://web.stanford.edu/dept/communication/faculty/krosnick/docs/2009/2009_handbook_krosnick.pdf>.

¹²³³ Certificate #: STU 2022-096.

¹²³⁴ See Open Science Framework, “OSF Preregistration”, online: <<https://osf.io/prereg/>>; Centre for Open Science, “Open Scholarship Simplified”, online: <<https://www.cos.io/products/osf>>; Alina Ladyzhensky, Amanda Staller & Theresa Vo “Preregistration Essentials: “Enhancing Transparency in Research” (1 May 2025), online: <<https://osf.io/cp4x5>>.

- Group (B)'s questionnaires had overlapping questions and unique, personalized questions for the 11 units of observation.

Survey fatigue is said to peak at 12 minutes. But general survey fatigue is also a big problem, so surveys must truly intrigue most groups' users; otherwise, they'll not participate or abandon after starting.¹²³⁵ Accordingly, I sought to keep most questionnaires under 12 minutes. Because the Group (A) questionnaire sought to act like a semi-structured interview, it was longer than 12 minutes:

- judges: estimated 18–20-minute duration for 60 total questions (19 were conditional and not shown to all users) about judicial role and workload; hearing preparation; making factual and legal findings; and judicial decision-writing;
- common law s. 96, appeal, and federal courts: estimated 10–12-minute duration for 50 total questions (25 were conditional and not shown to all users) about court resources and autonomy; annual court reports; publishing decisions; court data; and innovation);
- lawyers: estimated 13-15-minute duration for 45 total questions (seven were conditional and not shown to all users) about judicial decisions & judicial decision-making; accessing information about what occurs in Canadian courts and about Canadian judges; and keeping up with jurisprudence and preparing for litigation;
- academics: estimated 10-12 minutes for 35 total questions (seven were conditional and not shown to all users) about teaching people to read judicial decisions; accessing information about what occurs in Canadian courts and about Canadian judges; and judicial decisions and judicial decision-making;
- ADMs: estimated 9-11-minute duration for 37 total questions (13 were conditional and not shown to all users) about becoming aware of important legal issues; court system funding and accessing information about what occurs in Canadian courts and about Canadian judges; and judicial decisions & judicial decision-making;
- court legal counsel: estimated 8–10-minute duration for 33 total questions (nine were conditional and not shown to all users) about judicial decisions and judicial decision-making; and court resources, court autonomy, and court data;
- journalists: estimated 7-9-minute duration for 25 questions (five were conditional and not shown to all users) about judicial decisions and judicial decision-making; and accessing information about what occurs in Canadian courts and about Canadian judges);
- law students: estimated 7-9-minute duration for 25 questions (three were conditional and not shown to all users) about judicial decisions and judicial decision-making; and accessing information about what occurs in Canadian courts and about Canadian judges;

¹²³⁵ Qualtrics, "Survey Methodology and Compliance Best Practices", online: <<https://www.qualtrics.com/support/survey-platform/survey-module/survey-checker/survey-methodology-compliance-best-practices/>>.

- federal and provincial parliamentarians: estimated 5–7-minute duration for 22 questions (nine were conditional and not shown to all users) about becoming aware of important legal issues; and court system funding and accessing information about what occurs in Canadian courts and about Canadian judges;
- litigants: estimated 7-9-minute duration for 28 questions (six were conditional and not shown to all users) about accessing information about what occurs in Canadian courts and about Canadian judges; and judicial decisions and judicial decision-making.
- legal research, publishing, and analytics companies: estimated 10-12-minute duration for 30 total questions (eight were conditional and not shown to all users) about access to judicial decisions; the structure and content of judicial decisions; access to court data; and primary use for court data; and
- legal information professionals: estimated 8-10-minute duration for 16 questions about metadata (e.g., data that describes the trial or matter & judicial decisions); the structure and content of judicial decisions; and the publication and accessibility of judicial decisions.

The following sections follow the same three-fold format when I examine the data from the 10 survey groups in Group (B):

1. I briefly describe demographics.
2. I describe the blocks of questions each survey group encountered. The actual questions are in the footnotes as are all response rates broken down by numbers of answer and percentage. All survey instruments and full data available online for download from the Open Science Framework and are licensed as Creative Commons CC0.¹²³⁶
3. I summarize each user group response to each block of questions and make applicable comments about the relationship of the response and comments.

Lawyer survey

The lawyer survey asked lawyers three blocks of questions on judicial decisions and judicial decision-making; accessing information about what occurs in Canadian courts and about Canadian judges; keeping up with jurisprudence and preparing for litigation before turning to optional demographic information.

Demographics

Practice region	British Columbia (100), Alberta (86), Ontario (61), Saskatchewan (22), Nova Scotia (18), Manitoba (9), Prince Edward Island (8), Quebec (4), Nunavut (2), New Brunswick (1), Northwest Territories (1), and Newfoundland and Labrador (1). ¹²³⁷
Gender	Male (152), Female (142), Prefer not to say (23), and Non-binary/third gender (2). ¹²³⁸
Age	35-44 (75); 45-54 (69); 55-64 (65); 25-34 (57); 65-74 (42); over 75 (8). ¹²³⁹
Solicitor or litigator	Litigator (216); Both (78); Solicitor (21). ¹²⁴⁰
Years of practice	More than 30% (79); 6-10 (48); 11-15 (48); 0-5 (44); 21-25 (37); 36-30 (31; and 16-20 (30). ¹²⁴¹
Areas of practice	Practice areas were fairly concentrated with top users being criminal, administrative, civil, family, constitutional, and

¹²³⁶ Creative Commons, “CC0”, online: <<https://creativecommons.org/public-domain/cc0/>>.

¹²³⁷ Lawyer Survey Q5.2.

¹²³⁸ Lawyer Survey Q5.3.

¹²³⁹ Lawyer Survey Q5.4.

¹²⁴⁰ Lawyer Survey Q5.5.

¹²⁴¹ Lawyer Survey Q5.7:

	appeal with multiple other specializations also participating. ¹²⁴²
How lawyer got to the survey	Anonymous link (383 lawyers) and social media (49).

Overall, participation was very modest. Had I got broader support from certain organizations (the Canadian Bar association or other larger law societies, like the Law Society of Ontario), I anticipate I could've achieved slightly higher participation levels. That said, generating meaningful data from lawyers about their experience is likely always going to be challenging. For example, during the time I wrote this dissertation, multiple other surveys (both from academics and from other organizations) were also occurring, and lawyers generally aren't incentivized to do the kind of surveys that are desperately needed—either because they think their answers won't lead to change or because of a sheer lack of time.

Judicial decisions and judicial decision-making: decisions are frequently long, slow, and complex—at least for some lawyers

The lawyer survey included 25 questions in this block,¹²⁴³ and survey answers suggest these themes:

¹²⁴² Lawyer Survey Q5.6: Criminal (33.33% or 98 lawyers); Administrative (31.97% or 94 lawyers); Civil procedure (29.25% or 86 lawyers); Family (24.49% or 72 lawyers); Constitutional (18.03% or 53 lawyers); Contract (17.35% or 51 lawyers); Appeal (17.01% or 50 lawyers); Corporate/commercial (16.67% or 49 lawyers); Public Law (15.65% or 46 lawyers); Employment (14.63% or 43 lawyers); Tort (14.63% or 43 lawyers); Regulatory (12.93% or 38 lawyers); Personal Injury (MVA) (11.90% or 35 lawyers); Insurance (11.22% or 33 lawyers); Estate/Trusts (10.88% or 32 lawyers); Human rights (10.20% or 30 lawyers); Aboriginal (9.18% or 27 lawyers); Personal Injury (Any kind of personal injury that is not an MVA) (9.18% or 27 lawyers); Property (7.48% or 22 lawyers); Creditor/debtor (6.46% or 19 lawyers); Class action (5.78% or 17 lawyers); Municipal (5.78% or 17 lawyers); Anything else: (4.76% or 14 lawyers); Insolvency (3.40% or 10 lawyers); Refugee (2.38% or 7 lawyers); Tax (2.38% or 7 lawyers); IP (2.04% or 6 lawyers); Equitable (1.36% or 4 lawyers).

¹²⁴³ Here are the 25 questions:

1. Q2.2. Rank the group(s) you think Canadian judges should try to write for in order of importance. (Drag applicable options into box and into desired order) – *Shown to all lawyers*
2. Q2.3. What should Canadian judges have as goals for their decision-writing? (Pick all applicable options) – *Shown to all lawyers*
3. Q2.4. Do your clients read the judicial decision(s) from their litigation? (Pick one option) – *Shown to all lawyers*
4. Q2.5. Are your judicial decisions in your jurisdiction clear and easy to understand—e.g., for the general public? (Pick one option) – *Shown to all lawyers*
5. Q2.6. What are common problems with clarity? (Pick all applicable options) – *Shown to lawyers who did not say always in the previous question*
6. Q2.7. Are judicial decisions in your jurisdiction an appropriate length—e.g., for the general public? (Pick one option) – *Shown to all lawyers*
7. Q2.8. What are common problems with decision length? (Pick all applicable options) – *Shown to lawyers who did not say always in the previous question*

-
8. Q2.9. Are judicial decisions in your jurisdiction timely—e.g., not too slow? (Pick one option) – *Shown to all lawyers*
 9. Q2.10. What are common problems with the timeliness of decisions? (Pick all applicable options) *Shown to lawyers who did not say always in the previous question*
 10. Q2.11. What do you think is more important to your clients in their legal disputes? (Pick one option) – *Shown to all lawyers*
 - a) A comprehensive decision that explains why the judge decided like they did, but they must wait three to six months for it; or
 - b) A speedy decision with limited or no explanation for the decision, but they only have to wait two weeks or less for it.
 11. Q2.12. What do you think is more important to your clients in their legal disputes? (Pick one option) – *Shown to all lawyers*
 - a) A comprehensive but slower decision—wait time of three to six months—that they can appeal; or
 - b) A speedy decision—wait time of two weeks or less—that they cannot appeal.
 12. Q2.13. Please rank what you think are the most important parts of judicial decisions in your jurisdiction. (Drag applicable options into box and into desired order) – *Shown to all lawyers*
 13. Q2.14. What do you mainly like about judicial decisions in your jurisdiction? (Pick all applicable options) – *Shown to all lawyers*
 14. Q2.15. What do you mainly dislike about judicial decisions in your jurisdiction? (Pick all applicable options) – *Shown to all lawyers*
 15. Q2.16. Do judicial decisions in your jurisdiction contain too much personally identifiable information about parties or witnesses? (Pick one option) – *Shown to all lawyers*
 16. Q2.17. Do you think judicial decisions in your jurisdiction require additional content? (Pick all applicable options) – *Shown to all lawyers*
 17. Q2.18. Do you prefer when judicial decisions in your jurisdiction use the issue-driven structure where applicable facts, arguments, law, and analysis stay together; the fact-driven structure; or similar versions of the structures? (Pick one option) – *Shown to all lawyers*
 18. Q2.19. Why do you prefer the issue-driven structure? (Pick all applicable options) – *Shown to lawyers who said they prefer the issue-driven structure in the previous question*
 19. Q2.20. Why do you prefer the fact-driven structure? (Pick all applicable options) – *Shown to lawyers who said they prefer the fact-driven structure in Q2.18*
 20. Q2.21. Canadian judicial decisions could rely on more standardized structures with headings and sections like these ones:
 - a) introduction/overview: describes what the decision is about;
 - b) issues: describes the legal issues the decision addresses;
 - c) analysis: describes the judge's decision about each legal issue and their analysis of the parties' arguments, applicable facts, and law;
 - d) conclusion: summarizes conclusions;
 - e) order and costs: includes the order and who is responsible for costs.What do you think? (Pick one option) – *Shown to all lawyers*
 21. Q2.22. Canadian judicial decisions could rely on more standardized content such as plain language, standardized legal tests that would be similar to standardized jury instructions. What do you think? (Pick one option) – *Shown to all lawyers*
 22. Q2.23. What practice areas might be amendable to standardized structures or content? (Pick all applicable options) – *Shown to lawyers who did not say no in the previous question*
 23. Q2.24. Do you think judicial independence precludes courts from encouraging judges to rely on the kinds of standardized structures and contents in decisions that I just asked you about? (Pick one option) – *Shown to all lawyers*
 24. Q2.25. Do you think judicial independence precludes governments from encouraging judges to rely on standardized structures and content? (Pick one option) – *Shown to all lawyers*
 25. Q2.26. Why might standardizing structure and content infringe judicial independence? – *Shown to lawyers who didn't say no in the previous question*

- Some lawyers and judges agree about the audience for decisions: most surveyed lawyers agreed that judges should write for the public and all parties over the loser (a common anecdote).¹²⁴⁴
- Some lawyers mostly agree about the goals of decision-writing: most surveyed lawyers said decisions should explain the result in an understandable manner.¹²⁴⁵ Somewhat surprisingly, almost 40% of surveyed lawyers didn't think that judges should be seeking to demonstrate independence and impartiality as a goal.¹²⁴⁶
- Some lawyers think their clients don't read decisions: only 22% of surveyed lawyers said that they think their clients frequently read decisions and only 20% said their clients always read decisions.¹²⁴⁷ So several litigants may never read issued decisions.
- Some lawyers noted some fundamental points about judicial decision-writing that suggest reform and innovation are needed:
 - *clarity:* only 30% of surveyed lawyers said that decisions are frequently clear and easy to understand, and this percentage was consistent across surveyed jurisdictions in Canada.¹²⁴⁸ Over 54% of surveyed lawyers said decisions were too long followed by poorly structured, too many details, not enough context, and unclear headings.¹²⁴⁹
 - *length:* only 28% of surveyed lawyers said that decisions were frequently an appropriate length, and this percentage was consistent across surveyed jurisdictions in Canada.¹²⁵⁰ Over 90% of surveyed lawyers said that decisions are

¹²⁴⁴ Lawyer Survey Q2.2: All parties (95.51% or 404 lawyers); The public (93.62% or 396 lawyers); The court of appeal (75.65% or 320 people); Other judges (74.70% or 316 lawyers); The loser (58.87% or 249 lawyers); Anything else: (6.62% or 28 lawyers).

¹²⁴⁵ Lawyer Survey 2.3: Explain the result to the parties (94.98% or 397 lawyers); Ensure that people can understand the reasons for the decision (90.67% or 379 lawyers); Explain the result to the public (72.25% or 302 lawyers); Demonstrate independence and impartiality (59.81% or 250 lawyers); Explain the law to lawyers (58.61% or 245 lawyers); Educate the public (37.32% or 156 lawyers); Explain the law to other judges (36.60% or 153 lawyers); Cure flaws in decision-making (24.64% or 103 lawyers); Help them make a decision (24.40% or 102 lawyers); Anything else: (11.48% or 48 lawyers).

¹²⁴⁶ Lawyer Survey 2.3: Explain the result to the parties (94.98% or 397 lawyers); Ensure that people can understand the reasons for the decision (90.67% or 379 lawyers); Explain the result to the public (72.25% or 302 lawyers); Demonstrate independence and impartiality (59.81% or 250 lawyers); Explain the law to lawyers (58.61% or 245 lawyers); Educate the public (37.32% or 156 lawyers); Explain the law to other judges (36.60% or 153 lawyers); Cure flaws in decision-making (24.64% or 103 lawyers); Help them make a decision (24.40% or 102 lawyers); Anything else: (11.48% or 48 lawyers).

¹²⁴⁷ Lawyer Survey 2.4 (409 respondents): Sometimes (23.23% or 95 lawyers); Frequently (22.74% or 93 lawyers); Always (20.78% or 85 lawyers); I have no idea (19.80% or 81 lawyers); Seldom (11.98% or 49 lawyers); Never (1.47% or 6 lawyers).

¹²⁴⁸ Lawyer Survey Q2.5: Sometimes (56.48% or 231 lawyers); Frequently (30.07% or 123 lawyers); Seldom (10.27% or 42 lawyers); Always (2.20% or 9 lawyers); Never (0.98% or 4 lawyers).

¹²⁴⁹ Lawyer Survey 2.6: Too long (54.90% or 213 lawyers); Anything else: (41.49% or 161 lawyers); Poorly structured (39.18% or 152 lawyers); Too many details (27.06% or 105 lawyers); Not enough context (27.06% or 105 lawyers); Unclear headings (18.30% or 71 lawyers).

¹²⁵⁰ Lawyer Survey Q2.7: Sometimes (50.37% or 205 lawyers); Frequently (28.01% or 114 lawyers); Seldom (19.16% or 78 lawyers); Always (1.23% or 5 lawyers); Never (1.23% or 5 lawyers).

sometimes and frequently too long. Only 23% of surveyed lawyers said that decisions are sometimes and frequently too short.¹²⁵¹

- *timeliness*: only 25% of surveyed lawyers said that decisions are frequently timely, and this percentage was consistent across surveyed jurisdictions in Canada.¹²⁵² 90% of surveyed lawyers said that decisions tend to be either sometimes too slow or frequently too slow.¹²⁵³
- Comprehensive decisions could matter more than speedy or unappealable decisions for some litigants: most surveyed lawyers predict that their clients value explanation over speed¹²⁵⁴ and decisions they can appeal over speed.¹²⁵⁵
- Some lawyers say the most important point of a decision is the analysis: both surveyed lawyers and surveyed judges seem to agree with the point Chapter 1 stresses.¹²⁵⁶ Somewhat unsurprisingly, almost as many surveyed lawyers said that the factual summary was almost as important as the analysis.¹²⁵⁷ Despite the benefits of an issue-driven model, some lawyers seem still want to see if the judge generally understood the facts—even if the facts aren’t tethered to the law like they would be in an issue-driven format.
- Some lawyers have mixed views on issue driven vs. fact driven decisions with some preferring the fact-driven structure:¹²⁵⁸ surveyed lawyers shared similar views about why each was better (e.g., fact-driven said easier to understand¹²⁵⁹ and issue-driven said the same thing¹²⁶⁰). As Chapter 3’s introduction notes, this tension is pervasive throughout the 2023 Survey. Perhaps certain styles are better for trial courts (fact-driven) versus appeal courts (issue-drive). At their core, trial courts are fact-driven while appeal courts are issue-driven. So perhaps some lawyers’ preference for fact-driven in trial courts

¹²⁵¹ Lawyer Survey Q2.8: Sometimes too long (51.55% or 199 lawyers); Frequently too long (40.67% or 157 lawyers); Sometimes too short (22.02% or 85 lawyers); Anything else: (13.21% or 51 lawyers); Frequently too short 1.81% or 7 lawyers).

¹²⁵² Lawyer Survey Q2.9: Sometimes (45.82% or 181 lawyers); Frequently (25.82% or 102 lawyers); Seldom (23.80% or 94 lawyers); Always (1.52% or 6 lawyers); Never (3.04% or 12 lawyers).

¹²⁵³ Lawyer Survey Q2.10: Sometimes too slow (47.45% or 195 lawyers); Frequently too slow (42.58% or 175 lawyers); Anything else: 8.03% or 33 lawyers; Sometimes too fast (1.95% or 8 lawyers).

¹²⁵⁴ Lawyer Survey Q2.11: Comprehensive decision that explains the result (70.13% or 270 lawyers); Speedy decision with limited or no explanation (29.87% or 115 lawyers).

¹²⁵⁵ Lawyer Survey Q2.12: Comprehensive decision they can appeal (84.25% or 321 lawyers); Speedy decision they cannot appeal (15.75% or 60 lawyers).

¹²⁵⁶ Lawyer Survey Q2.12: Analysis (96.48% or 356 lawyers); Factual summary (88.35% or 326 lawyers); Conclusion (82.93% or 306 lawyers); Summary of parties’ legal arguments (72.09% or 266 lawyers); Order (67.75% or 250 lawyers); Overview (58.54% or 216 lawyers); Introduction (43.36% or 160 lawyers); Anything else: (1.90% or 7 lawyers).

¹²⁵⁷ Lawyer Survey Q2.12: Analysis (96.48% or 356 lawyers); Factual summary (88.35% or 326 lawyers); Conclusion (82.93% or 306 lawyers); Summary of parties’ legal arguments (72.09% or 266 lawyers); Order (67.75% or 250 lawyers); Overview (58.54% or 216 lawyers); Introduction (43.36% or 160 lawyers); Anything else: (1.90% or 7 lawyers).

¹²⁵⁸ Lawyer Survey Q2.18: Fact-driven structure or similar (55.81% or 197 lawyers); Issue-driven structure or similar (44.19% or 156 lawyers).

¹²⁵⁹ Lawyer Survey Q2.20: Easy to see if judge grasped issues, evidence, and arguments (72.59% or 143 lawyers); Easier to understand (69.54% or 137 lawyers); Anything else: (18.27% or 36 lawyers); Shorter (5.58% or 1 lawyer).

¹²⁶⁰ Lawyer Survey Q2.20: Easy to see if judge grasped issues, evidence, and arguments (72.59% or 143 lawyers); Easier to understand (69.54% or 137 lawyers); Anything else: (18.27% or 36 lawyers); Shorter (5.58% or 1 lawyer).

versus issue-driven in appeal courts reflects the reality of what these courts do. Perhaps part of the reason that fact-driven trials and decisions persist is because lawyers prefer that structure¹²⁶¹ or perhaps lawyers don't even know the deep issue until the trial is over and their argument is complete (like Chapter 1 discusses with judges).

- Some lawyers seem to think standardization of content and structure is possible: only 12% of surveyed lawyers said structure couldn't be standardized¹²⁶² and only 23% said content couldn't.¹²⁶³ At least one lawyer expressed extreme skepticism about content: "This suggestion is hilarious. Appellate courts cannot clearly describe much Canadian law and process, but instead use vague language. Good luck standardizing legal boilerplate. Start with defining judicial review standards of review. The truth is that boilerplate jury instructions are mantras more often than something useful."¹²⁶⁴ Surveyed lawyers didn't demonstrate any great agreement on what could be standardized, but civil procedure, family law, and administrative law were top contenders.¹²⁶⁵ Surveyed lawyers did demonstrate consensus on the desire for more predictability with clear, consistent structures (over content); the idea that standardization could "constrain" thinking and creativity; and the idea that governments largely shouldn't be involved in the standardizing.¹²⁶⁶ Some of that consensus is curious as governments are involved in standard statutory tests in statutes and how much structure dictates content.
- Like some judges, some lawyers have some hesitation about who encourages the standardizing: surveyed lawyers' answers were diffuse with a portion saying judges can choose and courts could encourage, but no one could force judges.¹²⁶⁷

¹²⁶¹ See some of the open-text comments in Lawyer Survey Q2.20: Easy to see if judge grasped issues, evidence, and arguments (72.59% or 143 lawyers); Easier to understand (69.54% or 137 lawyers); Anything else: (18.27% or 36 lawyers); Shorter (5.58% or 1 lawyer).

¹²⁶² Lawyer Survey Q2.21: Possibly. I would have to see the standardized structure (41.95% or 146 lawyers); Yes. Unless the standardization was poor, structures could be standardized (31.61% or 110 lawyers); Anything else: 14.08% or 49; No. Structures could not be standardized (12.36% or 43 lawyers).

¹²⁶³ Lawyer Survey Q2.22: Possibly. I would have to see the standardized content (40.23% or 140 lawyers); Yes. Unless the standardization was poor, content could be standardized (25.57% or 89 lawyers); No. Content could not be standardized (22.99% or 80 lawyers); Anything else: (11.21% or 39 lawyers).

¹²⁶⁴ Lawyer Survey Q2.22: Possibly. I would have to see the standardized content (40.23% or 140 lawyers); Yes. Unless the standardization was poor, content could be standardized (25.57% or 89 lawyers); No. Content could not be standardized (22.99% or 80 lawyers); Anything else: (11.21% or 39 lawyers).

¹²⁶⁵ Lawyer Survey Q2.23: All (29.53% or 88 lawyers); Civil procedure (29.19% or 87 lawyers); Family (25.50% or 76 lawyers); Administrative (22.82% or 68 lawyers); Contract (19.80% or 59 lawyers); Employment (19.46% or 58 lawyers); Personal Injury (MVA) (19.46% or 58 lawyers); Criminal (18.46% or 55 lawyers); Creditor/debtor 16.78% or 50 lawyers; Personal Injury (Any kind of personal injury that is not an MVA) (16.78% or 50 lawyers); Appeal 15.77% or 47 lawyers; Insolvency 14.77% or 44 lawyers; Tort (14.77% or 44 lawyers); Tax (14.77% or 44 lawyers); Regulatory (14.43% or 43 lawyers); Corporate/commercial (12.75% or 38 lawyers); Insurance (12.75% or 38 lawyers); Anything else: 12.75% or 38 lawyers; Class action (12.08% or 36 lawyers); Human rights (11.41% or 34 lawyers); None (10.40% or 31 lawyers); Constitutional (10.40% or 31 lawyers); Estate/Trusts (10.40% or 31 lawyers); Property (10.40% or 31 lawyers); Refugee (8.72% or 26 lawyers); Municipal (7.05% or 21 lawyers); IP (4.36% or 13 lawyers); Aboriginal (3.69% or 11); Public (3.69% or 11 lawyers); Equitable (1.34% or 4 lawyers)

¹²⁶⁶ Lawyer Survey Q2.26.

¹²⁶⁷ Lawyer Survey Q2.24: Possibly. Standardizing structure, content, or both could be explored (35.09% or 120 lawyers); No. Structure and content could be standardized. It could improve the rule of law (27.19% or 93 lawyers); Yes. While judges can choose to standardize, no one could pressure them to do it (26.02% or 89 lawyers); Yes. Standardizing structure and content could affect judicial independence or impartiality (11.70% or 40 lawyers).

- Some lawyers agreed that general standardization wouldn't affect judicial independence and impartiality, but concerns exist:¹²⁶⁸ as Chapter 1 notes, judicial independence and impartiality mainly protect the analysis, not the content and structure of an entire decision. So the 2023 Survey consensus—at least between lawyers and judges—is consistent with my conclusion. 198 lawyers also provided open-text responses when prompted again about why standardizing might infringe judicial independence. A general theme was that any standardization should be judiciary-owned, optional, and deviation-friendly.¹²⁶⁹ Of course, deviations would make things less standard, but at the very least, courts could run pilots on issues like family law, civil procedure, bail, or other routine matters as a way of “specializing” those decisions.
- Universal design for decisions might be a myth for some lawyers: Chapters 1-2 argues that some kind of standardization might help judges improve their reasoning and everyone's user experience. But as the data maybe suggesting, the question of which format is preferred or truly easier to understand is likely an empirical one alongside a preferential one—e.g., not everyone likes the same kinds of music. One lawyer said that some formats work best in certain environments: “Your comparisons are not great - one is an appeal court analysis, and the other is a lower court's analysis. I prefer issue driven decisions. I don't want to read about the lame arguments presented.”¹²⁷⁰ Or another made a similar statement about how structure: “I would prefer fact-driven if the judge used effective subheadings to make clear where they are analyzing the individual issues within the fact-driven structure, but if it's just going to be a large mass of text, then I prefer issue-driven. It's helpful to be able to jump to a certain point of a case to find exactly what you want.”¹²⁷¹ As I discuss with other users, some formats might be “better” for some users while other formats are less preferable.

Accessing information about what occurs in Canadian courts and about Canadian judges: it's not that easy for some lawyers—better data about courts and judges is needed

The lawyer survey included six questions in this block,¹²⁷² and survey answers suggest these themes:

¹²⁶⁸ Lawyer Survey Q2.24: Possibly. Standardizing structure, content, or both could be explored (35.09% or 120 lawyers); No. Structure and content could be standardized. It could improve the rule of law (27.19% or 93 lawyers); Yes. While judges can choose to standardize, no one could pressure them to do it (26.02% or 89 lawyers); Yes. Standardizing structure and content could affect judicial independence or impartiality (11.70% or 40 lawyers)

¹²⁶⁹ Lawyer Survey Q2.26.

¹²⁷⁰ Lawyer Survey Q2.26.

¹²⁷¹ Lawyer Survey Q2.26.

¹²⁷² Here are the six questions:

1. Q3.2. Is your confidence in courts and judges in your jurisdiction related to transparency—e.g., more transparency, more confidence; less transparency, less confidence? (Pick one option) – *Shown to all lawyers*
2. Q3.3. Is information about what occurs in courts in your jurisdiction easy to access—e.g., the average wait time for decisions, information about court processes, etc.? (Pick one option) – *Shown to all lawyers*

- Transparency seems important to some lawyers' confidence in courts; this survey data could be consistent with some of the ideas that Chapter 2 discusses,¹²⁷³ especially when paired with other users of the legal system like journalists. As discussed immediately below, many surveyed lawyers agree about things they want to know more about from courts and judges.
- Information about what occurs in some courts isn't frequently accessible for some lawyers:¹²⁷⁴ many surveyed lawyers want more or better information on court processes and on court processes, including performance data; more plain language writing in and plain language summaries of judicial decisions; non-party and media electronic access to court files; and more access to judicial decisions—amongst others.¹²⁷⁵
- Information about some judges isn't easy to access for some lawyers: only 8% of surveyed lawyers said information is always easy to access.¹²⁷⁶ Many surveyed lawyers wanted more and better information about how judges are trained, and a number wanted more information about judges writing and decision-making processes and better biographical and demographic information on judges.¹²⁷⁷

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3. Q3.4. How could courts in your jurisdiction improve their information sharing? (Pick all applicable options) – *Shown to all lawyers*
 4. Q3.5. Is information about judges in your jurisdiction easy to access—e.g., judges' biographical and demographic information, etc.? (Pick one option) – *Shown to all lawyers*
 5. Q3.6. How could information sharing about judges in your jurisdiction be improved? (Pick all applicable options) – *Shown to all lawyers*
 6. Q3.7. Periodically, Canadian judges could anonymously track two things for research, reform, or remuneration purposes:
 - a. their working hours for 3-5 days, including tracking time spent hearing cases, writing decisions, reviewing evidence, reading submissions, reading cases, etc.; and
 - b. the time it takes to write one criminal or civil decision, including tracking time spent drafting, editing, research, etc. What do you think? (Pick one option) – *Shown to all lawyers*

¹²⁷³ Lawyer Survey Q3.2: Yes (54.22% or 180 lawyers); Maybe (21.08% or 70 lawyers); No (18.07% or 60 lawyers); Anything else: (6.63% or 22 lawyers).

¹²⁷⁴ Lawyer Survey Q3.3: Seldom (29.22% or 97 lawyers); Sometimes (26.20% or 87 lawyers); Frequently (19.28% or 64 lawyers); I do not know (12.65% or 42 lawyers); Never (10.84% or 36 lawyers); Always (1.81% or 6).

¹²⁷⁵ Lawyer Survey Q3.4: More or better information on court processes (64.17% or 206 lawyers); More or better data on court processes, including performance data (57.63% or 185 lawyers); More plain language writing in judicial decisions (52.96% or 170 lawyers); More plain language summaries of judicial decisions (45.48% or 146 lawyers); Non-party and media access to court files (electronically) (42.06% or 135 lawyers); More access to judicial decisions (39.25% or 126 lawyers); More or better data on judges and their decisions (31.15% or 100 lawyers); More online hearings (30.84% or 99 lawyers); More or better information on judges and their decisions (28.04% or 90 lawyers); More annual reports (20.25% or 65 lawyers); Non-party and media access to court files (in person) (17.13% or 55 lawyers); Anything else: (14.95% or 48 lawyers).

¹²⁷⁶ Lawyer Survey Q3.5: Seldom (27.66% or 91 lawyers); Sometimes (22.80% or 75 lawyers); I do not know (19.76% or 65 lawyers); Frequently (11.85% or 39 lawyers); Never (9.42% or 31); Always (8.51% or 28 lawyers).

¹²⁷⁷ Lawyer Survey Q3.6: More or better information about how judges are trained (68.44% or 206 lawyers). More or better information about judges' writing and decision-making processes (38.87% or 117 lawyers); More or better biographical and demographic information on judges (38.21% or 115 lawyers); More or better biographical and demographic information on the individuals who apply to become judges (26.91% or 81 lawyers); Anything else: (22.26% or 67 lawyers); More or better information about judges' preferences—e.g., many American judges have webpages that provide transparent information on judges and judges' preferences (15.61% or 47 lawyers).

- Some lawyers think that judges tracking their time is something that courts could examine: only 25% of surveyed lawyers outright said no.¹²⁷⁸

Keeping up with jurisprudence and preparing for litigation: reviewing decisions from a lawyers' jurisdiction is a primary way to keep up, but most lawyers want help

The lawyer survey included eight questions in this block,¹²⁷⁹ and survey answers suggest these themes:

- Some lawyers mostly review decisions from their jurisdiction to keep up with jurisprudence: but just as many surveyed lawyers keep up with jurisprudence by chatting with their colleagues.¹²⁸⁰ Surveyed lawyers' habits in keeping up with applicable law are somewhat like surveyed judges (of course, this habit could vary between litigators and other kinds of lawyers who don't regularly review case law). Most of surveyed lawyers do interact with decisions on a somewhat regular basis—only 21 solicitors took the survey at least as revealed in the demographics data.¹²⁸¹
- Some lawyers mostly don't read cases versus skimming and reading: only 12% of surveyed lawyers said they fully read cases where most surveyed lawyers mix skimming and reading.¹²⁸²

¹²⁷⁸ Lawyer Survey Q3.7: Yes. Judges should periodically track this information (42.11% or 136 lawyers); Maybe. Judges could periodically track this information (34.37% or 111 lawyers); No. Judges should not periodically track this information (23.53% or 76 lawyers).

¹²⁷⁹ Here are the eight questions:

1. Q4.2. How do you keep up with jurisprudence? (Pick all applicable options) – *Shown to all lawyers*
2. Q4.3. What kinds of Canadian judicial decisions do you mostly interact with? (Drag applicable options into box and into desired order) – *Shown to all lawyers*
3. Q4.4. Do you mostly skim or read Canadian judicial decisions? (Pick one option) – *Shown to all lawyers*
4. Q4.5. How do you determine which judicial decisions are most applicable to your case? (Pick all applicable options) – *Shown to all lawyers*
5. Q4.6. How often do unique factual issues arise in hearings, trials, or appeals—e.g., neither myself nor my colleagues have ever heard a case with facts like this one? (Pick one option) – *Shown to all lawyers*
6. Q4.7. Would you like tools that indicate what facts are relevant and material in hearings, trials, and appeals—e.g., based on subject matter, a list of the facts that judges typically must find or resolve and the kinds of evidence for such facts? (Pick one option) – *Shown to all lawyers*
7. Q4.8. How often do novel legal issues arise in hearings, trials, and appeals—e.g., neither myself nor my colleagues have ever heard a case with legal issues like this one? (Pick one option) – *Shown to all lawyers*
8. Q4.9. Would you like tools that indicate what legal decisions, legislation, and principles are most applicable in hearings, trials, and appeals—e.g., based on subject matter, a list of five key cases and a set of legal principles? (Pick one option) – *Shown to all lawyers*

¹²⁸⁰ Lawyer Survey Q4.2: Review decisions from my jurisdiction (84.57% or 274 lawyers); Conversations with other lawyers (82.10% or 266 lawyers); Review decisions from other jurisdictions, including the SCC (81.48% or 264 lawyers); Attend community legal education in my province (75.00% or 243 lawyers); Legal newsletters—e.g., JD Supra, OBA, TLA, Lexbox, Lexology, Ontario Reports, Insolvency Insider, etc. (68.52% or 222 lawyers); Attend community legal education outside my province (22.53% or 73 lawyers); Twitter (16.98% or 55 lawyers); Anything else: (15.74% or 51 lawyers); I do not (1.23% or 4 lawyers)

¹²⁸¹ Lawyer Survey Q5.5.

¹²⁸² Lawyer Survey Q4.4: Mix of skimming and reading (66.46% or 214 lawyers); Mostly skim (21.12% or 68 lawyers); Mostly read (12.42% or 40 lawyers).

- Like some judges, some lawyers mostly said that novel factual and legal issues don't regularly arise: in contrast to many surveyed judges, most surveyed lawyers said they'd like tools to help them know what facts are relevant and material, and like some judges, most lawyers said they'd like tools to guide them in what law is most applicable to their matters.¹²⁸³ This sentiment is perhaps more about the current reality of the fact driven-process or "defensive litigation", an idea that Dr. Sean Rehaag and I have discussed elsewhere (in short, "Like doctors who order too many medical tests [commonly known as defensive medicine], lawyers often include far more evidence than necessary. In many disputes, lawyers seem to be throwing everything but the kitchen sink at the courts."¹²⁸⁴

Academic survey

The academic survey asked academics three blocks of questions about teaching people to read judicial decisions; accessing information about what occurs in Canadian courts and about Canadian judges; and judicial decision and decision-making before turning to optional demographic information.

Demographics

Location	Most surveyed academics were in Ontario with representation from most other provinces: Ontario (62); British Columbia (14); Alberta (9); Quebec (5); Saskatchewan (3); Nova Scotia (3); Manitoba (2); New Brunswick (2). ¹²⁸⁵
Gender	Surveyed academics identified with multiple genders: Male (52); female (38); prefer not to say (8). ¹²⁸⁶
Age	Surveyed academics represented multiple age groups with most academics being above 35: 35 – 44 (29); 55 – 64 (26); 45 – 54 (21); 65 – 74 (12); 25 – 34 (5); Over 75 (2 academics). ¹²⁸⁷
Status	Most surveyed academics were either an assistant/associate professor or full professor: Assistant or associate professor

¹²⁸³ Lawyer Survey Q4.7: Maybe. Such tools might be nice to have or experiment with (58.62% or 187 lawyers); No. I have the tools I need (22.57% or 72 lawyers); Yes (18.81% or 60 lawyers); Lawyer's Survey Q.4.9: Maybe. Such tools might be nice to have or experiment with (57.99% or 185 lawyers); Yes. (27.59% or 88 lawyers); No. I have the tools I need (14.42% or 46 lawyers).

¹²⁸⁴ Khan & Rehaag, *supra* note 129 at 388.

¹²⁸⁵ Academic Survey 5.2: Ontario (62.00% or 62 academics); British Columbia (14.00% or 14 academics); Alberta (9.00% or 9 academics); Quebec (5.00% or 5 academics); Saskatchewan (3.00% or 3 academics); Nova Scotia (3.00% or 3 academics); Manitoba (2.00% or 2 academics); New Brunswick (2.00% or 2 academics).

¹²⁸⁶ Academic Survey Q5.3: Male (53.06% or 52 academics); Female (38.78% or 38 academics); Prefer not to say (8.16% or 8 academics).

¹²⁸⁷ Academic Survey Q5.4: 35 – 44 (30.53% or 29 academics); 55 – 64 (27.37% or 26 academics); 45 – 54 (22.11% or 21 academics); 65 – 74 (12.63% or 12 academics); 25 – 34 (5.26% or 5 academics); Over 75 (2.11% or 2 academics).

	(45); Full professor (24); Adjunct instructor (19); Sessional instructor (7). ¹²⁸⁸
Litigation experience	Many surveyed academics had some kind of litigation experience—either personally or professionally: 0-5 years (37); No (24); 6-10 years (13); 16-20 years (8); More than 30 years (8); 11-15 years (4); 21-25 years (3 academics); 26-30 years (1). ¹²⁸⁹
Law degree	All surveyed academics who provided demographic information had a law degree. ¹²⁹⁰
Areas of expertise	Surveyed academics experience was somewhat concentrated but also diffuse. ¹²⁹¹

Getting legal academics' participation was more difficult than I predicted. But my own advisor told me he frequently gets requests for surveys, so survey fatigue is a real thing. As Chapter 4 discusses in more depth, however, law schools need to do far more to generate data about the experience of academics in their schools:

- Ontario has the most law schools, so that most participants came from Ontario is unsurprising; and
- participation by age, gender, and role was balanced.

Teaching people to read judicial decisions: it's not very easy for some academics

The academic survey included three questions in this block,¹²⁹² and survey answers suggest these themes:

¹²⁸⁸ Academic Survey Q5.5: Assistant or associate professor (45.92% or 45 academics); Full professor (24.49% or 24 academics); Adjunct instructor (19.39% or 19 academics); Sessional instructor (7.14% or 7 academics); Anything else: (3.06% or 3 academics).

¹²⁸⁹ Academic Survey Q5.6: 0-5 years (37.76% or 37 academics); No (24.49% or 24 academics); 6-10 years (13.27% or 13 academics); 16-20 years (8.16% or 8 academics); More than 30 years (8.16% or 8 academics); 11-15 years 4.08% or 4 academics); 21-25 years (3.06% or 3 academics); 26-30 years (1.02% or 1 academic).

¹²⁹⁰ Academic Survey Q5.7 (100% or 101 academics).

¹²⁹¹ Academic Survey Q5.8: Administrative (28.57% or 24 academics); Civil procedure (27.38% or 23 academics); Contract (26.19% or 22 academics); Constitutional (25.00% or 21 academics); Corporate/commercial (20.24% or 17 academics); Human rights (16.67% or 14 academics); Public Law (16.67% or 14 academics); Tort (16.67% or 14 academics); Criminal (15.48% or 13 academics); Aboriginal (13.10% or 11 academics); Appeal (11.90% or 10 academics); Regulatory (10.71% or 9 academics); Employment (9.52% or 8 academics); Class action (8.33% or 7 academics); Creditor/debtor (7.14% or 6 academics); Estate/Trusts (7.14% or 6 academics); Family (7.14% or 6 academics); Equitable (5.95% or 5 academics); Insurance (5.95% or 5 academics); IP (5.95% or 5 academics); Personal Injury (MVA) (5.95% or 5 academics); Property (5.95% or 5 academics); Tax (5.95% or 5 academics); Insolvency (4.76% or 4 academics); Personal Injury (Any kind of personal injury that is not an MVA) (4.76% or 4 academics); Anything else: (2.38% or 2 academics); Municipal (1.19% or 1 academics).

¹²⁹² Here are the three questions:

- Teaching educated individuals to read judicial decisions isn't easy for some academics: Only 5% of surveyed academics said it was easy to teach people to read judicial decisions, and only 22% said it was neither easy nor difficult.¹²⁹³
- Decision length and general content are barriers to comprehension for some academics teaching educated individuals to read decisions: most surveyed academics focused on length.¹²⁹⁴ Most assigned decisions were SCC decisions followed by appellate decisions. Few surveyed academics assign trial decisions.¹²⁹⁵

Accessing information about what occurs in Canadian courts and about Canadian judges: some academics need improved access about courts and judges

The academic survey included five questions in this block,¹²⁹⁶ and survey answers suggest these themes:

1. Q2.2. Rank the kinds of Canadian judicial decisions you mostly assign to students. (Drag applicable options into box and into desired order) – *Shown to all academics*
2. Q2.3. Is teaching people to read and understand Canadian judicial decisions difficult? (Pick one option) – *Shown to all academics*
3. Q2.4. What challenges do you face teaching people to read and understand Canadian judicial decisions? (Pick all applicable options) – *Shown to all academics*

¹²⁹³ Academic Survey Q2.3: It is somewhat difficult (54.13% or 59 academics); It is neither easy nor difficult (22.94% or 25 academics); It is difficult (18.35% or 20 academics); It is easy (4.59% or 5 academics).

¹²⁹⁴ Academic Survey Q2.4: Decision length (70.34% or 83 academics); Decision content (48.31% or 57 academics); Decision structure (29.66% or 35 academics); Legal jargon and legalese in decisions (53.39% or 63 academics); Unnecessary information in decisions (25.42% or 30 academics); Writing quality in decisions (30.51% or 36 academics); Anything else: (33.90% or 40 academics).

¹²⁹⁵ Academic Survey Q2.2: Supreme Court of Canada decisions (91.60% or 109 academics); Appellate decisions from my jurisdiction (77.31% or 92 academics); Trial decisions from my jurisdiction (63.03% or 75 academics); Appellate decisions outside my jurisdiction (63.03% or 75 academics); Decisions that are included in textbooks (55.46% or 66 academics); Trial decisions outside my jurisdiction (36.13% or 43 academics); Federal Court decisions (25.21% or 30 academics); Anything else: (5.04% or 6 academics); I do not assign decisions (4.20% or 5 academics).

¹²⁹⁶ Here are the five questions:

1. Q3.2. Is information about what occurs in courts in your jurisdiction easy to access—e.g., the average wait time for decisions, information about court processes, etc.? (Pick one option) – *Shown to all academics*
2. Q3.3. How could courts in your jurisdiction improve their information sharing? (Pick all applicable options) – *Shown to all academics*
3. Q3.4. Is information about judges in your jurisdiction easy to access—e.g., judges' biographical and demographic information, etc.? (Pick one option) – *Shown to all academics*
4. Q3.5. How could information sharing about judges in your jurisdiction be improved? (Pick all applicable options) – *Shown to all academics*
5. Q3.6. Periodically, Canadian judges could anonymously track two things for research, reform, or remuneration purposes:
 - a) their working hours for 3-5 days, including tracking time spent hearing cases, writing decisions, reviewing evidence, reading submissions, reading cases, etc.; and
 - b) the time it takes to write one criminal or civil decision, including tracking time spent drafting, editing, research, etc.

What do you think? (Pick one option) – *Shown to all academics*

- Information about what occurs in courts and judges is only sometimes easy to access for some academics: some surveyed academics might not actually be accessing information about courts. Regardless, few academics said it's always easy to access.¹²⁹⁷ Like lawyers, academics want more and better information on court processes; electronic non-party and media access to files; and judges' biographical and demographic information as well as how judges are trained.¹²⁹⁸
- Some academics also think that judges could periodically anonymously track their time: Only 23% of surveyed academics outright said no.¹²⁹⁹

Judicial decisions & judicial decision-making: decisions are frequently too long, complex, and slow for some academics

The academic survey included twenty-two questions in this block,¹³⁰⁰ and survey answers suggest these themes:

¹²⁹⁷ Academic Survey Q3.2: Frequently (27.97% or 33 academics); I do not know (24.58% or 29 academics); Sometimes (20.34% or 24 academics); Seldom (13.56% or 16 academics); Never (6.78% or 8 academics); Always (6.78% or 8 academics); Academic Survey Q3.5: More or better biographical and demographic information on judges (50.51% or 50 academics); More or better information about how judges are trained (45.45% or 45 academics); More or better biographical and demographic information on the individuals who apply to become judges (33.33% or 33 academics); More or better information about judges' writing and decision-making processes (29.29% or 29 academics); Anything else: (28.28% or 28 academics); More or better information about judges' preferences—e.g., many American judges have webpages that provide transparent information on judges and judges' preferences (16.16% or 16 academics); Academic Survey Q3.5: More or better biographical and demographic information on judges (50.51% or 50 academics); More or better information about how judges are trained (45.45% or 45 academics); More or better biographical and demographic information on the individuals who apply to become judges (33.33% or 33 academics); More or better information about judges' writing and decision-making processes (29.29% or 29 academics); Anything else: (28.28% or 28 academics); More or better information about judges' preferences—e.g., many American judges have webpages that provide transparent information on judges and judges' preferences (16.16% or 16 academics).

¹²⁹⁸ Academic Survey Q3.3: More or better information on court processes (49.53% or 53 academics); Non-party and media access to court files (electronically) (46.73% or 50 academics); More plain language summaries of judicial decisions (42.99% or 46 academics); More or better data on court processes, including performance data 39.25% 42 academics); More plain language writing in judicial decisions (38.32% or 41 academics); More access to judicial decisions (30.84% or 33 academics); More online hearings (21.50% or 23 academics); More annual reports (21.50% or 23 academics); Anything else: (21.50% or 23 academics); More or better data on judges and their decisions (14.95% or 16 academics); More or better information on judges and their decisions (14.95% or 16 academics); Non-party and media access to court files (in person) (9.35% or 10 academics).

¹²⁹⁹ Academic Survey Q3.6: Maybe. Judges could periodically track this information (44.04% or 48 academics); Yes. Judges should periodically track this information (32.11% or 35 academics); No. Judges should not periodically track this information (23.85% or 26 academics).

¹³⁰⁰ Here are the 22 questions:

1. Q4.2. Rank the group(s) you think Canadian judges should try to write for in order of importance. (Drag applicable options into box and into desired order) – *Shown to all academics*
2. Q4.3. What should Canadian judges have as goals for their decision-writing? (Pick all applicable options) – *Shown to all academics*
3. Q4.4. Rank what you think are the most important parts of Canadian judicial decisions. (Drag applicable options into box and into desired order) – *Shown to all academics*

- Some academics think judges should write for all parties: most surveyed academics also said the public and less than half said the loser.¹³⁰¹

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4. Q4.5. Are judicial decisions in your jurisdiction clear and easy to understand—e.g., for the general public? (Pick one option) – *Shown to all academics*
 5. Q4.6. What are common problems with clarity? (Pick all applicable options) – *Shown to academics who didn't say always in the previous question*
 6. Q4.7. Are judicial decisions in your jurisdiction an appropriate length—e.g., not too long for the general public? (Pick one option) – *Shown to all academics*
 7. Q4.8. What are common problems with decision length? (Pick all applicable options) – *Shown to academics who didn't say always in the previous question*
 8. Q4.9. Are judicial decisions in your jurisdiction timely—e.g., not too slow? (Pick one option) – *Shown to all academics*
 9. Q4.10. What are common problems with the timeliness of decisions? (Pick all applicable options) – *Shown to academics who didn't say always in the previous question*
 10. Q4.11. What do you mainly like about judicial decisions in your jurisdiction? (Pick all applicable options) – *Shown to all academics*
 11. Q4.12. What do you mainly dislike about judicial decisions in your jurisdiction? (Pick all applicable options) – *Shown to academics who didn't say always in the previous question*
 12. Q4.13. Do judicial decisions in your jurisdiction contain too much personally identifiable information about parties or witnesses? (Pick one option) – *Shown to academics who didn't say always in the previous question*
 13. Q4.14. Do you think judicial decisions in your jurisdiction require additional content? (Pick all applicable options) – *Shown to all academics*
 14. Q4.15. Do you prefer when judicial decisions in your jurisdiction use the issue-driven structure where applicable facts, arguments, law, and analysis stay together; the fact-driven structure; or similar versions of the structures? (Pick one option) – *Shown to all academics*
 15. Q4.16. Why do you prefer the issue-driven structure? (Pick all applicable options) – *Shown academics who said they prefer the issue-driven structure in the previous question*
 16. Q4.17. Why do you prefer the fact-driven structure? (Pick all applicable options) – *Shown to academics who didn't say said they prefer the fact driven structure in question 14*
 17. Q4.18. Canadian judicial decisions could rely on more standardized structures with headings and sections like these ones:
 - a) introduction/overview: describes what the decision is about;
 - b) issues: describes the legal issues the decision addresses;
 - c) analysis: describes the judge's decision about each legal issue and their analysis of the parties' arguments, applicable facts, and law;
 - d) conclusion: summarizes conclusions;
 - e) order and costs: includes the order and who is responsible for costs.
 What do you think? (Pick one option) – *Shown to all academics*
 18. Q4.19. Canadian judicial decisions could rely on more standardized content such as plain language, standardized legal tests that would be similar to standardized jury instructions. What do you think? (Pick one option) – *Shown to all academics*
 19. Q4.20. What practice areas might be most amendable to standardized structures or content? (Pick all applicable options) – *Shown to academics who didn't say no in the previous question*
 20. Q4.21. Do you think judicial independence precludes courts from encouraging Canadian judges to rely on the kinds of standardized structures and contents in decisions that I just asked you about? (Pick one option) – *Shown to all academics*
 21. Q4.22. Do you think judicial independence precludes governments from encouraging Canadian judges to rely on standardized structures and content? (Pick one option) – *Shown to all academics*
 22. Q4.23. Why might standardizing structure and content infringe judicial independence? (Pick one option) – *Shown to academics who didn't say no in the previous question*

¹³⁰¹ Academic Survey Q4.2: All parties (99.07% or 107 academics); The public (89.81% or 97 academics); The court of appeal (61.11% or 66 academics); The loser (41.67% or 45 academics); Other judges (66.67% or 72 academics); Anything else: (2.78% or 3 academics).

- Some academics think that judges' main goal in writing decisions should be explaining the result to the parties: many surveyed academics also said ensuring people can understand the decision and explaining the result to the public generally as well as demonstrating independence and impartiality.¹³⁰²
- Analysis is the most important part of decisions for some academics: many surveyed academics also said summaries of the facts and legal arguments.¹³⁰³
- Like some lawyers, some academics also noted some fundamental points about judicial decision-writing that suggest reform and innovation are needed:
 - *clarity*: only 22% of surveyed academics said decisions were frequently clear and easy to understand in their jurisdiction.¹³⁰⁴ Length is a key driver of complexity,¹³⁰⁵
 - *length*: only 16% of surveyed academics said decisions were frequently the right length¹³⁰⁶ and that they're almost always too long,¹³⁰⁷
 - *timeliness*: only 20% of surveyed academics said decisions are frequently timely¹³⁰⁸ with most decisions being too slow.¹³⁰⁹

¹³⁰² Academic Survey Q4.3: Explain the result to the parties (92.73% or 102 academics); Ensure that people can understand the reasons for the decision (85.45% or 94 academics); Explain the result to the public (76.36% or 84 academics); Demonstrate independence and impartiality (70.00% or 77 academics); Explain the law to lawyers (57.27% or 63 academics); Explain the law to other judges (42.73% or 47 academics); Educate the public (38.18% or 42 academics); Help them make a decision (37.27% or 41 academics); Cure flaws in decision-making (26.36% or 29 academics); Anything else: (9.09% or 10 academics).

¹³⁰³ Academic Survey Q4.4: Analysis (99.03% or 102 academics); Factual summary 75.73% or 78 academics); Summary of parties' legal arguments (71.84% or 74 academics); Conclusion (66.99% or 69 academics); Overview (56.31% or 58 academics); Order (54.37% or 56 academics); Introduction (37.86% or 39 academics); Anything else: (1.94% or 2 academics).

¹³⁰⁴ Academic Survey Q4.5: Sometimes (60.55% or 66 academics); Frequently (22.02% or 24 academics). Seldom (15.60% or 17 academics); Always (0.92% or 1 academic); Never (0.92% or 1 academic).

¹³⁰⁵ Academic Survey Q4.6: Too long (60.19% or 62 academics); Poorly structured (38.83% or 40 academics); Too many details (35.92% or 37 academics); Anything else: (34.95% or 36 academics); Not enough context (20.39% or 21 academics); Unclear headings (18.45% or 19 academics).

¹³⁰⁶ Academic Survey Q4.7: Sometimes (50.00% or 54 academics); Seldom (20.37% or 22 academics); Frequently (16.67% or 18 academics); I do not know (10.19% or 11 academics); Never (1.85% or 2 academics); Always (0.93% or 1 academic).

¹³⁰⁷ Academic Survey Q4.8: Sometimes too long (48.51% or 49 academics); Frequently too long (23.76% or 24 academics); Anything else: (13.86% or 14 academics); Sometimes too short (11.88% or 12 academics); Frequently too short (1.98% or 2 academics); see also Academic Survey Q4.12 where academics noted what they mostly dislike about decisions in their jurisdiction: Length (62.50% or 60 academics).

¹³⁰⁷ Academic Survey Q4.13: Seldom (41.84% or 41 academics); Sometimes (21.43% or 21 academics); Anything else (17.35% or 17 academics); Never (14.29% or 14 academics); Frequently (5.10% or 5 academics).

¹³⁰⁸ Academic Survey Q4.9: Sometimes (67.31% or 70 academics); Frequently (19.23% or 20 academics); Seldom (13.46% or 14 academics).

¹³⁰⁹ Academic Survey Q4.10: Sometimes too slow (54.29% or 57 academics); Frequently too slow (34.29% or 36 academics); Anything else: (9.52% or 10 academics).

- Like some lawyers, some academics have mixed views about their preference for issue-driven and fact-driven:¹³¹⁰ surveyed academics also made similar comments to lawyers about certain styles being appropriate for certain courts.¹³¹¹
- Some academics think decisions' content and structure could be standardized:¹³¹² few surveyed academics said that standardizing structure and content could generally affect judicial independence and impartiality.¹³¹³ Some surveyed academics did have more concerns about content.¹³¹⁴ Like surveyed lawyers, 35 academics provided open-text comments, and academics provided comments like some lawyers' comments about the need to remain flexible and the concern that standardization could preclude flexibility.¹³¹⁵ Surveyed academics seemed to have similar views to other groups about it not being forced by either courts¹³¹⁶ or governments.¹³¹⁷ Like lawyers, surveyed academics' answers only had some consensus about civil procedure as an area for standardization but 25% also said all.¹³¹⁸

¹³¹⁰ Academic Survey Q4.15: Issue-driven structure or similar (51.49% or 52 academics); Fact-driven structure or similar (48.51% or 49 academics).

¹³¹¹ Academic Survey Q4.16: Easier to understand (74.00% or 37 academics); Easy to see if judge grasped issues, evidence, and arguments (60.00% or 30 academics); Anything else: (20.00% or 10 academics); Shorter (14.00% or 7 academics); Academic Survey Q4.17: Easy to see if judge grasped issues, evidence, and arguments (43.90% or 36 academics); Easier to understand (35.37% or 29 academics); Anything else: (18.29% or 15 academics); Shorter (2.44% or 2 academics).

¹³¹² Academic Survey Q4.18: Possibly. I would have to see the standardized structure (47.06% or 48 academics); Yes. Unless the standardization was poor, structures could be standardized (21.57% or 22 academics);

No. Structures could not be standardized (15.69% or 16 academics); Anything else: (15.69% or 16 academics);

¹³¹³ Academic Survey Q4.21: Possibly. Standardizing structure, content, or both could be explored (40.63% or 39 academics); Yes. While judges can choose to standardize, no one could pressure them to do it (26.04% or 25 academics); No. Structure and content could be standardized. It could improve the rule of law (17.71% or 17 academics); Yes. Standardizing structure and content could affect judicial independence or impartiality (15.63% or 15 academics).

¹³¹⁴ Academic Survey Q4.19: Possibly. I would have to see the standardized content (44.12% or 45 academics); No. Content could not be standardized (29.41% or 30 academics); Anything else: 13.73% or 14 academics); Yes. Unless the standardization was poor, content could be standardized (12.75% or 13 academics).

¹³¹⁵ Academic Survey Q4.23.

¹³¹⁶ Academic Survey Q4.21: Possibly. Standardizing structure, content, or both could be explored (40.63% or 39 academics); Yes. While judges can choose to standardize, no one could pressure them to do it (26.04% or 25 academics); No. Structure and content could be standardized. It could improve the rule of law (17.71% or 17 academics); Yes. Standardizing structure and content could affect judicial independence or impartiality (15.63% or 15 academics).

¹³¹⁷ Academic Survey Q4.22: Possibly. Standardizing structure, content, or both could be explored (40.63% or 39 academics); Yes. While judges can choose to standardize, no one could pressure them to do it (26.04% or 25 academics); No. Structure and content could be standardized. It could improve the rule of law (17.71% or 17 academics); Yes. Standardizing structure and content could affect judicial independence or impartiality (15.63% or 15 academics).

¹³¹⁸ Academic Survey Q4.20: Civil procedure (32.39% or 23 academics); All (25.35% or 18 academics); Administrative (23.94% or 17 academics); Anything else: (18.31% or 13 academics); Personal Injury (MVA) (16.90% or 12 academics); Criminal (15.49% or 11 academics); Employment (15.49% or 11 academics); Regulatory (14.08% or 10 academics); None 12.68% or 9 academics); Contract (12.68% or 9 academics); Personal Injury (Any kind of personal injury that is not an MVA) (12.68% or 9 academics); Class action (11.27% or 8 academics); Municipal (11.27% or 8 academics); Refugee (11.27% or 8 academics); Creditor/debtor (9.86% or 7 academics); Estate/Trusts (9.86% or 7 academics); Family 9.86% or 7 academics); Human rights (9.86% or 7 academics); Insurance (9.86% or 7 academics); Constitutional (8.45% or 6 academics); Insolvency (8.45% or 6 academics); Tax

Legal officer survey

Lawyers that courts employ or aka staff lawyers/legal officers were asked two blocks of questions about judicial decisions and judicial decision-making and court resources, court autonomy and court data before turning to limited optional demographic questions.

Judicial decisions and judicial decision-making

The legal officer survey included 22 questions in this block.¹³¹⁹

(8.45% or 6 academics); Appeal (7.04% or 5 academics); Corporate/commercial (5.63% or 4 academics); Public Law (5.63% or 4 academics); Property (5.63% or 4 academics); Tort (5.63% or 4 academics); IP (4.23% or 3 academics); Aboriginal (2.82% or 2 academics).

¹³¹⁹ Here are the 22 questions:

1. Q2.2. Rank the group(s) you think judges in your Court should write for in order of importance. (Drag applicable options into box and into desired order) – *Shown to all legal counsel*
2. Q2.3. What do you think should be the goal of judicial decision-writing for judges in your Court? (Pick all applicable options) – *Shown to all legal counsel*
3. Q2.4. Rank what you think are the most important parts of judicial decisions in your Court. (Drag applicable options into box and into desired order) – *Shown to all legal counsel*
4. Q2.5. Are judicial decisions in your Court clear and easy to understand—e.g., for the general public? (Pick one option) – *Shown to all legal counsel*
5. Q2.6. What are common problems with clarity in decisions? (Pick all applicable options) – *Shown to legal counsel who didn't say always in the previous question*
6. Q2.7. Are judicial decisions in your Court an appropriate length—e.g., for the general public? (Pick one option) – *Shown to all legal counsel*
7. Q2.8. What are common problems with decision length? (Pick all applicable options) – *Shown to legal counsel who didn't say always in the previous question*
8. Q2.9. Are judicial decisions in your Court timely—e.g., not too slow? (Pick one option) – *Shown to all legal counsel*
9. Q2.10. What are common problems with the timeliness of decisions? (Pick all applicable options) *Shown to legal counsel who didn't say always in the previous question*
10. Q2.11. What do you mainly like about judicial decisions from your Court? (Pick all applicable options) – *Shown to all legal counsel*
11. Q2.12. What do you mainly dislike about judicial decisions from your Court? (Pick all applicable options) – *Shown to all legal counsel*
12. Q2.13. Do judicial decisions from your Court contain too much personally identifiable information about parties or witnesses? (Pick one option) – *Shown to all legal counsel*
13. Q2.14. Do you think judicial decisions from your Court require additional content? (Pick all applicable options) – *Shown to all legal counsel*
14. Q2.15. Do you prefer when judicial decisions from your Court use the issue-driven structure where applicable facts, arguments, law, and analysis stay together; the fact-driven structure; or similar versions of the structures? (Pick one option) – *Shown to all legal counsel*
15. Q2.16. Why do you prefer the issue-driven structure? (Pick all applicable options) – *Shown to legal counsel you said the issue-driven structure in the previous question*
16. Q2.17. Why do you prefer the fact-driven structure? (Pick all applicable options) – *Shown to legal counsel you said the fact-driven structure in the previous question*
17. Q2.18. Judicial decisions from your Court could rely on more standardized structures with headings and sections like these ones:
 - a) introduction/overview: describes what the decision is about;

The lawyers that courts employ are subject matter experts on many of questions. While I can't speculate why courts didn't even invite their legal officers to participate, the lack of participation is concerning. It could suggest that courts are concerned with what the data might show or what a quorum of legal officers might say about judicial decisions or courts in their jurisdiction.

Court resources, court autonomy, and court data

The legal counsel survey included six questions in this block.¹³²⁰ Again, the lawyers that courts employ are subject matter experts on many of these questions. While I can't speculate why

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- b) issues: describes the legal issues the decision addresses;
 - c) analysis: describes the judge's decision about each legal issue and their analysis of the parties' arguments, applicable facts, and law;
 - d) conclusion: summarizes conclusions;
 - e) order and costs: includes the order and who is responsible for costs.
- What do you think? (Pick one option) – *Shown to all legal counsel*
18. Q2.19. Judicial decisions from your Court could rely on more standardized content such as plain language, standardized legal tests that would be similar to standardized jury instructions. What do you think? (Pick one option) – *Shown to all legal counsel*
 19. Q2.20. What practice areas might be most amendable to standardized structures or content? (Pick all applicable options) – *Shown to legal counsel who didn't say no in the previous question*
 20. Q2.21. Do you think judicial independence precludes your Court from encouraging judges in your Court to rely on the kinds of standardized structures and contents that I just asked you about? (Pick one option) – *Shown to all legal counsel*
 21. Q2.22. Do you think judicial independence precludes governments from encouraging judges in your Court to rely on standardized structures and contents? (Pick one option) – *Shown to all legal counsel*
 22. Q2.23. Why might standardizing structure and content infringe judicial independence? – *Shown to legal counsel who didn't say no in the previous question*
 23. Q2.24. Periodically, Canadian judges could anonymously track two things for research, reform, or remuneration purposes:
 - a) their working hours for 3-5 days, including tracking time spent hearing cases, writing decisions, reviewing evidence, reading submissions, reading cases, etc.; and
 - b) the time it takes to write one criminal or civil decision, including tracking time spent drafting, editing, research, etc.
 What do you think? (Pick one option) – *Shown to all legal counsel*
 24. Q2.25. What do you think? (Pick one option) – *Shown to legal counsel who didn't say no in the previous question*
- ¹³²⁰ Here are the six questions:
1. Q3.2. Do you think your Court has enough resources—e.g., technology or staff? (Pick one option) – *Shown to all legal counsel*
 2. Q3.3. What other resources does your Court need? (Pick all applicable options) – *Shown to legal counsel who didn't say always in the previous question*
 3. Q3.4. Do you think your Court has enough autonomy—e.g., financial or administrative? (Pick one option) – *Shown to all legal counsel*
 4. Q3.5. What other autonomy do courts need? (Pick all applicable options) – *Shown to legal counsel who didn't say no in the previous question*
 5. Q3.6. Do you think your Court would explore new initiatives if it had more resources—e.g., case-management software or technological innovations? (Pick one option) – *Shown to all legal counsel*
 6. Q3.7. What do you think impedes your Court from tracking and releasing more data? (Pick all applicable options) – *Shown to all legal counsel*

courts didn't even invite their legal officers to participate, the lack of participation is concerning for what courts think they might say about these subjects.

Journalist survey

Journalists were asked two blocks of questions about judicial decision and judicial decision-making and accessing information about what occurs in Canadian courts and about Canadian judges before turning to optional demographic questions.

Demographics

Location	Surveyed journalists primarily reported in these provinces: Ontario (22); Alberta (6); British Columbia (4); Manitoba (4); Saskatchewan (2); Quebec (2); New Brunswick (2); Newfoundland and Labrador (1 journalist); Nova Scotia (1 journalist); Prince Edward Island (1 journalist). ¹³²¹
Gender	Surveyed journalists identified with multiple genders: male Female (24); Male (20); Prefer not to say (1). ¹³²²
Age	Surveyed journalists were from multiple age groups: 25-34 (33%); 35 – 44 (23%); 55-64 (21%); 45-54 (16%); 65 and over (4%). ¹³²³
Years as journalist	Surveyed journalists' experience was diffuse: more than 30 years (27%); 11-15 years (20%); 0-5 years (13%); 16-20 years (13%); 6-10 years (11%); 26-30 years (9%); 21-25 years (4%). ¹³²⁴

As noted in the methods section, Canada doesn't have many journalists who focus on the legal system or courts. Accordingly, the level of participation was surprisingly robust. That the majority came from Ontario is also unsurprising on a population basis.

¹³²¹ Journalist Survey Q4.2: Ontario (48.89% or 22 journalists); Alberta (13.33% or 6 journalists); British Columbia (8.89% or 4 journalists); Manitoba (8.89% or 4 journalists); Saskatchewan (4.44% or 2 journalists); Quebec (4.44% or 2 journalists); New Brunswick (4.44% or 2 journalists); Newfoundland and Labrador (2.22% or 1 journalist); Nova Scotia (2.22% or 1 journalist); Prince Edward Island (2.22% or 1 journalist).

¹³²² Journalist Survey Q4.3: Female (53.33% or 24 journalists); Male (44.44% or 20 journalists); Prefer not to say 2.22% or 1 journalist).

¹³²³ Journalist Survey Q4.4: 25-34 (33.33% or 14 journalists); 35 – 44 (23.81% or 10 journalists); 55-64 (21.43% or 9 journalists); 45-54 (16.67% or 7 journalists); 65 and over (4.76% or 2 journalists).

¹³²⁴ Journalist Survey Q4.4: More than 30 years (27.27% or 12 journalists); 11-15 years (20.45% or 9 journalists); 0-5 years (13.64% or 6 journalists); 16-20 years (13.64% or 6 journalists); 6-10 years (11.36% or 5 journalists); 26-30 years (9.09% or 4 journalists); 21-25 years (4.55% or 2 journalists).

Judicial decisions & judicial decision-making: some judges should mostly write for the public, and some journalists experience problems with complexity, delay, and length

The journalists' survey included 18 questions in this block,¹³²⁵ and survey answers suggest these themes:

¹³²⁵ Here are the 18 questions:

1. Q2.2. Rank the group(s) you think Canadian judges should try to write for in order of importance. (Drag applicable options into box and into desired order) – *Shown to all journalists*
2. Q2.3. What should Canadian judges have as goals for their decision-writing? (Pick all applicable options) – *Shown to all journalists*
3. Q2.4. Do you mostly skim or read judicial decisions? (Pick one option) – *Shown to all journalists*
4. Q2.5. Rank what you think are the most important parts of Canadian judicial decisions. (Drag applicable options into box and into desired order) – *Shown to all journalists*
5. Q2.6. Are judicial decisions in your jurisdiction clear and easy to understand—e.g., for the general public? (Pick one option) – *Shown to all journalists*
6. Q2.7. What are common problems with clarity? (Pick all applicable options) – *Shown to journalists who didn't say always in the previous question*
7. Q2.8. Are judicial decisions in your jurisdiction an appropriate length—e.g., for the general public? (Pick one option) – *Shown to all journalists*
8. Q2.9. What are common problems with decision length? (Pick all applicable options) – *Shown to journalists who didn't say always in the previous question*
9. Q2.10. Are judicial decisions in your jurisdiction timely—e.g., not too slow? (Pick one option) – *Shown to all journalists*
10. Q2.11. What are common problems with the timeliness of decisions? (Pick all applicable options) – *Shown to journalists who didn't say always in the previous question*
11. Q2.12. What do you mainly like about judicial decisions in your jurisdiction? (Pick all applicable options) – *Shown to all journalists*
12. Q2.13. What do you mainly dislike about judicial decisions in your jurisdiction? (Pick all applicable options) – *Shown to all journalists*
13. Q2.14. Do judicial decisions in your jurisdiction contain too much personally identifiable information about parties or witnesses? (Pick one option) – *Shown to all journalists*
14. Q2.15. Do you prefer when judicial decisions in your jurisdiction use the issue-driven structure where applicable facts, arguments, law, and analysis stay together; the fact-driven structure; or similar versions of the structures? (Pick one option) – *Shown to all journalists*
15. Q2.16. Why do you prefer the issue-driven structure? (Pick all applicable options) – *Shown to journalists who said issue-driven in the Q2.15*
16. Q2.17. Why do you prefer the fact-driven structure? (Pick all applicable options) *Shown to journalists who said "fact-driven" in the Q2.15.*
17. Q2.18. Canadian judicial decisions could rely on more standardized structures with headings and sections like these ones:
 - a) introduction/overview: describes what the decision is about;
 - b) issues: describes the legal issues the decision addresses;
 - c) analysis: describes the judge's decision about each legal issue and their analysis of the parties' arguments, applicable facts, and law;
 - d) conclusion: summarizes conclusions;
 - e) order and costs: includes the order and who is responsible for costs.What do you think? (Pick one option) – *Shown to all journalists*
18. Q2.19. Canadian judicial decisions could rely on more standardized content such as plain language, standardized legal tests that would be similar to standardized jury instructions. What do you think? (Pick one option) – *Shown to all journalists*

- Some journalists have views that are like some lawyers, judges, and academics, including for whom judges should write and the main goals of decision-writing: almost all surveyed journalists think that judges write for the public¹³²⁶ and that one of the main goals for decision-writing is ensuring the public understands the result.¹³²⁷
- Like some lawyers and some law students, some journalists skim and read decisions versus fully read: only 31% of survey journalists fully read decisions,¹³²⁸ and this reality could explain why some news reporting often misses crucial analytical details.¹³²⁹
- Some journalists mostly focus on the conclusion and the facts: some surveyed journalists were the only surveyed user group to note the conclusion as the most important followed by the facts and followed by analysis.¹³³⁰ While all those points were closely lumped together in the responses, some journalists are immediately interested in the outcome and the facts leading to the outcome.
- Surveyed journalists' answers reverberate surveyed lawyers' and academics' answers about clarity, length, and timeliness:
 - *clarity:* only 2% of surveyed journalists said decisions were always easy to understand¹³³¹ with length being a key factor in complexity.¹³³²
 - *length:* only 2% of surveyed journalists said decisions were always timely¹³³³ with most surveyed journalists saying decisions were mostly too long.¹³³⁴

¹³²⁶ Journalist Survey Q2.2: The public (93.75% or 45 journalists); All parties (89.58% or 43 journalists); The court of appeal (68.75% or 33 journalists); Other judges (58.33% or 28 journalists); The loser (52.08% or 25 journalists); Anything else: (4.17% or 2 journalists).

¹³²⁷ Journalist Survey Q2.3: Ensure that people can understand the reasons for the decision (91.49% or 43 journalists); Explain the result to the parties (85.11% or 40 journalists); Explain the result to the public (85.11% or 40 journalists); Demonstrate independence and impartiality (68.09% or 32 journalists); Educate the public (63.83% or 30 journalists); Cure flaws in decision-making (36.17% or 17 journalists); Explain the law to lawyers (23.40% or 11 journalists); Explain the law to other judges (21.28% or 10 journalists); Help them make a decision (17.02% or 8 journalists); Anything else: (12.77% or 6 journalists).

¹³²⁸ Journalist Survey Q2.4: Mix of skimming and reading (59.57% or 28 journalists); Mostly read (31.91% or 15 journalists); Mostly skim (8.51% or 4 journalists).

¹³²⁹ Jon Khan, "Keeping Faith: The Need for More Plain Language Summaries of Judicial Decisions" (27 October 2020), online: <<https://www.deliberatelegaldesign.com/blog/keeping-faith-the-need-for-more-plain-language-summaries-of-judicial-decisions>>.

¹³³⁰ Journalist Survey Q2.5: Conclusion (93.48% or 43 journalists); Factual summary (89.13% or 41 journalists); Analysis (89.13% or 41 journalists); Summary of parties' legal arguments (80.43% or 37 journalists); Overview (58.70% or 27 journalists); Order (45.65% or 21 journalists); Introduction (41.30% or 19 journalists).

¹³³¹ Journalist Survey Q2.6: Sometimes (54.35% or 25 journalists); Frequently (32.61% or 15 journalists); Seldom (10.87% or 5 journalists); Always (2.17% or 1 journalists).

¹³³² Journalist Survey Q2.7: Too long (63.64% or 28 journalists); Anything else: (43.18% or 19 journalists); Poorly structured (38.64% or 17 journalists); Too many details (36.36% or 16 journalists); Not enough context (29.55% or 13 journalists); Unclear headings (11.36% or 5 journalists).

¹³³³ Journalist Survey Q2.8: Sometimes (41.30% or 19 journalists); Seldom (28.26% or 13 journalists); Frequently (21.74% or 10 journalists); Always (4.35% or 2 journalists); Never (4.35% or 2 journalists).

¹³³⁴ Journalist Survey Q2.9: Sometimes too long (49.02% or 25 journalists); Frequently too long (33.33% or 17 journalists); Sometimes too short (9.80% or 5 journalists); Anything else: (7.84% or 4 journalists).

- *timeliness*: less 20% of surveyed journalists said that decisions were timely¹³³⁵ and that they were often too slow.¹³³⁶
- Accessibility to judicial decisions doesn't seem to meet some journalists' needs: most surveyed journalists said accessibility was something they disliked in their jurisdictions.¹³³⁷
- In contrast to many other respondent groups, some journalists mostly favour the fact-driven structure:¹³³⁸ this point might be unsurprising as journalists often explain the story of what happened versus the finite legal points. Most surveyed journalists said the fact-driven structure was easier to understand.¹³³⁹
- Some journalists are interested in seeing possible standardized structures and content: few surveyed journalists thought decisions' content or structure couldn't be standardized.¹³⁴⁰

Accessing information about what occurs in Canadian courts and about Canadian judges: journalists want better access to information about both

The journalist survey included five questions in this block,¹³⁴¹ and survey answers suggest these themes:

¹³³⁵ Journalist Survey Q2.10: Sometimes (48.89% or 22 journalists); Seldom (28.89% or 13 journalists); Frequently (17.78% or 8 journalists); Always (2.22% or 1 journalist); Never (2.22% or 1 journalist).

¹³³⁶ Journalist Survey Q2.11: Frequently too slow (47.92% or 23 journalist); Sometimes too slow (41.67% or 20 journalist); Anything else: (8.33% or 4 journalists); Sometimes too fast (2.08% or 1 journalist).

¹³³⁷ Journalist Survey Q2.13: Accessibility (69.57% or 32 journalists); Length (32.61% or 15 journalists); Style (21.74% or 10 journalists); Anything else: (15.22% or 7 journalists); Structure (8.70% or 4 journalists); Not enough oral decisions (8.70% or 4 journalists); Content (4.35% or 2 journalists); Nothing (2.17% or 1 journalist).

¹³³⁸ Journalist Survey Q2.15: Fact-driven structure or similar (76.09% or 35 journalists); Issue-driven structure or similar (23.91% or 11 journalists).

¹³³⁹ Journalist Survey Q2.17: Easier to understand (94.29% or 33 journalists); Easy to see if judge grasped issues, evidence, and arguments (45.71% or 16 journalists); Anything else: (22.86% or 8 journalists); Shorter (5.71% or 2 journalists).

¹³⁴⁰ Journalist Survey Q2.18: Possibly. I would have to see the standardized structure (47.83% or 22 journalists); Yes. Unless the standardization was poor, structures could be standardized (36.96% or 17 journalists); Anything else: (8.70% or 4 journalists); No. Structures could not be standardized (6.52% or 3 journalists); Journalist Survey Q2.19: Yes. Unless the standardization was poor, content could be standardized (44.44% or 20 journalists); Possibly. I would have to see the standardized content (42.22% or 19 journalists); No. Content could not be standardized (6.67% or 3 journalists); Anything else: (6.67% or 3 journalists).

¹³⁴¹ Here are the five questions:

1. Q3.2. Is your confidence in Canadian courts and judges related to transparency—e.g., more transparency, more confidence; less transparency, less confidence? (Pick one option) – *Shown to all journalists*
2. Q3.3. Is information about what occurs in courts in your jurisdiction easy to access—e.g., the average wait time for decisions, information about court processes, etc.? (Pick one option) – *Shown to all journalists*
3. Q3.4. How could courts in your jurisdiction improve their information sharing? (Pick all applicable options) – *Shown to all journalists*
4. Q3.5. Is information about judges in your jurisdiction easy to access—e.g., judges' biographical and demographic information, etc.? (Pick one option) – *Shown to all journalists*
5. Q3.6. How could information sharing about judges in your jurisdiction be improved? (Pick all applicable options) – *Shown to all journalists*

- Most surveyed journalists said that more transparency increases their confidence in courts: only 10% said no and 10% maybe.¹³⁴² Surveyed journalists had some of the strongest opinions on transparency out of all 2023 Survey users.
- Some journalists mostly agree that access to information about what occurs in courts in their jurisdiction isn't easy to access: only 8% of surveyed journalists said information is frequently accessible.¹³⁴³ Overwhelmingly, surveyed journalists want better electronic access to court files and generally to judicial decisions. Surveyed journalists also want more plain language writing, including more plain language summaries; more or better data on courts and judges; and more information about judges' biographic and demographic information.¹³⁴⁴
- Some journalists mostly agree that access to information about what occurs in courts in their jurisdiction isn't easy to access: only 11% of surveyed journalists said information is frequently accessible.¹³⁴⁵ Answers were moderately diffuse but many surveyed journalists wanted more or better biographical and demographic information on judges; more or better information about judges' writing and decision-making processes; and more or better information about how judges are trained.¹³⁴⁶

Law student survey

The law student survey asked law students two blocks of questions on judicial decisions and judicial decision-making and accessing information about what occurs in Canadian courts and about Canadian judges before turning to optional demographic questions.

¹³⁴² Journalist Survey Q3.2: Yes (73.91% or 34 journalists); No (10.87% or 5 journalists); Maybe (10.87% or 5 journalists); Anything else: (4.35% or 2 journalists).

¹³⁴³ Journalist Survey Q3.3: Seldom 47.83% or 22 journalists); Sometimes (36.96% or 17 journalists); Frequently (8.70% or 4 journalists); Never (4.35% or 2 journalists); Always (2.17% or 1 journalist).

¹³⁴⁴ Journalist Survey Q3.4: Non-party and media access to court files (electronically) (97.78% or 44 journalists); More access to judicial decisions (77.78% or 35 journalists); Non-party and media access to court files (in person) 68.89% or 31 journalists); More plain language writing in judicial decisions (64.44% or 29 journalists); More or better information on court processes (60.00% or 27 journalists); More plain language summaries of judicial decisions (57.78% or 26 journalists); More online hearings (53.33% or 24 journalists); More or better data on court processes, including performance data (51.11% or 23 journalists); More or better data on judges and their decisions (48.89% or 22 journalists); Anything else: (42.22% or 19 journalists); More or better information on judges and their decisions (40.00% or 18 journalists); More annual reports (35.56% or 16 journalists);

¹³⁴⁵ Journalist Survey Q3.5: Sometimes (35.56% or 16 journalists); Seldom (22.22% or 10 journalists); Never 15.56% or 7 journalists); Frequently (11.11% or 5 journalists); I do not know (11.11% or 5 journalists); Always (4.44% or 2 journalists).

¹³⁴⁶ Journalist Survey Q3.6: More or better biographical and demographic information on judges (57.78% or 26 journalists); More or better information about judges' writing and decision-making processes (51.11% or 23 journalists); More or better information about how judges are trained (42.22% or 19 journalists); More or better information about judges' preferences—e.g., many American judges have webpages that provide transparent information on judges and judges' preferences (40.00% or 18 journalists); More or better biographical and demographic information on the individuals who apply to become judges (31.11% or 14 journalists); Anything else: 17.78% or 8 journalists).

Demographics

Year of law school	Surveyed law students were in most years of law school: second year (38%); third year (30%); Ph.D. (4%); and LL.M. (1%). ¹³⁴⁷
Gender	Surveyed law students identified with multiple genders: male (53%); female (41%); non-binary/third gender (1%); and prefer not to say (3%). ¹³⁴⁸
Age	Most of the surveyed law students were between 25-34 (60%). The remainder were between 18-24 (24%), 35-44 (9%); 45-54 (3%); and 55 and above (3%). ¹³⁴⁹
Degree(s) before entering law school	The most common degree among survey users was Bachelor of Arts (60%) with the remaining degrees split between Master of Arts (10%), Bachelor of Commerce (9%); Bachelor of Science (7%) and some other smaller concentrations. 15 students also provided open-text answers, including Masters of Communication Management, Masters in Social Work, M.B.A, previous J.D., Bachelor of Social Work, Bachelor of Mathematics.¹³⁵⁰

Participation was lower than I anticipated, but like with law academics, law students likely also have survey fatigue and incredible demands on their limited time. To reduce identification risks, I did not ask what jurisdiction law students were present. Accordingly, as noted in the limitations section, no regional generalizations are possible:

- most users came from their second and third year;
- gender and age weren't entirely representative of law students; and
- most survey users would've had complex reading loads before entering law school with Bachelor of Art degrees or even master's degrees. Perhaps they'd already be proficient with grappling with some complex unclear writing or "speciality" writing.

¹³⁴⁷ Law Student Survey Q4.2: 2L (38.46% or 25 students) 3L (30.77% or 20 students); 1L (24.62% or 16 students); Ph.D. student (4.62% or 3 students); LL.M. student (1.54% or 1 student).

¹³⁴⁸ Law Student Survey Q4.3: Male (53.85% or 35 students); Female (41.54% or 27 students); Prefer not to say (3.08% or 2 students); Non-binary / third gender (1.54% or 1 student); Prefer not to say (3.08% or 2 students).

¹³⁴⁹ Law Student Survey Q4.4: 25 – 34 (60.00% or 39 students); 18 – 24 (24.62% or 16 students); 35 – 44 (9.23% or 6 students); 45 – 54 (3.08% or 2 students); 55 and above (3.08% or 2 students).

¹³⁵⁰ Law Student Survey Q4.5: Bachelor of arts (60.94% or 39 students); Anything else: (23.44% or 15 students); Master of arts (10.94% or 7 students); Bachelor of commerce (9.38% or students); Bachelor of science (7.81% or 5 students); Master of commerce (4.69% or 3 students); Bachelor of education (3.13% or 2 students); Bachelor of engineering 3.13% or 2; Master of science (1.56% or 1 student).

Judicial decisions and decision-making: many judicial decisions are frequently not clear, and most are too long

The law student survey included 16 questions in this block,¹³⁵¹ and survey answers suggest these themes:

- Some law students think judges should be mainly writing for parties, the public, and the court of appeal: appeal courts being ahead of the loser makes some sense when the court of the appeal is a logical outcome for the loser.¹³⁵²

¹³⁵¹ Here are the 16 questions:

1. Q2.2. What kinds of Canadian judicial decisions do you mostly interact with? (Drag applicable options into box and into desired order) – *Shown to all law students*
2. Q2.3. Rank the group(s) you think Canadian judges should try to write for in order of importance. (Drag applicable options into box and into desired order) – *Shown to all law students*
3. Q2.4. What should Canadian judges have as goals for their decision-writing? (Pick all applicable options)
4. Q2.5. Do you mostly skim or read Canadian judicial decisions? (Pick one option) – *Shown to all law students*
5. Q2.6. Rank what you think are the most important parts of Canadian judicial decisions. (Drag applicable options into box and into desired order) – *Shown to all law students*
6. Q2.7. Do you think the Canadian judicial decisions you have read are clear and easy to understand—e.g., for the general public? (Pick one option) – *Shown to all law students*
7. Q2.8. What are common problems with clarity? (Pick all applicable options) – *Shown to law students who didn't say always in previous question*
8. Q2.9. Do you think the Canadian judicial decisions you have read are an appropriate length—e.g., for the general public? (Pick one option) – *Shown to all law students*
9. Q2.10. What are common problems with decision length? (Pick all applicable options) – *Shown to law students who didn't say always in previous question*
10. Q2.11. What do you like about the Canadian judicial decisions you have read? (Pick all applicable options) – *Shown to all law students*
11. Q2.12. What do you dislike about the Canadian decisions you have read? (Pick all applicable options) – *Shown to all law students*
12. Q2.13. Canadian judicial decisions could rely on more standardized headings and sections like these ones:
 - a) introduction/overview: describes what the decision is about;
 - b) issues: describes the legal issues the decision addresses;
 - c) analysis: describes the judge's decision about each legal issue and their analysis of the parties' arguments, applicable facts, and law;
 - d) conclusion: summarizes conclusions;
 - e) order and costs: includes the order and who is responsible for costs.What do you think? (Pick one option) – *Shown to all law students*
13. Q2.14. Canadian judicial decisions could rely on more standardized content such as plain language, standardized legal tests that would be similar to standardized jury instructions. What do you think? (Pick one option) – *Shown to all law students*
14. Q2.15. Do you think judicial independence precludes courts from encouraging Canadian judges to rely on the kinds of standardized structures and contents in decisions that I just asked you about? (Pick one option) – *Shown to all law students*
15. Q2.16. Do you think judicial independence precludes governments from encouraging Canadian judges to rely on standardized structures and content? (Pick one option) – *Shown to all law students*
16. Q2.17. Why might standardizing structure and content infringe judicial independence? – *Shown to law students who didn't say no in Q2.16.*

¹³⁵² Law Student Survey Q2.3: All parties (93.83% or 76 law students); The public (93.83% or 76 law students); The court of appeal (75.31% or 61 law students); The loser (55.56% or 45 law students); Other judges (72.84% or 59 law students) Anything else: (9.88% or 8 law students).

- Like other respondent groups, some law students think that judges should ensure people understand the result as a goal for decision-writing: this point was consistent throughout most users.¹³⁵³
- Some law students mostly don't read decisions; instead, they mainly skim and read or just skim: 74% of surveyed law students mix skimming and reading.¹³⁵⁴ This point is unsurprising to me as it mirrors what I observed in law school, and it mirrors what surveyed lawyers and journalists said.
- Analysis is the most important part for some law students: while this point consistent throughout most 2023 Survey respondents, it was never this universal (96%).¹³⁵⁵ This point might be unsurprising as most assigned decisions to law students largely focus on the analysis and not the factual context in which they arise—e.g., case readers with excerpts of the analysis.
- Again, like every other user group, surveyed law students' answers suggest problems with clarity and length (I didn't ask law students about timeliness):
 - o *clarity*: only 5% of surveyed law students said that decisions were frequently clear and easy to understand.¹³⁵⁶ Length, poor structure, and too many details were drivers of complexity.¹³⁵⁷
 - o *length*: only 2% of surveyed law students said decisions are frequently an appropriate length¹³⁵⁸ with most saying generally too long.¹³⁵⁹ One law student pointed out the problem with the fact-driven model: the "excess length often arises when judges spend a ton of time reciting the arguments of the parties in detail (this is available or should be available in factums with the court registry if people really want all the details), or summarizing all of the evidence in much more detail than is needed to explain the decision."¹³⁶⁰ As Chapters 4-5 discuss,

¹³⁵³ Law Student Survey Q2.4: Ensure that people can understand the reasons for the decision (86.08% or 68 law students); Explain the result to the parties (82.28% or 65 law students); Explain the result to the public (81.01% or 64 law students); Explain the law to lawyers (64.56% or 51 law students); Cure flaws in decision-making (53.16% or 42 law students); Educate the public (53.16% or 42 law students); Demonstrate independence and impartiality (53.16% or 42 law students); Explain the law to other judges (50.63% or 40 law students); Help them make a decision (26.58% or 21 law students); Anything else: (5.19% or 12 law students).

¹³⁵⁴ Law Student Survey Q2.5: Mix of skimming and reading (74.68% or 59 law students); Mostly read (15.19% or 12 law students); Mostly skim (10.13% or 8 law students).

¹³⁵⁵ Law Student Survey Q2.6: Analysis (96.10% or 74 law students); Conclusion (80.52% or 62 law students); Factual summary (74.03% or 57 law students); Summary of parties' legal arguments (71.43% or 55 law students); Overview (70.13% or 54 law students); Order (54.55% or 42 law students); Introduction (49.35% or 38 law students); Anything else: (1.30% or 1 law student).

¹³⁵⁶ Law Student Survey Q2.7: Seldom (48.00% or 36 law students); Sometimes (45.33% or 34 law students); Frequently (5.33% or 4 law students); Never (1.33% or 1 law students).

¹³⁵⁷ Law Student Survey Q2.8: Too long (74.67% or 56 law students); Poorly structured (45.33% or 34 law students); Anything else: (44.00% or 33 law students); Too many details (40.00% or 30 law students); Not enough context (24.00% or 18 law students); Unclear headings (24.00% or 18 law students).

¹³⁵⁸ Law Student Survey Q2.9: Seldom (46.67% or 35 law students); Sometimes (40.00% or 30 law students); Never (10.67% or 8 law students); Frequently (2.67% or 2 law students).

¹³⁵⁹ Law Student Survey Q2.10: Frequently too long (76.00% or 57 law students); Sometimes too long (24.00% or 18 law students); Anything else: (10.67% 8 law students); Sometimes too short (8.00% or 6 law students).

¹³⁶⁰ Law Student Survey Q2.10: Frequently too long (76.00% or 57 law students); Sometimes too long (24.00% or 18 law students); Anything else: (10.67% 8 law students); Sometimes too short (8.00% or 6 law students).

easier access to underlying materials could alleviate this problem and increase transparency.

- Few law students said decisions' structure and content couldn't be standardized: only 7% disagree about structure¹³⁶¹ and content.¹³⁶² But like other groups, surveyed law students had hesitations about content but less about structure.¹³⁶³ Law students had about the same views on whether the encouragement came from courts¹³⁶⁴ or governments.¹³⁶⁵

Accessing information about what occurs in Canadian courts and about Canadian judges: courts could do better, especially more plain language summaries and information about judges

The law student survey included 5 questions in this block,¹³⁶⁶ and survey answers suggest these themes:

¹³⁶¹ Law Student Survey Q2.13: Yes. Unless the standardization was poor, structures could be standardized (54.17% or 39 law students); Possibly. I would have to see the standardized structure (30.56% or 22 law students); No. Structures could not be standardized (8.33% or 6 lawyers); Anything else: (6.94% or 5 law students);

¹³⁶² Law Student Survey Q2.14: Possibly. I would have to see the standardized content (43.06% or 31 law students); Yes. Unless the standardization was poor, content could be standardized (40.28% or 29 law students); No. Content could not be standardized (9.72% or 7 law students); Anything else: (6.94% or 5 law students).

¹³⁶³ Law Student Survey Q2.13: Yes. Unless the standardization was poor, structures could be standardized (54.17% or 39 law students); Possibly. I would have to see the standardized structure (30.56% or 22 law students); No. Structures could not be standardized (8.33% or 6 lawyers); Anything else: (6.94% or 5 law students);

¹³⁶⁴ Law Student Survey Q2.15: Possibly. Standardizing structure, content, or both could be explored (36.11% or 26 law students); No. Structure and content could be standardized. It could improve the rule of law (33.33% or 24 law students); Yes. While judges can choose to standardize, no one could pressure them to do it (22.22% or 16 law students); Yes. Standardizing structure and content could affect judicial independence or impartiality (8.33% or 6 law students).

¹³⁶⁵ Law Student Survey Q2.16: Possibly. Standardizing structure, content, or both could be explored (37.68% or 26 law students); No. Structure and content could be standardized. It could improve the rule of law (27.54% or 19 law students); Yes. While judges can choose to standardize, no one could pressure them to do it (21.74% or 15 law students); Yes. Standardizing structure and content could affect judicial independence or impartiality (13.04% or 9 law students).

¹³⁶⁶ Here are the five questions:

1. Q3.2. Is information about what occurs in courts in your jurisdiction easy to access—e.g., the average wait time for decisions, information about court processes, etc.? (Pick one option) – *Shown to all law students*
2. Q3.3. How could courts in your jurisdiction improve their information sharing? (Pick all applicable options) – *Shown to all law students*
3. Q3.4. Is information about judges in your jurisdiction easy to access—e.g., judges' biographical and demographic information, etc.? (Pick one option) – *Shown to all law students*
4. Q3.5. How could information sharing about judges in your jurisdiction be improved? (Pick all applicable options) – *Shown to all law students*
5. Q3.6. Periodically, Canadian judges could anonymously track two things for research, reform, or remuneration purposes:
 - a) their working hours for 3-5 days, including tracking time spent hearing cases, writing decisions, reviewing evidence, reading submissions, reading cases, etc.; and
 - b) the time it takes to write one criminal or civil decision, including tracking time spent drafting, editing, research, etc.

What do you think? (Pick one option) – *Shown to all law students*

- Accessing information about courts in their jurisdiction isn't easy for some law students: that said, 37% of surveyed law students said they didn't know.¹³⁶⁷ Like surveyed journalists, many surveyed law students wanted more information about such as plain language summaries of judicial decision and more plain language writing and non-party and media access to court files.¹³⁶⁸
- Like other user groups, information about judges is hard to access for some law students: Again, however 34% of surveyed law students said they didn't know. For the surveyed students with knowledge about access, many surveyed law students wanted more information about how judges are trained, a point that Chapters 1-2 discuss.¹³⁶⁹ Like some surveyed lawyers, surveyed law students noted skepticism about increasing biographical information about judges with ideas ranging from no value in increasing access to biographical info; judicial independence requires a high degree of judicial confidentiality; providing more information runs the risk of politicizing the system, *etc.*¹³⁷⁰
- Some law students think that courts could explore having their judges periodically anonymously track their time: only 15% of surveyed law students outright said no.¹³⁷¹

¹³⁶⁷ Law Student Survey Q3.2: I do not know (37.31% or 25 law students); Sometimes (23.88% or 16 law students); Seldom (14.93% or 10 law students); Frequently (14.93% or 10 law students); Never (7.46% or 5 law students); Always (1.49% or 1 law students).

¹³⁶⁸ Law Student Survey Q3.3: More plain language summaries of judicial decisions (79.37% or 50 law students); More plain language writing in judicial decisions (69.84% or 44 law students); Non-party and media access to court files (electronically) (57.14% or 36 law students); More or better information on court processes (53.97% or 34 law students); More access to judicial decisions (53.97% or 34 law students); More or better data on court processes, including performance data (46.03% or 29 law students); More or better data on judges and their decisions (28.57% or 18 law students); More or better information on judges and their decisions (26.98% or 17 law students); More online hearings (17.46% or 11 law students); More annual reports (17.46% or 11 law students); Anything else: (14.29% or 9 law students); Non-party and media access to court files (in person) (9.52% or 6 law students).

¹³⁶⁹ Law Student Survey Q3.5: More or better information about how judges are trained (67.21% or 41 law students); More or better information about judges' writing and decision-making processes (44.26% or 27 law students); More or better biographical and demographic information on the individuals who apply to become judges (40.98% or 25 law students); More or better biographical and demographic information on judges (34.43% or 21 law students); More or better information about judges' preferences—e.g., many American judges have webpages that provide transparent information on judges and judges' preferences (31.15% or 19 law students); Anything else: (13.11% or 8 law students).

¹³⁷⁰ Law Student Survey Q3.5: More or better information about how judges are trained (67.21% or 41 law students); More or better information about judges' writing and decision-making processes (44.26% or 27 law students); More or better biographical and demographic information on the individuals who apply to become judges (40.98% or 25 law students); More or better biographical and demographic information on judges (34.43% or 21 law students); More or better information about judges' preferences—e.g., many American judges have webpages that provide transparent information on judges and judges' preferences (31.15% or 19 law students); Anything else: (13.11% or 8 law students).

¹³⁷¹ Law Student Survey Q3.6: Maybe. Judges could periodically track this information (53.03% or 35 law students); Yes. Judges should periodically track this information (31.82% or 21 law students); No. Judges should not periodically track this information (15.15% or 10 law students).

Federal and provincial parliamentarians survey

The parliamentary survey asked parliamentarians two blocks of questions on becoming aware of important legal issues and court system funding & accessing information about what occurs in Canadian courts and about Canadian judges before turning to optional demographic questions.

Demographics

Kind of parliamentarian	Provincial/territorial (95%); Federal (4%). ¹³⁷²
Age	Ages were somewhat concentrated but also diffuse: 35 – 44 (7); 55 – 64 (7); 45 – 54 (4); Over 65 (4); 18 – 34 (1). ¹³⁷³
Identified gender	Male (10); Female (10); Prefer not to say (2); Non-binary / third gender (1). ¹³⁷⁴
Highest education level	Graduate (11); Undergraduate (10); College (2). ¹³⁷⁵
Legal training	No (20); yes (3). ¹³⁷⁶

When I was pre-testing the survey, many people told me they didn't think I'd get any participation from parliamentarians. While the participation was still low, I'm happy that I wasn't completely wrong:

- most respondents were provincial parliamentarians versus federal ones; and
- gender was mixed as was education with almost no parliamentarian having a law degree.

Becoming aware of important legal issues: members of the public, media, and staff mostly let some parliamentarians know

The parliamentary survey included 12 questions in this block,¹³⁷⁷ and survey answers suggest these themes:

¹³⁷² Parliamentary Survey Q4.2: Provincial/territorial (95.65% or 22 parliamentarians); Federal (4.35% or 1 parliamentarian).

¹³⁷³ Parliamentary Survey Q4.3: 35 – 44 (30.43% or 7 parliamentarians); 55 – 64 (30.43% or 7 parliamentarians); 45 – 54 (17.39% or 4 parliamentarians); Over 65 (17.39% or 4 parliamentarians); 18 – 34 (4.35% or 1 parliamentarian).

¹³⁷⁴ Parliamentary Survey Q4.4: Male (43.48% or 10 parliamentarians); Female (43.48% or 10 parliamentarians). Prefer not to say (8.70% or 2 parliamentarians); non-binary / third gender (4.35% or 1 parliamentarian).

¹³⁷⁵ Parliamentary Survey Q4.5: Graduate (47.83% or 11 parliamentarians); Undergraduate (43.48% or 10 parliamentarians); College (8.70% or 2 parliamentarians).

¹³⁷⁶ Parliamentary Survey Q4.6: No (86.96% or 20 parliamentarians); Yes (13.04% or 3 parliamentarians).

¹³⁷⁷ Here are the 12 questions:

1. Q2.2. How do you become aware of important legal issues, including ones that affect your portfolio? (Pick all applicable options) – *Shown to all parliamentarians*

- Judicial decisions aren't a big part of some parliamentarians' workflows:¹³⁷⁸ statutes are a bigger part of surveyed parliamentarians' job,¹³⁷⁹ and regulations are a bigger part.¹³⁸⁰ A former parliamentarian told me as much during pretesting, so this point is perhaps not that surprising to some.
- Plain language summaries of law would help some parliamentarians: most surveyed parliamentarians want more plain language summaries of decisions, regulations, and statutes.¹³⁸¹
- More data is needed to help some parliamentarians understand important issues in their jurisdiction: surveyed parliaments are interested in data and information about how legislative changes are affecting Canadians; data about the legal issues that Canadians encounter—e.g., how often they go to court; data about the criminal justice system; data about the family justice system; data about the civil justice system.¹³⁸²

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2. Q2.3. Do you interact with these legal materials when you are learning about important legal issues? (Pick all applicable options) – *Shown to all parliamentarians*
 3. Q2.4. How often do you interact with judicial decisions? (Pick one option) – *Shown to parliamentarians who said judicial decisions in the previous answer*
 4. Q2.5. What jurisdiction are those judicial decisions from? (Pick all applicable options) – *Shown to parliamentarians who said judicial decisions in Q2.3*
 5. Q2.6. Why do you not interact with judicial decisions more frequently? (Pick all applicable options) – *Shown to parliamentarians who didn't say daily in Q2.4*
 6. Q2.7. How often do you interact with statutes? (Pick one option) – *Shown to parliamentarians who said statutes in Q2.3*
 7. Q2.8. What jurisdiction are those statutes from? (Pick all application options) – *Shown to parliamentarians who said statutes in Q2.3*
 8. Q2.9. Why do you not interact with statutes more frequently? (Pick all applicable options) – *Shown to parliamentarians who didn't say daily in Q2.7*
 9. Q2.10. How often do you interact with regulations? (Pick one option) – *Shown to parliamentarians who said regulations in Q2.3*
 10. Q2.11. What jurisdiction are those regulations from? – *Shown to parliamentarians who said regulations in Q2.3*
 11. Q2.12. Why do you not interact with regulations more frequently? (Pick all applicable options) – *Shown to parliamentarians who didn't say Q2.10*
 12. Q2.13. What kind of materials could help you understand important legal issues in your jurisdiction? (Pick all applicable answers) – *Shown to all parliamentarians*

¹³⁷⁸ Parliamentarian Survey Q2.6: Not relevant to my responsibilities (46.67% or 7 parliamentarians); Anything else: (33.33% or 5 parliamentarians); Do not have time (26.67% or 4 parliamentarians); Do not know which ones to review (26.67% or 4 parliamentarians); They are too long (20.00% or 3 parliamentarians).

¹³⁷⁹ Parliamentarian Survey Q2.8: My jurisdiction (100.00% or 16 parliamentarians); Other jurisdictions (62.50% or 10 parliamentarians); Federal statutes (50.00% or 8 parliamentarians).

¹³⁸⁰ Parliamentarian Survey Q2.10: Daily (47.37% or 9 parliamentarians); Monthly (42.11% or 8 parliamentarians); Quarterly (10.53% or 2 parliamentarians).

¹³⁸¹ Parliamentarian Survey Q2.13: Plain language summaries of judicial decisions (87.50% or 21 parliamentarians); Plain language summaries of regulations (83.33% or 20 parliamentarians); Plain language summaries of statutes (75.00% or 18 parliamentarians); Data and information about how legislative changes are affecting Canadians (70.83% or 17 parliamentarians); Policy reports (66.67% or 16 parliamentarians); Data about the legal issues that Canadians encounter—e.g., how often they go to court (37.50% or 9 parliamentarians); Data about the criminal justice system (37.50% or 9 parliamentarians); Data about the family justice system (37.50% or 9 parliamentarians); Data about the civil justice system (29.17% or 7 parliamentarians); Anything else: (12.50% or 3 parliamentarians).

¹³⁸² Parliamentarian Survey Q2.13: Plain language summaries of judicial decisions (87.50% or 21 parliamentarians); Plain language summaries of regulations (83.33% or 20 parliamentarians); Plain language summaries of statutes

Court system funding and accessing information about what occurs in Canadian courts and about Canadian judges: some parliamentarians generally want more plain language information about court and more funding might be required

The parliamentary survey included five questions in this block,¹³⁸³ and survey answers suggest these themes:

- Some parliamentarians have views on court funding: 36% of surveyed parliamentarians didn't know and 16% said frequently. The rest said seldom to never.¹³⁸⁴
- Better information sharing about courts is needed for some parliamentarians: for those who had view about whether information was easy to access (most either didn't know or didn't said information wasn't frequently easy to access),¹³⁸⁵ surveyed parliamentarians answers were somewhat concentrated on what they wanted: more plain language summaries of judicial decisions; more or better data on court processes, including performance data; more plain language writing in judicial decisions; and non-party and media access to court files (electronically).¹³⁸⁶

(75.00% or 18 parliamentarians); Data and information about how legislative changes are affecting Canadians (70.83% or 17 parliamentarians); Policy reports (66.67% or 16 parliamentarians); Data about the legal issues that Canadians encounter—e.g., how often they go to court (37.50% or 9 parliamentarians); Data about the criminal justice system (37.50% or 9 parliamentarians); Data about the family justice system (37.50% or 9 parliamentarians); Data about the civil justice system (29.17% or 7 parliamentarians); Anything else: (12.50% or 3 parliamentarians).

¹³⁸³ Here are the five questions:

1. Q3.2. Do courts in your jurisdiction receive the funding they require? (Pick one option) – *Shown to all parliamentarians*
2. Q3.3. Is information about what occurs in courts in your jurisdiction easy to access—e.g., the average wait time for decisions, information about court processes, etc.? (Pick one option) – *Shown to all parliamentarians*
3. Q3.4. How could courts in your jurisdiction improve their information sharing? (Pick all applicable options) – *Shown to all parliamentarians*
4. Q3.5. Is information about judges in your jurisdiction easy to access—e.g., judges' biographical and demographic information, etc.? (Pick one option) – *Shown to all parliamentarians*
5. Q3.6. How could information sharing about judges in your jurisdiction be improved? (Pick all applicable options) – *Shown to all parliamentarians*

¹³⁸⁴ Parliamentary Survey Q3.2: I do not know (36.00% or 9 parliamentarians); Seldom (20.00% or 5 parliamentarians); Sometimes (20.00% or 5 parliamentarians); Frequently (16.00% or 4 parliamentarians); Never (4.00% or 1 parliamentarian); Always (4.00% or 1 parliamentarian).

¹³⁸⁵ Parliamentary Survey Q3.3: I do not know (32.00% or 8 parliamentarians); Seldom (28.00% or 7 parliamentarians); Frequently (24.00% or 6 parliamentarians); Never (8.00% or 2 parliamentarians); Sometimes (8.00% or 2 parliamentarians).

¹³⁸⁶ Parliamentary Survey Q3.4: More plain language summaries of judicial decisions (72.73% or 16 parliamentarians); More or better data on court processes, including performance data (63.64% or 14 parliamentarians); More plain language writing in judicial decisions (54.55% or 12 parliamentarians). Non-party and media access to court files (electronically) (40.91% or 9 parliamentarians); More or better data on judges and their decisions (36.36% or 8 parliamentarians); More or better information on judges and their decisions (36.36% or 8 parliamentarians); More or better information on court processes (31.82% or 7 parliamentarians); More annual reports (22.73% or 5 parliamentarians); More access to judicial decisions (22.73% or 5 parliamentarians); More online hearings (18.18% or 4 parliamentarians); Non-party and media access to court files (in person) (13.64% or 3 parliamentarians); Anything else: (4.55% or 1 parliamentarians).

- Some parliamentarians don't interact with the judicial system, but they still had views: for example, many surveyed parliamentarians didn't know if judges biographic and demographic information was easy to access. That said, many wanted more or better information about how judges are trained; more or better information about judges' writing and decision-making processes; and more or better biographical and demographic information on judges; and more or better biographical and demographic information on the individuals who apply to become judges.¹³⁸⁷ Some surveyed parliamentarians raised similar concerns about personifying the legal system and that "Canada doesn't need American style—data and info about judges decisions would help to organize trends because ideally trends shouldn't exist; not sure how this is relevant or valuable."¹³⁸⁸

Assistant and associate deputy minister survey

The Assistant and assistant deputy minister survey asked ADMs three blocks of questions on becoming aware of important legal issues; court system funding & accessing information about what occurs in Canadian courts and about Canadian judges; and judicial decisions & judicial decision-making before turning to optional demographic questions.

Demographics

Provincial/Territorial/Federal	The only ADM was provincial. ¹³⁸⁹
Age	The ADM was between 45-54. ¹³⁹⁰
Gender	The ADM identified their gender. ¹³⁹¹
Highest education level	The ADM had graduate education. ¹³⁹²
Legal training	The ADM wasn't trained as a lawyer. ¹³⁹³

One provincial ADM did leave demographic information. Because of the minute reidentification possibility, I deleted all demographic information. That ADM also sent me an email with further

¹³⁸⁷ Parliamentarian Survey Q3.6: More or better information about how judges are trained (77.78% or 14 parliamentarians); More or better information about judges' writing and decision-making processes (50.00% or 9 parliamentarians); More or better biographical and demographic information on judges (44.44% or 8 parliamentarians); More or better biographical and demographic information on the individuals who apply to become judges (38.89% or 7 parliamentarians). More or better information about judges' preferences—e.g., many American judges have webpages that provide transparent information on judges and judges' preferences (27.78% or 5 parliamentarians); Anything else: (22.22% or 4 parliamentarians).

¹³⁸⁸ Parliamentarian Survey Q3.6: More or better information about how judges are trained (77.78% or 14 parliamentarians); More or better information about judges' writing and decision-making processes (50.00% or 9 parliamentarians); More or better biographical and demographic information on judges (44.44% or 8 parliamentarians); More or better biographical and demographic information on the individuals who apply to become judges (38.89% or 7 parliamentarians). More or better information about judges' preferences—e.g., many American judges have webpages that provide transparent information on judges and judges' preferences (27.78% or 5 parliamentarians); Anything else: (22.22% or 4 parliamentarians).

¹³⁸⁹ ADM Survey Q5.2: Provincial/territorial (100.00% or 1 ADM).

¹³⁹⁰ ADM Survey Q5.3: Deleted.

¹³⁹¹ ADM Survey Q5.4: Deleted.

¹³⁹² ADM Survey Q5.5: Deleted.

¹³⁹³ ADM Survey Q5.6: Deleted.

comments on the survey noting that “One quick note, on the question of standardized text possibly conflicting with judicial independence. There may be an avenue that a practice directive from the Chief Justice can implement the practice while avoiding judicial independence concerns from the executive arm of government.”¹³⁹⁴

Almost every other ADM ignored my request although it appears that one or two may have looked at the survey consent page. One ADM, however, responded to me to note that because of their role, “it would be inappropriate for me to comment on judicial decision-making and use of judicial decisions.”¹³⁹⁵ I assume that other ADMs may hold similar views.

Becoming aware of important legal issues: staff and the public may let some ADMs know as well as other institutional meetings

The ADM survey included 13 questions in this block,¹³⁹⁶ and survey answers suggest these themes:

¹³⁹⁴ Email on file with author.

¹³⁹⁵ Email on file with author.

¹³⁹⁶ Here are the 13 questions:

1. Q2.2. How do you become aware of important legal issues, including ones that affect your portfolio? (Pick all applicable options) – *Shown to all ADMs*
2. Q2.3. Do you interact with these legal materials when you are learning about important legal issues? (Pick all applicable options) – *Shown to all ADMs*
3. Q2.4. How do you keep up with judicial developments in your jurisdiction? (Pick all applicable options) – *Shown to all ADMs*
4. Q2.5. How often do you interact with judicial decisions? (Pick one option) – *Shown to ADMs who said judicial decisions in Q2.3*
5. Q2.6. What jurisdiction are those judicial decisions from? (Pick all applicable options) – *Shown to ADMs who said judicial decisions in Q2.3*
6. Q2.7. Why do you not interact with judicial decisions more frequently? (Pick all applicable options) – *Shown to ADMs who didn't say daily in Q2.5*
7. Q2.8. How often do you interact with statutes? (Pick one option) – *Shown to ADMs who said judicial statutes in Q2.3*
8. Q2.9. What jurisdiction are those statutes from? (Pick all application options) – *Shown to ADMs who said judicial statutes in Q2.3*
9. Q2.10. Why do you not interact with statutes more frequently? (Pick all applicable options) *Shown to ADMs who didn't say daily in Q2.8*
10. Q2.11. How often do you interact with regulations? (Pick one option) – *Shown to ADMs who said regulations in Q2.3*
11. Q2.12. What jurisdiction are those regulations from? – *Shown to ADMs who said regulations in Q2.3*
12. Q2.13. Why do you not interact with regulations more frequently? (Pick all applicable options) *Shown to ADMs who didn't say daily in Q2.11*
13. Q2.14. What kind of materials could help you understand important legal issues in your jurisdiction? (Pick all applicable options) – *Shown to all ADMs*

- Like some parliamentarians, some ADMs become aware of important legal issues in a variety of ways: they include staff, members of the public, media, policy reports, briefing notes, interested organizations, law societies, and meetings with Chief Justices.¹³⁹⁷
- Like some parliamentarians, some ADMs interact with a variety of legal documents: some ADMs likely don't frequently interact with judicial decisions.¹³⁹⁸ The reason for interacting likely depends on the subject matter or specific legal issues.¹³⁹⁹ In contrast, some ADMs more frequently interact with other kinds of legal materials, including statutes¹⁴⁰⁰ and regulations.¹⁴⁰¹
- Likes some parliamentarians, some ADMs become aware of judicial developments in a variety of ways: staff, media, and meetings with Chief Justices are possible ways.¹⁴⁰²
- Like some parliamentarians, many kinds of materials could help some ADMs better understand important legal issues: plain language summaries of judicial decisions, statutes, and regulations could be crucial—as well as data about the legal issues that Canadians encounter and how legislation is affecting Canadians as well as the criminal justice, civil justice, and family justice system.¹⁴⁰³

Court system funding and accessing information about what occurs in Canadian courts & about Canadian judges: some ADMs think we don't go a good job collating information

The ADM survey included seven questions in this block,¹⁴⁰⁴ and survey answers suggest these themes:

¹³⁹⁷ ADM Survey Q.2.2: Rely on staff (100.00% or 1 ADM); Communicate with members of the public (100.00% or 1 ADM); Monitor media (100.00% or 1 ADM); Read policy reports—e.g., academic, internal, consultants (100.00% or 1 ADM); Anything else: (100.00% or 1 ADM); Read briefing notes (100.00% or 1 ADM); Interested organizations (100.00% or 1 ADM); Advocacy groups (100.00% or 1 ADM).

¹³⁹⁸ ADM Survey Q2.3: Judicial decisions (25.00% or 1 ADM); Statutes (25.00% or 1 ADM); Regulations (25.00% or 1 ADM); Anything else: (25.00% or 1 ADM).

¹³⁹⁹ ADM Survey Q2.7.

¹⁴⁰⁰ ADM Survey Q2.8: Daily (100.00% or 1 ADM).

¹⁴⁰¹ ADM Survey Q2.11: Daily (100.00% or 1 ADM).

¹⁴⁰² ADM Survey Q2.4: Rely on staff (100.00% or 1 ADM); Monitor media (100.00% or 1 ADM); Anything else: (100.00% or 1 ADM).

¹⁴⁰³ ADM Survey Q 2.14: Plain language summaries of judicial decisions (100.00% or 1 ADM); Plain language summaries of statutes (100.00% or 1 ADM); Plain language summaries of regulations (100.00% or 1 ADM); Data about the legal issues that Canadians encounter—e.g., how often they go to court (100.00% or 1 ADM); Data and information about how legislative changes are affecting Canadians (100.00% or 1 ADM); Data about the criminal justice system (100.00% or 1 ADM); Data about the civil justice system (100.00% or 1 ADM); Data about the family justice system (100.00% or 1 ADM); Anything else: (100.00% or 1 ADM).

¹⁴⁰⁴ Here are the seven questions:

1. Q3.2. Do courts in your jurisdiction receive the funding they require? (Pick one option) – *Shown to all ADMs*
2. Q3.3. Do courts in your jurisdiction have enough autonomy—e.g., administrative or financial? (Pick one option) – *Shown to all ADMs*
3. Q3.4. Is information about what occurs in courts in your jurisdiction easy to access—e.g., the average wait time for decisions, information about court processes, etc.? (Pick one option) – *Shown to all ADMs*

- Courts frequently get enough funding in some ADMs' jurisdictions: this point could be jurisdiction dependent.¹⁴⁰⁵
- Courts frequently have enough autonomy in some ADMs' jurisdictions: this point could be jurisdiction dependent.¹⁴⁰⁶
- Information about what occurs about courts in some ADMs' jurisdiction is sometimes easy to access:¹⁴⁰⁷ information could be improved by more or better data on court performances, court processes, and court files (they're "often treated as individual entities. We don't do a good job of collating court file data into meaningful trends").¹⁴⁰⁸
- Information about judges in some ADMs' jurisdiction is never easy to access:¹⁴⁰⁹ more or better information about how judges are trained and more public information on the judiciary's roles and what true judicial independence covers.¹⁴¹⁰
- Some ADMs think judges should periodically anonymously track their time: this point has been common with respondents.¹⁴¹¹

Judicial decisions & judicial decision-making: decisions are frequently too long, too slow, and too complex for some ADMs

The ADM survey included 12 questions in this block,¹⁴¹² and survey answers suggest these themes:

4. Q3.5. How could courts in your jurisdiction improve their information sharing? (Pick all applicable options) – *Shown to all ADMs*
5. Q3.6 Is information about judges in your jurisdiction easy to access—e.g., judges' biographical and demographic information, etc.? (Pick one option) – *Shown to all ADMs*
6. Q3.7. How could information sharing about judges in your jurisdiction be improved? (Pick all applicable options) – *Shown to all ADMs*
7. Q3.8 Periodically, Canadian judges could anonymously track two things for research, reform, or remuneration purposes:
 - a) their working hours for 3-5 days, including tracking time spent hearing cases, writing decisions, reviewing evidence, reading submissions, reading cases, etc.; and
 - b) the time it takes to write one criminal or civil decision, including tracking time spent drafting, editing, research, etc. What do you think? (Pick one option) – *Shown to all ADMs*

¹⁴⁰⁵ ADM Survey Q3.2: Frequently (100.00% or 1 ADM).

¹⁴⁰⁶ ADM Survey Q3.3: Frequently (100.00% or 1 ADM).

¹⁴⁰⁷ ADM Survey Q3.4: Sometimes (100.00% or 1 ADM).

¹⁴⁰⁸ ADM Survey Q3.5: More or better data on court processes, including performance data (100.00% or 1 ADM).

More or better information on court processes (100.00% or 1 ADM); Anything else: "Court files are often treated as individual entities. We don't do a good job of collating court file data into meaningful trends (100.00% or 1 ADM).

¹⁴⁰⁹ ADM Survey Q3.6: Never (100%) or 1 ADM).

¹⁴¹⁰ ADM Survey Q3.7: More or better information about how judges are trained (100.00% or 1 ADM);

Anything else: "More public info on the role of the judiciary and what true judicial independence entails (it's not that they get to golf on Thursday afternoons)" (100.00% or 1 ADM).

¹⁴¹¹ ADM Survey Q3.8: Yes. Judges should periodically track this information (100.00% or 1 ADM).

¹⁴¹² Here are the 12 questions:

1. Q4.2. Rank the group(s) you think Canadian judges should try to write for in order of importance. (Drag applicable options into box and into desired order) – *Shown to all ADMs*

- Some ADMs think judges should write for many audiences: all parties, the public, the Court of Appeal, the loser, and other judges were all selected.¹⁴¹³
- Like other groups, some ADMs experiences issues with judicial decisions:
 - *clarity*: decisions are only sometimes clear and easy to understand¹⁴¹⁴ with too many details and length being driving complexity factors;¹⁴¹⁵
 - *length*: decisions are only sometimes the appropriate length¹⁴¹⁶ with most being too long (“Judges seem to be concerned on being appealed so they spend an inordinate amount of space defending their decision, to the point they inadvertently open up areas of appeal.”);¹⁴¹⁷ and
 - *timeliness*: decisions are seldom timely,¹⁴¹⁸ and are frequently too slow.¹⁴¹⁹

-
2. Q4.3. Are judicial decisions in your jurisdiction clear and easy to understand—e.g., for the general public? (Pick one option) – *Shown to all ADMs*
 3. Q4.4. What are common problems with clarity? (Pick all applicable options) – *Shown to all ADMs*
 4. Q4.5. Are judicial decisions in your jurisdiction an appropriate length—e.g., not too long for the general public? (Pick one option) – *Shown to all ADMs*
 5. Q4.6. What are common problems with decision length? (Pick all applicable options) – *Shown to all ADMs*
 6. Q4.7. Are judicial decisions in your jurisdiction timely—e.g., not too slow? (Pick one option) – *Shown to all ADMs*
 7. Q4.8. What are common problems with the timeliness of decisions? (Pick all applicable options) – *Shown to all ADMs*
 8. Q4.9. Canadian judicial decisions could rely on more standardized structures with headings and sections like these ones:
 - a) introduction/overview: describes what the decision is about;
 - b) issues: describes the legal issues the decision addresses;
 - c) analysis: describes the judge’s decision about each legal issue and their analysis of the parties’ arguments, applicable facts, and law;
 - d) conclusion: summarizes conclusions;
 - e) order and costs: includes the order and who is responsible for costs.
 What do you think? (Pick one option) – *Shown to all ADMs*
 9. Q4.10. Canadian judicial decisions could rely on more standardized content such as plain language, standardized legal tests that would be similar to standardized jury instructions. What do you think? (Pick one option) – *Shown to all ADMs*
 10. Q4.11. Do you think judicial independence precludes courts from encouraging Canadian judges to rely on the kinds of standardized structures and contents in decisions that I just asked you about? (Pick one option) – *Shown to all ADMs*
 11. Q4.12. Do you think judicial independence precludes governments from encouraging Canadian judges to rely on standardized structures and content? (Pick one option) – *Shown to all ADMs*
 12. Q4.2. Why might standardizing structure and content infringe judicial independence? (Pick one option) – *Shown to all ADMs*

¹⁴¹³ ADM Survey Q4.2: The loser (20.00% or 1 ADM); All parties (20.00% or 1 ADM); The public (20.00% or 1 ADM); Other judges (20.00% or 1 ADM); The court of appeal (20.00% or 1).

¹⁴¹⁴ ADM Survey Q4.3: Sometimes (100.00% or 1 ADM).

¹⁴¹⁵ ADM Survey Q4.4: Too many details (100.00% or 1 ADM); Too long (100.00% or 1 ADM).

¹⁴¹⁶ ADM Survey Q4.5: Sometimes (100.00% or 1 ADM).

¹⁴¹⁷ ADM Survey Q4.6: Sometimes too long (100.00% or 1 ADM); Anything else: (100.00% or 1 ADM).

¹⁴¹⁸ ADM Survey Q4.7: Seldom (100.00% or 1 ADM).

¹⁴¹⁹ ADM Survey Q4.8: Seldom (100.00% or 1 ADM).

- Some jurisdictions already employ standardized structures¹⁴²⁰ and judicial decisions could rely on standardized content:¹⁴²¹ this point might be jurisdiction specific.

Litigant survey

The litigant survey asked litigants two blocks of questions on accessing information about what occurs in Canadian courts and about Canadian judges and judicial decisions and decision-making before turning to optional demographic questions.

Demographics

Location	Most surveyed litigants were in Ontario (14) followed by British Columbia (8), Manitoba (2), Alberta (1), Saskatchewan (1), Quebec (1), Newfoundland and Labrador (1), and New Brunswick (1). ¹⁴²²
Age	Surveyed litigants were almost all above age 35: 45 – 54 (10); 35 – 44 (9); 55 – 64 (7); 25 – 34 (2); 65 – 74 (1). ¹⁴²³
Identified gender	Many surveyed litigants identified as men (19) while the remaining identified as women (9) and prefer not to say (1). ¹⁴²⁴
Highest education level	Many surveyed litigants had either undergraduate or graduate degrees: graduate (12); undergraduate (9); College (5); High school or less (3). ¹⁴²⁵
How many disputes brought them to court	Surveyed litigants' answers were somewhat diffuse: 0-3 (9); 4-6 (9); Over 15 (6 litigants); 7-10 (4 litigants); 11-15 (1 litigants). ¹⁴²⁶
Whether they had representation	Surveyed litigants' answers were somewhat concentrated: No (55%); Yes. I paid for the lawyer (17%); No. But I had a lawyer handle some of my matter before running out of money (10%); No. But I had a lawyer coach (6%); Yes. The

¹⁴²⁰ ADM Survey Q4.9: Anything else: “Our decisions already follow this format” (100% or 1 ADM).

¹⁴²¹ ADM Survey Q4.10: Possibly. I would have to see the standardized content (100% or 1 ADM).

¹⁴²² Litigant Survey Q4.4: Ontario (48.28% or 14 litigants); British Columbia (27.59% or 8 litigants); Manitoba (6.90% or 2 litigants); Alberta (3.45% or 1 litigant); Saskatchewan (3.45% or 1 litigant); Quebec (3.45% or 1 litigant); Newfoundland and Labrador (3.45% or 1 litigant); New Brunswick (3.45% or 1 litigant).

¹⁴²³ Litigant Survey Q4.5: 45 – 54 (34.48% or 10 litigants); 35 – 44 (31.03% or 9 litigants); 55 – 64 (24.14% or 7 litigants); 25 – 34 (6.90% or 2 litigants); 65 – 74 (3.45% or 1 litigant).

¹⁴²⁴ Litigant Survey Q4.6: Male (65.52% or 19 litigants); Female (31.03% or 9 litigants); Prefer not to say (3.45% or 1 litigant).

¹⁴²⁵ Litigant Survey Q4.7: Graduate (41.38% or 12 litigants); Undergraduate (31.03% or 9 litigants); College (17.24% or 5 litigants); High school or less (10.34% or 3 litigants).

¹⁴²⁶ Litigant Survey Q4.2: 0-3 (31.03% or 9 litigants); 4-6 (31.03% or 9 litigants); Over 15 (20.69% or 6 litigants); 7-10 (13.79% or 4 litigants); 11-15 (3.45% or 1 litigants).

	lawyer was on a contingency agreement (6%); Yes. The lawyer was on legal aid (3%). ¹⁴²⁷
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Litigants from several provinces participated. A small number had “high school” or less education: more said they were educated about or above the national level for education. Most of the litigants are self-represented litigants because of how I accessed litigants (five had lawyers). Presumably, represented litigants could be surveyed, but accessing them through their lawyers could raise privilege concerns. But as you’ll see below, no question sought anything privileged.

Accessing information about what occurs in Canadian courts & about Canadian judges: like other users, some litigants could only sometimes access the information they wanted

The litigants’ survey included four questions in this block,¹⁴²⁸ and survey results suggest the following possible themes:

- Information about what occurs in courts wasn’t frequently available to some litigants:¹⁴²⁹ surveyed litigants wanted more or better information on court processes; more or better data on court processes, including performance data; more plain language summaries of judicial decisions; more or better data on judges and their decisions; more or better information on judges and their decisions; non-party and media access to court files (electronically); more plain language writing in judicial decisions; and more access to judicial decisions—amongst other items.¹⁴³⁰

¹⁴²⁷ Litigant Survey Q4.3: No (55.17% or 16 litigants); Yes. I paid for the lawyer (17.24% or 5 litigants); No. But I had a lawyer handle some of my matter before running out of money (10.34% or 3 litigants); No. But I had a lawyer coach (6.90% or 2 litigants); Yes. The lawyer was on a contingency agreement (6.90% or 2 litigants); Yes. The lawyer was on legal aid (3.45% or 1 litigant).

¹⁴²⁸ Here are the four questions:

1. Q2.2. Is information about what occurs in courts in your jurisdiction easy to access—e.g., the average wait time for decisions, information about court processes, etc.? (Pick one option) – *Shown to all litigants*
2. Q2.3. How could courts in your jurisdiction improve their information sharing? (Pick all applicable options) – *Shown to all litigants*
3. Q2.4. Is information about judges in your jurisdiction easy to access—e.g., judges’ biographical and demographic information, etc.? (Pick one option) – *Shown to all litigants*
4. Q2.5. How could information sharing about judges in your jurisdiction be improved? (Pick all applicable options) – *Shown to all litigants*

¹⁴²⁹ Litigant Survey Q2.2: Sometimes (36.84% or 14 litigants); Seldom (26.32% or 10 litigants); Never (15.79% or 6 litigants); Frequently (7.89% or 3 litigants); I do not know (7.89% or 3 litigants); Always (5.26% or 2 litigants).

¹⁴³⁰ Litigant Survey Q2.3: More or better information on court processes (73.53% or 25 litigants); More or better data on court processes, including performance data (64.71% or 22 litigants); More plain language summaries of judicial decisions (55.88% or 19 litigants); More or better data on judges and their decisions (55.88% or 19 litigants); More or better information on judges and their decisions (55.88% or 19 litigants); Non-party and media access to court files (electronically) (55.88% or 19 litigants); More plain language writing in judicial decisions (52.94% or 18 litigants); More access to judicial decisions (47.06% or 16 litigants); Anything else: (47.06% or 16

- Information about judges wasn't frequently available to some litigants:¹⁴³¹ surveyed litigants wanted more or better information about judges' writing and decision-making processes; more or better information about judges' preferences—e.g., many American judges have webpages that provide transparent information on judges and judges' preferences; more or better biographical and demographic information on judges; more or better information about how judges are trained; and more or better biographical and demographic information on the individuals who apply to become judges.¹⁴³²

Judicial decisions & judicial decision-making: some litigants are very interested in comprehensive decisions

The litigant survey included 17 questions in this block,¹⁴³³ and survey answers suggest these themes:

litigants); More online hearings (38.24% or 13 litigants); Non-party and media access to court files (in person) (32.35% or 11 litigants); More annual reports (14.71% or 5 litigants).

¹⁴³¹ Litigant Survey Q2.4: Seldom (38.24% or 13 litigants); I do not know (20.59% or 7 litigants); Never (17.65% or 6 litigants); Sometimes (14.71% or 5 litigants); Frequently (5.88% or 2 litigants); Always (2.94% or 1 litigants).

¹⁴³² Litigant Survey Q2.5: More or better information about judges' writing and decision-making processes (81.25% or 26 litigants); More or better information about judges' preferences—e.g., many American judges have webpages that provide transparent information on judges and judges' preferences (68.75% or 22 litigants); More or better biographical and demographic information on judges (56.25% or 18 litigants); More or better information about how judges are trained (56.25% or 18 litigants); More or better biographical and demographic information on the individuals who apply to become judges (46.88% or 15 litigants); Anything else: (37.50% or 12 litigants).

¹⁴³³ Here are the 17 questions:

1. Q3.3. Have you ever been—or are you currently—in a legal dispute in a court? (Pick one option) – *Shown to all litigants*
2. Q3.4. Have you received a decision resolving your legal dispute? (Pick one option) – *Shown to all litigants*
3. Q3.5. Did you read it? (Pick one option) – *Shown to all litigants*
4. Q3.6. Will you read it? (Pick one option) – *Shown to all litigants*
5. Q3.7. What is more important to you in your legal dispute? (Pick one option)
 - a) A comprehensive decision that explains why the judge decided like they did, but you must wait three to six months for it; or
 - b) A speedy decision with limited or no explanation for the decision, but you only have to wait two weeks or less for it. – *Shown to all litigants*
6. Q3.8. What is more important to you in your legal dispute? (Pick one option)
 - a) A comprehensive but slower decision—wait time of three to six months—that you can appeal; or
 - b) A speedy decision—wait time of two weeks or less—that you cannot appeal. – *Shown to all litigants*
7. Q3.9. Rank what you think are the most important parts of judicial decisions in your jurisdiction. (Drag applicable options into box and into desired order) – *Shown to all litigants*
8. Q3.10. Rank the group(s) you think Canadian judges should try to write for in order of importance. (Drag applicable options into box and into desired order) – *Shown to all litigants*
9. Q3.11. What should Canadian judges have as goals for their decision-writing? (Pick all applicable options) – *Shown to all litigants*
10. Q3.12. Are judicial decisions in your jurisdiction clear and easy to understand—e.g., for the general public? (Pick one option) – *Shown to all litigants*
11. Q3.13. What are common problems with clarity? (Pick all applicable options)
12. Q3.14. Are judicial decisions in your jurisdiction an appropriate length—e.g., not too long for the general public? (Pick one option) – *Shown to all litigants*

- Some litigants say they read the decisions given to them:¹⁴³⁴ most of the surveyed litigants had been a legal dispute.¹⁴³⁵
- Comprehensive decisions are more important than speedy ones to some litigants: only 16% of surveyed litigants said they wanted a speedy decision with limited or no explanation over a comprehensive one.¹⁴³⁶
- Appealable decisions are more important than speedy ones to some litigants: every surveyed litigant agreed on this point.¹⁴³⁷
- Factual summary, order and analysis are equally important to some litigants: while many surveyed litigants still said overview and introduction, those two were the lowest ranking parts of decisions and more litigants wanted the factual summary, order analysis, and conclusion before those parts.¹⁴³⁸
- Some litigants think judges should write for all parties: the public was another important audience. 50% of surveyed litigants said the loser.¹⁴³⁹

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13. Q3.15. What are common problems with decision length? (Pick all applicable options) – *Shown to litigants who didn't say always in previous question*
 14. Q3.16. Are judicial decisions in your jurisdiction timely—e.g., not too slow? (Pick one option) – *Shown to all litigants*
 15. Q3.17. What are common problems with the timeliness of decisions? (Pick all applicable options) – *Shown to litigants who didn't say always in previous question*
 16. Q3.18. Canadian judicial decisions could rely on more standardized structures with headings and sections like these ones:
 - a) introduction/overview: describes what the decision is about;
 - b) issues: describes the legal issues the decision addresses;
 - c) analysis: describes the judge's decision about each legal issue and their analysis of the parties' arguments, applicable facts, and law;
 - d) conclusion: summarizes conclusions;
 - e) order and costs: includes the order and who is responsible for costs.
 What do you think? (Pick one option) – *Shown to all litigants*
 17. Q3.19. Canadian judicial decisions could rely on more standardized content such as plain language, standardized legal tests that would be similar to standardized jury instructions. What do you think? (Pick one option) – *Shown to all litigants*

¹⁴³⁴ Litigant Survey Q3.4: Yes. I read all of it (94.74% or 18 litigants); No. I did not get a copy of the decision (5.26% or 1 litigant).

¹⁴³⁵ Litigant Survey Q3.2: Yes (96.97% or 32 litigants); No (3.03% or 1 litigants).

¹⁴³⁶ Litigant Survey Q3.6: Comprehensive decision that explains the result (83.87% or 26 litigants); Speedy decision with limited or no explanation (16.13% or 5 litigants).

¹⁴³⁷ Litigant Survey Q3.7: Comprehensive decision that I can appeal (100.00% or 31 litigants).

¹⁴³⁸ Litigant Survey Q3.8: Factual summary (89.29% or 25 litigants); Order (89.29% or 25 litigants); Analysis (85.71% or 24 litigants); Conclusion (78.57% or 22 litigants); Summary of parties' legal arguments (67.86% or 19 litigants); Overview (50.00% or 14 litigants); Introduction (39.29% or 11 litigants); Anything else: (7.14% or 2 litigants).

¹⁴³⁹ Litigant Survey Q3.9: All parties (92.86% or 26 litigants); The public (85.71% or 24 litigants); The court of appeal (67.86% or 19 litigants); The loser (50.00% or 14 litigants); Other judges (50.00% or 14 litigants).

- Some litigants think that explaining the result to the parties should be the most important goal for judges in writing their decisions: surveyed litigants' responses were consistent with most other justice system participants.¹⁴⁴⁰
- Like almost all other respondents, some litigants' answers suggest that decisions need substantial reform:
 - o *clarity*: only 13% of surveyed litigants said decisions were frequently clear and easy to understand.¹⁴⁴¹ Poor structure, length, and too many details were driving factors of complexity.¹⁴⁴²
 - o *length*: only 10% of surveyed litigants said decisions were frequently the right length.¹⁴⁴³ 37% noted that decisions are sometimes too short and 12% said they're frequently too short.¹⁴⁴⁴
 - o *timeliness*: only 3% surveyed litigants said decisions are always timely¹⁴⁴⁵ with most surveyed litigants said that they're too slow.¹⁴⁴⁶
- Some litigants think that decisions could rely on more standardized content and structures: no surveyed litigants said no to structured structures,¹⁴⁴⁷ and only 3% said no to standardized content.¹⁴⁴⁸

¹⁴⁴⁰ Litigant Survey Q3.10: Explain the result to the parties (89.66% or 26 litigants); Ensure that people can understand the reasons for the decision (79.31% or 23 litigants); Demonstrate independence and impartiality (72.41% or 21 litigants); Explain the result to the public (65.52% or 19 litigants); Cure flaws in decision-making (58.62% or 17 litigants); Educate the public (55.17% or 16 litigants); Explain the law to lawyers (37.93% or 11 litigants); Explain the law to other judges (34.48% or 10 litigants); Anything else: (31.03% or 9 litigants); Help them make a decision (27.59% or 8 litigants).

¹⁴⁴¹ Litigant Survey Q3.11: Seldom (37.93% or 11 litigants); Sometimes (34.48% or 10 litigants); Frequently (13.79% or 4 litigants); Never (6.90% or 2 litigants); I do not know (6.90% or 2 litigants).

¹⁴⁴² Litigant Survey Q3.12: Poorly structured (56.00% or 14 litigants); Anything else: (56.00% or 14 litigants); Too long (44.00% or 11 litigants); Too many details (32.00% or 8 litigants); Not enough context (32.00% or 8 litigants); Unclear headings (28.00% or 7 litigants).

¹⁴⁴³ Litigant Survey Q3.13: Sometimes (44.83% or 13 litigants); Seldom (27.59% or 8 litigants); I do not know (13.79% or 4 litigants); Frequently (10.34% or 3 litigants); Never (3.45% or 1 litigant).

¹⁴⁴⁴ Litigant Survey Q3.14: Sometimes too short (37.50% or 9 litigants); Frequently too long (37.50% or 9 litigants); Anything else: (37.50% or 9 litigants); Sometimes too long (25.00% or 6 litigants); Frequently too short (12.50% or 3 litigants).

¹⁴⁴⁵ Litigant Survey Q3.15: Sometimes (40.74% or 11 litigants); Seldom (33.33% or 9 litigants); Never (14.81% or 4 litigants); Frequently (7.41% or 2 litigants); Always (3.70% or 1 litigant).

¹⁴⁴⁶ Litigant Survey Q3.16: Frequently too slow (61.54% or 16 litigants); Sometimes too slow (30.77% or 8 litigants); Anything else: (19.23% or 5 litigants); Sometimes too fast (7.69% or 2 litigants); Frequently too fast (3.85% or 1 litigant).

¹⁴⁴⁷ Litigant Survey Q3.17: Yes. Unless the standardization was poor, structures could be standardized (65.52% or 19); Anything else: 24.14% or 7 litigants); Possibly. I would have to see the standardized structure (10.34% or 3 litigants).

¹⁴⁴⁸ Litigant Survey Q3.18: Yes. Unless the standardization was poor, content could be standardized (60.71% or 17 litigants); Anything else: (21.43% or 6 litigants); Possibly. I would have to see the standardized content (14.29% or 4 litigants); No. Content could not be standardized (3.57% or 1 litigants).

Legal research, legal publishing, and legal tech organization survey

The legal research, publish, and tech survey asked them questions from four blocks of questions about access to judicial decisions; the structure and content of judicial decisions; access to court data; and primary use for court data before turning to optional demographic questions.

Demographics

What kind of organization	Surveyed organizations provided these answers: Legal publishing (1); Anything else: (1): “Technically we are an insuretech.” ¹⁴⁴⁹
What category the organization falls into	Surveyed organizations provided these answers: legal research (2); Legal knowledge management (1); Online dispute resolution (1); Document management (1). ¹⁴⁵⁰
Where organization is located	Surveyed organizations were in Quebec (1) and Alberta (1). ¹⁴⁵¹

Overall, the participation rates were low (3/11 possible organizations). Canada has five major publishers of decisions (Quicklaw, Westlaw, CanLII, VLex, and Lexum). Three organisations also said that they provide access to Canadian judicial decisions, so possibly more than one publisher participated, but of the three respondents, 100% said they access decisions from CanLII and 50% said from court websites.¹⁴⁵² So I’m skeptical that any of the major publishers participated as they would getting the decisions directly from courts¹⁴⁵³—although one participate did note a data sharing agreement (which some courts do have with publishers and other companies).

Access to judicial decisions: some organizations appear to rely heavily on CanLII

The legal research, publish, and tech survey included four questions in this block,¹⁴⁵⁴ and survey answers suggest these themes:

¹⁴⁴⁹ Organization Survey Q5.4: Legal publishing (50.00% or 1 organization); Anything else: (50.00% or 1 organization).

¹⁴⁵⁰ Organization Survey Q5.5: Legal research (100.00% or 2 organization); Legal knowledge management (50.00% or 1 organization); Online dispute resolution (50.00% or 1 organization); Document management (50.00% or 1 organization).

¹⁴⁵¹ Organization Survey Q5.6: Quebec (100% or 1 organization); Alberta (100% or 1 organization).

¹⁴⁵² Organization Survey Q2.2: Yes (100.00% or 3 organization).

¹⁴⁵³ Organization Survey Q2.5: Data sharing agreements (66.67% or 2 organizations); Copyright (33.33% or 1 organizations); Intellectual property (33.33% or 1 organizations); Judicial publishing norms (33.33% or 1 organizations).

¹⁴⁵⁴ Here are the six questions:

- All surveyed organizations rely heavily on CanLII: some surveyed organizations also rely on court websites.¹⁴⁵⁵ As Chapters 4-5 discuss, individuals shouldn't have to rely on third parties to access court information.
- No surveyed organization allows bulk access:¹⁴⁵⁶ their data sharing agreements, copyright, IP, and judicial publishing norms preclude it.¹⁴⁵⁷ Again, as Chapters 4-5 discuss, individuals shouldn't have to rely on third parties to access court information in bulk. As Chapter 1 discusses, judicial independence isn't a one-way street.

Structure and content of judicial decisions: some organizations are interested in standardizing both

The legal research, publish, and tech survey included five questions in this block,¹⁴⁵⁸ and survey answers suggest these themes:

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1. Q2.2. How does your organization access Canadian judicial decisions? (Drag applicable options into box and into desired order) – *Shown to all organizations*
 2. Q2.3. Does your organization provide access to Canadian judicial decisions? (Pick one option) – *Shown to all organizations*
 3. Q2.4. Does your organization provide users bulk access to Canadian judicial decisions? (Pick one option) – *Shown to organizations who said yes in the previous answer*
 4. Q2.5. Why does your organization not provide more bulk access to Canadian judicial decisions? (Pick all applicable options) – *Shown to organizations who said no in the previous answer*

¹⁴⁵⁵ Organization Survey Q2.2: Yes (100.00% or 3 organization).

¹⁴⁵⁶ Organization Survey Q2.4: No (100.00% or 3 organizations).

¹⁴⁵⁷ Organization Survey Q2.5: Data sharing agreements (66.67% or 2 organizations); Copyright (33.33% or 1 organizations); Intellectual property (33.33% or 1 organizations); Judicial publishing norms (33.33% or 1 organizations).

¹⁴⁵⁸ Here are the five questions:

1. Q3.2 Canadian judicial decisions could rely on more standardized structures with headings and sections like these ones:
 - a) introduction/overview: describes what the decision is about;
 - b) issues: describes the legal issues the decision addresses;
 - c) analysis: describes the judge's decision about each legal issue and their analysis of the parties' arguments, applicable facts, and law;
 - d) conclusion: summarizes conclusions;
 - e) order and costs: includes the order and who is responsible for costs.
 Does your organization think that more standardized structures could improve legal research, knowledge management, or legal analytics? (Pick one option) – *Shown to all organizations*
2. Q3.3 Canadian judicial decisions could rely on more standardized content such as plain language, standardized legal tests that would be similar to standardized jury instructions. Does your organization think that more standardized content could improve legal research, knowledge management, or legal analytics? (Pick one option) – *Shown to all organizations*
3. Q3.4 In your organization's opinion, what changes to the structure of decisions could improve legal research, knowledge management, or legal analytics? (Pick all applicable options) – *Shown to all organizations*
4. Q3.5 In your organization's opinion, what changes to the content of decisions could improve legal research, knowledge management, or legal analytics? (Pick all applicable options) – *Shown to all organizations*
5. Q3.6 Rank the best file format for courts to release judicial decisions to your organization. (Drag applicable options into box and into desired order) – *Shown to all organizations*

- All surveyed organizations seemed interested in standardized structures and content: all surveyed organizations said standardized structures could possibly improve legal research, knowledge management, or legal analytics¹⁴⁵⁹ and most surveyed organizations said standardized content could also do the same.¹⁴⁶⁰
- All surveyed organizations wanted changes to structure: suggestions include more standardization and metadata.¹⁴⁶¹
- All surveyed organizations wanted changes to content: such changes include summary sections, clear conclusions, clear orders, and more metadata.¹⁴⁶²

Access to court data: access doesn't appear democratic for some organizations

The legal research, publish, and tech survey included 16 questions in this block,¹⁴⁶³ and survey answers suggest these themes:

¹⁴⁵⁹ Organization Survey Q3.2: Yes. Unless the standardization was poor, structures could be standardized (100.00% or 3 organizations).

¹⁴⁶⁰ Organization Survey Q3.3: Yes. Unless the standardization was poor, content could be standardized (66.67% or 2 organizations); Possibly. I would have to see the standardized content (33.33% or 1 organization).

¹⁴⁶¹ Organization Survey Q3.4: More standardization (100.00% or 3 organizations). More metadata (100.00% or 3 organizations); More headings (33.33% or 1 organization); Better headings (33.33% or 1 organization).

¹⁴⁶² Organization Survey Q3.5: Brief summary section (100.00% or 3 organizations); Clear conclusion (100.00% or 3 organizations); Clear order 100.00% or 3 organizations); More metadata (66.67% or 2 organizations); Clear overview (33.33% or 1 organization); More standardization (33.33% or 1 organization); Keywords (33.33% or 1 organization).

¹⁴⁶³ Here are the 16 questions:

1. Q4.2. What countries is your organization currently accessing court data from? (Pick all applicable options) – *Shown to all organizations*
2. Q4.3. What Canadian court data is your organization currently using? (Pick all applicable options) – *Shown to organizations who said Canada in the previous question*
3. Q4.4. Can your organization access the data it needs from Canadian courts? (Pick one option) – *Shown to all organizations*
4. Q4.5. What other data does your organization want from Canadian courts? (Pick all applicable options) – *Shown to organizations who didn't say always in the previous question*
5. Q4.6. How does your organization access Canadian court data? (Pick all applicable options) – *Shown to organizations who said Canada in Q4.2*
6. Q4.7. How does your organization get data directly from courts? (Pick all applicable options) *Shown to organizations who said direct from courts in the previous question*
7. Q4.8. Rank the most useful court data for your organization. (Drag applicable options into box and into desired order) – *Shown to all organizations*
8. Q4.9. Rank the best formats to receive data from courts for your organization. (Drag applicable options into box and into desired order) – *Shown to all organizations*
9. Q4.10. Rank the preferred method to access court data for your organization. (Drag applicable options into box and into desired order) – *Shown to all organizations*
10. Q4.11. Does your organization provide access to court data? (Pick one option) – *Shown to all organizations*
11. Q4.12. Does your organization allow users bulk access court data? (Pick one option) – *Shown to all organizations*

- Surveyed organizations are using a variety of data: decisions appear to be a main data source,¹⁴⁶⁴ and organizations get them from CanLII, courts, and court websites.¹⁴⁶⁵
- Surveyed organizations don't seem to provide bulk access to court data:¹⁴⁶⁶ data sharing agreements preclude it.¹⁴⁶⁷
- Surveyed organizations want more metadata in civil and criminal decisions: answers were quite broad and included things like subject matter, counsel names, links to originating proceedings, *etc.*¹⁴⁶⁸

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12. Q4.13. Why does your organization preclude bulk access to your court data? (Pick all applicable options) – *Shown to organizations who said no in the previous question*
 13. Q4.14. What metadata would your organization like to see courts or publishers include in criminal decisions? (Pick all applicable options) – *Shown to all organizations*
 14. Q4.15. What metadata would your organization like to see courts or publishers include in civil decisions? (Pick all applicable options) – *Shown to all organizations*
 15. Q4.16. Could more open-access APIs, aka “application programming interface”, to Canadian judicial decisions and their metadata be beneficial for legal research, knowledge management, or legal analytics—either generally or for your organization? (Pick one option) – *Shown to all organizations*
 16. Q4.17. Anything else I should know about metadata and judicial decisions? (Pick one option) – *Shown to all organizations*

¹⁴⁶⁴ Organization Survey Q4.8: Decisions (100.00% or 3 organizations); Case management documents (66.67% or 2 organizations); Hearing lists (33.33% or 1 organization); Orders (33.33% or 1 organization); Pleadings (33.33% or 1 organization).

¹⁴⁶⁵ Organization Survey Q4.6: CanLII (100.00% or 2 organizations); direct from courts (50.00% or 1 organization); Court websites (50.00% or 1 organization).

¹⁴⁶⁶ Organization Survey Q4.12: No (100.00% or 1 organization).

¹⁴⁶⁷ Organization Survey Q4.13: Data sharing agreements (100.00% or 1 organization).

¹⁴⁶⁸ Organization Survey Q4.9: Citation (50.00% or 1 organization); Decision date (50.00% or 1 organization); Jurisdiction (50.00% or 1 organization); Delivery time—*i.e.*, how long the parties had to wait for the decision (50.00% or 1 organization); Jury vs. no jury (50.00% or 1 organization); Represented vs. self-represented (50.00% or 1 organization); Information on why individual is self-represented—*e.g.*, not enough money (50.00% or 1 organization); Information on whether self-represented individual previously contacted a lawyer (50.00% or 1 organization); Plaintiff gender (50.00% or 1 organization); Defendant gender (50.00% or 1 organization); Plaintiff age (50.00% or 1 organization); Defendant age (50.00% or 1 organization); Plaintiff ethnicity (50.00% or 1 organization); Defendant ethnicity (50.00% or 1 organization); Plaintiff type—*e.g.*, government, business, person (50.00% or 1 organization); Defendant type—*e.g.*, government, business, person (50.00% or 1 organization); Headings used in the decision (50.00% or 1 organization); Subject matter—*e.g.*, personal injury, criminal, family (50.00% or 1 organization); Relief sought (50.00% or 1 organization); Procedural vs. substantive (50.00% or 1 organization); List of defences that defendant and third party raised (50.00% or 1 organization); Secondary sources decision cites (including citing paragraph) (50.00% or 1 organization); Statutes decision cites (including citing paragraph) (50.00% or 1 organization); Cases decision cites (including citing paragraph) (50.00% or 1 organization); Treatment of cited case in decision—*e.g.*, positive, neutral, negative (50.00% or 1 organization); Cases cited in written argument (50.00% or 1 organization); Cases cited in oral argument (50.00% or 1 organization); Statutes cited in written argument (50.00% or 1 organization); Statutes cited in oral argument (50.00% or 1 organization); Secondary sources cited in written argument (50.00% or 1 organization); Secondary sources cited in oral argument (50.00% or 1 organization); Costs sought (50.00% or 1 organization); Costs awarded (50.00% or 1 organization); Damages sought (50.00% or 1 organization); Damages awarded in itemized format (50.00% or 1 organization); Originating or appeal proceeding (50.00% or 1 organization); Appeal justification—*e.g.*, error of law (if applicable) (50.00% or 1 organization); Appeal information, including any appeal outcome (50.00% or 1 organization); Anything else: (50.00% or 1 organization).

- Surveyed organizations want more API access: surveyed organizations generally want API access for court data.¹⁴⁶⁹

User needs: some organizations have broad and varied needs

The legal research, publish, and tech survey included two questions in this block,¹⁴⁷⁰ and survey answers suggest these themes:

- Surveyed organization's user needs are broad: they include legal research, predictive analytics, business intelligence, and providing support.¹⁴⁷¹
- Surveyed organizations' clients are varied: they include law firms, individuals, banking, insurance, academics, and government.¹⁴⁷²

Legal information professional survey

The legal information professional survey asked legal information professionals from four blocks of questions about metadata; the structure and content of judicial decisions; and the publication and accessibility of judicial decision before turning to optional demographic questions.

Demographics

Location	Surveyed legal information professionals were mostly from Ontario (17), British Columbia (9), Alberta (6) with the remaining from Manitoba (3), Quebec (2), Nova Scotia (2), and Newfoundland and Labrador (1). ¹⁴⁷³
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¹⁴⁶⁹ Organization Survey Q4.10: API (100.00% or 3 organizations); Bulk file download (66.67% or 2 organizations); RSS (66.67% or 2 organizations); Email listserv (33.33% 1 organization).

¹⁴⁷⁰ Here are the two questions:

1. Q5.2. What is your organization's primary use for court data, including judicial decisions? (Pick one option) – *Shown to all organizations*
2. Q5.3. Who is your organization's target client, customer, or audience for products that use Canadian court data? (Pick all applicable options) – *Shown to all organizations*

¹⁴⁷¹ Organization Survey Q5.2: Legal research (50.00% or 1 organization); Predictive analytics (50.00% or 1 organization); Business intelligence (50.00% or 1 organization); Provide support to individuals (50.00% or 1 organization); Provide support to SMEs (50.00% or 1 organization); Provide support to large corporate clients (50.00% or 1 organization); Anything else: (50.00% or 1 organization).

¹⁴⁷² Organization Survey Q5.3: Law firms (Top 100) (100.00% or 2 organizations); Law firms (small and medium sized) (100.00% or 2 organizations); Individuals (100.00% or 2 organizations); Banking, insurance, or financial services (100.00% or 2 organizations); Academics (50.00% or 1 organization); Government (50.00% or 1 organization).

¹⁴⁷³ Legal Information Professional Survey Q5.2: Ontario (42.50% or 176 legal information professionals); British Columbia (22.50% or 9 legal information professionals); Alberta (15.00% or 6 legal information professionals); Manitoba (7.50% or 3 legal information professionals); Quebec (5.00% or 2 legal information professionals); Nova Scotia (5.00% or 2 legal information professionals); Newfoundland and Labrador (2.50% or 1 legal information professional).

Gender	Surveyed legal information professionals mostly identified as female (33) followed by male (7) and prefer not to say (2). ¹⁴⁷⁴
Age	Surveyed legal information professionals age was somewhat concentrated: 35 – 44 (13); 45 – 54 (13); 25 – 34 (8); 55 – 64 (4); 65 – 74 (3); 18 – 24 (2). ¹⁴⁷⁵
Position	Surveyed legal information professionals' positions was somewhat concentrated: Anything else: (15); Courthouse librarian (10); Research librarian (7); Research librarian (non-governmental organization) (5); Research librarian (government) (2); Knowledge management (government) (1); Knowledge management (private sector law firm) (1). 15 legal information professionals included these open-text comments that included these positions: academic law librarian, information sector consultation, courthouse librarian, judges' librarian. ¹⁴⁷⁶
Individuals they interact with the most	Surveyed legal information professionals' positions was somewhat concentrated: Lawyers (22); Law students (10); Anything else: (7); Decision-makers (1); Researchers (1). 15 legal information professionals included these open-text comments that also included these individuals: judges; law professors. ¹⁴⁷⁷
Whether they are trained as a lawyer	Most surveyed legal information professionals weren't lawyers: no (34); yes (8). ¹⁴⁷⁸

As a person who attended three law schools, I generally stress the importance of knowing the library, meeting legal information professionals, and frequently visiting the shelves. I don't know what other instructors or academics might say. Even in the era of digital content and LLMs and

¹⁴⁷⁴ Legal Information Professional Survey Q5.3: Female (78.57% or 33 legal information professionals); Male (16.67% or 7 legal information professionals); Prefer not to say (4.76% or 2 legal information professionals).

¹⁴⁷⁵ Legal Information Professional Survey Q5.4: 35 – 44 (30.23% or 13 legal information professionals); 45 – 54 (30.23% 13 legal information professionals); 25 – 34 (18.60% 8 legal information professionals); 55 – 64 (9.30% or 4 legal information professionals); 65 – 74 (6.98% or 3 legal information professionals); 18 – 24 (4.65% or 2 legal information professionals).

¹⁴⁷⁶ Legal Information Professional Survey Q5.5: Anything else: (36.59% or 15 legal information professionals); Courthouse librarian (24.39% or 10 legal information professionals); Research librarian (private sector law firm) (17.07% or 7 legal information professionals); Research librarian (non-governmental organization) (12.20% or 5 legal information professionals); Research librarian (government) (4.88% or 2 legal information professionals); Knowledge management (government) (2.44% or 1 legal information professional); Knowledge management (private sector law firm) (2.44% or 1 legal information professional).

¹⁴⁷⁷ Legal Information Professional Survey Q5.6: Lawyers (53.66% or 22 legal information professionals); Law students (24.39% or 10 legal information professionals); Anything else: (17.07% or 7 legal information professionals); Decision-makers (2.44% or 1 legal information professional); Researchers (2.44% or 1 legal information professional).

¹⁴⁷⁸ Legal Information Professional Survey Q5.7: No (80.95% or 34 legal information professionals); Yes 19.05% or 8 legal information professionals).

google, libraries still present an unparalleled user experience, and legal information professionals are responsible for that reality (to be very clear, this dissertation relies heavily on the libraries of the University of Toronto and York University as well as the Toronto Public Library System). In other words, legal information professionals still have some of the best knowledge and methods of legal information, and justice system participants should involve them in any reform efforts for data gathering and transparency. Here, the respondent rate was some of the best among the groups on a denominator basis.

Metadata: some legal information professionals want far more metadata

The legal information professionals' survey included three questions in this block,¹⁴⁷⁹ and survey answers suggest these themes:

¹⁴⁷⁹ Here are the three questions:

1. Q2.2. What metadata would you like to see courts or publishers include in criminal decisions—either generally or for your organization? (Pick all applicable options) – *Shown to all legal information professionals*
2. Q2.3. What metadata would you like to see courts or publishers include in civil decisions—either generally or for your organization? (Pick all applicable options) – *Shown to all legal information professionals*
3. Q2.4. Anything else I should know about metadata and Canadian judicial decisions? (Pick one option) – *Shown to all legal information professionals*

- Much of the desired civil¹⁴⁸⁰ and criminal metadata¹⁴⁸¹ isn't available for some legal information professionals: as one legal informational professional noted, "CanLII is a

¹⁴⁸⁰ Legal Information Professional Survey Q2.2: Citation (97.92% or 47 legal information professionals); Jurisdiction (95.83% or 46 legal information professionals); Judge name(s) (95.83% or 46 legal information professionals); Decision date (93.75% or 45 legal information professionals); Counsel names (89.58% or 43 legal information professionals); Statutes decision cites (including citing paragraph) (85.42% or 41 legal information professionals); Secondary sources decision cites (including citing paragraph) (81.25% or 39 legal information professionals); Cases decision cites (including citing paragraph) (81.25% or 39 legal information professionals); Subject matter—e.g., murder, assault, etc (79.17% or 38 legal information professionals); Treatment of cited case in decision—e.g., positive, neutral, negative (75.00% or 36 legal information professionals); Link to all filed materials—e.g., written arguments (75.00% or 36 legal information professionals); Represented vs. self-represented (66.67% or 32 legal information professionals); What expert opined on (66.67% or 32 legal information professionals); Procedural vs. substantive (66.67% or 32 legal information professionals); List of related proceedings—e.g., motions (66.67% or 32 legal information professionals); Link to originating proceeding—e.g., criminal charge (66.67% or 32 legal information professionals); Jury vs. no jury (64.58% or 31 legal information professionals); Interlocutory vs. final relief (64.58% or 31 legal information professionals); Registry (62.50% or 30 legal information professionals); Originating or appeal proceeding (62.50% or 30 legal information professionals); Appeal information, including appeal outcome (62.50% or 30 legal information professionals); Expert names (60.42% or 29 legal information professionals); Cases cited in written argument (56.25% or 27 legal information professionals); Secondary sources cited in written argument (56.25% or 27 legal information professionals); Appeal justification—e.g., error of law (if applicable) (56.25% or 27 legal information professionals); Statutes cited in written argument (54.17% or 26 legal information professionals); Headings used in the decision (52.08% or 25 legal information professionals); Cases cited in oral argument (52.08% or 25 legal information professionals); Statutes cited in oral argument (52.08% or 25 legal information professionals); Secondary sources cited in oral argument (52.08% or 25 legal information professionals); List of live issues (43.75% or 21 legal information professionals); List of defences that accused raised (41.67% or 20 legal information professionals); Accused age (37.50% or 18 legal information professionals); Witness breakdown—e.g., police officers, lay witness, eye witness (37.50% or 18 legal information professionals); Delivery time—i.e., how long the parties had to wait for the decision (35.42% or 17 legal information professionals); Hearing information—e.g., in person, by phone, by video (35.42% or 17 legal information professionals); Start and end paragraphs for concurring, separate, or dissenting opinions (33.33% or 16 legal information professionals); Paragraphs that address live issues (31.25% or 15 legal information professionals); How many court days (29.17% or 14 legal information professionals); Accused gender (27.08% or 13 legal information professionals); How many witnesses (27.08% or 13 legal information professionals); Accused ethnicity (25.00% or 12 legal information professionals); Information on why individual is self-represented—e.g., not enough money (20.83% or 10 legal information professionals); Judge gender (20.83% or 10 legal information professionals); Word count of entire decision (20.83% or 10 legal information professionals); Jury demographic information (18.75% or 9 legal information professionals); Breakdown of court time by party—e.g., accused case vs. crown case (18.75% or 9 legal information professionals); Expert gender (16.67% or 8 legal information professionals); Anything else: (16.67% or 8 legal information professionals); Information on whether self-represented individual previously contacted a lawyer (14.58% or 7 legal information professionals); Word count for what appears under each heading—e.g., 500 words for analysis (14.58% or 7 legal information professionals); How many online participants (14.58% or 7 legal information professionals); Location of online participants (12.50% or 6 legal information professionals); Connectivity issues with online hearings (12.50% or 6 legal information professionals).

¹⁴⁸¹ Legal Information Professional Survey Q2.2: Citation (97.92% or 47 legal information professionals); Jurisdiction (95.83% or 46 legal information professionals); Judge name(s) (95.83% or 46 legal information professionals); Decision date (93.75% or 45 legal information professionals); Counsel names (89.58% or 43 legal information professionals); Statutes decision cites (including citing paragraph) (85.42% or 41 legal information professionals); Secondary sources decision cites (including citing paragraph) (81.25% or 39 legal information professionals); Cases decision cites (including citing paragraph) (81.25% or 39 legal information professionals); Subject matter—e.g., murder, assault, etc (79.17% or 38 legal information professionals); Treatment of cited case in decision—e.g., positive, neutral, negative (75.00% or 36 legal information professionals); Link to all filed materials—e.g., written arguments (75.00% or 36 legal information professionals); Represented vs. self-represented

very good product, but I think some of the information you included here would really add a lot of value for legal researchers/information professionals/articling students. Often time we are asked for magical things that are not mentioned in decisions but we are expected to find anyways....”¹⁴⁸² Surveyed legal information professionals’ answers were quite concentrated and the metadata they were most interested in is only partially included with decisions by some publishers. Either publishers or courts could be including far more metadata—at least based on the views of legal information professionals. As Chapter 5 discusses, it could unlock the potential for far more empirical legal research about judicial decision-writing and judicial decision-making.

(66.67% or 32 legal information professionals); What expert opined on (66.67% or 32 legal information professionals); Procedural vs. substantive (66.67% or 32 legal information professionals); List of related proceedings—e.g., motions (66.67% or 32 legal information professionals); Link to originating proceeding—e.g., criminal charge (66.67% or 32 legal information professionals); Jury vs. no jury (64.58% or 31 legal information professionals); Interlocutory vs. final relief (64.58% or 31 legal information professionals); Registry (62.50% or 30 legal information professionals); Originating or appeal proceeding (62.50% or 30 legal information professionals); Appeal information, including appeal outcome (62.50% or 30 legal information professionals); Expert names (60.42% or 29 legal information professionals); Cases cited in written argument (56.25% or 27 legal information professionals); Secondary sources cited in written argument (56.25% or 27 legal information professionals); Appeal justification—e.g., error of law (if applicable) (56.25% or 27 legal information professionals); Statutes cited in written argument (54.17% or 26 legal information professionals); Headings used in the decision (52.08% or 25 legal information professionals); Cases cited in oral argument (52.08% or 25 legal information professionals); Statutes cited in oral argument (52.08% or 25 legal information professionals); Secondary sources cited in oral argument (52.08% or 25 legal information professionals); List of live issues (43.75% or 21 legal information professionals); List of defences that accused raised (41.67% or 20 legal information professionals); Accused age (37.50% or 18 legal information professionals); Witness breakdown—e.g., police officers, lay witness, eye witness (37.50% or 18 legal information professionals); Delivery time—i.e., how long the parties had to wait for the decision (35.42% or 17 legal information professionals); Hearing information—e.g., in person, by phone, by video (35.42% or 17 legal information professionals); Start and end paragraphs for concurring, separate, or dissenting opinions (33.33% or 16 legal information professionals); Paragraphs that address live issues (31.25% or 15 legal information professionals); How many court days (29.17% or 14 legal information professionals); Accused gender (27.08% or 13 legal information professionals); How many witnesses (27.08% or 13 legal information professionals); Accused ethnicity (25.00% or 12 legal information professionals); Information on why individual is self-represented—e.g., not enough money (20.83% or 10 legal information professionals); Judge gender (20.83% or 10 legal information professionals); Word count of entire decision (20.83% or 10 legal information professionals); Jury demographic information (18.75% or 9 legal information professionals); Breakdown of court time by party—e.g., accused case vs. crown case (18.75% or 9 legal information professionals); Expert gender (16.67% or 8 legal information professionals); Anything else: (16.67% or 8 legal information professionals); Information on whether self-represented individual previously contacted a lawyer (14.58% or 7 legal information professionals); Word count for what appears under each heading—e.g., 500 words for analysis (14.58% or 7 legal information professionals); How many online participants (14.58% or 7 legal information professionals); Location of online participants (12.50% or 6 legal information professionals); Connectivity issues with online hearings (12.50% or 6 legal information professionals).

¹⁴⁸² Legal Information Professional Q2.4. Multiple other points were also noted, including “not all judicial decisions are published - perhaps there could be a metadata standard for those that are not published so they could be retrieved at the jurisdictional repository”; “not all judicial decisions are published - perhaps there could be a metadata standard for those that are not published so they could be retrieved at the jurisdictional repository”; *etc.*

The structure and content of judicial decisions: some legal information professionals think they could be more standardized

The legal information professionals' survey included four questions in this block,¹⁴⁸³ and survey answers suggest these themes:

- Some legal information professionals said that standardized structures could improve legal research, knowledge management, or legal analytics: no surveyed legal informational professional said no, but one said they can't see judges adhering to such a standard.¹⁴⁸⁴
- Some legal information professionals said that standardized content could improve legal research, knowledge management, or legal analytics: only 10% of surveyed legal information professionals said no.¹⁴⁸⁵
- Some legal information professionals want to see changes to decisions' structure: more metadata, better headings, more standardization, and more headings were suggestions.¹⁴⁸⁶

¹⁴⁸³ Here are the four questions:

1. Q3.2. Canadian judicial decisions could rely on more standardized structures with headings and sections like these ones:
 - a) introduction/overview: describes what the decision is about;
 - b) issues: describes the legal issues the decision addresses;
 - c) analysis: describes the judge's decision about each legal issue and their analysis of the parties' arguments, applicable facts, and law;
 - d) conclusion: summarizes conclusions;
 - e) order and costs: includes the order and who is responsible for costs.Do you think that standardized structures could improve legal research, knowledge management, or legal analytics—either generally or for your organization? (Pick one option) – *Shown to all legal information professionals*
2. Q3.3. Canadian judicial decisions could rely on more standardized content such as plain language, standardized legal tests that would be similar to standardized jury instructions. Do you think that more standardized content could improve legal research, knowledge management, or legal analytics—either generally or for your organization? (Pick one option) – *Shown to all legal information professionals*
3. Q3.4. What changes would you make to the structure of Canadian judicial decisions to improve legal research, knowledge management, or legal analytics—either generally or for your organization? (Pick all applicable options) – *Shown to all legal information professionals*
4. Q3.5. What changes would you make to the content of Canadian judicial decisions to improve legal research, knowledge management, or legal analytics—either generally or for your organization? (Pick all applicable options) – *Shown to all legal information professionals*

¹⁴⁸⁴ Legal Information Professional Survey Q3.2: Yes. Unless the standardization was poor, structures could be standardized (46.81% or 22 legal information professionals); Possibly. I would have to see the standardized structure (44.68% or 21 legal information professionals); Anything else: (8.51% or 4 legal information professionals).

¹⁴⁸⁵ Legal Information Professional Survey Q3.3: Yes. Unless the standardization was poor, content could be standardized (41.30% or 19 legal information professionals); Possibly. I would have to see the standardized content (36.96% or 17 legal information professionals); No. Content could not be standardized (10.87% or 5 legal information professionals); Anything else: (10.87% or 5 legal information professionals).

¹⁴⁸⁶ Legal Information Professional Survey Q3.4: More metadata (80.43% or 37 legal information professionals); Better headings (67.39% or 31 legal information professionals); More standardization (67.39% or 31 legal information professionals); More headings (50.00% or 23 legal information professionals); Anything else: (8.70% or 4 legal information professionals).

- Some legal information professionals want to see changes to decisions’ content: clear conclusion, summary section, more metadata, clear overview, keywords, clear order, and more standardization were suggestions.¹⁴⁸⁷

The publication and accessibility of judicial decisions: some legal information professionals seem to think publication could be more democratic

The legal information professionals’ survey included four questions in this block,¹⁴⁸⁸ and survey answers suggest these themes:

- Some legal informational professionals seem to support the broader dissemination of judicial decisions: many surveyed legal information professionals suggested that legal research, knowledge management, or legal analytics could improve if judicial decisions were more broadly released.¹⁴⁸⁹
- Some legal informational professionals seem to support changes to Crown copyright: while some legal information professional didn’t know if Crown copyright impacts legal research, knowledge management, or legal analytics, many seemed to possibly think it did.¹⁴⁹⁰

¹⁴⁸⁷ Legal Information Professional Survey Q3.5: Clear conclusion (73.33% or 33 legal information professionals); Brief summary section (68.89% or 31 legal information professionals); More metadata (64.44% or 29 legal information professionals); Clear overview (62.22% or 28 legal information professionals); Keywords (60.00% or 27 legal information professionals); Clear order (57.78% or 26 legal information professionals); More standardization (57.78% or 26 legal information professionals); Anything else: (11.11% or 5 legal information professionals).

¹⁴⁸⁸ Here are the four questions:

1. Q4.2. Rank the best format for Canadian courts to release decisions—either generally or for your organization? (Drag applicable options into box and into desired order) – *Shown to all legal information professionals*
2. Q4.3. Could legal research, knowledge management, and legal analytics increase if courts released judicial decisions more broadly, e.g., to law libraries or firms—either generally or for your organization? (Pick one option) – *Shown to all legal information professionals*
3. Q4.4. Does Crown copyright over Canadian judicial decisions impact legal research, knowledge management, or legal analytics—either generally or for your organization? (Pick one option) – *Shown to all legal information professionals*
4. Q4.5. Could more open-access APIs, aka “application programming interface”, to Canadian judicial decisions and their metadata be beneficial for legal research, knowledge management, or legal analytics—either generally or for your organization? (Pick one option) – *Shown to all legal information professionals*

¹⁴⁸⁹ Legal Information Professional Survey Q4.3: Maybe (38.64% or 17 legal information professionals); Yes (34.09% or 15 legal information professionals); No (27.27% or 12 legal information professionals).

¹⁴⁹⁰ Legal Information Professional Survey Q4.4: I do not know (27.91% or 12 legal information professionals); Maybe (27.91% or 12 legal information professionals); No (23.26% or 10 legal information professionals); Yes (20.93% or 9 legal information professionals).

- Some legal informational professionals seem to support more API access to judicial decisions and their metadata: many surveyed legal information professionals seemed to support the idea and indicated it could be beneficial for legal research.¹⁴⁹¹

¹⁴⁹¹ Legal Information Professional Survey Q4.5: Maybe (39.53% or 17 legal information professionals); Yes (39.53% or 17 legal information professionals); I do not know (18.60% or 8 legal information professionals); No (2.33% or 1 legal information professional).

Appendix 3: Florida's 140 datapoints¹⁴⁹²

Justice system participant	Datapoints
Every court	1. Case number. 2. Date that the alleged offense occurred. 3. Date the defendant is taken into physical custody by a law enforcement agency or is issued a notice to appear on a criminal charge. 4. Whether the case originated by notice to appear. 5. Date that the criminal prosecution of a defendant is formally initiated. 6. Arraignment date. 7. Attorney appointment date. 8. Attorney withdrawal date. 9. Case status. 10. Charge disposition. 11. Disposition date and disposition type. 12. Information related to each defendant, including: a. Identifying information, including name, known aliases, date of birth, race, ethnicity, and gender. b. Zip code of last known address. c. Primary language. d. Citizenship. e. Immigration status. f. Whether the defendant has been found to be indigent 13. Information related to the charges filed against the defendant, including: a. Charge description. b. Charge modifier description and statute, if applicable. c. Drug type for each drug charge, if known. d. Qualification for a flag designation as defined in this section, including a domestic violence flag, gang affiliation flag, sexual offender flag, habitual offender flag, habitual violent felony offender flag, pretrial release violation flag, prison releasee reoffender flag, three-time violent felony offender flag, or violent career criminal flag. 14. Information related to bail or bond and pretrial release determinations, including the dates of any such determinations: a. Pretrial release determination made at a first appearance hearing that occurs within 24 hours of arrest, including any monetary and nonmonetary conditions of release. b. Modification of bail or bond conditions made by a court having jurisdiction to try the defendant or, in the absence of the judge of the trial court, by the circuit court, including modifications to any monetary and nonmonetary conditions of release. c. Cash bail or bond payment, including whether the defendant utilized a bond agent to post a surety bond. d. Date defendant is released on bail, bond, or pretrial release for the current case. e. Bail or bond revocation due to a new offense, a failure to appear, or a violation of the terms of bail or bond, if applicable. 15. Information related to court dates and dates of motions and appearances, including: a. Date of any court appearance and the type of proceeding scheduled for each date reported. b. Date of any failure to appear in court, if applicable. c. Deferred prosecution or pretrial diversion hearing, if applicable. d. Each scheduled trial date. e. Date that a defendant files a notice to participate in discovery. f. Speedy trial motion date and each hearing date, if applicable.

¹⁴⁹² *Criminal Procedure and Corrections*, *supra* note 817.

	g. Dismissal motion date and each hearing date, if applicable. 16. Defense attorney type. 17. Information related to sentencing, including: a. Date that a court enters a sentence against a defendant. b. Charge sentenced to, including charge sequence number, and charge description. c. Sentence type and length imposed by the court in the current case, reported in years, months, and days, including, but not limited to, the total duration of incarceration in a county detention facility or state correctional institution or facility, and conditions of probation or community control supervision. d. Amount of time served in custody by the defendant related to each charge that is credited at the time of disposition of the charge to reduce the imposed length of time the defendant will serve on the term of incarceration that is ordered by the court at disposition. e. Total amount of court costs imposed by the court at the disposition of the case. f. Total amount of fines imposed by the court at the disposition of the case. g. Restitution amount ordered at sentencing. 18. The sentencing judge or magistrate, or their equivalent.
Every state attorney (akin to a sr. crown prosecutor)	1. Information related to a human victim of a criminal offense, including: a. Identifying information of the victim, including race, ethnicity, gender, and age at the time of the offense. b. Relationship to the offender, if any. 2. Number of full-time prosecutors. 3. Number of part-time prosecutors. 4. Annual felony caseload. 5. Annual misdemeanor caseload. 6. Disposition of each referred charge, such as filed, declined, or diverted. 7. Number of cases in which a no-information was filed. 8. Information related to each defendant, including: a. Each charge referred to the state attorney by a law enforcement agency or sworn complainant related to an episode of criminal activity. b. Case number, name, and date of birth. c. Drug type for each drug charge, if applicable. d. Deferred prosecution or pretrial diversion agreement date, if applicable.
Every public defender (akin to legal aid)	1. Number of full-time public defenders. 2. Number of part-time public defenders. 3. Number of contract attorneys representing indigent defendants for the office of the public defender. 4. Annual felony caseload. 5. Annual felony conflict caseload. 6. Annual misdemeanor caseload. 7. Annual misdemeanor conflict caseload.
Every detention facility	1. Maximum capacity for the county detention facility. 2. Weekly admissions to the county detention facility for a revocation of probation or community control. 3. Weekly admissions to the county detention facility for a revocation of pretrial release. 4. Daily population of the county detention facility, including the specific number of inmates in the custody of the county that: a. Are awaiting case disposition. b. Have been sentenced by a court to a term of incarceration in the county detention facility. c. Have been sentenced by a court to a term of imprisonment with the Department of Corrections and who are awaiting transportation to the department. d. Have a federal detainer, are awaiting disposition of a case in federal court, or are awaiting other federal disposition. 5. Information related to each inmate, including:

	a. Identifying information, including name, date of birth, race, ethnicity, gender, case number, and identification number assigned by the county detention facility. b. Immigration status. c. Date when an inmate is processed and booked into the county detention facility subsequent to an arrest for a new violation of law, for a violation of probation or community control, or for a violation of pretrial release. d. Reason why an inmate is processed and booked into the county detention facility, including a new law violation, a violation of probation or community control, or a violation of pretrial release. e. Qualification for a flag designation as defined in this section, including domestic violence flag, gang affiliation flag, habitual offender flag, habitual violent felony offender flag, pretrial release violation flag, sexual offender flag, prison releasee reoffender flag, three-time violent felony offender flag, or violent career criminal flag. 6. Total population of the county detention facility at year-end. This data must include the same specified classifications as subparagraph 4. 7. Per diem rate for a county detention facility bed. 8. Daily number of correctional officers for the county detention facility. 9. Annual county detention facility budget. This information only needs to be reported once annually at the beginning of the county's fiscal year. 10. Annual revenue generated for the county from the temporary incarceration of federal defendants or inmates.
Department of Corrections	1. Information related to each inmate, including: a. identifying information, including name, date of birth, race, ethnicity, gender, case number, and identification number assigned by the department. b. Immigration status. c. Highest education level. d. Date the inmate was admitted to the custody of the department for his or her current incarceration. e. Current institution placement and the security level assigned to the institution. f. Custody level assignment. g. Qualification for a flag designation as defined in this section, including sexual offender flag, habitual offender flag, habitual violent felony offender flag, prison releasee reoffender flag, three-time violent felony offender flag, violent career criminal flag, gang affiliation flag, or concurrent or consecutive sentence flag. h. County that committed the prisoner to the custody of the department. i. Whether the reason for admission to the department is for a new conviction or a violation of probation, community control, or parole. For an admission for a probation, community control, or parole violation, the department shall report whether the violation was technical or based on a new violation of law. j. Specific statutory citation for which the inmate was committed to the department, including, for an inmate convicted of drug trafficking under s. 893.135, the statutory citation for each specific drug trafficked. k. Length of sentence served. l. Length of concurrent or consecutive sentences served. m. Tentative release date. n. Gain time earned in accordance with s. 944.275. o. Prior incarceration within the state. p. Disciplinary violation and action. q. Participation in rehabilitative or educational programs while in the custody of the department. r. Digitized sentencing scoresheet prepared in accordance with s. 921.0024. 2. Information about each state correctional institution or facility, including: a. Budget for each state correctional institution or facility. b. Daily prison population of all inmates incarcerated in a state correctional institution or facility.

	c. Daily number of correctional officers for each state correctional institution or facility. 3. Information related to persons supervised by the department on probation or community control, including: a. Identifying information for each person supervised by the department on probation or community control, including his or her name, date of birth, race, ethnicity, gender, case number, and department-assigned case number. b. Immigration status. c. Length of probation or community control sentence imposed and amount of time that has been served on such sentence. d. Projected termination date for probation or community control. e. Revocation of probation or community control due to a violation, including whether the revocation is due to a technical violation of the conditions of supervision or from the commission of a new law violation. 4. Per diem rates for: a. Prison bed. b. Probation. c. Community control. This information only needs to be reported once annually at the time the most recent per diem rate is published.
Justice Administrative Commission (somewhat akin to the courts administration services for Canada's federal courts)	1. Number of private registry attorneys representing indigent adult defendants. 2. Annual felony caseload assigned to private registry contract attorneys. 3. Annual misdemeanor caseload assigned to private registry contract attorneys.
Criminal regional conflict counsel (akin to a kind of legal aid)	1. Number of full-time assistant regional conflict counsel handling criminal cases. 2. Number of part-time assistant regional conflict counsel handling criminal cases. 3. Number of contract attorneys representing indigent adult defendants. 4. Annual felony caseload. 5. Annual felony caseload assigned to contract attorneys. 6. Annual felony conflict caseload. 7. Annual misdemeanor caseload. 8. Annual misdemeanor caseload assigned to contract attorneys. 9. Annual misdemeanor conflict caseload.

Appendix 4: Access to court decisions

Court	Self-publish	Search	View	Download pdf/word/html	XML/HTML Annotations	Robots.txt	Terms of service/use
British Columbia Supreme Court	Yes.	Yes. ¹⁴⁹³	Yes (HTML).	No.	Yes. Some.	Disallows access to most parts. ¹⁴⁹⁴	No terms of service that preclude scraping, and it offers explicit permission to reproduce decisions and reasons. But it precludes commercial reproduction and use without permission. ¹⁴⁹⁵
British Columbia Court of Appeal	Yes.	Yes. ¹⁴⁹⁶	Yes (HTML).	No.	Yes. Some.	Disallows access to most parts. ¹⁴⁹⁷	No terms of service that preclude scraping, and it offers explicit permission to reproduce decisions and reasons. But it precludes commercial reproduction and use without permission. ¹⁴⁹⁸
Supreme Court of the Northwest Territories	No. The Court relies on Norma by Lexum.	Yes. ¹⁴⁹⁹	Yes (PDF/Word).	Yes (PDF/Word).	No.	Allows access to most parts. ¹⁵⁰⁰	No posted terms of service.

¹⁴⁹³ The Courts of British Columbia, “Search Judgments”, online:

<https://www.bccourts.ca/search_judgments.aspx>.

¹⁴⁹⁴ The Courts of British Columbia, “Robots.txt”, online: <<https://www.bccourts.ca/robots.txt>>.

¹⁴⁹⁵ The Courts of British Columbia, “Website Policies”, *supra* note 1119.

¹⁴⁹⁶ *Supra* note 1493.

¹⁴⁹⁷ *Supra* note 1494.

¹⁴⁹⁸ *Supra* note 1495.

¹⁴⁹⁹ Northwest Territories Courts, “Decisions: Supreme Court”, online: <https://decisia.lexum.com/nwtcourts-courstno/sc/en/nav_date.do>.

¹⁵⁰⁰ Northwest Territories Courts, “Robots.txt”, <<https://www.nwtcourts.ca/robots.txt>>.

	While you can access decisions on the Court's website, the true host and publisher is Lexum.						
Court of Appeal for the Northwest Territories	No. The Court relies on Norma by Lexum. While you can access decisions on the Court's website, the true host and publisher is Lexum.	Yes. ¹⁵⁰¹	Yes (PDF/Word).	Yes (PDF/Word).	No. But CanLII and other publishers may add some.	Allows access to most parts. ¹⁵⁰²	No posted terms of service.
Nunavut Court of Justice	No. But decisions are available on CanLII.	No	No.	No.	No. But CanLII and other publishers may add some.	Allows access to most parts, but nothing here to really scrape. ¹⁵⁰³	No terms of use preclude scraping, but nothing here to really scrape. ¹⁵⁰⁴
Nunavut Court of Appeal	No. But decisions are available on CanLII.	No.	No.	No.	No. But CanLII and other publishers may add some.	Allows access to most parts, but nothing here to really scrape. ¹⁵⁰⁵	No terms of use preclude scraping, but nothing here to really scrape. ¹⁵⁰⁶
Supreme Court of Yukon	Yes.	No.	Yes (PDF).	Yes (PDF). ¹⁵⁰⁷	No. But CanLII and other publishers may add some.	Allows access to many parts and nothing appears to preclude bulk	No terms of use preclude bulk downloading. ¹⁵⁰⁹

¹⁵⁰¹ Northwest Territories Courts Decisions, "Court of Appeal", online: <https://decisia.lexum.com/nwtcourts-courtstno/ca/en/nav_date.do>.

¹⁵⁰² *Supra* note 1500.

¹⁵⁰³ Nunavut Courts, "Robots.txt", online: <<https://www.nunavutcourts.ca/robots.txt>>.

¹⁵⁰⁴ Nunavut Courts, "Disclaimer", online: <<https://www.nunavutcourts.ca/index.php/42-nunavut-courts/45-disclaimer>>.

¹⁵⁰⁵ *Supra* note 1503.

¹⁵⁰⁶ *Supra* note 1504.

¹⁵⁰⁷ Yukon Courts, "Supreme Court Judgments", online: <<https://www.yukoncourts.ca/en/supreme-court/judgments>>.

¹⁵⁰⁹ Yukon Courts, "Disclaimer", online: <<https://www.yukoncourts.ca/en/disclaimer>>.

						downloading. ¹⁵⁰⁸	
Court of Appeal of Yukon	Yes.	No.	Yes (PDF).	Yes (PDF). ¹⁵¹⁰	No. But CanLII and other publishers may add some.	Allows access to many parts and nothing appears to preclude bulk downloading. ¹⁵¹¹	No terms of use preclude bulk downloading. ¹⁵¹²
Saskatchewan Court of King's Bench	No. But decisions are available on CanLII.	No.	No.	No.	No. But CanLII and other publishers may add some.	Allows access to most parts, but nothing here to scrape. ¹⁵¹³	No terms of use.
Saskatchewan Court of Appeal	No. But decisions are available on CanLII.	No.	No.	No.	No. But CanLII and other publishers may add some.	Allows access to most parts, but nothing here to scrape. ¹⁵¹⁴	No terms of use.
Manitoba Court of King's Bench	No. But decisions are available on CanLII	No.	Yes (PDFs of some recent decisions). ¹⁵¹⁵	Yes (PDFs of some recent decisions). ¹⁵¹⁶	No. But CanLII and other publishers may add some.	Allows access to most parts, but nothing here to scrape. ¹⁵¹⁷	No terms of use.
Manitoba Court of Appeal	No. But decisions are available on CanLII	No.	Yes (PDFs of some recent decisions). ¹⁵¹⁸	Yes (PDFs of some recent decisions). ¹⁵¹⁹	No. But CanLII and other publishers may add some.	Allows access to most parts, but nothing here to scrape. ¹⁵²⁰	No terms of use.
Alberta Court of King's Bench	No. But decisions are available on CanLII.	No.	Yes (PDFs of some recent decisions). ¹⁵²²	Yes (PDFs of some recent	No. But CanLII and other publishers may add some.	Allows access to most parts, but nothing	No terms of use preclude scraping, but nothing here

¹⁵⁰⁸ Yukon Courts, "Robots.txt", online: <<https://www.yukoncourts.ca/robots.txt>>.

¹⁵¹⁰ Yukon Courts, "Judgments", online: <<https://www.yukoncourts.ca/en/court-appeal/judgments>>.

¹⁵¹¹ *Supra* note 1508.

¹⁵¹² *Supra* note 1509.

¹⁵¹³ Saskatchewan Courts, "Robots.txt", online: <<https://sasklawcourts.ca/robots.txt>>

¹⁵¹⁴ *Ibid.*

¹⁵¹⁵ Manitoba Court of King's Bench, "Recent Judgments", online: <<http://www.manitobacourts.mb.ca/court-of-queens-bench/recent-judgments/>>.

¹⁵¹⁶ *Ibid.*

¹⁵¹⁷ Manitoba Courts, "Robots.txt", online: <<http://www.manitobacourts.mb.ca/robots.txt>>.

¹⁵¹⁸ Manitoba Court of Appeal of Manitoba, "Recent Judgments", online: <<http://www.manitobacourts.mb.ca/court-of-appeal/recent-judgments/>>.

¹⁵¹⁹ *Ibid.*

¹⁵²⁰ *Supra* note 1517.

¹⁵²² *Ibid.*

	And they do include some recent decisions. ¹⁵²¹			decisions). ¹⁵²³		here to scrape. ¹⁵²⁴	to really scrape. ¹⁵²⁵
Court of Appeal of Alberta	No. But decisions are available on CanLII.	No.	No.	No.	No. But CanLII and other publishers may add some.	Allows access to most parts, but nothing here to scrape. ¹⁵²⁶	No terms of use preclude scraping, but nothing here to really scrape. ¹⁵²⁷
Ontario Superior Court of Justice	No. But decisions are available on CanLII.	No. But decisions are available on CanLII (search function brings you to embedded CanLII tool on its site).	No (Some recent decisions are listed but the links brings you to CanLII).	No (Some recent decisions are listed but the links brings you to CanLII).	No. But CanLII and other publishers may add some.	Disallows access to most parts. ¹⁵²⁸	No terms of service that preclude scraping, and it offers explicit permission to reproduce decisions and reasons. But it precludes commercial reproduction. ¹⁵²⁹
Court of Appeal for Ontario	No. The Court relies on Norma by Lexum. While you can access decisions on the Court's website, the true host and publisher is Lexum.	Yes. ¹⁵³⁰	Yes (iframe/PDF).	Yes (PDF). ¹⁵³¹	Yes. Some.	Disallows access to most parts. ¹⁵³²	No terms of service that preclude scraping, and it offers explicit permission to reproduce decisions and reasons. But it precludes commercial reproduction. ¹⁵³³

¹⁵²¹ Alberta Court of King's Bench, "Judgments", online: <<https://albertacourts.ca/qb/resources/judgments>>.

¹⁵²³ *Ibid.*

¹⁵²⁴ Alberta Courts, "Robots.txt", online: <<https://albertacourts.ca/robots.txt>>.

¹⁵²⁵ Alberta Courts, "Terms of Use", online: <<https://albertacourts.ca/terms-of-use>>.

¹⁵²⁶ *Supra* note 1524.

¹⁵²⁷ *Supra* note 1525.

¹⁵²⁸ Ontario Courts, "Robots.txt", online: <<https://www.ontariocourts.ca/robots.txt>>.

¹⁵²⁹ Ontario Courts, "Website Policies", *supra* note 1120.

¹⁵³⁰ Court of Appeal for Ontario, "Decisions Search Page", online: <<https://www.ontariocourts.ca/decisions/search/en/search.php/>>.

¹⁵³¹ *Ibid.*

¹⁵³² *Supra* note 1528.

¹⁵³³ Ontario Courts, "Website Policies", *supra* note 1120.

Supreme Court of Newfoundland and Labrador	No.	No. But decisions are available on CanLII.	No.	No.	No. But CanLII and other publishers may add some.	None or temporarily unavailable. ¹⁵³⁴	No terms of service that preclude scraping, and it offers explicit permission to reproduce decisions and reasons. ¹⁵³⁵
Court of Appeal of Newfoundland and Labrador	Yes.	Yes. ¹⁵³⁶	Yes (PDF).	Yes (PDF).	No. But CanLII and other publishers may add some.	None or temporarily unavailable. ¹⁵³⁷	No terms of service that preclude scraping, and it offers explicit permission to reproduce decisions and reasons. ¹⁵³⁸
Supreme Court of Prince Edward Island	No.	No. But decisions are available on CanLII.	No.	No.	No. But CanLII and other publishers may add some.	Allows access to most parts, but nothing here to scrape. ¹⁵³⁹	No terms of service that preclude scraping, and it offers explicit permission to reproduce decisions and reasons. But it precludes commercial reproduction. ¹⁵⁴⁰
Prince Edward Island Court of Appeal	No.	No. But decisions are available on CanLII.	No.	No.	No. But CanLII and other publishers may add some.	Allows access to most parts, but nothing here to scrape. ¹⁵⁴¹	No terms of service that preclude scraping, and it offers explicit permission to reproduce decisions and reasons. But it

¹⁵³⁴ Newfoundland Courts, “Robots.txt”, online: <<https://court.nl.ca/robots.txt>>.

¹⁵³⁵ Supreme Court of Newfoundland and Labrador, “Disclaimer”, *supra* note 1120.

¹⁵³⁶ Court of Appeal of Newfoundland and Labrador, “Search – Decisions of the Court”, online: <<https://www.court.nl.ca/appeal/search-decisions-of-the-court/>>.

¹⁵³⁷ *Supra* note 1534.

¹⁵³⁸ Court of Appeal of Newfoundland and Labrador, “Disclaimer”, online: <<https://www.court.nl.ca/appeal/disclaimer/>>.

¹⁵³⁹ Courts of PEI, “Robots.txt”, online: <<https://www.courts.pe.ca/robots.txt>>.

¹⁵⁴⁰ Courts of PEI, “Copyright”, *supra* note 1120.

¹⁵⁴¹ *Supra* note 1539.

							precludes commercial reproduction. ¹⁵⁴²
Court of Queen's Bench of New Brunswick	No.	Limited (not really). Function allows you to search, but it doesn't bring up decisions. ¹⁵⁴³	No.	No.	No. But CanLII and other publishers may add some.	Disallows access to most parts. ¹⁵⁴⁴	No terms of service that preclude scraping.
Court of Appeal of New Brunswick	Yes. ¹⁵⁴⁵	No.	Yes (PDF).	Yes (PDF).	No. But CanLII and other publishers may add some.	Disallows access to most parts. ¹⁵⁴⁶	No terms of service that preclude scraping.
Supreme Court of Nova Scotia	No. The Court relies on Norma by Lexum. While you can access decisions on the Court's website, the true host and publisher is Lexum.	Yes. ¹⁵⁴⁷	Yes (iframe/PDF).	Yes (PDF).	Yes. Some.	None or temporarily unavailable. ¹⁵⁴⁸	No terms of service that preclude scraping, and it offers explicit permission to reproduce decisions and reasons. But it precludes commercial reproduction. ¹⁵⁴⁹
Nova Scotia Court of Appeal	No. The Court relies on Norma by Lexum. While you	Yes. ¹⁵⁵⁰	Yes (iframe/PDF).	Yes (PDF).	Yes. Some.	None or temporarily unavailable. ¹⁵⁵¹	No terms of service that preclude scraping, and it offers explicit

¹⁵⁴² Courts of PEI, "Copyright", *supra* note 1120.

¹⁵⁴³ New Brunswick Justice and Public Safety, "New Brunswick Court Index", online: <<https://www1.gnb.ca/nota/Default.aspx?lang=en-US>>.

¹⁵⁴⁴ New Brunswick Courts, "Robots.txt", online: <<https://www.courtsnb-coursnb.ca/robots.txt>>.

¹⁵⁴⁵ New Brunswick Courts, "Decisions", online: <<https://www.courtsnb-coursnb.ca/content/cour/en/appeal/content/decisions.html>>.

¹⁵⁴⁶ *Supra* note 1544.

¹⁵⁴⁷ Nova Scotia Courts "Searchable Database of Decisions of the Courts of Nova Scotia", online: <<https://decisia.lexum.com/nsc/en/nav.do>>.

¹⁵⁴⁸ Nova Scotia Courts, "Robots.txt", online: <<https://www.courts.ns.ca/robots.txt>>.

¹⁵⁴⁹ Nova Scotia Courts, "Copyright Policy", *supra* note 1120.

¹⁵⁵⁰ Nova Scotia Courts "Searchable Database, *supra* note 1547.

¹⁵⁵¹ Nova Scotia Courts, "Robots.txt", *supra* note 1548.

	can access decisions on the Court's website, the true host and publisher is Lexum.						permission to reproduce decisions and reasons. But it precludes commercial reproduction. ¹⁵⁵²
Tax Court of Canada	No. The Court relies on Norma by Lexum. While you can access decisions on the Court's website, the true host and publisher is Lexum.	Yes. ¹⁵⁵³	Yes (iframe/PDF).	Yes (PDF).	Yes. Some.	None or temporarily unavailable. ¹⁵⁵⁴	No terms of service that preclude scraping, and it offers explicit permission to reproduce decisions and reasons. But it precludes commercial reproduction. ¹⁵⁵⁵
Federal Court	No. The Court relies on Norma by Lexum. While you can access decisions on the Court's website, the true host and publisher is Lexum.	Yes. ¹⁵⁵⁶	Yes (iframe/PDF).	Yes (PDF).	Yes. Some.	None or temporarily unavailable. ¹⁵⁵⁷	No terms of service that preclude scraping, and it offers explicit permission to reproduce decisions and reasons. But it precludes commercial reproduction. ¹⁵⁵⁸
Federal Court of Appeal	No. The Court relies on Norma by Lexum.	Yes. ¹⁵⁵⁹	Yes (iframe/PDF).	Yes (PDF).	Yes. Some.	Allows access to most parts. ¹⁵⁶⁰	No terms of service that preclude scraping, and it offers

¹⁵⁵² Nova Scotia Courts, "Copyright Policy", *supra* note 1120.

¹⁵⁵³ Tax Court of Canada, "Judgments", online: <<https://decision.tcc-cci.gc.ca/tcc-cci/en/0/ann.do>>.

¹⁵⁵⁴ Tax Court of Canada, "Robots.txt", online: <<https://www.tcc-cci.gc.ca/robot.txt>>.

¹⁵⁵⁵ Tax Court of Canada, "Important Notices", *supra* note 1124.

¹⁵⁵⁶ Federal Court, "Advanced Search", online: <<https://decisions.fct-cf.gc.ca/fc-cf/en/d/s/index.do?col=54>>.

¹⁵⁵⁷ Federal Court, "Robots.txt", online: <<https://www.fct-cf.gc.ca/robots.txt>>.

¹⁵⁵⁸ Federal Court, "Important Notice", *supra* note 1124.

¹⁵⁵⁹ Federal Court of Appeal, "Advanced Search, online: <<https://decisions.fca-caf.gc.ca/fca-caf/en/d/s/index.do?col=53>>.

¹⁵⁶⁰ Federal Court of Appeal, "Robots.txt", online: <<https://www.fca-caf.gc.ca/robots.txt>>.

	While you can access decisions on the Court's website, the true host and publisher is Lexum.						explicit permission to reproduce decisions and reasons. But it precludes commercial reproduction. ¹⁵⁶¹
SCC	No. The Court relies on Norma by Lexum. While you can access decisions on the Court's website, the true host and publisher is Lexum.	Yes. ¹⁵⁶²	Yes (iframe/PDF).	Yes (PDF)	Yes. Some.	Allows access to most parts. ¹⁵⁶³	No terms of service that preclude scraping, and it offers explicit permission to reproduce decisions and reasons. But it precludes commercial reproduction. ¹⁵⁶⁴

¹⁵⁶¹ Federal Court of Appeal, "Important Notices", *supra* note 1123.

¹⁵⁶² SCC, "Search All Databases", online: <<https://scc-csc.lexum.com/scc-csc/en/nav.do>>.

¹⁵⁶³ SCC, "Robots.txt", online: <<https://www.scc-csc.ca/robots.txt>>.

¹⁵⁶⁴ SCC, "Terms and Conditions", *supra* note 1123.

Dataset summary

This dataset could include roughly 12,500 observations from all publicly available superior, appellate, and federal courts common law decisions from 2018, and it has these characteristics:¹⁵⁶⁵

- It only relies on decisions from 2018. Three reasons support this inclusion criterion: (i.) 2018 represents the average number of decisions each jurisdiction normally publishes;¹⁵⁶⁶ (ii.) if 2018 decisions were appealed, they have had the necessary time to become fully perfected appeals (so one could examine the relationship of dataset features to appeal rates/success); (iii.) 2018 data is likely more complete than more recent years (e.g., now reported oral decisions from people who requested transcription or publication, *etc.*).
- It would rely on a complete (vs. randomized) set of published decisions.¹⁵⁶⁷ A complete dataset is imperative. It will facilitate more robust, descriptive, and predictive analysis.¹⁵⁶⁸ A complete dataset allows individuals or organizations to analyze more observations of individual judges' behaviours as well as more predictive modelling possibilities—e.g., does month and background lend to delay, length, *etc.*

¹⁵⁶⁵ This sample size is based on the decisions for each jurisdiction/court from CanLII as reported in 2018. Quebec is omitted from the dataset because comparing common and civil law would create unnecessary and potentially misleading conclusions in my data.

¹⁵⁶⁶ 12,560 decisions in 2017 and 13,149 in 2019.

¹⁵⁶⁷ As discuss below, however, even a complete set is not complete as judges issues oral reasons in many major or minor disputes.

¹⁵⁶⁸ Relying on a randomized set would present some problems:

1. I concede one can create a randomized set based on number of reported cases in each jurisdiction where you seek to control for case type distribution; registry location; month of year, *etc.* and by relying on stratification and weighting methods (see Beauchamp-Tremblay & Dusséaux, “*supra* note 235).
2. But such a randomized set might miss the nuance I’m trying to understand from a descriptive perspective, and an incomplete set would lead to more biased predictive conclusions. More vs. less data is crucial for accurate machine learning predictions. Some judges occasionally (vs. normally) write very long, slow, or complex decisions or *vice versa*, and a random set could easily miss this nuance. So if the random sample only got Judge 1’s long decisions, the descriptive and predictive conclusions would be flawed.
3. Canada’s lack of status quo data compounds this problem. Even demographics about case law in Canada is hard to access—e.g., how many contract law disputes are occurring in Canada right now.

This list breaks down the dataset by jurisdiction and court:

- British Columbia (2,432 decisions):
 - British Columbia Supreme Court (1,950 decisions).
 - British Columbia Court of Appeal (482 decisions).
- Northwest Territories and Yellowknife (88 decisions):
 - Supreme Court of the Northwest Territories (77 decisions).
 - Court of Appeal for the Northwest Territories (11 decisions).
- Nunavut (43 decisions):
 - Nunavut Court of Justice (36 decisions).
 - Nunavut Court of Appeal (7 decisions).
- Yukon (62 decisions):
 - Supreme Court of Yukon (46 decisions).
 - Court of Appeal of Yukon (16 decisions).
- Saskatchewan (453 decisions):
 - Saskatchewan Court of Queen's Bench (349 decisions).
 - Saskatchewan Court of Appeal (104 decisions).
- Manitoba (322 decisions):
 - Manitoba Court of Queen's Bench (183 decisions).
 - Manitoba Court of Appeal (139 decisions).
- Alberta (1,314 decisions):
 - Alberta Court of Queen's Bench (876 decisions).
 - Alberta Court of Appeal (438 decisions).
- Ontario (5,324 decisions):
 - Ontario Superior Court (4,276 decisions).
 - Ontario Court of Appeal (1,048 decisions).
- Newfoundland & Labrador (252 decisions):
 - Supreme Court of Newfoundland and Labrador (177 results).
 - Court of Appeal of Newfoundland and Labrador (75 results).
- Prince Edward Island (78 decisions):
 - Supreme Court of Prince Edward Island (48 decisions).
 - Prince Edward Island Court of Appeal (30 decisions).

- New Brunswick (298 decisions):
 - Court of Queen’s Bench of New Brunswick (161 decisions).
 - Court of Appeal of New Brunswick (137 decisions).
- Nova Scotia (422 decisions):
 - Supreme Court of Nova Scotia (326 decisions).
 - Nova Scotia Court of Appeal (98 decisions).
- Federal Courts (1,741 decisions):
 - Tax Court of Canada (204 decisions).
 - Federal Court (1,285 decisions).
 - Federal Court of Appeal (192 decisions).
 - Supreme Court of Canada (60 decisions).

Descriptive and predictive study goals

Descriptive goal and method

The descriptive study’s methodology and goals would be generating descriptive information about court and judicial output; decision length, delivery time, complexity, and structure; judicial behaviour; and appeal rates. As the dissertation discussed, Canada currently lacks this information. This dataset could provide a status quo benchmark on Canadian judicial decisions. Aside from legal publishing companies,¹⁵⁶⁹ no one has data on what is the average length, delivery time, complexity, or appeal rates and outcomes for Canadian decisions. So any guidance to judges about what is an acceptable or desirable length, delivery time, complexity, or avoiding successful appeals rests mostly anecdote.

Aside from this benchmark, a purely descriptive study presents four other benefits:

1. Descriptive conclusions will enable more empirical, objective discussions about reforming judicial decisions—e.g., it could partially identify the jurisdictions that are achieving more “success” in outputting short, timely, simple decisions. These findings would assist in evaluating those jurisdictions’ possible strengths vs. slower jurisdictions.
2. Descriptive conclusions will demonstrate what could happen with more transparent data. Perhaps Canadian empirical legal research could increase if courts, CanLII, Westlaw, Quicklaw, Lexum, and VLex published more useful metadata or create a more useful

¹⁵⁶⁹ As discussed in the dissertation, CanLII, Westlaw, Quicklaw, and VLex have a monopoly on legal data and datasets in Canada.

metadata API (this benefit assumes empirical legal research and legal analytics are beneficial).¹⁵⁷⁰

3. Descriptive trends will enable individuals or organizations to form hypotheses about decision length, delivery time, and complexity. Individuals or organizations could then use the descriptive dataset for predictive modeling.
4. Descriptive trends and conclusions allow individuals or organizations to understand the user experience of judges and decisions' readers and anyone decisions impact.

Predictive goal and method

Individuals or organizations could use four machine learning random forest models for predictive study (the rest of this part will explain how those models work). All models would have the same goal—determine what dataset features are statistically significant predictors¹⁵⁷¹ of four dependent features:¹⁵⁷²

- decision length (how many words in each decision): what dataset features are statistically significant predictors of decision length;
- delivery time (how many days between the last hearing day and the day the decision was delivered): what dataset features are statistically significant predictors of delivery time;
- complexity (combination of decision length, cases cited, and number of subjects the decision addresses): what dataset features are statistically significant predictors of complexity; and
- appeal rates/outcomes: what dataset features are statistically significant predictors of successful appeals?

Before moving on, the following briefly explains what I mean by statistically significant predictor. Unlike classical statistics (like regression analysis), many machines learning models don't provide data on the statistically significant relationship between features. Accordingly, machine learning is often criticized as presenting a black box.¹⁵⁷³

¹⁵⁷⁰ *Supra* note 878.

¹⁵⁷¹ By "significant predictor", I mean a statistically significant relationship exists between the two features. In contrast to some statistics or economics literature, data science uses the terms "predictor and response features" more than the terms "independent and dependent variables."

¹⁵⁷² For a discussion of why decision-length, delivery time, and complexity are problems for access to justice, see Khan, "Life of a Reserve", *supra* note 4 at 42-43, 73-74. In short, these phenomena cause access to justice issues.

¹⁵⁷³ For a very recent and thorough take on this subject, see Enguerrand Horel, *Towards Explainable AI: Feature Significance and Importance for Machine Learning Models* (2020) (PhD Thesis, Stanford University).

An alleged clear “upside” of regression analysis vs. random forest analysis is that it provides more interpretability. But this comparison is misplaced, and as Breiman notes, it ignores the goal of statistical analysis:

Framing the question as the choice between accuracy and interpretability is an incorrect interpretation of what the goal of a statistical analysis is. The point of a model is to get useful information about the relation between the response and predictor variables as well as well as other information about the data structure.¹⁵⁷⁴

It also overlooks the statistical methods researchers can use to help interpret machine learning rankings and create significance cutoffs¹⁵⁷⁵—such as the PIMP significance ranking random forest models could rely on, a point I’ll discuss further in a moment.¹⁵⁷⁶

The models could also explore other features’ relationships to decision length, delivery time, complexity, and appeal rates/outcomes—e.g., do lay litigants impact decision length and delivery time. Predictive study conclusions could then provide an empirical basis for possible reforms or further studies. Addressing the model’s conclusions may lead to more acceptable lengths, delivery times, complexity, and understanding errors in lower courts (or error reduction—keeping in mind what Chapter 1 said about legal error).

Fully informed hypotheses about what features would be statistically significant predictors aren’t possible. At present, because Canada lacks the granular data the descriptive study will generate, pan-Canadian hypotheses would largely be educated guesses because we simply lack data about the dataset’s population parameters—e.g., average decision length. We simply don’t have the adequate descriptive statistics to properly form hypothesis. So individuals or organizations would have to form them after their descriptive study is complete but before they conduct any statistical tests. This approach is consistent with classical statistics (e.g., using descriptive data to generate

¹⁵⁷⁴ Leo Breiman, “RF/tools: A Class of Two-eyes Algorithms” (2003) Siam Workshop at 27-28, online: <<https://www.stat.berkeley.edu/~breiman/siamtalk2003.pdf>> [Breiman, “RF/Tools”].

¹⁵⁷⁵ See, e.g., Horel, *supra* note 1573.

¹⁵⁷⁶ In short, “the PIMP algorithm can also be used as a post- processing step with other learning methods that provide (unbiased) measures of feature relevance, such as linear models, logistic regression, SVM, etc. The raw scores given by these models provide with a feature ranking, but usually it is difficult to choose a significance threshold. The PIMP *P*-values are easier to interpret and provide a common measure that can be used to compare feature relevance among different models” (see Andre Altmann *et al*, “Permutation importance: a corrected feature importance measure” (2010) 26:10 Bioinformatics 1340 at 1347).

hypotheses)¹⁵⁷⁷ as well as modern machine learning and data science techniques (e.g., exclusively studying relationships in data to generate hypothesis or so called “hypothesis generating” research).¹⁵⁷⁸ And it doesn’t trigger a “HARKing” problem as the descriptive study won’t offer predictive conclusions.¹⁵⁷⁹ But it clearly would provide better ideas to test and some likely strong indications of certain features’ dominance based on averages—e.g., delivery time in one province or court system.

That said, based on my previous, somewhat similar study of British Columbia decisions in “Life of the Reserve”, possible hypothesis about predictors and their ranking are possible:¹⁵⁸⁰

- decision length: in ranked order, court days, delivery time, jurisdiction, individual judges, and use of headings are the most statistically significant predictors;
- delivery time: in ranked order, decision length, court days, oral judgment, individual judge, and subject are the most statistically significant predictors;
- complexity: in ranked order, decision length, subject, number of decisions cited, decision length, delivery time, headings, jurisdiction, and individual judge are the most statistically significant predictors; and
- appeal: in ranked order, decision length, individual judge, court days, subject, headings, and jurisdiction are the most statistically significant predictors.

After the descriptive study is complete and individuals or organizations have evaluated the data, they should preregister this initial hypothesis, final ones, and their overall methodology with the Open Science Framework as well as associated data and related code after the analysis concludes.¹⁵⁸¹ They could then rely on two methods will be used to test hypotheses about decision length, delivery time, and complexity: (1) classification and regression trees (*aka* a CART model) to identify dominant features; and (2) random forest models to run the three discussed models.¹⁵⁸² Both methods avail algorithmic machine learning and decision trees to

¹⁵⁷⁷ See, e.g., Jon Hartwick & Henri Barki, “Hypothesis Testing and Hypothesis Generating Research: An Example from the User Participation Literature (1994) 5(4) Information Systems Research 446 at 447, online: <<https://pubsonline.informs.org/doi/pdf/10.1287/isre.5.4.446>>

¹⁵⁷⁸ See, e.g., Daphne Exer & Kirstie Whitaker, “Point of View: Data science for the scientific life cycle” (6 March 2019) *Elife*, online: <<https://elifesciences.org/articles/43979>>.

¹⁵⁷⁹ See, e.g., The Embassy of Good Science, “Data drive hypothesis without disclosure (‘HARKing’),” online: <<https://embassy.science/wiki/Theme:26631aa0-18f0-4635-b71b-80a6f4e58d33>>

¹⁵⁸⁰ Khan, ““Life of a Reserve”, *supra* note 4, Part II.

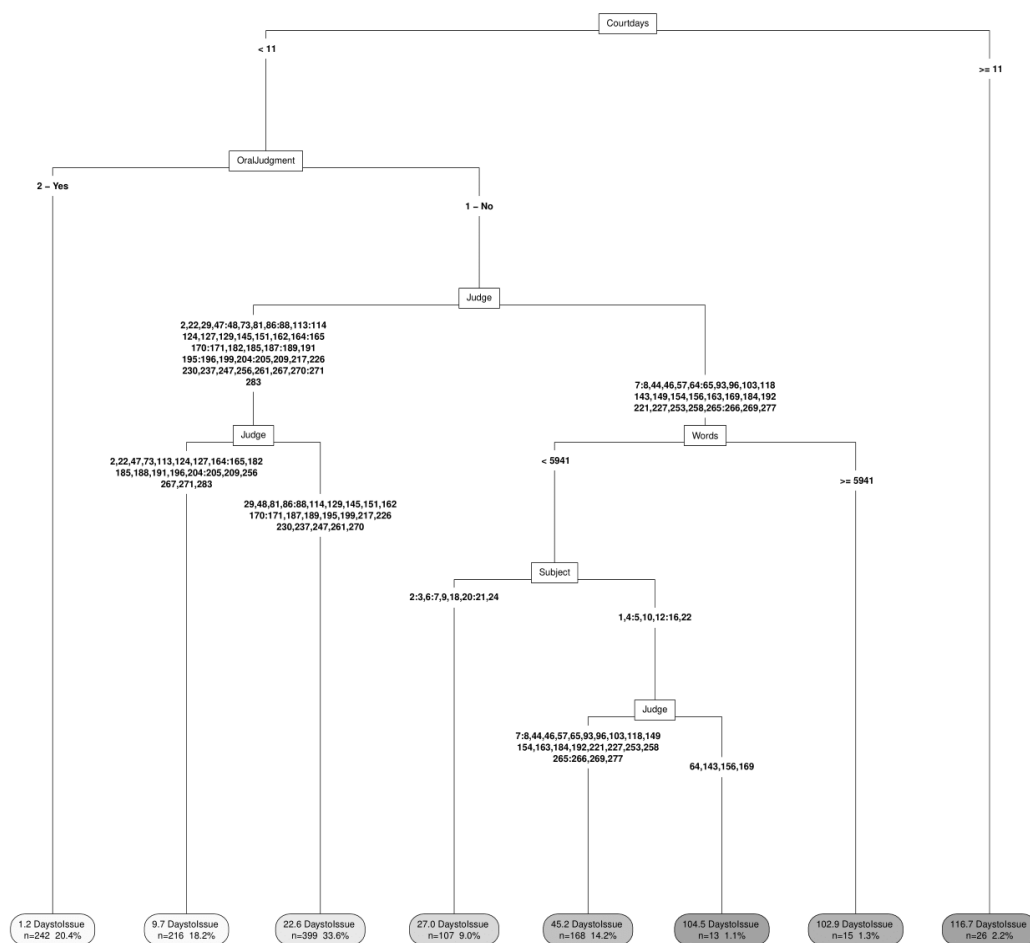
¹⁵⁸¹ *Supra* note 1234.

¹⁵⁸² For a breakdown of the ranger coding package that the models could avail, see Marvin N Wright, Stefan Wagner & Philipp Probst, “Package ‘ranger’” (7 March 2019), online: <<https://cran.r-project.org/web/packages/ranger/ranger.pdf>>.

analyze data and to offer predictions on significant features.¹⁵⁸³ For understanding, I included a sample CART model from previous research below in *Figure 13*.

As you’ll see, CART models visualize the hypothesis or problem you’re trying to understand by outputting a decision tree. But CART models have a flaw: because CART models only build a single decision tree, they can be biased. For example, one dominant predictor feature (*aka* independent variable) with many subcategories may appear a biased number of times in the decision tree. Due to this potential, CART models are less robust than random forest models.

Figure 13: Sample Cart Model



¹⁵⁸³ For an analysis and detailed explanation of classification and regression trees, see Breiman *et al*, *supra* note 42; see also Steinberg, *supra* note 42. For an analysis and detailed explanation of random forest models, see Breiman, “Random Forests *supra* note 42; see also Liaw & Wiener, *supra* note 42.

In contrast to a CART model—which only relies on one decision tree—random forest models create multiple, uncorrelated decision trees. This approach reduces the chance for one predictor feature dominating the model. Accordingly, it increases robustness.

Individuals or organizations could employ a random forest design from “Life of Reserve” that uses this machine learning sequence:¹⁵⁸⁴

1. The model will draw random “bootstrapped” samples from the dataset. These samples are called bootstraps because they’re equivalent to the entire dataset’s size but sampled with replacement—*i.e.*, a single observation can present itself multiple times while others may be missing in the sample. This random sampling (with replacement) simulates collecting more “new data” and adds variability so that predictions are robust when this simulated “new data” is introduced.
2. Those samples grow multiple decision trees (*i.e.*, they create multiple CART models like the one you just observed).
3. At each split in those trees (commonly known as a node), the model randomly limits the number of predictor features the tree can choose. So the tree must choose the best split from only some of the predictors. Coupled with what point 1 just noted, such limiting improves the model’s generalizability and predictive power.
4. Multiple trees will grow, form nodes, and split until 1,000 trees are created.
5. Those trees will form a “forest” of randomly created trees.
6. This process of creating a random forest will produce a ranking of predictor features. The model will then make predictions by averaging all decision trees’ votes.¹⁵⁸⁵ To validate and explain those predictions, the model will rely on multiple evaluation metrics,¹⁵⁸⁶ including a cut-off p-value of <0.05 to facilitate PIMP significance thresholds.¹⁵⁸⁷
7. The random forest models will then test those predictions by permuting the predictors.¹⁵⁸⁸ It will measure any decrease in accuracy with the permuted predictor on a holdout data set (known as the out-of-bag set). For example, in previous research,¹⁵⁸⁹ a random forest model—which was seeking to make predictions about delivery time—permuted the “word count” feature and tested it on the out-of-bag sample. The prediction worsened by 36 days (in other words, the prediction was off by 36 days, and this “offness” was more significant than many other features).

¹⁵⁸⁴ Khan, ““Life of a Reserve”, *supra* note 4, Part II.

¹⁵⁸⁵ For an accessible breakdown of random forests, see Leo Breiman & Adele Cutler, “Random Forests”, online: <https://www.stat.berkeley.edu/~breiman/RandomForests/cc_home.htm#intro>; Breiman, “RF/tools”, *supra* note 1574; see also Gérard Biau & Erwan Scornet, “A random forest guided tour” (2016) 25:2 TEST 197.

¹⁵⁸⁶ This metrics could include RF RMSE; Altmann MSE; Altmann p-value; Cart % of Goodness of Splits; RF Prediction Error (RMSE); RF R-Squared; CART prediction error; Cart R-Squared.

¹⁵⁸⁷ Altmann *et al.*, “Permutation importance”, *supra* note 1576.

¹⁵⁸⁸ Effectively, the predictor is scrambled to become noisy and kept in the model to observe the impact.

¹⁵⁸⁹ Khan, ““Life of a Reserve”, *supra* note 4, Part II.

But random forest models—like any other predictive model—still have flaws. A common flaw is the earlier discussed problem of one predictor feature being dominant in the model. Here is one example that further explains how one dominant predictor feature can lead to flawed predictions and how individuals and organizations could seek to mitigate flawed predictions. The proposed study would consider 13 jurisdictions and 28 courts. So the jurisdiction feature will have 13 subcategories, and the court feature will have 28 subcategories. In contrast, the judge feature will have hundreds of subcategories, and it naturally will appear more than other features despite the random forest’s sampling and limiting.

To reduce the chance of biased predications, individuals or organizations should take two steps. First, they should rely on CART models to identify potential dominant features. Second, they should then separate models with certain dominant features excluded to ensure robust predictions. In total, they would likely have at least 60 iterations of the three models:

- one entire dataset model: including all features will provide a holistic analysis but one that is potentially biased and correlated;
- one entire dataset model with the “judge” feature excluded: removing the “judge” feature will facilitate the chance of less biased and correlated data;
- one entire dataset model with “judge” feature and any other “dominant” feature excluded: removing “judge” and other “dominant” features will facilitate the chance of less biased and correlated data;
- 28 individual jurisdictional models with the “judge” feature included and excluded: including the “judge” feature will facilitate observing the feature’s impact on other features, and removing the “judge” feature will facilitate the chance of less biased and correlated data; and
- 28 individual jurisdictional models with the “judge” and any other “dominant” feature included and excluded: including these features will facilitate observing the feature’s impact on other features, and removing these features will facilitate the chance of less biased and correlated data.

Before concluding this part, two points are important:

1. Individual or organization could rely on classic regression analysis, e.g., multiple linear regression or multiple nonlinear regression.¹⁵⁹⁰ But random forest models can consistently outperform some classic regression models.¹⁵⁹¹ As Katz *et al* note, random

¹⁵⁹⁰ For context, regression analysis is a form of predictive modeling that investigates relationships between dependent and independent variables.

¹⁵⁹¹ See, e.g., Raphael Couronné, Philipp Probst & Anne-Laure Boulesteix, “Random forest versus logistic regression: a large-scale benchmark experiment” (2018) 19:270 BMC Bioinformatics.

forest models are “unreasonably effective in a wide array of supervised learning contexts”; they consistently outperform common approaches to predictive analysis.¹⁵⁹² Similarly, as Breiman notes, random forests are extremely accurate and can supply more and better information than existing regression models.¹⁵⁹³

2. Notwithstanding thoroughness and checks and balances, random forests are fallible: they will not indicate influence, causation, or correlation. They will only indicate statistically significant relationships. As Breiman and Cutler aptly note, “Take the output of random forests not as absolute truth, but as smart computer generated guesses that may be helpful in leading to a deeper understanding of the problem.”¹⁵⁹⁴ Accordingly, individuals or organizations could also use classic regression analysis during the analysis phase as a check and balance on random forest conclusions or to better understand identified relationships. But classic regression may be quite challenging in this format because of the large number of subcategories just discussed.

Dataset features

The 12,829 observations could include 37 features that could be gathered from three sources:¹⁵⁹⁵ (1) judicial decisions; (2) publicly accessible documents; and (3) direct insight from courts and law societies. The features are based on previous and new research; conversations with lawyers and academics; and typical features from empirical legal research.¹⁵⁹⁶

The following list outlines the feature’s purpose; how the features could be generated; possible descriptive and predictive benefits; any uncertainty about the feature (if applicable); and if applicable, a preliminary hypothesis about the feature’s predictive power (I ranked features’ significance in the previously mentioned initial hypothesis, and those could change after descriptive conclusions are generated):

1. Court Name (jurisdiction)

- *Purpose*: organizational/grouping & analytical.
- *Method*: provided with decisions’ metadata/automated scraping from judicial decisions.

¹⁵⁹² Katz, Bommarito & Blackman, *supra* note 42 at 7.

¹⁵⁹³ The upside of regression analysis over random forest analysis is that regression analysis can provide more interpretability. The criticism of random forest models is the lack of interpretability, *i.e.*, the so-called “black box” problem. As Breiman notes, however, “[f]raming the question as the choice between accuracy and interpretability is an incorrect interpretation of what the goal of a statistical analysis is. The point of a model is to get useful information about the relation between the response and predictor variables as well as other information about the data structure.” (see Breiman, “RF/tools”, *supra* note 1574 at 27-28).

¹⁵⁹⁴ Leo Breiman & Adele Cutler, “Random Forests: A Philosophical Note”, online: <https://www.stat.berkeley.edu/~breiman/RandomForests/cc_philosophy.htm>.

¹⁵⁹⁵ Scaling some of this research is difficult. The predictive power of some of these features—e.g., lawyers’ biographical data—may not be worth the effort gather it. But as the dissertation stressed, collaboration could bring such projects to fruition.

¹⁵⁹⁶ Khan, ““Life of a Reserve”, *supra* note 4, Part II.

- *Descriptive*: describe decisions based on location.
 - *Predictive*: predict jurisdiction's influence on decision length, delivery time, and complexity.
 - *A preliminary hypothesis*: the jurisdiction in which a matter is heard affects the decision length, delivery, time, complexity, *etc.* Courts who issue less decisions (or who are better staffed) may issue shorter, faster, and less complex decisions.
2. Registry/judicial centre
- *Purpose*: organizational/grouping & analytical.
 - *Method*: automated scraping from judicial decisions.
 - *Descriptive*: describe how many decisions are issued in what registry.
 - *Predictive*: predict registry's impact on decision length, delivery time, and complexity.
 - *A preliminary hypothesis*: judges may write more when they travel, and statistically significant relationships may exist between whether they hear a matter in their home registry or abroad.
3. Case name
- *Purpose*: organizational purposes.
 - *Method*: provided with decisions' metadata/automated scraping from judicial decisions.
4. Judge
- *Purpose*: organizational/grouping & analytical.
 - *Method*: provided with decisions' metadata/automated scraping from judicial decisions.
 - *Descriptive*: describe the cross-Canada wide behaviour of individual judges.
 - *Predictive*: predict judges' impact on decision length, delivery time, complexity, and appeal.
 - *A preliminary hypothesis*: individual judges may be statistically significant predictors of decision length, delivery time, complexity, and appeal.
5. Judge gender
- *Purpose*: organizational/grouping & analytical.
 - *Method*: publicly accessible documents and direct insight from courts, and a script will enter this feature based on judges' names from a separate database.
 - *Descriptive*: describe cross-Canada behaviour of judges based on gender.
 - *Predictive*: predict judges' gender's impact on decision length, delivery time, complexity, and appeal.

- *A preliminary hypothesis*: judges' gender may be a statistically significant predictor of decision length, delivery time, complexity, and appeal.¹⁵⁹⁷

6. Judge age

- *Purpose*: organizational/grouping & analytical.
- *Method*: publicly accessible documents and direct insight from courts, and a script will enter this feature based on judges' names from a separate database.
- *Descriptive*: describe the cross-Canada behaviour of judges based on age.
- *Predictive*: predict judges' age's impact on decision-writing.
- *A preliminary hypothesis*: judges' age may be a statistically significant predictor of decision length, delivery time, complexity, and appeal.

7. Year judge appointed to bench

- *Purpose*: organizational/grouping & analytical.
- *Method*: publicly accessible documents and direct insight from courts, and a script will enter this feature based on judges' names from a separate database.
- *Descriptive*: describes cross-Canada behaviour of judges based on appointment year to bench.
- *Predictive*: predict judges' appointment year's impact on decision length, delivery time, complexity, and appeal.
- *A preliminary hypothesis*: judges' appointment year may be a statistically significant predictor of decision length, delivery time, complexity, and appeal.

8. Year judge appointed to specific court

- *Purpose*: organizational/grouping & analytical.
- *Method*: publicly accessible documents and direct insight from courts, and a script will enter this feature based on judges' names from a separate database.
- *Descriptive*: describe cross-Canada behaviour of judges based on appointment year to specific court.
- *Predictive*: predict judges' appointment year's impact on decision length, delivery time, complexity, and appeal.
- *A preliminary hypothesis*: judges' appointment year to a specific court may be a statistically significant predictor of decision length, delivery time, complexity, and appeal.

¹⁵⁹⁷ See, e.g., Sean Rehaag, "Do Women Refugee Judges Really Make a Difference? An Empirical Analysis of Gender and Outcomes in Canadian Refugee Determinations" (2011) 23 Canadian Journal of Women and the Law 627; L Ostberg and Matthew E Wetstein, *Attitudinal Decision Making in the Supreme Court of Canada* (UBC Press: Vancouver, 2007) at 221; Donald R Songer & Susan W Johnson, "Judicial Decision Making in the Supreme Court of Canada: Updating the Personal Attribute Model" (2007) 40 Canadian Journal of Political Science 911; James Stribopoulos & Moin A Yahya, "Does a Judge's Party of Appointment or Gender Matter to Case Outcomes? An Empirical Study of the Court of Appeal for Ontario" (2007) 45 Osgoode Hall Law Journal 315.

9. Political party that appointed judge

- *Purpose*: organizational/grouping & analytical.
- *Method*: publicly accessible documents and direct insight from courts, and a script will enter this feature based on judges' names from a separate database.
- *Descriptive*: describe cross-Canada behaviour of judges based on political party appointment.
- *Predictive*: predict political party appointment's impact on decision length, delivery time, complexity, and appeal.
- *A preliminary hypothesis*: political party appointment may be a statistically significant predictor of decision length, delivery time, complexity, and appeal.

10. Judge's pre-appointment workplace sector (private/public)

- *Purpose*: organizational/grouping & analytical.
- *Method*: publicly accessible documents and direct insight from courts, and a script will enter this feature based on judges' names from a separate database.
- *Descriptive*: describe cross-Canada behaviour of judges based on their pre-appointment workplace sector.
- *Predictive*: predict judges' pre-appointment workplace sector's impact on decision length, delivery time, complexity, and appeal.
- *A preliminary hypothesis*: judges' pre-appointment workplace may be a statistically significant predictor of decision length, delivery time, complexity, and appeal.

11. Judge's pre-appointment subject matter expertise

- *Purpose*: organizational/grouping & analytical.
- *Method*: publicly accessible documents and direct insight from courts, and a script will enter this feature based on judges' names from a separate database.
- *Descriptive*: describe the cross-Canada behaviour of judges based on their pre-appointment subject matter expertise.
- *Predictive*: predict judges' pre-appointment subject matter expertise's impact on decision length, delivery time, complexity, and appeal.
- *A preliminary hypothesis*: judges' pre-appointment subject matter expertise may be a statistically significant predictor of decision length, delivery time, complexity, and appeal.

12. Judge's law school

- *Purpose*: organizational/grouping & analytical.
- *Method*: publicly accessible documents and direct insight from courts, and a script will enter this feature based on judges' names from a separate database.
- *Descriptive*: describe cross-Canada behaviour of judges based on their law school.

- *Predictive*: predict judges' law school's impact on decision length, delivery time, complexity, and appeal.
- *A preliminary hypothesis*: law school may be a statistically significant predictor of decision length, delivery time, complexity, and appeal.

13. Judge called to the bar

- *Purpose*: organizational/grouping & analytical.
- *Method*: publicly accessible documents and direct insight from courts, and a script will enter this feature based on judges' names from a separate database.
- *Descriptive*: describe cross-Canada behaviour of judges based on their call year.
- *Predictive*: predict judges' bar call's impact on decision length, delivery time, complexity, and appeal.
- *A preliminary hypothesis*: judges that were called to the bar before some time are appealed more or less than judges who were more recently called to the bar.

14. Judge's clerkship

- *Purpose*: organizational/grouping & analytical.
- *Method*: publicly accessible documents and direct insight from courts, and a script will enter this feature based on judges' names from a separate database.
- *Descriptive*: describe the cross-Canada behaviour of judges based on their clerkships.
- *Predictive*: predict judges' clerkship's impact on decision length, delivery time, complexity, and appeal.
- *A preliminary hypothesis*: judges who clerked write longer, more complex, and more frequently appealed decisions.

15. Judge's questionnaire

- *Purpose*: organizational/grouping & analytical.
- *Method*: publicly accessible documents and direct insight from courts, and a script will enter this feature based on judges' names from a separate database.
- *Uncertainty*: Most judges in the sample won't have a questionnaire attached to them since the process only required them since 2016. As well, appointment year will largely capture this feature.
- *Descriptive*: describes the cross-Canada behaviour of judges based on their questionnaire.
- *Predictive*: predict judges' questionnaire impact on decision length, delivery time, complexity, and appeal.
- *A preliminary hypothesis*: judges with questionnaires write longer decisions. But appointment year will probably capture the same effect.

16. Counsel name

- *Purpose*: organizational/grouping & analytical.

- *Method*: automated scraping from judicial decisions.
- *Uncertainty*: Descriptive and predictive conclusions would be based on a narrow snapshot of appearances—e.g., perhaps the 2018 year was a year with a lot of appearances vs. the opposite. This criticism, of course, could apply to all the individual samples from each province and court. Additionally, certain counsel may only take on complex cases.
- *Descriptive*: describe counsel that appear in each jurisdiction.
- *Predictive*: predict counsels’ impact on decision length, delivery time, complexity, and appeal.
- *A preliminary hypothesis*: individual counsel may be a statistically significant predictor of decision length, delivery time, complexity, and appeal.¹⁵⁹⁸

17. Counsel gender

- *Purpose*: organizational/grouping & analytical. This point would allow aggregating/disaggregating the data based on gender.
- *Method*: publicly accessible documents and direct insight from law societies, and a script will enter this feature based on counsels’ names from a separate database.
- *Uncertainty*: a concern with using this feature is the same as the counsel name feature. If the counsel name is included, gender should be included enable aggregation/disaggregation.
- *Descriptive*: describe cross-Canada representation of counsels’ gender.
- *Predictive*: predict counsels’ gender’s impact on decision length, delivery time, complexity, and appeal.
- *A preliminary hypothesis*: counsel gender may be a statistically significant predictor of decision length, delivery time, and complexity.¹⁵⁹⁹

18. Counsel age

- *Purpose*: organizational/grouping & analytical.
- *Method*: publicly accessible documents and direct insight from law societies, and a script will enter this feature based on counsels’ names from a separate database.
- *Uncertainty*: a concern with using this feature is the same as the counsel name feature.
- *Descriptive*: describe cross-Canada representation of counsels’ age.
- *Predictive*: predict counsels’ age’s impact on decision length, delivery time, complexity, and appeal.

¹⁵⁹⁸ See, e.g., Sean Rehaag, “The Role of Counsel in Canada’s Refugee Determination System: An Empirical Assessment” (2011) 49 Osgoode Hall Law Journal 71; Jamie Liew *et al*, “Not Just the Luck of the Draw? Exploring Competency of Counsel in Federal Court Refugee Leave Determinations (2005-2010)” (2021) 37:1 Refuge 61; Rebecca L Sandefur, “The Impact of Counsel: An Analysis of Empirical Evidence” (2010) 9:1 Seattle Journal for Social Justice 51.

¹⁵⁹⁹ See, e.g., Erin B Kaheny, John J Szmer & Tammy A Sarver, “Women Lawyers before the Supreme Court of Canada” (2011) 44:1 Canadian Journal of Political Science 83.

- *A preliminary hypothesis*: counsel age may be a statistically significant predictor of decision length, delivery time, complexity, and appeal.¹⁶⁰⁰

19. Counsel law school

- *Purpose*: organizational/grouping & analytical.
- *Method*: publicly accessible documents and direct insight from law societies, and a script will enter this feature based on counsels' names from a separate database.
- *Uncertainty*: a concern with using this feature is the same as the counsel name feature.
Descriptive: describe cross-Canada representation of counsels' law school.
- *Predictive*: predict counsels' law schools' impact on decision length, delivery time, complexity, and appeal.
- *A preliminary hypothesis*: counsel law school may be a statistically significant predictor of decision length, delivery time, complexity, and appeal.

20. Counsel call to the bar

- *Purpose*: organizational/grouping & analytical.
- *Method*: publicly accessible documents and direct insight from law societies, and a script will enter this feature based on counsels' names from a separate database.
- *Uncertainty*: a concern with using this feature is the same as the counsel name feature.
- *Descriptive*: describe cross-Canada representation of counsels' bar call year.
- *Predictive*: predict counsels' bar call's impact on decision length, delivery time, complexity, and appeal.
- *A preliminary hypothesis*: counsel year of call may be a statistically significant predictor of decision length, delivery time, complexity, and appeal.¹⁶⁰¹

21. Subject from keywords

- *Purpose*: organizational/grouping and analytical.
- *Method*: automated scraping—depending on the data source (could use the categorization the publisher provides).
- *Descriptive*: describe some of the status quo about decisions for subjects—e.g., what is the status quo about the kinds of decisions judges are issuing (e.g., tort, personal injury, criminal, family) and the process leading to those decisions (e.g., long vs. short trials).
- *Predictive*: predict subject-matter's impact on decision length, delivery time, complexity, and appeal.
- *A preliminary hypothesis*: subject may be a statistically significant predictor of decision length, delivery time, complexity, and appeal.

¹⁶⁰⁰ See *supra* note 1598.

¹⁶⁰¹ *Ibid.*

22. Cases/statutes/other authorities cited

- *Purpose*: organizational/grouping, analytical, and design.
- *Method*: automated scraping from judicial decisions.
- *Descriptive*: describe cross-Canada citation practices. This description will also facilitate designing potential standardized content for decisions.
- *Predictive*: predict cases/precedent's cited impact on decisions' length, delivery time, complexity, and appeal.
- *A preliminary hypothesis*: judges cite particular cases in "complicated" cases. Individuals or organizations would still have to refine their measure of what is "complicated" or "complex".¹⁶⁰² Existing measures of complexity seem somewhat circular—*i.e.*, long decisions with many citations equals a complex decision. A full literature review could help finalize a clear metric.¹⁶⁰³ The other measure that individuals or organizations could incorporate is how many subject matters are involved in each case—*e.g.*, tort and contract law; tort and insurance law—as well as sentiment scores.

23. Number of cases/statutes/other authorities cited

- *Purpose*: organizational/grouping, analytical, and design.
- *Method*: simple counting script.
- *Descriptive*: describe cross-Canada citation practices.
- *Predictive*: predict number of cited cases' impact on decision length, delivery time, complexity, and appeal.
- *A preliminary hypothesis*: judges cite more cases in "complicated" cases. Again, individual or organizations would need a better measure of "complicated" or "complex" as this prediction would be circular—*i.e.*, long decisions with many citations equal a complex decision.¹⁶⁰⁴

24. Cases/statutes/other authorities mentioned

- *Purpose*: organizational/grouping, analytical, and design
- *Method*: automated scraping from judicial decisions.

¹⁶⁰² Mike Madden, *Putting Numbers to Words: Measuring the Readability of Court and Administrative Tribunal Decisions in Canada* (2025), (PhD Thesis, University of Ottawa, 2025), online: <<https://ruor.uottawa.ca/items/48fa55a3-f3bf-4ff1-a52b-1e4a7575cb9b>>.

¹⁶⁰³ See, Adam Feldman, "Empirical SCOTUS: One opinion more complex than the next" (13 June 2018), Scotusblog, online: <<https://www.scotusblog.com/2018/06/empirical-scotus-one-opinion-more-complex-than-the-next/>>; Andrew Green & Albert Yoon, "Triaging the Law: Developing the Common Law on the Supreme Court of India" (2017) 14:4 *Journal of Empirical Legal Studies* 683; Kawin Ethayarajh, Andrew Green & Albert Yoon, "A Rose by Any Other Name: Understanding Judicial Decisions that Do Not Cite Precedent" (2018) 15:3 *Journal of Empirical Legal Studies* 563; Frank B Cross *et al.*, "Citations in the U.S. Supreme Court: An Empirical Study of their Use and Significances" (2010) 2010 *University of Illinois Law Review* 489. See also, Edwards & Livermore, *supra* note 938; Russell Smyth, "Citation to Authority on the Supreme Court of South Australia: Evidence from a Hundred Years of Data" (2008) 29:1 *Adel L Rev* 113; Peter McCormick, "Judicial Authority and the Provincial Courts of Appeal: A Statistical Investigation of Citation Practices" (1994) 22:2 *Man LJ* 286.

¹⁶⁰⁴ *Ibid.*

- *Descriptive*: describe cross-Canada mentioning of principles, statutes, etc. Judges mention cases/principles more than cite them—e.g., on this s. 7 application isn't citing s. 7, but it's mentioning it. Separating citations from document mentions allows me to parse out and better analyze where citations are occurring in decisions.
- *Predictive*: none.
- *A preliminary hypothesis*: none.

25. Number of cases/statutes/other authorities mentioned

- *Purpose*: organizational/grouping, analytical, and design
- *Method*: simple counting script.
- *Descriptive*: describe cross-Canada citation mentioning practices.

26. How many court days

- *Purpose*: organizational/grouping & analytical.
- *Method*: automated scraping and provision from courts that do not provide it with decisions.¹⁶⁰⁵
- *Descriptive*: describe how cross-Canada practice of court days.
- *Predictive*: predict court days' impact on decision length, delivery time, complexity, and appeal.
- *A preliminary hypothesis*: court days are the most significant predictors of decision length, delivery time, complexity, and appeal.

27. Date hearing concluded

- *Purpose*: organizational/grouping & analytical.
- *Method*: automated scraping from judicial decisions.
- *Descriptive*: this feature will describe when a hearing concludes.
- *Predictive*: this feature facilitates predictions about the hearing date's impact on decision length, delivery time, complexity, and appeal.
- *A preliminary hypothesis*: the month in which the hearing occurs—perhaps coupled with other features—may be a significant predictor of either decision length, delivery time, or complexity. Due to the limited nature of the dataset, this prediction will likely not be extremely robust and would be limited to a particular month.

28. Date decision issued

- *Purpose*: organizational/grouping & analytical.
- *Method*: provided with decisions' metadata/automated scraping from judicial decisions.
- *Predictive*: this feature will describe when decisions are issued.

¹⁶⁰⁵ Some jurisdictions, e.g., Northwest Territories, Yukon, Manitoba & Saskatchewan trial courts, & Northwest Territories' appeal courts don't provide hearing dates on their decisions in any database.

- *Descriptive*: this feature facilitates predictions about the issue date's impact on decision length, delivery time, complexity, and appeal.
- *A preliminary hypothesis*: the month in which the decisions is issued—perhaps coupled with other features—may be a significant predictor of either decision length, delivery time, complexity, and appeal. This prediction will likely not be extremely robust and would be limited to a particular month vs. a historical study by year.

29. How many days lapsed before decision was released

- *Purpose*: organizational/grouping & analytical.
- *Method*: simple automated script.
- *Descriptive*: this feature will describe how many days it takes to release a decision—*i.e.*, delivery time.
- *Predictive*: this feature facilitates predictions about delivery time's impact on decision length, delivery time, complexity, and appeal.
- *A preliminary hypothesis*: the slower the decision time, the longer and more complex the decision and the greater chance of successful appeal.

30. Word count

- *Purpose*: organizational/grouping & analytical.
- *Method*: automated scraping from judicial decisions.
- *Descriptive*: this feature will describe a decision's word count.
- *Predictive*: this feature facilitates predictions about word count's impact on decision length, delivery time, complexity, and appeal.
- *A preliminary hypothesis*: the longer the decision, the slower and more complex the decision and the greater chance of appeal.

31. Use of headings

- *Purpose*: organizational/grouping & analytical.
- *Method*: automated scraping from judicial decisions.
- *Descriptive*: describe cross-Canada use of headings.
- *Predictive*: predict headings' impact on decision length, delivery time, complexity, and appeal.
- *A preliminary hypothesis*: using headings is related to longer, slower, and more complex decisions, and such issues are related to greater chances of appeal.

32. Actual headings

- *Purpose*: organizational/grouping & analytical.
- *Method*: scraping.

- *Descriptive*: describe the actual headings that are used—e.g., a content analysis.¹⁶⁰⁶ This feature will ascertain how many judges are using the issue-drive decision-writing style; it will also enable more empirical evidence for the proposed re-design of decisions.
- *Predictive*: none.
- *A preliminary hypothesis*: None.

33. Word count under each heading

- *Purpose*: organizational/grouping, analytical, and design.
- *Method*: automated scraping from judicial decisions.
- *Descriptive*: describe how many words are under each heading—e.g., it would easily allow researchers to determine what a judge thinks is analysis and how many words were spent on it.
- *Predictive*: none.
- *A preliminary hypothesis*: many decisions likely don't have much analysis.

34. Whether case includes any self-represented individuals and how many

- *Purpose*: organizational/grouping & analytical.
- *Method*: automated scraping from judicial decisions.
- *Descriptive*: describe how many.
- *Predictive*: predict self-represented individuals' impact on decisions' length, delivery time, and complexity.
- *A preliminary hypothesis*: decisions that have self-represented litigants will be “different” than decisions that don't.

35. Case history

- *Purpose*: organizational/grouping & analytical.
- *Method*: to be determined. Currently, it would require access to all appellate court decisions in 2018, 2019, and 2020. The most reliable way to get appeal information is through a commercial database or CanLII, and they currently preclude scraping or automated research.
- *Descriptive*: describe case history—e.g., appealed, appealed successfully, appeal denied.
- *Predictive*: predict appeal rate and appeal outcomes impact on decisions' length, delivery time, and complexity.
- *A preliminary hypothesis*: judges write to allay appeal aversion, and longer and slower decisions are more likely to be appealed than shorter and quick decisions.

¹⁶⁰⁶ See, e.g., Mark A Hall & Ronald F Wright, “Systematic Content Analysis of Judicial Opinions” (2008) 96 California Law Review 63; Adam Feldman, “Opinion Clarity in State and Federal Trial Courts” in Michael A Livermore & Daniel N Rockmore, eds, *Law as Data: Computation, Text, & the Future of Legal Analytics* (Sante Fe Press: Sante Fe, 2019) 407.

36. Sentiment

- *Purpose*: organizational/grouping, analytical, and design.
- *Method*: automating processing of each decision.
- *Descriptive*: describe cross-Canada sentiment scores.
- *Predictive*: predict sentiment scores impact on decisions' length, delivery time, complexity, and appeal.
- *A preliminary hypothesis*: More complicated sentiment scores lead to longer, slower, more complex, and more appealed decisions.

37. Weather

- *Purpose*: organizational/grouping, analytical,
- *Method*: automating processing of each decision.
- *Descriptive*: describe cross-Canada weather patterns as they relate to judging.
- *Predictive*: predict weather's impact on decisions' length, delivery time, complexity, and appeal.
- *A preliminary hypothesis*: weather is a statistically significant predictor of decisions' length, delivery time, complexity, and appeal.¹⁶⁰⁷

Dataset sources: judicial decisions

As the dissertation discussed, an information monopoly and commercial monopoly preclude individuals from accessing complete datasets of decisions for many courts. So individuals or organizations would have to access them from either CanLII, courts directly, Westlaw, LexisNexis, or an academic dataset holder (but none of the full dataset this study prescribes). A court could likely be able to gain such access from CanLII, so too could the CJC.

Dataset sources: data about judges and lawyers

Canada has no aggregated biographical or demographic datasets for lawyers or judges. Accordingly, individuals or organizations would have to get the necessary data from courts and law societies. A court may be able to gain such access.

¹⁶⁰⁷ See, e.g., Holger Spamann, "No, No, Judges Are Not Influenced by Outdoor Temperature (or Other Weather): Comment" (2020) Harvard Law School John M. Olin Center Discussion Paper No. 1036, online: <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3645463>.

Dataset and methodological limits

The proposed dataset could be a comprehensive, accurate dataset. But results would be limited to the dataset that individuals or organizations create and the coding protocol for any hand coded datapoints or error rates for automated methods. Such a dataset—like most datasets examining judicial or court behaviour—has one principal weakness.

The dataset would be missing dozens to hundreds of unreported decisions from each jurisdiction in 2018—*i.e.*, the dataset would likely be missing over 1000 decisions or more.

Accordingly, like all empirical legal datasets, the conclusions would be incomplete, and no descriptions or predictions can fully account for the missing data's effect. Epstein and Martin put it best:

no matter how good their design, their data, and their methods—will the researchers be able to conclude that their theory is right or wrong ... All they will be able to say is whether their data are *consistent* with the observable implications following from their theory.¹⁶⁰⁸

¹⁶⁰⁸ Epstein & Martin, *supra* note 938 at 907.

Appendix 6: A lack of standardization and uniformity

The following breaks down how courts approach six datapoints in decisions (in computer science terms, the language courts regularly use before a certain datapoint—*aka* “REGEX” courts regularly flag). It provides visual examples of the REGEX and their location in the decision.

As you can see, a large amount of variety and standardization exists in these basic datapoints. Much of what this dissertation has discussed has been pointing to such lacks of standardization as problems that accumulate and compound.

1.	Registry/judicial centre	353
2.	How many court days	365
3.	Date hearing concluded.....	377
4.	Oral or written decision.....	377
5.	Counsel name(s).....	403
6.	Whether the case includes any self-represented individuals, and how many	420

1. Registry/judicial centre

- Canadian rely on at least 15 regex: (“Considered at”; “Docket.”; “Heard at ...”; “Judicial centre”; “Judicial District of ...”, “Place of Hearing.”; “Place and Date of Hearing”; “Registry”; “Sitting in ...”; “Judicial District of”; “Motion in Writing Considered at”; “Place of Hearing”; “at”; “()”; “[]”.

A. British Columbia

- British Columbia Supreme Court.
 - Located in one place in most decisions.
 - (1) Near the beginning on the right side. Flagged by “Registry.”.

IN THE SUPREME COURT OF BRITISH COLUMBIA	
Citation:	Wilson v. British Columbia, 2018 BCSC 2327
Between:	Date: 20181231 Docket: S1812071 Registry: Vancouver

- British Columbia Court of Appeal.
 - Located in one place in most decisions.
 - (1) Near the beginning on the right side. Flagged by “Place and date of hearing” on the left side of the decision.

COURT OF APPEAL FOR BRITISH COLUMBIA	
Citation:	<i>Olenga v. British Columbia</i> , 2018 BCCA 489
Between:	Aime Olenga
And	Her Majesty the Queen in Right of British Columbia as Represented by the Province of British Columbia MCFD
Before:	The Honourable Mr. Justice Hunter (In Chambers)
On appeal from:	An order of the Supreme Court of British Columbia, dated November 6, 2018 (<i>Olenga v. British Columbia</i> , 2018 BCSC 1931, Vancouver Docket S161748).
Oral Reasons for Judgment	
The Appellant, appearing in person:	A. Olenga
Counsel for the Respondent:	S.E. Lacusta
Place and Date of Hearing:	Vancouver, British Columbia December 28, 2018
Place and Date of Judgment:	Vancouver, British Columbia December 28, 2018

B. Northwest Territories and Yellowknife

- Supreme Court of the Northwest Territories.
(1) Near the beginning in the middle area of transcribed oral decisions. Flagged by “sitting in” or “heard at”.

<i>R v Elanik</i> , 2018 NWTSC 74	S-1-CR-2017-000060
IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES	
IN THE MATTER OF:	
HER MAJESTY THE QUEEN	
- v -	
FRANK 'JUNIOR' ELANIK	
Transcript of the Reasons for Sentence delivered by The Honourable Justice S.H. Smallwood, sitting in Aklavik, in the Northwest Territories, on the 6th day of November, 2018.	

(2) Near the beginning of the decision on the left side in written decisions.
Flagged by “Heard at”.

Cementation Canada Inc. v Lavallee, 2018 NWTSC 37		Date: 2018 07 27 Docket: S-1-CV-2017 000 313
IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES In the matter of the <i>Employment Standards Act</i>, 2007 And in the matter of the Decision of The Employment Standards Appeal Office File No. 20-3148/16, Order 2478		
BETWEEN:	Cementation Canada Inc.	Appellant
	-and-	
	Bryan Lavallee	Respondent
Appeal from a decision of an Adjudicator under the <i>Employment Standards Act</i>, S.N.W.T. 2007, c. 13. Heard at Yellowknife, NT, on April 10, 2018. Reasons filed: July 27th, 2018		

- Court of Appeal for the Northwest Territories.

- Located in one place in most decisions.

(1) Near the beginning the right side in most decisions. Flagged by “Registry”.

In the Court of Appeal for the Northwest Territories		
Citation: <i>R v Bernarde</i> , 2018 NWCA 7	Date: 20181105 Docket: A1-AP-2018-000006 Registry: Yellowknife	
Between:	Her Majesty the Queen	Respondent
	- and -	
	Cameron Bernarde	Appellant

C. Nunavut

- Nunavut Court of Justice.

- Located in one place in most decisions.

(1) Near the beginning on the right side. Flagged by “Place and date of hearing” on the left side of the decision.

COURT OF APPEAL OF YUKON	
Citation:	<i>Angerer v. Cuthbert</i> , 2018 YKCA 8
	Date: 20180525 Docket: 17-YU815
Between:	Stefan Ludwik Angerer, Ursula Angerer, Leopold Selinger, Edeltraud Selinger, Gerry McGraw and Stefan Landfried
	Respondents (Plaintiffs)
And	Shelley R. Cuthbert
	Appellant (Defendant)
Before:	The Honourable Chief Justice Bauman The Honourable Madam Justice Cooper The Honourable Mr. Justice Fitch
On appeal from: An order of the Supreme Court of Yukon, dated October 11, 2017 (<i>Angerer v. Cuthbert</i> , 2017 YKSC 54, Whitehorse Registry File No. 16-A0132).	
The Appellant appearing In Person:	S.R. Cuthbert
Counsel for the Respondent:	M. Hannam
Place and Date of Hearing:	Whitehorse, Yukon May 10, 2018

E. Saskatchewan

- Saskatchewan Court of Queen’s Bench.

- Located in one place in most decisions.

(1) Near the beginning on the left side. Flagged by “Judicial Centre”.

QUEEN’S BENCH FOR SASKATCHEWAN	
Date:	2018 12 03
Docket:	ORG 463 of 2016
Judicial Centre:	Regina
	Citation: 2018 SKQB 337
BETWEEN:	
T & C ARNDT MINERALS LTD., BLACK MUD HOLDINGS INC. JOHN BORGES, ERNIE BALYSKI, B & L SERVICE 1995 LTD., COBRETT FARMS LTD., DTJT HOLDINGS INC., R & K ERICKSON HOLDINGS LTD., 101195195 SK. LTD., 101165820 SK. LTD., IAN FLADLAND, GLH HOLDINGS LTD., G & C VENTURES LTD., HORSESHOES VENTURES INC., C. ANDERSON HOLDINGS INC., TERRY JOHNSTON, 101208906 SK. LTD., 101176040 SK. LTD., 101167982 SK. LTD., KOSIOR FARM CO. LTD., MUCHAEL MALACH, MARY MALACH, 6115365 MANITOBA LTD., MARY ANNE MARGARET MCPHEE, NORMAN MCFADDEN, NORESS INVESTMENTS, KEVIN RIPPLINGER, RID HOLDINGS LTD., 101176925 SK. LTD., SOUTHERN RANGE WELL SERVICING LTD., SCHLING HOLDING LTD., SAMENOOK REINFORCING LTD., BRIAN SALAWAY, SAINT’S SUPERVISORY SERVICES INC., TAZAK LAND & CATTLE CO. INC., TRAIL FARM LTD., VAALL HOLDINGS INC., WEYBURN OPTICAL CENTRE LTD., DARRYL WARD, PATRICIA WARD, RYAN BOUSFIELD, DRH VENTURES LTD., JP VENTURES INC., DONNA KLEIN, LDL FARMS INC., MILLER ENTERPRISES INC., 101167936 SK. LTD., BRENDA MURRAY, KELLY VAN DE SYPE, DEANNDIA VAN DE SYPE, AND 1011230984 SASKATCHEWAN LTD.	
PLAINTIFFS/DEFENDANTS	
- and -	

- Saskatchewan Court of Appeal.

- Decisions don’t include this information.

F. Manitoba

- Manitoba Court of Queen’s Bench.

- Located in one place in most decisions.

Date: 20181214
Docket: CR 17-01-36486
(Winnipeg Centre)
Indexed as: R. v. Brass
Cited as: 2018 MBQB 182

COURT OF QUEEN'S BENCH OF MANITOBA

BETWEEN:) **APPEARANCES:**
)
HER MAJESTY THE QUEEN) Geoffrey Bayly and
) Minh Nguyen
- and -) for the Crown
) -
CHRISTOPHER MATTHEW BRASS) Tara Walker and Jodi Myskiw
) for the Accused
Accused.)
)
) Judgment delivered:
) December 14, 2018

- ### G. Alberta

- Court of Queen's Bench of Alberta**
- Citation: R v Esposito, 2018 ABQB 936
- Date: 20181116
Docket: 16034374501
Registry: Calgary

- 358

In the Court of Appeal of Alberta

Citation: Dorin v EPCOR Distribution and Transmission Inc, 2018 ABCA 427

Date: 20181212
Docket: 1803-0303-AC
Registry: Edmonton

- Ontario Superior Court of Justice.
 - Located in one of seven possible places. But this Court also doesn't include this information in every decision
 - (1) Near the beginning in the centre. Flagged by "Heard at ...":

359

(2) Near the beginning on the right side. Precedes “Court File No”.

	CITATION: W. v. K., 2018 ONSC 7765 KINGSTON COURT FILE NO.: 379/17 DATE: 20181228
SUPERIOR COURT OF JUSTICE – ONTARIO	
RE: W.	
Applicant	
AND:	
K.	
Respondent	
BEFORE: Justice A. C. Trousdale	
COUNSEL: Jane E. Thurber, Counsel for the Applicant	
Peter M. Callaghan, Counsel for the Respondent	
HEARD: October 24, 2018	

(3) Near the beginning in the centre. Precedes “Court File No.”.

	NEWMARKET COURT FILE NO.: CR-16-02050G	CITATION: R. v. Lawson, 2018 ONSC 4251 DATE: 20180706
ONTARIO		
SUPERIOR COURT OF JUSTICE		
BETWEEN:	)	
	)	
HER MAJESTY THE QUEEN	)	
	)	S. Kumaresan, for the Crown
– and –	)	
	)	
ASHTON LAWSON	)	
	)	M. Lacy and D. Negandhi, for the Applicant
	)	
Applicant	)	
	)	HEARD: June 27, 2018

(4) Near the beginning in the centre. Flagged by “at”.

Citation: Martin v. GiesbrechtGriffin, 2018 ONSC 7794 Court File No. CV-13-00000555-0000 Date: November 29 2018	
SUPERIOR COURT OF JUSTICE	
B E T W E E N :	
DELMER MARTIN	Plaintiff
- and -	
GIESBRECHT, GRIFFIN, FUNK & IRVINE LLP (FORMERLY KNOWN AS GIESBRECHT, GRIFFIN & FUNK), THE ESTATE OF D. KIM LAVERGE	
	Defendants
R U L I N G O N M O T I O N	
BEFORE THE HONOURABLE JUSTICE C D BRAID on November 29, 2018, at KITCHENER, Ontario	
APPEARANCES:	
R. Trenker	Counsel for the Plaintiff
A.T. McKinnon	Counsel for the Defendants

(5) Near the beginning in the centre after “Heard”. Flagged by “()”.

CITATION: Granter v. Tricco, 2018 ONSC 6906	
COURT FILE NO.: 18/D-160	
DATE: 2018/12/27	
ONTARIO	
SUPERIOR COURT OF JUSTICE	
B E T W E E N:	
BRIAN FREDERICK GRANTER	Self-Represented
Applicant	
- and -	
NATALIE ELIZABETH TRICCO	Self-Represented
Respondent	
HEARD: November 15, 2018 (Pembroke)	

(1) Located near the beginning in the centre. Flagged by “Place of Hearing:”.

		
IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR GENERAL DIVISION		
Citation: <i>Power v. Newfoundland and Labrador (Municipal Affairs and Environment)</i> , 2018 NLSC 258		
Date: December 18, 2018		
Docket: 201701G5476		
BETWEEN	MICHAEL POWER	APPLICANT
AND:	HER MAJESTY THE QUEEN in right of Newfoundland and Labrador as represented by the Minister of Municipal Affairs and Environment	RESPONDENT
Before: Justice William H. Goodridge		
Judicial Review from a decision of Minister of Municipal Affairs and Environment dated the 9th day of August 2017.		
Place of Hearing:	St. John's, Newfoundland and Labrador	Back to top

- Court of Appeal of Newfoundland and Labrador.
 - Because this Court only has one registry, it doesn't include this information.

J. Prince Edward Island

- Supreme Court of Prince Edward Island.
 - Located in one place in most decisions.
(1) Near the beginning on the right side. Flagged with “Registry”.

SUPREME COURT OF PRINCE EDWARD ISLAND	
Citation: <i>C.A.M. v. J.C.</i> , 2018 PESC 49	Date: 20181214 Docket: S2-DV-1102-3503 Registry: Summerside

- Prince Edward Island Court of Appeal.
 - Located in one place in most decisions.
(1) Near the beginning on the left side. Flagged with “Registry”:

PROVINCE OF PRINCE EDWARD ISLAND PRINCE EDWARD ISLAND COURT OF APPEAL	
Citation: <i>Taha v. Government of P.E.I.</i> , 2018 PECA 18 and S1-CA-1385	Date: 20180710 Docket: S1-CA-1384
Registry: Charlottetown	

K. New Brunswick

- Court of Queen's Bench of New Brunswick.
 - Located in one place in most decisions.

(1) Near the beginning on the left side. Flagged by “Judicial District of”:

IN THE COURT OF QUEEN'S BENCH OF NEW BRUNSWICK TRIAL DIVISION JUDICIAL DISTRICT OF MONCTON	
Citation: 2018 NBQB 208 Date: 2018/11/15	MC 0998-04

- Court of Appeal of New Brunswick.
 - Because this Court only has one possible registry, it doesn't include this information.

L. Nova Scotia

- Supreme Court of Nova Scotia.
 - Located in one place in most decisions.
(1) Near the beginning on the right side. Flagged with “Registry”.

SUPREME COURT OF NOVA SCOTIA IN BANKRUPTCY AND INSOLVENCY Citation: <i>Handspiker (Re)</i> , 2018 NSSC 333	
In the Matter of: The bankruptcy of Alyssa Ashley Ann Handspiker	Date: 20181224 Docket: No. 42487 Registry: Halifax

- Nova Scotia Court of Appeal.
 - This Court has one registry (“Halifax”).
 - Located in one place in most decisions.
(1) Near the beginning on the right side. Flagged with “Registry”.

NOVA SCOTIA COURT OF APPEAL Citation: <i>Jessome v. Beaton</i> , 2018 NSCA 91	
	Date: 20181121 Docket: CA 475329 Registry: Halifax

M. Federal Courts

- Federal Court, Federal Court of Appeal, Tax Court of Canada.
 - These courts have 13 possible registries (“Calgary”, “Charlottetown”, “Edmonton”, “Fredericton”, “Halifax”, “Iqaluit”, “Montreal”, “Ottawa”, “Quebec”, “St. John’s”, “Toronto”, “Vancouver”, “Winnipeg”).
 - Located in one place with two different flags.
(1) Near the end of the decision. Flagged by “Motion in Writing Considered at”.

FEDERAL COURT SOLICITORS OF RECORD	
DOCKET: STYLE OF CAUSE: MOTION IN WRITING CONSIDERED AT OTTAWA, ONTARIO	T-1844-17 ATTRACTION INC. v ETHIKA INC.

(2) Near the end of the decision. Flagged by “Place of Hearing”.

FEDERAL COURT SOLICITORS OF RECORD	
DOCKET:	IMM-5386-17
STYLE OF CAUSE:	KETTIA JOSEPH ET AL. v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	MONTRÉAL, QUEBEC
DATE OF HEARING:	JUNE 13, 2018
JUDGMENT AND REASONS:	ROUSSEL J.
DATED:	June 20, 2018

- Supreme Court of Canada.
 - This Court has one possible registry (“Ottawa”).

2. How many court days

- Canadian courts flag hearing days with least 14 regex, but some courts don’t include hearing days at all:
 - “Place and Date of Hearing”; “Heard at ... on”; “Appeal heard on”; “Date Heard.”; “Application heard in writing”; “Chambers motion heard”. “Appeal heard”; “Appeal heard and decision pronounced”; “Heard on the...”; Appeal heard on...”; “Heard”; “Date of Hearing”; “DATE OF HEARING”; “DATES OF HEARING”.

A. British Columbia

- British Columbia Supreme Court.
 - Located in one place.
- (1) Near the beginning on the right side. Flagged by “Place and Date of Hearing”.

IN THE SUPREME COURT OF BRITISH COLUMBIA	
Citation:	<i>Chiovetti v. Parksville (City)</i> , 2018 BCSC 2314
	Date: 20181227 Docket: S85226 Registry: Nanaimo
Between:	
	Ron Chiovetti, Adam Fras, Doug O'Brien, Melanie Van Der Stock and Berwick Retirement Communities LTD.
	Petitioners
And	
	City of Parksville
	Respondent
	Before: The Honourable Mr. Justice Baird
	Reasons for Judgment
Counsel for the Petitioners Chiovetti, Fras, O'Brien, Van Der Stock, and Berwick Retirement Communities Ltd.:	M. Foster
Counsel for Revera Inc.	M.J. Hargreaves
No appearance on behalf of the Respondent:	
Counsel for the British Columbia Housing Management Commission and the Provincial Rental Housing Corporation:	R. Josephson
Place and Date of Hearing:	Nanaimo, B.C. December 17, 2018
Place and Date of Judgment:	Nanaimo, B.C. December 27, 2018

- British Columbia Court of Appeal.
 - Located in one place.
 - (1) Near the beginning on the right side. Flagged by “Place and Date of Hearing”.

COURT OF APPEAL FOR BRITISH COLUMBIA	
Citation:	<i>Agent E v. Canada (Attorney General)</i> , 2018 BCCA 491
Between:	Agent E
And	Attorney General of Canada (in right of the Royal Canadian Mounted Police)
Before:	The Honourable Mr. Justice Tysoe The Honourable Mr. Justice Harris The Honourable Madam Justice Griffin
	On appeal from: An order of the Supreme Court of British Columbia, dated May 29, 2018 (<i>Agent E v. Canada (Attorney General)</i> , Vancouver Docket No. S162923).
	Oral Reasons for Judgment
Counsel for the Appellant:	J.B. Gratl T. Rauch-Davis
Counsel for the Respondent:	D. Kwan
Place and Date of Hearing:	Vancouver, British Columbia December 14, 2018
Place and Date of Judgment:	Vancouver, British Columbia December 14, 2018

B. Northwest Territories and Yellowknife

- Supreme Court of the Northwest Territories.
 - Many decisions don't explicitly include it because they're oral decisions.
 - If included, located in one place.
 - (1) Near the beginning on the left side. Flagged by “Heard at ... on”.

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES	
	In the matter of the <i>Employment Standards Act</i> , 2007
	And in the matter of the Decision of The Employment Standards Appeal Office File No. 20-3148/16, Order 2478
BETWEEN:	Cementation Canada Inc.
	-and-
	Bryan Lavallee
	Appellant
	Respondent
Appeal from a decision of an Adjudicator under the <i>Employment Standards Act</i>, S.N.W.T. 2007, c. 13. Heard at Yellowknife, NT, on April 10, 2018. Reasons filed: July 27th, 2018	

- Court of Appeal for the Northwest Territories.
 - Located in one place.

(1) Near the end of the decision after the last paragraph on the left side. Flagged by “Appeal heard on”.

Appeal heard on October 23, 2018	
Memorandum filed at Yellowknife, Northwest Territories this day of , 2018	
	Costigan J.A.
	Veldhuis J.A.
	Wakeling J.A.

C. Nunavut

- Nunavut Court of Justice.

- Located in one place.

(1) Near the beginning of the decision on the left side. Flagged by “Date Heard:”.

ᑎᓄᓐᓂᓐ ᑎᓄᓐᓂᓐ ᑎᓄᓐᓂᓐ Nunavunmi Maligaliuqtiit NUNAVUT COURT OF JUSTICE Cour de justice du Nunavut	
Citation:	<i>Redfern v. Qikiqtani Inuit Association, 2018 NUCJ 13</i>
Date:	20180509
Docket:	08-15-007
Registry:	Iqaluit
Applicant:	Madeline Redfern
	-and-
Respondent:	Qikiqtani Inuit Association
Before: The Honourable Madam Justice Susan Cooper	
Counsel (Applicant):	Crista Osualdini
Counsel (Respondent):	Sylvie M. Molgat
Location Heard:	Iqaluit, Nunavut
Date Heard:	May 8, 2017
Matters:	<i>Judicial Review</i>

- Nunavut Court of Appeal.

- Located in one place with two different flags.

(1) Near the end of the decision after the last paragraph on the left side. Flagged by “Application heard in writing”.

IV. DISPOSITION [18] As it appears desirable in the interests of justice that Mr. Salomonie should have legal assistance on this appeal, and where it appears that Mr. Salomonie has not sufficient means to obtain such assistance, an order shall go granting the application. Counsel is to be assigned pursuant to s. 684(1) of the <i>Criminal Code</i> to act on Mr. Salomonie's behalf through to the conclusion of this appeal. In accordance with s. 684(2), as legal aid has rejected Mr. Salomonie's application for legal representation, the Attorney General shall pay for the fees and disbursements incurred by counsel on Mr. Salomonie's appeal.
Application heard in writing August 7, 2018. Memorandum filed at Iqaluit, Nunavut, this 7th day of August, 2018.
Justice Neil Sharkey Nunavut Court of Appeal

(2) Near the end of the decision after the last paragraph on the left side. Flagged by “Appeal heard on”.

Appeal heard on September 19, 2017 Reasons filed at Iqaluit, Nunavut this day of June, 2018
Berger J.A.

D. Yukon

- Supreme Court of Yukon.
 - This Court doesn't include this information.
- Court of Appeal of Yukon.
 - Located in one place.

(1) Near the beginning on the right side. Flagged by “Place and Date of Hearing”.

COURT OF APPEAL OF YUKON	
Citation: <i>Blackjack v. Yukon (Chief Coroner)</i> , 2018 YKCA 14	Date: 20181024 Whitehorse Docket: 16-YU805
Between: Theresa Anne Blackjack and Little Salmon Carmacks First Nation	Respondents (Petitioners)
And Kirsten MacDonald, Chief Coroner of the Yukon Territory	Appellant (Respondent)
Before: The Honourable Madam Justice Bennett The Honourable Madam Justice Charbonneau The Honourable Madam Justice Dickson	
On appeal from: An order of the Supreme Court of Yukon, dated March 6, 2017 (<i>Blackjack v. Yukon (Chief Coroner)</i> , 2017 YKSC 17, Whitehorse Docket No. 15-A0093).	
Counsel for the Appellant:	R.A. Buchan
Counsel for the Respondent Theresa Anne Blackjack:	V. Larochelle
Counsel for the Respondent Little Salmon Carmacks First Nation:	S. Roothman
Place and Date of Hearing:	Whitehorse, Yukon November 22, 2017
Place and Date of Judgment:	Vancouver, British Columbia October 24, 2018

E. Saskatchewan

- Saskatchewan Court of Queen’s Bench.
 - This Court doesn’t include this information.
 - Saskatchewan Court of Appeal.
 - Located in one place.
- (1) Near the beginning on the left side. Flagged by “Appeal Heard”.

Court of Appeal for Saskatchewan Docket: CACR2933		Citation: <i>Rowan v Canada (Attorney General)</i>, 2018 SKCA 104 Date: 2018-12-31
Between:	James Alan Rowan	<i>Appellant</i> (And Person Sought for Extradition)
And	The Attorney General of Canada (on behalf of the United States of America)	<i>Respondent</i>
Between:	James Alan Rowan	<i>Applicant</i> (And Person Sought for Extradition)
And	The Minister of Justice and the Attorney General of Canada	<i>Respondent</i>
Before:	Jackson, Ottenbreit and Whitmore J.J.A.	
Disposition:	Appeal dismissed, application for judicial review denied	
Written reasons by:	The Honourable Madam Justice Jackson	
In concurrence:	The Honourable Mr. Justice Ottenbreit The Honourable Mr. Justice Whitmore	
On Appeal From:	2017 SKQB 95, Saskatoon	
Appeal Heard:	May 11, 2018	

F. Manitoba

- Manitoba Court of Queen’s Bench.
 - This Court doesn’t include this information
 - Manitoba Court of Appeal.
 - Located in one place with three different flags.
- (1) Near the beginning in the centre. Flagged by “Chambers motion heard”.

Citation: R v Desrochers, 2018 MBCA 55		Date: 20180514	Docket: AR17-30-08980
IN THE COURT OF APPEAL OF MANITOBA			
BETWEEN:			
HER MAJESTY THE QUEEN	)	M. B. Cheater	
	)	<i>for the Applicant</i>	
	)		
<i>Respondent</i>	)	R. N. Malaviya	
	)	<i>for the Respondent</i>	
- and -	)		
MARCEL ROBERT DESROCHERS	)	Chambers motion heard:	
	)	April 19, 2018	
	)		
<i>(Accused) Applicant</i>	)	Decision pronounced:	
	)	May 14, 2018	

J. E. D.

(Accused) Respondent

Appeal heard:
April 18, 2018

Judgment delivered:
November 22, 2018

- and -

ANDREW RYAN LAND

(Accused) Respondent

Appellant

J. H. Youn
for the Respondent

*Appeal heard and
Decision pronounced:
November 21, 2018*

Written reasons:
December 10, 2018

[35] The parties may speak to costs, if necessary.

Heard on the 12th day of July, 2018.

Dated at Edmonton, Alberta this 21st day of December, 2018.

L.R. Birkett
M.C.Q.B.A.

Appearances:

[9] Accordingly, the appeal is dismissed.

Appeal heard on November 7, 2018

Judgment Delivered November 7, 2018

Memorandum filed at Calgary, Alberta
 11/11/11 3:28 PM

this 14th day of December, 2018

Martin J.A.

(1) Near the beginning in the centre. Flagged by “Heard”.

		CITATION: R. v. Matthias, 2018 ONSC 7591 COURT FILE NO.: CR-18-50000147 DATE: 20181221
ONTARIO		
SUPERIOR COURT OF JUSTICE		
BETWEEN:	)	
HER MAJESTY THE QUEEN	)	<i>Brady Donohue</i> , counsel for the Crown
- and -	)	
KAYLA MATTHIAS	)	<i>Frank Bernhardt</i> , counsel for the Accused
	)	
HEARD: December 4-7, 2018		

- Ontario Court of Appeal.

- Located in one place.

(1) Near the beginning. Flagged by “Heard”.

		CITATION: R. v. Hersi, 2018 ONCA 1082 DATE: 20181224 DOCKET: C61690 & C62005
COURT OF APPEAL FOR ONTARIO		
Juriansz, Benotto and Trotter J.J.A.		
BETWEEN		
	Her Majesty the Queen	Respondent
and		
	Mohamed Hersi and Guled Mahadale	Appellants
Catriona Verner, for the appellant Hersi		
R. Craig Bottomley, for the appellant Mahadale		
Elise Nakelsky, for the respondent		
Heard: December 20, 2018		
On appeal from the convictions entered on May 1, 2015, and the sentence imposed on Mohamed Hersi on September 4, 2015, by Justice Robert A. Clark of the Superior Court of Justice, sitting with a jury.		

I. Newfoundland & Labrador

- Supreme Court of Newfoundland and Labrador.

- Located in one place.

(1) Near the beginning. Flagged by “Date of Hearing”.

IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR GENERAL DIVISION	
Citation: <i>R. v. MacLean</i> , 2018 NLSC 209 Date: October 19, 2018 Docket: 201604G0203	
HER MAJESTY THE QUEEN	
v.	
RUSSELL MACLEAN	
Restriction on Publication: By court order made under subsection 486.4(1) of the <i>Criminal Code</i> , information that may identify the person described in this judgment as the complainant or a witness shall not be published in any document or broadcast or transmitted in any way.	
Before: Justice George L. Murphy Reasons for Judgment Given Orally	
Place of Hearing:	Corner Brook, Newfoundland and Labrador
Date of Hearing:	September 7, 2018
Date of Oral Judgment:	October 16, 2018

- Court of Appeal of Newfoundland and Labrador.

- Located in one place with two flags.

(1) Near the beginning on the left side. Flagged by “Appeal Heard”.

IN THE COURT OF APPEAL OF NEWFOUNDLAND AND LABRADOR	
Citation: <i>R. v. O'Keefe</i> , 2018 NLCA 11 Date: February 16, 2018 Docket: 201701H0001	
Restriction on Publication: By court order made under subsection 486.4(1) of the <i>Criminal Code</i> , information that may identify the person described in this judgment as the complainant or a witness shall not be published in any documents, broadcasted, or transmitted in any way.	
BETWEEN:	
REGINALD O'KEEFE	APPELLANT
AND:	
HER MAJESTY THE QUEEN	RESPONDENT
Coram: Welsh, Harrington and Hoegg, J.J.A.	
Court Appealed From: Supreme Court of Newfoundland and Labrador Trial Division (G) 201401G6152, 2016 NLTD(G) 154, 2016 NLTD(G) 196	
Appeal Heard: November 9, 2017	

(2) Near the beginning on the left side. Flagged by “Application Heard”:

Application Heard: August 16, 2018
Decision Rendered: August 17, 2018

J. Prince Edward Island

- Supreme Court of Prince Edward Island.

- Located in one place.

(1) Near the beginning on the right side. Flagged by “Place and Date of Hearing”.

SUPREME COURT OF PRINCE EDWARD ISLAND		
Citation: <i>P.E.I. Atlantic Baptist v. C.U.P.E. et al.</i> , 2018 PESC 39		Date: 20181106 Docket: S1-GS-28133 Registry: Charlottetown
Between:	P.E.I. ATLANTIC BAPTIST HOMES INC.	Applicant/Moving Party
And:	CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 2523	Respondent
And:	THE BOARD OF ARBITRATION, comprised of Michel Doucet, Q.C., Wayne McMillan and Bob Crockett, constituted pursuant to the <i>Labour Act, R.S.P.E.I. 1988, c. L-1</i> and the Collective Agreement between P.E.I. Atlantic Baptist Homes Inc. and Canadian Union of Public Employees, Local 2523	Respondent
Before: The Honourable Chief Justice Tracey L. Clements		
Appearances: Christopher S. Montigny and Emily A. MacDonald, Solicitors for the Applicant/Moving Party Glen Gallant, Solicitor for the Respondent No appearances for the Board of Arbitration		
Place and Date of Hearing	Charlottetown, Prince Edward Island	July 12, 2018
Place and Date of Judgement	Charlottetown, Prince Edward Island	

- Prince Edward Island Court of Appeal.
 - Located in one place.
 - (1) Near the beginning on the left side. Flagged by “Place and Date of Hearing”.

PROVINCE OF PRINCE EDWARD ISLAND PRINCE EDWARD ISLAND COURT OF APPEAL		
Citation: <i>McQuaid v. Trainor</i> , 2018 PECA 30		Date: 20181218
Docket: S1-CA-1395		
Registry: Charlottetown		
BETWEEN:		
	DAVID ERIC McQUAID	APPELLANT
AND:	JEAN MARIE TRAINOR	RESPONDENT
Before: Chief Justice David H. Jenkins Justice James W. Gormley Justice Gregory A. Cann		
Appearances: Kevin C. Toner, counsel for the Appellant Respondent representing herself, not present		
Place and Date of Hearing Island	Charlottetown, Prince Edward	
December 10, 2018		

K. New Brunswick

- Court of Queen’s Bench of New Brunswick.
 - Located in one place

(1) Near the beginning in the centre. Flagged by “DATE OF HEARING” or “DATES OF HEARING”.

BETWEEN:	
GERALD WARD McCARRON and BEVERLY MAE WOOD,	
	Plaintiffs,
	– and –
JAMES ALLISON WYLIE,	
	Defendant.
 <u>DECISION</u>	
BEFORE:	Mr. Justice George S. Rideout
AT:	Moncton, New Brunswick
DATE OF HEARING:	September 24, 25 and 26, 2018
DATE OF DECISION:	November 6, 2018
APPEARANCES:	Edward McGrath, on behalf of the Plaintiffs
	Wynn Meldrum, on behalf of the Defendant

- Court of Appeal of New Brunswick.
 - Located in one place.

(1) Near the beginning on the left side. Flagged by “Appeal heard”.

R. v. Fox, 2018 NBCA 62	R. c. Fox, 2018 NBCA 62
CORAM: The Honourable Chief Justice Richard The Honourable Justice Drapeau The Honourable Justice Larlee	CORAM : l'honorable juge en chef Richard l'honorable juge Drapeau l'honorable juge Larlee
Appeal from a decision of the Court of Queen's Bench: June 5, 2018	Appel d'une décision de la Cour du Banc de la Reine : le 5 juin 2018
History of case:	Historique de la cause :
Decision under appeal: 2018 NBQB 107 , [2018] N.B.J. No. 142	Décision frappée d'appel : 2018 NBBR 107 , [2018] A.N.-B. n° 142
Preliminary or incidental proceedings: 2018 NBCA 43	Procédures préliminaires ou accessoires : 2018 NBCA 43
Appeal heard: October 9, 2018	Appel entendu : le 9 octobre 2018
Judgment rendered: October 9, 2018	Jugement rendu : le 9 octobre 2018
Reasons delivered: December 27, 2018	Motifs déposés : le 27 décembre 2018

L. Nova Scotia

- Supreme Court of Nova Scotia.

- Located in one place.

(1) Near the beginning in the centre. Flagged by “Heard”.

SUPREME COURT OF NOVA SCOTIA Citation: <i>R. v. Anand</i> , 2018 NSSC 307		Date: 20181130 Docket: Hfx No. 473336 Registry: Halifax
Between:	Mehardeep Singh Anand v. Her Majesty the Queen	Appellant Respondent
Judge:	The Honourable Justice D. Timothy Gabriel	
Heard:	October 2, 2018, in Halifax, Nova Scotia	
Counsel:	Joshua Nodelman and Brittini L.A. Deveau (Articled Clerk) for the Appellant Edward J. Murphy, for the Respondent	

- Nova Scotia Court of Appeal.
 - Located in one place.
- (1) Near the beginning in the centre. Flagged by “Appeal Heard”.

NOVASCOTIA COURT OF APPEAL		
Citation: <i>R. v. Reddick</i> , 2018 NSCA 85		
		Date: 20181102 Docket: CAC 462279 Registry: Halifax
Between:		
	Alexander John Reddick	Appellant
	v.	
	Her Majesty the Queen	Respondent
Judge:	The Honourable Justice Anne S. Derrick	
Appeal Heard:	September 20, 2018, in Halifax, Nova Scotia	

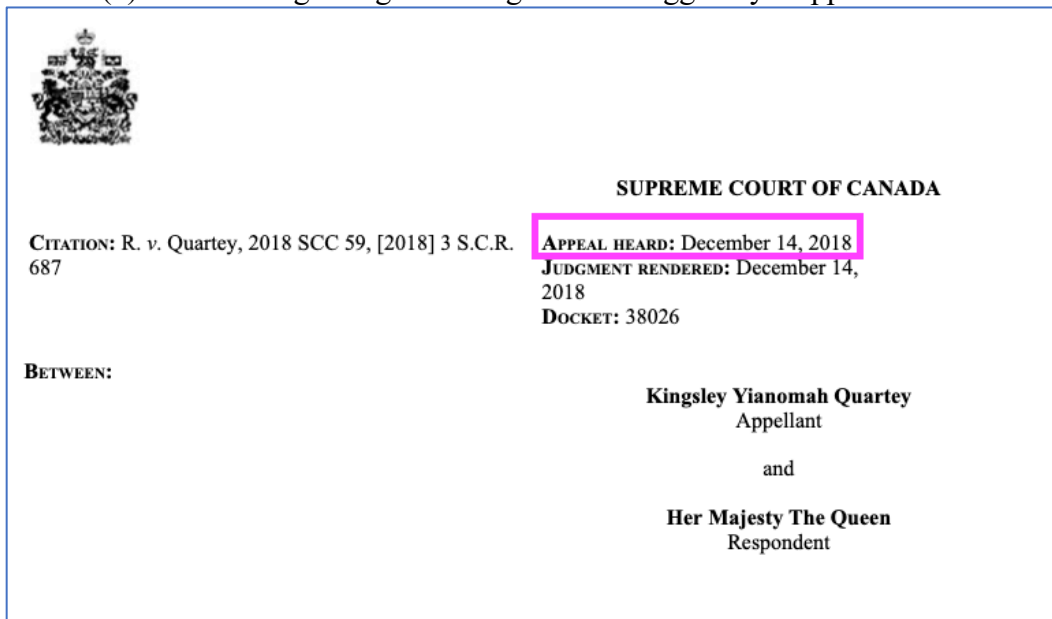
M. Federal Courts

- Tax Court of Canada, Federal Court, and Federal Court of Canada.
 - Located in one place.
- (1) Near the end on the right side. Flagged by “Date of hearing”.

CITATION:	2018 TCC 260
COURT FILE NO.:	2015-3501(IT)G
STYLE OF CAUSE:	DIRK MUELLER AND HER MAJESTY THE QUEEN
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	September 19, 2018
REASONS FOR JUDGMENT BY:	The Honourable Mr. Justice Randall S. Boccock
DATE OF JUDGMENT:	December 18, 2018

- Supreme Court of Canada.
 - Located in one place.

(1) Near the beginning on the right side. Flagged by “Appeal Heard”.



3. Date hearing concluded

This information will be found in the same place as “How many court days” criterion.

4. Oral or written decision

- Most decisions indicate whether they’re oral or written decisions.
- Canadian courts flag oral decisions with at least 31 regex: (“Oral Reasons”; “Oral Ruling”; “Transcript of ...”; “(Delivered Orally)”; “(Oral)”; “Oral ... Judgment...”; “Judgment delivered orally”; “Appeal Heard and Decision pronounced”; “delivered the following oral judgment for the court”; “[orally].”; “Oral Reasons for Judgment”; “Memorandum of Oral Decision”, “Oral judgment”, “Oral Reasons for Decision of ...”, “(Orally)”, “heard and released orally.”, “Date of Oral Judgment”, “Edited transcript of Oral Reasons for Judgment”, “Edited Oral Reasons for Judgment”, “Date of Oral Judgment”, “Oral Reasons for Judgment (Edited)”, “Reasons for Judgment Given Orally”, “Reasons for Oral Decision”, “Place and Date of Oral Judgment,” “per oral reasons”, “decision delivered orally”, “decision rendered orally”, “Edited version of transcript of oral ...”, “given orally.”, “delivered orally ...”, “delivered orally.”, “delivered the following judgment orally”).

A. British Columbia

- British Columbia Supreme Court.
 - Most decisions will be written decisions.
 - Located in one place.

(1) Near the beginning. Flagged by “Oral Reasons ...” or “Oral Ruling”.

IN THE SUPREME COURT OF BRITISH COLUMBIA		
Citation:	<i>Bates v. British Columbia (Superintendent of Motor Vehicles)</i> , 2018 BCSC 1211	Date: 20180430 Docket: S23724 Registry: Fort St. John
Between:	Wayne William Bates	Petitioner
And	The Superintendent of Motor Vehicles for the Province of British Columbia	Respondent
Before: The Honourable Mr. Justice Betton		
On judicial review from: Decision of delegate of Superintendent of Motor Vehicles, May 12, 2017		
Oral Reasons for Judgment		

- British Columbia Court of Appeal.
 - Most decisions will be written decisions.
 - Located in one place.

(1) Near the beginning. Flagged by “Oral Reasons ...” or “Oral Ruling”.

COURT OF APPEAL FOR BRITISH COLUMBIA		
Citation:	<i>Law v. Ma</i> , 2018 BCCA 439	Date: 20181102 Docket: CA45057
Between:	Man Cyril Law	Appellant (Plaintiff)
And	Dr. S.W. Ian Ma, Dr. Sally S.C. Law Inc., Operating a public medical clinic under the name and style of Dr. Sally S.C. Law Inc., Dr. Sally S.C. Law, Dr. Gerald Yeung and Caritas Medical Clinic, Ministry of Health (Health Authorities of Services of British Columbia), BCMA (British Columbia Medical Association) and College of Physicians and Surgeons of British Columbia	Respondents (Defendants)
Before:	The Honourable Madam Justice Garson The Honourable Mr. Justice Harris The Honourable Mr. Justice Savage	
On appeal from: An order of the Supreme Court of British Columbia, dated February 15, 2018 (<i>Law v. Ma</i> , Vancouver Docket S150979).		
Oral Reasons for Judgment		

B. Northwest Territories and Yellowknife

- Supreme Court of the Northwest Territories.
 - Many decisions will be oral decisions, and these decisions will be in transcript form.
 - Located in one place.

(1) Near the beginning in the centre. Flagged by “Transcript of ...”.

<i>R v Washie and Simpson, 2018 NWTSC 56</i>	File No. S-1-CR-2017-000173
IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES IN THE MATTER OF:	
HER MAJESTY THE QUEEN	
- v -	
KEITH LUCAS WASHIE SONNY JAMES SIMPSON	
delivered by the Honourable Justice K.M. Shaner, sitting in Yellowknife, in the Northwest Territories, on the 12th day of July, 2018.	
Transcript of Oral Reasons for Decision	
13	MR. DAVISON: No. Thank you.
14	THE COURT: Thank you, counsel, for your
15	submissions.
16	-----
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22	
23	
24	
25	
26	
27	
1	<u>CERTIFICATE OF TRANSCRIPT</u>

- Court of Appeal for the Northwest Territories.
 - Many decisions will be oral decisions, and these decisions will be in transcript form.
 - Located in one place.

P. (D.) v R, 2019 NWTCA 1 A-1-AP-2017-000014

IN THE COURT OF APPEAL FOR THE NORTHWEST TERRITORIES

IN THE MATTER OF:

P. (D.)

- v -

HER MAJESTY THE QUEEN

Transcript of the Reasons for Judgment delivered
by The Honourable Justice K.M. Shaner, sitting in Yellowknife, in the Northwest Territories, on the 17th day
of December, 2018.

- Nunavut Court of Justice.

- (1) Near the beginning in the centre. Flagged by “(Delivered Orally)”.

ᓄᓇᓂᓪ ᓄᓇᓂᓪ ᓄᓇᓂᓪ Nunavunmi Maligaliutit NUNAVUT COURT OF JUSTICE Cour de justice du Nunavut	
Citation:	<i>R. v. Oqallak</i>, 2018 NUCJ 35
Date:	20181214
Docket:	12-18-4; 12-17-16
Registry:	Iqaluit
Crown:	Her Majesty the Queen
	-and-
Accused:	Sheldon Oqallak

Before:	The Honourable Madam Justice Susan Cooper
Counsel (Crown):	Phillipe Plourde
Counsel (Accused):	Sarah White
Location Heard:	Iqaluit, Nunavut
Date Heard:	November 7, 2018
Matters:	Sentencing on <i>Criminal Code</i> , RSC 1985, c C-46, sections 129(a), 145(3) and 244.2(1)(b).

REASONS FOR SENTENCE

(Delivered Orally)

- Nunavut Court of Appeal.

- 380

(1) Near the beginning in the centre. Flagged by “Oral Reasons ...”.

		Date: 20201126 Docket: 08-20-016-CAP Registry: Iqaluit
Between:	Her Majesty the Queen	Respondent
	- and -	
	G.H.	Applicant
Restriction on Publication Identification Ban – See the Criminal Code, section 486.4. By Court Order, information that may identify the complainant must not be published, broadcast, or transmitted in any way. NOTE: This judgment is intended to comply with the identification ban. Anonymized Judgment Disclaimer: This judgment has been anonymized to comply with legislative requirements or at the discretion of the authoring Justice to protect vulnerable parties. Letters have been assigned at random		
Oral Reasons for Decision of The Honourable Mr. Justice Jack Watson		
Application for Judicial Interim Release		

D. Yukon

- Supreme Court of Yukon.
 - Most decisions will be written decisions.
 - Located in one place.

(1) In the first paragraph. Flagged by “(Oral)”.

SUPREME COURT OF YUKON		
Citation: <i>Barrick v. Humane Society Yukon</i> , 2018 YKSC 51		
		Date: 20181026 S.C. No.: 18-A0090 Registry: Whitehorse
BETWEEN:	BRIDGET TERESE BARRICK and WILLIAM ALLERTHORN BARRICK	PLAINTIFFS
AND	HUMANE SOCIETY YUKON, PATRICK COLFER, BETTY IRWIN, CAROL OBERG and SARAH MURPHY	DEFENDANTS
Before Mr. Justice J. Menzies		
Appearances: Gary W. Whittle Mark Wallace	Counsel for the Plaintiffs Counsel for the Defendants	
REASONS FOR JUDGMENT		
[1] MENZIES J. (Oral): The plaintiffs are bringing an action against the Humane Society Yukon and a number of its directors based on a claim that the Society has been acting in bad faith and/or the directors are acting dishonestly, have been unfair in their treatment, have failed to follow the rules of natural justice, and are taking actions against the plaintiffs arbitrarily.		

- Court of Appeal of Yukon.

- Most decisions will be written decisions.
- Located in one of two places
 - (1) Near the beginning in the centre. Flagged by “Oral Reasons ...”.

COURT OF APPEAL OF YUKON	
Citation:	<i>R. v. Mathieson</i> , 2019 YKCA 6
	Date: 20190220 Docket: 18-YU834
Between:	Regina
And	Daryl Michael John Mathieson
	Appellant
	Respondent
Restriction on publication: Publication of information that could disclose the identity of the complainant or witness has been prohibited by court order pursuant to s. 486.4 of the <i>Criminal Code</i> .	
Before:	The Honourable Madam Justice Stromberg-Stein (In Chambers)
On appeal from: An order of the Supreme Court of Yukon, dated November 13, 2018 (<i>R. v. Mathieson</i> , 2018 YKSC 49, Whitehorse Docket 18-AP003).	
Oral Reasons for Judgment	

- (2) In the first paragraph. Flagged by “(Oral)”.

<i>R. v. Morrison</i> , 2002 YKCA 7	Date: 20020611 Docket: C.A. 01-YU471 Registry: Whitehorse
COURT OF APPEAL FOR THE YUKON TERRITORY	
ORAL REASONS FOR JUDGMENT:	
CORAM:	The Honourable Chief Justice Finch The Honourable Mr. Justice Donald The Honourable Mr. Justice Low
BETWEEN:	HER MAJESTY THE QUEEN
	RESPONDENT
AND:	ADAM K. MORRISON
	APPELLANT
ZEBEDEE BROWN	Appearing for the Respondent
MICHAEL COZENS	Appearing for the Appellant
REASONS FOR JUDGMENT	
[1] FINCH C.J.Y.T. (Oral): Mr. Cozens has said everything that could reasonably be said in support of this application for leave to appeal but we are all of the view that leave to appeal should be refused. Written reasons for judgment will be delivered in due course.	

E. Saskatchewan

- Saskatchewan Court of Queen’s Bench.

- Most decisions will be written decisions.
- Located in at least one place.

(1) Near the beginning on the left side. Flagged by “Oral ... Judgment...”.

QUEEN’S BENCH FOR SASKATCHEWAN	
Date:	2016 01 05
Docket:	CR 933 of 2013
Judicial Centre:	Estevan
Citation: 2016 SKQB 4	
BETWEEN:	
HER MAJESTY THE QUEEN	
- and -	
ALMER STANDINGREADY	
Counsel:	
Maura C. Landry	for the Crown
Timothy J. Beler	for the accused
ORAL SENTENCING JUDGMENT	
JANUARY 5, 2016	
MEGAW J.	

- Saskatchewan Court of Appeal.
 - Most decisions will be written decisions.
 - This Court seems to orally dismiss appeals and then issue written decisions.
 - Located in at least two places depending on the circumstance.

(1) When the oral description is transcribed, near the beginning on the left side.

APPELLANTS

- and -

JEAN PAQUIN, EXECUTRIX IN THE ESTATE
OF LEO WHITEMAN, DECEASED

RESPONDENT

CORAM:

THE HONOURABLE CHIEF JUSTICE BAYDA
THE HONOURABLE MR. JUSTICE SHERSTOBITOFF
THE HONOURABLE MADAM JUSTICE JACKSON

COUNSEL:

J.N. Halford for the appellants
A.D. Zborsky for the respondents

DISPOSITION:

Appeal Heard:	15 September 1995
Appeal Dismissed Orally:	15 September 1995
Oral Reasons Transcribed:	26 October 1995
Appeal File:	C.A. 2156
Appeal From:	Q.B. No. 2633 of 1994, Regina
Reasons by:	The Honourable Chief Justice Bayda
In concurrence:	The Honourable Mr. Justice Sherstobitoff and The Honourable Madam Justice Jackson

(2) When orally dismissed but a written decision follows, near the beginning on the left side. Flagged by “Appeal dismissed (orally)”.

Court of Appeal for Saskatchewan	Citation: <i>R v Fiddler</i>, 2016 SKCA 42
Docket: CACR2581	Date: 2016-03-16

Between:

Rocky Norman Fiddler

Appellant

And

Her Majesty the Queen

Respondent

Before: Jackson, Herauf and Whitmore J.J.A.

Disposition: Appeal dismissed (orally)

Written reasons by: The Honourable Mr. Justice Whitmore

In concurrence: The Honourable Madam Justice Jackson
The Honourable Mr. Justice Herauf

On Appeal From: Provincial Court, Meadow Lake

Appeal Heard: 16 March 2016

F. Manitoba

- Manitoba Court of Queen’s Bench.
 - Most decisions will be written decisions.
 - This Court seems to orally issue decisions and then issue written decisions. I’m interested in the transcribed oral reasons. But flagging the oral dismissal is also useful.
 - Located in at least two places depending on the circumstance.

(1) When orally dismissed but a written decision follows, near the beginning in the centre. Flagged by “Judgment delivered orally”.

Date: 20180502
 Docket: FD 13-01-05524
 (Winnipeg Centre)
 Indexed as: Boyko v. Boyko
 Cited as: 2018 MBQB 67

**COURT OF QUEEN'S BENCH OF MANITOBA
(FAMILY DIVISION)**

BETWEEN:

ROBERT OWEN BOYKO,	)		APPEARANCES:
	)		
petitioner,	)		Tyler Grant,
- and -	)		for the petitioner
	)		
JENNIFER DONNA BOYKO,	)		Charles Guberman,
respondent.	)		for the respondent
	)		
	)		JUDGMENT DELIVERED:
	)		ORALLY: April 27, 2018
	)		JUDGMENT DELIVERED:
	)		WRITTEN: May 2, 2018

(2) When the oral description is transcribed, near the beginning in the centre. Flagged by “Judgment delivered orally”.

Date: 20100218
 Docket: CR08-01-28687
 Indexed as: R. v. Basarowich
 Cited as: 2010 MBQB 42
 (Winnipeg Centre)

COURT OF QUEEN'S BENCH OF MANITOBA

BETWEEN:

HER MAJESTY THE QUEEN,	)		Erin E. Magas
	)		for the Crown
- and -	)		-
	)		
CHRISTIAN JACOB BASAROWICH,	)		Michael P. Cook
accused.	)		for the accused
	)		
	)		JUDGMENT DELIVERED
	)		ORALLY:
	)		February 18, 2010

REASONS FOR SENTENCE

- Manitoba Court of Appeal.
 - Most decisions will be written decisions.
 - This Court hardly ever issues oral decisions that are then reported in written form. Historically, it used to issue more. The following examples are historical only.
 - Located in two places with different flags.

(1) Near the beginning in the centre. Flagged by “Appeal Heard and Decision pronounced”.

IN THE COURT OF APPEAL OF MANITOBA	
	Coram: Kroft, Monnin and Steel JJ.A.
B E T W E E N:	
HER MAJESTY THE QUEEN	) R. B. McNicol, Q.C. and
	) E. B. Eva
	) for the Appellant
	)
Appellant	) R. L. Pollack, Q.C.
	) for the Respondent
- and -	)
	)
MARIANNE SHEARD	) Appeal heard and
	) Decision pronounced:
	) February 7, 2002
	)
	) Written reasons:
(Accused) Respondent	) February 19, 2002

(2) Near the beginning. Flagged by “delivered the following oral judgment for the court” & [orally]:

Counsel:
B.F.A. Bonney, for the appellant;
G.A. Lawlor, for the Crown.
This appeal was heard before Twaddle, Lyon and Helper, JJ.A., of the Manitoba Court of Appeal. On January 7, 1992, Twaddle, J.A., delivered the following oral judgment for the court.
[1] Twaddle, J.A. [orally]: The accused

G. Alberta

- Alberta Court of Queen’s Bench.
 - Most decisions will be written decisions.
 - Located in one place with three flags.

(1) Near the beginning in the centre. Flagged by “Oral Reasons for Judgment”.

Citation: Pan v Li, 2017 ABQB		Date: 20171106 Docket: 4803 167532 Registry: Edmonton
Between:	Hui Pan	Applicant
	- and -	
	Yong Li	Respondent
Oral Reasons for Judgment of the Honourable Madam Justice R. Khullar		

(2) Near the beginning in the centre. Flagged by “Memorandum of Oral Decision”.

Court of Queen's Bench of Alberta		Date: 20190222 Docket: 0503 03556 Registry: Edmonton
Citation: DD v Wong Estate, 2018 ABQB 486		
Between:	D. D., D. D. as Next Friend of L.L. and Her Majesty the Queen in Right of Alberta	Plaintiffs
	- and -	
	Janet Wong, Personal Representative of the Estate of Keet Peng Wong, Dr. Young Phiri, Norther Lights Regional Health Centre and Northern Lights Health Region Operating As Norther Lights Regional Health Centre, Dr. John Doe, Dr. James Roe	Defendants
Corrected judgment: A corrigendum was issued on February 22, 2019; the corrections have been made to the text and the corrigendum is appended to this judgment. Memorandum of Oral Decision on Admissibility under rule 8.14 of the Honourable Mr. Justice W.N. Renke		

(3) Near the beginning in the centre. Flagged by “Oral judgment”.

Court of Queen's Bench of Alberta		
Citation: R v Holmes, 2018 ABQB 916		
		Date: 20181107 Docket: 160717534Q1 Registry: Medicine Hat
Between:	Her Majesty The Queen	Crown
	- and -	
	Barbara Elizabeth Holmes	Accused
Oral Judgment of the Honourable Mr. Justice J.H. Langston		

- Alberta Court of Appeal.

- Most decisions will be written decisions.
- Located in one place with two flags.

(1) Near the beginning in the centre. Flagged by “Oral Reasons for Decision of ...”

In the Court of Appeal of Alberta		
Citation: Edmonton (City) v Edmonton (Subdivision and Development Appeal Board), 2018 ABCA 316		
		Date: 20180928 Docket: 1803-0166-AC Registry: Edmonton
Between:	City of Edmonton	Applicant
	- and -	
	Subdivision and Development Appeal Board of the City of Edmonton	Respondent
	- and -	
	Sara Scott	Respondent by Order
Oral Reasons for Decision of The Honourable Mr. Justice Jack Watson 		

H. Ontario

- Ontario Superior Court of Justice.

- Most decisions will be written decisions.
- Located in one place with two flags.

CITATION: *Rolley v. MacDonell*, 2018 ONSC 1292

COURT FILE NO.: 14-59774

DATE: 2018/02/28

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:)

MARK ROLLEY, JOCELYN ROLLEY,)

EMILY ROLLEY, BENJAMIN ROLLEY,) *Joseph Obagi and Christopher Obagi, counsel*

JOSEPH ROLLEY, TOMMY PAUPST AND) *for the Plaintiffs*

ANGEL PAUPST)

Plaintiffs)

– and –)

)

)

)

DOROTHY MACDONELL and BELAIR)

INSURANCE COMPANY INC.) *Kirk Boyd and Sandra Lebrun, counsel for the*

Defendants) *Defendant, Dorothy MacDonell*

)

HEARD: February 19, 2018

RULING AT TRIAL

Ruling No. 19

Surveillance Motion (No. 2)

(Oral Reasons – February 21, 2018)

-

ENTERED ON PAGE

REASONS FOR DECISION

1

Transcript Ordered: January 22, 2019
Transcript Completed: March 5, 2019
Ordering Party Notified: March 5, 2019

FRIDAY, DECEMBER 7, 2018

CITATION: R. v. Branco, 2018 ONSC 7789
R E A S O N S F O R D E C I S I O N

STRIBOPOULOS, J. (Orally):

These are my very brief oral reasons with respect to the Crown's application to adduce into evidence an Agreed Statement of Facts filed in support of guilty pleas that were later struck.

- 390

(1) Near the beginning on the left side. Flagged by “heard and released orally:”.

COURT OF APPEAL FOR ONTARIO		
		CITATION: R. v. Clarke, 2018 ONCA 905 DATE: 20181113 DOCKET: C63672
Feldman, Roberts and Fairburn J.J.A.		
BETWEEN	Her Majesty the Queen	Appellant
and	Monique Clarke	Respondent
Andrew Hotke, for the Crown		
Monique Clarke, in person		
Amy Ohler, for the respondent		
Heard and released orally: November 7, 2018		

I. Newfoundland & Labrador

- Supreme Court of Newfoundland and Labrador.

- Most decisions will be written decisions.
- Located in one place with two flags.

(1) Near the beginning on the left side. Flagged by “Date of Oral Judgment” & “Edited transcript of Oral Reasons for Judgment”.

IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR GENERAL DIVISION	
Citation: <i>Maurice's Service Centre Limited v. Wood Products Industries Limited</i> , 2018 NLSC 74	
Date: April 9, 2018	
Docket: 201501G6197	
BETWEEN:	MAURICE'S SERVICE CENTRE LIMITED
AND:	WOOD PRODUCTS INDUSTRIES LIMITED
AND:	EURO INVEST INC.
	APPLICANT
	FIRST RESPONDENT
	SECOND RESPONDENT
Before: Justice Gillian D. Butler Edited Transcript of Oral Reasons for Judgment	
Place of Hearing:	St. John's, Newfoundland and Labrador
Date(s) of Hearing:	April 6, 2018
Date of Oral Judgment:	April 6, 2018

(2) Near the beginning. Flagged by “Edited Oral Reasons for Judgment”, “Date of Oral Judgment”, and “Oral Reasons for Judgment (Edited)”.

HER MAJESTY THE QUEEN	
v.	
HUBERT WALTER HUNT	
Edited Oral Reasons for Judgment	
Before: Justice Valerie L. Marshall	
Place of Hearing:	St. John's, Newfoundland and Labrador
Date of Hearing:	September 20, 2018
Date of Oral Judgment:	September 24, 2018
Appearances:	
Lloyd Strickland and Jeffrey Summers	Appearing on behalf of the Crown
Derek Hogan	Appearing on behalf of the Accused
Authorities Cited:	
CASES CONSIDERED: <i>R. v. Anthony-Cook</i> , 2016 SCC 43; <i>R. v. Druken</i> , 2006 NLCA 67; <i>R. v. B.O.2.</i> , 2010 NLCA 19; <i>R. v. Colpitts</i> , 2018 NSSC 180; <i>R. v. Clarke</i> , 2016 NSSC 101; <i>R. v. Plange</i> , 2018 ONSC 1657; <i>R. v. Proulx</i> , 2000 SCC 5.	
STATUTES CONSIDERED: <i>Criminal Code of Canada</i> , R.S.C. 1985, c. C-46; <i>Canadian Charter of Rights and Freedoms</i> , section 11, part 1 of the <i>Constitution Act</i> , 1982, being schedule D to the Canada Act, 1982 (UK), 1982, c. 11.	
ORAL REASONS FOR JUDGMENT (Edited)	

(3) Near the beginning in the centre. Flagged by “Reasons for Judgment Given Orally” and “Date of Oral Judgment”.

IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR GENERAL DIVISION	
Citation: <i>Nalcor Energy v. Anderson</i> , 2018 NLSC 12	
Date: January 26, 2018	
Docket: 201608G0159	
IN THE MATTER OF Rule 53 of the <i>Rules of the Supreme Court</i> , 1986, S.N.L. 1986, c. 42, Sch. D (as amended)	
AND IN THE MATTER OF Eldred Davis being a person against whom a contempt of court proceeding was commenced under Rule 53.03	
BETWEEN:	
NALCOR ENERGY AND MUSKRAT FALLS CORPORATION	APPLICANTS
AND:	
ANDREA ANDERSON, JIM LEARNING, JOHN LEARNING, KIRK LETHBRIDGE AND PERSONS UNKNOWN	RESPONDENTS
Before: Justice George L. Murphy	
Reasons for Judgment Given Orally	
Place of Hearing:	Happy Valley-Goose Bay, Newfoundland and Labrador
Date of Hearing:	December 11, 2017
Date of Oral Judgment:	January 26, 2018

- Court of Appeal of Newfoundland and Labrador.
 - Most decisions will be written decisions.
 - Located in one place with two flags.
 - (1) Near the beginning on the left side. Flagged by “Reasons for Oral Decision” and “(Orally)”.

IN THE COURT OF APPEAL OF NEWFOUNDLAND AND LABRADOR	
Citation: <i>R. v. Greenham</i> , 2018 NLCA 70 Date: December 4, 2018 Docket Number: 201801H0092	
BETWEEN:	
TONY GREENHAM	APPELLANT
AND:	
HER MAJESTY THE QUEEN	RESPONDENT
Coram: White J.A.	
Court Appealed From: Provincial Court of Newfoundland and Labrador Grand Falls-Windsor	
Application Heard: December 4, 2018	
Decision Rendered: December 4, 2018 (Orally)	
Reasons for Oral Decision: December 6, 2018	

(2) Near the beginning on the left side. Flagged by “(Orally)”.

IN THE COURT OF APPEAL OF NEWFOUNDLAND AND LABRADOR	
Citation: <i>R. v. Ferwerda</i> , 2018 NLCA 14	
Date: January 4, 2018	
Docket Number: 201701H0103	
BETWEEN:	
PIETER FERWERDA	APPELLANT
AND:	
HER MAJESTY THE QUEEN	RESPONDENT
Coram: O'Brien J.A.	
Court Appealed From: Supreme Court of Newfoundland and Labrador General Division, Corner Brook 201604G0201	
Application Heard: January 4, 2018	
Decision Rendered: January 4, 2018 (Orally)	
Reasons Filed: March 2, 2018	

J. Prince Edward Island

- Supreme Court of Prince Edward Island.
 - Most decisions will be written decisions.
 - This Court seems to orally issue decisions and then issue written decisions. I'm interested in the transcribed oral reasons. But flagging the oral dismissal is also useful.
 - Located in one place with one flag.

(1) Near the beginning on the left side. Flagged by “Place and Date of Oral Decision”.

SUPREME COURT OF PRINCE EDWARD ISLAND		
Citation: R. v. King 2018 PESC 8	Date: 20180328 Docket: S2-GC-161; S2-GC-162;	S1-GC-1290, 1305, 1306, 1307
	Registry: Charlottetown	
Between:	Her Majesty the Queen - against - Kenneth Bradford King	
	Before: The Honourable Justice Terri A. MacPherson	
	Decision on Sentencing	
Appearances: Chera Lee Gomez and co-counsel Jonathan Coady on behalf of the Federal and Provincial Crown Brendan Hubley on behalf of the accused		
Place and date of oral decision	Charlottetown, Prince Edward Island March 5, 2018	
Place and date of written decision	Charlottetown, Prince Edward Island	March 28, 2018

- Prince Edward Island Court of Appeal.
 - Most decisions will be written decisions.
 - Located in one place with one flag

(1) Near the beginning on the left side. Flagged by “Place and Date of Oral Judgment.”.

PROVINCE OF PRINCE EDWARD ISLAND PRINCE EDWARD ISLAND COURT OF APPEAL	
Citation: R. v. Malek Sahouli , 2018 PECA 8	Date: 20180517
Docket: S1-CA-1381	
Registry: Charlottetown	
BETWEEN:	
	MALEK SAHOULI
AND:	APPELLANT
	HER MAJESTY THE QUEEN
	RESPONDENT
Before: Justice John K. Mitchell (Review of Release Pending Appeal)	
Appearances:	
Joel M. Wonnacott, counsel for the Appellant	
Thomas P. Laughlin, Q.C., counsel for the Respondent	
Place and Date of Hearing Island	Charlottetown, Prince Edward
May 16 and 17, 2018	
Place and Date of Oral Judgment	Charlottetown, Prince Edward Island
May 17, 2018	

K. New Brunswick

- Court of Queen’s Bench of New Brunswick.
 - Most decisions will be written decisions.
 - Located in one place with one flag.
- (1) Near the beginning in the centre. Flagged by “Oral Decision”.

IN THE COURT OF QUEEN'S BENCH OF NEW BRUNSWICK TRIAL DIVISION JUDICIAL DISTRICT OF SAINT JOHN NEUTRAL CITATION 2018 NBQB 096 BETWEEN:	
	ADAM MCGRAW
	- and -
	ERIC NICKERSON
	ORAL DECISION

- Court of Appeal of New Brunswick.
 - Most decisions will be written decisions.
 - Located in one place with one flag.

(1) Near the beginning on the left side. Flagged with “(Orally)”.

BETWEEN:	ENTRE :
<u>HERB FOURNIER</u>	<u>HERB FOURNIER</u>
-	-
APPELLANT	APPELLANT
- and -	-et-
-	-
<u>LOCAL 160 of the COMMUNICATIONS, ENERGY AND PAPERWORKERS UNION OF CANADA</u>	<u>SECTION LOCALE 160 DU SYNDICAT CANADIEN DES COMMUNICATIONS, DE L'ÉNERGIE ET DU PAPIER</u>
RESPONDENT	INTIMÉE
Motion heard by: The Honourable Justice Richard	Motion entendue par : l'honorable juge Richard
Date of hearing: April 9, 2018	Date de l'audience : le 9 avril 2018
Date of decision: April 9, 2018	Date de la décision : le 9 avril 2018
Counsel at hearing:	Avocats à l'audience :
For the appellant: Brian Murphy, Q.C.	Pour l'appelant : Brian Murphy, c.r.
For the respondent: Brenda Comeau	Pour l'intimée : Brenda Comeau
	<u>DECISION</u>
<u>(Orally)</u>	

L. Nova Scotia

- Supreme Court of Nova Scotia.
 - Most decisions will be written decisions.
 - Some decisions will note the date of the oral decisions and subsequent written decision.
 - Located in one place with one flag.

(1) For oral decision that then become oral decisions, near the beginning on the left side. Flagged by “Oral Decision:”.

SUPREME COURT OF NOVA SCOTIA	
Citation: <i>Rudderham v. Nova Scotia (Environment)</i> , 2018 NSSC 172	
Date: 20180523 Docket: Hfx No. 471414 Registry: Halifax	
Between:	Stacey Lee Rudderham, Dwight Ira Isenor, Shubenacadie Watershed Environmental Protection Society, and Bill Horne v. Nova Scotia (Minister of Environment) and Scotian Materials Limited
	Appellants Respondents
LIBRARY HEADING	
Judge:	The Honourable Justice Suzanne Hood
Heard:	May 22, 2018, in Halifax, Nova Scotia
Oral Decision :	May 23, 2018
Written Release of Oral Decision:	July 12, 2018

(2) For oral decisions that remain oral decisions, near the beginning on the left side. Flagged by “Oral Decision:”

SUPREME COURT OF NOVA SCOTIA	
Citation: <i>R. v. Rouse</i> , 2018 NSSC 240	
Date: 2018-09-27 Docket: CRK No. 462970 Registry: Kentville	
Between:	<i>Her Majesty the Queen</i> v. <i>Darrin Phillip Rouse</i>
Judge:	The Honourable Justice Gregory M. Warner
Oral Submissions:	September 27, 2018 at Kentville, Nova Scotia
Oral Decision :	September 27, 2018, at Kentville, Nova Scotia

- Nova Scotia Court of Appeal.
 - Most decisions will be written decisions.
 - Located in one place with two flags. Some decisions will be issued orally and then followed by written decisions.

(1) Near the beginning on the left side. Flagged by “(Orally)”.

NOVA SCOTIA COURT OF APPEAL	
Citation: <i>Kelly v. Nova Scotia Board of Inquiry under the Human Rights Act</i> , 2018 NSCA 48	
Date: 20180611 Docket: CA 471805 Registry: Halifax	
Between:	Pearl Kelly v. Nova Scotia Board of Inquiry under the <i>Human Rights Act</i>, the Nova Scotia Human Rights Commission, the Nova Scotia Liquor Corporation and the Attorney General of Nova Scotia Appellant Respondents
Judges:	Farrar, Bryson and Bourgeois, J.J.A.
Appeal Heard:	June 11, 2018, in Halifax, Nova Scotia
Written Release	June 13, 2018
Held:	Appeal dismissed without costs per oral reasons for judgment of Farrar, J.A.; Bryson and Bourgeois, J.J.A. concurring.
Counsel:	Julie MacPhee and Kyle Power, for the appellant Jason Cooke, for the respondent Nova Scotia Human Rights Commission Bradley Proctor and Michael Murphy, for the respondent Nova Scotia Liquor Corporation Lynn M. Connors, Q.C., for the respondent Nova Scotia Board of Inquiry (not participating) Edward A. Gores, Q.C., for the respondent Attorney General of Nova Scotia (not participating)
Reasons for judgment:	(Orally)

(2) Near the beginning in the centre. Flagged by “per oral reasons”.

NOVA SCOTIA COURT OF APPEAL	
Citation: <i>Adi v. Alabadleh</i> , 2018 NSCA 40	
Date: 20180515 Docket: CA 470871 Registry: Halifax	
Between:	Husam Adi v. Suha Alabadleh Appellant Respondent
Judges:	Beveridge, Farrar and Bourgeois, J.J.A.
Appeal Heard:	May 15, 2018, in Halifax, Nova Scotia
Written Release	May 16, 2018
Held:	Appeal stayed per oral reasons for judgment of the Court.
Counsel:	Patrick J. Eagan, for the appellant Brian K. Awad and Melanie Gillis, for the respondent

M. Federal Courts

- Tax Court of Canada.
 - Most decisions will be written decisions.

- Located in two places with two flags.
(1) Near the beginning in the centre. Flagged by “decision delivered orally” or “decision rendered orally”.

BETWEEN:	MARY ELIZABETH TENCH, and HER MAJESTY THE QUEEN,	Docket: 2016-3784(IT)I Appellant, Respondent.		
Appeal heard and decision delivered orally from the bench on September 4, 2018, at Halifax, Nova Scotia Before: The Honourable Justice B. Russell				
<table border="0" style="width: 100%;"> <tr> <td style="width: 35%; vertical-align: top;"> Appearances: For the Appellant: Counsel for the Respondent: </td> <td style="width: 65%; vertical-align: top; text-align: right;"> The Appellant herself Meaghan Mahadeo Ian Wilenius </td> </tr> </table>			Appearances: For the Appellant: Counsel for the Respondent:	The Appellant herself Meaghan Mahadeo Ian Wilenius
Appearances: For the Appellant: Counsel for the Respondent:	The Appellant herself Meaghan Mahadeo Ian Wilenius			

- (2) Near the beginning in the centre. Flagged by “Edited version of transcript of oral ...”

BETWEEN:	SUCHOCKI ACCOUNTING LTD., and HER MAJESTY THE QUEEN,	Dockets: 2017-4214(IT)G 2017-4213(IT)APP Appellant, Respondent.
EDITED VERSION OF TRANSCRIPT OF ORAL REASONS FOR ORDER		
Let the attached edited transcript of the reasons for order delivered orally at the hearing on March 6, 2018 at Edmonton, Alberta, be filed. I have edited the transcript (certified by the Court Reporter) for style, clarity and to make minor corrections only. I did not make any substantive changes. Signed at Ottawa, Canada, this 8th day of May 2018. “Patrick Boyle” Boyle J.		

- Federal Court.
 - Most decisions will be written decisions.
 - Located in one place with two flags.

(1) Near the beginning in the centre. Flagged by “given orally:”.

Ottawa, Ontario, April 4, 2018		Date: 20180404
PRESENT: The Honourable Mr. Justice Barnes		Docket: T-185-18 Citation: 2018 FC 364
BETWEEN:		
BRIAN FAZAKAS AND JEANNIE FAZAKAS		Plaintiffs
and		
HER MAJESTY THE QUEEN		Defendant
<u>ORDER</u>		
UPON hearing this motion on general sittings in Fredericton, New Brunswick on Monday, March 12, 2018;		
AND UPON reviewing the material filed by the parties;		
AND UPON dismissing the motion for the following reasons given orally:		

(2) Near the beginning in the centre. Flagged by “delivered orally ...”.

Vancouver, British Columbia, October 10, 2018		Date: 20181010
PRESENT: The Honourable Madame Justice Simpson		Docket: IMM-576-18 Citation: 2018 FC 1014
BETWEEN:		
GURSHER SINGH ALIAS ANANDPREET SINGH		Applicant
and		
THE MINISTER OF CITIZENSHIP AND IMMIGRATION		Respondent
<u>JUDGMENT AND REASONS</u>		
(Reasons delivered orally in Vancouver, British Columbia on October 1, 2018)		

- Federal Court of Appeal.
 - Most decisions will be written decisions.
 - Located in one place with two flags.

(1) Near the beginning in the centre. Flagged by “delivered orally:”.

Date: 20031216	
Docket: A-456-02	
Citation: 2003 FCA 477	
CORAM: STONE J.A.	
SEXTON J.A.	
SHARLOW J.A.	
BETWEEN:	
RUSSELL STEPHENS	
	Applicant
and	
THE MINISTER OF HUMAN RESOURCES AND DEVELOPMENT CANADA	
	Respondent
Heard at Toronto, Ontario, on December 15 th , 2003.	
Judgment delivered orally from the Bench at Toronto, Ontario, on December 15 th , 2003.	

- Supreme Court of Canada.
 - Most decisions will be written decisions.
 - Located in two places with two flags.

(1) Near the beginning on the right or left side. Flagged with “delivered the following judgment orally”.

October 17, 2018
Coram: Wagner C.J. and Abella, Moldaver, Karakatsanis, Gascon, Côté, Brown, Rowe and Martin JJ.
BETWEEN:
Her Majesty The Queen
Appellant
- and -
Marc Cyr-Langlois
Respondent
- and -
Attorney General of Ontario, Association québécoise des avocats et avocates de la défense and Criminal Lawyers' Association
Interveners
JUDGMENT
The appeal from the judgment of the Court of Appeal of Quebec (Montréal), Number
500-10-005977-150, 2017 OCCA 1033, dated June 29, 2017, was heard on October 15, 2018, and the Court on that day delivered the following judgment orally.

(2) Near the beginning. Flagged by “delivered orally by”.

<i>Criminal law — Sexual assault — Defences — Honest but mistaken belief in consent — Chief Military Judge putting defence of honest but mistaken belief in consent to court martial panel — Accused acquitted of sexual assault — Appeal Court finding that defence could not be put to panel before limitations set out in Criminal Code were considered — Setting aside of acquittal and order for new trial affirmed — Criminal Code, R.S.C. 1985, c. C-46, s. 273.2(b).</i>
Cases Cited
Referred to: <i>R. v. George</i> , 2017 SCC 38, [2017] 1 S.C.R. 1021.
Statutes and Regulations Cited
<i>Criminal Code</i> , R.S.C. 1985, c. C-46, s. 273.2.
APPEAL from a judgment of the Court Martial Appeal Court of Canada (Bell C.J. and Bennett and Trudel JJ.A.), 2018 CMAJ 1, [2018] C.M.A.J. No. 1 (QL), 2018 CarswellNat 234 (WL Can.), setting aside the acquittal of the accused and ordering a new trial. Appeal dismissed.
<i>Mark Létourneau, Jean-Bruno Cloutier and Francesca Ferguson</i> , for the appellant.
<i>Dominic G. J. Martin, Bruce W. MacGregor and Anthony T. Farris</i> , for the respondent.
<i>Kelly McMillan and Shaun O'Brien</i> , for the intervener.
English version of the judgment of the Court delivered orally by

5. Counsel name(s)

- At least 24 regex precede or follow counsel names: (“Counsel for the Plaintiff”, “Counsel for the Defendant”, “Counsel for the Third-party”, “Counsel for the Crown”, “Counsel for the

Accused”, “Counsel (Plaintiff)” “Counsel (Defendant)”, “Counsel (Crown)”, “Counsel (Accused)”, “Counsel (Applicant)”, “Counsel (Respondent)”, “for the Applicant”, “for the Respondent”, “for the Appellant”, “for the Appellants”, “for the Respondents”, “for Respondent”, “for Applicant”, “for Respondent”, “for Plaintiff”, “for Defendant”, “Appearing on behalf of”, “Solicitor for the”, “on behalf of”).

A. British Columbia

- British Columbia Supreme Court.

- Located in one place in most decisions.

(1) Near the beginning on the right side in the information block under the “Reasons for Judgment” or “Oral Reasons for Judgment” headings on the right side. Flagged by “Counsel for the Plaintiff”, “Counsel for the Defendant”, “Appearing for the Plaintiff”, “Appearing for the Defendant”, “For the Plaintiff”, “For the Defendant”.

Reasons for Judgment	
Counsel for the Plaintiff:	J.W.D. Mills
Counsel for the Defendant:	M.J. Hargreaves
Place and Date of Trial:	Victoria, B.C. June 11-15, 20-22, 2018
Place and Date of Judgment:	Victoria, B.C. December 27, 2018

Before: Master McDiarmid in Chambers	
Oral Reasons for Judgment	
Appearing for the Plaintiff by teleconference:	P. Mac Roibeaird, Company Representative
Appearing for the Plaintiff:	S. Ambrose, Company Representative
Counsel for the Defendant Derewenko:	D. Zachernuk
For the Defendant Elite Mortgage Corp.:	Mr. Heath
Place and Date of Trial/Hearing:	Salmon Arm, B.C. January 29, 2018
Place and Date of Judgment:	Salmon Arm, B.C. January 29, 2018

- British Columbia Court of Appeal.

- Located in one place in most decisions.

(1) Near the beginning on the right side in the information block under the “On appeal from” or “Oral Reasons for Judgment” heading. Flagged by “Counsel for the Plaintiff”, “Counsel for the Defendant”, “Appearing for the Plaintiff”, “Appearing for the Defendant”, “For the Plaintiff”, “For the Defendant”.

On appeal from: An order of the Supreme Court of British Columbia, dated August 16, 2016 (<i>Adam v. Insurance Corporation of British Columbia</i> , New Westminster Docket No. M144536).	
Counsel for the Appellants:	V.R.K. Orchard, Q.C. M. Baker
Counsel for the Respondent:	S. Hoyer R.W. Parsons
Counsel for the Intervenor, Attorney General of British Columbia:	D.R. Suntjens L.F. de Lima
Counsel for the Intervenor, City of Chilliwack and District of Kent:	P.A. Hildebrand

On review from: An order of a Justice of this Court in Chambers, dated July 12, 2017 (*Hawkeye Power Corporation v. Sigma Engineering Ltd.*, 2017 BCCA 275, Docket No. CA44110).

Oral Reasons for Judgment

Appearing on behalf of the Appellant:	R. Neeld
Counsel for the Respondent:	S.M. Hirju
Place and Date of Hearing:	Vancouver, British Columbia February 9, 2018
Place and Date of Judgment:	Vancouver, British Columbia February 9, 2018

B. Northwest Territories and Yellowknife

- Supreme Court of the Northwest Territories.
 - Located in two places in most decisions.
(1) Near the beginning of the decision on the right side under the “APPEARANCES” heading on the left side. Flagged by “Counsel for the Crown”, “Counsel for the Accused”, “Counsel for the Plaintiff”, “Counsel for the Defendant”, “Counsel for ...”.

R v Oake, 2019 NWTSC 2

S-1-CR-2018-000005

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

DARCY OAKE

Transcript of the Bail Review Decision held
before The Honourable Justice L.A Charbonneau, sitting in Yellowknife, in the Northwest Territories, on
the 19th day of December, 2018.

APPEARANCES:

Mr. D. Praught:	Counsel for the Crown
Mr. C. Davison:	Counsel for the Accused

- (2) Near the end after the last paragraph on the left side. Flagged by “Counsel for the Crown”, “Counsel for the Accused”, “Counsel for the Plaintiff”, “Counsel for the Defendant”, “Counsel for ...”.

[51] For these reasons, I concluded that Mr. Mohamed's statement is voluntary.

S.H. Smallwood
J.S.C.

Dated at Yellowknife, NT, this
20th day of December, 2018

Counsel for the Crown:	Duane Praught
Counsel for the Accused:	Jennifer Cunningham

- Court of Appeal for the Northwest Territories.
 - Located in one place in most decisions.
 - (1) Near the beginning on the left side. Flagged by “Appearances”. Flagged by “Counsel for the Appellant” or “Counsel for the Respondent”.

P. (D.) v R, 2019 NWTCA 1 A-1-AP-2017-000014

IN THE COURT OF APPEAL FOR THE NORTHWEST TERRITORIES

IN THE MATTER OF:

P. (D.)

- v -

HER MAJESTY THE QUEEN

Transcript of the Reasons for Judgment
delivered by The Honourable Justice K.M. Shaner, sitting in Yellowknife, in the Northwest Territories,
on the 17th day of December, 2018.

APPEARANCES:

Mr. E. McIntyre: Counsel for the Appellant
Mr. A. Godfrey: Counsel for the Respondent

- (2) Near the end on the left side. Flagged by “Appearances”. Who counsel represents is flagged by “for the Applicant”, “for the Appellant” “for the Respondent”.

[17] The appeal is dismissed.

Appeal heard on October 23, 2018

Memorandum filed at Yellowknife, Northwest Territories
this day of , 2018

Costigan J.A.

Veldhuis J.A.

Wakeling J.A.

Appearances:

S. Boucher
for the Respondent

C. Davison
for the Appellant

C. Nunavut

- Nunavut Court of Justice.
 - Appears in one place in most decisions.

(1) Appears at the beginning on the left side. Almost always flagged by “Counsel”. Occasionally flagged by “Plaintiff” or “Defendant”. Who counsel represents is flagged by “(Crown)”, “(Accused)”, “(Applicant)”, “(Respondent)”, or the various party names.

ᓄᓇᓂᓄᓂ ᓄᓇᓂᓄᓂ Nunavunmi Maligaliuqtiit NUNAVUT COURT OF JUSTICE Cour de justice du Nunavut	
Citation:	R. v. Koonoo, 2018 NUCJ 38
Date:	20181221
Docket:	11-17-128
Registry:	Iqaluit
Crown:	Her Majesty the Queen
	-and-
Accused:	Lila Koonoo
Before:	The Honourable Madam Justice Susan Cooper
Counsel (Crown):	Sarah Bailey
Counsel (Accused):	Ilan Nueman
Location Heard:	Iqaluit, Nunavut
Date Heard:	December 21, 2018
Matters:	Sentence for guilty plea to <i>Criminal Code</i> , RSC 1985, c C-46, s. 255(3).

Before:	The Honourable Mr. Justice Paul Bychok
Counsel (Applicant A.M.):	Stefanie Laurella
Counsel (Director of Child and Family Services):	Sheila MacPherson
Counsel (Respondent N.N.):	Caroline Pothemont
Location Heard:	Iqaluit, Nunavut
Date Heard:	February 27, 2018
Matters:	Interpretation of <i>Child and Family Services Act</i> sections 26.1 and 28.

- Nunavut Court of Appeal.
 - Located in one place.

(1) At the end of decision on the left side. Flagged by “Appearances:”. Who counsel represents is flagged by “for the Applicant”, “for the Respondent”, “for Appellant”, “for Respondent”, “for the Appellants”, “for the Respondents”.

VI. CONCLUSION

[23] Mr. Dejaeger's sentence appeal is accordingly dismissed.

Appeal heard on September 25, 2018.

Memorandum filed at Iqaluit, Nunavut this 22nd day of November, 2018.

Justice M. Bielby

Justice J. Strekaf

Justice R. Khullar

Appearances:

S. Cowan and Y. Rahamim, for the Applicant

N. E. Devlin, for the Respondent

D. Yukon

- Supreme Court of Yukon.
 - Located in one place in most decisions.
 - (1) Near the beginning on the left side. Flagged by “Appearances”, and who counsel represents is flagged by “Counsel for the ...”, “Counsel for ...”.

SUPREME COURT OF YUKON		
Citation: <i>S.L.H. v. A.W.H.</i> , 2018 YKSC 54	Date: 20181224 S.C. No. 18-D5076 Registry: Whitehorse	
BETWEEN	S.L.H.	PLAINTIFF
AND	A.W.H.	DEFENDANT
Before: Madam Justice E.M. Campbell		
Appearances:		
Shaunagh Stikeman André W.L. Roothman	Counsel for the plaintiff Counsel for the defendant	

- Court of Appeal of Yukon.
 - Located in one place in most decisions.

(1) Near the beginning of the decision on the right side under the “On appear from” section. Flagged by “Counsel for ...”. That flagging also indicates who counsel represents (e.g., “Counsel for the Appellant”).

COURT OF APPEAL OF YUKON	
Citation:	<i>Blackjack v. Yukon (Chief Coroner)</i> , 2018 YKCA 14
Between:	Date: 20181024 Whitehorse Docket: 16-YU805 Theresa Anne Blackjack and Little Salmon Carmacks First Nation
And	Respondents (Petitioners) Kirsten MacDonald, Chief Coroner of the Yukon Territory
Before:	Appellant (Respondent) The Honourable Madam Justice Bennett The Honourable Madam Justice Charbonneau The Honourable Madam Justice Dickson
On appeal from: An order of the Supreme Court of Yukon, dated March 6, 2017 (<i>Blackjack v. Yukon (Chief Coroner)</i>, 2017 YKSC 11, Whitehorse Docket No. 15-A0093).	
Counsel for the Appellant:	R.A. Buchan
Counsel for the Respondent Theresa Anne Blackjack:	V. Larochelle
Counsel for the Respondent Little Salmon Carmacks First Nation:	S. Roothman
Place and Date of Hearing:	Whitehorse, Yukon November 22, 2017
Place and Date of Judgment:	Vancouver, British Columbia October 24, 2018

E. Saskatchewan

- Saskatchewan Court of Queen’s Bench.
 - Located in one place in most decisions.
- (1) Near the beginning after the style of cause on the left side. Flagged by “Counsel:”. Who counsel represents is flagged by “for the ...”:

QUEEN’S BENCH FOR SASKATCHEWAN	
Date:	2018 12 20
Docket:	FLD 13 of 2008
Judicial Centre:	Regina
Citation: 2018 SKQB 352	
BETWEEN:	
KEVIN JULES HANSLIP	PETITIONER
	- and -
FAYE WHITEQUILL	RESPONDENT
	- and -
LAVERNE RAE CLARK AND HERMAN HANSLIP	THIRD PARTIES
Counsel: Bruce Campbell Sterling McLean for the respondent for the third parties	

- Saskatchewan Court of Appeal.
 - Located in one place in most decisions.
(1) Near the beginning. Flagged by “Counsel:”. Who counsel represents is flagged by “for the ...”.

Court of Appeal for Saskatchewan Docket: CACR2933		Citation: <i>Rowan v Canada (Attorney General)</i> , 2018 SKCA 104 Date: 2018-12-31	
Between:	James Alan Rowan		
	<i>Appellant</i> (And Person Sought for Extradition)		
And	The Attorney General of Canada (on behalf of the United States of America)		
	<i>Respondent</i>		
Between:	James Alan Rowan		
	<i>Applicant</i> (And Person Sought for Extradition)		
And	The Minister of Justice and the Attorney General of Canada		
	<i>Respondent</i>		
Before:	Jackson, Ottenbreit and Whitmore J.J.A.		
Disposition:	Appeal dismissed, application for judicial review denied		
Written reasons by:	The Honourable Madam Justice Jackson		
In concurrence:	The Honourable Mr. Justice Ottenbreit The Honourable Mr. Justice Whitmore		
On Appeal From:	2017 SKQB 95, Saskatoon		
Appeal Heard:	May 11, 2018		
Counsel:	Christopher Veeman for the Appellant Sean Sass for the Respondent		

F. Manitoba

- Manitoba Court of Queen’s Bench.
 - Located in one place in most decisions.
(1) Near the beginning in the centre. Flagged by “Counsel:”. Who counsel represents is flagged by “for the ...”.

		Date: 20181228 Docket: CI 16-01-03432 (Winnipeg Centre) Indexed as: Breton v. Canada (Attorney General) Cited as: 2018 MBQB 205
COURT OF QUEEN'S BENCH OF MANITOBA		
-		
-		
BETWEEN:		
YVES CHRISTIAN BRETON,	)	Counsel:
	)	STEPHAN J. THLIVERIS
plaintiff,	)	SCOTT W. CANNON
	)	for the plaintiff
- and -	)	
	)	RANDAL T. SMITH, Q.C.
THE ATTORNEY GENERAL OF CANADA,	)	DARREN P. GRUNAU
	)	for the defendant
defendant.	)	
	)	
	)	JUDGMENT DELIVERED:
	)	December 28, 2018

- Manitoba Court of Appeal.
 - Located in one place.

Citation: R v Loonfoot, 2018 MBCA 140

Date: 20181227

Docket: AR17-30-08956

IN THE COURT OF APPEAL OF MANITOBA

Coram: Mr. Justice Michel A. Monnin
Madam Justice Holly C. Beard
Madam Justice Karen I. Simonsen

BETWEEN:

HER MAJESTY THE QUEEN)
) ***J. F. Rogala***
) ***for the Appellant***
)
) ***N. M. Cutler***
)
Respondent) ***for the Respondent***
)
- and -) ***Appeal heard and***
) ***Decision pronounced:***
CODY CHAD LOONFOOT) ***December 6, 2018***
)
)
) ***Written reasons:***
(Accused)) ***December 27, 2018***

Appellant

- Alberta Court of Queen's Bench.

- (1) Near the end on the left side. Flagged by “Appearances:” or “Participant”. Who counsel represents is flagged by “for the ...”.

411

- Alberta Court of Appeal.

- Located in one place in most decisions.
 - (1) Near the end of on the left side. Flagged by “Appearances”. Who counsel represents is flagged by “for the ...”.

VII. Conclusion

[53] I deny Mr. Rogerson's application.

Application heard on November 28, 2018

Reasons filed at Edmonton, Alberta
this 20th day of December, 2018

Wakeling J.A.

Appearances:

R.A. Fata
for the Respondent

C.S. Mitchell
for the Applicant

H. Ontario

- Ontario Superior Court of Justice.

- Located in one of two places in most decisions.
 - (1) At the beginning on the left side. Flagged by “COUNSEL”. Who counsel represents is flagged by “for the ...”.

CITATION: D.R.W. v. C.W., 2018 ONSC 7774
COURT FILE NO.: FS-18-0015
DATE: 2018 12 31

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: D.R.W. v. C.W.

BEFORE: Dol J.

COUNSEL: Ursula Cebulak, for the Applicant
Poroshad Mahdi, for the Respondent

HEARD: December 20, 2018

- (2) At the beginning in the centre, and nothing flags it, but who counsel represents is flagged by “for the ...”.

COURT FILE NO.: FC-15-1562-1

CITATION: *Cameron v. Cameron*, 2018 ONSC 7770

DATE: 2018/12/31

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:))
Brennan Cameron)))))))

Applicant Sarah Kennedy, Counsel for the Applicant

– and –
Leanne Cameron

Respondent Rodney Cross, Counsel for the Respondent

)
HEARD: In writing

- Ontario Court of Appeal.
 - Located in one place in most decisions.
 - (1) Near the beginning on the left side under the style of cause. Nothing flags it. Who counsel represents is flagged by “for the ...”.

COURT OF APPEAL FOR ONTARIO		CITATION: Williams (Re), 2018 ONCA 1087
		DATE: 20181228
		DOCKET: C65401
Juriansz, Benotto and Trotter J.J.A.		
IN THE MATTER OF: Jerome Williams		
AN APPEAL UNDER PART XX.1 OF THE CODE		
Anita Szigeti, for the appellant		
Adam Wheeler, for the Crown		

I. Newfoundland & Labrador

- Supreme Court of Newfoundland and Labrador.
 - Located in one place in most decisions.
 - (1) Near the beginning under the summary and hearing information sections. Flagged by “Appearances”. Who counsel represents is flagged by “Appearing on behalf of ...”.

Place of Hearing:	St. John's, Newfoundland and Labrador						
Date of Hearing:	November 20 and 29, 2018						
Summary:	The Court denied the application of two defendants to set aside a default order on the basis that the applicants had failed to demonstrate a potentially good defence on the merits.						
Appearances:	<table border="1"> <tr> <td>Cletus E. Flaherty</td> <td>Appearing on behalf of the Plaintiffs</td> </tr> <tr> <td>Daniel W. Bennett</td> <td>Appearing on behalf of Garry Hynes and Barbara Hynes</td> </tr> <tr> <td>Jillian A. Hewitt</td> <td>Appearing on behalf of Gerard Hynes</td> </tr> </table>	Cletus E. Flaherty	Appearing on behalf of the Plaintiffs	Daniel W. Bennett	Appearing on behalf of Garry Hynes and Barbara Hynes	Jillian A. Hewitt	Appearing on behalf of Gerard Hynes
Cletus E. Flaherty	Appearing on behalf of the Plaintiffs						
Daniel W. Bennett	Appearing on behalf of Garry Hynes and Barbara Hynes						
Jillian A. Hewitt	Appearing on behalf of Gerard Hynes						

- Court of Appeal of Newfoundland and Labrador.
 - Located in one place in most decisions.
 - (1) Near the beginning of the decision on the left side under the hearing information. Nothing flags it. Who counsel presents is flagged by “Counsel for the ...”.

BETWEEN:	
ELIZABETH ST. CROIX	APPELLANT
AND:	
JOAN PARDY-CALLAN	FIRST RESPONDENT
AND:	
WADE CALLAN	SECOND RESPONDENT
 Coram: Welsh, White and Hoegg JJ.A.	
Court Appealed From: Supreme Court of Newfoundland and Labrador Family Division 201802F0675	
Appeal Heard: October 1, 2018	
Judgment Rendered (Orally): October 1, 2018	
Memorandum of Disposition Filed: October 2, 2018	
Counsel for the Appellant: Michelle Wilson Counsel for the Respondent: Sophie St. Croix and Stephen Griffin	

J. Prince Edward Island

- Supreme Court of Prince Edward Island.
 - Located in one place in most decisions.
(1) Near the beginning on the left side. Flagged by “Appearances:”. Who counsel represents is flagged by “Solicitor for the ...” or “solicitor for the ...”.

SUPREME COURT OF PRINCE EDWARD ISLAND	
Citation: <i>R. v. Rogerson</i> , 2018 PESC 44	Date: 20181121 Docket: S1-GC-1265 Registry: Charlottetown
Her Majesty the Queen - against - Colleen Marie Rogerson	
Before: The Honourable Chief Justice Tracey L. Clements	
Appearances: Nathan Beck, Solicitor for the Crown Christopher Montigny, Solicitor for the Accused	

- Prince Edward Island Court of Appeal.
 - Located in one place in most decisions.

(1) Near the beginning on the left side under the judges' information. Flagged by "Appearances". Who counsel represents is flagged by "Counsel for the ..." or "for the..."

PROVINCE OF PRINCE EDWARD ISLAND PRINCE EDWARD ISLAND COURT OF APPEAL	
Citation: R. v. Brookfield Gardens Inc. , 2018 PECA 2	Date: 20180202
Docket: S1-CA-1355	
Registry: Charlottetown	
BETWEEN:	
	BROOKFIELD GARDENS INC.
AND:	APPELLANT
	HER MAJESTY THE QUEEN
	As represented by the Public Prosecution Service of Canada
	RESPONDENT
Before: Chief Justice David H. Jenkins Justice Michele M. Murphy Justice John K. Mitchell	
Appearances: Robert I.S. MacGregor, counsel for the Appellant M. Shaun O'Leary, counsel for the Respondent	

K. New Brunswick

- Court of Queen's Bench of New Brunswick.

- Located in in one place.

(1) Near the beginning under the style of cause and hearing information. Flagged by "Appearances". Who counsel represents is flagged by "for the ...", "for", "on behalf of".

		Respondent
- and -		
J.D. IRVING LTD., AV GROUP NB INC., CHALEUR SAWMILLS GP INC., DELCO FOREST PRODUCTS LTD., FORNEBU LUMBER COMPANY INC., MARWOOD LTD., AND TWIN RIVERS PAPER CO.		
		Intervenor
Date of Hearing:	Date of Hearing:	December 11, 2018
	Date of Decision:	December 11, 2018
	Before:	Justice H. H. McLellan
	At:	Fredericton, New Brunswick
Appearances:		David Duncan Young for the applicant. Richard A. Williams and Maya Hamou for The Province of New Brunswick. Catherine A. Lahey, Q.C., for J.D. Irving Ltd., Rebecca M. Atkinson, for the other intervenors.

- Court of Appeal of New Brunswick.

- Located in in one place.

(1) Near the beginning under the judges’ information. Flagged by “Counsel on motion” or “Counsel at hearing”. Who counsel represents is flagged by “For the ...”

May 17, 2018	le 17 mai 2018
Reasons for judgment by: The Honourable Justice Baird	Motifs de jugement : l'honorable juge Baird
Concurred in by: The Honourable Justice Quigg The Honourable Justice French	Souscrivent aux motifs : l'honorable juge Quigg l'honorable juge French
Counsel at hearing: For the appellant: Jean Eugène Trahan For the respondent: Kathryn A. Gregory, Q.C.	Avocats à l'audience : Pour l'appelant : Jean Eugène Trahan Pour l'intimée : Kathryn A. Gregory, c.r.

L. Nova Scotia

- Supreme Court of Nova Scotia.
 - Located in one or two places in most decisions.
(1) Near the beginning after the Library Heading. Flagged by “Counsel”. Who counsel represents is flagged by “for the ...” or “on behalf of ...”.

SUPREME COURT OF NOVA SCOTIA FAMILY DIVISION Citation: <i>Tobin v. Hurley</i>, 2018 NSSC 313		Date: 2018-12-11 Docket: <i>SFSNMCA</i> No. 101160 Registry: Sydney
Between:	Katherine Tobin v. Thomas Hurley	Applicant Respondent
Judge:	The Honourable Justice Lee Anne MacLeod-Archer	
Heard:	September 19, 20, 27 and 28, 2018, in Sydney, Nova Scotia	
Written Release:	December 11, 2018	
Counsel:	Candee J. McCarthy for the Applicant William P. Burchell for the Respondent	

(2) Near the beginning after the “ENDORSEMENT” heading on the left side. Nothing flags it. Counsel is flagged by “on behalf of” or “for the”.

Supreme Court of Nova Scotia (Family Division) G.L.M. v. T.D., 2018 NSSC 255 ENDORSEMENT	
October 5, 2018	
G.L.M. v. T.D., SFSNMCA 78594	
Candee McCarthy on behalf of the Applicant	
Stephen Jamael on behalf of the Respondent	

- Nova Scotia Court of Appeal.
 - Located in one place in most decisions.

(1) Near the beginning after the Library Heading on the left side. Flagged by “Counsel”. Who counsel represents is flagged by “for the ...” or “on behalf of ...”.

NOVA SCOTIA COURT OF APPEAL	
Citation: <i>R. v. Amyotte</i> , 2018 NSCA 98	
	Date: 20181214 Docket: CAC 471763 Registry: Halifax
Between:	Matthew Chad Amyotte v. Her Majesty the Queen Appellant Respondent
Judges:	Fichaud, Bryson and Van den Eynden JJ.A.
Appeal Heard:	June 14, 2018, in Halifax, Nova Scotia
Held:	Leave to appeal denied, per reasons for judgment of Van den Eynden, J.A.; Fichaud and Bryson, JJ.A. concurring
Counsel:	Nicholaus S. Fitch, for the appellant Kenneth W.F. Fiske, Q.C., for the respondent

M. Federal Courts

- Tax Court of Canada.
 - Located in two places in most decisions.
 - (1) Near the end of the decision on the right side. Flagged by “Appearances” or “Participants”. Who counsel represents is flagged by “Counsel for the ...”. Lay litigants will be flagged by “for the Applicant” or “for the Respondent”.

CITATION:	2018 TCC 262
COURT FILE NO.:	2018-1799(IT)APP
STYLE OF CAUSE:	ALEX IHAMA-ANTHONY AND HER MAJESTY THE QUEEN
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	October 10, 2018
REASONS FOR JUDGMENT BY:	The Honourable Justice Don R. Sommerfeldt
DATE OF JUDGMENT:	December 20, 2018
APPEARANCES:	
For the Applicant:	The Applicant himself
Counsel for the Respondent:	Priya Bains, Lesley L'Heureux

(2) Near the beginning under the style of cause in the centre. Flagged by “Appearances” or “Participants”. Who counsel represents is flagged by “Counsel for the ...”. Lay litigants will be flagged by “for the Applicant” or “for the Respondent”.

BETWEEN:	ALEX IHAMA-ANTHONY, and HER MAJESTY THE QUEEN,	Docket: 2018-1799(IT)APP Applicant, Respondent.				
Application heard on October 10, 2018, at Toronto, Ontario By: The Honourable Justice Don R. Sommerfeldt						
Appearances: <table style="width: 100%;"> <tr> <td style="width: 50%;">For the Applicant:</td> <td style="width: 50%;">The Applicant himself</td> </tr> <tr> <td>Counsel for the Respondent:</td> <td>Priya Bains, Lesley L'Heureux</td> </tr> </table>			For the Applicant:	The Applicant himself	Counsel for the Respondent:	Priya Bains, Lesley L'Heureux
For the Applicant:	The Applicant himself					
Counsel for the Respondent:	Priya Bains, Lesley L'Heureux					

- Federal Court.
 - Located in one place in most decisions.
 - (1) Near the end of decisions after the “SOLICITORS OF RECORD” Information. Flagged by “Appearances”. Who counsel represents is flagged by “for the ...”.

FEDERAL COURT <u>SOLICITORS OF RECORD</u>			
DOCKET:	T-1725-18 T-1726-18		
STYLE OF CAUSE:	KODY JOHN WILLIAM SOLOMON AND PATRICIA KELLY SOLOMON v GARDEN RIVER FIRST NATION JUSTIN RALPH ROMANO AND PATRICIA KELLY SOLOMON v GARDEN RIVER FIRST NATION		
PLACE OF HEARING:	TORONTO, ONTARIO		
DATE OF HEARING:	DECEMBER 13, 2018		
JUDGMENT AND REASONS:	STRICKLAND J.		
DATED:	DECEMBER 19, 2018		
APPEARANCES: <table style="width: 100%;"> <tr> <td style="width: 60%;"> Louis P. Strezos Michelle Biddulph Maggie Wentz Corey Shefman </td> <td style="width: 40%; text-align: right; vertical-align: top;"> FOR THE APPLICANTS FOR THE RESPONDENT </td> </tr> </table>		Louis P. Strezos Michelle Biddulph Maggie Wentz Corey Shefman	FOR THE APPLICANTS FOR THE RESPONDENT
Louis P. Strezos Michelle Biddulph Maggie Wentz Corey Shefman	FOR THE APPLICANTS FOR THE RESPONDENT		

- Federal Court of Appeal.
 - Located in one place.

(1) Near the end of the decision on the left side under the “NAMES OF COUNSEL AND SOLICITORS OF RECORD” block of information. Flagged by “Appearances”. Who counsel represents is flagged by “For the ...”.

FEDERAL COURT OF APPEAL							
NAMES OF COUNSEL AND SOLICITORS OF RECORD							
DOCKET:	A-419-17						
APPEAL FROM A JUDGMENT OF THE HONOURABLE MR. JUSTICE BOSWELL DATED NOVEMBER 27, 2017, NO. T-2230-16							
STYLE OF CAUSE:	ABUBAKAR SHARIF v. ATTORNEY GENERAL OF CANADA						
PLACE OF HEARING:	TORONTO, ONTARIO						
DATE OF HEARING:	OCTOBER 22, 2018						
REASONS FOR JUDGMENT BY:	STRATAS J.A.						
CONCURRED IN BY:	RENNIE J.A. WOODS J.A.						
DATED:	NOVEMBER 13, 2018						
<table border="1"> <thead> <tr> <th colspan="2">APPEARANCES:</th> </tr> </thead> <tbody> <tr> <td>Paul Quick</td> <td>FOR THE APPELLANT</td> </tr> <tr> <td>Eric O. Peterson</td> <td>FOR THE RESPONDENT</td> </tr> </tbody> </table>		APPEARANCES:		Paul Quick	FOR THE APPELLANT	Eric O. Peterson	FOR THE RESPONDENT
APPEARANCES:							
Paul Quick	FOR THE APPELLANT						
Eric O. Peterson	FOR THE RESPONDENT						

- Supreme Court of Canada.

- Located in one place.

(1) Near the beginning after the Appeal from information. Nothing flags it. Who counsel represents is flagged by “for the ...”.

APPEAL from a judgment of the Ontario Court of Appeal (Hoy A.C.J.O. and Doherty and Miller J.J.A.), 2017 ONCA 231, 137 O.R. (3d) 263, 412 D.L.R. (4th) 531, 352 C.C.C. (3d) 355, 23 Admin. L.R. (6th) 66, [2017] O.J. No. 1431 (QL), 2017 CarswellOnt 3901 (WL Can.), affirming in part a decision of MacDonnell J., 2016 ONSC 1961, 352 C.R.R. (2d) 60, [2016] O.J. No. 1597 (QL), 2016 CarswellOnt 4901 (WL Can.), dismissing applications to quash, vary or revoke a production order and allowing in part an application to set aside a sealing order. Appeal dismissed. <i>M. Philip Tunley, Iain A. C. MacKinnon and Jennifer P. Saville</i>, for the appellants. <i>Croft Michaelson, Q.C., and Sarah Shaikh</i>, for the respondent. <i>John Patton and Deborah Krick</i>, for the intervener the Attorney General of Ontario. <i>Justin Safayeni</i>, for the interveners the Aboriginal Peoples Television Network, the Advocates in Defence of Expression in Media, the Canadian Association of Journalists, the Canadian Journalists for Free Expression, the Canadian Media Guild/Communications Workers of America Canada, the Centre for Free Expression, Global News, a Division of Corus Television Limited Partnership and Postmedia Network Inc. <i>Sean A. Moreman and Katarina Germani</i>, for the intervener the Canadian Broadcasting Corporation. <i>Faisal Mirza and Yavar Hameed</i>, for the intervener the Canadian Muslim Lawyers Association. <i>Paul Schabas and Kaley Pulfer</i>, for the interveners the Media Legal Defence Initiative, Reporters Without Borders, the Reporters Committee for Freedom of the Press, the Media Law Resource Centre, the International Press Institute, Article 19, Pen International, Pen Canada the Canadian Centre of Pen International, the Index on Censorship, the Committee to Protect Journalists, the World Association of Newspapers and News Publishers and the International Human Rights Program. <i>Tae Mee Park</i>, for the intervener the British Columbia Civil Liberties Association. <i>Brian N. Radnoff and Rebecca Shoom</i>, for the intervener the Canadian Civil Liberties Association.
--

6. Whether the case includes any self-represented individuals, and how many

- Self reps are referred to in at least 21 ways in Canadian decisions (“Representing himself as ...”, “Representing herself as ...”, “Representing themselves as ...”, “appeared in person”, “appearing in person”, “appearing on his own behalf”, “appearing on her own behalf”, “on their own behalf”, “on his own behalf”, “on her own behalf”, “on their own behalf”, “on behalf of”, “acted on own behalf”, “acting on own behalf”, “self-represented”, “for the Self-Represented Litigant”, “appearing in-person”, “appearing in person”, “in person”, “in-person”, “appeared as a representative”, “personally”).
- Some jurisdictions, such as Ontario, don’t always include these identifiers.

I provided this prompt and had this conversation before receiving this feedback:

You are a legal academic in Canada who has a focus on access to justice, legal reform, and judicial independence and impartiality. I want you to write me a heavy handed critique of this document. Break it down by section and chapter. Feel free to tell me things I have missed by relying on deep research mode.

ChatGPT said:

Thanks for sharing the document. To tailor a heavy-handed critique effectively, could you please clarify a few things:

- 1. Are you looking for critique strictly from the perspective of Canadian legal scholarship, or should I also incorporate comparative or international perspectives?*
- 2. Would you like this critique to include suggestions for improvement, or focus strictly on analytical dismantling?*
- 3. Should I emphasize particular themes—such as judicial independence, access to justice, empirical methodology, or design theory?*
- 4. What is the intended use of this critique (e.g., peer review, policy submission, rebuttal paper)?*

Once I have this information, I can proceed with a detailed, section-by-section critique using deep research mode where appropriate.

Primarily Canadian, but you can also look at those things.

Yes. Please provide suggestions alongside the dismantling.

All of those.

To prepare me for finalizing.

*Thanks for the clarification. I'll begin a detailed, heavy-handed critique of the dissertation *Deliberate Design: Why Canada's Legal System Needs It* by Jon Khan. This will be broken down chapter-by-chapter and will focus on judicial independence and impartiality, access to justice, legal reform methodology, and empirical validity—within the context of Canadian legal scholarship. I'll also include comparative insights where appropriate and provide both critique and concrete suggestions for improvement.*

I'll let you know when the full critique is ready for your review.

Research completed in 11m · 2 sources · 26 searches

Comprehensive Critique of Jon Khan's *Deliberate Design: Why Canada's Legal System Needs It*

Abstract and Introduction

Khan's abstract and introduction set an ambitious agenda, but they raise immediate questions of conceptual clarity and evidentiary support. The central premise is that Canada's legal system was "never deliberately designed" and that this lack of conscious design underlies a national "justice crisis" and a "legal data deficit"[1]. This is a bold framing, yet the terms are deployed more as slogans than well-defined concepts. For example, "**deliberate design**" is not clearly delineated in the abstract, leaving readers unsure whether it refers to systematic institutional planning, user-centered process engineering, or something broader. The introduction later attempts to define "design" (distinguishing *deliberate design* from an ad hoc evolution of tradition and inertia)[2][3]. However, introducing such a pivotal concept without an upfront definition muddles the conceptual clarity. A more rigorous introduction would situate "design" in context – for instance, acknowledging that while Canada's legal system evolved without a unifying blueprint, it has *some* designed elements (court rules, statutes establishing courts, etc.). By presenting the system as entirely "undesignated," Khan risks overstating his case and overlooking incremental design efforts in Canadian legal history. He could strengthen this section by explicitly defining "**deliberate design**" as an evidence-based, user-centered approach to justice system reform (as he later implies) and contrasting it with the status quo of piecemeal historical development[1]. Engaging with Canadian legal history or administrative law scholarship here would help – for example, noting past attempts at systemic reform or design-like interventions (such as procedural simplification initiatives or specialized courts) that indicate the issue is not absolute absence of design but insufficient or misaligned design.

The "**justice crisis**" is another foundational concept introduced with minimal context. Khan claims "most people can't access basic justice"[4], echoing common access-to-justice statistics, but he provides no source or detail in the abstract. This sweeping claim, while broadly supported by Canadian studies on unmet legal needs, begs for substantiation. A reader might recall that numerous reports (e.g. the 2013 *National Action Committee on Access to Justice* report) document serious access problems, yet Khan neither cites nor summarizes such findings. The introduction would benefit from anchoring the "justice crisis" in empirical research or official inquiries – for instance, referencing studies that **X% of Canadians do not get legal help for their serious civil problems** or that **court delays and costs exclude many from timely justice**. By not engaging with this existing Canadian literature, Khan somewhat downplays the rich academic dialogue on access to justice. A more nuanced introduction could acknowledge that the "justice crisis" has been examined by scholars like Trevor Farrow, Ab Currie, and others, and then explain how *his* approach (focusing on system design and data deficits) offers a novel contribution. This would situate his work within the Canadian scholarly landscape rather than as an abstract crusade. In its current form, the introduction's treatment of the justice crisis is cursory, relying on the reader's presumed agreement rather than demonstrating command of the evidence.

Logically, the introduction proceeds to outline Khan's **thesis and main ideas**, but here too some coherence issues arise. He posits a "simple thesis" that *while laws and practices change, how we reform our legal system mostly doesn't*[5]. This is a provocative insight – essentially accusing legal institutions of clinging to outdated reform methods (intuition, tradition, ad-hoc fixes) despite changing external conditions. It rings true that reform in Canada has been slow and

conservative, yet labeling the explanation “simple” borders on reductive. The justice system’s problems surely have multiple causes (underfunding, complexity of law, socio-economic inequality), and although stagnant reform culture is an important factor, treating it as *the* explanation may be an overstatement. The introduction would be stronger if it acknowledged the multifaceted nature of the crisis – for example, conceding that *deliberate design* is one vital lens among others. As it stands, Khan’s overarching claim verges on a monocausal narrative, risking logical oversimplification by implying that better design thinking alone could resolve entrenched issues like high legal costs or regional disparities.

Khan identifies **three main ideas** underlying his thesis[6][7][8] (and even a fourth, auxiliary idea[9]), which provide a useful roadmap but also illustrate some conceptual overreach. His first idea is that legal innovations and research “**frequently don’t scale**” – essentially, that Canada has failed to scale up access to justice despite pilot projects and theories[10]. This observation is astute: many localized or academic A2J innovations (self-help centers, pro bono clinics, etc.) have not translated into system-wide change. However, Khan attributes this failure largely to the **lack of data and measurable standards** in the system[11]. While data deficiencies are real, the assertion that they are the “fundamental reason” innovations don’t scale is asserted rather than proven. It overlooks other well-documented barriers to scaling access to justice, such as political inertia, fragmented provincial-federal responsibilities, and resistance from professional stakeholders. A more empirically robust argument would at least cite instances where data-driven reform succeeded abroad, or evidence that current reforms stalled due to lack of information. Khan’s point would be more convincing if backed by, say, a comparison showing jurisdictions with robust justice data (perhaps the U.K. or Australia) achieved broader reform than Canada – something he implies later but does not state here. In sum, the first idea is promising but under-substantiated: *to strengthen it, Khan should present concrete examples or studies demonstrating how insufficient data has hampered scaling access to justice in Canada.* Without that, the causal link remains somewhat speculative in this introductory stage.

His second idea contends that many individuals “**don’t access basic fairness**” in Canadian courts, essentially facing a *justice lottery* where outcomes vary by geography, resources, or the particular judge[7]. This is a serious normative claim, implying inconsistent quality of justice and potential violations of equality before the law. Khan attributes this inconsistency to a *lack of standardization in decision-making* coupled with courts’ “**expansive views**” of judicial independence, deliberative secrecy, and confidentiality, which he says are used to “*preclude basic and innovative reform*”[12]. Here, Khan’s logical coherence wavers. He is arguing that disparate judicial practices (e.g. how judges write decisions or manage cases) result in uneven fairness, and that judges and courts invoke independence and secrecy to resist corrective measures like standardization. While it is plausible that standardizing certain processes could reduce outcome variance (for instance, using uniform templates for judgments or checklists to avoid omissions), the introduction presents this claim in sweeping terms without examples. Are there studies showing litigants fare worse in one province versus another due to differing court practices? Are judges on record opposing reforms by citing independence or confidentiality concerns? Khan does not say here, leaving the reader to take his word for it. This **normative critique** of the judiciary – effectively accusing courts of hiding behind lofty principles to avoid accountability – is provocative and potentially valid, but it **lacks empirical grounding in the introduction**. It would benefit from at least a reference: e.g., mentioning the well-known case of *R. v. Jordan* (2016) which highlighted systemic delay differences across provinces, or noting any

instance where the Canadian Judicial Council (CJC) or judges resisted data collection on independence grounds. Without such context, Khan's claim risks sounding like an unfounded indictment. Conceptually, he conflates "fairness" with uniformity and transparency, which is debatable – fairness also requires individualized justice, which excessive standardization could undermine. A more nuanced treatment would recognize this tension. A constructive suggestion is that Khan should acknowledge in his introduction that **judicial independence serves vital rule-of-law functions** (protecting judges from outside pressure), even as he argues it has been interpreted too broadly. By doing so, he would not appear to simply dismiss independence and secrecy as obstinate relics, but rather frame his reform argument in terms of *rebalancing* those principles with accountability and design. As it stands, the second idea's critical stance on judges is intriguing but heavy-handed, potentially alienating readers who expect a fairer engagement with opposing viewpoints.

Khan's third main idea reframes the entire "**Justice Crisis**" as a **rule-of-law and judicial independence crisis**[8]. This is an analytically interesting move: he suggests that if many Canadians aren't receiving basic fairness, then the justice system is failing at core constitutional commitments (like equality before the law and impartial adjudication). In other words, he implies that true judicial independence and impartiality are not being achieved in practice because outcomes and access vary so widely. Conceptually, this stretches the definition of *judicial independence*. Traditionally, independence refers to judges' freedom from interference and ability to decide cases impartially **for the individual case**[13]. Khan instead argues it encompasses a systemic duty to produce fair, consistent, accessible justice for all – a duty Canadian courts are *not* meeting[8][14]. This is a **normative expansion** of the principle and one of Khan's central claims. It indeed aligns independence with public confidence and the rule of law (since if courts as a whole are inaccessible or perceived as inconsistent, public confidence erodes). However, **the conceptual leap is not fully justified by legal doctrine**. Nowhere in the Supreme Court's classical definition (e.g. *Valente v. The Queen*, 1985) is *systemic design* or *data transparency* mentioned as an element of judicial independence – independence is secured through structural guarantees (tenure, financial security, administrative control) to ensure individual impartial decision-making. Khan's view that *judicial independence "requires" innovative reforms and transparency*[15][16] finds **little direct support in Canadian case law**, and he does not cite any in the introduction. In Chapter 1 he relies on decisions like *R. v. Sheppard* and *R. v. R.E.M.* (which concern the duty to give reasons) to support a broader obligation of transparency[17]. But even he admits later that those cases were confined to the criminal context and do not explicitly invoke "*independence*"[13][18]. In short, Khan's third idea is **logically bold but doctrinally tenuous**. It exemplifies a kind of conceptual overreach: transforming a call for better practices into a constitutional imperative. A court might respond that independence, properly understood, does not *mandate* data collection or uniformity – those are policy choices. To improve this, Khan could bolster this section by referencing scholarly interpretations of "**functional independence**" or "**accountable independence**" that support aligning judicial administration with rule-of-law values. By engaging with academic commentary (for example, Justice Lorne Sossin's writings on the balance between independence and accountability), he could lend credibility to his claim. Absent that, the introduction's assertion that the judiciary is breaching its own independence obligations by not embracing reform comes off as rhetorically powerful but legally unproven. It may be **premature** to label the situation a "judicial independence crisis" without demonstrating that judges are unable or unwilling to act impartially in individual cases – a claim that, if taken literally, is quite severe.

More precision here (perhaps calling it a *crisis of public confidence in the administration of justice* connected to independence) would avoid mischaracterizing what independence traditionally means.

A fourth idea in the introduction acknowledges **why reformers eschew deliberate design, data, and humility**: because data is hard to get, examining outcomes threatens the finality of decisions, and measuring abstract values like fairness is inherently difficult[9]. This portion is refreshingly candid and adds nuance to Khan’s otherwise uncompromising stance. He recognizes that pursuing empirically-driven reform raises complex challenges – for instance, collecting meaningful justice data across jurisdictions is technically and politically complicated[19], and any attempt to rigorously measure judicial performance can spark concerns (e.g. reopening debates on decided cases or quantifying “fairness” could be controversial). By admitting these difficulties up front, Khan demonstrates some **empirical humility** of his own, which buttresses his overarching call for epistemic humility in the system. The introduction could be even stronger if it linked these challenges to specific Canadian contexts: for example, noting that Canada’s federal structure means court data resides in siloed provincial systems (making “*end-to-end*” data collection onerous), or that privacy laws limit the sharing of justice information. Mentioning such institutional constraints would show that Khan appreciates the practical barriers to his design vision, not just the attitudinal ones. Nonetheless, by identifying these three reasons reformers avoid data (complexity, fear of undermining finality, and normative uncertainty in metrics), Khan sets the stage for his later chapters that attempt to offer solutions. One constructive suggestion is that he could explicitly frame these as hypotheses to be addressed: *if* data is hard to gather, how might it be made easier? *If* finality is sacrosanct, how can we evaluate justice system outcomes without relitigating cases? Posing these questions would clarify the **empirical robustness** goals of his project and prepare the reader for a solutions-oriented discussion.

Finally, in terms of **methodology and interdisciplinary approach**, the introduction (with reference to a Prologue on methods) indicates that Khan adopts *human-centered design* as his primary methodology, supplemented by empirical legal studies, data science, cognitive psychology, and other fields[2][20]. This breadth is admirable but also raises concerns about **scope and depth**. Human-centered design (HCD), as described, emphasizes user experience, iterative prototyping, and data-driven iteration[2][20]. Khan plainly believes this approach can revolutionize legal system reform by focusing on the “users” of the justice system (judges, litigants, lawyers, etc.)[3][21]. Yet, there is a question of whether his dissertation truly *executes* the HCD methodology or merely advocates for it. In the Prologue he lists the five phases of HCD (empathize, define, ideate, prototype, test) and claims Canada is stuck at phase 1 (lack of understanding of users)[22]. He even recounts a 2019 design project where his team prototyped a judge’s note-taking software[23]. These anecdotes show he has dabbled in applying design thinking. However, the dissertation format is primarily analytical and empirical (surveys, doctrinal analysis, comparative study) rather than a full design-process case study. The **interdisciplinary reach** is similarly broad – from machine learning to law & economics – but one wonders if these are deeply integrated or just invoked. For instance, Khan cites cognitive science to argue human decision-making isn’t purely rational (undermining any complacency that judges are superhumanly rational)[24]. This point is well-taken, but it’s not novel – legal scholarship has for years absorbed insights about cognitive biases in judging. The introduction does not clarify how much original interdisciplinary research Khan himself conducts versus how

much he relies on existing studies. Thus, while the methodological ambition is praiseworthy, it gives an impression of **overextension**. The risk is that the dissertation tries to be *part legal theory, part empirical study, part design blueprint*, and may not fully satisfy any one approach. To address this, Khan could have been more explicit in the introduction about his research questions and how each method aligns with answering them (he lists research objectives and questions, but mostly in general terms)[25]. For example: *Is the question*, “What design principles can improve judicial decision-writing?” If so, HCD and cognitive psychology are relevant. *Is another question*, “Why have Canadian courts resisted data-driven reform?” If so, a sociological or doctrinal method applies. Making these mappings clear would improve conceptual clarity and coherence. It would also temper expectations – readers would understand that the dissertation is not a full-fledged design project implementation, but rather an academic exploration informed by design methodology. In summary, the introduction showcases Khan’s visionary scope and passion for reform, but it would benefit from more grounding: clear definitions, engagement with existing Canadian literature, concrete examples, and a sharper delineation of how his interdisciplinary tools will be used. This foundation would better prepare the reader for the chapter-by-chapter arguments that follow.

Chapter 1 – Judicial Independence and the Absence of Deliberate Design

Chapter 1 serves as the dissertation’s conceptual cornerstone, examining how Canada’s lack of **deliberate system design** might be compromising core judicial values like independence, impartiality, and basic fairness[26]. Khan divides the chapter into multiple parts – defining “design,” arguing for standardization and data-gathering, and surveying comparative jurisdictions – to build the case that “*the world has changed. And the judiciary should follow.*” In doing so, he raises important themes of **judicial independence vs. accountability**, the **user experience of judges and litigants**, and the stark **contrast between Canadian courts and those abroad**. However, several aspects of the chapter reveal weaknesses in conceptual clarity, logical argumentation, and use of supporting evidence, which undermine the force of his normative claims.

Defining “design” and the Canadian status quo: Early in Chapter 1, Khan tackles the meaning of “*design*” in the legal context[27]. He notes that others use the term in various ways and then specifies how *he* is using it[28]. From the text, Khan appears to define “**deliberate design**” as a conscious, user-centered planning of legal system processes and institutions, in contrast to an undirected accumulation of traditions[3][29]. While he does attempt a definition, it remains somewhat amorphous. For instance, he cites that Canada’s system evolved via “*colonialism, rebellion, precedent, tradition, feeling, and inertia*”[29], implying that no one ever sat down to architect the justice system with the user (the public) in mind. This is a compelling historical narrative, but it glosses over the fact that **parts** of the system *were* designed deliberately (the drafters of the *Judges Act* in 1867, the reforms of the court structure in the 1960s, etc., all made policy choices). By painting with such a broad brush, Khan risks a lack of nuance. A reader might question: *Did literally nothing get deliberately designed?* What about specific innovations like unified family courts or case management rules – were those not deliberate attempts at better design? Khan doesn’t address these. The conceptual clarity of “traditional design vs. deliberate design” thus suffers; it sets up a somewhat false binary. A more precise framing might concede that while individual reforms have occurred, **Canada lacks an overarching design philosophy**

or **user-centric framework** guiding its justice system. That distinction – an absence of systemic, evidence-based design (as opposed to ad hoc, isolated fixes) – would sharpen Khan’s point. In the chapter, Khan does hint at this by describing the system’s reliance on “*traditional design*” (i.e., the default ways of doing things inherited from the past)[30]. But he could have strengthened conceptual clarity by providing concrete examples of what counts as *traditional design* practices (for example, **lengthy written reasons modeled on precedent**, or **courthouse procedures that haven’t changed in decades**) and why they are ill-suited to modern needs. This would vividly illustrate the contrast with *deliberate, user-driven design* (such as designing court forms for clarity, or judgment templates for consistency). Without such examples, the reader is left with an abstract notion that might sound like “everything we do now is wrong because it wasn’t designed.” That overstatement could alienate practitioners who know that many well-intentioned reforms have been tried over the years. In short, Chapter 1’s opening argument is *conceptually provocative but somewhat under-exemplified*. It would benefit from a clearer articulation, perhaps a short case study of a process that *lacks* design (like the chaotic patchwork of data collection across courts) versus how a *deliberately designed* version of that process could look.

Judicial independence: requirement or roadblock to design? The most significant (and controversial) claim in Chapter 1 is that properly understood, **judicial independence obliges courts to embrace standardization, transparency, and other “design” reforms**, rather than to resist them. Khan flips the traditional view on its head: rather than seeing independence and deliberative secrecy as constraints on change, he argues these principles “*shouldn’t be used to halt innovative reforms*” and in fact “*judicial independence likely requires*” such reforms[15]. This is a bold normative claim that challenges how many judges view their autonomy. Khan’s reasoning appears to be that since independence and impartiality exist to maintain public confidence in justice, if current practices (like inconsistent decision formats or opaque operations) undermine public confidence, then courts have a **constitutional duty** to redesign those practices[16][31]. He bolsters this argument by interpreting Supreme Court precedents on the duty to give reasons (*Sheppard, R.E.M.*) as implying a broader duty of transparency[32][17]. He even cites an American judge (T.S. Ellis) who wrote that judges threaten their independence if they fail to be transparent[16]. The chapter’s logical structure here is: (1) reasons are required for decisions to prove impartiality; (2) by extension, data and openness are required at a systemic level to prove the institution’s impartiality and efficiency; ergo, (3) independence is not a shield against reform but a mandate for it.

While **intellectually intriguing**, this line of argument exposes some *logical leaps* and *weak evidence*. For one, drawing a straight line from *individual case reasons* to *system-wide data transparency* is a stretch. The SCC in *Sheppard* mandated that a trial judge give sufficient reasons so that the accused and the public understand the result[33]. It did not say that courts as organizations must publish statistics or adopt uniform judgment templates. Khan acknowledges that *Sheppard* and *R.E.M.* never mention “independence” or “impartiality” explicitly in their ratio[13], which undercuts his doctrinal footing. Yet he insists a “proper reading” of those cases extends to an institutional obligation[17]. This is **interpretive overreach** – effectively reading into the law what he thinks it *ought* to contain. A critical reader might find this unpersuasive: it conflates **procedural fairness in adjudication** with **institutional design choices**. To illustrate the gap, consider: a judge can be fully independent and impartial in deciding a case (meeting the constitutional standard) even if the court system around them is inefficient or data-poor. The one

does not automatically negate the other, legally speaking. Khan's rhetorical move is to claim the broader context (system design) is inseparable from independence because public confidence spans beyond individual cases. That is a reasonable policy argument, but Chapter 1 sometimes presents it as if it were a settled legal implication, which it is not. The chapter might have been more logically coherent had Khan explicitly framed this as a *normative proposal*: e.g., "*Courts should interpret their independence as encompassing a responsibility to facilitate transparency and consistency.*" Instead, he often phrases it indicatively – that independence "**requires**" or the constitution "**obliges**" certain reforms[15][17] – without a clear legal basis beyond his own extrapolation. This could be seen as a **methodological weakness**: a blurring of descriptive legal analysis and prescriptive argument. A more rigorous approach would separate what the law currently says from what Khan argues it should evolve to mean.

Moreover, the **empirical support** for Khan's contention that transparency and standardization would in fact *increase* public confidence (and thus bolster independence) is only briefly touched. He asserts that some empirical research suggests transparency can increase trust[34], but we are not given specifics. A critique here is that Chapter 1 relies more on logical assertion than hard evidence when linking reform measures to improved independence/impartiality. For example, if one claims that standardizing how judgments are written will improve impartiality, one should ideally point to research or comparative experience showing that more uniform judgments correlate with perceptions of fairness or with fewer appeals. Khan does not provide such data; instead, he appeals to reason: *surely, if some litigants get 50-page convoluted rulings and others get 5-page clear ones, there's a fairness issue.* This has intuitive appeal, but remains an **unverified premise**. There is also a counter-argument unaddressed: *could standardization undermine independence by straitjacketing judicial expression or by making judges fear statistical scrutiny?* Many jurists would at least raise this concern. Khan's Chapter 1 stance is dismissive of that possibility (he deals with it more in Chapter 2 as a "concern" to be overridden). But in building the principle here, the lack of engagement with potential downsides is notable. He treats independence almost solely as a public-confidence issue, not as a guarantee of decisional freedom in each case. Thus, his analysis might strike a judge or a constitutional scholar as one-sided. **Judicial independence has multiple dimensions** (individual decisional independence, institutional administrative independence, etc.), and Chapter 1 could have been more analytically rigorous by dissecting those and explaining how deliberate design can enhance *some* dimensions without harming others. Instead, Khan tends to cast any hesitancy about reform as misguided "judges-as-superhuman" thinking[35] or protectionism. In sum, while Chapter 1's reframing of independence is thought-provoking and aligns with modern calls for greater judicial accountability, it is **insufficiently substantiated** by doctrine or empirical evidence at this stage. The argument would be stronger if Khan had, for instance, cited the Canadian Judicial Council's own acknowledgment that public trust is key (the CJC has stated that an independent system must also be accessible and trusted[36][37]) and then argued that trust can't be earned without the concrete measures he proposes. That kind of linkage between official statements and his recommendations would ground his normative claims in existing institutional discourse, rather than appearing as a unilateral redefinition.

Standardization and user experience: A significant portion of Chapter 1 advocates for **standardizing judicial decision-making and writing** as a means to improve fairness and efficiency[38][39]. Khan contends that the lack of any standard or uniform approach to judgments leads to avoidable errors and inconsistencies[40][41]. He invokes concepts like the

“*classic model of error*” being flawed and the idea that too much responsibility is placed on individual judges for errors, rather than on system design[40]. This is an intriguing application of human-factors thinking (borrowed perhaps from fields like aviation or medicine) to the legal realm. Khan even references the “Swiss cheese model” of accident causation in complex systems[42], implying that rather than blaming a judge for a mistake, we should design layered defenses to catch errors (like unclear reasoning or legal mistakes) before they cause injustice. The **conceptual clarity** of this section is one of the stronger points in Chapter 1 – it effectively introduces readers to a new way of thinking about judicial work: as a process prone to cognitive overload and error, which could be mitigated by better design. For example, Khan notes that judges have a “*difficult user experience*” with a demanding job and inadequate support[43]. By characterizing judges themselves as *users* of a system (the system of judgment writing and case management), he shines light on the often under-discussed issue of judicial workload and cognitive bias. This perspective is valuable and aligns with empirical research that judges, being human, are subject to limits on memory, attention, and consistency. Khan suggests that **standardized formats or tools** could help judges focus on what’s important and reduce variance[44][45]. For instance, he discusses how determining the material facts and issues is hard and sometimes “*impossible*” in real-time hearings[44], hinting that structured decision templates might ensure nothing critical is overlooked in the reasoning.

However, while the **diagnosis** is convincing (judicial decision-writing is indeed highly individualistic and error-prone), the **prescription** of standardization raises many questions that Chapter 1 does not fully answer. One major concern is the **normative trade-off**: standardization could risk treating all cases too similarly, potentially sacrificing the flexibility and tailoring that justice demands. Khan downplays this, asserting that standardization would *improve* impartiality and discretion rather than compromise them[46][39]. The logic is that if every judgment adheres to certain clear components (e.g. issue overview, facts, analysis, conclusion), judges’ discretion would operate within a consistent framework, making their decisions more comparable and their use of discretion more transparent. While this is plausible, it is largely *asserted* rather than demonstrated. Chapter 1 would benefit from comparative evidence here: do any jurisdictions already impose a standardized judgment structure, and what has the effect been? Khan does mention that some other countries have experimented with these ideas – for example, he notes that New Zealand “*provid[es] decision administration*” in a certain way, and that British courts invested in accessible data[47][48]. But he doesn’t directly cite a foreign court that, say, **mandates all judgments follow an IRAC (Issue-Rule-Analysis-Conclusion) format** or uses checklist-based reasoning. Perhaps because few (if any) have formally done so. Instead, he relies on analogies (New Zealand’s people-centered courts or the U.S. “six-month list” for delayed judgments[49][50]) to suggest that standardization and transparency work elsewhere. The **logical coherence** suffers slightly as a result: the chapter moves from diagnosing Canadian courts’ lack of standards to extolling broad benefits of standards, without an intermediate step of proving those benefits.

Another gap is the **empirical basis** for saying that current variability causes unfairness. Khan claims “*many litigants likely face a lottery*” in outcomes depending on who their judge is or where they are[7]. That is a serious allegation of systemic inconsistency. Yet Chapter 1 provides no data on outcome disparities or judge-to-judge variation. If Khan’s own research or existing studies found, for instance, significant differences in win rates or sentencing patterns between courts (something that could be shown with statistics), it would strongly support his point.

Instead, the chapter seems to rely on conjecture and anecdotal sense – which, while perhaps accurate, is not robust evidence. This is a spot where the author **insufficiently engages with Canadian case law and literature**. Canadian appellate courts have occasionally addressed concerns about inconsistent results (for example, in sentencing law or in class action certification standards). And academics have long discussed the “judge lottery” in contexts like refugee determinations or small claims. Citing such sources (e.g. studies on disparate grant rates among judges in immigration cases) would bolster Khan’s fairness argument with concrete examples[7]. The absence of such engagement makes Chapter 1’s fairness critique feel somewhat abstract and under-substantiated. It comes across as a broadside assertion – “*some litigants get better results simply because of who their judge is*”[51] – which many inside the system might instinctively contest unless shown evidence.

Comparative analysis: Chapter 1’s final part compares Canada with **New Zealand, the U.S., the U.K., and Australia** in terms of legal system innovation, data gathering, and design-thinking adoption[52][53]. This comparative perspective is extremely valuable – it prevents the discussion from being insular and shows that Canada *could* learn from elsewhere. Khan’s descriptions of these jurisdictions, though, sometimes veer into celebratory summaries and may **overstate the accuracy or generality** of foreign practices. For example, he writes that New Zealand “*codified its commitment to human-centered design in courts*”[54]. By this he refers to a legislative modernization initiative in NZ aimed at making courts more user-friendly, transparent and efficient[55]. It’s true that New Zealand’s legislation included explicit goals of a “*people-centered*” justice system[47]. However, one could question how much practical effect that has had. Khan provides positive anecdotes – NZ giving “*decision administration*” information (likely referring to publishing statistics on court timeliness or workloads)[56] and using a business intelligence tool for court data[57]. He contrasts this with Canada, noting no Canadian government or province has *codified* such a design-centric approach or offered comparable judicial data transparency[58]. This comparison is fair: Canada indeed lacks any statute remotely similar in ambition to NZ’s 2013–2017 reforms. Yet the analysis would be stronger if Khan also acknowledged context: *New Zealand is much smaller*, which he briefly does[59], and NZ’s unitary court administration may make reforms easier than Canada’s fragmented system. Without that caveat, readers might wonder if Khan is suggesting an apples-to-apples transplant of NZ practices to Canada, which could be overly simplistic.

In discussing the **United States**, Khan rightly highlights some areas where U.S. courts surpass Canada in openness: the **PACER** electronic records system, annual judicial statistics, and the famous federal “*six-month list*” that publicly flags judges with delayed decisions[60][50]. He notes that PACER “changed the face of empirical legal research” by giving scholars access to vast case data[61], and observes that no comparable system exists in Canada – indeed, most Canadian courts still lack publicly searchable dockets[62]. These factual points are accurate and underscore Canada’s *legal data deficit*. Similarly, the six-month list example is used effectively to show how U.S. transparency operates: judges with delayed rulings are listed, yet it’s not seen as an independence crisis there (federal judges have life tenure and are not penalized beyond potential reputational sting)[50]. Khan uses this to argue that more transparency about judges’ performance is feasible and not fatal to independence[63]. This is a compelling comparative insight. However, one must note that even in the U.S., PACER has been criticized (it’s historically paywalled and clunky), and the six-month list, while public, exerts only soft pressure. The **omission of such nuances** might be considered a downplaying of counter-

evidence. For instance, Khan celebrates that the U.S. is moving to democratize PACER access by making it free[64], but doesn't mention that it took decades of complaints and even litigation to get there – evidence that transparency reforms can be slow and contested even in a system arguably more open than Canada's. Including that would show that even in positive comparators, progress was neither easy nor instant, reinforcing the need for persistence and policy commitment.

Khan's treatment of the **U.K.** and **Australia** similarly cherry-picks innovation highlights. He notes the U.K.'s £1 billion investment in modernizing its legal system and making data more open[65]. This likely alludes to the ambitious HMCTS Reform Programme, which indeed had substantial funding to digitize courts and improve access. Yet, the critique here is that Khan mentions the price tag and objective (radical change, open data) but doesn't discuss outcomes or controversies. The U.K. program has been both praised for pushing online courts and criticized for delays and lack of user-friendly design in some areas. Chapter 1 could be more critical in its comparative analysis by acknowledging such mixed results. Similarly, Khan points out that *Australia's courts and judges have continually participated in academic research projects, including tracking how judges use their time*[66]. This is a useful observation – Australia has had initiatives like the Australasian Courthouse Workload studies and collaborative empirical projects. By comparison, Canadian judges have been more reticent to let outsiders study their work patterns. Khan's argument is that Canadian judges should emulate the Aussies' openness to being studied and improving via research. This is well taken. However, the description "*continually participated in numerous academic research projects*" might overstate how routine it is – those projects (like time studies) are still the exception rather than the rule even in Australia. A critical eye might ask: How many Australian courts actually did systematic time tracking? Was it mandated or voluntary? If Khan has sources, he doesn't detail them here. To avoid **comparative oversimplification**, he should ensure that he's not presenting the foreign examples as utopias but as sources of specific lessons. Indeed, later in the dissertation (Chapters 4 and 5) he does acknowledge that other countries have their own gaps and that Canada's larger size complicates things[58]. But in Chapter 1, the tone can sometimes verge on "*New Zealand good, Canada bad*". A more balanced critique would also mention, for example, that despite New Zealand's legislative mandate for user-centric courts, NZ still faces many A2J issues (as he hints, no system is perfect[56]). This nuance would actually strengthen his call by showing he's aware design is a journey, not a one-time fix.

What's missing or underemphasized in Chapter 1: There are a few areas that the critique must note as *omissions*. First, **Canadian legal academic literature** on these topics is not prominently featured. Chapter 1 would have benefited from citing Canadian scholars who have addressed judicial independence and systemic reform. For instance, Ian Greene and Peter McCormick have written about judicial administration and transparency; Benjamin Alarie and Andrew Green have empirically studied Supreme Court patterns; Roderick Macdonald and others have philosophized about designing legal institutions. These voices are largely absent. Khan's arguments sometimes come across as if no one in Canada has ever suggested similar ideas, which is not the case. Recognizing prior commentary (even if to say it didn't go far enough) would situate his work in continuity with Canadian debates rather than in a vacuum. Similarly, **case law beyond R.E.M. and Sheppard** could have been invoked to enrich the discussion. For example, the *Reference re Judiciary* (1997) established that administrative independence (control over court scheduling and assignments) is part of the s.11(d)

guarantee[67]. That case could be double-edged: it affirms judges' control over administration (which might include how they craft judgments or handle data), but one could argue it also implies courts have responsibility for those functions' integrity. Khan doesn't mention it, missing an opportunity to align his recommendations with constitutional jurisprudence.

Additionally, **institutional structures** like the Canadian Judicial Council's role in policy and existing initiatives are downplayed. For instance, the CJC has committees on court administration and has issued some guidelines (Khan notes a 2021 guideline on bulk data access[68], but only to criticize it as limiting access to a commercial monopoly). The **Action Committee on Access to Justice** (2013) or recent federal efforts (e.g. Justice Canada's Justice Data initiative) are not mentioned in Chapter 1. This gives the impression that absolutely nothing has been done, which may alienate insiders who have worked on those efforts. A more persuasive critique might concede that some steps have been taken (like the CJC's fledgling openness to data sharing, or Ontario's moves toward online dispute resolution in certain areas) but then explain why these are insufficient or piecemeal. Khan does something like this with the judicial education example – noting that the CJC *said* it would consider more transparency in training materials but delivered very little, prompting Parliament to act[69][70]. That is an excellent case study he includes: it shows a missed opportunity by the judiciary and how lack of proactive design led to an external mandate (Bill C-3). More such concrete case studies within Canada would greatly enhance Chapter 1. For example, he could have examined the **Ontario Court's experiment with metrics** (if any), or the push for unified family courts as a design improvement (which took decades). By not doing so, the chapter may strike some readers as glossing over the complexities of Canadian reform attempts.

Constructive suggestions for Chapter 1: To strengthen this foundational chapter, Khan should consider a few improvements:

- **Clarify terminology early:** Define “*deliberate design*” in operational terms and use a brief example (perhaps drawn from another sector, like how health care was redesigned with patient experience in mind, or how airline safety was improved by system design) as an analogy. Then tie it back to what a *designed* legal system might mean (e.g. user-friendly court processes, data-driven policy decisions). This would ground the abstract concept.
- **Cite Canadian sources on independence and access:** Engaging with notable Canadian writings (judicial speeches, law review articles) would show he's building on or challenging existing thought, not ignoring it. For example, if a retired Chief Justice has commented on the need for modernization, quoting that would lend weight. Conversely, acknowledging a scholar who warns against managerial judging would show he's weighed counterviews.
- **Provide empirical illustrations of inconsistency:** Even if his own survey data was limited, he could reference known stats like variability in self-represented litigant outcomes or regional delay differences (the *Jordan* case data) to evidence the “lottery” problem. Including a chart or statistic in Chapter 1 would make the fairness argument more concrete.

- **Balance comparative analysis:** When drawing lessons from abroad, include a sentence on the *limits* of each foreign example. For instance, note that U.S. federal transparency hasn't solved all problems (PACER is being improved due to user complaints), or that the U.K.'s billion-pound project faced implementation hurdles. This honesty would enhance credibility; it shows he's not blindly idolizing other systems but critically evaluating them. It also prepares the reader to think about how to adapt, not just adopt, foreign ideas.
- **Introduce design recommendations with context:** If standardizing judgments is a key recommendation, frame it as "*standardization where appropriate*" and perhaps suggest a pilot project (e.g. one court experimenting with a uniform judgment template and measuring user comprehension). Presenting it as a pilot or iterative design experiment would be consistent with his HCD ethos and less doctrinaire than implying every judge must immediately conform to a script.

By implementing these suggestions, Chapter 1 would maintain its provocative edge while improving its scholarly rigor and persuasiveness. The core message – that **systemic design flaws contribute to Canada's justice woes and that judicial independence properly understood is not opposed to reform** – is compelling. But it needs to be delivered with sharper clarity of concept and stronger support, lest it be dismissed as the overzealous plea of a reformer rather than the grounded analysis of a legal academic.

Chapter 2 – Addressing Courts' Concerns: Are Traditional Independence Arguments Justified?

Chapter 2 shifts from making the affirmative case for deliberate design to **anticipating and refuting potential objections** from the judiciary and others. Khan identifies eight specific concerns that courts *might* raise in opposition to increased transparency, standardization, and data-driven reforms, and he argues that none of these concerns ultimately justifies preserving the status quo^{[71][72]}. This chapter is essentially a defensive rebuttal, intended to show that the **"usual" arguments against innovation in the legal system are either overstated or solvable**. The structured approach – enumerating concerns one by one – is laudable for its clarity. It demonstrates that Khan has thought through counterarguments, which strengthens the logical coherence of his overall thesis. However, upon critical evaluation, some rebuttals in Chapter 2 come off as too cursory or dismissive, occasionally lacking the depth or evidence needed to fully allay the concerns raised. There is also an element of *talking past* the likely proponents of these concerns, as Khan sometimes downplays the values underlying them (like judicial discretion or the adversarial nature of law) in a way that a skeptic might not accept. Let us examine each of the main concerns and Khan's responses, assessing conceptual clarity, empirical robustness, and normative persuasiveness in turn.

1. Public Confidence and Transparency: The first concern Khan tackles is the fear that **greater transparency could weaken public confidence** in the justice system (perhaps by exposing every flaw or disparity). He flips it: transparency likely *wouldn't* weaken confidence – *it could increase it*^[73]. Khan argues that it's hard to see how openness erodes independence or confidence; on the contrary, since judicial independence exists for the public's benefit, more openness should enhance the public's trust^[74]. He even cites an American jurist's view that lack of transparency threatens independence^[16] and notes empirical hints that transparency can raise trust^[34]. Conceptually, this is consistent with Chapter 1's thesis: independence and confidence

go hand in hand with openness. **Normatively, Khan is on solid ground in principle** – in a democracy, secretive institutions often breed suspicion, whereas transparent ones can build legitimacy. But **is his rebuttal sufficient?** One might say it's a bit one-dimensional. He dismisses the concern without fully engaging with why someone might think transparency harms confidence. For instance, judges might worry that publishing raw data (like individual judge statistics) could be misinterpreted by the public or media, leading to misguided attacks that undermine respect for courts. Khan's rejoinder is essentially that *not* publishing data is worse, because it looks like hiding, and anyway independence isn't about protecting judges' image[16][75]. While this has merit, a constructive critique is that he could strengthen his argument by acknowledging the kernel of truth in the concern: yes, data can be misused or misunderstood (a point he later concedes in Chapter 4 regarding data weaponization in polarized debates[76]). Chapter 2 would be more convincing if Khan said: *"Some worry that revealing performance data (e.g. how many cases each judge clears) could momentarily dent public confidence if the numbers look unflattering. However, any such effect is likely temporary and outweighed by long-term gains in accountability. Moreover, public confidence should rest on reality, not appearances – if the data reveals problems, addressing them will ultimately increase confidence."* Such reasoning addresses the concern head-on, rather than just insisting it's specious. Empirically, one could also suggest piloting transparency to gather evidence: for example, did public confidence drop in jurisdictions that introduced judicial report cards or open statistics? If not, that's proof of concept. Khan doesn't cite specific studies (there are some U.S. state court surveys on public trust that could have been relevant). So his response, while logical, feels a bit *light on evidence*. It relies on a general faith that sunlight is the best disinfectant. Most readers inclined to agree with him won't mind, but those skeptical might remain unconvinced absent real-world data. In summary, Concern #1's rebuttal is conceptually coherent but could be **empirically underdeveloped**. It might have been improved by proposing transparency with explanatory context (ensuring data is released with public education to mitigate misinterpretation) – an important practical safeguard that Khan doesn't explicitly mention in this section.

2. Administration of Justice and Transparency: The second concern is that transparency might **compromise the administration of justice**, perhaps by disrupting proceedings or violating privacy/confidentiality in sensitive matters. Khan again asserts transparency *wouldn't* compromise administration – in fact, it could promote it[77]. This is a broad claim, as "administration of justice" can encompass many things: efficient case management, fair trials, privacy rights, etc. Khan's likely argument (from context) is that gathering and releasing more information about court operations would not impede judges from doing their jobs; rather, it could highlight inefficiencies to be fixed, thus improving administration. He might also be hinting that *deliberative secrecy* (judges' internal deliberations) and *judicial confidentiality* (e.g. private communications) need not be violated by general data transparency[78]. In Chapter 1 he pre-emptively argued that general data about courts (like caseloads, timelines) can be shared without breaching the confidentiality of specific case deliberations[78]. The conceptual clarity of Khan's position here is decent: he draws a line between revealing *aggregate or process data* and revealing *the content of judges' private deliberations*. The former, he says, is wholly consistent with justice administration and independence[78], and likely required for a well-administered system.

However, Chapter 2's treatment of this concern is quite brief, reflecting perhaps that it overlaps with Concern #1 and #3. It might not fully acknowledge, for example, the **privacy concerns** that come with transparency. An astute reader would wonder: what about information that *shouldn't* be public, like identities of vulnerable witnesses or sealed evidence? Khan likely assumes those obvious limits remain – he's talking about transparency in terms of data and standardized information, not breaching lawful confidentiality. But because he doesn't explicitly say "of course, confidentiality protections (for deliberations or personal information) would stay in place," critics could caricature his position as advocating total openness to the point of recklessness. To fortify his argument, Khan should explicitly state that **transparency reforms focus on non-identifying, process-oriented data and on results (reasoned decisions), not on judges' internal thought processes or sensitive personal data**. Indeed, one of his later recommendations (Rec #5 in Chapter 5) is that the CJC and courts must address privacy implications of data sharing – he clearly knows it's an issue. But in Chapter 2, that nuance isn't front and center. The result is a potential **normative gap**: he doesn't want to compromise the actual administration of justice (which includes fair trial rights and privacy), but by not addressing it, he might leave the concern incompletely answered. The empirical side is less relevant here (this is more a principled stance), though one could argue historically, courts have managed to increase transparency (publishing reasons, streaming hearings) without collapsing justice – examples he could mention. For instance, the Supreme Court of Canada broadcasts its hearings online; this transparency has not harmed its functioning, arguably it has educated the public. Including such examples as evidence would concretely show that transparency and effective administration can coexist or even reinforce each other. In short, Concern #2 is handled by assertion rather than demonstration. The chapter might improve by offering concrete *reassurances* – for example: "*Courts can release performance metrics without revealing any confidential case information, just as many government agencies report statistics while respecting privacy.*" This would directly confront the implicit fear of this concern.

3. Judicial Impartiality/Independence and Data: The third concern is that transparency or data collection might cause courts and judges to **lose their independence or compromise impartiality** – essentially, that external scrutiny or imposed standards could bias judges or erode their freedom to decide cases on their merits. Khan replies that this is unlikely; if anything, transparency could *increase* both independence and impartiality[79]. This reiterates the core argument from Chapter 1 but in the context of rebutting a defensive stance. Khan writes that the link between transparency and a loss of independence is "hard to see," especially since independence exists for citizens, not for judges' sake[16]. He even suggests that *courts have a constitutional obligation to be transparent*[80] (a strong claim we critiqued earlier). He further observes that in other domains, if a public institution tried to *reduce* transparency, there'd be backlash[81] – implying that courts are behind a societal trend. Conceptually, Khan is trying to normalize transparency as a compatible element of judicial independence, not an antagonist.

This portion of Chapter 2 is one of the more compelling ones in logic, because Khan doesn't merely say "it won't hurt" – he turns it into "it will help." He argues that in an age of open government and user-centric data, courts that remain opaque may actually invite greater interference or criticism, thereby endangering their independence[75]. This is a clever **coherence of argument**: it frames doing nothing as the riskier path for judicial independence. Indeed, he cites the example of **mandatory judicial education laws (Bill C-3)** as a byproduct of judicial opacity on training and decision reasons in sexual assault cases[69][70]. Because the judiciary

was slow to voluntarily share information and improve training, Parliament stepped in with legislation – arguably a hit to the judiciary’s autonomy[70]. This concrete example significantly strengthens his rebuttal. It shows that *lack* of openness can provoke exactly what judges fear: outside intervention that could be seen as compromising independence. By including this, Khan provides normative **evidence** that transparency is protective: had the judiciary transparently handled sexual assault case training and ensured reasons in all cases, the controversial legislation might have been unnecessary. This kind of example-based reasoning is what one wishes more of the chapter contained. It acknowledges the legitimacy of the concern (we don’t want to compromise impartiality or independence) but then demonstrates how ironically, resisting transparency might lead to greater compromise down the line (through politicization or public distrust).

One critique here might be that Khan paints with a broad brush about the “*trend*” toward openness in other branches of government[82]. He notes the federal government has open data portals and Charter statement requirements for bills as transparency measures[83], and provinces have open data portals (albeit with little on courts)[84]. This comparison is used to underline that courts are out of step. While largely true, we should note that governments and courts are not perfectly analogous: governments are policy-making bodies subject to democratic oversight, whereas courts have confidentiality (like deliberative secrecy) inherent to their adjudicative function. Khan presumably would retort that those core confidential elements (like jury deliberations or judicial conferences) can remain secret, but everything *else* (statistics, outcomes, processes) can be open. Still, there is a philosophical debate not fully addressed: *Should judges, as neutral arbiters, be subject to the same transparency expectations as political actors?* Khan assumes yes, to the extent it serves the public, but some might argue judges need a protected sphere to maintain impartiality (free from public or political pressures). Chapter 2 doesn’t delve into that deeper tension, focusing instead on the practical argument that transparency hasn’t harmed U.S./U.K./NZ judiciaries’ independence[85]. This is somewhat persuasive but would be stronger if backed by, say, testimony from those judiciaries acknowledging transparency’s benefits. Perhaps quoting a Chief Justice from another country who endorses open data would drive the point home. Nonetheless, Khan’s stance in Concern #3 is normatively well-founded: independence is a means to an end (public trust and rule of law), not an end in itself, so anything that furthers that end (like openness) is arguably required.

From a **constructive perspective**, to better convince skeptics, Khan could propose safeguards: for instance, if judges fear that publishing data might invite litigants to tailor their behavior or forum-shop (a possible impartiality issue), then any data release can be time-lagged or aggregated to mitigate immediate strategic use. The chapter doesn’t mention such tactical solutions, but they could be part of a compromise approach – showing reforms need not be all-or-nothing. Overall, Concern #3 is addressed with a principled counterargument enriched by a strong Canadian example (Bill C-3) illustrating the unintended consequences of non-transparency. It reflects Khan’s logical consistency but could be refined with more acknowledgment of the inherent tension judges feel (he tends to flatly deny any real tension exists, which some might find too blithe).

4. Politicization and Personalization: The fourth concern is that **increased transparency (especially via data) could lead to the justice process being politicized or judges being singled out (personalized) for criticism**. This is a real worry: if detailed statistics on each judge

are public, will special-interest groups weaponize that information to pressure judges or label them “lenient” or “harsh”? Could standardization or data make the judiciary seem like political actors subject to public campaigns? Khan acknowledges the concern but argues that standardization itself is an antidote[86]. The idea is that if decision-making is more uniform and based on agreed standards, there is less room to attack individual judges – any critique would be of the system as a whole rather than idiosyncrasies. This argument has some merit: one reason judges fear personalization is because without standards, any one judge might stick out (for example, Judge X writes extremely short decisions, or Judge Y’s sentencing average is higher). If everyone adheres to common practices, individual variations narrow, making outlier-based attacks less likely or at least less justified. However, one could counter-argue that even with standards, some judges will have different outcomes by virtue of case mix or philosophy, and political actors could still seize on data (think of U.S. judicial elections where even standardized metrics become campaign fodder).

Khan’s response here feels **a bit brief and optimistic**. He essentially says: politicization stems from inconsistency and opacity; fix those and you inoculate the system. While consistency can indeed depersonalize criticism, the chapter doesn’t thoroughly address how to prevent, say, media from constructing league tables of judges once data is out – a scenario that might worry the bench. A deeper engagement would admit this possibility but then argue why it’s not as dangerous as it sounds. For example, Khan could suggest that *if* the public and media are given proper context for the data (e.g. average ranges, explanations for anomalies), the risk of unfair vilification diminishes. Also, if the judiciary proactively **collaborates** in presenting the data (explaining what it means and doesn’t mean), they can shape the narrative rather than be victim to it. Perhaps this is what he implies by collaboration, but it’s not explicit in Concern #4’s brief treatment. As for **personalization**, standardization might reduce the phenomenon of “maverick judge” stories, but it won’t eliminate personalities from the equation. Even in highly standardized systems (like some civil law judiciaries with formulaic judgments), certain judges gain reputations. So this concern isn’t fully put to rest by the simple assertion given.

It’s worth noting Khan’s own comparative evidence that counters the fear of politicization: he mentions that in Florida’s massive data transparency project, the judiciary did *not* oppose it on independence grounds[87][88], and in New Jersey’s bail reform, judges actually led the data-driven changes in partnership with political branches[89]. These examples show that openness didn’t inevitably politicize the judiciary; in fact, judges maintained or enhanced their credibility by being part of the solution. Including a reference to those here would strengthen his rebuttal: *“In jurisdictions that embraced transparency, judges were not dragged into partisan brawls – on the contrary, cooperation across branches produced results like lower crime and faster trials (as New Jersey saw)[89], which can depoliticize an issue by addressing it.”* This flips the script: success from transparency can take an issue off the political table (because it’s solved or mitigated), whereas opacity leaves it festering as a political talking point.

Normatively, Concern #4’s answer aligns with Khan’s general confidence in design: standardization is portrayed as a shield for judges, not a leash. But to truly persuade the judicial audience, more reassurance might be needed. A suggestion to improve this section is to incorporate **oversight mechanisms** that accompany transparency. For instance, if granular judge-level data is released, one could form a neutral body (perhaps under the CJC) to analyze and contextualize it, so it’s not just raw fodder for sensationalism. This way, judges don’t feel

hung out to dry individually. Khan doesn't mention such mechanisms here, though his Recommendation #7 in Chapter 5 (judges auditing their own decision-making with data) hints at an internal approach to using data constructively rather than punitively[90][91]. Tying that idea back into rebutting politicization would help: if judges themselves are reviewing data to improve, then data isn't a weapon against them but a tool for self-regulation. Chapter 2 doesn't explicitly make that connection, leaving a bit of a **methodological gap** between identifying the concern and offering a concrete solution beyond "just standardize."

5. Increased Complaints: The fifth concern is the fear that transparency or standardization could lead to **more complaints against judges** – for example, if more performance data is out, litigants might file complaints whenever a judge appears to deviate from norms or has poor stats. Khan's rebuttal is that this argument is speculative and not a convincing reason to avoid reform[92]. He basically downplays it: even if complaints did rise, it doesn't necessarily mean anything substantive is wrong; and if transparency reveals valid issues, then complaints might be merited (implying that avoiding complaints by hiding information is not a legitimate strategy). This is one of the shorter sections, suggesting Khan finds it a relatively weak objection. On one hand, he's right that **fear of criticism is not, in principle, a good excuse to shirk accountability**. A public institution should not suppress information simply to avoid dealing with grievances. On the other hand, the chapter misses an opportunity to discuss how to handle an uptick in complaints constructively. If judges worry about being flooded with unfounded complaints, perhaps the answer is *to reform the complaint process* – making it more transparent too, and ensuring frivolous complaints are dismissed but real issues identified. Khan doesn't delve into this, which is a slight oversight given the topic's importance to judges (they are understandably sensitive to anything that could affect their reputation or career, and an increase in complaints could be stressful even if none succeed).

Empirically, is it likely that complaints would rise with more transparency? Possibly yes initially, as patterns become visible. But one could argue, and Khan should, that over time transparency *prevents* serious problems that generate complaints. For example, if data shows a judge struggling with timeliness, the court can quietly assist or the judge can adjust, *before* parties feel the need to complain. Thus, transparency could actually reduce the need for complaints by prompting earlier self-correction – a point consistent with Khan's design philosophy but not explicitly stated. Normatively, Khan is correct that speculation about possible increase in complaints is a flimsy basis to deny the public information about their courts. He might have bolstered this by noting that **existing complaint bodies (like provincial judicial councils)** rarely remove judges except in egregious cases, and an increase in complaints doesn't equate to a crisis – it might just be part of accountability. A constructive addition here: suggest improvements to the complaint system alongside transparency – e.g., publish anonymized complaint statistics to show trends, which builds trust that complaints are taken seriously. If Khan's aim is a comprehensive redesign, factoring in judicial conduct oversight is relevant. Chapter 2 doesn't mention it, which could be seen as a slight gap in systemic thinking (he focuses on data and decisions, but the complaint mechanism is a key part of the system's feedback loop).

6. Cognitive Bias and Standardization: The sixth concern is that standardizing judgments or processes might **perpetuate or exacerbate cognitive biases** or heuristics. Perhaps the worry is that a one-size-fits-all template could lock in a particular way of thinking, or that judges might

rely too mechanically on standardized checklists and miss nuance, thus reinforcing biases. Khan responds that even if standardization did introduce or highlight some cognitive bias, those effects would be *observable and amenable to redesign*[93]. In other words, **design is iterative** – if a standardized approach yields a new problem, it can be tweaked. This is a very *design-thinking* answer: treat reforms as prototypes that can be continuously improved. Conceptually, it's strong because it shows Khan is not claiming infallibility for his proposals, only that they can be tested and adjusted, which is the essence of human-centered design. It addresses the concern by saying: biases might surface, but at least we'll see them clearly in the data; currently, biases might be hidden in inconsistent narratives and not systematically caught. Indeed, he argues earlier that an antiquated understanding of error prevails and we blame individual "bad apple" judges rather than systemic conditions[40]. Standardization plus data could enable us to spot patterns of bias (e.g., if across many cases a certain irrelevancy is affecting outcomes) and then correct it via training or further design changes.

However, one might critique that Chapter 2 (and the dissertation generally) doesn't cite much actual **cognitive psychology research** to support the claim that standardized formats reduce error. Khan includes a figure of "175 Cognitive Biases" in Chapter 1[94] – likely to illustrate how many pitfalls exist in human decision-making. But he doesn't, for instance, reference specific studies on judicial bias or how structured decision guidelines have or haven't worked. In fields like medicine, checklists reduced errors (famously in surgeries). Khan could draw that parallel: surgeons use checklists to avoid bias (like confirmation bias or omission bias), and judges could too (e.g., a checklist to ensure they addressed all elements of a legal test). That evidence from other domains would reinforce his rebuttal that standardization helps mitigate bias rather than entrench it. The chapter doesn't give those concrete analogies, presumably for brevity, but their absence is felt when trying to persuade a skeptical audience. A judge concerned that a template might pigeonhole their reasoning could be shown how, for example, an airplane pilot's standardized protocols actually prevent oversight that might stem from bias or distraction.

Nonetheless, Khan's answer here is sensible: any **unintended negative effects of reforms can themselves be measured and fixed**. This exhibits the humility he preaches – acknowledging that not every design will be perfect, but committing to iterate. It would be constructive for him to propose explicitly how to monitor for such effects. Perhaps he imagines the surveys and data collection efforts he advocates would reveal if bias persists or new biases emerge. If so, stating that "with better data, we can continually audit the system for bias and adjust our designs" would close the loop explicitly.

7. Stagnating the Common Law: The seventh concern posits that standardizing and formalizing judgments might **stagnate the development of the common law**. Critics might argue that if judges must all follow a strict formula or if innovation in reasoning style is curtailed, the organic growth of legal principles could slow – creativity and evolution might be stifled by homogeneity. Khan counters that standardization likely *wouldn't* stagnate the common law; it could even lead to more progressive and transparent development[95]. His rationale is likely that with standardized presentation and comprehensive data, it will be easier to see where the law stands and identify areas for reform. Far from homogenizing thought, it could democratize it by making legal trends clearer. Also, if all decisions are reasoned and accessible (one of his big points), the *substance* of the common law – the reasoning and rules – becomes more visible to everyone, which can spark debate and refinement. It's possible he suggests that standardization applies to

format, not outcome, so judges would still be free to innovate in legal analysis, but just present it in a clearer structure. If that's his stance, it should be clarified: nothing in his plan stops a judge from creating a new precedent or developing the law; it merely asks that they explain it clearly and maybe with certain consistent sections.

However, a potential normative issue: if standardization were taken too far (say, AI-assisted templates that fill in boilerplate), could that make judges lean too much on formula and reduce the imaginative reasoning that sometimes creates new law? Khan would probably answer that creative legal reasoning and clarity are not mutually exclusive. In fact, requiring judges to articulate reasoning in a standardized way might expose when they are just relying on rote formulas and *force* more creative thinking where needed. Also, stagnation of common law could equally result from the current system if poor access to judgments means fewer people engage with them; open data could involve more stakeholders (academics, public interest groups) in legal development, potentially *accelerating* evolution where needed. Khan hints at this synergy by referencing how data-driven reforms in the U.S. led to insights that transformed practices (like New Jersey's bail reform)[\[89\]](#). Transparent data illuminated injustice (unnecessary detention), which catalyzed law reform. That is a progressive development of the legal system spurred by openness. If courts similarly tracked outcomes, they might refine doctrines that cause delays or unequal results. Chapter 2 should connect these dots to decisively rebut the stagnation concern. Without explicit examples, the rebuttal is a bit flat – an assertion that it *could* lead to more progressive development, without explaining the mechanism. For a reader loyal to the mystique of the common law's incremental growth, this may not suffice. They might fear that standard templates become ossified and discourage novel argument structures.

To alleviate that, Khan could incorporate a suggestion: *standardization should be periodically reviewed and updated*. If common law practices change or if feedback indicates a template is too constraining, it can be revised by consensus of the judiciary. This mirrors his iterative design philosophy, but applying it specifically to legal doctrine evolution. The chapter doesn't go into that detail, presumably due to space, but it's an important assurance to give. Standardization is not about freezing the law, it's about **making the current law more comprehensible** and its development more trackable. If Khan emphasized that standardization refers mainly to *form* (*structure, accessibility*) and not *substance* (*judgment or choice of precedent*), it would clarify the conceptual misunderstanding behind the stagnation concern.

8. Judicial Discretion: The eighth concern is that standardization might **compromise judicial discretion**, i.e. limit judges' ability to tailor decisions to the unique facts of each case or to exercise judgment in sentencing, etc. Khan argues the opposite: standardization *wouldn't* compromise discretion – it could improve it[\[96\]](#). His reasoning is likely that by providing judges with better tools, information, and consistent frameworks, they can apply their discretion more consistently and transparently. Discretion is not eliminated; rather, it's guided by data and best practices so that one judge's discretionary decision can be understood in context of others. This might actually **enhance fairness**, as similarly situated cases would be handled more similarly, which is a key aspect of sound discretion. Khan might also be implying that some things judges treat as discretionary (like whether to give detailed reasons or not) should not be discretionary at all but standardized requirements – thereby freeing up judges' true discretion for where it matters (the outcome of the case, not whether to explain the outcome).

While this argument aligns with his theme, it might not convince a judge who equates discretion with judicial freedom and individuality. The judge might say: “If I have to follow a template for decision-writing, I’ve lost discretion in how I communicate my reasoning.” Khan would respond that such discretion in form is not the kind of discretion that warrants protection; only discretion in decision *content* does. That’s a subtle point that Chapter 2 doesn’t articulate outright. It should differentiate **substantive discretion** (which remains intact – judges still decide based on law and facts) from **procedural or stylistic discretion** (which standardization might curb for the sake of clarity and consistency). Once framed that way, it’s easier to agree that limiting the latter is not a threat to judicial role, but a help.

Furthermore, if by discretion one also means choices like how to manage a trial or whether to accommodate a self-represented litigant in a certain way, standardization could provide guidelines without robbing a judge of flexibility in an individual case. Khan may argue that data and design will identify best practices that most judges would voluntarily adopt, effectively improving the exercise of discretion. But if a case genuinely calls for deviation, nothing prevents a judge from doing so – they would just ideally record why, contributing that knowledge back to the system. This positive feedback loop of discretion-plus-data is not spelled out in the text, but is consistent with his approach.

In sum, Concern #8 is handled by asserting compatibility between reform and discretion. Here again, examples could help: perhaps mention a jurisdiction where guidelines exist (like sentencing guidelines in England, which standardize certain aspects yet judges still have leeway). Those guidelines actually improved consistency without stripping judges of all freedom – a real-world parallel that would bolster Khan’s claim. Without such examples, his response might seem a bit abstract to someone fiercely protective of judicial freedom.

General evaluation of Chapter 2: This chapter’s strength lies in its structured **logical coherence** – it systematically goes through potential negatives and responds, which is the hallmark of a thorough policy argument. It shows Khan’s awareness that reforms face cultural and doctrinal resistance. It also reinforces his overarching normative stance: none of the traditional shibboleths (independence, discretion, etc.) are inherently at odds with modernization. The weakness is that some rebuttals rely on quick assurances or role-reversal arguments (“it’ll actually be better”) without always providing tangible proof. The chapter might have benefited from deeper engagement with **why these concerns hold intuitive appeal** to the legal community. By not fully crediting the legitimacy of, say, fear of politicization or overbearing uniformity, Khan can come across as a bit dismissive – the very thing he accuses others of being toward change.

To make Chapter 2 more convincing and balanced, Khan could incorporate more **Canadian context** where these concerns have arisen. For instance, reference any statements by Canadian judges or the CJC raising these issues (if available). If none exist publicly, even hypothetical scenarios could be fleshed out. Sometimes he hints (e.g., “*similar performance evaluation programs in Canada received strong opposition*”^[97] referring to Utah vs. Canadian reaction), but providing detail – what program, when, who objected – would educate the reader on the reality of resistance. Similarly, acknowledging any *failed reform attempts* due to these concerns (for example, perhaps a past proposal for a judicial monitoring system that got shelved due to independence worries) would show he has learned from history, not just theoretically rebutted it.

Another improvement would be to propose **mitigating strategies for each concern** as I've indicated: such as oversight committees for data (to prevent misuse), phased implementation (to gauge impact on common law), and clear communication plans (to ensure transparency increases understanding, not confusion). Khan's chapter implicitly assumes all will go well; adding these concrete strategies would display the *empirical robustness* of his approach – that he's not ignoring the practical management of change.

Overall, Chapter 2 effectively conveys that **no single objection provides a knock-down argument against deliberate design reforms**. Khan's optimism that every challenge can be met with a thoughtful solution comes through strongly. However, skeptics might perceive a bit of a *straw-man effect* in that the concerns are stated but not given full weight before being batted away. A truly heavy-handed critique might say Khan under-engages with the genuine values underlying these concerns (like the importance of individual judicial voice or the complexity of public perception). Yet, given the dissertation's purpose to advocate change, Chapter 2's tone is perhaps appropriately confident. Constructively, to ground that confidence, Khan should integrate more evidence from comparative experiences or small-scale tests (if any exist) to show that courts can embrace these reforms without disaster. This would not only rebut the fears but also reassure reform-minded readers that these ideas have precedent or at least plausibility in reality.

In conclusion, Chapter 2 serves as a necessary counterweight to Chapter 1: after rallying for reform, Khan proves he can answer the hard questions about independence, impartiality, and the integrity of the legal process. While some answers could be fleshed out with greater empirical and doctrinal support, the chapter's message is clear and largely persuasive: **the perceived risks of innovation are either unfounded or manageable, and clinging to those concerns is more dangerous to justice in the long run**[\[75\]](#)[\[70\]](#).

Chapter 3 – Empirical Insights and the 2023 “Users of Judgments” Survey

Chapter 3 transitions from theory and principle to **empirical research**, as Khan presents the results of his original 2023 Survey (with references back to a 2019 Survey) aimed at understanding the experiences and views of those who use judicial decisions[\[98\]](#). This chapter is where Khan attempts to **practice what he preaches** about human-centered design: by actually gathering data from “users” – judges, lawyers, litigants, journalists, etc. – he seeks to uncover pain points and validate (or refine) the claims made in earlier chapters. The endeavor is commendable in scope: he surveyed *12 groups* of stakeholders, including judges themselves[\[98\]](#). However, as the chapter title candidly admits, the research met with **limitations** – he “kind of failed to learn what I set out to learn, but ... learned some important things”[\[99\]](#). This honest admission sets a tone of empirical humility. A critical analysis of Chapter 3 will examine the conceptual clarity of his research design, the robustness of his data and analysis, the coherence with his thesis, and whether his interpretations and conclusions are justified. We'll also consider what is missing or could be improved, especially given his interdisciplinary aspirations.

Research design and methodology: Khan devotes Part I of Chapter 3 to outlining the survey method – describing the dataset, methodological limits, goals, sampling, and so on[\[100\]](#)[\[101\]](#). From the outline, we know he separated respondents into Group A (judges) and Group B (11

other categories of users)[102]. He took care to do **pretesting, consultation, deploying surveys** thoughtfully[103], which is good practice. Despite these efforts, one glaring issue is **sample representativeness and size**. Khan invited 51 retired judges and got 14 responses (27%)[104], and it appears active judges were not broadly reachable (likely due to institutional barriers). Other groups' participation rates aren't given in the snippet, but one can infer they were limited; otherwise, he wouldn't say he "still know[s] very little" at the end[105]. The chapter identifies that generating the desired user experience insights was "*very difficult and time consuming*", especially as an external researcher[106]. This points to a **methodological gap** in Canada: there is no easy pipeline for researchers to survey court users, particularly judges. Khan's struggle itself becomes evidence of the system's data deficit and insularity, reinforcing his earlier arguments (in a somewhat ironic but illuminating way).

Critically, the **empirical robustness** of the survey findings is limited by these constraints. Small, non-random samples mean any quantitative results can only be interpreted as exploratory. Khan seems to acknowledge this by not overclaiming what he "learned" – indeed, he emphasizes modest conclusions. For example, he notes "*judges are willing to share their experience if asked*" (pointing to the 27% retired judge response as a positive sign)[107], and observes that some expansive views from 2019 persisted or worsened by 2023[108]. But he doesn't generalize beyond his sample, which is methodologically sound. He is transparent that he "*still know[s] very little*" about users' experience[105], implying that the survey raised almost as many questions as it answered. From a critique standpoint, this frankness is good scholarly practice, but it also reveals a **gap between ambition and execution** in his research. He set out to gather extensive user data (which few have attempted in Canada), but due to systemic barriers (judicial reluctance, difficulty reaching participants, etc.), the data yielded was thin. This underscores one of his dissertation's key normative claims: the legal system needs to be *redesigned to facilitate exactly this kind of empirical learning*. In that sense, the partial failure of the survey strongly supports his thesis about the *legal data deficit*. It's almost a live demonstration of the problem – a meta-level insight that Chapter 3 could highlight more explicitly.

Key findings: Despite limitations, Khan extracts **five main conclusions** from the 2023 Survey[106][109]. Let's evaluate each:

1. **Difficulty of user experience research:** "*Generating the kind of user experience insights needed... is very difficult and time consuming (at least for an external participant).*"[106]. This is more a process finding than a substantive one, but it is important. Conceptually, it highlights a design flaw: if an independent researcher finds it onerous to gather feedback from judges or court users, that implies the system lacks channels for feedback. This aligns with Khan's idea that Canada is still at *phase 1* of design (empathize with users)[3]. Empirically, this conclusion is well-founded – the evidence is the author's own arduous experience and low response rates. Logically, it reinforces his argument for making such research an *internal* feature of the system (e.g., courts or the CJC proactively surveying stakeholders)[110][111]. A critique might be that this "finding" is somewhat self-referential (it's about his difficulty doing research, not about the users per se). But it's valid to include, as it justifies many of his recommendations about collaboration and data collection infrastructure.
2. **Courts' expansive views haven't shifted:** "*Courts haven't shifted from the expansive views from the 2019 Survey. If anything, courts demonstrated more expansive views*

about judicial independence, deliberative secrecy, and judicial confidentiality.”[108]. This is a critical insight that directly feeds Chapter 1 and 2’s premises. It suggests that between 2019 and 2023, the judicial establishment perhaps became even more entrenched in conservative positions about independence (maybe as a reaction to external pressures like Bill C-3 or simply inertia). The conceptual clarity here hinges on what “expansive views” means: presumably, it means courts maintain that their independence and confidentiality interests are very broad, resisting calls for transparency or external input. Khan is essentially evidencing the mindset that he’s arguing needs to change. However, what is the empirical basis? Possibly the survey asked judges or courts about things like willingness to share data or views on independence boundaries, and the answers indicated a strong status-quo preference. But given he had few judge respondents, how can he generalize about “courts” at large? It’s likely he’s triangulating: combining his survey results (however limited) with observations of actual court behavior between 2019 and 2023 (e.g. maybe noticing that no court implemented changes or that some issued statements doubling down on confidentiality). He may also be referencing that in 2023, fewer courts cooperated with his survey than in 2019 (which itself says something – maybe in 2019 he had some judicial participation via the “Life of a Reserve” project and by 2023, even that waned). The chapter might not detail this, but a critique is the evidence for “more expansive views” is not clearly presented beyond his impression. It would bolster his argument if he cited, for instance, a 2020s policy or speech from a Chief Justice emphasizing traditional independence. Without that, readers have to trust his characterization. Nonetheless, given his access to at least some judges’ responses, we can accept this as a plausible directional finding. Normatively, it’s a bit disheartening, but it justifies why his recommendations need to be bold – the courts themselves aren’t moving much. A constructive comment might be that Khan could have included verbatim snippets (anonymized) of judges’ survey comments that illustrate this “expansive view” mentality, to give a flavor of the resistance. That would have added qualitative depth and credibility to this conclusion.

3. **Harder now to generate data about judges, but judges will share if asked:**
“Generating data about judges is perhaps harder now than historically. That said, the 2023 Survey echoes previous surveys: if asked, judges are willing to share their experience and views.”[107]. Here Khan captures a paradox: institutionally it’s hard to get info, but individually judges aren’t averse to talking – at least some aren’t. The evidence is presumably the retired judge response rate and maybe candid answers he did receive. Conceptually, this suggests the barrier is more structural/cultural than personal. Judges likely fear or are prohibited (by council guidelines) from formally participating in research without permission, but once beyond that (e.g. retired or given assurance of anonymity), a good number are cooperative. This finding supports one of his arguments for **more collaboration and a less cloistered judicial culture**. It implies that if the CJC or courts themselves sanctioned and organized feedback mechanisms, many judges would contribute constructively. Empirically, though, the sample of judges (mostly retired) who responded is small, so one must be cautious not to romanticize – those who answered may be the more reform-minded subset. Khan acknowledges all he can say is “if asked, some judges will answer”. That’s valuable, if unsurprising (judges are people too, often eager to discuss their work if it’s safe to do so). The suggestion underlying this is to **institutionalize the asking** – something he indeed recommends by suggesting, for

example, that maybe the CJC or judicial associations could conduct such surveys regularly[110][112]. As a critique, one might say Khan could have tried harder to get active judges (maybe through bar associations or indirect means). But given formal barriers, it's understandable. Perhaps engaging the Canadian Judicial Council early for buy-in would be ideal, though as a lone PhD student that might not have been feasible. This limitation itself is telling of the **institutional structure** – it wasn't supportive of research. For future, a constructive note is that Khan should disseminate these findings to judicial stakeholders, as hearing that judges *are* willing in principle could encourage those bodies to approve more research access.

4. **Universal design for decisions might be impossible or naïve:** *“Universal design for decisions might be impossible or naïve – e.g., some lawyers, individuals, organizations prefer the historic traditional approach to decision-writing while others prefer the modern issue-driven approach.”*[113]. This is a very significant concession. It shows Khan confronted feedback that not all users agree on the “best” style or format for judgments. Some still like the old-fashioned narrative or fact-driven reasons; others like concise, issue-focused ones. This finding injects **nuance** into his push for standardization: perhaps a single standard won't satisfy everyone, and imposing one could alienate some users. It's evidence of a potential *design trade-off* – one size may not fit all. Conceptually, this aligns with user-centered design's emphasis on iterative testing: you may find divergent user preferences, requiring either a compromise or multiple solutions (e.g., maybe providing both a brief summary and a full traditional narrative to please both camps). Khan's recognition of this in Chapter 3 is commendable intellectual honesty. It guards against the impression that he's an uncompromising evangelist of a particular format. Instead, he openly states maybe a “universal” solution is “naïve.” That indicates he sees the need for **flexibility and further research**.

However, the chapter likely doesn't fully explore how to resolve this tension – that's left for Chapter 5's recommendations or future work. A critique could be that he might have segmented his design proposal: perhaps trial courts and appellate courts need different standards (since appeal judges often prefer issue-driven, trial judges fact-driven, as he hints)[114]. Or maybe differentiate by audience: what academics prefer vs litigants vs judges might vary. If his data showed, say, self-represented litigants want plainer, shorter decisions, while lawyers enjoy lengthy doctrinal expositions, that's crucial to mention. It appears he did segment by group in Part II (surveys of lawyers, academics, litigants, etc. separately)[115][116], which is good design. Summarizing each group's key feedback in the narrative would improve conceptual clarity – e.g., “Many lawyers in our survey expressed comfort with lengthy decisions (perhaps seeing them as comprehensive), whereas journalists and self-represented litigants found them impenetrable.” That level of detail would vividly illustrate the point about differing preferences. If the chapter did that, it would strengthen the critique by pointing to where the arguments in earlier chapters might need tailoring. If it didn't, that's a missed opportunity to use the rich qualitative data that presumably came from open-ended survey questions. Nonetheless, the conclusion drawn – that a singular approach might not please everyone – is an important tempering of his recommendations. It suggests **co-design** with users is needed: maybe convene different users to hammer out what essential elements in decisions are non-negotiable versus what could be flexible.

1. **Users are not getting a useful experience: decisions are too long, slow, complex; court systems opaque.** *“Surveyed respondents – across multiple groups and jurisdictions – likely are not getting a useful user experience in Canada’s courts, including decisions frequently too long, slow, and complex and opaque court systems.”*^[117]. This is a powerful, if somewhat unsurprising, finding. It essentially confirms the “justice crisis” effects from a user perspective: people find the system hard to navigate and its outputs (judgments) hard to digest. The strength here is that it’s drawn from voices of actual users, not just academic lament. Khan can now cite evidence that, for example, **litigants feel decisions take too long or are unintelligible**. This backs his Chapter 1 claims that the system fails basic fairness and comprehension. The conceptual clarity is fine – it lists the issues: length, delay, complexity, opacity. These align with well-known A2J problems (e.g. delay was highlighted in *Jordan*, complexity is a barrier for self-represented litigants, etc.). Empirically, one would want to know how he measured these perceptions. Possibly through scaled questions (e.g., “do you find written judgments easy to understand?”) or open-ended responses. If the chapter provided some stats like “X% of non-lawyer respondents reported difficulty understanding judgments,” that would add weight. But even without precise percentages, the general trend across groups is telling and consistent with broader literature (for instance, studies by N. Soares or others on readability of judgments often show they are beyond the reading level of average citizens).

From a normative standpoint, this finding underscores *why* deliberate design is needed: the current user experience is poor. It justifies his recommendations for clearer writing, shorter decisions (Rec #8)^[118], and for data to track timeliness (Rec #7)^[90]. It also touches on **access to justice**, as complexity and slowness are primary reasons many people give up or feel unfairly treated. The comparative aspect (“across multiple jurisdictions” means he had respondents from outside Canada too?) suggests Canada isn’t unique, but likely worse since he implies Canada lacks what others have. It would be interesting if his survey included some foreign participants (maybe through academic contacts), which could show if Canadians rated their system’s clarity lower than, say, New Zealanders rate theirs. The phrase “across multiple groups and jurisdictions”^[117] hints he might have some international respondents or at least responses from different Canadian jurisdictions. If international, that could provide comparative perspective: e.g., maybe UK respondents also say judgments are complex, but their system is becoming more open (which might moderate the complaint). The chapter likely doesn’t deeply analyze differences by country due to small samples, but noting it suggests Canada is not alone in these challenges, although his argument is Canada is behind in solving them.

Alignment with thesis and previous chapters: Chapter 3’s findings generally support Khan’s overarching thesis, but also **inject realism and complexity** into it. For instance:

- The persistence of judicial insularity (finding #2) justifies his call for a cultural shift (Ch. 1 & 2 arguments).
- The difficulty of researching user experience (finding #1) validates his portrayal of a data deficit (Ch. 1 & 4).
- The varied preferences on judgment style (finding #4) complicates the push for a single standard (touching on Ch. 1’s standardization advocacy), implying perhaps a need for a

balanced or dual approach. This might influence how recommendations are framed (maybe encouraging experimentation rather than one mandate).

- The confirmation that users find the status quo problematic (finding #5) bolsters the normative urgency of his entire project (Ch. 1's emphasis on fairness, Ch. 4's call for data to measure and address issues).

In terms of **logical coherence** within the dissertation, Chapter 3 functions as a reality check: it transitions from the conceptual "ought" to the actual "is" (even if through a limited lens). It ensures the reader that Khan did not simply assume what users need – he attempted to gather evidence. This is crucial for a human-centered design approach: empathize and define the problem based on user input, not just top-down assumption. The fact that he encountered mixed feedback on what the "best" judgment format is, shows he's letting user input complicate his solution, which is exactly what a responsible design researcher should do. It lends credibility to his later recommendations if he adapts them to account for this (e.g., recommending iterative testing of new decision formats with users rather than imposing one by fiat). If his recommendations ignore that finding and push a uniform approach anyway, that would be a disjoint and open to critique. But I suspect he uses softer language like "consider how transparent standardization could improve..."^[119] rather than "impose one standard now" – which aligns with the caution he gleaned.

What's missing or could be improved in Chapter 3: One noticeable absence might be direct quotes or richer qualitative insights from the survey. A chapter that just lists broad conclusions might feel thin; including some voices of participants could humanize the issues. For example, if a self-represented litigant wrote "the judgment I received was 30 pages of legal jargon – I couldn't find the outcome easily," quoting that (anonymously) would vividly illustrate the problem of complexity. Or a judge respondent might have said "we cannot allow external access to our deliberations due to independence," exemplifying the expansive view. Without these, the chapter may feel like it's filtering a lot of raw data into a few abstracted points, potentially losing richness.

Additionally, while Khan notes methodological limits, the critique could mention the risk of **response bias**: those who responded (especially among users) might be disproportionately those frustrated or, conversely, those keen to voice suggestions. If many did not respond, maybe they are apathetic or have other views. Khan's cautious phrasing ("likely not getting a great experience"^[117]) shows he isn't over-generalizing, but still, one must be careful. A constructive improvement is that future research should build on this – perhaps now armed with this initial study, one could convince institutional players to collaborate on a larger, more representative survey (he hints at that with suggestions that CJC or ministries do such surveys routinely^[120]). So Chapter 3 could propose an iterative next step: using these findings as hypotheses to be tested on a bigger scale.

Constructive suggestions for Chapter 3:

- **Deeper analysis by user group:** Present, if possible, a brief section for each major stakeholder group surveyed, summarizing their unique issues. E.g., "Judges (14 responses): Expressed X, Y, Z concerns (maybe heavy workload, need for better tools). Lawyers (N responses): noted inconsistency between courts, difficulty advising clients due to unpredictable judgment timelines. Litigants: complained of jargon and delay," etc.

This segmentation would ensure all perspectives are heard and provide actionable insights targeted to each (like where should improvement focus first? Possibly the largest gaps).

- **Acknowledge bias and limitations openly:** Which he does, but ensure it's in the narrative that we can't treat these findings as statistically representative. This manages expectations about how much weight to give them. Khan does a decent job by phrasing in cautious terms ("likely", "appears") and concluding that he still knows little[105], which ironically strengthens his case for more data gathering.
- **Connect back to design process:** Perhaps explicitly frame what he did as the "Empathize and Discover" phase of design[121]. Highlight how these user insights will inform the "Ideation" phase (which his Chapter 5 recommendations essentially are). That would show a methodological thread of HCD running through the work: problem findings leading to design proposals.
- **Show humility and adapt proposals:** Use the mixed feedback to adjust the tone of recommendations. For example, instead of "we must standardize judgments," he might say "we should experiment with standardized elements to improve clarity, while monitoring user satisfaction." This acknowledges that he heard not everyone wants the same thing. Given his overarching recommendation is to have *epistemic humility*[122], showing it in how he handles his own survey's lessons is vital.

To conclude, Chapter 3 is a modest but critical piece of the dissertation. It doesn't deliver sweeping data to settle debates (which Khan admits), but it grounds the discussion in actual user perspectives and underscores both the *need* for and the *challenges* of empirical legal research in Canada. It strengthens the dissertation by preventing it from being purely theoretical – it demonstrates Khan's commitment to evidence-based reform, even if the evidence-gathering was challenging. The chapter could be more comprehensive in detailing survey outcomes, but given space and participation limits, it achieves what is most important: **validating many of the concerns raised earlier (poor user experience) with real-world input and highlighting the very systemic barriers that Chapters 1, 2, and 4 seek to address.** The constructive path forward is clear: build on these initial findings with more robust data collection (perhaps by those with authority to mandate participation) – a task that Khan rightly passes on to institutions in his recommendations.

Chapter 4 – The State of Empirical Legal Research and the Legal Data Deficit

In Chapter 4, Khan pivots to examine the broader ecosystem of **legal data, empirical research, and education in Canada**, effectively diagnosing why the country's justice system suffers from a chronic data deficit and what might be done about it. This chapter is highly diagnostic and prescriptive, aligning closely with Khan's interdisciplinary emphasis. It is divided into parts addressing: the need for a national standard for data, the imperative for law schools to embrace empirical methods, and the call for Canadian law journals to improve empirical research standards[123][124]. In essence, Chapter 4 zooms out from courts to the **supporting infrastructure** that produces knowledge about the legal system – or currently fails to. A critical review will focus on how convincingly Khan identifies the gaps (conceptual clarity of the problems), whether he provides evidence or examples (empirical robustness and logical

coherence), and how his normative claims (e.g., “we *must* create a data standard”[\[125\]](#)[\[126\]](#)) hold up in light of Canadian institutional realities. We’ll also consider if he missed relevant context or literature, and what suggestions could enhance this chapter.

National standard for legal data (Part I): Khan argues that **Canadian governments, legal organizations, and courts must create a national standard for legal data gathering and access**[\[127\]](#). This implies a unified approach to collecting statistics and making data interoperable across provinces and courts. Conceptually, this is one of the most straightforward recommendations – many have lamented the fragmentation of Canadian justice data (each province collects limited court stats in different ways; no central repository exists for many metrics like plea rates, trial durations, etc.)[\[128\]](#)[\[129\]](#). Khan likely provides examples of what a national standard could entail: e.g., agreeing on common definitions of data points (like what counts as a “case”, how to measure delay), sharing technology or platforms, and ensuring open public access to that data. He references a concrete model: *Florida’s legislation requiring 140 data points across the criminal justice process*[\[130\]](#), which standardized data collection and made it publicly available. By highlighting Florida as “unprecedented transparency”[\[131\]](#), Khan gives empirical weight to the feasibility of a broad data standard. He also notes that in Florida, the judiciary cooperated rather than objected[\[87\]](#), countering any notion that judges cannot live with such data sharing.

He further cites the example of *Alberta’s Memorandum of Understanding* between its courts and government, which specifically addresses gathering “Business Intelligence” data in a joint manner[\[132\]](#)[\[133\]](#). That shows at least pockets of progress domestically: some jurisdictions recognize the need to track and use data. However, Khan points out even those MOUs often lack clarity or are not public in most provinces[\[84\]](#)[\[133\]](#). The conceptual clarity in this section is strong: it identifies *interoperability*, *data gaps*, *siloe information* as key issues[\[134\]](#)[\[19\]](#). He likely emphasizes that currently we don’t even know basic national stats (he mentions “*Canada’s system doesn’t capture national divorce or guilty plea rates*”[\[135\]](#)). This starkly illustrates the deficit.

One critique might be that Khan underestimates the legal and logistical complexity of creating a national standard. Canada’s decentralized court administration (especially for provincial courts) means no single entity can mandate data collection. Statistics Canada has improved coverage[\[136\]](#), but provinces might view detailed court data as their domain. Khan acknowledges some of this by noting it’s unclear who is even responsible for data in many MOUs[\[84\]](#). He proposes a cooperative approach (governments *and* courts *and* legal organizations working together)[\[127\]](#), which is apt but easier said than done. A question arises: what would compel them to do so? Khan’s normative stance is likely that **constitutional obligations and access to justice goals** should compel them – e.g., to fulfill rule-of-law promises, data must be gathered[\[17\]](#). But practically, maybe legislative action (like a federal initiative similar to Florida’s law) is needed. The chapter might not detail an enforcement mechanism, which could be a gap. For instance, could the federal government tie funding to provinces to data reporting requirements? Khan doesn’t mention that specifically. A constructive suggestion is that he could have invoked the **Justice Ministers meetings** (federal-provincial) as a forum to adopt national metrics, or suggested StatsCan be given a stronger mandate and resources to collect uniform court data (with provinces’ consent). Since the chapter is more visionary, it perhaps leaves implementation details out, but including even a sentence on how to

achieve consensus (maybe through the Canadian Judicial Council or a task force) would show he's thought it through.

Empirically, Khan's call is supported by comparative success stories: he mentions that U.S. federal courts publish extensive annual stats[137] and that the U.S. is moving to open PACER for free[64]. Also, New Zealand using BI tools and codifying open data goals[57]. These examples serve as evidence that a country can coordinate nationally (NZ being unitary helps, but he notes scale differences). He also draws parallels to municipalities joining a global data standard[138] – implying if cities can standardize data (through ISO standards), courts can too. The logic is compelling: do we want to lag behind municipalities in data sophistication?

“Humility of uncertainty” (Part I, ii): Khan emphasizes maintaining “*the humility of uncertainty*” when dealing with data[139]. This is a conceptual piece urging actors not to be overconfident in what data means or what interventions will work – a theme he repeats. It's almost a philosophical caution to accompany the push for empiricism. He likely cites how even experts get analysis wrong, referencing a point that “*messing up empirical analysis is easy*”[140] and that many current empirical studies are flawed by overclaiming results[141][142]. This reflects awareness of the **replication crisis** in social sciences[125]. Including this in Chapter 4 shows conceptual clarity: it's not enough to gather data; one must analyze and use it responsibly. Normatively, he's advocating for a culture shift in legal research to be more self-critical and careful (perhaps because law traditionally is not empirical, lawyers may misinterpret stats). He might mention some sensational studies or news that oversimplified data – pointing out the need for literate interpretation[143]. The chapter likely calls out academics and journalists for sometimes prioritizing “blockbuster headlines” over nuanced truth[143]. That signals a normative claim: **improving data literacy** among those who consume or produce legal data, which ties into the law school and journal parts.

Requests for “private” data (Part I, iii): The outline shows Khan touches on “*rethinking requests for alleged ‘private’ data*”[144]. This suggests he deals with the pushback that some data cannot be shared due to privacy or confidentiality (like court records with personal info, or data about judges considered private). He likely argues that much of what is labelled “private” could be anonymized and still released, or that the public interest in aggregate data outweighs knee-jerk privacy concerns. Possibly citing that judges' work data (e.g. number of cases pending) is not personal info and should be public. We saw mention that a policy for bulk access currently limits to a commercial entity in one province[68] – he probably criticizes that as a *commercial monopoly* that is unjustified[145]. He might mention that *deliberative secrecy* should not bar sharing data like how long decisions take or how many each judge issues – because as he noted, US federal courts publish a six-month backlog list without harming independence[50]. The conceptual point is distinguishing *personal/private* information (which legitimately needs protection, e.g., identities of vulnerable litigants) from *impersonal systemic data* which can be open. This clarifies a recurring confusion that might hinder data release. It's an important part of his normative argument: that **transparency and privacy can be balanced**, and we need to recalibrate what really must remain confidential. If anything, he suggests Canadian courts err on the side of secrecy even for things others make public (like judges' training materials – he gave example of CJC's scant disclosures[69][146]).

One critique: while advocating broad data transparency, Khan must be careful not to seem dismissive of genuine privacy concerns. He does acknowledge privacy must be addressed (Recommendation #5)[147]. In Chapter 4, he frames it as something to be solved (perhaps by anonymization or by excluding truly sensitive info from open data sets). A suggestion would be to mention best practices: e.g., how some jurisdictions handle personal data in open court records (like the US PACER has rules to redact certain identifiers). If he didn't mention that, it's a minor gap – but he likely alludes to balancing test. The key is he pushes back against **overbroad appeals to privacy** that are essentially excuses to not collect or release data at all. That's valid – for instance, some Canadian courts have resisted even giving researchers anonymized data citing privacy, which can be overly cautious. He tries to shift that mindset.

Law schools and empirical literacy (Part II): Khan strongly contends that **Canadian law schools must finally emphasize empirical research and legal analytics**[148]. He outlines how currently, Canadian law students “mostly lack options” for data/statistics training[149], whereas American students have many options[150]. This reflects a long-standing critique that Canadian legal education remains doctrinal and doesn't equip students to engage with empirical evidence or interdisciplinary research. He might provide a quick survey: e.g., “out of 20 Canadian law schools, only 1 or 2 offer a dedicated course in empirical methods or law & statistics” – if he has that info, it would be compelling. Conversely, many US schools offer courses, joint degrees, centers for empirical legal studies, etc., which he likely notes[150]. The empirical robustness of these claims might rely on counting course offerings or referencing commentators (for example, he could cite a piece by sociologist Ronit Dinovitzer or others calling for more quant training in law). He also references the “Arthurs debate”[151] – likely referring to the famous debate triggered by the 1983 Arthurs Report (“Law and Learning”) which contemplated the role of social science in legal research. Possibly, opponents then argued law schools should not turn into social science faculties. Khan diplomatically says he's “not trying to have another ‘Arthurs’ debate”[151], implying he doesn't want to rehash whether law is a science; rather, he pragmatically wants lawyers to have basic literacy in data because law now intersects with technology and policy evaluation more than ever. This is a wise positioning – it shows he's aware of past resistance and tries to skirt ideological fights by focusing on functional need. Conceptually, he frames empirical training as necessary for the future lawyer's toolkit (especially as AI and data get integrated into legal practice).

Normatively, he implores Canadian law schools to “chart a better path forward”[152] in embracing these methods. A critique: he might understate that some progress is slowly happening (e.g., a few empirical research projects at Osgoode or UofT). But by and large, he's correct – it's slow and not mainstream. A constructive idea could be he suggests concrete steps: requiring at least one methods course, or collaboration with social science departments, or funding positions for empirical legal scholars. If not detailed, that could be a missed chance to guide schools. However, since the dissertation might not allow too granular suggestions, focusing on the imperative is perhaps enough.

Law journals and research standards (Part III): Khan's final part addresses Canadian law journals needing to adopt **strict empirical research standards** and encourage better empirical scholarship[124]. He notes a “dearth of strict empirical legal research”[153] and a “lack of rigour” in what exists[154]. This is a pointed critique of current Canadian legal scholarship. Likely he observes that very few Canadian law journal articles employ statistical analysis or

original data, and those that do may have methodological flaws (like small samples, no discussion of limitations, etc.). He might cite examples of high-profile empirical claims that were later questioned. For instance, there have been some controversial empirical studies in Canadian law (like on judge backgrounds affecting decisions, or citation counts) – he could mention one. Or he references an external critique: perhaps by someone like Prof. Anthony Doob (a criminologist) who lamented how law reviews treat empirical work.

By calling for a “national standard”[\[155\]](#), he suggests something like guidelines that journals require: e.g., proper methodology sections, possibly even peer review by someone with technical expertise. In American journals, the *Journal of Empirical Legal Studies* or many peer-reviewed ones have such standards, but Canadian student-run law reviews might not be equipped to assess statistical validity. Khan’s normative recommendation might be to involve interdisciplinary peer reviewers or adopt replication data requirements (like requiring authors to share their datasets). This aligns with trends in social sciences to combat the replication crisis. He references how even top empirical studies can be flawed[\[125\]](#) and that overconfident conclusions are a problem[\[141\]](#). So he is essentially urging the Canadian legal academy to professionalize empirical work akin to how other disciplines have, rather than treat it casually.

The conceptual clarity here is straightforward: identify the gap (lack of empirical tradition and standards) and suggest raising the bar. He mentions “shorter article formats” like IMRaD structure[\[156\]](#), implying law journals might need to adapt their format to accommodate empirical papers more succinctly. Right now, many empirical papers struggle to fit in law reviews or get sidelined because they have long methodology sections that student editors might not appreciate. Khan even hints that *publishing culture* (“*publish or perish*”) *emphasizes flashy results over careful nuance*[\[143\]](#), so adjusting formats and expectations could help. Empirically supporting these claims is tough because it’s somewhat insider knowledge of the academia, but anecdotal evidence and personal observation suffice. Perhaps his own frustration in publishing empirical work (like his earlier studies on reserved judgments) informs this view.

Relevance and accuracy of comparative references: Throughout Chapter 4, Khan draws on comparative contexts (U.S., NZ, etc.). Are they accurate? For example, he says American law students have many data literacy options[\[150\]](#) – indeed, many U.S. law schools offer courses in Law & Economics (with empirical components), joint degrees, or have centers employing quantitative methods. UK law schools also increasingly cover empirical research in their socio-legal curricula. That check out. His portrayal of Canadian law schools as lagging is widely acknowledged by observers (e.g., few courses beyond maybe “Law & Economics” at some schools, which often is theoretical econ not hands-on stats). On law journals: certainly, U.S. has specialized journals and even general law reviews often get faculty input for empirical pieces, whereas Canada has fewer outlets (Canadian Data like CLRQ is new, but not fully mainstream). So he’s likely accurate there. One potential comparative omission: some Canadian interdisciplinary journals (e.g., *Windsor Yearbook of Access to Justice* or *Osgoode Hall Law Journal* special issues) do try to encourage empirical pieces, but they remain exceptions. Khan might not mention them if he sees them as too few to matter.

Missed or downplayed elements: A critic might point out that **some Canadian initiatives** are underway that Khan doesn’t mention, perhaps because they’re very recent or niche. For example, the Department of Justice Canada has an internal research division that collects some data and

occasionally publishes studies (e.g., the “Justice Data Modernization” program). If Khan didn’t mention it, one might think he overlooked it. However, those efforts are not very visible or comprehensive yet, so maybe not. Similarly, the Action Committee on A2J (2013) recommended better metrics – a link he could have made, as that was a national body of stakeholders acknowledging the need for data to measure progress on A2J goals^[157]. If not referenced, it’s a slight oversight because it would reinforce his call by showing even high-level committees sought this (though with limited follow-through).

Another thing he could mention: other countries’ experiences in law journal reforms or legal academia requiring empirical work (maybe Australia or UK had similar debates – e.g., the UK has seen more empirical legal research integrated in REF assessments). But these are minor; his main comparisons (US and NZ) suffice.

Constructive suggestions for Chapter 4:

- **Propose a concrete plan for the national data standard:** For instance, recommend that the Federal Department of Justice convene a working group with provincial justice ministries and the judiciary to define key metrics and assign reporting responsibilities. Even if just a broad outline, it would show how to get from idea to action. Khan implicitly says “must create”, but adding *who* should lead or *how* to enforce compliance would add practical heft.
- **Highlight quick wins in data collection:** Perhaps note that some data is already collected but not shared. E.g., each court likely tracks how many cases are filed, disposed, etc., internally. Standardizing might be as simple as agreeing to publish what they already have in a central portal. This could make it seem less daunting than building a whole new system from scratch. If Khan didn’t emphasize this, doing so might reduce perceived obstacles.
- **Name-drop any supportive voices:** If any Chief Justices or policymakers have publicly called for better data (sometimes they do in speeches about evidence-based justice reforms), citing one would bolster his argument that enlightened minds in the system agree. Even international voices, like a quote from a UK or US Chief Justice about the need for data, could help show it’s mainstream elsewhere.
- **For law schools:** Suggest incremental steps like developing interdisciplinary courses or requiring a research methods module in the JD curriculum. And encourage collaboration with local social science or hiring faculty with those skills. Perhaps mention that bodies like the Federation of Law Societies could include data literacy in competencies (since they accredit law schools). That would tie it to existing structures.
- **For journals:** Maybe propose that the Canadian Law Review Editors (who often have annual meetings) consider adopting a set of guidelines for empirical submissions. Or that law faculties support a dedicated empirical law journal or network. If nothing else, urging more peer review on quantitative papers to catch errors.
- **Integrate Chapter 4 with earlier findings:** Perhaps refer back to Chapter 3’s struggle – e.g., “As our survey experience showed, without a national strategy and institutional support, collecting meaningful data is nearly impossible^[106]. This chapter’s

recommendations address those systemic barriers.” This ties the empirics to the reform proposals.

In evaluating Chapter 4 overall: it is **highly relevant to Canadian legal academic literature and institutional structure**. It’s basically calling out those structures (education, research culture) for failing to evolve. This can step on toes (law schools might bristle at the critique). But it’s needed if one is to truly push for *deliberate design* – the designers (lawyers, judges, scholars) themselves need retraining and better tools. So Chapter 4 plays a critical role in broadening the scope from courts to the pipeline of knowledge. It’s comprehensive in that it hits governments, academia, and publications – a full ecosystem approach. If anything, one could wish for more elaboration on how to overcome the inevitable inertia and resource constraints (these changes require money, expertise, willingness). Khan might assume that pointing out the necessity will spur action (though reality may be tougher). A heavy-handed critique can applaud his identification of the issues but also note that **achieving these changes requires significant commitment** and perhaps address possible counterarguments (like law schools might say, “we have too much already to teach; adding quant skills dilutes doctrinal training”). Khan might respond that ignoring quant skills leaves future lawyers ill-equipped for policy or modern practice (which is true as data and AI become prevalent). He might mention that clients and governments increasingly expect lawyers to analyze empirical info (from forensic economics to big data in e-discovery), so it’s part of competency now.

In conclusion, Chapter 4 is forward-looking and essentially sets up the broader conditions for his central thesis to succeed: without better data and empirically savvy participants, deliberate systemic design cannot happen or be tested properly. It grounds the lofty calls in Chapters 1-2 in the nitty-gritty of education and research reform. The critique finds it to be a mostly well-reasoned chapter, though ambitious. Constructively, pushing for pilot projects (like one law school or one journal adopting these ideas to set an example) might be a pragmatic way he could have framed it to avoid the all-or-nothing trap. Regardless, the chapter’s strength is highlighting that **cultural change in the legal sector is as necessary as technical fixes**, which is a profound point often missed in A2J discussions.

Chapter 5 – Recommendations: Eight Deliberate Design Reforms for Courts and Governments

Chapter 5 culminates the dissertation with **eight specific recommendations** that synthesize the analysis from Chapters 1–4 into actionable reforms^{[158][159]}. These recommendations aim to operationalize the concept of deliberate design, addressing various facets of the justice system: governance, information access, transparency, privacy, standardization, data metrics, and judicial reasoning requirements. A chapter-by-chapter critique must now examine each recommendation critically: Are they well-founded based on earlier chapters? Do they adequately incorporate the nuance and challenges identified? Are they sufficiently substantiated or are they leaps of faith? Moreover, we should consider whether these proposals properly balance **judicial independence with accountability, access to justice with practical feasibility**, and how they compare with analogous measures in other jurisdictions. We will also note if any key areas were *missed* or under-addressed, and provide suggestions for strengthening each recommendation.

Recommendation 1: Give courts more administrative and financial autonomy

Content: “Governments should give courts more administrative and financial autonomy.”^[160]

This recommendation is rooted in the notion that courts need independence not just in adjudication but in managing their operations (budget, administration) to innovate effectively^[161]. Khan earlier cited that jurisdictions with greater court autonomy see more innovation^[161], and likely referenced a 2006 report or comparative models (some U.S. states have independent court budgets, for example). The idea is that if courts control their resources and admin decisions, they can implement reforms (like tech upgrades, data collection processes, staffing) without being hamstrung by government bureaucracy or funding constraints.

Critique: Conceptually, this recommendation aligns with a common view in Canadian legal circles – indeed, there’s periodic advocacy for an independent court services agency (especially at the provincial level, to remove courts from direct Justice Ministry control). It resonates with constitutional principles: *Judicial Independence* includes administrative independence in certain respects (per Valente, internal scheduling and assignment). Khan extends that to say external administrative control (like budgets) should also shift towards the judiciary.

The **normative argument** is strong: more autonomy means courts can deliberately design improvements free from political interference or neglect. However, there are **practical caveats**. Financial autonomy implies either a self-governing budget (like a block grant that courts allocate) or even separate funding streams (e.g., trust funds or endowments for courts). Government finance departments may resist ceding control due to accountability concerns (courts are not elected, so who oversees their spending?). Administrative autonomy might involve creating a court administration service run by a judicially-led board (like the Court Administration Service for federal courts, which already exists to some extent). Actually, at the federal level, the *Courts Administration Service (CAS)* is a model where an independent agency handles admin for some courts (Fed Court, Tax Court, etc.), albeit funded by Parliament. Khan might have mentioned CAS as partial progress. If not, it’s a small oversight because it shows Canada has a prototype of autonomous admin at federal level (though not financial independence, since budgets still come from government allocations).

One risk: if courts have complete autonomy but limited commitment to reform, they might also stagnate (just without oversight). Khan assumes autonomy leads to innovation^[161] (citing maybe that “culture of continuous innovation” phrase^[161]). But one could question: *autonomy to do what?* If judicial leadership is not keen on data/changes, autonomy could just entrench the status quo with less outside pressure. For example, if a provincial court were given a lump-sum budget and full control, they might prioritize salary and facilities but not invest in data tech because internally there’s no consensus. Khan’s earlier chapters recognized some judges resist change. So autonomy alone is not a panacea unless coupled with an internal mindset shift. It’s possible Khan envisions that if courts have their own budget, they will feel more responsible for delivering results (no more “we can’t do X because government didn’t fund it” excuses). That could be true, but we can’t assume all courts would spontaneously become design-oriented.

Comparative accuracy: He mentions the U.S. states where independent court admin fosters innovation^[162]. Indeed, some states (like New Jersey, which he cited, and perhaps states with

unified court systems and independent funding streams) have been more agile in reform. But others still struggle. The correlation is not automatic – leadership matters too. Nevertheless, providing autonomy is a prerequisite for any significant self-driven reform. So the recommendation is sound as an enabling condition.

Constructive suggestion: To strengthen this recommendation, Khan could propose *how* to implement it: e.g., forming a commission to design a new funding model, or pilot autonomy in one province to evaluate results (maybe start with one that’s receptive). Also, he should mention checks: even autonomous courts should be accountable (perhaps via public annual reports on how funds used and performance metrics – which ties to Recommendation #7 on developing metrics[90]). This prevents autonomy from turning into unaccountable fiefdoms. The recommendation as stated is broad; adding such qualifiers (autonomy *along with* transparency and performance measurement) would quell critics who fear giving courts a blank cheque.

Recommendation 2: Eradicate Crown copyright and democratize access to decisions

Content: “*The Federal government or Supreme Court of Canada should eradicate Crown copyright, and governments and courts must democratize access to all judicial decisions.*”[163]

This is a clear and widely endorsed idea in open access circles: in Canada, published court decisions are technically under Crown copyright (government-owned), which can restrict reproduction. Although in practice, courts often give decisions to CanLII or publishers, the principle impedes truly free use (like text mining, wide dissemination). Khan urges removing that barrier so that court decisions are unequivocally public domain (as they are in the US). “Democratize access” means ensuring *every* decision is accessible to the public, likely online for free (many lower court decisions or older ones are not readily available except via paid databases or by request). This ties to his data deficit point – if not all decisions are available, researchers can’t analyze them, and public can’t see law in action.

Critique: This recommendation is perhaps the most straightforward and has broad support outside certain government publishers. It doesn’t directly clash with judicial independence (it’s more about government policy and publication). The Supreme Court of Canada has already signaled support for open access by making their decisions available and not pursuing copyright enforcement. But formal eradication requires either legislative change to the Copyright Act (exempting court decisions) or the courts proactively disclaiming copyright. Khan suggests either the federal government or SCC could do it. The SCC could lead by stating that as a matter of common law, judicial reasons are not subject to Crown copyright (some have argued they could). Or Parliament could pass an amendment.

Empirical/normative support: Khan’s earlier analysis likely touched on how Crown copyright perpetuates the *commercial monopoly* by private publishers or limited access by official channels[145]. He flagged that currently bulk data access is given to a commercial entity in one province, which is undemocratic[145]. Removing copyright would empower free services like CanLII and others to collect and use decisions without constraint, potentially improving accessibility.

Comparatively, most common law jurisdictions have moved toward open access licensing for case law (UK, Australia have open government licenses for legal info). Canada is behind if it hasn’t formally done so. So the recommendation is accurate and timely.

Feasibility: Legislatively, this is low-hanging fruit; it doesn't cost money, just political will. The law or SCC's stance is outdated. One potential hitch: some might worry about privacy since making all decisions open might include sensitive info inadvertently. But privacy can be handled via anonymization rules rather than copyright. Also, certain tribunals or small-case rulings (which might not be published now) would become open – but that's part of democratization. He probably insists all decisions, even minor ones, should be accessible because they matter (and to avoid any “justice in the shadows”). He cited Bill C-3 requiring reasons in all sexual assault cases[70] – now if those reasons in acquittals aren't all public, that undermines purpose. So democratizing implies as soon as a reason is given, it's published unless a clear privacy exception (like youth court confidentiality) applies.

Constructive suggestions: He might encourage that any copyright removal be accompanied by funding to ensure scanning older judgments and building accessible databases (because making it legal to share doesn't automatically put everything online – there's an effort needed). Also, after eliminating Crown copyright, maybe formalize that all courts must send decisions to a public repository (like CanLII or an official site). The SCC or government could spearhead a National Judgments Portal. Khan references how PACER gave US scholars data[164]; Canada could similarly centralize decisions. So, recommendation 2 could be strengthened by explicitly recommending a central open-access database or at least consistent dissemination practices by every court.

Recommendation 3: Provide easy-to-access information about judges

Content: “*The CJC, Canadian courts, and federal and provincial governments should provide easy-to-access information about current judges.*”[165] This calls for a **Canadian Judges Database** (he even had a prototype figure for it[166]). It means the public should be able to find basic professional information about each judge – likely their background, appointment date, perhaps their decisions or areas of law, maybe even performance metrics if available. Currently, it's surprisingly hard to find information on many judges (some courts list short bios, many don't; there's no central listing of all judges and their profiles).

Critique: The rationale ties to transparency and public confidence: people have a right to know who their judges are (qualifications, experience, etc.), and researchers benefit by seeing the composition of the bench. It also aligns with judicial accountability in a non-invasive way – just factual openness. Many jurisdictions do better here: e.g., the UK Judicial Office publishes profiles of judges; U.S. federal courts have a directory with bios; even some states have evaluation results. Canada's secretive approach (no standardized public bio) seems dated.

Potential **pushback:** Some might raise security concerns (judges historically were wary of too much personal info out of fear of harassment). But “information” can be limited to professional details, which are often known anyway (lawyer career, etc.). Another pushback is judges may not want to seem like they are public figures with profiles – but given their role, modest transparency is reasonable. Khan's argument likely is that in an era of misinformation, providing official info counters speculation and humanizes the judiciary to the public.

He had a figure showing a prototype judges' database[166] – presumably listing names, maybe law school, appointment year, prior positions, etc. That's akin to what many legal directories or Wikipedia tries to compile, but it should be official and complete.

Comparative reference: He might mention New Zealand's approach (they had a judicial registry or something if codified user-centric approach includes publishing such info). Or how in the U.S., detailed judicial bios are easily findable (though often via third parties, but official federal judiciary site gives some info like commission date, previous roles).

Substantiation: This wasn't explicitly covered in earlier chapters except tangentially when he decried the lack of data about judges (like they don't even list how many judges and who is on which court in an easily accessible central place, etc.). But common sense plus his emphasis on user experience suggests it's a quick win for transparency.

Constructive suggestions: Include not just static bios but continuous updates on vacancies, new appointments, etc., in one place. Suggest the CJC or Commissioner for Federal Judicial Affairs (for fed judges, which has some info but not user-friendly) as maintainers. Also, possibly integrate this with performance data eventually (Rec #7's metrics – e.g., average time to judgment or participation in training – though that is more sensitive). At minimum, a public-facing judges database should improve public knowledge.

He should ensure privacy lines: no personal home addresses or such (obviously), just career info and maybe some metrics like number of decisions authored, which is arguably public already if one scrapes decisions. Possibly also *financial disclosure* info if wanting to parallel what some U.S. jurisdictions require – but he doesn't mention that, likely out of scope.

Recommendation 4: Increase transparency and collaboration

Content: “*The CJC and Canadian courts should increase transparency and collaboration.*”[167] This is a broad exhortation reflecting themes of the dissertation. Transparency likely covers numerous things: publishing more information (data, policies, training materials as he noted in Bill C-3 context[69]), being open about processes, etc. Collaboration refers to working with researchers, other branches, and users to reform (like cooperating in surveys, pilot projects, or multi-stakeholder initiatives).

Critique: As a recommendation, it's a bit general – almost an umbrella principle. It reiterates what he's argued: that the judicial branch should not operate behind closed doors, and should actively engage with academics (like let them do studies, share data), with government (in jointly solving systemic issues), and with the public (via consultations maybe). We saw specific contexts: e.g., recommending judges survey lawyers and others regularly[110][112] is an example of collaboration with system users. Also, he cited New Jersey's success came from all branches collaborating[168], and that in Canada, such cross-branch working groups are rare outside periodic meetings. So he likely wants the CJC to sponsor more joint projects, and for courts to be less insular.

Substantiation: This flows from Chapter 2 (concerns that need to be overcome by opening up) and Chapter 3's difficulty in research (collaboration would ease that). He gave an example:

Utah's working group on A2J had judges, bar, academics, etc.[\[169\]](#). Something similar in Canada is needed – he noted maybe one province started something similar but not as comprehensive[\[170\]](#). So recommendation 4 is to institutionalize inclusive problem-solving.

Feasibility: It requires a cultural shift more than legal change. The CJC could create committees that include non-judges (currently, CJC committees are judge-only). Government could invite judicial input in policy earlier. It's doable, but must overcome suspicion and roles concerns. Judges historically worry collaboration with exec or researchers might compromise independence or confidentiality – but Khan has argued those are overblown. This rec emphasizes rebuilding trust: judges trusting that collaboration won't be misused, and others trusting judges to engage in good faith improvement efforts.

Constructive suggestions: He could propose specific collaborative initiatives: e.g., an annual “Justice System Innovation Forum” with judges, lawyers, public, tech experts; or cross-appointments of advisory roles (like have a sociologist sit in on some CJC discussions). Even recommending that the CJC set up a standing *Advisory Panel of Public and Experts* to give input on transparency and user experience would operationalize this. Also, transparency could be tangibly improved by things like live-streaming more proceedings (some courts did during COVID), publishing meeting summaries of the CJC (they are famously opaque), or having open consultations on rule changes. Khan doesn't detail these, but they are implied directions.

Recommendation 5: Address privacy impacts comprehensively

Content: “*The CJC and courts must comprehensively address privacy impacts.*”[\[147\]](#) This likely means as transparency and data increase, they need clear rules and measures to protect personal information appropriately (like robust anonymization where necessary, redaction policies, and managing how open data is to avoid harm). He earlier stated privacy is often used as an excuse, but he's not ignoring genuine privacy needs – thus a recommendation to systematically tackle it so that it ceases to be a vague barrier and becomes a managed factor.

Critique: This recommendation acknowledges a critical balance. Comprehensively addressing privacy suggests the judiciary should have clear guidelines on what data can be shared, how to de-identify data, and how to comply with privacy laws in open access. Right now, each court often decides ad hoc, and sometimes over-redacts or under-redacts due to lack of standards. Possibly he's advocating for a national policy or consistent framework (maybe something like the CJC's 2021 guidelines on bulk data requests, but more user-friendly and expansive).

Substantiation: Throughout, he pointed out incomplete approaches to privacy (like one province's arrangement limiting data to a company, presumably under a confidentiality agreement). He likely argues that privacy concerns can be met with technology (like automated redaction of names of minors or victims in data sets) and policy (like not releasing certain fields). But he wants it done explicitly rather than letting privacy linger as a nebulous fear.

Comparative references: Possibly mention how other jurisdictions manage – e.g., U.S. has rules e.g. Fed Rule of Procedure 5.2 (personal identifiers must be redacted in public filings). The UK and others have data protection regimes but still allow open data with those rules. So Canada could adopt similar approach: define what constitutes personal data that needs shielding

(addresses, SIN, etc.), and what is public (judge's name, outcome, etc.). Without clarity, either too much is hidden or open.

Constructive suggestions: He could propose that an interdisciplinary committee including privacy experts, judges, and open data advocates develop guidelines for publishing court info safely. Or that courts invest in redaction tools to anonymize decisions when necessary (like family law decisions often have initials – ensure that’s consistent). Also, integrate privacy training for court staff dealing with data. By addressing it head-on, courts can then confidently share data without fear of breaching privacy – enabling Rec #2-4 to happen responsibly.

One might critique if he elaborated enough on privacy beyond "address it". But given space, he signalled its importance, which is good. It's a check on overly zealous transparency, showing maturity in his plan.

Recommendation 6: Consider transparent standardization to improve independence, etc.

Content: *“The CJC and courts should consider how transparent standardization could improve judicial independence, impartiality, access to justice, and user experience.”* [119] This mouthful basically says: pilot or explore standardized practices (likely focusing on judgment formats/templates, perhaps standardized reasons or procedures) in a transparent way, to reap the benefits argued in Chapter 1 and 2. The wording "consider how... could improve" is notably cautious – it doesn’t say “implement standardization now”, but urges serious examination of it as a tool to advance core values.

Critique: This wording likely reflects the mixed survey feedback (some liking traditional vs issue-driven formats) [113]. So instead of dogmatically imposing standardization, he suggests a thoughtful, evidence-based approach to it (“transparent” implies involving feedback and showing results).

He argued earlier that standardization might improve impartiality and efficiency [39], but also realized one size might not fit all. This rec encourages experimentation: e.g., maybe a court could standardize certain elements (like every judgment starts with a summary and ends with a clear order) and measure the effect on comprehension or appeal rates, etc. Transparent here might mean if standardization is tried, do it openly and share data on how it works (so others can learn). Possibly it also implies the process of developing standards should be transparent (involve stakeholders and be open to comment).

Feasibility: “Considering” it is easy; actual standardization faces judge buy-in issues. Many judges cherish writing style freedom. Khan isn't mandating that they relinquish it overnight, just to contemplate if some consistency benefits everyone. It’s a soft-sell approach likely needed to get judicial cooperation. Possibly he envisions CJC forming a working group on judgment writing best practices that consults widely – which would be a start.

Constructive suggestions: One way to implement is to create a model template for judgments (like a recommended structure) and encourage voluntary adoption, then track user feedback. Or start with certain case types (e.g., small claims or routine appeals) where standard form might be easier. If proven helpful there, extend further. By framing it as an experiment to *enhance*

independence (judges showing they're consistent and fair fosters independence)[\[15\]](#), it's more palatable than as a constraint.

He might mention independence could be improved because public trust consistency and clarity[\[39\]](#). But he'd need to ensure judges don't see this as automated justice. Emphasizing it's about clarity not interfering with outcome discretion is key (maybe why he says "transparent standardization" – as opposed to hidden or rigid algorithms, it's openly agreed guidelines).

Recommendation 7: Develop comprehensive data metrics and encourage judges to self-audit

Content: *"The CJC and courts should develop more comprehensive data metrics and encourage judges to audit and evaluate their decision-making."*[\[90\]](#). This flows from Chapter 4's emphasis on measuring outcomes and Chapter 1's view of judges as frontline operators needing feedback (like surgeons get). Essentially, define key performance indicators (KPIs) for the judiciary (e.g., time to disposition, clearance rates, proportion of decisions overturned, user satisfaction maybe) and gather those metrics. Then have judges reflect on their own data – perhaps privately but constructively – to improve.

Critique: This is one of the more delicate suggestions because it touches on evaluating judges, which is historically taboo (outside appeal and gross misconduct). But Khan frames it as self-audit and learning rather than external punitive evaluation. Judges, being professionals, can benefit from seeing their stats and comparing to aggregate to identify if they have outlier patterns (like always slow or frequently appealed). If done internally and developmentally, it might avoid defensive reaction.

He pointed to how in other fields, professionals use metrics for continuous improvement (e.g. pilots, doctors have checklists and review errors)[\[171\]](#). Judges currently seldom do such introspective analysis aided by data – it's more anecdotal. If the CJC had a confidential dashboard for each judge summarizing their outputs, it could help them identify where to improve. But also, some metrics should be public at aggregate level to hold system accountable (like how many cases each court handles per year, backlog numbers, etc.).

Feasibility: The challenge is designing metrics that account for context and don't incentivize bad behavior (e.g., if judges are measured on speed, might they rush decisions?). Khan earlier noted measuring outcomes is normative tricky[\[172\]](#). So "comprehensive metrics" implies more than one measure to avoid skew, and careful interpretation. He did stress humility and avoiding simplistic conclusions[\[141\]](#) – that should apply here: use metrics as one tool, not absolute ranking.

Comparative perspective: Some jurisdictions do have formal judicial performance evaluation programs (several U.S. states do surveys of lawyers rating judges, etc.). Canada hasn't, due partly to independence fears. Khan likely doesn't suggest U.S.-style evaluation commissions, but rather an internal improvement approach. It aligns with independence if it's self-driven: judges improving themselves to better serve rule of law, rather than outsiders disciplining them by stats. But if internal efforts fail, external pressure often comes (like Bill C-3 example). So better to preempt with self-audit.

Constructive suggestions: To make this effective, he could suggest the CJC start capturing some baseline data (like how many judgments each judge produces a year, average length of reserve, etc.) and share it confidentially with each judge along with group averages. Over time, perhaps release anonymized distributions to show overall system health. Also, hold workshops where judges discuss these metrics, perhaps identifying if issues are systemic (e.g., certain courts uniformly slow due to process, not individual fault – then fix process, not blame judge). Emphasize metrics are for improvement, not punishment.

One risk is if media or public get hold of metrics (via FOI maybe if they are compiled by government-run system). That's why the judiciary may prefer to do it under their umbrella (if they have autonomy, Rec #1, they can handle data internally without FOI exposure, or at least control context).

Recommendation 8: Require brief reasoned decisions in all cases and publish them

Content: *"The CJC and SCC should be clear: brief reasoned oral or written decisions are required in all cases, applications, or motions, and all decisions should be publicly available."*^[118]. This ties up earlier points: no decision should be made without giving reasons (to ensure accountability and fairness) and no decision should remain hidden from public record. It reacts to known issues: sometimes judges give no reasons for certain decisions (e.g., a quick dismissal) or deliver oral reasons not transcribed, leaving no accessible record.

Critique: This is a strong rule for ensuring the right to know why a decision was made – a fundamental of rule of law. SCC in cases like *Sheppard* insisted on reasons for decisions affecting liberty, etc., but there's still grey areas (like many lower court rulings, unrecorded oral reasons). Bill C-3 targeted a specific gap (sexual assault acquittals needed reasons). Khan says make that general: any outcome merits at least a short explanation, and that should be part of public record (oral can be recorded/transcribed, or a written note done).

Feasibility wise, it might slightly increase judges' workload (can't just say "application dismissed" without explanation). But even a few lines would do, and it can be oral on the spot if needed. Many judges already follow a practice of giving some reasons for most things, but not all. It may require culture shift for quick matters. Ultimately, it enhances appeal rights (you can't appeal if no reasons to examine) and public understanding. It also generates data (complete record of decisions for analysis, fulfilling open data goals).

This rec also ensures no "secret law" – sometimes, without publishing all decisions, only a subset (often higher profile or written ones) get published, skewing perception of how law is applied. If every decision is available, patterns like systemic biases or inconsistencies can be caught, as he desires.

Substantiation: It echoes Chapter 1's discussion that reasons are inherent to independence and rule of law^[33], which he extended to all cases^[17]. So he's basically codifying what he argued was a constitutional obligation anyway. It finalizes the solution to the problem identified (lack of reasons in some cases undermines fairness and trust^[70]).

Comparative perspective: Common law tradition typically requires reasons for final decisions, but not always for procedural or small matters. European civil law judges often give very brief decisions or standardized forms for routine cases – that could be a model (though sometimes too terse, but something rather than nothing). Many jurisdictions are trending to at least a minimal record. So he's pushing Canada to the strict end of that: every decision on record. Considering technology (digital recording etc.), it's feasible.

Constructive suggestions: Implementation would involve training judges to give succinct reasons spontaneously for minor rulings and ensuring transcripts are reliably produced. Possibly leveraging technology: e.g., providing software to quickly turn oral reasons to text for posting. The SCC or CJC clarifying this expectation (maybe via a Practice Directive or Ethical Principle update) could set the tone. Start in one court's rules and expand.

Also, ironically, if Rec #8 is done, Rec #2 (open access) must follow so those reasons can be accessed – he ties that in by saying "and publicly available". Yes, capture and then share.

It might invite more appeals (if reasons expose errors that would have gone unnoticed otherwise). But appeals are part of ensuring correctness, so that's not necessarily bad (except resource-wise). Over time, quality might improve with oversight.

General oversight of Rec 1-8:

Have these recommendations missed anything major? Possibly: - He didn't directly mention **simplifying court processes** (like forms or procedures for unrepresented litigants) though his general design theme covers that implicitly. The focus is more on judges and data rather than on front-end user interface of courts (aside from decisions). That might be a slight gap – systemic design could also mean redesigning how people file cases, access information, etc. He touched on ODR in Utah example[\[173\]](#), but no explicit rec like "invest in user-friendly court services." Perhaps because he focused on judicial decisions primarily. - Also didn't mention **legal aid or funding** improvements, which are often central to A2J. But those might be outside his design angle, or he assumes others cover that. Still, one could say the justice crisis involves cost barriers, which design alone doesn't fix. He might argue better data and design can reduce costs or delays, indirectly helping, but it's not full solution. Perhaps he's intentionally focusing on the structural and informational aspects within courts' control, leaving funding for legal services aside. - Not much on **diversity or systemic bias** issues explicitly, except implying standardization and data can detect bias. Some might think he's downplayed things like racial bias issues in the system (though he knows data could reveal them). - He doesn't explicitly say "improve user support for judges" (like more clerks or research counsel to help implement changes, though in Chap 1 he noted judges lack support-systems[\[43\]](#)). Autonomy and data might allow justification for such support, but not directly recommended. Possibly an omission, but maybe implied under autonomy (courts could then hire needed support). - **Case law engagement:** While he built on R.E.M., Sheppard, etc., he didn't mention if there's any constitutional impediment to some of these recs. Likely not, they are mostly enhancements. But e.g., requiring reasons in all cases might meet some legal threshold (I think it's fine legally, as it only increases fairness).

Constructive synergy: It's good how these recs interlink – e.g., 1 (autonomy) enables 2-8; 2 (open decisions) underpins 3 (info for judges – presumably linking to their decisions?), 7 (metrics from decisions), 8 (accessible reasons), etc. 3 (info about judges) and 4 (transparency) build trust which likely eases acceptance of others. 5 (privacy) is an enabler to do 2,4,6,7 safely. 6 (standardization) and 8 (reasons in all cases) both improve consistency and data, feed into metrics #7. It's a cohesive package.

If all implemented, they'd fundamentally alter how the Canadian judiciary operates: more open, measured, and user-focused – which is precisely his thesis vision.

Final overall critique: The recommendations are ambitious but logically derived from his critique of status quo. Some are readily doable (2,3,8 arguably low cost/high benefit), some require heavy culture change (1,6,7). Khan identifies what the author missed downplayed etc. He likely notes the absence of these measures historically is why crisis persists. Each section we gave suggestion to strengthen by referencing known initiatives or cautioning how to implement carefully (like metrics not to be punitive, standardization to be flexible, etc.).

One overarching suggestion could be: set priorities and sequence – perhaps start with easier wins like removing Crown copyright (#2) and publishing all decisions (#8, which SCC could endorse quickly) to build momentum, while laying groundwork for bigger changes like metrics and autonomy with pilot projects. But as a dissertation, listing them without that project management lens is fine; implementation details might be for policymakers later.

In conclusion, the recommendations collectively reflect a **holistic reform agenda** that is heavily oriented toward transparency, data, and user-centric principles, consistent with Khan's argument. They target nearly every key deficiency he identified: governance (autonomy), information access (copyright, decisions access, judge info), culture (transparency/collab, standardization), empirical infrastructure (metrics, analysis), and fairness (reasons for all). A heavy-handed critique can appreciate the breadth but should also underscore the challenges in persuading entrenched institutions to adopt them. Constructively, it must be noted that achieving these requires building coalitions of support – judges, government, bar, and public must see the benefit. Khan's dissertation, with its comparative and empirical support, is an attempt to build that case.

Finally, a professional legal academic report would wrap up possibly with an overall assessment (like concluding remarks on the viability of these reforms and the need for **deliberate design mindset** from all justice system participants, echoing his overarching recommendation of humility and intentionality[122]). Since the user only asked through Chapter 5 and recommendations, maybe not expecting a separate conclusion section from us beyond that. However, summarizing the overarching critique might be good to close the narrative.

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