

# Research in Brief

Research and Statistics Division



## Review of the Access to Justice Index for Administrative Bodies

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### Why review the Access to Justice Index?

In 2014, the Supreme Court of Canada said that:

Ensuring access to justice is the greatest challenge to the rule of law in Canada today.<sup>1</sup>

It still is in 2025.

In 2015, the Research and Statistics Division of the Department of Justice Canada released the Access to Justice Index for Federal Administrative Bodies. The Index is a comprehensive tool that allows administrative bodies in Canada to assess their own progress in delivering meaningful access to justice to users. The Index highlights the power of data-driven policy and programming. It clearly identifies areas in which administrative bodies can make concrete improvements.

However, the Index is now a decade old. That is a long time in the life of such a tool. What has changed since the Index was first published?

- The Truth and Reconciliation Commission released its 94 calls to action to further reconciliation between Canadians and Indigenous Peoples. Our justice systems need to implement approaches that enable reconciliation.
- The Covid-19 pandemic devastated our economy, locked us down and disrupted social interaction for years. Our justice systems were forced to rethink how they function.
- Trust in government is declining. This has serious implications for the rule of law, and our justice systems in particular. A 2023 study by the Institute on Governance compares trust in

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<sup>1</sup> This is the opening sentence of the reasons for decision in [Hryniak v Mauldin](#) 2014 SCC 7.



government on five policy areas – climate change, justice, the economy, diversity and government and expert opinion.<sup>2</sup> Consider this statement:

“...Canadians’ trust in government on matters pertaining to the justice system averaged just 41%, compared to the overall level in trust in government at 59%. It was by far the lowest of the five issue areas examined. Indeed, at several points, trust dropped as low as 30%.”

- The pace of technological change has only accelerated. Users compare their experience of our justice systems with their experiences of accessing or buying other public or private services. Their expectations of responsiveness, speed and reliability are shaped by what they experience elsewhere. There is no free pass for the justice sector.

In addition to these challenges, thinking and practice on access to justice has evolved in the past decade. There is a recognition that change in justice systems is a permanent state. This means that administrative bodies need to develop the institutional capacity to constantly evolve. Change can no longer come by initiating one-off projects. It comes by building a permanent capacity to rethink and innovate.

Administrative justice actors also recognize that justice system participants are largely going to represent themselves or will rely only partially on professional assistance. This means that access to justice improvements have to be designed around user needs, rather than around the convenience of justice system “insiders”. In some contexts, this also entails seeing justice services as part of a broader continuum of social service needs. If an administrative body sees itself as part of a justice continuum, it can build connections with other service providers, so that it doesn’t operate in isolation.

Finally, administrative justice systems have not traditionally made much use of data to guide system design or improvement. By its nature, law is values- and rules-based. This creates a bias in favour of values and rules when we diagnose and address problems, rather than looking at what the data tells us. In addition, the common law teaches us to focus on individual cases, and to deal with issues incrementally, rather than looking for systemic solutions. These traditions have created a solid bedrock of principles that are great for adjudicating individual cases. But they actually inhibit innovation in justice system design. The access to justice movement is increasingly focused on grounding improvements in data and system thinking, rather than gut feelings and anecdotal accounts.

These events and trends are the reasons for revising the Index. The goal is to make the Index more responsive to the realities that administrative bodies face today. The goal is also to motivate administrative bodies to follow a structured path to improving access to justice and strengthening trust in the rule of law across Canada. In that spirit, the title of the Index has changed to remove the reference to “federal” administrative bodies. By removing references to federal laws and policies, the Index is amenable to use by any administrative body, regardless of jurisdiction.

At the same time, key qualities of the Index remain the same. This tool is meant to inspire administrative bodies to improve the quality of service to users. Its use is voluntary. When an administrative body takes the Index challenge and completes the questionnaire, Justice Canada

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<sup>2</sup> Institute on Governance, [Trust in Government](#), Action Learning Project, April 2023.

tabulates the results and communicates them to the administrative body in confidence. It is up to the individual body to decide whether to make its results public.

It is worth explaining the Index's use of the term "administrative body". In administrative justice, much of the access to justice literature focuses on the work of tribunals.

Tribunals are impartial adjudicative bodies, most of which have some structural independence from the rest of the executive branch of government. But tribunals don't hold a monopoly on adjudicating rights and interests. In fact, the vast majority of adjudication is conducted by large bureaucracies – think of government departments ruling on entitlement to social benefits, workers' compensation, or immigration rights and benefits. Tribunals deal only with a small number of cases, most often the ones where the bureaucracy has denied entitlement.

Yet for users, these government departments are also the face of administrative justice. They may hold hearings or invite submissions before deciding on entitlement. So they are also implicated in the access to justice debate. For this reason, the Index refers to "administrative bodies" rather than limiting its questions to tribunals. If government departments embraced access to justice principles, the effect would be transformative. This is why the Index encourages all administrative bodies, not just tribunals, to take the challenge.

This report gives an overview of how and why the Index has changed. It is divided into three sections:

- The first section sets out the changes to the structure of the Index questionnaire.
- The second highlights the most important changes to the content of the questions.
- Finally, the report explains why there is now a guide that accompanies the questionnaire. The guide offers the reasoning behind the questions and provides examples, so that the responses of administrative bodies better reflect their current and planned practices.

## 1. A new structure for the Index

There are two important changes to the structure of the Index. One creates a series of questions that enable an administrative body to assess its own institutional capacity for improving access to justice. The other change moves certain questions off a binary 'yes/no' choice and onto a scale of possible responses. A scale of answers allows an administrative body to provide a more precise assessment of its performance in relation to a given question. The use of gradations in possible responses reflects the reality that access to justice improvements take time and are also a function of the resources available to an administrative body. If funding is limited, the administrative body may make some access to justice improvements, even if they are not the ideal ones.

### A. New questions that assess institutional capacity to improve access to justice

The objectives of the previous iteration of the Index were to:

- fill a gap in measuring access to administrative justice at the federal level in Canada;
- provide baseline information on a few key indicators for the participating administrative bodies so that they might track progress over time;

- inspire administrative bodies to reach further and achieve even greater access to justice for parties; and,
- identify good practices for other federal administrative bodies to adopt

While the last two objectives point towards an approach that an administrative body could adopt in order to develop **future** improvements to justice services, the focus of the Index was largely on providing a diagnostic of the **current** state of its services.

In other words, the Index generally did not address the administrative body's capacity or inclination to develop an internal infrastructure that fosters continuous access to justice improvement.

The revised structure now divides the questionnaire into two parts. The first is a diagnostic of the administrative body's current performance. It provides a snapshot that tells the administrative body how it is performing in relation to indicators that address:

- access to the administrative body;
- processes, including procedural justice, representation of parties, ethics and inclusion, public information and outreach;
- costs; and
- outcomes.

The second part asks a series of questions that probe the institutional capacity of the administrative body to continuously improve the delivery of access to justice. Current studies on how to improve access to justice emphasize the need to create a working culture committed to access to justice.<sup>3</sup>

Building an access to justice culture in an administrative body takes time. In addition, funding justice systems is generally not a top priority for government. This is why the development of institutional capacity needs to be looked at over a longer time horizon than the immediate access to justice improvements that the first part of the questionnaire examines. If the administrative body is willing, yet funds are limited, then its access to justice innovations may need to be stretched over a longer time span.

The second part of the questionnaire assesses institutional capacity in three areas:

- user-centred design;
- data-driven improvement;
- engagement in the justice service continuum and future thinking

### User-centred design

While the legislature sets the statutory mandate of every administrative body, the way in which the mandate is executed must be reconciled with the real-life needs of the people who use the justice services. The questions in this section of the Index recognise that adopting user-centred design requires time and effort. But the institutional transformation that it brings is long-lasting. While not many

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<sup>3</sup> See for example, the [National Center for State Courts Justice for All Initiative Guidance Materials](#) (2019), and the 2024 OECD publication entitled [Measuring and improving access to justice in court services](#) – Learning from the United Kingdom's experience.

administrative bodies have developed expertise in user-centred design, there are plenty of how-to resources available at no or low cost.

### **Data-driven improvement**

The function of data is to ground justice system improvements in empirical evidence. In this regard, an evidence-based approach is essential to user-centred design. And once an administrative body has redesigned a process, an empirical approach then demands that it see whether the process change is actually doing what it is supposed to do. So, a commitment to monitor and evaluate is also a feature of an evidence-based approach. Ideally, the administrative body also sees transparency and accountability as part of an access to justice culture. So it publishes the results of its operational performance.

Gathering and analysing data, and program evaluation may be unfamiliar tasks for an adjudicative body. These are also areas which represent additional incremental costs for administrative bodies managing tight budgets. The questions in this section are intended to acknowledge these practical limitations as administrative bodies develop capacity in this area.

### **Engagement in the justice service continuum, future thinking**

Almost all administrative bodies are focused on dispute resolution. However, legal problems don't always manifest themselves as formal disputes. And people who enter justice systems don't come looking for a mediation or an adjudication. They come looking for a solution to their legal problem.

There are many ways to find that solution. Some involve private resolution or dispute avoidance. There are also a range of actors that may affect a solution. These include government bureaucracies, community organizations, as well as lawyers and paralegals.

While the principal (and often sole) statutory task of administrative bodies is to resolve formal disputes, many administrative bodies can choose to act in a broader sphere. The body may decide to focus solely on improving what falls within the four corners of its statutory mandate. Or it can take a different route. It can see itself as part of a continuum of justice services and play a role both in dispute avoidance and in helping to improve the justice services that other actors in the field provide.

For example, an administrative body that adjudicates denials of benefits by a government department could take the view that, while it has no business opining on the policy of the benefits statute, it can still make constructive suggestions about the upstream practices of the government department. This is because those practices may determine the number and complexity of the cases it receives. And it can find ways to do this without compromising its institutional and adjudicative independence.

Another example might be the willingness of the administrative body to reach out to actors in the community who deal with the kinds of people who have cases before the body. Taking a proactive approach to assisting community organizations to function as navigators is an example of the administrative body playing a role within a larger continuum that enhances access to justice.

The principal goal of an administrative body is to manage its own jurisdiction, not to improve the work of others. That said, sometimes influencing the surrounding justice environment can also serve the goal of

improving access to justice to the administrative body itself. Striking the right balance will vary from one administrative body to the next. The questions in this section invite an administrative body to consider where the appropriate balance lies in relation to other justice system actors.

The section also touches briefly on the idea of future thinking. The pace of technological change is such that each administrative body needs to be thinking about how its operations and mandate must respond to that change and its impacts on access to justice. How to deal with artificial intelligence? With new forms of threats to privacy? There is a need for each administrative body to develop some institutional capacity to deal with technological change.

**B. Assessing access to justice performance on a scale**

The second structural change is about how questions are posed. The questions in the previous version of the Index only allowed for yes/no responses. Binary responses are not a problem when an administrative body is first starting to address access to justice gaps in its services.

However, this approach has limitations because it does not acknowledge that many administrative bodies are at various stages of maturity in improving access to justice. If the answers to questions are only binary in nature, there is no room for an administrative body to grow further from its current level of progress.<sup>4</sup>

The revised Index introduces a scale of responses for some questions. Not all questions lend themselves to gradations in the responses. However, for some questions a scale of possible answers shows the administrative body what the next stage of access to justice improvement might look like.

Here is an example of the change in approach:

Before	After
<p>Does the administrative body provide information to parties who represent themselves? (e.g. checklists and other public legal education and information materials, on process, FAQs, and other topics specific to a self-represented party)</p> <p>Yes – (5 points)</p> <p>No – (0 points)</p>	<p>Does the administrative body provide information to parties who represent themselves?</p> <p>No – 0</p> <p>Yes, it provides generic information (e.g. checklists and other public legal education and information materials, on process, FAQs, and other topics specific to a self-represented party) – 5</p> <p>Yes, it provides proactive personalised support to some or all self-represented</p>

<sup>4</sup> One federal tribunal that has taken the Index challenge twice made the following observation about the initial iteration of the Index: “As per its own objectives [...], the Index’s intended users are administrative bodies seeking guidance and inspiration at the early stages of addressing access to justice gaps. The Index is ill-designed to qualitatively assess progress of A2J-mature organizations. The binary nature of its questions precludes that approach.”

	parties through a structured program, such as a navigator service – 10
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Gradations in responses lay out a pathway to the next level of access to justice maturity. This may motivate administrative bodies to take the Index challenge repeatedly over time. This approach better aligns with the limitations on the capacity to innovate that administrative bodies quite naturally face. A small administrative body that takes the Index challenge for the first time may be overwhelmed by the number of possible improvements that the questionnaire suggests. Where to begin?

The use of gradations in responses, along with the longer time horizon to build the kind of institutional capacity mentioned above both point to an approach to improving access to justice over the long haul. So, the small administrative body that takes the challenge for the first time may set itself a manageable agenda for change. Then, eighteen months or two years later it may take the Index challenge a second time, see where it has improved, and set its next agenda for change.

A serious attack on access to justice barriers requires an institutional commitment over a sustained period. The aim is to encourage administrative bodies to adopt an approach to improvement that is incremental, but that stretches over the long term.

## 2. Revisions to the content of questions

This section highlights some important changes to the content of the questions. It does not detail every change. The revisions mentioned here are ones that are intended to reflect the current understanding of important access to justice issues in Canada.

### **Administrative bodies should be assessed on what is within their control**

Some questions in the original Index asked the administrative body about a choice that the legislator had already made for them (e.g. by granting or withholding a statutory/regulatory power).

The administrative body should not be faulted if the legislator has reduced its freedom to improve access to justice through the wording of a statute. The revised questions try to address this problem by offering an opt-out where the administrative body has no control over the issue in question.

### **The shift to virtual proceedings**

The first iteration of the Index presumed that in-person proceedings are the default. The pandemic has changed this. Since the pandemic, in-person proceedings are the exception. And in some administrative bodies there has been a wholesale embrace of video or telephone proceedings, to the complete exclusion of in-person proceedings.

But a user-centred approach offers multiple channels. Giving users choice recognises that a substantial minority of people in Canada face digital literacy challenges, or may have limited access to technology.

At the same time, virtual proceedings are cheaper than in-person proceedings and many administrative bodies have limited resources.

The revised Index promotes a multi-channel approach as the ideal, while recognizing that many administrative bodies may not be able to offer it.

### **An active and trauma-informed approach to adjudication**

While the first iteration of the Index asked about the use of active adjudication in proceedings, the current version strengthens the emphasis on active adjudication as a low cost and highly effective tool for ensuring that all parties can participate meaningfully in proceedings.

The revised Index also focuses on the value of training on trauma-informed adjudication, as this is an essential element of user-centred proceedings.

### **Understanding Truth and Reconciliation**

The Truth and Reconciliation Commission's Final Report had a significant impact on Canada's legal systems, including the administrative justice system. At a minimum, adjudicators and others working in administrative bodies have a duty – both as public office holders and as custodians of a justice system – to learn about the magnitude of these human rights failings in Canada.

The revised Index poses questions that every administrative body should address, whether or not the body deals directly with Indigenous issues or Indigenous users of its services.

### **A stronger focus on plain and inclusive language**

The use of plain and inclusive language in all communications, including reasons for decision, is a low cost and effective means of improving access to justice. The revised Index asks administrative bodies a broader range of questions on how it communicates clearly and effectively with users and the public at large.

### **A stronger focus on monitoring and reporting on operational performance**

Creating service standards, monitoring operational performance and then reporting on it publicly are essential to a data-driven approach to administrative justice. In addition, transparent communication about where an administrative body is succeeding and where it needs to improve service builds public trust in the body.

The revised Index identifies new areas where administrative bodies can set measures that assess operational performance. The use of gradations in responses to some of the questions reflects the fact that improving on accountability is a gradual endeavour.

### **3. A guide to using a revised Index**

The number of administrative bodies in Canada and the diverse range of their mandates means that some users of the Index may wonder how a given question applies to them, or what issue a particular question is getting at.

This is particularly true of the questions in the second part. There is a wide range of sophistication in the development of institutional capacity among administrative bodies. For example, both the concept and process of user-centred design may be unfamiliar to some administrative bodies. So explaining the thinking underlying the questions in the Index is useful, and in many instances necessary.

To achieve this, a guide now accompanies the questionnaire. The guide provides a short explanation of the thinking behind each question. In some instances, the guide also references resources that the administrative body might consult in planning and implementing access to justice improvements.

### **Conclusion – the Index is a catalyst to implementing an access to justice culture**

Access to justice has never been a more pressing issue in Canada. There is a compelling need for administrative bodies to do their part in improving access to justice, and in turn strengthening the rule of law and trust in public institutions. That work begins by examining how an administrative body delivers justice to the people who use its service.

The revised Index is the most comprehensive self-assessment tool available to administrative bodies in Canada. Using it is voluntary, and the results of taking the Index challenge are confidential – unless, of course, the administrative body chooses to make them public. This tool is available to any administrative body, including government departments that adjudicate rights, entitlements and benefits, in any jurisdiction.

For more information, please contact: [rsd-drs@justice.gc.ca](mailto:rsd-drs@justice.gc.ca)