

Enhancing Access to Justice: Some Recent Progress in Manitoba

D O N N A J . M I L L E R , Q . C . *

I. INTRODUCTION

Access to justice is a policy area that is garnering increasingly greater attention. There are at least three national organizations leading collaborative discussions on how best to enhance our understanding of the issues and solutions to reducing barriers within Canada's justice system. The Action Committee on Access to Justice in Civil and Family Matters was convened at the invitation of the Chief Justice of Canada, The Right Honourable Beverley McLachlin.¹ Chaired by Justice Thomas Cromwell of the Supreme Court of Canada, the Action Committee's mandate is to develop a national vision for access to justice and to reduce barriers to Canada's civil system of justice. The Canadian Bar Association

* The author is currently Deputy Minister of Justice and Deputy Attorney General of Manitoba. She completed this article while she was Executive-in-Residence at the Manitoba Institute for Policy Research (MIPR) at the University of Manitoba. The views expressed in this article do not represent the views of the Attorney General of Manitoba or the Department. The author is grateful to Dr. Karine Levasseur of the Department of Political Studies, University of Manitoba, and to Paul Vogt and Robert Ermel of the Manitoba Institute for Policy Research, University of Manitoba for reviewing an earlier draft and providing helpful comments. She would like to acknowledge University of Manitoba political studies student, Kelly MacWilliam, for his outstanding research support. Finally, this article could not have been written without the three interviewees who generously volunteered their time for this research study.

¹ The Action Committee is a stakeholder-driven initiative that reports to all of the participating organizations and sectors involved in civil and family justice. The Committee has recently posted four excellent Working Group Reports for consultation and discussion. Each report deals with different aspects of civil and family justice, and is available on the website of the Canadian Forum on Civil Justice: <<http://www.cfcj-fcjc.org/collaborations>>.

launched its Envisioning Equal Justice initiative several years ago and has published a number of papers to enhance an understanding of the context and challenges of accessing justice.² The Canadian Forum on Civil Justice, now at York University, is undertaking a five-year project on the costs of the fair and effective resolution of legal problems.³

Both the Manitoba Law Reform Commission (MLRC) and the Manitoba Bar Association (MBA) have published on the topic within Manitoba. The MLRC's *Issues Paper* succinctly summarizes a core complaint on access, namely, that "the legal system is seen to be unaffordable to too many people."⁴ The Commissioners observe the absence of an up-to-date empirical study on the legal needs of Manitobans and conclude that this should be a first step towards tailoring solutions to the problems of access to justice.⁵ The MBA organized a series of town hall meetings and reported on a wide variety of concerns it heard from those who participated in its sessions.⁶ In the criminal justice field, the most common complaint was that of delay, which participants mostly attributed to the multiplicity of remands.⁷ One of the recommendations in the criminal justice field related to the enhancement of restorative justice programs

² The CBA has produced a series of working and discussion papers and in April 2013 organized an Envisioning Equal Justice Summit in Vancouver, with leaders from the profession and the judiciary participating. Details can be found online: Canadian Bar Association <<http://www.cba.org/CBA/Access/main/>>.

³ The CFCJ provides excellent material on its website including an inventory of justice reforms at <<http://www.cfcj-fcjc.org>>. The Costs of Justice five-year project is described on the Forum's website as "The primary purpose of the Cost of Justice project is to facilitate & sustain a knowledge-sharing alliance that has the expertise to develop and pilot ground breaking research with the potential to fill the current empirical gap relating to cost-benefit analyses in the justice system."

⁴ Manitoba Law Reform Commission, *Access to Justice* (Issue Paper No 1, 8 March 2012) at 3, online: Manitoba Law Reform Commission <http://www.manitoba.lawreform.ca/pubs/pdf/additional/issue_paper_access_justice.pdf>.

⁵ *Ibid* at 10.

⁶ Manitoba Bar Association, *Town Hall Meetings on Access to Justice* (2011), online: Manitoba Bar Association <<http://www.cba.org/manitoba/main/PDF/Town%20Hall%20Meetings%20on%20Access%20to%20Justice%20Final%20Report%20and%20Summary.pdf>> [Town Hall Meeting].

⁷ *Ibid* at 7. In this context, the term "remand" refers to an adjournment of a criminal matter, awaiting the next step in the criminal proceeding.

or community based alternative justice systems as a means to more effectively deal with offenders.⁸

No purpose would be served in trying to duplicate the excellent research being undertaken by these national and local bodies, and none is attempted here. Rather, the goal of this paper is much more modest, namely, to uncover and explain some innovative programs in Manitoba that facilitate access to justice. It is hoped that this paper will contribute to a better understanding of the changes that are being implemented in the province to render the delivery of justice more effective and accessible to Manitobans.

II. BACKGROUND

The twin decades of the 1970s and 1980s witnessed significant structural change to Manitoba's justice system. The Provincial Court of Manitoba and Legal Aid Manitoba were both established.⁹ At the same time, a province-wide small claims system was put into place.¹⁰

⁸ *Ibid.*

⁹ Legal Aid Manitoba became a legislated service in 1971 and opened its doors to clients in 1972. The inaugural legislation can be found at *The Legal Aid Services Society of Manitoba Act*, SM 1971, c 76. An earlier form of legal aid had previously existed in Manitoba for many years. Dale Gibson describes the original system of legal aid in the province in the following terms: "The innovation that meant most to the man on the street was the establishment of a scheme of free legal aid. Here Manitoba again led the rest of the country. A Legal Aid Committee of the Law Society, under the general chairmanship of F.M. Burbidge, and staffed chiefly by members of the junior bar, began to function in April 1939. It had two branches. An eight-man Needy Persons' Advisory Committee which met every Monday evening to interview applicants for legal aid, gave summary advice where appropriate, and referred cases requiring the continuing services of a lawyer to a six-man Certificate Granting Committee that met Wednesday evenings. If the latter committee, after again interviewing the applicant, felt that the case was a worthy one, they would issue a certificate naming a lawyer of less than fifteen years' standing at the Bar to handle the case without fee." Dale Gibson & Lee Gibson, *Substantial Justice: Law and Lawyers in Manitoba 1670-1970* (Winnipeg: Peguis, 1972) at 270.

The Provincial Court was created via *The Provincial Judges Act*, SM 1972, c 61, assented to July 11, 1972.

¹⁰ See Part II of *An Act to Amend the County Courts Act*, SM 1972, c 77. The original monetary jurisdiction of the Court was set at \$1,000.

The Court of Queen's Bench and the County Courts of Manitoba were amalgamated to form the current Court of Queen's Bench.¹¹ The breadth of these structural changes was unprecedented in the life of the courts since their establishment almost a century earlier, after Manitoba's entry into Confederation. The government achieved these changes through legislative amendments, which were drafted following consultation with the judiciary and the legal profession.¹²

The reforms in the justice system of Manitoba being implemented today are reflective of a world where government is moving away from its traditional role as the primary engine of public policy change, to one where policy is developed by multilateral sectors working collaboratively with one another horizontally. There is an emerging understanding that multiple institutions, the executive branch of government, the judiciary, and professional bodies, amongst others, can leverage more effective solutions to the challenges within the justice system by drawing from broader insights and competencies of these multiple sources towards enhancing overall solutions.

Further, the initiatives being pursued today are much less about structural reform and much more about strategic change, directed at creating programs and processes that will make a difference to those Manitobans interacting directly with the justice system. The judiciary has led some of these initiatives while the executive branch or professional bodies, like the Law Society of Manitoba, have advanced others. Regardless as to which institution took the lead, the changes that will be discussed in this article were all achieved through consultation and collaboration with multiple sectors.

This article will highlight a few of the justice initiatives being pursued by three institutions within the province: the judiciary, Justice

¹¹ See *An Act to Amend The Queen's Bench Act and to repeal The County Courts Act, The Surrogate Courts Act and The County Court Judges Courts Act and to amend The Municipal Boundaries Act*, SM 1982-83-84, c 82.

¹² The amalgamation of the two section 96 courts followed a report by the MLRC, which had consulted with the judiciary prior to the release of its report recommending an amalgamated court to be called the Court of Queen's Bench: see Manitoba Law Reform Commission, *Structure of the Courts, Part I: Amalgamation of the Court of Queen's Bench and the County Courts of Manitoba*, Report #52, (Winnipeg: MLRC, 25 October 1982), online: Manitoba Law Reform Commission <www.manitobalawreform.ca/pubs/pdf/archives/52-full_report.pdf>.

Manitoba and the Law Society of Manitoba. These three institutions have been among the most active in the province in developing programs that are making a difference in how justice is being delivered to Manitobans.¹³

The judiciary has led a number of reforms in both civil and criminal justice areas. The focus of this section of the article will be on the creation of problem-solving courts within the Provincial Court of Manitoba. To enhance our knowledge of these courts, Chief Judge Champagne of the Provincial Court agreed to be interviewed to provide details on the implementation of these types of courts in Manitoba, as well as to highlight some of the initiatives the Provincial Court is pursuing pertaining to Aboriginal communities.¹⁴

With respect to the justice initiatives being led by Justice Manitoba, the article will describe the recent work of the new Justice Innovation Directorate within the Department of Justice. Ms. Irene Hamilton, Director of Justice Innovation, agreed to be interviewed to provide details on a few initiatives that she and her colleagues are developing in concert with the judiciary and the profession.¹⁵

Mr. Allan Fineblit, CEO of the Law Society of Manitoba, also agreed to be interviewed to highlight some of the programs the Law Society has developed to facilitate access to justice.¹⁶ As will be explained, this includes the establishment of an Access to Justice Stakeholders Committee to increase the level of collaboration across the multiple sectors that participate within the Province's justice system.

¹³ There are several other institutions that have also made a difference on the ground, including Legal Aid Manitoba, the Public Interest Law Centre, the Legal Help Centre, the Manitoba Law Foundation, the MBA and the Community Legal Education Association (Manitoba), amongst others.

¹⁴ Interview of Chief Judge Champagne (3 July 2013). Research ethics approval was granted during the summer of 2013 (Protocol #J2013:096). The interviewees have all expressly permitted the author to use their names and the excerpts of their interviews published in this article.

¹⁵ Interview of Ms Irene Hamilton (11 June 2013). *See* note 14 re research approval and permissions.

¹⁶ Interview of Mr. Allan Fineblit (14 June 2013). *See* note 14 re research approval and permissions.

III. PROGRESS ON SOME SPECIFIC JUSTICE INITIATIVES

A. Some Criminal Justice Initiatives Led by the Judiciary

The judiciary in Manitoba has taken a strong leadership role in developing a variety of initiatives to facilitate access to justice. Many of these relate to the challenges associated with access to justice in family and civil litigation, and the Court of Queen's Bench has implemented a series of reforms to reduce costs and delay in these areas.¹⁷ Other innovations have focused on the field of criminal justice. One of the current leaders of criminal justice reform in Manitoba is The Honourable Kenneth Champagne, Chief Judge of the Provincial Court. A judge of the Court since 2005, Chief Judge Champagne has been in his current position since 2009.¹⁸

Chief Judge Champagne characterizes the Provincial Court as the "people's court".¹⁹ He refers to the high number of Manitobans that come into contact with the Court, whether as a result of a traffic ticket or something more serious.²⁰ In pursuing his leadership role in the

¹⁷ In the field of civil litigation, for example, the vast majority of civil litigants request Judicial Alternate Dispute Resolution (JADR) before trial and JADR has become an integral component of civil dispute resolution in the Court since it was first implemented in 1994. As of April 1, 2012, a new QB Rule 20A has come into effect to provide a simplified procedure for expedited actions, which incorporates the foundational principle of proportionality for claims not exceeding \$100,000. Case management has been in place since 1995 in the Court of Queen's Bench (Family Division) to reduce delays, increase efficiencies and reduce costs. These are amongst a number of changes that have been adopted through the leadership of the judiciary and very able court administrators. There are now more JADRs than civil trials in the Province (Source: Manitoba Justice, Courts Division).

¹⁸ Chief Judge Champagne was appointed Chief Judge effective June 11, 2009. *The Provincial Court Act*, CCSM c C275, s 8.0.1(2) stipulates that a Chief Judge holds office for a non-renewable term of seven years from the time of his or her appointment.

¹⁹ *Supra*, note 14, unless otherwise noted the following information and quotations were obtained through the interview which took place between the author and Chief Judge Champagne.

²⁰ According to the most recently available Annual Report of the Provincial Court, the Court disposed of 81,207 adult charges, ranging from *Criminal Code* to *Highway Traffic Act* offences during the 2011-12 year. Provincial Court of

Court, Chief Champagne values his close relationship with the newly appointed Chief Justice of Manitoba, The Honourable Richard Chartier, and the Chief Justice of the Court of Queen's Bench, The Honourable Glenn Joyal, as well as his relationship with their predecessors. He also appreciates his rapport with the judges and staff of his own Court, members of the legal profession (both Crown and defence counsel as well as Legal Aid), the chiefs of the police forces across Manitoba, Aboriginal leaders, as well as his provincial and territorial counterparts across Canada. He characterizes these relationships as foundational to his role and responsibilities as Chief Judge.

1. Problem-Solving Courts

Chief Judge Champagne and his predecessor, Chief Judge Wyant, have both played prominent roles in shaping the development and establishment of problem-solving courts in Manitoba. The context and function of problem-solving courts has been described as

The growth in problem solving courts in Canada, and indeed, across North America, is testament to a new way of thinking when it comes to the role of our courts in a democratic society. As opposed to the criminal court process being the "end of the road" for an accused person, the court process now offers an accused person the opportunity for a new beginning by hopefully and finally addressing the issues that have led to his or her involvement in criminal activity. In some Canadian and American jurisdictions, courts have developed and implemented community courts which recognize and address the often integrated or connected issues that an accused person may present - mental health issues, drug addictions, homelessness. Community courts also ensure that accused or offenders make reparation to the community for the harm caused by their offending behaviour.²¹

Problem-solving courts look beyond sheer criminal culpability; they view offending behaviour as interconnected to a broader array of potential personal troubles in the lives of offenders.²² From a justice

Manitoba, *Annual Report 2010-2011*, at 8, online: Manitoba Courts <http://www.manitobacourts.mb.ca/pdf/annual_report_2010-2011.pdf>.

²¹ Provincial Court of Manitoba, *Annual Report 2009-2010*, at 19, online: Manitoba Courts <http://www.manitobacourts.mb.ca/pdf/annual_report_2009-2010.pdf>.

²² Ursula Castellano & Leon Anderson, "Mental Health Courts in America: Promise and Challenges", (2013) 57:2 *American Behavioral Scientist* 163.

perspective, problem-solving courts can be characterized as applying diagnostic adjudication, rather than the traditional form of procedural or decisional adjudication.²³ Diagnostic adjudication has been described in the following terms

[a]s the name suggests, diagnostic adjudication is largely devoted to determining the cause of a problem and devising the proper treatment to eliminate it, or mitigate its most damaging effects. ... In diagnostic adjudication neither the law nor the facts are necessarily dispositive; more important may be a reaching of agreement on how to reclaim a juvenile or restore a family. Findings of guilt or fault may be irrelevant, and disposition of the case decidedly secondary to securing a socially desirable result.²⁴

Chief Judge Champagne describes problem-solving courts as “trying to deal with society’s problems and issues through the back end.” As he explains, the problem-solving courts represent an opportunity to address “the underlying issues that have caused the person to become involved in a conflict with the law.”

The Drug Treatment Court is one of the problem-solving courts within the Provincial Court of Manitoba.²⁵ The Drug Treatment Court is now in its eighth year of operation,²⁶ with more than 60 graduates from the program.²⁷ The administrative and procedural protocols for the project were developed by a committee, with representation from the Provincial Court, private and Legal Aid lawyers, federal and provincial justice officials, court services personnel and representatives of social service organizations.²⁸ The

²³ See Cornelius M Kerwin, Thomas Henderson & Carl Baar, "Adjudicatory Processes and the Organization of Trial Courts" (1986) 70:2 *Judicature* 99 at 100.

²⁴ *Ibid* at 102.

²⁵ The Drug Treatment Court and the Mental Health Court are the two most significant problem-solving courts in Manitoba.

²⁶ The Drug Treatment Court was implemented on January 10, 2006.

²⁷ Another leader of the problem-solving courts in Manitoba is The Honourable Judge John Guy who, from its inception (January 2006) until recently, was the judge of the Drug Treatment Court of Manitoba. Judge Guy is widely recognized for his leadership in developing the Drug Treatment Court to be one of the most successful models in the country. Judge Guy recently started sitting in the Mental Health Court.

²⁸ See the Provincial Court of Manitoba, *Annual Report 2004-2004 & 2005-2006* at 14, online: Manitoba Courts <http://www.manitobacourts.mb.ca/pdf/annual_report_2004-2006.pdf>. The Addictions Foundation of Manitoba is

Drug Treatment Court today sits every Tuesday afternoon in Winnipeg.

Chief Judge Champagne describes the benefits of the Drug Treatment Court in the following manner

When you help people get through their addictions issues, and become or re-become contributing members of society, you have done very good work. You have saved the community an awful lot of money, as most of these people ... would otherwise be going through the regular justice system and they would typically be sentenced to lengthy sentences. And the recidivism rate for those traditional approaches to drug offences is sky high, whereas the recidivism rate of those who graduate from the drug treatment program is incredibly low.²⁹

Not all who enter the Drug Treatment Court successfully complete its requirements. However, as he reflects on the success rates, Chief Judge Champagne is impressed by the low dropout rate, considering the significant challenges faced by the participants who must adhere to the program's rigorous requirements.³⁰ Drug treatment courts attempt to end the "revolving door syndrome" of persons with drug addictions, and are making a difference. Earlier this year the federal government approved two more years of funding towards the continuation of this Court in Winnipeg, and in five other centres across Canada.³¹

Another problem-solving court in Manitoba is the Mental Health Court, which began to hear cases in May 2012. Mental health courts began in the United States in the mid-1990s and rose in popularity after 2000 when the American federal government launched a

cited in the *Annual Report* as one of the social service organizations represented on the Committee at 14.

²⁹ Chief Judge Champagne advises that the recidivism rate for graduates of the Program in Manitoba currently stands at 14%.

³⁰ Chief Just Champagne credits some of the success of the program to the stringent admission criteria developed in Manitoba for being accepted into the program.

³¹ Funding was provided pursuant to the federal government's National Anti-Drug Strategy, see online: National Anti-Drug Strategy <<http://nationalantidrugstrategy.gc.ca/dtc-ttt.html>>.

There are now 6 Drug Treatment Courts operating in Canada. Aside from Winnipeg, the Courts operate out of Toronto, Vancouver, Edmonton, Ottawa, and Regina.

funding program for these types of courts.³² Mental health courts have been described as “specialized criminal courts that divert offenders with serious mental illnesses from the criminal justice system into community-based treatment.”³³

The detailed proposal for the Mental Health Court in Manitoba was developed by a steering committee, which met over the course of several years.³⁴ Former Chief Judge Wyant was the first chair of the Steering Committee, which comprised representatives from the justice system, including Crown and defence counsel, Winnipeg Police Service, Manitoba Corrections, and representatives from Manitoba Health and the Winnipeg Regional Health Authority (WHRA). When Chief Judge Champagne assumed his current position, he agreed to co-chair the Committee with prominent local forensic psychiatrist, Dr. Stanley Yaren. The Committee continued to meet frequently in an effort to finalize a proposal for a mental health court pilot for consideration by the Minister of Justice and Ministers of Health and Healthy Living.³⁵ Since its establishment a year ago, the Province has been the sole funder of this Court.

The Mental Health Court today involves a weekly sitting, available only in Winnipeg at the present time. The Court offers pre-sentence intensive services and supports to persons whose criminal involvement is a direct result of their mental illness. Services are provided by a Forensic Assertive Community Treatment (FACT) team, which has been established within the WRHA's Community Mental Health Program to work with the program's participants.³⁶

Persons who have been diagnosed with a severe and persistent mental disorder, such as schizophrenia or bipolar mood disorder, and committed certain criminal offences may be eligible for the Court. A

³² See Erickson, Steven K Erickson, Amy Campbell & J Steven Lamberti, "Variations in Mental Health Courts: Challenges, Opportunities, and a Call for Caution" (2006) 42:4 Community Mental Health Journal 335 at 336-7.

³³ Castellano & Anderson *supra*, note 22 at 164.

³⁴ The Steering Committee began meeting in 2005.

³⁵ Provincial Court of Manitoba, *Annual Report 2008-2009* at 19-20, online: Manitoba Courts <http://www.manitobacourts.mb.ca/pdf/annual_report_20082009.pdf>.

³⁶ See the Court's own description of the program, online: Manitoba Courts <http://www.manitobacourts.mb.ca/pr/mental_health_court.html>.

Crown Attorney will review the case to determine if an applicant meets the criteria. If accepted, an applicant must also complete a waiver form so the FACT team can access his or her criminal and medical records to develop a responsive recovery plan. The FACT team consists of a psychiatrist, a team leader, a multidisciplinary team of four service coordinators, and an administrative assistant. In addition to providing intensive support to the participants, the team members also report to the Court on a weekly basis.³⁷

As of April 2nd, 2013, there were 25 participants involved in the Mental Health Court.³⁸ Today, the number of participants stands at 40. This represents a “full docket” based upon the resources that are available. At the end of its first year, the Court conducted an evaluation of the program. Chief Judge Champagne advises that the feedback from those involved was generally very positive, especially the comments from the family members of the participants in the program.

2. Aboriginal Justice Initiatives

Chief Judge Champagne is fully supportive of the concept of introducing an Aboriginal community court as a diversionary court operating within the framework of the Provincial Court. He has attended meetings with leaders of Aboriginal communities and listened to their ideas on the design of such a court. He believes that the vision for the Aboriginal community court must come from the Aboriginal communities. He reflects on the challenges of this area, as he cautions,

we need to do a better job of ensuring that the Aboriginal community trusts the justice system and has a voice in that justice system. That can be a difficult thing when you look at the history of Canada and the history of this province.

At the same time, he is open to his Court sitting in more First Nations communities. However, here too he believes that the first step towards assessing whether this should occur is for the First Nations community to determine whether it wishes the Court to be there. According to its revised circuit schedule for 2014, the Court is

³⁷ *Ibid.*

³⁸ Manitoba, Legislative Assembly, *Debates and Proceedings*, 40th Leg, 2nd Sess, Vol 64B (25 June 2013) at 2720 (Hon. Andrew Swan).

scheduled to sit more days in Aboriginal communities in Manitoba than ever before.

In the meantime, he is reflecting on how to integrate full sentencing circles into his busy court. He sees sentencing circles as a valuable way of embracing Aboriginal culture and the principles of justice. Further, sentencing circles can facilitate the re-integration of the accused back into the community “because the victim’s family and the community members at large were engaged in the process and therefore know what’s going on.”

B. Director of Justice Innovation, Justice Manitoba

Ms. Irene Hamilton has been Director of Justice Innovation for Manitoba Justice since January 2012. It is a new position that was created under the leadership of The Honourable Andrew Swan, Minister of Justice and Attorney General, and his Deputy Minister, Mr. Jeffrey Schnoor, Q.C. The focus of this position is the criminal justice system, as Ms. Hamilton explains:

To put it in terms that our deputy minister uses the criminal justice system involves inputs to the system, namely, the people who are being arrested or charged; then the process as they move through the criminal justice system (velocity); and then outputs at the end, which could be a disposition, or if the person is incarcerated, it could be a release from jail. So Justice Innovation has as its focus the velocity, the speed with which matters are moving through the criminal justice system. Our challenge is to look at how we could make processes better, or develop different processes or new processes, in order to make the system move more effectively and more quickly.³⁹

To support the position within the Department, the Deputy Minister of Justice, Mr. Schnoor, created a Departmental steering committee known as “Interlinkage”, with membership drawn from the heads of those branches directly involved in the criminal justice system. The Deputy Minister chairs the Committee.

The judiciary in Manitoba also plays a critical role in developing initiatives with the Director. The Chief Justices and the Chief Judge have each appointed champions from their respective courts to work

³⁹ *Supra*, note 15, unless otherwise noted the following information and quotations were obtained through the interview which took place between the author and Ms. Hamilton.

with the Director.⁴⁰ The role of the Judicial Innovation Champions is to ensure that the design and implementation of any new initiatives properly reflect the needs and concerns of the Courts and those it serves. Ms. Hamilton explains the critical role that the judiciary plays in the support and development of new programming as

valuable because I can pick up the phone and say “Okay, I’ve got this idea, what do you think?” They’re willing to have those kinds of discussions and it’s really important because before embarking on any of these things, I have to know that the judges are in agreement and see it as a positive change. The judicial support of innovation is critical. It’s not going to happen if the judges don’t agree with it.

Ms. Hamilton is skilled in ‘back-casting’. She looks at the processes within the criminal justice system and, working collaboratively, imagines what they could be. Then, as she explains it, she “figures out what we need to do to make that happen.” Her first project, now fully implemented, is an example of her overall approach. It began with an aspect of criminal justice in northern Manitoba, specifically the process for transporting inmates from northern Manitoba’s correctional facility in The Pas to the Thompson Court House and back - a return distance of almost 800 kilometers. Prior to her office being involved, inmates would normally be transported by sheriff’s van, or by plane during inclement weather to attend at the Thompson Court House.

Ms. Hamilton’s office studied what actually happened in the Thompson Court House with respect to the inmates who had been transported during the four-week period of February 2012, and again in February 2013. Specifically, they conducted a study of what happened during each of those periods with respect to the following: the number of people being transported; the outcome of their court appearances; and how often each inmate had been remanded. A high level assessment of the transportation costs was also included.⁴¹

⁴⁰ The current membership of the Judicial Champions of Innovation consists of Chief Justice of Manitoba Richard Chartier, Chief Justice Glenn Joyal, and Associate Chief Justice (General Division) Shane Perlmutter of the Court of Queen’s Bench, and Chief Judge Ken Champagne, and Associate Chief Judge Janice leMaistre of the Provincial Court of Manitoba.

⁴¹ In calculating the number of remands, all remands were included in the total count even if the remands did not occur within that four week time period.

While enhancing the video conferencing capacity between The Pas Correctional Centre and the Thompson Court House seemed to be an obvious solution to limit the incidence of travel, and thereby address the costs and safety risks associated with the extensive northern travel involved, Ms. Hamilton met with the northern Bar in Thompson to discuss this proposal in its early stages. The Bar expressed some concerns, as she explains:

[T]hey were concerned that this had been the way in which business had been done for years, and it provided them with the opportunity to bring their clients in for the purpose of interviewing their clients. Even if they weren't going in to court, they might have the opportunity to speak with them, and then they'd go back to the correctional centre.

As a result of her consultation with legal professionals, the project now had a further issue to address: finding a better way for defence counsel to confer with their clients.

The solution that was ultimately reached to address the multiple issues presented by this project involved three dimensions. First, the quality of video conferencing between The Pas Correctional Facility and the Thompson Court House was significantly upgraded. Second, the number of court appearances, whether by video conferencing or physical appearance, was reduced and the Court adopted a process of what might be described as “purposeful scheduling”. The idea is to limit the number of remands and to only have an appearance where a judicial decision is required,

[w]e changed a number of the court processes so that people, even if they were going to be appearing by video, wouldn't have to appear for remands until the lawyers had spoken with one another and had determined what was going to happen. So if it's the person's first appearance in custody or bail denied they go to custody coordinators docket, and the matter is there for 4 weeks, giving the lawyers time to have those discussions, and then it goes back onto the judge's dockets. We also eliminated all of those remands that were often weekly or bi-weekly.

The result is that unless otherwise ordered by a judge, personal appearances at the Thompson Court House are limited to an accused entering a guilty plea that results in them serving federal time, or if there is a preliminary inquiry or a trial.

Finally, to enhance the opportunities for defence counsel to interview their clients, the Department uses an encrypted and secure program called “Go To Meeting”. A computer was installed in The

Pas Correctional Centre, and counsel wishing to schedule an appointment with his or her client can do so by contacting Correctional staff at The Pas at least 24 hours in advance. As Ms. Hamilton explains:

An icon will pop up on the lawyer's computer in their office or home - wherever they are - when the meeting is scheduled. Lawyers are given as much time as they need to have their interview with their clients. They can show them documents. Essentially, it gives them the opportunity to discuss information, provide advice and receive instructions in a much less rushed situation than going to the sheriff's lockup the morning before court.

The project in Northern Manitoba was fully implemented as of April 15, 2013. Currently, the Justice Innovation Branch is conducting a post-implementation analysis and review. The first stage of that process involves obtaining feedback from the judiciary and court staff, along with the sheriffs and other justice personnel directly involved in the process. The Branch will then confer with the Crown and defence counsel practicing in Thompson. The idea is to incorporate that feedback that will achieve more effective results, all the while balancing a number of different interests.

While the project in northern Manitoba is the first project to be addressed and implemented by Justice Innovation, it has many others it is working on including piloting a direct data entry project in the Provincial Court. The overall objective is to make the Provincial Court a "paperless" court.⁴² An electronic information project is also being tackled with the Provincial Court.

Ms. Hamilton identifies one of her biggest challenges to be finding solutions that will "work for everybody", as she explains,

in Justice, we have to consider not just the two branches of government, but also all of the private interests and the interests of the accused, which are not necessarily consistent with the concerns or interests of the department or the judiciary. So it's an interesting challenge to get everybody moving in the same direction. We certainly have to be very cognizant of what the goal and the responsibility of each of those players is in the system.

⁴² Enabling legislation was introduced this past session, *Bill 8 - The Provincial Court Amendment Act*, 2nd Sess, 40th Leg, Manitoba, 2012. The Bill did not proceed to Third Reading, although the government has indicated it will be reinstated in the third session.

The other critical piece is ensuring that they have all of the relevant information. As she explains, “[w]e can come up with ideas about what we can change, but then we need to make sure that we’re not missing any pieces.” This involves getting the right players on board. The process that Ms. Hamilton has adopted, with a careful inclusive approach, is an exemplary way to move forward to developing innovative approaches to the criminal justice process. She appears to have heeded the principle that management analysis should never lose sight of the goal of doing justice.⁴³

C. Law Society of Manitoba Initiatives

Mr. Allan Fineblit is one of the longest serving members of the Federation of Law Societies of Canada, having been Chief Executive Officer of the Law Society of Manitoba (LSM) since 1998. He came to his CEO role with extensive public law experience, with positions as Executive Director of Legal Aid Manitoba, and as Assistant Deputy Attorney General (Criminal Justice) with Manitoba Justice.

1. *Access to Justice Stakeholders’ Committee*

Under Mr. Fineblit’s guidance, the Law Society of Manitoba created the Access to Justice Stakeholders’ Committee, which operates provincially and is now entering its third year of operation.⁴⁴ Seventeen organizations are represented at the table including the Courts, the federal and provincial Justice departments, professional bodies, Aboriginal organizations and community groups.⁴⁵ The Committee meets two or three times a year.

⁴³ Perry S Millar & Carl Baar, *Judicial Administration in Canada*, (Kingston: McGill-Queen’s University Press, 1981) at 327 where the authors write: “The point is clear and simple: management analyses of a court system should never lose sight of the high and overriding goal of doing justice in each individual case.”

⁴⁴ *Supra*, note 16, unless otherwise noted the following information and quotations were obtained through the interview which took place between the author and Mr. Fineblit.

⁴⁵ The complete list of organizations represented at the table are: Law Society of Manitoba, Court of Queen’s Bench (Family Division), Provincial Court of Manitoba, Faculty of Law, Manitoba Bar Association, Justice Canada, Justice Manitoba (represented by the following branches of the Department - the Courts Division, Justice Innovation Branch, Constitutional Law Branch and Family Law Branch), Legal Aid Manitoba, Community Legal Education Association,

The core mandate of the Committee is “to foster relationships and partnerships across the range of players who are interested in access to justice issues.” The overarching goal is for members to learn what is already being done and to identify gaps; coordinate efforts to avoid duplication; and explore opportunities for partnerships.⁴⁶ It is an important step in coordinating justice strategies to ultimately make a difference in the quality of justice programming in Manitoba.

The Law Society also has a number of projects that it runs internally to facilitate access to justice. Two of these are particularly compelling: the Family Law Access Centre and the Forgivable Loans Initiative.

2. Family Law Access Centre (FLAC)

FLAC was created by the Law Society of Manitoba and has been up and running for approximately three years. It is a ‘made-in-Manitoba’ initiative that sets a precedent for other jurisdictions to consider. The program was established to provide family law services for those who do not qualify for Legal Aid, but cannot easily afford legal services to assist them with their family law matters, such as divorce, child custody and spousal support. Mr. Fineblit describes those who benefit from this program as “the working poor”. He observes that family law services are particularly challenging for the working poor because of the unpredictability of the total legal costs when retaining a lawyer for family law services. As he illuminates,

[o]ne of the most difficult parts of people getting access to family law lawyers is the fact that when they walk into their lawyer’s office, and say “well, how much is this going to cost me?” the lawyer says “I can’t tell you how much it’s going to cost you because it’s unpredictable”. That in itself limits access because people can’t go out and say “I need \$20,000, so here’s my plan for

Manitoba Law Foundation, Manitoba Law Reform Commission, Legal Help Centre, Federation of Law Societies (FLSC) Access Committee & National Action Committee on Access to Justice representative (J. Hirsch), Assembly of Manitoba Chiefs, Manitoba Metis Federation and Manitoba Interfaith Immigration Council. The current Chair and Vice-Chair of the Committee respectively are David Gray and Linda Brazier Lamoureux, Email from P. Bourbonnais, the Law Society of Manitoba (4 July 2013).

⁴⁶ See Community Legal Education Association (Manitoba), *Annual Report 2011-2012* at 6, online: Community Legal Education Association <<http://www.communitylegal.mb.ca/wp-content/uploads/CLEA-AR-2012-4.pdf>>.

how I'm going to raise \$20,000". They're told it's a blank cheque, you really don't know.

Under the FLAC program, the LSM acts as a brokerage house in family law matters by buying legal services at a discount from private bar lawyers⁴⁷ and then making them available to those who meet the financial eligibility guidelines for the program.⁴⁸ There is no screening for merit. Mr. Fineblit described the application process to the author:

If they meet our eligibility criteria, we don't ask them if they're going to be successful, or reasonable, or consider their rate of success because we treat them like any other client. They're paying the costs, so if they're willing to pay for it then we don't have this kind of screening process. So we're treating them as if they're paying clients. That includes, by the way, their freedom to instruct their lawyer and to decide on disbursements. In Legal Aid, you would have to get approval for disbursements but not with us. So that makes it administratively easier but also creates more of a connection to the case because they've got to consider themselves whether it's a reasonable expenditure of their money. The cases are clearly serious and there are people who don't have another alternative.

There is about a one year waiting period to get into the program. While the program has been operating for approximately three years, the Law Society continues to view this as a pilot program and has had discussions with other organizations towards finding a permanent home. While Legal Aid Manitoba might appear to be a natural fit, there are some challenges with that idea,

Legal Aid says that it would be impossible for it to operate a program that pays \$80/hour for those lawyers representing the poorest of the poor [in its own program] and double that amount for people who are slightly less poor [the FLAC program] and it just wouldn't work in their context.

The costs of administering the FLAC program are not significant. When the Centre was first launched, it was estimated that two members of the Law Society staff would be needed to administer the

⁴⁷ The discounted rate is as follows. A lawyer with less than five years at the Bar is paid \$100.00 an hour. A lawyer with five to 10 years at the Bar is paid \$130.00 an hour. A lawyer with more than 10 years at the Bar is paid \$160.00 an hour. While the lawyer works at a discounted rate, he or she is also guaranteed payment for their services through the FLAC program.

⁴⁸ The eligibility guidelines are set out on the Law Society of Manitoba website and can be found at <<http://www.lawsociety.mb.ca/for-the-public/family-law-access-centre>>. The applicant must also agree to reimburse the Law Society for these fees.

program. However, today only one person administers the program and she does so in conjunction with other duties.

Mr. Fineblit is the first to admit that the program is imperfect. As he explains, the FLAC financial eligibility requirements essentially begin at the level where the eligibility for free Legal Aid ends.⁴⁹ While he believes that FLAC is capturing the most serious cases of need beyond those who qualify for free Legal Aid, he points out that some applicants are ineligible for the FLAC program because they simply cannot pay. That is, in reviewing their financial situation, the Law Society concludes that they would be unable to reimburse the Society for their legal fees if they were admitted into the program,

We can't take them into the program because there's no hope that they can pay us... If you looked at what they were spending each month, these are not unreasonable expenditures - they're not buying fancy cars or imported cigars from some place - these are the expenditures of life. But the truth is that the program won't work for a significant number of people who qualify financially for our program because they don't have any money to pay back the cost. It only works if the people are paying back the cost, recognizing then that the only cost to the program is the bad debt. So to take somebody in when there's no hope of that person paying back, that's not this program, that's Legal Aid.

Mr. Fineblit believes that the solution to this issue involves a recognition that the Legal Aid Manitoba guidelines must be modified so that those who fall within this gap become eligible for free Legal Aid.

The Law Society has learned much from operating the FLAC program. Notably, Mr. Fineblit has concluded that, while the issue of self-represented litigants (SRL) in family court in Manitoba is a significant issue, it is potentially a manageable one. He observes that, if the FLAC program was continued and the Legal Aid guidelines were enhanced so that those who currently fall in the gap between eligibility for Legal Aid and the FLAC program were covered by Legal Aid, the problem of SRLs in family law cases in Manitoba would mostly disappear. As he describes it, in Manitoba, the issue of SRL in family law cases is "mostly a problem of hundreds, not thousands."

⁴⁹ While an individual qualifies for FLAC funding if his or her gross income does not exceed \$35,000 Legal Aid Manitoba's eligibility guidelines for free legal services for a family of six or more identify \$37,000 as the top level of gross income, see online: Legal Aid Manitoba <<http://www.legalaid.mb.ca/>>.

Mr. Fineblit characterizes FLAC as “a very significant and useful tool as part of a range of initiatives addressing access issues in our Province.” Its creation has meant that more Manitobans have been able to be represented by their own counsel in family law disputes than would otherwise be the case.

3. Forgivable Loan Initiative

This program is the brainchild of the former Dean of the Faculty of Law at the University of Manitoba, Mr. Harvey Selter, and Mr. Fineblit. Under the program, the Law Society awards a forgivable loan to selected students from under-serviced Manitoba communities, subject to them being accepted into the University of Manitoba Faculty of Law. The Law Society will forgive 20% of the loan for each year that the recipient practices in his or her community after being called to the Bar. The loan is up to \$25,000 a year for each of the three years of law school study and the loan is to help defray the expenses of the student living away from his or her home community.⁵⁰

The program runs today as a joint venture of the Law Society of Manitoba, the Faculty of Law at the University of Manitoba and the MBA. Each organization plays a key role: the Law Society manages and finances the operation; the Faculty is responsible for creating spaces and recruiting the applicants; while the MBA helps these students find summer employment in their home communities to keep them connected.⁵¹

The program was created to respond to the problem of underserved rural communities. The goal is to facilitate access to

⁵⁰ The details of the program can be found on the Law Society of Manitoba website at <<http://www.lawsociety.mb.ca/news/law-society-extends-forgivable-loan-program>>.

⁵¹ As Mr. Fineblit explains, “Without summer employment opportunities for these students, you face the problem of you get the students into the law school, they are in Winnipeg, summer comes, they get a great offer of a summer job at one of the really good firms and they go there and they get sucked into that vortex and they never go back. So a key component people identified was making sure that the firms in the communities they came from were prepared to provide summer employment to these students as a way of keeping their connections to their home community.”

legal services within those communities. Mr. Fineblit describes the rationale of the program in the following terms:

The program was initially developed because of a clear issue we learned about in communities outside of Winnipeg, particularly some of the smaller communities, where there was an under supply of lawyers. In addition to that, we did some demographic analysis and the Bar was aging and not refreshing itself. It was a very old Bar in those communities and there was not any indication that it was refreshing itself.

Mr. Fineblit's observations mirror those of the MBA. In its report on access to justice, the MBA concluded that there were significant "supply issues" in rural areas to meet the demand for legal services.⁵² In particular, the report observed that "[m]any lawyers in rural communities are nearing retirement age and recruitment of younger lawyers to these centres remains a challenge."⁵³

The Forgivable Loans program is expensive to run: if it is successful, it's \$75,000 per student.⁵⁴ There is currently one law student in the program and another student who is being considered. While there is a full commitment to those students within the program, Mr. Fineblit notes that the original rationale for the initiative, underserved rural communities, may no longer be as apparent. Demographic analysis conducted by the Law Society concluded that there was 6% growth last year in lawyers practicing outside of Winnipeg. Further, the Law Society recently experienced one of the largest ever percentages of articling students practicing outside of Winnipeg.

Mr. Fineblit also observes that, while the program was launched to address an aging Bar in rural Manitoba, there may be more pressing issues to address, namely, that of Manitoba communities that are without any lawyers. He believes that this problem may be particularly acute with respect to the "high number of large First Nation communities that could sustain a resident lawyer". He also observes that the world of legal service delivery is changing quickly and many

⁵² *Town Hall Meetings*, note 6.

⁵³ *Ibid* at 5.

⁵⁴ The calculation of total cost of \$75,000 for each student is based upon \$25,000 x 3 (years of law school). As Mr. Fineblit explains: "If the program works, it's \$75,000 a student - we don't want to be paid back because if we're paid back it means the program hasn't been successful, the student has left the community."

would question whether ‘in-person’ legal service delivery is the way of the future. Not surprisingly, Mr. Fineblit continues to keep his finger on the pulse of change to assess the relative policy merits of continuing with the *status quo* or of a change in direction,

[t]he pace of change is very fast, much faster than when you and I grew up and you’ve got to be nimble in terms of not marrying yourself to a program that is meeting the wrong need. We’re happy with what we did. We think it’s a nice thing to have done. If you talk to the student [in the program], she would tell you that she wouldn’t be where she is and wouldn’t be going back to her community were it not for this program. But whether we need to expand or make [the program] bigger or change it, we don’t know yet.

Mr. Fineblit has other ideas on facilitating access to justice. He believes that further work on alternate service providers is needed. The Law Society Benchers have directed him to work on a model that would allow non-lawyers (paralegals), who have gone through an appropriate training program, to work in areas formerly exclusively assigned to lawyers, so long as they do so in a law office under the supervision of a lawyer. He believes that the need for alternate service providers may be particularly acute in the field of family law and that developing such a model could significantly facilitate access to justice in Manitoba.

Mr. Fineblit finds his access to justice work amongst the most rewarding of his career. He reflects upon the reality of the difference that these Law Society initiatives have made to the people it has impacted and sums it up this way,

it may seem kind of silly in the big picture of things, but when you see individual people who are being helped, for me, it is quite rewarding. You see people who have a serious problem for which they don’t have a solution and you provide them with a solution. It’s very small scale; we’re not helping thousands of people, just individuals. Still, it’s very satisfying to see that we’ve been able to help individuals because they’re quite sympathetic in terms of their own situations.

IV. CONCLUSIONS

A consistent practice across all three of the justice officials interviewed for this article is their extensive use of collaboration. Whether one considers the creation of the problem-solving courts, the Justice Innovation projects, or the Law Society of Manitoba’s access to justice programs, horizontality – working in conjunction with other

sectors across the justice system – is an integral part of the design and implementation of these initiatives.

Judges and lawyers are stewards of the justice system and must remain open to reforms, like those featured in this article, which will enhance the fundamental principles of justice. Ninety years ago, Roscoe Pound observed that,

Law must be stable and yet it cannot stand still. Hence all thinking about law has struggled to reconcile the conflicting demands of the need of stability and of the need of change. ... Thus the legal order must be flexible as well as stable. It must be overhauled continually and refitted continually to the changes in the actual life, which it is to govern. If we seek principles, we must seek principles of change no less than principles of stability.⁵⁵

Adaptation to change is not only an essential element of law, it is essential in sustaining the legitimacy of the justice system.⁵⁶ The initiatives taken by those who have been profiled in this article have helped to make a difference with respect to the accessibility and effectiveness of justice within Manitoba. We are all the better for it.

⁵⁵ Roscoe Pound, *Interpretations of Legal History* (Cambridge: Cambridge University Press, 1923) at 1.

⁵⁶ Millar & Baar, *supra* note 43 at 323.

