

Enabling Access to Justice through Technology

Thomas Spraggs is a personal injury lawyer practicing in Coquitlam, BC. Tom has been recognized as a leading proponent of reform from within the legal sector, serves as a Director of the British Columbia Law Institute, and is constantly striving to improve legal services delivery through the effective use of technology in his practice.

Most discussions regarding access to justice in Canada centre on need for increased funding for legal aid. While it may very well be true, as a technology firm, we bring a different perspective: First, technology can automate many low-value tasks currently performed by lawyers, increasing the value-for-money of current funding for legal aid. Second, technology can also help overcome several non-monetary barriers, improving access to justice for all Canadians.

Lawyers are expensive, so let's use their time more effectively

Most lawyers resent the administrative burden placed on them, and would prefer not to pass the cost of performing these activities on to their clients either directly or indirectly. Yet lawyers and the firms they work for have been slower to embrace productivity-enhancing technology than most other sectors of the economy. Lawyers today still spend on average more than 30% of their time on relatively low-value activities:¹

- scheduling appointments
- gathering client information
- managing documents
- logging time & documenting expenses
- coordinating billings and payments

With today's technologies, however, there is evidence the majority of time spent on these activities can be eliminated, allowing lawyers to work more effectively. This increased productivity can be used to significantly increase the value obtained from existing budgets for legal aid.

But legal fees aren't the only barrier to access to justice

We shop, bank, and socialize on-line 24-7, yet legal services are still predominantly delivered during business hours, either face-to-face or via telephone. For a single parent working full-time, the cost of hiring a lawyer may only be one of many barriers to accessing justice:

- How do I find a lawyer I can trust?
- Can I afford to take time off work to see a lawyer?
- What if my employer/ex-spouse/landlord finds out I'm seeing a lawyer?

¹ Measuring the potential increased productivity that comes from technology is challenging, but there are some reliable data: One legal practice automation vendor has extensive data showing a 25% increase in productivity from adopting their software, while other studies found a 64% increase in efficiency from adopting advanced legal research tools. Observed utilization, realization, and collection rates from actual practices suggest true productivity of about 19% (1.5 hours billed per 8-hour day), though this includes productivity losses related to a range of factors, not simply tasks that can be more effectively automated. Based on available research, we selected 30% as a conservative and defensible number.

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These barriers are amplified in rural and remote communities, where the pool of available lawyers is reduced, and travel times to see a lawyer can become an insurmountable barrier. Similarly, people who are mobility-challenged, who work shifts, elderly, or are simply busy find it challenging to access legal services.

The same, secure technologies that underpin innovations such as telehealth and online education have the potential to provide legal services anywhere, anytime. For the single parent, this means videoconferencing with a lawyer in the evening after the kids are in bed. For a small business owner in Iqaluit, it could mean accessing specialized services not available in their community. By embracing technology, we can overcome many of the non-monetary barriers to access to justice.

I'd like to help, but...

Many lawyers are committed to giving back to the community through providing pro bono services, but face their own barriers. For example, Canadian Bar Association (CBA) members each commit to providing 50 hours of pro-bono services per year. Providing these services, however, frequently involves travelling to a community centre, setting up, then travelling home. A lawyer volunteering for a two-hour free legal clinic may lose more than four hours out of their day. In contrast, technology can connect people seeking legal help to lawyers willing to help them at times and using modes of communication that are mutually convenient.

The contribution of pro-bono legal services to access to justice cannot be underestimated: Returning to the example above, the equivalent monetary value of the 50 hours pledged by CBA members alone is approximately \$250M per year.² If all of Canada's lawyers pledged a similar amount, the value rises to \$750M annually. To place this amount in context, the operating budget for Legal Aid Ontario (LAO) in 2016 was \$440M. Leveraging technology to provide pro-bono services will not address all the barriers to access to justice, but making it easier for lawyers to contribute their time could make a substantial difference.

Accelerating unbundling

Unbundling legal services has long been recognized as a key strategy in increasing access to justice. Lawyers and law firms have been slow, however, to embrace unbundling.³ Resistance to what is a profound cultural change is cited as a key explanation, but our analysis suggests the previously discussed low-level of technological adoption may be a greater barrier than culture: Most law firms lack the level of automation necessary to make the unbundling of legal services financially viable. If the financial overhead of acquiring a new client followed by generation of a first and final, low-dollar value invoice exceeds the revenues generated, then firms cannot and will not embrace unbundling. Many provincial / territorial governments and law societies have invested significant resources into unbundling, but in order for these investments to yield returns, they must be paired with equivalent investments in technology.⁴

² For this calculation: 50,000 CBA members x 50 hours per member x \$137/hour (Tier 2 lawyer rate for Legal Aid Ontario). We are aware rates vary from province to province, as well depending on the experience of the lawyer and the complexity of the case.

³ Nate Russell, Slaw January 16, 2017

⁴ <https://www.lawsociety.bc.ca/our-initiatives/legal-aid-and-access-to-justice/unbundling-legal-services/>

Enabling Access to Justice Through Technology (cont.)

Virtual courtrooms

Over the past decade, we have seen courts integrate videoconferencing technology into traditional courtrooms, as well as some pilots of fully virtual courts. Yet much more can be done and should be done to increase the pace of adoption of these technologies. For many, the time commitment alone of proceeding to trial poses an insurmountable barrier to access to justice, especially for Canadians living in rural and remote communities.

How Can Governments Help?

Federal, provincial, and territorial governments can help accelerate the adoption of technologies that enable access to justice in several ways:

- Encouraging and supporting technology solutions that assist clients to access, and lawyers to deliver legal services;
- Encouraging and supporting technology solutions that streamline and simplify the delivery of low value administrative tasks associated with legal services;
- Providing public education and information informing citizens of new technology solutions;
- Ensuring existing and new laws, rules and regulations support the development and use of improved technologies for delivery of legal services.

Integrating these actions into existing innovation strategies at both federal and provincial / territorial levels of government will help maximize the benefits both in terms of enhanced access to justice and economic development.

Access to justice – time to think differently

Enabling access to justice requires money, but it also requires us to think differently about what the barriers truly are, and how we can address them. Leveraging technology to increase the efficiency of lawyers will help free up time otherwise spent on low-value activities, stretching limited legal aid budgets. It will also allow lawyers to embrace unbundling of services without compromising the financial viability of the firms they work for. Using videoconferencing and other collaboration technologies has the potential to revolutionize the delivery of pro-bono services, encouraging lawyers to contribute their time in ways that are more sustainable for them as well as better for the people they are helping. Incorporating videoconferencing, chat, mobile scheduling and payment into client-lawyer relationships will address many of the non-financial barriers to accessing justice, as will accelerating the adoption of virtual courtrooms. Technology will dramatically improve access to justice in Canada; but this potential can only be realized through focused, coordinated actions by governments, regulators, firms, and individual lawyers.