



Development of An Access to Justice Index for Federal Administrative Bodies

By Susan McDonald

Research and Statistics Division

Department of Justice Canada

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Executive Summary

Introduction

The Department of Justice (DOJ) initiated the Access to Justice Index for Federal Administrative Bodies project in the late spring of 2014 with the goal of developing and piloting a quantitative measurement (the “Index”) of access to justice in the context of Canadian administrative law. The Index provides the administrative body a score, out of 100, which describes how well it is doing to ensure access to justice for its users/clients/parties.

This pilot project is an adaptation of the work introduced by the US National Center for Access to Justice,¹ the *Access to Civil Justice Index* (2014). In developing and piloting the “Index”, DOJ and federal administrative bodies worked collaboratively to address a gap in terms of measuring access initiatives in the administrative justice context. The Index will provide innovative and creative base line information for the participating administrative bodies, as well as identify good practices that other federal administrative bodies could adopt.²

The purpose of the Index is to:

- 1) fill a gap in terms of measuring access to administrative justice at the federal level in Canada;
- 2) provide baseline information on a few key indicators for the participating administrative bodies so that they might track progress over time;
- 3) inspire administrative bodies to reach further and achieve even greater access to justice for parties; and,
- 4) identify good practices for other federal administrative bodies to adopt.³

This report focuses on the concepts underlying the Index and how it was developed. This report does not present the results from the responses to the questionnaire.⁴

Methodology

To develop the Index, researchers selected four categories based on a review of the access to justice literature:

- 1) Access to the Administrative Body (including the sub-categories of Physical Access and Access through Technology);
- 2) Processes (including Procedural justice, Representation, Interpersonal and Informational aspects);
- 3) Costs (including Service Charges and Intangible Costs); and
- 4) Outcomes (including Distributive, Functional and Transparency elements).

¹ [US National Center for Access to Justice](#)

² *Because the Justice Index is selective, rather than comprehensive, it should always be thought of as the beginning, not the end, of an ongoing conversation about best practices ... to providing access to justice.* –US National Center for Access to Justice, *Access to Civil Justice Index*. See *ibid*.

³ “Because the Justice Index is selective, rather than comprehensive, it should always be thought of as the beginning, not the end, of an ongoing conversation about best practices ... to providing access to justice.” – US National Center for Access to Justice, *Access to Civil Justice Index*. See more [here](#)

⁴ Separate reports entitled, *An Access to Justice Index for Federal Administrative Bodies: Results for the Canadian Human Rights Commission*, and *An Access to Justice Index for Federal Administrative Bodies: Results for the Competition Tribunal*, are forthcoming.

Researchers developed questions from the users' perspective. The questions required a yes/no answer. Each positive response carried a weight of 10, 5 or 1 based on the importance of the issue to the overall category from the perspective of the user/client/party. Negative responses received a score of zero. The participating administrative bodies responded to the questionnaire and were also able to provide comments. A score for each category was calculated by dividing the total weighted score earned by the total weighted score possible and multiplying by 100. The composite, or overall, score for each administrative body was calculated as an average of the four category index scores.

The higher the score, the better the administrative body is doing on facilitating access to justice for users/clients/parties. A perfect score is 100. For this pilot project, no "pass" or "fail" score was identified; nor was a minimum score identified on any given sub-category.

The report discusses the four categories and their sub-categories and the questions that comprise each. Weights for each question are also provided.

Conclusion

Results from the pilot test show that the participating federal administrative bodies are excelling in some areas of access to justice, but there is room for improvement.⁵ These are areas that can be examined further.

⁵ The reports on the results for each administrative body, (*ibid.*), detail areas for improvement.

1.0 Introduction

The Access to Justice Index for Federal Administrative Bodies (the “Index”) began in 2014 as a pilot project to develop a tool, as a way to measure access to justice in the context of administrative law and specifically, for federal administrative bodies. This report describes the concepts underlying the Index and how it was developed.

1.1 Defining Access to Justice

Access to justice has been called “the central justice issue in Canada today.”⁶ It has traditionally been seen as access to lawyers (e.g. legal aid) and court-based processes.⁷ However, in recent years, as evidenced by the work of many, access to justice has taken on a much broader definition.⁸ Law societies, the Canadian Bar Association (CBA), the Supreme Court of Canada, through the National Action Committee (NAC), the Canadian Forum on Civil Justice,⁹ as well as academics, students, practising lawyers and other professionals involved in our justice systems are all studying and making recommendations on how to improve access to justice in our country.

In doing so, definitions of access to justice are in plentiful supply. Justice Cromwell of the Supreme Court of Canada, for example, defines access to justice as knowledge, resources and services to use the justice system in family, criminal and civil contexts.¹⁰ Law Professor Trevor Farrow, Osgoode Hall Law School, notes that, “Good laws, rules, judges, educators, lawyers and courtrooms are all important. However, these are not ends in themselves, but rather steps along the path to justice and access to it.”¹¹

To conceptualize this project, it was important to begin with a common understanding of what is access to justice. Former McGill University Law Professor Roderick Macdonald, considered one of the seminal legal experts in the area of access to justice, summarized a set of elements that ultimately define an accessible justice system:

- 1) just results,
- 2) fair treatment,
- 3) reasonable cost,
- 4) reasonable speed,
- 5) understandable to users,
- 6) responsive to needs,
- 7) certain, and

⁶ Chief Justice, Beverley McLachlin ([August 2011](#))

⁷ Roderick A. Macdonald, “Access to Justice in 2003: Scope, Scale and Ambitions” in J. Bass, W.A. Bogart and F.H. Zemans, eds., *Access to Justice for a New Century - The Way Forward* (Toronto: Irwin, 2005) at 20. Access to lawyers and courts is Macdonald’s first “wave” of access to justice.

⁸ There are numerous reports that reflect the expansion of the concept of access to justice. See for example, the work of the [Canadian Forum on Civil Justice](#), or the work of the Canadian Bar Association (see <https://www.cba.org/CBA-Equal-Justice/Home>)

⁹ *Ibid.*

¹⁰ Hon. Thomas A. Cromwell, “Access to Justice: Towards a Collaborative and Strategic Approach” (2012) 63:1 *UNBLJ* 38 at 39.

¹¹ Trevor C.W. Farrow, “What is Access to Justice?” (2014) 51:3 *Osgoode Hall LJ* 957 at 983.

8) effective, adequately resourced and well-organized.¹²

In the same foundational article from 2005, Macdonald defined five waves – or categories – of access to justice.¹³ Macdonald argued that in order to achieve access to justice, it would be important to move from strategies focused on resolving singular issues towards a “comprehensive access to justice strategy ...”.¹⁴

At the Department of Justice Canada, access to justice is considered a fundamental value of the Canadian justice system. It is a principle that flows out of respect for the “rule of law” where the whole of Government has a role to play. In keeping with this, the Department of Justice defines access to justice as:

*Enabling Canadians to obtain the information and assistance they need to help prevent legal issues from arising and help them to resolve such issues efficiently, affordably, and fairly, either through informal resolution mechanisms, where possible, or the formal justice system, when necessary.*¹⁵

This broader understanding of access to justice underscores that:

- I. The justice system extends beyond courts and tribunals to include an extensive informal system (e.g., information sources, self-help strategies, and other dispute resolution options). Increasing access to justice through the use of formal or informal systems is key to achieving fair¹⁶ and just outcomes¹⁷ thereby increasing cost-savings for the government and the whole of the justice system through better resource distribution/allocation;
- II. There is a need to develop Canadians’ understanding and literacy of, and capability to navigate, the legal system, through a range of measures (e.g., providing all Canadians with basic legal training) necessary to enable individuals to better manage their justiciable problems;¹⁸
- III. Access to justice issues are often intensified by other components and conditions, including socio-economic, health factors, and/or policy decisions taken in other areas of responsibility.¹⁹

1.2 The Index project

¹² Macdonald, *supra* note 7.

¹³ *Ibid.* at 19. Those five waves include: 1) access to lawyers and courts; 2) institutional redesign; 3) demystification of law; 4) preventative law; and 5) proactive access to justice. (at 19)

¹⁴ *Ibid.* at 24.

¹⁵ *Access to Justice Toolbox*, Internal document. (Ottawa: Department of Justice Canada, 2012)

¹⁶ *Ibid.* “fair” meaning “accessible, affordable, efficient, sustainable, and proportional”.

¹⁷ *Ibid.* “just outcomes” meaning “Demonstrates respect for the rule of law, supports Charter values, and enables greater social inclusion for Canadians.

¹⁸ See for example, Sarah McCoubrey, *Building Legal Literacy, Preventing Crisis*. (Ottawa: Department of Justice Canada, 2015). Available upon request from rsd-drs@justice.gc.ca.

¹⁹ Ab Currie. *The Legal Problems of Everyday Life - The Nature, Extent and Consequences of Justiciable Problems Experienced by Canadians*. Ottawa: Department of Justice Canada, 2009. Accessed December 16, 2016 at http://www.justice.gc.ca/eng/rp-pr/csj-sjc/jsp-sjp/rr07_la1-rr07_a1/rr07_la1.pdf

The Department of Justice, Research and Statistics Division, initiated the Access to Justice Index for Federal Administrative Bodies project with the goal of developing and piloting a quantitative measurement of access to justice in the context of Canadian administrative law. This measurement includes indicators, data and results and is intended to highlight the power of data-driven policy and programming. The Index can be an important resource for administrative bodies wherein results describe how well they are doing to ensure access to justice for their users/clients/parties.

The project is an adaptation of the Access to Civil Justice Index, launched in 2014 by the US National Center for Access to Justice,²⁰ which measures access to justice in the civil context in all 50 states. This Canadian pilot project aims to address a knowledge gap around access to justice issues in the federal administrative context. It aims to do so in a manner that respects the mandates and the independence of the participating administrative bodies, as well as the strategic outcomes of the Department of Justice Canada (DOJ) - a fair, relevant and accessible justice system and supporting the federal government with high-quality legal services - while contributing to the dialogue on access to justice.²¹

The Index itself was developed by a working group comprised of officials from the DOJ, four federal administrative bodies, and two legal academics. Two federal administrative bodies – the Canadian Human Rights Commission (CHRC) and the Competition Tribunal - participated in the testing of the Index, known as the “pilot project.” It is important to note that the CHRC and the Competition Tribunal each has a different composition, mandate, and different processes. Even with these differences, the Index is applicable.

To summarize the objectives, this project intends to:

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

²⁰ [US National Center for Access to Justice](#)

²¹ Under the Department of Justice Canada’s Program Alignment Architecture (PAA), the Department has two strategic outcomes which represent its overarching objectives. The first strategic outcome is important in this context and states:

“Strategic Outcome 1 - A fair, relevant and accessible Canadian justice system: The Department plays a stewardship role in ensuring a fair, relevant and accessible Canadian justice system. This Strategic Outcome is a shared responsibility among a broad range of players, including Parliament, the judiciary, federal departments and agencies, partners in provincial, territorial and municipal governments, a broad range of non-governmental organizations and stakeholders, and, ultimately, all Canadians.”

To fulfil its stewardship role of the Canadian legal framework, the Department “...ensures a bilingual and bijural national legal framework for the administration of justice that contributes to a safe and just society for all Canadians and confidence in Canada’s justice system. The Department develops and tests innovative approaches to strengthen the legal framework within the following domains: criminal law, youth criminal justice, sentencing, official languages, marriage and divorce, access to justice, legal dualism, and Aboriginal justice. In addition, in view of the federal government’s shared interest in a sustainable justice system, the Department promotes and facilitates ongoing dialogues with the provinces and territories in the areas of shared jurisdiction and provides funding for the delivery of programs that directly support federal policy objectives.” See the Department of Justice’s 2016-2017 Report on Plans and Priorities at http://www.justice.gc.ca/eng/rp-pr/cp-pm/rpp/2016_2017/rep-rap/toc-tdm.html

- 3) inspire administrative bodies to reach further and achieve even greater access to justice for parties; and,
- 4) identify good practices for other federal administrative bodies to adopt.²²

1.3 Administrative Bodies

“The rule of law is no less significant in an administrative hearing room or decision-making process than a courtroom.”²³

Administrative bodies are specialized, arm’s length, governmental agencies established under federal or provincial legislation to implement legislative policy on specific issues in a non-partisan manner. Appointment to such agencies is usually by order-in-council where candidates are chosen for their expertise and experience in the particular sector being regulated by the legislation. Sossin suggests that the rationale for these bodies would include the following:²⁴

- To resolve disputes or reach decisions on the basis of specialized expertise;
- To resolve disputes or reach decisions in a more informal and expeditious fashion, thereby reducing costs to the parties; and
- To resolve disputes in a fashion both at arm’s length from the government and advancing the policy mandates set out in the applicable legislation.

Many administrative bodies function through a hearing process to determine conflicting rights and obligations or to deliberate entitlements between competing parties. The formal hearing is an adjudicative process that functions similarly to the courts; procedure is less formal than before the courts and the rules of evidence do not apply, although decisions must be based on strong evidence.

The decisions of administrative bodies are final and not subject to appeal, although a right of appeal may be provided in the enabling statute to the courts, or to another administrative tribunal or Cabinet. Even where no right of appeal is provided, the Canadian *Constitution* guarantees to superior courts the jurisdiction to review the function of any administrative tribunal – judicial review - so as to ensure that it acts within the jurisdiction conferred on it by Parliament.

Administrative bodies, regardless of whether they are federal, provincial/territorial or municipal, are quite different from each other in terms of their mandates, structures and powers. These differences are and will continue to be important in the development and application of the Index. The goal has

²² “Because the Justice Index is selective, rather than comprehensive, it should always be thought of as the beginning, not the end, of an ongoing conversation about best practices ... to providing access to justice.”– US National Center for Access to Justice, Access to Civil Justice Index. See more [here](#). There is nothing in principle about the Index that would prevent it from being of use to provincial administrative bodies, although questions based on Treasury Board Secretariat policies might be less applicable (e.g. Only New Brunswick is bilingual.) The Index has the potential to contribute to a Federal-Provincial-Territorial dialogue across jurisdictional lines.

²³ Lorne Sossin, "Chapter 7: Access to administrative justice and other worries" in Colleen Flood & Lorne Sossin, eds, *Administrative Law in Context*, 2d ed. (Toronto: Emond Montgomery Publishing, 2013). (hereinafter referenced as Sossin)

²⁴ *Ibid.*

been to make the chosen questions/indicators for this access to justice index universal to the extent that it applies to the different administrative bodies participating in the pilot project.

As noted in a posting by Ian Mackenzie on *Slaw* in early 2014, most administrative bodies have “shared a bias toward adversarial processes.”²⁵ The author notes that when parties are not represented (whether or not by choice), and do not understand the complexities and legal parameters of the case at hand, the underlying assumptions of adjudicative processes no longer apply. Adjudicators have not been particularly active in the past. As with the judiciary, however, greater demands are being placed on adjudicators to become active because of:

- A decrease in represented parties/an increase in self-represented parties;
- An overall increase in the amount of litigation in some areas;
- Increasing pressure on tribunals to “do more with less” as a result of fiscal pressures;
- A recognition of the importance of “proportionality” in dispute resolution; and
- Increasing backlogs in disputes, leading to delays in the administration of justice.²⁶

Sossin suggests that active adjudication should be viewed, “as a mid-point between adversarial and inquisitorial models of legal process, and one focused on the policy context rather than the judicial model of the neutral arbiter or inquest model of the judge-led inquiry.”²⁷ He further notes that:

The link between Active Adjudication and access to justice is clear. If tribunal members are more active to ensure a fair process, the inequalities in representation, and more broadly in power and resources between parties, may be mitigated and access enhanced.²⁸

1.4 Self-represented Litigants

Self-representation has become one of the most important issues in access to justice in the last decade, particularly in family and civil law given the paucity of publicly funded legal services, especially for those who are economically disadvantaged. Administrative bodies, for the most part, have been designed to be more informal than the traditional adversarial court system and yet, in many cases, especially where one party has legal representation and the other does not, there can be power imbalances throughout the processes.

Each administrative body has its own set of rules. Where procedures and rules are simple and self-representation is the norm, self-representation may help increase access to justice. In this context, however, the supports (information, guidance, etc.) provided by the administrative body become even more important than in a more complex setting. Self-representation is one of the biggest challenges facing judges and tribunal members. In recent years, judicial education groups, such as the National Judicial Institute,²⁹ have taken this into consideration in planning workshops. This is a key issue for the

²⁵ *Slaw*, Accessed December 8, 2014 at <http://www.slaw.ca/2014/01/15/active-adjudication-and-impartiality/>

²⁶ Sossin, *supra*, note 23

²⁷ *Ibid.*

²⁸ *Ibid.*

²⁹ See the National Judicial Institute’s website at <http://www.nji.ca/>

Council of Canadian Administrative Tribunals (CCAT) and will continue to be addressed by their various committees and in annual conferences.³⁰

The CCAT undertook a survey in 2014 on self-represented litigants, asking 250 of its members to identify numbers of self-represented litigants appearing at hearings or other processes. As well, the survey asked what tools, policies or training the member bodies had to address the challenges self-represented litigants face. The survey now exists as a checklist that is available for members to use. Results from the 124 administrative bodies that responded were aggregated and presented by jurisdiction.³¹ The development stage of the Index project coincided with the CCAT's survey and the author met with CCAT to discuss its work and seek permission to use questions from its self-represented litigants survey/check list.

University of Ottawa Law Professor Michelle Flaherty,³² in her paper on self-represented litigants, examines adjudication trends and usefully outlines some of the relevant decisions on the scope of the duty of an adjudicator to assist a self-represented litigant. She concludes that the courts have generally held that adjudicators are required to assist the self-represented with procedural matters, but there is no positive obligation to assist self-represented parties with substantive legal matters.³³

1.5 The Cost and Quality of Access to Justice Research

An important principle in the field of access to justice is that justice and access to justice should be viewed from the point of view of the individual experiencing the legal problem. This principle finds expression in concepts such as therapeutic justice, whole-client or holistic legal services and restorative justice.

Researchers at the University of Tilburg, Institute for Interdisciplinary Studies of Civil Law and Conflict Resolution (TISCO), have developed this idea of viewing access to justice from the point of view of the person experiencing the problem.³⁴ Based on a thorough literature review, the researchers have developed a comprehensive measurement tool along three major dimensions: the cost, the quality of the process and the quality of the outcome. Within each component there is a number of specific indicators, each one measured on a five-point scale. The consistent measurement of indicators makes possible consistent scoring and the construction of scales and indexes to represent the cost and quality measures.

³⁰ See the resources available on self-represented litigants on the CCAT's website at, <http://www.ccat-ctac.org/en/resources--opportunities/self--represented-parties--checklist>

³¹ Report available from the CCAT website, accessed January 3, 2017, at <http://www.ccat-ctac.org/CMFiles/AJCpaper-FinalPOSTAugust112015.pdf>

³² Michelle Flaherty, "Self-Represented Litigants: A Sea Change in Adjudication" (October 2013) Ottawa Faculty of Law Working Paper No. 2013-07. Accessed at: http://jpo.wrlc.org/bitstream/handle/11204/1794/Self-Represented%20Litigants_A%20Sea%20Change%20in%20Adjudication.pdf?sequence=3. Also available in Peter Oliver & Graham Mayeda, eds, *Principles and Pragmatism: Essays in Honour of Louise Charron* (Toronto: LexisNexis, 2014).

³³ *Ibid.* at 26-27.

³⁴ Martin Gramatikov, Maurits Barendrecht, Malini Laxminarian, Jin Ho Verdonchot, Laura Klaming and Cory van Zeeland, *A Handbook for Measuring the Costs and Quality of Access to Justice* (Tilburg University, Tilburg Institute for Interdisciplinary Studies of Civil Law and Conflict Resolution Systems (TISCO), 2008) at 24.

This approach for measuring the cost and quality of access to justice was developed for civil justice problems. However, the concept should be sufficiently flexible to be applied to criminal justice or other areas. It is possible to modify the model, keeping the main components while significantly changing some of the indicators. For example, Tilburg researchers have modified the model in order to apply it to victims of crime.³⁵ Department of Justice Canada researchers applied a modified model to accused individuals those going through the Ottawa Drug Court.³⁶

³⁵ Malini Laxminarayan, "Measuring crime victims' pathways to justice: Developing indicators for costs and quality of access to justice" (2010) 23:1 *Acta Criminologica: Southern African Journal of Criminology* 61.

³⁶ See for example, Ab Currie and Menaka Raguparan. *The Path to Justice in a Court-based Drug Treatment Program*. Ottawa: Department of Justice, 2013. Accessed January 4, 2017, at http://www.justice.gc.ca/eng/rp-pr/csj-sjc/jsp-sjp/rr13_5/

2.0 Methodology

As noted in the Introduction, the development of the Index is an adaptation of the work completed by the U.S. National Center for Access to Justice, which developed an Access to Civil Justice Index for the 50 states. This section of the report elaborates on definitions used, as well as the development of the Index.

2.1 Definitions

Index

What is an index? While this term is used in many different contexts, we use it here as an indicator or a measurement of a stated or known goal. In this project, the Access to Justice Index for Federal Administrative Bodies is a measurement of Canadians' ability to access justice at each of the participating administrative bodies.³⁷

Terms used in the Questionnaire

Members, staff, party or parties of the administrative body are considered separately in the questions.

- *Members* refers to those who adjudicate on behalf of an administrative body and are Governor-in-Council appointments for fixed periods of time (e.g. 3 years, 5 years).
- *Staff* refers to those who work for, or support, the administrative body and are public servants.
- *Party/ies* refers to the individual(s), group, organization, business, etc. who has made a complaint AND the individual(s), group, organization, business, etc. against whom the complaint has been made. As each administrative body may use a different term to describe these, we have chosen to use this general term.

Active adjudication is defined by Sossin "as a mid-point between adversarial and inquisitorial models of a legal process, and one focused on the policy context rather than the judicial model of the neutral arbiter or inquest model of the judge-led inquiry. An active adjudicator will respect the right of parties to put forward their own positions on questions of law and fact but may supplement submissions by raising additional issues, seeking information or perspectives not provided by the parties, and redressing any asymmetries resulting from represented and unrepresented parties or parties of greater or lesser sophistication. . . ." ³⁸

At a practical level, Ian Mackenzie describes active adjudication as "...the act of bending the process to fit the person or persons before the adjudicator, while respecting the impartiality of the adjudicator." ³⁹

³⁷ A Glossary of Terms can be found in Appendix 1.

³⁸ Lorne Sossin & Mark Friedman "Charter Values and Administrative Justice" (2014) (Toronto: Osgoode Legal Studies Research Paper Series, 13/2014). Abstract accessed December 29, 2016, at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2389809

³⁹ Ian McKenzie January 14, 2015, Active Adjudication and Impartiality in Slaw. Accessed December 29, 2016, at: <http://www.slaw.ca/2014/01/15/active-adjudication-and-impartiality/>

Accessible language is similar to the concept of “plain language”.⁴⁰ The Council of Canadian Administrative Tribunals (CCAT) offers training on decision writing that includes how to explain legal concepts in plain language.⁴¹

Public legal education and information (PLEI) is defined as “an activity that seeks in a systematic way to provide people with the opportunity to obtain information about the law and the justice system in a form that is timely and appropriate to their needs.”⁴²

2.2 The US Access to Civil Justice Index

The US *Access to Civil Justice Index* created an index for each American state in each of the following four areas:

- 1) Approach used with self-represented litigants;
- 2) Availability of lawyers for the poor;
- 3) Accessibility for persons with disability; and,
- 4) Language access.⁴³

Each state received an overall score – a mark out of 100 – based on the findings for each of the four categories. The US Access to Civil Justice Index provides a vivid picture of which states are ensuring that their civil justice system is accessible and providing necessary resources to make the legal system fairer to everyone.⁴⁴

2.3 The Development of the Categories

Categories and specific questions for the Index were developed from different literature on administrative law and practice, measuring the cost and quality of access, as well as access to justice literature in general.⁴⁵ For example, in his writing on access to administrative justice, Law Professor Sossin identifies three categories which provided a useful starting point. These are:

⁴⁰See for example, Elizabeth Grace “Cognitively Accessible Language (Why We Should Care)” Accessed January 4, 2016 at <http://www.thefeministwire.com/2013/11/cognitively-accessible-language-why-we-should-care/>

⁴¹ See <http://www.ccat-ctac.org/home>

⁴² Department of Justice Access to Justice Service Agreement. The Access to Justice Services Agreements (AJA) are funding arrangements between the federal government and Canada’s three territories (Yukon, the Northwest Territories and Nunavut.) They are the means by which the Government of Canada financially supports the delivery of access to justice services in northern communities, including: legal aid (both criminal and civil), Aboriginal courtwork services and public legal education and information. For more information see <http://www.justice.gc.ca/eng/fund-fina/gov-gouv/access.html> (accessed December 29, 2016).

⁴³ The National Center for Access to Justice revised their Index to reflect comments and corrections received from 21 states; it was re-released in 2016 having undergone significant revisions.

⁴⁴ See <http://justiceindex.org/about/#ij2016> (accessed January 20, 2017).

⁴⁵ There is a large body of literature on these issues. Please see the bibliography for an alphabetical listing of sources consulted and listed here. Jane H. Aiken & Stephen Wizner, “Measuring Justice” (2013) *Wis L Rev* 79; Canadian Bar Association, *Access to Justice Metrics: A discussion paper* (Ottawa: CBA, 2015); Maurits Barendrecht, “Rule of law, measuring and accountability: problems to be solved bottom up” (2011) 3:2 *Hague Journal on the Rule of Law* 281; Maurits Barendrecht, José Mulder & Ivo Giesen, “How to measure the price and quality of access to justice?” (TISCO Working Paper, 2006); Janine Benedet & Isabel Grant, “Taking the stand: Access to justice for

- 1) access to the tribunal (standing and hearings);
- 2) access to information and knowledge(guidelines, simplification, language and prior decisions); and,
- 3) access to resources needed to navigate the tribunal system (legal representation, fees and costs, budget and staffing).⁴⁶

witnesses with mental disabilities in sexual assault cases" (2012) 50 *Osgoode Hall LJ* 1; Juan Carlos Botero, Robert L Nelson & Christine Pratt, "Indices and indicators of justice, governance, and the rule of law: an overview" (2011) 3:2 *Hague Journal on the Rule of Law* 153; Juan Carlos Botero & Alejandro Ponce, "Measuring the rule of law" (2011) The World Justice Project Working Paper ; Dion Chu, Matthew R Greenfield & Peter Zuckerman, "Measuring the Justice Gap: Flaws in the Interstate Allocation of Civil Legal Services Funding and a Proposed Remedy" (2013) 33 *Pace L Rev* 965; Joint Research Centre-European Commission, *Handbook on Constructing Composite Indicators: Methodology and User Guide* (OECD Publishing, 2008); Robin Creyke, "Administrative Justice-Towards Integrity in Government" (2007) 31 *Melb UL Rev* 705; Robin Creyke, "Integrity in tribunals" (2013) 32 *U Queensland LJ* 45; Liz Curran & Mary Anne Noone, "Access to justice: a new approach using human rights standards" (2008) 15:3 *International Journal of the Legal Profession* 195; Brendan Edgeworth, "Access to Justice in Courts and Tribunals: Residential Tenancies in New South Wales (1971–2001)" (2006) 31:2 *Alternative Law Journal* 75; Tom Ginsburg, "Pitfalls of measuring the rule of law" (2011) 3:2 *Hague Journal on the Rule of Law* 269; Martin Gramatikov, *A Handbook for Measuring the Costs and Quality of Access to Justice* (Tilburg: Tilburg Institute for Interdisciplinary Studies of Civil Law Conflict Resolution Systems, 2010) (Handbook); Martin Gramatikov, Maurits Barendrecht & Jin Ho Verdonschot, "Measuring the costs and Quality of Paths to Justice: Contours of a methodology" (2011) 3:2 *Hague Journal on the Rule of Law* 349; Linn Hammergren, "Indices, indicators and statistics: a view from the project side as to their utility and pitfalls" (2011) 3:2 *Hague Journal on the Rule of Law* 305; G. Heckman, "Dialogue between Courts and Tribunals-Essays in Administrative Law and Justice (2001-2007)" (2009) 27 *Windsor YB Access Just* 485; Laura Klaming & Ivo Giesen, "Access to Justice: the Quality of the Procedure" (2008) Tilburg Institute for Interdisciplinary Studies of Civil Law and Conflict Resolution (TISCO) Working Paper ; Alana Klein, "Of Justice and Its Scales: Looking Back on (Almost) Forty Years of Rod MacDonald's Scholarship on Access to Justice" (2013) 59 *McGill LJ* 761; David Allen Larson, "Access to Justice for Persons with Disabilities: An Emerging Strategy" (2014) 3:2 *Laws* 220; Malini Laxminarayan, "Measuring crime victims' pathways to justice: Developing indicators for costs and quality of access to justice" (2010) 23:1 *Acta Criminologica: Southern African Journal of Criminology* 61; Richard Moorhead, "An American Future? Contingency Fees, Claims Explosions and Evidence from Employment Tribunals" (2010) 73:5 *The Modern Law Review* 752; Stephanie Ortoleva, "Inaccessible justice: Human rights, persons with disabilities and the legal system" (2010) 17 *ILSA J. Int'l & Comp. L.* 281; Jim Parsons, "Developing clusters of indicators: an alternative approach to measuring the provision of justice" (2011) 3:2 *Hague Journal on the Rule of Law* 170; Daniel Poulin, "Free Access to Law in Canada" (2012) 12:03 *Legal Information Management* 165; Kent Roach & Lorne Sossin, "Access to justice and beyond" (2010) 60:2 *University of Toronto LJ* 373; Anne-Marie Santorineos, "L'accès à la justice en matière de droits de la personne : le difficile accès au Tribunal des droits de la personne" (2012) 42 *RDUS* 49; Noel Semple, "Canada: Depending on the Kindness of Strangers—Access to Civil Justice" (2013) 16:2 *Legal Ethics* 373; Lorne Sossin & Steven J Hoffman, "The Elusive Search for Accountability: Evaluating Adjudicative Tribunals" (2010) 28:2 *Windsor YB Access Just* 343; Lorne Sossin & Zimra Yetnikoff, "I Can See Clearly Now: Videoconference Hearings and the Legal Limit on How Tribunals Allocate Resources"(2007) 25 2 *Windsor YB Access Just* 247; Alexis Spire et Katia Weidenfeld, "Le tribunal administratif: une affaire d'initiés? Les inégalités d'accès à la justice et la distribution du capital procédural" (2011) 3 *Droit et société* 689.

⁴⁶ Sossin, *supra* note 23. Accessed at

https://www.law.utoronto.ca/documents/conferences/adminjustice08_Sossin.pdf

Other resources, such as the Council of Canadian Administrative Tribunals' (CCAT) *Principles of Administrative Justice* Statement⁴⁷ and the Council of Australian Tribunals' *International Framework for Tribunal Excellence*⁴⁸ also provided guidance.

In addition to these resources, research on the cost and quality of access to justice from the University of Tilburg, in the Netherlands, informed the development of the categories and the subsequent indicators within each category.⁴⁹ According to this body of research, a fundamental principle is that justice and access to justice should be assessed from the point of view of the individual experiencing the legal problem and not only from the perspective of the justice system. Researchers at the University of Tilburg transformed the viewpoint of the person experiencing a justice problem into a measurement tool along three major dimensions: 1) the cost, 2) the quality of the process, and 3) the quality of the outcome.

Since the administrative bodies would be completing the survey for this particular index, the questions had to be modified. Keeping the user's point of view, the questions were subsequently translated in such a way that an administrative body would be able to answer it. For example, from the user's perspective, it is important that s/he have physical access to the administrative body. This perspective was translated in the following way: Does the administrative body (or contracted services provider) have at least one office open to the public? The essence of the user's point of view is retained, while allowing the administrative body to answer the question from its operational perspective.

2.4 Key Methodological Points in the Development of the Index Categories and Questionnaire

Several key assumptions or statements helped with the development of the Index Categories and the Questionnaire. The principal ones are below.

1. In selecting the Index categories and sub-categories, the working group agreed that they must be clear and easy to understand, mutually exclusive and able to be applied to each administrative body.
2. It is important to acknowledge that each participating administrative body has a specific mandate and a specific context in which it operates.
3. Administrative bodies are encouraged to answer questions prospectively, such that where the scenario presented in the question has never arisen, officials are encouraged to ask "Could the administrative body accommodate/deal with this?"

⁴⁷ See Council of Canadian Administrative Tribunals' (CCAT) *Principles of Administrative Justice* Statement.

Accessed at <http://www.ccat-ctac.org/en/about-ccat/principles-of-administrative-justice>

⁴⁸ [Council of Australian Tribunals, International Framework for Tribunal Excellence, April 2014](http://coat.gov.au/images/downloads/INTL%20COAT%20FRAMEWK%20TRIB%20April%202014.pdf). Accessed at <http://coat.gov.au/images/downloads/INTL%20COAT%20FRAMEWK%20TRIB%20April%202014.pdf>

⁴⁹ See for example, Martin Gramatikov, "A Framework for Measuring the Costs of Paths to Justice" (2010) Tilburg University. Accessed December 29, 2016 from the Tilburg University Measuring Access to Justice website at: <http://www.hiil.org/project/measuring-costs-quality-of-access-to-justice> ; also see, Martin Gramatikov & M. Laxminarayan, "Weighting Justice: Constructing an Index of Access to Justice" Tilburg University Legal Studies Working Paper No. 18/2008.

4. Each category results in a separate index, calculated based on responses to the Questionnaire, where data collected are “yes/no” responses to questions. Administrative bodies were able to provide comments and best practices throughout the Questionnaire and these are included in the results to provide context.
5. To ensure scores are well differentiated, weights of 10, 5, and 1, per question, have been used. This approach provides discrete values and avoids a complex scale.
6. Based on consultations with the participating administrative bodies, a weight of 10, 5, or 1 is assigned based on:
 - i. the perceived importance of the question to the party (ies);
 - ii. the relative importance of the question to the overall category; and
 - iii. whether a question(s) speaks to obligations of the administrative body (e.g. from legislation such as the *Official Languages Act* or Treasury Board Secretariat policies). For these questions, the Questionnaire acknowledges both the obligatory requirement (a value of 1), and allocates points for any additional, or variations of, the administrative body’s initiatives in the area (e.g. official languages, duty to accommodate etc.) so that the weight could be a 5 or a 10.
7. Additional information may warrant further precision, or broader reconsideration of the weighting scheme at some point in the future.⁵⁰ For example, in response to the publication of the original US National Access to Civil Justice Index, the organization received hundreds of emails and calls, significant media attention and embarked on an update of the Index in March 2015. A revised Index was released in the spring of 2016.⁵¹

2.5 Index Categories and Questions

After a review of the literature, four categories were chosen to reflect a more complete picture of access to administrative justice from the parties’ perspectives. The indicators and questions were developed based on what parties have expressed as important.⁵² These questions were then translated into operational services. For example, from the parties’ perspective, it is important to have the possibility of physically going to the tribunal and speaking directly with an agent or officer.

Category 1: Access to the Administrative Body

This first category, Access to the Administrative Body, has two sub-categories: a) Physical Access and b) Access through Technology. In keeping with the increase in use of technology in all facets of daily life, University of Ottawa Law Professor Jane Bailey and colleagues challenge many of the assumptions in the use of technology to provide access to justice for all. These authors note that,

⁵⁰ See *infra*, Section 4.0 Conclusion, for a short discussion of next steps.

⁵¹ See <http://ncforaj.org/2015/03/19/new-justice-index-research-project-underway/>

⁵² See *infra*, Section 2.4, Key Methodological Points, number 6, to understand how weights were assigned.

The dialogue regarding access to justice and technology can too easily fall prey to a sort of technological determinism that implicitly assumes that technological change is inevitable, unstoppable and certain to enhance access to justice.⁵³

Bearing this in mind, the second sub-category asks questions about access to the administrative body through technology.

1a: Physical Access

Questions in this sub-category focus on the ability of parties to access the offices of the administrative body in person. This is particularly important where there are oral processes. Question 2 asks, “Are oral processes (e.g. hearing, mediation) held in locations as close as possible to the parties?” A positive response to this question is worth 10 points, the highest value given because of the importance to the parties themselves. Another question worth 10 points is whether the rooms used for oral processes accommodate persons with a disability (Question 3). Where there are oral processes, it is assumed that parties want to be present, rather than joining by video conference, although it is important to have that as an option. The 14 questions for this sub-category can be found in Table 1a below.

Table 1a: Category 1: Access to the Administrative Body - Physical Access

No.	Question	Weight
1.	Does the administrative body (or contracted service provider) have at least one office open to the public?	1
2.	Are oral processes (e.g. hearings, mediation) held in locations as close as possible to the parties?	10
3.	When needed, can the rooms used for oral processes (e.g. hearings, mediations) accommodate anyone with a disability (e.g. elevator, ramps, wider doors, etc.)?	10
4.	Are there rooms available where lawyers and other representatives can meet privately with their clients?	5
5.	Does the administrative body have reception staff to assist visitors?	1
6.	Can a party speak with a representative of the administrative body outside of regular business hours (e.g. 8h00 – 17h00) across Canada?	5
7a.	Can parties watch live or simulated oral processes?	5
7b.	Are parties informed that they can watch a live or simulated oral process?	1
8.	Is the administrative body open to the public?	1
9.	Does the administrative body have a general policy or practice on accommodating special needs?	5
10.	Is the office of the administrative body, as well as the site of processes, readily accessible by public transit?	1
11.	Does the office of the administrative body provide access to childcare or child-friendly spaces for children of parties or witnesses?	1
12.	Are parties given choices when the administrative body is scheduling oral processes?	1
13.	Has a substantiated claim of failure to accommodate a party’s needs been filed against the administrative body in the past 12 months? ⁵⁴	5

⁵³ Jane Bailey, Jacquelyn Burkell and Graham Reynolds, “Access to Justice for All: Towards an “Expansive Vision” of Justice and Technology” (2013) 31:2 *Windsor YB Access Just* 181 at 182.

⁵⁴ Question 13 is one of two questions on the Questionnaire where a negative response is awarded points.

1b: Access through Technology

In this sub-category, a number of the questions are reflected in Communications policies as established by the Treasury Board Secretariat. For example, Question 17 asks, “Can the administrative body’s website be understood by users with various literacy skills?” The Policy on Communications and Federal Identity of the Government of Canada states:⁵⁵

5.1 Objectives

The objectives of this policy are to ensure the following:

5.1.1

Government of Canada communications are non-partisan, effectively managed, well coordinated, clear and responsive to the diverse information needs of the public. . . .

5.1.3

The Government of Canada is visible and recognizable to the public in Canada and abroad, and is projected equally in both official languages. . . .

It is argued that in order to be compliant with the above policy, websites must be designed with different literacy levels in mind. Similarly, Question 18 asks, “Does the administrative body’s website meet Treasury Board accessibility standards for persons with disabilities?” Among other elements, the standards address: screen readers, adjustable font sizes and contrast settings, reader-compliant files, audio, video captioning, sign language, windowing and descriptive videos.⁵⁶ Questions 17 and 18 are each worth 10 points, reflecting the importance of these elements for the party. One other question is worth ten points in this sub-category, Question 15a, which asks “Can party(ies) participate in oral processes via written submissions?”

During the development of this and the other categories, it has been important to remember that the oral processes of administrative bodies includes not only hearings, but all types of dispute-resolution processes, such as case conferences, mediation sessions and early dispute-resolution processes wherein that parties have the opportunity to tell or relate their stories.

The 16 questions asked in this sub-category are presented below in Table 1b.

Table 1b: Category 1: Access to the Administrative Body - Access through Technology

No.	Question	Weight
14a.	Can parties participate in oral processes via teleconference or videoconference?	5
14b.	Do parties participate in oral processes via teleconference or videoconference?	1
15a.	Can parties participate in oral processes via written submissions?	10
15b.	Do parties participate in oral processes via written submissions?	5

⁵⁵ The *Policy on Communications and Federal Identity* of the Government of Canada came into effect May 11, 2016 and can be accessed at: <https://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=30683>

⁵⁶ The Government of Canada’s *Standard on Web Accessibility* can be found at <https://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=23601>

16a.	Can the administrative body respond to general questions from the public using different mechanisms, such as the Internet, email, live chat, telephone, TTY, and/or text messaging?	5
16b.	Can the administrative body respond to all specific questions about a case when using different mechanisms, such as the Internet, email, telephone, TTY and/or text messaging?	5
17.	Can the administrative body's website be understood by users with various literacy levels?	10
18.	Does the administrative body's website meet Treasury Board accessibility standards for persons with disabilities?	10
19.	Is the administrative body's website accessible to persons with different learning styles, such as the inclusion of visual and audio presentations of information?	5
20a.	Does the administrative body make use of web-diagnostic tools, such as Google Analytics or other software?	5
20b.	Is the administrative body's website designed to facilitate navigation?	5
21a.	Does the administrative body solicit feedback from website users? (e.g. a pop-up survey or a feedback tab on the site)	5
21b.	If the administrative body solicits feedback from website users, does it respond to issues raised?	5
22.	Is technical assistance with the website readily available? (e.g. via a free telephone call)	1
23a.	Does the administrative body use online forms?	5
23b.	Does the administrative body use "smart" forms?	5

Category 2: Processes

2a: Procedural Justice

Procedural Justice includes 20 indicators on access to both formal and informal processes, which will vary by organization. With many administrative bodies, a party will be able to choose a specific process. As such, a case conference, a mediation or another process represents a different pathway to justice.

All the questions are worth five points except for one which is worth 10 points: "Does the administrative body provide interpretation services in languages other than French or English?" This is extremely important where one or more of the parties may not have French or English as a first language or may require other means of communication due to a disability.

Table 2a: Category 2: Processes – Procedural Justice

No.	Question	Weight
24a.	Do members receive training on, or are they assessed on prior experience with, active adjudication?	5
24b.	Do staff receive training on, or are they assessed on experience with, active adjudication?	5
25a.	Do members receive training on, or are they assessed on experience with, objectivity and bias?	5
25b.	Do staff receive training on, or are they assessed on experience with, objectivity and bias?	5

26.	Can parties choose among a variety of processes as their case goes through the system?	5
27a.	Does the administrative body monitor its members for implicit prejudice?	5
27b.	Does the administrative body monitor its staff for implicit prejudice?	5
28a.	Does the administrative body offer informal dispute mechanisms for parties to lodge and resolve complaints about their services?	5
28b.	Does the administrative body offer formal dispute mechanisms for parties to lodge and resolve complaints about their services?	5
28c.	Can parties choose between the administrative body's informal and formal dispute-resolution mechanisms? (If no to 28a or 28b, skip 28c = 0)	5
29.	Does the administrative body provide interpretation services in languages other than French or English?	10
30a.	In the last five years, has the administrative body evaluated how satisfied parties are with its processes?	5
30b.	Has the administrative body responded to issues identified in evaluations of user satisfaction?	5
31.	Does the administrative body have performance indicators relevant to access to justice?	5
32.	Does the administrative body have a system to collect and manage case data?	5
33a.	Does the administrative body have documented internal service standards? If no, skip 33b = 0 points	5
33b.	Is compliance with internal service standards monitored?	5
33c.	Does the administrative body have documented external service standards for process milestones? If no, skip 33d, 34	5
33d.	Is compliance with external service standards monitored?	5
34.	Does the administrative body meet its external service standards in 85% or more of cases?	5

2b: Representation

The questions in this sub-category were largely informed by the Council of Canadian Administrative Tribunals' self-represented parties questionnaire circulated to its members in 2014-15.⁵⁷ Self-representation, which has become one of the most important issues in access to justice in the last decade, refers to the situation where a party does not have legal representation from a lawyer or paralegal or other legally trained professional. Administrative bodies, for the most part, are designed to be less formal than the court system and therefore may see many cases with self-represented parties.

⁵⁷ The original questionnaire has morphed into a checklist and is accessible to the public to use. It can be found at <http://www.ccat-ctac.org/en/resources--opportunities/self--represented-parties--checklist> (Accessed December 29, 2016).

Table 2b: Category 2: Processes – Representation

No.	Question	Weight
35.	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)	10
36.	Does the administrative body monitor trends in self-representation?	1
37a.	Do members receive training on how to work with, or are they assessed on experience with regard to, self-represented parties?	5
37b.	Do staff receive training on how to work with, or are they assessed on experience with regard to, self-represented parties?	5
37c.	Does the administrative body monitor members' engagement with self-represented parties and submissions?	5
37d.	Does the administrative body monitor staff engagement with self-represented parties and submissions? (e.g. calls with clients could be randomly monitored)	5
38.	Does the administrative body support parties who lack the capacity to self-represent? (e.g. designated staff provide additional information by telephone or in person, provide additional assistance with documents and processes; referrals to outside service providers)	5
39.	Can a party have a support person of their choice present throughout the process? (e.g. a family member, friend, community worker, etc.)	5

2c: Interpersonal

Some of the elements in this third sub-category include whether members and staff receiving training on treating clients with respect (Questions 40a and 40b) and whether the administrative body has a Code of Values and Ethics (Question 41). There are two additional questions (42a and 42b) that ask whether members and staff receive training on the duty to accommodate. This category consists of five questions, which are presented below in Table 2c.

Table 2c: Category 2: Processes – Interpersonal Aspects

No.	Question	Weight
40a.	Do members receive training on, or are they assessed on experience with regard to, treating parties, staff and other members with respect?	5
40b.	Do staff receive training, or are they assessed on experience with regard to, treating parties, members, and, other staff with respect?	5
41.	Does the administrative body have a "Code of Conduct/Values/Ethics"?	1
42a.	Do members receive training or are they assessed on experience with regard to the duty to accommodate?	10
42b.	Do staff receive training or are they assessed on experience with regard to the duty to accommodate?	10

2d: Informational Aspects

In this final sub-category, the theme is information (developing, disseminating, etc.) which is an extremely important category. The definition for Public Legal Education and Information (PLEI) in this pilot project is drawn from the Access to Justice Service Agreements between the three territories and the Department of Justice:

“an activity that seeks in a systematic way to provide people with the opportunity to obtain information about the law and the justice system in a form that is timely and appropriate to their needs.”⁵⁸

Questions focus on the quality and the accessibility of the information provided to the public. Questions also ask whether the administrative body does regular outreach activities (Question 45) and whether its information is available in other settings (Questions 46a and 46b). Thus, access to justice includes an expectation that the administrative body is to facilitate such access by being proactive and reaching out to the public, not just providing information when asked or approached.

Table 2d: Category 2: Processes – Informational Aspects

No.	Question	Weight
43.	Does the administrative body provide opportunities for parties to correct inaccurate information during the process (i.e. before a decision is rendered)?	5
44.	Is written and oral information about the administrative body kept up-to-date? (e.g. when there are changes in the law, in the processes, information provided to parties and to the public is updated)	5
45.	Does the administrative body conduct regular outreach activities? (e.g. on an on-going basis activities such as newsletters, stakeholder meetings, speaking events, etc.)	5
46a.	Is there information about the administrative body on the website of relevant stakeholders and information and services agencies?	1
46b.	Is there information about the administrative body in the waiting rooms of relevant stakeholders and services agencies?	1
47.	Is there a Frequently Asked Questions (FAQ) section on the administrative body’s website?	5
48.	Is there a glossary of terms on the administrative body’s website?	5
49.	Is accessible/plain language used in written resources?	10
50a.	Is accessible/plain language used in oral communication with parties?	10
50b.	Does the administrative body monitor communication materials for accessible language?	1
51.	Has the administrative body had any substantiated claims with the Office of the Commissioner of Official Languages for the refusal to provide services in English or French filed against it in the past 12 months? ⁵⁹	5
52.	Are written resources available in languages other than French and English (e.g. Braille, Spanish and Chinese)?	1
53.	Does the administrative body provide information using visual aids?	1
54a.	When interacting with parties, do staff refer additional resources?	5
54b.	Does the website provide referrals to additional resources?	5
54c.	Does the administrative body provide paper copies of additional resources?	5
54d.	Are referral lists kept current?	5
55.	Does the administrative body protect personal information?	5

⁵⁸ Department of Justice Access to Justice Service Agreement. *Supra*, note 42.

⁵⁹ Question 51 is the second of two questions on the Questionnaire where a negative response is awarded points.

Category 3: Costs

Costs makes up the third main category for the Index. It considers the costs to parties who access administrative processes. Almost all of these costs are services charges, but a few include intangible costs such as mental health supports for members, staff and parties. There are many other types of costs,⁶⁰ but it was determined that these would be difficult to measure in a self-assessment tool.

3a: Service Charges

For service charges, questions relate to the actual exchange of money in return for services, such as receiving hard copies of PLEI publications, or administrative fees to cover the cost of filing documents in a case.

Having to pay for access to services represents a clear and concrete barrier to parties with low incomes. Three questions in this sub-category receive the highest weight of 10: Question 59a, 60a and 61. The first question in this sub-category, Question 56 reminds the reader that it is important to remember that proceedings include any dispute-resolution process, such as mediation sessions. Many newcomers are initially unable to provide testimony in English or French. Interpretation may also be required as an accommodation when a party has a disability that impedes clear communication in one of Canada's official languages.

There are 11 questions in this sub-category.

Table 3a: Category 3: Costs – Service Charges

No.	Question	Weight
56.	Does the administrative body pay for interpretation of languages other than French and English during hearings, mediation and other proceedings?	5
57.	Does the administrative body pay for the translation of key documents (e.g. letters to parties, decisions) into languages other than French and English?	5
58.	Does the administrative body pay for additional copies?	5
59a.	Can parties file documents at no charge? (skip 59b if yes, if skip 0 points)	10
59b.	If there are fees for filing documents, is there a sliding scale or waiver of fees for parties who meet low-income criteria?	5
60a.	Can parties use the administrative body's rooms for oral processes (e.g. hearings, mediation) at no charge? (skip 60b if yes, if skip 0 points)	10
60b.	If there are fees for the use of rooms, is there a sliding scale or waiver of fees for parties who meet low-income criteria?	5
61.	Can users access public legal education and information (PLEI) materials (in print or online) free of charge?	10
62.	Does the administrative body partner with a public-interest pro bono PLEI group?	5
63.	Does the administrative body maintain toll-free telephone and fax lines?	5
64.	Does the administrative body allocate a portion of its budget to the information needs of parties, such as surveys, testing of materials, website revisions, etc.)	5

⁶⁰ Maurits Barendrecht, José Mulder & Ivo Giesen, "How to measure the price and quality of access to justice?" (TISCO Working Paper, 2006)

3b: Intangible Costs

Intangible costs include those costs such as pain and suffering or other emotional and psychological impacts of the process of filing or responding to a complaint with an administrative body. What is being measured here is whether the administrative body recognizes these potentially negative intangible costs and is acting to address them for staff, members and parties.

Table 3b: Category 3: Costs – Intangible Costs

No.	Question	Weight
65.	Does the administrative body provide staff with assistance and support for mental well-being? (e.g. access to an Employee Assistance Program, an internal wellness program)	1
66.	Does the administrative body have an assistance program for mental well-being for members?	1
67.	Does the administrative body provide assistance or support related to mental health to parties, and/or does it provide referrals to relevant people/organizations?	5

Category 4: Outcomes

Fittingly, the final main category for the Index is Outcome. The outcome of an administrative process plays an important role in parties' overall sense of fairness and justice.

4a: Distributive Justice

This section includes questions that are just part of the analysis that members will undertake while making a decision on the merits, and on the remedy, in a particular case. Distributive Justice highlights that many conflicts have one or more issues related to the division of assets, damages and tasks, and to application of sanctions. Distribution as a dimension of the quality of outcomes refers to the appropriateness of outcomes with regard to questions about allocation.⁶¹

Question 70 asks whether the administrative body considers the roles of parties in disputes (e.g. employer/employee). An example of this latter question would be where a significant power imbalance exists in a conflict, such as between a large employer and a single employee. Most administrative bodies would agree that this information is part of the facts of each case and always considered.

Question 71 asks whether the administrative body considers the efforts of the parties. This element may be found in the enabling statute. An example of this element is where one party is awarded costs because the other party abused the process. Other questions include: "Can the administrative body award or facilitate a remedy for monetary harm?" and "Does the administrative body award or facilitate a remedy for monetary harm?" (Questions 72a and 72b). These are followed by the same questions for emotional harm (Questions 73a and 73b). The distinction between the two questions is that the first asks if the administrative body is able to do this (does their enabling statute permit this) and then, whether they actually do it.

⁶¹ Definition from the Tilburg Model Handbook, *supra* note 42

Table 4a: Category 4: Outcomes – Distributive Justice

No.	Question	Weight
68.	As appropriate, does the administrative body help to distribute of money and assets (e.g. benefits)?	1
69.	Does the administrative body consider the needs of the parties? (e.g. the unique socioeconomic circumstances of the parties)	1
70.	Does the administrative body consider the roles of parties in disputes (e.g. employer/employee)?	1
71.	Does the administrative body consider the efforts of the parties?	1
72a.	Can the administrative body award or facilitate a remedy for monetary harm?	5
72b.	Does the administrative body award or facilitate a remedy for monetary harm? (e.g. an award that includes lost salary and benefits)	5
73a.	Can the administrative body award or facilitate a remedy for emotional harm? (e.g. stress, anxiety or other negative emotional impact)	5
73b.	Does the administrative body award or facilitate a remedy for emotional harm?	5

4b: Functionality

As noted earlier, another aspect of this category refers to the extent to which outcomes are useful from the perspective of the parties. When a conflict arises, few people immediately think of the rights they may or may not have. Most people instead seek to resolve the conflict and that spurs them toward seeking justice.⁶² The indicators in this sub-category explore the usefulness of the outcome in light of these problems.

Table 4b: Category 4: Outcomes – Functionality

No.	Question	Weight
74.	Does the administrative body seek to improve the relationship damaged during the dispute?	5
75.	Does the administrative body solicit feedback on the extent to which the parties have reconciled their differences? (e.g. a survey or follow up to solicit feedback on the reconciliation process)	5
76a.	Can the administrative body enforce outcomes?	5
76b.	Does the administrative body enforce outcomes?	5
77.	Does the administrative body monitor outcomes to prevent future conflict?	5

4c: Transparency of Outcomes

It is important that, whatever the outcome of a complaint, it, and the justification for it, is transparent. If so, the outcome and its justification can be examined and better understood by the parties and by the public. In addition, transparency is necessary in order to evaluate the extent to which the outcome is similar to other people's outcomes in similar cases.⁶³

⁶² *Ibid.*

⁶³ *Ibid.*

Table 4c: Category 4: Outcomes – Transparency of Outcomes

No.	Question	Weight
78.	Is the decision clearly communicated to the parties? (e.g. in plain/accessible language in a letter or email)	5
79.	Are the reasons for the decision clearly communicated to the parties?	5
80.	Is the decision or settlement publicly accessible in full or redacted format?	5
81.	Once issued, are decisions by the administrative body monitored internally for consistency in application?	5

The development of the questions to operationalize each category took significant time and several rounds of consultation with participating administrative bodies, academics, the US National Center for Access to Justice, the CCAT and researchers at the Department of Justice Canada. Each administrative body approached the review of categories and questions differently. For example, the CHRC undertook a collaborative process where five working groups were created and officials from every relevant area of the CHRC were represented on one or more of the five working groups.⁶⁴ The final set of answers was provided to management for review and to senior management for approval before submitting the response to the Department of Justice.

3.0 Collecting the Data

Upon completion of a set of questions with weights for each of the four categories, the Questionnaire was edited for accessible or plain language, but with an understanding that the intended audience were the administrative bodies themselves. The final questions with their respective weights can be found in Section 3 of this report.

The Questionnaire was programmed into FluidSurveys and sent to the participating administrative bodies for completion where the project lead coordinated responses from different work units as appropriate. Respondents were instructed to answer the questions from the perspectives of the parties. All questions were mandatory. Space was provided for comments after each question so that respondents could clarify an answer to indicate if they believed that the question was not applicable to their body. During the analysis of the data, any such comments were taken into consideration and will be considered in the final analysis of the pilot project before moving forward. All questions were deemed applicable for both administrative bodies.

3.1 Calculating the Index

Each question in the Questionnaire is weighted using the discrete values of 10, 5, and 1. This weighting approach, with three basic values signaling contrasting levels of importance, was selected for ease of understanding and usability.⁶⁵ The weights are assigned based on the relative importance of the question to the overall category, as well as the number of questions relating to a particular issue. These

⁶⁴ There was one working group per dimension, and a fifth working group that assessed the overall framework at a theoretical and operational level.

⁶⁵ This was the approach taken for the US Access to Civil Justice Index in both 2014 and 2016. For more information, see: <http://justiceindex.org/methodology/> (Accessed December 29, 2016)

three values were chosen over a sliding scale to ensure adequate differentiation. A “yes” response to a question received the total points possible, while a “no” response received zero points.⁶⁶

A standardized score out of 100 was calculated for each category by dividing the score that the administrative body achieved by the total score possible and then multiplying this number by 100.

To produce the Composite Index, each of the index scores for the four categories are added together and then divided by four, according an equal weight of 25% to each category’s set of indicators. Table 5 below shows the calculations. The higher the score, the better the administrative body does on facilitating access to justice for parties. A perfect score is 100. For this pilot project, no “pass” or “fail” score was identified; nor was a minimum score identified on any of the sub-categories. Rather, the score provides a baseline measurement and a way to document change and improvement.

Table 5 below shows the number of questions in each sub-category, the total weight accorded to each sub-category and the calculation of Index category scores, as well as the calculation of the Composite Index. In the Index Calculation column, the weighted score earned by each administrative body is represented by the number of the sub-category (e.g. 1a, 1b, 2a, 2b, etc.).

Table 5 – Index Calculations and Scores by Category

Composite Access to Justice Index Score			
Category 1 – Access to the Administrative Body			
Sub-category	# of Questions	Total Weight Possible	Index Calculation (weighted score/total weight)*100
1a Physical access	14	52	$1a/52 * 100 = \text{INDEX1a}$
1b Access through Technology	16	87	$1b/87 * 100 = \text{INDEX1b}$
Totals Category 1	30	139	$(1a + 1b)/139 * 100 = \text{INDEX1}$
Category 2 – Processes			
2a Procedural	20	105	$2a/105 * 100 = \text{INDEX2a}$
2b Representation	8	41	$2b/41 * 100 = \text{INDEX2b}$
2c Interpersonal	5	31	$2c/31 * 100 = \text{INDEX2c}$
2d Informational	20	80	$2d/80 * 100 = \text{INDEX2d}$
Totals Category 2	53	257	$(2a+2b+2c+2d)/257 * 100 = \text{INDEX2}$
Category 3 – Costs			
3a Service Charges	11	70	$3a/70 * 100 = \text{INDEX3a}$
3b Intangible Cost Supports	3	7	$3b/7 * 100 = \text{INDEX3b}$
Totals Category 3	14	77	$(3a+3b)/77 * 100 = \text{INDEX3}$

⁶⁶ There are two exceptions to this. Question 13 which reads, “Has a substantiated claim of failure to accommodate a party’s needs been filed against the administrative body in the past 12 months?” and question 51, “Has the administrative body had any substantiated claims with the Office of the Commissioner of Official Languages for the refusal to provide services in English or French filed against it in the past 12 months?” A response of “no,” rather than “yes” will result in points added to the total score.

Category 4 – Outcomes			
4a Distributive justice	8	24	$4a/24 * 100 = \text{INDEX4a}$
4b Functionality	5	25	$4b/25 * 100 = \text{INDEX4b}$
4c Transparency of outcomes	4	20	$4c/20 * 100 = \text{INDEX4c}$
Totals Category 4	17	69	$(4a+4b+4c)/69 * 100 = \text{INDEX4}$
Access to Justice Composite Index			$(\text{INDEX1} + \text{INDEX2} + \text{INDEX3} + \text{INDEX4}) / 4 * 100 = \text{COMPOSITEINDEX}$

3.2 Limitations

The indicators in the Index together form a framework on what access to justice in the administrative law context can look like. The Index does not pretend to fully define what access to justice can mean to parties, nor is it the only access to justice framework possible.

The data collection was completed by the administrative body itself. There may be variation across the country, between regional offices in terms of services available to parties (e.g. physical access to Commission offices) or staff (e.g. access to training opportunities). It is hoped that discussion around the results of this exercise will stimulate additional work to understand access to justice in its own specific context, including implementation of many of the items included in the Index and additional follow-up on other items. As results from these studies become available, they will be incorporated into future iterations of the Index to make it an even stronger tool for change.

The Index and its Questionnaire were developed with consultation from at least four federal administrative bodies, academics and several other organizations. It is recognized that the Index was only piloted with two administrative bodies, the CHRC and the Competition Tribunal, and that these two bodies are quite distinct in terms of mandate, and the parties they serve. It is hoped that additional federal administrative bodies will be interested in participating in the Access to Justice Index project enabling more feedback on the value and utility of this tool.

The difference between the mandate of the CHRC, and consequently its structure, and other tribunals may render cross-tribunal comparisons slightly more difficult. The Index was designed to accommodate these differences with the goal of making such comparisons possible. Though the CHRC does not presently hold hearings, it does nevertheless interact with parties to a complaint. The principled expectations that a party may have at a hearing should also apply in other contexts in which there is direct interaction. Lower scores of certain type of tribunals over others may be more a reflection of legislative provisions rather than administrative practices.

Legislative provisions may inherently limit access. In such circumstances, a tribunal may only be able to get a certain score. For example, an administrative body that is limited by its legislation in the type of remedies it can provide, may only score 70. From a scoring perspective, this may equate to a “B-”; whereas, from an operational point of view, this may be considered an “A+”. This may ultimately diminish the comparative value of the Index. Ultimately, however, the Index is not intended to be used without the specific context of each administrative body clarified.

By negotiating the scores, a regression toward the means may have occurred resulting in the majority of items being identified as having a weight of 5. Greater variation in the weights may be desirable. A table showing the number of questions at 1, 5, and 10 may help illustrate the above point. It may also be important to note that as mandatory service standards come into force, the weight of various questions may change. Finally, it may be worth validating the questions among actual users/parties of administrative bodies.

4.0 Conclusion

The developmental work for the Canadian Access to Justice Index for Federal Administrative Bodies began in the spring of 2014. It was developed through a collaborative process that encouraged input and discussion amongst federal administrative bodies, as well as legal academics and non-governmental organizations. Significant research guided these discussions and those with expertise and interest in measuring access to justice contributed to the process and to the overall product.

Professor Sossin noted in his review of this report that, “It is often said that ‘what we count is what counts.’”⁶⁷ If the measurement of access to justice is limited to just a few key indicators, perhaps the ones that are easy to articulate and easy to collect, then access to justice is limited. The Index reflects perspectives on what will contribute to an accessible administrative body. Its strength lies in its holistic approach to Access to Justice. In effect, a whole range of “qualitative and quantitative measures” are required to properly measure and to accurately explain access to justice for administrative bodies.

Professor Sossin also commented that, “A key value of the Index is using it as a comparative resources”.⁶⁸ While the Index was designed to be used by all federal, and indeed, provincial/territorial and other administrative bodies, regardless of mandate, lower scores for some administrative bodies may be the result of their enabling legislation, rather than practices that could be addressed without the need for law reform. Specific reports were prepared for the CHRC and the Competition Tribunal so that the specific context of their mandate and work could be explored without the immediate comparison between the two bodies. It is hoped that more administrative bodies will start using the Index and its comparative value can be further explored.

The Index can contribute to dialogue about the scope of accessibility to administrative bodies, what responsibilities they ought to assume given their respective mandates and how they can discharge those responsibilities. By establishing baseline scores in each of the four categories and a composite score for each participating administrative body, there is the potential to return to the Questionnaire in several years to assess progress. Where there has not been progress, the reasons for this can also be explained. The intent to return and assess progress will help to keep the access to justice discussion in the foreground.

In addition to contributing to dialogue, the Index can be used to support budget priorities, as well as foster new partnerships with other departments, governments and other public sector entities or NGOs, such as mental health service providers, translation services or new standards. One idea that has been proposed has been to explore the use of the Index with all the federal-provincial-territorial administrative bodies from one area. With today’s focus on evidence and performance measurement for governments,⁶⁹ the Index has many possible applications.

⁶⁷ Lorne Sossin “Comments on the Access to Justice Index for Federal Administrative Bodies.” Internal document to the Department of Justice, February 2017. Text in quotations is drawn directly from Professor Sossin’s comments.

⁶⁸ *Ibid.*

⁶⁹ See for example, the federal Justice Minister’s mandate letter, in which Prime Minister Trudeau states on page 1: “I expect that our work will be informed by performance measurement, evidence, and feedback from Canadians.” Accessed at: <http://pm.gc.ca/eng/minister-justice-and-attorney-general-canada-mandate-letter>

The results from this pilot of the Index show that the participating federal administrative bodies excel in some areas of access to justice, but there is room for improvement in others. These are areas that can be examined further. At the same time, the questions asked and their respective weights will be reviewed. Further work may be considered to validate questions that demand the parties'/users' perspectives. Finding "more effective ways to hear from users directly ultimately needs to play a role in the formulation of the Index if it is to serve its purpose of allowing participating tribunals to gain the insights that will enable it to improve its accessibility over time."⁷⁰

⁷⁰ *Supra*, note 67.

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Annex 1

Glossary of Terms

Below are terms and explanations used throughout the report.

Access to Justice

Enabling Canadians to obtain the information and assistance they need to help prevent legal issues from arising and help them to resolve such issues efficiently, affordably, and fairly, either through informal resolution mechanisms, where possible, or the formal justice system, when necessary.⁷¹

Accessible language is similar to the concept of “plain language”. The Council of Canadian Administrative Tribunals (CCAT) provides a definition of “plain language” and offers an on-line course on literacy.⁷²

Active adjudication is defined by Sossin “as a mid-point between adversarial and inquisitorial models of a legal process, and one focused on the policy context rather than the judicial model of the neutral arbiter or inquest model of the judge-led inquiry. An active adjudicator will respect the right of parties to put forward their own positions on questions of law and fact but may supplement submissions by raising additional issues, seeking information or perspectives not provided by the parties, and redressing any asymmetries resulting from represented and unrepresented parties or parties of greater or lesser sophistication. . . .”⁷³

At a practical level, Ian Mackenzie describes active adjudication as “...the act of bending the process to fit the person or persons before the adjudicator, while respecting the impartiality of the adjudicator.”⁷⁴

Composite Index score is the overall **Index score** for the administrative body, reflecting results for all four categories.

Index

While this term is used in many different contexts, it is used here as an indicator or a measurement of a stated or known goal. In this project, the Access to Justice Index for Federal Administrative Bodies is a measurement of Canadians’ ability to access justice at each of the participating administrative bodies.

Index score is the term used for the **Weighted score** divided by the total possible weights for each sub-category or category, which is then multiplied by 100. Each category will have a separate Index score. The **Composite Index score** is calculated by adding each category Index score together and dividing by four.

⁷¹ Department of Justice, September 2012

⁷² See the report by CCAT, *Literacy and Access to Administrative Justice in Canada: A Guide to Plain Language*. Accessed January 2, 2017 at <http://www.ccat-ctac.org/CMFiles/Publication/Literacyandjustice.pdf>

⁷³ Lorne Sossin & Mark Friedman, “Charter Values and Administrative Justice” (2014) 67: The Supreme Court Law Review: Osgoode’s Annual Constitutional Cases Conference 391.

⁷⁴ Ian McKenzie January 14, 2015, Active Adjudication and Impartiality in Slaw. Accessed December 29, 2016, at: <http://www.slaw.ca/2014/01/15/active-adjudication-and-impartiality/>

Members refers to those who adjudicate on behalf of an administrative body and are Governor-in-Council appointments for fixed periods of time (e.g. 3 years, 5 years).

Party/ies refers to the individual(s), group, organization, business, etc. who has made a complaint AND the individual(s), group, organization, business, etc. against whom the complaint has been made. As each administrative body may use a different term to describe these, we have chosen to use this general term.

Public legal education and information (PLEI) is defined as “an activity that seeks in a systematic way to provide people with the opportunity to obtain information about the law and the justice system in a form that is timely and appropriate to their needs.”⁷⁵

Staff refers to those who work for, or support, the administrative body and are public servants.

Weighted score refers to the total of all the points for each sub-category or category. The points are the weights (either 10, 5 or 1 for a “yes” response or zero for a “no” response) given to each indicator.

⁷⁵ Department of Justice Access to Justice Service Agreement. For more information see *supra*, note 42 and <http://www.justice.gc.ca/eng/fund-fina/gov-gouv/access.html> (accessed December 29, 2016).

Annex 2

Instructions for Completion of the Access to Justice Index for Federal Administrative Bodies Questionnaire

How to complete the survey

You are asked to answer every question, involving, where appropriate, those in your organization who are best placed to answer, such as Communications on the website, Human Resources on training, etc.

If there is a question that you believe is “Not Applicable” to your organization, would you please note the reason/s in the comments section for that question. You must answer each question with a “yes”, “no”, or a comment in the “Comments” section before you can move to the next page. You can also provide Comments with a “yes” or “no” response.

Where a question asks about a practice in your organization, respond with a “yes” answer if the practice is carried out with half or more than half of the organization. (e.g. Do staff receive training on, or are they assessed on experience with, active adjudication?)

The survey is fairly long. You are able to save your work and return to it at a later time.

More information on the survey methodology can be found in the Methodology and Reference Guide. If you have questions of a technical nature related to the e-survey, please contact Jo-Anne Raymond (jo-anne.raymond@justice.gc.ca). If you have questions on the substance of the e-survey, please contact Susan McDonald (susan.mcdonald@justice.gc.ca).

Terminology

In this survey, **members** and **staff** and **party** or **parties** of the administrative body are considered separately in the questions. The term, **members**, refers to those who adjudicate on behalf of an administrative body and are Governor-in-Council appointments for fixed periods of time (e.g. 3 years, 5 years).

The term, **staff**, refers to those who work for, or support, the administrative body and are public servants.

The term, **party/ies** refers to the individual or individuals, group, organization, business, etc. who has made a complaint AND the individual or individuals, group, organization, business, etc. against whom the complaint has been made. As each administrative body may use a different term to describe these, we have chosen to use this general term.

Other terms, such as active adjudication, accessible language and public legal education and information are clarified in the explanatory notes below the appropriate question.

Annex 3

Access to Justice Index for Federal Administrative Bodies Questionnaire

Category 1 Access to the Administrative Tribunal

Category 1.1. Physical Access

This first category, Access – both Physical Access and Access through Technology - has been drawn from Professor Lorne Sossin's writing on access to justice in the administrative law context and has been modified. It is not enough to look at physical access to the administrative body, given the use of technology to facilitate access for parties, and so Category 1.2 asks questions about access to the administrative body through technology. In responding to the questions in this and the other categories, keep in mind that oral processes includes not only hearings, but all types of dispute-resolution processes, such as case conferences, mediation sessions and early dispute-resolution processes.

Please identify your tribunal.

1. Does the administrative body (or contracted service provider) have at least one office open to the public?

Yes

No

2. Are oral processes (e.g. hearings, mediation) held in locations as close as possible to the parties?

Yes

No

3. When needed, can the rooms used for oral processes (e.g. hearings, mediations) accommodate anyone with a disability (e.g. elevator, ramps, wider doors, etc.)?

Yes

No

4. Are there rooms available where lawyers and other representatives can meet privately with their clients?

Yes

No

5. Does the administrative body have reception staff to assist visitors?

Yes

No

6a. Can a party speak with a representative of the administrative body outside of regular business hours (e.g. 8h00 – 17h00) across Canada?

Yes

No

6b. Can parties watch a live or simulated oral processes?

To provide service to clients outside of regular business hours, managers might approve overtime or flexible work schedules for staff.

Yes

No

7a. Can parties monitor live or simulated oral processes?

Yes

No

7b. Are parties informed that they can watch a live or simulated oral process?

Yes

No

8. Is the administrative body open to the public?

Yes

No

9. Does the administrative body have a general policy or practice on accommodating special needs?

Yes

No

10. Is the office of the administrative body, as well as the site of processes, readily accessible by public transit?

Yes

No

11. Does the office of the administrative body provide access to child care or child-friendly spaces for children of parties or witnesses?

Yes

No

12. Are parties given choices when the administrative body is scheduling oral processes?

Yes

No

13. Has a substantiated claim of failure to accommodate a party's needs been filed against the administrative body in the past 12 months?

Yes

No

Category 1.2 Access Through Technology

14a. Can parties participate in oral processes via teleconference or videoconference?

Yes

No

14b. Do parties participate in oral processes via teleconference or videoconference?

Yes

No

15a. Can parties participate in oral processes via written submissions?

Yes

No

15b. Do the parties participate in oral processes via written submissions?

Yes

No

16a. Can the administrative body respond to general questions from the public using different mechanisms, such as the Internet, email, live chat, telephone, TTY, and/or text messaging?

Yes

No

16b. Can the administrative body respond to all specific questions about a case when using different mechanisms, such as the Internet, email, telephone, TTY and/or text messaging?

Yes

No

17. Can the administrative body's website be understood by users with various literacy levels?

Yes

No

18. Does the administrative body's website meet Treasury Board accessibility standards for persons with disabilities?

Yes

No

19. Is the administrative body's website accessible to persons with different learning styles, such as the inclusion of visual and audio presentations of information?

Yes

No

20a. Does the administrative body make use of web-diagnostic tools, such as Google Analytics or other software?

Yes

No

20b. Is the administrative body's website designed to facilitate navigation?

Yes

No

21a. Does the administrative body solicit feedback from website users? (e.g. a pop-up survey or a feedback tab on the site)

Yes
No

21b. If the administrative body solicits feedback from website users, does it respond to issues raised?

Yes
No

22. Is technical assistance with the website readily available? (e.g. via a free telephone call)

Yes
No

23a. Does the administrative body use online forms?

Online forms help reduce printing and delivery costs. Some forms can be completed online, but must be printed out and sent by mail or facsimile.

Yes
No

23b. Does the administrative body use “smart” forms?

A smart form is an electronic document that can be completed and submitted online.

Yes
No

Category 2 Processes

Category 2.1 Procedural Justice

By far the largest category, Processes, is divided into four subcategories. Procedural justice is the first subcategory and includes: the ability to express views during the process; the consideration of views and feelings during processes; the ability to influence outcomes; perceptions of a process’ fairness; and levels of satisfaction. In this category, “members” and “staff” of the administrative body are considered distinctly in the questions. The term, “members,” refers to those who adjudicate on behalf of an administrative body and are Governor-in-Council appointments for fixed periods of time (e.g. 3 years, 5 years), while the term, “staff,” refers to those who work for, or support, the administrative body and are public servants.

24a. Do members receive training on, or are they assessed on prior experience with, active adjudication?

Active adjudication is explained in Sossin, Lorne and Friedman, Mark, “Charter Values and Administrative Justice” (2014). Osgoode Legal Studies Research Paper Series. Paper 62. Adjudication does not have a precise definition but usually connotes a mid-point between adversarial and inquisitorial models of adjudicative hearings. An active adjudicator will respect the right of parties to put forward their own positions on questions of law and fact but may supplement submissions by raising additional issues, seeking information or perspectives not provided by the parties, and redressing any asymmetries resulting from represented and unrepresented parties or parties of greater or lesser sophistication. . . . “ At a practical level, Ian Mackenzie describes it as “...the act of bending the process to fit the person or persons before the adjudicator, while respecting the impartiality of the adjudicator.”

Yes

No

24b. Do staff receive training on, or are they assessed on experience with, active adjudication?

Yes

No

25a. Do members receive training on, or are they assessed on experience with, objectivity and bias?

Yes

No

25b. Do staff receive training on, or are they assessed on experience with, objectivity and bias?

Yes

No

26. Can parties choose among a variety of processes as their case goes through the system?

Options might include: alternative dispute resolution, early settlement, a hearing before the administrative body; request awards for costs, etc.

Yes

No

27a. Does the administrative body monitor its members for implicit prejudice?

An implicit prejudice is one that occurs “outside of conscious awareness and control.” Monitoring could take the form of periodic self-assessment, analysis of decisions, interviews, performance evaluation, etc. An example is Harvard’s IAT: a self-assessment for implicit stereotyping. Potential examples of implicit prejudice would be decisions to doubt the legitimacy of awarding a disability pension to a young person, or to question the seriousness of a mental illness such as depression.

Yes

No

27b. Does the administrative body monitor its staff for implicit prejudice?

Monitoring could take the form of periodic self-assessment, analysis of decisions, interviews, performance evaluation, etc.

Yes

No

28a. Does the administrative body offer informal dispute mechanisms for parties to lodge and resolve complaints about their services?

An informal conflict-management system includes a variety of alternative dispute resolution (ADR) processes, such as: informal consultation, negotiation (self-resolution), third-party mediation, conflict coaching, and facilitation and group interventions.

Yes

No

28b. Does the administrative body offer formal dispute mechanisms for parties to lodge and resolve complaints about their services?

A formal conflict-management system could include: a written complaint process, an Ombudsman, etc

Yes

No

28c. Can parties choose between the administrative body's informal and formal dispute-resolution mechanisms?

Yes

No

29. Does the administrative body provide interpretation services in languages other than French or English?

Yes

No

30a. In the last five years, has the administrative body evaluated how satisfied parties are with its processes?

Evaluation should consider accessibility of information (e.g. level of language, accessible formats, website functionality, etc.). Evaluations can be service specific, such as a survey about face-to-face mediation services, and may be completed as part of an internal or external audit.

Yes

No

30b. Has the administrative body responded to issues identified in evaluations of user satisfaction?

Yes

No

31. Does the administrative body have performance indicators relevant to access to justice?

Performance indicators describe how an observer can tell that results have been achieved. They define standards for the expected level of achievement of results, including timing, and can be qualitative or quantitative.

Yes

No

32. Does the administrative body have a system to collect and manage case data?

Yes

No

33a. Does the administrative body have documented internal service standards?

Yes

No

33b. Is compliance with internal service standards monitored?

Yes

No

33c. Does the administrative body have documented external service standards for process milestones?

Yes

No

33d. Is compliance with external service standards monitored?

Yes

No

34. Does the administrative body meet its external service standards in 85% or more of cases?

TBS is introducing new service standards policy and operational directives will be required for all departments and agencies. There is no official document that lists goals for each standard. According to internal discussions with evaluation officials, Treasury Board Secretariat is aiming for 90%; while 80% is considered too low, some organizations have agreed to 85%. No global standard has been set that takes the average of all priority services offered. See TBS Policy on Service here.

Yes

No

Category 2.2 Representation

Self-representation has become one of the most important issues in access to justice in the last decade. Administrative bodies, for the most part, are designed to be less formal than the court system and therefore may see many cases with self-represented parties.

35. 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)

Administrative bodies were intended to provide a less formal way to resolve disputes. Each administrative body has its own set of rules. Self-representation may help increase access to justice, but just as important are the supports (information, guidance, etc.) provided by the administrative body.

Yes

No

36. Does the administrative body monitor trends in self-representation?

Yes

No

37a. Do members receive training on how to work with, or are they assessed on experience with regard to, self-represented parties?

Yes

No

37b. Do staff receive training on how to work with, or are they assessed on experience with regard to, self-represented parties?

Yes

No

37c. Does the administrative body monitor members' engagement with self-represented parties and submissions?

Yes

No

37d. Does the administrative body monitor staff engagement with self-represented parties and submissions? (e.g. calls with clients could be randomly monitored)

Yes

No

38. Does the administrative body support parties who lack the capacity to self-represent? (e.g. designated staff provide additional information by telephone or in person, provide additional assistance with documents and processes; referrals to outside service providers)

Yes

No

39. Can a party have a support person of their choice present throughout the process? (e.g. a family member, friend, community worker, etc.)

Yes

No

Category 2.3 Interpersonal Aspects

Some of the elements in this third subcategory include: whether users were treated in a polite and respectful manner by administrative body staff and members; tribunal officials; members and staff did their best to produce a good outcome for all parties; members and staff were transparent in their communication.

40a. Do members receive training on, or are they assessed on experience with regard to, treating parties, staff and other members with respect?

Yes

No

40b. Do staff receive training, or are they assessed on experience with regard to, treating parties, members, and, other staff with respect?

Yes

No

41. Does the administrative body have a “Code of Conduct/Values/Ethics”?

Yes

No

42a. Do members receive training or are they assessed on experience with regard to the duty to accommodate?

Yes

No

42b. Do staff receive training or are they assessed on experience with regard to the duty to accommodate?

Yes

No

Category 2.4 Informational Aspects

In this final subcategory, the theme is information (PLEI—public legal education and information) and includes: whether officials (staff or members depending upon the context) explain processes, rights and options in a thorough and timely manner; whether the parties understood these explanations; and whether the parties were provided opportunities to ask for clarification.

43. Does the administrative body provide opportunities for parties to correct inaccurate information during the process (i.e. before a decision is rendered)?

Yes

No

44. Is written and oral information about the administrative body kept up-to-date? (e.g. when there are changes in the law, in the processes, information provided to parties and to the public is updated)

Yes

No

45. Does the administrative body conduct regular outreach activities? (e.g. on an on-going basis activities such as newsletters, stakeholder meetings, speaking events, etc.)

Yes

No

46a. Is there information about the administrative body on the website of relevant stakeholders and information and services agencies?

Yes

No

46b. Is there information about the administrative body in the waiting rooms of relevant stakeholders and services agencies?

Yes

No

47. Is there a Frequently Asked Questions (FAQ) section on the administrative body's website?

A FAQ document is part of many information packages. It answers questions commonly asked by clients, users and other parties even after they have reviewed other information. It is assumed that an FAQ is written in plain language so that people with various literacy levels can understand it.

Yes

No

48. Is there a glossary of terms on the administrative body's website?

Yes

No

49. Is accessible/plain language used in written resources?

The CCAT maintains a definition of plain language and offers an online course on literacy that is free for CCAT members.

Yes

No

50a. Is accessible/plain language used in oral communication with parties?

Yes

No

50b. Does the administrative body monitor communication materials for accessible language?

Yes

No

51. The administrative body does not have any substantiated claims with the Office of the Commissioner of Official Languages for the refusal to provide services in English or French filed against it in the past 12 months?

Yes

No

52. Are written resources available in languages other than French and English (e.g. Braille, Spanish and Chinese)?

Yes

No

53. Does the administrative body provide information using visual aids?

Yes

No

54a. When interacting with parties, do staff refer additional resources?

Yes

No

54b. Does the website provide referrals to additional resources?

Yes

No

54c. Does the administrative body provide paper copies of additional resources?

Yes

No

54d. Are referral lists kept current?

Yes

No

55. Does the administrative body protect personal information?

Yes

No

Category 3 Costs

This category considers the costs to parties who access administrative processes. Almost all of these costs are services charges. Not included are costs identified in the Tilburg research (opportunity cost compensation and several intangible costs).

Category 3.1 Service Charges

56. Does the administrative body pay for interpretation of languages other than French and English during hearings, mediation and other proceedings?

Proceedings include any dispute-resolution process, such as hearings and mediation sessions. Many newcomers, particularly refugee claimants recounting traumatic events, are unable to provide testimony in English or French. Interpretation may also be required when a party has a disability that impedes clear communication in one of Canada's official languages.

Yes

No

57. Does the administrative body pay for the translation of key documents (e.g. letters to parties, decisions) into languages other than French and English?

Yes

No

58. Does the administrative body pay for additional copies?

Yes

No

59a. Can parties file documents at no charge?

Yes

No

59b. If there are fees for filing documents, is there a sliding scale or waiver of fees for parties who meet low-income criteria?

Yes

No

60a. Can parties use the administrative body's rooms for oral processes (e.g. hearings, mediation) at no charge?

Yes

No

60b. If there are fees for the use of rooms, is there a sliding scale or waiver of fees for parties who meet low-income criteria?

Yes

No

61. Can users access public legal education and information (PLEI) materials (in print or online) free of charge?

Yes

No

62. Does the administrative body partner with a public-interest pro bono PLEI group?

Yes

No

63. Does the administrative body maintain toll-free telephone and fax lines?

Yes

No

64. Does the administrative body allocate a portion of its budget to the information needs of parties, such as surveys, testing of materials, website revisions, etc.)?

While not necessarily a line item in the budget, the answer would be “yes” when resources are dedicated to activities that respond to the information needs of parties (e.g. website revisions, brochure updates, user surveys, etc.)

Yes

No

3.2 Intangible Cost Supports

65. Does the administrative body provide staff with assistance and support for mental well-being? (e.g. access to an Employee Assistance Program, an internal wellness program)

Yes

No

66. Does the administrative body have an assistance program for mental well-being for members?

Yes

No

67. Does the administrative body provide assistance or support related to mental health to parties, and/or does it provide referrals to relevant people/organizations?

Yes

No

4.0 Outcomes

4.1 Distributive Justice

The final category, Outcome, plays an important role in parties’ overall sense of fairness and justice. The first subsection, Distributive Justice, highlights that many conflicts have one or more issues related to the division of assets, damages and tasks, and to application of sanctions. Distribution as a dimension of the quality of outcomes refers to the appropriateness of outcomes with regard to questions about allocation. (Definition from the Tilburg model handbook)

68. As appropriate, does the administrative body help to distribute of money and assets (e.g. benefits)?

Yes

No

69. Does the administrative body consider the needs of the parties? (e.g. the unique socioeconomic circumstances of the parties)

Yes

No

70. Does the administrative body consider the roles of parties in disputes (e.g. employer/employee)?

Yes

No

71. Does the administrative body consider the efforts of the parties?

Yes

No

72a. Can the administrative body award or facilitate a remedy for monetary harm?

Yes

No

72b. Does the administrative body award or facilitate a remedy for monetary harm? (e.g. an award that includes lost salary and benefits)

Yes

No

73a. Can the administrative body award or facilitate a remedy for emotional harm? (e.g. stress, anxiety or other negative emotional impact)

Yes

No

73b. Does the administrative body award or facilitate a remedy for emotional harm?

Yes

No

4.2 Functional Justice

Another dimension in this Category is the extent to which outcomes are useful from the perspective of parties. When a conflict arises, few people immediately think of the rights they may or may not have. Most people instead seek to resolve the conflict and that spurs them toward seeking justice. (Definition from the Tilburg model handbook)

74. Does the administrative body seek to improve the relationship damaged during the dispute?

Yes

No

75. Does the administrative body solicit feedback on the extent to which the parties have reconciled their differences? (e.g. a survey or follow up to solicit feedback on the reconciliation process)

Yes

No

76a. Can the administrative body enforce outcomes?

Yes

No

76b. Does the administrative body enforce outcomes?

Yes

No

77. Does the administrative body monitor outcomes to prevent future conflict?

Yes

No

4.3 Transparency of Outcomes

Transparency is discerned as a dimension of the quality of outcomes. Basically, this refers to two related elements. The quality of an outcome may be partly dependent on the justification underlying it. Thus, it is important that the justification is transparent and open to scrutiny. This scrutiny helps with evaluating the extent to which an outcome is similar to those of similar cases. (Definition from Tilburg model handbook)

78. Is the decision clearly communicated to the parties? (e.g. in plain/accessible language in a letter or email)

Yes

No

79. Are the reasons for the decision clearly communicated to the parties?

Reasons are typically communicated at the same time as the decision.

Yes

No

80. Is the decision or settlement publicly accessible in full or redacted format?

Yes

No

81. Once issued, are decisions by the administrative body monitored internally for consistency in application?

Yes

No

Please provide any examples of best practices—activities or initiatives that enhance access to justice. These could fit into one or more of the four index categories. The examples will not be weighted, nor form part of the index, but will be highlighted in the narrative that will accompany the Index results, as a way to share good ideas.

NOTE: