

JUSTICE METRICS COLLOQUIUM

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The University of Victoria Access to Justice Centre for Excellence (ACE) has been conducting research into empirical measurement in the justice sector and searching for ways to produce access to justice metrics that can be relied upon for informed, evidence-based decision making around justice. To this end, ACE has hosted a series of colloquia to bring together representatives of a broad range of justice sector organizations to discuss the justice metrics question and inform concrete, practical work on justice metrics. The latest of these colloquia was held on February 27, 2020 and focused on the concept of a justice data commons and the potential application of the Data Innovation Program (the “DIP”) operated by the BC Ministry of Citizens' Services, to the justice metrics question.

The colloquium was attended by representatives from the BC government, courts, administrative tribunals, notaries, NGOs, academia, and libraries. The group heard presentations on the subjects of data commons, BC privacy law in a research context, and the BC Data Innovation Program. The group then participated in an exercise demonstrating how research projects happen through the DIP and a plenary discussion about the information presented. This report summarizes the content, trends, and themes emerging from the presentations and discussions.

Data commons

A data commons consists of data co-located and collectively managed by a community, along with tools for working with the data. Powerful new capabilities for working with the data sets have emerged in recent decades, but these capabilities cannot be applied unless the data is accessible in the first place. At present, accessibility of data in the justice sector is generally very limited. There are major barriers to access to data in the legal field springing from balkanization, concerns about privacy and security, and the technical difficulty of reading and parsing data where it is available. The result of this limited access to data is that researchers in the justice sector are constrained by a dearth of data and limited access to it.¹ Building a data commons has the potential to be one way to make data available to researchers while mitigating the costs of the associated technical challenges and without compromising privacy or security.

It was widely agreed by colloquium attendees that access to data is critical for sound decision and policy-making. One attendee, taking a long-term perspective on the justice metrics project informed by the work of Access to Justice BC (A2JBC), noted that it has been the case for many years that the most important questions about access to justice cannot be answered with the available data. This creates challenges for many efforts at empirical study. In particular, attendees agreed that it is crucial to record journeys between multiple justice service providers.

It was also noted that there are two sides to the access coin: while there is much work to be done for the justice system to start using data more effectively, we must also work on collecting better data. Attendees expressed enthusiasm for the projects that people outside the justice system could undertake with improved access to data from the justice system, for example, anti-poverty advocates. In this sense, providing data is a useful goal for the justice system. There was some conversation about providing support to organizations that want to improve their data collection up front in order to make it more useful to other researchers. There is experience within the DIP dealing with these issues, and attendees from the DIP were optimistic with respect to their ability to make use of currently inconsistent justice data.

¹ Margaret Hagan, Jameson Dempsey & Jorge Gabriel Jiménez, “A Data Commons for Law,” (2 April 2019), online: *Medium* <<https://medium.com/legal-design-and-innovation/a-data-commons-for-law-60e4c4ad9340>>.

Privacy

When providing access to justice data, it is paramount that the privacy of the individuals involved be respected. David Loukidelis, QC delivered a presentation on the legal rules through which privacy rights are expressed in British Columbia and the application of those rules to access to justice research.

Generally, these rules protect individual privacy while enabling research with public benefits.² The statutes most relevant to this discussion are the *Freedom of Information and Privacy Act* (FIPPA) and the *Statistics Act*.

FIPPA regulates the collection, use, and disclosure of identifiable personal information by public bodies. This includes ministries, tribunals, the Court Services Branch and the Criminal Justice Branch, for example, but excludes courts. The *Statistics Act* empowers the Director of Statistics to collect and share statistical information under certain conditions.

Privacy considerations in data collection

FIPPA and the Statistics Act each authorize fairly broad data collection. FIPPA authorizes collection of personal information under several heads of authority, including where the information “relates directly to and is necessary for a program or activity of the public body” or where it is “necessary for the purposes of planning or evaluating a program or activity of a public body.” The Statistics Act authorizes the Director of Statistics to collect statistical information “respecting the commercial, industrial, financial, social, economic and general activities and conditions of British Columbia,” including collaborating with ministries to collect statistics (and inclusive of statistics derived from those ministries' activities). The minister responsible for the Statistics Act may authorize the Director to collect “other statistics or statistical information the Lieutenant Governor in Council considers desirable.”

Privacy considerations in data sharing

FIPPA authorizes a public body to disclose personal information to another public body within Canada where the information is “necessary for the delivery of a common or integrated program or activity,” “for the purposes of planning or evaluating a program or activity of a public body,” or for research purposes if

² David Loukidelis, *Privacy and Justice Sector Research and Evaluation* (Victoria, BC, 2020).

certain conditions are met. Conditions include that the research purpose “cannot reasonably be accomplished” unless the data is provided in individually-identifiable form and that any data-linking both clearly benefits the public and is not harmful to the individuals the information is about.

The Statistics Act generally requires information to be kept secret. Identifiable information cannot be examined other than by a person sworn to secrecy under the Act, and those persons are forbidden to disclose information obtained under the Act in a personally-identifiable form.

Implications

Current privacy legislation allows researchers to access individually identifiable information for research purposes, but it is important to note that researchers rarely do so. Researchers in general are interested in population-level data rather than information about individuals. De-identified data is the “currency of research.”³

The legislation discussed here only authorizes participation in research efforts— it does not mandate it. The issue of the court’s independence and responsibility to protect confidentiality and privacy was raised. BC courts respond to research efforts on a case-by-case basis, and data sharing with the courts is a matter that will need to be examined in further detail.

The BC Data Innovation Program

The DIP is a BC government program to consolidate, integrate, and communicate data for population-level research. The DIP gathers together data collected by individual public sector organizations, links it together, then de-identifies it and makes it available to researchers in a secure environment.⁴

The DIP currently has 29 data sets, across seven different ministries and two government bodies. Data collection takes place through collaboration with the various BC government ministries and public sector organizations. Data providers collect their own data and then share it with the DIP. This delegation to

³ *Supra* note 2 at 3.

⁴ *Data Innovation Program Privacy and Security Framework* (Ministry of Citizens’ Services, 2019).

the DIP saves individual ministries the often-expert work of assessing individual research applications, as researchers will instead apply to the DIP for access to data.



The BC DIP operates under the authority of the Director of Statistics set out in the Statistics Act and complies with FIPPA. DIP is guided by data privacy and security best practices, through a model they call the Five Safes: safe people, ensuring all staff are trained to honour data protocols; safe projects, in which DIP projects must all provide a clear public benefit; safe data, ensuring all data collections are de-identified of names, addresses, ID numbers, postal codes, and any other secondary identifying information; safe settings that meet modern and secure technical specifications; and safe outputs in which data is anonymized and all data points are appropriately tagged (for example, referring to people in the corrections system as ‘clients’ rather than ‘inmates’).

Colloquium attendees expressed interest in the DIP's capacity to support ensuring data quality at the time of recording. The DIP does not have formal service offerings to this end, but they do have knowledge in the area and are open to helping. There are data scientists at the DIP who work specifically on improving the quality of contributed data sets, and service design practitioners within the Ministry of Citizens' Services who know about designing processes with high-quality metrics in mind. Some colloquium participants voiced concern about improving the data coming out of their organization before trying to integrate those data sets with those of the DIP. An approach the justice sector could adopt might be to develop data protocols and standards across data providers to ensure the sector is as aligned as possible. Beth Collins, Director of Privacy and Legislation with the Data Innovation Program, noted that a particular aim of the program is to fight “data dysmorphia”; that is, the idea that data is too low-quality to be of use. Collins emphasized that perfect is the enemy of the good when it comes to data. Even imperfect data has value; using data is what makes it valuable, however imperfect it may seem. Data

THE BC DATA INNOVATION PROGRAM: FIVE SAFES MODEL



dictionaries and metadata can go a long way to developing data consistency, and the DIP can provide some support on that front (for example, a data dictionary template).



The DIP then links together data sets from the different ministries. The DIP, as a trusted delegate, is in a far better position to integrate data than any individual data provider could be, and they have expertise in the technical work involved. There is also significant expertise required in performing the cost/benefit analysis required under FIPPA to ensure that the data linking is beneficial to the public interest and not harmful to individuals. Being able to delegate this work is another important cost reduction for data providers.

The DIP then de-identifies the linked data. This is a technical problem requiring significant expertise, and it is again a major efficiency gain for data providers to delegate this work to the DIP. The DIP

continues to protect linked and de-identified data as personal information subject to FIPPA and the secrecy provisions of the *Statistics Act*.

Researchers interested in the DIP's data submit access requests, which are only approved for projects that align to the Five Safes model. Assessing data access requests on these bases is, again, a matter requiring significant expertise that is not necessarily present within the organizations providing data. Approved researchers are granted access to de-identified data. When their analysis is complete, the results are checked for the possibility of re-identification and the original data providers are consulted to be sure their data has not been misinterpreted.

The DIP thus provides the benefits of a data commons while complying with the privacy and security requirements of BC law. Colloquium attendees expressed optimism about participating in the DIP as a way to address some of the data problems currently inhibiting access to justice research. The DIP pointed to the New Zealand Data Futures Partnership as an apt model for creating a trusted data-use environment across a range of stakeholders including citizens, consumers, businesses, Māori, non-governmental organizations and government bodies.⁵

Justice sector test project

How might we develop a data commons in the justice sector? ACE proposed initiating a small cross-sector research project based on the DIP as a first step. This would be a useful learning exercise in identifying data needs and gaps and would help establish best practices. Presenters from the DIP were supportive of this idea and recommended looking at what data is already in the DIP and limiting scope within the justice sector to a few key data sources, expecting that the most useful results will probably come from integration with data from other sectors.

Individual attendees made several suggestions for projects that could be pursued. Family law was raised as a particularly promising area to launch a test project. One project suggestion was to track cases handled through collaborative and adversarial family law models and explore whether these methods yielded different outcomes several years post-resolution of cases in areas beyond justice, like employment or health. Another idea was to study the impact on children of parental conflict during separation; it was

⁵ *A New Zealand Data Futures Partnership* (Stats NZ, 2015) online: <archive.stats.govt.nz/about_us/what-we-do/our-publications/cabinet-papers/data-futures-partnership-cabinet-paper.aspx>

suggested that this is a focused question, which will help with the tractability of the project as well as reducing anxiety around data sharing. One attendee suggested that tribunals could be a strong setting for a test project, emphasizing that justice sector data is hugely valuable to tribunals; most access to justice studies focus on courts, but much of justice begins at the tribunal level and improvements at this level might ease some of the pressure on courts.

Data commons leadership and stewardship

Lastly, there was some discussion about the governance model for a justice sector data commons and related research efforts moving forward. The metrics project is in need of leadership. ACE is committed to remaining collaborative and sharing the leadership responsibilities. It was suggested that universities may be well positioned to take leadership roles. One attendee from a university noted that it can be difficult to get commitment to provide resources at the central university level, but that they were happy to help coordinate and build capacity. Another said that the DIP might be of interest to academics and could be a useful focal point for reaching out within universities.

There was discussion of whether ACE, or any other organization, would consider hiring a full-time data scientist to work on the justice metrics project. One attendee stressed the point that homogeneity of perspectives is a major problem in the justice sector, and outside expertise is necessary. Another attendee suggested that this expertise exists within universities and that academic institutions ought to canvass internally (for example, in computer science departments).

The DIP can offer a data dictionary template, and government-employed service design experts are available from a separate ministry. The DIP is also developing quality control protocols to support data collection. For example, DIP data scientists are undertaking a review of the Medical Services Plan data and will upload their findings to GitHub and conduct webinars about best practices that emerged from this research.

Future Colloquia

Attendees agreed that the colloquium model is appropriate and useful, with several attesting to the value of people being in the same room. One attendee also said that the colloquium model helps to produce champions of the value of data within organizations, and those champions are important for leadership of

the metrics project. It was also pointed out that there are still important voices unrepresented at the colloquia, particularly the voice of lived experience, without which we have limited standing to consider certain questions. Having a sense of how the metrics project is actually working to improve user experiences is important, and the colloquia could do more to provide that sense. The annual interval was generally agreed to be reasonable timing. Meeting more frequently, it was felt, would mean less value each time.

More frequent colloquia might be less necessary thanks to the ad hoc working groups that are another part of the metrics project governance model. A2JBC, for example, has a working group on measurement that generated a measurement framework collateral to and supportive of today's work.⁶ One particular use for this model that was suggested was to form working groups to examine existing agreements on data sharing and standard policies and procedures (for example, the ICBC sharing agreement), allowing for engagement between colloquia.

ACE leadership closed the meeting by saying that it is time to put more emphasis on concrete projects. There is a tendency in the legal field to put the perfect before the good that can result in decision paralysis. The DIP is a promising step to reduce barriers to engage in metrics work. Working with data implies many thorny questions about privacy, institutional trust, and technical realities. The lack of good answers to these questions has been an obstacle to the justice metrics project for a long time, and the DIP provides at least some of those answers. One possible way forward is to first develop a national vision and strategy, and then assign timelines, commitments, and plans to that strategy. Now is the time for us to commit to this work.

⁶ Yvon Dandurand et al, *Access to Justice Measurement Framework* (Access to Justice BC Measurement Working Group, 2018).



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