

THE ACCESS TO JUSTICE GAME

Guide for Use in Post-Secondary Learning



Paper and Digital Versions



ACCESS TO JUSTICE GAME

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OVERVIEW OF THE ACCESS TO JUSTICE GAME

How the Game Works

Players take on the role of one of three characters with a common legal problem. They have the choice to visit a range of legal service providers (like a law firm, community legal clinic, or courthouse) to try and get help with their problem, within their character's time and money constraints. They can visit these locations in any order, as many times as they want. The goal of the game is to get enough help with their problem that they can bring their issue to the court (or to the Landlord and Tenant Board, in the housing scenario). Players "win" the game when their character successfully starts a formal legal process to have their case heard, or by resolving the problem itself.

Different options are available to each character based on their personal circumstances, finances, and the kind of help they need. These limitations are based directly on real-world rules and constraints. So, for example, the legal aid income cut-offs and the services legal aid offers in-game are directly reflective of how Legal Aid Ontario works in real life.

Learning Objectives

After playing the Access to Justice Game, students should be able to:

- Understand the prevalence of civil justice issues in the lives of Ontarians;
- Identify and describe the functions of the major legal service providers in Ontario;
- Identify and critically assess the gaps in service coverage;
- Bring a systemic analysis to the legal services environment in Ontario;
- Understand the relationship between access to legal services and legal outcomes; and
- Understand the most common barriers to access to justice.

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A Note on Game Formats

The Access to Justice Game exists in two formats:

1. The “Paper Game” uses pen-and-paper materials and requires students to circulate around a classroom and role play together.
2. The “Digital Game” is available on OJEN’s website at ojen.ca/accesstojusticegame.

While both games have the same educational content, scenarios, and navigation options, the Digital Game automates a number of functions that an instructor must perform manually in the Paper Game (notably the distribution of Chance Cards and double-checking that students have met the required objectives when they claim success). It can also be assigned outside of class time, as homework.

However, the Paper Game offers a highly active, participatory classroom activity, with many opportunities for shared social learning and significantly less reading. Both versions have strengths; please choose whichever edition is the best fit for your educational context.

Suggested Time for Playing the Game as an In-Class Activity

1 hour:	15 – 20 minutes	Introducing the topic of civil access to justice
	20 minutes	Playing the game
	15 – 20 minutes	Debrief and discussion

ACCESS TO JUSTICE AND THE ONTARIO CONTEXT

Access to Justice is the measure of how easy it is for people to get the help or resources they need to solve legal problems. In 2013, a committee of lawyers lead by Supreme Court of Canada Justice Thomas Cromwell released a report called “Access to Civil & Family Justice: A Roadmap for Change.” They found that the justice system was too complex, too slow, and too expensive to deliver good results to the majority of people in Canada. This was the start of a major shift in how the legal community thinks about legal reform and priorities.

“There is a serious access to justice problem in Canada. The civil and family justice system is too complex, too slow and too expensive. It is too often incapable of producing just outcomes that are proportional to the problems brought to it or reflective of the needs of the people it is meant to serve. While there are many dedicated people trying hard to make it work and there have been many reform efforts, the system continues to lack coherent leadership, institutional structures that can design and implement change, and appropriate coordination to ensure consistent and cost effective reform. Major change is needed.”¹

— Access to Civil & Family Justice: A Roadmap for Change

Since then, our picture of the “**access to justice crisis**” has become a lot clearer. Civil law problems - including family, employment, housing, human rights, immigration, wills and estates, health law, education law, consumer protection, contracts, business law, and more - are extremely common among the general population. Recent studies estimate that almost **half (48.4%) of Canadians over the age of 18** will experience at least one civil justice problem in a given 3-year period and just about everyone will have a civil legal problem at some point over the course of their life².

The law is complicated. In many cases it’s difficult to get a fair legal outcome without support and access to some legal advice. Yet many of those people with civil

¹ Action Committee on Access to Justice in Civil and Family Matters. (2013). Access to Civil & Family Justice: A Roadmap for Change. Online: www.cfcj-fcjc.org/sites/default/files/docs/2013/AC_Report_English_Final.pdf

² Currie, A. (2016). Nudging the Paradigm Shift, Everyday Legal Problems in Canada. Canadian Forum on Civil Justice (CFCJ) Cost of Justice Reports. Online: www.cfcj-fcjc.org/cost-of-justice

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legal problems will not be able to get appropriate help for a variety of reasons: the cost of a lawyer, the time involved, a lack of knowledge about their options, the intimidation factor, and more.

Many of the people surveyed in recent studies tried to gather information: 61% got advice from friends and relatives, and 33% searched the internet for help. Fewer people successfully got help or advice: about 28% got help from a third-party organization, like a union or an advocacy group, while **only 19% ever got legal advice** from a professional. Only about 7% of people with a civil justice problem would eventually make it into the formal legal system (including courts, tribunals, etc.). About three quarters attempted to work the issue out directly with the other party, successfully or otherwise. About 30% never got a resolution to their issue at all.

Of those surveyed, the average person spent \$6,100 trying to solve their legal problem. That's almost as much as the average Canadian household in 2012 spent on food (\$7,739) and almost 10% of the average household expenditure.³ Indeed, cost is the most significant single factor in the access to justice crisis. A recent survey of legal fees found that the average cost of a relatively simple civil matter, including a trial that lasted 2 days or less, ranged from **\$13,000 - \$37,000**.

Everyone knows that lawyers are expensive, but most people don't know how much a legal problem can cost until they have one. While paralegals can now provide legal advice in many areas (like at tribunals and Small Claims Court), and can be a more affordable alternative to private lawyers, their fees for the same services will still typically amount to thousands of dollars. While **legal aid** is available to some Ontarians, the annual income caps are notoriously low (\$18,795 for a single person or up to \$54,289 for a family of four) and only cover a limited range of issues.⁴

Cost is not the only barrier. Fighting a legal battle takes an immense amount of **time**, in both intensity and duration. Many services are only available during standard workdays, which requires many people to take time off. Individual cases can take years to make their way through a court process or to get a decision from a tribunal. Over the course of that time, other problems may spring up that drain a person's attention and resources.

³ Farrow, Trevor et al. "Everyday Legal Problems and the Cost of Justice in Canada: Overview Report." Canadian Forum for Civil Justice, 2016 at 14.

⁴ Figures cited are accurate as of August 2020. See Legal Aid Ontario at www.legalaid.on.ca/en/ for current information.

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Beyond the logistical issues, many Ontarians are deterred from addressing their legal issues by the complexity, opacity, and intimidation of the legal system. Many people don't know their rights, where to get help, or when they should consider legal action. Many fear discrimination, poor treatment, or unfair results. As a result, a huge number of Ontarians are not able to assert their rights in important areas like family disputes, employment issues, housing, and debt management.

Understanding the Legal Aid System in Ontario

Legal Aid Ontario (LAO) is the major provider of free or low-cost legal services to low-income Ontarians. The legal aid system provides services in four different ways:

(1) Legal Aid Certificates. Areas of law: Criminal, family

If you meet the income requirements and you have a criminal or family matter, Legal Aid Ontario will issue you a certificate which you can take to a private lawyer. The lawyer will help you and get paid directly by LAO, at a rate set by LAO. Certificates are only issued for one legal problem at a time and they only cover a limited amount of a lawyer's time. Only a small number of lawyers will accept certificates.

(2) Duty Counsel. Areas of law: Criminal, housing, sometimes family

All criminal courts, some family courts, and some housing tribunals have a Duty Counsel office on site. You can visit Duty Counsel on the day you appear in court/tribunal and they will help you that day. They can't take on your case in an ongoing way or help you between court dates. They don't draft court documents or submissions for you.

(3) Community Legal Clinics. Areas of law: Housing, income security, some others

These are independent organizations funded by Legal Aid Ontario to provide legal services directly to low-income people within certain geographical boundaries. All clinics help with housing and social assistance, and some also work on employment claims, immigration, or family law issues. You must meet an income cut-off to be represented, but many will give brief "summary advice" even if you are above the income limits. Summary advice can be a short analysis of your case and advice on what to do next.

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You can find your area's community legal clinic on the Legal Aid Ontario website, where you can search based on your postal code. There are also **Student Legal Aid Services Societies** which operate out of law schools, with law students doing the legal work under lawyer supervision. They otherwise function similarly to community legal clinics, but they may also offer criminal law, immigration, or other legal services.

(4) Specialty Legal Clinics. Areas of law: Various

Specialty clinics provide free legal services to people with a particular legal need or identity (anywhere in Ontario) who may not be well-served by other legal aid services. Generally you must still meet the income cut-offs set by Legal Aid Ontario to qualify for help.

Some examples of specialty clinics: The HIV/AIDS Legal Clinic Ontario; Advocacy Centre for the Elderly; Black Legal Action Centre; Justice for Children and Youth.

Funding and Income Cut-Offs

In August 2020, at the time of writing, the Legal Aid Ontario income cut-off was \$18,795 per year for a single-person household or \$45,289 for a family of four. Cut-offs and rates can change from year to year based on trends, funding, and changing demographics in Ontario. You can find the current income cut-offs on the Legal Aid Ontario website at www.legalaid.on.ca.

For comparison, a person working for minimum wage (\$14 as of August 2020) for 35 hours per week would have an annual salary of \$25,480 before tax – they would earn too much money to qualify for legal aid as a single person without dependents.

Also Good to Know...

Pro Bono Ontario offers some programs in which lawyers volunteer to help some clients with some specific types of legal problems. It's always worth checking whether there's a Pro Bono Ontario project that could help you: www.probonoontario.org.

The Law Society of Ontario's **Lawyer Referral Service** can connect you with a lawyer who will give you a free 30-minute consultation. They will not give you legal advice during that consultation, but afterwards you can choose to hire them (at their usual rates). You can request a lawyer who meets special accessibility needs or speaks a certain language, so this service can be useful for anyone without strong English.

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PREPARING TO PLAY

Preparing the Paper Game Materials

If you intend to run the **Paper Game** in class with your students, you will need to print copies of the materials in advance. The amount depends on the size of your class.

About half of your students will play as litigant characters while the other half will play as legal service providers, working at stations. There are 8 stations and 3 characters. Each station and each character has different instructions. You can double up students at each station if your class numbers allow it; ensure each has their own copy of the instructions if so.

For a class of 30, you might put 2 students at each station (for a total of 16 students) and assign 4-5 students to each of the 3 character roles (making up the remaining 14 students).

You will need to print:

- 1-2x each set of Station Instructions
- A few copies of each character's Scenario sheet – enough that each student playing a character will have their own copy
- 1x set of Chance, Success, and Item cards (located at the back of the Paper Game). These will need to be cut out.

Finally, you will need a way to indicate where each Station is in the room. Stations represent each of the 8 legal service providers that appear in the game. You could use simple page with each station's name written clearly and in large print.

Decide in advance where each station will be located in your classroom. You may want to place the appropriate sign and Station Instructions in each location before class begins.

Preparing the Digital Game Materials

To run the **Digital Game** with your students, they will simply need a computer, tablet, or phone with internet access. The game is available at ojen.ca/accesstojusticegame.

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PLAYING THE GAME

Paper Version

Select students to operate the stations. Each station should have a sign and a set of the matching Station Instructions.

Explain that the rest of the students will play as litigants. Give each student a Scenario sheet for either Jean, Jamie, or Dallas. The instructor should keep all of the Chance, Success, and other cards.

Give all students a few minutes to read the instructions and ask any questions. Ensure they understand that:

- Litigants should move around the room visiting stations in any order they want, trying to get help with their character's problem.
- Station operators have instructions for what to ask and tell each litigant.
- Sometimes a litigant may be told to get a card – Chance, Success, or an item card. They can get those from the instructor.
- The litigant must keep track of how much money they have in the bank and their income.

Give students 15-20 minutes to complete play. If students finish early, they can play a second Scenario or swap out with one of the station operators.

Digital Version

To play the digital game in class, ensure students can access it on phones, tablets, or laptops. They can work individually, in pairs, or small groups.

Explain how the game works:

- You will play as one of three characters: JEAN, family law; JAMIE, employment law; or DALLAS, housing law.
- Your goal is to get your character legal help and get their issue resolved or heard by the court.
- To do that, you will be able to visit different buildings and services to gather information and help.

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- You can go anywhere, in any order, and you can visit the same place more than once.
- Things may happen to your character that change your circumstances or finances.
- Remember to read carefully and keep an eye on how much money you have – it's listed at the top of the screen.

How to Win

While it can be difficult to “win,” there are at least two paths to success for each character:

- Jean can get help filling out her forms from the Family Law Information Centre at the courthouse and file them without a lawyer or hire a lawyer through the Lawyer Referral Service.
- Jamie can make a complaint to the Ministry of Labour or start a Small Claims Court process.
- Dallas can pay back the money with help from the community legal clinic; or get a settlement through mediation (if they can pay a certain amount out of pocket).
- All three can hire a lawyer at the Law Firm if they have enough money.

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AFTER PLAY: DISCUSSION QUESTIONS

Game Take-Up

Begin by surveying how students fared. Compare how many students playing each character found success and how they got there. Consider the full picture of how these experiences compare and why.

Suggested Discussion Questions

How did it feel? Was it frustrating? Confusing? Remember that the constraints in the game reflect real-world limits, like who can help with what, income cut-offs, etc.

Do you think your character is going to win their case in the end? Will they be happy with the outcome? What does “access to justice” mean for these people? Note:

- Dallas may still be evicted or could fall behind on rent again.
- Jamie won’t get his job back and may have to wait months before receiving the money he is owed (if at all).

What does it mean for our society as a whole if most people struggle to enforce their legal rights in housing, employment, and family law? Consider, for example, that a 2016 study of Ministry of Labour complaints about wage theft found that of \$47.5 million that was stolen from workers since 2009, only \$19 million of that was ever recovered – leaving a gap of over \$28 million lost.

What would have helped your character?

What other factors could affect whether your character got help? Consider the impact of work schedules, lack of transportation, child or elder care, language or literacy barriers, technological barriers, etc.

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Important Concepts

The **referral maze**: people commonly get referred to other services by staff at one institution that can't help them. But often those staff don't know precisely what other organizations do and don't do. As a result, a person may be sent in the wrong direction multiple times before they find the help they need (or give up).

The **middle class access to justice gap**: very low income people can qualify for some kinds of help under legal aid, but the vast majority of Ontarians make too much money to qualify but not nearly enough to be able to afford representation from a private lawyer.

Self-represented litigants: people who try to pursue their own case through the courts or tribunals without a lawyer or paralegal. By some estimates, 75% of parties in family court are self-represented.

Unbundled legal services or limited scope retainers: some lawyers now offer services that are less than full representation, in which a person hires them to help with only a small part of their case – for example, drafting submissions to court, appearing in court, or looking over a negotiated agreement before it is finalized. These services can provide crucial legal support in key moments while drastically reducing cost, but they require a lot of careful work and skill from the litigant to manage the rest of their court process appropriately.

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SUGGESTED READINGS

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Under the leadership of former Chief Justice of Canada Beverley McLachlin, the Action Committee on Access to Justice in Civil and Family Matters has emerged as a national body coordinating the efforts of many individuals and organizations concerned with access to justice in Canada. OJEN became involved with one of the Committee's sub-bodies, the Prevention, Triage and Referral Working Group. This group highlighted ways in which public education strategies could support access to justice efforts by building engagement and legal capability in people. OJEN developed the game as a strategy to present the access to justice crisis to young people in an accessible way while teaching them about real civil justice processes and sources of support in the community for people who find themselves facing legal issues.

Since then, the game has become one of OJEN's most popular and effective teaching tools. The game has been run in both English and French with participants that number in the thousands and audiences comprising high school, community college and law students, but also teachers, teacher candidates, lawyers, judges, community workers, young parents, newcomers and others. OJEN hopes you and your classes enjoy it and we welcome your feedback. Please feel free to contact us at info@ojen.ca.