



Rural & Remote Access to Justice

A Literature Review



Canadian Forum on Civil Justice • Forum canadien sur la justice civile



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The Rural and Remote Access to Justice Boldness Project:

This review has been commissioned to support the work of the Rural and Remote Access to Justice Boldness Project (RRBP). The RRBP is a special initiative funded by Legal Aid Ontario (LAO) to transform legal service delivery. It is led by four community legal clinic Executive Directors and a LAO staff liaison working in rural and remote communities. The project partners are using a social innovation methodology (The Boldness Collaboratory™) to investigate and experiment with a multiplicity of ways to increase access to justice for people living on a low income in rural and remote communities of Ontario. By commissioning the review, the partners wished to identify the current trends, gaps in the research, and promising practices in service delivery. Specifically, they wished to know how “rural and remote” is understood, what is known about access to justice challenges and opportunities in rural and remote communities, whether the research to date has documented differences with urban communities, and how other provinces and countries have handled the access to justice challenges in rural and remote areas.

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I. INTRODUCTION

“People’s lives are profoundly affected by their inability to access adequate legal information and services.”¹

All Canadians, regardless of financial or other barriers, should have reasonable access to justice.² Yet the reality remains that for the nearly 20% of Canadians living in rural and remote communities, accessing justice remains difficult, largely due to the unique challenges to service provision that exist in rural and remote communities.³ These challenges are rooted in the geographical, demographic, and social and cultural characteristics that define rurality and remoteness, and in the varied combinations of these elements that determine the legal and social service needs of individual communities. Moreover, rural and remote areas have various infrastructure, resource, communication and social barriers that impede and/or complicate service delivery. This literature review provides an overview of these challenges and explores developments aimed at improving access to services for rural and remote populations.

While the purpose of the review is to examine the specifics of rural and remote access to justice in Canada, it also surveys challenges and developments in rural and remote access to justice in the United States, Australia, Sweden and Finland. Our explanation for venturing beyond Canadian specific literature is twofold. Firstly, to date, there is not a significant body of scholarship addressing rural and remote legal needs and access to justice issues in Canada. Additionally, there is a limited amount of primary research in this area. Secondly, the United States, Australia, Sweden and Finland are all jurisdictions that face similar access to justice challenges and have similar – although not identical – public, legal, and government frameworks, and economies, to Canada. This means that the literature from these countries offer the opportunity for comparative learning and can shed some light on Canadian rural and remote access to justice issues.

¹ Pamela Cross with Michele Leering, Report and Recommendations of the Five County Connecting Region Project to The Law Foundation of Ontario and Community Partners in the Counties of Frontenac, Hastings, Lennox & Addington, Northumberland and Prince Edward, *Paths to Justice: Navigating with the Wandering Lost - Providing Access to Justice in Rural and Linguistic Minority Communities in South-Eastern Ontario* (Toronto: The Law Foundation of Ontario, March 2011) at 10 [Cross with Leering, *Paths to Justice: Navigating with the Wandering Lost*].

² Two major national reports have recently galvanized the public conversation on access to justice in Canada: The Final Report of the Action Committee on Access to Justice in Civil and Family Matters (*Access to Civil & Family Justice: A Roadmap for Change*) and the *Reaching Equal Justice* Report by the Canadian Bar Association. These reports have acknowledged that we are at a critical stage of access to justice in Canada and without change the system will fall further into crisis. While both reports offer a comprehensive overview of the barriers impeding access to justice in Canada, both also suggest “100% accessibility is the only defensible goal.” See Canadian Bar Association, *Reaching Equal Justice: An Invitation to Envision and Act - Equal Justice: Balancing the Scales* (Ottawa: Canadian Bar Association, August 2013) [Canadian Bar Association, *Reaching Equal Justice*] at 60 [internal citations omitted]; The Action Committee on Access to Justice in Civil and Family Matters, *Access to Civil & Family Justice: A Roadmap for Change* (Ottawa: Action Committee on Access to Justice in Civil and Family Matters, October 2013) [Action Committee, *Roadmap for Change*].

³ The number used to calculate the percentage of Canadians living in rural communities depends on which definition of rural is adopted. The 2011 Census estimates the number of rural Canadians to be 6.3 million or 18.9% of the population. See Statistics Canada, *Census in Brief: Canada’s Rural Population Since 1851 – Population and Dwelling Counts, 2011 Census*, Catalogue No 98-310-X2011003 (Ottawa: Statistics Canada, 2011), online: <statcan.gc.ca>.

Throughout the review, we draw on a diverse range of literature, primarily from the fields of law, healthcare, geography and sociology. Additionally, we draw from a wider range of literature than may be present in a more traditional literature review. That is, we regularly refer to grey literature such as research reports, government reports, project evaluations and websites, as well as academic scholarship. This is because a large portion of the research that is being conducted on rural and remote access to justice issues is taking place outside of academia and within organizations ranging from movement to not-for-profits, who do not typically publish their work in peer-reviewed journals. As to the range of literature, we incorporate literature from geography and sociology to expand the definition of “rural” and “remote” beyond a simple statistical calculation that determines population density. Literature from the healthcare field, which we use extensively, provides advanced insights into service delivery and accessibility issues in rural and remote communities, as well as examples of promising practices. In many cases, the issues the healthcare sector faces with regards to service provision parallel and intersect with those in the legal sector. Finally, in reviewing the legal literature, we examined literature that specifically addresses access to justice issues in rural and remote communities as well as literature that speaks to access to justice barriers more generally. Drawing on this unique combination of sources has resulted in a review that reveals a complex picture of rural communities, where legal needs and legal service delivery options must be tailored to specific communities and how innovation in service delivery is key to enhancing access to justice in rural and remote areas.

The review begins with a comprehensive examination of the definitions of “rural” and “remote,” then moves to discuss definitions of “access” and the barriers that impede access to justice for rural and remote Canadians. The review concludes by offering an overview of promising practices and access to justice initiatives in rural and remote areas – both in Canada and abroad.

II. DEFINING RURAL & REMOTE

Defining Rural

The adage, “if you’ve seen one rural place, you’ve seen one rural place,”⁴ rings true for rural communities in Canada and abroad. There is no single definition of “rurality” that provides an accurate characterization of every rural community. Rural sociologists, demographers, geographers, legal professionals, and healthcare workers agree that a universal definition of rurality remains elusive.⁵

A multifaceted approach⁶ that explores rurality in terms of several key characteristics offers greater promise for understanding “rural” communities and their needs. These characteristics can be categorized into three groups (which will be discussed in more detail below):

⁴ Jeanne Hoeft, L Shannon Jung & Joretta Marshall, *Practicing Care in Rural Congregations and Communities* (Minneapolis: Fortress Press, 2013) at 9.

⁵ L Gary Hart, Eric H Larson & Denise M Lishner, “Rural Definitions for Health Policy and Research” (2005) 95:7 Am J Public Health 1149 at 1149 [Hart, Larson & Lishner, “Rural Definitions”]. See also Susanne Hjort & Gunnar Malmberg, “The Attraction of the Rural: Characteristics of Rural Migrants in Sweden” (2006) 122:1 Scottish Geo J 55 at 56-57.

⁶ Hart, Larson & Lishner, “Rural Definitions,” *supra* note 5.

1. **Distance and Density.** How far rural communities are from larger urban centers and how many people per square kilometre reside there.
2. **Demography.** How the demographic profile of a community, i.e. the average age, income levels, education levels, language profiles, etc., shapes the population and their needs.
3. **Social and Cultural Characteristics.** The way in which the social organization of communities, along with value systems and beliefs, influence the specification of a population.

Defining Remote

While we can also use these three categories to explore “remoteness,” the literature suggests far less attention has been paid to determining the unique features of remote communities than rural communities. As Joan Nuffield notes, “rurality” and “remoteness” are often categorized as a “*single entity* for policy making and program development,” despite the fact that “rurality” and “remoteness” are *separate concepts* that refer to communities with different characteristics.⁷ Often, remote communities are simply defined in relation to rural communities. That is, they are defined as being *farther* away from services than rural communities, with less people per square kilometer (as discussed further below). When we make distinctions between “rural” and “remote” areas, there are indications of heterogeneity within individual “rural communities” and “remote communities” that complicate the application of singular policies to meet the needs of unique populations.⁸ Thus, more research is needed to fully explore the similarities and differences between rural communities and remote ones.⁹

Distance & Density

Rural and remote areas are traditionally distinguished¹⁰ from urban areas by their proximity to urban centres, in addition to the number of residents per square kilometre.

Statistics Canada offers the following definitions:

⁷ Canada, Department of Justice, *The Challenges of Youth Justice in Rural and Isolated Areas in Canada* by Joan Nuffield (Ottawa: Department of Justice Canada, April 2003) at 2 [Nuffield, *Challenges*].

⁸ As discussed below, the criminal justice and healthcare literature are two bodies of literature that present clearer distinctions between “remote” and “rural” communities.

⁹ The fundamental distance, demographical and social factors that can be commonly applied to rural and remote communities provide the only instances in this review where both terms will be discussed jointly.

¹⁰ Most definitions incorporate geographic elements of population size, density, and distance. See Elsa Arbuthnot, Jane Dawson & Patti Hansen-Ketchum, “Senior Women and Rural Living” (2007) 7:1 *Online J Rural Nursing* 35. See also Statistics Canada, Agricultural and Rural Working Paper Series, *Definitions of “Rural”* by Valerie du Plessis et al (Ottawa: StatsCan, 2001); Norah Keating, Jennifer Swindle & Stephanie Fletcher, “Aging in Rural Canada: A Retrospective and Review” (2011) 30:3 *Can J Aging* 323 at 327 [Keating, Swindle & Fletcher, “Aging in Rural Canada”]. See also Christopher Bryant & Alun E Joseph, “Canada’s Rural Population: Trends in Space and Implications in Place” (2001) 45:1 *Can Geographer* 132 [Bryant & Joseph, “Trends in Space”].

- Urban areas are places with a minimum population of 1,000 people and a minimum population density of 400 people per square kilometre;¹¹ a concentration of population at high density.
- Rural areas are places with a “population living outside settlements of 1,000 or more inhabitants with a population density of 400 or more inhabitants per square kilometre.”¹² The population is “not concentrated, but dispersed at a low density.”¹³

In short, rural areas are places that are “not urban areas.”¹⁴

The United States Census Bureau and The White House Office of Management and Budget take a similar approach to Statistics Canada in their definitions of “rural” and “remote.” Both institutions offer urban-rural classifications that represent delineations of geographical areas.¹⁵

- Urban areas represent densely developed territory, and encompass residential, commercial, and other non-residential urban land uses.
- Rural areas “encompass all population, housing, and territory not included within an urban area.”¹⁶ This includes all counties that are not part of a Metropolitan Statistical Area (MSA)—areas with a population of 50,000 or more people.

Neither Statistics Canada nor the United States Census Bureau offers a separate definition for “remote” areas. Rather, Statistics Canada includes “remoteness” as a qualifying factor that identifies one category of “rural” community in Canada.¹⁷ A similar definition appears in Finnish research¹⁸ that references “remote rural” communities. Statistics Canada justifies this lack of distinction between the two types of communities by noting that “rural areas include all territory lying outside population centres”¹⁹ and, as such, “within rural areas, population densities and living conditions can vary greatly.”²⁰ The implication for policies and discussions concerning accessibility²¹ is that “rural” areas are depicted as places that are far away from urban regions and “remote” areas are depicted as rural areas that are farther away from

¹¹ Canada, Statistics Canada, *From Urban Areas to Population Centres*, (Ottawa: Statistics Canada, 7 February 2011) [Statistics Canada, *Urban Areas*].

¹² Canada, Statistics Canada, *Self-Contained Labour Areas: A Proposed Delineation and Classification by Degree of Rurality* by Anne Munro, Alessandro Alasia & Ray D Bollman (Ottawa: Statistics Canada, December 2011).

¹³ Statistics Canada, *Urban Areas*, *supra* note 11.

¹⁴ Jamie Baxter & Albert Yoon, “No Lawyer for a Hundred Miles? Mapping the New Geography of Access of Justice in Canada” (2014) 52:1 Osgoode Hall LJ 9 [Baxter & Yoon, “No Lawyer for a Hundred Miles”].

¹⁵ United States Census Bureau, *Urban and Rural Classification*, (Washington: US Census Bureau, 27 July 2015) online: <<https://www.census.gov/geo/reference/urban-rural.html>>.

¹⁶ United States Census Bureau, *2010 Census Urban and Rural Classification and Urban Area Criteria*, (Washington: US Census Bureau, 2010) online: <<https://www.census.gov/geo/reference/ua/urban-rural-2010.html>>.

¹⁷ Statistics Canada, *Census Dictionary*, Census Year 2011 (Ottawa StatCan, 2012) online: <www12.statcan.gc.ca/census-recensement/2011/ref/dict/98-301-X2011001-eng.pdf> [Statistics Canada, *Census Dictionary*].

¹⁸ Toivo Muilu & Jarmo Rusanen, “Rural Definitions and Short-Term Dynamics in Rural Areas of Finland in 1989-97” (2004) 36:8 *Env & Planning* 1499 at 1503.

¹⁹ Statistics Canada, *Census Dictionary*, *supra* note 17.

²⁰ *Ibid.*

²¹ Nuffield, *Challenges*, *supra* note 7 at 2.

urban regions. Consequently, “remote” areas under this definition do not effectuate separate consideration or tailored programs and problem-solving strategies.

Criminal justice and healthcare literature present clearer distinctions between “remote” and “rural” communities. In their study, *The Nature of Nursing Practice in Rural and Remote Canada*, Martha MacLeod et al., define “remote” separately in terms of both distance and density related factors, noting that, “geographical parameters, particularly measures of distance to [facilities], form the basis of most published indices of...remoteness.”²² Further descriptors commonly used in the literature to denote “remote” areas include: “isolation,”²³ “distance from urban centres,”²⁴ and “zero metropolitan influenced zones.”²⁵

U.S. literature, including work by Thomas Ricketts et al,²⁶ suggests that the term “remote” is explicable through a combination of population factors and distance-to-services. Specifically, “remote” areas are identified as having a population density of 6 or less persons per square mile, a distance of 45 miles and/or 60 minutes from primary to the next-level care, or a service catchment area of 500–3000 residents within a 25-mile radius of a health service site.²⁷

Some sociologists and healthcare experts²⁸ go a step further in the measurement of “urban,” “rural,” and “remote” areas, and propose a sliding scale model of rurality where the “demarcation between rural and non-rural areas may be both unclear and rapidly changing...and the north [includes] both urban and remote populations widely dispersed over vast geography.”²⁹ In his paper, *Defining Remote Health*, John Wakerman explains that, “the geographical conceptualization of rurality and remoteness has changed over time,” and rather than an “urban-rural dichotomy” that defines “rural” as “not urban,” there is a “continuum from urban through to rural and remote, to something more complex which recognizes the heterogeneity of non-metropolitan areas and the distinct features and similarities of different settings.”³⁰

²² Martha LP MacLeod et al, *The Nature of Nursing Practice in Rural and Remote Canada* (Ottawa: Canadian Health Services Research Foundation, September 2004) at 9, online: <www.chrsf.ca>.

²³ Nuffield, *Challenges*, *supra* note 7 at 8.

²⁴ Karen Cohl & George Thomson, *Connecting Across Language and Distance: Linguistic and Rural Access to Legal Information and Services* (Toronto: Law Foundation of Ontario, December 2008) at 31-32 [Cohl & Thomson, *Connecting*].

²⁵ Strengthening Rural Canada Initiative, *Strengthening Rural Canada: Fewer & Older: The Coming Population and Demographic Challenges in Rural Newfoundland & Labrador - An Executive Summary* by Bakhtiar Moazzami (Ottawa: Government of Canada, Adult Learning, Essential Skills & Literacy Program, 2015) [Moazzami, *Strengthening*].

²⁶ Thomas C Ricketts, Karen D Johnson-Webb & Patricia Taylor, “Definitions of Rural: A Handbook for Health Policy Makers and Researchers” (1998), (Technical Issues Paper prepared for the Federal Office of Rural Health Policy Health Resources and Services Administration, 1 June 1998), (Chapel Hill: University of North Carolina, 1998) [Ricketts, “Definitions of Rural”], cited in John Wakerman, “Defining Remote Health” (2004) 12:5 *Austl J Rural Health* 210 at 211 [Wakerman, “Defining Remote Health”].

²⁷ Ricketts, “Definitions of Rural,” *supra* note 26 at 14. Wakerman, “Defining Remote Health,” *supra* note 26.

²⁸ Ontario, Ministry of Health and Long-Term Care, *Rural and Northern Health Care Framework/Plan: Stage 1 Report*, (Toronto: MOHLTC, 2010) at 25 [MOHLTC, *Rural and Northern Health Care Framework*]; Hart, Larson & Lishner, “Rural Definitions,” *supra* note 5.

²⁹ MOHLTC, *Rural and Northern Health Care Framework*, *supra* note 28 at 25.

³⁰ Wakerman, “Defining Remote Health,” *supra* note 26.

In his overview of the Australian urban-rural continuum, Richard Coverdale notes that, “not all population centres of the same size or distance from capital cities will have the same level of resources, social capital, enterprise or cohesion.”³¹ Rather, “some towns and regional centres are more affluent than others; some retain stronger social and human capital reserves, whilst others contain burgeoning industries and positive futures....[and] all these factors will have a bearing on a community’s ability to attract and influence public and private infrastructure, including services and facilities.”³² Thus, while the literature commonly defines rural and remote communities based on their geography, it is important to recognize that rural communities often have little in common beyond population size. Being the same distance from a population centre does not mean communities will be similar. In fact, they may have different local economies, access to service routes, and many other distinguishing characteristics.³³

Demography

Generally speaking, rural communities have different socio-economic and demographic profiles than their urban counterparts.³⁴ The demographic features most commonly associated with rural and remote communities are outlined below. As is often the case in discussions involving rurality and remoteness, demography is analysed in relation to socio-economic factors such as age, language, and education to clarify what characterizes “rural” and “remote” populations, and to explain how these compositions differ from urban areas.

Traditionally, non-urban areas are characterized as having more homogenous populations than urban areas. While it is true that urban areas are far more diverse, rural areas do contain distinct sub-groups who are older, have lower education levels, and have lower socio-economic status. Karen Cohl and George Thomson posit that rural and remote areas are comprised of a “[disproportionate number] of single mothers, Aboriginal people, people with low educational attainment and elderly, disabled or unemployed individuals.”³⁵ Linguistic minorities can be added to this list as another distinct rural group. To the extent that these categories accurately reflect the demographic characteristics of rural and remote populations, they do not detract from the diversity within the non-urban landscape as a whole, nor do they signal a uniformity that can be universally attributed to the myriad rural and remote areas in Canada and abroad.

³¹ Richard Coverdale, *Postcode Justice - Rural and Regional Disadvantage in the Administration of the Law in Victoria* (Melbourne: Deakin University, July 2011) at 20-21 [Coverdale, *Postcode Justice*].

³² *Ibid.*

³³ Lisa Bourke et al, “Understanding Rural and Remote Health: A Framework for Analysis in Australia” (2012) 18 *Health & Place* 496 at 499 [Bourke et al, “Understanding Rural and Remote Health”]; Senate, Standing Senate Committee on Agriculture and Forestry, *Beyond Freefall: Halting Rural Poverty* (June 2008) (Chair: Joyce Fairbairn) [Senate Committee, *Halting Rural Poverty*].

³⁴ MOHLTC, *Rural and Northern Health Care Framework*, *supra* note 28 at 29.

³⁵ Cohl & Thomson, *Connecting*, *supra* note 24 at 31.

Diversity & Language

While immigrants and migrants in Canada comprise a relatively small percentage of “rural” populations — 6% as compared to 25% in urban areas³⁶ — there are, nonetheless, sizable pockets of Canadian immigrants and migrants who relocate to rural towns,³⁷ many of whom do not speak English or French.³⁸ For example, Hastings County, a rural community in Ontario, has a large influx of migrant farm workers each summer, many of whom have little to no familiarity with either of Canada’s official languages.³⁹ Data from Quinte United Immigrant Services shows the presence of approximately 58 different linguistic groups in this part of rural Ontario.⁴⁰ Other research points to an additional 15,000 predominantly Spanish-speaking migrant workers who move to parts of rural Ontario for up to eight months each year, as well as a German-speaking migrant group.⁴¹ For members of these semi-permanent resident groups, language can be a significant barrier standing in the way of access to essential legal, medical, or other social services. Procuring and affording a translator can be difficult, and lack of access to translation services can lead to greater isolation of these population groups.⁴²

Within immigrant populations in rural and remote areas, women both suffer from and contribute to additional isolation.⁴³ Women make up the majority of the rural Canadian immigrant class categorized as

³⁶ Ray D Bollman & William Reimer, “Demographics, Employment, Income and Networks: Differential Characteristics of Rural Populations” (2009) 14:2 J Agromedicine 132 at 134 [Bollman & Reimer, “Differential Characteristics”]. See also Statistics Canada, “Immigrants in Rural Canada: 2006” by Roland Beshiri & Jiaosheng He in Ray D Bollman & Neil Rothwell, eds, *Rural and Small Town Canada Analysis Bulletin*, Vol 8 No 2 (Ottawa: Statistics Canada, June 2009) [Beshiri & He, “Immigrants in Rural Canada”].

³⁷ According to 2006 Census data, immigrants made up a larger share of the population in rural areas in British Columbia, Ontario, Manitoba, and Alberta, relative to other provinces. See Beshiri & He, “Immigrants in Rural Canada,” *supra* note 37.

³⁸ Jamie Baxter & Albert Yoon, *The Geography of Civil Legal Services in Ontario: Report of the Mapping Phase of the Ontario Civil Legal Needs Project* (Toronto: The Ontario Civil Legal Needs Project Steering Committee, November 2011) [Baxter & Yoon, *Geography*].

³⁹ The 2006 census recorded 980 people living in the area who had no knowledge of either French or English while 8,385 people said that they spoke a non-official language most often at home. Cross with Leering, *Paths to Justice: Navigating with the Wandering Lost*, *supra* note 1 at 61-62. A more recent report on the needs of rural communities in the Ottawa region reinforces the finding that residents in rural communities who speak non-official languages are a particularly vulnerable population. See South Ottawa Community Legal Services, West End Legal Services & Community Legal Services of Ottawa Centre, *Ottawa Community Legal Clinics Transformation Project: Report on Findings and a Proposed Model* (Toronto: Public Interest Strategy and Communications, Inc, April 2015), online: <<http://www.ottawaclinics.ca>> [Ottawa Community Legal Services, *Ottawa Community Legal Clinics Transformation Project*].

⁴⁰ *Ibid* at 62.

⁴¹ *Ibid* at 61-62.

⁴² People who do not speak English or French are unlikely to be able to read or understand public legal information unless it has been translated or to communicate without the assistance of an interpreter with legal service providers who speak only English or French. Providing legal information and services in a client’s first language is ideal, but it is not always possible given the number of languages and dialects spoken in Ontario and the limited resources of legal and other organizations providing first-language services. Some immigrants face cultural barriers to accessing services, in addition to language barriers, regardless of how long they have been in Canada. Cohl & Thomson, *Connecting*, *supra* note 24 at 14-15.

⁴³ Catherine Carter-Snell, *Multimedia Education for Rural Professionals Working With Sexual Assault Victims* [Research Project Reporting Form], Alberta Rural Development Network project no RU-056 (Shewood Park, AB: ARDN, 16 March 2011) at 1, online: <www.adrn.ca>; Finland, Ministry for Foreign Affairs, *Access to Justice for Persons Living in Poverty: A Human Rights Approach* by Magdalena Sepúlveda Carmona & Kate Donald (Finland:

“family, spouse or dependent.”⁴⁴ According to Cohl and Thomson, whose work has focused on rural Ontario, “spouses and dependents have the highest incidence of no knowledge of English or French...[which] can have an impact on the next generation.”⁴⁵ School boards in rural and remote Canada have remarked that they frequently enroll students who, “because of their mothers and grandmothers, have no official language knowledge.”⁴⁶

A recent report on the legal needs of rural Ontarians, notes that beyond the ethnic and cultural diversity of rural and remote communities, marginalized groups or “people who experience discrimination based on ethnicity, gender, sexual orientation or in other ways do not ‘conform’ are likely to have [their] experiences compounded by rural barriers such as social isolation, heightened visibility, and appearing as an ‘outsider.’”⁴⁷ While the legal field has yet to fully explore the needs of lesbian, bisexual and transgendered persons in rural areas, the literature in the healthcare field is instructive. Rural health researchers suggest rural areas tend to lack community-based social networks that provide support specifically to marginalized communities such as lesbian, gay, bisexual and transgendered people.⁴⁸ This lack of specialized community support has been shown to reduce the likelihood that individuals with marginalized identities and complex community networks will seek and obtain assistance.⁴⁹ For these individuals, “culturally appropriate service delivery is particularly important”⁵⁰ in order to ensure further marginalization is avoided. Appropriate service delivery will likely need to include the improvement of language interpretation services and an increased availability of public legal education materials in the priority languages of individual rural communities,⁵¹ as well as additional outreach to persons who may not be seeking help due to fear of further marginalization.

Ministry for Foreign Affairs, 2014) at 7 [Sepúlveda Carmona & Donald, *Access to Justice for Persons Living In Poverty*].

⁴⁴ Cohl & Thomson, *Connecting*, *supra* note 24 at 12.

⁴⁵ *Ibid.*

⁴⁶ *Ibid.*

⁴⁷ Public Interest Strategies & Communications, *Final Report: The East and Central Region Legal Clinic Transformation Project* (Toronto: Public Interest Strategies & Communications, Inc, July 2015) at 47 [Public Interest, *East and Central Region Legal Transformation Project Report*].

⁴⁸ Cathleen E Willging, Melina Salvador & Miria Kano, “Pragmatic Help Seeking: How Sexual and Gender Minority Groups Access Mental Health Care in a Rural State” (2006) 57:6 *Psychiatric Services* 871 [Willging, Salvador & Kano, “Pragmatic Help Seeking”]; Claire C Nelson, “AIDS Prevention Programs in a Smaller Community,” (1993) 84 *Can J Public Health* (Supplement 1) S39 [Nelson, “Aids Prevention Programs in a Smaller Community”]; Samia Addis et al, “The Health, Social Care And Housing Needs of Lesbian, Gay, Bisexual and Transgender Older People: A Review of the Literature” (2009) 17:6 *Health & Social Care in the Community* 647; Judith Bradford, Caitlin Ryan & Esther D Rothblum, “National Lesbian Health Care Survey: Implications for Mental Health Care” (1994) 62:2 *J Consulting & Clinical Psych* 228; Michael J Johnson et al, “Gay and Lesbian Perceptions of Discrimination in Retirement Care Facilities” (2005) 49:2 *J Homosexuality* 83.

⁴⁹ Willging, Salvador & Kano, “Pragmatic Help Seeking,” *supra* note 48.

⁵⁰ Public Interest, *East and Central Region Legal Transformation Project Report*, *supra* note 47 at 11; Claire C Nelson, “AIDS Prevention Programs in a Smaller Community,” *supra* note 48; P Panazzola & B Leipert, “Exploring Mental Health Issues of Rural Senior Women Residing in Southwestern Ontario, Canada: A Secondary Analysis Photovoice Study” (2013) 13:2320 *Rural & Remote Health* 1 [Panazzola & Leipert, “Exploring Mental Health Issues of Rural Senior Women”].

⁵¹ Cohl & Thomson, *Connecting*, *supra* note 24.

Age

The specific needs of rural and remote communities and the inability of individuals to get these needs met (see Section III), are contributing factors to out-migration from non-urban areas.⁵² The result, as Bryant and Joseph indicate,⁵³ is a shift in the demographics of rural and remote communities towards an older population as younger generations relocate for better opportunities and easier access to services.⁵⁴ Statistics Canada also points to a pattern of “aging in place,” or aging of the resident population.⁵⁵ When coupled with low birth rates and longer life expectancy, these factors account for the 15% of Canadian rural populations who are 65 or older, compared to 13% in urban areas.⁵⁶ This demographic pattern significantly affects the service delivery needs of related communities, and influences the nature and extent of the accessibility challenges they face.⁵⁷

Aging in rural and remote areas is also closely tied to the socio-economic factors associated with “rurality” and “remoteness.” Elderly populations have a lower income earning potential, use resources differently and have different needs from younger generations. Nora Keating, Jennifer Swindle and Stephanie Fletcher, in their retrospective review of Aging and Rural Canada, cite research of older rural adults that reveals “tenuous labour force attachment, higher rates of poverty, and concerns about income adequacy.”⁵⁸ This follows the larger pattern of socio-economic disparity between urban and non-urban areas, which indicates that “in general, rural populations have higher unemployment rates, lower incomes and are less highly educated than urban populations.”⁵⁹

Income & Education

Ray Bollman and William Reimer report that 14% of those living in rural regions (approximately 1.2 million people) live in households with incomes below the low income cut-off.⁶⁰ This is a smaller percentage than people in urban areas although for some communities, this finding may be attributable to a lower cost of living, and lower housing costs.⁶¹ Rural economies of scale have a significant impact on the income levels of Canadians living in rural and remote communities, with many areas largely dependent on a single industry for jobs.⁶² Manufacturing and farming are key employment sectors in

⁵² Public Interest, *East and Central Region Legal Transformation Project Report*, *supra* note 47 at 9.

⁵³ Bryant & Joseph, “Trends in Space,” *supra* note 10 at 133.

⁵⁴ MOHLTC, *Rural and Northern Health Care Framework*, *supra* note 28 at 29; See Alun E Joseph & Anne Martin-Matthews, “Growing Old in Aging Communities” (1993) 28:1 J Canadian Studies 14; Bryant & Joseph, “Trends in Space,” *supra* note 10 at 132-137. For a recent report on out-migration and the aging rural population in Ontario see Moazzami, *Strengthening*, *supra* note 25.

⁵⁵ Beshiri & He, “Immigrants in Rural Canada,” *supra* note 37.

⁵⁶ *Ibid.*

⁵⁷ Keating, Swindle & Fletcher, “Aging in Rural Canada,” *supra* note 10 at 326.

⁵⁸ *Ibid* at 334.

⁵⁹ MOHLTC, *Rural and Northern Health Care Framework*, *supra* note 28 at 29.

⁶⁰ Bollman & Reimer, “Differential Characteristics,” *supra* note 36 at 138-139.

⁶¹ Consultation participants noted that many rural barriers also affect people who may be considered “middle income.” Some rural residents may own their homes but have extremely limited cash flow. (One rural client we learned about owned her home outright, but supported herself and her four children on \$11,000 a year from child tax credits and minimal support payments from her ex-husband). Cohl & Thomson, *Connecting*, *supra* note 24 at 33.

⁶² For example, the Cod Fishery in Newfoundland. See Moazzami, *Strengthening*, *supra* note 25 at 133.

non-urban regions in Canada, Australia and the United States;⁶³ as such, “rural populations are more vulnerable than their urban counterparts to economic downturns because of their concentrated economic specialization.”⁶⁴ In Ontario, a recent report finds that unemployment rates increase as rurality rises.⁶⁵ That is, the more rural or remote the community the higher the unemployment rates.

The socio-economic and demographic disparities between urban and non-urban regions are connected to the difference in education levels between rural and remote areas and their urban counterparts. Cohl and Thomson address education and literacy jointly with other socio-demographic factors. They point out that, compared with urban populations, rural residents “tend to have lower education and literacy levels, lower incomes, fewer job opportunities and more seasonal employment, more housing in need of repair, and poorer health and access to health care.”⁶⁶ Cohl and Thomson go on to add that these problems are worsened by “distance, isolation, lack of transportation, limited services and the facts of rural life... [that] exacerbate the impact of poverty, particularly on people who are most vulnerable.”⁶⁷ Furthermore, although “the rural poor look a lot like the urban poor—they too are disproportionately composed of single mothers, people with low educational attainment and elderly, disabled or unemployed individuals—they experience poverty very differently than their urban counterparts”⁶⁸ largely because of the challenges they face in accessing support systems.⁶⁹

The literature also points to considerable differences between the socio-demographic profiles of remote communities and their rural counterparts,⁷⁰ although only a small portion of this research looks specifically at the demographics of remote populations independently of rural populations. Broadly speaking, however, the literature indicates higher concentrations of poverty, and a higher proportion of indigenous peoples in remote northern areas.⁷¹

Keeping this general trend in mind, Bollman asserts that “not all communities in any region follow the regional pattern. No matter how communities are grouped, some communities in each group have grown consistently and some have declined consistently. Rural communities are diverse.”⁷² Some communities feature language diversity, whereas in others, disproportionate age distribution may be more of a distinguishing factor. In discussing demography and diversity in rural and remote areas, there is an interrelatedness between factors: aging concerns invite questions of employment, level of income may alter service-delivery needs, linguistic barriers highlight patterns of cultural and gender-specific isolation, and immigration changes the diversity of populations within non-urban communities. The

⁶³ Coverdale, *Postcode Justice*, *supra* note 31 at 21-22.

⁶⁴ Hart, Larson & Lishner, “Rural Definitions,” *supra* note 5.

⁶⁵ Moazzami, *Strengthening*, *supra* note 25.

⁶⁶ Cohl & Thomson, *Connecting*, *supra* note 24 at 33.

⁶⁷ *Ibid.*

⁶⁸ *Ibid* at 31.

⁶⁹ For more information, see Section IV, *infra*.

⁷⁰ Reiny Iriana, Pascoe Pleasence & Christine Coumarelos, “Disadvantages and Responses to Legal Problems in Remote Australia,” (2013) 32 L & Justice Foundation New South Wales 1 [Working Paper] at 2 [Iriana, Pleasence & Coumarelos, “Disadvantages and Responses to Legal Problems”]; See also MOHLTC, *Rural and Northern Health Care Framework*, *supra* note 28; Coverdale, *Postcode Justice*, *supra* note 31.

⁷¹ Iriana, Pleasence & Coumarelos, “Disadvantages and Responses to Legal Problems in Remote Australia,” *supra* note 70; MOHLTC, *Rural and Northern Health Care Framework*, *supra* note 28; Nuffield, *Challenges*, *supra* note 7.

⁷² See Bollman & Reimer, “Differential Characteristics,” *supra* note 36, citing Bollman at 135, n 3.

qualities that define demography in rural and remote areas also influence the challenges specific communities face.

Social & Cultural Characteristics

Beyond using geography and demography as definitional tools, social and cultural characteristics can also be used to distinguish rural populations from their urban counterparts. While the literature suggests several of the characteristics can be empirically verified, many are ideological in nature. In their survey of Rural Definitions for Health Policy and Research, Gary Hart, Eric Larson, and Denise Lishner draw attention to the fact that “‘rural’ means many different things to many people, such as agricultural landscapes, isolation, small towns, and low population density.”⁷³ Johan Rye suggests that instead of looking to the “concrete, tangible, objective features of rural areas [like] landscape, settlement and occupational structures,” greater attention should be paid to “the more abstract characteristics of social life that evolve in these areas [including] traditionalism, dense social structures, a feeling of community and so forth.”⁷⁴

Joan Nuffield challenges this idealized view of “country life” and the “romantic north” in her Department of Justice report, *The Challenges of Youth In Rural and Isolated Areas of Canada*. Nuffield argues that the north “might more accurately be characterized as places of significant hardship, especially when it comes to the delivery of services.”⁷⁵ Within the social and cultural confines of rurality and remoteness, there is a darker reality⁷⁶ that includes fewer opportunities and options for education and work, limited entertainment and cultural activities, and insufficient access to public and private services⁷⁷ that together paint a stark picture in contrast to the “tranquility” and “peacefulness” of the hypothetical “rural idyll.”⁷⁸

The debate surrounding rural imagery and conceptual characterization aside, the recognition that rural communities – like all communities – have distinct social norms that influence community dynamics, relationships and individual behavior is relatively uncontested. In some cases, rural communities can maintain or be slower to alter traditional values and may react negatively to “big city ideas.”⁷⁹ In particular, in rural and remote areas where people know each other well,⁸⁰ there is often a “safety net” that unites the community and fosters conformity.⁸¹ Resulting normative values and ideals can foster an

⁷³ Hart, Larson & Lishner, “Rural Definitions,” *supra* note 5.

⁷⁴ Johan Fredrik Rye, “Rural Youths’ Images of the Rural” (2006) 22:4 J Rural Studies 409 at 410 [Rye, “Rural Youths’ Images of the Rural”].

⁷⁵ Nuffield, *Challenges*, *supra* note 7.

⁷⁶ Rye, “Rural Youths’ Images of the Rural,” *supra* note 74 at 411.

⁷⁷ Birgit Jentsch & Mark Shucksmith, eds, *Young People in Rural Areas of Europe* (Burlington, VT: Ashgate, 2004); Rye, “Rural Youths’ Images of the Rural,” *supra* note 74.

⁷⁸ Rye, “Rural Youths’ Images of the Rural,” *supra* note 74 at 411.

⁷⁹ Bushy, “Rural Determinants in Family Health: Considerations for Community Nurses” (1990) 12:4 Family & Community Health 29 at 29. For a more recent discussion of the influence of tradition value on service delivery in the legal sector, see Ottawa Community Legal Services, *Ottawa Community Legal Clinics Transformation Project*, *supra* note 39 at 18.

⁸⁰ Nuffield, *Challenges*, *supra* note 7.

⁸¹ Public Interest, *East and Central Region Legal Transformation Project Report*, *supra* note 47 at 9.

“attachment to tradition”⁸² and define the culture of individual communities. Traditional gender roles, in particular, are cited throughout the literature as strongly held values that contribute to the identity of some rural and remote communities.⁸³

Rural communities have also been recognized as having a culture of “resiliency and self-reliance,” where resiliency in rural areas “reinforce[s] the independent/dependent binary.” This self-reliant attitude can portray the decision to act on, or acknowledge the need for help as a “decidedly ‘urban’ or ‘outsider’ thing to do.”⁸⁴ This cultural characteristic creates challenges in determining and addressing the needs of rural and remote populations since it can discourage people from seeking help.

III. UNIQUE LEGAL ISSUES FACING RURAL CANADIANS

The legal needs of rural and remote communities largely resemble those of urban areas. As Reid and Malcolmson⁸⁵ observe, “people in rural [and remote] communities need the same kinds of legal help that people in urban areas need: procedural assistance and legal advice.”⁸⁶ Nevertheless, for many rural and remote communities, their population size and distance from population centres (discussed in Section II) create barriers that complicate the availability and access to services. In Nuffield’s *The Challenges of Youth Justice in Rural and Isolated Areas in Canada*,⁸⁷ one respondent asserts that “the greater the isolation, the greater the vulnerability and lack of services.”⁸⁸ This statement is true of access to both legal and non-legal services. The literature on access to justice recognizes that legal problems are interrelated and are often indivisible from other socio-economic and demographical issues.⁸⁹ Consequently, general service deficits complicate the ability to address overlapping legal needs. Problems also tend to “cluster” — resulting in “one problem triggering a cascade of other problems.”⁹⁰

Limited options within rural and remote communities mean that individuals may be subjected to several referrals while attempting to resolve an issue. This phenomenon is commonly referred to as “referral

⁸² *Ibid.*

⁸³ *Ibid* at 9.

⁸⁴ *Ibid* at 8.

⁸⁵ Cross with Leering, *Paths to Justice: Navigating with the Wandering Lost*, *supra* note 1, citing Gayla Reid & John Malcolmson, *Voices From the Field: Needs Mapping Self-Help Services in Rural and Remote Communities: Final Report* (Vancouver: Supreme Court Self-Help Information Centre (SHIC) Advisory Committee, May 2008) [Reid & Malcolmson, *Voices from the Field: Needs Mapping*].

⁸⁶ Public Interest, *East and Central Region Legal Transformation Project Report*, *supra* note 47 at 11.

⁸⁷ Nuffield, *Challenges*, *supra* note 7.

⁸⁸ Nuffield, *Challenges*, *supra* note 7 at 20.

⁸⁹ This is discussed further in Section II. See generally Canadian Bar Association, *Reaching Equal Justice*, *supra* note 2 at 59; Action Committee, *Roadmap for Change*, *supra* note 2; Ab Currie, “Civil Justice Problems and the Disability and Health Status of Canadians” (2007) 21:2 J L & Soc Pol [Currie, “Civil Justice Problems”]; Alexy Buck, Nigel Balmer & Pascoe Pleasence, “Social Exclusion and Civil Law: Experience of Civil Justice Problems Among Vulnerable Groups” (2005) 39:3 Soc Pol’y & Admin 302 [Buck, Balmer & Pleasence, “Social Exclusion and Civil Law”].

⁹⁰ Cohl & Thomson, *Connecting*, *supra* note 24 at 47-48; See generally Pascoe Pleasence et al, *The Final Report of the First LSRC Survey of Justiciable Problems* (London, UK: Legal Services Commission, 2004) [Pleasence et al, *The Final Report of the First LSRC Survey*]; Currie, “Civil Justice Problems,” *supra* note 89.

fatigue” and has been shown to have a detrimental impact upon people’s willingness to seek help.⁹¹ Cohl and Thomson indicate that, “just as legal problems emerge when people approach community organizations for help with other problems, non-legal problems become evident to legal professionals in the course of dealing with legal issues.”⁹² It is for this reason that many rural service providers have begun to explore partnerships with a wider range of service delivery groups - including community organizations and trusted intermediaries. The hope is that these partnerships will increase mutual referrals and improve awareness of the various services - both legal and non-legal - available to rural residents.⁹³

While both rural and remote communities may have similar kinds of legal problems, including problems related to poverty, employment, family, housing, and health and wellbeing, rural communities do have some distinct needs – particularly when it comes to addressing these problems. While both an urban resident and rural resident may have the same legal issue, accessing the services needed to resolve the problem might present distinct difficulties for those in rural communities. Below, we discuss six areas where rural and remote communities have distinct needs. The areas are:

- Serving Aboriginal Communities
- Youth Justice
- Mental Health
- Family Law
- Elder & Disability
- Employment & Social Assistance

Serving Aboriginal Communities

Aboriginal peoples living in rural and remote areas encounter unique legal problems due to the alternative legislative and constitutional legal frameworks that may apply to different communities, common adherence to internal dispute resolution practices, the isolation and close-knit nature of some communities, the continuing presence of intergenerational trauma and the social discrimination Aboriginal peoples regularly face.

Problems with the delivery of justice services to Aboriginal communities have persisted for decades⁹⁴ and continue to attract particular attention⁹⁵ in access to justice literature, with a consensus towards

⁹¹ Pascoe Pleasence with Nigel Balmer & Alexy Buck, *Causes of Action: Civil Law and Social Justice*, 2nd ed (Norwich: Stationery Office, 2006); Melina Buckley, *Moving Forward on Legal Aid: Research on Needs and Innovative Approaches* (Ottawa: Canadian Bar Association, 2010); Christine Coumarelos et al, *Legal Australia-Wide Survey: Legal Need in Australia* (Sydney: Law and Justice Foundation of New South Wales, 2012); Attorney-General’s Department Access to Justice Taskforce Report, *A Strategic Framework for Access to Justice in the Federal Civil Justice System* (Canberra: Commonwealth of Australia, 2009).

⁹² Cohl & Thomson, *Connecting*, *supra* note 24 at 47-48.

⁹³ See e.g. Ottawa Community Legal Services, *Ottawa Community Legal Clinics Transformation Project*, *supra* note 39 at 55.

⁹⁴ Problems with the delivery of justice services to Northern and isolated Canadian communities were identified as early as the 1950s, when Mr. Justice Sissons made his initial foray by bush plane into isolated Inuit communities

“the need for courts to be knowledgeable of community history, community conditions, aboriginal and northern culture and the availability of legal aid.”⁹⁶ Aboriginal poverty rates also tend to be higher than that of the general population, leading to what has been called a “circle of disadvantage”⁹⁷ where poverty and discrimination combine.⁹⁸ This combination can make it more difficult to access legal and other related services and can further reinforce a “mistrust of mainstream institutions and the service sector.”⁹⁹ Moreover, though “not all First Nations and Aboriginal communities are also remote communities,”¹⁰⁰ a large segment of Canada’s Aboriginal population live in northern and isolated areas, further compounding issues related to service delivery and building community relations.

Though a detailed analysis of specific First Nations and Aboriginal issues is beyond the scope of this review, Nuffield discusses a number of unique legal problems experienced by Aboriginal communities in Canada. These include issues related to internal dispute resolution, transportation and access to external justice service difficulties, band membership and political status or affiliation issues, as well as economic resource and unemployment-related legal problems.¹⁰¹ As discussed in the paragraphs below, Aboriginal youth are a particularly vulnerable group whose legal needs are disproportionately impacted by the often rural or remote location of their communities.

Youth Justice

For both Aboriginal and non-Aboriginal youth, geography and distance, a lack of services, and a scarcity of community resources are identified as barriers to a “fair and effective youth criminal justice system.”¹⁰² These factors feature prominently in definitions of rural and remote communities in Canada and abroad, and contribute to the overall challenges and a lack of specialized legal support for youths in rural and remote areas.¹⁰³ The California Commission on Access to Justice Report observes that, “rural youth have different issues from urban youth, and the issues seem to be related to the lack of

and circuit courts becoming a regular part of the northern criminal justice landscape. Nuffield, *Challenges*, *supra* note 7 at 6.

⁹⁵ See e.g. Nuffield, *Challenges*, *supra* note 7; Cross with Leering, *Paths to Justice: Navigating with the Wandering Lost*, *supra* note 1; Coverdale, *Postcode Justice*, *supra* note 31 at 41.

⁹⁶ Nuffield, *Challenges*, *supra* note 7 at 3. A recent report by three community legal clinics in the Ottawa community have further recognized that the aboriginal population in Ottawa is not being heavily served by the clinic system. See Ottawa Community Legal Services, *Ottawa Community Legal Clinics Transformation Project*, *supra* note 39 at 55

⁹⁷ Joan Kendall, “Circles of Disadvantage: Aboriginal Poverty and Underdevelopment in Canada” (2001) 31:1-2 *Am Rev Can Studies* 43.

⁹⁸ In Ontario, the unemployment rate in 2011 was as high as 66% in some rural and remote aboriginal communities. See Moazzami, *Strengthening*, *supra* note 25 at 2.

⁹⁹ Southwest Community Legal Clinic Network Transformation Initiative, *Integrated Report on the Needs & Resources Assessment Project* (Toronto: PC Human Resources, July 2015) at 153, 160 [Southwest CLCN, *Report on Needs & Resources*].

¹⁰⁰ MOHLTC, *Rural and Northern Health Care Framework*, *supra* note 28 at 41.

¹⁰¹ Nuffield, *Challenges*, *supra* note 7 at 24.

¹⁰² *Ibid* at i.

¹⁰³ *Ibid*.

opportunity that they receive in their rural communities.”¹⁰⁴ The inefficacy of justice systems to meet the needs of young persons in rural and remote communities has resulted in patterns of repeat offending, and has placed many youths at a “disadvantage in relation to sentencing.”¹⁰⁵ Coverdale alludes to preventative measures as a means to curb levels of criminal justice system entry into remand among youths, noting that, “[y]oung people who have early interaction with the criminal justice system are more likely to be drawn further into the system.”¹⁰⁶

In rural and remote areas, the absence of non-custodial avenues for youth to resolve justiciable problems means that the only available outcome for many is incarceration. Detention for young offenders in rural and remote areas can result in a removal from their community and distance from their family to a regional or urban centre where they can be accommodated. Consequently, “[t]hey may suffer a greater degree of dislocation than children from urban areas.”¹⁰⁷ This problem can be complicated by a lack of parole-planning, rehabilitation and reintegration programs in rural and remote areas to support youth offenders when they re-enter their community.¹⁰⁸ As a result, “[s]entencing may have particularly harsh effects on children from rural areas.”¹⁰⁹

As previously mentioned Aboriginal youth in northern (remote) parts of Canada and Alaska experience heightened difficulties with the criminal justice system. For example, Inuit male youths in Nunavut, more so than female youths from the same areas, have been described as “angry, confused, ill-educated and underemployed...striking out at themselves and others, and locked in anti-social alcohol and drug abuse adaptations,” all problems with potential ramifications within the justice system.¹¹⁰ Similar trends have been identified in Australia, where in addition to the problems mentioned above, a disproportionate number of Aboriginal youths have been distinguished as persons, “who have an intellectual disability (including acquired brain injury) and who are from rural areas.”¹¹¹

¹⁰⁴ California Commission on Access to Justice, *Improving Civil Justice in Rural California* (Los Angeles: State Bar of California, 2010) at 22 [California Commission, *Improving Civil Justice in Rural California*].

¹⁰⁵ Coverdale, *Postcode Justice*, *supra* note 31 at 70.

¹⁰⁶ *Ibid.*

¹⁰⁷ *Ibid.*

¹⁰⁸ *Ibid.*, citing Victorian Auditor General, *Report on Services to Young Offenders* (June 2008) online: <audit.vic.gov.au>.

¹⁰⁹ Coverdale, *Postcode Justice*, *supra* note 31 at 70.

¹¹⁰ Serge Bouchard & Clotilde Pelletier, *Justice in Question: Evaluation of Projects to Create a Local Judiciary in Povungnituk (Northern Québec)* (Montreal: Consulting Services in Social Sciences Development and Culture Change for the Coordination of Departmental Activities Among the Native Peoples, Québec Department of Justice, 1986); Nuffield, *Challenges*, *supra* note 7 at 3, citing Don Clairmont, *Review of Justice System Issues Relevant to Nunavut* (Ottawa: Research and Statistics Division, Department of Justice, 1999) Technical Report 1999-4E; Nuffield, *Challenges*, *supra* note 7, citing Richard Guy Condon, “Changing Patterns of Conflict Management and Aggression Among Inuit Youth in the Canadian Arctic” (1992) 8:2 *Native Studies Rev* 35.

¹¹¹ Coverdale, *Postcode Justice*, *supra* note 31 at 70, citing Victoria Youth Parole Board, *Victoria Youth Parole Board and Youth Residential Board Annual Report 2007-2008*, online: <cyf.vic.gov.au>.

Serving the Elderly, Persons with Disabilities and Persons with Mental Health Challenges

Literature from the healthcare field indicates additional access challenges exist in rural and remote communities for the elderly, persons with disabilities, psychiatric survivors and people with mental health disabilities.¹¹² There is also an acknowledged overlap between medical and legal problems in rural and remote communities that often leads to an increase in health-related legal problems.¹¹³

In many instances the access barriers for these three populations are similar (although their antecedents are different). For example, for the elderly and individuals with mental or physical health challenges, using resources that rely on self-help or action can act as a barrier.¹¹⁴ Unreliable transportation in rural communities can also make it difficult to access services for these populations.¹¹⁵

For those with mental health challenges, finding adequate treatment can be particularly difficult. The lack of psychiatrists in rural Canada leaves the work of mental health assessment and treatment to local general practitioners who may or may not have adequate training in these areas.¹¹⁶ Even if local mental health care providers can offer adequate treatment, geographic and transportation constraints continue to make accessing these services difficult, especially for persons with mental health disabilities.¹¹⁷ Transporting patients from one care facility to another can be incredibly challenging because it often requires transportation over hundreds of kilometres and high out-of-pocket costs for the patient.¹¹⁸

Finally, stigma associated with physical and mental illness is common in rural communities¹¹⁹ and can be exacerbated by patterns of familiarity and lack of privacy in rural communities.¹²⁰

¹¹² Panazzola & Leipert, "Exploring Mental Health Issues of Rural Senior Women," *supra* note 50; Debra G Morgan et al, "Improving Access to Dementia Care: Development and Evaluation of a Rural and Remote Memory Clinic" (2009) 13:1 *Aging & Mental Health* 17; Jacqueline J Glover, "Rural Bioethical Issues of the Elderly: How Do They Differ from Urban Ones?" (2001) 17:4 *J Rural Health* 332 [Glover, "Rural Bioethical Issues"]; Ontario, Ministry of Rural Affairs, *Rural Roadmap: The Path Forward for Ontario* (April 2014) at 5 [Ministry of Rural Affairs, *Rural Roadmap*].

¹¹³ Linda Gyorki, *Breaking Down the Silos: Overcoming The Practical and Ethical Barriers of Integrating Legal Assistance into a Healthcare Setting* (Canberra ACT, AUS: The Winston Churchill Memorial Trust of Australia, 2013) [Gyorki, *Breaking Down the Silos*], citing Christine Coumarelos, Pascoe Pleasence & Zhigang Wei, "Law and Disorders: Illness/Disability and the Experience of Everyday Problems Involving the Law" (Justice Issues Paper 17, Law and Justice Foundation of New South Wales, 2013).

¹¹⁴ Reid & Malcolmson, *Voices from the Field: Needs Mapping*, *supra* note 85.

¹¹⁵ Cohl & Thomson, *Connecting*, *supra* note 24 at 32; Ministry of Rural Affairs, *Rural Roadmap*, *supra* note 112.

¹¹⁶ John C Hogenbirk et al, *Using Telehealth to Augment Delivery of Mental Health Services by Family Health Teams: Potential Barriers and Possible Solutions* (Sudbury: Centre for Rural and Northern Health Research, 2006).

¹¹⁷ Nuffield, *Challenges*, *supra* note 7.

¹¹⁸ Glover, "Rural Bioethical Issues," *supra* note 112.

¹¹⁹ Aruna Tummala & Lauren Weiss Roberts, *Ethics and Conflicts in Rural Communities: Stigma and Illness* (Hanover: Dartmouth College Press, 2009) [Tummala & Roberts, *Ethics and Conflicts in Rural Communities*].

¹²⁰ Glover, "Rural Bioethical Issues," *supra* note 112.

Family Law

Family legal issues are as present in rural environments as they are in urban areas, but access to adequate family law legal services is severely limited outside of major population centers.¹²¹ Families experiencing custody, access, and divorce issues are often unable to find legal support, and the options that may be available for professional help can be extremely limited. Further, many rural families continue to hold the position that problems should be dealt with “in house,” thereby increasing resistance to seeking outside support.¹²² Professional conflict of interest may arise for the lawyers that do practice family law in these communities as a result of, “the smallness of the community [which] may create personal conflicts and make it difficult to maintain confidentiality.”¹²³

In addition to standard family law legal problems, domestic abuse is a pronounced issue in rural communities because the size of the community, traditional social norms, and increased stigma decrease the amount of anonymity for victims of family violence and discourage reporting.¹²⁴ Inadequate transportation and limited shelter options for individuals attempting to escape an abusive environment increase the difficulty of victims in reaching a safe place and conferring with a lawyer.¹²⁵

Employment & Social Assistance

Employment opportunities in rural and remote areas are lacking in comparison to those available in urban population centres, where there is a greater variety of better paying jobs.¹²⁶ The 2008 economic downturn has negatively impacted many traditional sources of income in rural communities across the country; often, what jobs are available to rural residents are either seasonal or part-time and may pay below minimum wage.¹²⁷ Low income and inconsistent employment opportunities pose an even greater problem because of the limited access to, and the high cost of, basic goods in rural and remote

¹²¹ Reid & Malcolmson, *Voices from the Field: Needs Mapping*, supra note 85 at 41. See also Michele Leering, *Community Legal Needs Assessment: Examining the Need for Access to Justice for Low-Income Residents of Lennox & Addington County* (Belleville: Hastings and Prince Edward Legal Services, December 2001) at 18 [Leering, *Community Legal Needs Assessment*].

¹²² *Ibid* at 19.

¹²³ Cohl & Thomson, *Connecting*, supra note 24 at 33.

¹²⁴ Cohl & Thomson, *Connecting*, supra note 24; Leering, *Community Legal Needs Assessment*, supra note 121 at 18. Muriel McQueen Fergusson Centre for Family Violence Research, *Making Family Violence Law Information Available to People in Rural Areas: An Inventory of Promising Practices* by Deborah Doherty (Ottawa: Department of Justice Canada, 2002); Victim/Witness Program, East Region *Serving Victims of Violence in Rural Communities: Challenges and Best Practices* by Deborah Kasdorff & Barbara Erb (January 2010). See also Woman Abuse & Ontario Works in a Rural Community, *Rural Women Speak about their Experiences with Ontario Works: Final Report* by Colleen Purdon (Status of Women Canada, November 2003).

¹²⁵ Cohl & Thomson, *Connecting*, supra note 24.

¹²⁶ Leering, *Community Legal Needs Assessment*, supra note 121 at 9. See also Moazzami, *Strengthening*, supra note 25.

¹²⁷ Reid & Malcolmson, *Voices from the Field: Needs Mapping*, supra note 89 at 42; Leering, *Community Legal Needs Assessment*, supra note 121 at 10.

communities.¹²⁸ Consequently, there is significant reliance on social assistance programs in rural areas.¹²⁹

The process of securing and maintaining social assistance income can be difficult, and can trigger a number of legal issues. Proof of eligibility, disqualification, abrupt cessation of payments, different regional rule frameworks, unclear legal language, and the requisite attendance of distant workshops are some of the problems an individual might experience in the course of receiving social assistance.¹³⁰

IV. ACCESSIBILITY OF LEGAL SERVICES IN RURAL & REMOTE AREAS

In this section, accessibility and the barriers that inhibit accessibility are examined. The section begins with an investigation of general definitions of accessibility, then moves to a discussion about what “access” means in the context of the justice system. This section also explores how the concept of access is deployed and evaluated in the literature on rural and remote communities with an emphasis on access as it relates to service delivery. We draw on several different bodies of literature in order to fully explore ideas of accessibility and accessible service delivery; however, the focus is primarily on literature from the justice sector and the healthcare sector. The healthcare literature is particularly useful in this regard, as recent innovations in healthcare service delivery in rural areas, as well as a long standing examination of the concept of accessibility of medical care, offer insight into how legal services in rural and remote communities may be improved.

Defining Accessibility

The question of how to define “access” in rural and remote locations has been a topic of interest for geographers for several decades – particularly those interested in the relationships between special aspects of social inclusion and exclusion. As early as 1979, geographer M.J. Mosley was defining access in the rural context as “the degree to which someone or something is “get-at-able.”¹³¹ More recently, geographers John and Conor Farrington have defined access as the “ability of people to reach and engage in opportunities and activities,”¹³² with the word “reach” referring to a special separation that may be overcome by ways other than movement. One of the more interesting features of the definition of access adopted by geographers – and one which may be particularly useful for our purposes – is the idea that access to both “opportunities and activities” is a key marker of social inclusion (or exclusion, as the case may be). As John and Connor Farrington note in their piece on social inclusion and rural accessibility, “to participate in society means the ability to engage with a reasonable range of activities

¹²⁸ Canada, Public Health Agency of Canada, *The Rural Think Tank 2005: Understanding Issues Families Face Living in Rural and Remote Communities* (2005).

¹²⁹ Leering, *Community Legal Needs Assessment*, supra note 121 at 10.

¹³⁰ *Ibid.*

¹³¹ As cited by John Farrington & Conor Farrington, “Rural Accessibility, Social Inclusion and Social Justice: Towards Conceptualization” (2005) 13:1 *J Transport Geography* 1 at 2 [Farrington & Farrington, “Rural Accessibility”] [internal citation omitted].

¹³² *Ibid.*

within society...”¹³³ When this lens of accessibility and social inclusion is applied in the justice context, access to legal services becomes more than simply delivering services effectively. Although service delivery is an important part of “access,” it is more important still to create access to opportunities for those in rural and remote communities so that they can be active participants in the justice system, or for them to feel included in the process of accessing and receiving justice.

Framing “access” as a broad concept encompasses not only the physical availability of resources but also the opportunity – which could be provided, for example, by ensuring adequate access to transportation or a reliable internet connection - to actively engage with the system in a way that creates inclusion. It is consistent with the more expansive version of access to justice recently articulated in several major reports on the state of access to justice in Canada.¹³⁴ The final report of the national Action Committee on Access to Justice in Civil and Family Matters, *A Roadmap for Change* notes:

Historically, access to justice has been a concept that centered on the formal justice system (courts, tribunals, lawyers and judges) and its procedures. The formal system is, of course, important. But a more expansive, user-centered vision of an accessible civil and family justice system is required.¹³⁵

Moreover, *A Roadmap For Change* describes several important elements of this expanded vision of access to justice, such as “public awareness of rights, entitlement, obligation and responsibility,” “public awareness of ways to avoid or prevent legal problems,” and the “ability [of the public] to participate effectively in negotiations to achieve a just outcome.”¹³⁶ Although *A Roadmap for Change* does not directly define “access,” we can conclude from this sketch of an access to justice vision that the national Action Committee is working with a definition of access that extends beyond the availability of legal services, and encompasses elements of inclusion and participation in the system.

Similarly, the *Reaching Equal Justice* Report published by the Canadian Bar Association (CBA) places the idea of “access” even more squarely within the context of inclusion. In framing “access,” the CBA report refers to the building of an “inclusive” justice system, which will be “equally accessible to all, regardless of finances, capacity or social situation” and will be “based on people’s relationship to the justice system and their need for assistance in different situations.”¹³⁷

While neither of these reports gives significant attention to the distinct access challenges faced by rural and remote communities (beyond a mention of disproportionate disadvantage),¹³⁸ the reports’ approach to access clearly indicates any discussion of access to justice must go beyond an examination of the availability of formal legal services, and include a contextual analysis of access. That is, when evaluating the accessibility of justice, the intangible elements of access – such as when and why people

¹³³ *Ibid* at 5.

¹³⁴ Action Committee, *Roadmap for Change*, *supra* note 2.

¹³⁵ *Ibid* at 2.

¹³⁶ *Ibid*.

¹³⁷ Canadian Bar Association, *Reaching Equal Justice*, *supra* note 2 at 59.

¹³⁸ See Action Committee, *Roadmap for Change*, *supra* note 2 at 2ff; Canadian Bar Association, *Reaching Equal Justice*, *supra* note 2 at 8.

may or may not seek help, and how community dynamics influence the way service is or is not delivered – should be taken into account.¹³⁹

Framing access in relation to inclusion and engagement also suggests that more opportunities for rural engagement with law and policy development at the regional and/or national levels is an important aspect of improving access. As Australian legal scholar Kim Economides argues, policies – particularly those that institute centralized mechanisms of service delivery – and legislation are developed without any significant attention being paid to the unique legal needs and localized legal cultures found in rural and remote communities. The resulting urban-centric bias in both policy and legislation means at best the policies are often ineffective and at worst they act to discriminate against rural and remote populations in “varying degrees.”¹⁴⁰

The literature on access in rural and remote communities regularly employs a contextual approach to access. In fact, much of the literature suggests that adopting a more sophisticated notion of access is key to painting a comprehensive picture of the legal needs and legal service delivery in rural and remote communities,¹⁴¹ particularly when it comes to assessing legal capability – a key indicator of why people do or do not seek our help to resolve their legal issues.¹⁴² In the next section, we look at how the literature views the concept of access in relation to service delivery and in so doing highlight the most common barriers to access.

¹³⁹ This more sophisticated approach to access has been central to discussion of access to medical care for decades. See for example, Lu Ann Aday & Ronald Andersen, “A Framework for the Study of Access to Medical Care” (1974) 9:3 *Health Services Research* 208 [Aday & Andersen, “A Framework for the Study of Access to Medical Care:”]; Lu Ann Aday, “Access to What and Why?: Toward a New Generation of Access Indicators” delivered at the Public Health Conference on Records and Statistics, National Centre for Health Statistics (1993); Ronald M Andersen, “Revisiting the Behavioral Model and Access to Medical Care: Does it Matter?” (1995) 36 *J Health & Social Behavior* 1 [Andersen, “Revisiting the Behavioral Model”]; Lisa Bourke et al, “Developing a Conceptual Understanding of Rural Health Practices,” (2004) 12:5 *Australian J Rural Health* 181 [Bourke et al, “Conceptual Understanding”]; Lisa Bourke, “Forgotten Rural Health?” (2012) 2:6 *Community Medicine & Health Education* 1; Jane Farmer et al, “Dr. John Has Gone: Assessing Health Professionals’ Contribution to Remote Rural Community Sustainability in the UK” (2003) 57:4 *Social Science & Medicine* 673.

¹⁴⁰ Kim Economides, “Centre-Periphery Tensions in Legal Theory and Practice: Can Law and Lawyers Resist Urban Imperialism?” (Paper delivered at the Second National Rural and Regional Law and Justice Conference, UNE/Deakin Schools of Law, Coffs Harbour, NSW, Australia, 18-20 May 2012), (2012) *Int’l J Rural L & Pol* at 2 [Economides, “Centre-Periphery Tensions”]. This argument was also made recently in a submission from the Centre for Rural Regional Law and Justice National Rural Law and Justice Alliance to the Australian Government Productivity Commission Access to Justice Arrangements public inquiry. See Centre for Rural Regional Law and Justice & National Rural Law and Justice Alliance, “Joint Submission to Productivity Commission Inquiry into Access to Civil Justice” (2013) at 7, online: <<http://www.pc.gov.au/inquiries/completed/access-justice/submissions/submissions-test/submission-counter/sub020-access-justice.pdf>>.

¹⁴¹ See Leering, *Community Legal Needs Assessment*, *supra* note 121; California Commission, *Improving Civil Justice in Rural California*, *supra* note 104, cited in Lisa R Pruitt & Bradley E Showman, “Law Stretched Thin: Access to Justice in America” (2014) UC Davis Research Paper Series No 391 466 [Pruitt & Showman, “Law Stretched Thin”].

¹⁴² See Law and Justice Foundation of New South Wales, “Reshaping Legal Assistance Services: Building on the Evidence Base” by Pascoe Pleasence et al (April 2014), online: <<http://www.lawfoundation.net.au>> [Law and Justice Foundation, “Reshaping Legal Assistance Services”]; Hugh M McDonald & Julie People, “Legal Capability and Inaction for Legal Problems: Knowledge, Stress and Cost” (2014) 41 *Updating Justice* 1, online: <[lawfoundation.net.au](http://www.lawfoundation.net.au)>.

Service Delivery & Accessibility

Like the concept of access to justice, the term “legal services” has come to be understood more broadly. Whereas the term once referred primarily to formal legal services provided by lawyers, community legal clinics, and courts and tribunals, it now encompasses a far wider range of services and supports, including, “self-help services, public legal education and information, advice from trained volunteers, paralegal services, summary advice, brief services and referrals, duty counsel, unbundled legal services, and full representation by a lawyer.”¹⁴³ As the CBA notes, “...meaningful access can be assured through a range of legal services and forms of assistance, depending on the circumstances.”¹⁴⁴

Canadians experience a growing number of unmet legal needs. Nearly 50% of Canadians will experience an everyday legal problem over any given three year period.¹⁴⁵ Less than 7% of people will use the formal court system to resolve their issue, most will find an alternative “path to justice.”¹⁴⁶ As a result, addressing the legal needs of Canadians has meant rearticulating what it means to provide legal services. Legal services are now viewed as operating on a continuum. At one end of the continuum is a variety of “self-help” services; at the other end is full representation.¹⁴⁷ Self-help services include providing public legal education information, the use of legal transaction kits, intermittent “coaching” or legal guidance opportunities, and limited or “unbundled” use of legal services,¹⁴⁸ and may “involve [an individual] taking personal responsibility for completing all or part of the relevant legal transaction.”¹⁴⁹ Full representation may include tasks such as information gathering, legal and other research and analysis, advice and counseling, commencing or defending proceedings, negotiations and mediation,

¹⁴³ University of Toronto Faculty of Law Middle Income Access to Civil Justice Steering Committee, “University of Toronto Faculty of Law Middle Income Access to Civil Justice Initiative: Background Paper” (Toronto: University of Toronto, 2011) at 30 [Middle Income Access to Civil Justice Steering Committee, “Access to Civil Justice Initiative”].

¹⁴⁴ Canadian Bar Association, *Reaching Equal Justice*, *supra* note 2 at 16.

¹⁴⁵ 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) [Currie, *The Legal Problems of Everyday Life*]. For more recent data, see Trevor Farrow, Nicole Aylwin & Ab Currie, Canadian Forum on Civil Justice, “Everyday Legal Problems and the Cost of Justice in Canada: An Overview” [forthcoming in 2015] [Farrow, Aylwin & Currie, “Everyday Legal Problems”]. A brief overview of the data from this survey can be found online. See: Canadian Forum on Civil Justice, “Everyday Legal Problems and the Cost of Justice in Canada” (21 April 2015), *Slaw*, online: <<http://www.slaw.ca/>>.

¹⁴⁶ For those that did not use the formal court system, about 19% obtained legal advice in some form, mainly from private bar lawyers; 21% obtained assistance from an organization such as a union or an advocacy group; 33% searched online for help; 75% contacted the other party in the dispute and 61% reported obtaining advice from friends and relatives. See Farrow, Aylwin & Currie, “Everyday Legal Problems,” *supra* note 141. The phrase “path to justice” is borrowed from Hazel Genn’s foundational work on justiciable problems. A *justiciable problem* is a problem arising out of the normal activities of peoples daily lives that and could be resolved within the formal legal system although it may be more sensibly dealt with in other ways, i.e. by taking alternative “paths to justice.” See Hazel Genn et al, *Paths to Justice: What People Do and Think About Going to Law* (Oxford: Hart Publishing, 1999) [Genn et al, *Paths to Justice*].

¹⁴⁷ See Action Committee, *Roadmap for Change*, *supra* note 2 at 13; Middle Income Access to Civil Justice Steering Committee, “Access to Civil Justice Initiative” *supra* note 139 at 28; Canadian Bar Association, *Moving Forward on Legal Aid: Research on Needs and Innovative Approaches* by Melina Buckley (Ottawa: Canadian Bar Association, June 2010) at 6.

¹⁴⁸ Jeff Giddings & Michael Robertson, “Large Scale Map or the A-Z? The Place of Self-Help Services in Legal Aid” (2003) 30:1 *JL & Soc’y* 102 at 103.

¹⁴⁹ *Ibid.*

interim proceedings, trials and hearings, law reform and systemic activities, educational activities, and referrals.¹⁵⁰ In rural and remote communities, having a full spectrum of legal service options available is central to providing access to justice.¹⁵¹

In many respects, the legal needs of rural and remote communities resemble those of urban areas, yet, due to the unique features of rural communities (as discussed in Section I), common barriers, such as transportation, access to childcare, or high cost of services – legal or otherwise – can be exacerbated.¹⁵²

The literature indicates that accessibility of service in rural and remote areas is typically assessed in two ways, both of which have an impact on rural and remote communities' ability to "reach and engage with opportunities and activities."¹⁵³ The first is through evaluating the characteristics of the system; that is, the availability and distribution of services (number of available services and the range of services available), the ease in which these services can be accessed, the location of services (geographical distance), the cost of service, and other factors such as the ease of gaining entry to the system (travel time, waiting time, accurate referrals etc.).¹⁵⁴ The second is through analysing the characteristics of the population with unmet need. Here, researchers attempt to examine the "propensity" of the population to use the system. This propensity can be influenced by factors such as age, gender, ethnicity, income, and education level; use is also influenced by more mutable factors such as trust (in the system or service provider) and community dynamics, which can be particularly influential in rural and remote contexts (see below).¹⁵⁵ While it is possible to examine barriers along these two axes, the lack of accessibility is rarely a result of a single factor. More often, several overlapping factors, both systemic and "propensity" based hinder access. For example, while a systemic barrier such as a lack of mental health services and support may make acquiring a psychological assessment more costly and time consuming in a rural community,¹⁵⁶ stigma around mental health and a perceived lack of anonymity (which often accompanies living in a small community) may also contribute to the decision not to pursue

¹⁵⁰ Middle Income Access to Civil Justice Steering Committee, "Access to Civil Justice Initiative" *supra* note 139 at 28-29.

¹⁵¹ California Commission, *Improving Civil Justice in Rural California*, *supra* note 104; John F Roil, "External Review of Legal Aid in Newfoundland and Labrador, Volume 1" (St John's: Government of Newfoundland, March 2014) [Roil, "External Review in Newfoundland"]; Action Committee, *Roadmap for Change*, *supra* note 2.

¹⁵² See Cohl & Thomson, *Connecting*, *supra* note 24 at 33. However, some areas of unique need have been identified by the literature including increased access to specialized psychiatric aid. See also Nuffield, *Challenges*, *supra* note 7, which will be discussed further in this section.

¹⁵³ Farrington & Farrington, "Rural Accessibility," *supra* note 131 at 2. This dual approach to has been employed in the healthcare field since the early 1970s, when a great deal of attention was paid in the healthcare literature to developing more sophisticated frameworks for studying access to medical care. For a comprehensive overview of the literature on access in the 1970s see, Aday & Andersen, "A Framework for the Study of Access to Medical Care," *supra* note 139 at 208-220.

¹⁵⁴ See Roil, "External Review in Newfoundland," *supra* note 151; Cohl & Thomson, *Connecting*, *supra* note 24; Coverdale, *Postcode Justice*, *supra* note 31; Kerri Graham & Kathryn Underwood, "The Reality of Rurality: Rural Parents' Experiences of Early Years Services" (2012) 18 *Health & Place* 1231 [Graham & Underwood, "Reality of Rurality"]. See also Mary Stratton, "Alberta Legal Services Mapping Project: An Overview of Findings from the Eleven Judicial Districts" (July 2011) *Canadian Forum of Civil Justice*, online: < <http://www.cfcj-fcjc.org/>>.

¹⁵⁵ See e.g. Cohl & Thomson, *Connecting*, *supra* note 24; Graham & Underwood, "Reality of Rurality," *supra* note 154; Marianne O Nielsen, "Indigenous-Run Legal Services in Australia and Canada: Comparative Developmental Issues" (2006) 16:3 *Int Crim J Rev* 157. Law and Justice Foundation, "Reshaping Legal Assistance Services," *supra* note 142.

¹⁵⁶ In rural communities, clients are often required to the mental professional's location, which is usually in a metropolitan area. See Coverdale, *Postcode Justice*, *supra* note 31.

help.¹⁵⁷ While the existing literature on rural and remote access does identify some general reasons as to why people do or do not seek legal help – i.e., lack of knowledge around their rights, failure to identify the problem as a legal problem, unsure of where to go for help, etc.¹⁵⁸ – typically, the research addresses propensity barriers and systemic barriers (and their solutions) in isolation. There is considerable need for research that examines the complex nature of these barriers in rural practice, the relationship between propensity barriers and systemic barriers and how these work in combination to impact the willingness and ability of people to seek help.

While there is an abundance of literature exploring access barriers affecting rural and remote communities, far less attention is paid to frameworks of evaluation that would provide a comprehensive measure of improved “access.” As is noted in the recent report of the East and Central Region Legal Clinic Transformation Project, there remains a lack of “reliable tools and systems for monitoring and evaluating the efficacy of delivery of legal service, specifically in response to demographic patterns of need and socio-political landscapes.”¹⁵⁹ Evaluating and monitoring improved access becomes even more difficult when legal services are integrated in healthcare settings.¹⁶⁰ Michael Cain, Deborah Macourt, and Geoff Mulherin suggest better evaluative research would allow for service providers to adjust services to meet the needs of rural and remote areas as they change over time.¹⁶¹ Specifically, they suggest monitoring:

- solicitor to population ratios
- the presence or absence of public legal assistance services

¹⁵⁷ A 1997 study on perceived stigma around mental health in rural America found that adults in rural areas perceived more stigma around mental health services than their urban counterparts. See Dan R Hoyt et al, “Psychological Distress and Help Seeking in Rural America” (1997) 25:4 Am J Community Psychology 449. Psychological distress and help seeking in rural America. The observation that people may be less likely to seek out help for mental health issues, particularly when they intersect with legal issues is well documented, see, for example, Cole & Thomson, *Connecting*, *supra* note 24; Glover, “Rural Bioethical Issues,” *supra* note 112. Moreover, several reports recommend increasing the number of mental health courts in rural areas. See Ontario Bar Association, *Getting it Right: The Report of the Ontario Bar Association Stakeholder Summit* (Toronto: Ontario Bar Association, 2007) at 7.

¹⁵⁸ See generally Hazel Genn et al, *Paths to Justice*, *supra* note 146; Nigel J Balmer et al, *Knowledge, Capability and the Experience of Rights Problems* (London: Public Legal Education Network, March 2010); Currie, *The Legal Problems of Everyday Life*, *supra* note 145; Buck, Pleasence & Balmer, “Social Exclusion and Civil Law,” *supra* note 89; Ab Currie, “Self-Helpers Need Help Too” (2010) at 1 [unpublished, archived at Law for Life], online: <www.lawforlife.org.uk>. Several national reports also provide a review of the literature pertaining the barriers people experience when seeking help. See for example, Action Committee, *Roadmap for Change*, *supra* note 2; Canadian Bar Association, *Reaching Equal Justice*, *supra* note 2; Australian Government Productivity Commission, *Access to Justice Arrangements: Productivity Commission Inquiry Report, Volume 1* (5 September 2014) no 72 at 377 [*Productivity Report Vol 1*].

¹⁵⁹ Public Interest, *East and Central Region Legal Transformation Project Report*, *supra* note 47 at 40.

¹⁶⁰ Michael Cain, Deborah Macourt & Geoff Mulherin, *Lawyer Availability and Population Change in Regional, Rural and Remote Areas of New South Wales* (Sydney: Law and Justice Foundation of New South Wales, September 2014) at 2-14 [Cain, Macourt & Mulherin, *Lawyer Availability and Population Change*]. For an example of the added difficulty in measuring accessibility when legal services are integrated into healthcare settings, see Linda Gyorki, *Breaking Down the Silos*, *supra* note 113. She suggests that any attempt at integration for example, would need the support of robust evaluation tools that examine longitudinal data in evaluating the efficacy of legal service delivery in such a setting.

¹⁶¹ Cain, Macourt & Mulherin, *Lawyer Availability and Population Change*, *supra* note 160 at 127.

- legal service provision to population ratios (e.g. grants of legal aid per 1,000 residents; ALS representations per 1,000 Indigenous residents)
- the views of practicing solicitors and managers of legal services working in RRR areas, particularly locations experiencing sustained population loss.¹⁶²

These recommendations, while valuable, are indicative of another bias in the literature. As Jamie Baxter and Albert Yoon have noted, there is an overemphasis on the “supply” side of accessibility, that is, on studying the characteristics of the system,¹⁶³ rather than focusing on client needs and the “propensity” side of the accessibility framework as described above.

V. BARRIERS TO ACCESSIBLE RURAL SERVICE DELIVERY

Common barriers to accessing legal services in rural and remote communities are set out in detail below. In addition to highlighting these commonly identified barriers, we also identify those barriers that have not yet been fully explored in the literature. Broadly speaking, the literature on accessibility in rural and remote areas is generally devoted to the characteristics of the system rather than to the characteristics of the population, which is likely due to an the overemphasis in the literature on the geographical constraints of rural and remote communities.¹⁶⁴

Geography

As the primary feature used to characterize rural and remote communities, a significant amount of attention in the literature is directed at understanding how geography creates barriers to access. As legal scholars Rebecca Sandefur and Aaron Smyth note, the inability to reach services and physical location are defining characteristics of rural and remote communities.¹⁶⁵ Sandefur and Smyth write that “geography is destiny: the services available to people from eligible populations who face civil justice problems are determined not by what their problems are or the kinds of services they may need or be able to use, but rather by where they happen to live.”¹⁶⁶

Though scholars have paid a significant amount of attention to “geography as destiny,” more recent work on the geography of legal service delivery suggests there is an overemphasis in the research on the density of lawyers in urban and rural settings. The distance needed to reach these lawyers has meant that scant attention has been paid to the “mechanism by which practitioners actually supply legal

¹⁶² *Ibid* at 127 [direct citation from original].

¹⁶³ Baxter & Yoon, “No Lawyer for a Hundred Miles,” *supra* note 14.

¹⁶⁴ *Ibid* at 7-8.

¹⁶⁵ Rebecca L Sandefur & Aaron C Smyth, *Access Across America: First Report of the Civil Justice Infrastructure Mapping Project* (Chicago: American Bar Foundation, 7 October 2011), online: American Bar Foundation [Sandefur & Smyth, *Access Across America*].

¹⁶⁶ *Ibid* at 9.

services in [remote] geographic space.”¹⁶⁷ In other words, “[g]eography clearly matters for achieving access to justice – but how it matters is more complicated than research and policy has so far acknowledged.”¹⁶⁸

The literature typically identifies two barriers that relate to geography and the inability of rural and remote residents to access services in a timely, cost effective and efficient manner: economies of scale, and transportation and infrastructure.¹⁶⁹

Economies of Scale

The delivery of local services – legal and otherwise – in rural and remote communities is often not economically viable due to the economies of scale.¹⁷⁰ The low numbers, dispersed nature, and distance of populations means it usually costs more to deliver less.¹⁷¹ The result is that rural and remote communities often suffer from a smaller range of available services. Likewise, individuals in these communities are often unable to easily access specialized services that are too expensive to provide in rural contexts, as the difficulty of persuading specialists to travel in, and the cost of bringing them in, are formidable.¹⁷² This means a significant amount of pressure is placed on local service providers. For example, in Nuffield’s study on youth justice in rural and remote communities, one respondent from Nunavut remarks that “communities in her jurisdiction are ‘ill-equipped’ – meaning that there is no one to help the youth to do his/her community service, follow up with him/her, or write a report; alternatively, it is the same community person who tries to do all these things and eventually ‘burns out.’”¹⁷³ Rural areas also lack access to the volunteer networks available in urban areas, making it difficult for service providers to find and incorporate volunteers into their service delivery models.¹⁷⁴ Moreover, service providers that operate in rural areas, and in particular community legal clinics, can find it difficult to reach clients since there is often a dearth of local networks and business partners through which service providers can make their services known.¹⁷⁵

The rural economy of scale has a significant impact on those who live in poverty, which in rural

¹⁶⁷ Baxter & Yoon, *Geography*, *supra* note 38 at 7-8; see also Sandefur & Smyth, *Access Across America*, *supra* note 165.

¹⁶⁸ Baxter & Yoon, *Geography*, *supra* note 38 at 46.

¹⁶⁹ Arguably, geography has some impact upon all of the unique barriers to delivering accessible rural service.

However, in this section we focus on the two barriers where the defining feature of those barriers is geography.

¹⁷⁰ Graham & Underwood, “Reality of Rurality,” *supra* note 154; John Wakerman et al, “Primary Health Care Delivery Models in Rural and Remote Australia - A Systematic Review” (2008) 8:276 *BMC Health Services Research*.

¹⁷¹ In some cases, instead of delivering less, rural practitioners offer their services at lower rates. Alternatively, professionals are forced to offer their services for less in an attempt to respect their clients’ ability to pay. In a recent survey on the average rates of Canadian lawyers, one rural practitioner noted his fees had “hit a ceiling” as the rural market rule not bare high fees. See Charlotte Santry, “The Going Rate: Canadian Lawyer’s Legal Fees Survey,” *Canadian Lawyer Magazine* (3 June 2013), online: <canadianlawyermag.com>. See generally, Roil, “External Review in Newfoundland,” *supra* note 151; Baxter & Yoon, *Geography*, *supra* note 38; Ottawa Community Legal Services, *Ottawa Community Legal Clinics Transformation Project*, *supra* note 39 at 18.

¹⁷² Nuffield, *Challenges*, *supra* note 7.

¹⁷³ *Ibid* at 13.

¹⁷⁴ Nicole Rich, *Reclaiming Community Legal Centres: Maximising Our Potential So We Can Help Our Clients Realise Theirs* (Victoria, AUS: Victoria Law Foundation, 2009).

¹⁷⁵ Ottawa Community Legal Services, *Ottawa Community Legal Clinics Transformation Project*, *supra* note 39 at 34.

populations is often inter-generational and long-term.¹⁷⁶ Poverty in rural economies is influenced by several factors, including fewer employment opportunities, employment opportunities that are seasonal or particularly sensitive to economic downturns (i.e. resource and manufacturing industries), lower levels of education (often correlated with income), and a lack of affordable housing and access to healthcare services resulting in poorer overall health.¹⁷⁷ As Sepúlveda & Donald note, “persons living in poverty face daunting financial hurdles to engaging with the justice system on a fair and equal basis: not only the costs of legal assistance but also other direct and indirect costs.”¹⁷⁸ In rural and remote areas, there are fewer free, public options for individuals seeking legal help.¹⁷⁹ The result is that such persons may have to rely more heavily on neighbours, family or others within the community to connect with legal service providers.¹⁸⁰ Furthermore, individuals facing complex challenges that may require integrated services to resolve are likely to be lacking support in all the areas where they need it, further exacerbating the original issue.¹⁸¹ This means people are more likely to run into legal trouble as their issues remain unaddressed or not sufficiently addressed.¹⁸²

Research from Law and Justice Foundation of New South Wales also indicates that legal capability or the “propensity” to seek out services is far lower in populations that have lower incomes, less education, and do not speak English as a first language.¹⁸³ In short, the willingness and ability to take action to resolve legal issues was lower in populations that were characterised by disadvantaged.¹⁸⁴

Transportation & Infrastructure

Transportation and poor infrastructure are identified in both legal and healthcare literature as one of the most significant barriers to accessing legal services in rural and remote areas.¹⁸⁵ In *Paths to Justice: Navigating with the Wandering Lost*, the role and state of transportation in legal service delivery is outlined in the following way: “Transportation to legal services, whether to a lawyer’s office, a legal

¹⁷⁶ See Senate Committee, *Halting Rural Poverty*, *supra* note 33.

¹⁷⁷ Cohl & Thomson, *Connecting*, *supra* note 24; Leering, *Community Legal Needs Assessment*, *supra* note 121; Graham & Underwood, “Reality of Rurality,” *supra* note 154; The Ontario Rural Council, *Roundtable Report on “Linguistic and Rural Access to Justice”* (Guelph: The Ontario Rural Council, 16 September 2008) [The Ontario Rural Council, *Roundtable*].

¹⁷⁸ Sepúlveda Carmona & Donald, *Access to Justice for Persons Living in Poverty*, *supra* note 43 at 17.

¹⁷⁹ Leering, *Community Legal Needs Assessment*, *supra* note 121.

¹⁸⁰ Cohl & Thomson, *Connecting*, *supra* note 24 at 33.

¹⁸¹ Cain, Macourt & Mulherin, *Lawyer Availability and Population Change*, *supra* note 160 at 2-14.

¹⁸² Coverdale, *Postcode Justice*, *supra* note 31.

¹⁸³ Law and Justice Foundation, “Reshaping Legal Assistance Services,” *supra* note 142 at 17.

¹⁸⁴ For example, a recent study by the Law & Justice Foundation of New South Wales reveals that the population who did not take action to resolve their legal problem because “they did not know what to do” were largely eligible for legal aid, and a far greater percentage were unemployed and living in disadvantaged housing. See *ibid.*

¹⁸⁵ Cross with Leering, *Paths to Justice: Navigating with the Wandering Lost*, *supra* note 1; Coverdale, *Postcode Justice*, *supra* note 31; MOHLTC, *Rural and Northern Health Care Framework*, *supra* note 28 at 34; Cohl & Thomson, *Connecting*, *supra* note 24; Michael Cain & Suzie Forell, “Recruitment and Retention of Lawyers in Regional, Rural and Remote New South Wales” (2010) 13 *Justice Issues*, Law & Justice Foundation [Cain & Forell, “Recruitment and Retention of Lawyers”]; Kate Rosier & Myfanwy McDonald, *The Relationship Between Transport and Disadvantage in Australia* (Melbourne: Australian Institute of Family Studies, August 2011) [Resource Sheet]. Southwest CLCN, *Report on Needs & Resources*, *supra* note 99; Ottawa Community Legal Services, *Ottawa Community Legal Clinics Transformation Project*, *supra* note 39; Public Interest, *East and Central Region Legal Transformation Project Report*, *supra* note 47.

clinic, another community-based service, a library (which has internet access to legal websites) or court, is an enormous challenge in rural communities.”¹⁸⁶ Cost, the condition of roads, access to vehicles and licensing are the primary aspects of transportation that complicate distance-based travel and service delivery in rural and remote areas. Low-income persons in rural and remote communities are especially affected by, “diminishing services, distances, and lack of transportation.”¹⁸⁷

In rural and remote communities, public transit is typically non-existent.¹⁸⁸ In cases where public transit is available, it is often irregular and unreliable, or offered only to specific populations such as the elderly or disabled.¹⁸⁹ As such, travel to access legal services within a rural or remote community or in neighbouring areas can be time consuming and expensive. The result, as described in *Paths to Justice: Navigating with the Wandering Lost*, is that “individuals living in rural towns or in the countryside have very few opportunities to travel to the community service providers.”¹⁹⁰ Cost often exacerbates the problem since, “many of these people are living on a low income and are already struggling to make ends meet.”¹⁹¹

Nuffield cites several examples in Canada where an absence of public transportation (and taxis) hinders access to services, even within short distances in rural and remote regions. In Kentville, Nova Scotia, there is no public transportation and no taxi service, so a family that does not own a car has very few options to travel to a courthouse located only an hour away.¹⁹² In Smiths Field, Ontario, an identical problem is manifested through an absence of public transportation options, no family vehicle, and an inability to directly access legal services that are thirty minutes away.¹⁹³ For many individuals in rural and remote areas, the only choice is to pay someone with a vehicle or hire a taxi from a neighbouring area, options that can both be costly. A recent report on rural legal needs in eastern Ontario finds that many clients rely on friends, families or even their social workers to help pay for transportation.¹⁹⁴ The inability to pay for a taxi or obtain help from family or friend means clients often fail to show up for appointments. As a consequence, they are frequently seen as “non-responsive” when they miss legal appointments because of transportation woes.¹⁹⁵ In the extreme, rural residents have been documented as walking for an hour or longer or hitchhiking in an effort to access justice services and keep appointments.¹⁹⁶

Transportation problems may not be lessened by vehicle ownership. “[D]istances, poor roads, weather conditions, and the price of gas can be obstacles to accessing services and can influence every part of daily life.”¹⁹⁷ Weather conditions can negatively affect travel within and between communities in rural

¹⁸⁶ Cross with Leering, *Paths to Justice: Navigating with the Wandering Lost*, *supra* note 1 at 11.

¹⁸⁷ Cohl & Thomson, *Connecting*, *supra* note 24 at 52.

¹⁸⁸ Cross with Leering, *Paths to Justice: Navigating with the Wandering Lost*, *supra* note 1 at 60.

¹⁸⁹ Cohl & Thomson, *Connecting*, *supra* note 24 at 32; Ministry of Rural Affairs, *Rural Roadmap*, *supra* note 112.

Even when distance is not a major factor to overcome, travel continues to present a problem for those who live in areas with limited public transportation access. See Nuffield, *Challenges*, *supra* note 7 at 10-11.

¹⁹⁰ Cross with Leering, *Paths to Justice: Navigating with the Wandering Lost*, *supra* note 1 at 60.

¹⁹¹ *Ibid.*

¹⁹² Nuffield, *Challenges*, *supra* note 7 at 10-11.

¹⁹³ *Ibid.*

¹⁹⁴ Public Interest, *East and Central Region Legal Transformation Project Report*, *supra* note 47 at 76-77.

¹⁹⁵ Nuffield, *Challenges*, *supra* note 7 at 10-11.

¹⁹⁶ Cohl & Thomson, *Connecting*, *supra* note 24 at 32.

¹⁹⁷ *Ibid.*

and remote regions at different times in the year, leaving some only accessible by water or air. In some areas, “travel to services, or for service providers, [and] travel to communities can be dangerous in bad weather...travelers either risk the journey, or journeys are postponed or cancelled, creating delays in services, including circuit court days.”¹⁹⁸ Interestingly, Newfoundland and Labrador have attempted to address the issues with transportation by heavily investing in public transportation infrastructure; as a result, the province has seen an improvement in the delivery of services to rural areas. Where roads have been improved, service delivery also improves.¹⁹⁹

Additional suggestions for overcoming transportation barriers include providing more mobile and technology driven services. This includes everything from conducting phone or video consultations, to the ability to submit documents electronically, to flipping the service delivery model by having clinic workers or other justice services visit clients in their homes and/or scheduling appointments at local agencies or community centers (e.g. the library).²⁰⁰

Shortages in Service Delivery

Similar to the provision of medical services,²⁰¹ legal professionals in rural and remote communities are relatively scarce compared to their urban counterparts.²⁰² One explanation for this discrepancy is that young²⁰³ and experienced professionals are hard to attract and retain in rural and remote communities.²⁰⁴ Financial concerns are frequently cited as the reason why many service providers are reluctant to move to rural communities.²⁰⁵ For example, a recent study from the University of California, Davis School of Law showed that the most discouraging factors for law students in relation to seeking rural employment were the perception of earning a low income and the perception of fewer career and economic opportunities.²⁰⁶

The impact of perception on retention issues in rural and remote communities however goes deeper. In Queensland, legal scholar Trish Mundy asked 12 final year law students at different universities to reflect on how rural and remote practice issues were addressed in law school. Nearly all of the students

¹⁹⁸ Nuffield, *Challenges*, *supra* note 7 at 11.

¹⁹⁹ Newfoundland and Labrador, Department of Finance, *Solid Investments in Provincial Infrastructure*, (St. John’s: Department of Finance, 2015) at 30.

²⁰⁰ Public Interest, *East and Central Region Legal Transformation Project Report*, *supra* note 47 at 77; Ottawa Community Legal Services, *Ottawa Community Legal Clinics Transformation Project*, *supra* note 39 at 55.

²⁰¹ MOHLTC, *Rural and Northern Health Care Framework*, *supra* note 28.

²⁰² Cain & Forell, “Recruitment and Retention of Lawyers,” *supra* note 185; Baxter & Yoon, “No Lawyer for a Hundred Miles,” *supra* note 14.

²⁰³ Lisa R Pruitt et al, “Access to Justice in Rural Arkansas” (2015) UC Davis Legal Research Paper Series, Research Paper No 426 [Pruitt et al, “Access to Justice in Rural Arkansas”].

²⁰⁴ Nuffield, *Challenges*, *supra* note 7; Cain & Forell, “Recruitment and Retention of Lawyers,” *supra* note 185 at 2; Trish Mundy, *Recruitment and Retention of Lawyers in Rural, Regional and Remote NSW: A Literature Review* (Lismore, Aus: Northern Rivers Community Legal Centre, July 2008).

²⁰⁵ Debra Cassens Weiss, “Small-Town Clerkship Program in Iowa Hampered by Lack of Interest - From Lawyers, Not Law Students,” *ABA Journal* (7 May 2012) online: <www.abajournal.com>. Pruitt et al, “Access to Justice in Rural Arkansas,” *supra* note 203.

²⁰⁶ *Ibid.*

noted that rural and remote issues were absent from their law school curriculum. Most felt that any discussions on the legal profession focused on the “big city” and “top tier” firms.²⁰⁷ The result, Mundy argues, is that the “urban centric” bias present in non-regional law schools marginalizes rural and remote issues. This leads to the perception that the only, or the best, practice options are in urban centres; a perception that has obvious implications for retention issues in rural areas.²⁰⁸

When lawyers do relocate to small communities, they often do not stay for very long. As Cain and Forell observe in New South Wales, “[s]olicitors who took up positions in public legal services in remote locations generally only stayed for one or two years...the pattern for these solicitors was to relocate to a less remote practice in an area which had higher levels of service and amenity.”²⁰⁹ In Newfoundland and Labrador, the government is developing more attractive compensation packages to keep lawyers in rural communities permanently.²¹⁰ Several jurisdictions in the U.S., Australia and Canada have begun to consider and implement programs that offer loan repayment plans, and other financial and lifestyle incentives aimed at attracting younger lawyers to small communities.²¹¹ Similar strategies of “practice bonusing” have been used in the healthcare field.²¹² There is also an increasing trend towards developing placed-based educational and training initiatives that target applicants from underserved communities.²¹³ This is done in the hopes of capitalizing on the ties students already have to rural areas and thus, will encourage long-term retention.²¹⁴ Research from the medical community seems to lend some support to this strategy, with one 2005 study finding that practicing rural physicians were more likely to have come from a rural background.²¹⁵

Cain and Forell, however, recommend against viewing the dearth of legal professionals in rural and remote areas as solely an issue of recruitment and retention.²¹⁶ They suggest a lack of solicitors is also connected to the lower numbers of available positions for solicitors in an area, an effect of the economies of scale discussed in Section V.

²⁰⁷ Trish Karen Mundy, “Placing the Other: Final Year Law Students ‘Imagined’ Experience of Rural and Regional Practice Within the Law School Context” (2012) 8:8 Int’l J Rural L & Pol’y, 2012 International Journal of Rural Law and Policy, 1 at 4-5 [Mundy, “Final Year Law Students”].

²⁰⁸ *Ibid* at 6. In response to evidence such as that presented by Mundy, a collaborative team of law school academics has created the Rural and Regional Legal Education Network (RRLEN), funded by Australian Learning and Teaching Council. The RRLEN creates law school curriculum that both attracts lawyers to rural and remote practice and prepares them for this unique service delivery environment. See Rural & Regional Legal Education Network, “Curriculum Package” (Australia: Government Office for Teaching and Learning, 2015), online: <rrlen.net.au> [RRLEN, “Curriculum Package”].

²⁰⁹ Cain & Forell, “Recruitment and Retention of Lawyers,” *supra* note 185 at 2.

²¹⁰ Roil, “External Review in Newfoundland,” *supra* note 151 at 57.

²¹¹ Pruitt et al, “Access to Justice in Rural Arkansas,” *supra* note 203; Mundy, “Final Year Law Students,” *supra* note 207; Rural Education & Access to Lawyers Initiative, *2009-2013: Five Year Summary Report* (Vancouver: Canadian Bar Association, British Columbia Branch, 2014) [REAL, *Five Year Summary Report*].

²¹² Ian P Sempowski, “Effectiveness of Financial Incentives in Exchange for Rural and Underserved Area Return-of-Service Commitments: Systematic Review of the Literature” (2004) 9:2 Can J Rural Medicine 82, cited in Baxter & Yoon, “No Lawyer for a Hundred Miles,” *supra* note 14.

²¹³ Baxter & Yoon provide a concise summary of the initiatives in “No Lawyer for a Hundred Miles,” *supra* note 14 at 18-40.

²¹⁴ *Ibid* at 18.

²¹⁵ James TB Rourke et al, “Relationship Between Practice Location of Ontario Family Physicians and Their Rural Background or Amount of Rural Medical Experience” (2005) 10:4 Can J Rural Medicine 231.

²¹⁶ Cain & Forell, “Recruitment and Retention of Lawyers,” *supra* note 185 at 1.

Where legal professionals are present in rural and remote areas, their limited numbers and lack of diversity in specialization can lead to difficulties getting advice or obtaining legal counsel.²¹⁷ Sole practitioners in rural areas tend to be generalist lawyers who offer a range of civil legal services, especially in areas where the number of lawyers relative to population size is small.²¹⁸ This makes it difficult for the lawyer to provide legal advice outside his or her area of specialty. By contrast, in urban areas where individuals have access to a range of different civil legal services, lawyers are more likely to specialize in a particular area or areas of legal practice. For example, a recent report on rural and remote communities in Newfoundland and Labrador indicates that, “[i]n many rural areas, finding lawyers who have a reasonable amount of experience in and knowledge of criminal law and family law would be difficult.”²¹⁹ In Ontario, rural practitioners identified shortages of legal services in “family law, lawyers willing to accept legal aid, and litigators.”²²⁰ This void in resources is anticipated to worsen as the majority of rural lawyers — 80 percent of whom operate small or sole practices — face high overheads and administrative costs, which adversely affects their ability to take on *pro bono* work.²²¹

Finally, in many cases, the increasing age of lawyers – commonly referred to as the “greying bar” – in rural communities presents challenges for service retention.²²² Often, retiring legal service providers do not have a succession plan in place, or they lack sufficient resources to create a succession plan, which may be due to the small size of many rural practices.²²³ Finding a replacement for lost legal services when retiring lawyers do simply ‘close their doors’, takes a significant amount of time, and the result is that many people are left without access to justice.

²¹⁷ Baxter & Yoon, *Geography*, *supra* note 38; Nuffield, *Challenges*, *supra* note 7; Roil, “External Review in Newfoundland,” *supra* note 151.

²¹⁸ Baxter & Yoon, *Geography*, *supra* note 38 at 46; Luis Garicano & Thomas N Hubbard, “Managerial Leverage is Limited by the Extent of the Market: Hierarchies, Specialization, and the Utilizations of Lawyers’ Human Capital” (2007) 50:1 J L & Econ 1.

²¹⁹ Roil, “External Review in Newfoundland,” *supra* note 151 at 86.

²²⁰ Cohl & Thomson, *Connecting*, *supra* note 24 at 34.

²²¹ Sole Practitioner and Small Firm Task Force, *Final Report of the Sole Practitioner and Small Firm Task Force* (Toronto: Law Society of Upper Canada, 2005), cited in Cohl & Thomson, *Connecting*, *supra* note 24 at 34.

²²² The Canadian Bar Association has recognized the relative aging of the bar as future challenge for the legal profession generally, and a challenge for those in the rural and remote areas of Canada more specifically. See Canadian Bar Association, *CBA Legal Futures Initiative: The Future of Legal Services in Canada: Trends and Issues* (Ottawa: Canadian Bar Association, June 2013) at 18. See also Dean Jobb, “Where Are You, Atticus Finch?” *Canadian Business* (10 May 2010) online: <www.canadianbusiness.com>; Law Society of Upper Canada, (2009) 13:1 Ontario Lawyers Gazette, online: <lawsocietygazette.ca> [Ontario Lawyers Gazette]; Jim Middlemiss, “Small Communities Struggle to Pry Lawyers from Canada’s Big Cities, Despite Promise of Jobs” *National Post* (1 October 2013) online: <news.nationalpost.com>.

²²³ Roil, “External Review in Newfoundland,” *supra* note 151 at 86; Ontario Lawyers Gazette, *supra* note 222; Sarah J King D’Souza, “The Three ‘R’s’: Rural, Regional, and Remote” (2010) 8:5 The Advisory, online: <lawsociety.ab.ca>. Interestingly, rural farmers face similar succession planning challenges. A 2008 report on rural poverty notes that young farmers are not longer taking over intergenerational family farms due to difficulties in securing necessary capital to operate in today’s agricultural market. The farming industry has responded with several different loan programs that make it easier to transfer farm to the next generation. See Senate Committee, *Halting Rural Poverty*, *supra* note 33.

The high cost – or *perceived* high cost – of accessing legal services has been widely identified as a barrier to access to justice.²²⁴ “Cost” can include both the direct cost of obtaining legal representation (e.g. lawyers fees, court fees, etc.) as well as the indirect costs associated with trying to resolve a legal problem (e.g. transportation costs, opportunity costs, childcare, etc.). While the cost of accessing legal services is a hindrance for many people, regardless of location,²²⁵ costs can be particularly daunting for those in rural and remote communities due to lower income levels and the fact that the costs of accessing legal services are exacerbated by distance.²²⁶ In rural and remote areas, there are fewer free, public options for individuals seeking legal help. The result is that people may need to rely more heavily on neighbours, family, or other community members to connect with legal service providers,²²⁷ which may involve traveling to community members who live several miles away. This problem may be worse in remote areas where people live further away and resources are even more inaccessible.²²⁸

Poverty as it relates to access to justice has received extensive attention in research and legal forums. The dominant view can be summarized as follows: “Persons living in poverty face daunting financial hurdles to engaging with the justice system on a fair and equal basis: not only the costs of legal assistance but also other direct and indirect costs.”²²⁹ Writing on the Australian experience, Richard Coverdale provides a salient description of how distance increases the indirect costs of accessing services for residents in the Gippsland area. He explains that rural and remote residents for whom the closest town is Gippsland are often required to travel to courts further away because the court in Gippsland sits only four times a year, for one week at a time. For some people, this increases travel time by up to three and a half hours in each direction. Each person appearing in court is given the same start time, so it is often the case that people will attend court all day and not have their case heard. The court appearance may then be rescheduled for the following day, which means additional transportation costs and travel time, or expenses for overnight accommodations. It can also mean lost pay from one or more days of missed work as well as expenses for childcare, food and other incidentals. Family court circuits are not equipped for lengthy or immediate hearings, so cases are often transferred to Melbourne or other areas even further away, and the process to have cases heard begins anew. If mediators are recommended at a specific location, individuals are required to travel to that location, irrespective of

²²⁴ See Action Committee, *Roadmap for Change*, *supra* note 2; Canadian Bar Association, *Reaching Equal Justice*, *supra* note 2; R Roy McMurtry et al, *Listening to Ontarians: Report of the Ontario Civil Legal Needs Project* (Toronto: The Ontario Civil Legal Needs Project Steering Committee, May 2010); Ab Currie: *The Legal Problems of Everyday Life*, *supra* note 145; Noel Semple, “Cost of Seeking Civil Justice in Canada” (2015) University of Windsor Faculty of Law, online: <ssrn.ca> [forthcoming]; Julie Macfarlane, *The National Self-Represented Litigants Project: Identifying and Meeting the Needs of Self-Represented Litigants, Final Report* (Toronto: Law Society of Upper Canada, May 2013) at 39.

²²⁵ Hazel Genn & Alan Paterson, *Paths to Justice Scotland; What People in Scotland Do and Think About Going to Law* (Portland, OR: Hart Publishing, 2001) at 98-99 [Genn & Paterson, *Paths to Justice Scotland*].

²²⁶ Cohl & Thomson, *Connecting*, *supra* note 24 at 33.

²²⁷ *Ibid.*

²²⁸ *Ibid.*

²²⁹ Sepúlveda Carmona & Donald, *Access to Justice for Persons Living in Poverty*, *supra* note 43 at 17. For a more general discussion on the impact of poverty on rural Canadians, see Rural and Small Town Programme, *Rural Poverty Discussion Paper*, by Ausra Burns, David Bruce, & Amanda Marlin (Ottawa: Government of Canada, 2007).

distance, to continue to use the services of that mediator. Psychological assessments required by the courts also require travel to that professional's location, which is usually in a major city.

In this example, expenses are incurred at every step of the process to access legal or court-mandated services. Situations like the one outlined by Coverdale are not unique to Australia but exist in Canada as well.²³⁰ Nuffield extends the issue of costs to other areas, including education and healthcare. She states that, "in many rural and [remote] communities, resident or even circuit justice services of any kind are not available: people must travel to the services. Indeed, many such communities enjoy no resident professional services of any sort, including medical or educational programs."²³¹ The high cost of accessing justice is onerous for many, but for someone with a mortgage and family, legal fees and related costs can be prohibitively daunting.²³² Childcare in particular has been identified as a barrier to rural service access, as many rural jobs operate outside of standard office hours. This can make it difficult to provide and access secure childcare in an environment where childcare resources are limited.²³³

Ultimately, when the direct and indirect cost of accessing services is wedded with increased stress²³⁴ and any unseen complications that may arise when dealing with a legal issue, it is not surprising that many people are reluctant to seek legal assistance.

²³⁰ See for example, Nuffield, *Challenges*, *supra* note 7.

²³¹ Nuffield, *Challenges*, *supra* note 7 at 11.

²³² Genn & Paterson, *Paths to Justice Scotland*, *supra* note 225 at 98-99.

²³³ Cohl & Thomson, *Connecting*, *supra* note 24; Graham & Underwood, "Reality of Rurality," *supra* note 154; Panazzola & Leipert, "Exploring Mental Health Issues of Rural Senior Women," *supra* note 50; Pruitt & Showman, "Law Stretched Thin," *supra* note 141.

²³⁴ There is a growing body of legal needs research that examines the impact of unresolved and ongoing legal problems on the physical and mental health and wellbeing of an individual. Generally speaking, it is well recognized that dealing with a legal issues increases an individual level of stress and in some cases can exacerbate or cause physical or mental health issues. See Currie, "Civil Justice Problems," *supra* note 89; Pascoe Pleasence & Nigel J Balmer, "Mental Health and the Experience of Social Problems Involving Rights: Findings from the United Kingdom and New Zealand" (2009) 16:1 *Psychiatry, Psychology & L* 123; Pascoe Pleasence et al, *Civil Justice in England and Wales 2009: Report of the 2006-9 English and Welsh Civil and Social Justice Survey* (London: Legal Services Commission, 2010).

Social Relations of Place

“Social relations of place” refers to the way in which the interaction and actions of residents in rural communities, including conversations, individual behaviours, and actions of community groups, influence help-seeking behaviour.²³⁵ If we understand “accessibility” to include not just the availability of legal services, but also “actual use of services,” social relations of place has a significant impact on the accessibility of legal and other social services.²³⁶

Researchers in the healthcare context have observed social relations of place to “affect the flow of information and action in rural communities,” influencing how, when, and why people may or may not seek help.²³⁷ For example, shame or fear of stigmatization can impede people from seeking out services since the lack of privacy within small communities often leads to concerns regarding confidentiality, conflict, or the publicizing of “sensitive issues.”²³⁸ The fear of stigmatization is particularly acute for residents in small towns that have alternative lifestyles, mental health issues²³⁹ or are victims of intimate partner violence,²⁴⁰ which can lead to “problems of disclosure.”²⁴¹

Stigmatization has also been recognized as a barrier to rural service access in the legal literature.²⁴² Cohl and Thomson observe that there is a high probability that “stigma [becomes] attached to seeking legal help in a community where everyone appears to know everyone else’s business.”²⁴³ *Paths to Justice: Navigating with the Wandering Lost*, a study funded by the Law Foundation of Ontario, recognizes that rural residents often experience “embarrassment” regarding the “legal wrangles in their life.”²⁴⁴

Lack of anonymity and privacy are also particular concerns for rural residents involved in criminal proceedings, both as victims or defendants. Nuffield writes that “[f]or victims, the most common problems are...pressures not to report or participate in criminal justice or alternative processes,”²⁴⁵ whereas Coverdale highlights that, in some rural and remote areas, the hesitation to seek legal aid stems from the impact of local media coverage of legal matters. He highlights the following comments by rural and remote residents:

²³⁵ This definition is adapted from Bourke et al, “Understanding Rural and Remote Health,” *supra* note 33 at 499.

²³⁶ Andersen, “Revisiting the Behavioral Model,” *supra* note 139 at 4.

²³⁷ Bourke et al, “Understanding Rural and Remote Health,” *supra* note 33 at 499. See also, Bourke et al, “Conceptual Understanding,” *supra* note 139; Claire C Nelson, “AIDS Prevention Programs in a Smaller Community,” *supra* note 48.

²³⁸ Bourke et al, “Understanding Rural and Remote Health,” *supra* note 33 at 499.

²³⁹ Tummala & Roberts, *Ethics and Conflicts in Rural Communities*, *supra* note 119.

²⁴⁰ Lisa R Pruitt, “Place Matters: Domestic Violence and Rural Difference” (2008) UC Davis Legal Studies Research Paper Series No 149; Pruitt & Showman, “Law Stretched Thin,” *supra* note 141.

²⁴¹ Claire C Nelson, “AIDS Prevention Programs in a Smaller Community,” *supra* note 48 at S39.

²⁴² See Cohl & Thompson, *Connecting*, *supra* note 24; California Commission, *Improving Civil Justice in Rural California*, *supra* note 104 at 36; John North, “Legal Aid in Regional, Rural and Remote Areas (RRR)” (Paper delivered at the International Legal Aid Conference, Kuala Lumpur, 20 July 2006), online: <lawcouncil.asn.au> [North, “Legal Aid in Regional, Rural and Remote Areas”].

²⁴³ Cohl & Thomson, *Connecting*, *supra* note 24 at 33.

²⁴⁴ Cross with Leering, *Paths to Justice: Navigating with the Wandering Lost*, *supra* note 1 at 19.

²⁴⁵ Nuffield, *Challenges*, *supra* note 7.

“Impact of local paper reportage (is) greater in smaller communities. Consequences of public knowledge (is) often harsher than the penalty.”

“Local papers print convictions and names and addresses. Whatever the offence, they print it! (The local) papers often also publish committal outcomes! (first hearing, where a Magistrate decides if there is enough evidence for the case to go to trial).”

“Court reports are always in the local paper which results in people’s reputations being stained.”

“Invasive, degrading reporting by local media, including publication of defendant’s age and address. Whereas city counterparts don’t face the same shaming.”²⁴⁶

Ultimately, in order for rural residents to choose to seek legal assistance, they must feel that accessing legal help will improve their situation. Legal services need to be perceived as an accessible and safe environment for dispute resolution.

Beyond issues related to privacy, fear, shame and stigmatization, the close social relationships typical of small communities, combined with the dearth of available legal practitioners (see above) can lead to conflicts of interest, which Coverdale notes are “a huge problem for clients in small towns.”²⁴⁷ As Coverdale explains, though some people within a community may have been using the same lawyer or law firm for years, they encounter problems when, for example, “the firm and their ex-partner [are] involved in a will or conveyancing or commercial matter, [so] their lawyer will not be able to undertake the family law matter...Clients then have to go to another town or the city to find a lawyer.”²⁴⁸ Issues around conflict of interest become even more severe in remote communities where “conflict rules may eliminate the opportunities for some residents to have any legal representation at all.”²⁴⁹

Nonetheless, the social relations of place can also have a positive impact on service accessibility in rural communities. The tight-knit nature of communities and their strong community networks can enhance information sharing between community members and organizations, including social service providers. As Jane Farmer and her colleagues have recently observed in the healthcare field, when individual service professionals are active in social and civil activities of their small towns, not only is information sharing improved, but community sustainability is enhanced through the facilitation of more productive social relationships and the building of trust between service providers and community members.²⁵⁰ Researchers in the legal field have similarly noted that the informal networks permeating the social structures of rural communities are essential for doing outreach and providing access. Utilizing these networks and engaging “trusted intermediates”²⁵¹ can help build confidence in the system, especially

²⁴⁶ Coverdale, *Postcode Justice*, *supra* note 31 at 92.

²⁴⁷ *Ibid* at 76; Cain, Macourt & Mulherin, *Lawyer Availability and Population Change*, *supra* note 160; Cohl & Thomson, *Connecting*, *supra* note 24; North, “Legal Aid in Regional, Rural and Remote Areas,” *supra* note 242.

²⁴⁸ Coverdale, *Postcode Justice*, *supra* note 31 at 76.

²⁴⁹ CBA Task Force on Conflicts of Interest, *Conflicts of Interest: Final Report, Recommendations & Toolkit* (Ottawa: Canadian Bar Association, 2008) at 3, 163.

²⁵⁰ Jane Farmer, Maria Prior & Judy Taylor, “A Theory of How Rural Health Services Contribute to Community Sustainability” (2012) 75 *Social Science & Medicine* 1903 at 1907.

²⁵¹ Cross with Leering, *Paths to Justice: Navigating with the Wandering Lost*, *supra* note 1.

with residents who may have complex needs,²⁵² and allow for communities to “buy-in,” particularly when service providers may be viewed as outsiders.²⁵³

Recent research suggests that one of the key factors inhibiting rural and remote residents from seeking help is lack of information regarding legal services. A study in British Columbia notes that even when the scope of legal issues was not significantly different between urban and rural locales, people living in urban areas were far more likely to know about the services available to them. Moreover, rural residents living on low incomes or who may be otherwise disadvantaged are far less likely to know what services exist or which self-help tools are available to support them.²⁵⁴ For this reason, training trusted intermediaries to identify legal issues and coordinate referrals is a “key factor to successful service delivery in rural contexts.”²⁵⁵ Trusted intermediaries are likely to know the community members and be one of the first points of contact for those in need.

In short, while social relations of place can have a negative impact upon service accessibility in rural areas, they can also provide an opportunity for service providers to build trust, increase local knowledge of available legal services, and combat access barriers that result from the more challenging aspects of small town living.

Digital Divide

The distance of rural and remote communities from urban centres and the demographic characteristics that define rurality and remoteness (see Section II) determine the level of access that rural communities have to communication technologies (including the Internet) as well as the comfort level residents may have using technology to address or obtain information about their legal issues. As noted in *Paths to Justice: Navigating the Wandering Lost*, “rural residents have lower comfort and skill levels with technology such as use of internet to access information and less access to both the Internet and computers.”²⁵⁶ Consequently, the “digital divide”²⁵⁷ remains a “significant obstacle to using communications technologies” to address legal needs in rural communities.²⁵⁸

²⁵² Suzie Forell & Abigail Gray, “Outreach Legal Services to People with Complex Needs: What Works?” (2009) Justice Issues No 12; Action Committee on Access to Justice in Civil & Family Matters: Prevention, Triage and Referral Working Group, *Final Report - Responding Early, Responding Well: Access to Justice through the Early Resolution Services Sector* (Toronto: Canadian Forum on Civil Justice, 12 February 2013) online: <cfcj-fcjc.org> [Action Committee Prevention, Triage and Referral Working Group, *Final Report - Responding Early, Responding Well*]; Ab Currie, *Halton Hills Legal Health Check-Up - Extending the Reach of Legal Aid: Report on the Pilot Phase of the Legal Health Check-Up Project* (Halton Hills, ON: Halton Community Legal Services, 2015) [Currie, *Halton Hills Legal Check-Up Pilot Report*].

²⁵³ The Ontario Rural Council, *Roundtable*, *supra* note 177.

²⁵⁴ Reid & Malcolmson, *Voices from the Field: Needs Mapping*, *supra* note 89; Iriana, Pleasence & Coumarelos, “Disadvantages and Responses to Legal Problems,” *supra* note 70.

²⁵⁵ Ottawa Community Legal Services, *Ottawa Community Legal Clinics Transformation Project*, *supra* note 39 at 55. See also Public Interest, East and Central Region Legal Transformation Project Report, *supra* note 47 at 55. For a specific discussion of the positive impact that trusted intermediaries can play in service delivery, see Currie, *Halton Hills Legal Check-Up Pilot Report*, *supra* note 252.

²⁵⁶ Cross with Leering, *Paths to Justice: Navigating with the Wandering Lost*, *supra* note 1 at 11.

Studies that address the digital divide in rural and remote communities overwhelmingly indicate that the challenges surrounding the availability, accessibility and use of the Internet and other technological resources are multi-faceted and experienced, to different degrees, by individual groups within rural and remote populations. For example, individuals with lower education and income levels, the elderly and more recent immigrants and migrant workers, are less likely to have access to the Internet and engage in less online activity than their counterparts.²⁵⁹ Gender has also been shown – although somewhat inconsistently – to impact Internet accessibility and online activity.²⁶⁰ Statistically, this translates to higher levels of internet access by urban populations – 51% of the people living in urban areas are more likely to access the Internet compared to those in rural areas.²⁶¹

To better understand the digital divide challenges of rural and remote populations, Haight et al suggest separating the digital divide into three parts: (1) barriers to physical access, (2) gaps in online activity, and (3) connectivity via social networks. Barriers to physical access to the Internet are rooted in the same geographical characteristics that create transportation and infrastructural challenges for rural communities.²⁶² For example, where Internet access does exist in rural communities, it is often described as “spotty” due to underdeveloped landscapes and the absence of “high-speed backbones.”²⁶³ The second challenge focuses on gaps in the level of online activity and the technological capabilities of rural and remote residents. In circumstances where access to the Internet and computers is not a major obstacle, the knowledge, skills and comfort to use these resources remains important to accessing legal aid and information online. A 2013 report by the CBA indicates that 48% of Canadians lack the literacy skills required to make use of online tools²⁶⁴ and may need assistance in navigating the various sites that provide legal information in order to locate the best and most helpful information.²⁶⁵ In many cases trusted intermediaries (e.g. youth workers, librarians, healthcare workers, community support workers etc.) are needed to help those with low literacy, low digital literacy or those with other access challenges make use of digitally provided information.²⁶⁶

The third aspect of the digital divide relates to leveraging connectivity via social networks such as Twitter and Facebook.²⁶⁷ While more research is needed in this area, understanding how social media networks can be used to improve legal awareness (see Section I) and improve the accessibility of legal

²⁵⁷ The term digital divide refers to the gap in access to communications technologies that exist between demographic populations and regions.

²⁵⁸ Cohl & Thomson, *Connecting*, *supra* note 24 at 35.

²⁵⁹ Michael Haight et al, “Revisiting the Digital Divide in Canada: The Impact of Demographic Factors on Access to the Internet, Level of Online Activity, and Social Networking Site Usage” (2014) 17:4 *Information, Communication & Society* 503 at 511 [Haight et al, “Revisiting the Digital Divide in Canada”].

²⁶⁰ *Ibid.*

²⁶¹ *Ibid* at 511. These barriers are discussed in detail in Section V.

²⁶² *Ibid* at 505-507.

²⁶³ Cohl & Thomson, *Connecting*, *supra* note 24 at 35.

²⁶⁴ Canadian Bar Association, *Reaching Equal Justice*, *supra* note 2 at 10.

²⁶⁵ Mary Dracup, *Linking Law: Practical Guidelines for Delivering Law to Rural Victoria Using E-Learning Technologies* (Melbourne: Deakin University, 2014) at 25, online: <deakin.edu.au> [Dracup, *Linking Law*].

²⁶⁶ *Ibid.*

²⁶⁷ Haight et al, “Revisiting the Digital Divide in Canada,” *supra* note 259 at 507-508.

information will be important as social networking sites continue to grow as an avenue for information exchange.²⁶⁸

In addition to the factors recognized by Haight et al, socio-economic factors (addressed in Section II) also influence Internet and technology usage rates. Given the lower incomes and higher poverty rates in rural communities there may be individuals who cannot afford personal computers or other at-home technologies that require service plans. As a result, there are pockets of “rural residents [w]ho have limited or no access to telephones and long-distance or toll-free service and limited or no access to cell phones”²⁶⁹ and do not have the same communications access or reach as other groups. In many cases public libraries or community centers have proved helpful for those wanting or needing to use technology to address legal issues. Libraries often provide free use of computers and free access to the Internet and in some cases have trained library staff to better assist library patrons in finding relevant legal information.²⁷⁰

In Canada, however, recent funding cuts to programs like Alberta’s Community Access Program (CAP), an initiative created to provide Canadians with access to the Internet and its economic benefits,²⁷¹ Industry Canada’s Community Access Program, a program designed to provide Internet access and digital skills training at local public libraries and community agencies, and the termination of Library and Archives Canada’s (LAC) workforce and archival programs²⁷² have impacted the ability of libraries to continue to provide (and increase) the services mentioned above. The ramifications of these (and similar) spending cuts for rural and remote populations are summarized by Maggie Macdonald, the CEO of the Chinook Arch Library System in Alberta: “That same funding has a significant effect for each rural library...Specifically, those with the fewest resources are going to be hit. As well, they don’t have high-speed connections in their homes, but in their libraries they do because those libraries have access through the Alberta government to the Super Net.”

Inaccessibility to the Internet and other technologies also creates barriers for legal professionals in rural and remote areas, who may require online services for professional development and knowledge exchange.²⁷³ Economides posits that there is a level of technological support required [by lawyers] that remains unmet by the geographical constraints of rural and remote areas,²⁷⁴ an argument that is supported by the assertion that, “until recently, it was also nearly impossible to create the appropriate infrastructure in Northern Canada because of the technical challenges presented by the remoteness and geographic characteristics of Canada’s North.”²⁷⁵ Other theorists propose an alternate understanding of legal practice in non-urban areas, indicating that, “practice in rural and [regional] environments has

²⁶⁸ *Ibid* at 504.

²⁶⁹ Cohl & Thomson, *Connecting*, *supra* note 24 at 35.

²⁷⁰ For example, the LawMatters project launched in public libraries in British Columbia in 2007 has the goal of providing legal information services to the general public in libraries throughout the province.

²⁷¹ Susan Quinlan, “Funding Cut Expected to Reduce Public Internet Access in Libraries,” *Prairie Post* (11 May 2012) online: <<http://www.prairiepost.com>>.

²⁷² Karen McGrath, Open Letter to Industry Canada, *Ontario Library Association* (11 April 2012) online: <www.accessola.org>.

²⁷³ Coverdale, *Postcode Justice*, *supra* note 31 at 90. For research in the Australian context, see Dracup, *Linking Law*, *supra* note 265 at 16.

²⁷⁴ Economides, “Centre-Periphery Tensions,” *supra* note 140 at 1.

²⁷⁵ Haight et al, “Revisiting the Digital Divide in Canada,” *supra* note 252 at 505.

been described as ‘entrepreneurial’ in contrast to the ‘institutional’ structure of urban practice.”²⁷⁶ Though studies that discuss technological barriers in rural and remote areas are more heavily focused on residents than legal practitioners, work by Economides et al suggests that significant challenges exist for legal professionals, and obstacles remain to providing uninhibited access.²⁷⁷

VI. OVERCOMING BARRIERS & PROMISING PRACTICES

Notwithstanding the challenges posed by rural and remote access to justice, a number of programs and initiatives - both domestic and international - have had some success in addressing the unique service needs of individuals in these communities. Internationally, the United States, United Kingdom, Australia, and the Nordic countries (Norway, Sweden, and Finland), which face similar geographic and demographic remote access to justice challenges as Canada, have experimented with solving access problems stemming from lack of transportation options, language and immigration issues, lack of local lawyers, poor technological literacy and limited access to technology, stigma associated with seeking help, the scarcity of specialized help, and the cost of providing services. All of these issues, as discussed above, are part and parcel of the rural and remote reality.

Some countries are further along in the process of addressing rural and remote access to justice problems than others. Depending on the region, the response of acting organizations is dictated by the access barriers they have identified as most prominent. As a result, few, if any, of the jurisdictions mentioned above have managed to surmount all of the access to justice barriers facing rural and remote communities in their area of operation. However, progress has certainly been made towards bridging service gaps. The literature suggests that current programs and “promising practices” aim to improve rural and remote service delivery in at least one of five ways (although a single initiative is likely to contain elements of several different solution approaches):

1. **By improving the professional presence of lawyers, paralegals, or personnel trained to assess, identify and refer legal problems.** These projects might bring legal support to communities through the implementation of satellite offices, the initiation of remote legal practice incentives for law students or young lawyers, or the provision of legal training for community leaders or other public service professionals.
2. **By enhancing collaborative and inter-professional service provision and building relationships with trusted intermediaries.** In these initiatives the focus is placed on increasing collaboration between service providers and/or strengthening the capacity of service provider networks. More than any other category, this category of solutions emphasizes the entwined nature of justice problems with other social, economic and other personal problems. These initiatives start from the assumption that effective service addresses the multifaceted nature of a client’s problem – not simply the legal aspect.

²⁷⁶ Amanda Kennedy et al, “Educating Law Students for Rural and Regional Practice: Embedding Place Based Perspectives in Law Curricula” (2014) 24:1 L Education Rev 6 at 21.

²⁷⁷ Economides, “Centre-Periphery Tensions,” *supra* note 140; Jeff Giddings, Barbara Hook & Jennifer Nielsen, “Legal Services in Rural Communities: Issues for Clients and Lawyers” (2001) 26:2 Alternative LJ 57 at 60.

3. **Through the design of programs that harnesses communication technologies as a means of overcoming distance barriers.** These programs often invest in virtual communication technologies to facilitate tele-legal consultations and provide extensive self-help resources by distributing relevant and easy-to-access legal information. Programs in this category bridge the distance gap by delivering responsive legal advice or support over the phone or Internet and may utilize call in centres, videoconferencing, online forums, or email to connect individuals seeking legal support with legal service provide.
4. **By improving legal information and promoting legal awareness.** Unlike the first three types of initiatives, this category does not rely on direct communication between the individual seeking help and a legal service provider to improve access to justice. Instead these solutions aim to enhance knowledge and awareness through the distribution of relevant legal information. Interactive legal “check up” quizzes, monthly newsletters, blogs, websites, and reference materials placed in locations like libraries and regional health care centres, are examples of information distribution strategies that have been implemented successfully.
5. **Through the development of coordinated national strategies that seeks to address rural and remote issues at a systems level.** While this is perhaps the most underdeveloped approach to rural and remote issues, there is some evidence – emerging primarily out of Australia – that a more systematic and national approach to addressing rural issues, holds promise.

Below is an overview of promising practices and initiatives being developed in the jurisdictions identified above, i.e. Canada, the United States, the United Kingdom, Australia, and the Nordic countries (Norway, Sweden, and Finland). In some regions, like Norway, Sweden, and Finland, more progress has been made in improving access to medical, as opposed to legal, services. The comparative nature of medical and legal services warrants attention as the creative medical delivery solutions bring to bear valuable evidence of effective remote service strategies that could be adapted for the legal sector. Thus, we include some promising rural medical service delivery initiatives in the discussion below.

Increasing Legal Professional Presence

There is a scarcity of lawyers in rural and remote areas. Because access to professional legal services is a critical component of access to justice, one of the more readily apparent strategies to improve access involves attracting more lawyers to rural areas.²⁷⁸ Cohl and Thomson note that Australia, the US, and the UK have all undertaken programs to increase the number of rural private lawyers, many of which make use of financial incentives to encourage relocation.²⁷⁹ In 2009, the Canadian Bar Association's British Columbia branch launched the Rural Education and Access to Lawyers (REAL) project to improve the future availability of legal services in rural areas of the province.²⁸⁰ By making funding available to rural practitioners for the summer hire of second-year law students, advertising within provincial law schools, and creating regular networking opportunities for lawyers, students and other justice system stakeholders, the project saw a substantial increase in the number of law students choosing to practice in rural communities after graduation.²⁸¹ Though the REAL project has helped ensure the longevity of pre-existent practices, other models are better suited to extend the range of physical presence legal services. Many community legal clinics across Canada make use of satellite offices to reach distant communities, and circuit courts offer intermittent access to formal legal processes.²⁸²

For their part, several Canadian initiatives have also made attempts to increase the number of lawyers practicing in rural communities. In Manitoba, a loan forgiveness program was introduced to subsidize law school for rural students who chose to practice in a rural area post-graduation.²⁸³ Loans are made available to eligible students (up to \$25,000/year) and a 20% forgiveness rate is applied to the loans for every year of subsequent practice in rural communities. This program is based on the premise that students from rural communities are more likely to practice in rural areas. So far, one student has been through the process from start to finish (receiving loan support through law school and practicing in a rural community afterwards). The long term aim of the program is to expand to 20 students, but it has been expensive to run (~\$75 000/student), and this has made expansion of the project difficult.²⁸⁴ In British Columbia, the aforementioned REAL program has achieved long-term success in expanding the number of students who chose to article in these locations.²⁸⁵ In Ontario, the Law Foundation of Ontario has been funding "Connecting Articling Fellowships" since 2010.²⁸⁶ These fellowships place articling

²⁷⁸ Baxter & Yoon, "No Lawyer for a Hundred Miles," *supra* note 14.

²⁷⁹ Cohl & Thomson, *Connecting*, *supra* note 24 at 36. Providing financial incentives to practitioners who perform essential legal assistance work in rural and remote communities was a key recommendation of the Australian Productivity Commissions Access to Justice Arrangements Inquiry report. See *Productivity Report Vol 1*, *supra* note 158.

²⁸⁰ REAL, *Five Year Summary Report*, *supra* note 211 at 5.

²⁸¹ *Ibid* at 13.

²⁸² Cohl & Thomson, *Connecting*, *supra* note 24 at 56; The Nunavut Court of Justice, *Ingirranivut - Our Journey: A Statistical and Comparative Review of Crime and Court Operations in Nunavut 2000-2012* (Iqaluit: Nunavut Court of Justice, 18 January 2013) at 22.

²⁸³ Baxter & Yoon, "No Lawyer for a Hundred Miles," *supra* note 14 at 17.

²⁸⁴ Daniel Fish, "Law Grads Need Debt Forgiveness Program, Says Canadian Bar Association," *Precedent Magazine* (14 August 2014) online: <<http://lawandstyle.ca>>.

²⁸⁵ REAL, *Five Year Summary Report*, *supra* note 211.

²⁸⁶ This program was developed in response to a recommendation made in Karen Cohl and George Thomson's 2008 seminal report, which was commissioned as part of the Law Foundation of Ontario's Linguistic and Rural Access to Justice Project. See Cohl & Thomson, *Connecting*, *supra* note 24 at 66.

students in community legal clinics serving linguistic minorities, or in clinics in rural and remote areas to “encourage students to continue in those communities when they become lawyers.”²⁸⁷ To date over 44 articling positions have been funded, with six more planned for the 2015-2016 articling year.²⁸⁸

The approach to increasing the professional presence of lawyers in northern Ontario has been different. Instead of financially incentivizing students or young lawyers to move from the city to rural areas, Lakehead University, located in Thunder Bay, created its own Faculty of Law in 2013 to source and train lawyers who have rural backgrounds, and are more likely to stay and practice in the communities they have ties to.²⁸⁹ This model of legal education follows a “place-based” methodology that meets the challenge of placing lawyers in rural areas by sourcing them from those areas to begin with. The school is already showing signs of success, with 57% of the students coming from Northern Ontario areas, and a further 15% from small town and rural Ontario.²⁹⁰ These results lend weight to Mundy’s assertion that regional law school can offset the the urban-centric nature of the law school curriculum (although they should not be used as an excuse to ignore rural issues in non-regional schools).²⁹¹

One interesting project aimed at enhancing the prevalence and prominence of rural and remote legal issues in non-regional law schools is the Australian Rural and Remote Legal Education Network (RRLEN). The RRLEN, is an Australian Learning and Teaching Council funded project that is developing a law school curriculum designed to not only educated law students on the unique issues of legal service delivery in rural and remote areas, but to increase the attractiveness of rural and remote practice for students.²⁹² To date, the RRLEN has developed an open-source curriculum package that features eight separate modules that deal with various aspects of rural and remote practice, including the uniqueness of practicing in a rural context, rural client care, and ethics for rural and remote lawyers.²⁹³

Many jurisdictions have identified the presence, or lack thereof, of lawyers in rural communities to be a critical component of access to justice. As a result, initiatives led by law schools and bar associations in Texas, Iowa, Montana, Nebraska, South Dakota, and Australia to improve access to justice for rural communities have focused primarily on encouraging young lawyers and law students to move to rural areas and practice.²⁹⁴ Not all of these initiatives have been successful, but the ones that are share some common characteristics. Some, such as the Distance Lawyering Project with the Texas Access to Justice

²⁸⁷ Law Foundation of Ontario, “FAQs for Organizing and Applying to Host Connecting Articling Students” (2015) Law Foundation of Ontario, online: <www.lawfoundation.on.ca> [Law Foundation, “FAQs”]. These fellowship were created in response to Cohl & Thomson, *Connecting*, *supra* note 24.

²⁸⁸ Law Foundation, “FAQs,” *supra* note 287.

²⁸⁹ Baxter & Yoon, “No Lawyer for a Hundred Miles,” *supra* note 14 at 19

²⁹⁰ Lakehead University, “Where Our Students Are From,” online: <<https://www.lakeheadu.ca/>>.

²⁹¹ Mundy, “Final Year Law Students,” *supra* note 207.

²⁹² Jennifer Nielsen & Amanda Kennedy, “Rethinking the Law Curriculum: Strategies for Rural and Regional Australia” (2012) 37:2 *Alternative L J* 134.

²⁹³ See RRLEN, “Curriculum Package,” *supra* note 208.

²⁹⁴ Michelle Cheng & Jenny Smith, “Distance Lawyering: We Need Your Help” *Texas Access to Justice Commission* (19 December 2014) online: <www.texasatj.org> [Cheng & Smith, “Distance Lawyering”]; The Iowa State Bar Association, “ISBA Rural Practice Committee,” (Des Moines, Iowa State Bar Association, 2010), online: <www.iowabar.org> [ISBA, “ISBA Rural Practice Committee”]; Pro Bono Net News, “LiveHelp Offers Real-Time Support in 4 States,” online: (December 2007) 5:3 *Pro Bono Net News* <news.probono.net> [Pro Bono Net News, “LiveHelp”]. For the Future Lawyers initiative in Australia see Sher Campbell & Katherine Lindsay, “Lawyers of the Future: Creating Aspirations, Forging Connections and Facilitating Professional Links in Rural and Regional Contexts” (2014) *Int J L & Pol’y* 1 at 1.

Commission & Texas Young Lawyers Association, are still in their opening stages.²⁹⁵ Effective rural placement can involve exposing students to the possibility of rural practice at an early stage in their education, requiring a set number of years of rural practice before rewards or incentives are released, and carefully limiting the size and scope of rural placements to a manageable amount that can be monitored, controlled, and supported. South Dakota's program seems to be most effective in these areas.²⁹⁶

Depending on the community in question, the prospect of attracting more lawyers may not be as feasible as improving the efficiency of available human resources. Leveraging the professional presence of paralegals, health care workers, social workers, and community leaders might improve the quality of referrals and identification of legal issues.²⁹⁷ The Ontario Rural Council suggests that third party "trusted intermediaries" could be invaluable in the legal triage and referral process, but they caution that care workers in the social and health fields are already taxed by their professional roles.²⁹⁸ Still, the volume of community contact that these professionals experience makes their participation in the referral process ideal.²⁹⁹ For example, the Ontario Justice Education network has provided training to Child and Family Youth Workers to improve their legal awareness as part of a larger project to improve legal literacy across the province.³⁰⁰

Collaborative Service Provision and Intermediaries

Having recognized that justice problems are regularly entwined with social, economic and personal problems, support for increasing collaboration between service providers and/or strengthening the capacity of service provider networks is evident both in the literature and in practice. In 2013, the Access to Legal Services Group of the national Action Committee on Access to Justice in Civil and Family Matters recommended that "[publicly funded legal services including public legal education and information services] should be integrated to better meet the needs of the public and of low income people in particular."³⁰¹ Similarly, the CBA's *Reaching Equal Justice* Report has set the target date of 2030 to ensure that "80% of lawyers in people-centred law practices work with an integrated team of service providers...[who] will operate in a shared practice that includes non-legal service and services provided by team members who are not lawyers."³⁰²

²⁹⁵ Cheng & Smith, "Distance Lawyering," *supra* note 294.

²⁹⁶ South Dakota Unified Judicial System, "Rural Attorney Recruitment Program" (State of South Dakota, 2012) online: <ujs.sd.gov> [SDUJS, "Rural Attorney Recruitment Program"].

²⁹⁷ The Ontario Rural Council, *Roundtable*, *supra* note 177.

²⁹⁸ *Ibid.*

²⁹⁹ Cross with Leering, *Paths to Justice: Navigating with the Wandering Lost*, *supra* note 1.

³⁰⁰ *Ibid* at 33.

³⁰¹ Action Committee Prevention, Triage and Referral Working Group, *Final Report - Responding Early, Responding Well*, *supra* note 252 at 22.

³⁰² Canadian Bar Association, *Reaching Equal Justice*, *supra* note 2 at 28.

Collaborative service provision or “joined-up” services³⁰³ hold a great deal of promise for increasing access to services in rural areas. As the East and Central Region Legal Clinic Transformation Report notes,

the rural context presents a unique demographic of clients exhibiting complex and multifaceted issues, since they lack access to many of the specialized supports they need, and face stigma in acknowledging their needs and seeking help. Since each issue can compound the next, a collaborative team of service providers from multiple disciplines is effective in supporting clients with complex, compounded needs.³⁰⁴

The benefits of integrated service delivery have been evident in the healthcare field for some time, where there is “a trend towards using multi-, inter- and trans-disciplinary team models to provide holistic care to patients requiring specialized health services in rural areas, specifically the elderly and those presenting complex mental health needs.” The team model provides many benefits. For instance, while many people with legal issues may not seek out legal services, they may seek out healthcare, or other community services, or attempt to get advice from a trusted intermediary.³⁰⁵ By leveraging the “tight knit” community networks of rural communities³⁰⁶ and working collaboratively, it may be possible to reach people that may have otherwise gone without support. Moreover, by offering integrated service provision, some of the transportation issues that may prohibit people from seeking out multiple different services – i.e. shuttling back and forth between different service providers – may be alleviated as a team of service professionals could offer a “one-stop shop.”³⁰⁷ As Deborah L. Rhodes notes, “[o]ne-stop shopping is particularly beneficial for elderly, rural, and disabled clients who cannot readily shuttle between multiple agencies.”³⁰⁸

A recent community legal clinic project in Ontario has begun to experiment with interdisciplinary partnerships with some success. The Halton Community Legal Services Legal Health Check-Up Project is a partnership between a small community legal clinic funded by Legal Aid Ontario, and seven intermediary groups. The goal of the project is to “increase the number of clients served through the development of partnerships with health care providers, peer groups...and other organizations within the community.”³⁰⁹ To do so, the group has developed the Legal Health Check-up tool, which is designed to help intermediaries “problem spot” and make legal referrals where appropriate.³¹⁰ An early evaluation of the project suggests success. The Halton Community Legal Service increased client intake

³⁰³ Law and Justice Foundation, “Reshaping Legal Assistance Services,” *supra* note 142 at 67.

³⁰⁴ Public Interest, *East and Central Region Legal Transformation Project Report*, *supra* note 47 at 50.

³⁰⁵ People fail to seek legal help for a variety of reasons ranging from the perceived high cost of services to a lack of knowledge about where to go for help. In some cases people may not even realize they have a legal problems. See Genn & Paterson, *Paths*, *supra* note 225; Currie, “Civil Justice Problems,” *supra* note 89; Pleasence et al, *The Final Report of the First LSRC Survey*, *supra* note 90.

³⁰⁶ See section II, *supra*. See generally The Law Foundation of Ontario, “FAQs,” *supra* note 287; Cohl & Thomson, *Connecting*, *supra* note 24; Panazzola & Leipert, “Exploring Mental Health Issues of Rural Senior Women,” *supra* note 50.

³⁰⁷ Deborah L Rhode, “Whatever Happened to Access to Justice” (2009) 42:4 Loy LA L Rev 869 at 899.

³⁰⁸ *Ibid.*

³⁰⁹ Currie, *Halton Hills Legal Check-Up Pilot Report*, *supra* note 252.

³¹⁰ *Ibid.*

by about one-third as a result of the Check-Up tool³¹¹ indicating that community partnerships can help increase the reach of legal service providers, especially within hard to reach populations.³¹²

However, providing collaborative services is not without its challenges. The Law & Justice Foundation of New South Wales summarizes the literature describing many of these challenges in the Reshaping Legal Assistance Services discussion paper. The paper notes that among other challenges, collaborative service provisions can be costly and the organization and implementation of the programs slow as different organizations try to align mandates, decide on allocation of resources, and sort through various internal institutional hurdles.³¹³ “Collaborative inertia” is also a challenge, where despite the best efforts and intentions of the service providers, progress towards the identified goals is stalled.³¹⁴ Finally Collaborative service provision brings with it the potential to increase tension between service providers since collaboration requires each partner to “share turf”.³¹⁵

Investing in Responsive Technological Solutions

While phone and Internet service coverage in rural and remote Canada is not entirely ubiquitous, the coverage not sufficient, and, as discussed, poses challenges in regards to the digital divide, technology can offer an efficient and inexpensive way to communicate. Short of having lawyers and other justice system representatives in an accessible physical location, remote interaction made possible by telecommunications and computing technologies can facilitate the next best thing: a voice or video call, or text based messaging interaction that permits real-time dynamic communication between two or more parties. Provided both parties are available and able to access and use a connected communication tool, information can be exchanged instantaneously, obviating the need to travel. Of all the possible ways to use communications technology to bridge the distance divide, call-in centres and hotlines are the most widespread. In Nunavut, Inuk-speaking operators staff legal aid phone lines and anyone can call collect.³¹⁶ British Columbia has a 24-hour “tele-bail” service, and Legal Aid Ontario has implemented a toll free referral service, to name just a few examples.³¹⁷ Outside Canada, more of an effort has been made to facilitate real-time remote connection opportunities between lawyers and their clients. The U.S. company Avvo not only has an online lawyer directory, but also allows callers in compliant jurisdictions to receive legal advice from expert lawyers at a flat-fee rate.³¹⁸ In Canada, a tentative step in this direction has been taken by Nishnawbe-Aski Legal Services and Pro Bono Canada

³¹¹ *Ibid.*

³¹² The Australian Productivity Commission in their recent Inquiry Report also identified legal health checks as a successful mechanism for increasing access to justice for rural populations. See . See *Productivity Report Vol 1*, *supra* note 158 at 171-173.

³¹³ Law and Justice Foundation, “Reshaping Legal Assistance Services,” *supra* note 142 at 70.

³¹⁴ *Ibid* at 71.

³¹⁵ *Ibid* at 70.

³¹⁶ Nuffield, *Challenges supra* note 7 at 21.

³¹⁷ Nuffield, *Challenges supra* note 7 at 21. Legal Aid Ontario, *Legal Aid Ontario: Q3 Report* (Toronto: LAO, 2015) at 3.

³¹⁸ Avvo Inc, online: <avvo.com>.

who, in their “Ask a Lawyer” project, created an online space for community legal workers to consult with pro bono lawyers via website forum queries and responses.³¹⁹

In areas where broadband high-speed Internet is available, video conferencing becomes a viable option. The Ontario Government’s Justice Video Network currently supports 200 videoconferencing sites across the province that have been used for everything from case conferencing and sign language interpretation, to solicitor-client hearings and training sessions.³²⁰ The Western Canada Society to Access Justice Organization runs several community legal clinics in remote areas of British Columbia using videoconferencing, and recently the Centre de santé communautaire Hamilton/Niagara setup videoconferencing links to Ottawa and Toronto for francophone residents to connect with French-speaking lawyers.³²¹ These applications demonstrate the usability, reliability and potential for growth of technology-driven access to justice solutions.

The solution category that retains a degree of experimental status is the tele-legal category. Most initiatives that incorporate video-conferencing or live chat lines tend to steer clear of facilitating direct legal consultations between lawyers and their clients. Here again, however, Australia is beginning to do just that. New South Wales Legal Aid has experience with web conferencing sessions that facilitate meetings between lawyers – located in their central offices – and clients who visit their satellite locations.³²² To help clients who may lack experience or have difficulty using the video-conferencing equipment, support workers are available to assist with the process.³²³ Further insight into the effective use of telepresence solutions could be garnered from tele-medical applications in Norway, Sweden and Finland, where this kind of technology has been implemented with great success since the early 1980s in the medical field.³²⁴ Because the effective use of tele-legal tools surmounts so many of the common access to justice barriers – by ensuring privacy from the community, allowing access to specialists, lawyers and language interpreters, obviating the need for transportation, and doing so at relatively low cost, to name a few examples – future development of these solutions may have the most impact on access to justice in rural and remote communities.

Improving Legal Information

Whether legal information acts as a supplement to a wider array of justice services, or serves as a standalone resource, it is equally valuable to recipients. The distribution of static legal information has a number of advantages, such as the ability to reach a wide audience and remain relevant and available

³¹⁹ Cohl & Thomson, *Connecting*, *supra* note 24 at 38.

³²⁰ *Ibid* at 40.

³²¹ *Ibid*.

³²² Legal Aid New South Wales, “Annual Report 2013-2014” (2014) online: <www.legalaid.nsw.gov.au>.

³²³ This solution is efficient because video conferencing skills are in far greater supply than legal skills in remote areas.

³²⁴ Eivind Rinde, Ivar Nordrum & Birger J Nymo, “Telemedicine in Rural Norway” (1993) 14 *World Health Forum* 71; Vikramajeet Khatri et al, “A Review of Telemedicine Services in Finland” (Paper delivered at the 15th Nordic Baltic Conference On Biomedical Engineering & Medical Physics, 2011), (2011) 34 *IFMBE Proceedings*; Paolo Zanaboni, Undine Knarvik & Richard Wootton, “Adoption of Routine Telemedicine in Norway: The Current Picture” (2014) 7 *Global Health Action*.

for an extended period of time. However, unlike technologically responsive and physical presence solutions, it is difficult to tailor static information to address the unique needs of individuals. Some information distribution systems adapt more readily to the individual user than others. The Halton Region Legal Health Check-Up tool, for instance, employs an interactive question and answer interface to steer users towards relevant legal information and referral options.³²⁵ Other, more traditional approaches to distributing legal information can still be useful, particularly if content is written and published with a specific region in mind. As part of the Five County Network of LAO-funded Service Providers initiative (FCN), different members of the project's five county network write monthly newsletter articles on common legal issues experienced by people in the region. The articles are published online and are available for distribution in local newspapers.³²⁶ Between print, web, television, and radio, distribution opportunities for static legal information are near endless. The FCN group has canvassed a number of distribution options that it may use to disseminate information in the future, including: posters, pamphlets, "tear-aways" in local stores, mall food court television screens, websites, blogs, household mailers, public service radio ads, community newspaper legal information columns, community legal resource guides, YouTube short videos, and radio call-in programs.³²⁷ Increasing the exposure to legal information can help people identify legal issues and make independent and informed decisions; ideally, information distribution should be part of every rural outreach initiative.³²⁸ Whenever and wherever this takes place, care should be taken to anticipate the literacy and language barriers faced by information recipients. The challenge to reduce "legal-ese" and write or speak in plain language is another critical requirement for successful information sharing.³²⁹

In terms of legal information resources for the public, two of the most well developed websites in terms of navigability, and content are the AdviceNow website, created by the Law for Life Foundation in the U.K.³³⁰ and Your Legal Rights, created by Community Legal Education Ontario (CLEO). Both sites provide a single portal where the public can access high-quality, current and accurate legal information on a range of everyday legal issues (e.g. accessing benefits, consumer disputes, employment issues, etc.) in multiple plain language formats.

Beyond providing accessible legal information to the public, CLEO provides an additional online service for service providers called the PLE Learning Exchange. A unique feature of PLE Learning Exchange is the "Connecting Communities" project aimed at providing access to justice to people who do not speak English or French, or who live in rural and remote communities by "supporting the creation of innovative training projects and partnerships between legal and community organizations."³³¹ It was designed as a three-year pilot project and since its launch has developed a variety of training projects in partnership with legal and community organizations to enhance their ability to provide legal information and referrals in rural and remote areas.³³² Guided by a Training Committee, it established a network of

³²⁵ Currie, *Halton Hills Legal Check-Up Pilot Report*, *supra* note 252.

³²⁶ Cross with Leering, *Paths to Justice: Navigating with the Wandering Lost*, *supra* note 1 at 33.

³²⁷ *Ibid.*

³²⁸ The Ontario Rural Council, *Roundtable*, *supra* note 177 at 2.

³²⁹ *Ibid* at 3.

³³⁰ AdviceNow, "Law for Life: The Foundation for Public Legal Education," *Advice Now* (blog), online: <lawforlife.org.uk/blog/advicenow>.

³³¹ CLEO, "Connecting Communities" (CLEO, 2012), online: <cleo.on.ca>.

³³² *Ibid.*

community legal workers for sharing information, research, and innovative approaches to community legal education and information.³³³ To date it has over twenty funded projects.³³⁴

Other notable legal information initiatives that improved legal self-help competencies arose from California's investment in legal self-help centers, and Vermont has formed a partnership between attorneys and local libraries to provide legal information workshops;³³⁵ Montana, Iowa, and Louisiana have experimented with providing interactive, chat-based legal support through their legal aid websites. All of these initiatives share the advantages associated with reaching a wide audience in an efficient manner, effectively surmounting the barriers imposed by cost and transportation difficulties experienced by rural individuals. Further, technology-based solutions have the added advantage of facilitating private information access, which helps address stigma concerns associated with seeking help in tight-knit rural communities.

Coordinated and Systemic Approaches

While both the national Action Committee's Final Report, *A Roadmap for Change*³³⁶ as well as the CBA *Reaching Equal Justice* Report³³⁷ have pointed to the need to develop a comprehensive and coordinated national strategy for tackling access to justice issues, the use of such strategies in the access to justice arena are in their infancy. For rural and remote issues in particular, the need for a coordinated and strategic approach to address access to justice challenges in rural and remote areas was identified as early as 2008, in Cohl and Thompson's report on linguistic and rural access to justice.³³⁸ Nonetheless, the development of such strategies has been slow, although the practice is showing promising results in a few jurisdictions – particularly in Australia.

Coordinated national and/or regional strategies have typically been used by governments to drive systemic improvements to standards and outcomes in areas of national or regional importance, such as healthcare or education. They operate by establishing, at a national or regional level, a common vision and guiding principles, key priorities, and the desired outcomes of the strategy. They are inclusive change management programs that allow government bodies (often in collaboration with other stakeholders) to move effectively towards a common goal through establishing shared benchmarks that can be met via regionally specific strategies and programs.

One of the reasons why such strategies have become increasingly popular as a mechanism of systemic change is their ability to effectively address complex and dynamic problems (e.g. homelessness, poverty, eldercare, etc.) at the national and/or regional level, while being attentive to the particularities of the

³³³ CLEO, "Connecting Communities: Strengthening Links Between Legal and Community Agencies" (CLEO, 2011), online: <cleo.on.ca>.

³³⁴ For a full list of projects, please visit PLE Learning Exchange, "Funded Projects" (CLEO, 2012), online: <<http://www.plelearningexchange.ca/>>.

³³⁵ Vermont Bar Association, "Rural Legal Education Project," online: <www.vtbar.org>.

³³⁶ Action Committee, *Roadmap for Change*, *supra* note 2.

³³⁷ Canadian Bar Association, *Reaching Equal Justice*, *supra* note 2.

³³⁸ Cohl & Thompson recommended a coordinated regional approach. See Cohl & Thompson, *Connecting, supra*

problems in individual jurisdictions. Although national and regional strategies do establish a single vision for change and a set of desired outcomes, the ways in which this change is realized is not rigidly defined. Change is effected through a wide range of tailored and collaborative initiatives that are designed and executed by various government bodies and stakeholders across the country to address the problem as it presents itself at that time, in that place. This ensures that pervasive and dynamic problems are tackled comprehensively with a variety of unique solutions that, despite their uniqueness, adhere to a common vision.

Access to justice in rural and remote areas is a complex and pervasive problem at both the national and regional levels. It is a problem that may not only benefit from having a coordinated strategy in place to address the issues, but may require one in order to make sustainable progress. A coordinated strategy, at either the regional or national level, would be a particularly effective tool to address issues in rural communities since it would allow for communities to continue developing local programs that meet the unique needs of their populations, but would also provide the vehicle for coordinating these reform initiatives across and between jurisdictions.³³⁹

Although not specific to rural and remote issues, a successful example of the coordinated yet decentralized approach to change is the National Homelessness Initiative (NHI) in Canada, which was re-tooled into the current Homelessness Partnering Strategy (HPS). The HPS serves as the federal body most directly responsible for homelessness matters and is intended to “promote a coordinated federal effort to address homelessness based on common objectives and compatible approaches.”³⁴⁰ HPS takes a community-based approach to its mandates, supporting efforts to reduce homelessness at the community level by supporting a wide range of partners. In this way, the approach to solving the complex issue of homelessness remains decentralized and tailored to the unique needs of different communities, while benefiting from national collaboration. The strategy involves collaboration at all levels, including both partnerships between federal and provincial governments, and between departments and agencies within the federal government.

Australia has arguably done the most to develop and implement comprehensive national and regional rural outreach plans that successfully address multiple access barriers. In contrast to many of the U.S. and Canadian initiatives that focus solely on encouraging more lawyers to reside and practice within rural communities,³⁴¹ the Australian approach is characterized by legal information initiatives that run in parallel with communications technology solutions and collaborative practice strategies. In the case of Queensland, these various access to justice projects are being coordinated as part of an overall strategic

note 66.

³³⁹ Standing Council on Health, *National Strategic Framework for Rural and Remote Health* (2012), online: Rural Health Australia <<http://www.ruralhealthaustralia.gov.au>>.

³⁴⁰ “Canada: National strategies to Address Homelessness,” *The Homeless Hub* (2015 Canadian Observatory on Homelessness), online: <<http://www.homelesshub.ca/solutions/national-strategies/canada>>.

³⁴¹ Cheng & Smith, “Distance Lawyering,” *supra* note 294; SDUJS, “Rural Attorney Recruitment Program,” *supra* note 296; ISBA, “ISBA Rural Practice Committee,” *supra* note 294; Nebraska State Bar Association, “Rural Practice Initiative” (Lincoln, NE: Nebraska State Bar Association, 2013) online: <www.nebar.com>.

plan.³⁴² This holistic approach encourages the success of individual efforts in relation to each other and the larger goals set by Legal Aid Queensland to improve justice access in the region.

Progress in Australia's New South Wales region has also been significant, especially in terms of bringing multiple stakeholders together to form a coordinated approach to access to justice. Legal Aid New South Wales has developed the "Cooperative Legal Service Delivery Program" (CLSD), which is a regionally-based approach to legal service delivery that aims to improve outcomes for economically and socially disadvantaged people by building cooperative and strategic networks of key legal services and community organizations.³⁴³ At the heart of the CLSD program is the idea that better coordination and planning enhances the efficient and effective use of scarce resources. The CLSD program brings together many different stakeholders, forming regional coalitions of key legal service providers, as well as regional and central coordination. A number of projects to improve legal service delivery are run by the CLSD program at the local level, based on evidence collected at the regional level showing trends in expressed legal need.

In some instances, a coordinating body that plans and strategizes at the national or regional level allows for the creation of large-scale projects involving stakeholders in different regions. An example of a rurally-focused program involving a coordinated regional approach is Legal Aid NSW's Regional Outreach Clinic Program (ROCP), which funds legal service practitioners and clinics to provide regular advice in communities in which there is identified legal need, little or no access to public legal services, and where it would not be feasible or efficient for a Legal Aid NSW office to provide an outreach service.³⁴⁴

While the Australian regional strategies mentioned above have their roots in the justice sector, another national initiative aims to address the rural and remote service delivery problem in the larger context of dealing with inequalities faced by Aboriginal peoples. Part of Australia's *Closing the Gap* policy, which seeks to address these inequalities, includes six national partnership agreements between the Commonwealth of Australia and the states and territories. A number of these agreements are focused on rural and remote issues, such as "Remote Indigenous Housing," "Remote Indigenous Public Internet Access," and "Remote Service Delivery." Each agreement outlines funding allocation, the purpose and objectives of the agreement, and the responsibilities of national and state bodies. These agreements "ensure that all levels of government are committed to the same framework of outcomes, measure of progress, and policy directions,"³⁴⁵ as well as provide additional funding, build on current initiatives, and address shortfalls.

What all of these national and regional strategies have in common is that they bring together a wide range of community partners and stakeholders to coordinate efforts through planning and evidence-based practices to work on a commonly shared goal. Because remote service delivery tends to touch on many sectors, it involves many different stakeholders that are not often in conversation with each other.

³⁴² Pro Bono Net News, "LiveHelp," *supra* note 294.

³⁴³ "Cooperative Legal Service Delivery Program," *Legal Aid New South Wales* (14 September 2015), online: <<http://www.legalaid.nsw.gov.au>>.

³⁴⁴ "Regional Outreach Clinic Program," *Legal Aid New South Wales* (19 February 2015), online: <<http://www.legalaid.nsw.gov.au>>.

³⁴⁵ "Closing the Gap: What Are the National Partnership Agreements and How Do They Fit In?" *Australian Indigenous HealthInfoNet* (18 December 2013), online: <<http://www.healthinfolnet.ecu.edu.au>>.

Collaboration at the national and regional levels is key to producing a coordinated strategy to address the issue of rural and remote service delivery head-on. As discussions in Canada continue to explore the potential of coordinated and collaborative approaches to addressing access to justice needs, examples from the Australian context provide some early examples of how national and regional strategies can be successful in addressing widespread and pervasive access to justice issues.

VII. CONCLUSION

Bucolic landscapes, pastoral images and a romanticized view of “small town living” continue to dominate our collective popular imagination when it comes to rural and remote areas. Yet, as this literature review reveals, behind these idealized notions of life in rural and remote Canada lay complex and diverse communities whose legal needs and access to legal services are profoundly affected and shaped by a matrix of factors including geography or “degree of rurality,” demographics (i.e. age, education, income, language, etc.) and community dynamics.

As we develop a more sophisticated understanding of rural and remote legal needs, the importance of outreach in the delivery of legal services becomes evident. Even if adequate resources and services are available, without digital and in-person outreach strategies, reliable infrastructure, and the legal awareness to propel people into action, people may continue to avoid or at the very least underutilize, legal services available to them.³⁴⁶ Put another way, effective legal service delivery may depend on proactively addressing unmet needs, rather than being reactive demand.

The greater use of responsive digital technologies and the use of intermediary partnerships are two approaches to achieving effective outreach that are currently receiving attention. These are discussed throughout the report (see Section VI). Those developing outreach strategies are faced with similar barriers in both rural and urban areas. Psychological barriers, local and group cultures and elements of social organization in the service delivery area are common problems. However, larger urban areas are more densely packed with a greater number of services and resources. Developing outreach strategies is certainly more challenging in rural and remote areas because of the paucity of services, greater distances, in some cases poorer access to digital services and limited or no public transportation. This is especially true for the most disadvantaged among the rural population. There may be fewer people in rural and remote areas to play first contact and gateway roles and fewer trusted intermediaries. The characteristic anonymity of cities may be lacking or may play out differently in rural and remote areas making the disclosure of problems more difficult. These are all factors that must be considered in devising outreach strategies to overcome distance and other factors that distinguish rural and remote from larger urban areas or, at least, become greater along the continuum from big city to remote regions.

Nonetheless, the literature clearly identifies a growing number of initiatives, particularly outside of Canada, that are attempting to address the complexity of rural legal service delivery needs. Promising practices range from locally based initiatives, such as providing financial incentives to lawyers to practice in rural areas, and using trusted intermediaries to help with triage and referral, to larger, systemic

³⁴⁶ Currie, Currie, *Halton Hills Legal Check-Up Pilot Report*, *supra* note 252 at 23.

approaches such as the use of national or regional strategies to coordinate efforts. Other digitally based and online solutions attempt to minimize the impact of geography and distance on service delivery and information sharing.

While promising practices and the scholarship around rural and remote access to justice is growing, there is a significant need for more research in several areas, including:

- **Distinguishing between and among rural and remote communities.** Despite the fact that Statistics Canada recognizes a continuum of “rurality,” rural and remote continue to be collapsed in discussions around legal needs and legal service provision (see Section II). However, as the literature indicates, there is great deal of conceptual complexity involved with understanding rural and remote communities, how they operate, and the particularities of need. Consequently there is a need for carefully developed operational definitions that are specific to particular areas, service delivery cultures and approaches and accessibility problems.
- **Understanding why people do or do not seek help in rural and remote areas.** As discussed in Section IV, current research tends to separate the characteristics of the system (i.e. availability and distribution of services) from the characteristics of the population with unmet need (e.g. gender, ethnicity, age). Put differently, research tends to survey either the availability and distribution of services *or* the factors that contribute to seeking or not seeking help. Rarely are these two lenses combined. There is a need for research that articulates how the characteristics of the system, the population and the social and cultural characteristics of place (see Section V) combine to influence the propensity of the population to access and use services.
- **Reaching vulnerable populations.** More research is also needed into how to best reach extremely marginalized and vulnerable populations in rural and remote communities, such as bisexual, gay, lesbian and transgendered persons, persons with mental health issues, persons experiencing domestic violence, and others, who may be even more reluctant to seek help from service providers due to the dynamics of rural life and the way in which service provision is typically offered.
- **Legal education and improving professional presence in rural legal service delivery.** To date, there is very little Canadian research on how to best integrate rural and remote access to justice issues into the law school curriculum. It is also not clear from current research which factors most influence students’ decisions to practice or not practice in rural areas. While this pool of research is growing, more research on how a “placed-based” model of legal education can influence the positioning and retention of young lawyers in rural areas is necessary.
- **Primary place-based research.** There is an overarching need for place-based research that takes into account the diversity within and among rural communities. This means more evidenced-based primary research that can inform the creation of tailored solutions to meet community needs. There is also a need to ensure that this place-based research informs the development of policies and legislation that, as discussed, can be “urban-centric” in orientation (see Section IV).

- **Regional and National strategies.** As discussed, the use of coordinated regional and national strategies as a means to address rural and remote access issues is still in its infancy (see Section VI). However, early successes with this approach in Australia, combined with the research on the value of collaborative or “joined-up” service delivery, makes this a very promising area of practice that needs to be further researched. Moreover, more effective evaluation methods for such coordinated programs need to be developed, as it can be difficult to demonstrate outcomes in such projects.³⁴⁷

One-fifth of Canadians live in rural and remote communities. However, Canada has a long way to go in examining and addressing rural and remote legal service delivery in the Canadian context compared to other jurisdictions. The fact that so many Canadians live in rural and remote areas, the importance of rural areas to our economy and society, and the unmet legal needs of these communities together mean that access to justice for rural populations should be a major concern of justice system workers, policymakers and the wider Canadian society. Accordingly, greater attention to rural and remote legal needs, starting with recognizing the unique challenges, strengths, and promising practices in these communities, is a good first step.

³⁴⁷ See for example the discussion on the difficulty in evaluating the outcomes of joined-up services in Reshaping Legal Assistance Services Paper. Although this discussion refers to the difficulty joined-up services have in demonstrating outputs, arguably the same is true for coordinated strategic approaches to service delivery as these types of programs are coordinated service, just a higher level. See Law and Justice Foundation, “Reshaping Legal Assistance Services,” *supra* note 142 at 99.