

Toward a Better Justice System: Brazilian and Canadian best practices on Governance

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Summary: National Justice Systems are hardly seen as a state-of-the-art one: complex access, belated trials and sentences, high costs and low efficiency seem almost a universal hindrance. Despite some differences between their Justice Systems, Canada and Brazil have been developing programs in order to improve the governance of the National Justice System. This research had as its main goal to do a comparative study – based on a Canadian Department of Justice Conceptual Framework created to strengthen the ability to measure and evaluate the justice system – about best practices in both countries toward a better Justice System. According to Canadian Justice System key actors, Legal Aid, Mediation Programs, and the Program of Legal Education and Information (PLEI) were selected as best practices. According to key actors in Brazil, the best practices are Special Courts and Communitarian Justice Program.

1. Introduction

Citizens from a wide range of countries hardly see their National Justice System as a state-of-the-art one. Complex access, belated trials and sentences, high costs and low efficiency seem almost a universal hindrance. Although there is apparently no panacea, quick fixes or simple solutions, many alternatives are being tried worldwide. The judicial reality in Brazil is not different and Canada may encounter in its system some limitations as well.

Some research and government reports drawn up in the referred countries have shown that general population expects far beyond from their National Justice System. In Brazil, a survey conducted by Universidade de Brasília - UnB found that 83.9% of population agree the Judiciary have problems, and needs to go through a significantly reduction of its own failures (DATAUNB, 2005). The main problems reported on the survey concerning the Justice System revealed: slow pace, lack of trust, high cost and ineffectiveness. In Canada, a document published by the Department of Justice entitled Report On Plans and Priorities has indicated prospective investments amounting over US\$ 415 Million CAD during 2005-2006 term, for the purpose of “*a fair, relevant, accessible justice system that reflects Canadian values*” and whose major priority is “*promoting access to and improving efficiencies in the justice system*” (DEPARTMENT OF JUSTICE – CANADA, 2005a).

Despite some differences between their National Justice Systems, Brazil and Canada have been developing programs and opening the subject to a variety of interdisciplinary areas – especially to public policy and administration academia – in order to improve the governance of the National Justice System. Such attitude must be also a growing tendency among international cooperation agencies, like the World Bank or the Organization for Economic Co-operation and Development – OECD. These organizations are constantly working on advances to achieve fair and effective Justice Systems around the world by seeking solutions to the similar challenges and needs of various governments and promoting good practices that enhance the effectiveness of democratic institutions (WORLDBANK, 2005; OECD, 2005).

Outlining Brazil and Canada’s cases as a frame of reference, this research had as its main goal to do a comparative study about the best practices in both countries toward a better Justice System.

Initially, this paper presents some considerations about the subject matter in Brazil and Canada, beginning with a brief overview. Then, considerations about the main research concepts – governance, good governance and best practice – are treated with relevance. An analysis of the Canadian Department of Justice Conceptual Framework, and its capability to measure, evaluate

and report on the state of the National Justice System are presented. From this analysis the variables for a better justice system have been chosen: accessibility, adaptability, effectiveness, inclusiveness fairness and equity. This Canadian model is particularly important because it has been used for relating these variables with this research core concepts, and driving the interviews with key actors in search of practices for a better justice system.

Finally a set of Canadian and Brazilian Justice System best practices was compiled, based on an analysis of the interviews with key actors of each country's National Justice System.

2. Overview

The Justice System is an important set of Institutions in most democratic countries. Composed by many actors, such as courts and tribunals, legal services (Private Bar, Paralegals, Crowns, Prosecutors), Government branch (usually, a Government Justice Department), Community Agencies and NGOs, Justice Systems around the world have much in common: they are complex, diverse, large, and not as effective as citizens expect.

This ineffectiveness is the major reason the optimization of the Justice Systems is constantly in focus, not only in fully-developed countries as Canada but also in developing countries as Brazil. Of course, the Justice System is markedly different in these two countries, and the causes range from law origins to the kind of system actors. Nonetheless, both countries are constantly experimenting modernization of the Justice System.

The actions of Government Agents confirm that a modern justice system is an important item on agenda. Mr. Vic Toews, Former Minister of Justice and Attorney General of Canada, said August 2006, in a speech for Quebec Canadian Bar Association that Canadians “believe justice system has become less and less effective (...), hasn’t kept up with the realities of the 21st century, (...) and moves too slowly” (DEPARTMENT OF JUSTICE – CANADA, 2006). In Brazil, on December 2004, the *Pacto de Estado em favor de um Judiciário mais Rápido e Republicano (State Pact to a More Effective and Republican Judiciary)*, joined the President of Brazil, the President of Supreme Court and Chiefs of the Legislative branch on an agreement for a modern justice system “capable to reduce court delays and the low efficacy of judge decisions that contributes to retard national development“ (BRASIL, 2004).

Government speeches strongly encouraged discussion about modernization of justice system because most organizations that integrate the Justice System are state institutions. Beside then, there are Community Agencies and NGOs orbiting around the system. For such reason, the present research proposal include both public administration as policy science theories, as it is shown below. When terms like effectiveness, fast track procedures and efficacy appear in justice system discussion - besides citizens’ opinion about services provided by the state - they come along with the concept of governance.

3. Research Core Concepts

In this paper, we will use the following concepts: Governance will be referred as the processes of governing through public policy networks that include actors from both public and private sector (Lemieux,2000, p.120). Good Governance is Governance, with eight major characteristics: it is participatory, consensus oriented, accountable, transparent, responsive, effective and efficient, equitable and inclusive and follows the rule of law (OECD,2006). Finally, Best Practice is an activity or procedure that has produced outstanding results and could be adapted to improve effectiveness and efficiency in another situation.(UNITED NATIONS ,

2006).

For this research's purposes, justice system key actors have been oriented to consider as practices any action, program or policy that is: a) driven at Federal Level; or b) part of a Federal program; or c) a relevant practice developed at Provincial level (State Level, in Brazil), which should be adopted at most part of Canada or Brazil. The concept of Justice System is very broad, so in order to study as many practices as possible, the interviewees have been previously oriented to consider Justice System institutions such as Courts and Tribunals, Legal Services (Crowns, Prosecutors and Private Bar), Government Agencies (also Administration of Justice), Non-Governmental Organizations and also the Legal Framework.

4. Methodology: how "best practices" have been prospected

After this brief concepts presentation, this section is dedicated to describe the research design and methodology. Technically, this research can be characterized as an empirical investigation of a descriptive kind because it "proposes to investigate 'what is', or describe phenomenon characteristics as it is" (RICHARDSON et al, 1985). Content Analysis was chosen as the research technique, a set of procedures for describing communication messages content (id, 1985). According to Vala (1986, p.104), this technique has as its main goal to make inferences about communication messages based on an explicit logic.

First of all, it is worth emphasizing the research question from which this research itself originates: *What are Brazilian and Canadian best practices – regarding governance – toward a better Justice System?*

A preliminary step to face this question is to define the dimensions and variables which will be used to identify a "good practice toward a better Justice System". To face this challenge, it will be used a Canadian Department of Justice Conceptual Framework, created to strengthen the ability to measure and evaluate the justice system. According to the report, principles as accessibility, adaptability, effectiveness, inclusiveness, fairness and equity "can provide a framework through which regular and meaningful reporting can be done in ways that reflect the diversity, complexity and content of justice system in Canada" (DEPARTMENT OF JUSTICE - CANADA, 2004). The table below shows a fragment where justice system principles are described:

Table 1: Justice System Principles Identification	
Principles	Identification of Principles
Accessible	<ul style="list-style-type: none"> • Ensuring common understanding of, and broad access to, the justice system by all members of the community including non-participants as well as victims and accused; • Providing reasonable access to programs and services in different regions and communities; • Recognizing the diffuse interests of all communities, ensuring that the business of justice is accessible and available.
Adaptable	<ul style="list-style-type: none"> • Providing services and programs that are new and innovative; • Attempting to effect changes in the system by introducing new ways of doing business that anticipate a changing environment and effect changes in the Justice system; • Provision of alternatives to the formal justice model appropriate – for example Native Courts; restorative justice; alternative dispute resolution; • New harms or crimes that need to be addressed; new initiatives; adequate implementation; • Exploring complimentary approaches for greater effectiveness.
Effective	<ul style="list-style-type: none"> • Ensuring that costs of services are reasonable but commensurate with equity and justice; • Ensuring that levels of service respond to need; • Monitoring the size and scope of the justice system and balancing the effectiveness of

	<ul style="list-style-type: none"> achieving goals with efficient use of appropriate resources; Measuring the extent of unmet needs for services; Working with private sector and community sector service providers as appropriate to achieve goals effectively.
Inclusive	<ul style="list-style-type: none"> Providing services and programs in ways that recognize the composition and needs of the community which is increasingly diverse and complex; Paying attention to the legal education and justice system needs of new Canadians and those from vulnerable groups; Diversity changes the patterns of communication that are required to reach the entire citizenry.
Fair and Equitable	<ul style="list-style-type: none"> Identifying justice system outcomes and results that are in keeping with basic values and legislative frameworks in place; Ensuring that the application of the law is fair and impartial—all equal in eyes of the law; Ensuring that fairness, due justice, human rights and legal rights maintained and strengthened where appropriate; Ensuring populations are protected by the system and before the system. Justice initiatives must be communicated in a way that clarifies their values and social objectives.

Source: Team Report on strengthen the ability to measure evaluate and report on the state of national justice systems. (DEPARTMENT OF JUSTICE – CANADA, 2004)

With these five base principles for strengthening the ability to measure and evaluate the justice system, and the core research concepts that have been presented, it is also necessary to relate them in order to guarantee the answer of the research question.

Regarding this research core concepts, we say that a better justice system demands a better governance process, or a good governance process. So, when we try to explore *What are Brazilian and Canadian best practices – regarding governance – toward a better Justice System*, we are looking for practices that improve the process of governance of the Justice System. On other hand, when we look for developed practices for improving the justice system governance, it is necessary to choose some measurement or evaluation model or framework to drive the data collecting process. In this research, the Canadian Department of Justice Conceptual Framework will be used for this purpose.

In the development of this research, the means that was chosen to identify justice system good practices was through the principles presented in the Canadian Department of Justice Conceptual Framework. Prior to that, it was necessary to understand how these principles are related to good governance characteristics. This was done by the author based on research theory and conceptual framework principles identification.

Good Governance Characteristics ¹	Associated Principle at Canadian Department of Justice Conceptual Framework
Participatory	Accessible Principle
Effective and Efficient	Effective and Adaptable Principle
Equitable and Inclusive	Inclusive Principle
Respect to Rule of Law	Fair and Equitable

Source: Developed by the research author, based on theory and conceptual framework principles identification. ¹ Consensus Oriented characteristic of Good Governance has not be included in the table due a relation absence at conceptual framework.

Based on the principles described on the conceptual framework, a structured questionnaire was designed for use in interviewing justice system key actors. For each principle some questions were developed in order to capture from the interviewees the references to good

practices that, in his or her opinion, improve the Justice System in relation with some principle, and therefore some good governance characteristic.

For instance, for prospecting good practices related to the Accessible Principle, the following two questions have been composed, based on content of table 1 as follows:

Principles	Identification of Principles
Accessible	<ul style="list-style-type: none"> • Ensuring common understanding of, and broad access to, the justice system by all members of the community including non-participants as well as victims and accused; • Providing reasonable access to programs and services in different regions and communities; • Recognizing the diffuse interests of all communities, ensuring that the business of justice is accessible and available.

Questions:

- a. An important step to access Justice System is citizens **understanding its functioning**. Could you mention a practice developed to improve citizen understanding about the Justice System?
- b. Do you know some good practice at Justice System which main objective is to **guarantee broad access to programs and services provided by** the system?

The Research Questionnaire comprised ten questions: two for the Accessible Principle; one for the Adaptable Principle; four for the Effective Principle; two for the Inclusive Principle; and one for the Fair and Equitable Principle. These questions were created as necessary in order to fully identify the conceptual framework principles. In order to avoid confusion about the meanings of term definitions, research concepts have been presented to the interviewees prior to the interviews.

The questionnaire was presented to fourteen justice system key actors – seven at Canada and seven at Brazil – from two different sectors of society: Government and Academia. Due to resource limitations it was not possible cover private and non-government sectors. In Canada, four key actors were chosen from the Academia and three from the Government. In Brazil three people from the Academia and four from the Government were interviewed. It should be noted that most Brazilian government agents that were interviewed are also university professors. All of these people have key connections with National Justice System, some of them work on the Justice System at the strategic level, driving public policies. Judges and Prosecutors, occupying (or having occupied) high-level positions on their organizations, were interviewed. From Academia, Law and Political Science professors whose research is related to justice system improvement have been interviewed. Also former students that received awards for their academic achievements. Both at Brazil and Canada the researcher chose to interview high-level public employees and university professors. As was agreed, none of the interviewees was identified by their names or their job positions.

The data acquired from the interviews of the different groups – due to its quantity, complexity and diversity – was analyzed qualitatively with the aid of ATLAS.TI software system, that was used to classify the interviewees' speeches into classes: "accessibility", "adaptability", "effectiveness", "inclusiveness" and "fairness and equity", and then related with good governance characteristics.

After this analysis, the good practices have been organized according to the following criteria: a) How many key actors have mentioned that practice. This indicates whether that practice is understood as such by the majority of key actors. If a practice was mentioned by more

than 50% of interviewees, it has been considered relevant, and selected to be presented in the research report; b) How many times that practice was referenced in the interviews. This criterium is relevant to identify and avoid bias, as a single key actor could mention one practice many times relating it to more than one principle; c) The number of principles that the practice has been related to. This number is obtained from the previous ones. There were 10 questions that are linked to 5 principles. A good practice could be mentioned in the answer to more than one question, and therefore be related to more than one principle.

The table below shows how mentioned practices have been organized.

Practice	References made by Justice System key-actors			Principles				
	# Key-Actors	# References	# Principles	Accessible	Adaptable	Effective	Inclusive	Fair and Equitable
Program of legal Education and Information (PLEI Program) / Legal Education	4	7	3	X (4)			X (2)	X

Source: Research data analysis, based on Justice System key-actors interviews.

This table indicates that: a) PLEI Program was mentioned by 4 key actors; b) PLEI Program was referred 7 times by these four actors. c) PLEI Program was related to three principles, according to the given answers. The numbers in parenthesis indicates that PLEI Programs was referred four times related to the Accessible Principle, two times related to the Inclusive Principle, and one time related to the Fair and Equitable Principle.

The data from Brazilian and Canadian interviews were analyzed separately, as the research objective demands a report of each country's best practices.

5. Results I: Canadian Best Practices

In this section we present the results of the interviews with key actors of the Canadian Justice System. In most of them, Legal Aid, Mediation programs, and the Program of Legal Education and Information have been considered best practices developed for the improvement of the Canadian Justice System, and a concise analysis of these practices and programs is presented in this section. The main objective of this topic is to present readers with a preliminary views of those best practices, along with a few references for further information.

Best Practice	References made by Justice System key-actors			Principles				
	# Key-Actors	# References	# Principles	Accessible	Adaptable	Effective	Inclusive	Fair and Equitable
Legal Aid Program	5	7	2	X (6)				X
Mediation Programs	5	7	3	X	X (5)		X	
Program of legal Education and Information (PLEI Program) / Legal Education	4	7	3	X (4)			X (2)	X

Source: Research data analysis, based on Justice System key-actors interviews.

5.1. Legal Aid

"The Legal system is not accessible enough, specially for those people that don't have enough money", has said CAD-ACAD-04. CAN-ACAD-01 expressed concern about "the cost of the system, specially the cost of lawyers". In fact, judicial costs seems to be a big problem of Canadian Justice System, according to direct reference from five out of seven interviewees to Legal Aid programs when answering about Canadian best practices in National Justice System. Canadian judicial costs were indirectly mentioned in all seven interviews as an important factor that hinders Canadians' access to the Justice System.

The Canadian Department of Justice official Legal Aid Program web site displays the text "a strong legal aid system is one of the pillars supporting Canada's system of justice", and "Legal aid ensures that economically disadvantaged people living in Canada have equitable access to justice system" (DEPARTAMENT OF JUSTICE, 2008). Program responsibility is partitioned, with the Federal Government providing contribution funding through negotiated agreements, and Provinces and Territories responsible for the management and administration, retaining the rights to determine financial eligibility and coverage restrictions (DEPARTAMENT OF JUSTICE, 2002). Legal Aid programs included both criminal and civil legal aid, although the last one is an exclusive responsibility of the Provincial Governments. Legal Aid is provided in many ways, commonly using Legal Aid Certificates, which provide low income people with a pre-set number of lawyer service hours.

The concept of "disadvantage people", as written in the official Department of Justice web site, seems not to be very broad. CAN-ACAD-03 said that Legal Aid Program is very restricted, and is available "only for people that are really, really poor; they must be starving, must not have jobs or if they have a job, earn less than minimum wage". CAN-GOV-01 seems to agree, saying that "it is really just for poor people, it is not for everybody, it is not for just anybody who needs a lawyer." These opinions are not the same of the Research and Statistics Division of Canadian Department of Justice, which produced a report called "Legal Aid Eligibility and Covered at Canada" which says that "depending on the jurisdiction, the percentage of poor adults aged from 18 to 35 who would qualify for legal aid varies from 21% to 88%" (DEPARTAMENT OF JUSTICE, 2002).

In the interviews, Canadian Justice System key actors have mentioned Legal Aid Programs as it is shown in the following table.

Best Practice	References made by Justice System key-actors			Principles				
	# Key-Actors	# References	# Principles	Accessible	Adaptable	Effective	Inclusive	Fair and Equitable
Legal Aid Programs	5	7	2	X (6)				X

Source: Research data analysis, based on Justice System key-actors interviews.

According to the table: a) Legal Aid Programs have been mentioned by five interviewees; b) Legal Aid Programs was referred seven times by all five interviewees; c) Legal Aid Programs

were related to two principles. The numbers into parenthesis indicates that Legal Aid Programs was referred six times as being related to the Accessible Principle, and one time being related to the Fair and Equitable Principle.

According to Canadian Justice System key actors, Legal Aid programs are a good practice because they improve citizens' understanding of the Justice System, guarantee broad access to programs and services provided by the system (Accessible Principle, mentioned by CAN-ACAD-01, CAN-ACAD-03, CAN-ACAD-04, CAN-GOV-01 and CAN-GOV-03) and are a way to confirm that the law must be fair and impartial (Fair and Equitable Principle, mentioned by CAN-GOV-01). According to table 2, presented before, this practice improves the Justice System Governance in the following characteristics: Participation and Respect to Rule of Law.

Additional comments, directly and indirectly related to Legal Aid programs and costs of Canadian Justice Systems, mentioned by the interviewees follow: according to CAN-ACAD-02 "researches have shown that half of the self-represented litigants could afford lawyers, but they don't want it, because lawyers with university degree are expensive, so they decide to do it by themselves. They go to the courts and say 'I am representing myself, can you please give me the forms', and the people in the desk say 'It's more complex than that. You have to understand how the court system works' ". The study of the real costs of the system is difficult, according to CAN-ACAD-01: "it is difficult to study legal costs, because the larger costs are private costs, and we cannot break into lawyer firms files and look how much they are asking for their clients". CAN-ACAD-03 links the system's costs with Mediation programs, which is also the next Canadian Justice System good practice listed in this research results. According to this key actor "most litigants do not have the money to conclude the judicial case, and mediation is some kind of last resource, so they get into a negotiation expecting at least a minimum success. But the other side can detect this and exploit the situation". CAN-GOV-01 exalts the Program's success: "I think it is important because that kind of program ensures that poor people are in some way being protected. I think it is seen by the population at large as an important measure for making sure there is fairness in the system, it is not just because you are poor that you will suffer the consequences."

5.2. Mediation Programs

Most Canadian Provinces have established Mediation Programs as mandatory procedures in civil cases. Some Provinces do not mandate it, but nevertheless suggest or encourage the procedures. The Ontario Province, for instance, has a mandatory mediation program which has been introduced in 1999 for civil, non family, case management actions with Rule 24.1 of the Rules of Civil Procedure (EVALUATION COMMITTEE OF THE ONTARIO CIVIL RULES COMMITTEE, 2001).

The official web site of the Ontario Ministry of the Attorney General defines mediation as "one way for people to settle disputes or lawsuits outside of court. In mediation, a neutral third party - the mediator - helps the disputing parties look for a solution that works for them". According to this source, "The purpose of mediation is not to determine who wins and who loses, but to develop creative solutions to disputes in a way that is not possible at a trial".

Most arguments for mandatory mediation relate to its effectiveness: it makes the judicial processes faster and cheaper. According to the Report of the Evaluation Committee for the Mandatory Mediation Rule Pilot Project (EVALUATION COMMITTEE OF THE ONTARIO CIVIL RULES COMMITTEE, 2001) "Mandatory mediation cases of all types proceed to disposition more expeditiously than cases not subject to mandatory mediation". Its effectiveness

is further confirmed by other reports: “over 90 percent of all lawsuits settle before getting to the trial stage” (ONTARIO MINISTRY OF THE ATTORNEY GENERAL, 2008).

In spite of those strong arguments, some authors disagree in an important conceptual matter. Gilbert (2004) evaluates “mandatory mediation” as “a contradiction in terms”. According to Gilbert, “the principle of voluntariness is essential in the mediation concept. The parties are only bound to what they have voluntarily agreed on”. And he also provokes: “They cannot be forced to agree on something they do not want to do. However, does the success of the process depend on the parties’ willingness to involve themselves in it?”.

The following table 6 shows how Canadian key actors have evaluated Mediation Programs.

Best Practice	References made by Justice System key-actors			Principles				
	# Key-Actors	# References	# Principles	Accessible	Adaptable	Effective	Inclusive	Fair and Equitable
Mediation Programs	5	7	3	X	X (5)		X	

Source: Research data analysis, based on Justice System key-actors interviews.

According to the table 6, Mediation Programs have been mentioned seven times by five interviewees, and have been associated to three principles. According to the interviewed Canadian Justice System key actors, the implementation of Mediation Programs is a good practice because it improves citizens’ understanding of the Justice system and guarantees broad access to programs and services provided by the system (Accessible Principle, mentioned by CAN-ACAD-03); it is a new and innovative program (Adaptable Principle, mentioned by CAN-ACAD-01, CAN-ACAD-02, CAN-ACAD-03, CAN-ACAD-04 and CAN-GOV-01) and the programs are being provided in ways that take into account the diversity and complexity of the community, and change the patterns of communication used by the Justice System (Inclusive Principle, mentioned by CAN-ACAD-02). According to table 2 this practice improves Justice System Governance in the following characteristics: Participation; Effectiveness and Efficiency; and Equity and Inclusiveness.

Some of the interviewees have commented further: CAN-ACAD-01 highlights the importance of Mediation as an innovative practice “When we talk about new and innovative services and programs, in a lot of times we have to talk about the Mediation Program. The one that was designed, in civil procedure, was in Ontario, where early mediation is mandatory. Alternative dispute resolution is an important innovation.”. CAN-ACAD-02 recalled the relationship between mediation and time saving, and the role of experiment of Ottawa mediators: “Mediation is very useful, you don’t have to go to the Court, you don’t have to waste your time. I think is a very successful project, particularly in Ottawa, because there are civil mediators at Ottawa who handle most of the cases that are very, very good”. CAN-GOV-01 mentioned the economy of resources: “In terms of non-criminal justice, civil courts, people litigating each other, and things like that, I think that there has been a lot of attempts to try to alternative mediation so that people do not necessarily go the courts. In some cases they first have to try to mediate outside the court, before a traditional court, which uses a lot of resources, a lot of time”. Finally, it is convenient to recall the comment from CAN-ACAD-03 regarding legal aid, as was

mentioned in the previous section, due to the relationship between the economy of money and mediation “most litigants do not have money to conclude the judicial case, and mediation is some kind of last resource, so they get into a negotiation expecting at least a minimum success”.

5.3. Program of Legal Education and Information – PLEI

According to the Canadian Department of Justice official web site, Public Legal Education and Information (PLEI) “provide members of the public with the legal information they need to make informed decisions and participate effectively in the justice system. These activities contribute to ensuring that Canada has an accessible and responsive justice system that meets the needs of its citizens” (DEPARTMENT OF JUSTICE - CANADA, 2008b).

Mentioned by most of Canadian Justice System key actors, PLEI is a partnership between Canada’s Federal Government and the Provincial Governments. Basically, one designated PLEI organization receives annual funding for the development of a particular program. This program is not required to be similar to some other PLEI organization in another Province. “These organizations do not give ‘legal advice’. They may only distribute information about various aspects of the law or provide referrals so that people can make informed justice-related decisions”. (DEPARTMENT OF JUSTICE - CANADA, 2008b).

In the interview CAN-GOV-03 said that programs are “involved with plain language descriptions of laws and legal issues and simple questions and answers like: where to go, what you have to do when you arrive at the court house, what is the legal aid, where you get the funds”. CAN-GOV-03 also mentioned that PLEI programs “in recent years has been providing information in more languages, including Sign and Braille languages, for people with disabilities, because you have so many diverse groups in Canada.”

Best Practice	References made by Justice System key-actors			Principles				
	# Key-Actors	# References	# Principles	Accessible	Adaptable	Effective	Inclusive	Fair and Equitable
Program of legal Education and Information (PLEI Program)	4	7	3	X (4)			X (2)	X

Source: Research data analysis, based on Justice System key-actors interviews.

According to table 7, Programs of Legal Education and Information – PLEI have been mentioned seven times by four key actors, and have been associated to three principles. To Canadian Justice System key actors, a PLEI is a good practice because: it improves citizens’ understanding of the Justice system and guarantees broad access to programs and services provided by the system (Accessible Principle, mentioned by CAN-ACAD-01, CAN-GOV-01 and CAN-GOV-03); it is being provided in ways that take into account the diversity and complexity of the community, and changes the patterns of communication used by the Justice System (Inclusive Principle, mentioned by CAN-ACAD-01 and CAN-ACAD-04) and; it is a means to confirm that the law must be fair and impartial (Fair and Equitable Principle, mentioned by CAN-GOV-01). According to table 2 this practice improves Justice System Governance in the following characteristics: Participation, Equity and Inclusiveness, and respect to Rule of Law.

Some interviewees made additional comments. CAN-GOV-01 recalled that most PLEI organizations “are web based now, to make sure that information is available to people on the Internet”. This key actor highlighted a program recently developed by one PLEI organization; “an example of one specific publication (...) is a publication called The Secrets of Silver Horse. It is actually a publication for young children to help them understand when they have been subjected to abuse, sexual abuse or that kind of thing, and sure, in such way it is a source to explain to somebody who is very young, so it is trying to provide information about people’s legal option, that’s such an example and is hard, targets little kids.” This story is openly available through the Internet which means that this practice is accessible not only to Canadians, but also other countries. If translated to other Portuguese, this practice could easily be replicated to Brazil. CAN-GOV-01 also calls attention to the importance of this kind of program: “ (...) because the Justice System is not something you have people usually coming to your door and ask you for information.”

6. Results II: Brazilian Best Practices

In this section we show the results of the interviews with Brazilian Justice System key actors. According to most of them, Special Courts and Communitarian Justice Programs may be considered best practices developed to improve the Brazilian Justice System. A concise analysis of these practices and programs is presented in this section, with the objective to present readers with a preliminary views of those best practices, along with a few references for further information.

Table 8: Brazilian Best Practices, according mostly Brazilian Justice System Key Actors								
Best Practice	References made by Justice System key- actors			Principles				
	# Key- Actors	# References	# Principles	Accessible	Adaptable	Effective	Inclusive	Fair and Equitable
Special Courts	5	10	5	X (3)	X (2)	X (2)	X	X (2)
Communitarian Justice Program	4	13	5	X (3)	X (2)	X (4)	X (3)	X

Source: Research data analysis, based on Justice System key-actors interviews.

6.1. Special Courts

Brazilian *Juizados Especiais*, here translated as Special Courts, have been mentioned by five out of seven Brazilian Justice System key actors. They were created by the 9.099/1995 Federal Law. This law rules that Special Courts can be formed to drive both Civil and Criminal cases, both at the State and the Federal level. An important characteristic of Special Courts is that the cases it judges can not involve monetary values over than sixty Brazilian minimum wages, around CAD\$ 14,500.00 on April, 2008. Other limitations exists, depending on the State and the Federal Courts regulation.

Brazilian Special Courts, formerly known as Small Claim Courts have been innovative as they implement a paradigm based on conciliation rather than dispute. The law introduced core objectives like: make it easy for ordinary citizens to access the justice system; look for

resolutions of small claim cases. Brazilian Federal Law 9.099/1995 has established that Special Courts must be driven by the following principles: oral decisions and procedures; simplicity; informality; efficient judicial procedures and celerity; conciliation and negotiation (BRASIL, 1995). The Special Courts' approach to conflict resolution is conciliation instead of sentencing. Sadek (2007) remarks that the main objective of Special Courts is “composition, and not adversity, (...) it is a variable-sum game and not a sum-zero game, where if one win other must lost”.

Sadek’s (2007) research, which focused on Brazilian Special Courts practices, highlights some important characteristics of Special Courts: a) Special Courts installed in Brazil are fewer than necessary. Only 31% of cities have their own Special Court; b) Most Special Courts (54.7%) cases are about consumer-service regulation disputes and traffic accidents; c) Cases that have been through all Special Courts procedures take an average of 349 days to reach resolution. When there a resolution turns into judicial execution, this average rises to 649 days; d) According to a poll by the Brazilian Judges Association, population trust in Special Courts is high: 71.8% trust the Special Courts. The value is higher than the confidence in the Supreme Court, trusted by 52.7%; and e) 60.2% of all litigants propose the case without a lawyer. Finally, Sadek's research concludes that “the empowerment of Special Courts is a necessary step to a fair and equitable society. To accept the challenge of the Special Courts philosophy is a commitment to pro citizenry changes”.

In the interviews, Brazilian Justice System key actors have mentioned Special Courts as shown in the following table.

Best Practice	References made by Justice System key-actors			Principles				
	# Key-Actors	# References	# Principles	Accessible	Adaptable	Effective	Inclusive	Fair and Equitable
Special Courts	5	10	5	X (3)	X (2)	X (2)	X	X (2)

Source: Research data analysis, based on Justice System key-actors interviews.

According to the table: a) Special Courts have been mentioned by five key-actors; b) Special Courts was referred ten times by all five actors. c) Special Courts was associated to all five principles. The numbers in parenthesis indicate that Special Courts were referred to three times as relating to Accessible Principle, two times as relating to the Adaptable Principle, two times related to the Effective Principle, once in relation to the Inclusive Principle, and twice as being related to the Fair and Equitable Principle.

Therefore, according to Brazilian Justice System key actors, the implementation of Special Courts is a good practice because: it improves citizens’ understanding of the Justice system and guarantees broad access to programs and services provided by the system (Accessible Principle, mentioned by BRA-ACAD-01, BRA-GOV-01 and BRA-GOV-02); is a new and innovative service or program (Adaptable Principle, mentioned by BRA-GOV-02 and BRA-GOV-04); ensures that the quality of services is responding to society’s needs and balances the effectiveness of achieving goals with efficient use of appropriate resources (Effective Principle, mentioned by BRA-GOV-01 and BRA-GOV-04); changes the patterns of communication used throughout the Justice System (Inclusive Principle, mentioned by BRA-ACAD-01); and is a

means to assure that the law must be fair and impartial (Fair and Equitable Principle, mentioned by BRA-ACAD-01 and BRA-GOV-03). According to table 2 as presented, this practice improves Justice System Governance in the following characteristics: Participation, Effectiveness and Efficiency, Equity and Inclusiveness, and respect to Rule of Law.

Additional comments, by the interviewees: BRA-GOV-02 highlighted Federal Special Courts as an example of distributive justice, reminding of its important role in disputes involving Federal Social Welfare and poor citizens demanding Government pensions. These cases, instead of being transformed into long-term disputes in the regular Federal Courts, have found fast track solutions through the Federal Special Courts. BRA-GOV-02 calls this event an example of distributive Justice, especially because this sort of litigation usually involves very poor people. BRA-GOV-01 mentioned Civil Itinerant Courts, a kind of mobile Civil Special Court structured to move to wherever a possible “future” litigation might happen, as in a case of traffic accidents. It includes a team specialized in mediation and negotiation, which is prepared to propose an agreement in order to avoid a costly judicial dispute.

6.2. Communitarian Justice Program

The Communitarian Justice Program is a program “developed within the community, for the community and by the community”, as remarked interviewee BRA-GOV-03. The Program was created in 2000, having as its main goal to democratize justice accomplishment, by returning to citizens and the community the capacity of managing their conflicts with some autonomy (MINISTERIO DA JUSTIÇA, 2006, p.24). Communitarian Justice Program also has United Nations Development Program – UNDP support since 2005.

In 2006, the program was implemented by 40 communitarian agents in a pilot project conducted at Ceilandia and Taguatinga, suburbs of Brazil’s capital Brasília, with 332.455 and 223.452 habitants. Being a member of the community was a mandatory condition for one to become an agent, concerning the fact that the agents would have as an asset a greater understanding of local language and affinity with local values. The selection of agents is an elaborated process conducted by a specialized team, comprised of psychologists and social assistants. After preliminary selection, they receive basic judicial education, including fundamentals of law, communitarian mediation techniques and social networks creation and maintenance. All training program are locally developed, at the Citizenship and Justice School, related to the Local Court (Tribunal de Justiça do Distrito Federal e dos Territórios). Communitarian agents activity is overseen by an interdisciplinary team, formed by lawyers, psychologists, social assistants, administrative employees, an artist – to help in informal activities, such as theater plays for teaching the community about law fundamentals – and a judge, who coordinates the Program.

Communitarian agents have the following activities (MINISTERIO DA JUSTIÇA, 2006, p.45): a) offer judicial information, avoiding usual, complex and formal forensic language. The program’s main goal is to broaden access to judicial information, explaining citizen rights and the ways to make them effective. Secondary objectives are: a1) preventing future litigations caused by misinformation, a2) empowering the parties of a dispute to achieve dialogue in an mediation process, and a3) offering means for citizens to access the Judiciary branch and claim their rights when necessary; b) communitarian mediation, as a traditional mediation process, with the following characteristics: b1) it is a volunteer process; b2) the mediator is a third party, without particular interest in the dispute outcome; b3) the mediator has no decision power, b4) resolution is reached by consensus of the conflicting parties; c) social networks creation and maintenance,

developing a citizenship network as a means for transforming existing community demands into opportunities for social mobilization and collective mediation. This is possible because what sometimes is seen as an individual problem may actually be a collective one, which is amenable to community mobilization, raising awareness of the problem, discussing possible solutions, and working together as a community for some resolution outside of the courts, if possible.

The analysis of the interviews showed that Brazilian Justice System key actors have mentioned Communitarian Justice Program as it is shown in table 10:

Table 10: Communitarian Justice Program Practice Data Analysis								
Best Practice	References made by Justice System key-actors			Principles				
	# Key-Actors	# References	# Principles	Accessible	Adaptable	Effective	Inclusive	Fair and Equitable
Communitarian Justice Program	4	13	5	X (3)	X (2)	X (4)	X (3)	X

Source: Research data analysis, based on Justice System key-actors interviews.

According to the table, Communitarian Justice Program has been mentioned thirteen times by four key actors, and have been related to all five principles. According to Brazilian Justice System key actors, Communitarian Justice Program is a good practice because: it improves citizen understanding of the Justice system and guarantees broad access to programs and services provided by the system (Accessible Principle, mentioned by BRA-ACAD-01 and BRA-GOV-03); it is a new and innovative service or program (Adaptable Principle, mentioned by BRA-ACAD-02 and BRA-GOV-03); has been done with participation of private sector or the community and ensures that the quality of services is responding to the needs of society (Effective Principle, mentioned by BRA-ACAD-01, BRA-GOV-03 and BRA-GOV-04); it is being provided in ways that take into account the diversity and complexity of the community, and changes the patterns of communication used by the Justice System (Inclusive Principle, mentioned by BRA-GOV-03 and BRA-GOV-04) and is a means to confirm that the law must be fair and impartial (Fair and Equitable Principle, mentioned by BRA-GOV-03). According to table 2, this practice improves Justice System Governance in the following characteristics: Participation, Effectiveness and Efficiency, Equity and Inclusiveness, and respect to Rule of Law.

Further remarks were made by the interviewed Justice System key actors, regarding Communitarian Justice Programs: BRA-ACAD-01 mentioned that the program's main goal is “to explain justice and enhance citizen participation”, reminding that this program has been awarded the Prêmio Inovare¹. BRA-GOV-03 commented that “one of program's activities is the education about citizen’s rights, because if mediation is not an option – as there can be disputes where mediation is not feasible – people will have information about where to go and what to do to guarantee their rights.” The same interviewee remarked that Communitarian Justice Programs are a means to avoid the “transformation of conflict into litigation, and litigation into judicial case”. This is important because “not only it contributes by not overloading the Justice System, but also because alternative means exist, inside the community, to better manage local conflicts. This is possibly the perfect way to guarantee broad access to justice, in a broad concept.”

7. Conclusion

This research had as its main goal to do a comparative study about activities or procedures that have produced outstanding results – best practices – toward a better Justice System, in Canada and Brazil. The study has been conducted in light of governance concepts.

To reach this objective, the Canadian Department of Justice Conceptual Framework was used because of its capability to measure, evaluate and report on the state of the National Justice System. This framework, associated to research core concepts, was used to develop the research questionnaire. This questionnaire has been applied to fourteen Justice System Key Actors in Brazil and Canada, seven from each country.

According to more than 50% of the interviewed Canadian Justice System key actors, the relevant best practices at Canada are Legal Aid, Mediation Programs and Program of Legal Education and Information – PLEI. For the majority of the interviewed Brazilian Justice System key actors, the relevant best practices are Special Courts and Communitarian Justice Program. All these practices have been related to different Justice System principles – Accessibility, Adaptability, Effectiveness, Inclusiveness and Fairness and Equity – and therefore to the following Good Governance characteristics: participatory, accountable, transparent, responsive, effective and efficient, equitable and inclusive and follows the rule of law.

Finally, as a suggestion for future studies, it is recommended to contemplate a large number of key actors, in order to enhance the value of the results. Further, it would be convenient to study each of Justice System Governance characteristics separately, as a way to focus future research work.

¹ The *Prêmio Innovare: a Justiça do século XXI (Innovare Award)* is a annual ceremony created to identify, award, and publicize innovative practices at Judiciary Branch (and other Judicial Institutions) which contributes to modernize Brazilian justice services.

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