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Promising Evaluation Practices Guide: A Few Basic Tips

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Promising Evaluation Practices Guide: A Few Basic Tips

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Introduction

Any kind of empirical evaluation follows a more or less similar process (see Figure 1 below). You define your goals, conceptualize and operationalize your study, and the collect, analyse and share your data. Evaluation may lead to redefining your goals, expanding the services you offer or modifying your tool's design. Therefore, you may need to start the evaluation process again, after making revisions to your tool or in order to evaluate its impact over time.

Evaluation is important to better inform decisions and policies. Many questions and difficulties may arise during the evaluation process. How and where to start? What to prioritize? What frameworks, and methods to use? How to measure success, outcomes, and impact? The challenges in empirical work are well known. In the legal field, there is a data deficit, and a lack of common evaluation frameworks and methods[1]. Recently, greater efforts have been made across jurisdictions to overcome those challenges[2].

Figure 1: The Evaluation Process

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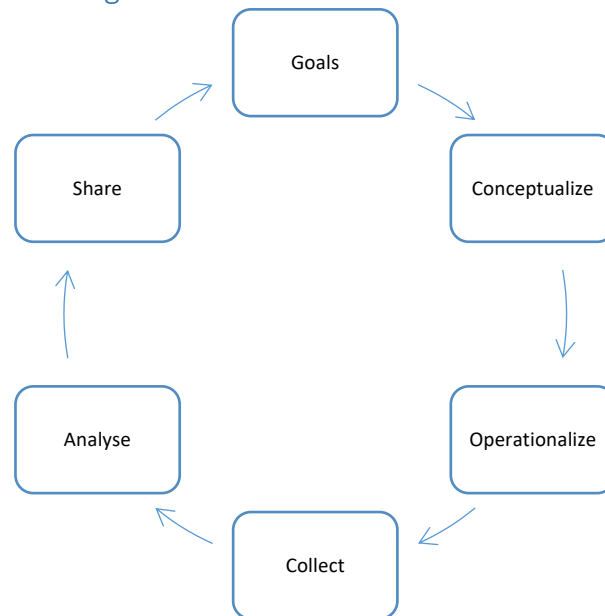
[1] See, for instance: Fabien Gélinas et al, *Foundations of Civil Justice: Toward a Value-Based Framework for Reform* (Cham: Springer, 2015); Alexandra Pasca, *Annotated Bibliography: Direct to Public Legal Services - Impact Evaluation* (ACT Project & CLEO, available upon request, 2020); Nicole Aylwin & Mandi Gray, "CFCJ Cost of Justice Project - Selected Annotated Bibliography", (2016), online: *Canadian Forum on Civil Justice* <https://www.cfcj-fcjc.org/sites/default/files//CFCJ%20Cost%20of%20Justice%20Project%20-%20Selected%20Annotated%20Bibliography.pdf>.

[2] Pasca, *supra* note 1; See also: Tim Roberts & Associates Consulting, "Justice metrics models in other jurisdictions" (2019) A Report for the University of Victoria, Faculty of Law, Access to Justice Centre for Excellence 60.

For each step of the evaluation process, I've identified a few basic tips based on promising evaluation practices. Those tips are informed by other best practices guides[3], my own research experience as well as discussions with other researchers and partners, in particular during workshops organized by the ACT Project[4]. I hope this practical advice will help you throughout your own evaluation process.

1. Set your Priorities

First, clearly define your goals, and set your priorities. What is the most important thing for you to know at this moment? What do you really want to measure? Why? Can you do it now? If not now, when? Once you`ve set your priorities for today, you can look at tomorrow. This does not mean you cannot plan for the next steps. It is simply a matter of being realistic about what you can and cannot do at this stage. The two major challenges here are: 1) vagueness; and 2) feasibility.

Often, service providers are too vague about their goals. For instance, most legal services providers say they aim at "increasing access to justice"[5]. This is a broad goal, which may be influenced by many factors (language barriers, limited resources or legal knowledge, etc.), on which you may not have a direct control. Try to be more precise: What are the specific objectives you have set in order to achieve your broader goal? What type of services you offer: legal information, in person or online assistance with court forms, referrals to appropriate resources? How may your services help people concretely?

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[3] See, for instance: Rochelle Klempner, "Best Practices: Document Assembly Programs Best Practices Guide for Court System Development and Implementation Using A2J Author (New York)", (May 2017), online: *Access to Justice - NY State Courts*
<https://www.nycourts.gov/LegacyPDFS/ip/nya2j/pdfs/BestPractices_courtsystemdocument_assemblyprograms.pdf>; Law Commission of Ontario, "Best practices at family justice system entry points: needs of users and responses of workers in the justice system : consultation paper.", (September 2009), online: <https://central.bac-lac.gc.ca/.item?id=family_law_process_cons&op=pdf&app=Library>; Berkman Center for Internet and Society et al, "Best Practices in the Use of Technology to Facilitate Access to Justice Initiatives", (2010), online: *Cyberlaw Clinc Harvard Law School*
<https://cyber.harvard.edu/publications/2010/Best_Practices_Technology_Access_to_Justice>.
[4] "ACT Project | Autonomy Through Cyberjustice Technologies and AI", online: *ACT Project*
<https://www.ajcact.org/en/>.
[5] See, for instance: "A2J Author Executive Summary.pdf", online:
<http://www.kentlaw.edu/cajt/a2j_authordownload/A2J%20150/A2J_Author_Executive_Summary.pdf>.

People also tend to be too ambitious. They want to save the world! But they do not know how to do that, or whether they are doing a good job. There is a huge difference between what you want to do and what you can actually do. Many will be unrealistic, for instance, because they have invested much energy in a tool they treat it like their baby. They love it so much that they would like to take care of everything, from its development to its functioning, and larger social impact, all at once. But is this possible? It is usually better to be modest about what you claim to do, so as to be able to deliver, and measure your success; than promising the sky, but not being able to keep your promise.

Therefore, you need to set your priorities. But how? One way to do so, is to make a list of what is feasible or not at this moment, given your resources (financial, human, technical), and the type of data you can collect. For instance, you may divide the data needed into three categories, depending on the difficulty you will face in obtain it: 1) easy, 2) hard or 3) unknown[6]. Legal services providers may help with this, since they know well the features and limitations of their systems. A literature review on existing data sources may also be helpful, such as: court statistics, national surveys, or studies on similar legal tools. It could give a good idea of what relevant data for your purposes is already available or remains to be collected.

2. Find a Way Out

Second, once you have clearly defined your goals, conceptualize your own study. Be careful not to get trapped in an endless game of concept juggling. Quickly find ways to fix some of the many moving parts of your puzzle. For instance: How to avoid overlaps between abstract concepts, such as outcomes, impact or success? What theoretical frameworks may help you to do so? The two main challenges here are getting lost and perfectionism.

Although it is very important to know what others have done, it is also very easy to get lost in the mass of existing research. Especially nowadays, with the growth of Internet, almost everything is

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[6] See: Fabien Gélinas et al, "CLEO Case Study: Evaluation Steps for the Family Law Guided Pathways (FLGP)" (Forthcoming) CLEO & Montreal Cyberjustice Laboratory.

accessible in one click. When should you stop digging? Once you've covered the main sources and studies, select those that are useful and inspiring for you, either in terms of theoretical framework or research design.

And remember, there is no such thing as a "perfect" study. Perfection is impossible to achieve in empirical work. No matter how well you conceptualize your study (theoretical framework, research objectives, questions and hypotheses), there will remain some ambiguities or overlaps which may be revealed by your data. Your way out of perfectionism is: "Good enough"[7].

3. Break it Down

Third, once you have established your research bases, and found a framework that resonates with what you want to do: How do you do it? Operationalize your study. Break down your key abstract concepts into tangible, and measurable indicators[8]. The main challenge here is to identify the appropriate indicators, and metrics for your study.

What are indicators? Indicators are concrete elements that can be "directly or indirectly observed"[9]. What indicators may serve you to assess whether you achieved your goals? What kind of data should you collect? You may want to measure different types of outcomes, such as: increasing legal education (understanding of case or process), empowerment (better equip users to take an action or make their case) or achieving better results (inside or outside of courts). Each of these outcomes may be assessed using different indicators.

What are indicators for? Indicators serve to build your evaluation instruments, such as survey questionnaires. For instance, for assessing whether your tools increased empowerment, you may ask the following questions: Are users providing all relevant facts in support of their claim? Are users able to communicate effectively their point of view? Do they feel confident about their case?

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[7] Peter Rossi, Mark Lipsey & Howard Freeman, *Evaluation: A Systematic Approach*, 7th ed (Thousand Oaks, London, New Delhi: Sage Publications, 2004).
[8] Fabien Gélinas et al, "A Step-by-Step Evaluation Model for Legal Tools" (Forthcoming) CLEO & Montreal Cyberjustice Laboratory at 89; Rossi, Lipsey & Freeman, *supra* note 7 at 89.
[9] Rossi, Lipsey & Freeman, *supra* note 7.

Are they persuasive? More or less persuasive than other litigants who did not use your tool or are represented by lawyers? For each of the above questions, you would have to identify the indicators that would help you answer it. After doing so, you can start thinking about your research design.

4. Keep it Short & Simple

Fourth, when designing your evaluation instruments, keep things short and simple. This is rarely the case. Questionnaires are often too long, and complex[10]. Questionnaire design raises many questions, such as: wording, length and order of questions. Should you use open or closed questions? What scales and answers options are optimal? For instance, the use of midpoint options ("Neither agree nor disagree") or no answer options ("I don't know") is controversial[11]. If questionnaire design may influence responses, we don't know exactly how it influences them. Studies results are contradictory on its effects[12]. Further research is needed in this regard. The main challenges in research design are mostly related to questionnaire design, so as to optimize participation rates, and avoid bias.

Ask simple, short, and few questions. Participants must be able to understand what you are asking them, and they should not get bored answering your questions. Otherwise, you will risk losing too many participants on the way. If national surveys can afford losing some participants given the large pools of potential respondents, they still may have sample representativeness issues[13]. How

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[10] World Justice Project (WJP), "Rule of Law Index", (2020), online: <worldjusticeproject.org>: The GPP questionnaire includes 127 perception-based questions and 213 experience-based questions, along with socio-demographic information on all respondents; Hazel Genn & Sarah Beinart, *Paths to Justice: What People Do and Think about Going to Law* (Oxford, England; Portland, Or.: Hart Pub., 1999): Glenn's questionnaire on legal needs (covers many categories of legal problems, and how litigants deal with those problems) is used in many jurisdictions, including in Canada; Ab Currie, "The Legal Problems of Everyday Life: The Nature, Extent and Consequences of Justiciable Problems Experienced by Canadians", (Ottawa 2007), online: *Department of Justice Canada* <www.justice.gc.ca>.

[11] "Evidence-Based Survey Design: Do You Agree or Somewhat Agree?", online: <https://www.td.org/insights/evidence-based-survey-design-do-you-agree-or-somewhat-agree>; Jon A Krosnick, "Questionnaire Design" in David L Vannette & Jon A Krosnick, eds, *The Palgrave Handbook of Survey Research* (Cham: Springer International Publishing, 2018) 439.

[12] Krosnick, *supra* note 11 at 264, 278, 299–300.

[13] World Justice Project (WJP), *supra* note 10 at 163–168: In the recent WJI Report (2020) the sample size was decreased from 1000 respondents/country to 500 respondents for some countries, due to small populations or '"obstacles in data collection" .

much of your precious time are you ready to spend answering a survey? Of course, it depends on the topic and the kind of study. In an interview or focus group, you easily exchange for one or two hours, since it implies a discussion and human interactions. How about self-administrated surveys by phone or online? From experience, less than half an hour is advisable. The easier and shorter the questionnaire, the higher the response rates.

Ask about one item at a time. A common but controversial practice is to measure several indicators by the same question[14]. It is then difficult to know to which item the participant response is actually referring. This is true especially when using a multiple-choice format[15], where respondents can't explain their answers. Sometimes, you may need to ask several questions, slightly differently, to measure the same variable,[16] as if you were looking at a sculpture, but from different angles. This is a more promising practice, since it allows you to gather more robust data in support of your conclusions.

Carefully draft your evaluation instruments so as to avoid confusion and bias. Reviewing other studies' questions, before drafting your own, is key[17]. Why? Because questions are likely to have been carefully thought through and tested. Also, it will give you a basis for comparison of your data. However, doing so is sometimes difficult given that evaluation instruments are not always publicly available (see tip 7). Another promising practice for identifying potential errors or bias is pretesting, either by seeking feedback from experts or among a small sample of your targeted population[18]. For instance, if words have ambiguous meanings, questions may be misinterpreted

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[14] Jonathan Lippman & A Gail Prudenti, "New York State Courts Access to Justice Program" 80 at 65: Exhibit A DIY Online Survey, Q4: For instance, some survey questions are formulated as follows: Where the questions, definitions and "learn mores" clear to understand? If the answer was "No", then participants were asked to specify: Which weren't clear?

[15] Jessica Pearson & Lanae Davis, "Final Report - Phase III: Full-Scale Telephone Survey", (2002), online: *CLAP* <https://www.clasp.org/sites/default/files/public/resources-and-publications/archive/0112.pdf> Hotline Users Questionnaire, Q29e]f)g]: Did the Hotline Worker: Refer you to another legal service program, free or reduced-fee attorney, or legal clinic? (Yes / No] Did you do what the worker suggested? (Yes / Tried or partially / No] If yes, how did this work for you? (Very well / Sort of worked / Not really worked / Too soon to tell].

[16] Gélinas et al, *supra* note 8 at 16.

[17] Krosnick, *supra* note 11 at 299–300.
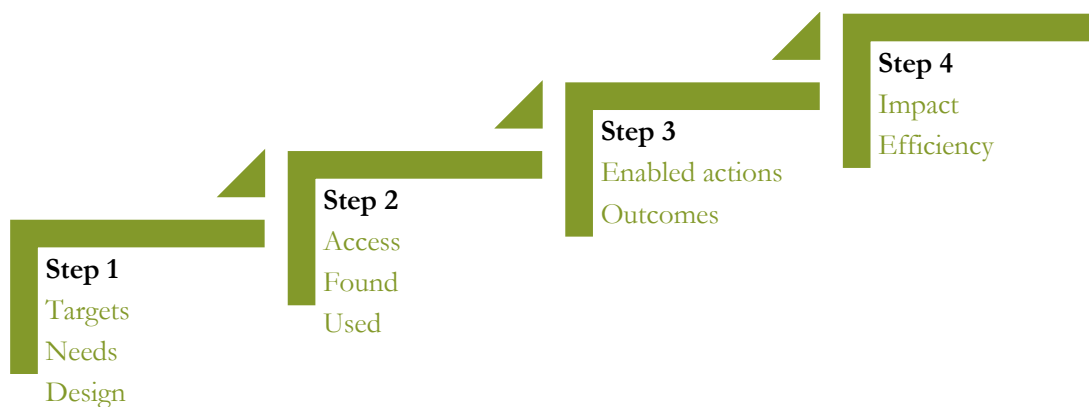
[18] *Ibid* at 294.

by participants, and their answers by you. Thus the importance of testing it, keeping it simple, and as short as possible.

5. Take One Step at a Time

Fifth, take one step at a time (see Figure 2 below). This is important not only for data collection, but it may serve you throughout the evaluation process. For instance, it may serve you when conceptualizing and operationalizing your study: when deciding what variables, indicators and metrics to use. Or when defining your goals, your targets, their needs, the type of services you can offer, and how. It is a useful tip to consider for the assessment of any kind of legal tool (online or offline), be it prior to launching your tool (step 1); during the implementation stage (step 2); when your tool is established (sept 3) or mature enough (step 4). Depending on your tool's development stage, your evaluation questions may differ. The main challenges are: time and resources.

Figure 2: A Step-by-Step Evaluation Model

Step 4
Impact
Efficiency

Step 3
Enabled actions
Outcomes

Step 2
Access
Found
Used

Step 1
Targets
Needs
Design

How and where to start? The stairs figure above represents a step-by-step evaluation model I am currently working on, as part of the ACT sub-project on legal tools for self-represented litigants[19]. This model integrates well-established variables from different complementarity evaluation

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[19] Gélinas et al, *supra* note 8.

frameworks[20]. Often, it is tempting to jump too quickly to step 3 or 4, to measure outcomes or impact. By doing so, we risk missing one step, thus missing some important data that would yield conclusions on the tool's impact. For instance, a first and crucial step in any evaluation is to define the targeted population, and then assess whether you have reached your target. So, take one step at a time!

Whose perspective should be given priority? Ideally, both users and experts' perspectives should be considered, to mitigate subjectivity and have a better understanding of the effects of your tool. But if you have limited resources, start gathering feedback from users via surveys or interviews, since they are the ones you want to help. When possible, reach out to legal experts (lawyers, judges). Although users' perspective is important, you may want to validate their perceptions with more objective criteria (legal validity). For instance, you could compare their outcomes with those of other litigants in similar cases, in order to verify whether they really achieved better results[21]. Users may be satisfied or unsatisfied of their experiences or results, but a lawyer or a judge may have a different opinion on the merits of their case.

The bottom line is **"Think big"**! Consider the full range of possibilities in terms of evaluation. But start small! Better to walk slowly (one step at a time), than rushing too fast or jumping steps. Even if it takes more time, in the end it will pay off. And learn fast! What's working and what isn't?

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[20] Laura Quinn & Joyce Raby, "Measuring Online Legal Resources: A Framework Inspired by the Drake Equation", (February 2018), online: *Florida Justice Technology Center* <https://floridajusticetechnologycenter.org/wp-content/uploads/2018/02/Drake-Equation-for-Online-Legal-v7.pdf>; Rossi, Lipsey & Freeman, *supra* note 7; Giampiero Lupo, "Evaluating e-Justice. The Design of an Assessment Framework for e-Justice Systems" in Karim Benyekhlef et al, eds, *e-Access to Justice* (Ottawa, CA: University of Ottawa Press, 2016) 53.
[21] On how to measure outcomes, see : Liz Curran, "A Literature Review: Examining the Literature on How to Measure the 'Successful Outcomes': Quality, Effectiveness and Efficiency of Legal Assistance Services", (1 February 2012), online: <https://papers.ssrn.com/abstract=2396949>; NCAJ at Fordham Law School, "Tracking Outcomes : A Guide for Civil Legal Aid Providers and Funders", (20 June 2018), online: *National Center for Access to Justice (NCAJ)* <https://ncforaj.org/wp-content/uploads/2018/06/NCAJ-Outcomes-Guide-complete-for-6-20-18.pdf>; Examples of studies tracking outcomes: John M Greacen, Amy Dunn Johnson & Vincent Morris, "From Market Failure to 100% Access: Toward a Civil Justice Continuum" (2015) 37:4 University of Arkansas at Little Rock Law Review 551–572; Kerry Sheldon, "Michigan Legal Help Evaluation Report: An examination of the efficacy of the Michigan Legal Help website in helping self-represented litigants successfully navigate the divorce process", (January 2015), online: <https://www.srln.org/node/450/evaluation-michigan-legal-help-evaluation-report-michigan-2015>.

6. Be Open to Surprises

During data collection and analysis, be open to surprises. The two challenges here are : 1) rigour, and 2) flexibility. How to rigorously collect and analyse your data? What standards should be used? How to anticipate and deal with surprises?

There are a wide range of data collection and analysis methods: quantitative, qualitative or mixed[22]. One method is not "more rigorous" than another[23]. It all depends on what you want to measure. What are your objectives, and research questions? How can you answer them? In other words, methods are "means to an end" [24]. What methods would enable you to meet your investigation goals? Some techniques are deductive, others more inductive Deductive methods are useful for verifying a hypothesis, by testing, monitoring or conducting surveys. So, you really have to know exactly what you are looking for. Inductive methods are more exploratory, such as: interviews, focus groups, observations, ethnography. The latter are useful for discovering the unknown. Often, mixed deductive-inductive approaches are used. Indeed, theory informs data collection and analysis, but data itself may inform and nuance theory[25]. Be transparent and explicit about your assumptions, and the methods used. Give a clear and detailed account of what you did, and why[26]. This will allow others to understand the validity and limitations of your study.

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[22] See: John W Creswell & David Creswell, *Research Design: Qualitative, Quantitative, and Mixed Methods Approaches*, 4th ed (Thousand Oaks: Sage Publications, 2018).
[23] Gery W Ryan, "What Are Standards Of Rigor For Qualitative Research?", online: <https://www.alnap.org/system/files/content/resource/files/main/ryan-paper.pdf>.
[24] *Ibid* at 4.
[25] A Michael Huberman & Matthew B Miles, "Data management and analysis methods" in *Handbook of qualitative research* (Thousand Oaks, CA, US: Sage Publications, Inc, 1994) 428; Susan Gasson, "Rigor in Grounded Theory Research: An Interpretive Perspective on Generating Theory from Qualitative Field Studies", (2004), online: *The Handbook of Information Systems Research* <www.igi-global.com/chapter/rigor-grounded-theory-research/30344>.
[26] Wolff-Michael Roth, *Rigorous Data Analysis: Beyond "Anything Goes"*, Practice of Research Method (Sense Publishers, 2015).

The notion of "surprise" is defined as: "new data that renders the prevailing conceptual model invalid"[27]. In other words, models are subject "to change as new information is obtained."[28] A source of evaluation surprise is the assumption that "programs as designed will make a difference"[29]. Your evaluation may reveal unexpected or unintended effects. For instance, your tool may be used by people who are not your intended targets. It may not have the impact you hoped. This could lead you to rethink your tool's design or mission.

Thus, being open to surprises means: "having a systematic study design […] but with a degree of flexibility"[30]. Unfortunately, no matter how hard we try, we will never escape surprises: "there is no magic elixir that will turn the invisible visible, or that will make known all that cannot be predicted, or that will always allow us to react to change in a timely fashion"[31]. This said, some surprises are more unforeseeable than others[32]. A way to foresee surprises is using cases studies[33]. This is exactly the purpose of CLEO Case Study[34], which served to develop an evaluation model[35]. It aims at a holistic and rigorous evaluation, but flexible enough to allow room for adjustments and adaptation. It provides you with the basic ingredients for a promising evaluation. It tells you what to mix together, and when, for your evaluation cake to rise. But it's not a magical recipe. You still have to choose your own dressing and add your own tool's flavour. The best recipes are result from a long process of trials and errors.

[27] John Bredehoeft, "The conceptualization model problem—surprise" (2005) 13:1 Hydrogeol J 37–46 at 38.
[28] Bredehoeft, *supra* note 27.
[29] Jonathan A Morell, *Evaluation in the Face of Uncertainty: Anticipating Surprise and Responding to the Inevitable* (Guilford Press, 2010) at 11.
[30] N Nakkeeran & Sanjay P Zodpey, "Qualitative research in applied situations: Strategies to ensure rigor and validity" (2012) 56:1 Indian Journal of Public Health 4.
[31] Morell, *supra* note 29 at 5.
[32] *Ibid* at 17.
[33] *Ibid* at 7.
[34] Gélinas et al, *supra* note 6.
[35] Gélinas et al, *supra* note 8 at 19–20.

7. Build Bridges by Sharing

This last tip may not help you with your evaluation but it may help those who come after you. A very important, but sensitive topic is raw data sharing. When communicating research results, what is most important? Of course, the study's findings and conclusions are of great interest. But also, how was it done? The methodology, and evaluation instruments used, especially in empirical studies, are important. How about data files? Raw data is rarely shared. Why is it so? Does it have to be so? Can something be done about this?

Part of the problem is this: First, data reports are often used solely for internal purposes and are not publicly available. Few disclose their evaluation instruments, and even fewer are sharing their raw data files. This means that we do not always have access to the actual study documents. This renders analysis and replication of studies difficult, if not impossible, since we are missing important information, such as: What questions were asked? What measurement scales were used? Second, a lot of data remains unexplored and unexploited. Data collected is often richer than what we can disseminate in one paper. But those who collect data do not always have the expertise, resources, and time to explore all of it.

Part of the solution would involve more collaboration towards developing common frameworks and methodologies. If most agree with this long-term objective, it is unclear how to actually achieve it. For instance, in Canada we aim at developing a national framework, which can be adjusted by provinces[36]. Another part of the solution is more transparency on methods used for data collection and analysis. In hard sciences, we are starting to have "open" databases[37]. Similar

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[36] "Access to Justice Metrics – A Discussion Paper: Envisioning Equal Justice.", (2013), online: <http://www.cba.org/CBAMediaLibrary/cba_na/images/Equal%20Justice%20%20Microsite/PDFs/Access_to_Justice_Metrics.pdf>.: "data sharing agreements and justice identifiers like health insurance numbers that help to ensure privacy while satisfying the need for robust information base is under discussion."

[37] For example, McGill Neuro's Tanenbaum Open Science Institute (TOSI) adopted a new policy called "open sciences", which aims at "openly sharing data, information, tools and research results". With the goal of "establishing best practices and developing tools and infrastructure to support sharing", so as to "expand and measure their impact", and "to advance medicine through patient-centred science". Note that data is anonymously collected, using a similar security system as the one used by banks. See: "Open Science, to accelerate discovery and deliver cures", online: *The Neuro* <https://www.mcgill.ca/neuro/open-science>.

initiatives are also emerging in the legal field[38]. Questionnaires and data files can be downloaded on some legal data portals[39]. But data collection and analysis protocols still differ from one study to another.

Data sharing raises many legitimate questions, on which we should reflect, about: transparency, informed consent, trade secrets, and privacy issues. Despite those challenges, how can we build a common evaluation framework and methodology? By sharing. In order to be able to compare, we need to know more. Only then can have a real dialogue, and start building bridges together. So do consider sharing as much information as you can!

Conclusion

If the seven tips discussed in this paper are pretty basic, applying them is not always easy. Let's try to apply them to the evaluation model I am currently working on with CLEO team and the Montreal Cyberjustice Laboratory[40]. To what extent can the model be adapted to various types of legal tools, offering different, more or less complex, services? It is tempting to say that it can be adapted for assessing any kind of legal tools, since this is our goal: developing an evaluation model that could be used by others. However, we should be careful about what we promise (tip 1). It is far from being a one size-fits-all model. If it has the advantage of being flexible, we acknowledge its limitations. It took us a long discussion on how to break it down (tip 2), and to find a way out (tip 3). We are now carefully drafting the evaluation instruments and the challenge is to keep it short and simple (tip 4). If we want to follow our own recommendations, then we should start small: testing it first with simple legal tools offering similar services, before testing it with more complex tools offering different services. This could lead us to adjust the evaluation model. We

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[38] On March 15, Canada's three federal research funding agencies—the Canadian Institutes of Health Research (CIHR), the Natural Sciences and Engineering Research Council (NSERC) and the Social Sciences and Humanities Research Council (SSHRC) launched the Tri-Agency Research Data Management Policy ("RDM Policy"). See: "Tri-Agency Research Data Management Policy", online: *Channels* <https://www.mcgill.ca/channels/channels/news/tri-agency-research-data-management-policy-330113>.

[39] World Justice Project (WJP), *supra* note 10; "Data Portal", online: *Measures for Justice* <https://measuresforjustice.org/portal>.

[40] Gélinas et al, *supra* note 8.

are learning a lot along the way (tip 6) and will be happy to share the lessons learned (tip 7). Success, as evaluation, is not achieved in a linear way. You may need to take a winding road. Sometimes, you may have the impression to turn in circles. At other times, you may feel vertigo. Perseverance and courage will help you overcome any challenges you may encounter. So, dare to innovate!

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