INTRODUCTION

This book is for readers who wish to know enough about law and legal systems to be able to accomplish something within the law or to go about changing it. In other words, the information found here should help readers accomplish some legal tasks themselves and offer a constructive critique of law and its institutions. “Legal studies” is a term with a broad meaning but is usually contrasted with “law studies” or “studying law,” which are most often used to describe preparation for professional practice as a lawyer. Studying law is comparable to learning a new language. Students in law schools report feeling that they are being taught to take on a new identity as part of learning to “think and speak like a lawyer.” As a result of intensive immersion in legal culture during the course of their studies, lawyers emerge with a distinct view of the world and a specific language to express that vision. They largely lose the ability to both think and speak as anything other than a lawyer. Legal studies, however, attempts to preserve what we might call students’ “bilingual” or “bicultural” capacities by allowing them to see the world simultaneously like a lawyer and a layperson.

It is the critical aspect of legal studies that helps students preserve an “external” view of law and the legal system. Although lawyers accept some responsibility for criticizing and improving the law, most of their efforts are directed at assisting clients to achieve their goals within the existing legal system. Lawyers and judges take a mostly “internal” perspective on law as professional “insiders.” The student of legal studies should instead demonstrate an ability to take both an internal and external perspective on the system.

Legal studies takes an external perspective on law similar to that found in the “law and society” and “socio-legal” approaches to research and scholarship.
From such perspectives, law and society interact (though not always on equal terms), each continually reshaping the other. Socio-legal studies, as part of the social sciences, aims to find enduring concepts, models, and theories about the intertwining of law and society and only incidentally concerns itself with the actual reform of legal institutions. By contrast, the critical wing of the law and society movement was initially focused on how law could be used to transform society, making it more egalitarian and inclusive. The focus in this book, however, is more on how members of society may transform law from the inside out using the tools of the legal system. A critical external perspective on law may reveal the need for legal change, but an internal perspective and traditional legal methods may be necessary to achieve some improvements.

Canadian examples are mostly used in this volume, but the general principles, concepts, and ideas presented are relevant to all legal systems that draw on the British legal tradition: the United Kingdom itself, Australia, New Zealand, other Commonwealth nations, and to a lesser extent, the United States. Such systems belong to the “common law” family of legal traditions and institutions, in which the decisions of judges in individual legal cases brought to trial establish the law by setting precedents that will be applied in later, similar disputes. Thus, law is built “from the ground up” as it were, with decisions in particular disputes becoming accepted as the basis for law commonly applied throughout the nation. Law is also created in common law systems by legislators in parliaments and other similar bodies. In common law legal systems, disputes that result in court proceedings (“litigation”) thus have a prominent role; this fact has affected many aspects of our legal institutions and procedures.

Over hundreds of years, the process of litigation in common law legal systems has developed characteristics with far-reaching implications for how law is administered and justice is achieved. As a result, common law litigation today incorporates the following characteristics:

1. Justice lies in following proper legal procedures—thus, “procedural justice” is the principal goal;
2. These procedures require debate and discourage dialogue, promoting an adversarial approach to dispute resolution over a cooperative one; and
3. The outcome of these procedures is often unpredictable, although the goal of law is to bring more certainty to human relations.
In other words, justice is the uncertain result of structured confrontation. If you are not a lawyer, you may find this statement about the legal system surprising, perhaps even shocking. If you are a lawyer, you will likely agree and say “yes, law is based on procedural justice and adversarialism, which leads to indeterminate outcomes.” From a legal studies perspective, these aspects of our legal system call for an explanation, and perhaps also require reform.

This description of litigation in Canada’s legal system highlights the need for those seeking justice through law to be prepared to take an active part in reaching their goal. Legal literacy is the term used in this book to describe the knowledge, skills, and abilities needed to pursue litigation in Canada and other similar common law legal systems. For instance, a person pursuing a legal claim has the responsibility to help prove the facts and make arguments as their contribution to the production of justice. It will therefore be useful for them to know how law and the legal system are structured (the topics of Chapters 3 and 4), and how legal process and procedures work (Chapter 5). Knowing how to find the written materials that comprise the body of law, and how to read them with understanding will also be necessary to pursue litigation (Chapters 6, 7, and 8). The ability to express legal ideas and arguments in a persuasive way to a decision-maker is the final skill this book will explore (Chapter 9). In this book, I will discuss the techniques learned as a part of legal literacy as the “tools” that must be used to fashion justice through law in our legal system. At the same time, from a critical legal studies perspective, I raise questions about the complexity, efficiency, and effectiveness of our present system of litigation.

**Procedural Justice**

“Procedural justice” is a term used by psychologists to describe the positive experience reported by people who feel they have been treated fairly while participating in legal proceedings. Feelings of being respected, listened to, and understood by legal authorities usually lead participants to be satisfied with the experience, even though the ultimate result may not be what they hoped for. In other words, people who feel they have been treated fairly consider the process they have gone through to be “just,” although they might question the justness of the outcome. Procedural justice can be compared to “substantive
justice,” a term describing a result that is correct according to a universal standard of justice and is therefore acknowledged to be just by everyone concerned.

Modern Western nations such as the United Kingdom, Canada, and the United States are heterogeneous societies with significant numbers of immigrants who have contributed a wide variety of cultures, religions, and philosophies to the mix of beliefs, ideas, and attitudes we observe around us today. In such societies, universally accepted standards of justice have little chance of taking root. Law is not thought to embody divine will, and judges are not considered to be divinely inspired. These circumstances make it difficult indeed for legal institutions in Canada and similar countries to achieve substantive justice. There will always be some who disagree with a ruling.

From a legal studies perspective, this represents a serious imperfection in our legal system because it could lead to disrespect for legal institutions and law in general—the problem of maintaining the legitimacy of the legal system in the eyes of the public. Legal systems faced with problems of legitimacy have focused on procedural justice as the answer to public doubts about their capacity to deliver substantive justice, and this has been an effective response.

Here are some examples to give a better understanding of the concept of procedural justice. Section 7 of the Canadian Charter of Rights and Freedoms (included in Canada’s Constitution) reads in part:

Legal Rights

Life, liberty and security of person

7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.²

Reading this, you might think that the phrase “in accordance with the principles of fundamental justice” means something like “in accordance with a set of rules (or a code)” that determines the just result in any dispute about individual rights. But that is not what it means to lawyers and judges. For them, these are the minimum required procedures to follow in order to arrive at a just result. The Supreme Court of Canada noted in a recent case considering
the meaning of Section 7 to be that “fundamental justice” simply requires a law not be arbitrary, that its adverse effect on people is not disproportionate to any public benefit, and that it does not do more than is necessary to accomplish its purpose.\(^3\) Provided these criteria are met, governments may pass any law they consider desirable, and it cannot then be challenged in the courts under Section 7. These are essentially procedural restrictions on making law—provided legislation is written carefully, with these guidelines in mind, governments may legally limit everyone’s life, liberty, and security.

Here is a second example of procedural justice in relation to decision-making that leads to action by government authorities. It is now well accepted in the law that such decisions must be made according to principles of natural justice and fairness. Again, the Supreme Court of Canada has confirmed what this standard means. In a recent case, the court established that even when collecting a debt, governments are bound by the duty to use procedural fairness, which involves giving notice to the debtors and receiving responses from them.\(^4\) These procedural steps constitute justice in that situation, but in the end they do not relieve a person from paying what is due.

Finally, here is an example of the importance of procedural justice in criminal law. The Supreme Court of Canada has confirmed that a procedural irregularity during a criminal trial that is an error of law may amount to a substantial wrong or miscarriage of justice, and can lead to a conviction being thrown out.\(^5\) Such is the strength of the law’s concern for proper procedure.

Procedural justice is a response to the reality that people in our society do not agree on universal standards of justice which lead to the absolutely correct result in every situation. Instead, we accept a legal system that delivers justice according to the law by following a series of legally approved steps, or “legal procedure.” If these procedures ensure fair treatment of the people involved, we believe procedural justice has been provided, and we accept the results. In other words, the process of following the correct procedures produces justice. Thus, justice is the result of well-planned action, not something already present that merely needs to be revealed. This description of justice may be hard to accept if you are not a lawyer, but it is familiar if you are, because legal education includes learning to take the right steps at the right time—that is, lawyers become experts in legal procedure. What procedural justice means for someone pursuing their legal rights is that they must become actively involved
in producing justice for themselves, and cannot just expect someone else to discover and accept the justness of their claim.

Procedural justice requires that the procedures to be followed are well designed to accomplish their purpose. A common design of the litigation procedure is to find out what has happened (the facts) by commenting on the situation (the argument) to persuade the judge to use the appropriate rules (the law) in order to reach a rational decision (the judgment) that does justice to the parties.

I will examine and critique the litigation processes and procedures found in Canada and similar legal systems in detail in Chapter 5.

THE ADVERSARIAL SYSTEM AND ADVERSARIALISM IN LAW

A second distinct characteristic of common law legal systems is their reliance on the adversary system to propel and manage litigation. The adversary system requires parties in dispute to take primary responsibility for pursuing their claims (or maintaining their defences) by collecting evidence and presenting it to a judge, along with their arguments, for decision (adjudication). In other words, the court is not expected to become actively involved in preparing a case for trial. The role of the judge is merely to hear what is presented by each side, and then to decide which party has put forward the best evidence concerning the facts, and the most persuasive arguments about the law. The adversarial approach to litigation stands in contrast to the inquisitorial approach found in most legal systems that are not based on British common law traditions. In an inquisitorial system of litigation, the judge takes primary responsibility for collecting evidence and preparing a case for decision, although the disputing parties also contribute to the process.

In the common law system, the expectation that the parties will pursue the dispute themselves without significant intervention by judges or other officials continues throughout all steps of the legal process, including the trial, where disputants present their evidence and arguments in whatever way they see fit, constrained only by the rules governing how trials are conducted. Courts refuse to “second-guess” the parties, and thus judges decline to intervene in deciding how cases should be presented, calling this a type of “paternalism” inconsistent with the adversarial system. Everyone is required to follow proper legal procedures and to pursue their claim diligently and independently, whether
or not they have the assistance of a lawyer. This is made clear, for example, by Rule 1.1 (2) of the Rules of Court of Alberta, which states, “These rules also govern all persons who come to the Court for resolution of a claim, whether the person is a self-represented litigant or is represented by a lawyer.” Judges will offer some extra guidance to parties without lawyers, but an impartial decision-maker must avoid becoming an ally. Chief Justice McLachlin of the Supreme Court of Canada put it this way, “The trial judge may try to assist, but this raises the possibility that the judge may be seen as ‘helping,’ or partial to, one of the parties.”

The adversarial approach to justice makes a person with a legal claim responsible for finding their own way through the legal system with minimal official assistance. Lawyers are available to help, but many cannot afford them. This form of litigation is consistent with Western modes of thought that emphasize polarity and dichotomy (for example: true/false, good/evil, right/wrong). A trial judge who hears two versions of the facts must choose which is to be believed as true, and which of two legal arguments will be accepted as right and correct. Adjudication in common law systems therefore consists of declaring a winner and a loser based upon the strength of the cases researched, organized, and presented by the parties. Litigation uses the methods of confrontation and debate as the primary means of resolving disputes. In doing so, it follows Western traditions of scientific inquiry, in which a hypothesis and its negation (“null hypothesis”) are tested by searching for data that tend to confirm one idea or the other. The Western practice of political decision-making based on debate is also reflected in adversarial legal traditions. Scientific knowledge and democratic politics are examples of the value of confrontation and competition in discovering the secrets of nature and choosing wise courses of action, and these models lend support to the value of the adversarial system in law. Legal studies, however, continues to question whether human affairs are best understood in the same way as nature, or whether wisdom is always as simple as deciding right from wrong.

Adversarialism is the term used to describe the attitudes and practices of disputing parties in such a system of litigation. Some of the attitudes connected with adversarialism are competitiveness, secretiveness, and distrust. Adversarial practices include manipulation, stalling, evasion, and sometimes deception, encouraging confrontation and discouraging cooperation between disputing parties. Lord Denning, a famous English judge, once remarked, “In
litigation as in war. If one side makes a mistake, the other can take advantage of it. No holds are barred." In another case, Denning noted that “as a matter of justice, a party must prove his case without any help from the other side.” Thus, the parties to a legal dispute are expected to engage in vigorous “partisan advocacy” for their competing positions, which discourages cooperation through dialogue as an alternative way of arriving at a just result.

Procedural justice based on adversarialism encourages combative and contradiction, behaviours that have been criticized as unnecessary and ineffective in achieving justice. Many have promoted “therapeutic” and “problem-solving” methods as more humane and creative ways of resolving disputes within the existing legal system, but the adversarial approach continues to be dominant. The alternative dispute resolution movement I describe in Chapter 4 encourages cooperation and dialogue outside the constraints of legal processes and procedures as a better path to justice. Critical legal studies questions whether the results obtained through the adversarial system of litigation are sufficiently beneficial to excuse the behavioural excesses often associated with it.

The following examples illustrate the adversarial system in practice. In criminal matters, a report of harm is followed by a police investigation, which may result in charges being laid in the name of the state against an individual (the accused) who is alleged to have committed the crime. The state and the accused person are clearly adversaries with opposing objectives: legal authorities wish to see a criminal punished, and the accused wishes to avoid punishment. Non-criminal legal matters arise through a process of “naming, blaming, and claiming”: a person recognizes they have been harmed (“naming”), identifies another person as the cause (“blaming”), and asks that person to rectify the situation (“claiming”). When the identified person refuses to act as requested, a dispute comes into existence.

If law is used as a reason for making or refusing a claim, we call it a legal dispute, whether or not legal proceedings are commenced. This process is straightforward if you claim that someone has failed to repay a debt they owe you, but less clear when you claim that their failure to be careful triggered a chain of events that resulted in your injury (called “negligence” in law). Whatever way the claim arises, in non-criminal legal disputes (known as “civil” cases), the person claiming and the person claimed against are also considered adversaries. Important consequences result from considering opposing sides
as adversaries in legal proceedings, most notably the climate of adversarialism that envelops (and some would say poisons) litigation.

**UNCERTAINTY AND INDETERMINACY IN LAW**

Law is expected to bring order and predictability to society by requiring people to act in specific, lawful ways, and prohibiting them from acting outside of the defined norms (unlawfully). We expect others to obey their duties under the law, and they in turn expect us to respect their rights. Order in human relations is thus maintained by laws that strike a balance between our freedom of action and others' freedom from interference. The certainty of law also allows us to predict the consequences of our actions. When we know the limits of lawful behaviour in advance, we can avoid becoming involved in legal disputes.

Recently, however, the certainty of law has been called into question. It is now increasingly difficult to be confident in our knowledge of what actions are lawful or not, and we do not know what the decision will be if they are called into question through litigation. The outcome of adjudication is described as increasingly indeterminate—instead of a single, predictable result, only a range of possible decisions can be foreseen, some supporting one disputing party, and some the other side. This results in uncertainty for all members of society, who find it more difficult to predict the legal consequences of their actions. Uncertainty and indeterminacy in law can generate doubt about the value and legitimacy of our legal system today—another issue that may be explored in critical legal studies.

Indeterminacy in litigation may occur in every step of the legal process: finding the facts; selecting and understanding the law; and making a rational decision that is both consistent with similar cases and also achieves justice between the particular parties. This changeability is surprising because law is usually regarded as a contributor to increased certainty in human affairs by warning and encouraging everyone to act lawfully, thereby making social life more predictable. When going about our daily business, most people operate in what has been called the "shadow of the law," and expect others to do likewise. Such a beneficial effect may well occur most of the time, but when a concrete legal dispute erupts, the certainty of the law is called into question through adversarial competition by the parties involved. A dispute encourages opposing sides to shine a spotlight on the law, and to disagree about its shape.
and shadow. This process highlights the importance of interpretation of the law during legal proceedings, which I will consider in Chapter 8. Rarely will any law be so clear that no conflicting interpretations are possible.

Not only may the law be called into question in the course of a legal dispute but also the facts of the case. Adversarial procedures encourage a disputing party to challenge the accuracy and truthfulness of the evidence presented to support the opposing side’s case (we will examine evidence in legal proceedings further in Chapter 9). In many cases, opposing parties present conflicting evidence, thus requiring a judge to consider which side has provided the most convincing version of the events in question. The judge’s “finding of fact” (the decision about what the evidence proves) often depends on careful comparisons of many different pieces of evidence, or making conclusions about the credibility (believability) of witnesses, and the results are often unpredictable.

As we will see in Chapter 4, the principle of precedent in the law is used to achieve consistency in decision-making over time and between different courts and judges. Its basic idea consists of resolving similar disputes in a similar way. Precedent therefore contributes to predictability in common law legal systems, where new law may be generated in individual cases. In theory, if one party presents a precedent (a past decision made in a similar case) to a judge, one can predict with relative confidence that the judge will follow the precedent and reach the same decision.

The adversarial system, however, encourages the other party to take a contrary position regarding precedent, along with every other aspect of the opposing side’s case. One method of calling a precedent into question is to argue that the previous case is not sufficiently similar to the present one, which has its own unique aspects and thus requires a different result. Such an argument is called “distinguishing” the prior case from the current one, with the result, if accepted by the judge, that it need not be followed as a precedent. When one side makes such arguments, a judge faces another difficult task: deciding which prior decisions are precedents that should be followed, and which are distinguishable and so may be disregarded. Because the law does not provide much guidance for judges when making these decisions, the result of an argument about precedent may go either way.

One concrete example of some of the kinds of legal uncertainty I discussed above can be found in a recent case decided in the Court of Queen’s Bench of Alberta. As described in the facts of the reported case, there was a collision
between two vehicles in the middle of an intersection with no signs or lights regulating the traffic. One car (we will refer to it as the car on the left) hit another coming from its right (the car on the right). The driver of the car on the left argued the accident happened because the driver of the car on the right was speeding excessively, otherwise he would have seen him sooner. At the trial, the driver of the car on the left admitted that he did not see the other vehicle before the collision, but said he was certain it was speeding. There were several people in the car on the right, and all testified (gave evidence orally in court) that the driver was staying at or below the speed limit. The judge concluded that the “weight” (strength) of the evidence was on the side of the driver on the right, and found as a fact that he was not speeding. Both sides in this dispute recognized that a particular traffic rule should be used in deciding the case. It read, “When two vehicles approach or enter an intersection from different highways at approximately the same time, the person driving the vehicle to the left shall yield the right of way to the vehicle on the right.”

The driver on the left may have planned to argue that this rule only applies to situations in which both drivers are obeying the law, but not if one was speeding. However, because of the judge’s decision about speed, it was no longer useful to argue about how the rule should be understood. The driver on the left also found some previous cases in which judges decided a driver was partly to blame if they realized there would be a collision and didn’t take action to avoid it. He urged the judge to follow these cases as precedents and decide that he was not the only one at fault. However, after carefully reading the cases, the judge concluded that the facts in these cases were sufficiently different to not be considered precedents. Finally, the driver on the left argued that the medical evidence presented about the other party’s injuries showed he did not take his doctors’ advice and therefore should have made a quicker recovery, thus reducing the amount of compensation he was entitled to. The judge disagreed. She concluded the other driver made reasonable progress in his medical treatments, and awarded him the compensation he requested.

This case is a good example of some of the indeterminacy encountered during litigation in an adversarial legal system. Although drivers do not usually plan their trips with arguments about the law and legal precedents in mind, when they are involved in a collision they may understandably expect to be able to determine quickly and with certainty which party is legally liable and thus responsible for the damage. With such knowledge, a dispute can be
settled by agreement, thus avoiding the time and expense involved in prolonged litigation. This is one reason why we may question the functionality of a legal system that necessitates adjudication, involving great uncertainty over the probable result, to resolve such disputes.

THE TOOLS OF LEGAL LITERACY

The preceding sections have described some of the challenges facing those who seek justice through litigation in an adversarial system:

• the correct process must be chosen and required procedures followed;
• the parties involved must make progress without much official help;
• each side in the dispute will oppose and compete with the other all the way; and
• there is usually no guarantee of success, despite an individual’s best efforts.

At this point, the reader may well conclude that common law litigation is a minefield which should only be approached under the guidance of a lawyer. The legal profession would support that view, since it serves its own interests. Today, however, the cost for legal services of all kinds, not just representation in litigation, is too high for everyone except larger businesses and the rich. The result is that many individuals and smaller organizations must either litigate without lawyers, or else abandon their legal claims. The proportion of self-represented parties (called pro se litigants in the United States) is growing in both Canadian courts and those of similarly developed Western countries. The causes of and possible solutions for lawyers’ high fees can be explored from both critical legal studies and economic perspectives, but that subject is beyond the scope of this book. What I will examine is the potential for legal literacy to address some of the unmet needs for help that have been created by the unaffordability of professional legal services. Legal systems in Canada and elsewhere face a crisis of legitimacy, if access to the courts is practically non-existent due to lawyers’ fees. The price of justice is now simply too high. One solution to lawyers’ effective monopoly over the production of justice through litigation may be extending legal literacy more widely in society.
Legal literacy provides techniques (called tools in this book) to meet the challenges of litigation without a lawyer. As I discuss in Chapter 2, these tools are taught to lawyers, but they may also be learned by non-lawyers who wish to gain a critical understanding of law and to work toward justice within the legal system. The key tools for effective action in an adversarial legal system are:

1. Legal analysis: using legal concepts and ideas to identify and describe issues (the decisions a judge will be asked to make about the facts and the law) that arise in specific situations. This analysis informs the choice of the appropriate legal process to follow to resolve those issues. Legal analysis also acts like a filter to separate legally relevant actions and events from irrelevant matters which may be disregarded when applying the law.

2. Legal planning: charting a course that involves taking the proper steps at the right times to facilitate adjudication of the legal issues raised. Procedural steps in law are designed to be fair to both sides of a dispute, but adversarialism encourages parties to try to use them for their own advantage. Good planning should include all the necessary steps, including those to be taken at trial.

3. Legal research: discovering support for the arguments to be made concerning the issues that have been identified, including those arguments critical of the other side’s case. Legal analysis is only the starting point for understanding and action in law—the initial legal analysis will be expanded and deepened as more facts and perhaps more issues are uncovered. Finding precedents is one goal of legal research, and another is discovering interpretations of law that strengthen arguments about how the law applies to the facts.

4. Legal communication: communicating in a credible and effective way, both orally and in writing, about the claims that have been made and the issues to be decided. Legal arguments take a variety of particular forms that must be mastered and responded to when made by the other side.

The term “legal capability” has recently been used in the United Kingdom to describe the knowledge, skills, and attitudes people require when faced with legal issues. A report put together by the Public Legal Education Network
investigating legal capability developed a diagram to identify the skills and abilities required at various points in response to a legal problem (Figure 1.1). It clearly shows that the concept of legal capability is similar to that of legal literacy used in this book.

Figure 1.1 Diagram illustrating the skills and abilities needed to work through a legal issue. Courtesy of the Public Legal Education Network.
In Figure 1.1, the tool of “legal analysis” is described as “spotting the legal issue” based upon some prior knowledge of law and legal rights. “Legal research” is included in the step of getting help from advisors and information sources such as the Internet. “Planning” is shown as the third step toward resolution, and “communicating one’s claims” along with the arguments that justify them is the final step toward the desired outcome.

In this volume, the tool of legal analysis will be the focus of Chapters 3 and 4, while I address legal planning by discussing legal processes and procedures in Chapter 5. The sometimes peculiar language of law can be an obstacle to legal analysis, planning, and research, so I explain it in Chapter 6, while I discuss methods and techniques of research for legal purposes in Chapter 7. Law does not speak for itself; it needs to be interpreted, a part of legal argument. Chapter 8 is devoted to some of the principles of interpreting legal materials. Finally, in Chapter 9, I give some guidance about communicating effectively to advance legal goals.

CRITICAL LEGAL LITERACY

Legal concepts and their complex, meaningful relations form one of the foundational structures of law, as I will discuss in Chapter 3. These building blocks are produced through processes that are legal (such as statutory interpretation), political (for example, litigation over voting rights), and economic (for instance, using litigation with competitors as marketing by other means). The tools of interpretation (see Chapter 8) and legal argument (discussed in Chapter 9) may be used to rework legal concepts that need to change. Such concepts may be those like “necessity,” “fairness,” and “the reasonable man,” where the legal meanings no longer reflect common understandings in society.

One of the messages of this book is that the law, its concepts, and ideas may be improved by critique and also by using the tools of legal literacy to bring about progressive change within existing legal systems. As figure 1.1 shows, engaging with the legal system requires strong personal motivation, persistence, and hope. When joined with knowledge, planning, and effective communication, it’s possible to achieve good results that also benefit others.

For instance, Lucie E. White wrote about guiding a poor, devout black woman, the sole parent of several young children (referred to in the case as “Mrs. G.”) through a hearing to decide if she should lose her social assistance
benefits because of an overpayment. One way the penalty could be avoided according to the law was if the money she received was spent on “necessities.” As part of her evidence, Mrs. G. revealed that a good part of the overpayment was spent on new shoes for the children to wear to church (“Sunday shoes”). This was unplanned testimony, and did not become a factor in the ultimate decision. However, it might have been used by the lawyer as part of an argument that the word “necessities” should be interpreted with regard to all of the particular circumstances of Mrs. G.’s life, and not limited to a standard bureaucratic definition of what is “necessary.” Such an argument might not succeed, but it would be a respectable attempt to secure justice for Mrs. G. using legal tools. White concludes her reflections by expressing respect for the “activities that poor Black single women with children—citizens—undertake for themselves, on their own ground” which may change the law and society.

The redefinition of marriage to include same-sex unions in a number of countries is a recent example of individuals successfully remaking law from the inside. Lawyers and their clients made convincing legal and political arguments to persuade courts and legislators to enlarge the definition of marriage beyond the union of heterosexual couples.

This book is intended to help the reader understand the tools that people use to produce justice, and how to use those tools themselves when they are pursuing the necessities of their own lives through law. In the concluding sections of each chapter, I will explore some possibilities for change in law and society which add a critical perspective to the knowledge of how the tools of legal literacy function. The next chapter considers what legal literacy means in more detail, and compares it to other forms of literacy that are important in our society.

CHAPTER REVIEW

After reading this chapter you should be able to:

• explain what is meant by the term “procedural justice”
• describe the adversarial system of law and explain the term “adversarialism”
• discuss the concepts of uncertainty and indeterminacy as they apply to law
• list the principal skills and techniques that comprise the “tools” of legal literacy
• explain what is meant by the term “critical legal literacy”