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Opening the Dialogue: The SRL Phenomenon - Final Event Report

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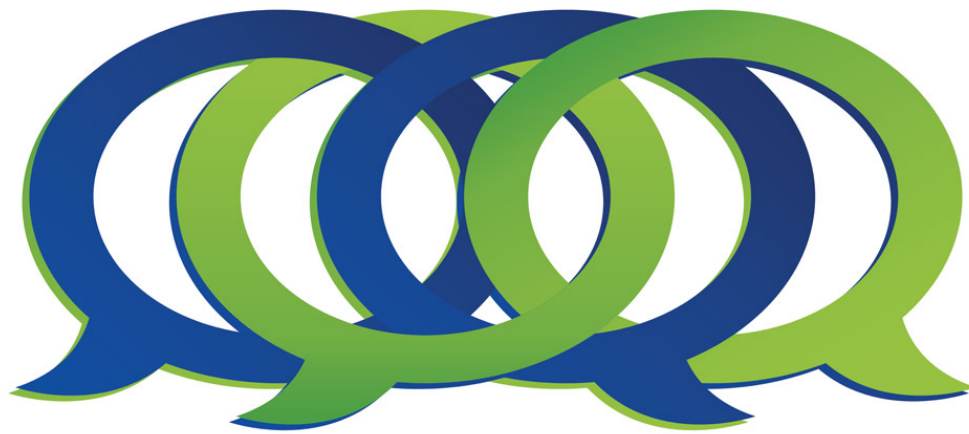
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Opening the Dialogue
THE SRL PHENOMENON

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The SRL Phenomenon
Faculty of Law University of Windsor
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Event Report
Dr Julie Macfarlane

SUMMARY

The Dialogue Event was conceived as an opportunity for self-represented litigants in family and civil court to directly describe their experiences to justice system actors – lawyers, judges, court services staff and policymakers – to address embedded assumptions about their motivations and impact on the justice system. 45 justice system representatives from the three participating provinces and 15 self-represented litigants (SRL's) attended. As a dialogue process, the event was intended to create relationships among people who while they play very different roles (in the justice system), may share a common purpose in recognizing the need for the system to adjust to the phenomenon of SRL's.

A sense of common purpose allows for problem diagnosis and a beginning discussion about possible solutions. The structure of the Dialogue Event focused on sharing experiences but also working in small groups on aspects of the challenges facing the justice system, including the response of both public and private legal services to the huge growth in the number of SRL's, the response of the community and court services, the judicial role in relation to SRL's, and the development of simplified forms and procedures.

This Report describes both the diagnostic and the problem-solving aspects of the discussions, and also tries to capture something of the spirit of the event and its impact on understandings among the participants of their different roles and experiences in the justice system, using some snippets from the discussions and some direct quotes from participants. It also highlights the shared values which emerged regarding the need for real access to justice for Canadians.

1. Development and goals

The idea for the Dialogue Event emerged about five months into the National SRL Research Project. It was quickly becoming apparent that the accounts of their experiences offered by SRL's – and mirrored to a substantial extent in the accounts of court staff and service providers - were radically different from both populist descriptions of SRL's (that they chose to represent themselves believing they could function as efficiently as a lawyer) as well as prevailing assumptions among many lawyers and judges (that SRL's cause chaos and delays, manipulating the system to their advantage). At odds with these narratives, the SRL's and the court staff told me consistently that self-representation was not a choice – and that the most important

reason for almost all SRL's to represent themselves was that they could not afford legal services (and did not qualify for Legal Aid). Most were not all confident about their ability to represent themselves but saw no other alternative.

The sharp divergence among these understandings of the "cause" of the SRL phenomenon suggested that a dialogue among the major actors was critical to creating policies and strategies that would both meet the needs of SRL's and win the support of justice system players, including judges and lawyers. A real-life sharing of experiences and perspectives among lawyers, judges, regulators, court administrators, policymakers and SRL's themselves might begin to bridge some of the perception gaps, and perhaps reconcile the divergent accounts of what is really happening in the courts - and what should be done about it.

In my work as a mediator/ facilitator, I have designed and facilitated a number of so-called "dialogue processes"¹. While they take many different forms, dialogue processes are usually small, invitation-only stakeholder forums in which the emphasis is on frank and open discussion among parties who may not ordinarily or publicly talk to one another. The goal is usually to identify ways to move forward in relation to a particular issue or conflict. I thought that the dialogue model might be useful here.

My objective was to maximize the likelihood that the results of this research, which focused on SRL experiences, would be heard by other justice system actors (not as "fact", but as their reality) and could be integrated in a meaningful way into their own perspectives.

Because we were working across three provinces to collect the data for the study, it also seemed important to begin to develop relationships among the major justice system actors. Dialogue processes are designed to build relationships as much as to produce operational "go-forward" plans (on the assumption that relationships must be strong to ensure that plans proceed). It was unclear how much collaboration presently takes place or how much information was being shared among the three provinces in relation to innovations, strategies, challenges etc. The Dialogue Event seemed to be a good way to kickstart or to support this process of information exchange on the pressing topic of SRL's.

2. Planning and design

Once we had decided that the Dialogue Event needed to be part of our planning, we scheduled a date – May 9-11 2013 – by which I could feel reasonably confident that

¹ Among a voluminous literature, see Barnett Pearce & Littlejohn Moral Conflict : When Social Worlds Collide Sage 1997, Fisher R. Interactive Conflict Resolution Syracuse University Press New York 1997, Bettye Pruitt and Philip Thomas Democratic Dialogue – A Handbook for Practitioners CIDA 2006

the Final Report would be completed, at least in complete draft form. This would allow the opportunity for the Report to form the basis of discussions (a common format for dialogue processes is the use of a ‘single text’ document for discussion).

Next, Sue Rice (Project Co-ordinator) and I began to develop an invitation list that would include the major stakeholders (lawyers and legal regulators, judges, public legal service providers, court services and courts administration, policymakers, para-legals, researchers and Access to Justice scholars). Our goal was to bring high-level individuals from all these groups together to make the dialogue both more significant symbolically, and to enable the building of crucial relationships at this level.

The SRL delegates – 5 from each province – were identified by Sue and I from interviews and also from our existing media lists (a number of respondents had already spoken to media about their experiences as part of local media attention to the Project). We were looking for SRL’s whom we knew could speak articulately about not only their own experiences, but also the challenges faced by SRL’s systemically. In addition, these particular SRL delegates were selected because:

- (i) As far as possible to gauge this, the SRL delegates’ experiences represented a microcosm of the study sample. In short, most had struggled with their experience as a SRL; all had experienced some negative impact, sometimes very significant and long-term; a few had emerged more confident than others (the “atypical” cases);
- (ii) They approximately represented the breakdown of family and civil SRL’s in the study (2/3 to 1/3) (a last-minute cancellation due to illness meant that we have slightly fewer civil SRL’s than we had intended);
- (iii) They were representative of other important variables including gender, age, education and class.

Finally, in building the Dialogue Event guest list, we determined that we would retain experienced facilitators to work with the delegates in both plenary and small group settings. This included a “coach” hired to assist the SRL’s in preparing for the event (see below).

3. Funding & costs

We knew that the justice system invitees (a total of 45) would be able to self-fund their travel and accommodation. We decided that in order to incentivize their attendance we would not charge any fee for participation, meals, materials etc (we did ask for a small contribution from just three additional late invitees to cover these costs). We felt that the nature of the Dialogue Event meant that it was important not to charge a “conference fee” but instead to make it clear that all we wanted delegates to do was to come willing to talk openly and constructively – and to listen to others.

The SRL's, most of whom are on a small and fixed income, needed to be funded for their travel accommodation and other (taxi, meals) essential expenses. Sue developed a budget based on best airfares, accommodation at the Windsor Hilton at a reduced party rate and meals costs for the SRL's while they were in Windsor. We then calculated a contribution figure for each province that included these costs, and in each case plus a small honorarium for some of the external facilitators.

The Law Foundation of British Columbia/ the Legal Services Society quickly told us that they thought they could fund the BC delegates costs through their new research fund. The Law Foundation of Alberta was initially unsure if they could approve "conference" funding, but once we made the case that this was not a conference but a unique stakeholder forum, their Board approved the Alberta portion of the required funding. We are very grateful to both these funders who have supported the Project from the very beginning.

In Ontario, the Law Foundation of Ontario was unable to help us further. Patricia Hughes of the Law Commission of Ontario and Rob Lapper of the Law Society of Upper Canada stepped in to fund the Ontario SRL's, along with a generous contribution from the Faculty of Law University of Windsor. Funding for the opening dinner was secured from Borden Gervais Ladner (thanks to David Scott QC, Partner) and for the Friday reception from the Essex Law Association (thanks to Ron Reaume, President).

The Dialogue Event was run on a very small budget (a total of \$55,000) which we used to the full. We cut costs in all possible ways - the cheapest (although efficient and clean!) possible form of delegate transportation between the Hilton and the Law School, breakfast on-site for the SRL delegates to avoid paying the more expensive Hilton hotel breakfast rate, and using student assistants who worked for a minimal wage. We asked people to bring their own copies of materials for distribution where possible. In addition, most of the facilitation team donated their time *pro bono*, including the plenary facilitators, Bernie Mayer and John Manwaring and all the Windsor Law facilitators.

4. Agenda planning

Once the invitations were out and began to be accepted, we started to plan a detailed agenda, first with the plenary facilitators (Bernie Mayer and John Manwaring) and then with the larger group of small group facilitators. The student assistants were brought into the final planning meeting to ensure that they understood planning decisions and were able to assist us as much as possible to achieve the goals of the dialogue.

We created a list of five working group choices (SRL's and public legal services; SRL's and private legal services; SRL's and community/ court-based/ alternative services); SRL's and court forms and procedures; SRL's and the judicial role) for

delegates and distributed this to all delegates asking them to indicate their preference.

We retained Sylvia McMechan, an experienced “coach” and a non-lawyer, to work with the SRL delegates before the event and assist each delegate with identifying the most important systemic issue or issues they wished to bring to the table. We felt that it was important to have someone in this support role to offer the SRL delegates – for the most part, less experienced at participating in professional conferences than the justice system delegates - to have someone they could speak to about their contribution, how to be most effective in communicating, etc. Sylvia played a critical role both before and during the event as a go-to person for the SRL’s.

Among the SRL delegates, there was a feeling of excitement as well as some nervousness as the date of the Dialogue Event approached. One SRL wrote to me before leaving home in Vancouver to travel to the Dialogue Event as follows: “I am getting an opportunity to share a little of my experience and to hopefully participate in facilitating change for others. I have felt I have much to say since my experience and never imagined that anyone would ever care to hear about it - at least not anyone from the ‘justice system’”.

4. The Dialogue Event: a timeline

Thursday May 9th:

The event began – as is conventional for dialogue processes - with a dinner. The dinner at the Windsor Hilton was attended by almost all the Dialogue Event delegates. Everyone wore first name only name badges and were seated at round tables intentionally “mixed” including a range of delegates from the different constituencies. After a welcome from Windsor Law Dean Camille Cameron the facilitators began with a short exercise in which the table groups introduced themselves and discussed their reasons for attending the dialogue. The seating plan produced some interesting dinner time conversations. SRL’s chatted with judges, lawyers with SRL’s, policymakers with court staff and pro bono activists. A paralegal found herself seated next to a regulator from her province. There was a sense of excitement, of promise, and some anxiety about the next two days of intensive discussions.

A SRL delegate commented after the event in an email: “The tone of the event was set right from the dinner on Thursday night, when only your first name was used and titles were dispensed with, setting the stage for everyone to contribute equally uninhibited to speak as equals with one another.”

Friday May 10th

As I walked into the Law School - where the remainder of the dialogue program

would take place - the following morning I was presented with the amazing spectacle of fifteen SRL's gathered in the lobby. I have worked in law schools on three continents for more than 30 years, and this was the first time I have ever seen "clients" in my law school. For me this was a seminal moment. Then came the justice system delegates into the Law School, sitting on the cafeteria sofas among the SRL's, shaking hands and introducing themselves, already aware that they were in a new kind of space for discussion.

Stereotypes exercise

As an icebreaker, the plenary facilitators asked delegates to work in pairs on unwrapping their "stereotypes" of one another. What do lawyers presume to be the "story" of a SRL? What do SRL's assume to be the motivations of lawyers? What do judges presume when they see a SRL in their courtroom? And so on.

After working in pairs for 5 minutes, the facilitators asked for a few people to share their "stereotypes" and how their conversation had changed that stereotype, if at all? The first three people to speak were SRL's. Each acknowledged that they came in with a negative view of people working in the justice system as a result of their experience, and had found themselves speaking with someone (a lawyer, a judge, a court services manager) who really cared, contrary to their expectations. Next a lawyer who now works for a *pro bono* organization acknowledged that when he practiced law at a large firm, he regarded SRLS as a nuisance. Now "I realize that we are all in this together to create a system of access".

Another lawyer said that she realized from her conversation with a SRL that she and her colleagues are motivated by trying to protect themselves from SRLs because of fears about insurance. Also, she doesn't want to talk to SRLs in case she is perceived as being unfair to her client.

A judge commented that SRLs should be asking themselves "what does a judge need to know to make this decision?" and then "how quickly can I get this information to the judge?" In other words, he wanted the SRL's to put themselves in his shoes. A SRL commented "But how do I know what information is needed by the judge? How do I put myself in your shoes when I don't know what you need to know from me?" In light of this exchange, another judge commented that the SRL usually has less information and knowledge than the judge assumes that they have - and the judge often has less information than the SRL assumes that they have.

Setting the Stage 1: The Perspective of SRL's)

The first plenary panel was composed of three SRL's, two from family court and one a civil SRL. As they ascended the dais in the moot court room, one wryly noted that this was finally their opportunity to look down from on high as "judges". As the three spoke, there was a hushed silence in the room as they read their statements. All three were articulate and compelling.

The first SRL to speak represented herself in a landlord/tenant matter that began in the BC Residential Tenancy Branch and ended up in the Supreme Court of British Columbia. The SRL said “I worked hours and hours for 10 minutes in court. I have family and friends, including friends who are lawyers, to help me and it still took hours. I waited in line over and over again to ask the court staff a question.” She said that her experience was very demanding, very time-consuming and made her very anxious. She believed that her case was simply “clutter” and should never have taken up so much court time and caused so much stress.

The second SRL to speak said that he would summarize his experiences in family court as “A recipe for a psychopath”. He had retained counsel but felt that he was a “warmonger”. He went a long time without a lawyer because he could not afford one, and his stress levels were very high. Now his family had lent him the money for a retainer and he had hired another lawyer.

The third and final SRL to speak had also been in family court. After the first 6 weeks with legal counsel, she was billed \$20,000. She realized that she could not afford to continue with a lawyer but was worried that as a self-rep she wouldn’t be able to protect the best interests of her daughter. She tried to find a lawyer who would provide her with unbundled services, she begged and pleaded with lawyers, but was always told she needed to provide a retainer. This experience was humiliating. Finally she found a lawyer who gave her some unbundled advice. She represented herself at a nine-day trial – staying up all night each night preparing - and lost.

At the end of the statements there was a burst of spontaneous applause. The moderator asked some questions and fielded others from the delegates. One question asked about settlement and efforts to bring their cases to a conclusion. One SRL had spent 16 hours in mediation to no avail. Another believed he had an agreement with his spouse at the outset but his lawyer, he believed, had not supported it and it fell apart.

One of the three SRL’s on the panel further commented that no matter how difficult this was for her, she feels sad for the many people – with less education and confidence than her - who aren’t given a chance to enter the game at all. Another panellist made the point that once you have self-represented, it is difficult to find a lawyer who is willing to take on your case.

This was a significant opening panel. As we left the moot court for a coffee break, we all knew that something had shifted in this conversation.

Setting the Stage 2: The Perspective of Courts Administration and Policymakers

A senior counsel from the Ontario MAG and an Ontario court services manager spoke about the challenges they saw facing both SRL’s and court administrators. They spoke about the challenges of court staff in assisting distressed and anxious

SRL's, and especially the limits on the type of assistance they could provide (the ubiquitous legal information/ legal advice distinction, described as an "ongoing challenge").

Both commented that SRL's want help, but not necessarily legal assistance. Instead they seek guidance - and also empathy. Resources currently available and being developed include Mandatory Information Programs (MIPs), and links to community resources through the FLIC's (Family Legal Information Centres).

Both the courthouse manager and the policy manager commented that changes in the legal system need to balance the needs of SRL's with the realities of an adversarial, adjudicative system, which these panelists are responsible for ensuring operates efficiently. For example, judges need information that is critical to make a decision, so there is a limit to how far procedures and forms can be simplified.

During the question period, another delegate commented that a recent survey of 250 court clerks revealed that they had a tremendous depth of legal knowledge and that they were constrained by the "false dichotomy" of legal advice/ legal information².

Setting the Stage 3: The Perspective of the Bench and the Bar

A legal regulator and a judge described how they understood the challenges of the rising numbers of SRL's in the courts. Speaking first, the judge described what he termed a "duty to assist" an unrepresented person, which requires judges to guide but not advise SRLs. Self-representation should not appear to be a disadvantage.

The legal regulator stated that we must accept that SRL's are "here to stay" and that they should be embraced into the system, where they have a legitimate place, and not treated as a problem. It is important that professional regulation does not create barriers to the delivery of legal services. He posed this question: "In the past we have been very careful about what exactly constitutes legal advice. Why are we afraid? What are we protecting? Do we need to protect this?"

The legal profession should be willing to take on the issue of SRL's, but they cannot do it alone. Lawyers and legal regulators should be prepared to work together to take on the challenges of innovation, including the role of para-legals, and changes in legal education for new lawyers.

Review of National SRL Research Project Findings

As the Principal Investigator, I offered delegates the opportunity to raise questions and comments about the Research Report, which most appeared to have read in full.

² Addressing the Needs of Self-Represented Litigants in the Canadian Justice System" A White Paper prepared for the Association of Canadian Court Administrators, Trevor Farrow et al 2010

Concern was expressed that the fact that respondents had to volunteer to be interviewed and that this might render the sample unbalanced or unrepresentative., I explained that volunteerism is an inevitable characteristic of a qualitative study and in this case subjects had to be willing to spend up to an hour in a personal interview. To try to address this, the sample in this study, while not randomized, was derived from a range of entry points including physical materials, local media coverage, Internet sites (our own site www.representing-yourself.com and the study Facebook page, plus links from many other sites) and a toll-free phone in line checked daily. The final sample turned out to be highly representative along a number of total population measures (eg gender, education levels) and highly consistent among the three provinces. It was also consistent with other SRL samples drawn in Canada and the US.

Moving into Working Groups

After lunch, delegates broke into five working groups that they had previously identified as their particular area of interest (see above). Each group had a dedicated facilitator and a student note taker. The groups were :

1. Public legal services and SRL' s
2. Private legal services and SRL's
3. Community and court-based services for SRL's
4. Simplified procedures and forms
5. The judicial role and SRL's.

The first working group session focused on *framing the issues and setting priorities*. Each group was asked to address the following questions:

1. What do you (each group member) understand as the issue or issues here? What are your goals to move forward in addressing this issue?
2. What is your reaction to the study findings in your working group topic area? What would you add/ question?
3. There is a lot of work to be done here and this is a complex issue – so what would you prioritize as steps that could be taken to address the problem as you understand it?

The working groups reported back to a plenary session at day's end. The following is a summary of each group's report back (please note that complete notes of each groups discussion are also being prepared for our archives from the student notes taken).

Group One: Public Legal Services (facilitated by Gemma Smyth)

The Public Legal Services group recognized that the thresholds for legal aid have not matched the rate of inflation. The overwhelming sentiment was that the threshold to access legal aid is so low as to prevent most people from accessing publicly funded

lawyers, particularly as it requires divestment of personal assets.

The group also discussed setting other priorities to try to bring more immediate, practical assistance to SRL's, both short-term and in terms of system change. These included: changing the adversarial culture of law (which begins with changing legal education) in order to facilitate earlier resolution; open dialogue among lawyers, judges and clients; creating more accessible legislation, laws, and policies; including SRLs in systems change, particularly through more direct consultation with SRLs; achieving a holistic integration of services (perhaps through hubs, health/social services/legal aid); and integrating intentionally trained professionals into assistance for SRL's (and generally increasing the roles of non-lawyers in the legal process).

Group Two: Private Legal Services (facilitated by Julie Macfarlane)

The Private Legal Services group recognized that the cost of legal services was placing the traditional retainer arrangement out of the reach of most ordinary Canadians. There is a disconnect between the supply and demand for legal services.

Their priority issues included: identifying "value –for-money" in legal services; identifying the barriers which discourage lawyers (or fail to provide them with any incentives) to offer "unbundled" legal services; getting reliable information to the public about lawyers; exploring a discount business model and its potential to enhance access to justice; and fostering a service model (and controlling the risk aversion of many lawyers).

One of the SRL's in this group asked the lawyers in the group a question about seeking unbundled legal services, "Why would I not be seen as worthy of legal services like any other client?" The response was that unbundling was a greater risk to the lawyer.

Group Three: Community/Court-based Alternative Services for SRL's (facilitated by Janice Forsyth)

The Community/ Court-Based Alternatives group discussed the need to better relate and connect the information and services provided to SRL's – in person and on line – to their needs including their level of understanding and knowledge about the law. As one group member put it, "You would want the system to be structured in a way that encourages people to behave in the way that you want them to."

This group's priority issue was focusing the discussion on system change. As one member put it, "If the Chief Justice says that the system is broken, we need more than tinkering." Other priorities included: building a shared vision; integrating existing services in the community into new visions of "legal services"; better training for court staff (and clarifying the legal information/ legal advice distinction) and developing a variety of responses that reflect the diversity of SRL's.

Group Four: Simplified Court Forms and Procedures (facilitated by Kari Boyle)

The Simplified Court Forms and Procedures group noted that there was a need to provide different points of access for diverse SRL's with different levels of education, reading level etc – and that on-line resources were not for everyone.

Their top priorities included: providing a “visual map” for court forms, checklists to assist SRL's in completing forms and a form checker (on-line or at the courthouse); coach or support persons for SRL's; and improvement of written materials so that they had less jargon and more examples for lay people; the development of a triage function in the courthouse to assist SRL's.

Group Five: The Judicial Role and SRL's (facilitated by John Manwaring)

The Judicial Role group discussed the need for judges to “take more control” to ensure that cases moved forward (eg in case management) and were not bogged down by tactical delays. A triage system would also be helpful in this regard. Some group members also advocated for a single specialized judge system (eg a unified family court model).

The SRL's in the group reiterated their desire for more empathy and kindness to be shown by judges towards SRL's. One group member made the comment : “If I were to think of one thing (as a priority for the judicial role), it's the shift in focus from the system to the problems of everyday life.” This was echoed by others in the group including one with experience of judicial education overseas. The group also discussed the need for “proactive judicial education” to assist them in working with SRL's, and for the system to develop “non-punitive” feedback mechanisms for judges.

After the working groups had presented a summary of their discussions (as set out above), the whole group offered some reflections and observations. One person commented on the repetition throughout many of the reports of the need for some type of triage function in the courts (or in the community) to enable earlier information and assessment before matters become more escalated and uninformed decisions are made by SRL's.. Another theme picked up in this final discussion of the day was the relationship between making short term changes to improve the situation for SRL's, while keeping our eye on long term systemic changes – and how to ensure that short term changes were consistent with long-term goals. Part of the difficulty is that we do not have a common vision of that long term goal – for example, should we be focusing on providing SRL's with legal counsel, or developing more diverse models of assistance that do not always require the services of a qualified lawyer? There is a concern among some that this would create a two-tiered system (with lawyers only for the wealthy). Finally, a SRL delegate noted that the culture of legal practice which assumed being “in charge” needed to change in

any case – people do want to feel that whomever they are working with they remain in control of their own case.

On this note, we retired to a reception funded by the Essex Law Association.

Saturday May 11th

Review

The facilitators began the morning session by asking if there were any comments and reflections on what happened on Friday. Many delegates offered observations. Among them:

A SRL: “After a few months of representing myself in court, yesterday I learned more in my working group than I had in months and months of research on my own. In court, I felt like an outsider going into a bullfight. Initially, I accepted the presumption that I was a troublemaker in court. Yesterday, through the discussion, I felt that the burden of that labeling, that I had imposed upon myself, was lifted.”

Another SRL: “I now realize that everyone I was dealing with in the legal system was acting in part out of fear – and this explained many of their actions. Lawyers don’t want to get involved and judges don’t want to get involved because they fear they have to be impartial. The court staff won’t help because of the fear of their consequences. So the self-reps are interacting with people all the time who are fearing the system and fearing consequences.”³

A judge: “Speaking as a judge, who has now been on the bench for 5 years, it is amazing to me that I need to come to Windsor, a XXX drive from the courthouse where I practice, to get the first feedback I have ever had from a litigant who has appeared before our court. I mean what other institution or service does not get direct feedback by some means from its client/customer/recipient population?... I have also had to come here to meet the manager of my own courthouse and have my first conversation with him.”

Innovations Panel

A delegate from each of the three provinces and another from the United States had been invited to address their two top /most successful innovations in services for SRL’s, and the two top remaining challenges they saw.

From the US: the two most successful innovations were described as (1) Removing the “handcuffs” from court services staff in order that they understood how much

³ A similar observation was made in a follow up email from a SRL delegate who suggested that “The legal profession has polarized themselves into staying safe by doing nothing.”

information and assistance they could provide to SRL's without encroaching upon "legal advice" and (2) The adoption of formal policies of many kinds, including policies to make clear that the judicial duty of impartiality doesn't prevent their active engagement with litigants, as well as new freedoms for court staff to assist SRL's with legal information (above). "This has led to a transformation of the attitude of the court to embrace a customer service ethic."

The two biggest remaining challenges: (1) Encouraging lawyers to offer "unbundled" legal services (2) Implementing triage most effectively to reach the most needy people and offer the best outcomes. More evaluation and feedback is needed from consumers.

From Ontario: (1) SRL's feel that they have been abandoned by the justice system in general and the legal profession in particular and they must be re-engaged. The most successful and effective innovations for re-engagement require us to go to where people are, and when they need us. Re-engagement sets the stage for the players in the justice system to start to respect SRLs again. (2) SRL's feel that they are disempowered – bright capable people end up feeling incompetent and frustrated. To reverse this, SRL's need to be re-empowered by giving them the tools they need to succeed – plain language forms, access to affordable and free legal advice and assistance. "We need innovations that ensure that the voice of SRL doesn't go away - we need to put them on rules committees, bench and bar committees, and keep listening to them."

The two biggest remaining challenges: (1) "Heavy duty" front end loaded advice, starting before someone even becomes a SRL Lawyers need to help with this by providing a solid orientation to their client about what is ahead and (2) Expectations management: reality-checking the expectations of SRL's

From British Columbia: the two most successful innovations were described as (1) The Justice Education Society's interactive website providing information designed specifically to meet the needs of SRL's and (2) JES on-line videos that show people what to expect in court, how they will be expected to behave and how procedures work in practice.

The two biggest remaining challenges: (1) Increasing the willingness of government to work with community agencies in developing smart forms and electronic filing systems and (2) Humanizing technology by incorporating the psychological and emotional elements of the SRL experience.

From Alberta: the two most successful innovations: (1) Alberta Justice has launched a new family justice services webpage aimed at SRL's. It includes information that SRL's say they need like what do I do when I get to court? What is court etiquette? What should I bring to court? This is a work in progress and (2) Intake and caseflow conferences in Provincial Court, which allow for discussion of the case in a private setting, efforts to settle, narrowing of the issues, assistance with the crafting of

orders and the setting of a timetable. In Court of Queen's Bench in Edmonton and Calgary, there is also a new case management counsel pilot to help with narrowing or resolving issues, developing litigation plans, and educating litigants about court processes and procedures.

The two biggest remaining challenges are: (1) Extending new programs outside major centres to regional courthouses in Alberta and available to SRL's in both Provincial Court and the Court of Queen's Bench and (2) Despite the wide range of programs and services available for SRL's, people need to know about them in order to be able to access them. Alberta is engaging community partners and service providers in creating an on-line portal which will provide linked/ integrated information.

Return to the Working Groups

After a coffee break, delegates returned to their working groups from the previous day to advance that discussion and address three new questions:

1. What is your reaction to the preliminary recommendations in your topic area? What would you question – add – challenge?
2. What specific proposals (for pilot projects or other initiatives) can you make for moving forward in this topic area (please focus on what is feasible and doable)
3. What next steps would you propose for the Opening the Dialogue initiative?

The working groups prepared to report back to a plenary session after lunch.

Lunch on Saturday, like lunch on Friday, was a fascinating canvas of conversation and discussion – around the lunch room SRL's were talking with lawyers and judges, judges with court services managers, researchers with SRL's and with regulators, and so on.

In these second working group session the groups were encouraged to propose specific and concrete ways forward in their topic area. The following is a summary of each group's report back (please note that complete notes of each groups discussion are also being prepared for our archives from the student notes taken).

Group One: Public Legal Services (facilitated by Gemma Smyth)

The Public Legal Services group proposed:

1. The inclusion of SRL's and other professionals who are not lawyers in ongoing system change initiatives. This is a significant cultural change ie for lawyers to see the public as consumers with rights;
2. More consumer evaluation and feedback of legal services;

3. The holistic integration of services via hubs for health, social services, legal aid, clinics, and mental health support (eg connect to 211);
4. Expand public legal education and raise legal consciousness earlier (eg high school education);
5. Provide on-the-spot court services including triage, 1st appearance clerks, form checkers;
6. Enhance public legal information services using the model of (eg) the Citizens Advice Bureau in the UK or a “Tourist Bureau of Law”;
7. Integrate social worker and mental health professionals into the courthouse to provide support;
8. Provide more funding and access for legal aid/pro bono legal services
9. Work to raise awareness of and funding for existing services;
10. Raise the political profile of the SRL and A2J issue – partly through the co-ordination of service providers and “champions of change”, who can “organize the anarchy”;
11. Standardize billing procedures for legal services and provide more access to unbundled legal services;
12. Explore the formation of a “SRL Anonymous” support service

Group Two: Private Legal Services (facilitated by Julie Macfarlane)

The Private Legal Services group proposed:

1. The collection of data to inform the debate over the types of services that must be provided by lawyers/ services that could be provided by other professionals to SRL’s (eg Law Society member data on practice costs, billing and revenues, evaluate other business models for A2J, determine how much training is needed to handle certain types of family file) ;
2. The collection of data to inform litigants (for example, transparency over legal costs, information about alternate billing arrangements such as the LSR, choice of para-legal services);
3. Develop incentives to provide affordable legal services and support to lawyers who wish to do so (eg a “road show” to legal and law school communities about how to offer LSR ‘s to clients, loan forgiveness programs, A2J scholarships and other forms of debt relief to enable new lawyers to offer affordable legal services);
4. Create leadership for systemic change (eg collaboration and data sharing among Law Societies, creating a “hub” to refer SRL’s to working groups, public consultations, trainings and other meetings)

Group Three: Community/Court-based Alternative Services for SRL’s (facilitated by Janice Forsyth)

The Community/ Court-Based Alternatives group proposed:

1. Pilot project for triage networking. The creation of a series of spider webs to create a formalized system of triage. There needs to be a sharing of approaches, a common understanding, and standardize where and how people are being offered resources for triage in a more systematic way;
2. There need to be more places where people get more actual legal advice (eg giving students the opportunity with supervision, give paralegals more authority, clarify legal advice vs. legal information across the country for court staff);
3. Clarify unbundling and release its potential: Law Societies tell lawyers they can unbundle, but then they are warned about disciplinary and insurance problems. “They are talking out of both sides of their mouth”;
4. A respected national body to take leadership on A2J. This would liaise among the provinces, collect data, and be committed to a vision of a full access system across the country (eg it would develop “best practices”, it would oversee the development of checklists for litigants and involve SRL’s and all stakeholders in their creation);
5. Strengthen the availability and awareness of dispute resolution options, especially mediation;
6. Explore a mechanism for an ongoing dialogue among stakeholders including SRL’s. There is a need to continue sharing information to get away from fear mongering and misinformation.

Group Four: Simplified Court Forms and Procedures (facilitated by Kari Boyle)

The Simplified Court Forms and Procedures group proposed:

1. There is a need for affordable models of legal services. “It’s like health care in the States – people are selling their houses where someone has serious health concern so they can pay the bills. The same thing is happening here in regard to legal services.” Unbundled services are required, but so are fixed fee services and greater transparency and accountability for lawyers (“a plan that sets reasonable goals with the client”);
2. The adaptation of court forms can take many forms – fill-in-the-blanks, on-line forms, incorporating a process map. SRL’s and lawyers do not have to use the same forms – for example, a simpler affidavit could be developed for SRLs to use (as is done in Alberta). Forms and websites need to be developed specifically for SRL’s. This work should include the development of new user guides developed for SRL’s;
3. SRL’s need to be represented on user committees that work on changing court forms and procedures. There should be user committees of SRL’s in each courthouse. As well, there needs to be a mechanism to collect the ongoing feedback of SRL’s as they use forms and procedures;
4. Form checker services should be provided by an authoritative person at the courthouse and on-line;

5. A single “hub” site is required to offer a “Navigator” system for SRL’s. This site should be widely promoted;
6. Related to a central “hub” site, there should be a national co-ordination body that promotes a multi-layered approach to SRL services. This body could co-ordinate services and direct SRL’s to not only legal, but other important resources, eg dispute resolution options;
7. Offer enhanced training for court services staff, including conflict resolution training.

The Judicial Role and SRL’s (facilitated by John Manwaring)

The Judicial Role group proposed:

1. Judges are an important part of responding to the SRL phenomenon, and identifying solutions;
2. Judicial decisions could be provided in summary form and made available to SRL’s to assist in their case preparation;
3. Feedback is provided from litigants to judges in some US courts and it is important to consider how this could be implemented in Canadian courts;
4. Judges would benefit from SRL’s receiving more upfront information (“a ten page memo”) at the time of filing that would set out the court’s expectations of them;
5. There should be continued updated and development of Electronic Bench books for judges dealing with SRL’s;
6. SRL courts have promise but only if they are well resourced – there is a need for evaluation of these initiatives to ensure they do not become second class justice for SRL’s;
7. Judicial education (for example offered by the National Judicial Institute) includes training for judges for conducting case management conferences and further programming is being developed for working specifically with SRL’s. This is important to offer support to judges and enhance understanding of working with SRL’s.

Next steps

The final session focused on next steps to continue the dialogue among the stakeholders. Ideas set out earlier included efforts to include SRL’s at local, provincial and national levels in working groups considering system reform and pilot programs aimed at assisting SRL’s; the development of court-based initiatives such as a SRL workshop, a SRL Navigator or a form checker; judicial and legal education projects focusing on SRL’s; and continuing writing, blogging and other social media connections among those present at the Dialogue Event - and others who wished to be included.

Many of these ideas were discussed and endorsed by the reports from the working groups (above). Some of the groups also presented ideas for a National Co-ordination group to “keep the SRL issue alive and in front of us.” A judge described the relationship to these issues of the work of the Chief Justice’s National Action Committee on A2J which has recently released its reports⁴.

In the closing minutes of Saturday’s discussion, the facilitators challenged each delegate to think of “one thing” that they could do on their return to their organization – whether a court, a law society, a legal aid board, a pro bono organization or a government agency – to begin to develop new solutions to empower and support SRL’s. Many individual delegates approached us either at the end of the event or in subsequent emails with ideas for concrete initiatives. For example, several lawyers present offered their services pro bono to assist a SRL. Another delegate worked on writing an Op-Ed with me in the week after the event.

We are acting to move forward suggested initiatives including: securing SRL representation on a number of organizational and government boards and working groups across Canada; collaboration among provincial Law Societies and among provincial Legal Aid Boards on strategies in relation to assisting SRL’s; courthouse pilots on legal advice/ legal information; a SRL “road show” to speak to law students in classes at Ontario law schools.

The following comment is one delegate’s sense of their personal commitment:

“One of the key things I think I can do is just continue the Dialogue in the workplace, to create more awareness of the impact our action or inaction has on SRL’s. In so doing I hope it will become part of a larger discussion on how the justice system must embrace the need to change to better serve the interests of those that is meant to serve.”

Evaluation

An event survey was sent out to all delegates and 16 responses received, mostly from SRL delegates. There was widespread agreement about the benefits and constructive tone of the event.

Many of the 16 surveys returned noted the importance of continuing the dialogue via the establishment of a centre or institute to continue to study the SRL phenomenon, initiate ideas and evaluate pilot programs. Many also described the importance of involving SRL’s on working groups and in testing new programs and initiatives designed to assist them. Most – although not all – respondents were enthusiastic about the idea of a similar Dialogue Event in their own region.

⁴ For the report of the Family Justice Working Group, see <http://www.cfcj-fcjc.org/sites/default/files/docs/Report%20of%20the%20Family%20Law%20WG%20Meaningful%20Change%20April%202013.pdf>

The following are a small selection of comments received after the event either via the formal evaluation survey or in emails sent to the Project in the days after the event. This selection is representative of the observations made about the impact of the event by many delegates from all constituencies.

“Honestly, it has been a long time since I have been to a conference which held me so spellbound.”

“I was most impressed with all the positive and focused attention on the need to better understand SRL’s and the willingness of the participants’ to accept the need to see changes made in all spheres of the justice system and within their own organizations to better serve the SRL’s.”

“There are so many good people doing what they can for people. There were a lot of “aha moments” for many of the participants on many levels. This is the beginning of dialogue and social change. There will be much more work to be done. “

“As a result of this weekend, people feel empowered. Every bit of information that gets out can help someone. This includes SRL’s understanding the perspectives of judges and lawyers, as well as being heard themselves. SRLs have no clue what it is like to be a judge/lawyer.”

“From the moment I stepped off the plane in Windsor until I left several days later I encountered an experience which I now consider to be the exact opposite of my interactions with the legal system. The chaos was replaced with order, indignities with respect and cruelty with kindness.”

“The courage of the SRL’s who presented and spoke at the dialogue was inspiring. It is now incumbent upon the participants to ensure that their voices are heard.”

“I believe it was a great opportunity for those of us in the justice system to see how we look to outsiders.”

“I returned home ...with an outlook on human nature that I never possessed before.... I had honestly thought the two days would be a shredding of the SRLs. ...(Yet) everyone, no matter their position, treated the SRL delegates with attention and respect. Some, if not all, acknowledged that this is a systemic problem way beyond any isolated challenges caused by the self-advocate movement.”

“The SRL’s are really a symptom of a larger problem. We can’t financial, emotionally and psychologically continue on this same old, same old path. The divide will just get greater and greater. Thank you for bringing this matter to the attention of so many people who have the ability to make significant changes.”