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What Court Staff Told Us

A Summary from the National Self-Represented Litigants Study 2011-2012



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What Court Staff Told Us

Written by Hannah Bahmanpour and Dr Julie Macfarlane

Between December 2011 and December 2012, Dr. Julie Macfarlane (with assistance of Sue Rice, Project Manager) interviewed 101 court and agency staff (including registry staff, court clerks, legal information centre staff, duty counsel and others) working directly with SRLs in Alberta, Ontario and British Columbia. They provided highly consistent responses to our questions about their experiences with SRLs and the challenges they presented for their work.

1. The volume of SRLs has increased significantly

Virtually all the 101 court and agency staff we interviewed for the National Study told us that the numbers of people representing themselves with whom they dealt had increased significantly over the last 3-5 years. Some had a longer perspective and described numbers beginning to jump dramatically 10-15 years ago. All agreed that this had changed the nature of the work of the counter and registry staff. Court clerks also spoke about the difference that it made to their work in not only dealing with judges and lawyers, but also with large numbers of SRLs.

“Our services have expanded because of the huge increase in volume – we used to see two or three people a day, now between 70-100 a day come to the Family Legal Information Centre.”

“The rise in SRL’s may be in part because of the information that is now available on-line and the forms that can be accessed on-line. People think that they can do it for themselves – why bother to retain counsel?”

2. SRLs come from all walks of life

SRLs increasingly include individuals who begin their matter with a lawyer but have run out of money to pay them. Many SRLs now are well-educated and expect to be able to navigate the court system on their own. Others are almost helpless, especially the elderly, and those without English or French as a first language. Duty counsel commented that they increasingly saw clients who might not formally qualify for their services who were desperate for their help.

“SRLs are smart people who do their homework and research.”

“Some SRLs feel like they (are), lost in the system, they don’t know how to speak the language.”

“SRLs are from all across the board now. We see all types of income for some applications.”

3. SRLs are anxious and stressed

Virtually all of the court and agency staff whom we interviewed for the National Study told us that the major challenge of working with SRLs was the stress and anxiety that they are experiencing. SRLs experience extreme emotional, psychological and financial pressures. This places high demands on court staff to demonstrate empathy and understanding, often difficult given the volume of people looking for their assistance and the fatigue that is often a result of dealing continuously with very emotional people. Many court staff express strong empathy for SRLs, while others seem exhausted and frustrated by the lack of training and support that they receive.

“People become impatient and then make mistakes. And then they rush it and it gets to be a worse situation for them.... people need to understand that coming to court is not a relaxing thing”

“I’m afraid the 80 year old landlady is going to have a heart attack while going through the forms to evict a tenant. ...It’s the emotional part (that is the hardest) and there is no court for that. “

“Sometimes they will write an affidavit that has no relevance to the case – people often are highly emotional”

“People cry a lot.”

4. Court Staff have security concerns

Some court staff also talked about security concerns, especially in larger courthouses, and the need to be able to call on the court sheriff where a client became angry and belligerent. Security protocols appear to be developing in a piecemeal fashion without a clear national or provincial policy or specific training for court staff on how to deal with angry and even threatening people.

5. SRLs need assistance with form completion

Many court staff described the difficulties they saw SRLs having with the accurate completion of the correct court forms for their matter. Some reflected

that the complexity of many of these forms confounded those with legal training also. Many remarked on the demands of continual changes in forms that leave them scrambling to keep up-to-date and the relatively poor training (often on-line) that they receive when new forms and procedures are introduced into their jurisdiction.

“There are some things (SRLs) might miss that are really important when filing paperwork.”

“The system needs to offer more advice on filing properly and the steps of the process at the very beginning the SRL experience.”

“We also have people in this community who are illiterate and simply can't fill out the forms.”

6. SRLs need more information about court procedure

Self-represented litigants are often highly emotional and undergoing extreme stress, anxiety and anticipation. Court/trial procedure is often unfamiliar and complex. Court staff can alleviate some of the unknowns that create anxiety and stress for self-reps by setting expectations. Court staff can provide self-reps with general information as to what will happen before, during and after their hearing. Examples of this include how to file documents prior to a hearing, when to speak in court, how to provide evidence to the court, and when to expect the judge's written decision.

An information package/tips sheet on 'self-representing' would be extremely handy and helpful to both court staff and self-reps. Each courthouse should have general information easily accessible for SRLs (in a variety of languages reflecting the court user population).

“There is no simple way to navigate the procedure. This is overwhelmingly the most common problem.”

“We simply can't help enough people.” (information service staff person)

“There are some SRLs who need (procedural) assistance because English is their second language or just because of a lack of sophistication with regard to knowledge of the court process.”

7. Legal information versus legal advice

In all Canadian jurisdictions, court staff are obliged to provide information to litigants, but cannot give legal advice. Many of the court staff we interviewed complained about the lack of clarity distinguishing legal information from legal advice. This has several implications. It limits court staff from providing the necessary information required to assist self-represented litigants, and frequently results in the court staff being the focus of frustration from a SRL who had expected more assistance. It creates anxiety for court staff who worry about whether they are crossing a “line”. As a measure of caution many court staff presently say and do less than they might be able to and many express frustration about this. Some court staff feel that they should be able to do more to help, and some take extraordinary measures to do so (for example, using whispers or pointing to give information or alert the SRL to problems with their forms, rather than addressing this openly).

While there is a fine line distinguishing legal advice from legal information, more clarity and better training for court staff is critical to their being able to do their job effectively. Court staff require better guidelines and training in order to assist SRLs, without the worry of providing legal advice.

“We are constrained as we are only allowed to offer legal information and not legal advice.”

“I want to help but we cannot tell them what to write because we don't have formal legal training. It's tough to know what is legal advice and what is not so sometimes we don't know and it is very frustrating. “

“Some just want a little information and direction – others assume that we are their lawyer, and expect the same services (from us) that a private paid lawyer would provide.”

“There is no lawyer in the Legal Information Centre – so no one who can give legal advice and also, there is no context for giving legal information.”

8. Cultural competence

Some SRLs in our study expressed dissatisfaction with the level of understanding (cultural competence) of some court staff. This is another way in which the work of court staff has changed significantly over the past 20 years. Many courthouses now serve communities where there are many different languages spoken and cultures represented (one example from our

study is Surrey, BC, where approximately 41% of the population are immigrants from countries such as India, China and the Philippines.

"If people don't speak English well, the legal system is not very accessible to them."

Cultural competence is the ability to interact effectively with people of different cultures and socio-economic backgrounds. Court staff would be better supported in their day-to-day interactions with SRLs if they were provided with training in cultural competence. For example,

"Our system can be intimidating to those from other cultures. Other cultures justice systems may not provide as many 'rights' to individuals who enter the system and thus they do not feel they have the "power" or "authority" to make independent decisions."

9. Plain language

In some instances court staff may use legal terminology that is unfamiliar to SRLs. Some expressions may need further explanation. Sometimes one court staff will use an expression or term differently from the way that another court staff or judge uses it, and this causes further confusion among SRLs. Some expressions are used interchangeably (e.g. 'remand' and 'adjournment') creating further confusion.

Both court staff and SRLs would be assisted by a focus on using plain language and where legal terms are necessary, using them consistently. This could be reflected in plain language training for court staff and more support for them in explaining legal jargon and terms of art. It could also be reflected in court literature prepared for SRLs which are presently often at a high reading level and contain many legal terms that are not understandable to the layperson.

Cynthia Eagan, a public librarian, worked with the National Study by evaluating legal information provision in the form of court guides in the provinces of Ontario, Alberta and British Columbia. She found that much of the material uses language that is inaccessible to many people without legal training (and sometimes at a grade 11 or above reading level). Cynthia also reported that the language in the court guides was frequently vague and unclear. The confusion and misunderstanding regarding the language used in these texts can be resolved by breaking down and rearranging sentences, and providing definitions within the text (as opposed to a final glossary) (see the Court Guides Assessment Project, Appendix I).

Documents in print also need to be clearly structured in order that litigants can follow their organization easily. The same principle applies to website-based resources. Cynthia found that many have broken links, and require better maintenance.

10. Collaboration and triage

All justice system stakeholders play a vital role, specifically with bridging the gap between the needs of self-reps and delivery of services. Collaboration and information of efforts and services between judges, court staff, administrators, duty counsel, lawyers and self-reps themselves would enable a more efficient and productive system.

Court staff are the frontline in helping SRLs prepare before they appear in court. Better preparation will make the experience less overwhelming for the SRL, and would also be helpful to the judge overseeing the matter, as well as the other party(ies) involved.

Essentially court staff are already playing a triage role, but without basic training and supports (e.g. clarity of the extent and limits of their role, appropriate materials designed for SRLs). Some court staff described the need to move from providing generic legal information for all to a more focused triage role. A more focused set of triage responsibilities might include, for example, a document-checker (many court staff described this as an important discrete task that could save time and avoid a SRL reaching a hearing without properly completed forms), a designated individual to make an initial assessment of the level of assistance that the individual SRL requires (court staff see a wide range of needs) and a better system for referring SRLs to available local resources (some court staff seem to be unclear about how much referral information to other local services they should and can provide to SRLs).

"We need to build relationships amongst all services providers. We need to be utilizing (resources) in the best possible way, and making referrals."