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Tracking the Continuing Trends of the Self-Represented Litigant Phenomenon

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Tracking the Continuing Trends of the Self-Represented Litigant Phenomenon

Erin Chesney, Julie Macfarlane &
Susan Rice

Data from the National Self-Represented Litigants Project, 2014-2015



**THE NATIONAL
SELF-REPRESENTED LITIGANTS PROJECT**
Research, Resources, Dialogue & Collaboration

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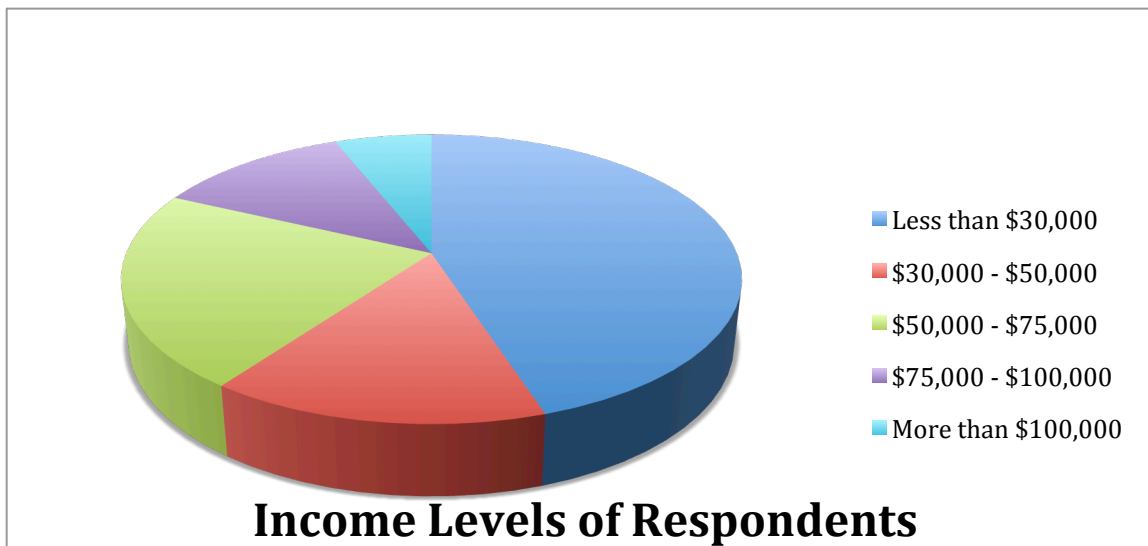
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Introduction

From 2011-2013, Dr. Julie Macfarlane conducted a study about experiences of self-representation in Canada. Her results were based on interviews and/or focus group interviews with 259 self-represented litigants (SRLs).¹ Since the release of the “The National Self-Represented Litigants Project: Identifying and Meeting the Needs of Self-Represented Litigants”, the National Self-Represented Litigants Project (NSRLP) has continued to collect data from a variety of SRLs across Canada by asking those who contact us to complete an Intake Form in Survey Monkey², linked to the website.³ This paper sets out to relate the new intake data to the original demographic data in the 2013 Research Report.

1. Who are the SRLs?

Out of the 69 SRLs who completed our online Intake Form from March 2014 to March 2015 present, 47% were female and 53% were male. The majority of participants were 50 years or older (56%).⁴ In terms of education, 56% of participants had a university or professional qualification.



Many of these higher earners initially retained a lawyer (see below), also consistent with the 2013 Study. This data is consistent with 2013 Study as well as with other studies that have collected demographic data on SRL income.

This data is consistent with the 2013 Study as well as with other studies that have collected demographic data on SRL income. For example, a comprehensive survey of

¹ Julie Macfarlane, “The National Self-Represented Litigants Project: Identifying and Meeting the

² A widely used software program: www.surveymonkey.com

³ March 2014 See Appendix A – Intake Form

⁴ 33.3% were 40-50 year olds, 9.09% were 30-40 year olds and 21.52% were 25-30 year olds

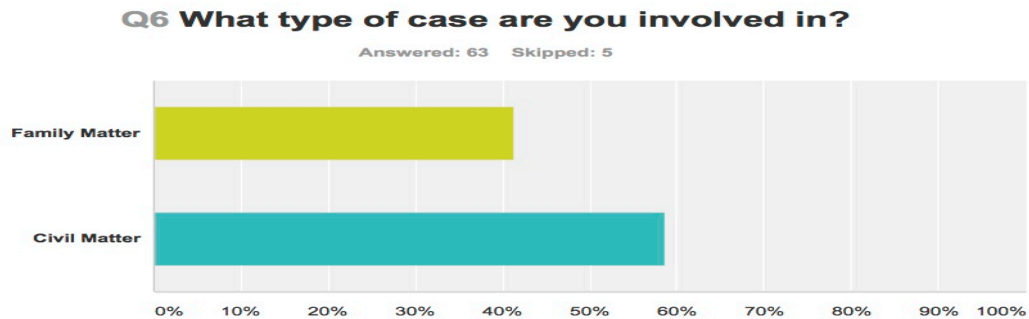
SRLs in the United States, conducted by Bruce Sales, Connie Beck and Richard Haan, for the American Bar Association in 1993 found that half the respondents had incomes under \$30,000 and that SRLs in this income range were significantly more likely to self-represent than those in higher income brackets.⁵

57% of respondents report having a university education, 20% college and 12% having other multiple professional qualifications. This is also consistent with the 2013 Study in which 50% of the SRL sample reported having a university degree and a further 23% a college qualification.

2. Where are they appearing?

SRLs are now appearing in every court and tribunal at every level across Canada. This is confirmed by other studies which have all concluded that the number of self-represented litigants has grown rapidly in courts all over Canada and the US in the last decade.⁶

a. civil/ family



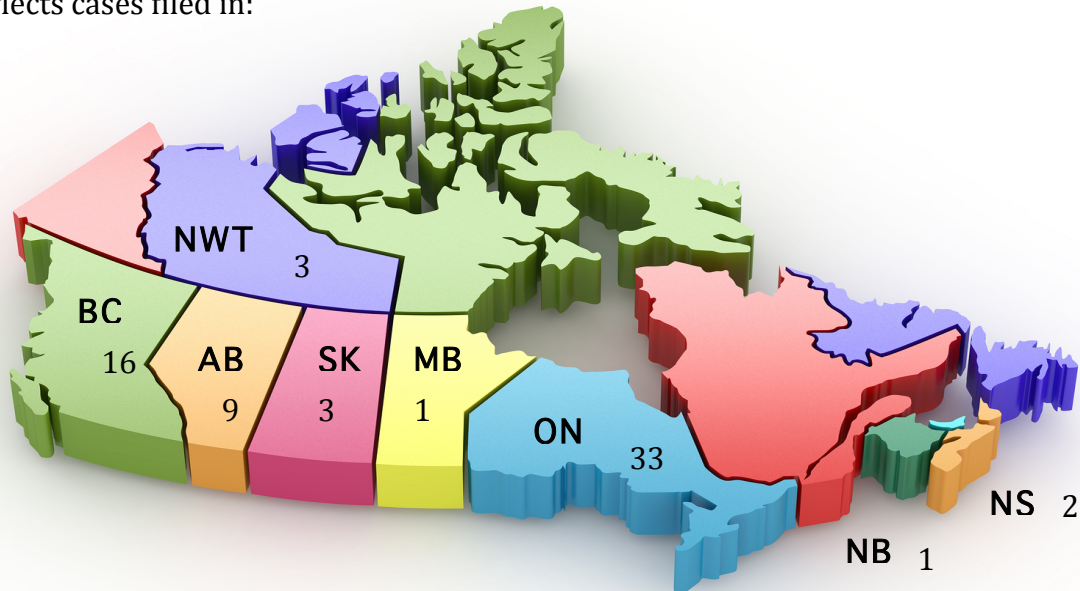
⁵ Self-Representation in Divorce Cases: A Report for the ABA Standing Committee on the Delivery of Legal Services, Sales, B., Beck C. and Hann, R. American Bar Association (1993).

⁶ See for example Farrow, T. et al, Addressing the Needs of Self-Represented Litigants in the Canadian Justice System, A White Paper Prepared for the Association of Canadian Court Administrators, March 27, 2012 <http://www.cfcfcjc.org/sites/default/files/docs/2013>; Hough, B. Self-Represented Litigants in Family Law: the Response of California's Courts, California Law Review Circuit vol 1 Summer 2010

As the above figure indicates, in the 2014-2015 NSRLP sample group there are slightly more SRLs involved in civil matters than family matters. In the 2013 Study, 60% of the sample were in family court, either provincial or divorce court.

b. province/ territory filed

68 respondents answered this question and some filed in multiple provinces/territories. While the majority are still Ontario cases (n=33) our data now reflects cases filed in:



1 respondent did not specify location

c. court/ tribunal

SRLs are present in all types and levels of courts and tribunals. Some respondents indicated that they had multiple proceedings in more than one court/tribunal. These include provincial superior and supreme courts, small claims court, federal court and a variety of administrative tribunals.

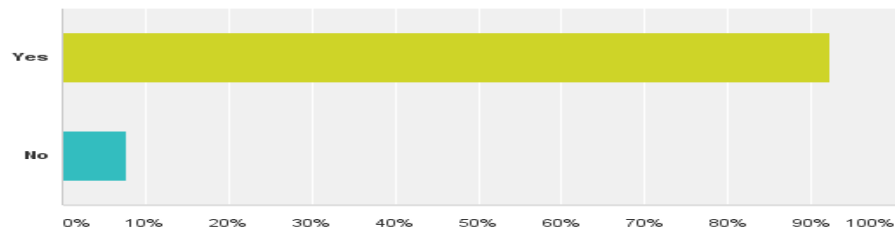
d. party breakdown

66% of respondents indicated that they were the plaintiff (or petitioner) in their case, while 34% were the defendant or respondent. This is almost identical to the findings of the 2013 Study (63% of SRLs were acting as plaintiffs or petitioners, and 37% as defendants or respondents).

3. What kinds of help do SRLs have and seek?




Q14 Have you ever retained a lawyer in the past? (For example: real estate transaction, criminal case, to draft a will, other)

Answered: 65 Skipped: 4



92% of respondents reported having retained a lawyer to work on an earlier issue giving rise to the need for legal assistance (for example, real estate, drafting a will).

When asked how they would rate the legal services provided to them in that earlier instance:

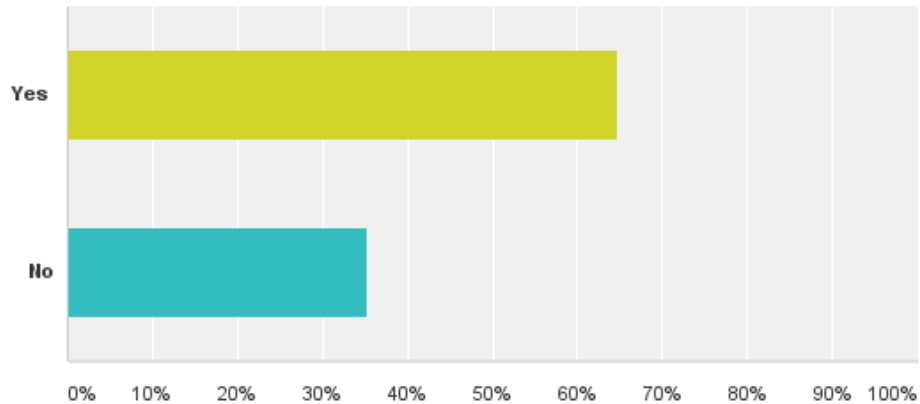
- Poor 54%  *"The lawyer was not fully prepared, very costly and had a different agenda than us."*
- Moderate 19%  *"Poor for divorce matters. Reasonably or well satisfied for real estate matters."*
- Good 20%⁷  *"I had retained a lawyer to process a real estate transaction and another lawyer to process a will. Both experiences were positive and met my expectations."*

Nonetheless, 65% of respondents (n=42) said they had originally retained a lawyer to work with them on **this case**

⁷ The remaining 7% indicated that this question was not applicable as they had not hired a lawyer before this case

Q16 Have you retained a lawyer to represent you at any stage in this case?

Answered: 65 Skipped: 4



83% of those individuals indicated that this was a lawyer in private practice, as opposed to a legal aid or publicly funded lawyer. However, those respondents (n=40) who indicated that they had initially retained a lawyer in their case had now run out of funds / were unwilling to continue to pay for this service.

The 2013 Study showed a similar result with more than half – 53% - of SRLs retaining a lawyer at some point in their case, three quarters using a lawyer in private practice.

59 % of participants reported being comfortable with carrying out legal research on their own. SRLs were asked to comment on the most useful on-line resource and just like the 2013 Study, the most frequently cited resource was CanLII – a free, online legal database⁸.

Many also indicated that court websites were useful to them when preparing their cases such as conducting research on the Supreme Court of British Columbia's website or pulling forms from the Ontario government's website. Some discussed frustration in navigating these sometimes complex and dense websites, but the general consensus is that legal research is possible for SRLs if they are given the right resources. One SRL stated that:

⁸ See the NSRLP CanLII Primer at <http://representingyourselfcanada.com/can-lll-primer/>

"The internet was great for researching case law... but I found just "digging" useful as well. Sometimes, you found information you did not think you needed, but actually did."

Finally, when asked whether they were receiving legal advice or assistance from a service or agency, 30% (n=21) answered affirmatively. When respondents were asked to describe where they were receiving legal advice, there was a wide range of answers ranging from law student clinics or programs, attending on duty counsel, to legal information centers. Consistent with the 2013 Study, this reveals that SRLs who can no longer afford or have never been able to afford private counsel will continue to seek out other forms of *pro bono* and publicly funded assistance.

In common with the 2013 Study, the vast majority of SRLs seek legal assistance in some form. Even if they cannot afford (to continue) to retain counsel and are ineligible for Legal Aid, they continue to look for ways to have help from a lawyer or legal information worker.

4. Other aspects of the SRL experience

94% of respondents disclosed that a lawyer was representing the other party in their case. In the 2013 Study 75% of the SRL sample reported that the other party in their family or civil case was represented by counsel. This means that the vast majority of SRL experiences that are reported to the NSRLP are matters in which one side is represented by counsel, and the other is not. From discussions with SRLs it appears that it is not uncommon for the other side to have a pattern of on-again, off-again representation.

The Intake Form also asks respondents if they usually brought a support person with them when they went to the courthouse, either for an appearance or to file documents or any other appointment (for example at a help service). We are interested in knowing how often a family member or a friend was there for emotional or psychological support.



17% of respondents indicated that they brought a support person most of the time



40% indicated that they brought a support person sometimes

This is relatively consistent with the original report during which 37% of SRLs reported that they regularly took a support person with them to court. Many SRLs in the 2013 Study spoke about bringing a support person, but “burning them out” over time as appearances piled up.

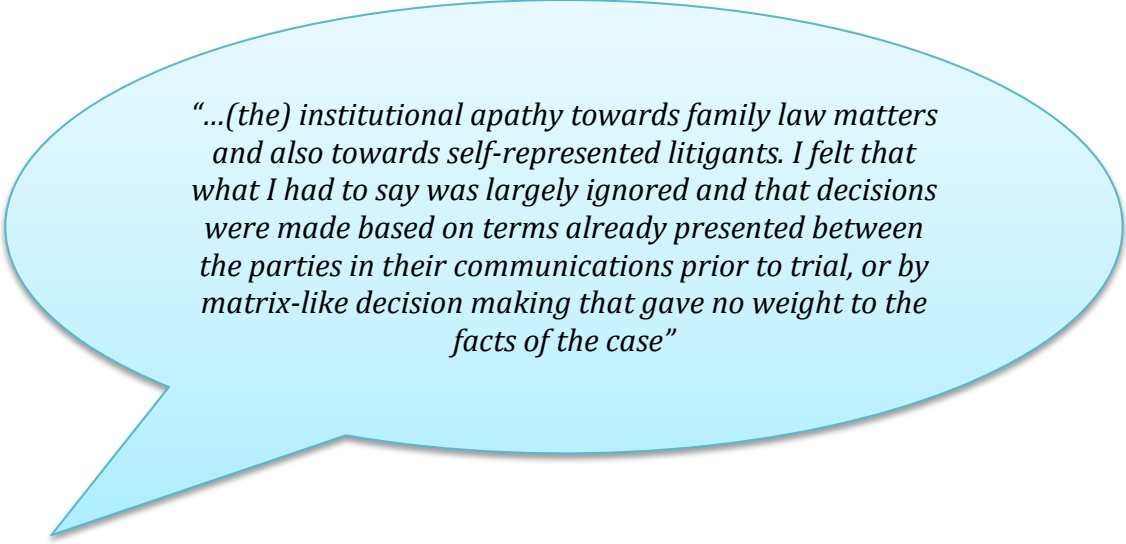
5. Qualitative data

The on-line Intake Form is less effective in gathering qualitative data about expectations and experiences than the personal interviews conducted for the 2013 Study, but does provide us with some insights. We have provided space at the end of a number of questions throughout the form in order for a respondent to offer more details regarding particular parts of the self-representation experience. In addition, the final question in the survey is an open-ended question in which respondents are invited to share any other aspect of their experience.

In organizing the qualitative data provided, there seem to be some common themes that run through the answers that are consistent with the qualitative data analysis in the 2013 Study.

One frequently expressed sentiment is a feeling of frustration and disappointment, and a sense of being demeaned by the process. It is clear that frustration has become a standard aspect of the SRL experience. These feelings seem to be present at every stage of respondent experience – for example, one stated that it was “very frustrating trying to find answers”, and others complained about the difficulty of presenting their case in court.

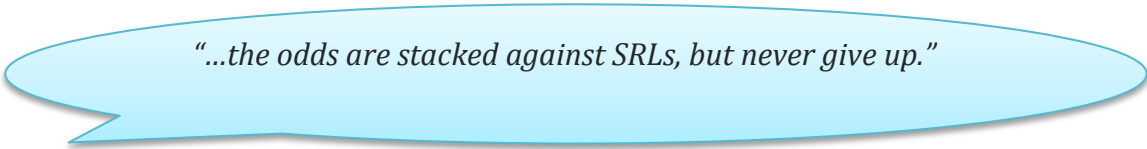
There were also suggestions of bias and hostility towards SRLs, and a failure to take what they said seriously. One SRL described his/her biggest disappointment as:



"...(the) institutional apathy towards family law matters and also towards self-represented litigants. I felt that what I had to say was largely ignored and that decisions were made based on terms already presented between the parties in their communications prior to trial, or by matrix-like decision making that gave no weight to the facts of the case"

Many SRLs discussed the importance of quality legal advice. Some spoke of their disappointment when a private lawyer whom they had retained earlier did not provide them with realistic advice. Many echoed the sentiment that "(legal) advice was accurate but not as practical as it could have been". Clients who can marginally afford legal services are often looking for opportunities to reduce costs by taking on some of the tasks themselves and want a higher level of practical orientation and explanation than "traditional" clients. Sometimes the respondent felt that this was because usually the lawyer did not take into account their limited financial means.

Once an individual comes to the conclusion that self-representation is the only practical way of going forward, many SRLs suggest finding sources of advice in lieu of a lawyer. One advises others to "communicate with the court clerks - they will provide the SRL with non-legal but helpful advice, [for example] all hearings are recorded and the transcripts can be ordered." Another suggested "seek(ing) the opinions of others to see what the perspectives are of the "reasonable bystander"... If the reasonable bystander is on your side, then you should not be discouraged." While warning of the obstacles that other SRLs may face, from their own experience some offer the advice along the following lines:



"...the odds are stacked against SRLs, but never give up."

Many respondents took the opportunity to share their experience learning how to research their legal issues. Many recognized the World Wide Web as an extremely valuable resource, but pointed out that it is sometimes overwhelming to sort through the myriad of sources and forms of information available. One SRL

described this as follows:

“(I) researched extensively into the law using the Internet as (my) primary research tool and found there was a wealth of information but it was difficult to assimilate, sometimes outdated or inaccurate and not very user friendly for non-lawyers.”

Other respondents spoke of the importance of finding relevant caselaw on the Web, citing websites such as CanLII (above) and government websites as their ‘go-to’ resources. One respondent described how finding a couple of cases similar to their own “was invaluable information and became the cases that I built my defence on.”

“People have the power to conduct significant research on their own...and become well versed in the relevant caselaw and related information regarding their case to the point where they could potentially represent themselves...”

Another repeated comment was the importance of utilizing search engines to find definitions to legal words that they did not understand, or simply to search using their research questions to see if anyone else might have faced the same issue. Although legal research was sometimes challenging, once again, respondents mostly seemed to have positive messages for other SRLs.

6. Conclusions

The fact that NSRLP continues to hear from SRLs on a daily basis – not all complete the Intake Form – bears out the hypothesis of the 2013 Study that the volume of SRLs continues to rise, and the legal system needs to adjust to this reality.

The new SRL data analyzed in this short report is complementary to and largely consistent with data from the 2013 Study. The Intake Form uses many of the same demographic questions and units of analysis as the original more extensive 2013 Study. In particular and of especial importance is that the socio-economic and educational backgrounds of SRLs completing the Intake Form is consistent with the

2013 data. Civil cases are somewhat more represented in this sample than family cases, but obviously SRLs are pursuing both types of action without counsel in growing numbers.

Also important is the consistency with which more the respondents report that they began their case with the assistance of a lawyer (almost always privately retained, very occasionally publicly funded). This further reinforces the finding of the 2013 Study that where possible, Canadians prefer to be represented by counsel – they simply cannot afford to be or to continue to be in many cases. Also consistent with the original study findings is the fact that SRLs continue to search assiduously for resources that might (minimally) “replace” legal representation in some way, whether this is *pro bono* advice and assistance, legal information help centres or simply researching on-line. Similarly SRLs like to be able to bring a support person with them to court, but often find that no one is available or worry about burning out their support person.

The same tone of frustration, and concerns about the unfair treatment of SRLs, that we heard in interviews during the 2013 Study is evident in the open form responses on the Intake Form. There is no particular indication that the situation is improving, at least for this small sample of SRLs – although some are clearly becoming more experienced legal researchers.

100% of intake respondents indicated they wanted to be added to the NSRLP newsletter mailing list, challenging the pervasive myth that SRLs do not retain an interest in and concern for access to justice once their own matter is concluded. As well, NSRLP’s social media presence is currently at an all-time high.

Twitter	1063
Facebook	675
E-Blasts	686
TOTAL SOCIAL MEDIA COMMUNITY	2424

These fora regularly host discussions by SRLs about their experiences navigating the Canadian legal system.

The intake procedure at the NSRLP is an ongoing process. We shall continue to adjust intake questions based on the changes we observe and the realization of new subject areas to investigate.

If you have any questions about the data presented in this short report, or are interested in reviewing the raw data, please contact NSRLP at representingyourselfcanada@gmail.com.

Appendix A – Intake Form



NSRLP Intake Form

National Self-Represented Litigants Project Intake Form

Although we are not currently conducting full research interviews, we are continuing to populate our database of self-represented litigants (SRL's) with background information and demographic data collected with their consent from SRL's who contact the Project.

If you are willing to contribute your information to our database, we shall place your answers to the following questions into our secure database. All files are assigned a number and. It is only by this number that your data is identified, unless you provide your permission for us to identify you (for example, in response to a speakers request, see (2) below)

The information that we are continuing to collect will be used for:

1. Developing further data about SRL demographics and experiences
2. Matching SRL's to organizations and agencies requesting a speaker or a working group member or similar participation by a SRL, with permission
3. Generate quantitative data to further generate the discussion about the SRL phenomenon and access to justice issues in Canada

Thank you for taking a few moments to provide this information about yourself and your experience as a self-represented litigant.



NSRLP Intake Form

1. Name:

2. City:

3. E-Mail Contact:

4. Telephone Contact:

5. Today's Date:

6. What type of case are you involved in?

- Family Matter
- Civil Matter

7. What is your gender?

- Female
- Male
- Other (please specify)

8. Do you have any dependent children?

- Yes
- No

9. In this case, what is your position?

- Plaintiff (Petitioner)
- Defendant (Respondent)

10. Is your case:

- Ongoing
- Concluded

11. What is your age?

- Under 20
- 20-25
- 25-30
- 30-40
- 40-50
- 50 plus

12. What is your annual income?

- Under \$30,000
- \$30,000-\$50,000
- \$50,000-\$75,000
- \$75,000-\$100,000
- More than \$100,000

13. What is your highest level of education?

- No high school diploma
- High school diploma
- College
- University/professional qualification
- Other (please specify)

14. Have you ever retained a lawyer in the past?

(For example: real estate transaction, criminal case, to draft a will, other)

Yes

No

15. If yes, how would you rate your satisfaction with the legal services provided to you?

Poor

Moderate/OK

Reasonably or Well Satisfied

N/A

If possible, please provide your reasoning behind your evaluation of your past experience with a lawyer

16. Have you retained a lawyer to represent you at any stage *in this case*?

Yes

No

17. If yes, was it:

A Private Lawyer

A Legal Aid or Publicly Funded Lawyer

N/A

If possible, please describe your experience with your lawyer for your present case.

18. Have you received legal advice from a service or agency?

- Yes
- No

If yes, please state the name of the clinic or agency or program

19. What is your first language?

- English
- French
- Spanish
- German
- Madarin or Cantonese
- Punjabi
- Urdu
- Polish
- Other (please specify)

20. In what province/territory is your case filed?

21. In what court in that province/territory is your case filed?

Other (please specify)

22. Are you comfortable using the Internet for research and to find and use other tools and programs for SRLs? Please describe your experience with legal research using the Internet - and tell us what was the most useful resource you found.

- Yes
- No
- Other (please specify)

23. Do you bring a support person with you to court?

- Most of the Time
- Sometimes
- Never

24. Is the other side represented by counsel?

- Yes
- No

25. Would you be willing to have us contact you for a brief telephone interview?

- Yes
- No

26. Are you interested in participating as a SRL in (eg) a conference, a working group or pilot project?

- Yes
- No

Please use this space to tell us anything additional that you would like to pass along about your experience as a SRL. In particular, we are very interested in your own tips for other SRL's.

27. In compliance with the Canadian Anti-Spam Legislation that came into effect on July 1, 2014, the NSRLP requires your express consent to communicate with you electronically and sending its press releases, statements, news, events information and other materials relating to NSRLP.

NSRLP greatly appreciates your support! We hope we can provide information that is relevant to you.

I consent to receive NSRLP emails and other electronic communications:

- Yes
- No

Once again, thank you for your time and being willing to share your experience with us. We very much appreciate it!

- Dr. Julie Macfarlane and the NSRLP Team