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Tracking the Trends of the Self-Represented Litigant Phenomenon: Data from the National Self-Represented Litigants Project, 2019-2021

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Tracking the Trends of the Self-Represented Litigant Phenomenon:

Data from the National Self-
Represented Litigants Project,
2019-2021

Charlotte Sullivan & Julie Macfarlane

October 2021



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Introduction

The last report covering data collected by the National Self-Represented Litigants Project (NSRLP) (information shared by self-represented litigants between January 1, 2018 and June 30, 2019) was published in January 2020, a mere two months before courts across Canada were left scrambling to adapt to a new reality: the COVID-19 pandemic.

Nearly eighteen months later—after thousands of virtual hearings, new protocols, and public health challenges that both improved and destabilized access to justice in myriad different ways—the NSRLP is bringing forward its findings collected from SRLs from July 1, 2019 to June 30, 2021, from a total of 279 respondents.

What is the National Self-Represented Litigants Project?

From 2011-2013, Dr. Julie Macfarlane studied the experiences of self-represented litigants navigating the justice system in three Canadian provinces: Ontario, British Columbia, and Alberta. She conducted detailed personal interviews, as well as focus group interviews, with 259 self-represented litigants. From this initial study, [ten recommendations for action](#) emerged:

1. Thinking differently about systemic change in the justice system, with an emphasis on improving access to justice for all;
2. Listening to and learning from the lived experiences of self-represented litigants themselves;
3. Improving legal services to accommodate different kinds of clients, including self-represented litigants, by adapting billing models, unbundling legal services, and sharing the marketplace with different kinds of legal professionals;
4. Adapting public funding to accommodate the legal needs of different kinds of clients, providing the maximum value;
5. Making legal information more accessible to a broad readership;
6. Enhancing mediation and dispute resolution services for self-represented litigants;
7. Ensuring that judges are well-educated about the unique needs of self-represented litigants and capable of addressing potential implications for courtroom procedure;
8. Adapting legal education and training by integrating new knowledge about self-represented litigants;
9. Measuring the social impacts of self-representation, especially as these litigants experience significant stress and negative social consequences following their experiences in court; and
10. Rebuilding public trust in the justice system.

After the publication of Dr. Macfarlane’s [initial study](#) in 2013,¹ self-represented litigants continued to contact her, looking to share their own stories. It was clear that there was a significant gap in existing organizations and systems, and that self-represented litigants’ contributions and experiences had been going unheard. The National Self-Represented Litigants Project (NSRLP) was born to fill that gap.

Our Data

The NSRLP research team quickly developed an [Intake Form](#) using SurveyMonkey² in order to continue collecting information from self-represented litigants from across Canada.

While the data collected from the replies to the Intake Form is less detailed than the original study interviews, the questionnaire tracks self-represented litigants’ demographics using some of the same variables, such as income, education level, and legal party status. It also asks questions about the litigant’s experience with prior legal services, mediation services, and bringing a support person to court. The Intake Form also provides a window into the personal experiences of self-represented litigants.

Each time NSRLP publishes a report on the data (approximately every 18 months), the research team adds one or more short questions to the survey going forward to reflect new trends and themes. In this way, we continue to build on a solid base and to explore new ideas and responses to the self-represented litigant phenomenon.

Previous intake reports are available via the following links:

1. [Original SRL Study \(published 2013\)](#)
2. [Intake Report 2014-2015 \(published 2015\)](#)
3. [Intake Report 2015-2016 \(published 2017\)](#)
4. [Intake Report 2017 \(published 2018\)](#)
5. [Intake Report 2018-2019 \(published 2020\)](#)

¹ See Julie Macfarlane, “The National Self Represented Litigants Project: Identifying and Meeting the Needs of Self-Represented Litigants” at 31, May 2013, online (pdf): <<https://representingyourselfcanada.com/wp-content/uploads/2015/07/nsrlp-srl-research-study-final-report.pdf>> [2013 report]

² A popular software program used to collect survey responses online and present aggregate data.

Part 1: Who are SRLs?

The demographics reflected in the 279 Intake Forms submitted between July 1, 2019 and June 30, 2021 are largely consistent with results reported in previous years.

Gender and age breakdown

260 of the 279 respondents provided information related to their gender. 48.9% of respondents (n=127) identified as female, 46.9% (n=122) identified as male, and 4.2% (n=11) either preferred to self-describe or not to say.

What is your gender?

Answered: 260 Skipped: 19

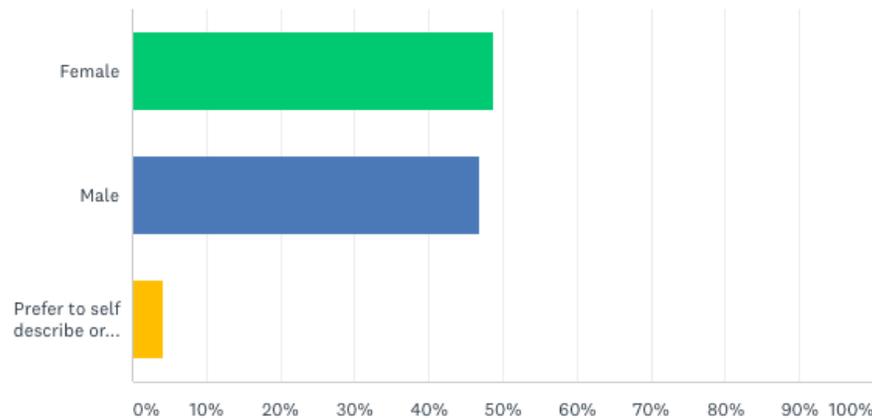


Table 1: Gender of respondents

Age data collected from the Intake Forms indicates that 51.5% of respondents were over 50 years of age, 29.2% were between the ages of 40 and 50, 15% between the ages of 30 and 40, 3.4% between the ages of 25 and 30, and 0.8% between the ages of 20 and 25. None of the respondents indicated that they were under the age of 20. However, the presence of self-represented litigants under the age of 25 (n=2) is a first in the history of the NSRLP's data collection on this subject.

In the last SRL Intake Report (covering 2018-2019), 63% of respondents were over 50 years old, 21% between the ages of 40 and 50, 12% between 30 and 40, and 3% between 25-30.³ Results have remained

³ See Brandon Fragomeni, Kaila Scarrow, and Julie Macfarlane, "Tracking the Trends of the Self-Represented Litigant Phenomenon: Data from the Self-Represented Litigants Project" at 5, January 2020, online (pdf): <https://representingyourselfcanada.com/wp-content/uploads/2020/01/Intake-Report-2019-Final.pdf> [2018-2019 report]

largely consistent over the years, with the exception of the over-50 category, which increased 8% between 2017 and 2018-2019 and now has decreased by almost 12%. Individuals over the age of 40 are more likely to be engaged in family and civil disputes, which explains their disproportionate representation in the sample (together, the categories of individuals aged 50 and over and aged between 40 and 50 represent over three quarters of respondents). It is possible that younger individuals are also choosing to resolve disputes outside the legal process by using, for instance, online mechanisms such as Online Dispute Resolution (ODR) or mediation. This question has yielded consistent results since the first report in 2013, and further analysis to determine specific factors contributing to the representation of some age groups over others would be valuable.

What is your age?

Answered: 260 Skipped: 19

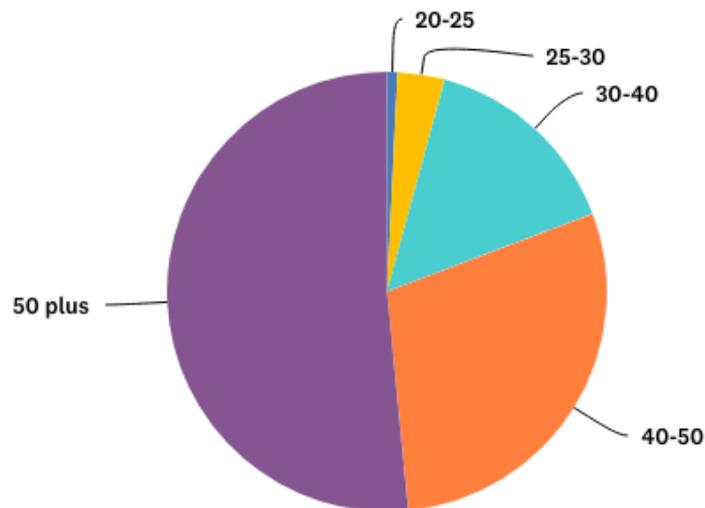


Table 2: Age of respondents

Legal party status

63.4% of respondents indicated that they were the plaintiff or petitioner in their case, while 36.6% indicated that they were the defendant or respondent. This approximately 2:1 plaintiff-defendant split is largely consistent with ratios observed in our previous data collection periods.

Was the other side represented?

Nearly 91% of respondents indicated that the other party in their case was represented by counsel. This figure has consistently increased over the years—in 2013, 75% of respondents indicated that the other

side was represented;⁴ in 2017, the same figure was 86%;⁵ and in 2018-2019, 90%.⁶ The vast majority of self-represented litigants in the NSRLP’s sample therefore are involved in cases where the other side is represented by counsel for at least part of the process.⁷

Do you identify as a person with a disability?

41.3% of respondents identified as a person with a disability. 7.3% of all respondents indicated that they have a cognitive disability and 6.18% that they have a physical disability. 27.8% of respondents who identified as disabled provided additional information, with some citing issues with addiction, serious long-term mental health issues, or learning disabilities. Many of those providing additional information identified as both cognitively and physically disabled.

Do you identify as a person with a disability?

Answered: 259 Skipped: 20

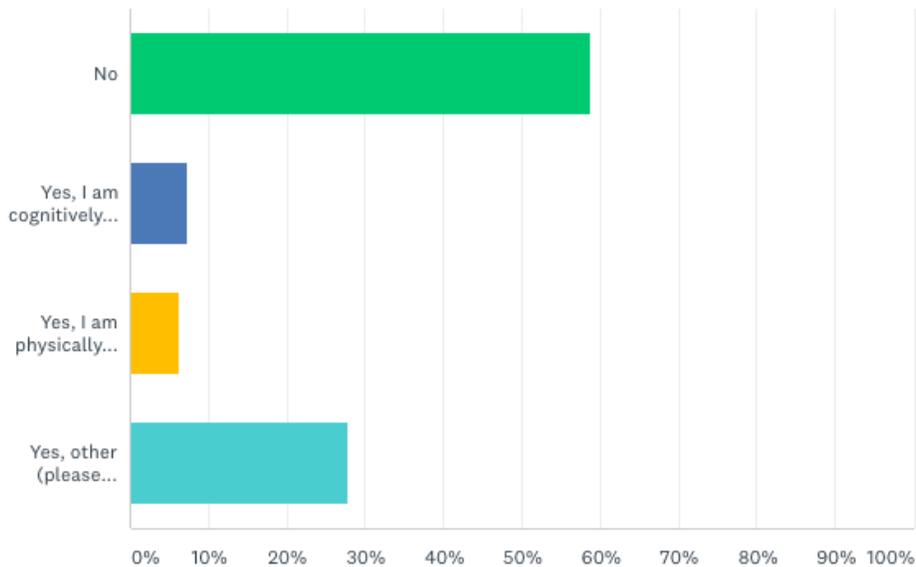


Table 3: Dis/abilities of respondents

⁴ See 2013 report, *supra* note 1.

⁵ See Kaila Scarrow, Becky Robinet, and Julie Macfarlane, “Tracking the Trends of the Self-Represented Litigant Phenomenon: Data from the Self-Represented Litigants Project” at 4, 2017, online (pdf):

<https://representingyourselfcanada.com/wp-content/uploads/2018/04/Intake-Report-2017-FINAL.pdf> [2017 report]

⁶ See 2018-2019 report, *supra* note 3, at 5.

⁷ The NSRLP does not collect specific data on whether the other party in a respondent’s case was represented for all or only part of the process.

These demographics are largely consistent with the NSRLP’s 2019 results, at which time just under 40% of respondents identified as persons with a disability.⁸ However, these statistics reflect lower numbers than the 47% of respondents who identified as disabled in 2017.⁹

In speaking with persons with disabilities who navigated the justice system within the period covered by this report, including in a [recent episode of the NSRLP podcast *Jumping Off the Ivory Tower*](#), the NSRLP has established that many disabled self-represented litigants continue to struggle while seeking accommodation from the courts. Anecdotal evidence suggests that the COVID-19 pandemic has significantly exacerbated these challenges for disabled self-represented litigants.¹⁰

First language

The vast majority of respondents (77%) indicated that their first language is English. Nine options other than English were included on the Intake Form—French, Mandarin, Cantonese, Spanish, Urdu, German, Polish, and Punjabi—but a further 10.7% of respondents selected “Other” in relation to their first language. Twenty other languages were represented in this sample: Korean, Hungarian, Tamil, Cree, Armenian, Turkish, Arabic, Ukrainian, Dutch, Portuguese, Hindi, Irish, Tagalog, Somali, Kutchi, Malayam, Serbo-Croatian, Italian, Gujrati, and Russian. Beyond that, 4.6% of respondents indicated their first language as French, 2.7% as Mandarin or Cantonese, 1.9% each as Spanish and Urdu, 0.8% as German, and 0.4% as Polish.

The diversity of represented languages in the sample is remarkable insofar as the Intake Form is presently only available in English. However, NSRLP is aiming to increase the number of Francophone self-represented litigants in our database and research reports; and to that end, we are conducting outreach initiatives into these communities. NSRLP has recently completed the translation of some web-based materials—including the Intake Form—into French, and aims to eventually make all resources available on our website accessible to Canadians in both official languages.

The Intake Form also asks respondents if they speak or read French fluently (a question added during the most recent intake period). Just a small number of respondents answered this question (n=32). Of these, 90.6% reported being unable to speak or read French fluently compared to 9.9% who can.

⁸ See 2018-2019 report, *supra* note 3, at 5.

⁹ In 2017, the NSRLP conducted targeted outreach to people with disabilities and published [a primer for individuals seeking accommodations](#), which may have led to a higher incidence of responses from persons with disabilities.

¹⁰ See the NSRLP’s upcoming research report, “Struggling for Accommodation” (*Shannon Meickle and Silvia Battaglia*).

Education levels

As in previous Intake Reports, respondents demonstrated a high level of educational attainment. 43.9% of self-represented litigants indicated having a university degree or equivalent professional qualification, and a further 22.3% a college diploma. 15.4% of respondents indicated “Other,” with some specifying that they had some university education but ultimately did not complete or had not yet completed their degree or diploma program. These results are largely consistent with previous reports: in 2018-2019, 46% of respondents held a university or professional degree and 22% a college diploma;¹¹ in 2017, these figures sat at 47% and 22% respectively;¹² and in 2013, at 50% and 23% respectively.¹³

What is your highest level of education?

Answered: 260 Skipped: 19

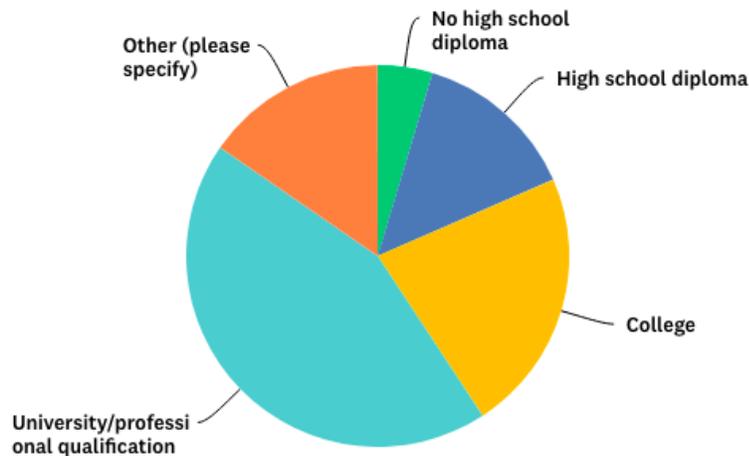


Figure 4: Educational attainment of respondents

Annual income levels

The majority of self-represented litigants in the sample continued to report lower income levels (below \$50,000 per annum). Most respondents (50.8%) reported their annual income as being under \$30,000, with an additional 16% reporting their incomes as falling between \$30,000 and \$50,000 annually.

¹¹ See 2018-2019 report, *supra* note 3, at 6.

¹² See 2017 report, *supra* note 5, at 6.

¹³ See 2013 report, *supra* note 1, at 30.

What is your annual income?

Answered: 256 Skipped: 23



Figure 5: Annual income levels of respondents

6.6% of respondents indicated that they make over \$100,000 annually, which is consistent with data collected in previous years. 8% of respondents in both 2018-2019 and 2017 reported earning over \$100,000 per annum,¹⁴ and 6% in both 2015-2016 and 2013.¹⁵ Of the 2019-2021 respondents who reported earning more than \$100,000 annually (n=17), 71.4% stated that they had worked with a lawyer at a prior stage in their case. This is slightly lower than in 2018-2019, at which time 84% reported having worked with a lawyer at some point.¹⁶

As was the case in previous reports, there is a significant gap between those eligible for Legal Aid and those who are able to afford *some* legal services while self-representing. Although not all of the high-earning self-represented litigants clarified why they chose to self-represent, previous expenditures on lawyers and debt load were mentioned by at least one respondent in the qualitative portion of the Intake Form, with the respondent stating that five years of paying for legal representation had effectively drained their savings. This suggests that the vast majority of self-represented litigants in Canada, including high-earning SRLs, face difficulties affording legal services for the entirety of their case, especially if it is protracted. As noted in the 2018-2019 report, this socioeconomic data is consistent with other studies having collected data on SRL income, which indicate that most people self-represent because they can neither afford to pay for legal services, nor qualify for Legal Aid.¹⁷

¹⁴ See 2018-2019 report, *supra* note 3, at 6; see also 2017 report, *supra* note 5, at 6.

¹⁵ See 2013 report, *supra* note 1, at 28; see also Macfarlane, Julie, Gurleean Gill, and Piper Riley Thompson, “Tracking the Continuing Trends of the Self-Represented Litigants Phenomenon: Data from the National Self-Represented Litigants Project, 2015-2016” at 3, 2016, online (pdf): <<https://representingyourselfcanada.com/wp-content/uploads/2017/02/Intake-Report-2015-2016-FINAL1.pdf>> [2015-2016 report].

¹⁶ See 2018-2019 report, *supra* note 3, at 7.

¹⁷ *Ibid* at 8.

Ethnic identity

The inclusion of a question on respondents' ethnic identities began in the 2018-2019 Intake Report in order to help identify particular challenges and difficulties faced by racialized self-represented litigants, recognizing that institutional racism in the justice system—particularly anti-Black and anti-Indigenous racism—poses unique challenges.

The majority of respondents (65.3%) identified as Caucasian. 8.2% identified as East Asian, 6.6% as South Asian, 4.7% as Black, 1.6% as Latinx, 1.6% as Middle Eastern or Arab, 0.8% as First Nations, and 0.8% as Inuit. A further 10.6% of respondents selected “Other,” with most indicating that they identified as bi- or multi-racial, others as simply “Canadian,” and one respondent as Maori. These results are consistent with those collected in 2018-2019, at which time 65% of respondents identified as Caucasian, 13% as “Other,” and 9% as East Asian. 2% of respondents in 2018-2019 identified as First Nations,¹⁸ meaning that responses from self-represented First Nations litigants have further decreased in number over the past two years. In order to collect and promote more data on the unique challenges facing Indigenous people who represent themselves, the NSRLP is committed to identifying new ways of collecting data from First Nations, Inuit, and Métis people over the coming year, including planned targeted outreach to these communities.

Part 2: Where are the SRLs in the sample appearing?

Civil/family litigants

57.8% of respondents were involved in a civil matter and 42.2% in a family matter. In 2018-2019, 62% of respondents indicated that they were involved in a civil case. In 2017, the majority of respondents (53%) were family litigants and in the original Intake Report of 2013, approximately two thirds were family litigants.¹⁹

Provincial jurisdiction

The majority (54.9%) of self-represented litigants in the sample filed their cases in Ontario. This is followed by British Columbia at 17.5% and Alberta at 12.6%. These were the three provinces originally included in the fieldwork for the 2013 study,²⁰ and so it is not surprising that the NSRLP's reach remains

¹⁸ See 2018-2019 report, *supra* note 3, at 8.

¹⁹ See 2013 report, *supra* note 1, at 33.

²⁰ *Ibid* at 17.

largest in those provinces. This is consistent with results from previous years, with data also including a smaller number of respondents from other provinces: Manitoba (5.3%), Nova Scotia (2.4%), Québec (2%), Saskatchewan (2%), Newfoundland and Labrador (2%), Yukon (0.8%), and Prince Edward Island (0.4%).

In what province/territory is your case filed?

Answered: 246 Skipped: 33

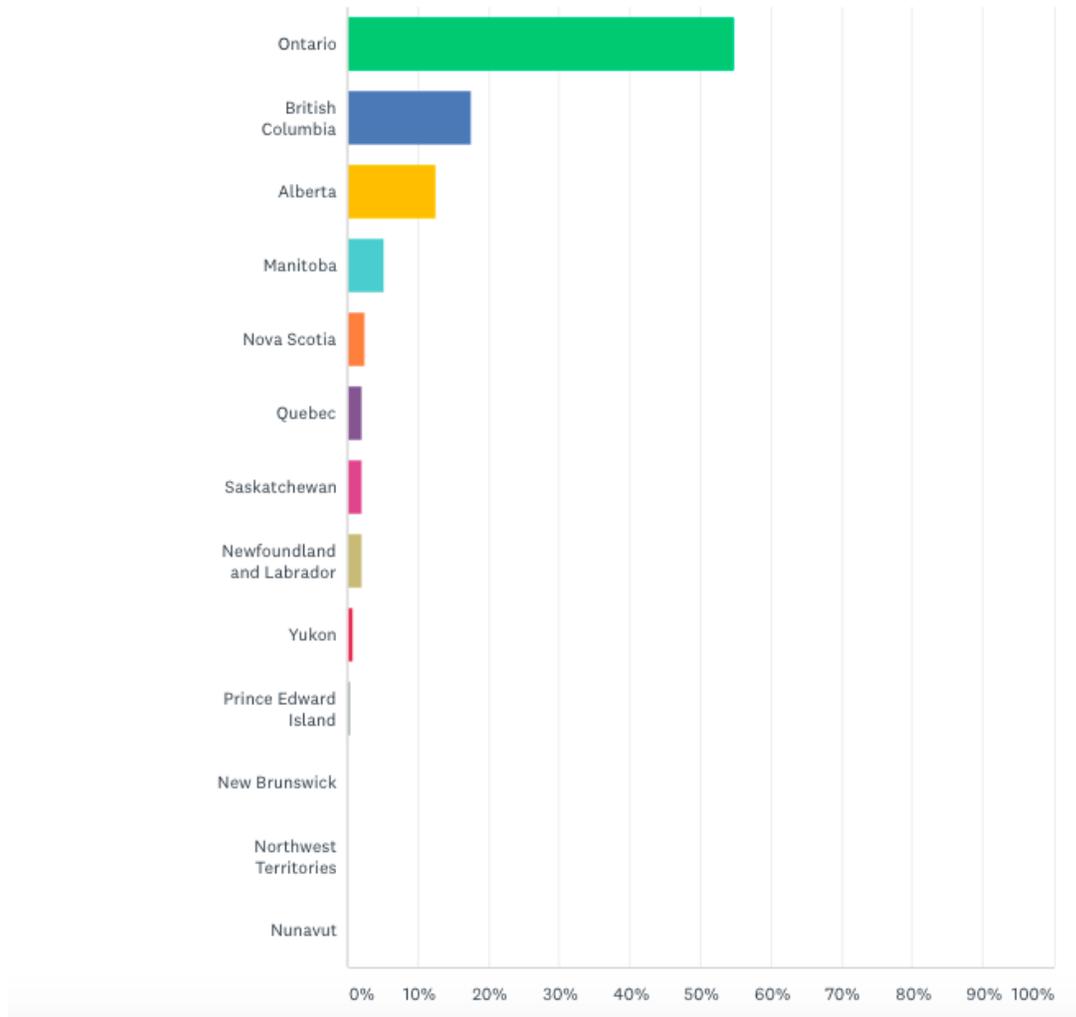


Figure 6: Provincial jurisdiction of respondents

The NSRLP is seeking to improve and expand upon outreach to self-represented litigants from across the country in order to develop a broader and more inclusive geographic base for the sample. Over the course of this intake period, two new regional chapters of the NSRLP were established that may assist in this endeavour. NSRLP West was launched in October 2019 and is headquartered at Thompson

Rivers University in Kamloops, British Columbia. Early 2021 saw the launch of NSRLP East, headquartered at the Schulich School of Law, Dalhousie University in Halifax, Nova Scotia. These chapters will assist in broadening outreach across both extremities of the country. In addition, recent work has been undertaken in conjunction with the McGill Chapter of Pro Bono Students Canada (PBSC) in order to both translate the Intake Form into French, and to build collaborative relationships with access to justice organizations in the province of Québec that will help increase the proportion of Québécois and other Francophone respondents in the sample over the coming years.

Court level

Over the course of the response period 43.8% of cases were filed at the Ontario Superior Court of Justice. The thirteen other courts and tribunals represented in the sample are present in far smaller numbers: Supreme Court of British Columbia 16.1%; Court of Queen’s Bench of Alberta 12.9%; Supreme Court of Canada 5.5%; Small Claims Court 4.6%; Court of Queen’s Bench of Manitoba 4.2%; Federal Court 3.2%; Court of Queen’s Bench for Saskatchewan 2.3%; Québec Superior Court and Court of Appeal each 1.8%; Supreme Courts of Newfoundland and Labrador and of Nova Scotia each 1.3%; Supreme Courts of Prince Edward Island and of Yukon Territory each 0.5%. These results indicate that the vast majority of respondents’ cases appeared at the trial court level. However, self-represented litigants are present in all types and levels of courts and tribunals across the country.

Part 3: What kind of help is sought by SRLs?

Assistance from lawyers

68.9% of respondents indicated that they had worked with a lawyer to represent them at some stage over the course of their case, which is consistent with results from the 2018-2019 and 2017 reports (68% each).²¹ While this is higher than the 53% figure identified in the initial 2013 study,²² it highlights the same underlying trend: many self-represented litigants begin their cases with representation, but at some point over the course of the process become unable to expend any more funds on legal expenses.

Respondents who indicated that they had, at some point, worked with a lawyer were asked to identify whether counsel was a privately retained lawyer, one assigned to them through Legal Aid, or someone working *pro bono*. 75.5% of respondents who had worked with a lawyer had privately retained their

²¹ See 2019 report, *supra* note 3, at 10; see also 2017 report, *supra* note 5, at 8.

²² See 2013 report, *supra* note 1, at 31.

assistance, compared to 16.2% going through Legal Aid, and a further 8.4% having found *pro bono* services.

Since 2013, there has been a sharp decline in reported access to *pro bono* services among respondents. While the 2013 study indicated that 64% of respondents had sought *pro bono* services once they began representing themselves,²³ the current iteration of the Intake Form asks only whether *pro bono* services have actually been received by the litigant, and not whether an unsuccessful attempt was made to retain them. Over the last eight years, answers to this question have shown access plummet from 58% of respondents reporting receiving *pro bono* services in 2015-2016,²⁴ to 24% in 2017,²⁵ then to a low of 7% in 2018-2019,²⁶ and finally up slightly to 8.4% in the current reporting period. As noted in the 2018-2019 report, it is unclear what variables have caused this decrease. However, with the majority of respondents being in Ontario—which experienced a 30% cut to legal aid services in 2019—this cut in government funding seems likely to be a major factor.²⁷ This single statistic is a grim reminder that legal assistance is becoming increasingly unavailable for many vulnerable litigants in Canada.

The majority of respondents who indicated that they had obtained help from a lawyer at some point during their case indicated that they were not satisfied with the legal help they received (58.7%). A further 22.4% said they were moderately satisfied, and only 10.6% stated that they were well-satisfied with the help they received. This question about satisfaction originated on the Intake Form in 2017, and largely reflects the results from the 2018-2019 report (at which time 52% were unsatisfied, 26% were moderately satisfied, and 10% were well-satisfied).²⁸ These results are a step up from 2017, when 65% of respondents indicated that their experience with legal services had been poor.²⁹

Unbundled legal services

Unbundled legal services—also known as “limited scope services”—are legal services provided by a lawyer or paralegal for just a part or parts of a client’s legal matter. They provide an affordable option for a litigant who might not be able to afford a full-scope retainer for the entirety of their case, or who still wants to self-represent but wishes for assistance with procedure or other aspects of their case. 72.8% of people who worked with a lawyer at some point during their case report not having been offered

²³ *Ibid* at 81.

²⁴ See 2016 report, *supra* note 14, at 11.

²⁵ See 2017 report, *supra* note 5, at 9.

²⁶ See 2018-2019 report, *supra* note 3, at 11.

²⁷ *Ibid*.

²⁸ *Ibid*.

²⁹ See 2017 report, *supra* note 5, at 11.

unbundled legal services, compared to 27.2% who had. This is a very slight decrease from 2017, at which time 29% of respondents accessed unbundled services.³⁰

Regrettably, many respondents who received unbundled legal services were unsatisfied with these services. 53.6% of self-represented litigants in the sample stated that they had a poor experience, while 28.6% had a moderate or okay experience and 17.9% said that they were satisfied. The first two of these numbers are largely consistent with data from the 2018-2019 report³¹ but the number expressing satisfaction has risen significantly from 2017, when 0% of respondents reported that they were satisfied with the services provided.³² This may reflect the growing experience of the Bar in offering unbundled legal services. Nevertheless, there remains substantial room for improvement in offering services that meet the needs of self-represented litigants. In the qualitative portion of this report (Part 4), certain respondents outline their reasons for dissatisfaction with unbundled services offered and/or received.

Half (50.5%) of all respondents reported having unsuccessfully sought out unbundled legal services. This figure reflects data from previous years. It is possible, however, that as more lawyers begin offering unbundled services upfront, access will increase. It is also entirely possible that many respondents were unaware that unbundled services were an option, meaning that they never sought out such services simply because they did not know they existed, rather than because of a lack of desire to use unbundled services.

Following the onset of the COVID-19 pandemic and the migration of most court procedures to video conference format, the NSRLP added a question to the Intake Form asking whether respondents might be interested in accessing virtual or remote legal services. Because this question was added in the middle of the response period, we have only obtained partial results (n=76). However, the overwhelming majority of respondents (89.5%) indicated an interest in such services.

³⁰ See 2018-2019 report, *supra* note 3, at 12.

³¹ *Ibid* at 14.

³² See 2017 report, *supra* note 5, at 12.

Would you be interested in virtual or remote legal services? (For example, consultation with a lawyer over Zoom, or another video conference platform.)

Answered: 76 Skipped: 203

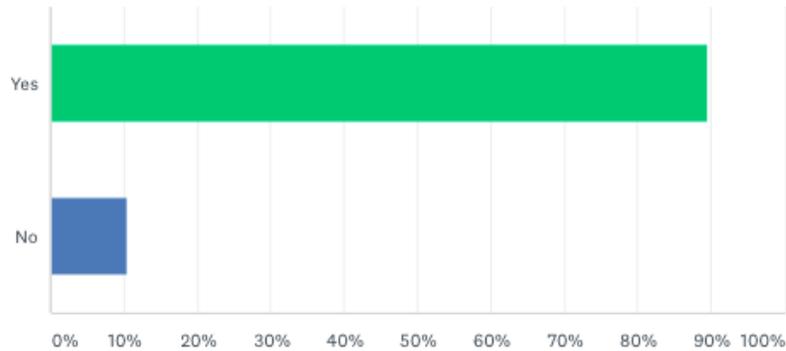


Figure 7: Respondents' interest in virtual or remote legal services

Respondents also indicated, via a qualitative prompt, whether they were satisfied with any virtual or remote legal services they received during the response period. Although not many responses were recorded (n=22), concerns reported include significant delays, lack of affordability, inaccessibility of remote legal services despite the prevalence of remote hearings, and unresponsive or incompetent counsel.

Mediation services

39% of respondents indicated that they have been offered mediation services at some point over the course of their case. Although this is a slight increase from 2018-2019, when 34% of respondents said that they were offered mediation services,³³ it still represents a substantial drop from the 2017 results (45%).³⁴ 41.2% of respondents indicated, however, that they actually *used* mediation services at some point during the process. This is a significant increase from the 2018-2019 figure (34%).

76.3% of respondents who used mediation services reported that they did not settle. This is consistent with the 2018-2019 period, at which time 75% of respondents reported that they did not settle.³⁵

³³ See 2018-2019 report, *supra* note 3, at 15.

³⁴ See 2017 report, *supra* note 5, at 13.

³⁵ See 2018-2019 report, *supra* note 3, at 15.

If "Yes" to question 29, did you:

Answered: 118 Skipped: 161

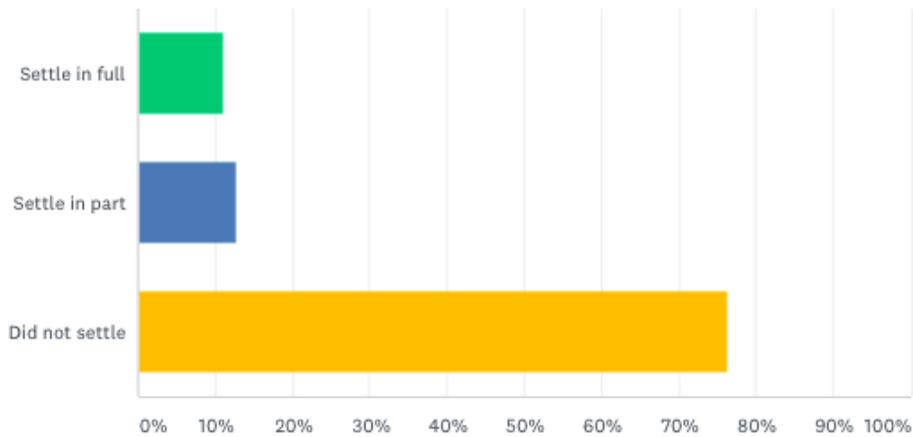


Figure 8: Outcomes of mediation among respondents

Support persons and McKenzie Friends

The majority of respondents (57.7%) have never brought a support person with them to court. A further 22.5% indicated that they sometimes do, and 19.8% responded that they usually do. This is consistent with the 2018-2019 period, where 57% of respondents indicated that they never brought a support person,³⁶ and the 2017 responses to the same question (59%).³⁷ While the 2017 results indicated that most respondents were unaware of the possibility of bringing a McKenzie Friend—someone who can sit beside a self-represented litigant in the courtroom, take notes, organize documents, and provide support—to court, it seems that more and more litigants are aware of this possibility and at least occasionally take advantage of this option. The NSRLP has created [support materials](#) for self-represented litigants who wish to bring a McKenzie Friend to court.

Respondents were also asked whether they introduced their support person (if they brought one into the courtroom) as a “McKenzie Friend.” While in 2017 only 12.5% of respondents indicated yes to this question,³⁸ the 2018-2019 report showed that this number had increased to 22%.³⁹ This may be the result of NSRLP and some courts trying to raise awareness of the McKenzie Friend role and how to ask for

³⁶ *Ibid* at 16.

³⁷ See 2017 report, *supra* note 5, at 13.

³⁸ *Ibid* at 13-14.

³⁹ See 2018-2019 report, *supra* note 3, at 16.

one.⁴⁰ This year's figures show that 19% of respondents introduced their support person as a McKenzie Friend. This figure may be impacted by COVID and the advent of virtual proceedings, during which respondents may be unaware that they may bring someone into the hearing, or may simply have less access to individuals whom they can bring with them.

Part 4: SRL Stories: Qualitative Data

The Intake Form also includes space for self-represented litigants to provide, in an open format, personal testimonies about their experiences self-representing. This allows respondents to elaborate upon some of the positive and negative aspects of self-representation, as well as potentially offer tips to others who are considering or are currently self-representing.

Importantly, the two-year period covered by this report is marked by the COVID-19 pandemic. In March 2020, communities all over the world found their day-to-day lives upended and their routines challenged by lockdowns as a result of the public health emergency. These lockdowns—with which came an increased reliance on technology to work, live, and communicate—led courts across Canada to reevaluate how to continue their work safely. Even the Supreme Court of Canada, for the first time ever, began holding fully virtual hearings in June 2020.⁴¹

In light of this unprecedented procedural shift, the qualitative data from this survey period has been divided into two periods: the first spanning from June 30, 2019 to March 15, 2020 (pre-COVID and telework); the second from March 16, 2020 to June 30, 2021 (during COVID). This permits a comparative analysis of the collected data and allows the NSRLP to evaluate the impact of the pandemic on self-represented litigants' experiences.

Pre-COVID Data (July 1, 2019 to March 16, 2020)

Of the 279 self-represented litigants who responded to the Intake Form during the review period, 79 responded between June 30, 2019 and March 16, 2020. This represents the pre-COVID sample. 57% of this sample (n=45) provided personal testimonies in the open-form question. The data presented in this section of the report is taken from those testimonies.

⁴⁰ See e.g. Judith M DaSilva, "The McKenzie Friend: Bringing a support person with you to court" (2020), online (pdf): *National Self-Represented Litigants Project* <<https://representingyourselfcanada.com/wp-content/uploads/2020/10/The-McKenzie-Friend.pdf>>

⁴¹ See Supreme Court of Canada, "Remote Hearings" (2020), online (*Supreme Court of Canada | Cour suprême du Canada*): <<https://www.scc-csc.ca/case-dossier/remote-virtuel/hearings-audiences-eng.aspx>>

General experiences self-representing

62.2% of respondents in the pre-COVID sample who provided testimonies described having had negative experiences self-representing. Among the factors contributing to their difficulties, which varied between respondents, were four that stood out as particularly significant.⁴²

1. Perceived unethical behaviour on the part of actors within the justice system (37.8% of respondents reported on this; 4.4% went even further by alleging corruption within the system).
2. Difficulties navigating judicial procedure (28.9% of respondents).
3. Financial difficulties (reported by 24.4% of respondents).
4. A perceived lack of fairness within the justice system, particularly for self-represented litigants (reported by 20% of respondents).

In contrast, only 6 respondents described having had positive experiences (13.3%); the remaining 24.4% of respondents provided neutral responses.⁴³

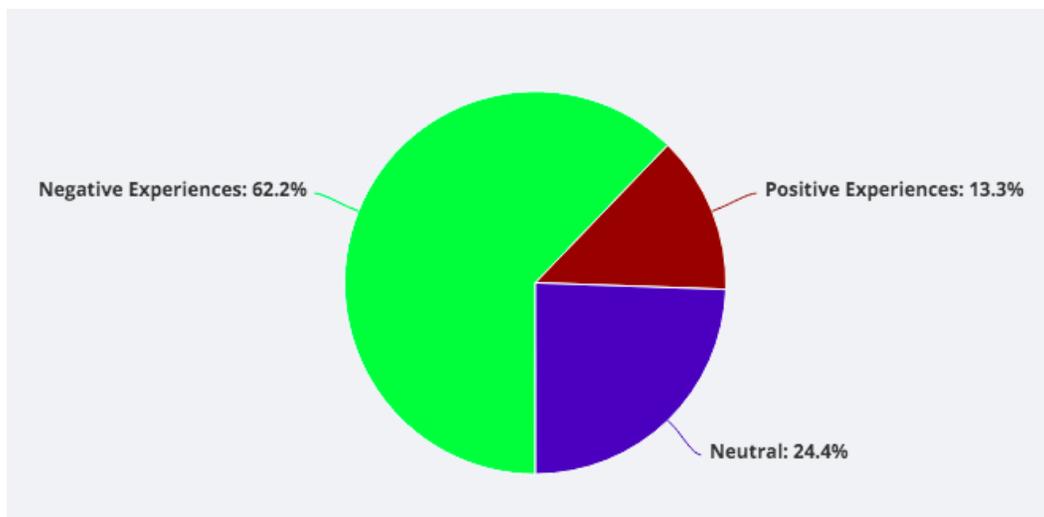


Figure 8: Overall experiences of self-represented litigants prior to the onset of the COVID-19 pandemic

Negative experiences

Respondents testified to feeling hopeless and losing faith in the justice system:

⁴² Particular significance was given to any theme cited by over 20% of the sample.

⁴³ Neutral input consisted of providing advice to other self-represented litigants via the Intake Form or asking questions/offering to participate in future workshops or surveys targeting self-represented litigants.

“I feel I am playing against a stacked deck and am beyond the experience level of all but the most experienced lawyers.”

“As an SRL, I can attest to a dramatic loss of faith in the legal system and particularly the lawyers who work within it. [...] The legal system has become overburdened with needless complexities because it allows lawyers to keep their pay cheques intact by maintaining a legal system that is unnecessarily burdensome, laden with outdated language and barriers to ready understanding. It does not need to be this way. The law can and should be understood by an ordinary person. This cumbersome approach also does not improve the public’s perception of the work they do or the legitimacy of the legal system itself.”

Negative feelings seem to be compounded for disabled litigants and litigants of colour. As noted earlier, over 40% of the sample during this intake period identified as having a disability. Five of those respondents (or 11.1% of those who provided testimonies in the pre-COVID phase) highlighted their disability in their responses, stating that they felt disabled self-represented litigants were at a particular disadvantage. One respondent did highlight the fact that bringing a McKenzie friend to court with them was helpful:

“I am an SRL with disabilities. I continue to find it extremely difficult to navigate the legal system effectively. [...] Bringing a courtroom ‘companion’ to assist me with notes has helped in that I have someone to debrief with after the proceeding and discuss the decision [...] afterwards. It can help emotionally when receiving a decision that makes you think you’re going crazy.”

8.9% of respondents mentioned that they felt discriminated against during their proceedings on the basis of race or ability. One respondent mentioned that the lawyer with whom they worked initially discouraged them from going to trial because of the colour of their skin. Another respondent, a Black man, mentioned that he especially felt that judges were biased against people of colour during proceedings, and that he felt like he was being perceived as a criminal during a civil case:

“From my experience, particularly for a person of colour or a Black person, I am being put at a huge disadvantage by the judge [...] these are some of the reasons why people of colour and people who cannot afford to hire a private lawyer are constantly put at a disadvantage in a court process. I also wonder how [...] the legal system treats a person who has committed [a] crime, considering me, who has not committed any crime nor has any criminal record, yet I am being treated differently in a case that is not criminal-related but [rather a] family matter.”

Positive experiences

Generally, those who had positive experiences mentioned that they won their cases and were grateful for the opportunity to self-represent. One stated:

“I am thankful for the Canadian legal system [for] allowing me to represent [myself] and [be] treated and awarded the same way as a regular lawyer.”

Another respondent, who took advantage of unbundled legal services at a local legal clinic for women, reported that she had found the use of a virtual lawyer extremely helpful despite ultimately needing to go to court on her own. Another stated that in her experience, the judge was extremely patient with her submissions and open to her arguments:

“Every case is unique, and for that reason, as well as the fact that Legal Aid lawyers are extremely busy and therefore obliged to some extent to offer a cookie cutter approach, I have found that due to my extensive research work and professional background, as well as scrupulous documentation of every encounter with my son’s father, I was able to present the court with detailed information supported by case law expressly pertinent to my case. I could ‘get away’ with much more detailed affidavits than a judge would ever tolerate from a lawyer. I found judges very open to receiving lots of information as long as the submissions were well-written, as concise as possible, well-organized, evidence-based, and devoid of ad hominem attacks or unsubstantiated, subjective assertions.”

Advice for other self-represented litigants

Almost one third, 28.9%, of respondents offered advice to other self-represented litigants while responding to the Intake Form, either as part of an overall testimony, or on its own (the latter responses were labelled as “neutral” in tone). Among these:

“Do your own research. Use CanLII and read everything you can that relates to your circumstances. The lawyers don’t know everything. [...] Learn the rules of civil procedure, but realize even the lawyers don’t know/understand the rules and don’t stay current with the revisions. As much as you may be angry or frustrated, be professional at all times in your approach and demeanor when dealing with anyone connected to your case.”

“Make a calendar right away that indicates when [you] have to file papers and serve them. Keep [your] papers organized [and] settle before trial.”

Data from the COVID era (March 17, 2020 to June 30, 2021)

Of the 279 self-represented litigants who responded to the intake form during the review period, a large majority, 200, responded between March 17, 2020 and June 30, 2021, during the COVID-19 pandemic. 46% of this sample (n=93) did not provide testimonies in the open-form question, compared to the 54% (n=107) who did. This is largely consistent with the uptake in the pre-COVID sample (57% provided responses to the open-form question). The data presented in this section of the report is taken from those 107 testimonies.

General experiences self-representing

62.6% of respondents who provided testimonies after the pandemic had begun described having had negative experiences self-representing. Interestingly, this is virtually the same as the same statistic from the pre-COVID sample (62.2%), suggesting that self-represented litigants had similarly bad experiences regardless of virtual format or other major stressors (the pandemic and all its resultant/concurrent stressors).

Among the factors contributing to their difficulties, which varied between respondents, four stood out as particularly significant.⁴⁴

1. Issues with judges and/or lawyers and how they treat self-represented litigants or generally behave themselves (mentioned by 32.1% of respondents).
2. A perceived lack of fairness within the justice system (reported by 36% of respondents).
3. Perceived unethical behaviour on the part of actors within the justice system (23.4% of respondents reported on this; 3.7% went even further by alleging corruption within the system).
4. Difficulties navigating judicial procedure (mentioned by 23.4% of respondents).

Issues with judges and lawyers, which was not a statistically significant issue for the pre-COVID sample (reported then by only 6.7% of the sample), rocketed to first place as the most significant issue in the COVID batch. In contrast, financial difficulties, which had been statistically significant for the pre-COVID sample, were mentioned by far fewer respondents (only 8.4%) in this sample.

⁴⁴ As with the pre-COVID sample, particular significance was given to any theme cited by over 20% of respondents.

Only 8 respondents described having had positive experiences (7.5%). The remaining 29.9% of respondents provided neutral responses.⁴⁵

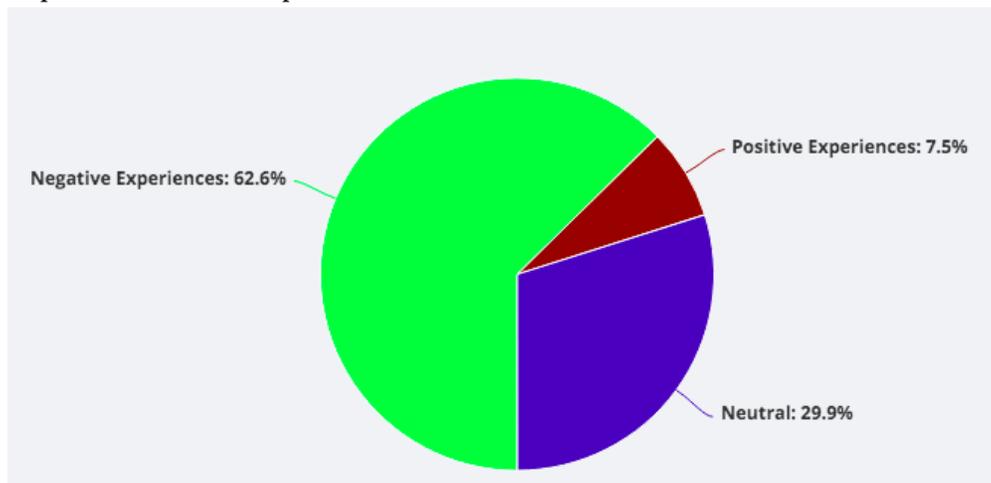


Figure 9: Overall experiences of self-represented litigants during the COVID-19 pandemic

Negative experiences

Respondents described a plethora of issues with their experiences self-representing, and paint a bleak picture of a legal system that is stacked against them from the very beginning:

“My experience as an SRL has been hell on earth and back again. I have been prejudiced against [for] being a woman, uneducated in the legal system as [it] is not taught in public schools or residential schools, making the legal system a monopoly solely for lawyers, courts, banks, etc. all in the name of money.”

“One of the biggest lessons we have learned is that if you are short on cash, and up against well-resourced defendants such as an insurance company, the benefits of justice are extremely difficult to access. We are horrified, to be frank, at the extent to which the system is weighted in favour of those with the means to fully access it. We are white and reasonably well-educated people who were fortunate enough to get a good start in life. We shudder to think about what happens to people who are members of visible minority groups, or to people down on their luck, who have been wronged and have no way to even begin to make themselves whole again. My wife is so appalled at the unfairness of the justice system that she has actually decided she wants to become a lawyer.”

⁴⁵ Generally, neutral input consisted of providing advice to other self-represented litigants via the Intake Form or asking questions/offering to participate in future workshops or surveys targeting self-represented litigants.

“My experience of the culture and attitudes of the legal profession towards SRLs has been psychologically harmful and negative (re-traumatizing), often prioritizing protecting [their] own turf and ego regardless of client needs. Trauma-informed practice and cultural safety knowledge and skills need to be disseminated throughout this profession, as both active and passive discrimination are rampant. Despite skills, when there is a power imbalance, lawyers [are] often ineffective in identifying and stopping abuse/excesses. Space for providing feedback without fearing retribution is disturbingly small in this profession. More institutional courage [is] needed in tribunals etc. to more fairly assess [the] aid requirements of SRLs instead of maintaining [the] fiction that the majority of these legal processes aren’t fundamentally and structurally unfair.”

“I was a civil litigation lawyer for over 30 years. I am now a retired [...] self-rep in a very hostile civil proceeding. Regardless of my legal sophistication and extensive experience, it is a daunting experience to self-represent. Costs of every step are very high. Results are always extremely uncertain. The application of the law is often perplexing. [...] Justice is a concept, [a] dream. It is hard to find. For most SRLs, you must simply accept what the court does and move on.”

“Courts treat unrepresented litigants poorly. Advantage [is given] to lawyers at every opportunity.”

“Our legal system of rules and procedures presumes that the principle of fairness is applied [...]. For most self-represented litigants, like myself, we are not treated fairly, nor do we as a group have equality when we go to court. Our rights to economic and psychological security are violated and we are discriminated against 95% of the time when we try to defend ourselves [...]. The action SRLs take in going to court alone is self-defeating and deeply demoralizing. It renders the SRL psychologically battered, ultimately financially impoverished, and economically injured for the rest of their life. Nothing the legal community has done with respect to my litigation over these last ten years has been fair. This illustration is replicated by SRLs willing to hope and willing to believe they matter in a court of law, despite the evidence to the contrary.”

As was the case for the pre-COVID sample, negative feelings seem to be compounded for disabled litigants and litigants of colour. 3.7% (n=4) of respondents reported feeling discriminated against over the course of their proceedings. Interestingly, whereas the data from the pre-COVID sample indicated discrimination on the basis of disability or race, the data from the COVID sample refers either to discrimination broadly or to discrimination on the basis of sex or gender.

While five disabled respondents in the pre-COVID sample (11.1% of that group) provided input highlighting their disabilities, six did so in the COVID sample (5.6% of the group). Once again, many

felt that disabled self-represented litigants are at a particular disadvantage. This also seems to have been compounded by the pandemic and its impacts on access to services and/or increased reliance on technology:

“I have been ill, and new mental health issues and lack of ALL services have made it impossible to keep momentum and follow up. [...] My communications disabilities impact my ability to correspond quickly electronically.”

Technological issues with virtual hearings and meetings also seem to have plagued non-disabled respondents, with one stating:

“I was hopeful about [getting] help [as an SRL], but time and technology got in the way. Constant deadlines for a very complex case needed much help, which ended up generally and practically unavailable. [...] Virtual near affidavit completion meetings were tried; tech problems ensued.”

Positive experiences

An even lower percentage of respondents than pre-COVID—at 7.5% (n=8)—report a positive experience self-representing during the pandemic. Those who reported positive experiences usually mentioned winning their cases. Many also reported using unbundled legal services at some point.

“One of the lawyers I worked with described her relationship with me as training me to be able to represent myself in the future. While it seemed inconceivable then, two years later this has been an essential strategy to speak back to the abuse I continue to suffer from my ex and that my children continue to suffer. It takes away the one thing that he could hold over my head: that I could win in court, but he could still bankrupt me by dragging out the legal process. Now he does not have this to hold over me.”

“Initially, we had a counsel, with whom we parted after about 2 years of unproductive litigation. I read all NSRLP publications, which I appreciate very much as the knowledge gained provided me with the confidence to forge ahead as [an] SRL. Over time, I became a diligent self-educated ‘legal scholar’ of case law. In my situation, it was essential to get familiar with contract law, so I read several textbooks on this subject. Thus far, I have been successful in winning 2 applications before Master in chambers.”

Advice for other self-represented litigants

19.6% of respondents provided advice for other self-represented litigants either as part of larger responses, or simply as their contribution in the open-form question (the latter responses were labelled as “neutral” in tone). Among these contributions:

“Start a file from the first moment, as if you were a lawyer. Keep and print everything, record all conversations, make notes, date and photograph packages like it’s a full-time job.”

“I have used four lawyers for consults (all advised against retaining them as a lawyer of record as the other side was clearly going to just drive up my costs to force me to settle), and found them to be helpful. I found the three senior counsel I consulted about specific appearances to be most helpful in explaining how specific justices want information presented. It is definitely easier to have elevated writing skills that allows your narrative to be presented in a concise, neutral tone with specific keywords. Navigating the Ontario Superior Court requires advanced ability to use code-shifting language in oral and written submissions. The most helpful thing for me personally was to have a therapist to process the emotional side of the court process/change in family dynamics.”

“Buy a leading civil rules text and read it in detail as it relates to your proceeding. These change every year and you must update them, and the ever-changing laws and jurisprudence all the time. Become familiar with CanLII and learn how to research the leading case law relating to the issues in your case. You will need a quality computer, scanner, Zoom, and Adobe Pro. The more simply you can present your issues the more likely you are to win. Motions are fantastically time-consuming and expensive and often unhelpful. Learn what evidence you need, gather it, and proceed to trial as quickly as possible. Focus on your case, not what the other side says. But be prepared to counter the other side’s position.”

The NSRLP also regularly hears from self-represented litigants through the Project’s public email address (representingyourself@gmail.com). More messages are also sent directly to Dr. Macfarlane, the NSRLP Facebook page, or posted directly as comments on the NSRLP website. These communications are indicative of the general desire among self-represented litigants to better understand the justice system and the processes relevant to their cases. Although the NSRLP is unable to provide legal advice or review legal documents, staff are able to direct self-represented litigants to resources—including the [NSRLP primers](#)—and give general legal information in order to provide assistance and support.

Part 5: Conclusions

a. COVID-19

Although the COVID-19 pandemic transformed court proceedings and seriously impacted every aspect of Canadians' lives, data on the overall experiences of respondents self-representing collected in the open-ended portion of the Intake Form is largely consistent between the periods before and after the onset of the pandemic. The biggest issues posed by COVID-19 for respondents related to the inaccessibility of services designed to assist them in ordinary times—many of which either temporarily became unavailable or migrated online—and issues using technology to attend meetings and proceedings. These accessibility issues were compounded for disabled self-represented litigants.

b. Barriers to access to justice

Over 40% of respondents in the 2019-2021 sample identified as having a disability. During the last Canadian Survey on Disability by Statistics Canada, which took place in 2017, 6.2 million Canadians—or 17% of Canadians—were found to be limited in their daily activities due to a long-term condition or health-related problem.⁴⁶ These statistics suggest that disabled Canadians are disproportionately represented within the self-represented litigant community. As noted previously, issues with accessibility are rampant within the justice system, and seeking accommodations from the courts remains challenging.

Financial and affordability issues remain the most significant barrier to accessing justice in Canada. Similar to previous reports, over half (50.8%) of all respondents report an annual income under \$30,000. Approximately 66% of all respondents reported earning under \$50,000 annually. Even for respondents earning particularly high incomes (over \$100,000 annually), financial barriers were cited as the reason not to retain counsel for the entirety of their case. There remains a significant gap between the eligibility threshold for Legal Aid and the ability to afford some legal services while self-representing. In Ontario and British Columbia, the two jurisdictions yielding the largest numbers of respondents, the eligibility threshold for a single-person household is \$22,720 (gross annual income) and \$20,040 (net annual income) respectively.⁴⁷ Although the Intake Form does not include a question asking whether

⁴⁶ Statistics Canada, *The Dynamics of Disability: Progressive, Recurrent or Fluctuating Limitations*, by Stuart Morris et al. (Ottawa: Statistics Canada, 3 December 2019) at 4, online (pdf): <<https://www150.statcan.gc.ca/n1/en/pub/89-654-x/89-654-x2019002-eng.pdf?st=sU4k2ctg>>

⁴⁷ See Legal Aid Ontario, “Details on Legal Aid Ontario’s financial eligibility increase for 2020” (27 March 2020), online: <<https://www.legalaid.on.ca/news/details-on-legal-aid-ontarios-financial-eligibility-increase-for-2020/>>; see also Legal Aid BC, “Do I qualify for legal representation?” online: <https://lss.bc.ca/legal_aid/doIQualifyRepresentation>.

respondents were eligible for Legal Aid, a number of respondents who commented in the open-ended segment of the Intake Form commented on their ineligibility (4.7% of respondents in the sample during the pandemic; 6.8% from the sample predating the pandemic) and cited this as a factor contributing to their decision to self-represent. These results continue to support the hypothesis that legal services are not viewed as affordable over the mid- to long-term.

A concerning number of respondents reported, in their answers to the open-ended question, experiencing discrimination over the course of their case in relation to ability, gender, or race. As is the case in the vast majority of Canadian institutions, systemic discrimination remains a significant issue that demands greater sensitivity on the part of triers of fact, lawyers, and other actors within the justice system.⁴⁸

c. Experiences with legal services

As noted in Section 4 of this report, the vast majority of respondents indicated that they perceived the justice system in Canada as being fundamentally unfair and/or unjust. Some self-represented litigants described overwhelming feelings of hopelessness, a sense of the odds being stacked against them, and experiencing extreme stress over the course of their case. Many also reported negative experiences dealing with judges and/or lawyers, whom they perceive as deeply entrenched within the system, occasionally describing them as “corrupt” and motivated primarily by personal gain and preserving the hierarchy and exclusivity of the Canadian justice system.

Many self-represented litigants (68.8%) reported having worked with a lawyer to represent them at some point during their case. As in previous reports, this reinforces the finding that the costs of legal services over time mean that many cannot afford continuing to pay for them. Individuals often end up representing themselves when they are no longer able to pay for legal representation. The majority of those who sought legal help from a lawyer reported that they were not satisfied with the assistance they received (58.6%). When compared to data from previous years, it is clear that respondents are becoming increasingly dissatisfied with the legal services available to them.

However, self-represented litigants demonstrated overwhelmingly that they are seeking affordable alternatives. Only 8.4% of respondents, however, were able to retain *pro bono* legal services during the

⁴⁸ See e.g. Joanne St Lewis, “Race, Racism, and the Justice System” in *Perspectives on Racism and the Human Services Sector*, Carl E James (ed) (Toronto: Toronto University Press, 2016) at 104; S Wortley & A Owusu-Bempah, “Unequal Before the Law: Immigrant and Racial Minority Perceptions of the Canadian Criminal Justice System” (2009) 10 Int Migration & Integration 447; Caroline Dick, “Sex, Sexism, and Judicial Misconduct: How the Canadian Judicial Council Perpetuates Sexism in the Legal Realm” (2020) 28 Fem Leg Stud 133.

intake period. Meanwhile, over half (50.5%) of respondents report having unsuccessfully sought out unbundled legal services during their case, compared to 27.2% who were offered such services. Generally, these trends suggest that there are significant barriers to accessing various kinds of legal services. Most concerning among these trends is the continuing decrease in access to *pro bono* services or Legal Aid.

41.2% of respondents referred to using mediation services at some point over the course of their case, but over two thirds did not settle during the mediation process. This mirrors anecdotal data received from self-represented litigants who report being unsure of the purpose of mediation or how to prepare for a mediation session. Although the data from this reporting period suggests an increase in the usage of mediation, there are continued barriers to accessing mediation services and using those services effectively, despite the Canadian justice system's encouragement of litigants to settle out of court.

d. Advice for other self-represented litigants

As noted in Part 4, respondents continued to provide (compared to other periods) detailed and useful advice for other self-represented litigants. These include tips for navigating procedure and paperwork, preparing for proceedings, and conducting legal research in order to present coherent legal arguments. Many respondents also stressed the importance of self-care while self-representing given its significant toll on mental well-being.

The Intake Form and intake procedures at the NSRLP are ongoing and evolving processes. The NSRLP is committed to continuously modifying the Intake Form and questions included in order to respond to changes observed in the legal system, as well as the growth of new subject areas requiring investigation.

Any questions regarding the data presented in this report may be directed to the NSRLP at representingyourself@gmail.com. We appreciate the information provided by all our respondents, and do our very best to reflect it authentically and comprehensively in these regular Intake Reports.

The National Self-Represented Litigants Project, October 2021