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Tracking the Trends of the Self-Represented Litigant Phenomenon: Data from the National Self-Represented Litigants Project, 2017

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Recommended Citation

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Tracking the Trends of the Self-Represented Litigant Phenomenon: Data from the National Self- Represented Litigants Project, 2017

Kaila Scarrow, Becky Robinet and Julie Macfarlane



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1. Introduction

From 2011-2013, Dr. Julie Macfarlane studied the experiences of self-representation in Canada in three provinces: Ontario, British Columbia, and Alberta.¹ She conducted detailed personal interviews and/or focus group interviews with 259 self-represented litigants (SRLs).²

After the publication of Dr. Macfarlane's initial report in 2013, SRLs continued to contact the National Self-Represented Litigants Project (NSRLP). This led the research team to develop an "Intake Form" in SurveyMonkey³, in order to continue to collect information from SRLs across Canada.

While the data provided from the replies to the Intake Form is less detailed than the original study interviews, the questionnaire tracks SRL demographics using some of the same variables, such as income, education level and party status. It also asks questions about the SRL's experience with prior legal services, mediation services, and bringing a support person to court. The Intake Form also provides a glimpse into SRL personal experiences based on a final question which is "open format".

NSRLP is committed to continued reporting on the SRL phenomenon. [Our last report on intake data spanned from April 1, 2015-December 31, 2016](#), and included data from 73 respondents. This latest Report presents data from 66 respondents, collected from January 1, 2017 to December 31, 2017.⁴

¹ Funded by the Law Foundations of Ontario, Alberta, and British Columbia

² Julie Macfarlane, ["The National Self-Represented Litigants Project: Identifying and Meeting the Needs of Self-Represented Litigants"](#), 2013.

³ A widely-used software program. The Intake Form [is available here](#).

⁴ As one would expect, some respondents left questions unanswered. The results provided here represent percentages of completed responses.

2. Who are the SRLs?

These results are very similar to previous Intake Reports, as well as the 2013 Study data.

a. Gender and age breakdown

Out of the 66 SRLs who completed the Intake Form from January to December 2017, 53% were female and 42% were male (the remainder preferred to self-identify or not say).

Age data collected from the Intake Form indicates that 55% of respondents were over 50 years old. 25% were 40-50 years old, 16% 30-40 and 3% were 25-30. None of the respondents indicated that they were under age 25. This somewhat older demographic is also reminiscent of our previous reports. It raises an interesting question about whether younger people might be doing something differently to resolve their disputes?

b. Party status

71% of intake form respondents indicated that they were the plaintiff or petitioner, while 29% indicated they were the defendant or respondent.

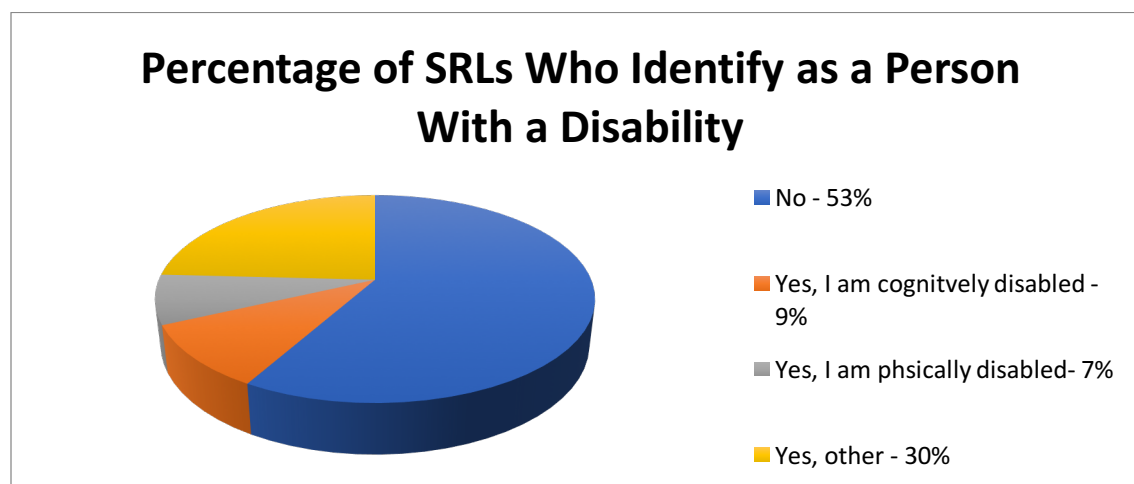
c. Was the other side represented?

The majority (86%) of SRL respondents told us that the other party was represented by counsel (in the 2013 Study this figure was 75%, and in the 2014-15 Intake Report it was 94%). As in previous years, the vast majority of SRL experiences that we learn of are matters where one side is represented by counsel, and the other is not. From our conversations with SRLs we have learned anecdotally that this representation is commonly on-again, off-again – that is, the other side sometimes has counsel and sometimes does not. It is probably safe to assume that those reporting that the other side has counsel mean that *at some point* in the case the other side was represented.

d. Do you identify as a person with a disability?

This question was added to the Intake Form in January 2017. The results surprised us. 47% of respondents identified as a person with a disability⁵.

While this is obviously a small sample, and the result may be skewed by our focused outreach this year to the disability community⁶, these numbers suggest that there are many disabled people who are self-represented. It is important to consider what the legal system presently does, and might do in the future, to accommodate their needs.



e. First language

The majority of SRL respondents reported that their first language was English (81%). Although 9 languages are listed as options, the next highest response was “Other” at 13%. French was the third most selected, at 3%. This is unremarkable given that our Intake Form is presently available in English only.

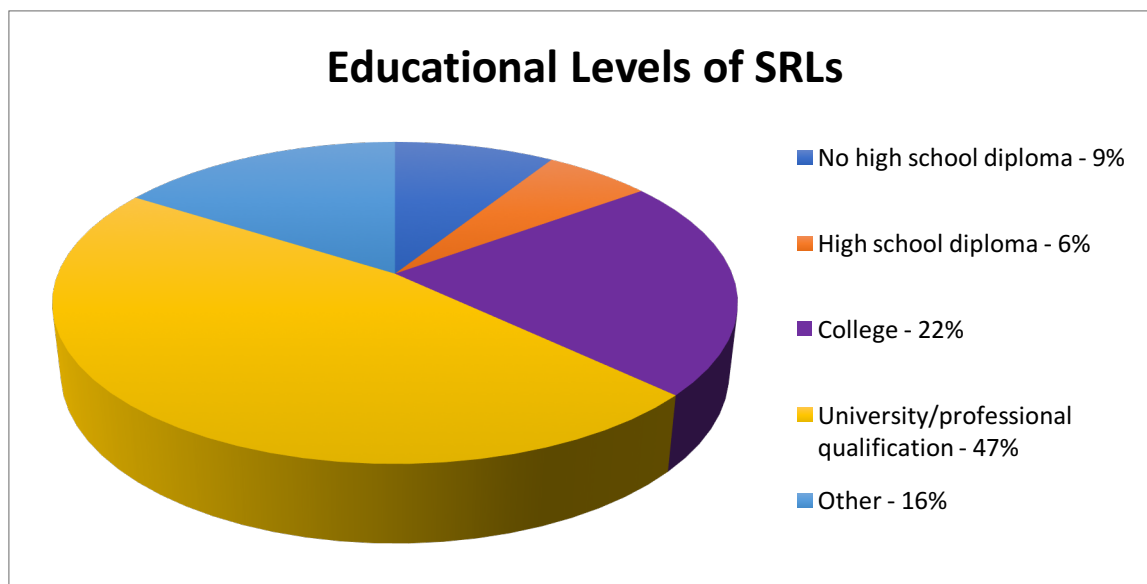
⁵ Asking respondents to self-identify as a person with disabilities is consistent with Canadian law. The Supreme Court of Canada has upheld a definition of disability based on personal perception. See *Quebec (Commission des droits de la personne et des droits de la jeunesse) v Montreal (City)*; *Quebec (Commission des droits de la personne et des droits de la jeunesse) v Boisbriand (City)*, Can LII (2000) SCC 27.

⁶ NSRLP has been reaching out to people with disabilities over the past year with the addition of the [PWD \(Persons with Disabilities\) Primer](#) to our bank of resources for SRLs and the [audio recording of all our SRL Primers](#).

NSRLP is continuing to work to secure funding to make our resources available in French, in order to make them accessible to Canadians in both official languages.

f. Education level

SRL respondents show a high level of education: 47% have a university or professional degree and 22% have a college diploma. This year's results are similar to the 2013 Study, where 50% of respondents held a university or professional degree. In the 2015-2016 Intake Report, 33% of respondents held a university or professional degree.



g. Annual income levels

As in previous years, we continue to see the majority of those representing themselves reporting lower income levels (below \$50,000), with most of these below \$30,000.

In the 2017 results, 44% of SRL respondents reported their annual income was under \$30,000, and 21% reported an annual income of \$30,000-\$50,000.

Also consistent with earlier reporting, 8% of respondents (also 8% in the 2015-16 Intake Report, and 6% in both the 2013 Study and the 2014-15 Intake Report) report earning more than \$100,000.

This data illustrates that even high-income earners cannot afford legal services for the entirety of their case.

Our socioeconomic data is consistent with other studies that have also collected data on SRL income. For example, the *Cases without Counsel* study (2016), conducted in four US states, found that the largest group (43%) of SRL respondents earned less than \$20,000 (US), and a further 27% earned between \$20-40,000.

3. Where are the SRLs in the sample appearing?

a. Civil/family litigants

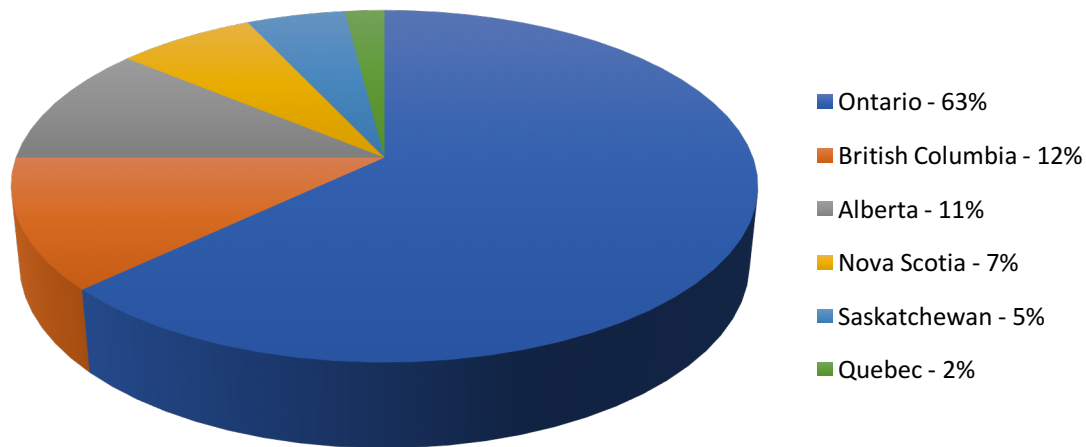
53% indicated they were family litigants, while 47% said they were involved in a civil case.

b. Provincial jurisdiction and court level

By far the largest number of respondents, 63%, filed in the Ontario courts, followed by respondents from British Columbia (12% of the total sample). As in previous years, the 2017 data included a few respondents from other provinces: New Brunswick, Manitoba, Prince Edward Island, Newfoundland, Yukon, Nunavut and the Northwest Territories.

We recognize that NSRLP needs to continue to improve our outreach to SRLs across the entire country, in order to broaden the geographic base of the sample.

Where are the Respondents located?



SRLs are present in all types and levels of courts and tribunals. These include provincial superior and provincial supreme courts, small claims court, federal court and a variety of administrative tribunals.

4. What kind of help do SRLs seek?

As in previous years, we continue to be interested in whether SRLs had prior legal representation in their case. In January 2017, we broadened some of the Intake Form questions and introduced new questions to further assess and explore both the types of legal services SRLs sought out, and the quality of service they experienced. We introduced new questions about access to and use of unbundled services, more detailed questions about SRL experiences with mediation, and questions about the use of a McKenzie Friend. The results are summarized below.

a. Have you worked with a lawyer to represent you at any stage in the case in which you are now self-representing?

Our 2017 Intake Form asks SRLs whether they have worked with a lawyer to represent them at *any stage* in their current case. Of the SRLs who responded, 68% stated that they had worked with a lawyer at some point during their current case. This is slightly higher than the 2013 Study figure of 53% but

shows the same underlying trend – many people who are now self-representing began with a lawyer representing them, but at some point became unable to expend any more funds on legal assistance.

b. If you worked with a lawyer at any stage of your case, in what capacity were they retained?

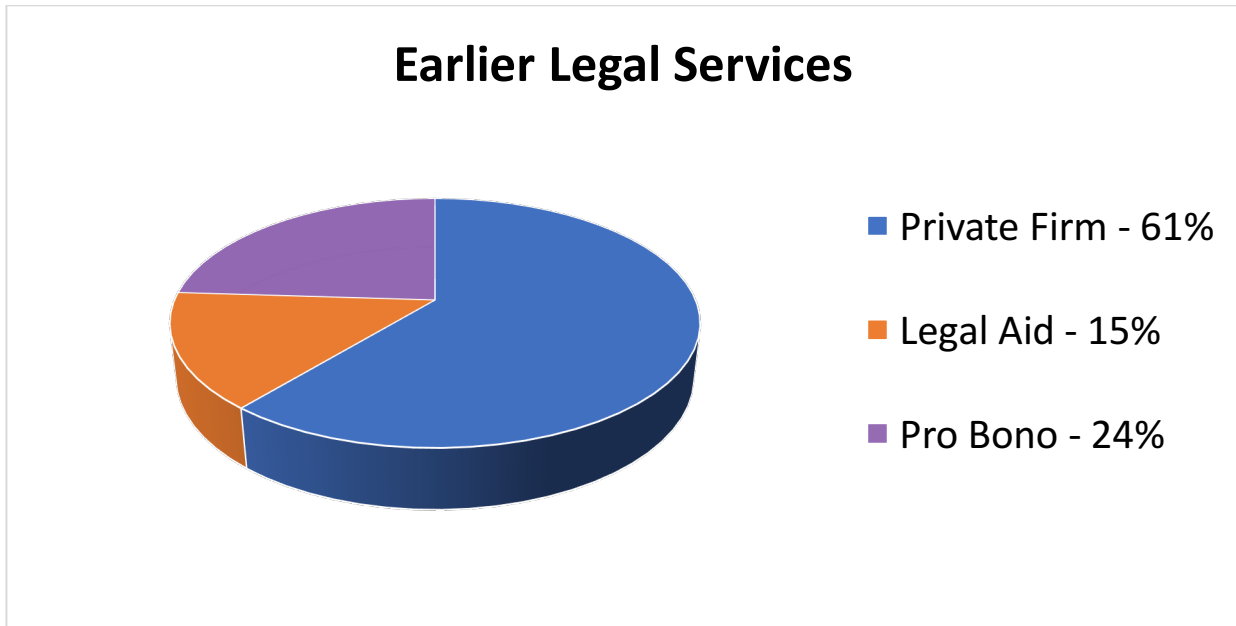
In January 2017 we added a question to the Intake Form that was asked in the original research study: what was the source of the legal assistance (if any) you received before you began self-representing? Specifically, we asked whether their previous lawyer was retained through a private firm, was a Legal Aid lawyer, or worked *pro bono*.⁷

The results showed that 61% of SRLs who had previously retained legal counsel did so through private firms, and just 15% via legal aid certificates. The low numbers referencing legal aid are not surprising given that the income eligibility requirement to qualify for legal aid is so low that it is increasingly difficult to obtain, leaving many with very low incomes unable to access public assistance.⁸

24% of the 2017 respondents said that they sought and were provided with *pro bono* services before they became self-represented. This is a sharp decline compared with the 2013 Study (where 64% reported they had sought and received *pro bono* services), and 58% in the 2015-16 intake group.

⁷ Private firms regulate their own rates. Some lawyers accept Legal Aid certificates which are issued to individuals, based on financial and legal eligibility, and are used to pay for a lawyer to represent an individual for a certain number of hours. ([See here](#))⁷ Some lawyers will work *pro bono*, meaning they do not charge for their services.

⁸ For instance, in Ontario, if you are a single person, to qualify for family or civil Legal Aid your annual income must be lower than \$13,635.



c. If yes, how satisfied were you with the services you received?

This was a new question. In our earlier Intake Forms, respondents were asked about their satisfaction with any earlier legal services they had received in *any case/matter*. This specifically included legal assistance *before* the matter in which they were now self-representing, for example in a criminal matter, a wills and estates matter or a conveyancing transaction. This question was asked (and also in the 2013 Study) in an effort to determine if individuals who were self-representing were doing so because of a past bad experience with a lawyer – in other words, if they were *predisposed to be negative* about lawyers and legal services. These results in these earlier surveys and interviews indicated that there was no such correlation⁹ and instead that the primary explanation for self-representation was financial.

The 2017 question is different, because it asks about satisfaction with any earlier legal services received *in this case* (in which the respondent is now self-representing).

Of the individuals who replied yes, they had worked with a lawyer at an earlier stage in this case (68% of the sample), 65% said the services they received were “poor”, 23% said they were “reasonably satisfied”, and just 8% responded that they were “well satisfied” with the services they received.

⁹ See the 2013 Study at pp35-36

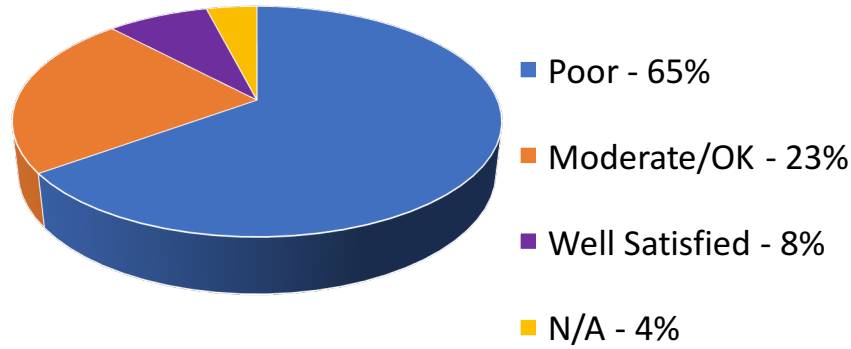
Because the questions are different, a direct comparison between these results and our earlier data on respondents' assessment of satisfaction with their experiences with a lawyer is inappropriate. However, it is notable that satisfaction with legal services generally seems to be falling. In 2013, 35% of respondents said that their earlier experience with legal services had been "poor", and in 2015-2016, this rose to 43% – in the 2017 sample, dissatisfaction was expressed by 65%.

Similarly, we see a sharp decline in the number of respondents who were "satisfied" with their earlier legal services. In 2015-2016, 28% of respondents were "reasonably/well satisfied" with the legal services they received. In 2017, only 8% of those reporting on previous legal assistance in the present case expressed themselves to be "reasonably/ well satisfied" (this number drops to 5% among those who had retained a lawyer from a private law firm rather than receiving legal aid or *pro bono* assistance). This outcome may be the result of the high expectations individuals have when paying for a service, compared to their expectations when receiving free or more affordable services.

Even allowing for the fact that a direct comparison is not appropriate here – and that this is a small sample and there is no control for variables that might affect individual experiences – the extent of dissatisfaction among the 2017 respondents is striking.

Satisfaction With Earlier Legal Services

(aggregated private, legal aid, pro bono)



d. Were you offered unbundled services by the lawyer you retained earlier?

This is a new question. Unbundled services, also known as limited scope services, are legal services offered by a lawyer for part(s) of a client's legal matter, as agreed upon with the client. Unbundled services are a more affordable way to purchase legal services, as opposed to full scope retainer agreements. Of the individuals who responded, 25% were offered unbundled services by their lawyer and 75% were not.

e. If you were offered unbundled services, how satisfied were you with these?

Of those offered unbundled services, 43% rated the service as "poor", 57% marked "moderate/OK", while zero stated that they were well satisfied. It is unclear – and worrisome – why so many SRLs were not largely satisfied with unbundled legal services, which are sometimes seen as an important part of improving Access to Justice. This result suggests that we should ask more detailed questions about experiences with unbundling in a revised and updated 2018 Intake Form¹⁰.

¹⁰ Forthcoming summer 2018.

f. Have you tried to find unbundled services without success?

Of those responding to this question, 56% said they had sought out unbundled legal services without success. We anticipate that as the number of lawyers who offer unbundled legal services increases, the number of SRLs who cannot access them will decrease.

The remaining 44% had not sought out unbundled services – however, they may not have been aware of this possibility in purchasing legal services. Depending on satisfaction (see (e) above), we anticipate that as awareness of unbundled services increases among SRLs, the number of people who say that they did not try to find a lawyer who would offer unbundled services is likely to decrease.

g. Have you been offered mediation services?

Rising fully 10% from last year's data, in 2017 45% of respondents reported having been offered mediation services. 46% of respondents (not necessarily the same individuals who reported being offered mediation) reported they had actually used mediation services.

In the 2017 Intake Form we added a question to ask whether those who used mediation services had reached a settlement as a result. A resulting 10% of respondents said they settled in full through mediation, 15% reported settling in part through mediation, and 75% reported not settling through mediation. Some SRLs commented that mediation services were unsuccessful for them because of a large power imbalance between themselves and the other side (for example, where there was a history of domestic abuse).

h. How often do you bring a support person with you to court appearances?

The percentage of those stating that they have *never* brought a support person to court with them increased from 59% to 67%. This 2017 data is discouraging, and suggests that fully two thirds of SRLs do not feel that the relative costs and rewards of asking someone to accompany them are

worthwhile. This may be in part because of concerns that we often hear of “burning out” support people; it likely also reflects a continuing unwelcoming climate in some courtrooms for SRL support persons.

Similar to last year’s data, 22% of SRLs reported that they *sometimes* bring a support person with them to court.

i. Do you introduce your support person as a “McKenzie Friend”?

This was a new question. Self-represented litigants have the right to ask the presiding judge if they can bring a McKenzie Friend with them to court. This person is permitted to sit beside the SRL at the front of the courtroom. A McKenzie Friend can provide a great deal of support during a proceeding or hearing; for instance, they can assist in organizing documents, take notes during the appearance, and provide emotional and moral support during the appearance.¹¹

The Intake Form results showed that only a small number (12.5%) of respondents reported introducing a support person as a McKenzie Friend.

At NSRLP, we shall continue to promote the adoption of a McKenzie Friend protocol by courts in Canada¹² and hope that we shall see a change in these numbers as a result. For the time being, however, it is clear that most SRLs go to court alone.

5. SRL Stories: Qualitative Data

This year we again invited SRLs completing the Intake Form to give us additional details in a final open form section about their personal experiences with self-representation, and to offer any tips they have for other SRLs going through the court process.

¹¹ [“The McKenzie Friend: Choosing and Presenting a Courtroom Companion”](#).

¹² [“The McKenzie Friend: Choosing and Presenting a Courtroom Companion”](#).

Many respondents offered stories that displayed the level of stress they are burdened with while trying to navigate the court system on their own:

“I am hard pressed for time and under a great amount of stress. Just trying to keep my head above the water and survive / get this over with ASAP.”

“Most of the time I was operating in a shock or trauma state and [it was] difficult to hear and understand what was taking place, let alone digest [it] and make decisions.”

“This last Monday morning I woke up vomiting in anticipation of my coming court appearance date.”

One respondent described the amount of time spent trying to file documents in the courthouse, only to realize they have been completed incorrectly or are missing vital information.

“Wait 2 to 3 hours [at the courthouse], when it is your turn to [submit] papers they are rejected due to mistakes . . . I was sent back 3 times [and] wasted 3 days”

We continue to see SRLs feeling as though the legal system is stacked against them when they are without representation and without a legal education:

“I have spent 5 years suffering the consequences of my inexperience, lack of knowledge, and submission to bullying tactics.”

Respondents continue to comment about the personal financial impact of the process:

“I had representation in the courtroom until I could no longer afford to”

“it was too late for me to be able to return to court to fight for my true rights and entitlements because I was severely limited by funds and the severe mobility restrictions due to the distance I had to travel to reach court.”

We also continue to hear from many respondents that they distrust the legal system, judges and lawyers:

“As a member of the lower caste--even if you get to court, are respectful, are well prepared, have strong arguments--you will not receive fairness, equity or consideration. It is likely your argument will not be heard.”

“There are lots of dirty tricks used by lawyers.”

Others feel there is a widely-held bias against SRLs in the legal system:

“(T)he method of obtaining justice does not exist within the system designed to abuse them.”

“My advice to other SRLs is to not to seek justice since there is none. It is the worst experience I went through. You lose your mind and health from the judicial abuse.”

“As a SRL, the judge takes my court matter lightly and consistently delays matters”

As in last year’s report, many SRLs offered tips and advice for others to learn from. We continue to see detail and precision in the advice offered. SRLs described the challenges of attempting legal research, how to read and understand court and procedural rules, how to interact with the court and how to prepare for court appearances. They counselled other SRLs to learn the court procedures as well as possible, to do their homework, and dig in for a long haul.

Interestingly, given the low numbers reporting presenting a McKenzie Friend as a support person (12.5%), or indeed anyone in a supportive capacity, many respondents remarked on the importance of having a support person:

“Having someone who could be of moral support during this would help someone in the process”

“Taking this on will consume you, and you will need the social network and resources around you for support”

Several respondents described the importance of being prepared, but also knowing when to cut losses or lower expectations:

“It is a process and results take time (a long time) - and sometimes letting go of the outcome (if possible) all together as health is more important

“Do your research. Meet with every resource. Be open minded. Know the law. Know the facts. Know when to cut your losses.”

“Really getting expectations in check - lower them!”

Others offered words of encouragement to other SRLs on how to remain strong while enduring the court process:

“Do lots of research. Try to find time for your kids and partner as it can be all consuming while you undergo a court procedure plus you end up using all your vacation time. When opposing counsel steps out of line . . . tell the judge about it.”

“Keep fighting. Do not give in to scare tactics or agree to terms you don’t really want out of fear or desperation. Stand your ground.”

“Going up against ‘aggressive’ counsel is scary but you have to speak up, don't be overcome by opposing counsel's level of sophistication, don't be silent when things do not make sense to you. The judge has an obligation to ensure that you have a chance to a fair trial from a procedural standpoint ... [the] judge won't know that you don't understand unless you tell them”

We noticed a continuation of the trend observed last year¹³ of respondents offering concrete practical tips about managing the court process based on their personal experiences, and how to make a very difficult situation a little better:

“Go out of your way to be polite, respectful, courteous, self-effacing, and even charming with court staff. These folks are the court's front lines. They deal with all sorts of characters, many of them not particularly nice. A little investment in pleasantries can pay big dividends when you need them to cut you some slack.”

“Treat everyone in the court process—lawyers for the other side, judges, witnesses, etc.—with the same courtesy and respect you would like to be treated with. Just because you disagree, you don't have to be disagreeable. Everyone involved can make your project easier or harder.”

We are also seeing more specific advice for SRLs when preparing for court appearances:

“Before researching case law, do some Google searches to see if you can find commentary on the particular aspect of the law your case involves. Many lawyers and judges have written scholarly articles on particular facets of the law. This can save a tremendous amount of time.”

¹³ ["New Data on SRLs: The Spectacular Rise of the Savvy Self-Represented Litigant".](#)

“Try to keep the emotion out of your presentations. After you have written something for the court, go through it and delete adjectives and adverbs, and especially qualifying words like ‘very,’ ‘extremely,’ etc. Emotions will not win the day. Good facts and solid legal arguments may.”

6. Conclusions

a. Income Levels

Similar to all our previous data, the majority of respondents continue to report low annual incomes, but there remains a significant portion who earn closer to a middle-class income, or higher. This result again supports the hypothesis that legal services are not viewed as affordable over the mid to long-term, even by individuals in higher income brackets.

b. SRLs with Disabilities

A surprising number of SRLs – almost half of the 2017 respondents – identified as a person with a disability, possibly skewed by our outreach to this community in 2017. Canada-wide data from 2012 reports an estimated 3.8 million adult Canadians being limited in their daily activities due to an impairment, representing 13.7% of the adult population.¹⁴ For those coming alone to the courts, a disability represents an often overwhelming additional obstacle.

c. Earlier Experiences with Legal Services

We see a dramatic decline in the number of respondents who describe themselves as satisfied with earlier legal services. The additional elaboration and comments provided in our open-ended questions reflected this dissatisfaction.

¹⁴ Statistics Canada. [“Disability in Canada: Initial Findings from the Canadian Intake form on Disability”](#).

d. Beginning with Counsel and Running Out of Funds

The number of respondents reporting that they had, at some point in their case, the assistance of a lawyer, reinforced a key finding of the 2013 Study: the costs of legal services (especially where these accumulate over time) mean that many cannot afford to continue to pay for them. In the comments section, respondents described spending large amounts of money on the preparation of court documents and court appearances by a lawyer until they could no longer afford to top up the retainer. We are seeing the same trend as previous years: that individuals are depleting their resources significantly in order to initially hire trained representation, but ultimately end up representing themselves.

e. Continuing to Look for Legal Assistance

The results of the 2017 Intake Report show that most SRLs are still actively seeking alternative, affordable legal services.

The numbers reporting successfully accessing *pro bono* services are worryingly lower than in the original Study (24% compared with 64% in 2013 and 58% in 2015-16).

In the 2017 Intake Form we added a new question asking about access to unbundled legal services, another way individuals may receive legal services at a lower total cost. We saw that 25% were offered unbundled services by the lawyer whom they previously retained. Another 55% sought out these services on their own, but without success.

Disappointingly, many SRLs who received unbundled services told us that they were not fully satisfied or were dissatisfied with them. Anecdotally, we have heard from SRLs that the hourly rate for unbundling is still too high, even though they are relieved of the burden of scraping together a retainer. In the future, we shall ask more detailed questions to help us understand why satisfaction is so low.

f. Experiences with Mediation

There continues to be more familiarity with mediation services. In the 2017 sample we see an increase in the number of respondents who report being

offered mediation services as well as those who actually used mediation services. However, many reported that their experiences with mediation did not result in full or partial settlement. We shall investigate this question in future intake forms to see whether mediation outcomes improve.

g. Advice for other SRLs

Last year we were struck by the growing sophistication and nuance of the tips offered by SRLs to others who face similar circumstances. In 2017, we continue to see very detailed advice offered to other SRLs. Respondents offered personal experiences with preparing court documents, preparing for appearances, how to research, and how to stay strong during the extreme stress and pressures of navigating and engaging the legal system.

h. Poor Experiences of the Justice System and of Self-Representation

We continue to see SRLs frustrated, overwhelmed, stressed and defeated by the legal process. Many described poor treatment by actors in the legal system, facing aggressive counsel, financial pressures, and a general lack of understanding of the plight of an SRL. Many reported that these stresses negatively affected their emotional and physical health.

On the positive side, a few respondents commented that they saw some individual improvements in the attitudes and demeanors of some judges toward SRLs.

i. Ongoing Commitment to Access to Justice

A whopping 94% of respondents indicated that they wanted to be added to the NSRLP newsletter mailing list, again challenging the myth that SRLs do not retain an interest in and concern about Access to Justice once their own matter is concluded.

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The intake procedure at the NSRLP is an ongoing process. We shall continue to modify intake questions based on the changes we observe and the growth of new subject areas which require investigation.

If you have questions about any of the data presented here, please contact 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.